

Vol. II of II
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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable George C. James, Circuit Court Judge

CAMEREN L. KELLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001118

APPENDIX

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Calderone Bracecross by Hastie

1 A Yes.

2 Q Okay. And you said you did graduate from
3 high school?

4 A Yes, sir.

5 Q And you have a diploma.

6 A I have a certificate.

7 Q You have a certificate. You didn't get a
8 GED certificate. You didn't get a diploma; is
9 that right?

10 A Yes.

11 Q And you readily admit that you smoke weed.

12 A Yes.

13 Q And you drink alcohol.

14 A Yes.

15 Q But you don't do anything harder than
16 that.

17 A No.

18 Q What is a brick?

19 A 36-ounce.

20 Q An ounce of what?

21 A Cocaine.

22 Q Well that's cocaine. And it's 36 ounces
23 of cocaine?

24 A Yes, sir.

25 Q I guess that's just kind of common

Calderone Bracey-cross by Hastie

1 knowledge on the street what a brick is.

2 A Yes, sir.

3 Q But you don't mess with cocaine; is that
4 right?

5 A No.

6 Q Have you sold cocaine?

7 A No.

8 Q Have you ever sold weed?

9 A Yes, sir.

10 Q You've sold weed; haven't you?

11 A Yes, sir.

12 Q Where do you normally get your weed from?

13 A We got a dude around the corner.

14 Q There's a dude around the corner. So if
15 you want weed, you just go to the weed around the
16 corner.

17 A Yes, sir.

18 Q And you would get it from him and you
19 would sell it?

20 A No, sir.

21 Q But you do sell it?

22 A Yes, sir.

23 Q And I asked earlier, where do you get your
24 weed from?

25 A Just around the corner.

Calderone Braceycross by Hastie

1 Q And you sell it.

2 A I don't sell his weed.

3 Q Oh, you don't sell his weed.

4 A Yeah, I smoke his weed.

5 Q Where do you get the weed that you sell?

6 A That's personal.

7 THE COURT: No, sir. You answer the
8 question.

9 Q Pardon?

10 A From another dude.

11 Q From another who?

12 A A connect.

13 Q A connect? What does that mean?

14 A Another person on the side.

15 Q Another person on the side.

16 A Yes.

17 Q Does this person have a name?

18 A Yes.

19 Q What is his name?

20 A Named Chris.

21 Q Does Chris have a last name?

22 A Chris Smith.

23 Q Chris Smith. That's where you get your
24 weed that you sell from.

25 A Yes, sir.

Calderone Bracey-cross by Hastie

1 Q Okay. Now you said that Mr. Goodwin is
2 your cousin; is right correct? Can you explain to
3 the jury how is he related to you?

4 A He is -- his grandfather is Missouri's.

5 Q Is that the last name of some people and
6 not the state?

7 A No, that's the people.

8 Q The people named Missouri?

9 A Yes.

10 Q Okay.

11 A We are kin to Missouri's, to like third
12 cousins, second cousins.

13 Q How are you kin to Missouris?

14 A On my grandma's side.

15 Q On your grandma's side.

16 A Yes.

17 Q And can you follow that grandma had a
18 daughter or somebody named or married somebody
19 Missouri?

20 A Yes.

21 Q That's what happened?

22 A Yes.

23 Q What is grandmama's daughter's name? That
24 would be your aunt; wouldn't it?

25 A Yes.

Calderone Bracey-cross by Hastie

1 Q What is her name?

2 A I don't know her like that.

3 Q You don't know your aunt like that? Or

4 you don't know her name?

5 A I don't know her name.

6 Q Where does this aunt live?

7 A I don't know.

8 Q You don't even know where your aunt lives;

9 do you?

10 A No, sir.

11 Q But through this aunt that you don't know

12 her name; that you don't know where she lives;

13 that's how Vernon Goodwin is your cousin?

14 A Yes.

15 Q The aunt you don't know her name or

16 nothing. Is that what you are telling the jury

17 here this afternoon?

18 A Yes, sir.

19 Q Let's go to December 14th.

20 A All right.

21 Q You've got a -- Vernon Goodwin came to

22 your house.

23 A Yes, sir.

24 Q That's what you said. And talked to you

25 about hitting a lick; is that right?

Calderone Bracey-cross by Hastie

1 A Yes, sir.

2 Q And your definition of a lick is that
3 means, "We are going to go rob somebody?"

4 A Rob someone.

5 Q Rob somebody. And your testimony is this
6 conversation took place in the house or in the
7 yard?

8 A In the yard.

9 Q In the yard.

10 A Yes, sir.

11 Q How long did this all last?

12 A This conversation?

13 Q Yes, sir.

14 A Five minutes.

15 Q About five minutes.

16 A Yes, sir.

17 Q Now you never hit a lick before is your
18 testimony; right?

19 A Yes, sir.

20 Q Did you talk to Mr. Goodwin or whoever the
21 mastermind might be, about details or where are we
22 going? Did you ask them, "Where are we going?"

23 A No, sir.

24 Q You didn't ask them, "Where are we going."

25 A No, sir.

Calderone Bracey-cross by Hastie

1 Q Did you ask them how many people are in
2 the house wherever we are going?

3 A No, sir.

4 Q You
5 didn't ask him how many people are in the house;
6 did you?

7 A No, sir.

8 Q You don't even have a gun; do you?

9 A No, sir.

10 Q To hit a lick with.

11 A No, sir.

12 Q Have you ever shot a gun before?

13 A Yes, sir.

14 Q What type of guns have you shot?

15 A All kinds.

16 Q All kinds. For example, list them.

17 A A shotgun.

18 Q Okay.

19 A A pump.

20 Q That's a shotgun or some other kind of
21 gun.

22 A A 9 millimeter.

23 Q A 9 millimeter.

24 A A 22.

25 Q Okay. Now this house that you are going

Calderone Bracey-cross by Hastie

1 to hit this lick at.

2 A Yes, sir.

3 Q Now one thing that you did know, a lick
4 meant, "We are going to rob somebody."

5 A Yes, sir.

6 Q Now you had to know that's pretty serious
7 business. You did know that; didn't you?

8 A Yes, sir.

9 Q People are not just going to let you walk
10 in and rob. Now you know that; right?

11 A Yes.

12 Q But you didn't ask the mastermind, whoever
13 this mastermind was, you didn't ask a single
14 question, "Hey, how many people might be in this
15 house." You didn't ask that; did you?

16 A No, sir.

17 Q Did you ask what kind of house is this, is
18 this a brick house? A double wide? A single
19 wide? Did you ask any questions?

20 A No, sir.

21 Q You all drove all the way from is it
22 Cassatt?

23 A Yes, sir.

24 Q All the way to this street name. You

~~25 don't know this street name, but it's Odell Lane.~~

Calderone Bracey-cross by Hastie

1 A Yes, sir.

2 Q That's a good 30-minute drive. And none
3 of those questions were asked. That's what you
4 telling this court today.

5 A Yes, sir.

6 Q Now your story today is that "I am going
7 to commit a robbery." Right? You are going over
8 here to commit a robbery.

9 A Yes, sir.

10 Q And you go into the house, and your
11 testimony is that you didn't even have a gun.

12 A That's why Vernon Goodwin had the supplies
13 and stuff. The gun was given to us.

14 Q When you went into the house at Odell
15 Lane.

16 A Yes, sir.

17 Q Did you have a gun?

18 A No, sir, I didn't. My brother did.

19 Q So you go into a house to rob somebody.

20 And don't even have a gun. That's your testimony
21 here today?

22 A Yes, sir.

23 Q You also said that, or Mr. Meadors might
24 have said you had on bedroom slippers.

25 A Yes, sir.

Calderone Bracey-cross by Hastie

1 Q Now you don't have to know a whole lot
2 about a robbery, but most folks don't rob anybody
3 with bedroom slippers.

4 THE COURT: All right, sir. That's not a
5 question.

6 Q Why did you wear bedroom slippers?

7 A That was what I had on.

8 Q That's what you had on.

9 A Yes, sir.

10 Q Do you have sneakers?

11 A Yes, sir.

12 Q You have sneakers. Were you all in a
13 hurry?

14 A No, sir.

15 Q But you did say you just woke up; didn't
16 you?

17 A Yes, sir.

18 Q Did you have on pajamas?

19 A No, sir.

20 Q Okay. So you get to the place you have
21 never been before.

22 A No, sir.

23 Q What's the plan to get inside? Well let's
24 back up. Let me take that back. You were dropped

25 off, right?

Calderone Bracey-cross by Hastie

- 1 A Yes, sir.
- 2 Q So you all walked up to the house.
- 3 A Yes, sir.
- 4 Q Were there any cars out there?
- 5 A No, sir.
- 6 Q There were no cars out there at that time.
- 7 A No, sir.
- 8 Q Not a single car.
- 9 A No, sir.
- 10 Q Well what is you and your brother's plan?
- 11 Not your cousins; you and your brother are out
- 12 there, right?
- 13 A Yes, sir.
- 14 Q You and Carlton.
- 15 A Yes, sir.
- 16 Q So what is the plan? How do you get
- 17 inside, what is the plan?
- 18 A Well first, our plan was, If nobody was
- 19 going to come up, we was going to force our way in
- 20 there. But if somebody was going to come up, we
- 21 was going to use them to come in the house.
- 22 Q Okay. Wasn't there a light out there in
- 23 the yard?
- 24 A I didn't pay attention.
- 25 Q You didn't pay attention to the light in

Calderone Bracey-cross by Hastie

1 the yard?

2 A No, sir.

3 Q And you are going to rob somebody?

4 A Yes, sir.

5 Q Where did you all hide? Because if there
6 wasn't a light, the car had lights. Did you all
7 hide somewhere waiting on somebody to come up?

8 A Beside the house.

9 Q Beside the house. So somebody did come
10 up.

11 A Yes, sir.

12 Q Were they walking?

13 A No, sir.

14 Q They were in a car?

15 A Yes, sir.

16 Q What color of car?

17 A I don't even know.

18 Q You don't know what color of car?

19 A Uh-uh. (Negative.)

20 Q And you are sure there were no other cars
21 out there at all?

22 A No.

23 Q No cars. Okay, now what is the plan now?

24 You have no gun; right?

25 A No.

Calderone Bracey-cross by Hastie

1 Q So you couldn't make them get out of the
2 car. So what's the plan? What happened?

3 A My brother came on the side of the car
4 where Mr. Goodwin is at, and he got out of the
5 car.

6 Q So he started on the driver's side where
7 Hugh Phillips was at; as you said.

8 A Yes, sir.

9 Q He didn't go to the passenger side first?

10 A No, sir.

11 Q He went straight over there.

12 A Yes, sir.

13 Q And what happened?

14 A And he got out of the car.

15 Q Who got out of the car?

16 A Mr. Hugh Phillips.

17 Q Was his wife with him? Was she in the
18 car?

19 A No, sir.

20 Q Nobody was in the car with him. Okay.
21 Your brother got Hugh, and what happened next?

22 A And then he put his gun to his back.

23 Q Okay.

24 A And then we walk on. Mr. Hugh Phillips

25 opened up the door, and we went on inside.

Calderone Bracey-cross by Hastie

1 Q He opened up the door?

2 A Yes, sir.

3 Q Did he knock on the door?

4 A No, sir.

5 Q Did he have a key to the door?

6 A No, sir.

7 Q So how did he get in?

8 A He walked on in.

9 Q He just walked right in?

10 A Yes, sir.

11 Q Okay. Once you all got inside, what
12 happened?

13 A Well my brother fired the gun. And he
14 fired a shot off and told everybody to get down.

15 Q How many shots?

16 A One or two.

17 Q One or two shots.

18 A Yes, sir. I don't know the exact amount.

19 Q And what are you doing? You have no gun.

20 A Uh-uh. (Negative.)

21 Q You don't know who has guns or anything;
22 do you?

23 A No, sir.

24 Q Were you surprised to see that many people
25 in the house?

Calderone Bracey-cross by Hastie

- 1 A No, sir.
- 2 Q You weren't even surprised.
- 3 A No, sir.
- 4 Q You have no gun; is that right?
- 5 A Yes, sir.
- 6 Q And you all are robbing people.
- 7 A Yes, sir.
- 8 Q Okay. So your brother fired off some
- 9 rounds in the floor. And everybody get down.
- 10 A Yes, sir.
- 11 Q And what is your job?
- 12 A The duct taping.
- 13 Q You had duct tape?
- 14 A Yes, sir.
- 15 Q Where was the duct tape?
- 16 A In my hands.
- 17 Q In your hands.
- 18 A Yes, sir.
- 19 Q Okay. So how many people did you duct
- 20 tape that day?
- 21 A Seven.
- 22 Q Seven.
- 23 A Uh-huh. (Affirmative.)
- 24 Q Do you know how to duct tape people?
- 25 A Yes, sir.

Calderone Bracey-cross by Hastie

1 Q Do you do a good job duct taping?

2 A No, sir.

3 Q Every other knot; right?

4 A Yeah.

5 Q Okay. So you stared duct taping
6 everybody. And did you tell them anything as you
7 were duct taping them?

8 A No, sir.

9 Q You didn't say anything to them?

10 A No, sir.

11 Q Did you reach in their pockets and check
12 what they had in their pockets?

13 A Yes, sir.

14 Q Did you pat them down and see whether they
15 had a gun?

16 A No, sir.

17 Q You didn't pat them down?

18 A No, sir.

19 Q So how many guns does your brother got?
20 We know he has one. How many guns does your
21 brother have?

22 A Two.

23 Q He has two.

24 A Yes, sir.

~~25 Q And that was the plan all the time, right,~~

Calderone Bracey-cross by Hastie

1 for him to have two guns and you have zero guns.

2 Is that part of the master plan?

3 A Yes, sir.

4 Q Mr. Meadors asked you about, during this

5 commotion, did you hear a phone ring at all?

6 A No, sir.

7 Q You didn't hear a phone ring; did you?

8 A I wasn't paying no attention.

9 Q You weren't paying no attention.

10 A No, sir.

11 Q Well probably if the phone rang you

12 probably would have heard it. So you heard no

13 phone ring. You are duct taping.

14 A Yes, sir.

15 Q At any time did you move folks into a

16 hallway?

17 A No, sir.

18 Q You didn't move anybody to a hallway; did

19 you?

20 A No, sir.

21 Q Okay. Now we're getting to the moment

22 where you got shot. What were you doing just

23 before this happened?

24 A While I been duct taping them?

25 Q Who were you -- were you in the kitchen

Calderone Bracey-cross by Hastie

1 when you got shot or were you out---

2 A No, I was in the living room.

3 Q You were out in the living room. Were you
4 duct taping someone, or were you finished?

5 A I was finished.

6 Q You had finished. Were you standing up?

7 A Yes, sir.

8 Q Did you see Belton with a gun?

9 A No, sir.

10 Q You didn't see him.

11 A No, sir.

12 Q The first time you had a gun you were hit.

13 A Yes, sir.

14 Q How many times did he shoot you?

15 A I---

16 Q You can't even remember; can you?

17 A Uh-uh. (Negative.)

18 Q Did you go down?

19 A Yes, sir.

20 Q On your back?

21 A No, sir.

22 Q On your knee?

23 A I fell on my knees; yes.

24 Q You fell on your knees. Did anybody else

25 shoot?

Calderone Bracey-cross by Hastie

1 A My brother did.

2 Q Your brother started shooting.

3 A He was shooting back.

4 Q Shooting back. Was he shooting back at
5 Belton?

6 A Yes, sir.

7 Q Was he just trying to shoot people that
8 were laying down or face down? Or was he just
9 shooting?

10 A He was shooting back at Belton. He shot
11 first.

12 Q But you know his testimony is he killed
13 Kemper. You know that; right?

14 A Yes, sir.

15 Q You are shot now.

16 A Yes, sir.

17 Q You are down on your knees.

18 A Yes, sir.

19 Q Where is your brother?

20 A After they were shooting, he ran.

21 Q He ran.

22 A Yes, sir.

23 Q Out the door you all came in?

24 A Yes, sir.

25 Q Okay. How far were you from the door?

Calderone Bracey-cross by Hastie

- 1 A A couple of inches.
- 2 Q You were close to the door.
- 3 A Yes, sir.
- 4 Q So you are on your knees. You got up?
- 5 A Yes, sir.
- 6 Q Ran as well.
- 7 A Yes, sir.
- 8 Q Can you recall how many rounds you had in
- 9 you at the time you got up?
- 10 A No, sir.
- 11 Q You had quite a few; didn't you?
- 12 A Yes, sir.
- 13 Q Okay. You ran out that front door you
- 14 came in.
- 15 A Yes, sir.
- 16 Q Which direction did you go in?
- 17 A To the left.
- 18 Q You ran to the left because there is a
- 19 tree line to the left.
- 20 A Yes, sir.
- 21 Q Is that right?
- 22 A Yes, sir.
- 23 Q How far did you go in that tree line?
- 24 A I can't remember.
- 25 Q You probably couldn't go too far.

Calderone Bracey-cross by Hastie

1 A Yes.

2 Q You were running with five bullet holes at
3 least. So you did fall; right?

4 A Yes.

5 Q You were asked were there any guns
6 admittedly on you, and you said no; is that right?

7 A Yes, sir.

8 Q The only thing you had was a bandanna
9 around your neck. Anything else?

10 A And my gloves.

11 Q That's right. And your gloves.

12 A Yes, sir.

13 Q I'm sure you feared those guys were coming
14 out of the house looking for you; right?

15 A No.

16 Q You
17 didn't -- you weren't fearful of that?

18 A Uh-uh. (Negative.)

19 Q The police -- a police officer did come up
20 to you; is that correct?

21 A Yes, sir.

22 Q How long had you been out there before the
23 police officer came, can you remember?

24 A No.

25 Q You can't remember that kind of stuff; can

Calderone Bracey-cross by Hastie

1 you?

2 A No.

3 Q But they did ask you, "Hey what happened?"

4 Right?

5 A Yes, sir.

6 Q And you told them, "Me and my cousin were
7 trying to rob these people." Or words to that
8 effect; right?

9 A Yes, sir.

10 Q That's what you told the police officer.

11 A Yes, sir.

12 Q Could you tell it was a police officer?

13 A Yes, sir.

14 Q You knew you were talking to someone in
15 authority.

16 A Yes, sir.

17 Q And with 5 bullet holes in your body, you
18 chose not to tell the truth; didn't you? Yes or
19 no?

20 A Yes.

21 Q You chose not to tell the truth. And in
22 your statement, I think, to Mr. Meadors, I did
23 that because I was trying to protect my what?

24 Who?

25 A My brother.

Calderone Bracey-cross by Hastie

1 Q Your brother. You lied because you wanted
2 to protect your brother. Who is the youngest, you
3 or him?

4 A The youngest?

5 Q The youngest of the two?

6 A Him.

7 Q He is your younger brother.

8 A Yes.

9 Q You are already shot. You know you are
10 already in serious trouble. And you lied because
11 you wanted to protect your kid brother; is that
12 right?

13 A Yes.

14 Q Okay. Two months later you are doing
15 better. That's right?

16 A Yes, sir.

17 Q Two months later you are at Palmetto
18 Richland Memorial Hospital?

19 A Yes.

20 Q In Columbia?

21 A Yes.

22 Q Were you visited by the police at Palmetto
23 Richland?

24 A No.

25 Q ~~They didn't visit you over there at all?~~

Calderone Bracey-cross by Hastie

1 A No, sir.

2 Q But you got transferred to Just Care or
3 something?

4 A Yes, sir.

5 Q Where is that?

6 A In Columbia.

7 Q That's in Columbia also, okay. Were you
8 visited in Just Care by Investigator West?

9 A No, sir.

10 Q You don't remember that?

11 A No, sir.

12 Q But you did make a statement to him about
13 what all had happened; didn't you?

14 A Yes, sir.

15 Q Where did you make this statement and
16 when?

17 A Sumter County.

18 Q That was after you got back to Sumter
19 County.

20 A Yes, sir.

21 Q About when was that approximately?
22 February?

23 A Yes, sir.

24 Q That's February. You got shot in

25 December. So you're doing better.

Calderone Bracecross by Hastie

1 A Yes, sir.

2 Q But you're still kind of.

3 A Yes, sir.

4 Q But you had a good while to think about
5 this; didn't you?

6 A Yes, sir.

7 Q You knew you were in some real bad
8 trouble. Because you know by now, Mr. Holliday, a
9 fine young man; your brother has killed, right?
10 Another man was shot, paralyzed; right? So you
11 know this is a real bad -- you have got to say yes
12 or no. You can't shake your head because she's
13 trying to....

14 A Oh, yes, sir. Yes, sir.

15 Q You know you are in real bad trouble now.

16 A Yes, sir.

17 Q Is that right?

18 A Yes, sir.

19 Q So Investigator West comes and asks you
20 what happened; right?

21 A Yes, sir.

22 Q And you told him as far as you can
23 recollect.

24 A Yes, sir.

25 Q Were you taking medicine at this time?

Calderone Bracey-cross by Hastie

1 A No, sir.

2 Q You weren't taking medicine. Your mind is
3 clear.

4 A Yes, sir.

5 Q Right?

6 A Yes, sir.

7 Q And that's when you told him the
8 information about Mr. Goodwin and their
9 involvement; right?

10 A Yes, sir.

11 Q But you also -- you admitted on the stand
12 today that you made a second statement; right?
13 You wrote a second statement.

14 A Yes, sir.

15 Q Right?

16 A Yes, sir.

17 Q And you were in which part when you wrote
18 this statement out at the jail?

19 A B pod.

20 Q Weren't you in B pod? Bravo pod; right?

21 A Yes, sir.

22 Q Now describe for the jury what kind of
23 place is Bravo pod.

24 A It's a closed one.

~~25 Q It's a lock down kind of place; right?~~

Calderone Bracey-cross by Hastie

1 A Yes, sir.

2 Q Nobody is walking around talking to each
3 other; right?

4 A No, sir.

5 Q Right?

6 A No, sir.

7 Q You're not allowed to; right?

8 A No, sir.

9 Q You all aren't allowed to talk to each
10 other in Bravo pod; are you?

11 A No, sir.

12 Q It's the lock down pod at Winkles Road;
13 right?

14 A Yes, sir.

15 Q The reason they call it lock down is
16 because they don't want you guys intermingling
17 with one other, or even talking to one another.

18 A Yes, sir. The thing about it is---

19 Q Hold it.

20 THE COURT: He has a right to explain his
21 answer.

22 Q He's already answered it.

23 A The thing about it, people come to the
24 door. They can come to the door.

25 Q Oh, people can come to the door.

Calderone Bracey-cross by Hastie

1 A Yes, sir.

2 Q Anybody can come to the door?

3 A Yes, sir.

4 Q At any time?

5 A When they are on their break.

6 Q How did that break thing work?

7 A They go and during like if my day to come
8 out, I get 30 minutes out on break. Door by door.

9 Q A day?

10 A Yes, sir.

11 Q Okay. Door by door. Everybody gets 30
12 minutes out.

13 A Yes, sir. We use a phone to go outside
14 and all that.

15 Q Okay. Just for 30 minutes.

16 A Yes, sir.

17 Q So that's the time you all use to
18 communicate with one another.

19 A Yes, sir.

20 Q So during that time you say you talked to
21 Vernon.

22 A Yes, sir.

23 Q Was your brother in B pod?

24 A Yes, sir.

25 Q Did you talk to your brother?

Calderone Bracey-cross by Hastie

1 A Yes, sir, when I come out.

2 Q Every time you come out, you talk to your
3 brother; didn't you?

4 A Yes, sir.

5 Q And love your kid brother; don't you?

6 A Yes, sir.

7 Q Did you all talk about what a mess you are
8 in right now?

9 A Yes, sir.

10 Q You did;
11 didn't you?

12 A Yes, sir.

13 Q You've
14 already told the jury you would lie for your
15 brother. You have lied for your brother; haven't
16 you?

17 A Yes, sir.

18 Q And there is no need to even show you the
19 letter, because the second letter that you wrote,
20 because you admit that you wrote the letter. Is
21 that right?

22 A Yes, sir.

23 Q But you admit here today that you lied
24 here again about that letter.

25 A Yes, I wrote it.

Calderone Bracey-cross by Hastie

1 Q You wrote it. You did write it though;
2 didn't you?

3 A Yes, sir.

4 Q Did you put a date on it?

5 A No, sir. I didn't even sign it. I wrote
6 it, but I did not sign it.

7 Q But that's your letter; isn't it?

8 A Yes.

9 Q Okay. And in that letter, you said that
10 the first statement that you took was true -- was
11 not true; is that correct?

12 A No, it was true. But he told---

13 Q But I'm asking---

14 MR. MEADORS: Your Honor, let him finish.

15 MR. HASTIE: Excuse me.

16 THE COURT: Let him finish his answer.

17 Q Go ahead.

18 A He told me to tell them that that was a
19 lie. But that wasn't no lie, that all went down
20 on December 14th 2009.

21 Q So he
22 told you to---

23 A Yeah, write. Write.

24 Q Write a lie.

25 A Yeah.

Calderone Braceycross by Hastie

1 Q How old are you?

2 A 26.

3 Q You're a grown man; right?

4 A Yes.

5 Q Are you scared of Vernon Goodwin or
6 something? You are not scared of him. So what if
7 he comes and tells you to lie, are you going to
8 lie for him?

9 A Yes, sir---

10 Q Evidently.

11 MR. MEADORS: Your Honor, let him finish his
12 answer.

13 THE COURT: Wait a minute. You are asking two
14 questions at once, and not giving him a chance to answer
15 them. Rephrase your question, and stop and let him
16 answer the question.

17 Q Are you afraid of Vernon Goodwin?

18 A No, sir.

19 Q If he tells you to lie, are you going to
20 tell a lie?

21 A No, sir.

22 Q No, sir.
23 That's right.

24 THE COURT: No, sir. Don't comment. Just ask

25 questions, Mr.....

Calderone Bracey-cross by Hastie

1 MR. HASTIE: Yes, sir, I apologize.

2 Q You just said you are not going to lie for
3 Vernon Goodwin. But you also just testified that
4 you did lie.

5 THE COURT: All right, let's don't repeat the
6 testimony.

7 Q Is that
8 correct?

9 A Yes, sir.

10 Q Who is Benjamin McGee?

11 A My brother-in-law.

12 Q He's your brother-in-law. Where does
13 Benjamin McGee live?

14 A In Rembert.

15 Q In Rembert. Do you know where in Rembert?

16 A No, not really.

17 Q What is his profession?

18 A What do you mean?

19 Q Where does he work?

20 A I don't know.

21 Q You don't know where he works? Does he
22 work, do you know that?

23 A No, sir. I don't know him like that.

24 Q You don't know him like that.. It's your
~~25 brother-in-law, right?~~

Calderone Bracey-cross by Hastie

1 A Yes.

2 Q How is he your brother-in-law? Let's get
3 that straight.

4 A Well my brother is married to his sister.

5 Q Which brother?

6 A Mario.

7 Q Mario is married to his sister.

8 A Yes.

9 Q Oh.....

10 MR. MEADORS: Your Honor, I am going to
11 object to these extra comments---

12 THE COURT: Yeah,---

13 MR. MEADORS: ---and sounds.

14 THE COURT: ---don't comment, Mr. Hastie.

15 MR. HASTIE: Yes, sir.

16 THE COURT: I've cautioned you on it twice. You
17 are going to have to accept the answers and move on.

18 MR. HASTIE: Yes, sir.

19 Q Do you know where -- you don't know his
20 address.

21 A No, I don't know their address.

22 Q Have you ever been to their home?

23 A Yes.

24 Q You have been to their house.

25 A Yes.

Calderone Bracey-cross by Hastie

1 Q How many times?

2 A Plenty of times.

3 Q Do you know him to smoke weed?

4 A I don't know him like that.

5 MR. MEADORS: Object to relevance.

6 THE COURT: Sustained.

7 MR. HASTIE: I beg the court's indulgence.

8 THE COURT: Yes, sir.

9 Q You have already admitted that you pled
10 guilty to manslaughter.

11 A Yes, sir.

12 Q And you received a sentence of 30 years.

13 A Yes, sir.

14 Q Correct? But there are at least 24 other
15 charges that are hanging over your head; is that
16 right?

17 A Yes, sir.

18 Q And the promise from the Solicitor's
19 Office is that you must tell the truth here today,
20 in order to make sure they bring those other 24
21 charges against you; is that correct?

22 A Yes, sir.

23 Q And you sure don't want that to happen; do
24 you?

25 A No, sir.

Calderone Bracecross by Hastie

1 Q You already got 30 years.

2 A Yes, sir.

3 MR. HASTIE: Your Honor, thank you very
4 much. I have no further questions.

5 THE COURT: Redirect, Mr. Meadors.

6 MR. MEADORS: I beg the court's indulgence.

7 Redirect Examination by Mr. Meadors:

8 Q Does that appear to be a copy of State's
9 47?

10 A Yes, sir.

11 Q Is that your signature on 46?

12 A Yes, sir.

13 Q On that paper, did you write this
14 statement on it that Mr. Goodwin asked you to
15 write?

16 A The yellow piece of paper?

17 Q Is that the one you wrote?

18 A Yes, sir.

19 THE COURT: That being?

20 MR. MEADORS: 47, I'm sorry.

21 Q Did you give him the original?

22 A On the statement?

23 Q Yes, sir.

24 A Yes, sir.

25 ~~MR. MEADORS: We would offer State's 46 and 47.~~

Calderone Bracey-cross by Hastie

1 THE COURT: Any objection, Mr. Sullivan?

2 MR. SULLIVAN: No, sir.

3 THE COURT: Mr. Hastie?

4 MR. HASTIE: Yes, Your Honor. He is saying
5 that those are---

6 THE COURT: No, sir. No, sir. Just give me --
7 I don't want an argument, I just want the legal grounds.

8 MR. HASTIE: Those aren't the same statements
9 that he is presenting. Those are different statements.

10 THE COURT: Okay, authenticate them and see what
11 you need to do. I thought he said 47 was the one he
12 wrote; did he not, Mr.?

13 MR. MEADORS: Yes, sir.

14 THE COURT: Let's us deal with that one. Any
15 objection to No. 47? 47, let's deal with one of them.
16 Do you have an objection?

17 MR. MEADORS: Can we ask the jury to step out a
18 minute?

19 THE COURT: Ladies and gentlemen, I am going to
20 have to ask you to go to the jury room for just a minute
21 while I deal with this legal issue. Do not discuss the
22 case among yourselves. We also make this recess about
23 10 or 15 minutes. We will send for you. Don't discuss
24 the case among yourselves.

25 (Whereupon, the following takes place

Calderone Bracey-cross by Hastie

1 outside the presence of the jury.)

2 THE COURT: 46 and 47.

3 MR. MEADORS: 46, Your Honor, is a
4 statement of March 12th 2010, by Mr. Calderone
5 Bracey, March 12th 2010. It's not signed.

6 THE COURT: That's 46 or 47?

7 MR. MEADORS: 47. That's 47.

8 THE COURT: That's 47.

9 MR. MEADORS: That's 47.

10 THE COURT: And that's the one on the
11 yellow paper.

12 MR. MEADORS: That's correct, sir.

13 THE COURT: Let me see it. This is the
14 one that if I recall, that he acknowledges that he
15 wrote. And is that right?

16 MR. MEADORS: Yes, sir.

17 THE COURT: Okay, what's 46?

18 MR. MEADORS: 46, I'm sorry about the
19 numerical order. It appears to me to be copy of
20 the same thing. I think he testified to that, but
21 it has his signature at the bottom. Now as we
22 look through it here, Your Honor,---

23 THE COURT: I don't want any argument, I
24 just want to know what you claim that it is.

25 ~~MR. MEADORS: Well I need to preface that.~~

Calderone Bracey-cross by Hastie

1 THE COURT: What is your preface?

2 MR. MEADORS: This has the same date on
3 it, the same verbiage. As we go through it now,
4 it looks like the only difference is some of the
5 small i's are made I's, but it has the exact same
6 words.

7 THE COURT: We will worry about that in a
8 minute.

9 MR. MEADORS: Okay.

10 THE COURT: Let me find out what the
11 objection is. What is the objection to No. 47,
12 Mr. Hastie?

13 MR. HASTIE: Because once again, Your
14 Honor, they are bringing up something into this
15 trial. He said he just got that statement this
16 morning from his attorney.

17 THE COURT: He didn't offer to it you, he
18 went into it.

19 MR. HASTIE: But he's presenting that as,
20 being the same statement. This thing is already
21 admitted on the stand that he---

22 THE COURT: No, that's not my question.
23 My question to you is what is your objection to
24 47? What is your legal objection to Exhibit No.

25 47?

Calderone Bracey-cross by Hastie

1 MR. HASTIE: My objection is, that this
2 gentleman did sign one. And I object, because I
3 think that's a fraud.

4 THE COURT: Well if he identifies it as
5 being the statement that he wrote, why is it a
6 fraud?

7 MR. HASTIE: Well that's fine. He has
8 already identified that.

9 THE COURT: Sir?

10 MR. HASTIE: That's fine. He's already
11 identified that as something that he wrote.

12 THE COURT: Right, so why are you---

13 MR. HASTIE: I will withdraw my objection.

14 MR. MEADORS: Judge, I want to offer them
15 together. If one doesn't go in and the other one,
16 I think they have to do it part and parcel. I
17 would ask, Your Honor,---

18 THE COURT: Well we will talk about that.
19 47 he doesn't any objection to. What about 46,
20 Mr. Sullivan, what is your objection to that?

21 MR. SULLIVAN: I don't object to---

22 THE COURT: I don't mean Mr. Sullivan, you
23 don't object to either one of them. You already
24 said that. Mr. Hastie.

25 MR. HASTIE: I don't object to that

Calderone Bracey-cross by Hastie

1 either, because that's the one he signed.

2 THE COURT: So you don't have any
3 objection to 46 and 47, Mr. Hastie?

4 MR. HASTIE: Yes, sir.

5 THE COURT: Admitted without objection.

6 (Statements marked State's Exhibit Nos. 46
7 and 47 into evidence.)

8 THE COURT: Two exhibits admitted without
9 objection. No. 46 being the white copy of
10 whatever document it is. And No. 47 being the
11 yellow copy of whatever it is. And I will examine
12 the witness on those when we get back from our
13 break. It 10 minutes.

14 (Whereupon, the Court breaks.)

15 THE COURT: Back on the record with regard
16 to the matter of the State vs. Kelley and the
17 State vs. Goodwin. Mr. Kelley and Mr. Goodwin are
18 back in the courtroom with their counsel. The
19 State is present and represented by the solicitor
20 and assistant solicitors. Before we took the
21 break the matter that was being offered were two
22 exhibits marked as 46 for identification and 47
23 for identification. Originally there was an
24 objection, but that has been withdrawn. Is that
25 correct, Mr. Hastie?

Calderone Bracey-cross by Hastie

1 MR. HASTIE: That is correct, Your Honor.

2 THE COURT: The two exhibits are admitted
3 without objection. Anything before we bring the
4 jury in, Mr. Meadors?

5 MR. MEADORS: No, sir. Just maybe for a
6 minute.

7 THE COURT: Sir?

8 MR. MEADORS: I just want to save time.
9 We have this witness and another witness and we're
10 about through. And another witness and it's
11 getting close to 5.

12 THE COURT: No, sir. We are going to
13 finish the state's case today if we have to go
14 until 8 'clock.

15 MR. MEADORS: No, no. I was just -- we
16 are going to be finished. I am just saying, can I
17 have some time, even a little break to make sure
18 we go through before I officially rest, since
19 there is so much? Just a little bit. I was going
20 to ask for the morning, and I haven't got that
21 now. Can you give me 10 minutes?

22 THE COURT: We'll see about that when the
23 time comes. Bring the jury in.

24 (Whereupon, the following takes place

25 within the presence of the jury.)

Calderone Bracey-cross by Hastie

1 THE COURT: Thank you, Ladies and
2 gentlemen, we are now ready to proceed. We have
3 resolved this legal issue, and we are ready to
4 proceed. Mr. Meadors has the right to go back
5 into redirect examination. Mr. Meadors.

6 MR. MEADORS: Very briefly, if it please
7 the court.

8 THE COURT: Yes, sir.

9 MR. MEADORS: Can I approach again, the
10 witness?

11 THE COURT: Yes, sir.

12 Redirect Examination by Mr. Meadors:

13 Q I think you testified. That's not your
14 signature; is it?

15 A No, sir.

16 THE COURT: On what?

17 MR. MEADORS: 46.

18 Q On State's Exhibit No. 46, is that your
19 signature?

20 A No, sir.

21 Q Now on State's Exhibit No. 39 for ID, is
22 that your signature?

23 A Yes, sir.

24 Q And State's 38 for ID is that your
25 signature?

Calderone Bracey-cross by Hastie

1 A Yes, sir.

2 MR. MEADORS: Your Honor, we would offer
3 State's 38 and 39.

4 THE COURT: Show them to Mr. Hastie and
5 Mr. Sullivan. You want to quickly identify them,
6 counsel, as being -- oh, I won't do that, unless
7 you look at them.

8 MR. MEADORS: I believe without objection.

9 THE COURT: Any objection, Mr. Sullivan?

10 MR. SULLIVAN: No, sir.

11 THE COURT: Mr. Hastie?

12 MR. HASTIE: No, sir, Your Honor.

13 THE COURT: State's 38 and 39 admitted in
14 to evidence without objection.

15 (Miranda and statement marked State's
16 Exhibit Nos. 38 and 39 into evidence.)

17 MR. MEADORS: I beg the court's
18 indulgence.

19 Q How many statements did you write, Mr.
20 Goodwin?

21 A Three more.

22 Q Did you give those to him?

23 A To Goodwin, no.

24 Q And did you sign any of them?

25 A No.

Calderone Bracey-redirect by Meadors

1 Q You didn't sign any of them?

2 A No.

3 MR. MEADORS: Thank you.

4 THE COURT: Is that all, Mr. Meadors?

5 MR. MEADORS: That's all we have.

6 THE COURT: Mr. Sullivan, recross?

7 Recross Examination by Mr. Sullivan:

8 Q The statement, the second statement,
9 obviously you wrote to law enforcement, or the one
10 where you said that the statement that you did
11 write to law enforcement was a lie. You didn't
12 sign that statement.

13 A No.

14 Q You have got to answer out.

15 A Are you talking about the yellow paper?
16 Or which one? Are you talking about the statement
17 that I gave to law enforcement?

18 Q You wrote a statement referring to the
19 statement that you gave to law enforcement, where
20 you said that the statement that you gave to law
21 enforcement wasn't true; correct?

22 THE COURT: They are all in evidence. Why
23 don't we refer to them by exhibit numbers.

24 MR. MEADORS: It's 47.

~~25 Q You have written a statement saying that~~

Calderone Bracey-recross by Sullivan

1 you didn't give to law enforcement; saying that
2 the statement that you gave to law enforcement
3 wasn't true; right?

4 A Right.

5 MR. SULLIVAN: Okay. Thank you.

6 THE COURT: Mr Hastie.

7 MR. HASTIE: Thank you, Your Honor.

8 Recross Examination by Mr. Hastie:

9 Q You said you wrote three statements; is
10 that correct?

11 A Yes.

12 Q Now when you say three statements, tell us
13 what those statements are.

14 A The same thing.

15 Q On, the same. The last one we talked.

16 A Yes.

17 Q You wrote that three times; didn't you?

18 A Yes.

19 Q We knew you gave one to Vernon Goodwin?

20 A Uh-huh. (Affirmative.)

21 Q Who did you give the other two too?

22 A Nobody.

23 Q Nobody. Now you know you are under oath
24 here today; right?

25 A Yes.

Calderone Bracey-recross by Hastie

1 Q You know that; right?

2 A Yes, sir.

3 THE COURT: Speak up.

4 A Yes, sir.

5 Q You are swearing that you are going to
6 tell the truth here today.

7 A Yes, sir.

8 Q Is that right?

9 A Yes, sir.

10 Q Do you remember we were at the preliminary
11 hearing together? You remember that; don't you?
12 Out at the jail.

13 A When I did what?

14 Q Pardon me?

15 A I don't remember exactly the date.

16 Q But you do remember you had a preliminary
17 hearing?

18 A Yes, I remember.

19 Q You remember being at the preliminary
20 hearing.

21 A Yes, sir.

22 Q And after our preliminary---

23 MR. MEADORS: Objection.

24 THE COURT: Yes, sir. Sustained. Unless

~~25 you have got a transcript of it, you are putting~~

Calderone Bracey-recross by Hastie

1 yourself in a position to be a witness,

2 Mr. Hastie, and you can't do that.

3 Q You did gave Vernon Goodwin a statement
4 like this; is this correct?

5 THE COURT: Like what?

6 MR. HASTIE: Exhibit 46, Your Honor.

7 Q Exhibit 46. You did give it to him;
8 didn't you?

9 A To him, yes.

10 Q And Vernon gave it to me. Do you know
11 that?

12 THE COURT: Answer yes or no.

13 A No.

14 Q Vernon did give this to me. And just
15 think hard now, remember you are under oath to
16 tell the truth.

17 THE COURT: Now don't say that again. You
18 know he's already said several times, and
19 everybody in here knows that he's under oath. So
20 just ask your questions, Mr. Hastie.

21 MR. HASTIE: Yes, Your Honor.

22 Q I asked you about this statement out at
23 the jail; didn't I?

24 MR. MEADORS: Your Honor, I---

25 ~~THE COURT: Objection is sustained. Come~~

Calderone Bracey-recross by Hastie

1 up, counsel.

2 (Whereupon, attorneys approach and confer
3 with judge.)

4 THE COURT: The objection is sustained.
5 The jury will disregard the question and the
6 answer.

7 Q So your testimony here today is that you
8 did not sign a statement at all; is that your
9 testimony?

10 A Yes, sir.

11 MR. HASTIE: Thank you.

12 THE COURT: You can step down. Mr.
13 Meadors, you may call your next witness.

14 MR. MEADORS: Ellen Phillips.

15 Ellen Phillips, after being
16 duly sworn, testified as follows:

17 THE CLERK: State your full name and spell
18 your last name.

19 A Ellen Phillips. P-H-I-L-L-I-P-S.

20 Direct Examination by Mr. Manning:

21 Q Ms. Phillips, who is Hugh Phillips?

22 A My husband.

23 Q Your husband. Where do you live now?

24 A [REDACTED] Pisgah Road in Rembert.

25 Q And how long have you lived in the Rembert

Calderone Bracey-recross by Hastie

1 Community.

2 A 13 years.

3 Q The house in question on Odell Lane, had
4 you been there before?

5 A Yes, sir.

6 Q Approximately how many times?

7 A About 10 times.

8 Q Did do you go there -- did you have
9 occasion to go there on 12/14/09?

10 A Yes, sir.

11 Q For what purpose?

12 A To braid Lennie Belton's hair.

13 MR. MANNING: Your Honor, may I ask the
14 witness to step down for the map?

15 THE COURT: Yes, sir. But advise her she
16 is going to have to speak loud and clear so
17 everybody can hear her.

18 (Whereupon, the witness steps down from
19 the witness stand.)

20 Q Would you take a moment to look at that
21 map? Do you recognize it?

22 A Yes, sir.

23 Q Okay. And tell us what road this is.

24 A Spring Hill Road.

25 Q Is that a paved road?

Ellen Phillips-direct by Manning

1 A Yes.

2 Q Okay, where is Odell Lane?

3 A Right here.

4 Q This is Odell Lane.

5 A Yes, sir.

6 Q Now if you are going to go to Lennie

7 Belton's house, which road would you take?

8 A I would take Spring Hill to Odell Lane.

9 Q Odell is over here.

10 A Yes.

11 Q What is this here?

12 A The single wide where Lennie lives.

13 Q Where Lennie lives. Is this another road
14 that you take to go to this same area; this
15 trailer.

16 A Yes, sir.

17 Q Is that the road right here?

18 A Yes, sir.

19 Q This has been referred to, is this the
20 road that has been referred to as an alternate
21 route up there on the old road?

22 A I believe so.

23 Q If one is going there, if you were going
24 there, would you take this road here or would you

~~25 take the Odell Lane?~~

Ellen Phillips-direct by Manning

1 A I would take the Odell Lane.

2 Q Why as opposed to the alternate route?

3 A I would take Odell Lane because it leads
4 right to the house.

5 Q Directly to there. And each time you
6 would go on Odell Lane?

7 A Yes, sir.

8 Q You may
9 have a seat.

10 (Whereupon, the witness resumes the
11 witness stand.)

12 Q Now tell Ms. Phillips, tell the jury where
13 you were just before going to braid Lennie's hair?

14 A Just before I went to Lennie's house, I
15 stopped at my house.

16 Q Okay. And who was driving you or your
17 husband?

18 A My husband.

19 Q Your husband was driving. And what,
20 describe the condition of the weather that night?
21 Was it sunshine, or not -- dusk dark or foggy or
22 what?

23 A It was extremely foggy.

24 Q It was extremely foggy. And when you got

25 ~~there who went in the house first?~~

Ellen Phillips-direct by Manning

1 A I did.

2 Q And is the route that you took brought you
3 straight up Odell Lane; is that correct?

4 A Yes, sir.

5 Q Why did you go in first as opposed to your
6 husband?

7 A No reason. I just kind of jumped out of
8 the car and went.

9 Q Was he supposed to bring some rubber bands
10 or hair doing stuff for you?

11 A Yes, sir, my blow dryer and supplies.

12 Q This box?

13 A Yes, sir, tote bag.

14 Q And approximately how long had you been in
15 the house before your husband came in?

16 A Just about a minute.

17 Q A minute or so?

18 A Yes, sir.

19 Q How did he come in to the house? Was he
20 by himself or was somebody with him?

21 A What caught my attention is that he
22 stumbled in the house and two men came in behind
23 him.

24 Q Two men came in the house. How were those
25 ~~two men dressed?~~

Ellen Phillips-direct by Manning

1 A They were in all black.

2 Q In 'all black?

3 A Yes, sir.

4 Q Did they have masks or bandannas or
5 anything like that covering their head and faces?

6 A One of them had a bandanna across his
7 face.

8 Q All right.

9 A And the other one had a ski mask.

10 Q And what was said or done when they first
11 got in to the house?

12 A As soon as they entered into the house
13 they said, "This is a hold up. This isn't a
14 joke." Pow, pow, pow. The shooter shot off
15 rounds.

