

Volume II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

Clifton Newman, Circuit Court Judge

RECEIVED

AUG 14 2013

THE STATE,

SC Court of Appeals
RESPONDENT,

V.

KELVIN MICHAEL BOWEN,

APPELLANT

Appellate Case No. 2011-185566.

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

Attorney for Appellant

BRENDAN J. MCDONALD
Assistant Attorney General
S.C. Bar No. 77784

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3188

Attorney(s) for RespondentS

INDEX

INDEX.....i

PRELIMINARY HEARING TRANSCRIPT DATED JUNE 10, 20091

TESTIMONY

 PAMELA LAIL

 Direct Examination by Ms. Barr4

 Cross Examination by Mr. Palmer31

 Cross Examination by Mr. Jenkinson32

 Redirect Examination by Ms. Barr.....45

TRANSCRIPT OF IDENTIFICATION HEARING DATED JANUARY 31, 2011.....46

MOTION TO SUPPRESS THE PHOTOGRAPHIC LINE UP47

TESTIMONY

 PAMELA LAIL

 Direct Examination by Ms. Shuler.....54

 Cross Examination by Ms. Barr58

 Redirect Examination by Ms. Shuler60

TRIAL TRANSCRIPT DATED JANUARY 31, 2011-FEBRUARY 4, 201163

CALL OF CASE BY MS. BARR.....76

JURY SWORN.....79

PRELIMINARY INSTRUCTIONS BY THE JUDGE.....79

OPENING STATEMENT BY MS. BARR.....82

OPENING STATEMENT BY MR. JENKINSON.....86

TESTIMONY

 ANNETTE BRADSHAW

 Direct Examination by Ms. Barr94

 SCOTT HARDEE

 Direct Examination by Ms. Barr123

 Cross Examination by Mr. Jenkinson148

 Redirect Examination by Ms. Barr.....156

QUADIR WILSON	
Direct Examination by Ms. Barr	157
DONTREY BARR	
Direct Examination by Ms. Barr	168
Cross Examination by Mr. Jenkinson	184
Redirect Examination by Ms. Barr.....	185
Recross Examination by Mr. Jenkinson.....	185
TAWANDA MACK ALLEN (In camera)	
Direct Examination by Ms. Barr	191
RONALD MACK	
Direct Examination by Ms. Barr	194
Cross Examination by Mr. Jenkinson	218
Redirect Examination by Ms. Barr.....	226
Recross Examination by Mr. Jenkinson.....	232
TAWANDA MACK ALLEN	
Direct Examination by Ms. Barr	233
Cross Examination by Mr. Jenkinson	234
DEBRORAH COLLINS	
Direct Examination by Ms. Barr	235
Cross Examination by Mr. Jenkinson	247
Redirect Examination by Ms. Barr.....	259
ANTONIO MCCLARY (In camera)	
Direct Examination by Ms. Shuler.....	264
Cross Examination by Ms. Barr	266
TESTIMONY CONTINUED	
ANTONIO MCCLARY	
Direct Examination by Ms. Barr	266
Cross Examination by Mr. Jenkinson	306
Redirect Examination by Ms. Barr.....	345
Recross Examination by Mr. Jenkinson.....	351
STEPHEN LUERSEN	
Direct Examination by Ms. Barr	352
Cross Examination by Mr. Jenkinson	370
Redirect Examination by Ms. Barr.....	389

KELLY HARDING	
Direct Examination by Ms. Barr	395
Cross Examination by Mr. Jenkinson	432
SUZANNE CROMER	
Direct Examination by Ms. Barr	443
Cross Examination by Mr. Jenkinson	459
Redirect Examination by Ms. Barr.....	465
Recross Examination by Mr. Jenkinson.....	466
JEFFREY SCOTT	
Direct Examination by Ms. Barr	466
JOSEPH COOPER	
Direct Examination by Ms. Barr	472
Proffer Examination by Mr. Jenkinson.....	479
Direct Examination continued by Ms. Barr	482
Cross Examination by Ms. Shuler.....	485
MOTION TO EXCLUDE PHOTOGRAPHS	486
DR. ELLEN RIEMER	
Direct Examination by Ms. Barr	490
Cross Examination by Mr. Jenkinson	521
JUSTIN WHACK	
Direct Examination by Ms. Barr	526
Cross Examination by Mr. Jenkinson	544
Redirect Examination by Ms. Barr.....	566
Recross Examination by Mr. Jenkinson.....	568
MOTION FOR DIRECTED VERDICT.....	569
COLLOQUY WITH DEFENDANT ON RIGHT TO TESTIFY	571
SCOTT PALMER	
Direct Examination by Mr. Jenkinson	575
Cross Examination by Ms. Barr	589
Redirect Examination by Mr. Jenkinson.....	597
KELVIN MICHAEL BOWEN, III	
Direct Examination by Ms. Shuler.....	600
Cross Examination by Ms. Barr	608

TIFFANY BOWEN	
Direct Examination by Ms. Shuler.....	610
Cross Examination by Ms. Barr	626
Redirect Examination by Ms. Shuler	640
RENEWAL OF MOTION FOR DIRECTED VERDICT	641
CHARGE CONFERENCE.....	645
CLOSING ARGUMENT BY MS. BARR.....	654
CLOSING ARGUMENT BY MR. JENKINSON	657
CLOSING ARGUMENT BY MS. BARR.....	682
CHARGE ON THE LAW.....	707
JURY NOTE	725
VERDICT	728
MOTION FOR NEW TRIAL	730
SENTENCING.....	738
STATE’S EXHIBIT #56 (PHOTOGRAPH).....	742
STATE’S EXHIBIT #57 (PHOTOGRAPH).....	742
STATE’S EXHIBIT #58 (PHOTOGRAPH).....	744
STATE’S EXHIBIT #59 (PHOTOGRAPH).....	744
STATE’S EXHIBIT #61 (DOCUMENTATION REGARDING APPELLANT).....	746
STATE’S EXHIBIT #62 (DOCUMENTATION REGARDING APPELLANT).....	746
STATE’S EXHIBIT #64 (APPELLANT’S DRIVER’S LICENSE REINSTATEMENT)	747
INDICTMENT	748
SENTENCING SHEETS	751
CERTIFICATE OF COUNSEL.....	755

**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBITS #65 (CASSETTE TAPE OF RONALD MACK)**

HEARING

488

1 injury from that weapon.

2 Q: Are there other pictures that were taken that show all
3 of the injuries as it relates to the shotgun?

4 A: Yes.

5 Q: Judge, we would move State's exhibit number ninety-
6 three into evidence.

7 Mr. Jenkinson: Your Honor, we will object.

8 The Court: For identification purposes only.

9 Ms. Barr: Judge my motion was denied?

10 The Court: Yes.

11 Q: Okay, alright, I'm going to show you State's exhibit
12 number ninety-four and ask you to tell me what's
13 depicted in that particular photograph. Well, let me
14 do this, let me give you ninety-four, ninety-five,
15 ninety-six, ninety seven and ask you if you recognize
16 those particular exhibits.

17 A: Yes.

18 Q: Alright, tell me what they show.

19 A: Two of the photographs, I'll tell you what numbers.

20 Q: Now, they're marked twice, so make sure when you talk
21 about the particular exhibit number you use the white
22 tag, rather than the red tag.

23 A: Okay.

24 Q: Alright.

25 A: State's exhibit, it looks like ninety-four and ninety-

1 five.

2* Q: Yes ma'am.

3 A: Show entrance gunshot wounds on the top of the
4 decedent's head, of his head.

5 Q: Okay.

6 A: And one this is after his hat, his hat is peeled away
7 so you can half way see that. And this is actually of
8 his hair and then exhibit number ninety-six shows a
9 closer up of one of the entrance gunshot wounds to the
10 right, to the central part of the head over the
11 hairline and this exhibit it's hard to see exactly what
12 this shows, but it does show a small, it does show an
13 entrance gunshot wound to the right area.

14 Q: Alright, do those photographs help you in describing
15 the pathway of the bullets into the head of Kenyan
16 Dorsey?

17 A: They help to describe the entrance locations.

18 Q: Okay, alright. Judge we would move State's exhibits
19* ninety-four through ninety-six, am I right? Ninety-
20 four through ninety-seven.

21 Mr. Jenkinson: Objection those are the same as we objected
22 earlier.

23 The Court: Sustain the objection.

24 Q: Judge, can she see them so she can testify ...

25 The Court: Yes.

HEARING

490

- 1 Q: Let me start with ninety-three; kind of describe for
2 the jurors what ninety-three shows and what I may need
3 you to do is kind of stand up and kind of show the
4 injury as it relates to the shotgun. Just kind of
5 using ...
- 6 A: You mean on my body? Okay.
- 7 Q: Make sure the pictures are turned in toward you.
- 8 A: Okay, if somebody has a problem hearing me, just ask me
9 to speak louder.
- 10 Q: Don't let them see it.
- 11 A: Yes ma'am. This first picture that was just handed to
12 me, shows it's, it's the side of his body as he's lying
13 down on the autopsy table, right side and I can see
14 that there are, there are shotgun pellet wounds
15 extending from here down to the right hip and then I
16 can't see above that because there's still a tee shirt
17 on. And I also see some blood coming out of his right
18 ear.
- 19 Q: Okay. Let me get that particular exhibit. Tell us
20 about number ninety-four.
- 21 A: Okay, number ninety-four is a photograph of the top of,
22 the top of the decedent's head looking from the right,
23 okay, so it's kind of a shot looking from here and I
24 can see that there's an entrance wound about over here
25 and another ...

1* Q: Now when you say 'here', tell me for the record, what
2 you're referring to.

3 A: Alright, like toward the front top of the scalp.

4 Q: Okay.

5 A: Okay, like over beyond the hairline, like one inch or
6 so into the hairline. Okay, and then there's another
7 entrance, gunshot wound around here.

8 Q: Now tell, for the record.

9 A: Which is on the right side of the head, not far above
10 the ear.

11 Q: Okay, alright, tell us about number ninety-five. Let
12 me get that and give it to the court reporter. Thank
13 you.

14 A: So, this photograph, I guess it's ninety-five, shows
15 just the same entrance, gunshot wounds. I just
16 described one at the top, front of the head; on the
17 hairline and the other one to the right, above the ear.
18* Also on the hair, but it's a closer up picture.

19 Q: Okay, alright and was that ninety-five or ninety-six?

20 A: Ninety-five.

21 Q: Alright. Tell us about number ninety-six.

22 A: Okay, ninety-six is a close up of the entrance, gunshot
23 wound in the top of the head that's about one inch
24 beyond the hair line. Beyond the front of the
25 hairline.

HEARING

492

1 Q: That's simply a closer up view of what you just
2 described in an earlier photo?

3 A: Yes.

4 Q: They are not two separate injuries to the top of the
5 head?

6 A: No.

7 Q: Just one to the top of the head and one to the side?

8 A: That's correct.

9 Q: Tell us about number ninety-seven.

10 A: And ninety-seven is a closer up view of the entrance,
11 gunshot wound that's on the right side of the head,
12 above the right ear.

13 Q: Alright. You can take a seat, although I may need you
14 to stand back up again.

15 A: Okay.

16 Q: Let me hand you what's been marked for identification
17 purposes that the State submitted, number ninety-eight,
18 ninety-nine, one hundred and one oh one and tell me if
19 you recognize what's depicted in those photographs.

20 A: Yes.

21 Q: Okay. I guess let's start at ninety-eight.

22 A: Okay, ninety-eight shows an exit wound from one of
23 those gunshot wounds.

24 Q: Okay.

25 A: And at this point, because I have not yet done an

1 internal exam, when I took this photograph, I could not
2 tell whether it was the entrance wound to the top of
3 the head or to the right side of the head that exited
4 the left jaw. But this photograph, number ninety-eight,
5 shows the exit, an exit wound from one of those
6 entrance, gunshot wounds.

7 Q: Okay.

8 A: And it's on kind of the left lower jaw area.

9 Q: Alright and number ninety-nine?

10 A: And ninety-nine is a photograph of the pellet shotgun
11 wounds that are streaming across the front of the
12 decedent's body from the left side to the right hip and
13 this is after he had been disrobed, so I can see the
14 injuries on the abdomen.

15 Q: Okay, and number, I think we're on one hundred.

16 A: One hundred shows the shotgun pellet wounds on the,
17* again on the right side of the abdomen, extending from
18 about the mid chest to the right hip and this
19 photograph just shows it from like, you know, the
20 camera at a different angle. It's not from this right
21 side, but it's taken from the top, like above the
22 decedent as he's lying on the table. And I can also
23 see some injuries that appear connected with those
24 injuries and those are on the left side of the upper
25* chest.

HEARING

494

1 Q: Alright, now what about 101?

2 A: 101 shows some shotgun pellet injuries to the right
3 forearm, which were a result of the pellets continuing
4 beyond the right hip, while the decedent's arm was next
5 to his right hip. So they kind of scraped the surface
6 of the right arm as well, in addition to going across
7 the abdomen.

8 Q: Alright.

9 Ms. Barr: Judge we would move State's ninety-eight through
10 101.

11 The Court: Mr. Jenkinson?

12 Mr. Jenkinson: Judge, likewise ...

13 The Court: Sustain the objection.

14 Q: Now Dr. Riemer, this time I'm going to hand you what's
15 been admitted, not admitted, what's been marked for
16 identification purposes as State's exhibit number one
17 oh two, one oh three, one oh four, one oh five, one oh
18 six, one oh seven and one oh eight. You can hold those
19 for just a moment. Let me ask you, first of all, the
20 previous exhibits were photographs of the victim before
21 he was cleaned up so to speak, is that right?

22 A: Some of them were.

23 Q: Okay.

24 A: And some of them, that's correct.

25 Q: Okay, this shows blood and so forth to the victim?

1 A: Yes, except this one doesn't really show that much
2 blood.

3 Q: And I just want to make sure these previous exhibits,
4 ninety-eight through one oh one, do they also show the
5 body of the victim before he was cleaned up? It's the
6 term I used.

7 A: Yes.

8 Q: Okay. Now, once you all get a body in at MUSC in the
9 state that it's presented, what do you all do to the
10 body? And when I say clean it up, kind of tell the
11 jurors what you do to help clean the body up and what's
12 the reason for that.

13 A: Well, when there's a lot of blood on the skin and
14 surrounding injuries, sometimes, frequently it's not
15 easy to tell what kind of an injury it is. And so I
16 take a rag and I have my assistant and you just put
17 some cold water on it and wipe off the blood that may
18 have accumulated on the skin wherever it is and then
19 those injuries are not covered up by a bunch of
20 bleeding and so I can see the injuries very clearly and
21 then I'm able to describe them better.

22 Q: Alright now, as it relates to the victim's hair, the
23 victim sort of had long hair that appeared to be in
24 corn rows of some type?

25 A: Yes.

HEARING

496

1 Q: Now, how do you extract the bullets and tell the extent
2 of the injury in the entrance into the head when he's
3 got all the hair there?

4 A: Just like, like a lot of blood on the skin may obscure
5 an injury that's within that blood, that bloody area,
6 when there's a lot of hair, it may be very difficult to
7 see the characteristics of a gunshot wound and to see
8 if there is any close range fire or contact wound fire
9 and for that reason, we, and also I want to get
10 accurate measurements of these wounds. I will take a
11 disposable razor and actually shave the margins of the
12 gunshot wounds to make sure I can tell with certainty
13 which is an entrance and which is an exit. And so that
14 helps clarify and to make sure that I'm not missing
15 anything. I don't shave the entire head out of respect
16 for the decedent and the family. Just so much as is
17 necessary so I can evaluate the injuries accurately.

18 Q: Alright, now as it relates to the third group of
19 photographs that I gave you; it starts with exhibit
20 number one oh two, is that correct? The last group?

21 A: This?

22 Q: Yes.

23 A: It's like one oh two.

24 Q: One oh two.

25 A: One oh two to one oh eight.

1 Q: Okay, alright now are those photographs of the victim's
2 injuries once the body's in the clean state?

3 A: Yes, after I've already wiped all of the blood that's
4 accumulated on the body and wiped it off so I can see
5 skin, injuries to the skin clearly.

6 Q: Alright now, in those particular photographs, first of
7 all, you talk about there being an external examination
8 of the victim's body and you said you did an internal
9 examination of the victim's body. Is that right?

10 A: Yes.

11 Q: Alright, kind of tell the jurors how you go about doing
12 an internal examination of a victim's body.

13 A: Well, after a thorough, external examination in which
14 I evaluate all of the injuries that are present
15 externally, I do an internal examination, which entails
16 from the neck down, it entails making a central
17 incision through the skin and muscle of the chest and
18 abdomen and then I, after removing the chest plate, I
19 can take out all of the organs in the chest and abdomen
20 and see if they suffered any injuries that were related
21 to the injuries that I observed externally or perhaps
22 maybe some other injuries or other abnormalities in any
23 internal organs. For instance, in order for me to
24 determine the cause of death, I need to rule out all
25 other causes as well. And when I evaluate internal exam

HEARING

498

1 of the head, when there are apparent gunshot wounds and
2 shotgun wound around the left eye and a gunshot wounds
3 to the head, it makes it a possibility that the gunshot
4 caused some injury that may be significant or otherwise
5 to the brain and in order to do that, without
6 mutilating the body before the funeral, but I need to
7 be through, there's an incision in the back of the
8 scalp and then the scalp is carefully peeled toward the
9 face and then the skull, the top of the skull is
10 removed and that allows me access to the brain and
11 other cranial contents within the skull. And I remove
12 the brain and evaluate its weight, as well as, any
13 injuries that are present and when there are defects in
14 the brain I can see the exact pathway of different
15 bullets. For instance, that may have gone through the
16 brain.

17 Q: And ma'am, as it relates to other vital organs in
18 Kenyan Dorsey's body, like the lungs and the heart, you
19 would have done that same type of internal examination?

20 A: Yes, I evaluate every internal organ.

21 Q: Alright and you all, sometimes you all photograph
22 internal organs of the body? You actually photograph
23 that sometimes?

24 A: Not frequently. Infrequently, only if it's extremely
25 important. I don't frequently photograph internal

1 organs for the reason that, you know, most individuals,
2 other than the physicians don't really know what the
3 difference between a normal and abnormal organ would
4 look like.

5 Q: Okay.

6 A: They don't really know what, you know, and I can
7 document these things without taking photographs. So
8 sometimes I do and sometimes I don't.

9 Q: And you certainly, you don't have any photographs that
10 you're intending to talk about as it relates to the
11 internal examination of Kenyan Dorsey?

12 A: No, I don't believe that I took any of those.

13 Q: Okay, alright now as it relates to exhibits number one
14 oh two through one oh eight, tell me what's significant
15 about those particular photographs.

16 A: Okay, well all of these photographs show the injuries
17 that he sustained with increased clarity and that's
18 because I already wiped the blood off; the blood that
19 had accumulated on his skin that's no longer there, so
20 I can see the outlines of the injuries and I can also
21 see the head, the areas that I shaved around the
22 entrance wounds, so those are depicted clearly and
23 that's it.

24 Q: Okay, would those photographs of the cleaned up state
25 of Kenyan's body help you to explain to the jury your

HEARING

500

1* testimony, your findings and your conclusions?

2 A: They show, yes, they show the external injuries.

3 Q: Those photographs will be helpful in allowing the jury
4 to see why you came to the conclusions that you did?

5 A: Yes.

6 Q: Alright, Judge as it relates to exhibits number one oh
7 two and one oh eight, may counsel and I approach the
8 bench?

9 (COUNSEL APPROACHES BENCH)

10 Ms. Barr: Your Honor, at this time we would move State's
11 exhibits, one oh two, one oh three, one oh four, one oh
12 five, one oh six, one of seven and one oh eight into
13 evidence.

14 Mr. Jenkinson: Objection.

15 The Court: The objection is sustained to all the
16 photographs, except for one oh three.

17 Q: Dr. Riemer, let me get you to step down from the
18 witness chair please. Let me figure out how this works.
19 Thank you. Come over here by me please. You can leave
20 your purse there, we'll take good care of it. Alright
21 you stand over there so that the jury can see clearly
22 103, this is a top view of the head of Kenyan Dorsey?

23 A: Yes, it's a view from the top like toward the right of
24 the head. So you can see this is his right eye, this is
25 the top of his nose, so we're taking the photograph

1 from the top and this is his right ear over here and
2 then that's a left shoulder and a right shoulder and
3 it's illustrates the location of the entrance wounds.

4 Q: Now, you talked about earlier how there was what
5 appeared to be injuries from shotgun pellets so forth
6 on his, near his eye. Can you see that injury from
7 that photograph?

8* A: I said there was shotgun pellet entrances.

9 Q: I understand, I'm sorry. Can you see those injuries to
10 the eye and face in that particular photo?

11 A: No, because the left eye is not displayed in the
12 photograph.

13 Q: Alright, alright now tell us the significance of that
14 particular, well first of all, is that an injury?

15 A: Yes, that's a gunshot wound; that's an entrance gunshot
16* wound on the top of his head.

17 Q: Alright and tell us about this particular exhibit, I
18 mean this injury.

19 A: This injury, above the right ear, is another entrance
20 gunshot wound and that's to the right side.

21 Q: Alright now you told me earlier that when you simply
22 looked at the body and you did the internal
23 examination, you were not able to determine just from
24 the external examination which gunshot wound actually,
25* which injury actually caused the exit here near the

HEARING

502

1 chin or the neck. Were you able to determine after you
2 did the internal examination?

3 A: Yes.

4 Q: Alright, tell us about that please.

5 A: Well, after I did the internal examination, or while I
6 was doing the internal examination, and evaluating the
7 brain and the skull it was, I was able to determine the
8 pathways of these perspective bullets through the
9 brain. I was able to complete that this bullet, this
10 is the one above the right ear, traversed, went across
11 the brain and his head and exited in the lower, the
12* left side of the jaw.

13 Q: Where did it continue from that point? Did it continue
14 to go back into the victim's body?

15 A: Yes, so this was after the bullet actually exited the
16 left jaw, it did not continue to the air or to the
17 floor, it actually went into, and I'll have to
18 demonstrate on my own body. After it exited the left
19 jaw, it went into the front of the left shoulder from
20 back here and then went into the left side of the chest
21 where it injured the left lung and the heart.

22 Q: Alright, you can have a seat. Now were you able to view
23 a couple of the crime scene photographs of the victim
24 sitting in the chair?

25 A: I did.

1 Q: Okay, now you talked about the pathway or the
2 projectory of the bullets to the top of the head, was
3 the pathway and projectory of those bullets consistent
4 with someone, the shooter, standing over the victim at
5 the time he was shot?

6 A: Yes.

7 Q: Alright I'm going to hand you, at this time, what's
8 been admitted as State's exhibit numbers eighty-six,
9 eighty-seven, eighty-eight and eighty-nine, ninety,
10 ninety-one and ask if you recognize what's depicted in
11 those photographs and I may have to get you to stand
12 back up again for me.

13 A: These are photographs of the, looks like the skull ---
14 path. However, it's very hard to see, however I can
15 actually visualize the defects in this path.

16 Q: Now when you say the defects, you're talking about the
17 holes?

18 A: The holes, the holes that correspond to the injuries to
19 the head.

20 Q: Alright, come on down here.

21 A: And there's another couple of more.

22 Q: Alright we'll talk about that as we go along.

23 A: Alright.

24 Q: Bring those with you please Doctor Riemer. Can I get
25 you to stand back here? Alright we're going to publish

HEARING

504

1 State's exhibit eighty-six. Is that the ball cap
2 you're talking about?

3 A: Yes.

4 Q: Alright take your pointer for me. You said it's kind
5 of difficult to see because the cap was black, did you
6 see the defects, or what you call the defects, what I
7 call the holes, in that particular photograph that
8 corresponds with the injury to his head?

9 A: Yes, it looks like this is one of the holes in the cap
10 that corresponds to one of the injuries in the head.

11 Q: Do you see the other one in that photograph?

12 A: Yeah, I think it's hard for me to tell. I'm not even
13 sure if I can see it. I can't see it clearly; it looks
14 like it may be over here, so there's actually the two
15 entrance gunshot wounds on the head and so this would
16 be the one to the top and this would be the one to
17 above right here.

18 Q: I'm going to show you eighty-seven, I'll publish it,
19 what appears to be a hole in the cap as it relates to
20 that particular exhibit.

21 A: Yes, I do.

22 Q: Well, let me do this ...

23 A: Yeah, it looks like it's up there. It looks like it's
24 up-side-down. So this is the one of the holes in the
25 hat.

1 Q: Alright tell us about ...

2 A: This is the bullet that I recovered from the left chest
3 cavity of Mr. Dorsey and this is the bullet that after
4 it went through the right side of his head, above the
5 right ear, and went through the brain and then exited
6 the left jaw and then went back into the chest, right
7 beyond the left shoulder, it injured the heart and lung
8 and then terminated, it was ended its path in the
9 chest, left chest cavity around the lung.

10 Q: Why is the number one there? What is that suppose to
11 tell us?

12 A: Oh, it's the first bullet that I recovered from the
13 body.

14 Q: Alright and this is of that same bullet?

15 A: Yes, this is from the under side, so based of the
16 bullet --- This is the second bullet that I recovered
17 from the body and it actually, I recovered it in the
18 sinuses, which are all those inner spaces that help us
19 to breathe and when they're all clogged up with mucous
20 we feel terrible and get sinusitis and colds, but that
21 was on the left side of the face and inside the face,
22 behind the cheek and that was the bullet that went to
23 the top of the head.

24 Q: Alright now what is the significance of the number,
25 characters FA09185?

HEARING

506

- 1 A: That's the unique identifying number of Kenyan Dorsey,
2 so even though he is a human being, an individual with
3 human qualities when he comes into the morgue, he gets
4 assigned a unique identifying number so that any
5 documents that I have, whether it be photographs or my
6 report, all have that number on there. So, let's say a
7 photograph ended in the wrong place, I can always, this
8 is from this particular autopsy.
- 9 Q: What does 09 represent?
- 10 A: It is the, FA means Forensic Autopsy and 09 is 2009, so
11 this was the 185th person deceased to have been
12 autopsies --- in USC in the year 2009.
- 13 Q: And with what we have admitted as State's exhibit
14 number ninety-one.
- 15 A: Yes, this is the different view of the bullet recovered
16 from the left side.
- 17 Q: Thank you ma'am; you may be seated. Now, in your
18 report ... In your report you talk about an injury to
19 the victim's left eye. Can you tell us a little bit
20 about that particular injury?
- 21 A: Yes. There's an injury starting at the left eye, near
22 the left orbital region. The tissues around the eyes
23 that show injuries from shotgun, the shotgun pellets to
24 the left eye and go down the --- direction.
- 25 Q: Okay, what is the extent of that injury to the eye?

1 Mr. Jenkinson: Object to this line of questioning.

2 The Court: Go ahead.

3 Mr. Jenkinson: Relevance.

4 Ms. Barr: Your Honor, it is tied to a specific weapon ...

5 The Court: Objection is overruled.

6 Q: The extent of the injury to the eye?

7* A: I saw shotgun pellets actually going through the left
8 eye and go down the --- direction....

9 Q: Now, when you all do the internal examination and the
10 external examination, you all are trying to determine
11 the cause of death, is that correct?

12 A: Yes.

13 Q: And you determined in your expertise in your
14 examination of Kenyan Dorsey what the cause of his
15 death was?

16 A: Yes.

17 Q: Alright, tell the jury what was the cause of the death
18 of Kenyan Dorsey?

19 A: Kenyan Dorsey died of multiple gunshot wounds.

20 Q: Alright and you all have different classifications of
21 death in South Carolina, is that correct?

22 A: Yes.

23 Q: Alright tell us about the classifications of death?

24 A: Well, any time an individual dies, you need to classify
25 it as either a natural death or a homicide, suicide or

HEARING

508

1 an accident. In cases that we can not tell, we call
2 them undetermined.

3 Q: And tell us about how you classified Kenyan Dorsey's
4 death?

5 A: I classified Kenyan Dorsey's death as a 'homicide
6 because these were fatal injuries conflicted by others.

7 Q: Okay, alright, now ma'am, all of the opinions that you
8 have rendered in this courtroom today, they are to a
9 reasonable of medical certainty?

10 A: Yes.

11 Q: Thank you ma'am. Please answer the questions of Mr.
12 Jenkinson.

13 CROSS EXAMINATION OF DR. RIEMER BY MR. JENKINSON:

14 Q: Just a couple of questions. Nothing in your
15 examination, nothing in your two hours of testimony has
16 ever said that the defendant in this case, Kelvin B.
17 had anything to do with murder of Kenyan Dorsey.
18 Is that a fair statement?

19 A: That's correct.

20 Q: Are you aware that the three people who did participate
21 in this trial, in this event, pled guilty or one of
22 them, or two of them pled guilty and one has been tried
23 and found guilty?

24 A: I'm not aware of the circumstances, no.

25 Q: No further questions.

1. The Court: Anything further?

2. Ms. Barr: No sir Judge.

3. The Court: Alright thank you. You may step down.

4. Dr. Riemer: Thank you very much.

5. The Court: The witness is excused

6. Ms. Barr: Thank you ma'am.

7. The Court: Next witness.

8. Ms. Barr: We call Justin Whack.

9. Mr. Jenkinson: Judge, can we just take a short break?

10. The Court: Yes sir.

11. Mr. Jenkinson: It's been a couple of hours.

12. The Court: Yes sir. Ladies and gentlemen, I'm going to
13. have you go to the jury room for a few minutes and then
14. press on a little bit.

15. (JURY EXITS THE COURTROOM)

16. Mr. Jenkinson: One of our experts is in Santee and I told
17. him to hold off because it looked like it was going to
18. be two o'clock. Some indication from the Solicitor,
19. yesterday it was two witnesses, now she says, I'm just
20. trying to figure out when to get my witnesses.

21. Ms. Barr: Judge I think ...

22. The Court: You can't give them appointments to come to
23. court ...

24. Mr. Jenkinson: I know that, I know that John, but he's an
25. hour, an hour plus away.

HEARING

510

1 The Court: It's Thursday afternoon. They got to come on
2* at this point, wherever they are, if they're going to
3 be witnesses. You might have to wait five, ten, fifteen
4 or an hour or two hours or whatever, but when we're
5 ready for them, we're ready for them.

6 Ms. Barr: Your Honor, just very quickly Judge. As it
7 relates to what's been marked for i.d. is State's
8 exhibit one hundred and one oh eight. Judge, we would
9 ask the court, in light of the fact that the firearms
10 expert from SLED testified that the firearm that was
11 recovered from the defendant's bedroom was the firearm
12 that fired the shots that, the shotgun shells that were
13 recovered from the crime scene, we would submit that
14 those particular photographs would show the shotgun
15 pellet wounds to the body of the deceased are more
16 appropriate and more relevant to establish that, that
17 gun created that injury. So Judge, we would just ask
18 the Court to reconsider its ruling denying the
19* admission of those particular exhibits.

20 The Court: Mr. Jenkinson?

21 Mr. Jenkinson: Your Honor, I'm sure the Solicitor isn't
22 intentionally mis-speaking. They said they removed
23 them from his bedroom. There has been no showing ever
24 that this was his bedroom. It shows some men's items,
25 just two or three. A baseball cap, which would be male

1 or female, some Budweiser underwear, could be male or
2 female, some deodorant, which was female upon closer
3 examination and three pieces of paper that did live in
4 that bedroom. But the physical presence of the
5 defendant in that bedroom has not been established that
6* he lived there, other than three pieces of paper. You
7 know, I've asked, you know, where was his toothbrush?
8 You know? A few other things like that would indicate
9 living, you say that he lived there, the Solicitor's
10 idea, there has been no proof that he lived there and
11 for that reason, that is not present and it is no
12 question that the shotgun was found there, but there's
13 no proof that he owned that shotgun, there's not even
14 any proof that he spent the night in that bed.

15 The Court: Alright. Well, sometimes in the attempt to
16 engage in overkill you lose credibility as to
17 everything you're seeking to get and I think that the
18 State, in this case, in seeking to admit twenty-five,
19 thirty, however number of pictures involved is clearly
20 excessive and perhaps led to the Court over looking
21 specific ones that might perhaps should be admissible,
22 but that's the way it goes. The, speaking earlier
23* about the Torres case, trying to get the specific
24 language from the court and this is December 2010 and
25 the Torres decision says we strongly encourage our

HEARING

512

1 Solicitor's to refrain from pushing the envelope on
2 admissibility in order to gain a victory, which in all
3 likelihood is already assured, because of other
4 substantial evidence in the case. Of course, not
5 referencing anything to assume that any victory is
6 assured, but the courts, court further went on to talk
7 about the growing concerns this court regarding the
8 efforts of the State to excessively admit photographs
9 that are not essential to proving material elements in
10 the case. I do find however, that number one hundred,
11 which along with the other one already admitted, should
12 be admitted. Reconsidered on that particular
13 photograph.

14 Ms. Barr: Thank you.

15 The Court: One hundred. The ruling stays. What says as
16 to number 108.

17 Ms. Barr: Thank you Your Honor.

18 Court Reporter: These two are in?

19 Ms. Barr: No, this one is not in. This one is not, this one
20 is.

21 Ms. Shuler: What two photograph numbers were those?

22 Ms. Barr: One hundred and 108.

23 Court Reporter: The one that's in is one hundred. The
24 one that's in is one hundred and 108 is for i.d. This
25 one's in, this one's out.

1 Ms. Shuler: Thank you.

2 The Court: Bring the jury.

3 (Jury Enters Courtroom)

4 Bailiff: Do you solemnly swear or affirm to tell the truth,
5 the whole truth and nothing but the truth, so help
6 you God?

7 Mr. Whack: I do.

8 DIRECT EXAMINATION OF INVESTIGATOR WHACK BY MS. BARR:

9 Q: Please state your full name for the record.

10 A: Justin Whack.

11 Q: Okay and sir tell us where you're employed.

12 A: Williamsburg county sheriff's office.

13 Q: Are you a certified police officer?

14* A: That's correct.

15 Q: How long have you been with the Sheriff's department?

16 A: Since 2001.

17 Q: Now, you assisted, or was a part of the investigation
18 surrounding Kenyan Dorsey in 2009, is that correct?

19 A: That's correct.

20 Q: Now the address where the murder occurred, was it in
21 Williamsburg county?

22* A: Yes it is.

23 Q: Alright, what time did you all get the 911 call?

24 A: The call came in around two thirty a.m.

25 Q: And how long did it take for the deputy to arrive at

HEARING

514

- 1 the scene?
- 2 A: Approximately fourteen minutes.
- 3 Q: Alright, you actually went out to the residence where
- 4 the victim was killed?
- 5 A: That's correct.
- 6 Q: Did you go inside the residence and in various rooms?
- 7 A: Yes I did.
- 8 Q: Alright I'm going to hand you what's been admitted as
- 9 State's exhibit number one oh nine, one ten and one
- 10 eleven. Does this photograph, or these photographs of
- 11 the residence of Annette Bradshaw?
- 12 A: Yes they are.
- 13 Q: Alright, can I get you to step down off the witness
- 14 stand for me? I'm going to publish State's exhibit 111.
- 15 Tell, using the pointer, tell the jury what's that a
- 16 view from and what's depicted in that photograph?
- 17 A: This will be the master bedroom of the residence.
- 18 Q: Okay.
- 19 A: The front door.
- 20 Q: Just make sure you show them.
- 21 A: I'm sorry. The front door would be back over to this
- 22 side. This is the living room area.
- 23 Q: Okay.
- 24 A: Like I say, this is the master bedroom this is the wall
- 25 that separates the master bedroom and the kitchen area.

HEARING

515

- 1 Q: So as it relates to the dimensions, where were the
2 victim's body have been on that kitchen ...
- 3 A: It would have been over in the kitchen area back off to
4 the right.
- 5 Q: Tell us about State's number 110?
- 6 A: This is the hallway of the residence that leads to a
7 bathroom and three other rooms. Three more bedrooms.
- 8 Q: Okay. State's number one oh nine, is that a closer
9 view of the angle that you just described?
- 10 A: That's correct.
- 11 Q: So that, the opening there would be the opening for the
12 back bedroom?
- 13 A: That's correct, this is a bedroom.
- 14 Q: Alright lead us in on the opposite where what's called
15 the master bedroom was?
- 16 A: On the opposite side.
- 17 Q: Alright and you, you can stand right there. You were
18 able to see the victim's body?
- 19 A: Yes.
- 20 Q: Alright, I'm going to hand you what's been admitted as
21 State's exhibit number one hundred. You all recovered
22* certain ammunition projectiles from the scene?
- 23 A: That's correct.
- 24 Q: Shotgun shells, fired shotgun shells?
- 25 A: That's correct.

HEARING

516

1 Q: And that resulted form the shotgun wound?

2 A: Yes it is.

3 Q: I'm going to publish State's exhibit number 100. Does
4 it show the shotgun shell wounds?

5 A: Yes.

6 Q: Alright did you also see ...

7 A: That's correct.

8 Q: Alright you can take a seat sir. Of course at some
9 point during the investigation, you all developed a
10 suspect and you arrested Antonio McClary?

11 A: That's correct.

12 Q: How old was Antonio at the time it happened?

13 A: Nineteen.

14 Q: Alright nineteen years old. How old was Ronald Mack?

15 A: Ronald Mack was seventeen.

16 Q: Alright, how old was Tawanda Allen?

17 A: She was thirty-six.

18 Q: Alright and how old was Kelvin B. at the time?

19 A: Thirty-one.

20 Q: Alright and what is the address for the information
21 that you had as it related to his address as listed on
22 his identification?