16 Q And what did they tell you or anyone else
17 who was in the house?

18 A They told everyone to get down.

19 Q What else?

20 A Lay face down.

21 Q Did they ask you to empty your pockets?

22 A Yes, sir.

23 Q There were two of them?

24 A Yes, sir.

25 Q Did one of them begin duct taping someone?

Ellen Phillips-direct by Manning

1 A Yes, sir.

2 Q Okay. And describe what happened during
3 that duct taping. Were you duct taped?

4 A Yes, sir.

5 Q Who is mom? Who did they refer to as mom?

6 A Well it seems like everyone was on the
7 floor. I was laying on the floor with my head
8 toward the wall. Some of the other guys, Tywan
9 was under the table. His head was against my arm.
10 Lance was toward my foot. We were in the kitchen
11 area.

12 Q When you say Lance, you mean Lance McCray?

13 A Yes, sir. They were ranting and raving
14 and yelling a lot. They were speaking on top of
15 each other. And it seemed like they noticed I
16 wasn't duct taped. So they called me out, because
17 it seemed like they couldn't get around to duct
18 taping me. So they asked me to get up, move over
19 to the kitchen area. And he said, "Sit down." I
20 sat on my back side and I put my hands behind my
21 back. He said, "I can't do it like that. Ma,
22 just lay down, I won't hurt you." And I laid
23 down. And He said, "Face down on the floor." I
24 faced down. He said, "Put your hands behind your
~~25 back." I put my hands behind my back.~~

Ellen Phillips-direct by Manning

1 Q And after that what proceeded immediately
2 following you doing that?

3 A He wrapped the duct tape around my hands
4 about three times. It felt loose to me. He
5 rapped it three times. And then turned and said,
6 "Ma is going to get it if you all don't give me
7 everything."

8 Q You said one was duct taping. What was
9 the other one doing who was with him? You said
10 two came in with your husband.

11 A I really am not sure. I tried not to give
12 eye contact.

13 Q Were you traumatized?

14 A Yes.

15 Q And when the shots rang out, where were
16 you at that point and time, if you can recall?

17 A I was still in that same spot. As he
18 finished duct taping me and said, "Ma is going to
19 get it if you don't give me everything." I kept on
20 facing down. Then the shooting started.

21 Q Did you know Kemper Holliday?

22 A Yes, sir.

23 Q Lance McCray?

24 A Yes, sir.

25 Q Lennie Belton?

Ellen Phillips-direct by Manning

1 A Yes, sir.

2 Q Darren Graham?

3 A Yes, sir.

4 Q Who else in the house did you know?

5 A Tywan's brother was there. Mr. Ransom and
6 my husband.

7 Q Before this incident was your husband
8 paralyzed?

9 A No, sir.

10 Q So he became paralyzed as a result of the
11 incident that occurred that night.

12 A Yes, sir.

13 MR. MANNING: I beg the court's
14 indulgence.

15 Q Were you one of the persons that got
16 robbed?

17 A Yes, sir.

18 Q Okay. Let me ask this. Did your husband
19 get robbed as well?

20 A Yes, sir.

21 Q And after the shooting and all occurred,
22 were you there when the 911 folks came? I mean
23 when the emergency came, and the sheriff's
24 department came?

~~25 A Yes, sir; I called them.~~

Ellen Phillips-direct by Manning

1 Q You were there during the entire ordeal.
2 I mean from the time it happened until the police
3 officers got there.

4 A Yes, sir.

5 Q So walk me through that. What went on
6 from the time it occurred until the first officer
7 got there. Tell me what happened.

8 A Once the, after the shooting began, and I
9 heard the array of bullets. It was quite a bit of
10 bullets. I heard the bullets hitting each other.
11 It sounded like, you know, ting, ting, ting.
12 Before I called out for my husband. He said,
13 "Stay down. They are still shooting outside." So
14 we stayed laying on the floor. And Darren and
15 Lennie came back in the house. Darren started
16 calling all of our names for us to get up.

17 Darren and Lennie called out for Kemper
18 again. They looked at him; turned him over. And
19 we seen the blood spot. He kind of dropped him
20 and screamed out, you know. And upon calling my
21 husband, I felt like I needed to keep him
22 conscious so I keep calling him. I said, "Why I
23 don't see anything wrong with you. Just get up.
24 Get up."

25 And I lifted up his jacket. And that's

Ellen Phillips-direct by Manning

1 the way I was able to see the blood stain on his
2 back. So I said, "Oh, you got shot in the back."
3 He started throwing up dry food. I cleaned him
4 up; wiped his face. He said can I take his shoes
5 off. He felt like pressure on his feet, and he
6 needed me to take his shoes off. So when I took
7 them, I said whose slipper is this. And one of
8 the officers in there said, "Nobody touch that"
9 You know.

10 And we received a call they were en route.
11 They asked me on the phone while we were at his
12 house, they asked me the address. At the time I
13 didn't know the address. And the officer was
14 there. I am pretty sure at the time they started
15 talking to my husband and the other officer. They
16 started putting yellow tape around. If I remember
17 correctly, an ambulance came in. And they made
18 me get out of the house.

19 Q Did you see one of the assailants get
20 shot? Do you know anything about that?

21 A No, sir. I actually didn't see anyone get
22 shot, because I was faced down on the floor in the
23 kitchen.

24 Q Were you there when one of the assailants
25 was found in the woods? Had you left or were you

Ellen Phillips-direct by Manning

1 there?

2 A I am not sure when he was found. I didn't
3 even know they found him in the woods. I was
4 waiting for the ambulance to take my husband to
5 the hospital. I followed the ambulance.

6 Q The point in going that night was to braid
7 Lennie's hair.

8 A Yes, sir.

9 Q And the sole purpose was to braid Lennie's
10 hair.

11 A Yes, sir.

12 Q Do you know Vernon Goodwin?

13 A Yes, sir; I happen to know Vernon Goodwin.

14 Q Which person in this courtroom is Vernon
15 Goodwin?

16 A Vernon Goodwin is sitting over there with
17 the white shirt.

18 Q Did you know him today?

19 A Yes, sir.

20 Q How long have you known him?

21 A I've worked as a teacher's assistant for
22 Kershaw County school district, and I did have him
23 in one of my classes at Camden High probably about
24 2002, something like that.

25 Q Do you know Cameren Kelley?

Ellen Phillips-direct by Manning

1 A No, sir.

2 Q During the time going there to braid
3 Lennie's hair, did you see Vernon Goodwin there?

4 A No, sir.

5 MR. MANNING: Your Honor, I have no
6 further questions.

7 THE COURT: Cross examination, Mr.
8 Sullivan?

9 Cross Examination by Mr. Sullivan:

10 Q You heard Calderone Bracey and Carlton
11 Bracey testify?

12 A Yes, sir.

13 Q This sort of respectful nice demeanor that
14 they had in here when they were testifying, is
15 that, are those the same individuals that you all
16 saw out there that day?

17 A Oh, no, sir.

18 Q Were they as nice and respectful?

19 A Oh, no, sir.

20 Q They were terrifying; weren't they?

21 A Yes, sir.

22 Q And they scared you to death.

23 A What they said to us; yes, sir.

24 THE COURT: Is that it, Mr. Sullivan?

25 ~~MR. SULLIVAN: Yes, sir. I'm sorry,~~

Ellen Phillips-direct by Manning

1 that's it. Thank you.

2 MR. HASTIE: No questions, Your Honor.

3 THE COURT: Any redirect, Mr. Manning?

4 MR. MANNING: Nothing, Your Honor.

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

6 You may call your next witness.

7 MR. MEADORS: Your Honor, we would ask for
8 a short recess.

9 THE COURT: Come up a minute, counsel.

10 (Whereupon, the attorneys approach the
11 bench and confer.)

12 THE COURT: Ladies and gentlemen, let me
13 ask you to go to your jury room for about 5
14 minutes. We will send for you very shortly. Do
15 not begin discussion of this case among
16 yourselves.

17 (Whereupon, the following takes place outside
18 the presence of the jury.)

19 THE COURT: Okay, Mr. Meadors, go ahead and
20 check. We will wait on you.

21 MR. MEADORS: I beg the court's indulgence. We
22 are just discussing very quick here.

23 THE COURT: The only thing that has not been
24 admitted are 21, 22, 23.

25 THE REPORTER: Those three. I have got them.

1 MR. MEADORS: Let me double check those, Judge,
2 and see what they are. 23 was -- I thought 23 was a
3 part of that whole supplemental that we admitted. Can I
4 just check?

5 THE COURT: According to the notes that I have,
6 as far as the exhibits are concerned, 1 through 46 or 1
7 through 47, except 21, 22, and 23, are all in evidence.
8 Is that what you have, Ms. Sullivan?

9 THE REPORTER: That's right, Judge.

10 THE COURT: Okay.

11 MR. MEADORS: And I just thought 23 was in
12 evidence. I am satisfied myself it was not. I just
13 thought it was. I thought 23 was a part of another
14 incident report, but apparently it's not.

15 THE COURT: And what is that? Are you going to
16 offer it, or what is the situation?

17 MR. MEADORS: I would like to, but I don't think
18 it is appropriate at this point.

19 THE COURT: 21, 22 and 23 are not going to be
20 offered by the State.

21 MR. MEADORS: Judge, definitely not. Let me
22 tell them. The only ones potentially would be 23. And
23 let me see if they agree. And if they don't, I won't
24 try. It's not in evidence.

~~25 THE COURT: Okay, not in evidence. 21 is for~~

1 Id. only. 22 for Id. only and 23 for Id. only. And
2 with that then, Mr. Meadors, the State would then rest;
3 is that correct?

4 MR. MEADORS: That would be correct, Your Honor.
5 Now, Your Honor, again, the stipulation. I've never
6 done this before, but it is in the record.

7 THE COURT: Yes, sir, that stipulation is in. I
8 published it. And it is a Court Exhibit; being
9 modified. I think it's Court's Exhibit No. 2. That
10 stipulation and an earlier stipulation as well.

11 MR. MEADORS: Thank you.

12 THE COURT: We will bring the jury back
13 in, and we will have you rest on the record. But
14 before we do that, let's find out where we are
15 with regard to the defense case.

16 Mr. Sullivan, well first of all, let me
17 ask the State to furnish to the defense both
18 Mr. Goodwin and Mr. Kelley's counsel, any matters
19 that you think are impeachable offenses. Because
20 I would call on them about whether they wish to
21 testify in this matter.

22 MR. MEADORS: I've got Goodwin's.
23 Mr. Kelley does not have a record.

24 THE COURT: Mr. Kelley, doesn't have a

~~25 record so there is nothing impeachable. What~~

1 about Mr. Goodwin?

2 MR. MEADORS: It's a distribution, I
3 believe, Your Honor, 2005. I think they're aware
4 of it. But let me get it just to be sure.

5 THE COURT: Distribution of what?

6 MR. MEADORS: Your Honor, I think it's
7 cocaine, excuse me one second. possession with
8 intent to distribute cocaine.

9 THE COURT: In 2005? Okay.

10 MR. MEADORS: That's my memory of 2005. I
11 don't know have it. I don't think they can
12 disagree with that. But it is clearly within the
13 10-year-period.

14 THE COURT: Mr. Hastie, do you concur that
15 that's admissible under 609?

16 MR. HASTIE: I do, Your Honor.

17 THE COURT: Okay.

18 MR. MEADORS: Judge, I have it now, I
19 apologize. For the record, the exact date. Your
20 Honor, I have manufacturing, distributing ice and
21 crank, YOA 10, 2005; is what I have. Mr. Goodwin
22 told me it was PWID. October of 2005.

23 THE COURT: And Mr. Hastie has stipulated
24 that is an impeachable offense under Rule 609.

~~25 All right. Now the State having announced that~~

1 they have rested, and of course we will put all of
2 this on the record in front of the jury. But
3 while I have got the jury out, Mr. Sullivan. I
4 will be glad to hear from you by way of the...

5 MR. SULLIVAN: I would move for a directed
6 verdict on this matter. The State hasn't met its
7 burden. It hasn't provided evidence that
8 Mr. Kelley actually planned with the
9 co-defendants to do the robbery. And that's my
10 motion.

11 THE COURT: I will hear from you,
12 Mr. Hastie.

13 MR. HASTIE: Thank Your Honor. Your
14 Honor, I would certainly join in the motion. I
15 don't think the State has certainly has not met
16 its burden on the murder, on the robbery; on any
17 of the charges really. Even when they put their
18 star witness on the stand, there was so many
19 conflicts in their testimony.

20 THE COURT: But aren't conflicts resolved
21 by the jury and not by the court?

22 MR. HASTIE: I still, that's my motion;
23 that they did not meet their burden in this
24 matter.

25 THE COURT: Well obviously you will agree,

1 and I think we all agree what's in the record;
2 and that these two individuals did not go in.
3 And so any liability they had, or any
4 responsibility they may have for any of these 25
5 charges, crimes is under an accomplice liability
6 theory. And that is the state's theory; is it
7 not, Mr. Meadors?

8 MR. MEADORS: Without question.

9 THE COURT: Without question. And so I be
10 glad to hear from, Mr. Meadors, as to defense
11 contends the State has failed to offer evidence to
12 proving that, the accomplice liability.

13 MR. MEADORS: Thank you. If it please the
14 court. Your Honor, there is evidence by two
15 individuals there were present that these two
16 defendants or their testimony is, that they
17 planned to rob, and to do a lick on this
18 residence; that the two Bracey brothers were taken
19 to Vernon Goodwin's house. Mr. Kelley was
20 driving. They talked about it beforehand, and on
21 the way. Guns were gotten from Mr. Goodwin's
22 house, and given to the defendants. The plan was
23 to rob money, dope, weed. \$5,000 was to be paid.
24 One witness even said they would get a cut of the
~~25 brick if it was also sold.~~

1 Under the hand of one, hand of all, which
2 I even think one of the brother's fits under, Your
3 Honor, because he didn't even shoot. We believe
4 there is the same theory regarding these
5 defendants. The testimony is, they planned; they
6 waited; they made a phone call, "What's taking you
7 all so long?" So we think there is direct and
8 circumstantial evidence to go to the jury under
9 accomplice liability of hand of one, hand of all;
10 that they are as guilty as the person who fired
11 the trigger. As is Mr. Calderone Bracey, Your
12 Honor.

13 THE COURT: Under Rule 19 of the South
14 Carolina Rules of criminal procedure the rule
15 actually states that at the conclusion of the
16 state's case, the court shall direct a verdict in
17 defendant's favor on any offense charged in the
18 indictment after the evidence on either side is
19 closed if there is a failure of competent evidence
20 tending to prove the charge in the indictment. In
21 my view the use of the word competent in that rule
22 is ill advised. And we worked on the revisions of
23 the criminal rules which are in the hands of the
24 Supreme Court right now. We changed that or
25 omitted the word competent, because competent

1 tends to infer believable. And that's now how
2 it's used in the rule whatsoever.

3 Competent evidence means evidence in the
4 record as opposed to whether you believe it or
5 not. In fact, Rule 19 goes on to say that in
6 ruling on the motion, the trial judge will
7 consider only the existence or nonexistence and
8 not it's weight. The matter which the defense
9 asserts; that is, contradictions in the testimony
10 or the variances in the testimony and matters of
11 weighing the testimony. So as to matters of the
12 jury does effect whether or not there is evidence
13 in the record.

14 And there is no question in my mind that
15 there is evidence in the record here of the
16 defendant's participating in this crime. And that
17 there is evidence of accomplice liability. And so
18 the court would respectfully deny that motion; the
19 motion of both defendants. Because I think there
20 is evidence in the record. And that's all I need
21 to know as far as discerning whether or not a
22 directed verdict should be granted. Specifically,
23 the law is, when two or more are acting in the
24 common plan or intent or present in the commission
~~25 of the crime, it does not matter who actually~~

1 commits a crime, all are guilty.

2 And there is evidence in the record here
3 that all four of these individuals were in the
4 area of the crime too; including driving together
5 over there. They had planned and discussed what
6 was going down and what they were going to do.
7 And I think that there is plenty of evidence for
8 the jury to consider whether or not they believe
9 the witnesses or not.

10 Therefore, the motion would be
11 respectfully denied. Mr. Sullivan, I am prepared
12 to talk to your client about, well let's do this.
13 This might take a little bit more time. But I am
14 going to finish all this, this afternoon.

15 I am going to bring the jury back at this
16 time. I am going to have the State rest on the
17 record. And then I will send the jury home for
18 the night. And then I will come back on the
19 record, Mr. Sullivan and Mr. Hastie. And let's
20 make a determination regarding whether or not they
21 are going to testify in this matter or whether
22 they are going to exercise their 5th Amendment
23 Rights. Is your client ready to address those
24 matters, Mr. Sullivan?

25 MR. SULLIVAN: Yes, sir.

1 THE COURT: We will have to get the jury
2 back in. Is your client ready too?

3 MR. HASTIE: Yes, sir.

4 THE COURT: We will do that after we get
5 the jury back in. Please bring the jury in.

6 (Whereupon, the following takes place
7 within the presence of the jury.)

8 THE COURT: Thank you, Ladies and
9 Gentlemen. Mr. Meadors, is there anything else on
10 behalf of the State?

11 MR. MEADORS: Not from the State of South
12 Carolina, Your Honor.

13 THE COURT: Ladies and Gentlemen, you have
14 heard the State announce that they have rested.
15 That means that they have presented all the
16 testimony to you at this time. And since it is 5
17 o'clock in the afternoon, I think it is about time
18 for us to stop. This has been a long day for you.
19 I know you have been here all day. And I do
20 complicate the lawyers in the case. They moved
21 the case along in an expeditious fashion and
22 gotten testimony presented to you.

23 There are of course, still matters that
24 need to be taken up. Matters that need to be
25 taken up before you. We have got some legal

1 matters that need to discuss, so we are going to
2 be here for a little while longer. But I am going
3 to go ahead and send you home and allow you to go
4 to your homes and families for the evening, with
5 the same admonitions and cautions that I have
6 given to you earlier in the trial. Do not discuss
7 the case with anyone. When you see your family
8 or your friends do not discuss it with them,
9 because you have got to decide the case based upon
10 what you heard in this courtroom and not on the
11 basis on what anyone else might say. Do not allow
12 anyone to discuss the case with you. If anyone
13 should approach you or try to talk with you about
14 the case, get their name and their description and
15 report it to the bailiff, and they will report it
16 to me.

17 And also do not do any research, and do
18 not look up anything on the internet and do not
19 listen to any news stories, or read any newspaper
20 accounts of this trial. Just forget about the
21 case over the evening recess, and please be back
22 in the jury room tomorrow morning at 9:30, and we
23 will be ready to go at that time. I'll see you
24 then. Thank you, have a pleasant evening.

1 4:57 p.m.)

2 THE COURT: Mr. Sullivan, I have
3 previously talked to your client about his 5th
4 Amendment Right. But let's go right here right
5 now, if you and Mr. Kelley would stand.

6 Mr. Kelley, earlier in this trial, I
7 advised you of your rights under the 5th Amendment
8 to the Constitution of the United States; that is,
9 your privilege against self incrimination. And at
10 that time you told me that you understood what I
11 had said, and that you did not have any questions
12 of me. Have you also had a chance to talk with
13 your lawyer about 5th Amendment Rights?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you understood your talks
16 with your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you made a decision as
19 to -- do you have questions that you want ask
20 either your lawyer or me about your privilege
21 against self incrimination?

22 THE DEFENDANT: No, sir.

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

25 case?

1 THE DEFENDANT: Yes, sir. I wish to not
2 testify.

3 THE COURT: So you have made a decision.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And that decision is not to
6 testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is that correct? Is that
9 decision on your part freely and voluntarily made?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: The court would find that the
12 Defendant clearly after having been advised of his
13 5th Amendment Constitutional Rights under the
14 United States Constitution and a similar
15 counterpart provision of the Constitution of the
16 State of South Carolina. And having advised by
17 the court and his lawyer, and having indicated
18 that he understood those rights, has made a free,
19 voluntary, knowing and intelligent decision to
20 exercise that privilege against self incrimination
21 and not testify in this case. The court will
22 respect that decision. Thank you, sir. You may
23 be seated.

24 Mr. Hastie, if you and Mr. Goodwin would

25 ~~stand. Mr. Goodwin, earlier in this trial, I~~

1 advised you of your rights under the 5th Amendment
2 to the Constitution of the United States and a
3 similar counterpart provision of the Constitution
4 of the State of South Carolina regarding your
5 privilege self incrimination. And you indicated
6 to me that you understood what I have told you.

7 Do you recall that conversation?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And I asked you if you had any
10 questions. And you indicated that you did not;
11 that is correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you also had a chance to
14 talk with your lawyer about your privilege against
15 self incrimination?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: And have you understood your
18 talks with him?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you have any questions
21 of either Mr. Hastie or me with regard to your 5th
22 Amendment Constitutional privilege against
23 self-incrimination?

24 THE DEFENDANT: No, sir, I do not.

25 THE COURT: Have you make a decision as to

1 whether you do or do not wish to testify in this
2 case?

3 THE DEFENDANT: Yes, sir, I did.

4 THE COURT: And what is that decision?

5 THE DEFENDANT: And what is that decision?

6 THE DEFENDANT: I do not wish to testify.

7 THE COURT: You do not wish to testify.

8 THE DEFENDANT: No, sir.

9 THE COURT: Is that decision on your part
10 freely, voluntarily, knowingly and intelligently
11 made?

12 THE DEFENDANT: Yes, sir, it is.

13 THE COURT: The court will find then that
14 the defendant Vernon Goodwin after having been
15 advised by the court and his lawyer of his rights
16 under the constitution to not provide
17 incriminating testimony or incriminating -- not to
18 testify in this matter and not provide any
19 evidence against himself and indicating he
20 understood those rights, has made a free,
21 voluntary, knowing and intelligent decision to
22 exercise those rights and not testify in this
23 matter, and the court will respect that decision.
24 Thank you.

25 ~~THE DEFENDANT: Thank Your Honor.~~

1 THE COURT: Now Mr. Sullivan, having down
2 that, and, Mr. Hastie, does the State or does the
3 defendant Kelley intend to offer any other
4 evidence or the testimony in this matter?

5 MR. SULLIVAN: No, sir.

6 THE COURT: Mr. Hastie, does the defendant
7 Goodwin intend to offer any other testimony or
8 evidence in this matter.

9 MR. HASTIE: No, sir.

10 THE COURT: So in the morning then it
11 would be appropriate. We can bring the jury
12 back. And both the defendant Kelley can rest.
13 Mr. Sullivan, do you agree with that?

14 MR. SULLIVAN: I do, Your Honor.

15 THE COURT: And, Mr. Goodwin, you rest as
16 well?

17 THE COURT: Yes, sir.

18 THE COURT: Do you agree with that?

19 MR. HASTIE: Yes, sir.

20 THE COURT: Then we will be able to go
21 directly in to closing arguments tomorrow. And
22 since they are not presenting any testimony, the
23 State will argue first, Mr. Manning, or, Mr.
24 Meadors.

25 ~~Tell me about how you all are going to~~

1 handle arguments.

2 MR. MEADORS: Your Honor, I think if I
3 tell the court, If I can split it. I'd like a
4 little more time. I think the last time you gave
5 us 30. I would ask for 40.

6 THE COURT: 40 minutes, and you all will
7 divide it either way you want?

8 MR. MEADORS: Yes, sir.

9 THE COURT: Okay. That's good. And I
10 know that for two defendants that's appropriate.
11 So how much time are going to need, Mr. Sullivan?

12 MR. SULLIVAN: I probably need about 25
13 minutes.

14 THE COURT: Mr. Hastie.

15 MR. HASTIE: About the same, Your Honor.

16 THE COURT: Let's say 30 each on each
17 defendant. And about -- and I'll give the State
18 45. You all have got two defendants you have got
19 to address. So 45 from the state's standpoint.
20 30 each on each defendant. Now let's talk about
21 charges, counsel. My plan would be to charge and
22 let me tell you what I am going to charge. And
23 you all tell if you think -- know of anything else
24 that you think needs to be charged.

25 The general felony charge which will

1 include presumption of innocence, burden of proof,
2 reasonable doubt, and credibility, direct and
3 circumstantial evidence. Of course, a charge
4 instructing about the defendant's not testifying.
5 Also accomplice liability, which includes a
6 portion of which is accomplice liability,
7 Mr. Sullivan, Mr. Hastie is mere presence is not
8 enough. I will also charge you about multiple
9 defendants, and multiple charges be considered
10 separately both the defendants and the charges.

11 I will also charge them the stipulations
12 that are in the record. I will not restate the
13 stipulations, but I will tell them what the two
14 stipulations mean. I will also give them a
15 charge about their duty and finding the
16 voluntariness of the statement or confession as
17 far as your client is concerned, Mr. Sullivan,
18 because you are still taking the position about
19 the voluntariness. Mr. Hastie went through his
20 objection to the voluntariness.

21 And then we will go through these charges
22 on the merits. And the first count, of course is
23 one of murder. Mr. Sullivan, what is your
24 position on lesser included?

25 MR. SULLIVAN: Accessory.

1 THE COURT: Well I think voluntary lesser
2 included of murder.

3 MR. SULLIVAN: Voluntary manslaughter.

4 THE COURT: You think it should be
5 charged?

6 MR. SULLIVAN: I think so.

7 THE COURT: What is your position,
8 Mr. Hastie?

9 MR. HASTIE: Yes, sir.

10 THE COURT: What do you think?

11 MR. MEADORS: I think, I agree. I think
12 it is an appropriate charge in this case. Under
13 the facts of this case, It should be concluded as
14 a charge, and a possible verdict on the -- Count
15 1, would be three possible verdicts. That would
16 be murder -- guilty of murder, guilty of voluntary
17 manslaughter or not guilty. I think that's what
18 the first one would be. The other of course,
19 offenses that the court will charge are those are
20 actually set forth in the indictment, and that is;
21 kidnapping, assault and battery with intent to
22 kill, assault with intent to kill, armed robbery.
23 And then I will also charge, I have to settle the
24 collateral offenses in the indictment are

25 attempted, armed robbery. Count 18, 19, 20, 21,

1 22, 23 and 24. And 25 are armed robbery. I have
2 got to charge armed robbery. And then I will also
3 charge section 2-69 out of Judge Anderson's charge
4 book on what an attempt is. I think to that will
5 take care of these things. Do you know of
6 anything else? That's all I have in my notes
7 that will be appropriate for the charge,
8 Mr. Sullivan. Anything else?

9 MR. SULLIVAN: I can't think of anything
10 else; no, sir.

11 THE COURT: Can you think of anything
12 else?

13 MR. HASTIE: No, sir.

14 THE COURT: Counsel, with that then, we
15 will be ready to go at 9:30 in the morning. And
16 we'll go directly in to closing arguments. Again,
17 so that we will be in the situation where we can
18 start with the jury at the time we need to,
19 everybody needs to be here 10 minutes ahead of
20 9:30. And that includes the defendants who need
21 to be dressed as Mary Poppins said, dressed and
22 pressed and in the courtroom and ready to go
23 forward when the jury gets here. Thank you. We
24 will be in recess until 9:30 tomorrow morning.

25 (Whereupon, the trial commences at 9:30)

1 a.m. on Thursday, September 23, 2011.)

2 THE COURT: Good morning, Ladies and
3 gentlemen. We are Back on the record with regard
4 to the matter of the State versus Kelley and
5 Goodwin. Mr. Kelley and Mr. Goodwin, are both
6 present in courtroom with their attorneys.

7 Counsel, I apologize for the problem with
8 the air in the courtroom. We noticed it
9 yesterday afternoon at 4 o'clock. Mr. Bradley
10 reported it at that time. I have not been able to
11 get in touch with anybody in the county
12 maintenance department or in the county council
13 office. So I took it upon myself to call Boykin.
14 And I was just told that it was just reported to
15 them 30 minutes ago. There would be a technician
16 on the way.

17 THE COURT: I am trying to remember
18 exactly what we accomplished yesterday afternoon.
19 Did the defense rest in the presence of the jury
20 or not?

21 MR. SULLIVAN: No, sir.

22 THE COURT: Okay. So we will call them in
23 and you all will rest, and then we will go from
24 there. Is there anything from the state before we

~~25 bring the jury in, Mr. Meadors?~~

1 MR. MEADORS: 15 seconds.

2 THE COURT: Just to make everything sure
3 that we have got everything covered, Mr. Sullivan,
4 and Mr. Hastie, I will have you -- I know you
5 have already rested as far as telling me that you
6 weren't putting up any testimony. And motions
7 have been made. But let me make sure that the
8 record is protected by your making whatever
9 appropriate motions would be made after everything
10 is concerned; all of the testimony. I assume it's
11 the same motions that you had made before. I
12 don't want to send the jury back out. Do you
13 understand?

14 MR. HASTIE: Yes, sir.

15 THE COURT: I am going to have you go
16 ahead and rest on the record. If you got anything
17 you want to put on the record with regard to
18 motions that would come in after the defense
19 rests, go ahead and make those now. Or is there
20 anything new that would like to add or would you
21 like to just make a motion and let me rule on it?

22 MR. SULLIVAN: I don't have anything, new
23 Your Honor.

24 THE COURT: For the record then, we will

25 ~~assume the same motions were made after the~~

1 defense rested, and it will be the same ruling,
2 and the record will be protected to that effect.
3 Bring the jury in, please. For your planning
4 purposes we are going to do the arguments now.
5 And then I will give the jury a brief recess.
6 Then we will do charge. And we are going to feed
7 lunch to the jury.

8 (Whereupon, the following takes place
9 within the presence of the jury.)

10 THE COURT: Thank you, Ladies and
11 Gentlemen, for your promptness in being back here.
12 And we are now ready to proceed. Yesterday when
13 you left the courtroom, you had heard that the
14 State had presented all of the evidence and
15 testimony that they were going to present to you.
16 And now the defendant has the right to present any
17 testimony and evidence that they wish to present.
18 Mr. Sullivan.

19 MR. SULLIVAN: Thank you, Your Honor.
20 Defendant Kelley would rest.

21 THE COURT: Mr. Hastie.

22 MR. HASTIE: Defendant Goodwin would rest
23 as well.

24 THE COURT: Both defendants have rested.

25 That means that you have now heard all of the

1 testimony that you will hear in connection with
2 this matter. And there are only two things that
3 remain to be done. Those are the arguments of
4 counsel and the instructions on the law by the
5 court. After those two things have been
6 accomplished you will be allowed to go to your
7 jury room to deliberate your verdict.

8 I will tell you now as I did at the first
9 of this case, and before we go any further and
10 before I tell you that, let me make sure that we
11 are covered on this. I do need to know if anyone
12 has tried to talk with you about this case in any
13 way over the evening recess, I would need to know
14 about it now. Again negative response, and that's
15 good.

16 Also if anybody has read any news stories
17 or listened to any broadcast media reports about
18 this case over the evening recess, I would also
19 need to know about that now. Again no response
20 and that's good. As I said, the only thing that
21 remains to be done in this case, are the arguments
22 of counsel and the instructions on the law by the
23 court. I will tell you that as I did the first of
24 this case, that the arguments of the lawyers are
25 not evidence in this case. They are simply the

1 lawyer's views of what they think the evidence
2 shows. The -- you will decide this case based
3 upon the evidence that you have heard from this
4 witness stand, and from any exhibits that have
5 been introduced into evidence. And any of the
6 exhibits that have been introduced into evidence
7 will go with you to the jury room, when you retire
8 to deliberate your verdict in this case.

9 But the lawyers do have the right, and not
10 the only the right but the duty on behalf of their
11 client to address you now and give you their views
12 of what they think the evidence shows. When they
13 have concluded that will, I will then instruct you
14 on the law of South Carolina, as it applies to the
15 facts of this case, as you may find those facts to
16 be. And then you will be allowed to deliberate
17 your verdict.

18 You will hear first from Mr. Sullivan on
19 behalf of the defendant. I think in fact you will
20 hear first from Mr. Manning, I believe is going to
21 go first. Are you going to go first, Mr. Meadors?

22 MR. MEADORS: Yes, sir.

23 THE COURT: You will hear first from Mr.
24 Meadors on behalf of the State and Mr. Manning on
25 behalf of the State. And then Mr. Sullivan and

1 Mr. Hastie. And before I recognize Mr. Meadors
2 for his closing argument, I do want to apologize
3 to you for the temperature in the courtroom. We
4 try our best to make sure that its comfortable.
5 The air went out yesterday afternoon about 4
6 o'clock. It was reported to the appropriate
7 people within the county, and nothing has been
8 done about it as of yet. But I am advised that
9 they are supposed to be on the way. But I do
10 apologize to you for that.

11 Some of you may have seen in the paper
12 that the penny progress sales tax is going to
13 result in the construction of the new judicial
14 center which should be ready in about 18 months.
15 And that's about 5 years too late. But be that as
16 it may, we will have that very shortly.
17 Mr. Meadors.

18 MR. MEADORS: How were they going to go
19 home? Why not take them right to the door and
20 drop them off if they were just going to buy some
21 weed? Why not go inside with them? I know these
22 folks. Give them a deal. Why this house?

23 Ladies and gentlemen, I haven't introduced
24 myself yet. My name is John Meadors. Good
~~25 morning. I am an assistant solicitor here in the~~

1 third judicial circuit. I am honored to be here
2 today on behalf of Solicitor Finney, assistant
3 solicitor Manning, Sheriff Dennis, Westley Gardner
4 and Investigator Mims. I am proud to be here with
5 them representing the people of the State of South
6 Carolina, the people of Sumter. And the victims
7 and their families in this case.

8 This is as an important case that has been
9 tried anywhere. This case is important to the
10 defendants. It is important to Sumter County.
11 It's important to the victims and their families.
12 I want to thank you for being here; being a juror
13 is not an easy job, but it is an important job.
14 And without you, the system wouldn't work. You
15 come in week in and week out as jurors, and decide
16 controversies. But this is our office. It's His
17 Honor's courtroom but it's our office. That's
18 where we work, where we love. This is what we do.
19 But you come in each week almost like a most
20 valuable on a team, and decide the outcome of the
21 ballgame. But it's not a game. There is nothing
22 more important. And you decide it based on what
23 you hear on the stand. And you decide it from
24 evidence, and you use your common sense.

~~25 You know when the clerk, Mr. Campbell,~~

1 brought you all, and I think it might even be two
2 groups here this week. I am not sure who came in.
3 He didn't send you to a short course on how to be
4 a juror. But I submit to you, you have been going
5 to that school your whole life. It's the school
6 of common sense of gathering experiences, and
7 looking at people. And judging people, deciding
8 what the truth is. It's common sense. That's
9 really what every case boils down to, common
10 sense; decide what the truth is; decide what the
11 facts are, and apply that to the law that His
12 Honor, Judge Howard P. King, given to you.

13 Now I want to start out by saying there
14 are a bunch of indictments in this case. And I
15 want to tell you that I don't think any of them
16 are in dispute as far as the State proving the
17 elements of the offense. I don't think anybody
18 will disagree with that. And there is no question
19 that there was a murder, a burglary, kidnapping,
20 armed robberies on December 14th 2009. Nobody
21 disputes. Entering a residence without consent
22 with intent to commit the crime, stealing; that's
23 not an issue. Armed robbery, everybody knows what
24 that is. Taking goods or monies from the person
25 or presence of another by means of force or

1 intimidation. This case comes to money; while
2 armed with a deadly weapon. It's not an issue.

3 Kidnapping, as this word, the Judge will
4 tell you, inveigle, confine. It means to hold
5 people against their will. When you don't want to
6 be. You tell them, "Sit down." Putting duck
7 tape. It's kidnapping. It's not an issue.
8 Assault and battery with intent to kill. One of
9 our victims got hit with a gun. That's not an
10 issue. Assault with intent to kill. Somebody get
11 hit. But the bullet goes -- the intent goes to
12 the bullet. That's not an issue.

13 So none of them are issues as to whether
14 any of these happened. They all happened.
15 Everybody agrees with that. Two individuals have
16 come up here and said, "Yeah, we were in there,
17 and we did it." The issue in this case, and we
18 submit to you it's not an issue. But an issue you
19 should consider is accomplice liability.
20 Accomplice liability. You may think it's weird,
21 but I think it's beautiful law. It's beautiful.
22 You listen as Judge King charges you accomplice
23 liability. And I think the reason I like it most
24 is it's common sense law. It's common sense law.

25 If a crime is committed by two or more people who

1 are acting together in committing a crime, and the
2 act of one is the act of all.

3 A person who joins with another to
4 accomplish an illegal purpose is criminally
5 responsible for everything, everything done by the
6 other person which occurs as natural consequences,
7 natural consequences of the acts down in carrying
8 out the common plan and purpose. Two or more
9 people pleading can be guilty of killing another
10 person when only one of the two had a gun. There
11 was only one bullet. And only one of the two
12 fired a shot that caused the death.

13 It happened here. It's a classic example
14 of accomplice liability is if two people go to a
15 store, and they plan to rob them. One of them
16 goes in with the gun. Maybe the teller puts up a
17 fight. There's gunfire. There's a death inside.
18 The person outside driving the car who didn't go
19 in, is just as guilty as the person who committed
20 the crime. And doesn't that make sense. But
21 after today when I talk to future jurors like you,
22 you know is what is to have accomplice liability?
23 This case. This is text box, accomplice
24 liability. A plan, a plan. Go to get weapons; a
~~25 driver. The only driver who could drive. Masks.~~

1 They go inside. And I will get to it, they go
2 inside. There's a death. There is robberies.
3 Calderone didn't shoot anybody, but he is just as
4 guilty as Carlton, because he went in. They
5 didn't shoot anybody, but they are just as guilty
6 as Carlton because they were part of the plan.

7 Ladies and Gentlemen, if Cameren Kelley
8 had not driven them over there, then he would
9 still be alive. Kemper would still be alive.
10 Barbados would still be walking. If it wasn't for
11 him, this wouldn't have happened. They couldn't
12 have gotten there. That's the hand of one, the
13 hand of all. They talked about it. They knew it.
14 They drove. That's what this case is about. Now
15 there is one other thing His Honor will charge
16 you. It's called a lesser included offense.
17 Murder is the unlawful killing of another with
18 malice aforethought, a meanness, an evilness a
19 wickedness. You all know what it is. Malice
20 means is mean. But you can infer from certain
21 circumstances and in this case, malice with the
22 use of a deadly weapon. These defendants were
23 charged, the Bracey brothers were charged with
24 that. The State made the decision for the Bracey
25 boys to cooperate in exchange, they will get

1 voluntary manslaughter 30 years. In exchange for
2 their cooperation.

3 We brought that out and testified to it.
4 30 years. His Honor will instruct you at the
5 appropriate time; that you have the right to
6 consider voluntary manslaughter as a lesser
7 included offense of murder for these two
8 defendants. I respectfully submit to you it's
9 murder. The facts are the murder. Did we make a
10 decision here to let them plead to less? Yes. To
11 get justice for all; to get all the parties
12 involved. We made that decision. They are going
13 to be doing 30 years. But the decision is what to
14 come back if you decide to come back, you have the
15 right to consider voluntary manslaughter.
16 Voluntary manslaughter is the killing of another
17 human being in the sudden heat of passion with
18 sufficient legal provocation. And the provocation
19 must be legal provocation.

20 They came in armed with firearms. But
21 that's your decision. That's what you will have
22 to decide. This is about choices. Exercise your
23 greatest choice. They did. Let's go get a lick.
24 Let's go make a lick. They got the two puppets
25 almost. They were either two scared or knew they

1 be identified if they went in there. So they got
2 these two puppets to do it. You are going to have
3 to exercise. They chose to do that. The Bracey
4 brothers chose to go in there. They chose to
5 shoot. They're paying for their choice.

6 What's the burden on the case? On the
7 State in this case? It's the same burden that's
8 on every case that's tried, beyond a reasonable
9 doubt. Beyond a doubt that makes reasonable folks
10 hesitate to ask. Hesitate to act, I am sorry. We
11 submit there is no reasonable doubt in this case.
12 And, you know, I've started saying in the last few
13 years, sometimes as I get older, you realize there
14 are questions in life. Sometimes questions are
15 just questions. You don't come in here looking
16 for reasonable doubts. You don't in here to
17 convict. You come in here to listen like lady
18 justice. You know lady justice, and I mean that
19 in a most pure way. She's listening to the facts,
20 listening to the testimony. And she had to drop
21 that balloon. It came down and sometimes you see
22 and watch the demeanor of the witnesses. But I
23 see, she's holding two cups and she weighs them.
24 She's holding two cups. So the Bracey boys took a
25 ~~sip of that justice cup. They took their sip.~~

1 And now we are going to decide what sip will get
2 to take. And that will be your choice.

3 Let's go back in time to the testimony
4 that took us to December 14th 2009. Common sense.
5 When I'm taking about reasonable doubt; it's
6 common sense. The Bracey brothers are in Cassatt.
7 I believe you see one of the statements he had
8 gotten off work, Mr. Carlton Bracey. He gets
9 back. The testimony is they receive a call from
10 Mr. Goodwin. There are phone tolls I am talking
11 about that in a minute. A telephone call from
12 Mr. Goodwin and one was Mr. Reddick.

13 They initially start talking about weed.
14 The Bracey brothers, Carlton and Calderone. I
15 don't mean it bad. They testified. And you have
16 got to evaluate whether you thought it was
17 credible or not. They smoke weed a lot. I'm not
18 trying, that's what they do. They smoke weed.
19 They wanted to help out the family some too. I am
20 not saying anything, that's just what they do.
21 One of them had a grand larceny, the other one
22 didn't have any record. Were they the same here
23 as they were in the house that night? Of course
24 not. Of course not. But you got to evaluate

~~25 their demeanor. They called. The Goodwin comes~~

1 over. I see a phone call from Goodwin to CK over
2 here, the phone tolls which are Cameren Kelley.
3 If you go look on his statement, you will see
4 that's the phone number, and the background
5 information; which is the next phone number and
6 the phone tolls that came from Goodwin's phone.

7 So they get together, and they go to
8 Goodwin to Cassatt. And instead of going to buy
9 some weed, Mr. Goodwin says, "I got a place where
10 we can go hit a lick. You don't have to buy it.
11 You can go hit a lick." One of his statements in
12 here, I believe, where Mr. Calderone said you have
13 it. And he said he had been wanting to do a lick
14 for a long, long time. Common sense is coming in
15 here the picture, Ladies and gentlemen. The
16 Bracey brothers are Cassatt, Kershaw County.
17 Don't know anything about Sumter. Don't know
18 anything about Odell Court.

19 They like to buy weed usually from the
20 around the corner. They don't travel. "We know
21 somewhere you can do lick." And what happens
22 next. Mr. Kelley is there. The only one that's
23 got a car. They're all out in the yard talking
24 about, "Yeah, let's do it." Going to give \$5,000.

25 Five thousand dollars. And then one of them

1 testified they will give them a portion of a brick
2 to sell. The testimony is, Mr. Goodwin had been
3 there just a few days before. No disrespect to
4 anybody, but there was gambling and maybe some
5 drugs there. He wanted to make a score. He
6 wanted to make a lick; hit him hard. Did they
7 want to kill anybody? Probably not. But it's the
8 natural consequences of the act.

9 And so they go to Mr. Goodwin's house.
10 They get guns. You heard the testimony. They
11 don't have guns at Mr. Reddick's house. What's
12 the cross examination about that when they went to
13 his house? It's in testimony; we're in the car.
14 They came and got the guns. Is that in dispute?
15 Mr. Goodwin provides the guns. Mr. Goodwin
16 provides the mask. Mr. Goodwin provides the
17 gloves. Mr. Kelley provides the only way they
18 could have gotten there; was Mr. Kelley.

19 So they start heading to Sumter. Heading
20 to Sumter. "Did you know where you were going,
21 Mr. Bracey. Mr. Bracey, no, sir. Did you know
22 where. No, I had no idea." And they get there.
23 You are not going to get to those statements.
24 Everybody's statements by that time. Well why,
25 why, why. According to them it's just to buy

(1 drugs. A place Mr. Goodwin has none. Why don't
2 you pull out in front. Seriously, why don't we go
3 inside with them. Give a man a deal here. A
4 statement that's already known. Does that make
5 any common sense. Yet, why this house out of the
6 blue. The Bracey boys didn't know about this
7 house. He knew where the house was. Mr. Goodwin.

8 How were they going to get home. He
9 picked them up. Okay, we will take you to buy
10 some weed. We're going to leave you from Cassatt
11 to Rembert. And we'll take you there, but we're
12 going to leave you. Does that make any common
13 sense. Of course not. We're just going to leave
14 him inside. I don't think we need to go over it
15 with the family; that you know what happened
16 inside. Kemper should still be here today In
17 fact, he would be here today if Mr. Goodwin hadn't
18 planned it, and Mr. Kelley hadn't taken him over
19 there. If these fellows hadn't shot. But it took
20 a combination of all it, he would still be
21 breathing. He should be breathing. Or maybe I
22 should be wrong, Mr. Bracey would have been shot.
23 What happens after the mayhem, the gunfire. This
24 doesn't need to be another Tuesday or Wednesday
25 night in Sumter, Ladies and gentlemen. It has got

1 to stop. And what happens. There is gunfire.

2 There's gunfire; the shots, Kemper is down.

3 You know the other thing that hit me at
4 4:10 a.m. this morning, Mr. Hastie came to my
5 mind. Those guys are robbers. I am not taking up
6 for them. They deserve everything they got. I do
7 thank you for coming in and helping to bring
8 justice to all of this. But this not a
9 professional robbery. Even Mr. Hastie asked one
10 of the investigators when you do a robbery, not
11 done really, I wanted you to know. It would
12 almost be a comedy if it wasn't a tragedy.