23 A: Kelvin B.

24 Q: Yes.

25 Mr. Jenkinson: I object.

1 The Court: Ms. Barr?

2 Ms. Barr: I think one of the identifications was in
3 evidence.

4 Mr. Jenkinson: I object ...

5 Ms. Barr: Judge, I'll withdraw the question. Sir I'm going
6 to hand you what's been admitted as State's exhibit
7 number sixty-two. What is the city and state upon
8 which Mr. Bowen was issued an identification card?

9 A: Long Beach, California.

10 Q: Alright. Now during the course of your investigation,
11 you heard certain people talk about cell phones?

12 A: That's correct.

13 Q: Alright, did you all attempt by search warrant or
14 subpoena to get cell phone records as they are related
15 to some of the players involved?

16 A: Yes ma'am.

17 Q: Were you successful in terms of text messaging and so
18 forth?

19 A: The text messaging we weren't able to get.

20 Q: And what type of phone ...

21 Mr. Jenkinson: I object to that question, Your Honor, that's
22 hearsay and should be stricken.

23 The Court: The objection is sustained.

24 Mr. Jenkinson: Move to strike that Your Honor.

25 The Court: Yes sir.

HEARING

518

1 Q: Alright, what types of phones were these involved? Are
2 these regular cell phones where people have accounts
3 when you pay, like to Verizon or ATT&T every month?

4 A: They were. One of them was a Verizon phone, ATT&T and
5 some of them were actual contract phones and some of
6 them were not.

7 Q: Now when they, if they're not contract phones, what
8 kind of phones would you call them?

9 A: Prepays.

10 Q: The prepaid phones?

11 A: Correct.

12 Q: Now sir you've been with the Sheriff's department how
13 long?

14 A: Since 2001.

15 Q: Alright are you familiar with the jail records there?

16 A: Yes.

17 Q: Okay and at my request, did you go and get certain
18 copies of jail records relating to Kelvin B. in this
19 case?

20 A: Yes I did.

21 Q: Okay I'm going to hand you what's been marked for
22 identification purposes as State's exhibit number one
23 twelve, asking you if you recognize that particular
24 document.

25 A: Yes, I do.

1 Q: Alright, how is it that you recognize it? Is it a form
2 only associated with the Williamsburg County Detention
3 Center.

4 A: Yes it is.

5 Q: What type of form is it?

6 A: It's an inmate property release form.

7 Q: A property release form?

8 A: That's correct.

9 Q: Alright and what is the date on that particular
10 exhibit?

11 A: The date on the letter is September 28th.

12 Q: Okay.

13 A: And the date on the release form is October 10, 2009.

14 Q: Alright, why is it important to keep documents of that
15 type information?

16 A: So when an inmate claims that his property was
17 destroyed or stolen or something like of that nature,
18 we have documentation to go back to and say hey, you
19 know, you requested that we give this to such and such
20 person.

21 Q: Okay, alright and was a request made by Mr. Bowen to
22 give property to somebody?

23 A: Yes it was..

24 Q: Alright what was the request by Mr. Bowen? To give what
25 item to who?

HEARING

520

- 1 A: It was to give ...
- 2 Q: Speak up and make sure the microphone.
- 3 A: It says please give my attorney, W. Jenkinson, my cell
4 phone, Samsung model.
- 5 Q: Okay and is it signed by Kelvin B.
- 6 A: Yes it is.
- 7 Q: Alright now, and the date on that?
- 8 A: September 28, 2009.
- 9 Q: Alright and at some point, did Mr. Jenkinson come to
10 the jail and pick up that item?
- 11 A: Yes he did.
- 12 Mr. Jenkinson: Your Honor, I object to this kind of
13 testimony.
- 14 The Court: Basis for the objection?
- 15 Mr. Jenkinson: Now, I'm going to have to be a witness.
- 16 The Court: Okay.
- 17 Mr. Jenkinson: This testimony is ...
- 18 The Court: Is there a fact that's an issue or subject to
19 dispute?
- 20 Mr. Jenkinson: Pardon me, I'm sorry?
- 21 The Court: Is that a disputed issue?
- 22 Mr. Jenkinson: Yes sir.
- 23 The Court: I overrule the objection.
- 24 Ms. Barr: Yes sir, thank you Your Honor.
- 25* Q: Investigator Whack tell me what item was released to

- 1 whom on what day.
- 2 A: It says that a Samsung model cell phone was released to
- 3 W. Jenkinson.
- 4^a Q: Are you, okay, what date did Mr. Jenkinson pick up a
- 5 cell phone?
- 6 A: October 13th, 2009.
- 7 Q: Alright and he would have gotten a cell phone from the
- 8 jail?
- 9 A: That's correct.
- 10 Q: Alright, Judge we would move State's exhibit number, I
- 11 think it's one twelve, into evidence at this time.
- 12^a Mr. Jenkinson: Over our objection.
- 13 The Court: Exhibit Number 112 is in.
- 14 Ms. Barr: Thank you, Judge.
- 15 The Court: It's admitted.
- 16 Ms. Barr: Sgt. Whack let me get her to mark that please.
- 17 (State's Exhibit Number 112 was entered)
- 18 Q: Now are you, would you have been the officer that
- 19 released the cell phone to W. E. Jenkinson?
- 20 A: Yes I am.
- 21 Q: He's the very able lawyer that's sitting with the
- 22 defendant, is that correct?
- 23 A: Yes, that's correct.
- 24 Q: And he's represented him throughout these proceedings?
- 25 A: That's correct.

HEARING

522

- 1 Q: Alright now, since the date that the cell phone was
2 released to Mr. Jenkinson, have you all been able to
3 get that phone back?
- 4 A: No ma'am, not to my knowledge.
- 5 Q: Alright, now one other, one last question, if I may.
6 Investigator Collins, Lt. Collins testified about
7 interviewing Ronald Mack in connection with the case,
8 I think back on May 28th of 2009?
- 9 A: Okay.
- 10 Q: Does that sound right?
- 11 A: That sounds alright.
- 12 Q: Do you have a transcript of that taped interview?
- 13 A: Yes I do.
- 14 Q: Were you there when that was being recorded?
- 15 A: Yes I was.
- 16 Q: Now we heard a male's voice on that tape, and before I
17 ask you this, were you in the courtroom when part of
18 that tape was played?
- 19 A: No ma'am, I wasn't.
- 20 Q: Do you dispute that the male's voice, not the
21 defendant's voice, but the male voice from the
22 sheriff's department is your voice?
- 23 A: I don't dispute that.
- 24 Q: Alright. Judge we would move to publish certain,
25 relevant portions of un-played Ronald Mack's statement

1 that's in evidence.

2 The Court: Alright.

3 Mr. Jenkinson: We object Your Honor. The State had that
4 opportunity and has taken advantage of that opportunity
5 to play and include the portion.

6 The Court: Ladies and gentlemen, we'll break for lunch
7 now. Please go to the jury room and return at two
8 thirty.

9 (Jury exits courtroom for Lunch Break)

10 The Court: Alright what would you want to play for the
11 jury now?

12 Ms. Barr: The part where it left off. I'm not going to re-
13 play anything else.

14 The Court: How long is that?

15 Ms. Barr: Ten minutes at the most.

16 The Court: And what's on it? What else do you want them
17 to hear?

18 Ms. Barr: Do we have another copy of the transcript to give
19 the judge?

20 The Court: Do you know what you want them to hear or you
21 just want to play it?

22 Ms. Barr: Yes Judge, I know what I want them to hear.

23 The Court: That's the question, what do you want them to
24 hear?

25 Ms. Barr: Yes sir.

HEARING

524

1 The Court: What else?

2 Ms. Barr: Will you hand your copy, Sgt. Whack to the judge?

3 Judge, I think based on reading the transcript, we
4 stopped the tape on page twenty-three, somewhere around
5 line fifteen and Judge we would like to play it through
6 the approximately page twenty-six. I'm sorry, page
7* twenty-seven, line twelve.

8 The Court: So you want the jury to hear that the
9 defendant might be on the run out of California and
10 came to be in a gang, where he was living in Maryland?

11 Ms. Barr: Yes sir.

12 Mr. Jenkinson: Which page is that on Your Honor?

13 The Court: The bottom of twenty-four.

14 Mr. Jenkinson: Twenty-four?

15 The Court: Bottom of twenty-four.

16 Mr. Jenkinson: That's already been played Your Honor. It
17 just, they played through twenty-seven.

18 Ms. Barr: It has not been Judge. As a matter of fact, Lt.
19 Collins testified and Mr. Jenkinson was clear that I
20 stopped on page twenty-three at line fifteen, because
21 the last thing I played was Ronald Mack stating we
22 either go to jail or we die or we either we're going to
23 end up having riches and everything.

24* Mr. Jenkinson: And what you want, what was Your Honor
25 referring to? What page was that on?

1 The Court: Twenty-four, the bottom of twenty-four and
2 the top of twenty-five.

3 Mr. Jenkinson: That is simply being offered for prejudice
4 and probative value. This is not a gang murder. There's
5 no gang activity, there's nothing in furtherance of
6 gang activity. There's just purely being offered to
7 prejudice with saying he was at one time in his life he
8 is a crypt, but again, we can't cross examine him and
9 I can't cross examine about it, whatever circumstanced,
10 because this is a tape and we're being denied our
11 rights under the fifth and sixth amendment; sixth the
12 confront; fourteenth to due process.

13 The Court: So the ruling of the Court is this, she can
14 play the tape, but you have to read back or turn the
15 tape down around beginning around line fourteen or so
16 on the bottom of --- the last thing that he can play,
17 that you wanted to play is my gang originated out of
18 California.

19 Mr. Jenkinson: What we'd like to do is start at line
20 thirteen, where the question was is Jason in San Diego?
21 Then that is the response that goes all the way through
22 and we would ask that thirteen ...

23 The Court: No, she can play down to the first word on
24 nineteen as my gang originated out of California, you
25 can even, I mean, you can, in fact you can play the

HEARING

526

1 entire answer to thirteen, but you must stop before
2 number twenty-four and so I'm striking lines twenty-
3 four, twenty-five and then on page twenty-five, the
4 continuity starts on lines fourteen, how long has your
5 mother dated Callie? Got it?

6 Ms. Barr: Yes sir.

7* The Court: If you inadvertently play any of the other then
8 we have to pause we have to manage the volume. We're
9 going to break until two-thirty.

10 -BREAK-

11 The Court: Mr. Jenkinson you were asking about a copy of
12 a motion that you filed?

13 Ms. Barr: We found it Your Honor.

14 Mr. Jenkinson: Twenty-four, Your Honor.

15* The Court: Okay. You're going to stop on what page again?

16 Ms. Barr: Judge I think you said what page am I going to
17 stop at?

18 The Court: Yeah, where you going to stop at?

19 Ms. Barr: I think you instructed me to stop at page
20 twenty-four, line twenty-three.

21 The Court: Yeah, and then after you start it back, where
22 do you press play after that to the end or?

23 Ms. Barr: No sir, I don't think I'll play to the end.

24 The Court: Do you know when or at what point you plan to
25 stop it after that?

1 Ms. Barr: Page Twenty four. I don't see me going beyond
2 that.

3 The Court: Twenty five, you're not?

4 Ms. Barr: Yes sir and Judge we would simply just place on
5 the record that the particular exhibit has already been
6 entered into evidence and we would, the State takes the
7 position that we're entitled to play more of it, but we
8 understand the Court's ruling.

9 The Court: What, what exhibit is into evidence?

10 Ms. Barr: The recorded statement of Ronald Mack.

11 Mr. Jenkinson: I don't have it. I have it as being
12 introduced into exhibits.

13 Court Reporter: It's number sixty.

14 Mr. Jenkinson: Your Honor it's only playing partially. Now
15 how we're going to handle that because I was unaware
16 that that tape was in.

17 Court Reporter: No, you agreed.

18 Mr. Jenkinson: Okay if it's in. When they played it I
19* assumed they were going to play the tape, but they only
20 played part of the tape and now it is in we would ask
21 that it not be sent to the jury room. If they want to
22 hear it, then they have to hear it in open court and
23 only that portion that's been in evidence. They can't
24 go in there and listen to the whole tape.

25 Ms. Barr: And that's a problem Judge. The whole tape is in

HEARING

528

1 evidence and the tape is like any other exhibit. We
2 can chose to use part of it. Some of it or none of it.
3 And that therein creates problems because the entire
4 tape is in evidence. So we take the position that we
5 can

6 Mr. Jenkinson: It was over our objection at that particular
7 time Your Honor. We did not --- we objected to the
8 tape and we objected to that whole line of testimony so
9 now in view of the position of the Solicitor wanting
10 the whole tape going when they only played half, we
11 would then object to the unused portion because it
12 defeats what the Court has ruled as admissible.

13 The Court: The jury can listen to any of the tape, but
14 it will be in the courtroom and it will be in the basis
15 on what they are allowed to here.

16 Mr. Jenkinson: Thank you.

17 The Court: Alright, let's bring the jury in.

18 (Jury enters courtroom)

19 Ms. Barr: It please the Court, Your Honor?

20 The Court: Yes.

21 DIRECT EXAMINATION OF SGT. WHACK BY MS. BARR:

22 Q: Sgt. Whack, I think when we broke, I was talking with
23 you about the taped statement of Ronald Mack, do you
24 remember me asking you about that?

25 A: Yes ma'am.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q: And I think at that time I moved to publish a portion of that statement. I'm going to do that at this time. And Judge, based on the Court's ruling, I'll stop it at a point in time that's I've been instructed to do so.

(TAPED STATEMENT OF RONALD MACK IS PLAYED)

Mr. Jenkinson: Your Honor, characterization that it was court ordered that she stop there, so ...

The Court: Alright.

Q: Alright, now sir I'm going to ask you one or two more follow up questions and I think I'll be done. At some point, were you notified that Tiffany Bowen maybe a witness to this case?

A: Yes.

Q: Okay. Did you make an attempt to contact Ms. Bowen to interview her?

A: I did.

Q: And did you actually have a conversation with Ms. Bowen?

A: Yes ma'am.

Q: Alright, tell me what you asked her.

A: I ...

Mr. Jenkinson: Your Honor, I object on the basis of hearsay.

Ms. Barr: It's his statement Judge.

The Court: Pardon me?

Ms. Barr: It's his statement; he can testify about what he

HEARING

530

1 said I would assume.

2 The Court: Objection overruled.

3 Q: Tell me what you asked of her.

4 A: I asked her what was testified to in reference to this

5 case?

6 Q: Alright and what was her response?

7 Mr. Jenkinson: Objection. Hearsay.

8 The Court: Ms. Barr?

9 Ms. Barr: Judge, it's not being offered except for truth of

10 the matter it serves, we take the position it's not

11 hearsay.

12 The Court: Well what's the point of it?

13 Ms. Barr: Your Honor, may we approach briefly? Yes sir, yes

14* sir. Let me back up for a minute Sergeant Whack did

15 you identify yourself to her?

16 A: Yes I did.

17 Q: You tell her where you work for?

18 A: Yes I did.

19 Q: And you told her you were calling about Kelvin B.

20 case?

21 A: That's correct.

22 Q: Did she agree to talk to you or did she refuse to talk

23* to you? Don't tell me what she said, just tell me

24 whether she agree to talk to you or ...

25 The Court: Overrule the objection.

1* Q: Did she agree to talk to you or did she refuse to talk
2 to you?

3 A: She refused.

4 Q: That's all the questions that I have.

5 CROSS EXAMINATION OF MR. WHACK BY JENKINSON:

6 Q: Mr. Whack, let's just start where you left off. You
7 ever heard the expression, do you agree to tell the
8 whole truth and nothing but the truth?

9 A: Yes I have.

10 Q: Have you just told us the whole truth in this case so
11 far?

12 A: Yes I have.

13 Q: Well did you tell us when you called Tiffany Bowen to
14 talk to her?

15 A: No, sir.

16 Q: Didn't bother to tell us it was Friday afternoon, just
17 a few days ago when she was getting ready to get in a
18 car and come to South Carolina, did you?

19 Ms. Barr: Objection Your Honor. The question assumes facts
20 that are not in evidence. We don't know where she was.

21 The Court: The objection is sustained.

22 Q: You called her this past Friday afternoon?

23 A: Yes sir.

24 Q: She had never seen you before in her life?

25 A: I guess not. I'd never seen her before.

HEARING

532

- 1 Q: ' You'd never seen her before and she has never seen you
2 before?
- 3 A: Not that I'm aware of.
- 4 Q: And anybody can say I'm a Sheriff's deputy from
5* Williamsburg county over a telephone can't they?
- 6 A: Yes sir.
- 7 Q: In fact, Ms. Bowen said, officer if you want to talk to
8 me, you can talk to me Monday, I'll be glad to talk
9 with you, Mr. Jenkinson, in your presence and you can
10 ask me whatever you want to ask. She told you that
11 twice didn't she?
- 12 A: It wasn't exactly like that.
- 13 Q: But she told you she'd meet with you on Monday and talk
14 with you didn't she?
- 15 A: She said that she would be here Monday to answer any
16 questions.
- 17 Q: And on Monday did you ask her any questions?
- 18 A: I didn't see her Monday.
- 19 Q: Did you walk up to her and ask her any questions
20 Monday?
- 21 A: No sir.
- 22* Q: Did you walk up Tuesday?
- 23 A: No sir.
- 24 Q: Did you walk up Wednesday?
- 25 A: No sir.

1 Q: Did you walk up this morning?

2 A: No sir.

3 Q: Did you walk up to her anytime up until you took the
4 stand today?

5 A: No sir.

6 Q: You saw her stand up in court and identify herself on
7 Monday?

8 A: That's correct.

9 Q: And you didn't make any attempt, cause all you wanted
10 to do was take the stand so you could tell us she was
11 not cooperating. That's the only reason you even
12 called her Friday afternoon, isn't it?

13 A: No sir.

14 Q: Well you certainly had Monday, Tuesday, Wednesday and
15 half a day Thursday to talk to her if you wanted to in
16 the courtroom, didn't you? Live and in person. With
17 a uniform on and proper identification.

18 A: Yes sir.

19 Q: Now, I want to understand something about the two cell
20 phones. I'm going to show you what is exhibit a
21 hundred and twelve that was introduced through you and
22 it says to whom it may concern. Please give my
23 attorney W. E. Jenkinson, III my cell phone, Samsung
24 model to my attorney. He has my authorization to get
25 custody of it. And that was back on September 28th,

HEARING

534

1 2009. You remember that?

2 A: Yes sir.

3 Q: Was the Samsung phone ever given to me on that day or
4 any day since?

5 A: According to ...

6 Q: Sir?

7 A: According to this paper you received it on October 13th?

8 Q: Where does it say on the second page anywhere where I
9 got a Samsung telephone?

10 A: It doesn't say that but there's the explanation.

11 Q: Well it doesn't say that does it?

12 A: No sir, because I was informed that you brought this
13 letter to the jail from, because he was in Abraham at
14 the time.

15 Q: Correct, but it doesn't say I got the telephone does
16 it?

17 A: Not on that form.

18 Q: Well, you don't want the jury to think that I have been
19 hiding this cell phone, this Samsung cell phone from
20 anybody from this day forward, do you?

21 A: Well, that's why I didn't attach that form, that's why
22 I didn't attach that sheet that's handwritten to that
23 inmate property sheet.

24 Q: So you're accusing me of hiding ...

25 Ms. Barr: Judge, I'm sorry, objection. He's interrupting

1 the witness.

2 The Court: Objection sustained. Let him finish the
3 answer sir.

4 Q: Were you back in court ...

5 The Court: Just a moment Mr. Jenkinson.

6 Mr. Jenkinson: Oh I'm sorry, sustained? Is that what you're
7 trying to do?

8* The Court: Just a moment. He's answering your question.

9 A: They attached, that hand written sheet to the inmate
10 property sheet because Mr. Bowen wasn't there at our
11 detention center to sign our sheet for you to get the
12 form. You presented our jail with that form while the
13 hand written note sheet requesting the Samsung phone to
14 us. In turn, they got you to sign our sheet with his
15 name at the top because you're his attorney and one of
16 our C.O's witnessed you signing the form and receiving
17 his property.

18 Q: Doesn't say I got the Samsung phone, does it?

19 A: On our sheet it does, but the paper you have your
20 client statement on that piece of paper.

21 Q: Were you back in court on August 30, 2010 when we were
22 trying to find the Samsung phone?

23 A: Not sure.

24 Q: You weren't? You weren't in the same courtroom when
25* we were trying to get the Samsung phone and had been

HEARING

536

1 asking for cell phone records?

2 Ms. Barr: Judge, we would object to this question, the
3 question calls for hearsay.

4 The Court: The objection is overruled, continue.

5 A: I'm not sure Your Honor.

6 Q: Well, let me refresh your recollection. There were two
7 Samsung, there were two phones in Mr. Bowen's
8 possession when he was arrested. You heard that
9 testified to yesterday.

10 A: No sir, I didn't hear it.

11 Q: Well, I'm going to tell you he had two phones; a
12 Samsung phone and he had a second telephone.

13 Ms. Barr: Objection, counsel is testifying.

14 The Court: Objection sustained.

15 Q: Well, did you know he had a Sprint Nextel greyish white
16 phone?

17 A: I'm not aware.

18 Q: Okay, did you know he had a Samsung phone?

19 A: Yes from the processing.

20 Q: Alright, I'm a show you a motion that was filed in
21 connection with this phone back in August 26, 2010.
22 You see that?

23 A: Yes.

24 Q: And who's name appears there?

25 Ms. Barr: Objection, hearsay Your Honor.

1 Q: Okay and there was a hearing held on this very matter
2 by the Honorable Clifford Newman, you recognize his
3 name, don't you?

4 A: Yes sir.

5 Q: And this is his. Okay and I want to show you page two
6 of the top of the page and you can read it to yourself
7 the first time.

8 (Witness reads)

9 Q: Were you in court yesterday when the detective
10 testified that the Samsung cell phone was last seen in
11 the Kia Sportage?

12 A: No sir, I wasn't.

13 Q: Or Antonio Dorsey or Dontrey Barr who saw it or Mr.
14 Wilson who saw it. He would certainly be able to
15 verify it hadn't he?

16 A: Possibly.

17 Q: Well, they would come from the cell phone company
18 wouldn't it?

19 A: Yes sir.

20 Q: Okay. Alright, all you know we haven't seen any of
21 that yet have we?

22 A: Not that I'm aware of.

23 Q: Not in three and half days.

24 A: Not that I'm aware of.

25 Q: For that matter we haven't seen any evidence since Mr.

HEARING

538

- 1 Bowen was arrested either, have we?
- 2 A: No.
- 3 Q: About twenty-two months ago. Twenty months ago. Now,
- 4 Dontrey Wilson and Dontrey Barr gave you statements,
- 5 didn't they?
- 6 A: Yes sir, I believe they did.
- 7 Q: They could, they have never been able to identify Mr.
- 8 Bowen as Callie have they?
- 9 A: Not to my knowledge.
- 10 Q: When Ronald Mack gave you the statements, you were
- 11 there for every statement he gave, weren't you?
- 12 A: I believe I was.
- 13 Q: Sir?
- 14 A: I believe I was.
- 15 Q: Well do you know? There was three. One the day of the
- 16 crime and two on the thirteenth of May and then a
- 17 fourth one on the twenty eighth of May.
- 18 A: I'm not sure. You'd have to check the statements to
- 19 see.
- 20 Q: You don't remember?
- 21 A: Sir?
- 22 Q: You don't remember?
- 23 A: I can't say that I was there for every one of them. I
- 24 would have to check the statements to see.
- 25 Q: Do you remember the first statement they gave that

1 Mack, Ronald Mack and Antonio McClary requesting
2 separately?

3 A: We always question them separate, we don't ...

4 Q: You always question witnesses separately to make sure
5 they're telling the same story, aren't they?

6 A: To make sure that there's, that each story is original

7 ...

8 Q: But you don't let them listen to each other, so and
9 then you can compare if the stories are the same,
10 right?

11 A: No sir.

12 Q: You don't do that? Well you questioned those two
13 separately, didn't you?

14 A: Yes sir.

15 Q: Okay. And they gave consistent statements back in
16 April, didn't they?

17 A: I would have to read their statements to see.

18 Q: Okay. Well, I'm a help you out. I'm a hand you, this
19 is the incident report. Y'all actually write out
20 everything, don't you, that occurs in an investigation?

21 A: Yes sir.

22 Q: But I'm a show you your incident report entries of 04-
23 06-2009. Is that what I have here?

24 A: Yes sir.

25 Q: And do you see where at two pm Mr. McGee arrives with

HEARING

540

1 his son Ronald Mack and gave a statement?

2 A: Okay.

3 Q: And then you met with Antonio McClary who lives out at
4 [REDACTED] --- and he gave you a statement? That's
5 correct? That's what I say separate and then also
6 Dontrey Barr was questioned and Mr. McClary was
7 questioned. Do you see all that?

8 A: Yes sir.

9 Q: And what was the entry date after you left Mr. Barr's
10 residence all statements appear to be consistent. Is
11 that what it says?

12 A: Yes sir.

13 Q: That means all of them are telling the same story,
14 separately, right?

15 A: Yes sir.

16 Q: Nobody ever said Kelvin B. had anything to do with
17 this case, did they?

18 A: Not at that time.

19 Q: And let's go forward as late as the thirteenth and
20 including the thirteenth in the statements given by Mr.
21 Mack and a portion that was played, he never, ever said
22 Kelvin B. is Callie, did he?

23 A: In his statement

24 The Court: Respond to the question.

25 Q: That's my question. He never, ever said that Kelvin

1 Bowen was Callie, did he?

2 A: He said Kelvin, his mom's fiancée.

3 Q: Kevin is what he said. Kevin, K-E-V-I-N. You remember
4 that?

5 A: I don't know. I mean I can't say he said Kelvin or
6 Kevin. We understood it to be Kelvin.

7 Q: Want me to show it to you?

8 A: Yeah.

9* Ms. Barr: And Your Honor, we would object to hearsay if
10 he's going to ask him questions about a transcript,
11 obviously tape is the best.

12 Mr. Jenkinson: Your Honor please, when the tape was played
13 for Investigator Collins. she had the transcript, she had
14 the transcript and she said is this a true and correct
15 transcript at the time.

16 Mr. Jenkinson: That it was not introduced into evidence.

17* The Court: Go ahead and find it.

18 Q: Let me show you Mr. Mack's statement give on May twenty
19 eight.

20 A: Alright.

21 Q: At 2:09 pm.

22 A: Okay.

23 Q: See it?

24 A: Yes.

25 Q: What is Callie's real name? What did he say?

HEARING

542

- 1 A: He said Callie name Kelvin.
- 2 Q: Spell it.
- 3 A: K-E-V-I-N
- 4 Q: Okay, that is not Kelvin, is it?
- 5 A: That's what the transcript says.
- 6 Q: He did not, that is not, Kevin is not Kelvin, is it?
- 7 A: No sir.
- 8 Q: You knew somebody real well by the name of Kelvin right
- 9 in your own office building, didn't you?
- 10 A: Yes sir.
- 11 Q: What's his name?
- 12 A: Kelvin Washington.
- 13 Q: Your sheriff. And if he'd a called the sheriff's name,
- 14 you'd a known that, wouldn't you?
- 15 A: Yes sir.
- 16 Q: You remember him saying that only Ronald Mack, I'm
- 17 sorry Antonio Dorsey only said Ronald Mack wore gloves
- 18 into the crime scene. Remember that?
- 19 A: Say that again.
- 20 Q: That only Ronald Mack wore gloves into the crime scene,
- 21 you remember that?
- 22 A: I don't right off.
- 23 Q: You wouldn't doubt that would you?
- 24 A: I can't confirm it either.
- 25 Q: You want to see that one too?

1 A: Sure.

2 Q: Okay. You remember Antonio McClary giving you a
3 statement on May thirteenth 2009, six seven twenty-
4 four, second statement?

5 A: Let me see.

6 Q: Remember that?

7 A: Yes.

8 Q: You were standing right there weren't you? Or sitting
9 right there.

10 A: Yes sir.

11 Q: Do you remember, you asked the question, did they have
12 gloves on or anything and what did he say?

13 A: I think Ronald did.

14 Q: And what did you say?

15 A: Ronald did.

16 Q: And what did he say?

17 A: I think Ronald did.

18 Q: He didn't say anything about anybody else having
19 gloves, did he?

20 A: No sir.

21 Q: Because if you don't have gloves on you leave
22 fingerprints.

23 A: That's true.

24 Q: Is there any fingerprints of Kelvin B. found at the
25* crime scene?

HEARING

544

- 1 A: I'm not aware of any.
- 2 Q: You're not aware of it are you?
- 3 A: I'm not.
- 4 Q: Now, Antonio McClary referred to Callie as Ronald Mack
- 5 ...
- 6 A: Step father, I believe.
- 7 Q: Never calling a boyfriend. He said he's a step father
- 8 of Ronald Mack, right?
- 9 A: That's correct.
- 10 Q: Nowhere is it written, or nowhere is it shown that
- 11 Kelvin Bowen is his step father, is there?
- 12 A: No sir.
- 13 Q: How many step fathers does Mr. Mack have?
- 14 A: Oh I don't know.
- 15 Q: More than one isn't it?
- 16 A: I don't know.
- 17 Q: Well, his mama's name is Tawanda Mack Allen isn't it?
- 18 That's more than, if you've got a Mack and an Allen
- 19 that's at least two. He's got one real daddy and at
- 20 least one step daddy.
- 21 A: Okay.
- 22 Q: Have you made any investigation into the two step
- 23 fathers as to whether or not they fit the description
- 24 and could in fact, be this person identified as Callie?
- 25 A: No sir.

1 Q: Didn't bother to check did you?

2 A: Is Mack her maiden name or is that her?

3 Q: I don't know. You're the investigator. Have you made
4 any inquiries?

5 A: I know of her guess it'd be her ex husband, James
6 Allen.

7 Q: But she's been married more than once.

8* A: Oh I don't know how many times she's been married.

9 Q: That would fit the description of step father wouldn't
10 it?

11 A: Mr. Allen would, yes.

12 Q: And Kelvin B. wouldn't fit the description of step
13 father would he?

14 A: It all depends on what he's been told.

15 Q: Well if they're not married he couldn't be his step
16* father could it?

17 A: He may have been told they're married.

18 Q: Do you remember Antonio McClary giving you a drawing as
19 to where he stood outside of the residence while the
20 shooting took place?

21 A: I don't remember. I remember him telling me, saying
22 where he was, but the drawing, I don't recall the
23 drawing.

24 Q: I'm a show you page seventeen of that statement, okay?
25* Question; and tell me where y'all got on the gravel

HEARING

546

1 road and draw it on this paper and talk at the same
2 time. How did y'all go in the house. I'm a make a
3 diagram and this is going to be, and then there's a
4 diagram.

5 Ms. Barr: Judge, may I inquire counsel as to which statement
6 he's referring to and which page?

7 Mr. Jenkinson: It was done on May 13th, 7:24, the second one.

8 Ms. Barr: Thank you sir.

9 Mr. Jenkinson: It's called the confession.

10 A: No sir.

11 Q: He never, meaning Antonio McClary, never told you he
12 went inside the house in this confession statement, did
13 he?

14 A: No sir.

15 Q: If he didn't go inside the house, he can't tell us who
16 shot or fired the shots that killed Kenyan Dorsey, can
17 he?

18 A: Not in that statement he didn't.

19 Q: Well, did you believe his statement?

20 The Court: Objection. This is irrelevant to what he
21 believes. Next question.

22 Mr. Jenkinson: Yes sir. When you questioned Ronald Mack,
23 did he try to pin the murder, that he admitted doing,
24 on a guy named Tom Tom and one named Bam from
25 Hemingway?

1 A: Seems like I do remember him mentioning those others.

2 Q: Now, you investigated of course, and talked with Tom
3 Tom and Bam to find out if they were involved?

4 A: I don't remember. I don't know if we ever figured out
5 what their real names were.

6 Q: Did anybody make any investigation in it, to it?

7 A: Certainly did.

8 Q: Who did? I haven't seen any notes; I'd just like to
9 see something or hear something that somebody did check
10 out a murder suspect or two.

11 Ms. Barr: Objection Judge, counsel is testifying.

12 The Court: Objection sustained to all counsel making random
13 statements.

14 Q: On the 28th of May you got a statement from Ronald Mack
15 and Tawanda Allen, remember that?

16 A: Yes sir.

17 Q: And do you recall right before the statement, let me
18 ask, Ronald Mack and his mother were taken over to the
19 sheriff's office for these statements, weren't they?

20 A: Correct.

21 Q: You took them, didn't you?

22 A: I think I did.

23 Q: And they were together when you were with, when they
24 were with you, weren't they?

25 A: I don't think so.

HEARING

548

- 1 Q: Do you remember them talking and between themselves and
2 having a conversation about what they were going to
3 say?
- 4 A: I don't recall.
- 5 Q: Do you recall his mama telling him to make something
6 up, but make sure that it's relating to the story?
- 7 A: No sir.
- 8 Q: To put Kelvin in it?
- 9 A: No sir.
- 10 Q: You don't remember that?
- 11 A: I don't remember that.
- 12 Q: But right after that they would have, they did get a
13 recorded statement. Right?
- 14 A: Like I say, I don't remember them talking about that.
- 15 Q: Were you present when Antonio McClary identified the
16 photograph on the computer?
- 17 A: Yes sir.
- 18 Q: He was taken over to see a lineup?
- 19 A: No sir, I think he was being brought over for an
20 interview.
- 21 Q: He was taken over for an interview?
- 22 A: Yes sir.
- 23 Q: And also to look at a photograph?
- 24 A: No sir, we brought him over for interview.
- 25 Q: Okay so, so he had no idea he was going to look at a

- 1 photograph?
- 2 A: That's correct; not to my, not to my knowledge.
- 3 Q: Okay. But he only saw one photograph?
- 4 A: He saw one when she was downloading the email.
- 5 Q: Okay, Antonio McClary's description of Callie, do you
6 remember that in his statement?
- 7 A: No sir.
- 8 Q: You were present on May 13 and 7:24 pm for the second
9* confession statement of Mr. McClary weren't you? Sir?
- 10 A: Am I on the transcript?
- 11 Q: I'll let you look at it.
- 12 A: Yes.
- 13 Q: And do you remember Investigator Lail asking Mr.
14 McClary, what does Callie look like? Do you remember
15 that question?
- 16 A: Yes sir.
- 17 Q: And what did he say?
- 18 A: He had told him he's scrawny.
- 19 Q: What kind of hair?
- 20 A: Peezy like, real peezy.
- 21 Q: Is that low cut?
- 22 A: No, absolutely not.
- 23 Q: Not low cut like an Afro. In other words, he's got a
24 full Afro?
- 25 A: He didn't say that; he just said peezy.

HEARING

550

- 1 Q: Well it's not low cut, right?
- 2 A: That's what he said.
- 3 Q: Alright, that was a complete description, well I take
4 it back, there's one. Is he light skinned or not? It
5 said, what does it say?
- 6 A: Brown skinned.
- 7 Q: Okay, other than that, there was no description given
8 by Mr. McClary, was there?
- 9 A: Just ...
- 10 Q: That was the complete description.
- 11 A: Yes sir.
- 12 Q: That was all he knew, wasn't it?
- 13 A: Yes sir.
- 14 Q: When you saw Ronald Mack, I'm sorry, when you saw Mr.
15 Bowen for the first time when he was brought to South
16 Carolina on the 28th, he didn't fit that description,
17 did he?
- 18 A: Partially.
- 19 Q: Well he was tall.
- 20 A: Yes sir.
- 21 Q: He's not scrawny, is he?
- 22 A: Yeah he is.
- 23 Q: Sir?
- 24 A: Yes he is.
- 25 Q: And, well, depends on who you call, want to call

- 1 scrawny right?
- 2 A: That's right.
- 3 Q: He's got a mustache and had one then.
- 4 A: I'm not sure whether he had one then or not.
- 5 Q: Well I'll help you with the computer picture. Do you
6 remember State's exhibit number 67?
- 7 A: Yes.
- 8 Q: That's the one that Mr. Dorsey identified him by?
- 9 A: That's Mr. McClary.
- 10 Q: I mean Mr. McClary, I'm sorry. Antonio McClary.
- 11 A: Yes sir.
- 12 Q: That's the one he identified him by?
- 13 A: Yes sir.
- 14 Q: And how tall is he in that picture?
- 15 A: Can't tell.
- 16 Q: Can't tell can you?
- 17 A: Not by the picture, no sir.
- 18 Q: How scrawny is he in that picture? Don't look like
19 he's scrawny does it?
- 20 A: Well ...
- 21 Q: Got a mustache doesn't he?
- 22 A: Yes sir.
- 23 Q: Did he tell you anything about a mustache?
- 24 A: No sir.
- 25 Q: That's pretty prominent, isn't it?

HEARING

552

- 1 A: I suppose.
- 2 Q: Did he tell you anything about a scar along his jaw
3 line that he identified while he was in court?
- 4 A: No sir.
- 5 Q: None of those ...
- 6 A: I don't know what he testified to in court.
- 7 Q: Well, none of those, virtually none of this photograph
8 matches the description he gave you in that sworn
9 statement does it?
- 10 A: It's not a full body photo.
- 11 Q: He identified him from the photo?
- 12 A: Well, he recognized him from the photo.
- 13 Q: I understand that. Is there anything from his
14 description that fits this photo?
- 15 A: Brown skin. I guess you could say he's scrawny.
- 16 Q: You don't know that though do you?
- 17 A: Not just by the photo.
- 18 Q: And he wasn't shown but one photo.
- 19 A: Well he wasn't shown that. He happened to come in to
20 the room when it was being downloaded.
- 21 Q: He stumbled into the room?
- 22 A: He was brought into the room by the police.
- 23 Q: Just walking around looking at computers?
- 24 A: Well in a way, yes.
- 25 Q: He went over there to look at that picture didn't he?