13 And he goes in with his bedroom slippers.
14 He just got home from work. He goes home. They
15 said, "Come on, I know where we can do a lick."
16 And they all come together. These guys don't do
17 licks, they do weed. That smoke weed. And they
18 go inside and they were over their heads.
19 Somebody comes in and they go in to the first
20 victim. They said they were going to break the
21 door down if they didn't. Could they have done
22 that. They obviously thought this was an easy
23 lick. Mr. Goodwin had been there. The money is
24 there. All of them acted together. All of them.

~~25 But they didn't know what they were doing.~~

1 Obviously they didn't duct tape them too well.

2 Mr. Belton gets out, and they start
3 firing. And then Carlton says, "I shot him." We
4 then go outside. We go outside. Calderone is on
5 the ground. People are scattered. He's got
6 bullet holes in him. He tells the first officer
7 who testified who did it. He initially says, "My
8 cousin did it." I don't think he knew the hand of
9 one, hand of all." He sure hit this man over
10 here. But he gets up here and says, "Yeah, I was
11 trying to cover for my brother. It was my brother
12 that actually knew him. But he uses his cousin's
13 name. The same cousin that had dropped him off;
14 that had planned it.

15 He then goes to Just Care. Now Just Care
16 is a detention facility where people that are
17 injured, retaining charges, you all heard that.
18 He gets treated. He could have died. And on
19 February 16th, Investigator West talks to him.
20 And not yesterday, not last week, not the week
21 before, on February 16th, and this is in evidence,
22 ladies and gentlemen but I want you to read it
23 when you get back there. February 16th of 2010,
24 this statement being written by Investigator

25 ~~Dominick West at the questioning of Calderone~~

1 Bracey.

2 "I came home from work. Went to sleep at
3 3 p.m. on December 14th. Woke up at 8:30 mad.
4 Vernon Goodwin came to the house with Cameren
5 Kelley driving. Said that he wanted to hit a
6 lick. This is back in February. February of
7 2010. I wanted to hit a lick at a house in
8 Rembert. A man gave me a bandanna, gloves, a 9
9 millimeter. Gave my brother Carlton a 9
10 millimeter with a scope and a skully with gloves.
11 The man supplied us with everything. He gave my
12 brother his cell phone. But that's simple on
13 this point. He give my brother his cell phone and
14 me the duct tape. He showed us the trailer.
15 They're like a yo yo, he shows them. But whatever
16 happens, it's so he can get dope and money. And
17 get that little money in return.

18 He said that they were going to ride up
19 and down the road until we called. But make
20 sense; doesn't it. You drop them off, you are
21 going to give them a ride home. He give you a
22 phone, so you can call to get through.

23 We went to the house. My brother grabbed
24 the guy in the car and forced him in the house.

25 After getting him in the house, we told everyone

1 to lay down. I duct taped while my brother held
2 the gun. You know, everything is not consistent.
3 If it is, that's where you all can worry. I think
4 one of the brothers said that maybe Calderone went
5 in the weapon first. And then handed him the
6 weapon. Calderone said, well I didn't go in with
7 the weapon, I had the duct tape. That's the kind
8 of inconsistence that is real or not. If
9 everything is exactly the same at any word, like
10 these two statements they gave. Look at those.
11 But it's too close. "After getting in the house,
12 I duct taped them. After duct taping them, I
13 grabbed the money. A man called the phone 3 or 4
14 times." He said testimony yesterday, I didn't
15 hear the phone ring. You heard another brother
16 say, I answered the phone. Why. What's taking so
17 long. We're out front, we're ready to go. We're
18 still looking for the drugs. One of the guns shot
19 first. So my brother ran out the door. And I ran
20 behind him, I fell in the wood line. We was
21 riding in a blue older car. That would be Mr.
22 Kelley's car. The only way this would have
23 happened, they would still be alive if he hadn't
24 drove.

1 planned the robbery. He told me -- he told me
2 they want to hit the house." They want to hit
3 these folks' house. Our intention was never to
4 shoot anybody. I think that's true. You saw him.
5 They know what they are going to get. They're
6 going to because Judge King sentenced them to 30
7 years. They are paying for it. They going to pay
8 for it. So that's the backdrop. In February,
9 Carlton who had an attorney, who is constitutional
10 law, what either of these attorneys are saying to
11 each other, is not what he said. He came in here
12 and said it is the first time he's told his
13 mother. It's the first he said this.

14 All we have at all, is Calderone, but
15 that's all we need. But nobody could identify
16 him. Because they didn't know who he was. He
17 wasn't from around here. I think anybody could
18 have shoot. These guys had never been there. And
19 nobody knew. The only person they knew was
20 Mr. Goodwin. So after his brother told on his
21 brother, he didn't want to. Then Calderone took a
22 sip of justice. "Yeah, I did it. I'm in my
23 bedroom slippers. I killed somebody. I am paying
24 for it." And so now we go in to a investigation.

25 And I comment on this, because he -- this was

1 pre-Miranda. It was pre-Miranda.

2 Mr. Goodwin comes down and talks to
3 Mr. Dominick West. Talks to him. They are down
4 there. Doesn't say anything. I can do this.
5 This is pre-Miranda. Doesn't say anything.
6 Doesn't say, you know, yeah, word out on the
7 street, we did rob those guys. It was just about
8 drugs. Just about drugs. Doesn't say a word.
9 And then after those statement of 2/16 I think it
10 is of Calderone, they go Investigator West, the
11 other investigator served the warrants on these
12 two gentlemen. And then what do we have. You
13 are going to have it. And I don't know have if I
14 have time to go over all of them. I want to
15 apologize to read them.

16 Cameren Kelley's statement. Now I have
17 been arrested; knows what happened. Knows that
18 phone call. Trouble. Knows the phone is the
19 problem. Because that's really the only thing
20 that make sense. "Here is my phone. Call me when
21 you are through." So he has got to explain the
22 phone. And Solicitor Finney pointed this out the
23 other day as we are going through it. His
24 statement just doesn't make sense. Read it. Use
~~25 your common sense. "I was chilling at Main's~~

1 house when Willie called his phone, and asked for
2 a ride to Rembert. Main told he didn't have his
3 license and asked if I can drop him off for gas
4 money. I said, yes. We left and picked them up
5 in their house, and took them to that street.

6 These guys didn't Rembert was. They didn't know
7 where this house was. When we passed a couple of
8 houses, they said we are good right here, Bro."

9 The Bracey brothers. Never been to Rembert.

10 Never been to this house. We live right here.

11 This is the house. Let's do It right here."

12 "We got out to let them out, and Calderone
13 Bracey handed me the money. While we started
14 driving back down the road, a burgundy Cadillac
15 passed us at a very high rate of speed. I see the
16 color and model, because they passed us a light
17 pole on the street. People say that was the
18 get-away-car." Wait a minute, you come in there.
19 And you just dropped them off, and you're going to
20 give the get-away-car away. Well it hasn't even
21 happened yet. It hadn't even happened yet.

22 He was there and he was trying to explain
23 his way out of it. He's got a big coat. They got
24 these guns. They don't see them. If that's what

25 they want you to think. All these guns and masks.

1 We just dropped them as we were leaving them.
2 And then he talks about the phone call. You will
3 have this back there. It says they must have
4 stolen it from the console there in the back. And
5 he says where is my phone, how about calling. So
6 we called from his phone. Called from Cameren's
7 phone. And he calls the 243 number, which is now
8 in evidence, and the phone toll in there. I'm not
9 sure of the exact number. But's he called 243.
10 Well the number, that means you decide.

11 And then he says I hear something. They
12 have got to explain that phone. Because that
13 phone is good stuff. And they gave him the
14 phone to call them when they got away. So they
15 have got to explain the phone out there. And they
16 hear this, and see it. Did you lose you lose your
17 cell phone. Yeah, I think I lost my cell phone.
18 Yeah, I think I lost my cell phone. I just wanted
19 to buy some weed. Is it there. Okay, I'll come
20 back and get it. No.

21 You will have his statement. Go back and
22 read Mr. Goodwin's statement. Mr. Goodwin is the
23 only person who knew these folks. Mr. Goodwin had
24 been there. Mr. Goodwin knew the drugs were

25 there, and the money was there. Told him that,

1 and that's why he they did it. He took them
2 there. Waited for them. Getting anxious. They
3 can't find it, because they are not good at
4 robbing. They're not good at killing. They're
5 paying the price.

6 Go back and look at these phone tolls too.
7 So this is now in possession of Mr. Bracey. And
8 Mr. Bracey testified I called Mario later to come
9 get me. Did Mario come pick him up the night he
10 walked. I don't know. It doesn't matter. But he
11 called. See if there is a call to Mario in there.
12 See if there are calls to Vernon Goodwin. He's
13 got the phone of Vernon Goodwin who dropped him
14 off not to buy weed; to do a lick.

15 Ladies and gentlemen, they are tough.
16 They may argue. Mr. Bracey gave these statements
17 saying he didn't do it. Said the first statement
18 was wrong. Why did you say that. He told me to.
19 And I think he literally does. He sees him down
20 at the jail. He said that's when I went to jail:
21 "Yeah, I wrote it." Did you sign it. I didn't
22 sign it. The expiration, it has this signature
23 on there. "Yeah, I wrote it. I wrote it for him.
24 He wanted me to write it." But that's the truth
25 up here. You saw his demeanor. You got to

1 evaluate. That's your choice. The same thing he
2 told Dominick West back in February -- back in
3 February of 2010. "Yes, I signed it." I was
4 doing it, but he said it's not the truth. And I
5 did it. "Yeah, I wrote it." But I didn't sign
6 my name. You go back there and look at it. Look
7 at his signature on the statements.

8 Ladies and gentlemen, I think my time is
9 about up. Here are the drugs. There is no
10 dispute about the drugs. Accomplice liability;
11 the hand of one is the hand of all. The act of
12 one is the act of all. Cameren Kelley drove that
13 bullet over there. It's just like -- it was just
14 like he pulled the trigger. It's just he was
15 driving a hearse to a funeral or the ambulance to
16 the hospital for Mr. McCray and the other victims.
17 It's the same pact. Without that, it couldn't
18 have happened. Without the plan, it couldn't have
19 happened. They put the Bracey boys in that
20 position. And because of their acts, they suffer
21 the natural consequences also. That's the law.

22 Ladies and gentlemen, all you can consider
23 is the testimony from the stand, and these
24 evidence. This evidence you have right here. All

25 I ask is when you go back, that you listen to His

1 Honor's charge. He knows the law better than
2 anybody. Determine what the facts are. What's
3 believable. What's credible. And apply it to
4 that law. The word verdict means to speak the
5 truth. It means to speak the truth. It's pure.
6 You decide what the truth is.

7 The Bracey brothers have taken a sip of
8 that type of justice. They have taken a sip.
9 It's now time for Mr. Goodwin and Mr. Kelley to
10 take a sip of justice; a fairness. It's time for
11 their sip. And that's up to you. And all we can
12 ask on behalf of the family, the solicitor and the
13 sheriff, is to use your common sense, and come out
14 with a verdict that says on December 14th 2009,
15 that Barbados would be walking. Kemper would be
16 beating. Mr. McCray wouldn't be shot. The other
17 people wouldn't have been robbed, shot. And it
18 wouldn't have happened if Mr. Goodwin hadn't
19 showed them the place, and planned it, and given
20 them guns. It wouldn't have happened unless
21 Cameren Kelley had taken them there. It wouldn't
22 have happened unless they thrust these puppets in
23 there with bedroom shoes. And weren't going to
24 find them guilty of murder, manslaughter. That's
25 up to you. Thank you.

1 THE COURT: Mr. Manning.

2 MR. MANNING: Thank you, Your Honor, may
3 it please the court.

4 THE COURT: Yes, sir.

5 MR. MANNING: Ladies and Gentlemen of the
6 jury, Solicitor Finney, Mr. Meadors, Mr. Mims,
7 Investigator Gardner, Sheriff Dennis, Ladies and
8 Gentlemen, this is the second time I will get to
9 address you this week. My name is Glenn Manning,
10 and I am honored to be a member of the solicitor's
11 of the third judicial circuit.

12 This case is not simple case. No case is.
13 But every case has one thing in common. You the
14 jury makes the decision. That's a part of the
15 American way. That's part of American law.
16 Mr. Meadors has gone over the law with you
17 basically. The hands of one is the hand of all.
18 Sure these two defendants did not enter the
19 house. No question about that. There's never
20 been any testimony about entering the house. And
21 the one thing I will tell you, and the judge will
22 instruct you on that, what come from the witness
23 stand is the only evidence you should consider in
24 addition to the evidence, the physical evidence
25 that was introduced in to court that you will have

1 access to in the jury room; nothing else. What I
2 say, what Mr. Meadors say, what the other lawyers
3 may say is not evidence. Your decision should be
4 based on the evidence that has been produced or
5 presented in this case. Nothing else.

6 Let's go back to December 14th 2009. At
7 12:48 Highway No. 1 North in Cassatt that's where
8 the Bracey's were living with their grandfather
9 and their mother. Carlton received a call from
10 the defendant Goodwin. And in the process,
11 Carlton asked him, "Do you know where I can get
12 some weed from." Weed is the particular name that
13 refers to street name for marijuana as you all
14 probably know. And so when they got over there,
15 picked him up. What did he say. Well why should
16 you have to buy the weed if you can hit a lick.
17 They got it, we'll just take it. I have been
18 there many times.

19 Lennie Belton, Darren Graham, who lived at
20 Odell Lane in the trailer. [REDACTED] Odell Lane down
21 in the Rembert. Said that they had never seen
22 either one of these guys before. Never have they
23 seen countless numerous times. Who had they seen
24 countless number of times. Vernon Goodwin.

~~25 Vernon Goodwin.~~

1 A few days before that, Vernon Goodwin
2 asked him is there any other way to get to Odell
3 Lane, to get to your house other than coming up
4 this old bumpy road. Is there any other way to
5 get to your house other than coming up this old
6 bumpy road. Any other way. This is Odell Lane.
7 It goes up to the trailer. Is there any other
8 way to get here. He said, yes. Yes, there is
9 right down here. You go up around this here.
10 Come up around there.

11 Now, Ladies and gentlemen, here is a
12 straight shot right here. The testimony reveals
13 Lennie Belton said people don't come around this
14 way for any reason, they come straight in the
15 road. Tyrone Ransom, how did he get there.
16 Straight up Odell Lane. Now think about this.
17 This is some testimony that Vernon Goodwin didn't
18 have a license so he wanted to get Kelley as a
19 smoke screen. Whether that would last or not,
20 they had been driving there before; had been
21 driving there before. Had been driving there
22 before whether they had a license or not. What
23 did the letter say. Did he ever -- yes, he came
24 this road one time. You know what that was,
25 Ladies and gentlemen, to scope out the scene.

1 Nobody, nobody ever used this road. Nobody.

2 Nobody. Why was he going to go around that way?

3 He was setting it all up then.

4 Why would they come there, and drop those

5 guys off at the road? Are you just taking me to

6 buy some weed? We're driving up to the house. I

7 got it. Go in and get the weed and we leave.

8 That's what you do. That didn't happen. You know

9 why? Because that was not part of the plan. The

10 plan was to go there, and not be seen. That's why

11 Vernon didn't drive his car. They would not have

12 known Cameren Kelley's car. The Bracey boys said

13 it was an old blue car. An old blue car. Had

14 Vernon driven, somebody in the area probably would

15 have recognized his car. That's why he didn't

16 drive it. Do not throw your common sense out of

17 the window. It is nothing fancy or mystical about

18 serving on a jury. Use your common sense. You

19 are all citizens. That's why you are here,

20 because you are citizens of Sumter County. That's

21 the American way. That's part of the judicial

22 system. You use your common sense. Does it make

23 sense for me to have gone here countless numbers

24 of times, gone in there, bought weed, smoked weed,

25 whatever else. Then all of a sudden, is there any

1 other way I can get here, other than come up this
2 old bumpy road. Ladies and gentlemen, everybody
3 who testified that you use this road, because it's
4 an abandoned road. But this is straight shoot
5 that everyone usually gets here to Odell Lane.
6 Odell Lane. The Bracey boys were not familiar at
7 all with this area. They come to Kershaw County
8 up in Cassatt. That's where they are from. But
9 what do they do. Vernon got there. Left them,
10 went to his house at [REDACTED] School House Road in
11 Camden. The testimony was that it took us a about
12 10 or 11 minutes to get there. Then it took us
13 another 20 minutes to go from there down to
14 Rembert.

15 You are going to drop me off to buy weed,
16 and you're just going to leave me. How am I going
17 to get back. How am I going to get back. How am
18 I supposed to get back. Hugh Phillips said he
19 just parked in the yard; looking for rubber bands
20 and other stuff for his wife Ellen Phillips to do
21 the hair of Lennie Belton. Over here to the right
22 side, he said he saw a car light go out. And not
23 long after that two individuals appeared.

24 The question becomes car lights we submit
25 to you, that went out was a car light from the car

1 that Cameren Kelley was driving. They were
2 waiting so that they can pick them up. They kept
3 circling back. Circling back so they could pick
4 them up. Think about it. You are going to take
5 me 30 miles from where I live to buy weed, and you
6 going to leave me. Mr. Bracey didn't have a car.
7 The Bracey's didn't even have guns. They didn't
8 have masks. They didn't have duct tape. Where
9 did all that come from. It came from Vernon
10 Goodwin.

11 Mr. Meadors told you, and I am sure that
12 Judge King will instruct you, the hand of one is
13 the hand of all. You do not have to go inside,
14 plan it, in concert. That's what these two did;
15 Vernon Goodwin, Cameren Kelley. They planned it.
16 They provided the means and mechanism to carry it
17 out. Now think about it. You are going to go hit
18 a lick wearing bedroom shoes? Bedroom shoes?
19 Come on. Think about.

20 Calderone said I came home from work
21 around 3:30 and I took a nap. Around 8 o'clock
22 or so, Vernon Goodwin shows up outside. Well
23 let's go take a look. I have got -- he had on
24 bedroom shoes. That goes to show that he probably
25 had probably had been taking a nap, and had walked

1 out, out of the bed. Slipped on the bedroom shoes
2 and walked out. Think about that. Where did he
3 get the gun from? Both said, no, we don't have
4 guns. My grandfather does not allow guns in the
5 house.

6 Vernon was given -- Vernon gave him the
7 gun. Both to them the guns. The masks, duct
8 tape, the whole 9 yards. That's part of the
9 plan. That's part of the scheme. And that's what
10 this is all about. Putting them together because
11 they were together. Because they did it together.
12 Ladies and gentlemen of the jury, you are the only
13 ones. You are the triers of the facts, and the
14 judge will tell you that. This case is not
15 simple. No case is simple, but use your common
16 sense.

17 Now, Hugh Phillips testified that he saw
18 the lights go out. They grabbed him up. Lennie
19 Belton testified he had never seen them before.
20 Darren Graham said he had never seen them before.
21 Lance McCray said I had seen them before. Tyrone
22 Bracey said I had never seen them before. Maurice
23 Ransom said I had never seen them before. Ms.
24 Ellen Phillips, Hugh's wife said, yes, I knew
25 Vernon. I taught him. I had never seen him at

1 that house before, but I knew him. Did you see
2 him that night. No. Do you want me to tell you
3 why? Vernon did not go there because he would
4 have known. They knew him. They sent the Bracey
5 boys in because no one was there, not a single
6 person testified said they knew the Bracey's, not
7 one.

8 Vernon is the mastermind. He certainly
9 did. He had been going up this road all those
10 times before. Cameren said I don't want to go up
11 that road because I don't want mess my rims.
12 Since when does a bumpy road mess up rims on a
13 car. That's part of the vehicle. It ain't going
14 to mess it up. How is it going to mess it up
15 unless it is muddy. There's been no talk about
16 it being real muddy or anything like that. If it
17 did, it wouldn't mess the rims or nothing, it
18 would just get dirty. And so you wash it off.
19 That's all you do.

20 Now, there again, ladies and gentlemen,
21 use your common sense. That's all you have to do
22 is use your common sense. And I am sure all of
23 you, all of you at least 18 years or older, all of
24 you, which means you have lived a life. Part of a
~~25 life. And you have seen a lot. Don't these~~

1 lawyers who are going to come up here and claim
2 that their clients didn't have nothing to do with
3 anything at all. But there again, use your common
4 sense. Use your common sense. That's all I ask
5 you to do, use your common sense.

6 This whole thing was set in motion; set in
7 motion. And Vernon Goodwin and Cameren Kelley,
8 they are just as guilty. Sure the Bracey boys
9 pled guilty to voluntary manslaughter. No
10 question about that. They testified to that.
11 They testified to what they did. In exchange for
12 that testimony, they were sentenced to 30 years in
13 prison. Both. 30 years in prison.

14 What did Calderone tell Jeffrey Richardson
15 immediately after it occurred. My cousin. My
16 cousin. My cousin. Who is his cousin? Vernon
17 Goodwin. Vernon Goodwin. He has not changed
18 that. In addition to he also brought in the other
19 fellows. His own brother. So why would he lie
20 about what happened? His own flesh and blood.
21 Someone he grew up with in the same household.
22 Ladies and gentlemen, I ask you to consider the
23 seriousness of this case; consider the evidence.
24 And we expect you to return a verdict based on

25 what you think should be in this case. And we

1 believe that will be one of guilty on all charges.

2 Thank you, Your Honor.

3 THE COURT: Mr. Sullivan.

4 MR. SULLIVAN: Thank you, Judge. Mr.

5 Meadors wants you all to think that the Bracey's

6 were just puppets; they were just being used.

7 That's baloney. The truth is the that the

8 Bracey's refuse to take responsibility for what

9 they have done.

10 Mr. Meadors told you all that the Bracey's

11 came in here to do justice. That's baloney. The

12 Bracey's came in here for another reason to help

13 themselves. I want to give you all a disclaimer.

14 I think some of the other lawyers have already

15 said this. But I am not going to intentionally

16 lie to you all If I take the next turn at trial.

17 I am not going to tell you something I think is

18 not true. What I say is not evidence. You will

19 have to go by what you heard the witnesses say.

20 The state's entire case hinges on what the

21 Bracey brothers say; their testimony. That's the

22 state's whole case. You all heard the line of

23 testimony about what happened with this botched

24 robbery. And really none of that matters. I mean

25 ~~it matters from the standpoint that it gives you~~

1 all a -- it illustrates what happened. It gives
2 you a total picture of what happened. But really
3 all that matters as far as the state's case is
4 concerned, is what the Bracey brothers say.

5 So you all have got to ask yourselves; do
6 you believe those guys. That's the state's case.
7 Do you believe them. They're putting on a big
8 act. And they are not good guys. They came in
9 here. You say them testify. They act all
10 respectful. And that's not them. You heard the
11 witnesses and the victims who were there talking
12 about them forcing Mr. Phillips into the trailer
13 and duct taping everybody. You heard the
14 witnesses -- the victims say how they really are.
15 What you saw is not how they are. They are thugs.
16 They are going to do whatever they can to help
17 themselves. And if that means coming into court
18 and lying, that's what they are going to do.

19 They neither one of them, Carlton or
20 Calderone, had absolutely zero credibility. Both
21 of them have got charges pending against them.
22 They entered a deal with the State where they can
23 plead to voluntary manslaughter. And still got a
24 whole bunch of charges pending; that if they don't
25 say what they are supposed to on the stand those

1 charges don't go away. They're going to do what
2 they have to do.

3 Carlton Bracey has got a conviction for
4 grand larceny. The wisest person that I have ever
5 known in life is my father. My father told me one
6 time, and I didn't, I was young when he told me
7 this. And it really didn't hit me the truth of it
8 until years later, but he told me that somebody
9 who will steal will lie. And that is the truth.
10 Carlton Bracey never told the police; he did give
11 a written statement. He never told police until
12 recently that Kelley had reported this. Calderone
13 Bracey has zero credibility. The same situation,
14 he's got charges pending against him. He doesn't
15 say what he is supposed to say upon on the stand.
16 And those charges don't go away. That's a pretty
17 big reason to lie.

18 And he didn't give his written statement
19 until February 16th. He had plenty of time to get
20 his story straight. This robbery happened
21 December of 09. That's plenty of time for these
22 guys to get their story straight. And you heard
23 him testify that he gave the second statement
24 saying that the statement that he gave to law
25 enforcement was a lie. And then he said in the

1 second statement he gave was a lie.

2 This right here will show you what a huge
3 lier he is. He was shot that night at the scene.
4 He is laying on the ground with 4 or 5 bullet
5 holes in hole. He, at that point, he lies to the
6 police. He says that him and his cousin went
7 there to rob the place. He is lying then. He
8 can't tell the truth. He went there with his
9 brother. He was trying to protect his brother.
10 Even then Calderon and Carlton Bracey both testify
11 that they have recently spoken with law
12 enforcement. I won't go in to detail about that.
13 I think you can infer what you want to from that.
14 They did testify that they have talked to law
15 enforcement since recently; since they entered
16 their guilty plea.

17 Yeah, Calderone did say in his statement
18 on February 16th that Cameren was supposed to
19 drive up and down the street. That doesn't mean
20 that they told Cameren. Kelley didn't say that.
21 That doesn't mean that he knew what was going on.
22 Neither Calderone or Carlton ever told the police
23 all this business about Kelley being around during
24 the planning of the robbery until just recently.

25 You heard Carlton Bracey testify that when

1 Mr. Goodwin gave them guns that he handled the
2 guns without gloves on. You also heard
3 Investigator Bean say that the duct tape, the
4 guns, everything was sent off to sled. You know,
5 it's interesting that we didn't hear from sled.
6 Why didn't we hear from them? Why weren't there
7 anybody -- any sled agents put on the stand by the
8 State. I'll tell you why, because it didn't help
9 them; because there were no fingerprints for
10 Mr. Goodwin that were lifted off of any gun or
11 duct tape.

12 You know why no fingerprints were lifted?
13 Because the Bracey's are lying, that's why.
14 Because their story is a lie. Basically the
15 state's case against Mr. Kelley comes down to what
16 he knew, what was going on in his head. Whether
17 he thought that he taking them to buy marijuana
18 or whether he knew the robbery was going on.
19 That's all this comes down to. And I would
20 subunit to all that State can't prove what he
21 knew; that he knew there was a robbery. And just
22 wasn't going to take them to buy marijuana. It
23 makes sense that Calderone and Carlton wouldn't
24 talk a whole lot about the robbery, and wouldn't
25 want Kelly to know. Because that's just one more

1 way to get back to the police. It makes sense
2 that they would want to kind keep that a secret.
3 It also makes sense that they would want to keep
4 what they were really doing, go in there and do a
5 robbery a secret from him because he was the only
6 one who had a license. And if he didn't to drive
7 them, and they didn't have any other way to get
8 there, they may have figured that if he knew what
9 was going on, he wouldn't drive them there. That
10 would mess up their whole plan.

11 You heard that this was December. It was
12 cold. The Bracey's were wearing jackets. The
13 pockets, a big jacket. Cameren may not have seen
14 any guns. Maybe he did see guns. Maybe the
15 Bracey's are the type guys who would carry guns.
16 Maybe he didn't think anything of it. I think
17 there is testimony that Cameren and Vernon didn't
18 wait around. And I believe it was Carlton who
19 testified that they dropped him off at the road
20 there. At the beginning of Odell Lane. Maybe
21 Cameren dropped them off because Cameren, it was
22 okay with him to take them there to get drugs.
23 But he didn't really want to be riding around with
24 drugs in his car. That's very plausible.

25 ~~And I think that Cameren would question,~~

1 and it would make sense to him, that he was taking
2 them to get marijuana, because you all heard that
3 this was a drug house. Or that marijuana was
4 there; probably sold from there. You heard a lot
5 about the couple different routes to get to this
6 trailer; that there was a dirt road. And there is
7 maybe another route. I don't know, maybe the
8 State wanted to try to show that Cameren and
9 Vernon waited there in the woods. Or I guess
10 maybe that's what the State was partially getting
11 at. But I think the testimony from Carlton, he
12 probably didn't even understand the significance
13 of where they were dropped off. So they just
14 dropped him off at the end of the road there.

15 What if Cameren found out about this on
16 the way over there. What if one of them said
17 something about robbing the place. Would that
18 make him guilty of murder? What if he found out
19 what was going on and said "You all are going to
20 do what." I don't want to have anything to do with
21 this." You got to drop them off somewhere. But
22 if you said, "No, get out of the car, I don't want
23 to have anything to do with this." He's got to
24 drop them off somewhere. Is that -- if he had

~~25 just found out, does that make him guilty of~~

1 murder? It might make him guilty of not going to
2 the police and telling them about what happened,
3 but it doesn't make him guilty of murder.

4 Carlton and Calderone Bracey were --
5 particularly Calderone was dead to rights.
6 Calderone was laying not too far from the trailer.
7 Shot on the ground. Right after this happened
8 with a mask. I think there was testimony that he
9 said that there weren't guns beside him, but
10 plenty of incriminating evidence. What did he
11 say? What can Calderone say? I don't if you all
12 ever heard the expression "Dead to Rights," but
13 they had they had him Dead to Rights.

14 The only thing he can say to help himself
15 is, "He got me, I didn't." But they made me do
16 it. He made me do it. Vernon Goodwin made me do
17 it. Cameren Kelley drove. He got me. But he put
18 me up to it. It always helps the defendant to
19 cooperate with police. Again, the Bracey's, which
20 is the entire state's case, they are going to do
21 what they have to do, to spend the least amount of
22 time behind bars that they can. And that is the
23 state's entire case is what the Bracey's said.
24 That is what they are hanging heir hat on. They

25 ~~used Mr. Kelley. They used him, because he was~~

1 the only one with the license.

2 The Bracey brothers they went in to that
3 trailer. They were terrified. They killed Kemper
4 Holliday. They put Hugh Phillips in a wheelchair.
5 They maimed Mr. McCray. They scared him to death.
6 You all didn't see who they were. That's not
7 enough for you. As if they haven't caused enough
8 carnage. Now they are trying to bring these guys
9 down. It never stops for them.

10 It's obvious you all know that this is
11 murder case. The burden is always high on the
12 State in a criminal trial. These guys are facing
13 murder. Ask yourselves when you go back to the
14 jury room to deliberate if the State has met their
15 burden in proving that Mr. Kelley is guilty of
16 murder beyond a reasonable doubt. Look at what
17 they hanging their hat on. Ask yourselves if you
18 believe the Bracey's. Please, please don't
19 convict an innocent man of murder. Thank you.

20 THE COURT: Mr. Hastie.

21 MR. HASTIE: Thank you.

22 THE COURT: Yes, sir.

23 MR. HASTIE: Ladies and gentlemen, good
24 morning. Before I make any comments about the

25 ~~evidence in this case, Vernon Goodwin and I would~~

1 like to thank you for being jurors the last few
2 days. We both realize that you have made a
3 tremendous sacrifice. Some of you have businesses
4 that have been away from this week, homes and
5 loved ones. But we realize that the reason you
6 are doing this is not because of your civic duty,
7 but because you want to make sure that justice is
8 properly administered here in the City of Sumter.

9 Now at the beginning of this trial Judge
10 King asked you to do a few things. One of those
11 things he said I want you to follow the law.
12 Another one that he asked you about, I wanted you
13 to be fair. And he said your duty is to hold the
14 prosecutors to their burden of proving Mr. Goodwin
15 is guilty beyond a reasonable doubt. Their
16 burden. He also asked you to do a few other
17 things. He said, you know, I want you to use your
18 common sense. I want you to use your life
19 experiences. This is not about who has a high
20 school degree or a college degree or a law degree.
21 It's your life experiences.

22 And he said I want you to evaluate
23 carefully the testimony of the witnesses. I start
24 off on Wednesday by telling you all that if I had

~~25 to give this case a theme, it would be taking~~

1 responsibility for your own actions. I ask you to
2 ask yourself if you heard all of these
3 presentations over the last two days, ask yourself
4 okay, where is the evidence? I also spoke briefly
5 about the presumption of innocence; that the
6 constitution of this country and this State says
7 that we all are presumed innocent until prove
8 guilty.

9 And the presumption of innocence as I said
10 just the other day is like a robe of righteousness
11 that we all wear. That's why the law places the
12 burden on the prosecution, and the burden is high.
13 It's way up here. They can't just pull it out and
14 say, well maybe it looks like he did it. And oh,
15 it might show this. No, no, it says beyond a
16 reasonable doubt.

17 Well now let's look at some of the
18 evidence and see why the prosecutors have failed
19 to prove Vernon Goodwin is guilty beyond a
20 reasonable doubt. This is a tragic day because
21 Mr. Holliday lost his life. There is nothing else
22 you can say about this, this is a terrible
23 tragedy. It's still beyond me how the solicitor
24 can go to Ms. Holliday and say we know who killed

~~25 your son. And we want to give this person a~~

1 break. We want to make a deal with him. And I
2 heard them said, "Oh man he has 30 years." You
3 all may not know, he will never have to serve 30
4 years.

5 MR. MEADORS: Your Honor, I object to
6 that.

7 THE COURT: Yes, sir. The objection is
8 sustained.

9 MR. HASTIE: He will probably be out---

10 THE COURT: That's not in evidence.

11 MR. HASTIE: Okay. The issue I said is,
12 did Vernon Goodwin mastermind this whole
13 robbery/murder situation. All I ask you, ladies
14 and gentlemen, is that evidence indeed shows that
15 the State if they have proven beyond a reasonable
16 doubt. Did he mastermind all of this? You heard
17 Mr. Meadors talk about common plan. There are so
18 many holes in this common plan, so to speak, and
19 we are going to go through the testimony of each
20 one of them; not each, but most of them.

21 You heard Mr. Meadors talk about well, you
22 know, if this gentleman apparently hadn't driven
23 them down to Rembert, Kemper would be alive.

24 Where do we stop? If the gun maker hadn't made

~~25 guns, Kemper would be alive. At the time if he~~

1 hadn't made ties, he might be alive. Where do we
2 stop with that type of thinking.

3 No, this wasn't about the drive down here.
4 This was Bracey boys, and what they said on the
5 stand. And it all revolves around that. Do you
6 believe these two fellows? You think about that.
7 That's all this is about. Do you believe what he
8 said yesterday or not. You heard the testimony of
9 that Jeffrey Richardson, the police officer, when
10 he got to the scene, he said, just a little
11 difficult. I am not that big of fellow. So I got
12 the call. I'm first on the scene, I'm just keep
13 some peace and stuff out there. There's a lot of
14 confusion going on. I did talk to Lennie Belton.
15 I said, did you check in to that to see if anybody
16 had any weapons. No, I didn't do that. That's
17 not part of my job right now.

18 What he did say when he went to the scene
19 they found Calderone on the ground. And he
20 mirandized him and everything on the ground. And
21 what did Calderone say? He say he and his cousin
22 that's the first you heard was he and his cousin.
23 He and his cousin were going to rob this place.
24 We won't mention nobody else's name. I think the

~~25 first you heard because it was associated by~~

1 Vernon Goodwin was introduced by Mr. Meadors and
2 say, "Is Vernon Goodwin your cousin. Yes." Okay.

3 Then I asked him, let's talk about your
4 family tree. How are you related to Vernon
5 Goodwin. Can you tell the jury. Well, I think on
6 my granddaddy's side. So my aunt, therefore she
7 is some kin to my aunt. Okay. Where does your
8 aunt live. Let's see, I don't where my aunt
9 lives. Okay. What is your aunt's name. I don't
10 know my aunt's name, but you know that Vernon
11 Goodwin is a cousin by this aunt. But you don't
12 even know where she lives. And you don't know her
13 name.

14 Richardson said you couldn't verify any of
15 this; that someone in the crowd out there. He
16 mentioned something that looked like a lot of
17 people out there. But someone they said they saw
18 a burgundy Cadillac. We don't know much about
19 that. They was said by him on the stand.
20 Terrance Colclough said he arrived second. And
21 said when he got there his job was just sort of
22 maintain crime scene. That's pretty much what he
23 did. He saw people coming and going, but he is
24 trying to keep a record of who would come inside
25 the yellow tape.

1 Investigator Bean, he was the first person
2 to talk about latent prints. He showed us
3 pictures of the guns that were found, and there
4 was several of them. Latent prints. But you
5 heard nothing from the stand about Vernon
6 Goodwin's fingerprint being on any weapon they
7 found. And they found a bunch of them. There
8 were a bunch of weapons I think they cited from
9 the house and in the field.

10 Did they show you any evidence of Vernon
11 Goodwin? Well here he is; his fingerprints are
12 all over the gun. Nothing. None of it. Duct
13 tape. Nothing. Any fingerprints on the duct
14 tape, no. Bedroom slippers were found at the
15 scene. And we will get to this a little later a
16 little deeper. Who in the world is going to rob
17 somebody in bedroom slippers. This mastermind
18 that was planning this, don't you think the
19 mastermind would say, he gave you all this other
20 stuff, and say look if you are going to rob
21 somebody, you shouldn't be going in your bedroom
22 slippers. Put on some sneakers. No, none of that
23 happened.

24 No DNA on the gloves, the do-rag, all that
~~25 stuff. You've seen no presented at all of any~~

1 DNA that connects anything to Vernon Goodwin.
2 Strange enough also that the investigator didn't
3 even talk about a gun found in the ditch on the
4 highway, Spring Hill Road, not Odell Lane. This
5 is down Spring Hill Road. Why would the gun be
6 found down there unless someone is trying to hide
7 something.

8 You heard Hugh Phillips talk about, there
9 is no cars in the yard. But you know Tywan and
10 Maurice said, "Our car was out there." Because
11 after the shooting what did they do? They ran out
12 of there, jumped in their car, and drove off.
13 Everybody in that house said there were at least 4
14 shots fired when they came through the door. But
15 you heard both of them get on the stand and said
16 "No, my brother fired 2 shots." Who lives at
17 Odell Lane? Belton, Darren Graham, and Letra
18 Graham.

19 When we asked Belton, "Well, okay, I smoke
20 weed. Do you sell weed. No, I don't smoke any
21 weed. But who is it that sell weed at the house?
22 Is it your mother."

23 Then you have all of this testimony from
24 all of them about, who goes to the hallway. Both

~~25 brothers got on the stand and said there was~~

1 absolutely no movement to the hallway. How could
2 all the people then come in here and talk about
3 there is this movement to the hallway.

4 Mr. Belton said he started shooting. His
5 gun jammed. He ran out the side door. None of
6 them said they knew the Bracey brothers. You
7 heard testimony from I think Cameren or maybe both
8 of the Bracey brothers. They had never been to
9 Rembert before. We have never been down there.
10 We have never been to Rembert. But he got on the
11 stand and was asked, "Do you Benjamin McGee. Do
12 you know Benjamin McGee. Yeah, we know Benjamin
13 McGee. He is our brother in law. Oh, he's your
14 brother-in-law. Where does Benjamin McGee live.
15 He lives in Rembert. Had you visited him before,
16 your brother-in-law. Yes, we visited him." And
17 his words were, "Several times." But he said he
18 had never been there before. That was his first
19 time.

20 You heard Investigator West's testimony
21 that he did take Calderone's statement after he
22 came out of Just Care. I believe it was -- which
23 is a little more than 2 months after this
24 shooting. He had 2 months to try to figure out,

~~25 "Okay, I am in deep trouble now." Now they~~

1 caught me and got my brother. And how can I
2 explain this. He had 2 months to think about a
3 goos story. And he did what doesn't make a whole
4 lot of sense.

5 Maurice Ransom got on the stand, "No, I
6 don't know Vernon Goodwin." I don't know anybody
7 by that name Vernon Goodwin. The two talk about
8 going dow the hallway. But he and his brother
9 made it very clear, he said, you know, some of us
10 just aren't telling the truth here. Because we
11 were told consistent is no one else in that yard
12 when this happened. And these guys said, We ran
13 and jumped in our car, drove off.

14 Darren Graham's testimony, a 10th grade
15 education. He had I thought was the most
16 interesting testimony. Because he was the one
17 that said, "You know what was strange, a phone
18 did ring that night." Calderone said, "I heard no
19 phone." But he said, Graham said a phone did
20 ring, his phone. My phone rang, guess who was on
21 the other end. Benjamin McGee. And it's might
22 strange, Benjamin, hold up on me. You all know
23 how these phones are now. You know exactly who
24 called you. He called him back. He hung up on
~~25 him again. He called a second time, "Oh, Ben, I'm~~

1 trying to reach this girl or something like that.
2 Don't worry about it." And Darren he knows
3 something is strang about getting the phone calls
4 too. Because he said, you know what, shortly
5 after that, these two fellows came to the door
6 after the phone call from Benjamin McGee.

7 And I remind you, he is a brother of the
8 Bracey brothers who lives in Rembert. Carlton got
9 on the stand yesterday. Are you kin to Benjamin
10 McGee. He had no problem knowing where Benjamin
11 McGee is. Yes, he's my brother-in-law. He's
12 married to my brother Maurio. Vernon Goodwin is
13 my cousin. His statement you just heard from this
14 letter said that came over and he gave us, the
15 guns, the gloves and all that stuff. But you
16 heard him testify that no, he we didn't get that.
17 He didn't come over and give us that stuff. We
18 had to go back to his house. Then he said well,
19 where does Vernon, your cousin Vernon Goodwin
20 live, Carlton. I don't know. Doesn't even know
21 where he lives. That's his cousin. He said he
22 went there that night. Carlton, when did you
23 first tell the Solicitor about this story about
24 Vernon Goodwin? Carlton had been in jail for over
~~25 two years. And just a few weeks ago he decided,~~

1 yeah and what my brother's statement a long time
2 ago is about right.

3 And I wondered how those stories can be so
4 similar until Calderone got on the stand, and
5 said, you know, I am in, we were in B pod. So
6 was Vernon. You are in B pod. How can you all
7 talk in B pod and B pod is a lock down pod.
8 There should be any conversation between these
9 guys. And what did he say, "Man, we talk all the
10 time. As a matter of fact, I talk to my brother
11 every day. Every day."

12 He never mentioned a word to his lawyer.
13 He has a public defender, Mr. Jack Howle. Never
14 mentioned a word of his involvement in this at
15 all.

16 MR. MEADORS: Judge, I object to that.

17 THE COURT: Objection is sustained.

18 That's not in evidence. I would remind you,
19 Mr. Hastie that your argument can only be things
20 that reasonably infer to the testimony.

21 MR. HASTIE: "We are going to hit a lick,"
22 he said on stand. He knew what a lick was. I
23 asked him, "Do you how to shoot a gun. Sure, I
24 know how to shoot a gun, Mr. Hastie. What kind of

~~25 guns have you shot. All kinds, 9-millimeter, 45,~~

1 a shotgun. Do you have a gun. No, sir, I don't
2 have a gun. My granddaddy doesn't allow guns in
3 his house."

4 One of the most amazing things to me on
5 the way there, not one of them asked, "Okay, how
6 am I going to get in this house mastermind? How
7 are we going to get in. Well our plan was, we are
8 going to wait on the side of the house. We know
9 that Maurice's car was in the yard for sure. And
10 we are going to wait until someone comes out. If
11 this is a plot, a mastermind plot. He testified
12 that they did not even discuss how many people
13 might be in this house. Who goes someplace and
14 robs someone and the question doesn't even come
15 up.

16 Another real strange thing about Carlton's
17 story is, "Okay, Carlton, after this debacle and
18 your brother is shot, your brother is shot, well
19 how did? You get away from there." What was the
20 testimony? "I walked. I walked." When at night?
21 He said, "I went through the woods." You walked
22 in the woods at night all the way from Rembert to
23 Cassatt. I checked out the distance this morning.
24 That's 18 miles. And this young man's testimony

~~25 is that he walked in the woods 18 miles at night.~~

1 That could have taken him 6 hours or so. He had a
2 cell phone didn't he? He said I had the cell
3 phone. Well I tried to call my brother but I
4 couldn't. In 6 hours you couldn't reach your
5 brother.

6 Calderone really scares me. Calderone
7 Bracey, because here is an armed robbery that is
8 going to rob somebody, and doesn't even have a
9 gun. "Were you working that night? Yes, sir.
10 How long have you been working there. Two weeks."
11 Who stayed with granddaddy. Auntie, uncle,
12 grandpa, Carlton, Mario, Darius." He didn't say
13 why he couldn't remember the name, but he said,
14 auntie.

15 "Have you ever hit a lick before, Carlton?
16 No, never hit a lick before." Then the question
17 is well why would you try to hit a lick now. "Are
18 you afraid of Vernon Goodwin. Are you afraid of
19 him for some reason. What did he say? No, I am
20 not afraid of Vernon Goodwin. Well did you write
21 that second statement then saying that the first
22 statement was a lie. and in the jail, why did you
23 do that. Because he asked me to do it. Are you
24 afraid of him. Is he some bad gangster or

~~25 something. No, I am not afraid of Vernon Goodwin.~~

1 So you a wrote a second statement saying I lied
2 about all of this stuff."

3 His second statement. You will have it.
4 He was shot, he said at least 5 times. And we
5 asked him why did you lie to the police at the
6 very beginning of this whole situation. He said
7 because I wanted to protect my baby brother. I
8 want to protect my brother. That's all. But when
9 his brother saw him laying on the floor, shot 5
10 times, what did his brother do for him? Ran.
11 Left him. Any of you all ever lost your phone
12 before. And never took, don't raise your hand.
13 My wife loses her phone every week. Once a week
14 she will lose her phone. How do we find out where
15 her phone is. She states, "Would you dial the
16 number for me, please. Can you dial the number
17 for me, please, so I can see where I left it.
18 Did I leave it in the office. Did I leave it in
19 the car. Did I leave it in the bedroom." She
20 loses her phone every week, and we have to dial
21 out of my phone to try to find it.

22 One brother said on the way up, we never
23 talked about the robbery. The other brother said,
24 "Yeah, we talked about this." Mr. Meadors, talked

~~25 about a sip of justice in this case. We should be~~

1 here about a sip of justice in here. We want
2 justice all of it, for those that are involved.
3 You heard testimony that Manning talked about,
4 Nah, he didn't want to go down the main road
5 because he had nice rims, so he went down this
6 road where four wheelers travel. Who in the world
7 would tip you, you got a nice car. And you are
8 going to go down the road where guys are driving
9 four wheelers? It makes no sense. Nobody ever
10 used this road Mr. Manning says. Nobody ever used
11 this road.

12 And you remember he said four wheelers use
13 that road all the time. That's what they drive
14 four wheelers out there. Don't want to mess up
15 his rims, he said. Who among you can't say, you
16 have a reasonable doubt this morning about Vernon
17 Goodwin? And he was this mastermind of this
18 debacle. Of course you have a doubt. The
19 evidence you have heard is filled with doubt.
20 This is case is about over now. I am about to sit
21 down.

22 THE COURT: Two minutes, Mr. Hastie.

23 MR. HASTIE: Thank you, Your Honor. But
24 It now rests in your hands. There is a story you

25 ~~all have heard about a man called a Legion. And~~

1 he had so many devils inside of him, until he
2 could do just about anything. When I saw these
3 Bracey boys yesterday, it reminded me of this guy
4 that lived in a graveyard. This man called
5 Legion. And the Solicitor went in that graveyard
6 and made a deal with the Bracey boys.

7 And this case is about, just about over.
8 Later in your life you are going to ask yourself,
9 did I do Vernon Goodwin justice today. Or you
10 might be at your Thanksgiving dinner, did I do
11 him justice. If you have a doubt about this case,
12 have them now, don't have them on Thanksgiving
13 dinner, or your Christmas dinner. If you have got
14 a doubt, you have it. One thing you remember in
15 the jury room there is no such thing is a box.
16 The majority of each make your own decision. You
17 don't vote say well 10 of us say okay, two say
18 not; no, the judge says unanimous. You can talk
19 to each other and share ideas. But this is not a
20 democracy in the jury room.

21 Each of you must be convinced beyond a
22 reasonable doubt that Vernon Goodwin did it. The
23 prosecution has only failed to prove this case.
24 Beyond a reasonable doubt, because of their

~~25 failure, we ask that you return the only verdict~~

1 that the evidence demands. And we ask that you
2 find Mr. Goodwin not guilty. Thank you.

3 THE COURT: Ladies and gentlemen, we have
4 been in the courtroom now for about an 1 hour or
5 40 minutes or so. And I think it is appropriate
6 to take a brief recess before I give my
7 instructions to you, and we are going to do that.
8 Because there are a number of charges in this
9 case, the instructions are going to be somewhat
10 lengthy and I do want you to be comfortable. So
11 we are going to take about a 10 minute recess at
12 this time. And we will return you to the
13 courtroom, at which time I will give you the
14 instructions. Again, I would tell you it's still
15 premature for you begin any discussion about this
16 matter among yourselves. You should not talk
17 about this matter among yourselves until you have
18 heard the instructions on the law by the court.
19 So if you would go with the bailiff to your jury
20 room, and we will return to the courtroom in about
21 10 minutes. Thank you very much.

22 (Whereupon, the Court Breaks.)

23 THE COURT: We are back on the record in
24 the case of the State versus Vernon Goodwin and

~~25 Cameren Kelley. The defendants are present and in~~

1 the courtroom with their attorneys. The State is
2 present and represented by Mr. Finney, Mr. Meadors
3 and Mr. Manning. Anything before we bring the
4 jury in?

5 MR. MANNING: Nothing, Your Honor.

6 THE COURT: Anything from you,
7 Mr. Sullivan?

8 MR. SULLIVAN: No, sir.

9 THE COURT: Mr. Hastie?

10 MR HASTIE: No, sir.

11 THE COURT: You may bring the jury.

12 (Whereupon, the following takes place
13 within the presence of the jury.)

14 THE COURT: Thank you, and thank you,
15 Ladies and Gentlemen. And thank you for your
16 patience. And as you have noticed they have now
17 gotten the air-conditioner to work. And I have
18 made this statement over the years in 15 plus
19 years that I have been in this job. I have been
20 in 42 counties of the 46 counties in the State,
21 and served in multiple courtrooms. And I have
22 found that there are only two temperatures in the
23 courtroom, too hot, too cold. It doesn't matter
24 where you go, that's always the case. But we hope

~~25 that you will be comfortable for at least a little~~

1 bit more while I now struck you on the law.

2 Mr. Foreman and ladies and gentlemen, if
3 you would give me your attention. It now becomes
4 my duty to instruct you on the law of this case.
5 You have followed very closely and listened very
6 tentatively to the presentation of the evidence in
7 this case. And also to the able arguments made by
8 Mr. Manning and Mr. Meadors on behalf of the
9 State. And Mr. Sullivan and Mr. Hastie on behalf
10 of the two defendants. And I thank you for that.

11 It now becomes the duty of the trial judge
12 under the Constitution of the State to charge and
13 instruct you on the law applicable to this case.
14 And it is your duty as jurors to accept and apply
15 the law as the court will now state it to you.
16 And as jurors it is your exclusive duty to decide
17 all the issues of fact in this case. And for that
18 purpose to determine the effect, the value, the
19 weight and truth of the evidence presented. Both
20 the State and the Defendant have the right to
21 expect that you will conscientiously consider and
22 evaluate the evidence in this case, and apply the
23 law thereto; to the end that both the State of
24 South Carolina and the defendant will receive and
25 obtain a fair and impartial trial.

1 Now when I use the word defendant, I
2 refer to each of the two defendants in this case;
3 that is, to Mr. Kelley and Mr. Goodwin. The State
4 by the bill of indictment in this case, charges
5 the defendants with the offenses known in the law
6 as a number of separate offenses. They are
7 murder, burglary, kidnapping, assault with intent
8 to kill, assault and battery with intent to kill,
9 armed robbery, and attempted armed robbery.

10 To these defendants and -- I mean to these
11 charges and to these indictments to the counts of
12 these indictments, both the defendants have
13 entered a plea of not guilty. This plea of not
14 guilty by the defendants places the burden of
15 proof on the State to prove by evidence the guilt
16 of the defendants beyond a reasonable doubt before
17 the jury can find them guilty. Or either of them
18 guilty. And in that connection I will tell you
19 that when you have a case that has multiple
20 defendants and or two or more defendants you
21 should consider the charges against them
22 separately and each defendant separately.

23 I specifically tell you that there are
24 two defendants in this case and each is charged
25 with 25 separate charges. ~~Whatever verdict you~~

1 find, it does not have to be the same as to both
2 defendants, nor does it have to be the same on all
3 charges. You are to take each defendant and each
4 charge and consider the evidence as to each
5 defendant on each charges separately. And write
6 your verdict in accordance and in conformity with
7 the evidence in the case and the instructions that
8 I am giving to you now.

9 When more than one person is charged with
10 a crime if the evidence warrants it, you may
11 convict one and acquit the other. Or you may
12 acquit both. Or you may convict both. It would
13 have been on your view of the testimony and the
14 evidence which you alone are to pass upon. So you
15 will consider each charge separately. And each
16 defendant separately.

17 Now the defendants, both of them are
18 presumed innocent in the law of the charges
19 contained in the indictment. It is a cardinal,
20 fundamental rule of the law of the evidence that a
21 defendant irrespective of the enormity of the
22 charges against him, will always be presumed
23 innocent of the crime or crimes for which he has
24 been indicted, unless and until the guilt of the

~~25 defendant has proven by evidence which satisfies~~

1 you the jury of the guilt of that defendant beyond
2 a reasonable doubt.

3 The presumption of innocence is not a mere
4 legal theory. It is not just a legal phrase. The
5 presumption of innocence is a substantial right to
6 which every accused including the defendants in
7 this case are entitled. Our Supreme Court has
8 declared that the presumption of innocence is like
9 a robe of righteousness placed about the shoulders
10 of a defendant and it remains with him and assigns
11 to him that class, the innocent, until that
12 presumptive robe of righteousness has been
13 stripped from his person by evidence satisfying
14 you the jury of the guilt of the defendant beyond
15 a reasonable doubt.

16 The presumption of innocence accompanies
17 each defendant from the time of his arraignment an
18 appearance in this court, and continues with each
19 defendant after you retire to the jury room to
20 deliberate your verdict. The presumption of
21 innocence continues in existence to the benefit of
22 the defendant until you the jury reach the
23 conclusion that the State has proven the guilt of
24 the defendant beyond a reasonable doubt. The

~~25 State is not required to prove the guilt of the~~

1 defendant beyond all doubt or beyond every doubt,
2 but beyond a reasonable doubt.

3 What is a reasonable doubt? It is not an
4 imaginary or fanciful doubt or a weak doubt. It
5 is a substantial doubt. It is a doubt which the
6 words imply. A doubt for which you can give or
7 assign a reason based on the testimony and
8 evidence in this case. A reasonable doubt is not
9 any sort of a doubt. You and I know from every
10 day life experiences that you may have a sort of a
11 doubt about any matter that arises no matter how
12 trivial it may be or how serious it may be. A
13 reasonable doubt is a doubt which makes an
14 honest, sincere, conscientious juror in search of
15 the truth, hesitate to act. Proof beyond a
16 reasonable doubt is proof which leaves you firmly
17 convinced of the defendant's guilt. If you have a
18 doubt for which you can give or assign as to the
19 guilt of the defendant, then he is entitled to a
20 verdict of not guilty.

21 Reasonable doubt may arise from evidence
22 which is in the case or from the lack of evidence
23 in the case. You the jury must make the
24 determination of whether or not reasonable doubt
25 exists as to the guilt or innocence of the

1 defendant. The very fact however that the jury
2 engages in a full and fair discussion of the
3 issues, and I said that wrong, and I want to go
4 back and correct that. You the jury must make the
5 determination as to whether or not reasonable
6 doubt exists as to the guilt or innocence -- of
7 the guilt of the defendant. A defendant does not
8 have to prove innocence. So I will say again,
9 you the jury must make the determination of
10 whether or not reasonable doubt exists as to the
11 guilt of the defendant.

12 The very fact the jury engages in a full
13 and free discussion of the issues of guilt or
14 non-guilt in this case with the normal
15 conversational ebb and flow on these issues does
16 not automatically mean that reasonable doubt
17 exists in this case or in any other case. I charge
18 you that each defendant is entitled to a every
19 reasonable doubt arising in the whole case. Or
20 arising in any defenses asserted by the defendant.
21 If upon any issue of fact essential to a
22 conviction and a verdict of guilty, you have a
23 reasonable doubt as to how that issue should be
24 resolved, it is your duty to resolve that doubt in
25 favor of that defendant.

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

1 any charge unless you find of the elements of the
2 charge have been proven by the State beyond a
3 reasonable doubt.

4 Now I charge you that the indictment in
5 this case which I hold in my hand is not evidence
6 of anything. The indictment is simply the formal
7 written instrument which contains the charges the
8 defendant and it serves as the formal document by
9 which this case is brought to trial. During this
10 trial each of us, you and I have certain duties to
11 perform. As the trial judge, it is my
12 responsibility to preside over the trial of this
13 case. And I also have a duty to rule upon or pass
14 upon the admissibility of evidence offered during
15 the progress of this trial. You are to consider
16 only the competent evidence before you, and you
17 are disregard and disabuse from your mind any
18 testimony ordered stricken from the record of this
19 case during the progress of the trial if there be
20 any. And you are consider only the testimony
21 which has been presented from the witness stand,
22 together with any exhibits admitted into the
23 record of the case, and any stipulations of
24 counsel made into the record. And I note that
25 ~~there are some stipulations and I will give you a~~

1 little instruction on those stipulations in
2 just a few minutes.

3 I have the additional duty to charge you
4 the applicable law of this case. As the presiding
5 judge, I am the sole judge of the law in this
6 case. And it is your duty to accept and apply the
7 law as I now state it to you. If you have a
8 preconceived idea as to what the law is or what
9 the law ought to be, and it does not agree with
10 what I tell you the law is, you are obligated
11 under your oath to abandon this preconception on
12 your part, because you are sworn to accept the law
13 precisely as I now state it to you.

14 In every case tried in this court before a
15 jury, the jury becomes the sole and exclusive
16 judge of the facts. You the jury are the judge of
17 the facts in this case. The court is the judge of
18 the law. The constitution of this State has
19 declared that the trial judge shall not intimate,
20 state, comment upon, or make any statement to a
21 trial jury about the facts in a case. Since you
22 are the sole judge of the facts, you are not to
23 infer from anything that I have said during the
24 progress of this trial in ruling upon the
25 - - - - - admissibility of evidence or otherwise or anything - - - - -

1 that I say to you that I have an opinion about the
2 facts of this case, I do not. The law does not
3 permit me to have an opinion about the facts.
4 That is a matter solely for you the jury to
5 determine.

6 As jurors, it is your duty to determine
7 as I have stated to you, the effect, the value,
8 the weight and the truth of the evidence presented
9 during the course of this trial. Necessarily
10 then, you must assess the credibility of the
11 witnesses who have testified in this case.
12 Credibility is simply a legalistic word meaning
13 believability. It means becomes your duty then to
14 analyze and evaluate the evidence. And to
15 determine that evidence which convinces you of its
16 truth. I charge you that in determining
17 credibility or believability of witnesses you may
18 believe one witness as against several witnesses
19 or several witnesses as against one witness. You
20 may part believe a part of the testimony of a
21 witness and reject the remaining part of the
22 testimony of that same witness. You may believe
23 the testimony of a witness in its entirety or you
24 may reject the testimony of a witness in its
25 entirety.

1 You may consider whether any witness has
2 exhibited any interest, any bias or any prejudice
3 in the case. And you may consider the demeanor of
4 a witness; that is, the appearance of a witness
5 from the witness stand. And you may consider the
6 opportunity for knowledge concerning those things
7 about which a witness testified. These
8 considerations you do not exercise arbitrarily,
9 but if in your good judgment there is sound reason
10 in the record for so doing. Because your
11 objective, ladies and gentlemen, is to find the
12 truth whether it comes from one or more witnesses.
13 And in doing so, in exercising your mental
14 processes and in determining what you consider to
15 be true, the law simply requires that you use your
16 good judgment, your common sense, your sense of
17 logic and reason and your experiences in life.
18 You then take and apply these attributes of
19 ability to the evidence and determine what you
20 consider to be the truthful evidence. And to
21 these true state of facts as determined by you
22 jury, you take and apply the law as the court will
23 state it to you, and thus arrive at a verdict in
24 this case.

25 Now you know recall that I told you that

1 are you to consider of course any stipulations
2 that have been made. And there are two
3 stipulations that are part of the record in this
4 case. A stipulation is an agreement, admission or
5 concession made in judicial proceedings by the
6 parties thereto or their attorneys. Stipulations
7 are binding upon those who make them. A
8 stipulation is an agreement, an understanding.
9 The court and jury must accept stipulations as
10 binding upon the parties. If counsel for the
11 parties have stipulated to any facts or any facts
12 have been admitted by counsel, you will regard
13 that fact as being conclusively proved as to party
14 or parties making the stipulation or the
15 admission.

16 Now as I said the defendants are charged
17 in this indictment, it is a 25-count indictment
18 and each defendant is charged with each of the 25
19 counts. You are to consider each defendant
20 separately. And you are to consider each charge
21 separately.

22 I now want to charge you on the various
23 offenses so that you can apply the elements of
24 those offenses to the facts as you find those

~~25 facts to be and arrive at a verdict. The first~~

1 count of the indictment is one for murder. What
2 is murder? Murder is defined as the wilful
3 felonious killing of a human being by a human
4 being with malice aforethought. Malice being
5 either express or implied malice. Section 16-3-10
6 of the code of laws of South Carolina provided
7 murder is the killing of any person with malice
8 aforethought either express or implied.

9 The State must prove beyond a reasonable
10 doubt that the defendant or a defendant killed
11 another person with malice aforethought. The
12 presence of malice is a required element of
13 murder. Malice is defined as being hatred or ill
14 will. Malice in its legal does not necessarily
15 import ill will toward the individual injured, but
16 signifies rather a general malignant recklessness
17 of the lives and safety of others. Or a condition
18 of the mind which shows a heart regardless of
19 social duty and fatally bent on mischief. Malice
20 is the wrongful intent to injure another person.
21 It indicates a wicked or depraved spirit intent on
22 doing wrong.

23 Malice is a legal term implying wickedness
24 and excluding just cause or excuse. It is the
25 ~~doing of a wrongful act and intentionally and~~

1 without just cause or excuse. The term malice
2 indicates a form, purpose and design to do a
3 wrongful act under the circumstances that excludes
4 a legal right to do so. Malice may be express or
5 implied. The words express or implied add nothing
6 to the meaning of the word malice. They do not
7 imply different kinds of malice, but merely the
8 manner in which the only kind known to the law may
9 be known to exist; that is, by either by positive
10 evidence or by inference.

11 Express malice is where there is a
12 deliberate intention to unlawfully take the life
13 of another. Implied malice is when circumstances
14 demonstrate a wanton or reckless disregard for
15 human life or a reasonably prudent person would
16 have known that according to common experience
17 that there is a plain and strong likelihood that
18 death would follow the contemplated act.

19 Now the law says that if one intentionally
20 kills another with a deadly weapon, the
21 implication of malice may arise. If facts are
22 proven beyond a reasonable doubt sufficient to
23 raise an inference of malice to your satisfaction
24 this inference would be simply an evidentiary fact
25 ~~to be taken into consideration by you the jury,~~

1 along with other evidence in this case you may
2 give it such weight as you determine it should
3 receive.

4 A deadly weapon is any article,
5 instrument, or substance which is likely to cause
6 death or bodily harm. Whether an instrument or
7 object has been used as a deadly weapon depends on
8 the facts and circumstances of each case. Now
9 although malice must be aforethought, there is no
10 requirement that it must exist for any appreciable
11 length of time before the commission of the act.
12 It may be conceived in the very moment the act
13 occurred. There must be a combination of the evil
14 intent and of the act producing the result.

15 Now under the theory that the lesser
16 included offense is included in the greater charge
17 and offense, one of the verdicts that you will
18 allowed to consider in this case is that of
19 voluntary manslaughter, which is a lesser included
20 offense of murder. What is voluntary
21 manslaughter? Well Section 16-3-50 of the code of
22 laws of South Carolina defines manslaughter as the
23 unlawful killing of another without malice express
24 or implied.

25 ~~Voluntary manslaughter is the unlawful~~

1 killing of a human being without malice in sudden
2 heat of passion without sufficient legal
3 provocation. Through voluntary manslaughter, the
4 State must demonstrate beyond a reasonable doubt
5 that the defendant or a defendant unlawfully
6 killed another without malice in sudden heat of
7 passion based on sufficient legal provocation.
8 Heat or passion alone will not be suffice. Both
9 heat or passion and sufficient legal provocation
10 must be present at the time of the killing to
11 constitute voluntary manslaughter. In sudden heat
12 of passion upon legal provocation while it need be
13 not be thrown to reason entirely or shut out
14 knowledge or volition, it must be such as would
15 normally disturb the sway of reason, and render
16 the mind of ordinary person incapable of cool
17 reflection and produce what according to human
18 experience may be called an uncontrollable impulse
19 to do violence. Compassion need not be so
20 overpowering as for the time to shut out knowledge
21 and destroy volition. To constitute sufficient
22 legal provocation, the provocation must come act
23 or related to the victim. Provocation of the
24 deceased must be such as naturally and instantly
25 produces in the mind of a person ordinarily

1 constituting the highest degree of exasperation
2 raised, anger, sudden resentment or terror.
3 Rendering the mind incapable of cool reflection.

4 If sufficient legal provocation does not
5 exist the killing even if committed during the
6 heat of passion is not voluntary manslaughter.
7 The provocation must deprive one of the power of
8 self control, but it need not entirely dethrone
9 reason. If the death is caused by the use of
10 deadly weapon, words alone, however appropriate
11 are not sufficient to constitute a legal
12 provocation. Rather when death is caused by the
13 use of a deadly weapon the words must be
14 accompanied by the appearance of an assault by
15 some overt threatening act, which would have
16 produced the heat of passion. Thus, words alone
17 may not constitute a sufficient legal provocation,
18 words accompanied by some overt threatening act
19 may be sufficient.

20 So if the basically the difference between
21 murder and involuntary or voluntary manslaughter,
22 not involuntary manslaughter by voluntary
23 manslaughter is that murder requires malice.

24 Voluntary manslaughter is the unlawful killing of
25 a human being without malice in sudden heat of

1 passion upon legal -- sufficient legal
2 provocation.

3 Now another of the charges against the
4 defendant in this case, or just both defendants
5 which you will consider separately in this case,
6 is the crime of kidnapping. And again, 16-3-910
7 of the code of laws of South Carolina sets forth
8 the statutory provisions for kidnapping as
9 follows: "Whoever shall unlawfully seize,
10 confine, inveigle, decoy, kidnap, abduct, or carry
11 away any other person by any means whatsoever,
12 without authority of law except when a minor is
13 seized or taken by his parent is guilty of the
14 crime.

15 The code goes on to say that the State
16 must prove beyond a reasonable doubt the elements
17 of kidnapping; that the defendant did first aid,
18 unlawfully seize, confine, inveigle, decoy,
19 kidnap, abduct or carry away another person. The
20 definition of decoy is to lure successfully.
21 Inveigle has been defined as enticing or cajoling
22 or tempting the victim usually through some
23 deceitful means; such as, false promises without
24 any means whatsoever and without authority of law.

25 ----- So South Carolina's kidnapping statute -----

1 requires proof of an unlawful act taking one of
2 several alternate forms, seizure, confinement
3 inveigle, decoy, kidnapping, abduction, carrying
4 away. Kidnapping is the intentionally taking of a
5 person and compelling him to be detained against
6 his will. It is the wilful and unlawful seizing
7 of a person against his will with the intent to
8 cause him to be confined, imprisoned or detained.

9 It is false imprisonment with the element
10 of abduction added. The essence of the offense of
11 kidnapping is the unlawful secret holding or
12 imprisonment of a person. An essential element of
13 the offense of kidnapping is the taking or
14 detention of the person kidnapped is without
15 lawful authority. Kidnapping occurs when a person
16 unlawfully seizes, confines, inveigles, decoys,
17 kidnaps, abducts or carries away any other person
18 by means without authority of the law. Kidnapping
19 is a continuing offense. The offense commences
20 when one is wrongfully deprived of freedom and
21 continues until freedom is restored.

22 Kidnapping is a mens rea offense. Mens
23 rea is a Latin term meaning a guilty mind. The
24 Mens rea required for crime of kidnapping is

25 knowledge. The State must prove the beyond a

1 reasonable doubt that the mens rea of knowledge
2 before you can convict the defendant of the
3 offense of kidnapping.

4 What is the definition of kidnapping under
5 the law. A person is said to act knowingly if he
6 is aware that a result is practically certain to
7 follow from his conduct whether his desire may
8 be -- whatever his desire may be as to that
9 result. Now another of the offenses charged in
10 this case is the offense of assault and battery
11 with intent to kill. Assault and battery is an
12 unlawful act of violent injury to the person of
13 another with malice aforethought either express or
14 implied. To prove assault and battery with
15 intent to kill the State must prove beyond a
16 reasonable doubt that the defendant committed an
17 unlawful act of violent injury to the person of
18 another with malice aforethought.

19 An assault is an unlawful attempt to offer
20 or commit a violent injury upon the person coupled
21 with the present ability to complete the attempt
22 or offer by a battery. Assault has been defined
23 as placing another person in apprehension of harm.
24 While words alone do not constitute an assault, if
25 ~~by words and conduct a person intentionally~~

1 creates a reasonable apprehension of bodily harm,
2 it is an assault. An assault is an attempt to do
3 violence to the person of another in rude, angry
4 or resentful manner.

5 An assault is the intentional creation of
6 fear of immediate bodily harm. A battery is the
7 use of force against another resulting in harmful
8 or offensive conduct. It is the assault brought
9 to a completion. A battery is the unlawful
10 touching or striking of another by the aggressor
11 himself or by any substance put in motion by him.
12 Done with the intention of bringing about a
13 harmful or offensive contact which is not legally
14 consented to by the other, and not other
15 privileged.

16 It is sometimes defined as any injury done
17 to the person or another in a rude, insolent or
18 revengeful way. The presence of malice is a
19 required element of the assault and battery with
20 intent to kill. As I have already explained to
21 you, malice is defined as being hatred or ill
22 will. And but it does not necessarily import ill
23 will toward an individual injured, but signifies
24 rather a general malignant recklessness of the

~~25 lives and safety of others. Or a condition of the~~

1 mind which shows a heart regardless of social duty
2 and fatally bent on mischief.

3 Malice is the wrongful intent to injure
4 another person. And again, as in murder, malice
5 and assault and battery with intent to kill can be
6 express or implied. They do not show different
7 kinds of malice but only the types of malice which
8 may be exist in the law. The law also says that
9 if one intentionally shoots another with a deadly
10 weapon, the implication of malice may arise if
11 facts are proven beyond a reasonable doubt
12 sufficient to establish an inference of malice to
13 your satisfaction, this inference is simply an
14 evidentiary fact to be taken into consideration by
15 you along with the other evidence in this case and
16 you may give it such weight as you determine.

17 I'll also define -- will not again define
18 for you what is a deadly weapon under the law.
19 Again, I told you earlier in my instructions on
20 murder that while malice must exist, it must be
21 aforethought. There is no requirement that it
22 must exist for any appreciable length of time
23 before the commission of the acts. It may be
24 conceived at the very moment the act occurs. It
25 ~~must be a combination of the evil intent and of~~

1 the act producing the result. Assault with
2 intent to kill requires the intent to kill.
3 However this intent need only be a general intent
4 demonstrated by acts and conduct of the accused
5 and other specific circumstances from which you
6 may naturally infer intent.

7 The specific intent to kill is not an
8 element of assault and battery with intent to
9 kill. Only a general intent to kill is necessary
10 to support a charge of assault and battery with
11 intent to kill.

12 Now also contained in the indictment is
13 the charge against the two defendants in a couple
14 of the counts of the indictment of assault with
15 intent to kill. The assault with intent to kill
16 is exactly the same thing as an assault and
17 battery with intent to kill that I have just
18 defined for you except that there is no battery.
19 It is simply an assault which is an attempt, an
20 unlawful attempt, to offer to commit a violent
21 injury upon the person of another coupled with the
22 present ability to complete the attempt or offer
23 by a battery.

24 As I have said, assault has been defined

25 ~~as placing another in apprehension of harm. It is~~

1 not necessary that the attempted injury or harm
2 actually took place. Before you can find a
3 defendant guilty of assault with intent to kill,
4 the State must prove the elements of assault with
5 intent to kill beyond a reasonable doubt. These
6 elements are, lawful attempt. Second, to commit
7 a violent injury. Third, to the person of
8 another. Fourth, with malicious intent. And
9 fifth accompanied by the present ability to
10 complete the act. Again malice is required as I
11 have already defined for you malice. I have
12 already defined for you the difference between
13 express and implied malice. And the inference
14 that may arise from the use of a deadly weapon.

15 Now another of the charges of the
16 indictment is that of armed robbery. Armed
17 robbery, Section 16-11-330 of the South Carolina
18 code provides that armed robbery is defined as
19 follows: A robbery committed while armed with a
20 pistol, dirk, slingshot, metal knuckles, razor or
21 other deadly weapon or while alleging either by
22 actions or words that he was armed while using a
23 representation of a deadly weapon or any object
24 which a person present during the commission of a
25 ~~robbery reasonably believed to be a deadly weapon.~~

1 So to convict the Defendant of armed
2 robbery, the State must prove that one, the
3 defendant did, and these are the elements. One,
4 commit a robbery. Secondly, while armed with a
5 pistol, dirk slingshot, metal knuckles, razor or
6 other deadly weapon. Or while alleging either by
7 action or words that he was armed with a deadly
8 weapon.

9 Now what is robbery. Robbery is larceny
10 with a person or immediate presence of another by
11 violence, intimidation or by putting such person
12 in fear. A thing is in the presence of a person
13 in respect to robbery which is so within his
14 reach, inspection, observation or control that he
15 could, if not overcome by violence or prevented by
16 fear, retain his possession of them. Robbery is
17 basically larceny compounded by aggravated or
18 intimidation or force used in the taking of the
19 property from the person or the presence of
20 another.

21 Larceny is the feloniously taking and
22 carrying of the goods of another against the
23 owner's will and without his consent, to
24 appropriate them to one's own use and to

25 ~~permanently deprive the owner of possession of the~~ — — —

1 property. So there are 5 elements that the State
2 must prove for larceny: Taking and carrying away
3 to the property which is called asportation in the
4 law of the property of another without the consent
5 and against the will of the other, that's the
6 other, that's the fourth one. And with intent to
7 steal.

8 Now in addition to the elements of
9 larceny, the crime of robbery requires two
10 additional elements. These are, that the property
11 must be taken from the person or immediate
12 presence of another, and the taking must be
13 accompanied and accomplished by violence,
14 intimidation or putting a person in fear.

15 Now to finally one more element is
16 necessary to constitute armed robbery. The State
17 must show the additional element that the robbery
18 was committed while armed with a pistol, dirk,
19 slingshot, metal knuckles, razor or other deadly
20 weapon or while alleging either by actions or
21 words that he was armed using a representation of
22 a deadly weapon.

23 Now what is a deadly weapon? That is a
24 factual matter that you must decide. A deadly

25 ~~weapon is any article, instrument or substance~~

1 which is likely to cause death or great bodily
2 harm. Now finally as far as the subsequent
3 offenses are concerned, I want to talk with you
4 for a few minutes about the crime in none in the
5 law as attempt, because there are some charges in
6 the indictment for attempted armed robbery. And
7 so you need to know what constitutes an attempt.

8 An attempt is an act done in part
9 execution of a design to commit a crime. There
10 must be an intent that the act be committed and an
11 act done not in full execution, but in pursuance
12 of that intent. An attempt is distinguished from
13 a preparation to commit it, and also from the
14 intent to commit. The law does not punish the
15 mere entertainment of criminal intent. To bring
16 the law into action, it is necessary that some act
17 should be done in pursuance of the intent,
18 immediately and directly tending to the commission
19 of the crime. An act which should the crime be
20 perpetrated, would constitute part and parcel of
21 the transaction. But which does not reach the
22 accomplishment of the original intent because it
23 is prevented or voluntarily abandoned.

24 In order to constitute an attempt to

25 ~~commit a crime, it is essential that coupled with~~

1 the intent to commit the offense there must be
2 some overt act beyond mere preparation in
3 furtherance of the intent. And there must be an
4 actual, or present ability to complete the crime.
5 Intent is an essential requirement of attempt.
6 And I've told you before, what is criminal intent.
7 Criminal intent is a State of mind which operates
8 jointly with an act or omission in the commission
9 of a crime. It is a mental state of conscious
10 wrongdoing.

11 Now I want to talk with you now about what
12 we know -- what is known in the law as accomplice
13 liability. When a person does an act in the
14 presence of and with the assistance of another,
15 the act is done by both. When two or more persons
16 acting with a common plan or intent are present at
17 the commission of a crime, It does not matter who
18 actually commits the crime, all are guilty. The
19 hand of one is the hand of all.

20 Present means to be sufficiently near to
21 aid and abet and assist in the commission of a
22 crime. Intent is also a necessary element or
23 there must have been a common design or intent to
24 commit the crime. And the crime must have been
25 committed pursuant to that plan with the person

1 aiding and abetting by some overt act. To be
2 guilty as an aider or abettor the participant must
3 have knowledge of the principal's criminal
4 conduct. Mere presence at the scene is not
5 sufficient to establish guilt as an aider or
6 abettor. The mere presence of a defendant where a
7 crime has occurred or a mere association by a
8 defendant with persons who have committed a crime,
9 is insufficient proof that the defendant has
10 committed a crime.

11 Evidence that an individual is present at
12 the time the crime is committed is not in and of
13 itself sufficient proof that the individual
14 committed the crime. The mere knowledge that
15 another person is going to commit a crime even if
16 defendant is present when the crime is committed
17 is not sufficient to convict the Defendant as a
18 principal.

19 The State must prove beyond a reasonable
20 doubt by competent evidence the theory of the hand
21 of one is the hand of all. To be guilty of the
22 crime the person must personally commit the crime
23 or be present at the scene of the crime and
24 intentionally or through some common design aid,
25 ~~abet or assist in the commission of the crime~~

1 through some overt act. A principal in a crime is
2 one who either actually committed the crime or who
3 is present aiding, abetting or assisting in the
4 commission of a crime. Presence at the scene of
5 the crime by prearrangement to aid, encourage or
6 abet in the preparation of the crime, constitutes
7 guilt as a principal.

8 The burden is on the State to prove every
9 element of the crime charged. If you find after
10 reviewing the evidence that the State has not
11 proven the guilt -- that has proven the
12 defendant -- if you find after reviewing the
13 evidence that the State has proved the defendants
14 only present at the scene of the crime, then the
15 State has not proven beyond a reasonable doubt any
16 participation in the crime, then it would be your
17 duty to find the defendant not guilty.

18 On the other hand, if you find from your
19 view of the evidence that the State has proven
20 that the defendant or a defendant aided and
21 abetted and participated in the crime, then it
22 would be your duty to find the defendant guilty.

23 Now, ladies and gentlemen, there are
24 generally two types of evidence which are

25 presented in the course of a trial, direct or

1 circumstantial evidence. Direct evidence is the
2 testimony of a person who asserts or claims to
3 have to actual knowledge of a fact; such as, an
4 eye witness. Circumstantial evidence is proof of
5 a chain of facts and circumstances indicating the
6 existence of a fact. The law makes absolutely no
7 distinction between the weight or value to be
8 given to either direct or circumstantial evidence.
9 Nor is a greater degree of certainty required of
10 circumstantial evidence than is required of direct
11 evidence. You should weigh all of the evidence in
12 this case. And after weighing all of the evidence
13 if you are not convinced of the guilt of the
14 defendant beyond a reasonable doubt you would find
15 that defendant not guilty.

16 The reverse is also true. After weighing
17 all of the evidence if you find either of the
18 defendant's is guilty of particular charge then it
19 would be your duty to find that defendant guilty.
20 Now there has been admitted in to evidence certain
21 testimony regarding statements made by the
22 defendants in this case. And I want to tell you
23 that while the court generally determines the
24 admissibility of that evidence as regards to any
25 alleged statement or confession, the jury makes

1 the ultimate determination of whether the
2 defendant made the statement. If he made the
3 statement, whether it was made by him freely and
4 voluntarily. And what weight, if any, it should
5 be given by you the jury.

6 You must determine if the alleged
7 statement or confession was the product of an
8 essentially free and unconstrained choice by the
9 maker. If you determine it was the burden upon
10 the State to prove that fact beyond a reasonable
11 doubt then you may give the statement such further
12 consideration as you deem proper. If you
13 determine the alleged statement or confession was
14 not the free and voluntary willed expression of
15 the defendant then you should not consider it at
16 all. If you determine whether a defendant's will
17 was overcome in obtaining a statement or
18 confession, you should consider both the
19 characteristics of the defendant and the details
20 of the interrogation, which are referred to in the
21 law as the totality of the circumstances.

22 Some of the factors you should and may
23 consider are, the age of the defendant, the mental
24 ability and capacity of the defendant, the

25 ~~education of the defendant, his IQ or~~

1 intelligence, his background and environment, and
2 the advice or lack thereof of the defendant of his
3 constitutional rights; including, but not limited
4 to the procedural safeguards known as the Miranda
5 warnings concerning the right to remain silent;
6 that any statement could be used against him in a
7 court of law, the right to have a lawyer present.
8 If an indigent then a lawyer would be appointed to
9 represent without costs, and that he could stop
10 making the statement at any time; also, the place
11 and the length of the detention and the nature of
12 the questions.

13 You the jury must carefully scrutinize all
14 of the surrounding circumstances before you give
15 any weight to an alleged statement or confession.
16 You must be satisfied beyond a reasonable doubt
17 that it was made by the defendant uninfluenced by
18 promise of reward, threat or injury or by any
19 diminution of his constitutional rights. You may
20 not consider any statement or confession unless
21 you find beyond a reasonable doubt that the
22 statement or confession was freely and voluntarily
23 given.

24 Now, Ladies and gentlemen, I will tell you

25 ~~now and I want to emphasize to you that the~~

1 defendant in -- neither defendant in this case has
2 testified. This is the constitutional right of
3 each one of them. It is not a circumstance you
4 can taken into consideration or even allow to
5 enter in your discussion in the jury room. Under
6 the constitution of this State and the United
7 States Constitution it is the defendant's
8 constitutional right not to testify. The burden
9 of proof is on the State of South Carolina to
10 establish the guilt of the defendant by competent
11 evidence beyond a reasonable doubt.

12 The fact that a defendant in this case did
13 not take the stand and testify in his own behalf
14 does create any inference against him. You are
15 not to permit this fact to weigh in the slightest
16 degree against either of these defendants nor
17 should this fact enter into the discussions or
18 deliberations of the jury in any matter
19 whatsoever.

20 Now, Ladies and gentlemen, I am about
21 finished with my instructions to you. But I would
22 tell you that you are not partisans or advocates
23 for the State of South Carolina or for either
24 these defendants. It has been often said that you
25 do not serve on the jury to punish your enemies or

1 reward your friends. Obviously such a perverted
2 system of justice would be intolerable. You have
3 selected by both the State and this Defendant as
4 fair and impartial jurors.

5 It is your duty then by your joint
6 deliberations to determine the truth in this case
7 giving to each defendant the benefit of each and
8 every reasonable doubt on each and every issue.
9 And then to the facts which you determine to be
10 true, you then take and apply the law which has
11 been given to you by this court and thus arrive at
12 a verdict which does speak the truth. Because the
13 word verdict, Ladies and gentlemen, has a Latin
14 derivative. It comes from the Latin verb
15 veredicto meaning to speak the truth or truth
16 saying. And when you have accomplished these
17 responsibilities you will have satisfied your oath
18 as jurors and you will have discharged your duty
19 to this court.

20 Now I want to instruct on the forms of
21 verdict in this case. If the State has failed to
22 prove the guilt of a defendant beyond a reasonable
23 doubt your verdict on that particular charge would
24 be two words, "Not guilty." If the State has
25 ~~proven the guilt of the defendant beyond a~~

1 reasonable doubt, your verdict would be one word,
2 "Guilty." The verdict that you render in this
3 case must be the verdict of each and every juror.
4 It must be your unanimous verdict. All 12 jurors
5 must agree on the verdict which you authorize your
6 foreperson to write.

7 Now, Mr. Foreman, I have prepared some
8 verdict forms for your use in the jury room. And
9 they are contained on these two sheets of paper.
10 And I will tell you now that the order or sequence
11 in which I have listed possible verdicts on these
12 sheets of paper and on these forms has absolutely
13 no significance whatsoever. You should not infer
14 from the order in which I have put the possible
15 verdicts on this form, that I have any opinion as
16 to what your verdict should be, I do not. As I
17 told you, the law does not allow me to have an
18 opinion. That is a matter solely up to you. I
19 have no opinion as to the facts. But obviously in
20 putting something down on piece of paper, I had
21 put something first and something second. So for
22 that being the reason that, of course, that is
23 done. But you should not infer that there is
24 anything -- that I have any opinion as to what
25 your verdict should be from the sequence in which

1 these are listed on the verdict form.

2 Now across the top of the -- there are
3 separate forms for each defendant. One is for
4 Vernon Sentell Goodwin, and that is this one. And
5 one is Cameren Laroderick Kelley, and that is this
6 one. And each one has the 25-count on each
7 charge, or lists each charge by count. And you
8 should list each count separately and each
9 defendant separately. But it simply says across
10 the top, the State of South Carolina, County of
11 Sumter, the State versus whichever the name the
12 defendant is. And the Court of General Sessions
13 verdict: We the jury by a unanimous agreement.
14 And I will tell you that your verdict must be
15 unanimous. It must the verdict of all 12 of you.
16 All 12 of you must agree on the verdict that you
17 allow your foreperson to write. We the jury by a
18 unanimous agreement, find the defendant in this
19 case, Mr. Kelley on Count 1, now Count 1 has three
20 possible verdict forms. And you would select one
21 of those.

22 And that is for Count 1, is murder of --
23 the charge is murder of Kemper Holliday. And you
24 would find the defendant either guilty of murder;
25 guilty of voluntary manslaughter or not guilty.

1 You would select one of those three. All of the
2 other 24 charges, the only possible verdicts are
3 either guilty or not guilty. But to go through
4 it, burglary in the first degree, guilty, not
5 guilty. Kidnapping of Hugh Phillips, guilty or
6 not guilty. Kidnapping of Ellen Phillips, guilty
7 or not guilty.

8 And so on all the way through with the
9 kidnappings. And then to the assault and battery
10 with intent to kill of Hugh Phillips, guilty or
11 not guilty. Assault and battery with intent to
12 kill of Lance McCray guilty or not guilty. And
13 all the way through until you have considered each
14 count on each defendant. And when you have done
15 that and arrived at a unanimous verdict, simply
16 date it, sign your name at the back. Notify the
17 bailiff. And we will bring you into the courtroom
18 as quickly as we can.

19 Now, I will tell you now that I am going
20 to send you to your jury room. I'm going to ask
21 that you not begin your deliberations just yet.
22 The law does require that I take up certain
23 matters of law with the attorneys. If it is not
24 necessary for me to bring you back into the
25 courtroom for additional instructions, the bailiff

1 will bring you the exhibits in this case, and the
2 verdict forms and will tell you to begin your
3 deliberations. And as I said, when you have
4 reached a verdict, simply knock on the door and we
5 will return you to the courtroom.

6 A bailiff will be stationed outside your
7 jury room door for your security during the course
8 of your deliberations. And very shortly sometime
9 in the next 30 minutes or so, lunch will be
10 brought to you. And you can continue to do -- or
11 you can do it either way you want to. If you want
12 to stop and eat your lunch, you can do that. Or
13 you can have a working lunch, and continue your
14 deliberations during the lunch period. So I am
15 going to ask the 12 principal jurors to go to the
16 jury room. But I am going to ask the three
17 alternates to stay with me.

18 But if you would, go with the bailiff to
19 the jury room, but do not begin your deliberations
20 just yet.

21 (Whereupon, the following takes place
22 outside the presence of the jury.)

23 THE COURT: Additions or exceptions, Mr.
24 Meadors?

25 MR. MEADORS: Please don't get mad at me,

1 Your Honor. I don't think Your Honor read the
2 stipulations again.

3 THE COURT: I did not read them again. I
4 told them they were there. I didn't think that, I
5 mean, I was concerned that that might be a comment
6 on the facts.

7 THE COURT: I just didn't know if you
8 meant to or didn't.

9 THE COURT: No, I thought that might be a
10 concern that might be a comment on the facts. I
11 think they -- it's just like any other testimony.

12 THE COURT: Anything, Mr. Sullivan?

13 MR. SULLIVAN: Nothing from the defense,
14 Judge.

15 THE COURT: Mr. Hastie.

16 MR. HASTIE: No, sir, Judge.

17 THE COURT: Counsel, make sure the
18 Exhibits are -- it should be 1 through 47. Check
19 them to make sure and let me talk to the
20 alternates for just a minute.

21 (Whereupon, at 12:28 p.m. jury commences
22 deliberations.)

23 (Whereupon, the alternates are excused.)

24 (Whereupon, At 2:19 jury has a question.)

25 THE COURT: We are back on the record in

1 the case of the matter of the State versus Goodwin
2 and Kelley. Mr. Kelley and Mr. Goodwin are
3 present in courtroom with their attorneys. The
4 State is present and represented by Mr. Meadors
5 and Mr. Manning. Counsel, we have a question from
6 the jury. Which has been marked as Court's
7 Exhibit No. 3. And it is signed by the foreman.
8 And the question is, please explain the difference
9 between murder and voluntary manslaughter.

10 And so I will bring the jury back and
11 instruct them on those two offenses. And I think
12 that's all I need to do in view of their
13 questions.

14 MR. MEADORS: Thank you.

15 THE COURT: Anything -- you think there is
16 anything other than that necessary, Mr. Sullivan?

17 MR. SULLIVAN: No, sir.

18 THE COURT: Mr. Hastie?

19 MR. HASTIE: No, sir, Your Honor.

20 THE COURT: Bring the jury in.

21 (Whereupon, the following takes place
22 within the presence of the jury.)

23 THE COURT: Thank you, ladies and
24 gentlemen. And I do have your note of inquiry.

25 And I will try to clarify the legal issues for

1 you. You asked me to explain the difference
2 between murder and voluntary manslaughter.

3 Murder is defined as the willful felonious
4 killing of human being by a human being with
5 malice aforethought. That malice may be either
6 express or implied. Voluntary manslaughter is the
7 unlawful killing of another without malice
8 express or implied. Voluntary manslaughter is the
9 unlawful killing of human being without malice in
10 sudden heat of passion upon sufficient legal
11 provocation. The presence of malice is a required
12 element of murder. It is not a required element
13 of manslaughter.

14 Malice is defined as being hatred or ill
15 will. Malice in its legal sense does not
16 necessarily import ill will toward the individual,
17 but signifies rather a general malignant,
18 recklessness of the lives and safety of others.
19 Or a condition of the mind which shows a heart
20 regardless of social duty and fatally bent on
21 mischief. Malice is the wrongful intent to injure
22 another person. It indicates a wicked or depraved
23 spirit intent on doing wrong.

24 Malice may be either express or implied.

25 The words express or implied add nothing to the

1 meaning of malice. They do not imply a different
2 kind of malice, but merely the manner in which the
3 only kind known in the law may be shown to exist.
4 That is by positive evidence or inference.

5 Express malice is where there is a
6 deliberate intention to unlawfully take the life
7 of another. Implied malice is when circumstances
8 demonstrate a wanton or reckless disregard for
9 life. Or a recklessly -- a disregard for human
10 life or a reasonably prudent man would have known
11 that there was a strong, plain likelihood that
12 death would follow. And the law says if one
13 intentionally kills another with a deadly weapon
14 it can be an inference of malice but is an
15 evidentiary fact for you to consider.