1 A: No sir.

2 Q: Y'all brought him over there to look at that picture?

3 A: No sir.

4 Q: He just happened to see it?

5 A: Yes sir.

6 Q: Okay. Thank you sir.

7 The Court: Any re-direction?

8 Ms. Barr: Very brief Judge.

9 RE-DIRECT OF SERGEANT WHACK BY MS BARR:

10 Q: Sergeant Whack, would you agree or disagree with the
11 characterization of Callie being tall?

12 A: Yes.

13 Q: Alright and the gentleman who was arrested and brought
14 from Maryland, Mr. Bowen, is he tall to you?

15 A: Yes.

16 Q: Is he scrawny to you?

17 A: Yes.

18 Q: Is he brown skinned to you?

19 A: Yes.

20 Q: Now, this whole notion about Kelvin versus Kevin, your
21 former sheriff, our former sheriff of Williamsburg
22 county was named Kelvin Washington, or is named Kelvin
23 Washington?

24 A: That's correct.

25 Q: You've heard him called Kevin before?

HEARING

554

- 1 A: Yes.
- 2 Q: People mispronounce that word all the time?
- 3 A: That's correct.
- 4 Q: Now when you called Ms. Bowen, where did you call her
5 from?
- 6 A: From here at the courthouse.
- 7 Q: The courthouse? Right?
- 8 A: That's correct.
- 9 Q: And when you asked her why you were calling, what did
10 she say?
- 11 A: She said that she'd be here on Monday to----her
12 attorney advised her to tell us that she'd be here on
13 Monday to answer any questions.
- 14 Q: Her attorney?
- 15 Mr. Jenkinson: Wait a minute, don't interrupt him. I want
16 to hear what he's got to say.
- 17 Q: I'm sorry, please continue.
- 18 A: She said that her attorney advised her to tell us that
19 she could answer any questions on Monday.
- 20 Q: Did she say who her attorney was?
- 21 A: No ma'am, she didn't.
- 22 Q: Now, one quick question. Mr. Jenkinson asked you have
23 you collected any evidence against Kelvin B. in the
24 twenty two months since he was arrested. Remember him
25 asking you that question?

1 A: Yes.

2 Q: Did you in fact, collect any evidence on Mr. Kelvin B.
3 since he been arrested?

4 A: Yes we did.

5 Q: Is this part of that evidence this shot gun?

6 A: Yes ma'am.

7 Q: That's all the questions I have.

8 The Court: Anything further?

9 RE-CROSS OF MR. WHACK BY MR. JENKINSON:

10 Q: Did you ever find any fingerprints on that shotgun?

11 A: No sir, I didn't personally.

12 Q: Did you ever find any documents indicating his
13 ownership of that shotgun?

14 A: No sir, the serial numbers were ...

15 MR. JENKINSON: Nothing further.

16* A: ... scratched off.

17 The Court: You may step down. Next witness?

18 Ms. Barr: Judge that's the State's case. The State will
19 rest.

20 The Court: Alright, ladies and gentlemen the State has
21 rested. Please go to the jury room and do not discuss the
22 case.

23 (Jury exits courtroom)

24* The Court: Matters of law.

25 Ms. Barr: None on behalf of the State Judge.

HEARING

556

1 Ms. Shuler: Your Honor, at this time the Defense would
2 move for a directed verdict. The State has failed to
3 produce any competent evidence that would tend to prove
4 each and every element of the crime beyond a reasonable
5 doubt. It is your, the Judge must grant the motion
6 where circumstantial evidence merely raises a suspicion
7 of guilt and we would assert that there's only a
8 suspicion of guilt in this case; there's not competent
9 evidence to suggest that Mr. Bowen was in South
10 Carolina in the time that the murder, had any
11 connection to South Carolina at the time of the murder,
12 had any connection with anybody at the time of the
13 murder. Ronald Mack testified that the first time he
14 had ever met Mr. Bowen was in May of 2009, which was
15 well after Mr. Dorsey had been murdered. He said the
16 first time he ever laid eyes on him was the day before
17 Mother's Day in May of 2009. Whenever he and his,
18 whenever Kelvin B. and his mother came down to South
19 Carolina to pick him up and carry him back to Maryland.
20 Antonio McClary's description does not fit the
21 description, does not fit what Mr. Bowen looks like and
22 nobody has identified him positively as being the
23 individual who has been alleged to have committed these
24 crimes. Multiple witnesses have given multiple
25 statements on various occasions; Mr. McClary has given

1 at least four statements that we know of. Mr. Mack has
2 given two. They have interviewed multiple people on
3 multiple occasions with different stories. There's a
4 failure of competent evidence to tend to suggest the
5 Defendant's guilty in this case. No fingerprints on
6 the gun, nothing linking him to the gun, other than,
7* other than the fact that it was in the room of his
8 girlfriend's house. It's mere presence is insufficient,
9 does not connect him directly to the crime. So we would
10 suggest that the Court grant the directed verdict in
11 this case. Your Honor, I would also add that there was
12 nothing to suggest that Kelvin B. ever spent the
13 night in Tawanda Allen's home. No toothbrush, no
14 clothing, no shoes, no razor, no hairbrush.

15* The Court: Rule 19 provides that in ruling on a motion
16 for directed verdict, the Court shall consider only the
17 existence or non existence of the evidence and not
18 it's weight. There is evidence in the record that the
19 Defendant killed Mr. Kenyan Dorsey and the Defendant,
20 along with Mr. Mack, they both shot him after breaking
21 into the house, further evidence that this was planned
22 sometime beforehand and that they were all armed with
23 various weapons when the murder was committed. If the
24 jury is to believe that evidence, then the Defendant
25 will most likely be found guilty and therefore, I deny

HEARING

558

1 your motion for directed verdict.

2 Ms. Shuler: Thank you Your Honor.

3 The Court: Anything else before we proceed with the
4 Defense?

5 Mr. Jenkinson: I'd just like about two or three minutes to
6 re-group if we could take a break.

7 The Court: Do you want me to question Mr. Bowen as to
8 his right to testify or not to testify?

9 Mr. Jenkinson: Yes sir. He has chosen not to testify.

10 The Court: Alright, we would like to examine him on the
11 record regarding that before the jury comes back. Mr.
12 Bowen at this time I'm going to explain to you certain
13 of your rights. If you do not understand anything that
14 I said, please let me know and I will explain it
15 further. Do you understand?

16 A: Yes sir.

17 The Court: We have reached the stage of the trial where
18 you have the right to present your defense and you have
19 the right to claim the protections by the 5th Amendment
20 to the Constitution of the United States. This
21 amendment states, in part, no person shall be compelled
22 in any criminal case, to be a witness against themself.
23 This means that you cannot be required to testify in
24 this case. No one can, you do have the right to
25 testify, but you cannot be compelled to testify. No

1. one can make you testify. This is a personal right
2. and no one can waive this right but you. If you decide
3. to testify, you'll be subject to the same rules that
4. govern other witnesses who have taken the stand and you
5. may be examined or cross examined on any relevant issue
6. in this case. In addition, if you have any convictions
7. involving dishonesty or false statements or crimes
8. punishable by imprisonment for more than one year and
9. I determine that the quote is value of admitting this
10. evidence outweighs its prejudicial effect to you, the
11. State then would be able to introduce your record to
12. attack your credibility. If you decide to testify,
13. this decision on your part, must be freely, voluntarily
14. and intelligently made. The full knowledge of the
15. protections given you by the 5th amendment, as well as
16. the consequences of your decision to testify. If you
17. decide not to testify, I will instruct the jury that
18. they can not give the fact that you did not testify any
19. consideration, whatsoever in their determination of
20. whether you're guilty or not guilty. And that there is
21. to be absolutely no prejudice to you because you did
22. not testify. It is left entirely up to you whether or
23. not you testify. You may talk with your lawyer, Mr.
24. Jenkinson, Ms. Shuler, family, friends or anyone else
25. you'd like to talk to, but the final decision is left

HEARING

560

1 entirely up to you. Do you understand what I've
2* explained?

3 A: Yes sir.

4 The Court: Do you have any questions about that?

5 A: You said I can talk to my family?

6 The Court: You can talk to your family.

7 A: So I can speak to my wife?

8 The Court: You can speak to your wife and they'll
9 arrange to have you do that in just a minute. But you
10+ have discussed, have you discussed with your lawyer
11 whether or not you should testify?

12 A: I can talk to him again to right?

13 The Court: You can talk with him again as well.

14 A: Alright.

15 The Court: So you want to confer with your lawyer and
16 your wife before deciding whether you should testify?

17 A: Yes sir.

18 The Court: Alright, we'll take a break.

19* (Court break was taken)

20 The Court: Mr. Bowen have you had enough time to decide
21 whether or not you're going to testify?

22 A: Yes sir.

23 The Court: Are you going to testify?

24 A: No sir.

25 The Court: Alright anything else on this?

1 Mr. Jenkinson: No sir.

2 The Court: Alright thank you. Alright, ready for the
3 jury?

4 Mr. Jenkinson: Yes sir.

5 The Court: Bring them on.

6* (Jury enters the Courtroom)

7 The Court: How's the jury doing?

8 A: Doing alright.

9 The Court: Doing alright?

10 A: Yes sir.

11 The Court: Okay. You've heard the State's case; it's
12 now the defenses turn.

13 Mr. Jenkinson: May it please the Court?

14* The Court: Yes sir.

15 Mr. Jenkinson: First order of business Your Honor, we would
16 move into evidence exhibit marked for identification as
17 Defense exhibit number 3 which is the Anne Arundel County
18 police tow vehicle form. Next we would move into evidence
19 Defendant's exhibit number 2, the statement of Antonio
20 McClary.

21 (Defendant's Exhibit Number One was entered)

22 Ms. Barr: We object to that one.

23* The Court: Mr. Jenkinson?

24 Mr. Jenkinson: It was authenticated by Mr McClary as what was
25 prepared and presented to him.

HEARING

562

1 The Court: The objection is sustained.

2 Mr. Jenkinson: The third item is Defense exhibit number 1,
3 the identification which Ronald Mack signed and authenticated
4 by Mr. Mack.

5 Ms. Barr: Objection, hearsay. And Your Honor, also we are
6 not sure that that exhibit is properly authenticated.

7 The Court: He's testified to by who?

8 Mr. Jenkinson: Mr. Mack. He authenticated and said he
9 signed, that was his signature and that was his statement
10 he provided.

11 Ms. Barr: Judge, we would simply take the position it's an
12 out of court statement offered --- There is not any
13 applicable hearsay rule that applies and therefore it should
14 be excluded as hearsay.

15 The Court: Sustain the objection at this time.

16 Mr. Jenkinson: I call Mr. Scott Palmer.

17 **-WITNESS IS SWORN IN-**

18 DIRECT EXAMINATION OF SCOTT PALMER BY MR. JENKINSON:

19 Q: You Scott Palmer?

20 A: I am.

21 Q: Mr. Palmer tell the jury where you live.

22 A: I live in Charleston, South Carolina.

23 Q: You practice law?

24 A: I do.

25 Q: How long have you been licensed to practice law?

- 1 A: I'm in my 23rd year.
- 2 Q: And where is your office located?
- 3 A: I actually have two offices; one is in Santee, South
4 Carolina and the other is in Ridgeville, South
5 Carolina.
- 6 Q: How long have you been practicing in the state of South
7 Carolina?
- 8 A: Since August of 1988.
- 9 Q: Does your practice include representing criminal
10 defendants?
- 11 A: It does sir.
- 12 Q: Have you represented clients in Williamsburg county?
- 13 A: I have; not that many, but I have on occasion, yes.
- 14* Q: Where did you go to law school?
- 15 A: University of South Carolina.
- 16 Q: And what year did you graduate?
- 17 A: 1988.
- 18 Q: Are you a member of the South Carolina bar association?
- 19 A: I am.
- 20 Q: And you're familiar with the ethical rules that govern
21 lawyers in court and in representing clients?
- 22* A: I am.
- 23 Q: Antonio McClary, do you know him?
- 24 A: Yes.
- 25 Q: Did you represent him?

HEARING

564

1# A: Actually I represented him on several different
2 matters.

3 Q: You've known him some time?

4 A: I have indeed.

5 Q: Did you have the occasion to represent him in criminal
6 charges for murder, for possession of a weapon during
7 a violent crime and burglary first in Williamsburg
8 county, South Carolina?

9 A: That's correct.

10 Q: What did, what did, tell the jury what was the nature
11 of those charges and what incident occurred out of
12 which he was charged.

13 A: Well he was alleged to have been involved in the case
14 that we're here about. The murder of a guy named
15 Dorsey.

16 Q: Kenyan Dorsey?

17 A: Yes.

18* Q: And did you represent him throughout until that case
19 was disposed of?

20 A: Yes.

21 Q: How was the case disposed of? By trial or by pleading?

22 A: He pled guilty.

23 Q: He pled guilty when?

24 A: I don't know. It was in 2010 sometime. I believe it
25 was probably about six months ago.

- 1 Q: Back in October?
- 2 A: October, yeah.
- 3 Q: And that was in this courtroom?
- 4 A: Yes.
- 5* Q: And before Judge Newman?
- 6 A: It was.
- 7 Q: And you were his lawyer of record at that time?
- 8 A: I was.
- 9 Q: When those charges were brought before this court,
- 10 would he plea guilty to murder?
- 11 A: You know, I'm going to have to look in the file, but I
- 12 believe it was a reduced charge, but, you know, there's
- 13 a lot of cases since then, so I believe, well, there
- 14 was a plea negotiation, so ...
- 15 Q: There was negotiations with whom?
- 16 A: With the Solicitor's office.
- 17 Q: And as a result, did he plea guilty to burglary second?
- 18 A: Again, I don't know if the burglary was dropped or if
- 19 that was part of the plea deal.
- 20 Q: If I show you the transcript, would that refresh your
- 21 recollection?
- 22* A: Yes and I would go with whatever that said.
- 23 Q: I'll ask you if this is copy of the transcript of the
- 24 guilty plea on October 14, 2010 of Antonio McClary?
- 25 A: Yes that is.

HEARING

566

1 Q: I call your attention to the first two pages. You may
2 want to glance at it to refresh your memory.

3 A: Okay, yeah, looks like he pled to second degree murder
4 and that looks like the only charge on here. It looks
5 like he pled to second degree and that was it.

6 Q: Alright then what was he charged with at the beginning
7 of the plea?

8 A: First degree and then there were some other charges.
9 I think it was ...

10 Q: The murder charge.

11 A: A burglary first and some weapons charges I think were
12 in there.

13 Q: Was that a negotiated plea with the Solicitor?

14 A: It was.

15 Q: And was the murder charge dropped?

16 A: The first degree was ...

17 Q: And there was ...

18 A: ... dropped.

19 Q: ... one murder charge against him in the ultimate plea
20 was there?

21 A: Right.

22 Q: First degree burglary, was it dropped?

23 A: I believe it was, yes.

24 Q: And he only pled to second degree?

25 A: Right.

1 Q: That carries up to fifteen years?

2 A: Right.

3 Q: Did he get a fifteen year sentence?

4 A: No.

5 Q: What did he get?

6 A: I think he got twelve.

7 Q: In the plea negotiations with the Solicitor, was there
8 any discussions with the Solicitor about his testifying
9 at this trial with Kenyan Dorsey?

10 A: I can't say that that was a condition of the plea. It
11 was probably brought up and I know when I talked to
12 McClary, when we were discussing the plea, I told him
13* that if he would probably be asked to testify in any of
14 these other charges on any other defendants that went
15 to trial, that he would be expected to testify.

16 Q: And he agreed to do that?

17 A: He did.

18 Q: And as a result, his, he only pled guilty to twelve
19 years?

20 A: Yeah, I don't know if it was as a result, but he
21 understood that when he pled that if any of the other
22 cases came to trial that he would be called to testify.

23 Q: Let's go back; did you receive, did you request from
24 the Solicitor's office what we call Rule 5 or Grady
25 Motion Discovery on his behalf?

HEARING

568

- *
1 A: Yes.
- 2 Q: Did you receive his statements that he had given law
3 enforcement in April and two in May of 2009?
- 4 A: Yeah, as I recall, they were in the form of a
5 transcript of a recording. There may have been some
6 other written statements that he prepared, but the main
7 statements were transcripts, transcribed recordings.
- 8 Q: Now, do you recall asking for a preliminary hearing
9 before this Court to determine whether or not there was
10 probably cause?
- 11 A: Yes.
- 12 Q: When was that hearing held?
- 13 A: That was earlier in 2010. I believe it was May or June
14 ...
- 15 Q: June the 10th, does that sound ...
- 16 A: (No response).
- 17* Q: Tell us what time the preliminary hearing was supposed
18 to begin.
- 19 A: I think we were called to appear maybe mid day, maybe
20 right after lunch and there was some other proceeding
21 going on in an unrelated case, so it was quite a way.
- 22 Q: Where was McClary and the other Defendants sitting from
23 mid day until the time of the preliminary hearing?
- 24 A: They were over in this area.
- 25* Q: All sitting together?

- 1 A: I believe they were, yeah.
- 2 Q: And the preliminary hearing took place around four pm?
- 3 A: That sounds right, yeah.
- 4* Q: That was before one of our local Magistrates?
- 5 A: That's correct.
- 6 Q: After that hearing, was there a meeting in the grand
7 jury room of the lawyers and the Defendants?
- 8 A: Yeah, there was, they had all the Defendants staged up
9 in the room up here and there was obviously law
10 enforcement there and then I think I was there, you
11 were there sir, and Mr. Fender who represented one of
12 the other Defendants was also there.
- 13 Q: Who was that?
- 14 A: Legrand Fender.
- 15 Q: Carroway? The public defender?
- 16 A: I'm sorry. I know someone named Legrand Fender.
- 17 Q: Is that him right there?
- 18 A: Mr. Carraway, of course, yes.
- 19 Q: Yes, okay. He was in, the lawyers were present?
- 20 A: Yes.
- 21* Q: Was Mr. McClary present with you in this meeting?
- 22 A: Yeah, and McClary and I were standing in the far corner
23 of the room, standing up, talking about his case.
- 24 Q: Okay and at one point in time did we sit around the
25 table together?

HEARING

570

- 1 A: Yes, you came over and asked us to sit at the table ...
- 2 Q: Let me ask this, was Mr. Bowen present?
- 3 A: Yes...
- 4 Q: And was Ronald Mack present? Mr. Carraway's prisoner?
- 5 Uh, client?
- 6 A: Yes.
- 7 Q: And you and your client?
- 8* A: Yes.
- 9 Q: So there was three lawyers and three parties in this
- 10 case?
- 11 A: Right.
- 12 Q: Tell us what happened.
- 13 A: Well, you approached me and asked if you could ask my
- 14 client a question. Naturally, I wanted to know what
- 15 the question was, because often in cases co. Defendants
- 16 may have conflicting interests and you told me you just
- 17 wanted to ask one simple question. Now, as I recall,
- 18 Mr. Bowen had not made any statements in the case,
- 19 especially any that incriminated my client, so we sat
- 20 at the table and you asked him, you asked Mr. McClary,
- 21 I was right next to him, ready to stop you if you went
- 22 past what you told me you were going to do, and you
- 23 asked him a simple question. You asked him to look
- 24 across the table at Mr. Bowen and said, is this the guy
- 25 they call Callie? And my client said, Mr. McClary said

1 no, that's not him. Callie's different; he's tall,
2 taller, much taller. He's got some piercings and, in
3 his face I think he said and he's got an Afro hairstyle
4 and Mr. Bowen didn't have any of those. Of course,
5 Bowen was sitting down, so I couldn't tell how tall he
6 was, but I looked across and he didn't have an Afro and
7 he didn't have any earrings or nose rings or whatever
8 other piercings one might have. He didn't have any.

9 Q: Anything else happen?

10 A: Excuse me?

11 Q: Did anything else happen?

12* A: Um

13 Q: Let me ask you this, were you surprised that that
14 developed?

15 A: I'm not, I wouldn't say, I wouldn't call it surprised
16 and I'll tell you why I'm saying that. I was
17 relatively new in the case, and after a while you don't
18 get surprised by a lot of things in these cases, but I
19 was a little puzzled that, you know, that he said that,
20 but the way he reacted and the way he said it, I mean,
21 I was pretty much convinced that he didn't believe that
22 that was the guy.

23 Q: Was he asked to sign a written statement confirming
24 that later?

25 A: Yeah, you had talked to me right after that. I said

HEARING

572

1 well, if you prepare one, I'll present it to him. You
2 did that and emailed it to me and we came back to court
3 some time after that, it wasn't too long for a bond
4 hearing and at that point, on that occasion, I had the
5 statement with me and asked him if he would sign it, if
6 he wanted to sign it and he said he did not want to
7 sign it.

8 Q: Okay, now let me back up to that meeting. And I take
9 you back to June the 10th and ask you if you recognize
10 what has been marked for identification as Defendant's
11 exhibit number 1?

12 A: I believe I have this particular statement in my file
13 and it was provided as a result of the discovery motion
14 that I served on the, oh no, I'm sorry. I'm mistaken.
15 This is a statement that I actually notarized.

16 Q: Whose statement is it?

17 A: Ronald Mack's. Yeah, there's my signature and my
18 printed name below it in my handwriting.

19 Q: On what day?

20 A: Well it's ...

21 Q: If you look above your signature, what date did you
22 notarize it?

23 A: Actually it's not dated. It says June 2009, but the
24 actual day is left blank.

25 Q: Let me, okay. Okay, now do you recall that this was

1 the same day that we were back in the room with your
2 client on the 10th when this was signed?

3 A: Yeah, that statement you had that already prepared, and
4 the only reason I signed it is just to notarize Mr.
5 Mack's signature, because I'm a Notary and I was, and
6 you asked me to notarize it.

7 Q: Okay.

8 A: So I observed him sign it and ...

9 Q: Did you observe him put an initial on each page?

10 A: Yeah and I ...

11 Q: And then ...

12 A: ... I saw him initial the pages.

13 Q: Did he and Mr. Carraway get a copy of this statement on
14 the same time we signed it?

15 A: I think, I can't really remember that.

16 Q: Okay, Your Honor we would now offer this statement.

17 Ms. Barr: Judge, would object same grounds. It's still
18 hearsay.

19 The Court: Counsel approach. Mr. Jenkinson I notice in the
20 statement that you are offering into evidence and the State
21 has objected to on page twelve, Mr. Mack said that you
22 received a warrant from Florence county charging with assault
23 and battery and intent to kill. Kelvin B. and Tawanda
24 Allen shot the victim James Allen. That they drove from
25 Maryland to Florence in January 2009 to an apartment on West

HEARING

574

1 Palmetto Street and found him and killed him; found him and
2 shot him, but didn't kill him. I just want to be certain
3 that you have considered it and you are aware that his also
4 implicates your client in another shooting in South Carolina,
5 specifically Florence county.

6 Mr. Jenkinson: I didn't recall that, but at the time we did
7 put both statements together.

8 The Court: Well this is an exhibit that you've offered into
9 evidence and the State has objected to.

10 Mr. Jenkinson: Well, I will withdraw at this time.

11 The Court: If you're going to withdraw it, then you need to
12 withdraw it in the presence of the jury.

13 Mr. Jenkinson: Can I consult with my partner for just one
14 second?

15 The Court: Alright. What's your position Ms. Barr? Mr.
16 Jenkinson do you wish to withdraw your request ...

17 Mr. Jenkinson: Yes sir.

18 The Court: ... your exhibit. The State's position?

19 Mr. Jenkinson: Yes sir.

20 Ms. Barr: Judge I don't have any objection to that.

21 The Court: Alright bring the jury back.

22 (Jury enters courtroom)

23 Mr. Jenkinson: What number is that Your Honor?

24 The Court: Page twelve.

25 Mr. Jenkinson: I mean what number?

1 The Court: The exhibit number is Defense exhibit number ...

2 Court Reporter: One. It's one.

3* The Court: Mr. Jenkinson?

4 Mr. Jenkinson: We withdraw that exhibit.

5 The Court: Alright, ladies and gentlemen of the jury Mr.
6 Jenkinson has elected to withdraw his request to have the
7 statement of Ronald Mack, dated June 2009 at this time. You
8 may proceed.

9 Q: Now, that's all the questions that we have at this
10 time.

11* CROSS EXAMINATION OF PALMER BY MS. BARR:

12 Q: Good afternoon Mr. Palmer.

13 A: Good afternoon.

14 Q: I imagine you probably don't like being on that hot
15 seat.

16 Mr. Jenkinson: Wait a minute, I'm sorry Your Honor. I do
17 have one more question to ask him.

18 The Court: Yes sir?

19 CONTINUE EXAMINATION BY MR. JENKINSON:

20* Q: I'm going to show you what has been marked as
21 Defendant's exhibit number 2 and ask you if that is a
22 statement that was prepared of the conversation with
23 Mr. McClary back in the grand jury room that you
24 described to us?

25 A: This is the statement, yes.

HEARING

576

1 Q: And did you find it accurate and a true representation
2 of what took place in the grand jury room?

3 A: Fretty much, yes.

4 Q: And did you have any problems about having it signed by
5 your client based on the wording?

6 A: I had no problems presenting it to him to see if he
7 wanted to sign it.

8 Q: That an accurate of what took place though?

9 A: I believe it is, yes.

10 Q: We move as Defense exhibit number 2.

11 Ms. Barr: Your Honor, we would object under Rule 613, being
12 Mr. McClary has admitted the main statement and therefore
13 astringent evidence of that statement is not admissible.

14 The Court: Objection sustained.

15 Mr. Jenkinson: Answer any questions they have.

16 CROSS EXAMINATION OF MR. PALMER BY MS. BARR:

17 Q: Mr. Palmer, you testified earlier that you were
18 relatively new to the case back in June of 2009?

19 A: That's right.

20 Q: Alright and if Mr. McClary was arrested in the middle
21 of May of 2009, the case would have been about a month
22 old?

23 A: Right.

24 Q: Alright and in June of 2009, when you appeared at the
25 preliminary hearing, of course you had not been, at

1 that time, seen all of the evidence in connection with
2 the case?

3 A: That's correct.

4 Q: You had not reviewed any pictures, any incident
5 reports?

6 A: Right.

7 Q: Any statements?

8 A: Right.

9 Q: And you knew, quite frankly, very little about the
10 facts of the case, at that time. Would that be fair?

11* A: Yeah, other than what McClary had related to me.

12 Q: Alright, now when you were at that preliminary hearing,
13 all of the lawyers and all of the defendants were
14 seated at that table over there?

15 A: That's right.

16 Q: Close, fair to say that you all were kind of close and
17 huddled together because of limited space?

18 A: We were.

19* Q: Okay and following that preliminary hearing, you all
20 went into a room in the back in the courthouse?

21 A: Right, that's correct.

22 Q: And of course, all of the defendants and all of the
23 lawyers were back there too right?

24 A: That's right.

25 Q: And Mr. McClary certainly did not volunteer to you or

HEARING

578

1 to Mr. Jenkinson any identifying or identification
2 information about Mr. Bowen did he? He didn't
3 volunteer that on his own did he?

4 A: No, we were in the corner discussing his case.

5 Q: Right and Mr. Jenkinson is the one who actually came to
6 you and asked permission to talk to your client, right?

7 A: Right and then he invited us to be seated at the table
8 with the other defendants and the other counsel.

9 Q: And at that time certainly, sir, there was nothing
10 improper about Mr. Jenkinson asking your client a
11 question with your permission, right?

12 A: Right.

13 Q: Now, the entire time that Mr. Jenkinson was talking
14 with you and talking with your client, Mr. Bowen was
15 just a few feet away from Mr. McClary wasn't he?

16 A: He was across the table from him.

17 Q: About as short a distance as you and I are now?

18 A: Well I think it was closer than that. It was ...

19 Q: Maybe about right here?

20 A: ... tables maybe three feet wide.

21 Q: Okay, and the entire time that Mr. Jenkinson was asking
22 you a question, asking your lawyer question, Mr. Bowen
23 was staring your client down wasn't he?

24 A: He was looking at him yes.

25 Q: Alright now, Mr. Jenkinson asked you, curiously, at

1 some point in time he prepared a statement for your
2 client to sign.

3 A: Right.

4 Q: You remember him asking you that?

5 A: Yes.

6 Q: And he presented that type written statement to you?

7 A: He first emailed it to me.

8 Q: Okay, alright and you said that you had no problem
9 presenting it to your client and let your client make
10 the decision as to whether or not he wanted to sign it?

11 A: Yes, that's correct.

12 Q: Alright and you testified that you presented the
13 statement prepared by Mr. Jenkinson to your client, Mr.
14 McClary right?

15 A: Actually I did that on two different occasions.

16 Q: Alright and you testify that he did not want to sign
17 it, right?

18 A: That's right.

19 Q: And you were, at that time, kind of confused as to why
20 he wouldn't want to sign it?

21 A: I wouldn't call it confused. I, you know, I, it was
22 the kind of thing that, you know, I presented it to him
23 and I said you don't have to sign this.

24 Q: Yeah.

25 A: Nobody can force you to sign it. It has to be your

HEARING

580

- 1 voluntary act and I'm just going to leave it up to you.
2 You've already made the statement, the written
3 statement just memorializes what you said. If you want
4 to sign it, fine, you know, that's fine with me too.
- 5 Q: What did he say when you presented it to him to sign?
6 A: He said I'm not going to sign it.
- 7 Q: Why?
8 A: He said because it's not the truth.
- 9 Q: What else? He said he's kind of scared of that guy
10 didn't he?
11 A: Well he didn't say at the first time when I came back
12 from the bond hearing.
- 13 Q: Okay.
14 A: He just said he didn't want to sign it.
- 15 Q: Said it wasn't the truth?
16 A: Right he said it wasn't the truth and the other time I
17 presented it to him was actually in the jail.
- 18 Q: Yes sir.
19 A: I had gone to see him, not for that specific purpose,
20 but when I went to see him and meet with him, about his
21 case, I had the statement with me.
- 22 Q: Okay.
23 A: And said, you know, here's this statement. Have you
24 decided to change your mind about signing it? And he
25 said no, I don't want to sign it.

1 Q: Alright.

2 A: And he never did sign it.

3 Q: And during that second time that he presented the
4 statement was when he told you I'm scared of that guy.

5 A: Right.

6 Q: And when he said I'm scared of that guy, he was talking
7 about Kelvin B.

8 A: Well he didn't say that name.

9 Q: Well that's who you all were talking about right? In
10 terms of that not being the one that was with me that
11 night, you all were talking about Kelvin B. right?

12 A: Yeah, that was the subject in the statement, he just
13 didn't say the exact name.

14 Q: Now, as any good defense attorney may be, which you
15 clearly are.

16 A: Thank you.

17 Q: Absolutely, you deserve it. You want to negotiate, try
18 to negotiate the best possible deal for your client,
19 right?

20 A: That's right.

21 Q: And by the time Antonio McClary pled guilty, of course,
22 you had seen the evidence in the case, right?

23 A: That's right.

24 Q: You reviewed the statements?

25 A: Right.

HEARING

582

- 1 Q: The incident reports?
- 2 A: Right.
- 3 Q: The SLED reports?
- 4 A: Right.
- 5 Q: Photographs?
- 6 A: Correct.
- 7 Q: And you basically, as part of your representation of
8 him, wanted to try to get him as little time as you
9 could possibly get.
- 10 A: That's correct.
- 11 Q: Now you have had, during the course of your career, to
12 actually write out formal plea agreements with clients
13 ...
- 14 A: Oh yeah.
- 15 Q: ... with clients and with the State or with the
16 Prosecutor?
- 17 A: Sure, yes.
- 18 Q: And in those plea agreements, you spell out your client
19 is going to do this for the State and in return for
20 that the State is going to do is for your client,
21 right?
- 22 A: Correct.
- 23 Q: There was no such agreement in this case, was there?
- 24 A: No.
- 25 Q: And Mr. McClary was not made a condition of his plea

- 1* that he testify for the State?
- 2 A: No.
- 3 Q: Alright and you certainly, having reviewed all of the
4 evidence in the case, you didn't have any reason to
5 believe that he was a shooter?
- 6 A: There was no evidence he even had a weapon.
- 7 Q: No evidence that he even had a weapon?
- 8 A: No and there were some other factors that I think were
9 persuasive in getting the plea agreement that he got.
- 10 Q: You viewed him as less responsible then some of the
11 other co defendants, is that fair to say?
- 12 A: Yeah, he was among the youngest and there was no
13 evidence he ever had a weapon. It was, you know, not
14 really certain whether or not he even entered the
15 dwelling. Now ultimately he admitted to entering the
16 dwelling, but those were some facts that we talked
17 about.
- 18* Q: And he admitted to entering the dwelling during the
19 course of his plea when he put his hand on the Bible
20 back in October?
- 21 A: That's correct.
- 22 Q: And you stood right next to him when you entered that
23 plea?
- 24 A: That's right.
- 25 Q: Mr. Palmer, thank you so much for helping us.

1 The Court: Mr. Jenkinson?

2 Mr. Jenkinson: Yes sir.

3 RE DIRECT EXAMINATION OF PALMER BY JENKINSON:

4 Q: In Mr. McClary's plea, did you learn for the first time
5* from the words of his own mouth, he did go inside and
6 participate in this crime?

7 A: Well, if I can just comment on that, the answer is yes,
8 but to explain that answer, you know, I've learned over
9 the years that it's important when you're dealing with
10 a criminal defendant whether or not to plea guilty. I
11 always emphasis a couple of things. Number one is, I
12 never push anybody to plead guilty. I might make a
13 recommendation, but I do stress the importance of if
14 you decide to plea guilty, it's fundamental that you
15 realize that you should be prepared to admit that you
16 did what you're pleading guilty to. I think we've all
17 been there, the client decides to take a deal and then
18 gets up there and says well I didn't really do it, I
19 just wanted the deal. Of course the plea won't be
20 accepted. So, in that sense I knew he was going to
21 admit what he was charged with or what he had agreed to
22* plea to, however, having said that, there were some
23 facts that came out in his testimony, when he was
24 pleading, he hadn't told me. Specifically, I'm
25 referring to the fact that he admitted entering the

1 dwelling, but he went on to say that he had disguised
2 his face with some type of mask. I believe he said it
3 was a tee shirt. He had covered his face so he
4 wouldn't be recognized. I wasn't aware of that fact
5 and I don't think it was in any of the statements, so
6 in that sense, yeah, he did say some things that I
7 wasn't expecting.

8 Q: Did you hear him say for the first time that he went in
9 the house and I saw him, meaning Kenyan Dorsey, sitting
10 in the chair and I pointed right at him. In other
11 words, he identified him for the shooter?

12 A: Yes.

13 Q: First time you learned that too.

14 A: I think that's the first time I heard him say that.
15 Now, there were some information in the case that maybe
16 there was some allegations by someone else. Witnesses
17 or co defendants that that's what happened. That set
18 of facts, in and of itself wasn't a surprise to me,
19 because it had been alleged by someone else. But yeah,
20 he said at for the first time at the guilty plea
21 proceedings.

22 Q: He never admitted holding a shotgun and being the
23 shooter of the shotgun?

24 A: No. He never admitted that.

25 Q: Are you aware and do you advise their clients under the

HEARING

586

- 1 new act that passed in June which would had been before
2 this plea that he's eligible for a sentence reduction
3 if he cooperates with the State?
- 4 A: We did discuss that, yes.
- 5 Q: You did discuss at with him?
- 6 A: Yes.
- 7 Q: And that is a possibility; you may file that motion for
8 him?
- 9 A: It's possible, yes.
- 10 Q: Which would reduce his sentence even further for his
11 testimony?
- 12 A: Yeah, I honestly don't think it's likely that he would
13 get that under the circumstances, but it is something
14 that's available.
- 15 Q: You didn't think he was going to get twelve years
16 either, did you?
- 17 A: Well, I knew he was, I knew that would be the
18 recommendation after I had negotiated the plea with the
19 Solicitor.
- 20 Q: When you started the negotiations you had no idea it
21 would be reduced down to twelve years, did you?
- 22 A: The original plea offer entailed a higher sentence.
- 23 Q: No further question.
- 24 The Court: Anything further?
- 25 Ms. Barr: Not from the State Judge.

1 The Court: Thank you sir.

2 Mr. Palmer: Thank you Your Honor.

3 The Court: Next witness. Next witness.

4 Ms. Shuler: The defense calls Kelvin Michael Bowen, III.

5 -WITNESS IS SWORN IN-

6 DIRECT EXAMINATION OF MR. BOWEN BY SHULER:

7 Q: Good afternoon. Can you tell everybody in the

8 courtroom your name?

9 A: My name is Kelvin Michael Bowen, III.

10 Q: I'm going to ask you to speak up real loud into the

11 microphone, so put it up closer to your mouth.

12 A: Okay.

13 Q: What do people call you? Do you have a nickname?

14 A: Yes.

15 Q: What's that nickname?

16 A: KB.

17* Q: Is it okay if I call you KB?

18 A: Yes.

19 Q: Did you come down here and put your hand on the Bible?

20 A: Yes ma'am.

21 Q: Did you swear to tell the truth?

22 A: Yes ma'am.

23 Q: Do you know what the truth is?

24 A: Yes.

25* Q: What is the truth?

HEARING

588

- 1 A: The truth is being honest and not telling a lie.
- 2 Q: Do you know what a lie is?
- 3 A: Yes.
- 4 Q: What's a lie?
- 5 A: A lie is when you dishonest and not telling the truth.
- 6 Q: Do you know why we're in court here today?
- 7 A: Yes.
- 8 Q: Why are we here?
- 9 A: Because of my dad's case.
- 10 Q: And are you here to tell the truth today?
- 11 A: Yes.
- 12 Q: Are you in school?
- 13 A: Yes.
- 14 Q: What grade are you in?
- 15 A: The eighth.
- 16 Q: Are you a good student?
- 17 A: Yes.
- 18 Q: KB what kind of things do you do for fun?
- 19 A: Sports.
- 20 Q: What kind of sports?
- 21 A: Football and basketball.
- 22 Q: What position do you play?
- 23 A: Defensive lineman.
- 24 Q: Is at in football?
- 25 A: Yes.

- 1 Q: You don't play any other position?
- 2 A: No.
- 3 Q: If you're not playing sports, what kind of things do
4 you do with your friends?
- 5 A: Play video games.
- 6 Q: What kind of video games?
- 7 A: Sports.
- 8* Q: I'm going to ask you about the weekend of April 3rd, 4th
9 and 5th of 2009.
- 10 A: Okay.
- 11 Q: Do you remember that weekend?
- 12 A: Yes.
- 13 Q: Why do you remember that weekend?
- 14 A: Because the 4th was a Saturday and it was my cousin,
15 Denay birthday.
- 16 Q: Who's your cousin Denay?
- 17* A: My cousin Denay is my mom's cousin and is my cousin too
18 and she lives in Texas.
- 19 Q: What's Denay's last name?
- 20 A: Holmes.
- 21 Q: Where does she live in Texas?
- 22 A: In Austin.
- 23 Q: And you said it was her birthday?
- 24 A: Yes.
- 25* Q: Did you talk to Denay at day?

HEARING

590

- 1 A: Yes.
- 2 Q: When did you talk to her?
- 3 A: Around eight thirty, nine o'clock.
- 4* Q: Did anybody else talk to her at day too?
- 5 A: Yes.
- 6 Q: Who talked to Denay?
- 7 A: My mom and my dad. Well we all did, we talked from a
8 speaker phone.
- 9 Q: Why did y'all call her?
- 10 A: Because it was her birthday.
- 11 Q: Did you call to wish her a happy birthday?.
- 12* A: Yes.
- 13 Q: Did y'all sing happy birthday to her on the phone?
- 14 A: Yes.
- 15 Q: When's your birthday?
- 16 A: April 18.
- 17 Q: Did your mom and dad give you something the weekend of
18 April 3rd, 4 and 5 of 2009?
- 19 A: Yes.
- 20 Q: Do you remember what they gave you?
- 21* A: Yes.
- 22 Q: What did they give you?
- 23 A: They gave me an electronic basketball court.
- 24 Q: What does it look like?
- 25 A: It's one back board with two rims on it and it's two

1 nets on e side and a net at e bottom, so when you shoot
2 it and it goes in, it comes back out to you so you can
3 shoot it again.

4 Q: Is at a big piece of equipment?

5 A: Yes.

6 Q: Where is at?

7 A: In my room.

8* Q: Did you get at present early?

9 A: Yes.

10 Q: Do you know why you got it early?

11 A: No, not really.

12 Q: But do you remember getting it early?

13 A: Yes.

14 Q: Did you and your dad put at together?

15 A: Yes.

16* Q: What day did ya'll put at together?

17 A: Saturday.

18 Q: Do you remember what date at was?

19 A: The 4.

20 Q: When did you start putting it together?

21 A: When my dad got home around two o'clock after we
22 finished cleaning up.

23 Q: Where was your mom at at time?

24 A: At e hair dresser.

25* Q: Were your dad and you at home alone?

HEARING

592

- 1 A: Yes.
- 2 Q: Did ya'll play at game after you put it together?
- 3 A: Yes.
- 4 Q: Did it take you a long time to put it together?
- 5 A: Yes.
- 6 Q: About how long did it take you to put it together?
- 7 A: About an hour because we kept having to find little
- 8 pieces.
- 9 Q: Did it have a lot of nuts and bolts?
- 10 A: Yes.
- 11 Q: How long did ya'll play it after you got done putting
- 12 it together?
- 13 A: Yes.
- 14 Q: How long did ya'll play it?
- 15 A: About an hour or so.
- 16 Q: Did ya'll do anything after you played your electronic
- 17 basketball game?
- 18 A: Yes.
- 19 Q: What did ya'll do?
- 20 A: We watched t.v.
- 21 Q: How long did ya'll watch t.v.?
- 22 A: We watched t.v. until we sung happy birthday to my
- 23 cousin.
- 24 Q: Did you do anything after you sang happy birthday to
- 25 your cousin?

- 1 A: Yes.
- 2 Q: What did you do?
- 3 A: Me and my dad played video games.
- 4 Q: How long did you play video games?
- 5 A: Until I fell asleep.
- 6 Q: What time did you fall asleep?
- 7 A: I don't remember, but I ink it was around two o'clock.
- 8 Q: Do you normally stay up late on the weekend and play
9 video games with your dad?
- 10 A: Yes.
- 11 Q: Was your dad with you all day long on Saturday?
- 12 A: Yes.
- 13 Q: Whenever you went to bed was he there?
- 14 A: I think so.
- 15 Q: Whenever you woke up e next day, was he there?
- 16 A: Yes.
- 17 Q: On Sunday he was there?
- 18 A: Yes.
- 19 Q: What did ya'll do on Sunday?
- 20 A: My dad got me and my mom up and he cooked breakfast.
- 21 Q: What did he cook for you all?
- 22 A: He made waffles, bacon and eggs.
- 23 Q: Beg the Court's indulgence. Did you speak to anyone
24 about your testifying today?
- 25 A: My dad's lawyers.

HEARING

594

- 1 Q: Did you speak to your mom?
- 2 A: Yes.
- 3* Q: And you spoke to me?
- 4 A: Yes.
- 5 Q: Did I tell you what to say?
- 6 A: No.
- 7 Q: Did your mama tell you what to say?
- 8 A: No.
- 9 Q: Are you telling the truth today?
- 10 A: Yes.
- 11 Q: Anything other than the truth?
- 12 A: No.
- 13 Q: And nobody told you what to say today did they?
- 14 A: No ma'am.
- 15 Q: If you will ask any, answer any questions that, did you
- 16 discuss your testifying today with your mom back
- 17 whenever your dad was arrested?
- 18 A: Can you repeat the question?
- 19 Q: Did you talk to your mama about your testifying today
- 20* whenever your dad was arrested back in May of 2009?
- 21 A: Yes.
- 22 Q: Did she tell you what to say then?
- 23 A: No.
- 24 Q: If you will, ask, answer any questions that Ms. Barr
- 25 may pose to you.

CROSS EXAMINATION OF BOWEN BY BARR:

1
2
3
4
5
6
7*
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24*
25

Q: Young man, I've just got a couple of questions, is it okay if I call you KB as well?

A: Yes.

Q: Okay, now you go to school in Prince George County?

A: Yes.

Q: So you're missing school this week?

A: Yes.

Q: Okay, you and your mom, how did ya'll get down here to South Carolina this week. Ya'll drove?

A: Yes.

Q: It took you what about seven hours to get down here?

A: No, eight.

Q: Eight hours to come down to Kingstree?

A: Yes.

Q: Okay now you said your cousin Denay, her birthday is when?

A: April 4.

Q: Okay. KB you know Tawanda Allen don't you? You've seen her before?

A: No.

Q: She never brought her kids by your house?

A: No.

Q: Are you sure?

A: Yes.

HEARING

596

- 1 Q: She's never picked you up?
- 2 A: No.
- 3* Q: Now your mom and your dad didn't live together during
4 this time did they?
- 5 A: Yes.
- 6 Q: How long had they been married?
- 7 A: I'm thirteen so I'm guessing thirteen years.
- 8 Q: They had separated at some point in 2008?
- 9 A: No.
- 10 Q: Had they ever separated?
- 11* A: No.
- 12 Q: Your dad had a girlfriend?
- 13 A: Not that I know of.
- 14 Q: Are you testifying that your dad spent every night the
15 thirteen years that he lived with your mom, married to
16 your mom ...
- 17 Ms. Shuler: Objection Your Honor. Your Honor, may we
18 approach?
- 19 The Court: I guess you want an answer as well huh? Oh
20* you don't want an answer?
- 21 Ms. Shuler: I would like an answer. May I approach Your
22 Honor?
- 23 The Court: Sure.
- 24 The Court: State the question Ms. Barr.
- 25 Q: Yes sir. KB, are you testifying that your dad and your

1 mom spent every night together that they were married,
2 are you saying that?

3 A: Yes.

4 Q: Every single night they were married they were living,
5 they were, they had spent the night at her house?
6 That's what you're telling us?

7 A: My dad stayed with us.

8 Q: Okay that's all I have Your Honor. Well I'm sorry
9 Judge. A quick question. Your dad is from California?

10 A: Yes.

11 Q: They call him Callie sometimes?

12 A: No.

13 Q: Alright, that's all I have.

14 Ms. Shuler: I have no further questions.

15* e Court: Step down. Next witness.

16 Ms. Shuler: The defense calls Tiffany Bowen.

17 -WITNESS IS SWORN IN-

18 DIRECT EXAMINATION OF TIFFANY BOWEN BY SHULER:

19 Q: Tiffany will you state your full name for the court?

20 A: Tiffany Monique Bowen.

21 Q: I'm going to ask you to speak up real loud into the
22 microphone.

23 A: Tiffany Monique Bowen.

24 Q: Thank you Tiffany. How old are you?

25 A: Thirty two.

HEARING

598

1 Q: Do you work?

2 A: Yes.

3 Q: Where do you work?

4 A: At Keiser which is a health insurance company. I'm a
5 lead member service representative which means when
6 people call in about their insurance I verify benefits,
7 whether or not they have prescription coverage, how
8 much it cost to go to the doctor, how much it is for
9 surgery, things of that nature.

10 Q: How long have you been there?

11 A: Four and a half months.

12 Q: Prior to working at Keiser where did you work?

13 A: I worked at a company called Atcom Worldwide, which is
14 an international company.

15 Q: How long were you there?

16 A: Two and a half years.

17 Q: Why did you leave that company?

18 A: For better benefits and better pay.

19 Q: Are you married?

20 A: Yes.

21 Q: To whom are you married?

22 A: Kelvin Michael Bowen, Jr.

23 Q: Is he here today?

24 A: Yes ma'am.

25 Q: Is he the defendant in this case?

- 1 A: Yes ma'am.
- 2 Q: How long have you been married to Kelvin?
- 3 A: For thirteen years.
- 4 Q: Do you guys have any children?
- 5 A: Yes ma'am.
- 6 Q: How many children do you have?
- 7 A: One.
- 8 Q: What's his name?
- 9 A: Kelvin Michael Bowen, Jr., I mean Kelvin Michael Bowen,
10 III.
- 11 Q: Was he the young man that testified prior to you
12 testifying now?
- 13 A: Yes.
- 14 Q: What do you guys call Kelvin Michael Bowen, III?
- 15 A: KB.
- 16 Q: When is KB's birthday?
- 17 A: April 15.
- 18 Q: Do you and your husband have a good relationship?
- 19 A: We use to.
- 20 Q: What happened in your marriage around about April or
21 May of 2009?
- 22 A: I noticed that he started putting passwords on his
23 phone, so I couldn't look at it if I wanted to go to
24 his phone to play a game I couldn't go on to it. He
25 started having conversations, if I walked into the room

HEARING

600

- 1 he would walk out of the room, things of that nature.
- 2* Q: Did that make you think that he was seeing somebody
- 3 else?
- 4 A: Yes.
- 5 Q: Did you find out if he was seeing somebody else?
- 6 A: Yes.
- 7 Q: Who was that person?
- 8 A: Tawanda Mack Allen.
- 9 Q: How did that make you feel?
- 10 A: I was hurt and betrayed. I felt betrayed.
- 11 Q: Did ya'll ever argue about Tawanda?
- 12 A: Yes ma'am.
- 13 Q: Did your husband have a number of cell phones?
- 14 A: My husband had two cell phones.
- 15 Q: Why did he have two cell phones?
- 16 A: Well the first cell phone he had was a t-mobile Samsung
- 17 phone, which is a contract phone that he does have a
- 18 bill on, that he did have a bill on. He just didn't
- 19* pay the bill on it, so then he didn't have a phone for
- 20 a period of time. And then in May he purchased a Razor
- 21 Boost Mobile cell phone.
- 22 Q: I'm going to ask you about the weekend of April 3rd, 4th
- 23 and 5th of 2009. What happened that weekend?
- 24 A: Well, he just got back from California.
- 25 Q: When you say he, who is he?

1 A: My husband, Kelvin, Jr. Okay, so he just got back from
2 California. He left March 22nd to go to his cousin's
3 birthday party. She was having it in California. He
4 arrived back April 1st. When I came home from work, he
5 was there. We talked, he showed me pictures, I
6 unpacked, I cooked dinner and that's our routine
7 because he was unemployed at the time. He had recently
8 left Wal-Mart. So when I go to work he stays at home.
9 He helps my son with his homework so when I come home
10 he has meat laid out for me. So, I cook. That's just
11 our routine.

12 Q: On Friday, April 3rd, did anything significant happen at
13 your house or was it just a regular day?

14 A: Just a regular day.

15 Q: What about Saturday, April 4? What did you do that
16 day?

17 A: I got up and went to my hairdresser appointment. I
18 have a regular appointment at ten a.m. every Saturday.

19 Q: Whenever you left the house, was Kelvin and your son at
20 home?

21 A: Yes ma'am.

22 Q: Whenever, what time did you get back from your hair
23 appointment?

24 A: It was about two thirty in the afternoon.

25 Q: Whenever you came back from your hair appointment, what

HEARING

602

1 did you discover had happened in your house?

2 A: That he had given my son his basketball court early.

3 Q: Did y'all discuss giving that to him early?

4 A: No ma'am.

5 Q: Why did your husband give that to him early?

6 A: Because he wanted to play with it.

7 Q: Did ya'll do anything later on that afternoon as a
8 family?

9 A: We just watched t.v. I cooked dinner while they were
10 finishing watching t.v. About eight thirty or nine
11 thirty at night. I called my cousin Denay and wished
12 her a happy birthday. I was originally supposed to go
13 to Texas for her birthday party, but I was sick, so I
14 didn't go.

15 Q: What did that conversation between you and Denay
16 entail?

17 A: We called her, I called her on my phone, on speaker ...

18 Q: When you say we, I want you to tell everybody's name.

19 A: Me, my son and my husband called her on speaker phone
20 and we sang happy birthday to her before she left to go
21 to the party.

22 Q: What happened Mother's Day weekend of 2009 if you
23 recall?

24 A: That Friday me and him got into an argument. Me and
25 Kelvin, Jr. got into an argument regarding Tawanda. He

1 left that Friday and he, I talked to him again Mother's
2 Day, which was that Sunday and he told me he would be
3 home and I spent the majority of the day at the
4 cemetery because at was the first year since my mom had
5 passed that I had to have a Mother's Day without her.

6 Q: Did he come back home on Sunday?

7 A: Yes ma'am. He came back late that night.

8 Q: Do you recall what occurred the following weekend?

9 A: The following weekend, again we argued about Tawanda.
10 I told him that, you know, you got a choice to make.
11 I can't keep going back and forth with letting you
12* know, keep seeing her and she's calling you, I can't
13 deal with that. So he left that night. He told me
14 don't worry about it, he was going to end the
15 relationship with her and that we were going to go
16 ahead and go to marriage counseling.

17 Q: When was the next time that you talked to your husband?

18 A: Well that would have been Sunday night when he called
19 back to say that he was on his way home and that
20* everything was going to be okay. Well then after that,
21 I didn't talk to him. I stayed up late for him. He
22 never returned home and the next time I heard from him
23 was Tuesday morning.

24 Q: What did you find out whenever he had called you that
25 Tuesday morning?

HEARING

604

- 1 A: He called me and told me that he had been arrested.
- 2 Q: What was your response?
- 3 A: Arrested for what?
- 4 Q: And did he tell you, did you find out what he had been
- 5 arrested for?
- 6 A: Yes, he had told me that he was arrested for murder.
- 7 Q: Whenever he told you that, what did you say?
- 8 A: When? When did this take place? Who did you murder?
- 9 What is this? How could you have done this? You know,
- 10 when.
- 11 Q: Did he tell you when this allegedly happened?
- 12 A: Yes he said this happened either that Saturday April 4
- 13 into early Saturday, I mean Sunday morning.
- 14 Q: Whenever he told you the dates, what did you say?
- 15 A: I said you couldn't have been there because you had
- 16 been home all that weekend.
- 17 Q: What type of haircut does your husband have?
- 18 A: I call it a cezar. He keeps it low cut.
- 19 Q: Does he have an Afro haircut?
- 20 A: No, he's never had an Afro haircut. He doesn't like
- 21 hair.
- 22 Q: Have you ever seen him with braids?
- 23 A: No ma'am.
- 24 Q: Have you ever heard anybody call him the name Callie?
- 25 A: No ma'am.

1 Q: You said a few moments ago that the Samsung phone was
2 turned off.

3 A: Correct.

4 Q: Do you remember what day that was turned off?

5 A: The billing cycle would have been April 9, so we were
6 to pay the bill by April 19, but we didn't.

7 Q: I'm going show you what has been marked as, for
8 identifications purposes as Defendant's exhibit 6 and
9 I ask you do you recognize that photograph?

10 A: Yes ma'am.

11a Ms. Shuler: Your Honor, at is time I would move this
12 photograph into evidence.

13 Ms. Barr: Judge we would object on the grounds of relevance.

14 The Court: Do you have some foundation of relevance you want
15 to state before you question the witness?

16 Ms. Shuler: Yes sir Your Honor.

17 Q: I asked you a few moments ago, what type of hair cut
18 your husband has and what did you tell me?

19 A: It's a low cut cezar.

20 Ms. Shuler: And Your Honor, I would now move this photograph
21 into evidence.

22 (Defendant's Exhibit Number Six was admitted)

23 Q: I'm going to show you this, what has been marked as
24 Defendant's exhibit, for identification purposes as
25 Defendant's exhibit number 6.

HEARING

606

1 A: Okay.

2 Q: Is that a photograph of your husband?

3 A: Yes ma'am.

4 Q: When was at photograph taken?

5 A: This was taken in March when he went back to California
6 to go to his cousin's birthday party.

7 Q: March of what year?

8 A: '09.

9 Q: Is that an accurate representation of what your husband
10 looked like in March of 2009?

11 A: Yes ma'am.

12 Ms. Shuler: Your Honor, I would move at is time to have at
13 photograph placed into evidence.

14 The Court: What says the State?

15 Ms. Barr: Without objection Judge.

16 The Court: Submitted without objection.

17 Ms. Shuler: Thank you.

18 Q: Tiffany I'm going to ask you to step down if you don't
19 mind, or can you see the t.v. from where you are?

20 A: Yes ma'am.

21 Q: Is that a photograph of your husband?

22 A: Yes ma'am.

23 Q: Is that an accurate representation of what he looked
24 like in March of 2009?

25 A: Yes ma'am.

1 Q: Does he have an Afro haircut in that photograph?

2* A: No ma'am he does not.

3 Q: I'm going to show you what's been marked for
4 identification purposes as defendants exhibit number 7.
5 I'm going to ask you if you recognize that photograph?

6 A: Yes ma'am.

7 Q: Is that a photograph of your husband?

8 A: Yes ma'am.

9 Q: When was that photograph taken?

10* A: It was taken in 2008.

11 Q: Is that an accurate representation of what your husband
12 looked like in April 2008?

13 A: I can't say that was April 2008, but it was 2008.

14 Q: Is that an accurate representation of what your husband
15 looked like in 2008?

16 A: Yes.

17 Ms. Shuler: Your Honor I would move to have this photograph
18 placed into evidence.

19* Ms. Barr: Judge, that's without objection.

20 e Court: Okay.

21 Q: Tiffany do you recognize that photograph?

22 A: Yes ma'am.

23 Q: Is that an accurate representation of what your husband
24 looked like in 2008?

25 A: Yes ma'am.

HEARING

608

1 Q: Does your husband have an Afro haircut in that picture?

2 A: No.

3 Q: Does he have braids?

4 A: No ma'am.

5 Q: I'm going to show you what's been marked for
6 identification purposes only as Defendant's exhibit
7 number 8. Do you recognize that photograph?

8 A: Yes ma'am.

9 Q: Is that a photograph of your husband?

10 A: Yes ma'am.

11 Q: When was that photograph taken?

12 A: This was taken in the summer of '08.

13 Ms. Shuler: At this time I would move Defendant's exhibit
14 number 8 into evidence.

15 Ms. Barr: No objection Your Honor.

16 The Court: Without objection.

17 **(Defendant's Exhibit Number Eight was admitted)**

18

19 Q: I can't, Your Honor, may I ...

20 The Court: You can give it to the jury.

21 Q: ... give it to the jury?

22 The Court: And the jury will have it in the jury room, it's
23 in evidence.

24 Q: Tiffany, did your husband have a Afro haircut in that
25 picture?

- 1 A: No ma'am.
- 2 Q: Does he have braids in that picture?
- 3 A: No ma'am.
- 4 Q: I'm going to show you Defendant's exhibit number,
5 what's been marked for identification purposes only
6 Defendant's exhibits 11 and 12. Do you recognize those
7 photographs?
- 8 A: Yes ma'am.
- 9 Q: When were those pictures taken?
- 10 A: These pictures were all taken March of 2009 in
11 California at his cousin's birthday party.
- 12 Q: Is that an accurate representation of what your husband
13 looked like in March of 2009?
- 14 A: Yes.
- 15 Ms. Shuler: At this time I would move those photographs into
16 evidence as well.
- 17 Ms. Barr: Judge these are without objection.
- 18 The Court: In without objection.
- 19 (Defendants Exhibit Numbers 11 and 12 were admitted)
- 20 Q: Tiffany, does your husband have an Afro haircut in any
21 of these pictures?
- 22 A: No ma'am, he does not.
- 23 Q: Does he have braids?
- 24 A: No ma'am he does not.
- 25 Q: Does he have facial hair in those pictures?

HEARING

610

1 A: Yes ma'am.

2 Q: Does he have a mustache in the other picture that I
3 showed you?

4 A: Yes ma'am.

5 Q: I'm going to show you Defendant's, what's been marked
6 for identification purposes as Defendant's exhibits 9
7 and 10. I'll ask you if you recognize these
8 photographs?

9 A: Yes ma'am.

10 Q: When were those pictures taken?

11 A: In the beginning of November.

12 Q: Which ones?

13 A: The, number 10 and number 9 was taken in the beginning
14 of November.

15 Ms. Shuler: I move Defendant's exhibits 9 and 10 into
16 evidence.

17 Ms. Barr: Let me see them please. No objection.

18 The Court: Without objection.

19 **(Defendant's Exhibit Numbers nine and ten were admitted)**

20 Q: Did your husband have an Afro haircut in these
21 pictures?

22 A: No ma'am.

23 Q: Does he have braids?

24 A: No.

25 Q: Does he have facial hair?

1 A: Yes.

2 Ms. Shuler: Beg the Court's indulgence.

3 Q: On Friday, did you receive a telephone call from an
4 officer by the name of Justin Whack?

5 A: I received a phone call, but I can't recall if his name
6 was Justin Whack.

7 Q: Did you know who had called you?

8 A: No ma'am.

9 Q: Did you know what agency they were with?

10 A: I think he said he worked with the court, but I wasn't
11 sure who he was.

12 Q: Had you ever spoken to this person before?

13 A: No ma'am.

14 Q: What did you tell him whenever he called?

15 A: He asked me my name, he asked me if he could ask me a
16 couple of questions, he asked me to verify my address
17 that I stay at. I gave him the address. He asked me
18 some questions about the court case and I told him that
19 I was more than willing to speak with him on Monday
20 when I arrived into Kingstree with my husband's lawyer.

21 Q: Has he tried to speak to you at any time since that
22 phone call?

23 A: No ma'am.

24 Q: Would you have discussed anything that he had to
25 discuss with you?

HEARING

612

- 1 A: Yes ma'am, in the presence of Mr. Jenkinson.
- 2 Q: Tiffany, if you had any idea, or any doubt in your mind
- 3 that your husband was not with you on April 3rd, 4 and
- 4 5 of 2009, would you of come here today?
- 5 A: No ma'am.
- 6 Q: Would you have put your child on the witness stand?
- 7 A: No ma'am.
- 8 Q: Are you telling the truth today?
- 9 A: The God's honest truth.
- 10 Q: Did you speak with anyone about your testimony on the
- 11 stand today?
- 12 A: Yes ma'am.
- 13 Q: Who'd you speak with?
- 14 A: You, and Mr. Jenkinson and my husband.
- 15 Q: Did anybody told you what to say?
- 16 A: No ma'am.
- 17 Q: Did I tell you what to say?
- 18 A: No ma'am.
- 19 Q: Did Mr. Jenkinson tell you what to say?
- 20 A: No ma'am.
- 21 Q: I have no further questions. If you will, answer any
- 22 questions that Ms. Barr may have for you.
- 23 The Court: Ms. Barr?
- 24 Ms. Barr: Thank you Your Honor.
- 25 CROSS EXAMINATION OF MS. BOWEN BY MS. BARR:

1 Q: Ms. Bowen let me ask you about some of those defense
2 exhibits if I may.

3 A: Okay.

4 Q: I'm sorry, ma'am may I see those please? Right there.
5 Ma'am I'm going to hand you what's been admitted as
6 State's exhibit numbers 11 and 12. You said these
7 pictures were taken in March of 2009?

8 A: Yes.

9 Q: Alright so that would have been like a month, as you
10 understand it now, before the murder of Kenyan Dorsey?

11 A: It would have been a week or so. The picture was taken
12 March the 8th of 2009.

13 Q: And that's Tawanda Allen in that picture isn't it?

14 A: Unfortunately it is.

15 Q: Not you?

16 A: No.

17 Q: So if this is not you in the picture, how do you know
18 when it was taken?

19 A: Because those are the pictures that were taken after
20 the birthday party.

21 Q: I thought I understood you to say when Ms. Shuler was
22 asking you questions that this was you and your
23 husband?

24 A: No ma'am, I never said that that was me with my
25 husband. She asked me if I recognize the photo and I

HEARING

614

1 said yes.

2 Q: Well you said just now that's when he brought the
3 picture back, but you actually don't know when it was
4 taken, do you?

5 A: The birthday party was March 28 2009.

6 Q: I understand when the birthday party was, but you don't
7 know when he took that picture with Tawanda Allen, do
8 you?

9 A: That's from, the pictures that he brought back.

10 Q: He took her to California?

11 A: I don't know if he took her but she went.

12 Q: Now, when did you find out that your husband was having
13 an affair with Ms. Allen?

14 A: I started to suspect in March, at the end of March, but
15 it wasn't confirmed until I saw those pictures in
16 April.

17 Q: And in addition to your husband using the phone outside
18 your presence and doing some other things like that, he
19 was also showing you signs that he was cheating on you
20 before then?

21 A: No ma'am.

22 Q: No?

23 A: No.

24 Q: Well wasn't he staying out from the house at night?

25 A: He would go out on weekends.

- 1 Q: Yeah.
- 2 A: That doesn't mean he's cheating. He has friends he can
3 go out to the club, he could be anywhere.
- 4 Q: I understand that, but wasn't he staying away from the
5 house? Regardless of where he was, there were times
6* that he was staying away from your house during the
7 weekend, right?
- 8 A: Yes.
- 9 Q: Contrary to what your son said, right?
- 10 A: Yes, he was staying, when you say staying out do you
11 mean going out and not coming back until 4 or 5 o'clock
12 in the morning or do you mean staying out the whole
13 night?
- 14 Q: Staying out the whole night. There were times when he
15 was doing that because he was cheating on you?
- 16 A: Yes.
- 17 Q: And ma'am I'm going to show you, publish what's been
18 admitted as State's exhibit number 67. Can you see
19 that from over there?
- 20 A: I can see it, but I can't read it.
- 21 Q: That's a letter dated April the 13 of 2009, isn't it?
- 22 A: Yes.
- 23 Q: That's a letter addressed to your husband, Kelvin B.
24 right?
- 25 A: Correct.

HEARING

616

- 1 Q: And the address that it's given to is [REDACTED]
2 Glen Burnie, Maryland, right?
- 3 A: Yes ma'am it is.
- 4 Q: And you didn't live at that address did you?
- 5 A: No ma'am.
- 6 Q: And have you reviewed this document?
- 7 A: No ma'am.
- 8 Q: Okay, would it surprise you to know that this is a
9 letter congratulating him on getting a job?
- 10 A: No it wouldn't surprise me.
- 11 Q: And it wouldn't surprise you to know at Tawanda Allen
12 was working at is company?
- 13 A: No.
- 14 Q: Okay, wouldn't surprise you to know that she would help
15 get her man get a job?
- 16 A: That's not her man, but okay.
- 17 Q: Well, I understand that, that's fair enough.
- 18 Ms. Shuler: Objection Your Honor, if, if, I would
19 appreciate it if ...
- 20 The Court: I heard you object. What did you not
21 appreciate?
- 22 Ms. Shuler: If Ms. Barr would not interrupt my client.
23 I'm sorry, my client's wife.
- 24 The Court: Okay, thank you. Don't interrupt the
25 witness.

1 Ms. Barr: Yes sir Judge. Mr. Bowen, I shouldn't say her
2 man. She got Mr. Bowen a job, the defendant.

3 A: Correct.

4 Q: Now, you said that when Sergeant Whack from the
5* Sheriff's Department called you last week, he asked you
6 for your address?

7 A: Correct.

8 Q: And you wouldn't give that information to him?

9 A: No, I did give him my address.

10 Q: Where did you tell him you lived?

11 A: At [REDACTED] [REDACTED].

12 Q: Where is that?

13* A: Temple Hills, Maryland.

14 Q: How long have you lived at that address?

15 A: Three or four years.

16 Q: Off and on have you always live there?

17 A: No, I always lived there.

18 Q: Now, when you found out that your husband had been
19 arrested for murder, you came down to visit him didn't
20 you?

21 A: Correct.

22* Q: And you came to see him at the jail, right over here,
23 right?

24 A: The first time I visited him?

25 Q: Yeah.

HEARING

618

1 A: No, the first time I visited him he was at Anne Arundel
2 County.

3 Q: Okay, no I mean down here in South Carolina.

4 A: Oh yes.

5 Q: The first time you came down to visit him while he was
6 in our jail, this was May 30th, 2009, is that right?

7 A: Yes.

8 Q: Okay alright. And the jail has pretty strict
9 procedures in terms of signing in and when you go see
10 an inmate, right?

11 A: Yeah.

12 Q: And you came down here and you had to sign in when you
13 went to go see your husband right?

14 A: Correct.

15 Q: Alright and you signed a log dated May 30, 2009,
16 Tiffany Bowen.

17* Ms. Shuler: Objection Your Honor.

18 The Court: What's your objection?

19 Ms. Shuler: I have not seen that document.

20 Ms. Barr: I'm not offering it into evidence at this time.

21 The Court: The objection is overruled.

22 Q: This is your name Tiffany Bowen, this is your writing
23 right?

24 A: Correct.

25 Q: You came to see him May 30, 2009?

- 1 A: Correct.
- 2 Q: You identified yourself as the wife?
- 3 A: Correct.
- 4 Q: And you said that the inmate you came to see was Kelvin B.
- 5
- 6 A: Correct.
- 7 Q: You said you always lived at St. Clair Road in
- 8 Maryland, right?
- 9 A: Correct.
- 10 Q: But yet you put down here that you lived at [REDACTED]
- 11 [REDACTED], Southeast in Washington, DC?
- 12 A: No that's my driver's license address. That's my
- 13 father's house.
- 14 Q: Somebody took this down, they got that information from
- 15 you?
- 16 A: I showed him my driver's license.
- 17 Q: Now what about this cell phone number, telephone
- 18 number? Where'd they get that from? You gave them
- 19 that right?
- 20 A: Which number are you referring to?
- 21 Q: That particular cell phone. You gave them that
- 22 information?
- 23 A: Yes.
- 24 Q: Now, during the time that your husband was creeping
- 25 around with Tawanda, he was lying to you?

HEARING

620

- 1 A: Yes ma'am.
- 2 Q: He's a liar right?
- 3 A: You could say that.
- 4 Q: There's a part of him that you did not know about in
5 April and May of 2009, right?
- 6 A: Yes.
- 7 Q: Part of him that he kept hidden from you, right?
- 8 A: Yes ma'am.
- 9 Q: Stuff, he did stuff that he didn't want you to know
10 about?
- 11 A: Correct.
- 12 Q: Now, your husband, during this time, liked to lift
13 weights?
- 14 A: No ma'am.
- 15 Q: Never lifted weights?
- 16 A: He has lifted weights but not at this time.
- 17 Q: And sometimes he takes protein to help build muscle
18 right?
- 19 A: No ma'am I've never seen him take anything.
- 20 Q: You've never seen him do that? Is that something that
21 he did that you didn't know about? Is that possible?
- 22 A: It's possible.
- 23 Q: Now, did you and your husband ever argue about any of
24 the other activities that he did that you didn't
25 approve of?

1 A: What other activities?
2 Q: I'm sorry, where are the photos? I'm going to hand you
3 what's been admitted as State's exhibit number 12. This
4 is a photograph with him and Tawanda, is that right?
5 A: Correct.
6 Q: He's got a tattoo on his arm?
7 A: I guess so.
8 Q: Alright State's exhibit number 6, he has tattoos on his
9 arm? And in addition to having tattoos on his arm,
10 he's got tattoos all over his body doesn't he?
11 A: Yes.
12 Ms. Shuler: Objection Your Honor. May we approach on is
13 matter? The basis of the objection is relevance.
14 The Court: Objection is overruled.
15 Q: He's got tattoos all over his body doesn't he?
16 A: Yes ma'am.
17 Q: You all never had an argument about kinds of tattoos he
18 has on his body?
19 A: No ma'am, because that's his body.
20 Q: He's got tattoos with gang insignia on his body,
21 doesn't he?
22 Ms. Shuler: Objection Your Honor, relevance? And may we be
23 heard on that outside the presence of the jury?
24 The Court: Ladies and gentlemen, I'll have you go to the
25 jury room.

(Jury exits courtroom)

1
2 Ms. Shuler: Last night at approximately nine o'clock, law
3 enforcement officers went to, particularly the
4 gentleman from Lake City went to Effingham jail,
5 approached our client and said, "You've got to let us
6 take pictures of the tattoos on your body." Solicitor
7 Barr has said, "We need those pictures and either you
8 let us take those pictures or we going to hold you down
9 on the ground, two officers are going to hold you down
10 and we going to take those pictures ourselves. He
11 said, "I want to speak to my lawyer". He attempted to
12 contact Mr. Jenkinson at nine o'clock last night to no
13 avail. They said, "You going to give them to us or we
14 going to pin you down". And at that point in time, he
15 had no choice, because if he didn't, they were going to
16 rip off his clothes and take those pictures and hold
17 him down. Your Honor, first of all, any sort of
18 evidence as to the tattoos on his body is hearsay. It
19 is markings on his body, what those markings mean,
20 anything along those lines, is hearsay. It is
21 testimony on the nature and is now a court statement
22 made for court used for the truth of the matter
23 asserted. Secondly, this is a violation of the Rules
24 of Professional Conduct Rule 4.2. The lawyer's Rules
25 of Professional Conduct, the communication with a

1 person represented by counsel. Solicitor Barr sent
2 this officer to get these pictures. She knew he was
3 represented. She didn't tell us that she was going to
4 do this, did not give us time to prepare for this and
5 here we are in the middle of trial, and she didn't
6 obtain a court order. Pursuant to the State versus
7 Simmons, it's a Court of Appeals case, 384 SC 145.
8 Protects an individual against the fourth amendment,
9 protects them against unreasonable searches and
10 seizures, which is guaranteed by the four amendment.
11 She had the opportunity to get that information, she
12 would have had to come to you for a court order.
13 First, establishing probable cause. Second there must
14 be a clear indication that relevant material evidence
15 will be found. And, third, the method used to secure
16 it is safe and reliable. Your Honor, there has been
17 absolutely no testimony that would suggests that Mr.
18 Bowen is in a gang. Nobody has said he is in a gang.
19 In fact, you excluded that testimony that was on the
20 tape from Mr. Mack. The evidence of him being in a
21 gang, is extremely prejudicial and any ...
22 The Court: There's a lot of evidence that he's in a gang.
23 The question is whether it's relevant to the murder in
24 this case.
25 Ms. Shuler: Absolutely. There is no ...

HEARING

624

1 The Court: Thank you for agreeing, but what's your point?

2 Ms. Shuler: Right. The motive in this case has been
3 testified to by Antonio McClary, the motive is money.
4 There has been no way linking ...

5 The Court: What's your point? You wanted the jury to go
6 out to tell me something. You've told me they've took
7 his picture. What else.

8 Ms. Shuler: We would object to the pictures. We would
9 object to any showing ...

10 The Court: But she hasn't offered any pictures.

11 Ms. Shuler: Your Honor.

12 The Court: You objected to -- the question was you have
13 a tattoo on you, it says gang on your chest or on your body
14 and you objected.

15 Ms. Shuler: Your Honor, she has a number of pictures that
16 she showed us earlier today that she intends on
17 producing and ...

18 The Court: Alright I'm going to let you and Mr.
19 Jenkinson confer while we take a break and then we'll
20 come back.

21 (There was a court break taken)

22 The Court: Alright, anything further?

23 Ms. Shuler: Yes sir, Your Honor. The Solicitor gained
24 this evidence through, its tainted. She gained it through
25 illegal activity. She had no court order. This was against

1 his fourth, fifth, sixth and fourteenth amendment rights.