16 Now on the other side, the other hand,
17 voluntary manslaughter as I have told you is the
18 unlawful killing of another without malice either
19 express or implied. Voluntary manslaughter is the
20 unlawful killing of a human being without malice
21 in sudden heat of passion upon sufficient legal
22 provocation. Heat of passion alone will not
23 suffice. Both heat of passion and sufficient
24 legal provocation must be present at the time of
25 the killing to constitute voluntary manslaughter.

1 The sudden heat of passion upon sufficient legal
2 provocation while it need not dethrone of reason
3 entirely, it must be of such a nature as would
4 naturally disturb the sway of reason and render
5 the mind of an ordinary person incapable of cool
6 reflection. And what according to human
7 experience may be called an uncontrollable impulse
8 to do violence.

9 To constitute a legal provocation the
10 provocation must come from some act or some act of
11 or related to the victim. The provocation of the
12 deceased must be such as naturally and
13 instantaneously produces in the mind of a person
14 ordinarily constituted a highest degree of
15 exasperation, rage, anger, sudden resentment or
16 terror rendering the mind incapable of cool
17 reflection. So in summary, without any more
18 detail in that I think that is the best way that I
19 can say it.

20 But in summary, the difference between
21 murder and manslaughter is that murder is the
22 killing of another human being with malice
23 aforethought. And malice is a necessary element
24 of murder. On the other hand, voluntary
25 manslaughter is the unlawful killing of another

1 being without malice, but in sudden heat of
2 passion and with sufficient legal provocation. So
3 those are the differences in the two offenses.

4 Having explained it that way, I will send
5 you back and ask you to resume your deliberations
6 and let me know if there is any other legal issues
7 that I can try to help you with. Obviously I
8 cannot comment on anything that you might be
9 having trouble with on a factual basis, but if
10 there any legal issues that I can help you with,
11 please let me know. Okay, thank you.

12 (Whereupon, the following takes place
13 outside the presence of the jury.)

14 THE COURT: Any exception to my additional
15 charges on behalf of the State, Mr. Manning?

16 MR. MANNING: No, sir, Your Honor.

17 THE COURT: On behalf of the defendant
18 Kelley, Mr. Sullivan?

19 MR. SULLIVAN: No, sir.

20 THE COURT: On behalf of defendant
21 Goodwin, Mr. Hastie?

22 MR. HASTIE: No, sir.

23 THE COURT: We will have the exhibit
24 marked as Court's Exhibit No. 3, and we wait until
25 we hear from the jury.

1 (Whereupon, at 2:32 p.m. jury commences
2 deliberations.)

3 (Whereupon, at 3:21 jury reaches verdict.)

4 THE COURT: We are back on the record with
5 regard to the matter of the State versus Goodwin
6 and Kelley. This is in case number
7 2011-GS-43 0881. Mr. Kelley, and Mr. Goodwin are
8 present in court with their attorneys Mr. Sullivan
9 and Mr. Hastie. The State is present and
10 represented by the solicitor Mr. Finney, assistant
11 solicitor Meadors and Manning. I understand the
12 jury has reached a verdict and I am going to bring
13 them in just a moment.

14 Before I do, I want to say to everyone
15 here in the courtroom that I know that this is an
16 important matter. It's important to everyone. It
17 is important to the victims and the victim's
18 families. It's important to the defendants, and
19 to the defendant's families. But I am going to
20 have to require that order and decorum be
21 maintained in the courtroom. And there will no
22 expressions of emotion one way or the other. No
23 clapping. No shows of emotion or outcries.
24 Nothing whatsoever. And I if that does occur, I
25 will consider and determine whether it is contempt

1 of court. And if there is anyone who thinks they
2 cannot sit here when the jury verdict is
3 published, sit quietly, and accept the verdict
4 without the show of emotions, I would ask that you
5 leave now. I am real serious about this. If
6 there is anyone who thinks they can't sit and hear
7 the verdict without the show of emotions.

8 That being the case, Mr. Bradley, you may
9 bring the jury in.

10 (Whereupon, the following takes place
11 within the presence of the jury.)

12 THE COURT: Thank you very much. Mr.
13 Foreman, have you reached a verdict in both cases?

14 THE FOREMAN: Yes, sir.

15 THE COURT: Is your verdict unanimous?

16 THE FOREMAN: Yes, sir.

17 THE COURT: Pass it up to the bailiff,
18 please.

19 THE COURT: From the standpoint of form,
20 the verdict appears to be correct. Mr. Sullivan,
21 would you and Mr. Kelley stand. And, Mr. Hastie
22 would you and Mr. Goodwin, stand, please. And,
23 Mr. Clerk, you may publish the verdict.

24 THE CLERK: Yes, sir. The State of South
25 Carolina, County of Sumter in the Court of General

1 Sessions Document No. 2011-GS-43-0881. The State
2 of South Carolina versus Cameren Laroderick Kelley
3 and Vernon Sentell Goodwin, defendants. As to the
4 verdict for Mr. Kelley, defendant, we the jury by
5 a unanimous agreement, find the defendant Cameren
6 Laroderick Kelley, as to Count 1, murder of Kemper
7 B. Holliday, guilty of voluntary manslaughter.
8 Count 2, burglary in the first degree, guilty.
9 Count 3, kidnapping of Hugh Phillips, guilty.
10 Count 4, kidnapping of Ellen Phillips, guilty.
11 Count 5, kidnapping of Lance Orlando McCray,
12 guilty. Count 6, kidnapping of Darren L. Graham,
13 guilty.

14 Count 7, kidnapping of Kemper B. Holliday,
15 guilty. Count 8, kidnapping of Lennie Belton,
16 guilty. Count 9, kidnapping of Maurice Ransom,
17 guilty. Count 10, kidnapping of Tywan Ransom,
18 guilty. Count 11, assault and battery with intent
19 to kill of Hugh Phillips, guilty. Count 12,
20 assault and battery with intend to kill of Lance
21 McCray, guilty. Count 13, assault with intent to
22 kill Tywan Ransom, guilty. Count 14, assault with
23 intent to kill Maurice Ransom, guilty.

24 Count 15, assault with intent to kill
25 Lennie Belton, guilty. Count 16, assault with

1 intent to kill Darren Graham, guilty. Count 17,
2 assault with intent to kill Ellen Phillips,
3 guilty. Count 18, age assault with intent to kill
4 Tywan Ransom, guilty. Count 19, armed robbery,
5 guilty. Count 20, attempted armed robbery of
6 Maurice Ransom, guilty. Count 21, attempted armed
7 robbery of Lennie Belton guilty. Count 22,
8 attempted armed robbery of Kemper Holliday,
9 guilty. Count 23, attempted armed robbery of Lance
10 McCray, guilty. Count 24, attempted armed robbery
11 of Hugh Phillips, guilty. Count 25, attempted
12 armed robbery of Ellen Phillips, guilty.

13 Signed Joseph Streath. Dated foreperson
14 dated September 23, 2011. Ladies and gentlemen,
15 is this your verdict as far as defendant Kelley is
16 concerned. Please raise your right hand.

17 (All jurors affirm.)

18 THE CLERK: Thank you. The verdicts as
19 far as pertains to defendant Goodwin. We the jury
20 by unanimous agreement find the defendant, Vernon
21 Sentell Goodwin, Count 1, murder of Kemper
22 Holliday guilty of voluntary manslaughter. Count
23 2, burglary in the first degree, guilty. Count
24 3, kidnapping of Hugh Phillips, guilty. Count 4,
25 kidnapping of Ellen Phillips, Guilty. Count 5,

1 kidnapping of Lance of Orlando McCray, guilty.
2 Court 6, kidnapping of Darren L. Graham, guilty.
3 Count 7, kidnapping of Kemper B. Holliday guilty.
4 Count 8, kidnapping of Lennie Belton, guilty.
5 Count 9, kidnapping of Maurice Ransom, guilty.
6 Count 10, kidnapping of Tywan Ransom,
7 guilty. Count 11, assault with intent to kill of
8 Hugh Phillips, guilty. Count 12, assault and
9 battery with intent to kill of Lance McCray,
10 guilty. Count 13, assault with intent to kill
11 Tywan Ransom, guilty. Count 14, assault with
12 intent to kill Maurice Ransom, guilty. Count 15,
13 assault with intent to kill Lennie Belton, guilty.
14 Count 16 assault with intent to kill Darren
15 Graham, guilty. Count 17, assault with intent to
16 kill Ellen Phillips, Guilty. Count 18, assault
17 with intent to kill Tywan Ransom, guilty.
18 Count 19, armed robbery, guilty. Count
19 20, attempted armed robbery of Maurice Ransom,
20 guilty. Count 21, attempted armed robbery of
21 Lennie Belton, guilty. Count 22, attempted armed
22 robbery of Kemper Holliday, guilty. Count 23,
23 attempted armed robbery of Lance McCray, guilty.
24 Count 24, attempted armed robbery of Hugh
25 Phillips, guilty. Count 25, attempted armed

1 robbery of Ellen Phillips, guilty. Signed Joseph
2 Streath. foreperson. Signed the 23rd day of
3 September 2011.

4 Ladies and gentlemen, if this is your
5 verdict so say you all by raising your right hand
6 as far as defendant Goodwin is concerned.

7 (Whereupon, all jurors affirm.)

8 THE COURT: Mr. Sullivan and Mr. Hastie,
9 you and your clients may be seated. Anything
10 before the jury is excused?

11 MR. SULLIVAN: Your Honor, I would ask
12 that the jurors be polled.

13 THE COURT: Mr. Hastie.

14 MR. HASTIE: The same request, Your Honor.

15 THE CLERK: Ladies and gentlemen, as I ask
16 you two questions related to the defendant Cameren
17 Laroderick Kelley, please stand and answer my two
18 questions relating to defendant Kelley.

19 Joshua McKenzie, is this your verdict and
20 still your verdict?

21 THE JUROR: Yes, sir.

22 THE CLERK: Thank you, you may be seated.
23 Sharon Campbell, is this your verdict and still
24 your verdict?

25 THE JUROR: Yes, sir.

1 THE COURT: Charles Barnes, is this
2 verdict and still your verdict?

3 THE JUROR: Yes, sir.

4 THE CLERK: Thank you. Maurice Adger, is
5 this your verdict and still your verdict?

6 THE JUROR: Yes, sir.

7 THE CLERK: Thank you. Joseph Streath, is
8 this your verdict and still---

9 THE JUROR: Yes, sir.

10 THE CLERK: ---your verdict?

11 THE JUROR: Yes, sir.

12 THE CLERK: James Jackson, is this your
13 verdict and still your verdict?

14 THE JUROR: Yes, sir.

15 THE CLERK: Thank you. April Hurley, is
16 this your verdict and still your verdict?

17 THE JUROR: Yes, sir.

18 THE CLERK: Katrina Jenkins, is this your
19 verdict and still your verdict?

20 THE JUROR: Yes, sir.

21 THE CLERK: Michael Truesdale, is this
22 your verdict and still your verdict?

23 THE JUROR: Yes, sir.

24 THE CLERK: Thank you. Sherry McCoy, is
25 this your verdict and still your verdict?

1 THE JUROR: Yes, sir.

2 THE CLERK: Keith Pandorf, is this your
3 verdict and still your verdict?

4 THE JUROR: Yes, sir.

5 THE CLERK: Thank you. Page Hoover, is
6 this your verdict and still your verdict?

7 THE JUROR: Yes, sir.

8 THE CLERK: Ladies and gentlemen of the
9 jury, we will now proceed to defendant---

10 THE COURT: First announce the polling.

11 THE CLERK: Your Honor, the verdict as far
12 as defendant Kelley is concerned, the verdict
13 still stands.

14 THE COURT: All right, sir.

15 THE CLERK: Ladies and gentlemen, as far
16 as defendant Goodwin goes, we will go through the
17 same process. Vernon Sentrell Goodwin. Joshua
18 McKenzie, is this your verdict and still your
19 verdict?

20 THE JUROR: Yes, sir.

21 THE CLERK: Thank you. Sharon Campbell,
22 is this your verdict and still your verdict?

23 THE JUROR: Yes, sir.

24 THE CLERK: Thank you. Charles Barnes, is

25 this your verdict and still your verdict?

1 THE JUROR: Yes, sir.

2 THE CLERK: Maurice Adger, is this your
3 verdict and still your verdict?

4 THE JUROR: Yes, sir.

5 THE CLERK: Joseph Streath, is this your
6 verdict and still your verdict?

7 THE JUROR: Yes, sir.

8 THE CLERK: James Jackson, is this your
9 verdict and still your verdict?

10 THE JUROR: Yes, sir.

11 THE CLERK: April Hurley, is this your
12 verdict and still your verdict?

13 THE JUROR: Yes, sir. Thank you. Katrina
14 Jenkins, is this your verdict and still your
15 verdict?

16 THE JUROR: Yes, sir.

17 THE CLERK: Thank you. Michael Truesdale,
18 is this your verdict and still your verdict?

19 THE JUROR: Yes, sir.

20 THE CLERK: Sherry McCoy, is this your
21 verdict and still your verdict?

22 THE JUROR: Yes, sir.

23 THE CLERK: Keith Pandorf, is this your
24 verdict and still your verdict?

25 THE JUROR: Yes, sir.

1 THE CLERK: Page Hoover, is this your
2 verdict and still your verdict?

3 THE JUROR: Yes, sir.

4 THE CLERK: Your Honor, the jury has been
5 polled and the verdict stands.

6 THE COURT: Thank you, sir. Mr. Sullivan,
7 is there anything before the jury is discharged on
8 behalf of defendant Kelley?

9 MR. SULLIVAN: No, sir.

10 THE COURT: On behalf of the defendant
11 Goodwin, Mr. Hastie?

12 MR. HASTIE: No, Your Honor.

13 THE COURT: Ladies and gentlemen, this
14 will conclude your services in connection with
15 this case. And I want to thank you for your
16 service. I make it a practice of course never to
17 thank a jury for their verdict, but I think that
18 is the jury's decision. But I do appreciate your
19 service. And I especially want to thank those of
20 you and some were late and you got a very short
21 notice about being up here. But we were in a
22 situation where we were short of jurors, because
23 Judge Cothran was here. Also we were short of
24 jurors, and we needed additional jurors. And so
25 we had to summon some of you at the very last

1 minute and for that I apologize. But I do
2 appreciate all of you in recognizing your citizen
3 responsibility in coming forward to serve when you
4 were requested to do so.

5 In my view, the jury's role in the fact
6 finding process is so important, that the judge
7 trial should not make any comment on the jury's
8 verdict even after a jury has returned a verdict.
9 And I make it a practice never to comment on the
10 verdict of the jury. I will tell you though there
11 was evidence in the record by which you could have
12 reached the decision that you did.

13 Now in a few minutes I am going to
14 discharge you as jurors. And I will tell you once
15 you have been discharged as a juror in this case,
16 there is nothing illegal about your talking with
17 anyone about your service in this case. There is
18 nothing illegal with anyone talking to you about
19 your service. It is a practice of which I
20 strongly disagree and I strongly disapprove, but
21 it is not illegal. It is up to you. If someone
22 should approach you and you do not wish to discuss
23 it, you let the court personnel know and I will
24 deal with them. I will tell you have met your

25 citizenship responsibilities for the jury service

1 in the Court of General Sessions or the Court of
2 Common Pleas in the next three years. You cannot
3 be required to serve in Circuit Court any more
4 than once every three years. Next week sometime
5 you will receive a small check that will no way
6 compensate you for your service this week. But it
7 is a small token for your service. Thank you, you
8 are excused.

9 (Whereupon, the jurors are excused.)

10 THE COURT: Mr. Sullivan, are there any
11 motions on behalf of Mr. Kelley?

12 MR. SULLIVAN: Your Honor, defendant
13 Kelley would move for judgment in arrest of
14 verdict for a new trial on the following grounds.
15 That it was an error of the trial court to admit
16 the cell phone into evidence.

17 THE COURT: To admit what, I am sorry?

18 MR. SULLIVAN: The cell phone.

19 THE COURT: The cell phone.

20 MR. SULLIVAN: There were I think two
21 statements where I had alleged a Rule 5 violation.
22 I think it was a statement of Mr. Ransom and; that
23 the defendant had got it right before trial. And
24 that's -- didn't have the proper opportunity to

25 look over the statement. Basically just get it so

1 late, is like not getting the statement.

2 THE COURT: Is that Mr. Bracey? Mr.
3 Bracey's statement?

4 MR. SULLIVAN: Mr. Ransom and Mr. McCray,
5 I am sorry.

6 THE COURT: Ransom and McCray. All right.

7 MR. SULLIVAN: Yes, sir. And I don't
8 think I mentioned -- made a mention of due
9 process, the 14th amendment earlier. But I would
10 assert that getting a statement like that at the
11 last minute, you might as well not even get the
12 statement. It does us no good in trying to read
13 the statement.

14 THE COURT: That wasn't the grounds that I
15 ruled on though.

16 MR. SULLIVAN: I'm sorry.

17 THE COURT: Okay. I think, you know, you
18 can't raise that for the first time. The grounds
19 as I recall was that it was a Rule 5 violation.

20 MR. SULLIVAN: And also that It was error
21 to find that Mr. Kelley's statement was voluntary.
22 Those are my grounds. Those are my motions.
23 Thank you, Judge.

24 THE COURT: All right, I would comment on
25 each of those separately. Of course with regard

1 with the telephone, I took testimony of that
2 outside the presence of the jury. And her
3 circumstances were giving rise to the discovery of
4 the telephone. The telephone was in the presence
5 of the -- was in the possession of the mother of
6 the co-defendants if I recall. And of course they
7 did not plead guilty until a few days before this
8 trial. Both were presented by counsel. And the
9 State or their agents had no authority to walk
10 with those witnesses. Or to talk with them at
11 that time or until such time as they pled guilty.
12 And any privilege against self incrimination would
13 no longer apply.

14 The rule is of course that the State must
15 produce whatever they have or its in their control
16 and in their control, means in the control of law
17 enforcement. But if it's not in the possession of
18 Solicitor's Office or law enforcement, and it is
19 produced to them at some point and time, and they
20 probably disclosed it, then I believe the
21 requirements of Rule 5 have been meet. And that's
22 what I ruled at the time and I still feel that
23 way. And the State did disclose the existence of
24 the telephone as soon as they knew about it and as
25 law enforcement found out about it. So I find no

1 violation of Rule 5 in that regard. And the same
2 would apply even if the -- if there was a due
3 process argument even though that was not made
4 before me at the time.

5 Regarding the statements of Mr. Ransom and
6 Mr. McCray again Rule 5, we get the exact
7 language. Provides that in the section of Rule
8 5(a) of evidence by the prosecution Rule 5(a)2
9 provides what is not subject to disclosure and
10 with the exception of with provisions of
11 Paragraphs A, B, C of that rule, it does not allow
12 the discovery of statements made by prosecution
13 witnesses or prospective prosecution witnesses;
14 provided that, after the prosecution witness has
15 testified on direct examination, the court shall
16 on motion of the defendant order the prosecution
17 to produce any statement to the witnesses in the
18 possession of the prosecution, which relate to the
19 subject matter, as to which the witnesses testify.

20 The State did more than that. They did
21 not wait until after the -- their witnesses had
22 testified I believe that they furnished a
23 statement before they even called those witnesses.
24 But It was during the course of the trial.

25 But I do believe that the rules or

1 requirements of Rule 5 have been met. And there
2 was no due process argument made at the time that
3 statements were admitted. So the same rules would
4 apply there. With regard to the Kelley statement,
5 the full Jackson vs. Denno hearing was held. And
6 I concluded that it was admissible. And of
7 course, the jury was also given an opportunity to
8 rule on the voluntariness of the statement. And
9 were given a charge on the voluntariness of the
10 statement. And they too could have found it to be
11 involuntary if they had felt the State had not
12 proven it beyond a reasonable doubt. So I would
13 respectfully deny the motion for a judgment in
14 arrest of verdict or a new trial.

15 THE COURT: Mr. Hastie.

16 MR. HASTIE: Your Honor, I would like to
17 renew my motion that I made at the directed
18 verdict or a directed verdict motion for a new
19 trial.

20 THE COURT: The cell phone?

21 MR. HASTIE: Yes, sir. You already
22 addressed it.

23 THE COURT: Well for the same reason it
24 would apply there. I think that the motion made

25 by Mr. Hastie as to admissibility or the admission

1 of the cell phone. Again, it's my view that Rule
2 5 only requires the State or its agents to produce
3 that information as soon as they have it. And
4 they did so in this case prior to the time that
5 the Bracey defendants pled guilty. They did not
6 access to that information; they did not learn
7 about the cell phone. When they did learn about
8 the cell phone they disclosed it the same day.

9 And so I rule that Rule 5 has been
10 complied with; and therefore, I would
11 respectfully deny the motion for a new trial or --
12 judgment in the arrest of verdict, which is made
13 on the same grounds as the directed verdict
14 motion. Counsel, that being the case what I want
15 to do at this time, Mr. Meadors and Mr. Manning,
16 is take about 10 minutes and allow you all to get
17 the sentencing sheets completed. And allow the
18 law enforcement, I believe, wants to take certain
19 security measures as far as the defendants are
20 concerned. And then we will reconvene with
21 sentencing in about 10 minutes.

22 MR. MEADORS: Thank Your Honor.

23 THE COURT: Thank you.

24 (Whereupon, the court takes a 10-minute

25 recess.)

1 THE COURT: Back on the record with regard
2 to the matter of Cameren Kelley and Vernon
3 Goodwin. Mr. Kelley and Mr. Goodwin are present
4 in the courtroom. The Solicitor is also present
5 with the assistant solicitor, Mr. Manning.
6 Mr. Finney, and, Mr. Meadors, on behalf of the
7 State, I will be glad to hear from anybody that
8 wishes to speak on behalf of the victims, and
9 anything that the Solicitor's Office wishes to
10 present. Including prior records.

11 Mr. Sullivan, and, Mr. Hastie, your
12 clients can just remain seated for now. We will
13 talk with them in just a few minutes.

14 MR. FINNEY: Thank you very much, Your
15 Honor.

16 THE COURT: All right.

17 MR. FINNEY: Your Honor, first of all, I
18 would present to the court that Mr. Vernon Goodwin
19 does have a prior record. He has a drug
20 conviction in 2005, for which he was given a
21 Youthful Offender not to exceed 6 years. There
22 was also, Your Honor, in a PWID -- 2005 was the
23 only conviction, Your Honor.

24 THE COURT: Okay. And Mr. Kelly didn't
25 have any prior record?

1 MR. FINNEY: That's correct, Your Honor.

2 THE COURT: Anybody with Mr. Finney, that
3 your victims would like to address the court or
4 members of the victim's family, I will be glad to
5 hear from them.

6 MR. FINNEY: If it please the court, Your
7 Honor, this is the mother of Mr. Holliday,
8 Patricia Holliday. She is here, and she would
9 like to make a statement to the court.

10 THE COURT: Ms. Holliday, I have heard
11 from you I think earlier in connection with the
12 guilty pleas on the two brothers. But you as the
13 victim in this case, do have the right to be kept
14 advised of everything that is going on, and you
15 have the right to be present. And you also have
16 the right to address the court. So I will be glad
17 to hear from you.

18 MS. HOLLIDAY: Thank you, Your Honor. My
19 name is Patricia Holliday. And I have a letter
20 here that I would like to read. This is my last
21 opportunity to speak on behalf of my son Kemper,
22 publicly. And it took me a while to put this
23 together, and I would like to read it.

24 "On [REDACTED] 1986, we gave birth to
25 Kemper Brennan Holliday. We chose the name

1 Kemper, because it was different and unlike any
2 name we ever heard. Kemper weighed in about 8
3 pounds and 10 ounces. And he was 22 inches long.
4 He was a beautiful baby, and we blessed God for
5 such a healthy gift from him.

6 Kemper grew up to be a fine young man. He
7 loved to play basketball, baseball and sing. His
8 greatest gift and or talent was singing and
9 playing the keyboard. Kemper was a self taught
10 musician; who had a great impact on encouraging
11 other children within the community to play music
12 as well. Though Kemper was usually quiet, he had
13 a way with friends and family that was precious.
14 Kemper not only sung gospel music, but he aspired
15 to become a rapper and to make it in the music
16 industry.

17 Kemper was a child that attended church
18 every Sunday, and he was a minister of music at a
19 local church for 8 years. As Kemper sat at the
20 computer on December 14th 2009, placing an entry
21 on to his my space page, I am sure he had no idea
22 that he would lose his life to a senseless act of
23 selfishness by total strangers. Kemper's life was
24 snatched away from him. And in that instance, my
25 direct family was changed forever. Kemper was

1 taken away from me; a mother who loved him dearly;
2 who loved singing with him and laughing with him
3 and talking with him.

4 Kemper was taken away from a father who
5 loved him dearly, and a brother who he looked to
6 as a hero. Kemper was taken away from a sister, a
7 niece, a nephew and countless aunts, uncles,
8 cousins and friends, co-workers in a community who
9 loved him dearly. Although I have another child,
10 Your Honor, Kemper was my youngest child; my baby
11 who lived at home with me. He was my friend. He
12 was my singing partner, my musician and my gift
13 from God.

14 I saw him every day, and I looked forward
15 to talking with him when he came in from work or
16 church. Now these past 21 months have been very
17 difficult for me and my family. As Kemper's
18 mother, I am finding the grieving process almost
19 unbearable. I can barely concentrate sometimes.
20 I have lost hair due to nerves because of the hurt
21 that I am feeling; I've had to seek therapy.

22 As a rule, I've always been generally
23 healthy and happy. But these past 21 months have
24 been a challenge. The loss of Kemper has been
25 costly in other ways. It has cost me and others

1 who love him, to have broken hearts. And I
2 realize that I am not alone in my grief. But I
3 realize that the loss of Kemper, I will never have
4 an opportunity to see prescious grandchildren. I
5 will never see him get married or, I will never
6 hear him sing another song again.

7 Now through this tragedy, I have been
8 overwhelmed by the outpouring of love and
9 compassion for my family, my friends and my
10 community. I have been amazed at the impact that
11 Kemper had on others in his 23 brief years of
12 life. Kemper was a kind hearted, sweet young man;
13 who loved and would never hurt anyone.

14 Your Honor, I can recall asking him to
15 kill a bug one day while we were sitting on the
16 porch. He said, "Mama, "I am not going to kill
17 that bug, because he deserves to live like
18 everybody else."

19 Kemper was a giver, and he would give you
20 his last dime. I was so proud of him. And I want
21 those that hurt him to know what kind of guy
22 Kemper was. I want them to know if they would
23 have asked him for anything that day, he would
24 have given it to them free. I wish that they

25 would have taken this senseless act to get to know

1 Kemper. I am sure that they would have found a
2 true friend in him.

3 Your Honor, I feel that the actions that
4 resulted in the death of my son require going to
5 another level of thinking on the part of those who
6 participated in the murder of my son.

7 So, finally, Your Honor, considering the
8 actions and choices made by these young men on
9 December 14th 2009, it is important to me that
10 they should receive maximum punishment under the
11 penalty of law. I feel that for every moment that
12 was given towards the thought of this senseless
13 act, there was an equal moment that was given to
14 have a change of mind. I want to see justice for
15 my son. Thank you, Your Honor.

16 THE COURT: Thank you. Thank you for
17 being here.

18 MS. PHILLIPS: Hi, Your Honor. I'm Ellen
19 Phillips.

20 THE COURT: Ms. Phillips.

21 MS. PHILLIPS: And I just wanted to speak
22 briefly. I'm very lost for words for now. This
23 really impacted our lives tremendously. Its
24 ruined my marriage of 28 years. Okay, my kids
25 ~~life and their children's lives. You know, I~~

1 really, forgive them. I really do. I think they
2 didn't give much thought to it at all. They lost
3 their lives also.

4 They are going to be in jail a long time.
5 And that's just -- it's just bad all around, you
6 know. But I think even the maximum sentence
7 couldn't change what has happened. You know, it
8 wouldn't bring Kemper back. It wouldn't make my
9 husband walk. But they really need to pay for all
10 the consequences. And all their lives are
11 effected.

12 THE COURT: Thank you for being here.

13 VICTIM ADVOCATE: Your Honor, Tywan
14 Ransom, Maurice Ransom, Lance McCray and Darren
15 Graham, the other victims did not want to speak.
16 But they wanted the court know that they are
17 satisfied with the verdict. And that they will
18 be happy with whatever the judge chooses to impose
19 upon these young men. This event has changed
20 their lives. And they know that it will change
21 these young men's lives and the two Bracey boy's
22 lives. But whatever the court sees fit to impose,
23 they are satisfied with it, Your Honor.

24 THE COURT: Mr. Finney, anything else on

25 behalf of the State?

1 MR. FINNEY: Judge, I just would like to
2 conclude by thanking the court for giving us the
3 opportunity. We know that we presented a very, I
4 guess, you would say a cloudy picture on Wednesday
5 when we asked you to begin this case. And we
6 thank the court for giving us the opportunity to
7 put up these family members. They waited a long
8 time. It was important for us to get the case
9 presented. And we are very, very pleased with the
10 jury's decision in the matter.

11 THE COURT: Mr. Meadors, anything you
12 would like to add?

13 MR. MEADORS: Your Honor, I echo the
14 Solicitor. I also for the record, in addition to
15 thanking the victim for their patience and
16 co-counsel Mr. Manning, I want to thank Sheriff
17 Dennis with the sheriff's department for an
18 outstanding job in investigating this case. I
19 want to thank them, Judge.

20 THE COURT: Mr. Sullivan, if you and,
21 Mr. Hastie, and your client, would come around,
22 please. Mr. Sullivan, I will be glad to hear from
23 you on behalf of Mr. Kelley.

24 MR. SULLIVAN: Thank you, Judge. Our
25 justice is not perfect. And there are probably

1 guilty men who walk free. And there is innocent
2 men who are behind bars. It's not an easy pill to
3 swallow to think that it's possible that maybe Mr.
4 Kelley was duped. Of course, that's not what the
5 jury decided. I want him to know, and his family,
6 know, I did the best I could for him.

7 He is 21 years old. He went to Camden
8 High School and received a GED. He just recently
9 passed the ASFAB test. He's worked at, I don't
10 know if I am pronouncing this right. Utica --
11 Utocca in Lugoff. He was an intern for a short
12 time with the Solicitor's Office in Kershaw
13 County. And he's worked at Wal-Mart as a stocker
14 for a short time. And he goes to Catoe's Chapel
15 in Bethune.

16 His family is here to support him. His, I
17 think, his mom couldn't handle it. I think she
18 left. His father James Holliday is here. And his
19 wife Teosha Goodwin -- I'm sorry his sister Teosha
20 Goodwin is here to support him. And that's all I
21 have, Judge.

22 THE COURT: Mr. Sullivan, I will be glad
23 to hear from Mr. Kelley, although I understand the
24 status of the matter at this time would be matters
25 ~~that could be raised on appeal. And if there is~~

1 anything he would like to tell the court now; he
2 may not want to say, because it's not going to
3 appeal to the jury's verdict. And I won't hold
4 that against him. But if there is anything he
5 would like to tell me, I will be glad to hear from
6 you. That will be up to you.

7 MR. SULLIVAN: Your Honor, he doesn't wish
8 to address the court. But his father Mr.
9 Holliday, would like to speak.

10 THE COURT: I will be glad to hear from
11 you, sir. Step up and give me your name. I'll be
12 glad to hear from you.

13 MR. HOLLIDAY: Your Honor, My name is
14 James Holliday.

15 THE COURT: Yes, sir.

16 MR. HOLLIDAY: And I am about the most
17 torn person in this whole room. That's my family.
18 Cameren is my son. I raised him to very
19 respectful. And I hoped he stayed that way. I
20 just ask that you have leniency on him. He's
21 never been in any trouble. I tried him raise him
22 the right way. That's all I have got to say.

23 THE COURT: Thank you, sir. Is that all,
24 Mr. Sullivan?

25 ~~MR. SULLIVAN: --Yes, sir.~~

1 THE COURT: Mr. Hastie.

2 MR. HASTIE: Thank you, Your Honor. Your
3 Honor, Vernon is -- he attended Camden High as
4 well, to the 12th grade. He is married. His wife
5 is in the court today. He has a daughter that is
6 just about 2 years old. He has worked at a couple
7 of jobs. He worked at Goodyear in Lugoff for
8 some time. He worked at a canvas plant in Camden
9 for some time. In the courtroom here today is his
10 mother and sister. Also his mother-in-law and his
11 sister-in-law as well.

12 He attended the Bethune Baptist Church.
13 He had that one drug conviction that you heard
14 about. He successfully completed the YOA program.
15 There are just no wins in here today. This is a
16 tragedy on both sides -- on both families. Ms.
17 Holliday, and you couldn't have said it best.
18 It's just a terrible day. He maintains his
19 innocence, Your Honor. And those issues will be
20 addressed on appeal, and he wishes not to speak.

21 THE COURT: All right. Counsel, just to
22 make sure I think we are all on the same page.
23 And I think if we have got this -- if there is any
24 disagreement, counsel, how about let me hear from

25 ~~you, Mr. Sullivan, and, Mr. Hastie. My~~

1 recollection of the law, and I looked at what it
2 is. I think that the manslaughter is 0 to 30.
3 The burglary is 15 to life. Kidnapping is 0 to
4 30. Armed robbery is a minimum 10, maximum 30.

5 The assault and battery with intent to
6 kill is 0 to 20. Assault with intent to kill is 0
7 to 10. And I believe that's all the charges; all
8 of the various things.

9 MR. FINNEY: Attempted armed robbery.

10 THE COURT: Armed robbery is 10. Minimum
11 of 10, maximum of 30, I will agree with that.

12 MR. SULLIVAN: Yes, sir.

13 MR. HASTIE: Yes, sir.

14 THE COURT: Thank you. Counsel, I have
15 got a total of 50 sentencing sheets that I am
16 going to have to complete. So I am going to do
17 that in chambers. And I will be back in just a
18 few minutes. Thank you. We will be in recess for
19 about 10 minutes.

20 (Whereupon, the court takes a short
21 recess.)

22 THE COURT: We are back on the record
23 with record to the matter of the State of South
24 Carolina versus Vernon Goodwin. And also the

~~25 State of South Carolina versus Cameren Kelley.~~

1 Indictment No. 2011-GS-43-081. Both defendants
2 are present in court with their attorneys, Mr.
3 Sullivan and Mr. Hastie. The State is present and
4 represented by the Solicitor.

5 First of all, let me say that in a few
6 minutes, I am going to pronounce sentence in this,
7 is my duty to do. I am going to have to ask that
8 everybody who is present in court to accept the
9 sentences pronounced by the court without any
10 shows of demonstrations of emotion in any way.
11 Those that are familiar with me and have been in
12 my court before have heard me say that when I got
13 this job over 15 years ago, I was told that
14 criminal sentencing was the most difficult thing
15 that we would have to do.

16 Nothing has changed in the last 15 years.
17 Or maybe it has changed my thinking on that in the
18 last 15 years. It is the most difficult that we
19 have to do. We judges have no crystal ball. We
20 have no way of foreseeing the future. All we can
21 do is to make a judgment based upon the facts that
22 we know about the particular instance. The
23 defendants involved, the victims involved and the
24 law, and impose a sentence that we think is right
25 ~~and appropriate. - Sometimes it pleases no one. -~~

1 Seldom does it please everyone.

2 But jury in this case has spoken. And it
3 is my duty to impose sentence. And I will do so
4 at this time. Before I want to address the family
5 of the victims in the case, and Mr. Holliday's
6 family. And then the victims that are here.
7 There is nothing I can say or do today that will
8 ease your pain. I can only empathize with you in
9 the pain that you have suffered as a result of
10 this very tragic incident.

11 It is a tragedy for everyone. It is a
12 tragedy for the defendants and their families.
13 It's a tragedy for Mr. Holliday, Mr. Holliday's
14 family. And then all the other victims in this
15 case. It was senseless, needless crime. And to
16 the victims, I can say that I can only sympathize
17 with you, and empathize with you. I cannot ease
18 your grief or your pain, but I hope that the
19 sentence that is imposed by the court today and
20 the actions of the court this week, will bring
21 some closure to this matter and that you will be
22 able to go on with your lives.

23 One of the things that has become pretty
24 apparent in this case is that these two defendants
25 ~~were not the shooters. They are not the ones~~

1 that actually went in to murder, and pulled the
2 trigger that resulted in the mayhem that was
3 created that night. But the jury has concluded
4 that all were involved. The jury has basically
5 concluded except but for Mr. Goodwin, procuring
6 the Bracey boys to commit this robbery. And but
7 for Mr Kelley driving them there that Kemper
8 Holliday would be alive today. And Mr. Hugh
9 Phillips would not in be in a wheelchair. And the
10 other victims would not have been terrorized or
11 traumatized by the terrible tragedy.

12 When determining sentences, I try to look
13 at aggravating and mitigating facts. Mr. Kelley
14 among the mitigating factors are his young age;
15 that he has no record; that he, while he didn't
16 finish high school; he has gotten his education.
17 And of course, as I said, he was not the shooter,
18 but he was definitely the driver. And the jury
19 concluded that they are all participants.

20 One of the other factors that I have and
21 looked at this, not all of the parties in this
22 case, most if not all the parties of people
23 involved in the incident that night, in December
24 of 2 years ago, 18 months ago, were involved in
25 ~~the drug culture of this county.~~

1 When you get involved in that culture, why
2 bad things happen. From an aggravating
3 standpoint, from Mr. Kelley's standpoint, he was
4 involved in drugs. The fact that there were
5 multiple crimes involved, many, many crimes here
6 that under the sentencing guidelines that were
7 promulgated years ago, but not adopted were --
8 would be all factors that would add points to the
9 sentence that would be imposed.

10 And while I don't penalize a defendant for
11 going to trial, I do think that a defendant, that
12 one of the things that I should consider, are the
13 early acceptance of responsibility. And of
14 course, that has not occurred here. With regard
15 to Mr. Goodwin again, the mitigating factors are
16 his age. He only has one conviction, and that
17 being a drug conviction. And again that most all
18 involved in this, the victims and the defendants
19 as well, were involved in the drug culture of this
20 county. Multiple crimes again involved.

21 The job that I have is not something that
22 I take lightly, but I do have to give effect to
23 the jury's verdict. And the jury found the
24 defendant's guilty of all of the crimes for which
~~25 they were charged. All 25 of them; albeit,~~

1 voluntary manslaughter rather than murder. But
2 guilty on all of the rest of the charges which
3 involve the kidnapping, and assault with intent to
4 kill on Mr. Phillips and Ms. Phillips. And the
5 kidnapping of Mr. McCray. And attempted armed
6 robbery and armed robberies of all of them. And
7 those factors the court cannot ignore.

8 As I said, very often a sentence that is
9 imposed is not pleasing to everyone. Sometimes it
10 pleases no one. But it is my duty to impose a
11 sentence that I think the facts and circumstances
12 and the situation here merits. And that's what I
13 am going to do.

14 I am going to not go in the order of the
15 indictments, but just merely announce the sentence
16 and will tell you and tell everyone that the
17 sentence that is being imposed on each count of
18 the indictment is the same sentence for each of
19 these two defendants.

20 On the counts of the indictment for
21 attempted armed robbery, the Sentence of the Court
22 as to each defendant; is that, the defendant is
23 committed to the South Carolina Department of
24 Corrections for a term of 20 years, to run

25 concurrent.

1 On the charge of armed robbery, the
2 Sentence of the Court is that each defendant is
3 committed to the South Carolina Department of
4 Corrections for a term of 30 years, to run
5 concurrent with the attempted armed robberies. On
6 the assault with intent to kill, the Sentence of
7 the Court is, defendant is committed to the State
8 Department of Correction on each count of assault
9 with intent to kill for a period of 10 years, to
10 run concurrent. Assault and battery with intent
11 to kill, the sentence of each defendant is that
12 they are sentenced to the State Department of
13 Corrections for a term of 20 years, to run
14 concurrent.

15 On all the kidnapping charges the sentence
16 of the court is defendants are committed to the
17 State Department of Corrections of 30 years, to
18 run concurrent. And on the charge of voluntary
19 manslaughter the Sentence of the Court is that
20 each defendant is committed to the South Carolina
21 Department of Corrections for a term of 30 years,
22 to run concurrent.

23 The primary sentence in this case is will
24 not the first count of indictment, but is the
25 second count of the indictment and that is the

1 burglary first degree. And the Sentence of the
2 Court on each defendant in that case is that each
3 defendant is committed to the South Carolina
4 Department of Corrections for a term of 40 years,
5 to run concurrent. So all the sentences would
6 concurrent to the burglary first, which is a
7 40 year sentence.

8 This will conclude this matter. And,
9 gentlemen, I am sorry that got yourselves in this
10 trouble. But I hope that you will be able to
11 adjust to prison life, and get your lives
12 straightened out. And some day get out of prison
13 and become productive citizens. Good luck to you.

14 -----End of Requested transcript of Record-----
15
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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in General Sessions Court on September 21st-23rd, 2011, in Sumter County, Sumter, South Carolina.

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

4-10-12
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/2021

FORM 5
RECORDED

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

2013 FEB -6 PM 3:33

IN THE COURT OF COMMON PLEAS

Cameren L. Kelley #347966

JAMES E. CAMPBELL
CLERK OF COURT
SUMTER COUNTY
ORIGINAL FILE2013-CP-43-205

Full name and prison number (if any) of Applicant.

Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

APPLICATION FOR

v.

State of South Carolina

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 BRCI, 4460 Broad River Rd., Columbia, SC.
2. Name and location of Court which imposed sentence Sumter General Sessions
3. Name(s) of co-defendant(s) (if any) Carlton Bracey; Caldron Bracey; Vernon Goodwin
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-43-0881 (armed robbery) and (burglary first)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-23-2011 (40-years)
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty plea of not guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 12, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2012-UP-656
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance of counsel
- (b) Due Process Violations
- (c) _____

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

- (a) counsel failed to investigate and render reasonable
- (b) performance, counsel failed to lodge timely
- (c) objections. Applicant will amend at a later date.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

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

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

- iv. _____
- (d) the date of each such disposition:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: /
- i. n/a
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- first filing for post conviction relief
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. n/a
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. n/a
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) first filing for post conviction relief
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes _____
- (c) your sentencing? yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no _____

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. Dan Sullivan, Esquire, Sumter Bar
 - ii. same as above
 - iii. Robert Pachak, Esq. SC. Appellate Defense
- (b) the proceedings at which each such attorney represented you:
 - i. trial and sentencing
 - ii. same as above
 - iii. direct appeal

19. State clearly the relief you seek in filing this application:
vacate sentences and convictions and remand for new trial or in the alternative the appropriate relief.
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Cameron Kelley, 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.

Cameron Kelley

SWORN to and subscribed before me this 4
day of Feb, 2013

Eugene H. [Signature] (L.S.)
Notary Public

My Commission Expires: My Commission Expires April 4, 2013

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Cameren Kelley, 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.

Cameren Kelley
Applicant

SWORN or affirmed to and subscribed before me this
4 day of Feb, 2003.

Eugene H. [Signature]
Notary Public
My Commission Expires April 4, 2016

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Cameron L. Kelley, #347966,

2013-CP-43-205

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent, making its Return to the application for post-conviction relief filed February 6, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true billed indicted at the May 2011 term of the Sumter County Grand Jury for Murder, Burglary-First Degree, eight counts of Kidnapping, two counts of Assault and Battery with Intent to Kill, five counts of Assault with Intent to Kill, two counts of Armed Robbery, and six counts of Attempted Armed Robbery (2011-GS-43-881). Dan Sullivan, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty of the lesser included offense of Voluntary Manslaughter and as indicted on all remaining charges. On September 23, 2011, Judge King sentenced Applicant thirty (30) years imprisonment for Voluntary Manslaughter, forty (40) years imprisonment for each count of Burglary-First Degree; thirty (30) years imprisonment for each count of Kidnapping; twenty (20) years imprisonment for each count of Assault and Battery with Intent to Kill; ten (10) years for each count of Assault

with Intent to Kill, thirty (30) years for each count of Armed Robbery; and twenty (20) years for each count of Attempted Armed Robbery, with all sentences running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf by Robert Pachak, Esquire. The South Carolina Court of Appeals dismissed the appeal. State v. Kelley, No. 2012-UP-656 (S.C. Ct. App. December 12, 2012). The Remittitur was issued on January 4, 2013.

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, records from the South Carolina Department of Corrections, appellate records, and the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of counsel; in that,
 - a. "Counsel failed to investigate and render reasonable performance, counsel failed to lodge timely objections."
2. Due Process Violation

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCPP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant further alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional

violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

[signature block on following page]

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

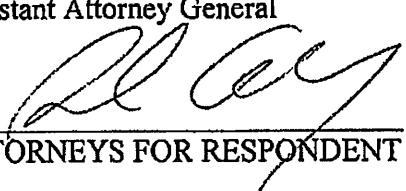
Respectfully submitted,

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Attorney General

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By: 

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December 10, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

2013-CP-43-205

CAMERON L. KELLEY, #347966

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

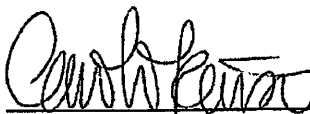
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Fulton Casey Dale Cornwell, Esquire
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, SC 29250

DATED this 10th day of December, 2013.



Caroline Kaiser, Legal Assistant
 For Respondent

1

2 State of South Carolina

3

4 County of Sumter

5

6 Vernon Goodwin &
7 Cameren Kelley,
8 Plaintiffs2013-CP-43-01889
2013=CP-43-00205
PCR Hearing

8

9 vs.