2 The Court: All right. Thank you. What sayeth the State?

3 Ms. Barr: Judge, I haven't, I didn't offer the pictures. I
4 just asked the witness about the tattoos on her
5 husband.

6 The Court: Alright.

7 Ms. Shuler: Your Honor, any sort of evidence that refers
8 to gang related material on his body, although it may
9 be relevant, relevance, it's not, probative value of
10 that does not outweigh the prejudicial value of that.

11 The Court: Alright.

12 Ms. Barr: Your Honor, we had an expert, a person who was
13 qualified as an expert on yesterday regarding gang
14 activity, gang writings, gang signs, their code of
15 ethics, if you will and Judge we believe evidence that
16 the Defendant is a member of a gang is entirely
17 appropriate because it sort of corroborates one, we
18 believe a part of the motive and his participation in
19 the crime and number two it corroborates the testimony
20 of Ms. Harding who was qualified as an expert witness
21 in gang activities and gang writings.

22 The Court: That corroborates his participation in what way?

23 Ms. Barr: To the extent that we have Ronald Mack who is an
24 admitted gang member testifying that he contacted the
25 Defendant who agreed, with no questions asked, to come

HEARING

626

1 down and bring him guns and help him kill somebody.
2 Judge, quite frankly that's just not something the
3 average person ought to do and so it's important for
4 the jury to understand the mentality of gang members so
5 they understand why this Defendant became involved in
6 killing somebody that he didn't even know.

7 The Court: I sustain the objection.

8 Ms. Shuler: Thank you, Your Honor.

9 The Court: Bring the jury.

10 (Jury enters courtroom 5:27 p.m.)

11 The Court: The objection is sustained. Next question.

12 CONTINUATION OF CROSS EXAMINATION OF MS. BOWEN BY MS. BARR:

13 Q: Ma'am you testified about the photograph that's
14 admitted as State's twelve. The picture that he took
15 with Tawanda and we talked about that particular
16 photograph you can see a tattoo on his arm and you know
17 about it because you have seen it.

18 A: Can I see the picture again. There's two tattoos on
19 his arms.

20 Q: What's that a tattoo of?

21 A: My name.

22 Q: Okay. What about the other arm you talked about?

23 A: I can't see. I can only see a piece of it.

24 Q: I mean, you know it though, because you've seen him
25 obviously with no shirt on.

1 A: Well, I haven't see him in twenty months with no shirt
2 on.

3 Q: You said something interesting. You said that the cell
4 phone was turned off April the 9th?

5 A: Right.

6 Q: 2009?

7 A: Right.

8 Ms. Barr: That's all the questions that I have.

9 The Court: Anything further?

10 Ms. Bowen - Recross Examination by Ms. Shuler:

11 Q: Where did your husband keep his toothbrush?

12 A: In my bathroom.

13 Q: Where did he keep his shoes?

14 A: In the closet.

15 The Court: This is improper redirect.

16 Ms. Shuler: I have no further questions, Your Honor.

17 The Court: You may step down. Next witness.

18 Mr. Jenkinson: That is the defense case.

19
20 The Court: All right. Ladies and gentlemen, you have heard
21 the defenses case. Any reply by the State?

22 Ms. Barr: Yes, sir.

23 The Court: Call your witness.

24 Ms. Barr: Your Honor, can Mr. Jenkinson and I approach very
25 briefly?

HEARING

628

1 (Counsels approach bench)

2 Ms. Barr: Judge, no other evidence.

3 The Court: Alright ladies and gentlemen, you have heard all
4 of the evidence in this case. I'm going to let you go now
5 until tomorrow morning at 9:15. You will come in, no 9:30
6 tomorrow morning, when you come in at 9:30 it will be time
7 for closing arguments. I'll give you the charge on the law
8 and you will deliberate. Tomorrow morning. What time did
9 we say?

10 Jury: 9:30.

11 The Court: 9:30.

12 (Jury excused for the evening 5:31 p.m.)

13 The Court: Any additional matters of law?

14 Ms. Barr: None from the State Judge.

15 Mr. Jenkinson: Your Honor we do have a motion. Just one
16 moment.

17 The Court: Yes sir.

18 Mr. Jenkinson: Your Honor, on behalf of the Defendant, we
19 move for a directed verdict at this time. There's been
20 a failure of any, well there's been a failure by the
21 State to produce any competent evidence of the
22 Defendant's guilt taking into consideration all of the
23 evidence and testimony presented. There were three
24 people on the planet tat put the Defendant Kelvin B.
25 in South Carolina in the early morning hours on the 5th

1 of April 2009. Those are Tawanda Allen, she did not
2 testify. That is Ronald Mack and he testified at
3 length in court that Kelvin B. Bowen who's name was
4 never called, was never in South Carolina. He referred
5 to somebody named Callie. There's not, the only person
6 in the court room that has called the Defendant Bowen
7* Callie is the Prosecutor and she probably done it two
8 dozen times in the course of the trial. The only
9 identification Antonio McClary provided was there was
10 a step daddy by the name of Kelvin, Kelvin, Kevin, not
11 Kelvin, who he identified as being Callie. He
12 identified Callie as being a tall, scrawny person. A
13 person who had an Afro hair cut, a person who had brown
14 skin. When we saw the only photograph, which we had
15* asked the Court to rule previously as inadmissible
16 because if the only photograph showing about a week
17 later, when shown that photograph in court he can say,
18 this person, I can't tell if they got a Afro haircut,
19 or it doesn't appear to be. This person I can't tell
20 whether he's tall and scrawny or not, you know. He
21 never would say whether he had brown skin or not. But
22 yet, he says that's him. Well it's the same person
23 who later testified that he did make a statement in
24* front of his lawyers and others that Kelvin B. was
25 not the Callie who appeared in Kingstree. So, he is

HEARING

630

1 the only person who identifies the Defendant in this
2 case. Possibly, remotely by a different name, by
3 improper description and more and if anything in the
4 law, as we all know, an eye witness description is
5 probably the worst type evidence, testimony anybody can
6 give. It's been evident in the testimony in this case.
7 He in no way, shape or form resembles him in name, in
8 description, in appearance. We've got multiple
9 pictures showing he's never had anything but a close
10 hair cut. Prior to the offense and after the offense.

11 We have a failure of any competent evidence,
12 whatsoever. All of the other attempted evidence,
13 there's been no proof that he was living with Tawanda
14 Allen. No proof to his living, there's not one person
15 on the planet who's come in this courtroom and said
16 he's ever spent the night there. There's not one
17 person who's ever seen him inside that apartment.
18 There's not one person who said they found his personal
19 belongings there, other than a baseball hat, which they
20 didn't say it was his. It could have been a males and
21 Ronald Mack, by the way was living in the apartment at
22 the time with his mother. An eighteen or nineteen year
23 old who has confessed to murder and his role in this
24 case. And he's been sentenced in this case. There was
25 some underwear, which anybody could have worn. There

1 was not a fingerprint in that apartment. There was not
2 a personal, there are three pieces of paper with his
3 name on it at that address. Well three pieces of paper
4 in an apartment don't create a person living there.
5 It's not even an inference because anybody can create
6 or have those documents sent there by giving, Tawanda
7 Allen could have done it. There's no evidence that the
8 Defendant himself caused these three letters to come
9 there. It's just a failure of any competent proof that
10 the State made any effort in the world, but the problem
11 is, they had a botched investigation. They did not get
12 cell phone records, they didn't have the lead
13 investigator even testify in this case because I'm
14* certain that she, on cross examination of a bunch of
15 items, would have testified in effect in favor of the
16 Defendant and she didn't take the stand. The Samsung
17 phone which would have placed him in South Carolina was
18 lost by law enforcement. Any chance to get
19 fingerprints off of the murder weapon was lost by law
20 enforcement. And all of these lost opportunities are
21 being suffered at the hands of Mr. Bowen because he's
22 on trial for a crime he didn't commit. To put up
23* competent evidence of his alimony. There's just no
24 competent evidence presented to this Court and as such
25 Your Honor, we would move for a directed verdict of not

1 guilty.

2 e Court: Well, it sort of sounds like a jury argument and
3 maybe the jury will buy the argument, but it's not for the
4 Court to weigh the evidence. There is evidence that if
5 believed by the jury, would clearly show that the Defendant
6 is guilty and I deny the motion. Anything else regarding the
7 requested jury charges?

8 Mr. Jenkinson: Yes sir. We will bring the actual one but I
9 know the court has them. First, we would want a
10 charge about the non testifying Defendant. Under our
11 rules, the Ervin charge, the standard Ervin charge that
12 I think the court uses that he is not required to
13 testify and as a matter of fact under our law he does
14 not have to testify that the Defendant does not have
15 any burden of proof

16 The Court: I told you I would tell them. I will tell the
17 jury that.

18 Mr. Jenkinson: Yes sir. Charge the usual reasonable doubt
19 that I explained to the jury in my opening argument and
20 the definition of a reasonable doubt. A doubt which
21 would cause a reasonable person to hesitate to act.

22 The Court: Alright. From the State?

23 Ms. Barr: Judge, we don't have any extraordinary request.
24 Just your standard request about the elements of
25 defense and Judge we would request hand of one, hand of

1 all. The standard ones, Judge, we don't have any
2 special requests.

3 The Court: Alright. We're shutting down.

4 (Court adjourned for the evening)

5 The Court: Good morning. Request to charge?

6 Ms. Barr: Judge we would just ask the Court to charge
7 constructive possession.

8 The Court: Constructive possession.

9 Ms. Barr: Yes sir.

10 The Court: Of what?

11 Ms. Barr: In this case we're concerned about the shotgun.

12 It actually wasn't found in actual possession of the
13 Defendant, but the State intends to offer it as
14 constructive possession.

15 The Court: In relation to what charge?

16 Ms. Barr: Possession of a Weapon During the Commission of a
17 Violent Crime. Pending that the murder weapon was found
18 inside of the bedroom that we believe he shared with
19 Tawanda Allen.

20 The Court: So the charge is possession during the
21 commission of crime not months later.

22 Ms. Bar: Yes.

23 The Court: It's not a constructive possession charge
24 case. I'm not going to charge that. Yes ma'am, Ms.
25 Shuler?

HEARING

634

1 Ms. Shuler: The Defense would like a charge on the
2 confession by co-defendant, the non testifying
3 Defendant charge, reasonable doubt charge,
4 circumstantial evidence charge and alibi charge that I
5 passed up Your Honor. All of those were taken from
6 Judge Ervin's book.

7 The Court: Okay, them individually now. The first one
8 you said is what?

9 Ms. Shuler: The confession by co-defendant.

10 The Court: Confession by a co-defendant. What says the
11 State?

12 Ms. Barr: Judge on the second paragraph on that particular
13 proposed charge I'll object to, because I think it
14 contemplates where co-defendants are tried together.
15 And so that's clearly not a situation that we have
16 here.

17 The Court: They deleted the second paragraph.

18 Ms. Barr: Okay, alright Judge. And Your Honor, there was,
19 the only confession that was admitted in the trial of
20 the case, was the taped confession of Ronald Mack and
21 Your Honor instructed the jury that they could only
22 consider that for impeachment purposes, so we would
23 think that the first paragraph is therefore obsolete,
24 it's moot at this point and we would object to that.

25 The Court: All right. Ms. Shuler.

1 Ms. Shuler: We would just like the point reiterated that
2 it shouldn't have been for impeachment purposes only
3 and to be construed as to that Defendant only.

4 The Court: Alright I'm going to think on that for a
5 minute and move to the next one.

6 Ms. Shuler: The next one will be the non testifying
7 defendant charge. We would just ask that the jury be
8 instructed that they cannot consider his lack of
9 testimony against him that he has to offer the evidence
10 to - pursuant to the fifth amendment of the
11 constitution and that that cannot be discussed in the
12 jury room.

13 The Court: Alright, I have a charge for that. It's not
14 this, but I have a charge that I give in every case
15 where the Defendant does not testify. That they have
16 the Constitutional right to remain silent and it can
17 not be held against them or used against them in any
18 way.

19 Ms. Shuler: We also have a reasonable doubt charge as
20 well that the State has to prove each and every element
21 beyond a reasonable doubt.

22 The Court: Alright, not a problem.

23 Ms. Shuler: And reasonable doubt is the kind of doubt
24 that would cause a reasonable person to hesitate to
25 act.

HEARING

636

1 The Court: I charge reasonable doubt in every criminal
2 case, so that's not a big thing.

3 Ms. Shuler: The next charge that we have is an alibi
4 charge. The Defendant has entered an alibi defense
5 saying that he was not there at the time he committed,
6 at the time the crime was committed, that he had
7 nothing to do with the crime. Since the law proposes
8 no burden upon the Defendant to prove that he was not
9 at the scene, it is still the State's burden to prove
10 that he was there.

11 The Court: Not a problem.

12 Ms. Shuler: And we would also ask that Your Honor charge
13 direct versus circumstantial evidence. They have
14 offered a great deal of circumstantial evidence that
15 would suggest, that they say suggests that he lived in
16 the home with Tawanda Mack Allen. We would like to
17 charge that limits that based on the circumstances that
18 they argued that suggests that he lives there. They
19 did not, they have not offered any direct evidence on
20 that matter.

21 The Court: Alright, I won't comment on the facts, but
22 I'll charge direct, the law regarding direct evidence
23 and circumstantial evidence.

24 Ms. Shuler: Those are all our proposed charges Your
25 Honor.

1 The Court: That will be the very first one that he
2 mentioned Ervin's book, of course, he retired from the
3 bench in about 1995 or 96 or something and I don't use
4 his charge book as a basis for the charge. This very
5 first charge, do you have a case authority for it?
6 Because I'm going to say, you want me to tell the jury
7 that they cannot consider any confession that any of
8 the co-defendants made against this Defendant. So are
9 you telling me that where Mr. Antonio McClary said that
10 this Defendant committed the crime, for the jury not to
11 consider that? Or where Mr. Mack said in his recorded
12 statement that is Defendant committed the crime but the
13 jury is not to consider that? I'm trying to interpret
14 what you're asking me to tell the jury.

15 Ms. Shuler: Whenever Ronald Mack's statement was played
16 Your Honor gave a limiting instruction at that time,
17 that that was to be used as impeachment evidence only.
18 We would just ask that be reiterated.

19 The Court: What do you want me to tell them?

20 Ms. Shuler: I've provided the name of the case at that
21 time and I can find it again.

22 The Court: Alright we can. Ms. Barr what's your
23 position on all is?

24 Ms. Barr: Judge, I think that, of course, Your Honor has
25 already given an instruction to the jury that the
recorded statement of Ronald Mack can only be

HEARING

638

1 considered by them for impeachment purposes only and we
2 would object to the proposed charge number one in it's
3 entirety.

4 The Court: I can certainly understand that if a person
5 confesses to committing a crime, says I confess, I did
6 the crime then that cannot be used as evidence that
7 someone else committed the crime, but if the statement
8 is that we committed the crime, then how can I tell the
9 jury or why should I tell the jury that they cannot use
10 that evidence against the co-defendant. So that's what
11 I'm trying to get a handle on. I don't, if there is
12 some case that kind of clearly talks about it, then I'd
13 like to look at it. I'm not disagreeing with you, I
14 just don't have a handle on what you want me to do.

15 Ms. Shuler: Case sited as State v. Chaffee 285SC21.

16 The Court: Alright.

17 Ms. Shuler: And that has been overruled on other grounds.

18 The Court: Alright, 1984. Well, that case is so, I mean
19 it's 1984 and my computer doesn't pick up cases that long,
20 that old. But let's see what you have here as far as
21 structure. Must not and cannot consider any confession that
22 a co-defendant makes, a co-defendant made against any other
23 defendant. You will consider any confession only as to the
24 person making it. I'll tell the jury that, I guess it's a
25 principle of law.

Ms. Barr: And Judge, I think that that was prior to US v.

1a Bruton who had issues of non testifying co-defendants
2 confession being used against person at trial and I
3 don't think that's applicable here. And we all know
4 you can't have a confession admitted against a
5 defendant, a confession of a non testifying defendant
6 against a defendant and so that law might have been
7 applicable then, but we take the position it's not
8 applicable now.

9 The Court: Well you could be right. I mean the case,
10 the line they drew through is, it says Chaffey and
11 Ferrell, which suggests that there were two defendants
12 in trial at that time.

13 Ms. Barr: Yes sir.

14 The Court: Let me just take a break and look it up as
15 opposed to attempting to wing it. Any other comments?

16 Ms. Shuler: None Your Honor.

17 The Court: Let me just take, let's take a break because
18 it is important.

19 (There was a court break taken)

20 The Court: Alright Ms. Shuler any other thoughts?

21 Ms. Shuler: Your Honor we would be -- it's our argument
22 that the statement being offered for impeachment
23 purposes only is consistent with that principle of law.

24 The Court: Alright. The question at this point is
25 whether the other people are co-defendants. They were
all charged together, but they're not co-defendants in

HEARING

640

1 a trial and that's where the Bruton issue came up. But
2 where the one defendant or both defendants charges are
3 now disposed of, they're simply witnesses and their
4 testimony stands along for the jury to believe or not
5 to believe. I'm going to charge the jury on prior
6 inconsistent statements, but they may use the evidence
7 of the earlier contradictory statements to determine
8 the truth of the statements that they are currently
9 making. But I'm not going to charge that they are to
10 not consider the testimony of witnesses who said we
11 committed the crime. Particularly where they are
12 charged with conspiracy and the statements can be used
13 under the rules concerning co-conspirators, statements
14 of the co-conspirator can be used against them. A co-
15 conspirator is made in furtherance of the conspiracy,
16 so what I'm going to charge is prior inconsistent
17 statement. Alright, anything else?

18 Ms. Barr: Not from the State Your Honor.

19 The Court: Alright, bring them on.

20 The Court: Are you going to start Ms. Barr?

21 Ms. Barr: Yes sir.

22 **(Jury enters courtroom at 10:25)**

23 The Court: Alright the jury is here, good morning.

24 Jury: Good morning.

25 The Court: Day number 5. Ladies and gentlemen, you've

1 heard all of the testimony, you've received all of the
2 evidence. It is now time to hear arguments from
3 lawyers, first from the State, Ms. Barr.

4 CLOSING ARGUMENTS BY MS. BARR:

5 Thank you, Your Honor. Ladies and gentlemen, good
6 morning. I'm going to start today like I started on Tuesday
7 with thanking you. And when I say that, Mr. Jenkinson, Ms.
8 Shuler, that's probably the only thing we're going to agree
9 about in the whole trial, but folks this has been an extreme
10 sacrifice. I'm sure that the facts that occurred in this
11 case are kind of difficult to listen to, but I am satisfied
12 that we picked an attentive jury, we picked an intelligent
13 jury and I, Mr. Jenkinson, Ms. Shuler and I we all feel we
14 picked a jury who will be fair and deliberate earnestly in
15 this case.

16 Now, the way that our system works, I get the chance to
17 do an opening statement and tell you a little bit about the
18 law and I get to sit down. Mr. Jenkinson then gets to get
19 back up and he'll get up and he'll do a statement and he'll
20 talk about why you should find his client not guilty. And
21 because the State bares the burden of proof, ultimately, I
22 get a second bite into the apple, so to speak, so I get to
23 stand back up and talk to you all again before you hear the
24 charges from the Judge. Now, I'm going to be very brief
25 right now, I'll be a little longer later on, but I'll be
brief right now and I'll just kind of tell you what the

HEARING

642

charges that are available for your consideration.

1 First, is the murder charge. You all remember on
2 Tuesday I told you about murder? Murder is the unlawful
3 killing of another with malice aforethought? The judge is
4 basically going to tell you under that murder charge, we have
5 to establish that the Defendant took the life of another
6 human being. With malice aforethought means that it was
7 premeditated, it was planned in other words and there was an
8 intent to do harm or kill the victim. He's also charged with
9 Burglary in the First Degree and let me tell you what the
10 elements are for Burglary in the First Degree. One, you have
11 to prove that he went into the dwelling, somebody's home.
12 We clearly established through testimony in the case that he
13 went into the home of Annette Bradshaw. Two, we have to show
14 that he went in without consent. He didn't have anybody's
15 permission when he went into the house. Three, we have to
16 show that there is some aggravating factor in connection with
17 that burglary that makes it a more serious burglary than
18 saying he broke in somebody's shed. We've got a couple of
19 different aggravating factors in the case. One aggravating
20 factor is it happened during the night time. There is
21 something about being, a Defendant breaking into someone's
22 home at night, because at night is when most folks are
23 relaxed, most of us are asleep at two o'clock in the morning
24 and so you're, at some point, unaware and not on your guard
25 and it makes it, makes you more vulnerable when someone

1 breaks in your house. A second aggravating factor that you
2 all can consider, if you find that he did these things and
3 you should find him guilty of Burglary in the First Degree,
4 is that when he entered the dwelling, when he entered the
5 home of Ms. Bradshaw and Kenyan Dorsey, he had a deadly
6 weapon. A firearm, such as the shotgun that you've seen in
7 evidence, is a deadly weapon. There is also a third
8 aggravating factor that you can consider that makes this
9 burglary a heightened burglary and it's the fact that he
10 caused physical injury or harm, i.e. he killed somebody,
11 inside the residence and that person was not a party to his
12 crimes. So if you find either one or all of those
13 aggravating factors existed in this case, you will find the
14 Defendant committed those, you should find him guilty of
15 Burglary in the First Degree. The third charge that you have
16 to consider is what we call Possession of a Weapon During the
17 Commission of a Violent Crime. The judge is going to tell
18 you when all the lawyers sit down, murder is a violent crime
19 in South Carolina. Burglary in First Degree is a violent
20 crime in South Carolina. We've already said the shotgun is
21 a deadly weapon, so if you find that he committed the
22 burglary, he committed the murder and he had the weapon, then
23 you should also find him guilty of possession of a weapon
24 during a violent crime. The last charge that you all have
25 to consider in the indictment is criminal conspiracy and
folks, criminal conspiracy is where two or more people, they

HEARING

644

1 make a plan to do something or to get something or to
2 accomplish something by unlawful means or to commit an
3 unlawful act and certainly the planning of a murder and a
4 burglary are unlawful acts in South Carolina and so if you
5 find and believe the testimony of Mr. Mack and the testimony
6 of Dontrey Barr where he's talking about, he testified that
7 Ronald Mack showed him the text messages on his phone. Where
8 he was text messaging Callie. I need some help down here.
9 I need to take care of Kenyan and there was further
10 testimony, that's the dude you're cool with? He said yeah.
11 There was all these text messages going back and for. You
12 mean gunplay? If you find --- that is where the criminal
13 conspiracy was committed. He didn't have to do anything
14 else. When he basically agreed to come to South Carolina and
15 bring those guns at the behest of Mr. Mack, he committed and
16 he completed the crime of criminal conspiracy and folks we
17 ask you that the conclusion of all of the arguments and at
18 the conclusion of the Judge's instructions to you and at the
19 conclusions of your deliberations, we ask that you turn a
20 guilty verdict on all four counts. Thank you all for your
21 attention.

22 Mr. Jenkinson: May it please The Court Your Honor? Ms. Barr.

23 The Court: Yes sir.

24 Ms. Barr: Yes, sir.

25 CLOSING ARGUMENTS BY MR. JENKINSON:

Mr. Foreman, ladies and gentlemen, good morning. It's

1. been a long week and it's been a tiresome week, but it's been
2. an important week. And you've now had the opportunity to
3. hear that evidence and that testimony from the witness stand.
4. You've been looking and listening carefully to what the
5. evidence and testimony is. I find this is very important in
6. a case over the last thirty nine and a half years of doing
7. this and I know I look much younger than that. You wouldn't
8. think I'm quite that old. But you know, what I found out
9. being in a courtroom is this. It's important to listen to
10. what you hear. Sometimes, and a lots of times, it's just as
11. important as to what you don't hear in a courtroom. Because
12. when you don't hear something that's your common sense saying
13. it wasn't proved. If you don't hear it, you can't imagine
14. it and if you don't hear it, it wasn't proved in a courtroom
15. and as His Honor told you Tuesday morning, first thing, you
16. must decide this case on what you see and hear in this
17. courtroom. Not on what you don't hear. Not on what a
18. suspicion may be. Not on what you think it could be, but only
19. on what you heard and saw in a courtroom. Now what am I
20. talking about? I'm talking about failure of proof. If I
21. told you that I had five things in my hand and I only showed
22. you four of them, would you say Billy Jenkinson, you ain't
23. got five things in your hand? Because you didn't show me but
24. four of them and that's what I'm talking about. I failed to
25. prove something to you. And the State, Ms. Barr and these
officers must prove their case to you and if they fail to

HEARING

646

1 prove that case to you, then it is your duty and your common
2 sense and the law to bring back a verdict of not guilty. So
3 I'm going to be talking a lot about what you didn't hear in
4 this courtroom. And then I'm going to be talking about what
5 you did hear in this courtroom, because it is important,
6 because you have the ability to believe, hear and weigh out
7 justice and a true verdict in this case and that verdict
8 again, must be on the testimony, the evidence you see and the
9 law. But it also must be on the lack of evidence that you
10 didn't see in a case. Because if you don't see it, it didn't
11 happen or it must not be so. Now, in a case, any case,
12 anybody who sits in the same seat that Kelvin B. is
13 sitting in, is innocent; he's innocent right now. And he's
14 only, only guilty when you go back in that jury room, weigh
15 it out and you say there has been proof beyond a reasonable
16 doubt, under our law, that he's guilty. You can't go back
17 in there and say, well wait a minute, I'm not sure. I'm
18 hesitating. I got doubts. Because that's your good sense and
19 our law saying bring back a verdict of not guilty. And all
20 I'm saying in these things is I want to make sure when you
21 go back that you understand these things. For three and half
22 days we sat and listened to the Prosecution's case. For
23 about an hour and half you listened to our case and if you
24 go by a time clock on who put up the longest case, Kelvin B.
25 loses, but that's not our law. What His Honor will tell
you he doesn't even have to put up any proof. He doesn't

1 have to testify, because the burden of proof is only on the
2 State. Kelvin B. has no burden to prove, none, zero, no
3 burden. He don't have to prove anything, say anything or do
4 anything. It's solely upon the State to prove a case beyond
5 a reasonable doubt. Now, Kelvin B. did not testify and
6 you say oh he didn't testify, he must be guilty. That's not
7 our law, that's not our law. His Honor will tell you that
8 under our Constitution and law a person does not have to
9 testify. You can't override the Constitution of this United
10 States, because that is a law and a matter of fact, he will
11 tell you, you can't assume anything. You can't even discuss
12 it in the jury room. To prevent that from happening. Because
13 if you sit there and your mind is saying, well he didn't
14 testify, he must be guilty, then you are violating the law
15 yourself. You are violating your oath, don't do that.
16 Follow what you heard and saw in The Court of law. Do as His
17 Honor tells you. These laws have been in place since 18,
18 1787. A lot longer that we've been here and they've guided
19 our country and served our system well, because it protects
20 innocent people from going to prison. How bad would it be,
21 how bad would it be to find somebody guilty when they were
22 not? How bad would that be? Now, in this case, Kelvin B.
23 has come into court and said I have an alibi. That means I
24 was not in South Carolina when this occurred and he put that
25 up through two witnesses that I'm going to talk about in a
few minutes. Because he wanted you, through these witnesses,

HEARING

648

1 to know where he was. He says I was not in South Carolina
2 by this defense on April 4 and 5 when this crime was
3 committed. The law of this state places no burden on Kelvin B.

4 to prove that defense. Remember he doesn't have to
5 prove anything? A law allows him to put that defense up.
6 Actually the burden is on the State to prove he was here.
7 Okay, so, that becomes an important consideration. This case
8 is really simple. There is no question, ladies and
9 gentlemen, that Kenyan Dorsey was murdered, there's no
10 question that the people that murdered him, a lot of them are
11 in prison today, where they belong. There's no question that
12 he was shot in his own home, and that's why we have never
13 questioned the fact that he was murdered. We didn't have any
14 questions, you didn't see me ask any questions about it. We
15 never disputed that. What we have only disputed in this case
16 was that Kelvin B. wasn't there. Everything else that
17 happened to Kenyan Dorsey that night is true. You saw me
18 yesterday, I didn't ask any questions of that pathologist.
19 The lady who did the autopsy. I don't even see why we had
20 to sit here almost two hours and listen to it, because we
21 admit that Kenyan Dorsey was shot by those bullets and shot
22 by a shotgun. We admit that. We admit that he was shot with
23 this shotgun. That's not what this case is about. Kenyan
24 Dorsey is dead and the people that killed him ought to be
25 held accountable, but the people who didn't do it don't need
to go to prison either and that's the only thing this case

1 is simply about. The only question you got to ask yourself
2 has it been proved beyond a reasonable doubt that Kelvin B.

3 was in South Carolina? Was it proved to you beyond a
4 reasonable doubt that he was present and did this crime.

5 That's all. That's the only question you got to say. It's

6 not a question about how many times he was shot or whether

7 that was the shotgun or whether all these pictures of his

8 trailer and all that's true. That's true. Let's don't get

9 confused by all this evidence. And you say well why did we

10 have to listen to that? I don't know. Because all the

11 Solicitor really had was some bad pictures of a young man who

12 was killed. All that is done, is to get your sympathy, to

13 get your blood up and say somebody got a pay and it might got

14 to be you. Don't let that happen, don't let that happen.

15 The only case, and we could have tried this case in a day,

16 the question is, was Kelvin B. here that night? That man

17 there. I'm not talking about a Callie, I'm not talking about

18 somebody with Tawanda, I'm not talking about who the real

19 Callie is. I'm talking about this man right here. That's

20 the questions that I want you to focus on. Now, so I want

21 to talk a little bit first about proof you didn't hear,

22 because when you don't hear something, like I promised to

23 have five marbles in my hand and I only showed you four and

24 you say you ain't proved it. So what didn't you hear in this

25 courtroom, from this stand that would cause you to hesitate

to act? Number one, let's don't ever forget that the burden

HEARING

650

1* of proof is on the State. I'm a little bit older than ya'll,
2 but I read Dick Tracey in the funny papers when I was growing
3 up. It was about a police officer. He had a watch and you
4 could, it was like a computer that we have today. Who'd a
5 known fifty years ago that Dick Tracey would have had a watch
6 that's almost like our phones today that you can see people
7 and do stuff? Magic watch, and he was a police officer. And
8 so when you're growing up, then we ran into things like CSI
9 and things like that. We got a pretty good idea of how you
10 prove cases now. DNA, fingerprints, footprints, tire tracks,
11 all kinds of things to put people at a crime. I asked over
12 and over, do we have a single fingerprint to tie Kelvin B.
13 to this crime. On that shotgun? Anywhere-out at the house?
14 On one of these bullets? On a doorknob? Anywhere, no. Not
15 because they were wiped off; they didn't look for them. Have
16 you ever heard a police officer not checking a weapon when
17 they find it, they always picking it up with pencils and
18 handling it real careful and wrap it up in something and take
19 it and dust it for fingerprint. People in grammar school
20 know that. Why wasn't that done in this case? That would
21 have proved whoever handled that shotgun was the person who
22 fired it. No fingerprints, no tire tracks, none whatsoever.
23 Nobody even bothered to look and yet he's supposedly the
24 shooter of the shotgun. Now, they say you know cell phones
25 are almost magic for law enforcement. It's a great tool for
divorce lawyers. The first thing you do is subpoena the wife

1 or the husband's phone records to find out who you been
2 calling and that's where you find out who the boyfriend is.
3 And then you check it for pictures and you check it for text
4 messages and you look at the phone and you examine it. And
5 if you don't do that, you can send it off to a laboratory and
6 they can forensically go into it, open it up and find out all
7 kinds of stuff. Even better yet, you just send to Farmer's
8 Telephone or whoever your provider is and send them a
9 subpoena and they just get the monthly records, because
10 everybody gets a cell phone bill and it tells you who you
11 call, the number you called, what date you called, what time
12 you called, how long you talked and they even have records
13 of where the cell phone tower was, they call pinging off of
14 it. If you're talking in Kingstree, you're pinging off the
15 Kingstree tower. If you calling to North Carolina, you
16 pinging off a tower, if you're riding down I-95 and make five
17 calls, you pinging off different, they can track you right
18 down I-95 off of these cell phone records. All of them and
19 do we have any cell phone that were important in this case?
20 Oh my gosh. We got to see one right here in the courtroom.
21 Kevin Mack's, I mean Ronald Mack's. The guy who was the
22 trigger man on the nine millimeter who's getting phone calls
23 from Callie. No records on that phone, but check his phone
24 bill; the incoming calls, outgoing, did you do that? No.
25 Duh. Well, you know that Kelvin B. had a cell, a phone,
you lost that Samsung phone, but you don't have to have the

HEARING

652

1 phone. All you got to do is just go to T Mobile, right on
2 the record and say T Mobile, this guy lives up here in
3 Maryland, give us his records for April. Who's he calling?
4 And they say a big spill about whether or not text records,
5 text records existed or not. Well, I can tell you this, they
6 sure got a record of who he called, because they sent him a
7 bill for it. They didn't bother to get it. That would prove
8 whether or not he did it and remember he, they have got to
9 prove their case and is this regular law enforcement,
10 criminal investigation. Where is it? Where is Tawanda
11 Allen's cell phone record? Didn't bother to check, oh my
12 gosh. And they want to send a man to prison for that? Oh
13 so they say, well Kelvin B. was living, this is what Ms.
14 Barr says, Kelvin B. is living with Tawanda Allen. He
15 lived in her apartment, she said it. You cannot, lawyers can
16 not be witnesses. Did you hear a single witness from this
17 stand say he was living there? No. Now, you found two
18 detectives who said, well we found a baseball hat. Who's
19 baseball hat was it? Don't know, but it's a baseball hat.
20 Okay. Do women wear baseball hats? Yeah. But that's proof
21 he was living there? Oh but wait a minute, we found some
22 Budweiser boxer shorts and a Budweiser tee shirt. Oh my
23 gosh, women don't drink Budweiser and they don't wear tee
24 shirts and they don't wear boxer shorts. Give me a break.
25 Oh well we found some Dove deodorant. My wife uses it, but
I don't. I use men's deodorant. Oh well, wait a minute he

1 had some clothes of his there. Okay, show me a picture of
2 them. Show me a picture of a closet with the clothes hanging
3 in it or something. Show me, show me his toothbrush with DNA
4 on it. Show me his razor, show me his shaving cream, show me
5 his hairbrush. Show me something to show the man lived
6 there. Show me one witness who said he lived there. Not
7 one. You know, did you hear a single witness say they even
8 saw him inside is apartment? Not one. Not one single person
9 sat here and said we saw him at at apartment. Yeah, we did
10 see him out front getting in a car, but we never saw him
11 inside of a apartment. And then they want you to say well
12 wait a minute. We found three pieces of paper with his
13 address on it though. Well, three pieces of paper lived
14 there, but not Kelvin B. Yeah, it has the address.
15 Tawanda Mack could have done that. Who did it? We don't know.
16 It was just there. And that has him living there? That's
17 proof beyond a reasonable doubt? Not one single person said
18 he lived there, not one single item of his personal
19 belongings were found there, but he's supposed to be living
20 there? Now was he going with Tawanda Allen? Yep, ain't no
21 question. But where were they meeting and where were they
22 going and what were they doing? I don't know. A lot of people
23 go out with women and go to motels and off and go places.
24 I don't know. But you know, it's so important for him to be
25 living there with that shotgun, under the mattress. Now
who's going to sleep on top of a shotgun on a mattress?

HEARING

654

1 Number one, it's uncomfortable and number two who's going to
2 live and sleep on top of a mattress? It just don't make good
3 common sense. Tawanda Allen did because she's guilty. That
4 was her bed. Now, Quadir Wilson, Dontrey Barr testified.
5 Neither one of these witnesses ever said that's Callie.
6 Neither one of these witnesses ever said that's the guy we
7 saw, but they did say they saw Ronald Mack's Iphone at, right
8 here, and there were incoming messages and texts on it. Have
9 we seen anything on it? This exhibit number 85? No. And
10 they've had it for twenty months. Twenty one months since
11 this crime, in their possession and did not test this phone
12 for those messages to prove that this man, Kelvin B. is
13 Callie. Ain't done it yet. Matter of fact, we tried to go
14 into it and saw there's no evidence that those text messages
15 ever occurred on this phone. They can say well they were
16 deleted, well fine. Show me the bills then. Show me
17 something, where's the proof? That's the proof that Kelvin
18 Bowen, he didn't do it. Right there, that's the proof,
19 because if it did, it would be connected to his phone. We
20 don't have one phone message, one record to show his phone
21 ever talked to this phone and this phone was recovered on the
22 7th of April, two days after, three days after the crime.
23 Actually two days after the crime. You know, one witness I
24 never heard say a word, this witness is the lead investigator
25 in this case that handled the whole file. Handled everything;
the phones, the records, was in charge of all these things.

1 I kept saying where is Investigator Lail? Why isn't she
2 testifying? Why isn't the lead investigator testifying in
3 this case? Unless she's got some information they don't want
4 you to ask about. Silence, not a word. She ain't got nothing
5 to say. She can't prove anything. Don't you know, if the
6 lead investigator in this case had evidence and testimony
7 that Kelvin B. was Callie and did the shooting, she'd be
8 up there singing like a bird? Nope, not a word. Total
9 silence. What you didn't hear in this courtroom. Now, what,
10 who did you hear a lot about in this courtroom committing
11 this crime? Ronald Mack. We heard enough evidence and
12 testimony to put him in jail for at least forty five years
13 and guess what. He is in jail, where he belongs, for forty
14 five years, because he is the confessed, pled guilty,
15 murderer in this case. His mama is Tawanda Mack Allen, in
16 prison for fifty years for her participation in this crime.
17 Neither one of those two people walked into court and said
18 there's Callie. Never heard it. Now, all of these are
19 reasonable doubts, what you didn't hear. Let's talk a little
20 bit about what you did hear. What proof was presented that
21 Kelvin B. now, I ain't talking about Callie, I ain't
22 talking about anybody else, but this man sitting over here
23 came down to Kingstree and killed this young man? Yeah, I
24 called him a young man, but I also called him just an old,
25 you know, he's seventeen years old. What proof? Antonio
McClary is the only person out of three that has walked in

HEARING

656

1 this courtroom and said yeah that's Callie. Now I got some
2 questions to ask you that I want you to go back in this room,
3 this jury room and I want to ask you to go back, cause your
4 job is to weigh the credibility and the believability of
5 Antonio McClary. Why would Antonio McClary all of sudden,
6 for the first time in history. Now, I understand he confessed
7 on May the 13th 2009. That was twenty two months ago or
8 twenty one months ago, he confessed. Twenty one months went
9 by, because I asked the question of one of the investigators,
10 Investigator Collins, I said in twenty something months, have
11 you ever taken one of these witnesses, and taken, cause this
12 man been sitting in jail all that time, Kelvin B. Have
13 you ever taken him over to his jail cell and said who is that
14 guy right there? Who's that? No picture, I'm talking about
15 who is this guy? Is this Callie or not? And they waited
16 until two days ago and you say why is that important? It's
17 important for this reason. Back on April the 7th, when they
18 took the first statement of Antonio McClary, he didn't say
19 one word about Callie, he didn't say anything about Kelvin B.

20 he didn't know. He lied. Lied. May the 13th, first
21 statement, he said I don't know. I didn't have anything to
22 do with it? He lied. Then they put pressure on him and he
23 confessed and that's what we call the confession statement.
24 He said that he saw some text messages. We ain't seen the
25 text messages; we know nothing about any. There's no phone
connecting with a person named Callie. On this statement,

1 he said we asked, well who's Callie? And he said Callie is
2 Ronald's step father. Okay. His step father. Well that's
3 interesting because Ronald has several step fathers. Okay,
4 thank you. Now, he asked him that twice, two different times
5 in that statement and he said step father. He said that
6 Callie showed up at Dontrey Barr's house at two o'clock in
7 the morning and Callie's there. Okay. Well, what's the rest
8 of the story? He said, well that day, earlier, I got a call
9* from Ronald Mack and he was over at his girlfriend Dymon's
10 in Hemingway and we went over there and picked him up about
11 nine o'clock that night. And riding back in the car, we were
12 looking at these text messages from Callie, saying Callie
13 would you come down here? And he wanted gunplay, remember
14 that word? He was up in Baltimore, Maryland. That's what
15 they said between nine and nine thirty. At two o'clock he
16 shows up in Kingstree? What he have a helicopter? Nine to
17* nine thirty, let's just say it's nine o'clock, let's just
18 say. Ten, eleven, twelve, one, two, five hours? Four
19 hundred and eighty nine miles? Riding down the highway with
20 all these weapons, shotguns, waiting for the Highway Patrol
21 to stop them. I don't think so. Could you get here from
22 above Washington, DC on I-95 to Kingstree in five hours? I
23 don't think so. Yeah, could have a helicopter. Yeah, if
24 there's nobody on I-95 and he drove a hundred miles an hour,
25 maybe, I don't know. It just doesn't fit. Now I'm going to
* come back to it in just a few minutes, because we got

HEARING

658

1 something that does fit to that time. An eight hour drive
2 from above Washington, DC, almost to Baltimore down here.
3 You can't drive to Richmond in five hours. Or if you can, you
4 can drive to Richmond in five hours, but not from Baltimore,
5 Maryland between nine and nine thirty and get here at two
6 o'clock. That ain't going to happen. Something is strange
7 and I'll come back to that. Now, he said in his confession
8 statement, they went in the house; I didn't go into the
9 house. Well, how did he know even Callie went in the house
10 and shot anybody? Of course, you know, we'll leave that one
11 alone, but guess what? He comes up later at his plea of
12 guilty and says he did go in the house. Well, what is the
13 biggest reason that he gave he knows Callie? What's the
14 first thing a law enforcement officer going to ask you about
15 a strange person? Alright you saw this man come in your
16 house or rob you, what did he look like? Tell us what this
17 man looked like and here's what he said about Callie. He
18 said Callie was real tall and scrawny; he had Afro peezy
19 hair, not low cut, it was like an Afro; and he had brown
20 skin. Okay. Not light skin, not dark skin, but brown skin.
21 So, then two or three days later, he just happens to be over
22 in the Sheriff's office, or taken over there, you know, to
23 look at a picture and they only show him one picture. And
24 I ask him and I held it up and I said tell me how tall he is
25 in is picture. He said this is Callie now. How tall is he?
He said well you can't tell. I said tell me how about his

1 afro haircut in at picture? He got a do-rag on. He could
2 have it braided down real tight, I guess, but you know, ain't
3 no afro. That, I said, well is he scrawny looking? He don't
4 look scrawny in that picture. Well is that brown skin and
5 he said well yeah, that's brown skin. What's brown skin and
6 what's dark skin and what's light skin? You be the judge.
7 Look around is courtroom. You see any brown skins here or
8 there? Or dark skins? I don't know, I mean that's just
9 thought to something, it is what it is. I'm not going to
10 argue about that. That is suppose, he described in his
11 confession exactly what we know to describe. No. And why
12 is that so important? Now that's a good question. Why would
13 he say that? The man is already confessed, he said I am in
14 deep trouble, I'm going to prison, I got to get out as light
15 as I can. I got to start helping out, I got to start
16 cooperating so I can get me a light sentence. I don't want
17 to be like the rest of them dudes. I ain't going to, ain't
18 going to claim I had no weapon, I ain't going to do nothing
19 and they going to believe me, cause I'm going to put the hand
20 on somebody so they can put them in prison. Well we get to
21 the 10th of June in this statement and you heard his lawyer
22 yesterday. We ask him, is man Callie? And he looked at him
23 and said no, at ain't Callie. So, what's Callie look like?
24 Well he's a real tall dude with an afro and oh by the way he
25 had piercings in his ear and his face. Rough looking and I'm
sitting right in front of Kelvin B. and his lawyer. No

HEARING

660

1 law enforcement, just the lawyers. That's scary when you're
2 a lawyer and you know your client is charged with murder and
3 the person who's supposed to be identifying him says it ain't
4 so. Yeah, we wanted the statement bad, but two weeks later
5 he changed his mind and said oh it's not true. Because he
6 thought about that thing and he said you know if I go and
7 tell that law enforcement I ain't going to get that light
8 sentence. I'm a help them out. So he goes to his guilty plea
9 and says let's cut a deal. I don't want no forty five years,
10 I don't want no fifty years. I'll come testify, I'll put the
11 finger on the man; let me off light, like in twelve years and
12 that's what he got. And you saw what he did yesterday,
13 saving, or day before yesterday, saving his own skin. I
14 brought Kelvin B. right here; I wanted him to get a good
15 look and he sat right in the car with him and he saw him.
16 I said did you see the moustache on the man? The mustache
17 is pretty big. You can remember a moustache. Whether or not
18 a person has a Afro and a moustache. He never remembered the
19 moustache on the man and he's had it. I said do you remember
20 the scar down his jaw? Six or eight inches long? He said
21 yeah, I see the scar, but I don't remember no scar. These
22 are things you remember people by. Just didn't happen.
23 Ronald Mack, the shooter, the bad guy confessed. Told law
24 enforcement he did it, pled guilty, got fifty years.
25 Testified in his own mama's trial, against his own mama,
saying she participated. Mama gets forty five years. I want

THIRD JUDICIAL CIRCUIT

(803) 436-2153

1. to talk to your common sense a minute. Would you come in
2. that courtroom to testify against your own mama and look at
3. this man and say he's not Callie, if you wasn't telling the
4. truth? Would you lie on your mama? Or would you tell the
5. truth for your mama? Or would you even testify or would you
6. lie for your mama? And wouldn't lie for this man in court
7. either and today we asked is that Callie over there? He said
8. that is not Callie. That is not Callie and if he told the
9. truth in testifying against his own mama, is he testifying
10. the truth here? I ask you, is that human nature? God knows
11. we all love our mamas. He testified against his own mama, but
12. he didn't testify, he testified honestly in this court.
13. Would he be doing such a thing if it wasn't true. That
14. speaks more to the truth and the credibility than anything
15. I've heard in this court. Now, he also said his mama had two
16. boyfriends. Who's that other boyfriend? He didn't know, he
17. said I just know my mama had two boyfriends. I wasn't living
18. up there then, back in April. In his taped statement he
19. said, they were talking about Kevin and Kelvin, two different
20. names completely. Yeah, they close. Kelvin Washington was
21. Sheriff of the county. Kelvin B. sits over there. There
22. a lot of Kevins around, but that's a different name. He was
23. never taken and asked and shown Callie, identified as Callie
24. the whole time he was in jail. Tawanda Mack Allen, mother
25. of Ronald Mack, found guilty, serving fifty years. She
didn't testify, she didn't put her finger on him either. I

HEARING

662

1 want to go back to the cell phones for just a minute. The
2 last Samsung T Mobile cell phone heard from ... tried to get
3 it. I had permission, because we didn't know what happened
4 to it. We were trying to find that cell phone. The last,
5 according to Detective Luersen, the last it was seen or heard
6 was this day. What they did with it, we don't know.
7 Apparently, it was towed off, sold, the car was sold, we
8 don't know; it just disappeared, gone. But the records
9 aren't and those records, if law enforcement had gotten them,
10 I doubt if we would be here today. Law enforcement must prove
11 their case, just like foot prints, fingerprints, DNA and
12 checking out all of the potential killers and you say wait
13 a minute. Who are the potential other killers here? Well,
14 Ronald Mack mentioned two names; A fellow by the name of Bam
15 and a fella by the name of Tom Tom from Hemingway. I asked
16 Officer Justin Whack yesterday, did you check those two guys
17 out? Well somebody may have. I said oh, Investigator Lail
18 would've check that I ain't heard anything from Investigator
19 Lail about it. He had at least two step fathers. Surely
20 they went and interviewed the two step fathers and found out
21 if any of them were tall and scrawny and had an afro or some
22 piercings in their face. Nope, didn't bother to do that
23 either. What is going on? We'll never know, because they
24 didn't bother to ask. In this case, His Honor is going to
25 charge you that this case also has circumstantial evidence.
There's two kinds of evidence; Direct evidence is what you

1 see in this court. Here's direct evidence right here;
2 testimony from the State, but circumstantial evidence is also
3 important, but there are rules involving circumstantial
4 evidence. Where a person actually sees a crime, that's
5 direct. Circumstantial evidence means proof of some other
6 fact or facts which taken together collectively prove the
7 existence of a particular fact. Before you can convict
8 Kelvin B. on some circumstantial evidence, the
9 circumstantial evidence must measure up to our law and that
10 measurement is this, not only must the circumstances be
11 proved, but they must point conclusively to the guilt of the
12 accused, conclusively. Must wholly be perfectly consistent
13 with the other. They also must absolutely be inconsistent
14 with any other theory. Every circumstance relied upon by the
15 State must be proven by tests of strict proof. They must be
16 consistent and taken together must reduce to a reasonable and
17 moral certainty that the Defendant, and no one else committed
18 the crime, or the Defendant didn't commit the crime. All
19 presumptions are in favor of the innocent, so circumstantial
20 evidence is very strict and you got to be very careful. Now,
21 what are the circumstantial evidence in this case? That
22 Kelvin B. lived in that apartment because of these three
23 pieces of paper. That's what they want you to say, well this
24 equals him living there, but nobody's ever seen him there.
25 No clothes, no nothing. His physical presence out in front
of the apartment would be, they say that's circumstantial

HEARING

664

1 evidence, well it is, but that don't prove anything. They
2 say his i.d. card shows he's from California, so he must be
3 Callie. Everybody who lives in the state of California must
4 be Callie. If you're from California, you're names gotta be
5 Callie. That's what Ms. Barr wants you to think. That's all
6 they got is an i.d. card. It don't say his name is Callie
7 on it. His name says its Kelvin B. grew up in, I think,
8 Long Beach California. But that don't make him Callie. You
9 know, what really happened, who is Callie? That's a good
10 question. That's what I kept wondering over and over in my
11 mind, because we don't know. We have to rely on what law
12 enforcement did. Who is Callie? We know, but we ain't sure
13 of who Callie is but we know that they have the burden of
14 proving it and we know he's a guy with a Afro haircut. Now,
15 this picture was taken in March 2009, about a week or two
16 before this crime was committed. Do you see an Afro haircut
17 anywhere? Now, no. Do you see a Afro haircut in any of
18 these pictures taken prior to the crime? Do you see one in
19 this picture? You can carry those back with you and I want
20 you to look at them. Do you see one in this picture? See
21 one in this picture? See one in this picture? You see
22 somebody with a moustache in this picture. Why are these
23 pictures important? Because it ain't Callie. We know that
24 Callie was a step father based on every single statement. We
25 know that there are step fathers who were never interviewed.
We know that there's two guys by the name of Bam Bam and Tom

1 who Ronald Mack said were responsible. We don't know,
2 because they were never interviewed. We know that there's
3 no way at Kelvin B. could have got to Kingstree, South
4 Carolina from Glen Burnie, Maryland in five hours. What does
5 that tell us? The real Callie lives closer than five hours.
6 The real Callie may be right here in South Carolina. The real
7 Callie may be around Kingstree or Williamsburg County.
8 Because we know he couldn't have gotten here in five hours.
9 We do know those things. None of this fits Kelvin B.
10 none of it. Not the description, not the time frame, not the
11 hair, not the moustache, none of is. You know what I found
12 unusual, is alibi defense, we put up Tiffany Bowen yesterday
13 and her son. And an alibi defense, what you need to know is
14 this, okay, why do you remember that day in question? How
15 do you remember it? Because it was two years, almost two
16 years since that crime. Well, her husband wasn't arrested
17 two years ago. A few weeks after he, this crime was
18 committed, he was arrested and the first words out of her
19 mouth, you couldn't have committed that crime. You were with
20 me. That was right back after you got back from California
21 on a trip. That was when you put together our son's birthday
22 present, because you wanted to play with it. You spent that
23 weekend at home with us, the whole weekend. We called my
24 cousin and sang happy birthday to her. You couldn't have
25 committed this crime. And you heard young KB. You judge
their credibility and their believability. A wife trying to

HEARING

666

1 keep her family together, yeah he's got a girlfriend and if
2 he's guilty of something, then yeah, he's guilty of having
3 a girlfriend. He's guilty of being at the wrong place at the
4 wrong time and messing with another woman. He's guilty of
5 that. But don't let that say he was in, bring him to South
6 Carolina when there's no proof of it. He's guilty of hanging
7 around a cynical, bad, evil woman, yeah he's guilty of that,
8 but not guilty of this crime. It bothered me when Justin
9 Whack took the stand, because there's a lot of things about
10 this case that bothered me and he said, I tried, I called
11 Tiffany Bowen on Friday and asked her if she would answer my
12 questions and she wouldn't answer. Wait a minute, that ain't
13 what happened. And I walked right here and I said, Officer
14 Whack, you put your hand on this Bible to tell the truth and
15 nothing but the truth, the whole truth didn't you? Yeah.
16 I said but you didn't tell us the whole truth, did you? Oh
17 yeah I did. I said well why don't you tell the jury the rest
18 of that conversation? Well what are you talking about? I
19 said well, didn't she say she would be glad to talk to you
20 on Monday and tell you what she was going to say? Well yeah,
21 she said that she wanted you there. Yeah. I said well you
22 didn't have a problem with that did you? No. I said she
23 didn't know who you were, you said you were a deputy and she
24 said, she cooperated and said she'd meet with you on Monday
25 in person. That's a lot better than talking on the phone
isn't it? Yeah. Well sure you talk to her on Monday. No.

1 Tuesday maybe? Wednesday? Thursday? No. He just did that
2 to try to, so he could sit on the stand and talk bad about
3 this lady because that's all you can do. If he didn't
4 believe her, he'd been on her like a bee after honey on
5 Monday, Tuesday, Wednesday, asking her. But never ask her a
6 question, never, never. Who you going to believe? Somebody
7 that wants to tell you part of the truth or the whole truth?
8 You know, you're sitting there and you're troubled. You been
9 sitting here for four days, well five and you say I've been
10 sitting here listening about a horrible murder that this
11 man's supposed to have committed. You feel like, well gosh,
12 I've seen all this stuff, maybe I need to find somebody
13 guilty sitting here all this time. Don't fall into that
14 trap. Don't fall into that trap. This is a system of
15 justice, not how many documents and exhibits you put in or
16 how many witnesses you put on the witness stand, it don't
17 matter. It's about justice and the truth. And proving
18 somebody guilty beyond a reasonable doubt. So what is your
19 verdict going to say Mr. Foreman and ladies and gentlemen?
20 What should your verdict say? It says not guilty. You're
21 not saying you're finding him innocent. What you're saying
22 is the State has not proved a case beyond a reasonable doubt.
23 You've not proved your case, that's what your verdict says.
24 But it says more. It says you have convicted Tawanda Allen,
25 Ronald Mack and Antonio McClary. Three people who admitted
their guilt and have been proved guilty beyond a reasonable

HEARING

668

1 doubt. But in this instance, there's not a complete case,
2 there's not complete evidence. Many important facts have not
3 been checked out that should have been checked out. Your
4 verdict does not say stop investigating this case. Your
5 verdict says law enforcement, go out and finish your job.
6 Go find these step fathers, go find these other witnesses and
7 finish your job. You still have a right to convict people
8 of this crime. That's what your verdict says. Your verdict
9 says seek the truth. Do justice. Go out and investigate
10 these step fathers. It says we can not put someone in prison
11 for such a weak identification, by a bunch of people who are
12 proven murderers. We can not put someone and find someone
13 guilty based upon the evidence and testimony and the law of
14 this state as we have seen and heard it in this courtroom.
15 We can not bring back a verdict on what we have not heard.
16 We can not bring back a verdict on suspicion. We can only
17 bring back a verdict that seeks justice. I couldn't thank
18 you for being here Monday, but I can thank you today. Not
19 for being here, but on behalf of Kelvin B. his wife,
20 Tiffany and young KB. I want to thank you for listening.
21 I want to thank you for hard work and doing your job. And
22 doing what the law requires and finding justice. Thank you.
23 The Court: We'll take a break now ladies and gentlemen.
24 Please go to the jury room. Please do not discuss the
25 case.

(Jury exits court room for break 11:25)

THIRD JUDICIAL CIRCUIT

(803) 436-2153

1* The Court: Alright, we'll take about seven minutes.

2 (Court break)

3 The Court: Yes sir?

4 Mr. Jenkinson: Your Honor, I would just ask The Court to
5 make sure the Solicitor proceeds with caution as to any
6 gang related activities in her argument. We ask to
7 make sure that's not included in the arguments.

8 The Court: Alright, bring the jury.

9 (Jury enters courtroom 11:39)

10* The Court: Ms. Barr?

11 REPLY CLOSING STATEMENT BY MS BARR:

12 Folks if I can have about thirty minutes of your time
13 and your attention again and then I'm going to sit down
14 and you all will have the most important job and that's
15 to render a decision. I feel for you, because it's
16 tough, but we know that you all will do the right thing
17 in this case. Ultimately, while Mr. Jenkinson and I
18 may disagree on what the right thing is in this case,
19 ultimately, both of us want you to do what's right and
20 what's just. This week has been a little weird for me.
21 My oldest niece and her husband, they have been trying
22 to have a baby for the longest and on Monday, I am very
23 proud to say, they gave birth to a little baby girl and
24 it was ironic because she was born about two o'clock in
25 the afternoon. About the same time that we were
picking this jury on a case in which another mother

HEARING

670

1 lost her child's life and it made me, at that time, I
2 think, probably appreciate the sanctity of life more so
3 an I ever have in my career. She's a little, tiny
4 thing, she's less than five pounds, she's still in the
5 neo-natal unit, but she's fighting and it makes you
6 realize how very, very precious life is. When I think
7 about life and death, you know, we have words for what
8 it means when you lose somebody special. If you lose
9 a spouse, you're considered a widow or widower. If a
10 child lose a parent, that child is considered an
11 orphan, but you know what, there are no words in the
12 English language to describe what you are when you lose
13 your child, because there are no words for that.
14 That's, I've been told, the most horrible fate that you
15 can suffer. And it's particularly horrible in this
16 case because Annette Bradshaw lost her child in the
17 most horrible way. I'm telling you that, Annette
18 doesn't want you to feel sorry for her. That's not why
19 I tell you that. I tell you that because Annette wants
20 you to render justice. That's all she seeks when she
21 comes in the Courtroom. Kenyan Dorsey was seventeen
22 years old when he was murdered. It was in April of
23 2009, probably about a month or two away from
24 graduating from high school, had his whole future ahead
25 of him and I'm going to address the whole notion of him
being in a gang obviously, because it's evidence that

1 you heard and I'm sure it's on your minds and I'm sure
2 you're probably going to talk about it when you get
3 back there. You know, when I was coming up, I'm not
4 going to tell you how long that was ago but when I was
5 coming up, we had little gangs in our high school, or
6 we thought they were gangs. They were really more like
7 clicks. Basically people got together, they wore the
8* same kind of clothes, they all ate lunch together, you
9 know, they walked places together. Didn't harm
10 anybody, but you know, they call that a gang. And if
11 in fact, if in fact, Kenyan Dorsey kind of lost his way
12 as a young man and got involved with Ronald Mack and
13 his crew and all that, for a moment lost his way, to me
14 that's particularly as it relates to Ronald Mack, makes
15 it so important for us to realize as parents, as
16* adults, the level of influence that we have on our
17 children. We have an incredible impact and influence
18 on children. You know, when Ronald Mack contacted his
19 mom and contacted Callie, and let's be clear, Callie is
20 not some phantom person out there in the sky at we
21 just, out in space somewhere that we don't know who it
22 is. We know who Callie is. Callie is Kelvin B.
23 sitting right there. Don't be fooled, that's Callie.
24 As sure as I'm standing here, that's Callie over there.
25* When he contacted them, and said listen, I'm having a
problem with Kenyan. I need some help, I need y'all to

HEARING

672

1 come out and help me. It didn't dawn on Tawanda Allen
2 or Kelvin B. man what's the problem? You having a
3 problem with Kenyan, you come on up here with us, you
4 come stay with us in Maryland. That was not, to me
5 now, that would have been the typical response of an
6 adult. That wasn't his response. What do you need,
7 gunplay? And was more an willing, ready and able to
8 put all that expensive gas in that truck and drive with
9 Tawanda Allen all the way from Maryland to South
10 Carolina to kill somebody he didn't even know. You
11 know, when I think about Kenyan, when I think about
12 Kenyan, I wonder whether or not, if in fact, this child
13 was caught up in some kind of gang, whether he realized
14 that wait a minute, Ronald Mack is into some heavy
15 stuff. Maybe he ought, I need to pull back from this.
16 Maybe that's why him and Kenyan, him and Ronald Mack
17 wasn't getting along in the week before he got
18 murdered. Maybe he pulled back from them and really,
19 really y'all? If Kenyan was this big time gangster,
20 like Ronald Mack wants to be, why was there no evidence
21 of any guns in his bedroom? Police went up and down
22 that house, went in and out the bedroom, no evidence of
23 guns, of drugs taken out his bedroom, no rolls of money
24 taken out his bedroom. There was no evidence at he had
25 any drugs in his system when they did the autopsy. So
I wonder whether or not if it is true, at some point,

1 because remember, his mom said, alright now you can
2 come in here at one thirty in e morning if you want to,
3 you better be ready to get up and go to church in e
4 morning. I wonder at some point, did he say, wait a
5 minute, I've got to pull back out of is. If in fact,
6 is what Ronald Mack says. Now, what's kind of scary
7 about is case is e precise nature in which is murder
8 was carried out. I tell you, I mean I've prosecuted
9 probably thirty, forty murder cases. This is just
10 unbelievable. These folks out of Maryland? They're
11 not like anybody we know. They're not like us. I mean
12 they just, they got a different mind set. I mean just,
13 a completely different mind set. They carry out this
14 murder, in and out in five minutes. They're in and out
15* that child's house in five minutes and on the way back
16 to Maryland and it doesn't bother any of them. They go
17 on with their lives. Ronald Mack moves up there, goes
18 to school there. Tawanda goes back to work, Kelvin B.

19 gets his license back, Tawanda gets Kelvin a job
20 where she working. I mean they just carrying on with
21 their lives. And it's absolutely amazing to me, but
22 people please don't be naive about what's out there in
23* the world. Evil is out there in the world and this
24 Defendant, the act that he committed was evil
25 personified. Now, Mr. Jenkinson was right about one
thing; when Ronald got in court he testified, of course

HEARING

674

1 Mr. Jenkinson wasn't here during the trial and I was,
2 but when Ronald Mack testified in his mother's case, he
3 threw her under the bus. Yeah she drove down there,
4 yeah Callie had the guns, yeah she waited outside in
5 the car while we went in the house and I put three in
6 him and Callie put five shotguns shells. Said all that
7 when he pled guilty, said all that when he testified in
8 her trial. You have to ask yourself the question
9 folks, what is it about this Defendant and his
10 relationship with Ronald Mack that would inspire such
11 loyalty from Ronald Mack? Yeah, you, Mr. Jenkinson's
12 right. He testified against his own mama, but when he
13 gets on that stand, I don't remember. I don't
14 remember. When he come in this courtroom, he
15 eyeballing his buddy over there. I don't remember, I
16 don't remember. But now when Mr. Jenkinson started
17 asking him questions, yeah, I remember that part. Oh
18 his memory got a whole lot better. Because he ought he
19 was helping him. You see, Ronald Mack knows, I'm doing
20 my time, I'm doing my fifty years, ain't nothing else
21 can happen to me, I can get up here and lie, I can
22 purger myself all day long, nothing else is going to
23 happen to me. And Judge row three, four more years on
24 me for perjury? I don't care. My mama's sitting up in
25 the Department of Corrections, she doing her time;
nothing else can happen to her. He's not going to hurt

1 him, but folks, if he can help him, he's going to try
2 to help him and that's exactly what Ronald Mack did.
3 And you have to realize as jurors, that you can't, you
4 can't always answer the question why. There's some
5 things we're just not going to know the answer to. I
6 mean, when I got this case, y'all had it for five days,
7 I've had it for almost two years and I tried one
8 defendant in court, two other defendants pled guilty
9 and I still can't understand it. I still can't
10 understand it, but the beauty about the criminal
11 justice system is that this judge is not going to lay
12 that burden at your feet. Nobody's going to sit up
13 there and when you come back, and render your verdict,
14 nobody's going to come up and say well, now you got to
15 tell me why. Explain to me if you going to convict
16 this man. Madam Solicitor explain to me why he would
17 want to kill this child. There are some things that
18 people do in this world you can never explain. I think
19 about that case with Scott Peterson, out of California
20 where the guy was having the affair and killed his
21 pregnant wife. And I ask myself, why would he do that?
22 I mean, hasn't he heard of divorce? I mean, why would
23 you do that? Some things you just can't answer. The
24 only thing you have to answer, is did he kill him. You
25 don't have to answer why. Because folks, there's never
a reason to justify what this Defendant did. I think

HEARING

676

1 in terms of the viciousness of this murder, if I can be
2 grateful about anything, it's probably simply one
3 thing. I'm grateful that Kenyan Dorsey probably did
4 not know what hit him. I'm grateful that, despite the
5 fact he was surrounded by evil and malice and violence,
6 none the less, he was still surrounded by the love of
7 his mother who was simply a few feet away from him. And
8 I'm grateful that, although the sounds of nine
9 millimeter handgun, sounds of a shotgun was blasted all
10 around him, all those sounds, the last sound that he
11 remembered was the words of his loving mother. You
12 see, Kenyan Dorsey, unfortunately, he was going to die
13 that night. That was his time. There was nothing that
14 anybody could do and these people, they didn't come all
15 the way down here from Maryland for nothing, they were
16 going to kill the boy. I mean, if they had come to the
17 house and firmly convinced and ten people were at the
18 house, they would just sit and wait until ten people
19 left and they would have come in and they would have
20 killed him. What is so ironic about that, his mother
21 was not supposed to be there, because Ronald knew she
22 worked midnight shift. Ronald knew that. He waited,
23 that's why he came when he did. But it just so
24 happened, for whatever reason, that child was meant to
25 die that night, and despite the fact that she was
supposed to be at work, his mom was meant to be there.

1 And perhaps because it was already predetermined that
2 he was going to die that night, maybe, you know, her
3 only role in all of this was to be the last one to talk
4 to him. To be the one to find him, his body. To be
5 the one to see the dark SUV running from the house and
6 the one to call the police. Maybe that's, maybe that's
7 just how it was meant to be. You know, you can't
8 explain it. It's just that's how it is. Even despite
9 what he's done, I still, as I stand here, pray to the
10 good Lord in Heaven that Kelvin B. never has to
11 suffer the kind of pain that he inflicted on this
12 family. I pray that never happens. You know, often
13 times, people are not who they present themselves to
14 be. People aren't who they appear. People put on
15 masks for people. Mr. Bowen was very successful for a
16 while in putting on a mask to his wife. Lied about
17 where he was going and who he was with and you know, I
18 can tell you now, you can put a Defendant on a shiny
19 suit and some nice, shiny shoes, you can change what he
20 looks like on the outside all day long, but you not
21 going to change the fact that on the inside he's a
22 skilled, cold-blooded, cold-hearted killer. The only
23 difference is today he's a skillful, cold-blooded,
24 cold-hearted killer with a nice suit on. You can come
25 into this courtroom and parade the wife up. You saw on
Monday morning how Mr. Jenkinson, or Monday afternoon

HEARING

678

1 Mr. Jenkinson said, oh Tiffany stand up, stand up.
2 Kelvin B. III stand up, stand up so the jury, you
3 can parade them in this courtroom all day long, it's
4 still doesn't change the fact that they are the wife
5 and the son of a skilled, cold-blooded, cold-hearted
6 killer. You know, the time to be the proud papa and
7 the loving husband is when you laying up in Tawanda
8 Allen's bed. You know, now that you on trial for
9 murder, don't try to play a proud papa and a loving
10 husband now. You know, when I think about the proud
11 papa, loving husband, and I think about Tiffany Bowen's
12 statement, you know, something hit me when she
13 testified yesterday. She said that when her husband
14 was arrested in Anne Arundel, Maryland, right after he
15 was arrested, he called her and I think she said he
16 called her first. I may be mistaken on that, but he
17 called her very shortly after his arrest and Ms.
18 Shuler asked, well what did he say? And she said well
19 he told me that he was arrested and I said arrested for
20 what? And he said arrested for murder and her exact
21 words were who did you murder? That's just how she
22 said it, who did you murder? Now, if my husband call
23 me from jail, saying at he was arrested for murder, I'd
24 say, for what? Oh my God, are you serious? But her
25 reaction is as cool as a cucumber, who'd you murder?
You know that testimony and her reaction is very

1 telling, very telling. Because she knows her husband
2 a whole lot better than we do. And she also mentioned
3 that she asked him, well what was the date? And she
4 said, no I know that couldn't be it because you were
5 home with me on that date. And I thought about it and
6 I said wait a minute now. Now mind you all of this is
7 happening pretty quickly. We didn't have a warrant on
8 Kelvin B. until after Antonio McClary came over to
9 the jail and saw his picture on the computer. We just
10 knew him as Callie, we didn't have a government name
11 for him so to speak. And so after Antonio made that
12 identification, then the Sheriff's department would
13 have had to go on over to a Magistrate, type up a
14 warrant, have the warrant signed by the Magistrate,
15 have it notarized, but it hadn't been served yet. So
16 how did Callie know the date unless he was in South
17 Carolina and committed the murder? They remembered the
18 date so much because they had to remember the date so
19 much. Now, how many of us, realistically, if I was to
20 throw out a date, November 16, 2010, unless that's an
21 anniversary or birthday of some significance, how you
22 going to remember that? You remembered that because
23 you have to remember that because you want to spring
24 your husband. That's why she remembers it so well.
25 When you talk about these quote unquote alibi witnesses
and folks, when that little boy got up on the stand and

HEARING

680

1 I said, you know, I mean what do you do with a thirteen
2 year old? But when the wife gets up and I said well,
3 I mean, Kelvin B. wasn't spending every night with
4 you. He was staying out all the time wasn't he? Well
5 yeah. I mean, even your own son said, you know that's
6 a contradiction to even your own son's statement
7 wouldn't it? Yeah, I guess. But they want you to
8 believe the alibis. And all of this notion about, you
9 know, Justin Whack calling Ms. Bowen on Friday and
10 trying to talk to her. When she goes in and says, well
11 no, you know, I didn't mean it that way, I just said
12 I'll talk to you on Monday with my husband's lawyer.
13 To me, if you have the truth on your side, if you're
14 telling the truth, why do you need a lawyer around when
15 you're telling the truth? I mean, if your husband's
16 charged with murder, folks that's some pretty powerful
17 evidence to come in and say, no I know he didn't do it,
18 because he was with me when it happened. When she had
19 that telephone conversation, supposedly when she says
20 well, you know, I know you didn't do it because you
21 were with me. You don't think a wife would have been
22 on the phone down to the Sheriff's department of
23 Williamsburg County saying, y'all got the wrong man.
24 I don't know what y'all got going on, but y'all got the
25 wrong man. My husband wasn't there, I'm proof.
Listen, I'm proof he was not there, I can show you. I

1 can show you the phone records where we were on a call
2 to my whoever it was in Texas.

3 Mr. Jehkinson: Your Honor, burden is shifting.

4 The Court: Objection is overruled.

5 Ms. Barr: No, they save it. Save it for court, because if
6 she gives a statement to law enforcement, law
7 enforcement is going to start going back, well let me
8 see. You say this, let me go interview this person to
9 confirm that or contradict it. Or if you say this let
10 me go talk to this person to confirm that or contradict
11 it. She didn't want to give them the opportunity to do
12 that. She wanted to answer his questions in the
13 presence of Kelvin B. lawyer, because she didn't
14 want to deviate from the script. And without the
15 lawyer being there, she might deviate from the script.
16 But these are the people we're suppose to believe.
17 Let's talk about Antonio McClary's testimony. Here's
18 why you can believe Antonio McClary. Let me, before I
19 tell you at, let me just say is, did Antonio McClary
20 get less time than Tawanda Allen and Ronald Mack? Yes.
21 To some of you, does the idea that he got less time
22 than the other two, does that kind of leave you with
23 heartburn? If it does, that's fair. If you have a
24 problem that he got less time than some of the other
25 people. Please take that out on me and not on justice
and not on this woman who seeks justice for her son.