10 The State of South Carolina,
11 DefendantsApril 17, 2015
Sumter, S.C.

11

12

13

14

15 Before the Honorable George C. James, Jr.

16 Judge.

17

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

19 Mr. Ronald Lloyd,
20 Attorney for Plaintiffs21 Mr. Daniel F. Gourley,
22 Attorney for the State

22

23

Margaret T. Sullivan,
Court Reporter

24

25

	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
1	<u>David Sullivan</u>				
2	by Mr. Lloyd	3		31	
	by Mr. Gourley		21		39
3	Pamela Kelley				
	by Mr. Lloyd	42			
4	by Mr. Gourley		54		
	Calvin Hastie				
5	by Mr. Lloyd	64		82	
	by Mr. Gourley		78		
6	Denise Missouri				
	by Mr. Lloyd	84			
7	Vernon Goodwin				
	by Mr. Lloyd	91			
8	Closing Remarks				
	by Mr. Lloyd	93, 108			
9	by Mr. Gourley	102			
10					
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David Sullivan-Direct by Lloyd

1 THE COURT: This is the Cameren Kelley
2 versus the State of South Carolina. Docket No.
3 2013-CP-43-205. Mr. Lloyd is here with Mr. Kelley.
4 And Mr. Gourley is here. And now Mr. Sullivan is
5 seated behind you. So, Mr. Lloyd, you can either
6 tell me a little bit about what you're going to
7 present today or you can call your first witness, or
8 I'll leave that up to you.

9 MR. LLOYD: Yes, sir. We will go ahead
10 and call Mr. Sullivan, and I believe we can
11 summarize very quickly the argument there.

12 THE COURT: Come on around, Mr. Sullivan.
13 You can go ahead and go around the corner there, and
14 put your left hand on the bible and raise your right
15 hand, and state your name.

16 A. David Sullivan.

17 David Sullivan, being first duly sworn,
18 testified as follows:

19 Direct Examination by Mr. LLOYD:

20 Q. Thank you, Mr. Sullivan. Mr. Sullivan,
21 you represented Mr. Cameren Kelley in September of
22 2011 in this case, is that right?

23 A. Yes.

24 Q. And I know the court has the record, but
25 in a few sentences, could you summarize what the

David Sullivan-Direct by Lloyd

1 State's charges were against Mr. Kelley?

2 A. The State alleged that Mr. Kelley was,
3 that he committed mainly, the main charge was
4 murder, and there are some other charges; in that,
5 he drove Carlton and Calderone Bracey to a drug
6 house to rob it. And that his part was that of the
7 driver; that he dropped them off and that he was to
8 pick them up. And that as an accomplice he was
9 guilty, like I said, of murder. And like I said,
10 there are some other charges.

11 Q. And in fact, Mr. Kelley was tried along
12 with his co-defendant Mr. Vernon Goodwin in the same
13 trial, is that right?

14 A. Correct.

15 Q. And the Bracey brothers that you referred
16 to just a moment ago, prior to trial, did they
17 plead before the court?

18 A. They did. They entered into a plea
19 agreement and they testified in court.

20 Q. And Mr. Goodwin and Mr. Kelley were
21 actually charged as principals in this case, is that
22 correct?

23 A. Correct.

24 Q. And they were never charged as accomplices
25 before the fact or criminal conspiracy. They were

David Sullivan-Direct by Lloyd

1 actually charged with the substantive counts that
2 the Bracey brothers were charged with, is that
3 right?

4 A. According to my notes, no, they weren't
5 charged with just being an accom -- they were
6 charged kidnapping, or he was charged with
7 kidnapping, murder, assault and battery with intent
8 to kill, armed robbery.

9 Q. There may have been a total of 24, or 25
10 charges against Mr. Kelley, is that right?

11 A. That sounds right.

12 Q. Now, Mr. Sullivan, prior to the trial of
13 this case, you understood the State's theory of the
14 timeline of events that led to the robbery and
15 murder in this case?

16 A. Yes.

17 Q. And in your preparation for a trial in
18 this particular case, because it related to
19 Mr. Kelley, did you understand that the State had to
20 prove in this particular case, the hand of one is
21 hand of all in an accomplice theory?

22 A. I thought that the State had to prove that
23 Mr. Kelley as an accomplice, knew what was going on,
24 played a part in the criminal scheme, that he wasn't
25 taking the Bracey brothers to the drug house to buy

David Sullivan-Direct by Lloyd

1 marijuana as he told the police.

2 Q. And I want to though concentrate
3 specifically on the State's theory in order to
4 convict Mr. Kelley as a principal in this case. In
5 order to convict him, was there any other theory
6 than the hand of one hand of all that would convict
7 Mr. Kelley as a principal in this case?

8 A. No, like I said, even though he -- the
9 evidence tended to show that he wasn't there when
10 the shooting actually happened, I think the State
11 had to prove that he, when he drove them there, the
12 Bracey brothers, he knew what was going on. He knew
13 what his part was as an accomplice. That's what the
14 State had to prove.

15 Q. And you just commented on the fact that he
16 was not actually the shooter. In fact, the evidence
17 prior to trial that you were aware of through
18 discovery in your own investigation, indicated that
19 Mr. Goodwin and Mr. Kelley were not inside the house
20 where the robbery took place, is that right?

21 A. That's right.

22 Q. And therefore, the only way Mr. Kelley
23 could be held liable as a principal on the murder
24 charges, kidnapping charges, armed robbery charges,
25 et cetera, was through the State's theory of

David Sullivan-Direct by Lloyd

1 accomplice liability through hand of one hand of
2 all.

3 A. Correct.

4 Q. And what was your understanding of the
5 elements the hand of one hand of all?

6 A. That Mr. Kelley would have had to have
7 aided and abetted the individuals who were actually
8 there, the Bracey brothers. Like I said, that he
9 knew what was going on, he knew what his role was.
10 And that he took an action in furtherance of that,
11 which was driving them to the scene and I think he
12 was, the testimony indicated that he was supposed to
13 pick them up, but things went south.

14 Q. And I'll get to the actual testimony in
15 just a minute. But you would agree with me that one
16 of the elements of hand of one hand of all, is that
17 they are sufficiently present aiding and abetting
18 the co-defendants, is that right?

19 A. I don't know. I think there is a case
20 State v. Chavis. I am not sure about that. I think
21 that they -- he could be guilty as an accomplice and
22 not have actually been there. I don't think I have
23 at least recently, I am not real familiar with case,
24 so I am not sure. I think that he could still be
25 guilty and not have been there if he knew what was

David Sullivan-Direct by Lloyd

1 going on, and participated in the crime.

2 Q. So your understanding at the time of the
3 the trial was that you could be still guilty as a
4 principal under the hand of one hand of all theory,
5 even if you were not present aiding and abetting the
6 co-defendants.

7 A. He could be guilty as an accomplice.

8 Q. Well there are different theories of
9 accomplice liability, is that correct? For example,
10 aiding, accessory before hand of a crime, right?

11 A. I believe so, yes.

12 Q. And criminal conspiracy for is another
13 example of accomplice liability, is that correct?

14 A. Yes.

15 Q. Prior to the trial, did you ever have a
16 discussion with Mr. Kelly's mother or family members
17 about where he was on the night of these events?

18 A. Yes. In some of our discussions his
19 parents were present, because Mr. Kelley insisted on
20 that. I didn't really like that, but we did with
21 his parent's present, discuss where he was that
22 night.

23 THE COURT: Could you all agree for the
24 record what time this happened, and on what day so
25 that can be in the record?

David Sullivan-Direct by Lloyd

1 MR. LLOYD: Yes, sir. In fact, I was able
2 to ask Mr. Sullivan about that.

3 Q. Mr. Sullivan, without reviewing the
4 record, do you recall what date the State alleged
5 this event happened? Or do you have the transcript
6 in front you to review that and refresh your memory?

7 A. I think it was, I am looking at the
8 investigative report, and it looks like it was on
9 December 14th 2009.

10 Q. And that is date that was alleged in the
11 indictment that the murder and armed robbery
12 occurred, is that correct?

13 A. I am sure it was.

14 Q. And do you recall based on the State's
15 evidence and the discovery you reviewed,
16 approximately the time that the robbery happened?

17 A. I don't see it in the investigative
18 report. I am looking at the---

19 Q. What are you referring, I am sorry.

20 A. ---incident report. It looks like the
21 dispatch time was around 21:40.

22 Q. And let me refer you to the record on
23 appeal page 328. Do you recall---

24 THE COURT: It's actually the transcript
25 of the trial. There was no appeal, correct?

David Sullivan-Direct by Lloyd

1 MR. LLOYD: Right. Yes, sir.

2 THE COURT: 328.

3 MR. LLOYD: I believe they are one off
4 from the transcript page, and it's probably page 327
5 in the transcript.

6 A. I am looking at page 327.

7 Q. And that's the testimony of a witness
8 named Darin Graham.

9 A. Okay.

10 Q. And do you recall Mr. Graham testifying?

11 A. Not really. I mean this has been, not off
12 the top of my head, this has been a pretty long time
13 ago since this trial.

14 Q. On that page though, do you see where
15 Mr. Graham is discussing the time line of the
16 evening?

17 A. Yes, I do.

18 Q. And based on Mr. Graham's testimony, the
19 robbery, the actual invasion, home invasion and
20 robbery occurred sometime after 9 clock, is that
21 fair?

22 A. You said it's on page 328.

23 Q. Yes, sir. That's correct.

24 A. And about 8, 83:0, 9, 9:00 o'clock it
25 looks like is what he says.

David Sullivan-Direct by Lloyd

1 Q. And based on Mr. Graham's testimony and in
2 fact other witnesses, the robbery, the Bracey
3 brothers had not entered the home prior to around
4 9:00 o'clock, is that right?

5 A. I -- you asked according to the other
6 testimony had the Bracey brothers entered the home
7 before 9:00 o'clock?

8 Q. Yes, sir.

9 A. I don't remember.

10 Q. But according to Mr. Graham, at least, as
11 of 9:00 o'clock, nobody had entered the house to
12 commit the robbery, is that right?

13 A. That's what it looks like looking at this
14 transcript.

15 Q. And prior to the trial, would you agree
16 with me that Mr. Kelley's family had actually
17 informed you that Mr. Kelley was home around 8:30 or
18 slightly before 8:30.

19 A. I don't really remember the exact times.
20 Basically what Mr. Kelley told me was that he drove
21 the Bracey brothers to a location that was just
22 short of the incident location. And that he dropped
23 them off, and he thought that he was taking them to
24 buy marijuana. I don't really recall the exact
25 times.

David Sullivan-Direct by Lloyd

1 Q. But as it related to his -- if you agree
2 with me that the State must prove under the hand of
3 one hand of all that Mr. Kelley had to be
4 sufficiently present aiding and abetting the
5 robbery. If Mr. Kelley was home prior to the time
6 of the robbery itself, that would establish an alibi
7 for the hand of one hand of all charge, would you
8 agree?

9 A. If he was home prior to robbery?

10 Q. Yes, sir.

11 A. He may have been home prior to the
12 robbery. And then right before the robbery, he
13 drove the Bracey brothers to, it looked to me like
14 to the incident location. He says just short of the
15 incident location. So I am not sure how an alibi
16 defense would have been appropriate. Maybe he was
17 at his -- with his parents a little bit before the
18 robbery. But right before the robbery, he drove
19 the Bracey brothers to the incident location or
20 short it of it.

21 Q. So is it fair to say you attach no
22 importance to whether or not Mr. Kelley had an alibi
23 for purposes of the element of the present, under
24 hand of one hand of all?

25 A. Correct. And I didn't think an alibi

David Sullivan-Direct by Lloyd

1 defense was appropriate given what he had told me.

2 Q. And that conclusion is based on your
3 belief that you can be held liable as a principal
4 whether or not you are present at time of the
5 commission of the crime.

6 A. As opposed to an accomplice.

7 Q. Yes, sir.

8 A. I think he could have been held liable as
9 an accomplice but not as a principal. I mean I
10 would have to go back and review the law on
11 accomplice liability. But I think you would
12 considered an accomplice as opposed to a principal.

13 Q. And if in fact you are correct on that,
14 then his alibi as to where he was at the time the
15 Bracey brothers entered the house, would have been
16 an important fact to present to the jury, isn't that
17 correct?

18 A. I don't think so. I mean, no.

19 Q. Can you explain?

20 A. If he is saying, he told me that he drove
21 the Bracey brothers to a location close to where the
22 church was and dropped them off. His defense was, I
23 was there, I did this. I just didn't know what was
24 going on. That was his defense. His defense was
25 not, I was somewhere else.

David Sullivan-Direct by Lloyd

1 Q. Well that was the defense you all
2 presented to the jury, is that correct? That he
3 was---

4 A. Correct. The defense that, like I said,
5 he, not that he had an alibi; that he did the act.
6 But mentally he thought he was just taking them
7 there to buy marijuana.

8 Q. And do you recall when you discussed with
9 Mr. Kelly's mother, that she informed you that
10 Mr. Kelley was in fact at a birthday party at his
11 house at the time of this robbery.

12 A. Let me look at my notes. It looks like
13 she may have talked to me something about on June
14 25th 2010. It looks like I had a conversation with
15 Mr. Kelley's mother. She says that Cameren says
16 that she and any other family members -- I think she
17 said something to the effect of that that he might
18 would have had an alibi. But that's not what -- I
19 went by what Cameren told me.

20 Q. And because you went by what Cameren told
21 you, did you ever investigate or interview any
22 witnesses that saw Cameren at home at that time of
23 this alleged robbery?

24 A. No, because we weren't following myself
25 and my investigator, weren't following alibi

David Sullivan-Direct by Lloyd

1 defense. We didn't do -- Mr. Davis, John Davis, my
2 PI, he did an investigation, but there is no reason
3 to -- I don't think he investigated based on an
4 alibi.

5 Q. And so you never talked to, or your
6 investigator never talked to any potential witnesses
7 that would place Mr. Kelley somewhere far away from
8 the cite of this robbery.

9 A. I asked Mr. Davis, I kind of just perusing
10 his report before came in here. I asked Mr. Davis
11 to talk to the neighbors, and to talk the
12 individuals, the victims who were there when this
13 happened. I think there was one witness he told me,
14 he said that he saw a car that had pulled up. That
15 that person didn't know who was in the car.

16 A. The neighbors basically, the witnesses he
17 talked to, I don't think really helped Mr. Kelley.
18 But like I said, I asked him to talk to the
19 neighborhoods and try to talk to the victims. And
20 if what they said would have been beneficial, then I
21 would have talked to them. But it seemed like what
22 they had said probably hurt him more than helped
23 him.

24 Q. And you would agree that all of the
25 witnesses that you either talked to or that were

David Sullivan-Direct by Lloyd

1 presented by the State, all indicated that only two
2 individuals entered the trailer I believe it was, is
3 that correct?

4 A. Right.

5 Q. Now let me show you on my iPad the State
6 v. Gibson case.

7 MR. LLOYD: Your Honor, this is 390, S.C.
8 347.

9 THE COURT: That's all 390, S.C., 347?

10 MR. LLOYD: Yes, sir.

11 THE COURT: I don't need the other cite.
12 And the name of that case again?

13 MR. LLOYD: State v. Gibson, Court of
14 Appeals, 2012.

15 THE COURT: All right.

16 Q. Mr. Sullivan, in that case, State v.
17 Gibson, it's discussing under headnotes I believe
18 that's 9 and 10, accomplice liability under the hand
19 of one hand of all theory. Do you see that?

20 A. Yes.

21 Q. And the court is actually citing an older
22 case. And I believe it's citing a 2002 case, is
23 that correct?

24 A. Yes.

25 Q. And the Court of Appeals is reiterating

David Sullivan-Direct by Lloyd

1 that the standard for hand of one is hand of all is
2 when you are charging somebody as a principal is
3 that they actually be present at time of the
4 commission of the crime aiding and abetting their
5 co-defendants.

6 A. That's not what this seems to say.

7 Q. Okay, let's....

8 A. Under an accomplice liability theory, a
9 person must personally commit the crime or be
10 present at the scene of the crime and intentionally
11 or through a common design, aid, abet or assist in
12 the commission of the crime.

13 Q. Yes, sir. And it's saying he must be
14 present, isn't that correct?

15 A. Be present at the scene of the crime and
16 intentionally or through a common design. I kind of
17 read that to say that you can either be present or
18 through a common design, aid, abet or assist in the
19 commission of the crime.

20 Q. And then would you explain to the court
21 what your understanding of the difference between
22 the accessory before the fact or after the fact of a
23 crime, and liability under hand of one hand of all?

24 A. I think they probably -- he probably could
25 have been charged with accessory before the fact.

David Sullivan-Direct by Lloyd

1 You asked the difference between that and accomplice
2 liability.

3 Q. They're both accomplice liability
4 theories. I'm asking, let me rephrase. What is the
5 difference in your mind between accomplice liability
6 under accessory before the fact and liability under
7 hand of one hand of all?

8 A. I am sorry, I would have to research that.

9 MR. LLOYD: I beg the court's indulgence.
10 Just a couple of more questions, Your Honor.

11 Q. Mr. Sullivan, at the time of the State
12 resting it's case, did you challenge the -- did you
13 move for a directed verdict? Let me start there.

14 A. I am sure I did.

15 Q. And do recall on what grounds you moved
16 for a directed verdict?

17 A. I don't. I don't think one of the grounds
18 was -- had anything to do with this accomplice
19 liability.

20 Q. I am going to refer you again, I believe
21 the bate stamp record, it would page 569. I believe
22 that would be page 568 of the transcript.

23 THE COURT: Page -- let me see the line 5?

24 MR. LLOYD: Yes, sir.

25 A. Okay.

David Sullivan-Direct by Lloyd

1 Q. And on that page is where you're
2 discussing with this Judge King, the trial judge,
3 the grounds for your directed verdict motion. Do
4 you see that?

5 A. On the page 568?

6 Q. Yes, sir.

7 A. I see an exchange between Mr. Meadors and
8 the court.

9 THE COURT: For some reason the pages
10 between what you have and what Mr. Lloyd has, might
11 be one page off.

12 A. Oh, I see it. I am sorry, judge. I see
13 on page 569 where I was moving for a directed
14 verdict. The State hadn't met its burden. It
15 hasn't proven that Mr. Kelley actually planned with
16 the co-defendant to do the robbery.

17 Q. And you did not raise anything that in
18 terms of the directed verdict motion, that went to
19 issue of hand of one hand of all, is that correct?

20 THE COURT: I am sorry would you restate
21 the question?

22 MR. LLOYD: Yes, Your Honor.

23 Q. At the point of you raising your directed
24 verdict motion, you did not raise an objection to
25 the State failing to put in any evidence that showed

David Sullivan-Direct by Lloyd

1 that Mr. Kelley was actually present at the time.

2 A. No, I didn't. Because I didn't think it
3 was necessary.

4 Q. And again that's because you believe that
5 under the theory of hand of one hand of all, it
6 didn't matter as to whether Mr. Kelley was actually
7 present or not.

8 A. Correct. And if I had to do it over
9 again, I would have made that objection. I don't
10 how much difference it would have made but.

11 Q. And why would you have made that objection
12 if you had to do it over again?

13 A. Because he wasn't there when the shootings
14 occurred and the crimes take place. I don't think
15 I would have necessarily would have prevailed on
16 that. But I mean I kind of in hindsight I wish I
17 would have objected to it.

18 Q. In fact both Bracey brothers, Calderone
19 Bracey and Carlton Bracey, did testify during the
20 State's case in chief, is that correct?

21 A. Yes.

22 Q. And neither one of their testimony
23 actually put Mr. Kelley on the scene at the time of
24 of the robbery, is that correct?

25 A. Correct.

David Sullivan-Direct by Lloyd

1 THE COURT: And for the record, Mr.
2 Gourley and Mr. Lloyd, can we agree that the Bracey
3 brothers were the people who went in the house and
4 fired the shoots?

5 MR. GOURLEY: Certainly, Your Honor.

6 MR. LLOYD: Yes. Your honor, I have no
7 further questions at this time for Mr. Sullivan.

8 THE COURT: Mr. Gourley. Any questions,
9 Mr. Gourley?

10 MR. GOURLEY: Yes, Your Honor.

11 Cross Examination by Mr. Gourley:

12 Q. Mr. Sullivan, let's give a little
13 background for Judge James, so he can get an
14 understanding of the case more in depth if that's
15 all right with you.

16 A. Sure.

17 Q. Just a quick summary.

18 THE COURT: Let me state this just for the
19 record. I did preside over several bond hearings.
20 I don't think believe I presided over Mr. Kelly's or
21 Mr. Goodwin's, but whatever the case, do you all
22 have a problem with me continuing with this? I
23 didn't preside over the trial.

24 MR. LLOYD: Of course not, Your Honor.

25 THE COURT: Go ahead, Mr. Gourley.

David Sullivan-Cross by Gourley

1 MR. GOURLEY: Thank you, Judge.

2 Cross Examination by Mr. Gourley:

3 Q. It was alleged Vernon Goodwin, Cameren
4 Kelley, and the two Bracey brothers met up, I
5 believe at the Bracey brother's grandfather's house,
6 is that correct? Does that sound about right? Or
7 the Bracey brother's house?

8 A. I believe so.

9 Q. And during that meeting they discussed
10 about potentially doing a lick or a robbery, is that
11 correct?

12 A. Right.

13 Q. And I believe it was alleged that Vernon
14 Goodwin was the person that knew about the victim's
15 house, right?

16 A. Yes.

17 Q. Had the local knowledge of where the house
18 was, is that correct?

19 A. Yes.

20 Q. And it was a known drug house with
21 potential money and cocaine, correct?

22 A. Correct.

23 Q. Now Vernon Goodwin didn't have a license
24 at the time, right?

25 A. Right. That's why Kelley was supposed to

David Sullivan-Cross by Gourley

1 drive.

2 Q. And what kind of car did Mr. Kelley have?

3 A. A blue Plymouth Sundance.

4 Q. And that was ID'd by some of the witnesses
5 and victim's at the house, right?

6 A. I believe it as.

7 Q. Now the -- Mr. Kelley was the one driving
8 the car that took Mr. Goodwin and the two Bracey
9 brothers to the victim's house or the area
10 surrounding the house, correct?

11 A. You said did Mr. Kelley drive?

12 Q. Right?

13 A. The three, yes.

14 Q. The three guys.

15 A. Correct.

16 Q. And they didn't actually go directly to
17 the drug house, they went on a back road that only
18 local people would know about. Would you agree with
19 me on that?

20 A. I think that's what the testimony showed.

21 Q. Okay.

22 A. Yes.

23 Q. And Vernon Goodwin had that local
24 knowledge and had actually been to the victim's
25 house beforehand, had known about this, had been

David Sullivan-Cross by Gourley

1 told about this road because he had a car was some
2 rims on it and didn't want to ding them, is that
3 correct? Is that according to your recollection?

4 A. I don't remember the rims, but, yes.

5 Q. And on their way to the victim's house, it
6 obviously was discussed that they were going there
7 to commit a robbery, correct?

8 A. Yes. That's what the testimony showed,
9 that's not what Mr. Kelley told me.

10 Q. And according to the State's testimony,
11 Mr. Goodwin gave them the weapons, correct?

12 A. Yes.

13 Q. And that the two Bracey brothers suited up
14 in all black in preparation to go rob this house,
15 correct?

16 A. Yes.

17 Q. And also Mr. Goodwin gave one of the
18 Bracey brother's his extra cell phone so he could be
19 reached after the robbery was concluded, correct?

20 A. Right. Mr. Goodwin gave them, the Bracey
21 brothers a cell phone, so they could call him. And
22 I objected to that coming in, because it was a last
23 minute thing, but, yes.

24 Q. And it was assumed, and of course
25 Mr. Kelley is still driving the car, that after the

David Sullivan-Cross by Gourley

1 robbery was concluded, one of the Bracey brothers
2 would then call Mr. Kelley and Mr. Goodwin for them
3 to be picked up after the robbery the done, correct?

4 A. Right. They were supposed to go pick them
5 up.

6 Q. And would you agree with me that's kind of
7 a rough summary of what was alleged.

8 A. Right.

9 Q. Now of course the robbery kind of went
10 haywire, and one of the Bracey brothers ended up
11 shot, and everybody kind of scattered at that point,
12 correct?

13 A. Correct.

14 Q. And it was alleged one of the victim's
15 heard one of the Bracey brother's cell phone
16 continuing to ring and ring and ring, correct?

17 A. I think I remember that from the trial,
18 yes.

19 Q. And that was actually Mr. Goodwin's extra
20 cell phone as the State alleged. If you don't
21 remember that's fine. The transcript will prove.

22 A. I believe so.

23 Q. Now with that in mind, Mr. Lloyd was
24 talking about trying to bring out the fact that
25 Mr. Kelley and Mr. Goodwin did not actually commit

David Sullivan-Cross by Gourley

1 the robbery, right? I think we can all agree on
2 that.

3 A. Correct.

4 Q. But Mr. Lloyd was pointing out the fact
5 that he may not have been present at the time the
6 robbery was committed, correct?

7 A. Right.

8 Q. But he was present at the crime scene in
9 an effort to drop off the Bracey brothers prior to
10 the crime, correct?

11 A. Yes.

12 Q. And he was supposed to had everything gone
13 directly according to the State's case, would have
14 picked up the Bracey brothers after they had
15 finished committing the robbery, correct?

16 A. Yes.

17 Q. So you would agree with me then that
18 Mr. Kelley helped plan the robbery, right?

19 A. Yes.

20 Q. Appeared at the crime scene.

21 A. Wait, wait. That Mr. Kelley helped plan
22 the robbery?

23 Q. Helped plan the robbery, yes.

24 A. Well I think that Vernon, according to all
25 the testimony, Vernon Goodwin was supposed to be the

David Sullivan-Cross by Gourley

1 mastermind.

2 Q. The mastermind.

3 A. I don't know how much planning Mr. Kelley did.

4 He was -- he knew what was going on according to
5 what the jury decided, and what the testimony--

6 Q. Okay.

7 A. ---indicated.

8 Q. He was aware of the robbery.

9 A. Yeah.

10 Q. He assisted in it by driving the car.

11 Obviously Mr. Goodwin couldn't drive it at the time.

12 He assisted in driving the car to the crime scene.

13 A. Correct. But like I said, I think the
14 planner was more Vernon Goodwin.

15 Q. So he appeared at the crime scene prior to
16 the crime taking place.

17 A. Yes.

18 Q. Mr. Goodwin possessed the weapons and
19 handed them over. Mr. Kelley was aware that there
20 was weapons involved, correct?

21 A. That's what the jury decided. That's what
22 the testimony indicated.

23 Q. And had everything gone correctly,
24 Mr. Kelley and Mr. Goodwin would have then according
25 to the State's theory of the facts, picked up

David Sullivan-Cross by Gourley

1 Mr. Bracey, correct?

2 A. Yes.

3 MR. GOURLEY: Your Honor, I don't know if
4 you want a copy. I was going to reference a case to
5 Mr. Sullivan.

6 THE COURT: Name of it?

7 MR. GOURLEY: I don't know if you want to
8 hear arguments on it or not.

9 THE COURT: Well he questioned him about
10 Gibson. You can question him about Chavis.

11 MR. GOURLEY: Yes, Your Honor. And
12 according to Chavis, Mr. Sullivan, I'll have you
13 read just this portion here. And, Your Honor, just
14 for the record, this is a directed verdict motion on
15 whether or not the hand of one hand of all theory
16 should have been presented to the jury, and whether
17 or not the judge erred it giving it to the jury.

18 THE COURT: Okay.

19 A. On appeal from the denial of a motion for
20 a directed verdict, is this where you want me to
21 read?

22 Q. Yes, please.

23 THE COURT: And go slowly for the Court
24 Reporter. Give me, you are under headnote, what?

25 MR. GOURLEY: It's the last paragraph,

David Sullivan-Cross by Gourley

1 Judge.

2 THE COURT: The last paragraph of the
3 whole opinion?

4 MR. GOURLEY: Yes, sir. I think it's page
5 2. That's several cases, Judge. I apologize.

6 THE COURT: Go ahead, Mr. Sullivan.

7 A. The evidence must be viewed in a light
8 most favorable to the State. Any evidence direct or
9 circumstantial reasonably tending to prove the guilt
10 of the accused creates a jury issue in the present
11 case. Evidence indicates appellant helped plan the
12 robbery, appeared at the scene prior to the crime.
13 Provided necessary weapons and tools. And received
14 a portion of the proceeds even though he did not
15 accompany the actual perpetrators. Submission of
16 the case to the jury was justified.

17 Q. So you would agree with me that's
18 somewhat similar to what we have here today.

19 A. I would. I understand what Mr. Lloyd's
20 getting at. And If I had to do it over again, I
21 think I should have researched the difference
22 between the accessory before and accomplice
23 liability.

24 Q. Yes, sir.

25 A. But based on what I'm reading right here,

David Sullivan-Cross by Gourley

1 it seems to indicate that there would be enough
2 evidence to go to the jury.

3 Q. So had you objected under this case law,
4 you would agree with me that most likely, of course
5 we don't know what the judge would have done. But
6 it seems to be reasonable that the hand of one hand
7 of all jury charge would have still gone to the
8 jury, and would be a jury question.

9 A. Under that case, right.

10 Q. And again even though Mr. Kelley wasn't
11 present at the crime scene when the robbery took
12 place, he was still present at the crime scene prior
13 to the crime.

14 A. Right.

15 Q. And had everything gone smoothly according
16 to the State's case, he would have then picked up
17 the Bracey brothers and taken off from that point
18 on.

19 A. Yes.

20 Q. Regarding the alibi witnesses, Mr. Kelley
21 told you about being at a birthday party at the
22 mother's house?

23 A. He never told me that he had an alibi. I
24 was -- my notes are a little sketchy about, I see
25 where I talked to his mother. And I mean I don't

David Sullivan-Cross by Gourley

1 know if he was a party a significant amount of time
2 before the crime happened. But I mean what he told
3 me was that he drove them there, that he was there.
4 I don't understand what difference it makes what he
5 was doing before that.

6 Q. Yes, sir.

7 A. If he was at a birthday party. The fact
8 is, he told me he drove them there. And it wasn't
9 alibi defense. It was a defense of, yeah, I did the
10 act, but I didn't know what was going on.

11 Q. Yes, sir. I beg the court's indulgence,
12 Your Honor.

13 THE COURT: Yes, Sir.

14 Q By Mr. Gourley) Your Honor, I don't have any other
15 questions. Thank you, Mr. Sullivan.

16 THE COURT: Redirect?

17 MR. LLOYD: Yes, sir. Just briefly Your
18 Honor.

19 Redirect Examination by Mr. Lloyd:

20 Q. Just to reorient the court out of this
21 record, can you recall where the robbery actually
22 took place?

23 A. It was close to Odell Lane, I think. I
24 went out with my PI. It was a, I mean, I can see it
25 in my mind. It was, I think it was out towards

David Sullivan-Redirect by Lloyd

1 Rembert. It was in a mobile home. And I think that
2 it was on a dirt road. And I want to say the street
3 was called Odell Lane.

4 Q. And that's in Sumter County?

5 A. Yes.

6 Q. And where did Mr. Kelley live?

7 A. I think he lived -- I think Mr. Kelly's, I
8 want to say he's from Camden. He went to Camden
9 High School. I think he lived, I can't remember if
10 he lived in Rembert or Camden. I am sorry.

11 Q. Yes, sir.

12 A. I can, let me find the correspondence that
13 the public defenders. It looks like we were sending
14 him mail to Douglas Street in Camden.

15 Q. And Mr. Gourley was asking you about
16 Chavis, and we'll get to that in a moment. But do
17 you recall when you met with Mr. Kelly's family, his
18 mother in particular, Mr. Kelley was present, isn't
19 that right?

20 A. Yes.

21 Q. And Mr. Kelley was actually present when
22 his mother was explaining to you that Mr. Kelley was
23 home long before the actual robbery took place.

24 A. You're asking if Cameren Kelley was
25 present when his mother was telling about this

David Sullivan-Redirect by Lloyd

1 alibi?

2 Q. Yes, sir.

3 A. I didn't -- I don't see that my notes
4 where I -- where the interview took place or who was
5 present during that interview. I just have it down
6 that I had a brief conversation with the client's
7 mother.

8 Q. But you do recall her explaining to you
9 that Mr. Kelley -- whether Mr. Kelley was present or
10 not, do you recall her explaining to you that
11 Mr. Kelley was home at a birthday party at the time
12 of this robbery?

13 A. I don't recall that. I'm just having to
14 look at my notes. Off the top of my head, I don't
15 remember any of that.

16 Q. Based on your investigation of the case,
17 after Mr. Kelley dropped the Bracey brother's off,
18 do you recall where he and Mr. Goodwin went?

19 A. I don't. I don't recall where they went
20 after they dropped him off.

21 Q. Do you recall whether Mr. Goodwin and
22 Mr. Kelley were even together after he dropped the
23 Bracey brothers off?

24 THE COURT: Who is -- whether who is
25 together?

David Sullivan-Redirect by Lloyd

1 MR. LLOYD: Mr. Goodwin and Mr. Kelley.

2 A. No, I don't.

3 Q. Do you recall whether during the course of
4 the trial, the Calderone brothers actually testified
5 that according to this supposed plan, Mr. Kelley and
6 Mr. Goodwin were actually supposed to be driving up
7 and down a road near by, waiting for them to call
8 for their ride home, and away from the robbery, is
9 that right?

10 A. I don't recall that. The trial has been a
11 good while back, but that seems reasonable. I don't
12 really recall that though.

13 Q. And so the fact that according to the
14 State's theory of Mr. Kelley's presence for purposes
15 of aiding and abetting this robbery, they were
16 supposed to get a phone -- Mr. Kelley was supposed
17 to get a phone call at some point to return from
18 Camden to pick up the Bracey brothers.

19 A. Right. I think the Bracey brothers
20 according to the testimony, had Vernon Goodwin's
21 phone. And so they were supposed to call when they
22 were ready to be picked up.

23 Q. And under their theory, the State's theory
24 of the case, if Mr. Goodwin and Mr. Kelley were not
25 together at the time of the robbery, the Bracey

David Sullivan-Redirect by Lloyd

1 brothers would have had to call Mr. Goodwin. And
2 Mr. Goodwin would have had to call Mr. Kelley. And
3 then Mr. Kelley would have to either pick up
4 Mr. Goodwin or return from Camden to Rembert to be
5 the get-a-way driver, is that right?

6 A. If they weren't together and they were
7 calling Vernon Goodwin and Mr. Kelley was the
8 driver, yes, I guess Mr. Goodwin would have had to
9 have called, if they weren't together, called
10 Mr. Kelley to go pick them up.

11 Q. And had you or your investigator talked to
12 any of the witnesses who would have placed
13 Mr. Kelley back home at a birthday party, you would
14 have learned as to whether or not Mr. Kelley and
15 Mr. Goodwin were together that evening during the
16 time of the robbery, isn't that correct?

17 A. I don't think that myself or my
18 investigator talked to any witnesses who said that
19 Mr. Kelley was at a birthday party after the
20 robbery.

21 Q. And let's talk about Chavis for a moment.
22 The last part of that decision talks about where
23 there was error to fail to give the jury an
24 instruction on alibi, is that correct? The very
25 last paragraph.

David Sullivan-Redirect by Lloyd

1 A. I believe so.

2 Q. And the court found in Chavis, the supreme
3 court ruled that it was, that that issue wasn't
4 preserved, isn't that correct? The alibi
5 instruction was not preserved, because counsel did
6 not raise it at the time, isn't that correct?

7 A. I think the little bit of Chavis I just
8 read, just said that there enough evidence to get
9 beyond a directed verdict. Because if there was,
10 even though the defendant wasn't present at the
11 scene.

12 Q. Yes, sir. I'm going to -- I don't know if
13 you still have Chavis up there. I might give you
14 this copy. If you will look at the very last
15 headnote.

16 A. Six?

17 Q. Yes, sir.

18 A. Do you want me to read that?

19 Q. Well you can just look at it. You would
20 agree with me that the supreme court is actually
21 stating in that very last paragraph of Chavis that
22 counsel failed to request a jury instruction on
23 alibi.

24 A. Yes.

25 Q. And therefore, that issue was not

David Sullivan-Redirect by Lloyd

1 preserved for appeal---

2 A. Right.

3 Q. ---is that correct?

4 A. Right, that's what it says.

5 Q. That decision does not say that an alibi
6 defense was not relevant to the case, isn't that
7 correct?

8 A. Right.

9 Q. And so as it relates to a hand of one hand
10 of all, that opinion would suggest that counsel
11 could have asked for an alibi instruction to the
12 jury, isn't that correct?

13 A. Yes.

14 Q. An alibi issue would go to the element of
15 hand of one hand of all of being sufficiently
16 present, aiding and abetting the co-conspirators for
17 lack of a better term.

18 A. Yes.

19 Q. And in this case, you never investigated
20 or presented on behalf of Mr. Kelley, whether or not
21 he had an alibi that would have refuted the element
22 of present aiding and abetting.

23 A. Correct. And like I said, I just look at
24 it, not in the terms of this case. I just looked at
25 in terms of he didn't say that -- he wasn't telling

David Sullivan-Redirect by Lloyd

1 me he wasn't there, but I see what you're getting
2 at.

3 Q. And just so the court knows, Mr. Kelley
4 never said that he never told you anything regarding
5 the fact that he knew that something was going to
6 happen or the robbery was going to happen. Isn't
7 that correct?

8 A. Correct. He told me that he thought he
9 was just taking them to get marijuana.

10 Q. And do you recall under the facts of the
11 case that one of the Bracey brothers actually
12 testified that they gave Mr. Kelley \$20 of cash
13 money when they got out at Odell Lane?

14 A. Yes, I do remember something about
15 Mr. Kelley getting \$20 in gas money.

16 Q. In other words, Mr. Kelley, the getaway
17 driver, was paid gas money to drop them off.

18 A. Yes.

19 Q. The brothers off. I beg the court's
20 indulgence.

21 THE COURT: Which witness testified about
22 the \$20?

23 MR. LLOYD: Carlton Bracey.

24 THE COURT: I've got his testimony.

25 Q. Mr. Sullivan, just one final question.

David Sullivan-Redirect by Lloyd

1 Going in to the trial, were you prepared to defend,
2 well let me rephrase the question. Going in to the
3 trial, before the start of the trial, were you
4 anticipating that the State was going to argue, hand
5 of one hand of all as related to Mr. Kelley?

6 A. Yes.

7 Q. And believing that they were going to
8 argue hand of one hand of all, you again did not
9 think it was important to determine whether or not
10 he had an alibi as to his location to refute the
11 element of whether or not he was present.

12 A. I thought if the jury decided that he knew
13 what doing on, and he participated, even though he
14 wasn't present, he would be guilty.

15 MR. LLOYD: Thank you, Mr. Sullivan.

16 THE COURT: Any recross?

17 MR. GOURLEY: Just briefly, Your Honor.

18 Recross Examination by Mr. Gourley:

19 Q. Mr. Sullivan, there was no disputing that
20 Mr. Kelley drove Mr. Bracey over to the victim's
21 house.

22 A. Correct.

23 Q. There's no disputing that Mr. Kelley knew
24 about the -- or it was alleged that Mr. Kelley knew
25 about the robbery and so forth, correct.

David Sullivan-Recross by Gourley

1 A. Yes.

2 MR. GOURLEY: And, Your Honor, If I may, I
3 am going to refer to State v. Hill, it's a second
4 case in the packet. And it is headnotes 10, 11 and
5 12. Page 3. If you'll just refresh your memory.
6 You don't have to read it out loud, but Mr. Lloyd
7 had just discussed with you the fact that Mr. Kelley
8 may not have known what was going to take place.
9 And had just merely had gotten case gas money, and
10 dropped them off, and went back home to the birthday
11 party, is that correct?

12 A. Yes.

13 Q. And State v. Hill discusses again, the
14 hand of one hand of all theory. And in that case
15 isn't it true that Mr. Hill claimed that he was
16 unaware of the final robbery, but he did help
17 participate in the planning of it, so on and so
18 forth. Didn't know that it was actually going to
19 occur, and wasn't present at the time, is that
20 correct?

21 A. Hold on just a second.

22 THE COURT: Well the case says what it
23 says.

24 MR. GOURLEY: Yes, Your Honor.

25 THE COURT: It says what it says.

David Sullivan-Recross by Gourley

1 MR. GOURLEY: Thank you.

2 Q. Regarding the alibis, Mr. Sullivan, did
3 you feel it was important to look into the alibis?

4 A. No.

5 Q. Do family members, mothers in particular,
6 make good alibi witnesses?

7 A. No.

8 Q. And again even though Mr. Kelley could
9 have been home at his house at the birthday party,
10 it still didn't take out the fact that he dropped
11 the Bracey brothers off at the victim's house,
12 correct?

13 A. Correct.

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

16 THE COURT: Anything else?

17 MR LLOYD: No, Your Honor.

18 THE COURT: Thank you, sir. You can step
19 down, Mr. Sullivan. We'll take 10 minutes.

20 (Whereupon, the court takes a short
21 recess.)

22 MR. LLOYD: We would call Pamela Kelley.

23 THE COURT: Come around, please, ma'am.
24 Walk around to where the chair is, and put your left
25 hand on the bible and state your name.

Pamela Kelley-Direct by Lloyd

1 Pamela Kelley, being first duly sworn,
2 testified as follows.

3 Direct Examination by Mr. Lloyd:

4 Q. Ms. Kelley, I am going to ask you, what
5 relation are you Cameren Kelley?

6 A. I'm his mother.

7 Q. You heard Mr. Sullivan's testimony just a
8 moment ago.

9 A. Yes, I did.

10 Q. I'm going to refer you back to the time
11 after Mr. Kelley, your son, Cameren was arrested.
12 Did you have an occasion to meet with Mr. Sullivan?

13 A. Yes.

14 Q. And do you recall how long after Cameren
15 was arrested that you met with Mr. Sullivan?

16 A. About maybe that next week.

17 Q. And at the time, did you understand what
18 Cameren was charged with?

19 A. Not at that time.

20 Q. When you met with Mr. Sullivan, what was
21 the purpose of you meeting with him?

22 A. Well actually he didn't want to talk with
23 us, but we had, you know, we wanted to talk to him
24 and he finally gave in. And we wanted to, you know,
25 tell our side of the story that Cameren was at home,

Pamela Kelley-Direct by Lloyd

1 because actually the victim is my husband's cousin.

2 He's a Holiday, my husband.

3 Q. And the victim you are referring to is

4 Kemper Holiday?

5 A. Yes.

6 Q. And Mr. Holiday was one of the victim's

7 who was shot?

8 A. Uh-huh. (Affirmative.)

9 Q. If you will say yes or no for the court.

10 A. Yes, I am sorry.

11 Q. And do you recall the evening that this

12 event happened, December 14th 2009?

13 A. Yes, I do.

14 Q. And can you tell the court very

15 succinctly, what was going on that evening at your

16 house?

17 A. It was my niece's birthday party. She was

18 born [REDACTED], and they were having a birthday

19 party for her. And plus her brother, my nephew, was

20 doing tattoos, so it was a a lot of kids at the

21 house that night. So...

22 Q. And do recall seeing Cameren at your house

23 that night during the party?

24 A. Yes, sir.

25 Q. When do you recall Cameren being at your

Pamela Kelley-Direct by Lloyd

1 house?

2 A. Right before he left, because actually I
3 heard the car, because it has a distinct sound. And
4 I looked out the window, and that's when I called
5 him.

6 Q. And when you say left, that's when he left
7 the house?

8 A. Yes.

9 Q. And do you recall about what time that was
10 that Cameren left the house?

11 A. It was a little before 7.

12 Q. And do you recall at any point Cameren
13 returning home?

14 A. Yes.

15 Q. And do you recall about what time that
16 was?

17 A. I sure do. My favorite show was on. It
18 was around 20 after 8, because I called him and I
19 asked him, where are you. And he says, I am on my
20 way. And about 10, 10 minutes later around 8, I
21 would say 8:27, 8:30 that's when he pulled in.

22 Q. And what was your favorite show?

23 A. America's Funniest Home Video.

24 Q. And America's Funniest Home Video was
25 still on the TV?

Pamela Kelley-Direct by Lloyd

1 A. It was still on.

2 Q. And so you believe Cameren returned home
3 about eight?

4 A. Uh-huh. (affirmative.) Because when he
5 pulled in---

6 Q. Eight or 8:30?

7 A. ---I looked at the clock. Uh-huh.
8 (Affirmative.)

9 Q. And when Cameren returned home, there was
10 how many people approximately at your house?

11 A. More than 15.

12 Q. And after the time Cameren returned home,
13 did you receive a phone call?

14 A. Yes, it was around, it was when the news
15 came on. Well actually, no. My husband's nephew
16 was there, Thorn Holiday. He was there. A family
17 member texted him and told him that Kemper had got
18 shot. And that's when he came in the house and told
19 us.

20 THE COURT: A family member texted who?

21 Q. Could you repeat that?

22 A. A family member texted my husband's
23 nephew.

24 Q. And your husband's nephew is named?

25 A. Thorn Holiday.

Pamela Kelley-Direct by Lloyd

1 Q. And do you recall about what time that
2 Thorn received that text?

3 A. It was before the news came on. I can't
4 really say, but it was before the news came on.
5 Because right after he came in and told my husband,
6 we turned it, you know, wait for the news. And then
7 the news came on and it was on there.

8 Q. And how long at that point had Cameren
9 been home?

10 A. Cameren had been home since 8:30. That
11 was, you know, a long time. I mean about 2 and a
12 half, three hours.

13 Q. And I want to direct you, your attention,
14 if you would explain to the court, at some point did
15 Cameren actually talk to somebody on your telephone?

16 A. Yes, my husband's---

17 Q. After you arrived at home?

18 A. Yes, my husband's friend. She actually
19 taught here in Sumter, Deborah Holland. She's a
20 retired math school teacher. And he was on the
21 phone with his girlfriend. Ms. Deborah beeped in on
22 his conversation with Sierra, because Deborah wanted
23 to talk with my husband, because they used to
24 carpool.

25 Q. And that's Deborah Holloman?

Pamela Kelley-Direct by Lloyd

1 A. Holland. H-O-L-L-A-N-D.

2 Q. And do you recall about what time

3 Ms. Holland called your house?

4 A. It was a little after 9.

5 THE COURT: So called the house phone?

6 Q. Yes, sir. And when you talked to

7 Mr. Sullivan, did you relate those evenings events

8 to him?

9 A. Yes, we did.

10 Q. Now did you at the time you talked to

11 Mr. Sullivan, had you ever heard of the phrase hand

12 of one hand of all?

13 A. Never.

14 Q. And in relating the events of that evening

15 and the location of Mr. Kelley, your son Cameren, to

16 Mr. Sullivan, what was the purpose in your mind of

17 telling him Cameren's whereabouts?

18 A. Because that's when we heard he was

19 charged with -- he was charged with murder. Murder?

20 And we just want him to know, well on the news it

21 said the murdered happened like 9:40. Cameren was

22 home at 8:30. Because I meet him at the door and I

23 told, you better not leave with the all these people

24 here. And I told him, you better not leave again.

25 Q. And to your knowledge, did Mr. Sullivan or

Pamela Kelley-Direct by Lloyd

1 anyone from his office ever contact or interview any
2 of the witnesses?

3 A. Nobody.

4 Q. Did you give Mr. Sullivan, Ms. Holland's
5 name?

6 A. Yes, we did.

7 Q. And was Ms. Holland, did she attend any of
8 the trial?

9 A. She helped put up Cameren's bond, her and
10 her father. And she came to one trial when it was
11 across the street. She came one day when it was
12 across the street.

13 THE COURT: And who is that again?

14 MR. LLOYD: Ms. Deborah Holland.

15 THE COURT: And what time did she call the
16 house, please, ma'am?

17 A. I think it was a little after nine when
18 she called.

19 Q. And you did relay that information to
20 Mr. Sullivan?

21 A. Yes, we did.

22 Q. Now at some point, did you also have a
23 conversation with Mr. Calvin Hastie, who is the
24 attorney for Vernon Goodwin?

25 A. Yes.

Pamela Kelley-Direct by Lloyd

1 Q. And do you recall when you had a
2 conversation with Mr. Hastie?

3 A. It was during the trial like maybe during
4 recess. We were in a conference room.

5 Q. Do you recall what you informed, don't
6 talk about what Mr. Hastie said, but do you recall
7 what you told Mr. Hastie?

8 A. We was trying -- we were telling him
9 everything we was telling Mr. Sullivan, you need to
10 check these witnesses. You need to call witnesses.
11 And some of them were not even related to Cameren.
12 You know, like the retired school teacher. And she
13 wasn't at the house, but she talked to him on the
14 phone. You know, when we was telling him, you need
15 to get in touch with these people.

16 Q. And just to back up for a moment, Ms.
17 Holland, Ms. Deborah Holland, would she have been
18 familiar with Cameren's voice?

19 A. Yes, Cameren worked -- used to work in her
20 yard.

21 Q. So she knew Cameren.

22 A. She knew Cameren.

23 Q. And if she talked to Cameren on the
24 telephone, she would know who he was.

25 A. She'd know exactly who Cameren was.

Pamela Kelley-Direct by Lloyd

1 Q. Now when Cameren returned home at
2 approximately 8:30, was Vernon Goodwin with him?

3 A. No.

4 Q. Do you have any knowledge of where Vernon
5 Goodwin was?

6 A. To my knowledge, Cameren dropped him off
7 at home.

8 Q. At Mr. Goodwin's house?

9 A. At his house.

10 Q. And certainly when he returned to your
11 house at 8:30, he was alone.

12 A. Yes.

13 Q. To your knowledge, did Cameren leave the
14 house again after he returned?

15 A. No, he didn't.

16 Q. And do you recall Cameren getting any
17 other phone calls from anybody that evening?

18 A. No, he was on the phone with his
19 girlfriend. Because by that, no, because after the
20 text came in to Thorn, that's -- me and my husband
21 came downstairs and watched TV downstairs. That's
22 when Thorn came in and told us about the text. He
23 didn't leave no more.

24 MR. LLOYD: I beg the court's indulgence.

25 Q. Ms. Kelley, you said that one of the

Pamela Kelley-Direct by Lloyd

1 shooting victim's is actually related to your
2 husband, is that right?

3 A. Uh-huh. (Affirmative.)

4 THE COURT: That's a yes?

5 A. Yes, sir, I am sorry.

6 THE COURT: That's all right.

7 Q. And that was Kemper Holiday?

8 A. Yes.

9 Q. Are you familiar with the area that this
10 incident is alleged to have happened?

11 A. No, me and my husband did drive. We did
12 go to the scene afterward just to see. Because...

13 Q. And how long did it take you to go from
14 your house to the scene of this incident?

15 A. From my house to the scene, about 10, 15
16 minutes.

17 Q. So if -- and you sat through the trial of
18 your son, is that right?

19 A. Yes.

20 Q. And there was testimony during the trial
21 that Cameren actually did drop the Bracey brothers
22 off---

23 A. Yes.

24 Q. ---near that location, is that right?

25 A. Yes.

Pamela Kelley-Direct by Lloyd

1 Q. And if the State's timeline is correct, it
2 would have taken Cameren approximately 15 minutes to
3 get from the scene back to your house?

4 A. Yes.

5 Q. Now how long would it have taken for
6 Cameren to leave near the scene of this incident,
7 and drop Vernon Goodwin off at his house?

8 MR. GOURLEY: Your Honor, I am going to
9 object. That's speculation.

10 THE COURT: Overruled. And the question
11 again Mr. Lloyd is how far from the scene to
12 Mr. Goodwin's house?

13 MR. LLOYD: Yes, sir.

14 THE COURT: Is there any evidence that
15 that's what he did? Well she said that's what she
16 thought he did. But so I'll go accept it for that
17 limited purpose. Go ahead, you can answer the
18 question. Do you want him to state it again?

19 A. Yes, please.

20 MR. LLOYD: Let me rephrase the question
21 overall.

22 Q. Did you inform Mr. Sullivan as to what
23 your understanding of the night's events were as it
24 related to Cameren dropping off Mr. Goodwin?

25 A. Well, Mr. Goodwin's mother can tell you

Pamela Kelley-Direct by Lloyd

1 better. Because Cameren dropped him off at his
2 house. And he actually went in and he scared her,
3 because she didn't realize he was there.

4 THE COURT: She needs to qualify---

5 A. Yes.

6 THE COURT: ---who he is.

7 A. Cameren was there. She didn't know that
8 Cameren was there.

9 Q. And are you familiar with where
10 Mr. Goodwin lives?

11 A. Not really. I've been there three times.

12 Q. And what part of -- does he live in
13 Kershaw County?

14 A. Uh-huh. (Affirmative.)

15 Q. If you'll say yes or no.

16 A. Yes, I'm sorry.

17 Q. We've always got to take care of the court
18 reporter.

19 A. Yes, I'm sorry.

20 Q. Approximately how far is it between your
21 house and where Mr. Goodwin lives?

22 A. About 10 minutes.

23 Q. And is Mr. Goodwin's residence closer to
24 the scene or further away from the scene?

25 A. Further away.

Pamela Kelley-Direct by Lloyd

1 Q. So basically your understanding of the
2 event Mr., I'd say Mr. Kelley. Your son Cameren
3 would have had to pass by your house to drop
4 Mr. Goodwin off to his house?

5 A. He would come -- no, he would come from
6 Rembert and drop Vernon off, then come home.

7 Q. And that's further, Mr. Goodwin's
8 residence is further away from Rembert---

9 A. Uh-huh. (Affirmative.)

10 Q. ---and your house.

11 A. Yes.

12 Q. And did you inform Mr. Sullivan of those
13 facts?

14 A. Yes.

15 MR. LLOYD: Nothing further, Your Honor.

16 THE COURT: Mr. Gourley.

17 MR. GOURLEY: Thank you, Your Honor.

18 Cross Examination by Mr. Gourley:

19 Q. Ms. Kelley, you said that Mr. Kelley got
20 home at 8:30?

21 A. Around 8:30.

22 Q. Around 8:30. Do you remember what day of
23 the week that was?

24 A. No, it was [REDACTED] -- it was the [REDACTED].

25 It was my niece's birthday.

Pamela Kelley-Cross by Gourley

1 Q. Niece's birthday. You don't remember what
2 day it was though? A weekday.

3 A. No, I don't.

4 Q. You just remember he got home at 8:30.

5 A. Yes, I do.

6 Q. But you don't remember the day that the
7 birthday party took.

8 A. No, I don't.

9 MR. GOURLEY: I being the court's
10 indulgence, Your Honor.

11 Q. You said there was about 15 people there?

12 A. Roughly 15. It was a bunch of kids.

13 Q. And who is Deborah Holland again? I'm
14 sorry, I didn't catch that.

15 A. She's my husband's friend. They carpool
16 together. She's a retired math teacher from Camden
17 High.

18 Q. And she called, what was that about? She
19 made a telephone call to who?

20 A. She called my home to talk with my
21 husband.

22 Q. Okay.

23 A. But Cameren was talking to his girlfriend.
24 She beeped in. They had three-way. She beeped in.
25 And that's when Cameren brought the phone up to my

Pamela Kelley-Cross by Gourley

1 husband.

2 Q. Thank you.

3 THE COURT: Let me ask you, who is the
4 retired school teacher? Is that Ms. Holland?

5 A. Yes, sir.

6 THE COURT: So your testimony is, your son
7 was on the phone with his girlfriend.

8 A. Yes, sir.

9 Q. And who was his girlfriend?

10 A. Sierra Bracey. David, I'm sorry. David.

11 Q. David Bracey?

12 A. Yes. Sierra David.

13 Q. Sierra David Bracey.

14 A. Not Bracey. Sierra David.

15 Q. Yes, ma'am. Thank you.

16 MR. GOURLEY: I don't have any other
17 questions. Thank you, Ms. Kelley.

18 THE COURT: Redirect?

19 MR. LLOYD: No, Your Honor.

20 THE COURT: Thank you, ma'am, you can step
21 down. Mr. Lloyd.

22 MR. LLOYD: Those are all the witnesses as
23 relates to Mr. Kelley.

24 MR. GOURLEY: I have no additional
25 witnesses, Your Honor.

1 THE COURT: Is Mr. Hastie here yet?

2 MR. GOURLEY: Yes, Your Honor.

3 THE COURT: Would you all like to proceed
4 straight into that, or do you anything that you
5 would like put on the record?

6 MR. LLOYD: I believe the arguments are
7 going to be same for both of them. Your Honor, the
8 only issue was that there we discussed this at the
9 bench. There was some issues that Mr. Kelley wanted
10 to raise with you.

11 THE COURT: Does he want to testify?

12 MR. LLOYD: He didn't want to testify. He
13 just wanted to make Some remark.

14 THE COURT: Let me clarify one thing, do
15 you want to call Mr. Hastie?

16 MR. LLOYD: Yes, sir.

17 THE COURT: Would you like for me to hear
18 from Mr. Kelley first? Of course we've got to get
19 Mr. Goodwin out here too. Mr. Kelley, do you have
20 some things you want to tell me as far as the law is
21 concerned?

22 THE PLAINTIFF KELLEY: Yes, sir.

23 THE COURT: Do you object to that,
24 Mr. Gourley?

25 MR. GOURLEY: Yes, Your Honor. Mr. Lloyd

1 is his attorney. It's Rule 11. You know, Mr. Lloyd
2 can make the proper arguments. The allegations have
3 been raised.

4 THE COURT: What I am not going to permit
5 him to do if I allow him to do anything at all, is
6 to read anything. If he wants something, he can
7 just hand it to me, and we'll put part of the
8 record. But if he's got legal arguments to make, I
9 will go out on a limb in this one instance, and I'll
10 hear your arguments. But I'm not -- if he wants to
11 read it, I can read too. And he can just attach
12 that as a submission. So are you going to read it
13 to me, sir?

14 THE PLAINTIFF KELLEY: Sir, I can just
15 quote it, but I'd like for the court to have the
16 motion.

17 THE COURT: I'm am asking you, are you
18 going to read it? Are you going to read it word for
19 word?

20 THE PLAINTIFF KELLEY: No, sir. I'll just
21 quote why I feel like my counsel was ineffective.
22 But I would like for the court to have this motion.

23 THE COURT: You can hand it up certainly.
24 And you understand, sir, you understand that you're
25 not acting as your own counsel. Mr. Lloyd is highly

1 trained in how to handle these types of matters..
2 And as I am sure he may have told you, some of the
3 things that you might want to tell me, might hurt
4 you. Because he has focused in on certain issues
5 that he deems to be pertinent. He is an expert
6 attorney. And he is a trained attorney.

7 THE PLAINTIFF KELLEY: Yes, sir.

8 THE COURT: And he knows how to say
9 things, how to raise them, how to argue them, how to
10 articulate them more so than you would. Do you
11 understand that?

12 THE PLAINTIFF KELLEY: Yes, sir. I would
13 like---

14 THE COURT: And you still want to put
15 these things on the record even though in the scheme
16 of things they might hurt your case. Is that what
17 you want to do?

18 THE PLAINTIFF KELLEY: I feel like it is
19 best for my case, Your Honor.

20 THE COURT: What has been handed up me is
21 a 15-page document. Is this something you typed,
22 sir?

23 THE PLAINTIFF KELLEY: Yes, sir.

24 THE COURT: Go ahead.

25 THE PLAINTIFF KELLEY: Well I feel my

1 counsel was ineffective, because he did not object
2 to construct an amendment towards my indictment.

3 THE COURT: What constructive amendment
4 was that?

5 THE PLAINTIFF KELLEY: well I was charged
6 as a principal. But during trial they brought up
7 the charge of hand of hand of all. But I was
8 charged as a principal in a crime, and the evidence
9 presented at trial, it doesn't put me at the scene.

10 THE COURT: Your lawyer has already argued
11 that.

12 THE PLAINTIFF KELLEY: And I'd also like
13 to say that my counsel was ineffective because the
14 Honorable Judge Howard P. King, failed to charge the
15 jury with burglary first at all. He didn't charge
16 the jury with any of the central evidence.

17 THE COURT: He didn't charge the jury --
18 were you convicted of burglary 1st?

19 THE PLAINTIFF KELLEY: Yes, sir. And
20 that's where I received my 40 year sentence for.

21 THE COURT: So you were convicted of
22 voluntary manslaughter.

23 THE PLAINTIFF KELLEY: Yes, sir.

24 THE COURT: Burglary first, armed robbery,
25 and attempted armed robbery and assault and battery

1 with intent to kill.

2 THE PLAINTIFF KELLEY: Yes, sir.

3 THE COURT: And you got several sentences.

4 And the upshot of it is, your total sentence is, an
5 aggregate of 40 years.

6 THE PLAINTIFF KELLEY: Yes, sir.

7 THE COURT: And you're saying Judge King
8 did not even charge burglary first degree to the
9 jury.

10 THE PLAINTIFF: No, sir. Not at all.

11 THE COURT: Anything else?

12 THE PLAINTIFF KELLEY: No, sir. That's
13 all.

14 THE COURT: Mr. Gourley, do you want to
15 call the applicant as a witness, Mr. Kelley?

16 MR. GOURLEY: No, Your Honor.

17 THE COURT: Mr. Lloyd, do you have any
18 additional evidence that you want to present?

19 MR.LLOYD: Not as it relates to
20 Mr. Kelley, Your Honor. Bring Mr. Goodwin. And how
21 about Mr. Kelley does he remain in the courtroom?

22 MR. LLOYD: I was going to defer to Your
23 Honor.

24 THE COURT: It suits me as long as it --
25 as long as we don't revisit any of his issues---

1 MR. LLOYD: Yes, sir.

2 THE COURT: ---without due notice to the
3 State.

4 MR. LLOYD: Yes, Your Honor.

5 THE COURT: Any objection?

6 MR. GOURLEY: No, Your Honor. And just
7 for the record, just to be clear that these are two
8 separate PCR actions. They're not being tried as
9 one for later on the down the road.

10 THE COURT: Do we need Mr. Kelley in here?

11 MR. LLOYD: I think he may want to be
12 present if Your Honor would entertain.

13 THE COURT: I'll let him stay. Are they
14 housed at the same location?

15 THE OFFICER: Yes.

16 THE COURT: You brought them both here.

17 THE OFFICER: Right.

18 THE COURT: If we need another chair, you
19 all can certainly get one from right here.

20 Mr. Tomlin, you can take it over there. And you can
21 bring in Vernon Goodwin.

22 THE COURT: Both proceedings that are in
23 the submission, Mr. Gourley, you can tell me better.

24 MR. GOURLEY: Yes, sir.

25 THE COURT: The transcript I have got

1 of Mr. Kelley's case and the transcript I have of
2 Mr. Goodwin's case, are they identical?

3 MR. GOURLEY: They certainly are, Judge.

4 THE COURT: And the only thing that would
5 be different is their applications and your return,
6 and maybe the attachments to the application.

7 MR. GOURLEY: Yes, sir.

8 THE COURT: And, Mr. Lloyd, did Judge King
9 charge burglary first?

10 MR. LLOYD: Your Honor, if Mr. Gourley is
11 okay, I can address that. He actually does not.
12 It's charged, he reads the charges to the jury. He
13 does not read the elements on that charge to the
14 jury. Quite frankly Your Honor, in looking at the
15 case law, and there's nothing directly on point on
16 that issue. But as Your Honor is very well aware,
17 if you look at the overall scheme of the charge to
18 the jury to determine whether it was proper. And in
19 this particular case, the jury did convict under the
20 hand of one hand of all theory on all other charges.
21 And quite candidly with the court, I think if you
22 review the cases that deal with the issue of the
23 overall scope of the charge or what is proper and
24 whether the jury understood that, I think that
25 probably is harmless error.

1 THE COURT: I understand. Come on in. We
2 are now on the record in Mr. Goodwin's case.
3 2013-CP-43-1889. Again Mr. Lloyd is in the
4 courtroom along with Mr. Hastie. Are we ready to
5 proceed on this?

6 MR. LLOYD: Yes, Your Honor.

7 MR. GOURLEY: Yes, Your Honor.

8 THE COURT: You can call your first
9 witness.

10 MR. LLOYD: Thank you, Your Honor. We
11 would call Mr. Calvin Hastie.

12 THE COURT: Come up, Mr. Hastie, and walk
13 around and I'll swear you in.

14 Calvin Hastie, being first duly sworn,
15 testified as follows.

16 THE COURT: Mr. Lloyd.

17 Direct Examination by Mr. Lloyd:

18 Q. Mr. Hastie, the court has already heard
19 the summary of the facts of the underlying trial. I
20 am going to go directly to, you first of all were
21 representing Mr. Vernon Goodwin at trial?

22 A. That's correct.

23 Q. And Mr. Goodwin was charged as a principal
24 on murder and armed robbery and kidnapping and some
25 other charges, is that right?

Calvin Hastie-Direct by Lloyd

1 A. Yes, sir.

2 Q. And let me ask you, we've had some
3 discussion with Mr. Sullivan regarding the hand of
4 one hand of all argument or theory that the State
5 put forward. Prior to going to trial in this
6 particular case, were you cognizant of the fact that
7 the State was arguing, or would present the hand of
8 one hand of all theory?

9 A. Yes, I was.

10 Q. And as a part of your preparation for that
11 as a theory of liability in this particular case,
12 did you do any research related to where Mr. Goodwin
13 was at the time of the commission of these crimes?

14 A. Well I relied on what my client told me,
15 and I certainly believe him. He said he was -- it
16 started at his house. He rode up there Cameren,
17 dropped him off and came back home so. And as far
18 as the hands of one hands of all, they're being
19 charged with conspiring, you know, before they left
20 with these other two young me to go there.

21 Q. Right. The State's theory of this
22 particular case, and not that you were agreeing with
23 the State's theory, but his theory was that
24 Mr. Goodwin had planned this robbery prior to
25 dropping off the Bracey brothers.

Calvin Hastie-Direct by Lloyd

1 A. That's the State's theory. Of course, I
2 completely object to that wholeheartedly to this
3 day. But that was their theory that he was the
4 mastermind as whether they used during the trial.

5 Q. And did you ever presenting based on what
6 Mr. Goodwin had told you, presenting an alibi
7 defense to the jury?

8 A. I thought that we had enough. There was
9 just a lot of circumstantial evidence. There was
10 really no evidence to put Mr. Goodwin in that home,
11 near that home. We know who killed the young man.
12 It certainly wasn't my client, Kelley. I just
13 thought we had a pretty strong case going in,
14 because it was very little proof on either one of
15 those two really being involved in this murder.

16 Q. Let me ask you this way, Mr. Hastie, what
17 was your understanding of what the State would have
18 to prove under the hand of one hand of all theory?

19 A. Well it's my understanding that they
20 would have to prove that there was some type of
21 conspiring together, providing the weapons and other
22 things like that, to be charged with one hand
23 involving another.

24 Q. Did you see any difference between that
25 theory of hand of one hand of all, and whether or

Calvin Hastie-Direct by Lloyd

1 not your client should have been charged with
2 accessory before the fact or criminal conspiracy?

3 A. Of course, I argued that, but that they
4 should not have charged with accessory before the
5 fact or conspiring, because again there was no proof
6 in my view of him conspiring to be involved in this
7 robbery.

8 Q. But even under the State's theory based on
9 the evidence that they put forward in the case, did
10 you believe that the State had shown the elements of
11 hand of one hand of all?

12 A. Shown, yes. Proven is a different thing.
13 But shown as they said, of course if they believe
14 that Vernon was the mastermind. They believed he
15 provided the tools for the robbery. Of course he
16 called Cameren to come to his house. He needed a
17 ride up to this incident site. It started at
18 Vernon's house so to speak. Calderone and the other
19 young man came to the inside. They rode there
20 together in a car. And the only reason and there's
21 evidence that was presented that said that they
22 called Vernon to take them there. And the only
23 reason Cameren got involved is because Vernon did
24 not have a license. I think he did have
25 transportation. He didn't have a license, so he

Calvin Hastie-Direct by Lloyd

1 called Cameren and said, could you take them to this
2 site. And I understand it was supposed to buy some
3 marijuana and not to rob anyone.

4 Q. Do you recall any evidence presented
5 during the State's case in chief, that placed
6 Mr. Goodwin and Mr. Kelley at or near the scene of
7 the robbery that evening, after they dropped the
8 Bracey brothers off?

9 A. Well it all depends on what you would say,
10 near the scene. Because there is testimony that
11 they drove them to there, and I don't know near that
12 was to drop them off in the house.

13 Q. But referring to the events prior to for
14 lack of a better description, the home invasion
15 itself.

16 A. That's right.

17 Q. Do you recall whether there was any
18 testimony during the State's case in chief as to the
19 whereabouts of Mr. Goodwin and Mr. Kelley during the
20 commission of the crime?

21 A. Certainly no testimony. They weren't
22 there for sure. We know they weren't there. There
23 is some testimony that a phone call was made to the
24 to Mr. -- to Vernon during the commission of the
25 crime.

Calvin Hastie-Direct by Lloyd

1 Q. And let's break that down. And you agreed
2 that there was no evidence presented placing
3 Mr. Goodwin and Mr. Kelley at or near the scene
4 during the commission of the crimes themselves.

5 A. That's correct.

6 Q. And in fact were you made aware as you
7 testified earlier that Mr. Goodwin says he was
8 actually at home during the time period of the
9 commission of these crimes?

10 A. That's correct.

11 Q. Now at the point that the State rested its
12 case, did you make a directed verdict motion?

13 A. I believe I did. I have to check the
14 record to make sure.

15 Q. I believe you have the record.

16 A. I mean it's on my desk right there.

17 MR. LLOYD: Your Honor, may I?

18 THE COURT: Yes, sir.

19 Q. Let me show you the record which is the
20 trial transcript.

21 A. Have you got a page?

22 Q. And I am going direct you beginning at
23 page 569, and let me help you out. I believe those
24 bate stamp numbers in this trial transcript page
25 numbers.

Calvin Hastie-Direct by Lloyd

1 A. 69 is here.

2 MR. LLOYD: Your Honor, that would be
3 page -- beginning at page 568 in the transcript.

4 THE COURT: Okay.

5 Q. Mr. Hastie, on that page, do you see where
6 you are addressing the court regarding your directed
7 verdict motion?

8 A. Yes, sir.

9 Q. And if you review that, and then explain
10 to court what ground you were raising as part of you
11 directed verdict motion.

12 A. You know, I really believe that they had
13 met their burden as it says here. I don't think the
14 State has certainly met its burden on the murder,
15 the robbery, on the charges. They really could not
16 put these two young men at the scene of the murder
17 in the house, at all. We know who killed those
18 boys. And I thought it was an atrocity to cut a
19 deal with the murderer, and get these two young men
20 who were not there for sure.

21 Q. So as a part of your directed verdict
22 motion though, you didn't raise any objection or
23 argument regarding the element of presence for the
24 purpose of hand of one hand of all as a legal
25 theory, did you?

Calvin Hastie-Direct by Lloyd

1 A. No, not at this point. But during the
2 trial, I constantly what I tried to bring out they
3 neither were there present during the murder of this
4 event.

5 Q. And you would agree with me that at the
6 time the State rested, if I am correct, that hand of
7 one hand of all requires sufficient presence to aid
8 and abet the commission of the crime, that that's an
9 element that the State has to have offered evidence
10 for prior to resting its case.

11 A. That's right.

12 Q. Let me ask you, did you understand prior
13 to the beginning of the trial, that Mr. Goodwin had
14 indicated or somebody else had indicated that
15 Mr. Goodwin was at home at the time of the
16 commission of these crimes?

17 A. Yes.

18 Q. Did you do any investigation, or did your
19 office do any investigation that would establish an
20 alibi for Mr. Goodwin's whereabouts at that time of
21 the commission of these crimes?

22 A. I don't know, it seems like I talked to
23 family's members who there was one like he was home
24 with some folks. But I did talk to some family
25 members. I can't recall, that confirmed that he was

Calvin Hastie-Direct by Lloyd

1 home.

2 Q. Would you agree with me that an alibi as
3 to his whereabouts during the commission of the
4 crime, would go to disproving or arguing against the
5 State's theory that he -- that Mr. Goodwin was
6 present during the commission of these crimes?

7 A. Present at the location of the crimes?

8 Q. Yes, sir.

9 A. I agree, but the State was really pushing
10 that, not that point was that, he was the
11 mastermind. He was a conspirator. He was the
12 provider of the weapons. He was the main guy. Now
13 they weren't pushing about the presence. They were
14 talking about this is the guy, that we believe, the
15 State now, not us, of course. The State believed he
16 was the mastermind. And they kept using that term,
17 the mastermind. He was the one that provided the
18 weapons. He was the one that provided the tapes.
19 He was the one that called Cameren. So that's what
20 they were focusing on, on those elements. Not
21 necessarily being present at the -- everybody knows
22 he was not present at the shooting.

23 Q. And you said that you had anticipated at
24 the beginning of the trial that that was the State's
25 theory of liability for Mr. Goodwin, and I'm not

Calvin Hastie-Direct by Lloyd

1 trying to put you on the spot, but can you explain
2 to the court at the time of this trial in 2011, what
3 was your understanding of what the State had to
4 prove to the jury to establish hand of one hand of
5 all liability?

6 A. Again that there was some type of
7 knowledge at the beginning before a plan. They had
8 to have some type of plan, and that's what they were
9 saying that there was a plan. Mr. Goodwin was, you
10 know, the leader of this plan; that there was a
11 plan. He had to provide some type of weapon or
12 something to -- for them to commit the crime with.
13 And they believe that he did that. Of course, we
14 said he did not. But those are some elements
15 though, that I believe were necessary.

16 Q. And again, I'm not trying to put you on
17 the spot, but can you explain at the time of this
18 trial, what was your understanding of the difference
19 between accessory before the fact or criminal
20 conspiracy versus hand of one hand of all liability?

21 A. Well I think some of the elements are
22 similar. And of course accessory before the fact,
23 you had to have some knowledge to participate prior
24 to the event happening. Criminal conspiracy I think
25 also is similar to that, the plan of a criminal act.

Calvin Hastie-Direct by Lloyd

1 And you're just being part of one that would help
2 plan a criminal act. But I can't remember all the
3 elements here today.

4 Q. Looking back at it now, do you believe
5 that you should have raised either a directed
6 verdict motion or an objection as to the charge to
7 the jury of hand of one hand of all?

8 A. Oh, of course, hindsight is great, but I
9 didn't think so at the time. I don't know whether I
10 think so now.

11 Q. And if you had investigated whether or not
12 there was some witnesses or other evidence to
13 establish an alibi for Mr. Goodwin, do you believe
14 looking back that you should have presented that to
15 counter the State's argument that he was
16 sufficiently pre -- Mr. Goodwin was sufficiently
17 present to constitute hand of one hand of all
18 liability?

19 A. Well we knew where he was. At least I
20 knew where -- thought I knew where he was at the
21 time of this incident, in which he's saying he was
22 home. But I don't know whether he was home with
23 anyone or not that we could prove that.

24 Q. And you don't know whether anybody was
25 home or not that could prove that, because you never

Calvin Hastie-Direct by Lloyd

1 interviewed or investigated whether or not there
2 were witnesses at all.

3 A. I don't know whether he provided me with
4 any information about witnesses at home. I have to
5 just take a look at my file and see. I am sure you
6 will put him on the stand.

7 Q. At some point, do you recall talking to
8 Mr. Goodwin's mother?

9 A. Yes.

10 Q. And do you also recall talking to
11 Mr. Kelley's mother or some relatives?

12 A. Yeah, probably so. Yeah.

13 Q. And did they both indicate to you that
14 there were witnesses as to Mr. Goodwin's and
15 Mr. Kelley's whereabouts on that evening during the
16 time of and after the robbery?

17 A. Now as far as Mr. Sullivan's client, I try
18 not to get involved with another lawyer's client.
19 But as far as Mr. Goodwin, I feel I had sufficient
20 information to know where he was. And he said he
21 was at home, and there was no question. It wasn't a
22 question about him being at home. The question was,
23 did he provide weapons for that murder. Did he go
24 there, and he said yes, I did go there, but I didn't
25 plan to do anything. He said clearly I went there.

Calvin Hastie-Direct by Lloyd

1 I dropped them off, and I returned home. So the
2 question was not about whether or not he was at home
3 or not. He was at home. That's not the issue. The
4 issue was he there at the time of that crime. And
5 there's no testimony that he was in that house at
6 the time at all.

7 Q. And we'll address that in two separate
8 parts. Neither at the directed verdict stage nor at
9 the time that Judge King charged the jury on the law
10 to apply in this case, did you object to the judge
11 considering or instructing the jury regarding hand
12 of one hand and all.

13 A. No, I did not.

14 Q. And because you didn't object to that
15 charge being given to the jury, that issue was not
16 even preserved for appeal, is that correct?

17 A. That's correct.

18 Q. And because there was no investigation on
19 your part of whether Mr. Goodwin had an alibi, you
20 didn't present any evidence or testimony regarding
21 an alibi defense did you?

22 A. No, I did not.

23 Q. And because you didn't present an alibi
24 defense, at the time that the jury received the
25 case, you did not request that Judge King instruct

Calvin Hastie-Direct by Lloyd

1 the jury on an alibi defense, is that---

2 A. No,----

3 Q. ---correct?

4 A. ---that's correct.

5 Q. And just for the sake of argument, if I'm
6 correct, that the hand of one hand of all requires
7 sufficient presence at the scene of the crime, then
8 you should have presented an alibi defense on
9 Mr. Goodwin's behalf, is that correct?

10 A. That's one of the elements of hands of one
11 hands of all. I think there are other elements that
12 he -- that were positive or that were against him.

13 Q. And you're correct. There are many
14 elements of hand of one hand of all. But the State
15 has to prove each of those elements beyond a
16 reasonable doubt, isn't that correct?

17 A. That's correct.

18 Q. And the failure to prove any one of those
19 elements of hand of one hand of all beyond a
20 reasonable doubt, requires the judge to instruct the
21 jury that they should find Mr. Goodwin not guilty,
22 isn't that correct?

23 A. That's correct.

24 Q. Now based on your investigation and
25 preparation of the case, were you aware of any facts

Calvin Hastie-Cross by Gourley

1 that established that Mr. Goodwin left his house
2 after returning there -- let me rephrase the
3 question. After Mr. Goodwin returned home that
4 evening, post dropping the Bracey brothers off, are
5 you aware of any facts or evidence that would say
6 Mr. Goodwin left his house again?

7 A. No.

8 Q. And are you aware of any evidence that
9 Mr. Goodwin and Mr. Kelley were in fact together the
10 rest of the evening after dropping the Bracey
11 brothers off?

12 A. Not together. Just, he was dropped off
13 and Mr. Kelley went on home.

14 MR. LLOYD: I beg the court's indulgence.

15 THE COURT: All right.

16 MR. LLOYD: Nothing further at this
17 moment, Your Honor.

18 THE COURT: Mr. Gourley, cross
19 examination.

20 MR. GOURLEY: Thank you, Your Honor.

21 Cross Examination by Mr. Gourley:

22 Q. Mr. Hastie, you had indicated that
23 Mr. Goodwin told you that he was taking the Bracey
24 brothers over to the victim's house?

25 A. Yes.

Calvin Hastie-Cross by Gourley

1 Q. What else did he tell you in regards to
2 that whole setting up kind of scheme?

3 A. Of course, as a lawyer you know don't
4 question, he told me a lot of things.

5 Q. Yes, sir.

6 A. Well he said he received a phone call from
7 Calderone and his brother that they wanted to buy
8 some weed, so to speak. And then that's he said
9 well I don't have a license. I can't -- I know
10 where you can get it from. And that's when he
11 called Kelley. He said these guys needed a ride.

12 THE COURT: Said he called Mr. Kelley?

13 A. Yes, sir. I'm sorry. Called Mr. Kelley
14 and said these young men needed a ride. And he said
15 their agreement was, to take them up there, give
16 them the ride they asked, and drop them off.
17 Evidently they had made arrangements for someone
18 else to bring them back.

19 Q. Okay. It was alleged that Mr. Goodwin
20 gave him some weapons. Did he comment on that at
21 all? Understanding that an attorney/client
22 privilege is waived when they file a PCR.

23 THE COURT: Do you agree with Mr. Llloyd?

24 MR. LLOYD: Yes, sir.

25 THE COURT: Attorney/client privilege is

Calvin Hastie-Cross by Gourley

1 waived once the PCR application is in place.

2 A. Mr. Goodwin did indicate to me then that
3 he did provide weapons to the two men.

4 Q. Now it was also alleged by the State that
5 the Bracey brothers were trying to attempt to call
6 Mr. Goodwin, do you recall that?

7 A. Yes.

8 Q. And it was alleged by the State that
9 Mr. Goodwin had actually given the Bracey brothers
10 his extra cell phone?

11 A. That's correct.

12 Q. So again, it was a theory of the State's
13 case that the Bracey brothers had Mr. Goodwin's cell
14 phone in order to reach Mr. Goodwin and supposedly
15 Mr. Kelley, in an effort to be picked up after a
16 robbery was committed?

17 A. That's an allegation, that's right.

18 Q. Yes, sir. Regarding the alibis, you did
19 have the opportunity to meet with some family
20 members?

21 A. Yes.

22 Q. And in your opinion had -- well there was
23 no question in your mind that Mr. Goodwin was at
24 home.

25 A. In my mind, no.

Calvin Hastie-Cross by Gourley

1 Q. And in your opinion does that -- does
2 Mr. Goodwin being at home, after he had dropped off
3 the Bracey brothers, amount to an alibi that would
4 absolve him of the crimes that were committed, or
5 the crimes that he was charged with?

6 A. I thought so at the time, sure.

7 Q. You felt that the the alibi would have
8 absolved him of the charges he was facing?

9 A. His alibi being at home?

10 Q. Yes, sir.

11 A. Yes.

12 Q. Is there a particular reason why you
13 didn't present that alibi then?

14 A. Well I guess at the time we went to trial
15 I thought that because of the lack of evidence that,
16 you know, we had a strong case going into this
17 trial.

18 Q. Correct, so---

19 A. But hindsight I probably should have
20 preserved it.

21 Q. Certainly.

22 A. Sure.

23 Q. So you would say that was a trial strategy
24 not to present an alibi?

25 A. Right.

Calvin Hastie-Redirect by Lloyd

1 Q. Based off the lack of evidence in the
2 State's case.

3 A. Yes.

4 Q. And in an attempt to poke holes in the
5 State's case?

6 A. Yes.

7 Q. And argue that Mr. Goodwin and Mr. Kelley
8 weren't present at the crime scene.

9 A. Definitely weren't present at the crime
10 scene.

11 Q. Certainly. And we stipulated to the fact
12 both Mr. Lloyd and I, that never one of them were at
13 the crime scene.

14 A. Yes.

15 MR. GOURLEY: I beg the court's
16 indulgence, Your Honor. Your Honor, I don't have
17 any other questions. Thank you, Mr. Hastie.

18 THE COURT: Redirect?

19 MR. LLOYD: Just briefly, Your Honor.

20 Redirect Examination by Mr. LLOYD:

21 Q. Mr. Hastie, was it a trial strategy not to
22 present an alibi defense, or was it that you didn't
23 believe that the issue of presence at the scene of
24 the crime was an issue that would determine the
25 outcome of the case?

Calvin Hastie-Redirect by Lloyd

1 A. That was more about my belief. I just
2 knew he wasn't there, and I just think that was a --
3 I didn't think that was a major issue at that time.

4 Q. And looking back at it, do you believe
5 that the issue of presence or sufficient presence is
6 in fact a necessary element that the State has to
7 prove under hand of one hand of all?

8 A. Yes, sir.

9 MR. LLOYD: Thank you, Your Honor.

10 THE COURT: Anything else, Mr. Gourley?

11 MR. GOURLEY: No, Your Honor.

12 THE COURT: Thank you, Mr. Hastie, you can
13 step down.

14 A. Thank you, Your Honor.

15 THE COURT: Mr. Lloyd, any additional
16 witnesses?

17 MR. LLOYD: Yes, Your Honor. Just
18 briefly, Ms. Deborah Missouri.

19 THE COURT: And state your name please,
20 for the record.

21 A. Deborah Denise Missouri.

22 THE COURT: How do you spell Deborah?

23 A. D-E-B-O-R-A-H.

24 THE COURT: And Missouri is like the
25 state?

Denise Missouri-Direct by Lloyd

1 A. Yes, sir.

2 Deborah Denise Missouri, being first duly
3 sworn, testified as follows:

4 Direct Examination by Mr. Lloyd:

5 Q. Thank you, Ms. Missouri. If you pull that
6 microphone close to you.

7 A. I'm okay.

8 Q. Now, Ms. Missouri, you're Mr. Goodwin's
9 mother, is that right?

10 A. Yes, sir.

11 Q. And I don't want to belabor points that
12 the court has already heard, so let's go to the
13 evening of December 14, 2009. You've heard some
14 testimony this morning about the arrival or the
15 comings and goings of Mr. Kelley and Mr. Goodwin.
16 Do you recall what time your son return home that
17 evening?

18 A. It was like 8 or a little after 8, because
19 like 7:45, I wanted something to drink. I wanted
20 some milk. But it was his wife's milk, so I was
21 trying to call him to ask him if it was okay that I
22 get some. But about a quarter, like I say, 8 or a
23 little after 8, he showed up. So he was in the
24 kitchen, and I was going in the kitchen. And
25 Cameren, because I have a curtain. My house is so

Denise Missouri-Direct by Lloyd

1 cold so I have a curtain up to the living room. And
2 Cameren came through and it scared the daylights out
3 of me. I said, oh, I didn't know you was here.
4 And that's when he said, yes, Ms. Deborah. I said,
5 hey, how are you doing. And he said he was fine.
6 And I went and asked my son. And my son say, you
7 got ask Teaosha, which is his wife, because it was
8 her milk. So I said okay. But then I got to say it
9 was my house, so I shouldn't have to ask nobody
10 nothing.

11 Q. Let me break that down so the court
12 understands. You live with your son Vernon?

13 A. Yes.

14 Q. And who else resides there with you?

15 A. My daughter Millia, and his wife.

16 Q. And how old is your daughter?

17 A. At the time she was about 6.

18 Q. About 6 years old. And where exactly
19 within Kershaw County is your house?

20 A. It was [REDACTED] Cleveland School Road.

21 Q. And what area of the county, do you call
22 that?

23 A. Kershaw.

24 Q. But what area of Kershaw County? Is it
25 near downtown Camden or is it?

Denise Missouri-Direct by Lloyd

1 A. It's about 10 minutes from Camden.

2 Q. And you said you were relating to the
3 court that at some point that evening, you were sort
4 sort of on a milk and cookie run?

5 A. Yes. Yes, sir.

6 Q. And is that why you remember what time it
7 is---

8 A. Yes, sir.

9 Q. ---that Mr. Goodwin returned?

10 A. Yes, sir.

11 Q. And if you would state for the court
12 again, when you were going to the kitchen or looking
13 for the milk, what did you do as it related to
14 Mr. Vernon Goodwin?

15 A. Oh, as I was walking out of my room to go
16 in the kitchen to talk to Vernon to ask him about
17 the milk, that's when---

18 Q. Let me stop you. Before that you had
19 testified to the court that you placed a phone call
20 to Vernon?

21 A. Oh, yes, I had called him. It was like 7,
22 7:45 when I called, because I wanted to ask him was
23 it okay before I go get the milk, before I mess with
24 his wife's milk. But he never answered the phone.
25 So about 15 minutes later he popped up. This was

Denise Missouri-Direct by Lloyd

1 like a little -- about 8 o'clock or a little. Right
2 at. It wasn't even 8:10. It was right, just about
3 at 8.

4 Q. So somewhere around 8:00 o'clock, you see
5 your son back home.

6 A. Yes.

7 Q. And you are telling the court as well that
8 you also saw Cameren Kelley.

9 A. Yes, sir.

10 Q. And this was all at about 8 o'clock.

11 A. Yes, sir.

12 Q. And when you saw Cameren, can you tell the
13 court again what happened when you ran into Kelley?
14 Mr. Kelley?

15 A. Well as I going to the kitchen, and also
16 he popped up through the curtain, and it scared the
17 daylights out of me. And I told him, I said, I
18 didn't know he was here. And he said, yes,
19 Ms. Deborah. And I said, hey, how are you doing.
20 He said, I'm going fine Ms. Deborah.

21 Q. What did you do after you talked to
22 Mr. Kelley?

23 A. Oh, went in the kitchen and talked to my
24 son, and asked him about the milk.

25 Q. And how long did you have a conversation

Denise Missouri-Direct by Lloyd

1 with your son?

2 A. It was about 3 seconds. Because after I
3 went and talked, he told me I had to ask his wife.
4 That's when I went back to my room. I was going
5 back to the room.

6 Q. And are you aware of whether or not your
7 son left the house again that evening?

8 A. No, sir, he didn't. Because he told --
9 Mr. Kelley told him that he was about to go home.
10 And they said their goodbyes. And he walked with
11 Mr. Kelley to the front door, and he went in his
12 room with his wife.

13 Q. And does your son have a car or a driver's
14 license?

15 A. No, sir. He has a car, but the car is in
16 my name.

17 Q. And did he use that car that evening?

18 A. No, sir.

19 Q. And your son, does he have a driver's
20 license?

21 A. No, sir.

22 Q. Now at some point, did you have a
23 conversation with Mr. Hastie regarding the events
24 that night?

25 A. Yes, sir. When---

Denise Missouri-Direct by Lloyd

1 Q. And just for record that night, referring
2 to December 14th---

3 A. Yes, sir.

4 Q. ---2009.

5 A. Mr. Kelley's mother had told Mr. Hastie
6 about -- they told Cameren's lawyer about Cameren
7 had an alibi. And then that's when I told
8 Mr. Hastie, I said, yes because, I walked into
9 Cameren. When Cameren came in, he scared the
10 daylights out of me when he came through the what
11 you call it. And I said that was around about
12 8 o'clock. And like I say, it's like, nobody really
13 would take heed to that right there.

14 Q. Did anybody ever, other than that
15 conversation with Mr. Hastie, did anybody ever
16 contact you from either Mr. Hastie's office or
17 Mr. Sullivan's office to interview you about the
18 facts of the case?

19 A. No, sir.

20 Q. Now prior to, did you sit through the
21 trial of your son?

22 A. Yes, sir.

23 Q. And prior to that trial, had you ever
24 heard the term hand of one hand of all before?

25 A. No, sir.

Denise Missouri-Direct by Lloyd

1 Q. Did you know what it meant after you heard
2 about it during the trial?

3 A. No. I only -- I started thinking that
4 everybody was together, that was it.

5 Q. And so at the time you were telling
6 Mr. Hastie about Mr. Goodwin's and Mr. Kelley's
7 whereabouts on the evening of December 14th 2009,
8 you were offering that information to them without
9 any regard to what the hand of one hand of all
10 actually meant, is that right?

11 A. Yes, sir.

12 MR. LLOYD: Nothing further, your honor.

13 THE COURT: Mr. Gourley.

14 MR. GOURLEY: Your Honor, I don't have any
15 questions for this witness.

16 THE COURT: Thank you, Ms. Missouri, you
17 can step down.

18 A. You're welcome.

19 MR. LLOYD: I beg the court's indulgence.

20 THE COURT: Yes, sir. Take your time.

21 MR. LLOYD: Your Honor, we would call

22 Mr. Vernon Goodwin.

23 THE COURT: Come on up please,

24 Mr. Goodwin.

25 Vernon Goodwin, being first duly sworn,

Vernon Goodwin-Direct by Lloyd

1 testified as follows.

2 Direct Examination By Mr. Lloyd:

3 Q. Vernon, I want to ask you, you heard
4 Mr. Hastie testify regarding the statements that you
5 made to him regarding the guns?

6 A. Yes, sir.

7 Q. And did you ever tell Mr. Hastie that you
8 gave the Bracey brothers, Calderone and Carlton
9 Bracey, guns for that crime?

10 A. No, sir, I did not.

11 Q. And what do you recall telling Mr. Hastie
12 about the guns and the Bracey brothers?

13 A. I told him I gave him guns a couple of
14 days before that situation took place for some
15 business -- for some other -- for a situation that
16 they had going on and I ain't even had nothing to do
17 with. But they called me, because I dealt with -- I
18 dealt was one of them like. And he was all right.
19 He asked for it a couple of days before that
20 incident took place, and I gave it to him.

21 Q. And just for the record, were they trying
22 to buy the guns from you?

23 A. Yes, sir.

24 Q. And that was well before December 14th?

25 A. That was way before December 14th.

Vernon Goodwin-Direct by Lloyd

1 Q. And so did you ever tell Mr. Hastie that
2 you gave them guns to commit this robbery.

3 A. No, sir, I did not.

4 MR. LLOYD: Nothing further, Your Honor.

5 THE COURT: Mr. Gourley.

6 MR. GOURLEY: Your Honor, I don't have any
7 questions.

8 THE COURT: Thank you, Mr. Goodwin. You
9 can step down. Mr. Lloyd.

10 MR. LLOYD: Nothing further, Your Honor,
11 in terms of witness testimony. I believe that
12 Mr. Kelley and Mr. Goodwin has a legal issue he
13 wants to raise with Your Honor.

14 THE COURT: Does he want to present the
15 same thing? Because the document I have says in the
16 matter of Vernon Goodwin and Cameren Laroderi
17 Kelley. And, Mr. Gourley, you object to that,
18 right?

19 MR. GOURLEY: Yes, Your Honor.

20 MR. LLOYD: Your Honor, if he may like
21 Mr. Kelley briefly address Your Honor.

22 THE COURT: Over the State's objection,
23 I'll hear from you, Mr. Goodwin, but I don't want
24 you reading anything to me. Because if you want to
25 read something, I can just read the piece of paper

Vernon Goodwin-Direct by Lloyd

1 myself. But go ahead and tell me what you would
2 like to tell me.

3 THE PLAINTIFF GOODWIN: I just want to say
4 I feel like counsel was ineffective because he
5 didn't object to the charge of accomplice liability
6 or hands of one hands of all, because I was not
7 charged with that. That's -- the court says once
8 the indictment comes back from the jury, you cannot
9 alter off on an indictment. And I was charged with
10 the principal, not conspiracy or accomplice
11 liability or hands of one, hands of all. And also I
12 feel like he was ineffective, because he didn't
13 object, because the court failed to charge the jury
14 with first degree burglary. I mean they had -- the
15 jury has got a know what the evidence are for
16 burglary first degree, right? He didn't do that.
17 So how could be found guilty for a crime when you
18 all don't even know what it be, burglary first.

19 THE COURT: Thank you.

20 THE COURT: Mr. Gourley, any witnesses?

21 MR. GOURLEY: No, Your Honor.

22 THE COURT: Mr. Lloyd, I will be glad to
23 hear any closing comments you have.

24 MR. LLOYD: Thank you, Your Honor, I will
25 be brief. I think you heard the testimony. Your

1 Honor, quite simply, let me first address the issues
2 that Mr. Kelley and Mr. Goodwin raised. As Your
3 Honor knows, to sort of paraphrase what they are
4 arguing, I believe, is that the indictment did not
5 contain the hand of one hand of all language. I
6 think the supreme court opinions are clear about
7 that. It is a longstanding precedence that that
8 does not have to be charged in the indictment.

9 As it relates to the arguments that we
10 raised in the testimony, Your Honor, our position is
11 that longstanding precedence from both appellate
12 courts establish that the hand of one hand of all
13 requires sufficient presence to either encourage,
14 incite, aid, in some sort of action on the part of
15 those co-conspirators who are actually committing
16 the offense in order for the defendant to be charged
17 as a principal. Otherwise, Your Honor, there would
18 be no difference between principal liability under
19 the hands of one hand of all, and accessory before
20 or after the fact or criminal conspiracy.

21 In this particular case, Your Honor, we
22 believe that it was essential. It's more than just
23 a trial strategy, but it was essential that counsel
24 actually explore and investigate whether or not
25 these two individuals had of alibi for their

1 location at the time of the commission of these
2 crimes. Had that been actually investigated and
3 presented as a defense, that would have obviously
4 led to a likely different conclusion, or certainly a
5 possible different conclusion as to related to the
6 element of presence or hand of one hand of all. In
7 fact, Judge King properly charged the jury that in
8 giving the hand of one hand of all charge, that to
9 be held as principals both Mr. Kelley and
10 Mr. Goodwin had to be present. Now I believe---

11 THE COURT: Well he said they had to be
12 personally present or be, excuse me, had to
13 personally commit the crime or be present at the
14 scene of the crime.

15 MR. LLOYD: Yes, sir.

16 THE COURT: And then there is a paragraph
17 on the next page that I will ask you about in just a
18 minute, but go ahead.

19 MR. LLOYD: Yes, sir. And, that, Your
20 Honor, I think is because what the hand of one hand
21 of all has attempted to do, is not establish just,
22 you know, your co-conspirator for example under
23 criminal conspiracy, or that you aided or abetted
24 before the commission of the crime or after the
25 commission of the crime, but that you are

1 sufficiently present to in somehow to be aiding in
2 the actual commission of it. In this particular
3 case had counsel on both Mr. Kelley and
4 Mr. Goodwin's behalf, investigated the facts as
5 related by their family, that there were witnesses
6 who would have placed them back at home in Kershaw
7 County; that neither one of them had ever left that
8 evening. That during the time of the commission of
9 this crime, at some hour and a half maybe more after
10 these two individuals are back home that. Your
11 Honor, failure in our opinion requires that both of
12 them be granted a new trial.

13 THE COURT: On the next page of the
14 transcript, and let me ask you this before I forget.

15 MR. LLOYD: Yes, sir.

16 THE COURT: Where is in the record if it
17 is, there was some reference today about \$20 for gas
18 is that in the transcript also?

19 MR. LLOYD: Yes, sir. I'll be honest with
20 you, Your Honor, I don't have a page so....

21 THE COURT: Would it be in one -- it would
22 be one in the Bracey's testimonies?

23 MR. LLOYD: Bracey brothers, I believe,
24 Your Honor.

25 THE COURT: And the Bracey -- one of the

1 Bracey brothers, both of them, I don't know which,
2 said that they needed money, and that Mr. Goodwin
3 was going to give \$5,000 a piece.

4 MR. LLOYD: Yes, sir. As I understand the
5 State's theory of the case, Your Honor, Mr. Goodwin
6 was the "mastermind," of this crime; that Mr. Kelley
7 was because he was only one out of the four that had
8 a license and a vehicle, drove them there. And
9 again this is all the State's theory, that at some
10 point as they're being dropped off, one of the
11 Bracey brothers actually pays Mr. Kelley gas money
12 for having dropped them off. And that according to
13 the testimony, they were then after the commission
14 of the crime, the Bracey brothers were to call
15 Mr. Goodwin.

16 THE COURT: That's what I understand.

17 MR. LLOYD: And then they were --
18 Mr. Goodwin and Mr. Kelley would have returned to
19 the scene to pick them up. Now obviously there are
20 a number of issues in terms of credibility there,
21 Your Honor, which aren't proper in a PCR proceeding.

22 THE COURT: Well I was going to ask this
23 question when I get to the end of all of your
24 arguments. But let be go back to this part of the
25 charge from Judge King.

1 MR. LLOYD: Yes, sir.

2 THE COURT: On this end of his, charge on
3 hand of one he says, on the other hand, if you find
4 from your view of the evidence that the State has
5 proved that the defendant or a defendant, aided
6 abetted and participated in the crime, then it would
7 be your duty to find the defendant guilty. Is that
8 a correct statement of the law?

9 MR. LLOYD: I looked at that as well, Your
10 Honor. And again, I think it's a correct statement
11 only if you consider the first part of his charge as
12 the answer.

13 THE COURT: Presence.

14 MR. LLOYD: Yes, sir. If, and again, Your
15 Honor, I would concede and the State and I have
16 discussed this as well. The problem with the
17 State's theory going forward in this case at trial
18 was that they didn't really establish the
19 whereabouts of Mr. Goodwin and Mr. Kelly during the
20 commission---

21 THE COURT: But there was never any
22 indication from the State, and it was never part of
23 State's theory that they were there anyway. So
24 would it really be an alibi, or would it just be an
25 explanation that they weren't together, so it could

1 not be credible that they were coming back to get
2 these guys?

3 MR. LLOYD: Yes, I think it's actually
4 both Your Honor. I agree with you---

5 THE COURT: Well why is alibi relevant if
6 the State is not saying you were there?

7 MR. LLOYD: The State's theory, one theory
8 the State could have posited I think, Your Honor, is
9 that they were somewhere sufficiently waiting as the
10 get away drivers. Under that theory and I think
11 under the case law, even if they were somewhere
12 close by waiting to be getaway drivers---

13 THE COURT: So whether you call it alibi
14 or explanation of being a part, whatever you call
15 it, you're saying that they should have called
16 witnesses, the lawyers should have called witnesses
17 to explain that circumstance.

18 MR. LLOYD: Yes, sir. I think that
19 obviously the issue of presence, The State would
20 have to prove beyond a reasonable doubt. Now I
21 would submit respectfully to Your Honor the State
22 would not submit sufficient evidence during its case
23 in chief, and that that should have been an issue
24 raised at the directed verdict stage. Certainly
25 though after that, and quietly honestly, Your Honor,

1 after Judge King properly raised the issue that the
2 State's theory as he understood it, was hand of one
3 hand of all. The only theory going in to this case
4 that would make them liability as principals, was
5 under hand of one hand of all. I can't think of
6 another theory that the State could have put forward
7 that would have charged him as principals.

8 THE COURT: What is the penalty for
9 accessory before the fact of murder? Isn't it the
10 same?

11 MR. LLOYD: It's the same, Your Honor, in
12 terms of the possible sentence. Yes, sir. And that
13 brings up another issue though, Your Honor, as to
14 whether they could have been charged with accessory
15 before the fact.

16 THE COURT: The fact is they weren't, were
17 they?

18 MR. LLOYD: Yes, sir. And so that, you
19 know, failure, our belief is the failure to both
20 investigate the alibi. And I call it an alibi
21 simply because it goes to the issue of presence.

22 THE COURT: Well alibi to me technically
23 would be something you have to give notice of. An
24 explanation of them being physically separated at
25 some point after dropping them off, might not be

1 technically be alibi, but it might depend on the
2 definition of presence insofar---

3 MR. LLOYD: Yes, sir.

4 THE COURT: ---as in the neighborhood.

5 MR. LLOYD: Yes, sir. I would definitely
6 agree with that.

7 THE COURT: You can continue.

8 MR. LLOYD: And, Your Honor, I don't want
9 to belabor the point. I think that's, our reading
10 of the case law is that the State was required to
11 offer sufficient evidence of presence, of sufficient
12 presence to get past directed verdict. We believe
13 they didn't do that and counsel -- defense counsel
14 didn't raise that as an objection. But Certainly
15 even if some view of the evidence was that there was
16 sufficient evidence put forward that would have
17 survived directed verdict, that again counsel should
18 have investigated the facts. Should have
19 investigated whether or not there were witnesses
20 that would have put Mr. Kelley and Mr. Goodwin not
21 only back home, but separate from each other at the
22 time of the commission of this crime.

23 Your Honor, I think it's undisputed, and I
24 don't want to speak for the attorney general's
25 office, but I believe they would agree that it's

1 undisputed that the crime happened somewhere after
2 9:30. At that point certainly Mr. Goodwin and
3 Mr. Kelley would have been home for more than an
4 hour and a half.

5 THE COURT: Mr. Gourley. Mr. Lloyd,
6 you'll certainly have the last word.

7 MR. GOURLEY: Your Honor, as far as the
8 PCR goes, ineffective assistance counsel and the
9 failure, I think Mr. Lloyd is arguing failure to
10 object at DV stage, regarding the hand of one hand
11 of all, I've presented to the court three cases,
12 State v. Chavis, State v. Hill and State v. Thomas,
13 dealing with this similar issue. Particularly, the
14 State v. Chavis. Mr. Sullivan and I had a
15 discussion about it. Obviously the case speaks for
16 itself. But, Your Honor, I would submit to the
17 court even had Counsel Hastie and Counsel Sullivan
18 had objected the DV stage, it still isn't sufficient
19 enough evidence to present hand of one hand of all
20 to the jury. And both Bracey brothers testified
21 at the trial that there was a common scheme and
22 plan. They met at Mr. Goodwin's house. Mr. Kelley
23 was the driver. They got the guns from Mr. Goodwin.
24 Got in the car. Got suited up in black. Jackets
25 and ski masks. Mr. Kelley and Mr. Goodwin -- or

1 Mr. Goodwin gave one of the Bracey brothers
2 Mr. Goodwin's extra cell phone; that Mr. Kelley and
3 Mr. Goodwin dropped them off in the vicinity of the
4 victim's house. Apparently Mr. Goodwin had the
5 local knowledge of the house, and knew it the house
6 known to sell drugs and had money.

7 THE COURT: The Bracey's gave Cameren 20
8 bucks.

9 MR. GOURLEY: Bracey gave Cameren 20 bucks
10 for the effort for driving.

11 THE COURT: Why would he give them \$20?
12 Excuse me, why would the Bracey brothers give them
13 20 bucks for gas when they were going to get \$5,000
14 for the robbery? Wouldn't that be feel like a
15 little small investment?

16 MR. GOURLEY: Correct, Your Honor.

17 THE COURT: Why pay somebody, if I'm
18 going to gave you \$5,000 to go rob Mr. Jones---

19 MR. GOURLEY: Yes, Your Honor.

20 THE COURT: Why would you give me \$20 to
21 take you there?

22 MR. GOURLEY: Judge, I mean if you're a
23 poor thinker and you're committing a crime, maybe
24 you want to create an alibi. Reasonable doubt.

25 THE COURT: Well you know if all that's

1 true, you know, and I don't know whether it's proper
2 for me to think like that---

3 MR. GOURLEY: Yes, sir.

4 THE COURT: ---but that doesn't make a
5 whole lot of sense.

6 MR. GOURLEY: Absolutely not, Your Honor.
7 And I would submit to the court that---

8 THE COURT: Sometimes don't think straight
9 when they're planning crimes.

10 MR. GOURLEY: Yes, sir.

11 THE COURT: So how about this alibi
12 situation?

13 MR. GOURLEY: Your Honor, I understand
14 Mr. Lloyd's thinking on this, that had they
15 presented the two mothers to testify that their
16 children were at home around 8, 8:30 at night, they
17 certainly weren't together and couldn't have been
18 potentially planning on picking the brothers up. If
19 were to take that testimony as credible evidence,
20 obviously family members love their children and
21 will say whatever they need to say for their
22 children. And I'm certainly not implying anything.
23 But...

24 THE COURT: But should the evidence have
25 been presented to the jury?

1 MR. GOURLEY: Your Honor, I would submit
2 to the court that Mr. Hastie and Mr. Sullivan both
3 were aware that their mothers would have testified
4 to that information, and strategically chose not to
5 present that testimony to the jury. And that they
6 were going to attempt to show, and I don't think it
7 was in dispute that Mr. Goodwin and Mr. Kelley did
8 not participate in the robbery. In hopes that the
9 jury would find that they were not guilty and were
10 just innocent bystanders, who happened to give the
11 Bracey brothers a ride to the victim's house.

12 THE COURT: Well wouldn't showing that
13 they did separate right after dropping them off,
14 wouldn't that perhaps indicate to a jury that hey,
15 they really weren't going to get back together,
16 because if they were going to get back together,
17 they would have just kind of stayed together.

18 MR. GOURLEY: Correct, Your Honor. And
19 again, and that's a credibility finding which would
20 have of course if it would have been presented,
21 would have been up to the jury to determine.

22 THE COURT: Did the Bracey brothers ever
23 testify why they didn't call Mr. Goodwin back?

24 MR. GOURLEY: Mr. Goodwin, well, Your
25 Honor, when he entered the house, guns started

1 blazing and they all -- Mr. Bracey got -- one of the
2 Bracey brothers got shot. He fled. I think the
3 police found him within the vicinity bleeding.

4 THE COURT: Who had the phone? The one
5 that didn't get shot or the one that did?

6 MR. GOURLEY: I'm not 100 percent sure. I
7 beg the court's indulgence, Your Honor.

8 THE COURT: Well whatever the case.

9 MR. LLOYD: Your Honor, if I may.

10 MR. GOURLEY: Mr. Lloyd has told me it was
11 Carlton Bracey, Your Honor.

12 MR. LLOYD: I believe it was Carlton
13 Bracey who testified.

14 THE COURT: But whatever the case is,
15 Mr. Goodwin never got a call back to come get them?

16 MR. GOURLEY: I'm not 100 percent certain,
17 Judge. I don't think so. There was some testimony
18 about I believe Mr. Goodwin and -- there was some
19 testimony about a burgundy Cadillac flying by.
20 Something like that. I think they were trying to
21 allege that maybe was to pick up people. But again
22 and then, Your Honor, just Mr. Kelley mentioned that
23 he was unaware of the plan to commit robbery. And
24 that's State v. Hill discussing on the DV again,
25 that even though the defendant in that case was

1 unaware of the final plan to commit the robbery, it
2 still would have surpassed directed verdict motion.

3 THE COURT: If the only evidence against
4 Mr. Kelley was that he just dropped them off to buy
5 drugs, would there be hand of one there? If that's
6 the State said that's all we got, we don't have any
7 evidence that he planned or knew or had any
8 knowledge that this was going to happen, he wouldn't
9 be guilty then, would he?

10 MR. GOURLEY: I don't believe so, Your
11 Honor, but that's not what the State's evidence
12 showed. Both Bracey brothers stated that everybody
13 knew what was going on.

14 THE COURT: Right. I understand that.

15 MR. GOURLEY: Certainly.

16 THE COURT: So the key on the hand of one
17 is according to Mr. Lloyd, is physical presence.

18 MR. GOURLEY: Mr. Lloyd kept referring to
19 it as sufficient presence. And I would submit to
20 the court that it's not sufficient presence, it's
21 just presence. And they were present at the scene
22 in the area where the victim's house was when the
23 crime took place.

24 THE COURT: So kind of like depending on
25 what the meaning of the word is, is. It depends on

1 what the meaning of the word present is.

2 MR. GOURLEY: Yes, sir.

3 THE COURT: So present at the scene,
4 you're saying could be waiting around the corner.

5 MR. GOURLEY: Could be waiting around the
6 corner, could have been dropping them off the scene
7 prior to the robbery as in State v. Chavis.

8 THE COURT: So there would be hopefully
9 case law on that point.

10 MR. GOURLEY: Yes, Your Honor.

11 THE COURT: From the getaway driver
12 dropping somebody off and planning to come back to
13 get them, whether or not that is presence.

14 MR. GOURLEY: Right, Your Honor. And I
15 would still submit to the court, we don't know what
16 was going to happen, because the armed robbery went
17 awry.

18 THE COURT: But the key is, what did
19 happen.

20 MR. GOURLEY: Correct, Your Honor.

21 THE COURT: Anything else, Mr. Gourley?

22 MR. GOURLEY: No, Your Honor.

23 THE COURT: Mr. Lloyd, any closing
24 comments?

25 MR. LLOYD: Your Honor, if I could just

1 address a few things and respectful to the State.
2 In Chavis, Your Honor, the getaway driver was
3 actually waiting outside the city limits. He was
4 sitting there waiting as the getaway driver. But
5 all of the cases that the State hands up, focus in
6 on the fact that you have to be present in some way,
7 the aiding and abetting or encouraging the
8 commission of crime itself. Your Honor, its touched
9 on something that I think is important, and just
10 getting the flavor overall in this case.

11 The State's theory of the case as Your
12 Honor correctly pointed out, was that they
13 dropped -- Mr. Goodwin and Mr. Kelley dropped them
14 off, the Bracey brother's off. Then disappeared
15 somewhere. I think even the State is conceding now
16 that they were nowhere the scene. And that they
17 were supposed to by some phone call, come back and
18 pick up the Bracey brothers. Your Honor, in
19 Mr. Carlton -- I believe it's Carlton Bracey's
20 testimony when you review that, Mr. Carlton Bracey
21 actually testifies that after they were dropped off,
22 and they're not dropped off right at the house. I
23 think all of the witnesses even testified for the
24 State conceded that they were dropped off somewhere
25 at a distance from the actual house where the home

1 invasion occurred. It was on near that road, but
2 not directly at the house, that after Mr. Kelley is
3 paid the \$20, Carlton Bracey actually testifies that
4 they -- he and his brother actually sit outside the
5 house for a while. It's not even like they
6 immediately go inside the house. They sit outside
7 the house sort of scoping it out for awhile. And
8 it's after awhile that another vehicle pulls up to
9 the house. And as those occupants are getting out
10 of the car, the Bracey brothers approach them, and
11 force them into the house.

12 The testimony is also from all the
13 witnesses including the victims of this event, that
14 they're in the house for quite a while. It's not
15 like they go in the house and the shooting
16 immediately starts and the victims are shot. But
17 the Bracey brother is shot. They're in the house
18 for quite a while, looking supposedly for the drugs
19 and the money that the State says that they went
20 there to steal. Again, based on the testimony that
21 the State put up, Mr. Goodwin who was supposedly the
22 mastermind of all this, and knew the house, knew
23 where the drugs were, knew where the money was,
24 apparently didn't relay that information to the
25 Bracey brothers, because they're in the house for

1 quite awhile according to the testimony, from even
2 the victim's, looking for cash and looking for
3 drugs.

4 After in fact the shooting starts, when
5 one of the victims actually gets lose from his being
6 tied up, and actually gets his hands on a gun, and
7 then the shooting starts between the Bracey brothers
8 and this victim. One of the Bracey brothers is
9 shot, and he actually falls at the scene. The other
10 brother, Bracey brother, actually says that he ran
11 off into the woods supposedly trying to reach
12 Mr. Goodwin to come and retrieve him. And
13 eventually testifies that he eventually called, I
14 believe it was his brother, Mr. Bracey called his
15 brother who had difficulty locating him as well.
16 And according to Mr. Bracey's testimony, he
17 literally walks in the woods from Rembert to I
18 believe to Cassette in Kershaw County.

19 THE COURT: Yeah.

20 MR. LLOYD: And so the theory even under
21 the State's case, Your Honor, is that because as we
22 know from the witnesses who were not just their
23 mothers, I want to clear. What they were testifying
24 to is that there other individuals. In Mr. Kelley's
25 case, he actually talked to a former teacher. It

1 wasn't his teacher, but a former teacher in Kershaw
2 County who -- with whom he had done some yard work
3 on numerous occasions. And that that conversation
4 happened even before the Bracey brothers went in to
5 the house according to the time line. So according
6 to the State's theory, Mr. Kelley and Mr. Goodwin
7 who are presumably waiting on this robbery to
8 happen, so they can come back and split up the
9 proceeds, are themselves in two different locations.

10 It would have required Mr. Bracey to call
11 Mr. Goodwin. Mr. Goodwin to then call Mr. Kelley.
12 Mr. Kelley would then leave his house and go 10, 15
13 minutes to Mr. Goodwin's house, pick him up and then
14 go back to Rembert. And that was always I think a
15 problem with this theory, that had the defense
16 actually put up the fact that there were witnesses,
17 that Mr. Kelley was back at a birthday party. He
18 did not leave and go anywhere that evening.
19 Mr. Goodwin was at home. He did not leave and go
20 anywhere else that evening, that the jury would have
21 seen that that theory just doesn't hold water.

22 It's also important I think, Your Honor,
23 in terms just the equity in this case, that at the
24 beginning of this case, Mr. Kelley was even offered
25 probation by the State. And obviously he rejected

1 that and went to trial. But if the State's theory
2 is correct that Mr. Kelley was in fact not only the
3 getaway, not only the driver to the scene, but that
4 he was supposedly knowledgeable of his plan to rob.

5 THE COURT: Did they offer him probation
6 on an accessory charge?

7 MR. LLOYD: I'm not sure what the
8 charge -- how they were going to plead it out, Your
9 Honor. But they had offered him probation straight
10 up. And Mr. Goodwin -- I mean Mr. Kelley obviously
11 said he was not guilty and wanted a trial on that.
12 So, you know, had the defense offered this factual
13 background where Mr. Goodwin and Mr. Kelley were
14 during that evening, I think it certainly would have
15 gone to the issue of whether the State sufficiently
16 could prove that they were anywhere near sufficient
17 to aid and abet the commission of this crime.

18 Your Honor, I believe all the cases do
19 adequately state that the difference between
20 accessory before the fact or criminal conspiracy, is
21 not just this agreement, not just this knowledge
22 that a crime is going to be committed, but that
23 you're actually physically there. Otherwise, you
24 know, you would never have a need to charge or even
25 have the existence of accessory before or after the

1 fact of criminal conspiracy. One of the things that
2 I think is important to note, Your Honor, is that
3 all the court cases have also reiterated the fact
4 that not only do you have to be present for the hand
5 of one hand of all liability, but it's also proper
6 for the court to also charge the jury at the time
7 you give a hand of one hand of all charge, as Your
8 Honor knows, that mere presence alone is not
9 sufficient to establish hand of one hand of all.

10 So the fact that you would charge or
11 properly charge the mere presence alone does not
12 establish hand of one hand of all. I believe argues
13 for the fact that physical presence is required.
14 Thank you, Your Honor.

15 THE COURT: Thank you. Now, Mr. Kelley,
16 and Mr. Goodwin, here's what I'll be doing. I'll be
17 signing an order that will do one of two things. It
18 will either grant your application in return for
19 which you would get a new trial, or it will deny
20 your application. And this will be your
21 application, Mr. Kelley, and Mr. Goodwin's
22 application. I'm not saying that my decisions will
23 be the same, but they may well be, whatever the
24 decisions.

25 If I find that your application should be

1 denied, I'll sign an order to that effect. And
2 Mr. Lloyd will get a copy of it. And you will have
3 30 days from his receipt of that order to file an
4 appeal. You understand that, Mr. Kelley?

5 THE PLAINTIFF KELLEY: Yes, sir.

6 THE COURT: Mr. Goodwin.

7 THE PLAINTIFF GOODWIN: Yes, sir.

8 THE COURT: Of course, Mr. Lloyd, can
9 educate you on another type of motion. It's not an
10 appeal. It would be a motion for reconsideration
11 that can be made and ruled upon under certain
12 circumstances. Now there is a shorter time for
13 that, it's 10 days. But he will educate you on
14 that. Now you understand that?

15 THE PLAINTIFF KELLEY: Yes, sir.

16 THE PLAINTIFF GOODWIN: Yes, sir.

17 THE COURT: All right, thank you.

18 --End of Requested Transcript of Record---

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in Common Pleas Nonjury Court on April 17, 2015, in Sumter County, Sumter, South Carolina.

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

5.3.17
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA **RECORDED** IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER 2018 JAN 16 } PM 3:39 THIRD JUDICIAL CIRCUIT

Cameren L. Kelley, #347966, JAMES C. CAMPBELL
Applicant, CLERK OF COURT
SUMTER COUNTY, S.C.

2016-CP-43-00205

CERTIFIED TRUE COPY
OF ORIGINAL FILED

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 6, 2013. Respondent submitted its Return on December 10, 2013. An evidentiary hearing was convened on April 17, 2015, in the Sumter County Judicial Center. Applicant was present at the hearing and was represented by Reginald I. Lloyd, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant presented testimony from David Sullivan, Esquire (hereinafter "Trial Counsel"), and Pamela Kelley.¹ The Court had before it a copy of the trial transcript, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the pleadings.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the

¹ The evidentiary hearing was presented with a separate PCR hearing for Applicant's co-defendant, Vernon Goodwin, as both parties had similar issues and arguments presented on their behalf by the same attorney, Mr. Lloyd. The testimony summarized and addressed in this Order was presented in relation to Applicant's application.

May 2011 term of the Sumter County Grand Jury for murder, first degree burglary, eight counts of kidnapping, two counts of assault and battery with intent to kill, five counts of assault with intent to kill, two counts of armed robbery, and six counts of attempted armed robbery (2011-GS-43-881). David Sullivan, Esquire, represented Applicant. John P. Meadors, Esquire, prosecuted the case.

Applicant and his co-defendant Vernon Goodwin proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty of the lesser-included offense of voluntary manslaughter and was found guilty as indicted on all remaining charges. On September 23, 2011, Judge King sentenced Applicant to imprisonment for thirty years for voluntary manslaughter, forty years for first degree burglary, thirty years for each count of kidnapping; twenty years for each count of assault and battery with intent to kill, ten years for each count of assault with intent to kill, thirty years for each count of armed robbery, and twenty years for each count of attempted armed robbery, with all sentences running concurrently.

A timely notice of appeal was filed on Applicant's behalf by Robert Pachak, Esquire. The South Carolina Court of Appeals dismissed the appeal. State v. Kelley, No. 2012-UP-656 (S.C. Ct. App. December 12, 2012). The remittitur was issued on January 4, 2013.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel; in that,
 - a. "Counsel failed to investigate and render reasonable performance, counsel failed to lodge timely objections."
2. Due Process Violation

At the evidentiary hearing, Applicant raised the following allegations:

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1. Trial Counsel failed to move to quash the indictment based on its lack of a reference to the theory of accomplice liability (hand of one, hand of all).
2. Trial Counsel failed to argue in his directed verdict motion or during the charge conference that a conviction under the accomplice liability theory requires proof of the defendant's physical presence at the scene of the crime.
3. Trial Counsel failed to pursue alibi defenses.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

IV. SUMMARY OF RELEVANT TESTIMONY

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Trial Counsel's testimony

At the evidentiary hearing, Trial Counsel testified the charges against Applicant stemmed from an incident on December 14, 2009 in which Applicant drove two co-defendants, Carlton and Calderone Bracey (the Bracey brothers), to a drug house in Rembert to rob it. He testified the State contended Applicant was the driver and that it was Applicant's job to drop the Bracey brothers off and pick them up some time after the robbery was complete. Applicant was tried with his co-defendant, Vernon Goodwin. Trial Counsel testified the Bracey brothers accepted a plea offer, pled guilty before the trial, and testified against Applicant and Goodwin. Trial Counsel testified Applicant and Goodwin were charged as principals and were never charged as accomplices before the fact or for criminal conspiracy.

Trial Counsel testified that in order for Applicant to be convicted at trial, the State had to prove the "hand of one, hand of all" theory. He stated that he met with Applicant before the trial with his parents present to discuss where Applicant was on the evening of the crimes. He testified Applicant told him he drove the Bracey brothers to a location that was just short of the incident location and dropped them off. Trial counsel testified the Applicant told him he thought he was only taking the Bracey brothers to buy marijuana. Trial Counsel testified he did not believe Applicant had a valid alibi defense based on what Applicant told him because, regardless of whether he was at home that night before the robbery occurred, he drove the Bracey brothers to the scene of the crime and dropped them off. Trial Counsel stated he chose not to investigate potential alibi witnesses based on what Applicant's mother told him Applicant was doing that night and because Applicant told him he dropped the Bracey brothers off at what ended up being the crime scene. Applicant's mother's testimony is summarized below.

Trial Counsel testified the investigator he hired interviewed the victims present at the crime scene, the neighbors who lived nearby, but he believed all their testimony would have hurt Applicant more than helped him. Trial Counsel stated he did not argue in his directed verdict motion that there was no evidence that Applicant was present at the crime scene because he did not think it was necessary to make that argument. He stated that in hindsight, he wished he had made that argument, but he still did not believe he would have been successful if he had made it.

Trial Counsel testified the State contended Applicant, Goodwin, and the Bracey brothers met at the Bracey home and planned the robbery. Trial Counsel stated Goodwin was the person who knew where the house was and that there might be money and cocaine to be stolen. He stated Goodwin did not have a driver's license at the time, so the group decided Applicant would drive. Trial Counsel stated Applicant drove a blue Plymouth Sundance; this vehicle was identified by witnesses at the victim's house. Trial Counsel testified that on the way there, Applicant took a back road that only local people would know about. Trial Counsel testified Goodwin was familiar with the area and had been to the house before. According to the Bracey brothers' trial testimony, Applicant, Goodwin, and the Bracey brothers discussed the robbery plan on the way to the house, Goodwin gave the Bracey brothers weapons, and the Bracey brothers dressed in all black. Trial Counsel stated Goodwin also gave the Bracey brothers an extra cell phone so they could call him after the robbery.

Trial Counsel testified that at trial, the State contended Goodwin was the mastermind of the robbery plan. Trial Counsel testified Applicant told him that even though he drove the Bracey brothers to the crime scene, he was not aware of the plan to rob the house. Trial Counsel testified he did not believe that he or his investigator spoke to any witnesses who would have testified Applicant was at home at a birthday party during the robbery.

Pamela Kelley's testimony

Pamela Kelley is Applicant's mother. She testified at the PCR hearing that she met with Trial Counsel the week after Applicant was arrested and told Trial Counsel her side of the story. She testified that one of the victims who was shot, Kemper Holiday, is her husband's cousin. Ms. Kelley testified that on the day of the crime, [REDACTED], 2009, Applicant was at home attending her niece's birthday party. She testified she remembers Applicant starting the car and leaving the house a little before 7 p.m. and returning home around 8:30 p.m. She stated when Applicant got home, there were about fifteen people at their house for the party. She testified that about 3 hours later, a family member texted someone who was attending the party and told him that Kemper Holiday had been shot. She stated Applicant spoke to a family friend, Deborah Holland, on the house phone around 9 p.m. that evening.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has considered the testimony presented at the post-conviction relief hearing. The Court has further had the opportunity to observe the witnesses presented at the hearing, determine their credibility, and weigh their testimony accordingly. Set forth below are relevant findings of facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Trial Counsel's testimony to be credible and persuasive. While the Court finds Applicant's mother, Pamela Kelley, was a credible witness, her testimony did not add any substance to Applicant's grounds for relief. These credibility findings have been applied to the Court's findings and conclusions set forth below.

The Court finds Applicant has not met his burden of proving entitlement to relief. The Court finds Trial Counsel's representation did not fall below the standards of professional norms in any manner. Based on the testimony presented and the record before the court, this Court finds Trial Counsel's representation was not ineffective in any respect.

Failure to move to quash indictment based on its lack of reference to accomplice liability theory

Applicant alleges Trial Counsel was ineffective for failing to challenge the indictments based on the fact that they did not reference the accomplice liability theory of "the hand of one is the hand of all." This allegation is without merit. South Carolina case law allows for a defendant to be convicted on the theory of accomplice liability even if the indictment charges him only as the principal. State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) ("It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense.") (citing State v. Leonard, 292 S.C. 133, 136, 355 S.E.2d 270 (1987); State v. Cox, 258 S.C. 114, 187 S.E.2d 525 (1972); State v. Hicks, 257 S.C. 279, 185 S.E.2d 746 (1971); State v. Hunter, 79 S.C. 73, 60 S.E. 240 (1908)). Trial Counsel cannot be ineffective for failing to make an argument that would have failed as a matter of law. Therefore, this relief on this ground is respectfully denied.

Failure to argue during directed verdict motion or during charge conference that a conviction under the accomplice liability theory requires proof of the defendant's physical presence at the scene of the crime

Applicant alleges Trial Counsel was ineffective for failing to argue to the trial court that the State had to prove Applicant's physical presence at the scene of the crime when the crime took place in order for Applicant to be found guilty. This argument fails as a matter of law.

A conviction under the accomplice liability theory is appropriate if there is proof beyond a reasonable doubt that a defendant participated with others in the pursuit of a common design to

commit an unlawful act and takes the part agreed upon or assigned to him in an effort to insure the success of the common undertaking. State v. Gilbert, 107 S.C. 443, 93 S.E. 125 (1917); State v. Blackwell, 220 S.C. 342, 67 S.E.2d 684 (1951); State v. Chavis, 277 S.C. 521, 290 S.E.2d 412 (1982); State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (2007); State v. Gibson, 390 S.C. 347, 701 S.E.2d 766 (2012); State v. Reid, 408 S.C. 461, 758 S.E.2d 904 (2015). In such an instance, the defendant is presumed to be present and is guilty as if physically present. Chavis at 522, 290 S.E.2d at 412-13 (citing State v. Gilbert, 107 S.C. 443, 93 S.E. 125 (1917)).

South Carolina courts have held proof of presence alone is not by itself enough evidence for a conviction and that proof of mere presence and prior knowledge that a crime was going to be committed, without more, is not enough to prove guilt. See State v. Harry, 420 S.C. 290, 803 S.E.2d 272 (2017). Indeed, a defendant's presence at the scene by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal. See Gibson, 390 S.C. at 354, 701 S.E.2d at 770; State v. Hill, 268 S.C.390, 395-96, 234 S.E.2d 219, 221 (1977). However, this concept cannot be construed to mean that the State must prove presence as a precursor to guilt under the accomplice liability theory. In Blackwell, the Supreme Court upheld a guilty verdict when the defendant planned the commission of the crime with others and waited out of town during the commission of the crime by the physical perpetrators. Blackwell, 220 S.C. 342, 67 S.E.2d 684. Similarly, in Chavis, the defendant met with three other men to plan a robbery, supplied two of them with masks, guns, and gloves, and drove them to the scene. Chavis at 522, 290 S.E.2d at 412. He left them there to commit the crime and went to play cards three miles away from the robbery scene. Id. He was found guilty and the conviction was upheld under the accomplice liability theory. Chavis at 523, 290 S.E.2d at 413. The facts in Chavis are somewhat similar to the evidence presented the instant case.

In Applicant's case, Trial Counsel did not move for a directed verdict on the ground that Applicant was not physically present at the scene of the crime or that the accomplice liability theory had not been established. Instead, Trial Counsel generically argued the State had not proven its case. While this generic motion might appear deficient, the Court finds that if Trial Counsel had made a directed verdict motion on the ground suggested by Applicant, the motion would have been justifiably denied in light of the case law referenced above. Also, during the course of its ruling on the directed verdict motion, the trial court covered the accomplice liability issue and ruled there was evidence that Applicant, Goodwin, and the Bracey brothers "had planned and discussed what was going down and what they were going to do." (Tr., p. 572).

Trial Counsel testified that in hindsight, he should have argued lack of physical presence as part of the directed verdict motion. Again, however, this Court finds such an argument would have rightly been rejected by the trial court, so there can be no prejudice from the lack of this argument. Applicant has failed to prove deficiency on this point.

The evidence presented by the State required the trial jury to largely believe the testimony of the Bracey brothers that Applicant and Goodwin planned and were participants in the robbery scheme. While the Bracey brothers' credibility was certainly suspect, the jury obviously believed their testimony. Applicant has failed to meet his burden of proving Trial Counsel was deficient in failing to properly argue the directed verdict motion.

Failure to pursue alibi defenses

Applicant claims Trial Counsel should have pursued an alibi defense at trial. At the PCR hearing, Applicant offered the testimony of his mother, Pamela Kelley. As noted above, Ms. Kelley testified at the PCR hearing that on the evening of the crimes, Applicant was at home at her niece's birthday party and left the house a little before 7:00 p.m. and returned between 8:27



and 8:30 p.m. She testified co-defendant Vernon Goodwin was not with Applicant and that America's Funniest Home Videos was still on. She said there were still at least fifteen people at the house and that she told Applicant when he got home that he better not leave again with all those people there. She testified Applicant stayed home the rest of the night and was on the house phone with his girlfriend a little after 9:00 when Deborah Holland called her to talk to her husband about a ride to work the next day. Holland rang in on Applicant's call through call-waiting.²

The crimes occurred in Rembert. According to various trial witnesses, the crimes occurred anywhere from 8:00 p.m. to 9:15 p.m., or perhaps a little later. The record reflects that the distance between the scene of the crime in Rembert to Vernon Goodwin's house and then to Cameren Kelley's house was such that the drive would have been 30 minutes or more. Applicant argues Ms. Kelley's testimony would tend to establish that Applicant could not have been in the vicinity of where the Bracey brothers perpetrated the crimes. However, this argument ignores the critical fact that both Applicant and Goodwin admitted to law enforcement that they dropped off the Bracey brothers just prior to the crimes and that Applicant was driving and Goodwin was in the front seat. Both Applicant and Goodwin told law enforcement they dropped off the Bracey brothers near the scene of the crime to buy marijuana and then left to go to their respective homes. At trial, Applicant stipulated his statement to law enforcement was freely and voluntarily given, and the trial judge so ruled.

The alibi testimony of Applicant's mother would have added nothing to the statements given by Applicant and Goodwin to law enforcement and to their own lawyers. Trial Counsel

² This Court notes Applicant cannot use Deborah Holland's purported testimony as an alibi to prove she spoke with Applicant on the house phone at that time because Applicant did not present her testimony at the hearing. See Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). However, Ms. Kelley's testimony establishes Ms. Holland called the house and spoke to Applicant.



testified that in his judgment, the best defense to put forward was that Applicant did drop the Bracey brothers off near the scene of the crime so the Braceys could buy marijuana but that he had no idea the Bracey brothers were planning a robbery.

The fact remains that both Applicant and co-defendant Goodwin admitted to law enforcement that they had dropped off the Bracey brothers near the crime scene, shortly before the crimes were committed. This comports with Ms. Kelley's testimony that Applicant was home by the time the crimes were committed; therefore, even if Trial Counsel were deficient for not calling Applicant's mother to testify, there is not a reasonable probability that the outcome of the trial would have been different.

Applicant argued at the PCR hearing that the alibi witness would have established that Applicant and Goodwin separated from each other after dropping off the Bracey brothers and that this would have created reasonable doubt that there was a plan for Applicant and Goodwin to pick up the Bracey brothers after the robbery. The Court concludes that Trial Counsel was not deficient in not calling Applicant's mother to establish that point, and that even if Trial Counsel were deficient, there is not a reasonable probability that the outcome of the trial would have been different. Therefore, Applicant has failed to meet his burden of proving either prong of the Strickland test, and relief on this ground is denied.

VI. CONCLUSION

Based upon the foregoing, the Court concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application for post-conviction relief. Therefore, the Court denies the application for post-conviction relief and dismisses the application with prejudice.

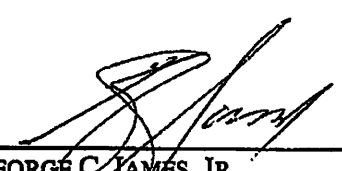


Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of January, 2018.



GEORGE C. JAMES, JR.
Presiding Judge

Sumter, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Murder
 Burglary
 Kidnapping
 Assault & Battery With Intent to Kill
 Assault With Intent to Kill
 Armed Robbery
 Attempted Armed Robbery
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA
 CERTIFIED TRUE COPY
 OF ORIGINAL FILE

At a Court of General Sessions, convened on May 19, 2011 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE - MURDER

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County, on or about December 14, 2009, willfully, feloniously, and intentionally kill the victim, Kemper B. Holiday, with malice aforethought, either express or implied, by means of shooting the victim with a gun in the right side of the chest area, and the victim did die as a proximate result thereof on or about December 14, 2009, in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO - BURGLARY, 1ST DEGREE

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin, Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009 enter the dwelling of Lennie Belton located at [REDACTED] Odell Lane without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant entered or remained in said dwelling in the nighttime and was armed with a deadly weapon, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

COUNT THREE - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Hugh Phillips, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT FOUR - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Ellen Phillips, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

DOCKET NO. 2011-GS-43-0881

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

May TERM 2011

THE STATE

vs.

CALDERONE MONDRELL BRACEY
CARLTON LEE BRACEY
VERNON SENTELL GOODWIN
CAMEREN LARODERICK KELLEY

Indictment for

Murder
Burglary
Kidnapping
Assault & Battery With Intent to Kill
Assault With Intent to Kill
Armed Robbery
Attempted Armed Robbery

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR
CALDERON MONDRELL BRACEY, CARLTON LEE BRACEY, VERNON SENTELL
GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID
NAMES SHOWN THEREON:

COUNT FIVE - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Lance Orlando McCray, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT SIX - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Darren L. Graham, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT SEVEN - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Kemper B. Holiday, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT EIGHT - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Lennie Belton, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT NINE - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Maurice Ransom, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT TEN - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Tywan Ransom, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

**ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR
CALDERON MONDRELL BRACEY, CARLTON LEE BRACEY, VERNON SENTELL
GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID
NAMES SHOWN THEREON:**

COUNT ELEVEN – ASSAULT & BATTERY WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, commit an unlawful act of violent injury to the person of another, to wit: Hugh Phillips, with malice aforethought, either express or implied, by shooting Hugh Phillips in the back, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

COUNT TWELVE – ASSAULT & BATTERY WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, commit an unlawful act of violent injury to the person of another, to wit: Lance Orlando McCray, with malice aforethought, either express or implied, by shooting Lance Orlando McCray in the left leg, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

COUNT THIRTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Tywan Ransom, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at him with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

COUNT FOURTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Maurice Ransom, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at him with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

COUNT FIFTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Lennie Belton, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at him with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

**ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR
CALDERON MONDRELL BRACEY, CARLTON LEE BRACEY, VERNON SENTELL
GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID
NAMES SHOWN THEREON:**

COUNT SIXTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Darren Graham, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at him with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

COUNT SEVENTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Ellen Phillips, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at her with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

COUNT EIGHTEEN – ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: handgun, did feloniously take from victim, Tywan Ransom in the presence of Tywan Ransom, by means of force or intimidation goods or monies of the said victim, such goods or monies being described: approximately \$175.

COUNT NINETEEN – ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: handgun, did feloniously take from victim, Darren Graham in the presence of Darren Graham, by means of force or intimidation goods or monies of the said victim, such goods or monies being described: approximately \$800.

COUNT TWENTY – ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Maurice Ransom, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR
CALDERON MONDRELL BRACEY, CARLTON LEE BRACEY, VERNON SENTELL
GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID
NAMES SHOWN THEREON:

COUNT TWENTY ONE- ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Lennie Belton, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT TWENTY TWO - ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Kemper Holiday, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT TWENTY THREE - ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Lance McCray, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT TWENTY FOUR- ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Hugh Phillips, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

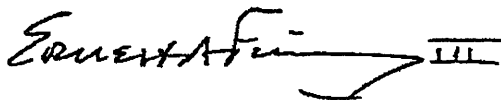
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GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID
NAMES SHOWN THEREON:

COUNT TWENTY FIVE - ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Ellen Phillips, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), 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.

Solicitor

A handwritten signature in black ink, appearing to read "Ernest A. Finley III". The signature is written in a cursive style with a long horizontal stroke at the end.