HEARING

682

1 Quite frankly, I'll tell you that, did I want him to
2 testify? Sure I did. Absolutely, I'm guilty, I wanted
3 him to testify. He's an eye witness to a murder in a
4 case I'm prosecuting. If Donald Duck was an eye
5 witness to the case I'm prosecuting, I would want
6 Donald Duck to testify. Yes, I sure do. Was there
7 ever a point when I sat down with his lawyer and I said
8 listen, you know, you tell Antonio to say A, B and C
9 and I'll give Antonio X, Y and Z? No. His lawyer came
10 up and said that. Yes Ms. Barr wanted him to come into
11 court and testify, because I just wanted him to tell
12 the truth, whatever it was. I also wanted Tawanda
13 Allen to testify, because I called her as a witness in
14 my case. Now, Tawanda gets up and she asserts her
15 fifth Amendment privilege not to incriminate herself.
16 I respect that, that's her right. Did I want Ronald
17 Mack to testify? Sure I did, absolutely, I'm guilty.
18 He was an eye witness to the murder, I wanted him to
19 testify in my case. I called him again, he got in
20 here, looked at his buddy and all of a sudden he gets
21 amnesia. But now, the reason why you can believe
22 Antonio McClary folks, is quite simple. Everything
23 Antonio McClary said can be corroborated. Everything.
24 You look at the crime scene photos, you recollect his
25 testimony in everything is a hundred percent
consistent. He talked about the vehicle being a dark

1 Kia. Well, low and behold we find Kelvin B. and
2 Ronald Mack in a dark Kia. He talked about Ronald
3 Mack's mom being Tawanda. Low and behold, we pick up
4 Kelvin B. and Ronald Mack and their in Tawanda's car
5 in Maryland. He talked about nobody forced entry into
6 the house, they just happened, much to their surprise,
7 to open the door and it was unlocked. That's
8 consistent with the photos that show no forced entry.
9 He talked about going down to the house, in the
10 bedrooms, didn't see Ronald Mack, Kenyan Dorsey
11 initially. Saw him in the chair sleeping. Absolutely,
12 one hundred percent consistent and corroborated by the
13 crime scene photos showing his body sitting up in the
14 chair. Talked about him being shot by a nine
15 millimeter handgun. Said at Ronald Mack did it.
16 Absolutely consistent. Ronald Mack pled guilty to
17 shooting with a nine millimeter, we know that it was a
18 nine millimeter, because of the autopsy and the SLED
19 experts testimony. We know that he was also shot with
20 a shotgun, because that's, again, consistent with the
21 SLED testimony and the autopsy report. Now, Antonio's
22 no saint. Now, don't get me wrong, but folks, he said
23 some things in this courtroom once he put his hand on
24 the Bible that really made him look kind of bad. He
25 didn't have to admit it. You know, he went in there
and he said, I went in and I didn't want my face to be

HEARING

684

1 seen, but I, and I grabbed some clothes off the chair
2 and look in the pictures and what do we see? The
3 clothes sitting on a chair. And he says he put some
4 kind of shirt around his face. What do we see in the
5 crime scene photos? The lane in which that Kia was
6 parked, right there on the ground, that same shirt that
7 he wrapped around his face. And folks, he even got up
8 and said, yeah, I pointed him out, I said there he is.
9 He didn't have to admit that if it wasn't true. Why
10 would he? Why would he volunteer that if it were not
11 true? The problem that the defense has is that Antonio
12 McClary is too credible and y'all that little dog and
13 pony show. When they bring Mr. Bowen over here. I want
14 you to get real close, real close. Y'all that's the
15 same part of that intimidation that started in the back
16 seat of that car that night. It's the same part of the
17 intimidation that continued when they were in court,
18 after that preliminary hearing and he continued to
19 carry it on when that young man was up on that witness
20 stand. I'm going to tell y'all, I'm going to be just
21 as honest and just as candid as I'm standing right
22 here. If I were an eye witness, and I saw Kelvin B.
23 do to Kenyan Dorsey or do to somebody else what he did
24 to Kenyan Dorsey, I would get up here and somebody
25 brought him said ma'am, Ms. Barr, is that the guy that
you saw shoot the victim? I'd say no too. I sure

1 would. No, you know what, matter of fact, I would
2 just, I would make it a little bit worse, I'd say no
3 the person who shot him was five foot two and light
4 skinned and curly hair and three hundred, I'd make it
5 just a complete opposite of who he was. Antonio
6 McClary knows what Kelvin B. is capable of. He saw
7 it for himself and Kelvin B. did not have an ax to
8 grind against that victim. He was only doing what
9 Ronald Mack asked him to do. And you mean to tell me
10 Antonio McClary, who is basically, the only thing
11 standing between Kelvin B. and his freedom, doesn't
12 have reason to be afraid of him? Do we, are we really
13 surprised that he was afraid and intimidated by him?
14 I remembered very vividly his testimony. He said, you
15 know, you know how you get that feeling that somebody's
16 watching you? And I was sitting in the back seat of
17 the car and I had my head leaning against the
18 windshield and I saw this reflection and I turned
19 around and he called it mean mugging. Said Callie was
20 sitting there just looking at me, had the nine
21 millimeter pointed at me. And he's back there in that
22 little small room back there and they three feet apart
23 and his lawyer come over and say, is that the one who
24 was with you that night? And we really expect him to
25 get up and say, yeah, sure enough, that was him. And
he got to walk back over to the jail with him? Are we

HEARING

686

1 surprised? But you know what? Why you can believe
2 Antonio McClary? When his lawyer presented him that
3 statement, he read that statement and said, no, I ain't
4 signing that. Said Mr. Palmer, I'm not going to sign
5 that, because that's not the truth. He came back and
6 presented him the same statement two weeks later. You
7 want to sign it now? No. No, that's not true. That's
8 not what happened. And by this time the lawyer's like,
9 well he's confused. He said well, Antonio why did you
10 tell me that? Man I'm scared of that guy. Antonio
11 said at he was with Mr. Bowen, I think he said fifteen
12 or twenty minutes that night. Now, you all had the
13 ability to observe Mr. Bowen for about maybe thirty
14 seconds when he came up and stood up. Is that a face
15 you forget? You saw that face, right here for thirty,
16 forty five seconds and then I let you observe him for
17 another fifteen more minutes. You have a conversation
18 with him. You hear him talk. You think you're going
19 to forget that face? I wouldn't. Their problem is, he
20 won't forget it. He's not like Ronald Mack. He won't
21 forget it. Mr. Bowen's problem is he made two
22 mistakes. Two very fatal mistakes. His first mistake
23 was trusting Ronald Mack. See Ronald Mack was a little
24 seventeen year old hothead. I don't know if he's
25 wrapped up in the gang like at, you know, maybe he
needed to get his first kill in and I guess you get

1 points for getting a kill in or whatever. But see, when
2 he, Mr. Bowen made the mistake of trusting Ronald Mack,
3 Ronald Mack's a little young kid. A little young punk
4 in my view. And he ran his mouth too much. It wasn't
5 enough for him to do is. He, he wanted people to know.
6 Oh I'm so bad, I'm so tough, I'm such a gangster. He
7 wanted somebody else to know he did it. That's why he
8 showed Dontrey Barr those test messages. You know now,
9 I love the way my good friend Mr. Jenkinson kind of
10 spun that text message thing. He said that they sent
11 the text message at nine o'clock. Well that's not
12 exactly true. The evidence said Dontrey Barr saw the
13 text messages at nine o'clock and he saw the whole line
14 of them, which meant they were sent earlier. And so
15 this notion about them being sent at nine o'clock and
16 therefore it would have been five hours between the
17 time they were sent and the time that the murder was
18 committed, that's not true. We know that the text
19 messages were sent much earlier. That's just what time
20 Dontrey Barr saw them, but see Ronald Mack wanted an
21 audience. He wanted people to respect him or fear him,
22 I'm not sure which. But he wanted an audience and so
23 he had to try to play bad and show Dontrey Barr the
24 text messages, but that wasn't enough for him. He
25 didn't just want to show somebody text messages, he
wanted somebody to see what he was capable of. So

HEARING

688

1* that's why he invited Antonio McClary along. And you
2 remember in his statement, he kept saying, Tony didn't
3 even believe me. You know, he had a accident a couple
4 of years, he kind of off. He, you know, thought I was
5 playing. He didn't think I was serious. You know,
6 Antonio didn't really do nothing, he just came, he just
7 came and saw what I did. People like that, you can't
8 be feared or respected unless people know that you just
9 is bad or is cold-hearted or whatever. So that's why
10 Antonio McClary was brought into is. That was Bowen's
11 first mistake. His second mistake was not following
12 his first instinct. When he came and picked up Antonio
13 McClary and Ronald Mack, he knew something wasn't right
14 about that; he knew something wasn't right about that.
15 You see, he's a little older, he's a little more savvy.
16 He knows probably, that you know, when you going to do
17 something like that, you don't bring in new people.
18 You don't add, you know, people at the last minute on
19 something like this. I mean, we're not talking about
20 me selling a crack rock to somebody. We talking about
21 killing somebody and Antonio McClary was right. The
22 entire time he was looking at him, sizing him up, like
23 can I trust you. The entire time and I bet he was
24 wondering, I don't know about this, I don't know about
25 this. He did not follow his first instinct which was
to not let Antonio McClary go and that was his fatal

1 flaw, because ultimately, ultimately Antonio McClary
2 did tell the police and did tell on him. And that's
3 why he's sitting up in the courtroom today. Those were
4 his two biggest mistakes. Now, when you think about
5 Ronald Mack's statement to the police and you couple
6 that along with Antonio McClary's statement to the
7 police you have to really ask yourself a question.
8 Well, gee why would Ronald Mack say that Callie was
9 Kelvin Bowen, the man who was living with his mama?
10 Why would he say that if it weren't true? Now this is
11 his buddy. This is his home boy. Why would you pull
12 this guy's name and face out the sky out of everybody
13 else in the entire world that you could blame it on?
14 Why would you do it if it wasn't true? There's been no
15 motive of any reason that Ronald Mack had to lie. If
16 anything, there's been a motive of a reason he had to
17 try to protect him at this point. Why would Antonio
18 McClary pull his picture out of everybody else's
19 picture in the entire world if he wasn't the one
20 participating in this crime? There was no motive for
21 them to lie. Couple more points, then I'm going to sit
22 down. When you look at this case, don't fall for the
23 old defense lawyers tricks. You know, one of the
24 things that we learn when we go to these seminars and
25 I've seen as a prosecutor. Defense lawyers, they
 hammer that you day in and day out, oh you didn't have

HEARING

690

1 this, you don't have the CSI stuff, you don't have
2 this, you don't have that. Therefore, the State can't
3 convict beyond a reasonable doubt, you got to find them
4 not guilty. See the defense wants you to fall for that
5 notion where you don't see the forest for the trees.
6 They want to sit there and tell you, well you don't
7 have this, you don't have this, you don't have this.
8 Now I want to ask you something as precise and skilled
9 as this man is, smart enough to tell Ronald Mack to
10 delete his text messages, smart enough to wear gloves,
11 smart enough to come in the middle of the night. Do
12 you really think he's going to leave fingerprints on
13 the gun? I mean, do you really think that? A serial
14 number filed off shotgun, you really think he's stupid,
15 now all of a sudden he's stupid? Huh-uh, huh-uh. Don't
16 fall for that old defense lawyers trick. You have all
17 of the evidence that you need in this case. There is
18 nothing else out there. And don't be fooled at their,
19 you know, we got some innocent man sitting up in this
20 courtroom. Low and behold we don't want to send a
21 innocent man to prison. This man is anything, is
22 anything but innocent. You know, Mr. Jenkinson went
23 over there and pointed at Investigator Lail. Oh, oh,
24 oh, she's silent. State didn't call her as a witness.
25 Oh well, I didn't call her as a witness. I didn't call
the ambulance people that came to pick up Kenyan's

1 body, I didn't call the driver of the car that took the
2 evidence from MUSC at the autopsy and took it to SLED,
3 didn't call the officer from Maryland who stopped
4 Kelvin B. and Ronald Mack. I didn't call any of
5 those people. Let's say I did. Now, of course we would
6 still be here till next week, but let's just say I
7 called everybody that knew anything about this case.
8 The reality is you wouldn't know any more then, than
9 you know right now. Then facts simply are what they
10 are. We know that this Defendant was involved because,
11 I'm not quite sure what the defense is it was three
12 people involved in the murder? And not four or is it
13 some other fourth person who we don't know about? But
14 what we do know, for sure, is that Ronald Mack and
15 Antonio McClary didn't have a gun. If they had a gun,
16 they wouldn't have needed to call Tawanda and they
17 wouldn't have needed to call Kelvin. Why would you
18 have them come all the way down here when you got
19 access to firearms? They didn't, so their job was to
20 bring the firearms. And folks, these little three
21 pieces of paper that Mr. Jenkinson talked about, that
22 just magically appeared in Tawanda Allen's apartment,
23 now I'm going to ask you something. That letter is
24 dated April 13th, 2009. That's Kelvin B. this
25 defendant, with her address, but he wasn't living
there. Now, here's the problem I have with that. They

HEARING

692

1 don't want him living there, because they know the
2 murder weapon was found there. So that's why they got
3 to try to remove him from that apartment. You know,
4 it's okay if he, you know, come there, but they, we
5 don't want him inside the house and we certainly don't
6 want him living there? Why in the world would you have
7 your address, where you get the job going to the house
8 you're not staying that? Now, the wife says she, you
9 know, he stayed there all the time. That was his home
10 with her. Now, I can understand if you got a credit
11 card bill at maybe got some hotel receipts on it that
12 you don't want the wife to see and you may have that
13 going to the girlfriends' house. I get that. That's
14 a job, a letter saying congratulations, you got a job.
15 Certainly it's a good thing for a man to have a job.
16 That's something you want to share with your wife
17 right? It's okay to have that letter going to your
18 house. There is a second exhibit somewhere in here.
19 State of Kansas. Department of Revenue. Kelvin Michael
20 Bowen, Jr. Same address where the murder weapon was
21 found. Got his license back. You get your license back,
22 surely that's something you can send to your house. He
23 did send that to his house. He sent that to the house
24 he was living in. That's the house he was living in
25 with Tawanda Mack. And folks, when you talk about the
level of proof, I submit to you we got the best

1 evidence. We got an eye witness testimony, eye witness
2 who saw him shoot Kenyan Dorsey with the shotgun and we
3 have forensics. We have evidence that the murder
4 weapon was found under his mattress on his side of the
5 bed. That is the best evidence. The last thing Mr.
6 Jenkinson and I are going to agree about. The people
7 who killed Kenyan Dorsey ought to go to jail. I
8 couldn't agree with him more than that. Three of them
9 who were involved have gone to jail and there's one
10 more that needs to go. And to me he's the worst one of
11 them all. He was so smart that it, it's almost scary.
12 You know, he had that Samsung cell phone than he was
13 arrested y'all. I'm sure when they took him into jail,
14 he had a bunch of stuff with him. He probably would
15 have had his wallet, his clothes, his shoes, all that.
16 Presumably his wallet would have had cash in it,
17 valuable stuff. Credit cards, social security cards,
18 id's. Folks, here is the proof that he knew he was
19 guilty. Out of all the valuable stuff that was in his
20 personal belongings, all the stuff that he got arrested
21 with, the only thing, the only thing that he was
22 worried about, getting out of the hands of law
23 enforcement and getting into the hands of his lawyer
24 was that Samsung telephone. Now you know, you sitting
25 up in jail, you got money in your wallet, you want
money to use the canteen. You got credit cards, you

HEARING

694

1 want to make sure your family members get your credit
2 cards so nobody else is using them. He wasn't worried
3 about any of that. Please give my Samsung telephone to
4 my lawyer. Because he didn't want you all to see what
5 was on that phone. He leaves this state, he comes to
6 our state, commits a murder in our county. That's his
7 way of doing justice. Mr. Foreman, ladies and
8 gentlemen of the jury, you all show him our way of
9 doing justice. Sir, please take this pen, you render
10 justice in this case. Each and everyone of you and you
11 find him guilty. Thank you all.

12 The Court: Let's stand for a moment.

JUDGE'S CHARGE TO JURY:

13 Mr. Foreman and members of the jury, you've heard the
14 testimony and evidence and arguments of the State and
15 the Defendant. I will now explain to you the law that
16 applies to this case. Under the Constitution, and laws
17 of South Carolina, you are the finders of the facts in
18 this case. I do not have a right to pass upon them or
19 express any opinion that I might have as to them. This
20 is a matter solely for you, the jury, to determine. As
21 jurors then, it is your duty to determine the effect,
22 value the weight and the truth of the evidence
23 presented during this trial. You are also the judges,
24 the sole judges of the credibility. That is the
25 believability of the witnesses who have testified in

1 this case. And the evidence in this case. In passing
2 upon credibility, you may take into consideration many
3 things such as the demeanor or the manner of the
4 witness while testifying, whether a witnesses'
5 testimony was contradicted on the one hand or supported
6 and corroborated on the other hand. You may believe a
7 small portion of a witnesses' testimony and disregard
8 the larger or vice versa. You may believe one witness
9 against many or many against one. All these things you
10 will consider, bearing in mind that you should give the
11 Defendant the benefit of any reasonable doubt. It
12 becomes your duty as jurors to analyze and to evaluate
13 the evidence and determine that evidence which
14 convinces you of its truth. There has been evidence
15 presented that the witnesses have made prior statements
16 which are not consistent when the witnesses present
17 testimony. You may use this evidence to decide whether
18 to believe the witness. You may also use evidence of
19 the earlier contradictory statements to determine the
20 truth of those statements. It is up to you to decide
21 whether to believe the earlier statements or the
22 testimony given in trial. If a witness has shown to
23 have knowingly testified untruthfully, concerning any
24 material matter, then you may consider this in
25 determining whether to trust the witnesses' testimony
as to other matters. You may reject all of the

HEARING

696

1 testimony of that witness or give all or part of the
2 testimony you think it deserves. I instruct you and
3 emphasis that the fact that the Defendant did not
4 testify is not a factor to be considered by you in
5 determining, not to be considered. I instruct you and
6 emphasis that the fact that the Defendant did not
7 testify, it is not a factor to be considered by you in
8 any way in your deliberations and in your consideration
9 on the question of guilt or innocence of the Defendant.
10 It must not be considered by you in any manner
11 whatsoever. The Defendant has the Constitutional right
12 to remain silent. And the assertion of this right must
13 not be considered by you in your deliberations and I
14 repeat, under your oath, you are to draw no conclusions
15 whatsoever from the fact that the Defendant in this
16 case did not testify. The fact that this Defendant did
17 not testify, should not even be discussed in the jury
18 room. The burden of proof, as I have stated to you, is
19 on the State. The Defendant is not required to prove
20 his innocence. The burden of proof remains on the State
21 to prove guilt beyond a reasonable doubt. There are
22 two types of evidence that are generally presented
23 during a trial; direct evidence and circumstantial
24 evidence. Direct evidence is the testimony of a person
25 who claims to have actual knowledge of a fact, such as
an eye witness evidence which immediately establishes

*
1 a main fact to be proved. Circumstantial evidence is
2 proof of a chain of facts and circumstances indicating
3 the existence of a fact. It is evidence which
4 immediately establishes collateral facts from which the
5 main fact may be inferred. Circumstantial evidence is
6 based on inference and not on personal knowledge or
7 observation. The law makes no absolutely no
8 distinction between the weight or value to be given
9 either direct or circumstantial evidence. Nor is a
10 greater degree of certainty required of circumstantial
11 evidence than of direct evidence. You should weigh all
12 of the evidence in the case. After weighing all of the
13 evidence, if you are not convinced of the Defendant's
14 guilt beyond a reasonable doubt, then you must find the
15 Defendant not guilty. As a trial judge, it is my
16 responsibility to preside over the trial of this case
17 and I also have the duty to rule upon or pass upon the
18 admissibility of the evidence offered during this
19 trial. You are to consider only the testimony which
20 has been presented from this witness stand, together
21 with any exhibits which have been made a part of the
22 record in this case or any stipulations that counsel
23 made into the record. I have the additional duty to
24 charge you the law applicable to this case and as the
25 presiding judge, I am the sole judge of the law in this
* case. It is your duty as jurors to accept and apply

HEARING

698

1 the law as I now state it to you and then reach your
2 verdict. Finally, I charge you with this regard that
3 you should not be concerned with what you think the law
4 ought to be, but what I charge you the law is. Now the
5 fact that the Defendant was arrested, charged and
6 indicted in this case, is not evidence and can not be
7 considered by you as evidence of guilt in this case.
8 Nor does it present any presumption of inference of
9 guilt. This indictment is simply the formal written
10 instrument which contains the charges made against the
11 Defendant. The indictment is the formal document by
12 which this case was brought into this court. The
13 Defendant has pled not guilty to each charge in this
14 indictment. And that plea puts the burden on the State
15 to prove the Defendant guilty. The person charged with
16 committing a criminal offense in South Carolina is
17 never required to prove himself innocent. I charge you
18 that it is an important rule of the law that the
19 Defendant in a criminal trial, no matter what the
20 seriousness of the charge may be, will always be
21 presumed to be not guilty of the crime of which the
22 indictment was issued unless guilt has been proven by
23 evidence satisfying you of that guilt beyond a
24 reasonable doubt. This presumption of innocence does
25 not end when you begin your deliberations, but it
accompanies the Defendant throughout the trial. Until

1 you've reached a verdict of guilt based on evidence
2 satisfying you of that guilt beyond a reasonable doubt.
3 The presumption of innocence is like a robe of
4 righteousness placed about the shoulders of the
5 Defendant, which remains with the Defendant until it
6 has been stripped from the Defendant by evidence
7 satisfying you of that guilt beyond a reasonable doubt.
8 The presumption of innocence is not merely a theory,
9 it's not just a legal phrase. It is a substantial
10 right to which every defendant is entitled unless you
11 the jury are satisfied of the Defendant's guilt beyond
12 a reasonable doubt. The State must prove the Defendant
13 guilty beyond a reasonable doubt, so what is a
14 reasonable doubt of law? A reasonable doubt is a doubt
15 which makes a honest, sincere, conscientious juror in
16 search of the truth to hesitate to act. Proof beyond
17 a reasonable doubt must therefore be proof of such a
18 convincing character that a reasonable person would not
19 hesitate to rely and act upon it in the most important
20 of his or her own affairs. Proof beyond a reasonable
21 doubt can also be described as proof that leaves you
22 firmly convinced of the defendant's guilt. Now, there
23 are very few things in this world that we know with
24 absolute certainty and in criminal cases, the law does
25 not require proof that overcomes every possible doubt.
If based on your consideration of the evidence, you are

HEARING

700

1 firmly convinced that the Defendant is guilty, then you
2 must find him guilty. If, on the other hand, you think
3 there's a real possibility that he is not guilty, you
4 must then give him the benefit of the doubt and find
5 him not guilty. This indictment in this case, or the
6 indictment in this case alleges several different
7 offenses against the Defendant. The charges of murder,
8 burglary first degree, conspiracy and possession of a
9 weapon during the commission of a violent crime. Each
10 indictment charges a separate and distinct offense.
11 You must decide each indictment separately on the
12 evidence and the law applicable to it uninfluenced by
13 your decision as to any other indictment. The
14 Defendant may be convicted or acquitted on any or all
15 of the offenses charged. You will be asked to write a
16 separate verdict Mr. Foreman, of guilty or not guilty
17 on each charge, on each indictment. The Defendant is
18 charged with murder. The State must prove beyond a
19 reasonable doubt that the Defendant killed a person
20 with malice aforethought. Malice is hatred, ill will
21 or hostility towards another person. It is the
22 intentional doing of a wrongful act without just cause
23 or excuse and with an intent to inflict an injury or
24 under circumstances that the law will infer an evil
25 intent. Malice aforethought does not require that the
malice exist for any particular time before the act is

1 committed. But malice must exist in the mind of the
2 Defendant just before and at the time that the act is
3 committed. Therefore, there must be a combination of
4 the previous evil intent and the act. Malice
5 aforethought may be expressed or inferred. These
6 terms, expressed and inferred, do not mean different
7 kinds of malice, but merely the manner in which malice
8 may be shown to exist. That is either by direct
9 evidence or by inference from the facts and
10 circumstances which are proved. Express malice is
11 shown when a person speaks words which express hatred
12 or ill will or when the person prepared beforehand to
13 do the act which was later accomplished. For example,
14 lying in await for a person or any other acts of
15 preparation going to show that the deed was within the
16 Defendant's mind would be express malice. Malice may
17 be inferred from conduct showing a total disregard for
18 human life. Inferred malice may also rise when the
19 deed is done with a deadly weapon. A deadly weapon is
20 any article, instrument or substance which is likely to
21 cause death or great bodily harm. Whether an instrument
22 has been used as a deadly weapon depends on the facts
23 and circumstances of each case. The Defendant is
24 charged with burglary, with first degree burglary. The
25 State must prove beyond a reasonable doubt that the
Defendant entered a dwelling without consent. A

HEARING

702

1 dwelling is any building or portion of a building in
2 which a person ordinarily sleeps. In order to prove
3 that Defendant entered the dwelling, the State does not
4 have to show that the Defendant's entire body entered
5 the dwelling. The smallest entry is sufficient. In
6 addition, the State does not have to prove that force
7 was used to gain entry. Next, the State must prove
8 beyond a reasonable doubt that the Defendant intended
9 to commit a crime, either a felony or a misdemeanor at
10 the time of the entry. Mere entry into a dwelling
11 without consent is not burglary. If the intent to
12 commit the crime was formed after the entry, it is not
13 a burglary. Intent may be shown by acts and conduct of
14 the Defendant and other circumstance in which you may
15 naturally and reasonably infer intent. Finally, the
16 State must prove beyond a reasonable doubt that while
17 entering the dwelling or when fleeing, the Defendant or
18 an accomplice was armed with a deadly weapon and deadly
19 weapon is any instrument which is likely to cause death
20 or great bodily harm. Secondly, when entering or while
21 in the dwelling or while fleeing or the Defendant or an
22 accomplice cause physical injury to anyone not
23 participating in the crime. And third while entering or
24 in the dwelling or while fleeing the Defendant or an
25* accomplice used or threatened to use a dangerous
object. Fourth, while entering, while in the dwelling

1 or while fleeing, the Defendant or an accomplice
2 displayed what was or appeared to be a pistol, rifle or
3 other firearm. Finally, five, the Defendant entered or
4 remained in the dwelling in the nighttime. Nighttime is
5 the period between sunset and sunrise, during which
6 there is not enough daylight to recognize a person's
7 face, except by artificial light or moonlight, the
8 Defendant is charged with conspiracy to commit a murder
9 and burglary in the first degree. The State must prove
10 beyond a reasonable doubt that the Defendant, combined
11 with one or more persons, for the purpose of committing
12 an unlawful act or by committing the lawful act by
13 unlawful means. There must be a mutual understanding,
14 agreement or common intention in plan. A mere passive
15 knowledge of or consent to the criminal conduct of
16 another is not enough to make a person a conspirator.
17 There must be guilty knowledge and participation.
18 Similarly, the mere fact that the Defendant may have
19 associated with another person or met with another
20 person and discussed common names and interests, does
21 not necessarily establish proof of the existence of a
22 conspiracy or that the Defendant was involved in a
23 conspiracy. On the other hand, it is not necessary
24 that the agreement be a formal one, that it be in
25 writing, that the person hold a meeting or express or
state the terms of a common plan or that the agreement

HEARING

704

1 is stated in the words between them. The agreement of
2 a criminal conspiracy may come into being through an
3 implied, mutual understanding. The willful intention
4 and intentional and knowing and adoption of two or more
5 persons of a common plan is sufficient. A conspiracy
6 may be shown by circumstantial evidence and the conduct
7 of the parties. In order to convict the Defendant of
8 conspiracy, the State must prove beyond a reasonable
9 doubt, not only that the Defendant knew of the unlawful
10 conduct, but that the Defendant agreed to combine with
11 other persons for the purpose of accomplishing the
12 unlawful conduct. The Defendant is charged with
13 possession of a weapon during the commission of a
14 violent crime. The State must prove beyond a
15 reasonable doubt that the Defendant was in possession
16 of a firearm or visibly displayed what appeared to be
17 a firearm, during the commission of a violent crime.
18 A firearm means any weapon which will, designed to or
19 may be readily converted to expel a projectile. In
20 order for the Defendant to be guilty of possession of
21 a weapon during the commission of a violent crime, you
22 must first find the Defendant guilty of either
23 committing a violent crime or attempting to commit a
24 violent crime. Murder and first degree burglary are
25 both violent crimes. Mr. Foreman and members of the
jury, the crime was committed by two or more people who

1 are acting together in committing a crime, the act of
2 one, is the hand of all. A person who joins with
3 another to commit an unlawful act is criminally
4 responsible for everything done by the other person,
5 which happened as a probable or natural consequence of
6 the acts done in carrying out the common plan and
7 purpose. For example, two people can be guilty of
8 killing another person when only one of the two had a
9 gun. There is only one bullet and only one of the two
10 fired the shot that caused the death. If two or more
11 people are together or acting together, assisting each
12 other in committing the offense, the act of one is the
13 act of all or as it is sometimes said, the hand of one
14 is the hand of all. Prior knowledge that a crime is
15 going to be committed without knowing is not sufficient
16 to make a person guilty of that crime. The mere
17 knowledge that another person is going to commit a
18 crime, even if the Defendant is present when the crime
19 is committed, is not sufficient to convict a Defendant
20 as a principle. Guilt as a principle is shown by actual
21 or constructive presence at the scene as a result of
22 prior arrangement. Therefore, a finding of a prior
23 arranged plan or common scheme is necessary for a
24 finding of guilt as a principle. The State must prove
25 beyond a reasonable doubt by competent evidence and
theory of the hand of one is the hand of all. The

HEARING

706

1 principle in a crime, is one who either actually
2 commits the crime or who is present, aiding and
3 abetting or assisting in committing the crime. When a
4 person does an act in the presence of and with the
5 assistance of another, the act is done by both. Where
6 two or more are acting with a common plan or intent are
7 present at the commission of a crime, it does not
8 matter who actually commits the crime, all are guilty.
9 The hand of one is the hand of all. Present at the
10 scene of the crime, means to be sufficiently near, to
11 aid and abet and assist in the commission of a crime.
12 However, mere presence at the scene of a crime is not
13 sufficient to convict one as a principle in theory of
14 aiding and abetting. Intent is also a necessary
15 element, so there must have been a common design or
16 intent to commit the crime or crimes and the crime upon
17 must have been committed pursuant thereto a person
18 aiding and abetting by some overt act. The intent
19 means, intending the result which actually occurs. Not
20 accidentally or involuntarily. Intent may be shown by
21 acts of the conduct of the Defendant and other
22 circumstances in which you make naturally and
23 reasonably infer intent. The State must prove these
24 elements beyond a reasonable doubt. Mr. Foreman and
25 members of the jury, an issue in this case is the
identification of the Defendant of a person who

1* committed the crime charged. The State has the burden
2 of proving identity beyond a reasonable doubt. You
3 must be satisfied, beyond a reasonable doubt of the
4 accuracy of the identification of the Defendant before
5 you may convict the Defendant. Identification
6 testimony is an expression or impression by a witness.
7 You must determine the accuracy of the identification
8 of the Defendant. You must consider the believability
9 of each identification witness in the same way as any
10 other witness. You may consider whether the witness had
11 an adequate opportunity to observe the Defendant at the
12 time of the offense. This will be effected by things
13 like how long or short a time has been, how far or
14 close the witness was, the lighting, whether the
15 witness had the chance to see the person or know the
16 person in the past. Once again, I instruct you the
17 burden of proof is on the State. The burden of proof
18 extends to every element of the crime charged and
19 specifically includes the burden of proving beyond a
20 reasonable doubt, the identity of the Defendant as the
21 person who committed the crime. If after examining the
22 testimony, you have a reasonable doubt as to the
23 accuracy of the identification, you must find the
24 Defendant not guilty. The Defendant has raised the
25 defense of alibi. In order to establish an alibi, it
must be shown that the Defendant was at another

HEARING

708

1 specified place at that time the crime or crimes was
2 committed and that it was therefore impossible for the
3 Defendant to have been at the scene of the crime. Mere
4 denial of presence at the scene of the crime does not
5 constitute an alibi. There's no burden on e Defendant
6 to prove an alibi. The burden is on the State to prove
7 beyond a reasonable doubt that the Defendant was
8 actually present at the scene of the crime, actually
9 participated in it and was not somewhere else. In
10 other words, the State has the burden of disproving the
11 Defendant's alibi defense. Mr. Foreman and members of
12 the jury, you have been selected by both State and the
13 Defendant to be fair and impartial jurors. It is your
14 duty then in your joint deliberations to determine the
15 truth in is case, giving the Defendant the benefit of
16 every reasonably doubt on each and every issue. From
17 the facts that you determine to be true, you take and
18 apply the law which I have just given to you and thus
19 arrive at a verdict which speaks the truth of this
20 case. I've told you the standards you have to apply
21 when the charges are murder, first degree burglary,
22 conspiracy and possession of a weapon during the
23 commission of a violent crime. I will give you a copy
24 of these instructions in written form. During your
25 deliberations you may refer to the instructions to
guide your decision making. You must consider the

1. instructions as a whole and not follow some and ignore
2 others. Please return the instruction to the Court at
3 the time the verdict is rendered. You have heard the
4 evidence and now you have heard the law. Whatever your
5 verdict as to each charge Mr. Foreman, you will
6 indicate by checking guilty or not guilty on the
7 verdict form. You will have a verdict form that has
8 all four charges, check verdict guilty or not guilty as
9 to each charge. There is no significance in the order
10 in which I state these possible verdicts. Simply one
11 must be stated first. You will then sign the verdict
12 form and date it Mr. Foreman. Remember that although
13 the foreperson is the only juror who signs this
14 verdict, it's not his alone. The verdict has to be a
15 unanimous verdict as to each charge. Mr. Foreman you
16 are not authorized to write nor sign the verdict until
17 all of you have agreed as to what the verdict should
18 be. Ladies and gentlemen, I'm going to send you to
19 your jury room, but do not begin to discuss the case
20 until you have received a copy of this jury charge, the
21 verdict form and the exhibits. Once you receive these
22 things, that will be your signal to begin your
23 deliberations. We've ordered lunch for you and we have
24 three or four smokers, I'm thinking about you all. So
25 before you begin your deliberations, I'll give you a
three minutes, take about ten puffs or whatever and

HEARING

710

1 then you'll come back to the jury room but then you'll
2 have food back there because we have ordered lunch.
3 So, once you begin your deliberations you must
4 deliberate with everyone present and participating
5 until you've reached a verdict. Once you have received
6 the, once you have had the chance, for those of you who
7 smoke, to get your foot and once you receive the
8 exhibits, the verdict form and a copy of these charges,
9 that would be your signal to begin your deliberations.
10 The entire time I've said you can't talk about this
11 case. Once you begin your deliberations you can talk
12 all you want, that's your time. Once you begin your
13 deliberations you will deliberate until you have
14 reached a verdict, at which time you will knock on the
15 door, advise e bailiff and we will bring you out to
16 receive your verdict. Now we've selected fourteen
17 jurors, but only twelve can participate in the
18 deliberations. The reason we select additional jurors,
19 is so that in the event that something would happen to
20 the first twelve of you, we will have extras, since we
21 must have twelve. But since the first twelve of you
22 everyone seems to be in good shape, if you're not in
23 good shape let me know you can not participate in
24 deliberation let me know. Everyone seems to be fine
25 and in good shape so that means after the, except for
getting lunch, these two jurors, madame bailiff?

1 Except for getting lunch for these two jurors out of
2 the jury room, the twelve other jurors will go to the
3 jury room and you all will remain with us, so please go
4 to the jury room at this time.

5 Clerk: The last two picked or the two ...

6 The Court: The last two.

7 Bailiff: The two alternates.

8 The Court: You all may not participate in the
9 deliberations, only the first twelve. So, if y'all
10 will now go to the jury room and madame clerk let them,
11 everyone else stay put, let those jurors who want to
12 smoke get that smoke, get the lunch and then wait for
13 these things before beginning your deliberations.
14 Thank you very much.

15 (Jury exits courtroom 1:02 p.m.)

16 The Court: Alright are there any additions or corrections
17 to the charge?

18 Ms. Barr: Not from the State Judge.

19 Mr. Jenkinson: None from the defense Your Honor.

20 The Court: Alright, if you all would review the exhibits
21 and make sure they're all straight.

22 (Exhibits viewed and confirmed)

23 The Court: Now, let's talk to the alternates and let
24 them go.

25 (Alternate jurors excused)

The Court: I have received a note from the jury. It says we

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the jury request to hear exhibit 65, we request to hear the section of the tape where Ronald Mack identified Callie. Mr. Jenkinson?

Mr. Jenkinson: Your Honor, please. We've identified that portion and agreed --- in doing so, Your Honor, this case came into evidence purely for purposes of impeachment only, not for consideration by the jury as to whether or not his testimony was truthful to be used against the Defendant. It was to be used against the testifying witness as to impeachment him. And under the case of State versus Miller, 262 SC 369, we would ask, and that's the case we sited that gave a curity of cur charge when it was read. We would like for the jury to be reminded of what is evidence is, because apparently, it's become crucial as far as testimony goes and not what with whether or not he should be impeached by it, but they are using this evidence in order to determine guilt or innocense of the Defendant. So we would ask that the taped first should not be played, because it's being asked for out of context and in violation of your instructions during the trial.

The Court: Ms. Barr?

Ms. Barr: Judge, I think counsel presumes what the purpose in which the jury requests to hear the tape. Whether it's to consider whether or not Mr. Mack was being truthful, we don't know that. Whether it's to consider

1 whether or not Mr. Mack properly identified the
2 Defendant, that's going to be on his guilt or
3 innocence, we don't know that. The Court gave a
4 limited instruction before the tape was played. The
5 Court gave that same instruction concerning how that
6 testimony is to be used by the jury when you gave jury
7 charges and we think that's appropriate and to deny
8 allowing them to hear it once it's in evidence, we
9 would think that's improper.

10 The Court: The Court gave it's instruction based on what
11 had been presented during trial at the time the item
12 was offered into evidence. Since that time, the
13 Defendant's cross examination of Mr. Mack in which Mr.
14 Mack was presented a statement by Mr. Jenkinson, his
15 testimony contradicting his earlier statement. Of
16 course, I'm not positive of the exact sequence of it
17 all, but the gist of it all is that the entire
18 testimony in the trial is now, it's all been done. The
19 jury has requested to listen to this evidence for
20 whatever reason. It's the jury's case at this point.
21 We're going to play the tape, based on what they
22 requested and after they have been given that, then
23 they will go back to deliberate and given no further
24 instructions limiting, or otherwise concerning the
25 evidence.

Mr. Jenkinson: Just for the record may we proffer what our

HEARING

714

next motion would be that we would ask the court to do?

1 The Court: Yes sir.

2 Mr. Jenkinson: We would then, based on this same case, and
3 I'm reading directly from it. The record shows the
4 trial judge admitted the note then questioned solely
5 for the purpose of impeaching the witness. The trial
6 judge upon his motion request of both the state and
7 appellant charged the jury that the note had been
8 admitted only for the purpose of contradicting the
9 witness. The witness then could not be considered as
10 evidence against the appellant. We would ask the
11 Court to do exactly what the Supreme done.

12 The Court: Alright. Your request has been noted. Bring
13 the jury. Do you have it cued to that part?

14 Ms. Barr: Yes sir, Judge.

15 (Jury enters courtroom 3:03 p.m.)

16 The Court: Foreman and ladies and gentlemen of the jury,
17 you have requested to hear portions of exhibit number
18 65 and we will play that now please.

19 (Taped Statement of Ronald Mack played for jury)

20
21 The Court: Do you want it to continue to play?

22 Foreperson: No, sir.

23 The Court: Alright thank you.

24 (Jury exits courtroom to continue deliberations 3:05)

25 The Court: Any additional exceptions to what has been

presented to the jury?

1 Ms. Barr: None from the State Your Honor.

2 Mr. Jenkinson: None other than those stated.

3 The Court: Alright. We'll be at ease, waiting for the
4 jury.

5 (Break on this case waiting for jury)

6 The Court: For record purposes, as far as the sequence.

7 I do understand that the tape of Mr. Mack was played
8 after he got off the stand through another witness. I
9 wanted to be sure that sequence is clearly stated on
10 the record, but it does not change my ruling in any way
11 as to giving any further instructions to the jury.

12 Alright.

13 (Jury verdict reached 3:23)

14 (Jury returns to court room 3:24)

15 The Court: Have you reached a verdict?

16 Foreman: Yes we have Your Honor.

17 The Court: Was it unanimous?

18 Foreman: Yes sir.

19 The Court: Alright, thank you. You may be seated. The
20 Defendant will stand. And you may publish the verdict.

21 Clerk: The State versus Kelvin Michael Bowen, Jr. We the
22 jury, by unanimous consent, find the Defendant Kelvin
23 Michael Bowen, Jr. as to the charge of murder, guilty.
24 As to the charge of first degree, guilty. As to the
25 charge of criminal conspiracy, guilty. As to the

HEARING

716

1 charge of possession of a weapon during the commission
2 of a violent crime, guilty.

3 The Court: The second one again was?

4 Clerk: The second one was as to the charge of first
5 degree burglary.

6 The Court: You didn't say that.

7 Clerk: Oh I'm sorry. If these are your verdicts, so say
8 you all. Please let it be known by raising your right
9 hands. Okay.

10 The Court: Okay, the verdict appears to be unanimous. Is
11 there any request to individually poll the jurors? Mr.
12 Jenkinson?

13 Mr. Jenkinson: Yes sir we would ask that the jury be polled.

14 The Court: Will you call them individually Madam Clerk?

15 Clerk: William T. McCrea, were those your verdicts and
16 are those still your verdicts?

17 A: Yes ma'am.

18 Clerk: Louis Dukes, were those your verdicts and are
19 those still your verdicts?

20 A: Yes ma'am.

21 Clerk: Matthew Blanding, were those your verdicts and are
22 those still your verdicts?

23 A: Yes ma'am.

24 Clerk: Debra Cooper, were those your verdicts and are
25 those still your verdicts?

A: Yes ma'am.

1 Once again, ladies and gentlemen, I want to thank you
2 for your services in this case. Any post trial motions
3 Mr. Jenkinson?

4 Mr. Jenkinson: I do have post trial motions.

5 The Court: Yes sir.

6 Mr. Jenkinson: On behalf of the Defendant, we move for a
7 motion for a new trial under, procedure Rule 29 a
8 judgment. Sitting as the thirteen jury Your Honor, you
9 have the duty to see that justice is done and may grant
10 a new trial if convinced the facts necessitate a new
11 trial. The State has failed to produce evidence to
12 support a conviction, therefore a new trial is
13 warranted. There is insufficient evidence to suggest
14 Mr. Bowen committed this crime, for the reasons that
15 have been stated before in our closing arguments. Mr.
16 Bowen was in Maryland at the time of this crime. Our
17 further grounds for a new trial are that the Court did
18 not suppress or sustain our objection to the
19 identification procedure, the lineup, photo lineup,
20 which was unduly suggestive. There was competent
21 evidence to suggest that the procedure was unduly
22 suggestive and the Sheriff's department intentionally
23 showed only one photograph and that single photograph
24 solicited an improper identification of the Defendant.
25 Next, The Court admitted some gruesome pictures of the
Defendant at the crime scene over our objection. The

HEARING

719

1 Defendant stipulated to the murder, and according to
2 State versus Middleton, the photographs should have
3 been excluded. The photographs were admitted to elicit
4 the sympathy of the jury and not for another purpose.
5 Next, Your Honor allowed testimony on hearsay evidence
6 about text messages that the Solicitor alleges was in
7 furtherance of the conspiracy, however, the text
8 messages could not be authenticated and were hearsay
9 for which there was no exception. Next the notebook
10 which was admitted of Ronald Mack that contained gang
11 related writings. There was nothing offered to
12 authenticate the notebook. The notebook's not relevant,
13 it's hearsay evidence and does not fall within the
14 exceptions of hearsay rules of prejudicial and far
15 outweigh the probative value. The Court allowed the
16 State to introduce the Iphone of co-defendant Ronald
17 Mack. Nothing on the phone connected the Defendant
18 with the crime. The telephone was not relevant, did
19 not contain evidence of the crime, was not produced by
20 the trial. It was clearly a violation of Rule 5 in the
21 Rules of Procedure in the case of Brady vs. Maryland.
22 Again, the autopsy photographs were likewise admitted.
23 Again, our argument is the State versus Middleton. We
24 argued yesterday those photographs should be excluded.
25 They are admitted to elicit sympathy of the jury. The
Court allowed the tape of Ronald Mack to be played for

1 impeachment purposes during the testimony of
2 Investigator Collins of the Sheriff's Department. The
3 person on the tape was Ronald Mack. Ronald Mack
4 testified in the trial and the tape was not used to
5 impeach him during his testimony. It was played by a
6 witness at a later point in the trial. It was an
7 improper impeachment that they allowed the witness to
8 testify two times. Ronald Mack. It violated the
9 Defendant's Sixth Amendment Rights to confront the
10 witness. It violated his rights of due process under
11 the Fourteen Amendment. The United States Constitution
12 and the South Carolina Constitution. We would further
13 argue that the Solicitor, over our objection, was
14 allowed in her closing argument to suggest that the
15 Defendant should prove his innocence through telephone
16 records. Finally, our motion in the request to play
17 the Ronald Mack tape. We asked for a limited structure
18 to that portion of Ronald Mack's tape could only be
19 played for purposes of, well first we objected to it
20 because, based on State versus Miller, 263SC069 and
21 secondly if the court ruled that it could be heard that
22 it would be heard only with the limited structure, that
23 that tape could only be used for purposes of
24 impeachment and not be considered against the
25 Defendant. That is paraphrasing what I've heard and
those are the grounds for our request for a new trial.

HEARING

721

The Court: Do you wish to respond Ms. Barr?

1
2 Ms. Barr: Your Honor, as it relates to the grounds for a new
3 trial concerning the admission of certain evidence,
4 Judge I don't have all of the grounds stated by Mr.
5 Jenkinson. I remember him talking about the admission
6 of the cell phone, The Court allowed admission of the
7 cell phone of Ronald Mack that was seized by the Lake
8 City Police Department because it corroborated
9 testimony from Dontrey Barr that he had an iphone so we
10 believe that's the basis for the admission. As it
11 relates to the text messages, Dontrey Barr talking
12 about seeing the text messages. It's my recollection
13 that counsel did not object to him testifying if he saw
14 them and so I believe that evidence came in
15 uncontradicted. As it relates to the evidence of alibi
16 obviously Judge, that was a credibility issue, that
17 was a question of fact from the jury. They heard from
18 our witnesses, they heard from the defense witnesses
19 and they chose to believe ours, so that's solely within
20 their providence to do so. Your Honor, as it relates
21 to the admission of the autopsy photos, there were
22 many, many photos that we sought to introduce that we,
23 that were not introduced. The Court made an analysis
24 as to whether or not probative value of those autopsy
25 photos and I believe we only got in maybe two or three,
but you obviously made an analysis as to whether or not

1 the probative value was outweighed by the prejudicial
2 effect and so we would submit that the admission of the
3 autopsy photos was proper. The tape of Ronald Mack was
4 properly introduced because it contradicted a prior
5 inconsistent statement that he doesn't remember making
6 and under Rule 613, astringent evidence of a prior
7 inconsistent statement and the witness doesn't admit to
8 making the inconsistent statement it allows it to come
9 in. Your Honor the gang writings that was found in
10 Ronald Mack's room were submitted into evidence because
11 his name was associated with the notebook and he
12 testified that he was a member of a gang. So, we view
13 that evidence as being properly admissible. In my
14 closing argument I did not try intend to shift the
15 burden when the Defendant does put up some evidence
16 then I'm allowed to argue why other evidence wasn't put
17 up. Also, the Court gave what we view to be
18 appropriate and substantial instructions regarding the
19 impeachment value that's to be associated with Ronald
20 Mack's recorded statements and for those reasons we
21 would respectfully request that the defense motion be
22 denied.

23 The Court: Alright, the Court respectfully denies the
24 motion, under Rule 29. The question as to whether or not the
25 Defendant is guilty or not guilty is for the jury to
determine and I support the jury's verdict one hundred

HEARING

723

1 percent and find that the evidence of guilt is overwhelming
2 and that justice, as far as the jury's verdict has been done.
3 The State has proven each and every element of every offense
4 beyond a reasonable doubt and each and every juror has been
5 satisfied that the State met that burden. Regarding the
6 request to suppress the photographs the defense claims that
7 the officer's suggested to the Defendant, suggested to Mr.
8 Antonio McClary who to pick, that's not supported by the
9 evidence. The evidence presented during the trial said that
10 they were downloading a picture that came from Maryland. Mr.
11 McClary spotted the picture and then said, do y'all have
12 Callie? That wasn't a part of any line up procedure or any
13 type of trickery by law enforcement it was beneficial that
14 it occurred at that time, as far as the State's case. The
15 manner in which that happened, it gave them an opportunity
16 to identify Mr. Bowen. As far as the gruesome pictures, the
17 Court applied the analysis that the Supreme the Court most
18 recently in December of 2011, outlined in State's versus
19 Torres. In which the Court clearly indicated were
20 photographs serve to corroborate testimony, it's not an abuse
21 discretion to admit it and it fully outlined the limitations
22 that should be placed on the Solicitor pushing the envelope
23 on admissibility in order to gain the victory in a case. In
24 this case, the State had seemingly a hundred pictures, so and
25 this Court went through those photographs and limited the
State's photographs, did not, definitely seem very gruesome

1 photographs because it was a horrific scene and the Court did
2 not allow the jury to see those photographs because so that
3 they might not or would not be influenced by the photographs
4 as opposed to the evidence and the court in the Torres case
5 went, considered the fact that the Judge would not allow
6 horrific photographs and photographs were screened. The
7 photographs seen by the jury in this case, were limited to
8 the gunshot wounds which would indicate and corroborate Mr.
9 Mack's testimony that he came up and shot him in the head
10 while he was in the chair and that Mr. Bowen then didn't
11 finish him off, because he was already dead, but just shot
12 him again with a shotgun and the pictures corroborated that
13 and had evidentiary value. Further regarding the text
14 messages that Mr. Barr saw, corroborated testimony offered
15 during the trial by both Mr. Mack and Mr. Barr and I do not
16 find hearsay there. Regarding the notebook, of course, the
17 State offered two notebooks. Both of which contained
18 extensive writings that seem to indicate gang affiliation of
19 the Defendant. Also, Mr. Mack's mother and Mr. Bowen and the
20 Court limited the introduction to the one notebook which had
21 Mr. Mack's name in it. The police officer testified that,
22 her daughter attended the same school and she knew the hall
23 pass that Mr. Mack was given indicated the fact that he was
24 there and lived there, was living there. The State would
25 have to put Ms. Allen and Mr. Bowen and Mr. Mack together and
that evidence helped to put them together. Not out in the

HEARING

725

1 parking lot where they were arrested, but inside the
2 residence where the second murder weapon and evidence of the
3 first murder weapon what they confiscated. Regarding the
4 iphone, the Court took a recess to give Mr. Jenkinson every
5 opportunity that he might desire to look at the iphone that
6 was confiscated that belonged to Mr. Mack. The iphone was
7 confiscated by Mr. Mack, from Mr. Mack, two days after this
8 murder by Lake City police department after he was arrested
9 on a drug charge. The Court found that that had evidentiary
10 value and that any problems with the State not having
11 previously shown that to Mr. Jenkinson was cured by giving
12 him an opportunity to inspect it, which the State previously
13 did in responding to his Rule 5 motion. Regarding the tape
14 that was introduced to impeach Mr. Mack. The Court gave the
15 jury a limited instruction prior to their beginning their
16 deliberation, but once the jury began this deliberation after
17 the Court had given a full instruction of the law, the Court
18 did not consider it necessary to give or proper to give
19 further limiting instruction concerning that request by the
20 jury, because, it would call upon the Court would speculate
21 as to why the jury might want to listen to that bit of
22 evidence. Rule 608 regarding evidence and bias shows that
23 any case that bias, prejudice or any motive to misrepresent
24 would be shown to impeach the witness. The tape that was
25 requested by the jury, Mr. Mack made reference to calling his
homeboy Callie and that Callie was his mother's financé. All

1 of that could be considered by the jury for impeachment
2 purposes and their request to listen to the jury to determine
3 which statement they should believe whether prior
4 inconsistent statements, whether they should believe the
5 testimony at trial versus the State's exhibit to law
6 enforcement. In summary the evidence of guilt is
7 overwhelming. The jury has found the Defendant guilty and
8 I deny any motion to change the jury's verdict.

9 Now, ladies and gentlemen, once you have decided someone
10 to be guilty, then it's my duty, obligation and
11 responsibility to sentence the person. You have found Mr.
12 Bowen guilty and we will do sentencing at this time. You
13 have no role in sentencing, but you're welcome to stay if you
14 want to. Bring the Defendant forward.

15 **(Defendant comes forward with counsel)**

16 **SENTENCING OF KELVIN MICHAEL BOWEN, JR.**

17 Ms. Barr: Your Honor, please the Court. Of course, my
18 comments will be very limited. Judge, you've had the benefit
19 of hearing the facts many times over during the course of
20 guilty pleas of Antonio McClary and Ronald Mack and of course
21 you were the presiding judge in the State versus Tawanda
22 Allen and so there is no need to bellinger the point as it
23 relates to facts. I would just note briefly, for the record
24 Judge, the Defendant was charged in California for armed
25 robbery and assault in the first degree. He was convicted of
grand theft involving vehicles and, Your Honor, that was in

HEARING

727

1 1996. He was also charged with false imprisonment and
2 battery by a prison. He was convicted of attempted theft and
3 resisting arrest in 1996 and I believe that was in Kansas
4 Judge. In addition, Judge, and probably most importantly he
5 along with Tawanda Allen have charges pending against them
6 out of Florence county that relate to a shooting of Tawanda
7 Allen's ex-husband and Judge after Ms. Allen and Mr. Mack
8 were arrested, for the charges stemming from this case,
9 Tawanda Allen gave a statement indicating that in January of
10 2009, which would have been three months before the murder of
11 Kenyan Dorsey, Ms. Allen had an argument with her ex-husband
12 about money and she told the Defendant that she had had that
13 argument and he asked her, 'what do you want me to do? Do
14 you want me to kill him?' and she says, 'no, I don't want you
15 to kill him. I just want you to make him hurt or make him
16 suffer' or words to that effect. The Defendant, along with
17 Ms. Mack drove from Maryland, South Carolina ...

18 The Court: From where?

19 Ms. Barr: I'm sorry from Maryland to South Carolina.
20 The ex-husband, I think his name is James Allen was living in
21 some apartment complex in Florence. The Defendant then went
22 into the apartment or whatever he was living and pretended to
23 be looking for someone else and the victim in that case
24 answered the door and said, 'no, that's not me' and 'nobody
25 by that name lives here'. According to Ms. Allen, he comes
back out to the car, sees Ms. Allen and Mr. Allen's son in

1 the vehicle and recognizes the resemblance between the man
2 who answered the door and the child and says, 'oh that must
3 be him', went back in and shot him in the leg with a nine
4 millimeter, by the way. Thankfully, he survived and the
5 Defendant is in the Florence County Detention Center in
6 connection with that charge as well as this charge. And
7 Judge, what we always believed was that the Defendant was a
8 member of a gang which was the reason why he was more than
9 happy to accommodate Mr. Mack's request. There were
10 statements made by Mr. Mack that the Defendant was not a
11 Blood, but a member of the Crypts and it was interesting that
12 he said that on the recording, because Ms. Harding that was
13 qualified as an expert in gang writings and gang activities,
14 testified that Bloods and Crypts, as we may commonly believe,
15 don't necessarily dislike each other. That, you know, when
16 they have mutual interests they get along fine. And that's
17 exactly what Ronald Mack said on his tape recorded statement.
18 A lot of people think Bloods and Crypts don't get along.
19 But, Judge, earlier in the week, while Mr. Bowen was being
20 dressed for court, one of the Deputies noticed that he was
21 just covered in tattoos and some of the tattoos that he had
22 on his body, when I said covered I mean neck to ankle. Some
23 of the tattoos that he had on his body say things like "In
24 Murder we Trust", "Pimp for Life". I had some of the
25 photographs reviewed by law enforcement and he described some
of the tattoos on him as being related to the Crypts so

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

certainly Judge we believed that this is the reason why he was willing to help Ronald Mack out of his situation.

The Court: All right. Mr. Jenkinson.

Mr. Jenkinson: If, Your Honor, please. You have heard the facts on the mother and son. They have been found guilty at this point. That's about all we can say, Your Honor. You have to impose a sentence.

The Court: Mr. Bowen, anything you'd like to say?

Mr. Bowen: I have no comment, Your Honor.

The Court: All right. Ms. Bradshaw, would you like to say anything?

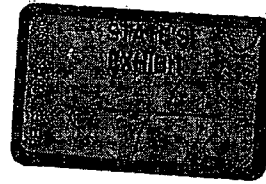
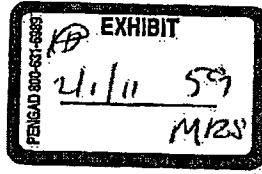
Ms. Bradshaw: No, sir.

The Court: Anything else, Ms. Barr?

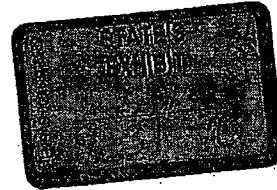
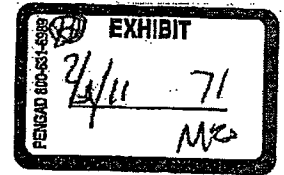
Ms. Barr: No sir.

The Court: For the sentence of murder the sentence is ninety-nine (99) years, burglary thirty (30) years, criminal conspiracy five (5) years and possession of a weapon during a violent crime five (5) years. All sentences will run consecutively to each other.

Mr. Jenkinson: Thank you, Your Honor.

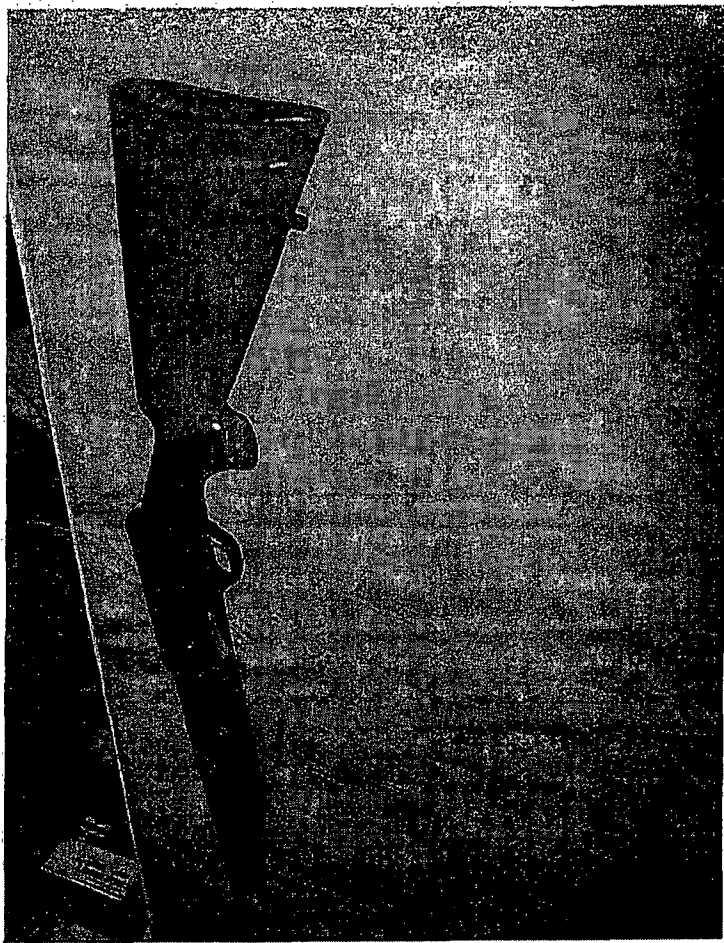
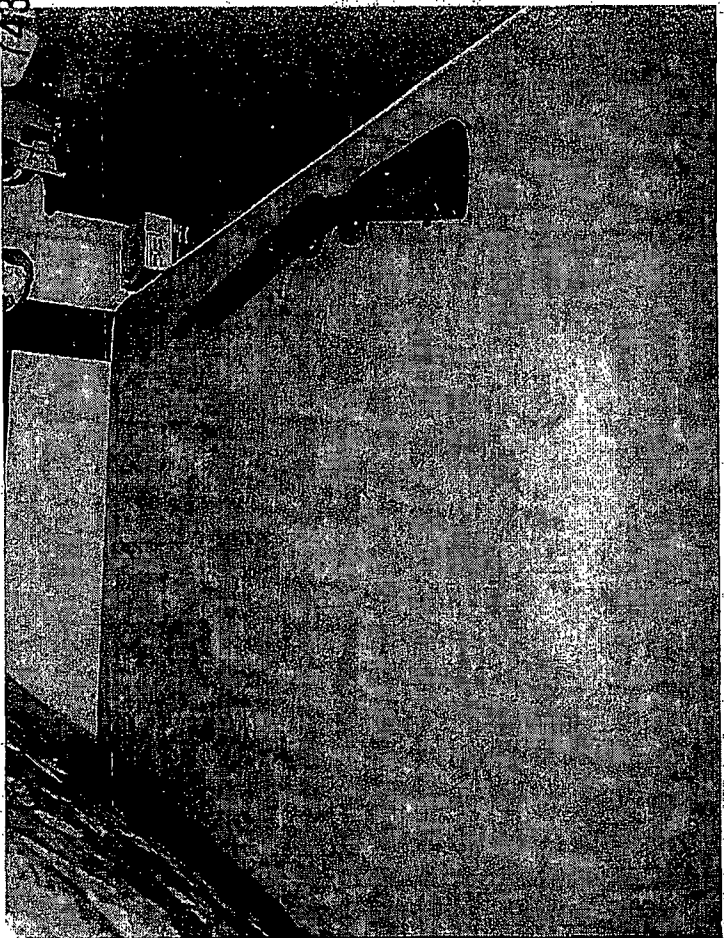


47.
 AS 91 cap 1001

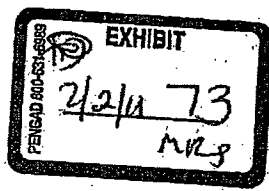
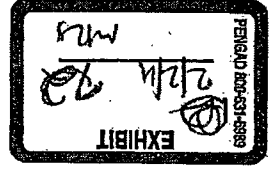
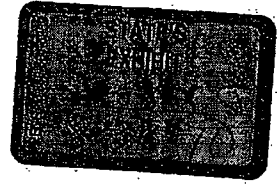


88.
 AS 91 1001 1002

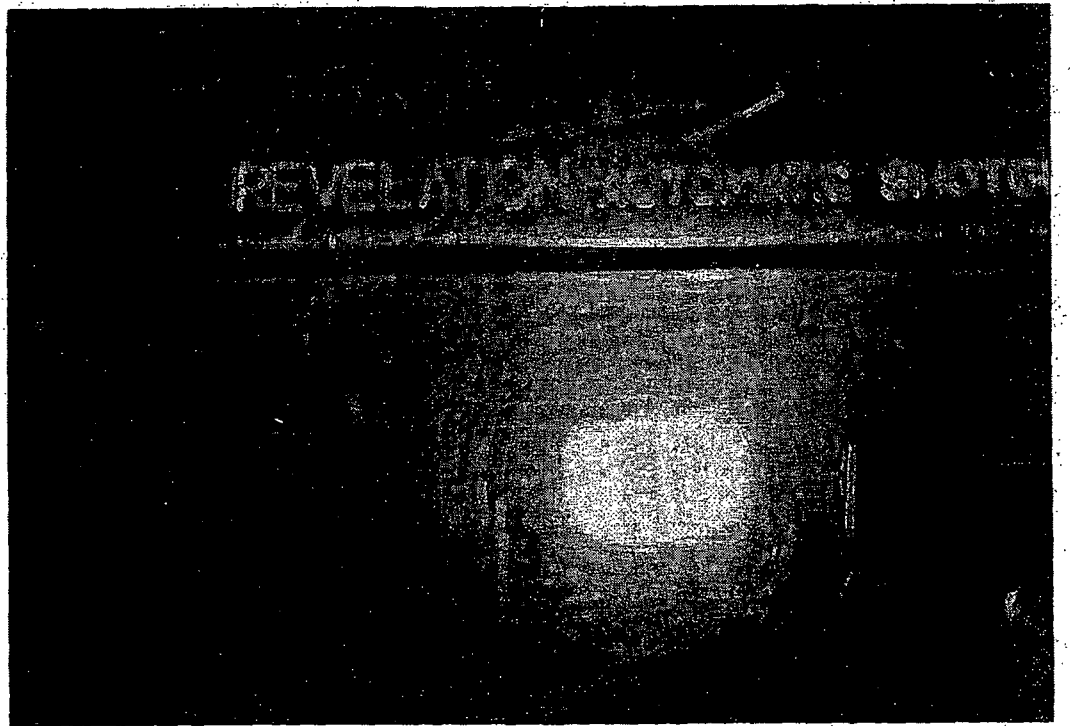
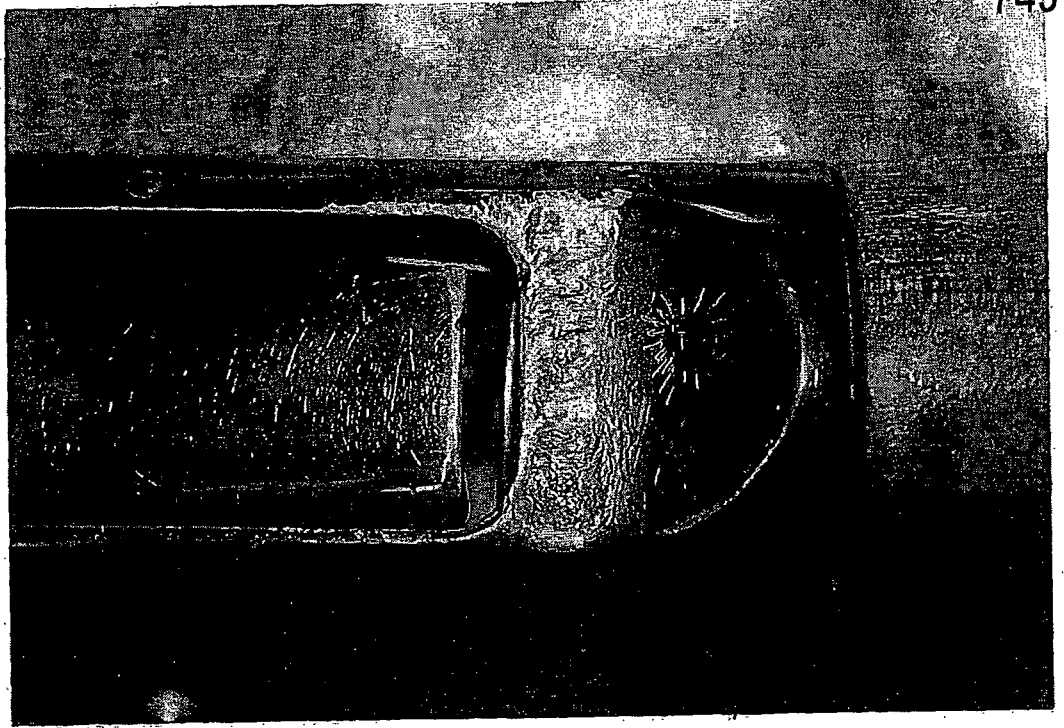
748



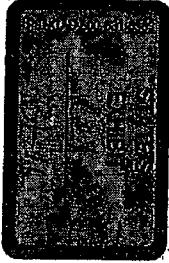
PERIOD 800-851-6889



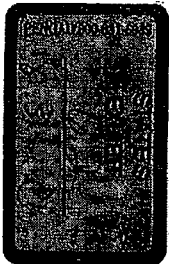
PERIOD 800-851-6889



PENGAD 800-631-6989
2/1/11
EXHIBIT
55
MRS



PENGAD 800-631-6989
2/1/11
EXHIBIT
55
MRS





Mark Parkinson, Governor
Joan Wagnon, Secretary
www.ksrevenue.org

May 04, 2009

DRIVER'S LICENSE REINSTATEMENT NOTICE

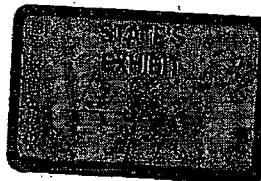
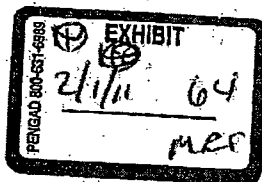
BOWEN JR KELVIN MICHAEL
[REDACTED]
GLEN BURNIE MD 21061

DRIVER LICENSE NUMBER: [REDACTED]
DATE OF BIRTH: 09/01/1977

YOUR DRIVING PRIVILEGES WERE REINSTATED ON 05/01/2009. THIS MEANS THAT YOUR DRIVING PRIVILEGES ARE RESTORED PROVIDED THAT YOU HAVE NOT OTHERWISE BEEN SUSPENDED, REVOKED OR CANCELED IN ANOTHER STATE.

AS A REMINDER, YOU MUST HAVE A VALID DRIVER'S LICENSE IN YOUR POSSESSION AND A VALID LICENSE PLATE ON ANY MOTOR VEHICLE YOU OPERATE. TO OBTAIN A DRIVER'S LICENSE VISIT A LOCAL DRIVER'S LICENSE EXAMINING STATION OR YOUR COUNTY TREASURER'S OFFICE. ALSO, IF YOUR ADDRESS IS DIFFERENT FROM THAT SHOWN ABOVE YOU NEED TO INFORM US OF THE CHANGE IN WRITING PER K.S.A. 8-248. YOU CAN CHANGE YOUR ADDRESS ON THE INTERNET AT WWW.KSREVENUE.ORG, BY MAIL OR FAX, OR BY GOING TO ANY KANSAS DRIVER'S LICENSE EXAMINING STATION.

A DRIVER'S LICENSE IS A PRIVILEGE WE SHOULD ALL RESPECT. PLEASE DRIVE SAFELY AND RESPONSIBLY.



Sincerely,

Marcy J. Ralston
Chief, Driver Control Bureau

DC50 RVDCVJH

DRIVER CONTROL
Docking State Office Building, 915 SW Harrison St. Room 100
PO Box 12021 Topeka, KS 66612-2021
Telephone: (785) 296-3671 FAX: (785) 296-6851 <http://www.ksrevenue.org/>

DOCKET NO. 2009-GS-45- 180

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

JULY TERM 2009

THE STATE
vs.

RONALD HAKEEM MACK

KELVIN MICHAEL BOWEN, JR.

ANTONIO LAVELLE MCCLARY

TAWANDA MACK ALLEN

Indictment for

MURDER, BURGLARY - FIRST
DEGREE, CONSPIRACY AND
POSSESSION OF A WEAPON DURING
VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

WITNESSES

SHERIFF'S OFFICE

Pamela Lail

ARREST WARRANT NUMBER

M060828-M060834, M060847-M060849,
M060853-M060856, M060836, M060843
& M060850

D/A: 9/11/08

ACTION OF GRAND JURY

True Bill

Sara J. Higgins
Foreperson of Grand Jury
Date: *7/2/09*

VERDICT

Foreperson of Petit Jury
Date:

CAOBYN E. WILLIAMS
CLERK OF COURT
KING'S TREE, S.C.
09 JUL -2 AM 1:36

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

**MURDER, BURGLARY – FIRST DEGREE,
CONSPIRACY AND POSSESSION OF A
WEAPON DURING VIOLENT CRIME**

At a Court of General Sessions, convened on July 6, 2009, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE – MURDER

That **RONALD HAKEEM MACK, KELVIN MICHAEL BOWEN, JR., ANTONIO LAVELLE MCCLARY and TAWANDA MACK ALLEN**, did in Williamsburg County on or about April 5, 2009, feloniously, wilfully and with malice aforethought, kill one **Kenyon Dorsey** by means of shooting the victim multiple times, and that the said victim did die as a proximate result thereof, in violation of Code Section 16-3-10, Code of Laws of South Carolina (1976), as amended.

COUNT TWO - BURGLARY – FIRST DEGREE

That **RONALD HAKEEM MACK, KELVIN MICHAEL BOWEN, JR., ANTONIO LAVELLE MCCLARY and TAWANDA MACK ALLEN**, did in Williamsburg County on or about April 5, 2009, enter the dwelling of the victim without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling "in the nighttime" and while armed with a deadly weapon" and caused physical injury to person who was not a participant in the crime, in violation of Code Section 16-11-311, South Carolina Code of Laws (1976), as amended.

FILED
09 JUL -2 AM 1:36
CANDY E WILLIAMS
CLERK OF COURT
WILLIAMSBURG, S.C.

COUNT THREE - CONSPIRACY

That RONALD HAKEEM MACK, KELVIN MICHAEL BOWEN, JR., ANTONIO LAVELLE MCCLARY and TAWANDA MACK ALLEN, did in Williamsburg County on or about April 5, 2009, violate Section 16-17-410 of the Code of Laws of South Carolina (1976), as amended, in that they did unite, combine, conspire, confederate and/or agree with each other for the purpose of committing the crime of Murder and Burglary in the First Degree.

COUNT FOUR - POSSESSION OF A WEAPON DURING VIOLENT CRIME

That RONALD HAKEEM MACK and KELVIN MICHAEL BOWEN, JR. did in Williamsburg County on or about April 5, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, in violation of Code Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

FILED

09 JUL -2 AM 11:08

CASOLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.


 SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG

INDICTMENT/CASE#: 2009-GS-45-0180

STATE VS.

KELVIN M. BOWEN, JR.

A/W#: M080853

AKA:

Date of Offense: April 05, 2009

Race: Black

Sex: Male

Age:

S.C. Code §: 16-03-0010, 0020

DOB: September 01, 1977

SS#:

CDR Code #: 0116

Address: , Long Beach, CA 90803

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0111116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45 (CSC w/minor 1st or Lawd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant Initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Stephen V. Baur 8443
Solicitor SC Bar #

Defendant

W. E. Jenkinson, III
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 99 days/months/years or under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: Count 2

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred, Defendant Waives Hearing, Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Set by SCDPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$56-1-286 (DUI Breath Test)	\$25
\$47.12 (Public Def/Prob)	\$500
\$14-1-212 (Law Enforce. Funding)	\$25
\$14/1/213 (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
\$90.7 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Carolyn J. Williams
Clerk of Court/ Deputy Clerk

Court Reporter: Melissa Singletary

PRESIDING JUDGE

Judge Code:

Sentence Date:

C. Newman

2/27

2/27/2011

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG

INDICTMENT/CASE#: 2008-GS-45-0180

STATE VS.

KELVIN M. BOWEN, JR.

A/W#: M060854

AKA:

Date of Offense: April 05, 2009

Race: Black

Sex: Male

Age:

S.C. Code §: 16-11-0311

DOB: September 01, 1977

SS#:

CDR Code #: 0079

Address: Long Beach, CA 90803

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Burglary in the First Degree

In violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Samuel V. Parr 8443
Solicitor SC Bar #

Defendant

W. E. Jenkins, III
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: Count one

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred, Defendant Waives Hearing, Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Set by SCDPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
§47.12 (Public Def/Prob)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14/1/213 (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
§90.7 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

PRESIDING JUDGE

Judge Code:

Sentence Date:

C. W. ...
2/2/11
2-14-2011

Carlye J. Williams
Clerk of Court/Deputy Clerk
Melissa S. ...
Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG

INDICTMENT/CASE#: 2009-GS-45-0180

STATE VS.

KELVIN M. BOWEN, JR.

AW#: ~~XXXXXX~~ ^{KUB} NO WARRANT

AKA:

Date of Offense: April 05, 2009

Race: Black

Sex: Male

Age:

S.C. Code §: ~~XXXXXX~~ 16-17-410 KUB

DOB: September 01, 1977

SS#:

CDR Code #: ~~0000~~ KUB 0049

Address:

Long Beach, CA 90803

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Criminal Conspiracy

In violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0101419

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Samuel V. Barr 8443
Solicitor SC Bar #

Defendant

W.E. Jenkins, III
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: Count one

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred, Defendant Waives Hearing, Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED

Set by SCDFPPS

Attend Voc. Rehab. or Job Corp. _____

Recipient:

May serve W/E beginning _____

*Fine:

Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ _____

Random Drug/Alcohol Testing

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

§47.12 (Public Def/Prob) \$500 \$ _____

Other: _____

§14-1-212 (Law Enforce. Funding) \$25 \$ _____

§14-1-213 (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

§90.7 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Cassidy J. Williams
Clerk of Court, Deputy Clerk

PRESIDING JUDGE C. Jenkins

Court Reporter: Melissa Singleton

Judge Code: _____

Sentence Date: 21412011

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG

INDICTMENT/CASE#: 2009-GS-45-0180

STATE VS.

KELVIN M. BOWEN, JR.

A/W#: M060855

AKA:

Date of Offense: April 05, 2009

Race: Black

Sex: Male

Age:

S.C. Code §: 16-23-0490

DOB: September 01, 1977

SS#:

CDR Code #: 0549

Address: Long Beach, CA 90803

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Possession of Weapon During Violent Crime

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0151419

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Stamberg V. Paul 8443
Solicitor SC Bar #

Defendant

W.E. Jenkins II
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years.

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: Count one

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred, Defendant Waives Hearing, Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14/1/213 (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Cashly F. Williams
Clerk of Court, Deputy Clerk
Court Reporter: Melissa Singletary

PRESIDING JUDGE: _____

Judge Code: 192129

Sentence Date: 21 4 2011

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 14th, 2013

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT