VOL V OF VI

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Brooks P. Goldsmith, Circuit Court Judge

DOMINIC A. GALLMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001179

APPENDIX

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is at the party --

A Let me explain to you what happened.

Q Do you know what I'm going to ask you?

A No, sir. Let me explain. I went to Ruby Tuesdays, my family and I. We left there, went home. From there I think my girl forgot some candles or something like that. I had to go back to Wal-Mart and then I went back home. And from a total of 3:00 to maybe 6, 6:30, I was with my family except for going to Wal-Mart to re pick up ice cream and candles and stuff like that.

Q You got off work at 3?

A About that time. About 3:00.

Q Well, what time was this phone call from your house to your cellphone?

A I don't know. I don't know. You've got the records, sir.

Q So you forgot something, so you had to come back to the house?

A I didn't forget it. I was the one that had to go back out.

Q Well, did you call yourself?

A What do you mean?

Q Who made the phone call from your house if you all had already gone to Ruby Tuesdays?

A We were only there for like maybe an hour, an hour and a half. From 3 to 6 I was with my family. But from 3 to 6 we were not at Ruby Tuesdays exclusively. We ate. Then we went back to the house I think to eat ice cream and cake. But they forgot something. So I ended up having to go to Wal-Mart, then come back. And I don't think I did anything else inbetween 3 and 6 or 6:30.

Q Who would have called you from your house at 3:30?

A What do you mean?

Q Who could have or would have called you from your house at 3:30?

A Is there a call on there at 3:30?

Q Well, you tell me. You remember details about certain days.

A Sir, you're looking at phone records. I can't remember exactly when somebody would call me.

Q Well, you remembered that first day when you called Blue on the 20th. You sure did on your phone toll then.

A He said the 20th. I remember it was all right for Blue to call me.

Q Well, let's talk about Blue. Now, Blue you've met one time? I understand you're a businessman. You met him one time. And you went through Stanley to

get your drugs from Blue, right?
A Right.
Q And there is a reason for that. He wasn't going to sell you drugs. He didn't know you?
A Right.
Q That's why you had Stanley?
A Right.
Q And, lo and behold, after Stanley is arrested, Blue is just going to start dealing with you hand-to-hand?
A He did. One time.
Q Never met you before?
A He met me once.
Q And he sold you drugs without meeting you. Blue sold you, didn't know you, going to sell you drugs out of nowhere, right after --
A I've been buying drugs from him for about a year, a year and a half.
Q He didn't know that.
A Yeah, he did.
Q Why didn't you just get them yourself then?
A Because he knows Stanley. Drug dealers, they'll deal with people they know, but they don't want to deal with people they don't know.
Q That's what I'm saying.
A But he knows my car has been coming through there for

a year.

Q But that explains your phone call to him on the 20th, right?

A No. He called me.

Q That explains his phone call to you. So he called you and said, look, I know your guy got arrested you usually get drugs from. So come on yourself?

A I'm giving him $60 a week.

Q So he knew the drugs were going to you?

A Yeah. He knew. He knew. Because after a while I didn't have to circle the block. I could sit out until Stanley came back downstairs.

Q Let's get back to the interview. So you will admit, even though you told the officers that you did not know Dominic Gallman, could not pick him out of a photo line-up, that there are phone calls from Dominic's cellphones to your phone prior to 9-9? Will you admit that?

A There are calls there I'm sure.

Q You told them that your business isn't very large, you don't make a lot of money, just enough to get you and your family by?

A I did not say that.

Q You deny that?

A No. I did not say that.

Q Everything else you agree to, but you deny saying that your business isn't very large and you didn't make a lot of money from it?
A No. That's where we came to the point of contention.
Q So they just made that up?
A No. The point was, they asked me why would I give Renata bond money. Then Ms. Burns interjected. I was dealing with Mr. Mead. Then Ms. Burns interjected. Well, if you're a businessman, if you're a family man and don't have a lot of money, why would you give him bond money? And I told her $400 is not a lot of money to me.
Q And that's what I was going to ask you next. When asked while you were there, you paid $200 in cash to Golden Chance bonding --
A It wasn't 200. It was 4.
Q So they put it was even less than you told them?
A Yeah.
Q Initially you told them you didn't have an answer for that, didn't you?
A Have an answer for what?
Q When they said, why would you give them bond money, you initially said, I don't know. You didn't know or you didn't have an answer?
A No. I said because Renata asked me. She came on

Tremain, said that Stanley was locked up, she had all of the money but $400. I gave her the $400 right then.

Q And that's what they put in here. And that after that, after you denied it --

A No.

Q -- didn't have an answer --

A I never denied it. I didn't -- there wasn't anything to deny.

Q Okay. Then he said Renata asked him to help. So he did. So they ended up putting in here what you just said. That's the truth, isn't it?

A Renata did ask me to help. But the point of me not making a lot of money and whatever else was said before that, no, I didn't say that.

Q And then you said you knew a woman at the bonding company but didn't know her name. That's what you testified. That's right. Right?

A No. They asked me her name. I said, I don't want to say that.

Q Well, they didn't mischaracterize that then?

A They mischaracterized a couple of things in there.

Q But they put in here you knew somebody at the bonding company?

A Yeah. I told them I knew the bonding company.

Q Why wouldn't you want to tell her name?
A I mean, at this point I am becoming a suspect. I called, returned his call. He says, come in. Tell me about Stanley Oliver. I get there. He asks questions about Stanley Oliver. Then he gets into questions about me. Then he gets into questions about the girl at the bonding company. Then he asked me where I lived. Sir, I don't want to tell you where I live. Has Stanley ever been to your house? No. Never, ever.
Q And that's the truth?
A Never, ever. Ever.
Q And --
A Where do you live? I don't want to say where I live, sir.
Q And he said you said you didn't associate with Oliver because Oliver just hustled on the street?
A They made that up.
Q Oh. So that's a lie?
A They said that. I didn't say that.
Q That's what I'm saying. You're denying that you said that to them?
A I never said the part about the jitterbug and all that other stuff. I never said that. That's South Carolina talk. I'm from Memphis. We don't use

"jitterbug" where I'm from.
Q "He thought Oliver was a criminal type, referring to him as a jitterbug." You didn't say that?
A No. And the Percival Road, further down, I never told them I lived there. I told them I would not tell them where I lived.
Q So they just made up that you lived at Percival Road?
A No. They knew that from my driver's record. That was the address on my driver's record.
Q So that was a lie? You don't live there?
A I never said that.
Q No. You didn't --
A But they put that in there because I know they checked my driver's record.
Q But you're saying you didn't live on Percival Road?
A Not at that time, no.
Q Now, getting back, you did --
A I never told them where I lived. When Mr. Mead asked me where I lived, I told them I didn't want to discuss that.
Q Why?
A It wasn't -- the point was Stanley. Stanley was a suspect. I wasn't a suspect. I didn't feel like I had to answer questions.
Q And they let you go that day?

A Now, knowing --

MR. DELGADO: Objection.

A -- what I know now, I would have been more cooperative. Knowing what I do know now, I would have been more cooperative. I felt like he felt like I had an attitude. But I felt like I should not have had to answer questions about me. I didn't do it. I didn't know who did it. I knew Stanley Oliver. I didn't know that he did it. I couldn't say that.

Q You weren't thinking about the phone calls from Dominic to your phone when you told him you didn't know Dominic, were you? You didn't have these in front of you then, did you?

A No.

Q And do you remember telling them that Oliver, you didn't like to take Oliver to jobs like the post office because you didn't trust him, you thought Oliver might steal from the place?

A I never said that.

Q They just made that up?

A I never said that. I never said that.

Q Did you do some work at the post office?

A I've had contracts with the post office for years.

Q Have you ever taken Stanley there?

A No. What he did for my company and the janitorial

portion were two different sides. The painters did -- I didn't let the painters do janitorial work. I didn't let the janitors paint. Those were two different sides. I didn't let the day laborers go into the post offices.

Q Who lived nextdoor to Blue?

A I was told it was his mother. I'd like to add, too, that after that interview with Investigator Mead and Investigator Burns and Investigator Wilkins (sic), I feel like I became a target at that point of the police.

Q They let you go, didn't they?

A Yeah, they did let me go.

Q And you became a target when Mike Allen told them what you told him in that back bedroom. Isn't that right?

A No. No. Everybody that came into contact with them after that had something to say about me.

Q I'll agree with that. And you admit you went into the back bedroom of Mike Allen's house, didn't you?

A Me and Pancho did.

Q No, sir. On direct you said me and Allen were back there watching TV?

A I never excluded Pancho. Pancho was his nephew. I never excluded him. I said that's where the picture

was of Stanley on the computer.
Q Who brought Pancho over there?
A I did.
Q You brought Pancho over there?
A Yes, sir.
Q You've been buying from Blue through Stanley for years?
A Can I explain that last thing?
Q Yes, sir.
A I brought Pancho over there because I was driving. Pancho knew the way. I went to get Pancho because I didn't know where Mike lived. Pancho knew where Mike lived. That's why Pancho was with me.
Q Well, on direct you said you were real close when he called, you were real close to the place. So you must have been close, right?
A No. I was close to Renata's. And I said I would stop by Renata to see if she had heard anything because he is screaming that somebody killed Stanley. And I was going to stop by there to see, you know, what had you heard.
Q And Mike was truly upset about --
A He was crying.
Q -- his brother?
A The same way he was crying up, here he was crying.

Q That was a real. You thought he was upset?
A I thought he was upset until I saw it again and heard about it again.
Q You thought he was upset that night, didn't you?
A I thought he was upset. I truly thought that.
Q He loved his brother?
A That's not his brother.
Q They call each other brother?
A Yeah.
Q He's got a kid my Monique, doesn't he?
A That's not his brother.
Q Did they call each other their brother?
A They introduced me as -- he introduced me to Mike Allen as his brother. But I later came to find out that's not his brother.
Q Then the question becomes, he loved him, didn't he? He loved him?
A I can't say that. I can't say. I don't know if he loved him or not. I wouldn't think so. His actions haven't shown it.
Q Really?
A (Nods head affirmatively).
Q I just had this down. You testified you got good deals at the bonding company?
A Yeah. I did. Part of my strategy with dealing with

other businesses is to do business with one particular place. If I bring you all of my business, you give me a break; and if you do business exclusively with me, with what I do, I'll give you a break.

Q Where is your gray Taurus, Mr. Joy?

A It's probably in Oklahoma.

Q In Oklahoma. And it a had a dent on the hood, didn't it?

A Yeah, it did have a dent. It did have a dent. One of my workers backed into it with the van.

Q And do you remember where you first met Mike Allen?

A On Tremain. On Tremain a couple of months before that.

Q Now, on 9-4-05 did you talk to Stanley that day?

A Yes.

Q Do you remember what you all talked about?

A Probably getting some weed because it was a holiday weekend.

Q And that would have been what day, the 4th?

A That was Sunday. I got out to work like -- I worked every single day. I don't take a day off. So on Sunday I got up. The only thing I did differently the holiday weekend was work an hour behind. I got up an hour later. I left out an hour later. I made

my first call an hour later, and I cut off just a little bit earlier.

Q This is Sunday?

A Yeah.

Q Okay. And --

A Because I worked all the way up until it was time to get dropped off at the restaurant.

Q You called Blue at 12:18 on September 4th?

A Okay. I didn't, but maybe a call from my phone went to him. But we called Blue all the time about weed. Not we as in me, but if I say I need some weed, he's going to call Blue.

Q You called Blue on December -- excuse me -- September 25th at 1:38?

A Okay.

Q Would you agree with that?

A I wouldn't agree with I called him. If you're looking at the records and there's a call to it, I can't deny that.

Q Can I come up?

A Yes, sir.

Q Do you mind? That's your phone number, 436-2210?

A Yes, sir.

Q It's a call to Blue's numbers?

A Yes, sir. Can I add something?

Q Sure.
A There's a call to Renata right before that, a call to Blue.
Q Ten minutes before that?
A A call to Blue, a call to Blue.
Q Call to Blue?
A Call to Blue, a call to Dominic, a call to Renata. I wouldn't have made those calls in that succession. That's got to be Stanley using that one.
Q So that wasn't you using that?
A I doubt it.
Q Down here, Joy to Blue. Blue back to Joy?
A He may have had a problem reaching him and then, like I said, people are looking at phones to see who called them and then called back.
Q But would you agree that there are a bunch of calls to Blue from your phone and back to you and calls from your phone to Dominic and calls from your phone to Renata on the 5th; and isn't that when you all were taking the dope over to Blue to see if he'd sell it to you?
A I went and bought some weed from Blue that weekend. Blue said that I dropped Stanley off. So, nine times out of ten, I got some weed from him that weekend because I got some weed every week. I had a weed

habit. And the next week it will probably be calls on that and then the week after that.

Q You drove Stanley -- and who did you take to the Red Roof Inn?

A Stanley and -- I called her Devine. I didn't know her name was --

Q Tata?

A -- Tatanisha until she got locked up.

Q You took them over there?

A Yes.

Q Did you talk to Stanley once he got over there?

A No. I talked to him before then. I talked to him before then. Because when I got there she was in my second apartment. I didn't care for her at all. And she knew this. I didn't like her hanging around. I didn't like her around because she was trouble. So when I got there, I said, man, can I talk to you for a minute? And I explained to him, you know I don't like this girl. I don't like her. I don't want her around.

Q So you would agree that when you got there you went off with Solo by yourselves while she stayed there?

A We didn't go off. We went out the door. Because I really didn't want to have that conversation in front of her and hurt her feelings. But she knew that I

just didn't want her around. My workers, I didn't mind Stanley being there because Stanley would do other things for me. If there was too much traffic in and out the apartment, if my vans were moved in the middle of the night or something like that and I'm paying for gas and they're not supposed to be moving and they're taking, paying, letting people pay them to ride them around in my vans, he'd call me. So I didn't mind him being there, but I didn't want her just hanging around there. She didn't serve a purpose to me.

Q Didn't she list that as her address, [redacted] Tremain Street, [redacted]?

A And she was lying. That apartment was in my name. Both those apartments were in my name. I dealt with the owner directly. She was not being honest. She said she wasn't being honest on there. As a matter of fact, she sent word to me later on, a year after that, apologizing to me for getting me involved in that and for saying that.

Q Who did she send that by?

A Stanley Oliver.

Q Did she send you a letter?

A It was a letter. It wasn't sent to me.

Q Have you got it?

A Nah. I don't have it. No, sir.
Q But there was a letter from her to you saying "I lied", and you don't have it?
A No. She mentioned that in the letter about her having lied about what was said and all of that. She even mentioned she didn't know the difference between guns. And really I don't know many females that do. If you show them a gun, they can say that's a .38 or that's a .9 or that's a .40 cal; I don't know women that can do that, not many of them.
Q So when she said that you gave the drugs from the robbery to a dealer named Blue, she made that up?
A Yeah. Yeah. See, I don't think she made it up. I think she got it from somebody. But if she said I did it, she made it up.
Q And Blue lives on McDuffie street?
A Yeah. He did.
Q That's true?
A That's true. I've been there.
Q Now, did you call -- once they got to the Red Roof Inn, did you call them?
A Did I call them?
Q Yes, sir.
A Nah. I just dropped them off. I just dropped them off. I was on my way home.

Q Then what happened next?
A I went home.
Q If there's a call from your home phone to that Red Roof Inn that next night or next morning, you would have called him, right?
A The next morning? Now, the next morning I picked them up and took them back to Tremain. But that night I dropped them off and kept rolling. I went home. But I don't think I would have called them from my house unless my cellphone battery was dead or something. But --
Q So if there were one, two, three, four calls from 12:47 a.m. to 10:04 a.m. from your home number to the Red Roof Inn, do you want to change that? Could you have called them?
A Say it again?
Q If there are four phone calls from your home phone number to the Red Roof Inn on the morning of September 7th, could you have called him?
A I may have called him.
Q So you were just mistaken when you said you didn't call him?
A It was two years ago.
Q From your cellphone. Excuse me.
A Now, that sounds more right. That sounds -- I didn't

use the home phone much. I used my cellphone.
Q So that's what -- the cellphone, you would have called him up until 4:00 in the morning?
A 4:00?
Q Excuse me. 12:47, 1:10, 1:12 and 10:04.
A Every night, and you can go back and check my phone records, my last call every night is inbetween 12:30 and 1:30. I go to sleep from 1:30 to 5:30. I get up every morning at 5:30. I mill around, watch the kids go out. I'll make my first call around 7:00, inbetween 7:30 and 8:30. Then I'm out the house. But a call at 12:40 is not uncommon. I get -- I make late calls all the time. I don't sleep. I sleep maybe four hours a night.
Q Did you ever make any calls to the Marlboro Inn?
A The Marlboro Inn? I don't know. If somebody I knew was there, maybe. I don't know.
Q Well, did you ever call Stanley at the Marlboro Inn?
A I don't know. I can't remember. You have the records, sir.
Q Well, you remember in detail these times. You don't remember if you called him at the Marlboro Inn?
A No. I said I remember my pattern. I know all the way up until 12:30 or 1:00 I'm calling or maybe talking to somebody. At 1:30 I go to bed. I know my

pattern. So if you say there's a call at 12:40, that's not unusual.

Q You called him at 10:21 a.m. If there's a call to the Marlboro Inn from your phone, do you remember why you called him?

A It might have been to pick him up. I don't know.

Q Did you pick him up from the Marlboro Inn?

A I'm not sure. I don't know. I don't know.

Q You don't know whether you picked him up from the Marlboro Inn --

A I don't remember that.

Q -- the week after these murders?

A I don't remember that. I remember picking him up from the Red Roof Inn, but I don't remember picking him up from the Marlboro Inn.

Q And you don't remember if you called him at the Marlboro Inn.

A I don't remember if I called him at the Red Roof Inn, not that many times that night.

Q You mentioned you had a gun, correct?

A Yes.

Q And that was a what?

A 9-millimeter.

Q And you said you kept it at home?

A Yes.

Q Where did you keep it?
A In my bedroom.
Q And that gun wasn't found by the police, correct?
A I don't know. I don't know what they found. I wasn't there.
Q Well, if I was to tell you it wasn't found by the police, where is that gun?
A You'd have to tell me, sir.
Q You don't know where the gun is?
A I left home on the first night that my picture was on TV. I never went back home. I spent the rest of my time trying to collect my money, put in my invoices, make sure that people that owed me money paid my family.
Q And you had $30,000 --
A No. I had 55.
Q -- that you paid your attorney?
A 55.
Q Did you go to see Ken Davis?
A Yeah. He had 30 of the 55.
Q You've never come and asked for that big of money before ever, had you, that many invoices at one time?
A Yeah. I'd gotten 27,000 maybe a month and a half before that.
Q Had you gone in and gotten it the same day?

A This is why I called Ken. Victoria is telling me -- the invoices were already in, but Victoria is telling me we're going to FedEx the package. So when I called the main office, she's like, yeah, it should be there. So I called Ken to see if she's shooting me a line. I didn't call Ken to try and get him to expedite my papers, because he couldn't do that. I didn't even turn invoices in to Ken. Ken only handed me keys. I dealt with the main office as far as payments.

Q And you told Ken you were in trouble, didn't you?

A Yeah. I told him my picture is on TV. I've got to turn myself in. No. He told me he saw me. He told me he saw me. But I wasn't making it a secret. He -- in the notes he said that was unusual for me to call because he normally had to get on me about putting in my invoices on time, picking up my money.

Q Now, you admit after Stanley went to jail Stanley didn't have his phone any more? Cellphone, right? I mean, you can't take those to jail?

A I'm assuming he didn't.

Q I mean, you're not allowed to have a cellphone in jail, are you, at Alvin S. Glenn Detention Center?

A No.

Q Okay. And you admit that you tried to get a lawyer,

Jimmy Rogers for Stanley, right?
A But I got Jimmy Rogers for everybody. Jimmy Rogers called me the rainmaker.
Q Well, apparently Jimmy Rogers decided not to take this case for some reason.
A After you called him, sir.
Q No.
A Stan Smith said that you called him. I tried to hire him for me, which was a blessing. You called him and told him that I was going to pay him with dirty money.
Q No, sir.
A Well, this is what Stan Smith said. Captain Stan Smith. And Jimmy Rogers said I am not taking that case. But Jimmy Rogers never told me he wasn't going to take the case. He just had me call -- I would have turned myself in a couple of days earlier. I'm running around the city trying to make sure, trying to contact him so I can go ahead and turn myself in. Then a friend took me to Mr. Delgado. But had it not been for that, I would have been stuck with Jimmy Rogers and turned myself in a couple of days earlier.
Q Until I determined that you weren't going to use Mr. Rogers?
A That's what Captain Stan Smith said. These are the

words that I heard. When I sat down Stan said, you've got about $44,000 out there, right; or 38 or something like that. Because everywhere I went to say I'm going to turn myself in but that doesn't have anything to do with my money. Pay my money. They would -- as soon as I left, they'd call, say Ken Joy just left here. So the police would go there. And they would find out that my business with them was actually a business relationship.

So Stan Smith was one step behind me as I was going around the city trying to make good on my money. He told me, we almost had it. Well, that's fine. Now, he said you tried to meet Jimmy Rogers, too. I said, yes, sir, I did. He said, well, Mr. Meadors called and told him that you were going to pay him with bad money; and Jimmy Rogers said, well, I'm not taking that case. But Jimmy Rogers never told me that.

Q Isn't it true Jimmy Rogers told you all he wasn't going to take that case because of what it was about?

A No.

Q And then told us that?

A I didn't find out Jimmy Rogers was not going to take that case until I turned myself in with Mr. Delgado.

Q Well, I thought you said you'd already talked to Stan

about it?
A Talked to who?
Q You'd already talked to Stan about it.
A Yeah. I was sitting here, Mr. Delgado was standing there, and Stan Smith said Mr. Meadors called him and told him you was going to pay him with dirty money. And that's when Jimmy decided not to take the case.
Q And Mr. Delgado took it. Mike Allen went with you. Did you go with him to turn in Stanley Oliver?
A No. To my understanding, Stanley Oliver -- I was going to take Stanley Oliver down to the police station to turn himself in. But he went with Mike. I may have been busy. I don't know if I missed some calls or something like that. But he ended up turning himself in with Mike. And when he did, it was a surprise to me.
Q And you talked to Mike after Stanley had turned himself in, correct?
A Yes.
Q And you all talked about -- it's what I was trying to ask you earlier -- about getting him a lawyer, correct?
A We had already -- I had talked to Stanley personally and told him that I would get him a lawyer. When I talked to Mike, I reiterated the fact that I would

help get him a lawyer and I said I'll actually go in physically and talk to Jimmy.

Q And Jimmy told you, I don't want to take the case now; you've got to be arrested; come back when you're arrested. Correct?

A No. No, he didn't say that.

Q After he was turned in --

A He told me he would take the case for 30,000. I left. I said okay. I left and I called Mike and Renata but I told them I've got 500. I'm not footing this bill. I ain't thinking about paying 30,000 for somebody else. I'll give you the first 5 to get you started, but you need to get your family involved in this.

Q Is that when you went back and asked for his share of the robbery money?

A I never knew about his share of the robbery money. I didn't need robbery money.

Q You were going to put up 5,000 for him?

A 500.

Q So you deny you went back and looked for his share of the money or asked her to look for that? Tata. You deny that?

A For one, she says that's a lie. She said on the stand that she was lying. I am saying that she's

lying. And if she said that, she is not being honest. I never -- right before that she says, well, Ken is keeping me abreast of what's going on with Stanley. Why didn't I ask him about the robbery money? Why -- if, like you say, I am sending them to rob people, why would she have his money? Why couldn't he tell me where his money is? It didn't happen.

Q He was in jail. That's why.

A If I'm keeping her abreast of what's going on with him, then apparently I'm having some contact with him and I know. Then he could have told me. I wouldn't have needed to go to her.

Q But you did go to her; you'll admit to that, and discussed, talked with her after he went to jail. You'll agree with that?

A She was on Tremain Street.

Q Is Tremain Street the answer for everything?

A No. That's my office. That's where I come into contact with people.

Q Is there a phone call from Mike Allen to you on September 13th after Stanley Oliver turned himself in?

A He called me. I never called him.

Q That's what I said.

A Blue called me. I didn't call him. Everybody that's saying this stuff contacted me after having contact with the police for some reason. I don't know. Tatanisha Robinson used my business address as her address. I didn't deal with these people like that. I didn't like her. I only bought weed from Blue. And I didn't know Mike. I met Mike. Mike said I only met him a couple of months before that.

Q Said --

A And I just met him. I didn't have any dealings with him. I met him. This is my brother. Hey, how you doing, how you doing; and that's it.

Q Were there two calls actually from Mike to you after Stanley turned himself in on the 13th?

A I don't know. I know he called me going crazy.

Q Okay. There's one here at 7:50, one here 10:40. I mean, you agree with that?

A No. The --

Q Mike to you?

A Then I called Mike.

Q Then you called Mike back?

A Yeah. And that's probably where I'm trying to find out exactly what's going on. But he called me first.

Q Okay. Then you called him back?

A Yeah, I called him back an hour later, maybe to let

him go I'm on the way. Because I had to go and get -- I stopped by Renata's. Then I had to go and get Pancho because Pancho had to tell me or show me exactly where Mike lived because I didn't know.

Q The bottom line is, after the 13th when he turned himself in, Mike called you called you, you called him back, you got Pancho, you went to the bedroom, you went to his house, you went into the back bedroom and you all talked?

A We all did. We all did. He met us in the front yard still crying and screaming about somebody is going to kill his brother. We finally extract from him that he went down to the City of Columbia Police Department. They talked to Stanley and took him into custody. When we get in the back room, he got the picture pulled up on the Internet with all the charges so you can actually see it. And then we talked some more. And I tell him I'll go, I'll physically go to talk to Jimmy tomorrow.

Q So you didn't know the night of the 13th that Stanley had been arrested?

A No. Not until I got to Mike's house.

Q So all these calls, Joy to Renata at 4:40, that was hours after he was arrested, wasn't it?

A I don't know.

Q Joy to Stanley, Joy to Renata, 2:32, 2:33, explain those. Mike had his cellphone then. Mike had his cellphone then.

A What do you mean? I don't understand what you're saying.

Q Well, he couldn't take his cellphone, could he? Didn't you talk to Mike right after he was turned in on the 13th before you met with him on the evening of the 13th?

A See, mike called me. I didn't know that Stanley had turned himself in. I didn't know Mike went down there with Stanley to turn himself in. I talked to Mike after Mike called me whatever time that says Mike called me. And that's when I found out that Stanley had turned himself in. Really not at that point. Not until I got to his house I found out that Stanley had turned himself in. Because he wasn't living with Renata during this time. Stanley was on the run.

Q Did you start talking to Dominic after that?

A I started talking to Dominic after I had contact with Mr. Mead.

Q You start talking with Dominic after that?

A Yeah.

Q Did Dominic call you?

A Looking for Solo. But now, I told him, now, the police asked me about you now. They showed me three pictures of three people and the police asked me about you. I went in and talked to them. As a matter of fact, Mike said they asked him. I said, well, all you've got to do is just tell them what you know and that's it. Because up to that point that was it for me.

Q So when you told him, you said the police asked him about you, you did know him when they asked you about him?

A No. I told him that.

Q And on the 15th you called Mike, didn't you?

A I don't know. If you have that --

Q Well, I'm not going to --

A Well, that may have been -- thinking about that date now, if he turned himself in on the 13th, I promised that I would go talk to Jimmy the next day which would have been the 14th. And I did say that I called Mike and I think Renata the next day to let them know what Jimmy said about the fee and what else to do.

Q Blue is calling you during this time period, too? Blue is calling you. 9-14.

A That may be Stanley from Blue's. I don't know.

Q Blue's phone to Joy September 14th, 4:58?
A Okay. Okay.
Q September 14th, you hadn't bought the first drugs from him then?
A I bought drugs from Blue every week. But I didn't -- at that point, no, I had not gone to his place to buy drugs yet. No.
Q And then you --
A But when he got -- when they showed him on TV, a lot of people -- I mean, a lot of people were coming and saying, you know, did you see so-and-so on TV; did you so-and-so on TV? They say he did this or they say he did that. A lot of people were doing that.
Q And then you changed your phone on what day?
A I think the 16th.
Q The heat is on on the 16th, isn't it?
A The irritation is on. Because I feel sad for the families; I feel sad for the victims; nobody should have to go through that, but the police is calling me asking me about murders and robberies and killings. And I don't do murders and robberies and killings. And the police is calling to threaten to shut my business down and to get me for all type of stuff. They had the IRS come to my business for credit card fraud, thousands of dollars in checks. I don't do

this stuff.
Q Who was that that came about?
A Agent Coronet. I never met him. I could not pick him out of a line-up. I don't know him. But I know in this town, in 2005 if you had bad checks and credit cards Agent Coronet will call you. And Agent Coronet did.
Q But it was about one of your employees?
A Exactly.
Q So --
A Who had used my cellphone as a point of contact for him.
Q So it happened on the 16th, two days after Mike Allen had gone down to the police department and told what you told him in the bedroom. That's what the allegations are, correct? That's what he testified to?
A I didn't say that to Mike.
Q But I'm just saying, he told the police that on the 14th, correct?
A He said that. I didn't say that to Mike.
Q Two days after that you changed your phone because you say somebody came down --
A At this time I didn't know that. You know, I didn't know Mike had said that until after I got arrested.

Really in the next year. Because we didn't get our motions until January or sometime of '06. And going through it, I see statements from different people and I see that Mike had said that in there. I didn't know that at that time Mike had said that, because the police didn't tell me that.

Q On the 16th somebody comes to you because one of your employees -- and what was the employee's name?

A Gene.

Q Who?

A Gene.

Q Gene who?

A Gene.

Q What's their full name?

A I mean, what does that have to do with anything?

Q I think a lot.

A I told him that I would give Gene his number. I would let Gene know that he's looking for him, but there is no need in threatening me. I didn't write them checks with Gene. I didn't use that credit card with Gene if in fact he did that. But I didn't do it, so why is he threatening to shut down my business?

Q And your new number then is 237-7294, correct?

A Right. To the best of my recollection of that

number.
Q Well, I'll show it to you. Okay.
A Because I didn't have it long.
Q Right. And the only phone numbers on there are a call to you, to Blue, Blue to you, Blue to you, Dominic to you and Dominic to you. Dominic to Blue and Dominic to Blue?
A Okay. Now that Stanley is locked up, it's a point of conversation now for sure. And that's not the only calls on there. You misrepresented that, sir.
Q I'll give you every one of them if you want to show them. I'll show you every one you made before and after. Every one of them that is highlighted in yellow is a call to these folks in this thing.
A That's not -- if you get the actual phone records, that 237 number would have more calls on there than just to Blue and Dominic.
Q Who would that they be to?
A Everybody I called before then.
Q You got them? They're your records.
A Yeah. We've got them right over there. Can I go get them?
Q Well, I think your attorney can bring them. Sure.
A There should be more calls than to just them.
MR. DELGADO: Your Honor, just for point of

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clarification. Not the synopsis of whole records. I believe they're in. Give them to the witness.

Q And actually that's the ones I showed when you called the thing about when you were at the Ruby Tuesdays and were gone. I said there's a call from your home. The you said, well, you had to come back. That was the record.

A Say that again?

Q That ruby Tuesdays call isn't on here.

A I didn't say I called Ruby Tuesdays. I said I went to Ruby Tuesdays. I never called Ruby Tuesdays, sir. I knew where they were going to be and what time approximately that they were going to be there.

Q Here are the rest of your -- these things, this is them.

A There is a call to 665-0201. There is a call to 901 --

Q Who is the first number?

A 834.

Q Who is that first --

A 3488.

Q Who is the first number you said?

A That's misrepresentation, sir, to say that the only calls I made was to them. That's not accurate.

Q The only calls out of that summary -- and you know

what we're doing. We're --

A Well, you should have said that was a summary. Then I would have said you are right. But that's a summary. That's not who I called. That's a summary of the information that you needed.

Q To link you all together?

A Well, he's locked up at this point. But to say that those were the only people I was calling, that's not what the records say. There's the records right there.

Q And they're already in. They're admitted as evidence. The jury will have them.

A Okay. That's fine.

Q And then you'll agree with me then, you'll agree with me this is a summary of the calls from your cellphone to the phone that's identified to Stanley that was Renata's?

A I didn't know Stanley's phone number. I didn't know. I can't say that that's his phone number. I program -- I might program a name in there or I might program a symbol for certain things and I'll push the button. I don't remember the numbers like that. Sometimes if you lose your phone you've lost a lot of information because you don't actually remember numbers. You program them in by names.

Q Did you say Gene was arrested?
A No. I didn't say Gene was arrested. They were looking for him.
Q And finally --
A And it may have been inbetween that time. It may have been not on the 16th but in that time. I know within a two-week period I was called about thousands of dollars of checks, bad checks, thousands of dollars for bad credit card fraud, three murders.
Q You had a bad week, didn't you?
A I had a bad two years.
Q So you deny telling Tata that you had -- or you did tell her you had a gun?
A No. She denied that. She denied that on the stand, sir.
Q But you admitted that you had a gun here today? You admit you had a gun at your house, 9-millimeter?
A I've never had a gun that had nothing to do with any robberies, any murders or nothing like that.
Q I didn't say you -- but you admitted having a 9-millimeter?
A I have had a gun, yeah.
Q You admit to going by Tremain Street with Stanley and going off and talking to him away from Renata because you wanted to tell him you didn't like her?

A No. It was away from Devine which we know here is Tatanisha because she is in my place of business. These fellows are paying rent here. I mean, I'm not just --

Q Tatanisha. I apologize. I'm sorry. My bad.

A Right. I'm not being just a terrible fellow, which I am. But these guys paying rent. They're paying to live here. You get cable. I'll hook you up with some food if you need it. Your light's not going to go out. But you're going to pay. And because they are paying, I can't just have people just laying around there sucking up the air, sucking up space and all that. So I had to tell her, get on, go.

Q You take care of them?

A Take care of who?

Q You take care of your residents?

A I provide for them, yes.

Q Mr. Delgado's last question was, Stanley, why do you help these people so? You try to help them, right?

A I do.

Q You try to take care of them?

A I try and help. I do. I am concerned about my community. I am. I'm concerned about the state of it.

Q And you tried -- you're concerned every day when

you're getting the marijuana from Blue?
A That's a habit. We all have faults. But overall, in general, I am concerned about the state of black men.
Q Thank you.
A I am concerned about the state of their relationships to black women, and I'm concerned about the economic opportunities in our community. And I did something about it. I didn't just talk about it. I did it.
Q And you --
A I did it. It's on record. I did it.
Q You tried to keep these fellows from getting caught, didn't you?
A No, sir. If they did it, they should have been caught. Whoever did something like that should have been caught.
Q No question about that, is there?
A Yeah. Because, in addition, nobody should be killed. But black on black violence is at a crisis state right now. So whoever did it should have been caught.
Q You got rid of the guns?
A Nah. I didn't do that.
Q You did read in the paper about the watch and the wallet, didn't you? I mean, you read that in the paper?

A I don't -- I don't know whether that came from.
Q Did read about it in the paper?
A I read the *USA Today*. I don't know -- I didn't watch a lot of the local news. When I was on TV, somebody told me that I was on the news. I'm from Memphis. The local news here I really didn't care much for, and I'm out anyways. Some of the local politics I would follow. But as far as watching the local news, reading a lot of the local papers, I just didn't make a regular habit of that.
Q You got rid of the gun, the car and the watch, didn't you, sir?
A No, sir. I wouldn't know where to get rid of a car.
Q Now, when you got arrested, you were a little bit bigger, right? I mean, you've lost a lot of weight?
A I was a lot bigger. This may have saved my life because I was eating myself to death.
Q Six feet, 240?
A Yeah. This may have saved my life. I was eating myself to death. I was.
Q And it does have -- if you don't mind me approaching -- Polo Road. And it says you're K, correct?
A They call me K.
Q Occupation: Painter. Correct?
A I didn't write that. Somebody else wrote that. But

painter, yeah, that's been known.

Q I worked in a paint store in high school. I've got nothing against that. And is this a picture of you when you were arrested?

A Yes, sir.

(WHEREUPON, State's Exhibit No. 215 is marked for identification.)

MR. MEADORS: 215. 215 without objection.

MR. STRICKLER: That's correct, sir.

MR. MILLING: No objection.

MR. MEADORS: Without objection.

(WHEREUPON, State's Exhibit No. 215 is admitted into evidence.)

Q And finally, State's 180, you got this from Mike Joy (sic)?

A Mike Allen.

Q Mike Allen to Mr. Joy. You got this from him?

A Yeah. I took that as an extortion note. I did.

Q What contact, direct or indirect, had Mr. Allen got prior to sending you this?

A From me?

Q Yes, sir.

A You're saying?

Q Or anybody else that you know of.

A None from me directly. None.

Q He just --
A I didn't know his address. I was really upset that he had mine and knew where to write me.
Q Were you upset that he had said that you had told him about this and you tried to cover it up? Did that make you upset?
A I was real upset. I thought it was all garbage and I gave it to my lawyer. I didn't even respond to him. I didn't write him back. I didn't try and write him back. I didn't try and have anybody else write him back. I kept it and gave it immediately to my lawyer.
Q And you didn't send any message over to Mike in Lexington prior to this trial?
A No. No. I wouldn't know how to do that.
Q And in here he talks about your conversation that you all had in that room and what you told him, doesn't it? It's what he says in here, right?
A He talks about what happened in his mind. But I never told Mike Allen that. Mike Allen told me he was about to leave down. What from I don't know. I told him, talk to the police, they'll let you go.
Q Thank you.

THE COURT: Mr. Strickler.

CROSS EXAMINATION

BY MR. STRICKLER

Q Good afternoon, Mr. Joy.

A How you doing, sir?

Q I'm all right. Thank you. This won't take as long. Just a few things. First of all, Defendant's Joy 1 through 5, these five photographs you've identified, Your Honor, I don't believe these have been moved into evidence at this time. At this point in time I'd go ahead and move them into evidence.

MR. DELGADO: I'm sorry. I meant to do so.

MR. MEADORS: I thought he did.

MR. MILLING: No objection.

THE COURT: Without objection.

(WHEREUPON, Defendant Joy's Exhibit No. 1 is admitted into evidence.)

(WHEREUPON, Defendant Joy's Exhibit No. 2 is admitted into evidence.)

(WHEREUPON, Defendant Joy's Exhibit No. 3 is admitted into evidence.)

(WHEREUPON, Defendant Joy's Exhibit No. 4 is admitted into evidence.)

(WHEREUPON, Defendant Joy's Exhibit No. 5 is admitted into evidence.)

Q First of all, I write as fast as I can and I can't keep up with what people say. My understanding is

your testimony is that one William Gedson worked for you?

A Gedson. He did work for me.

Q Okay.

A As a matter of fact, he was one of my best employees.

Q Okay. Is that the individual depicted on Defendant Oliver's No. 3?

A Yes, sir. That's Mr. Gedson.

Q The one I was asking Mr. Mead about when he testified?

A That's actually who Mr. Mead made contact with. And he left him a card, and that's who I got the card from and called Mr. Mead back.

Q Okay. You talked about taking Stanley and Ms. Robinson to the Red Roof Inn. Do you remember discussing that?

A Yes.

Q And I guess you came back the next day and picked them up?

A Right.

Q How was Stanley acting at that point in time? Was he acting any different than normal?

A Not really different. But he and I had had words about his girlfriend. So, I mean, it wasn't anything personal with me. It was just that I felt she was

trouble. I really did. I did not like her around. I felt she was trouble. And he and I had talked about this already.

Q Right.

A So when I got there I was like, you, can I talk to you for a minute, man? You know how I feel about her.

Q Right.

A And the fellows actually liked her. She is a personable little girl.

Q Right.

A But she's young and she liked to keep stuff going. They had a shoot out on Tremain --

Q You don't need to go into all that.

A -- behind her.

Q Okay. Mr. Delgado asked you whether or not Renata Williams had ever seen you burn any clothing and you said no. Okay. How about Leticia Jones? Leticia Jones ever seen you burn any clothing?

A No, sir. I don't know Leticia Jones.

Q Yes, sir.

A As a matter of fact, she testified to the fact that she doesn't know me.

Q Okay.

A She said that she had heard of me but she didn't know

me. She definitely didn't see me burning anything.
Q Do you remember when you spoke with Mr. Mead?
A It was --
Q What day it was?
A -- the 9th.
Q The 9th?
A Of September.
Q That's right. He left the card on the 8th and you went and spoke with him on the 9th?
A That's right. I went and talked to him the very next -- now I didn't remember the day because that's what I did. I remember going over my motion when I got it. I said, okay, that was the 9th that we talked. I remembered that.
Q Right. Right. Just as it would be hard to remember exactly when you made a phone call to anyone over two years ago, right?
A Yeah. I don't -- it's hard to remember the exact dates. I remember September 4th specifically because it was my baby's 16th birthday.
Q You've got a reason to remember that?
A Yeah. I remembered that. And my girl was mad because I was going to work anyways.
Q When you spoke with Mr. Mead, as I understood your testimony, the conversation started out okay?

A Yes, sir.
Q As okay as a conversation at a police station can start out I suppose?
A Yes, sir.
Q But it deteriorated over time. It didn't get --
A Yes, sir. I felt at a certain point in the conversation I became a suspect. And I didn't understand why. And had I known that I was going to be a suspect, I would have contacted my lawyer before talking to him. But I came down. When I talked to him on the phone, he said he wanted to me about Stanley Oliver, which I had no problem with that.
Q And he didn't ask you to go ahead and reduce what you had to say in writing in your own words, did he?
A I didn't write it and he wasn't writing it at the time.
Q Right. So there was no record being made as you were speaking by him or by you, right?
A No, sir. He was sitting in a chair across from me and Ms. Burns was sitting over to the left and Mr. Wilkerson walked in a little later. But she wasn't writing, he wasn't writing, and I wasn't writing anything.
Q So you had three police officers in there by the time this thing was over?

A Yes, sir.
Q Right?
A (Nods head affirmatively).
Q And there was no tape recorder in there to your knowledge?
A Not to my knowledge. I didn't see a tape recorder start. No.
Q And there was no video machine?
A Not to my knowledge. I didn't see a video recorder.
Q And you definitely dispute the portrayals or the words that Mr. Meadors had been using as far as how you characterized Stanley, correct?
A Yeah. I dispute that. I didn't say that.
Q You didn't say those things?
A I didn't say that I didn't trust him and call him a jitterbug. The thing was, Stanley actually was kind of like security or he would be an alarm system for my vehicles and my equipment that was on Tremain Street. Because -- I don't know if you're familiar with that area -- that's a high crime area.
Q Yeah.
A And I had a lot of equipment in there. So, no, I didn't say those things about him. But I did say I didn't take him to the post office. But he didn't have a need to be at the post office.

Q Okay. Did you ever have occasion to take Renata Williams to the police department?
A I did take her.
Q When did you take her?
A I can't remember the exact date, but I don't know if -- I think -- I'm not sure if Stanley was locked up or not, but he must have been if she called me. And she called me and said that the police were, you know, calling her. So I said, well, go down there. And she said, well, she didn't have a ride. So I was like, well, give me a couple of hours, I'll take you. And I took her.
Q Did you bring her back from there?
A I did not at the time because I said to her, I've got some runs to make, but call me when you get done and I'll be right down. She called me a couple of days after that, maybe after that from the house. And I asked her, I said, well, why didn't you call me? Because I didn't want her to think that I left her. So I was like, why didn't you call me when you got down? And she really didn't have an answer for that. And I should have known something was messed up then.
Q Now, all these questions that Mr. Meadors was asking you from -- well, all these questions Mr. Meadors was asking you about the phone records. Okay?

A Yes, sir.
Q Specifically about, you know, calls to the Marlboro Inn, Red Roof; do you have the Red Roof Inn's number memorized?
A No, sir, I don't.
Q Do you have the Marlboro Inn's number memorized?
A No, sir. I didn't have it programmed in my phone.
Q Okay. You've been here in the trial throughout the trial of this case, correct?
A Yes, sir.
Q Has anyone testified what the number to the Red Roof Inn is?
A No, sir.
Q How about the Marlboro Inn?
A Not to my knowledge, no.
Q Okay. And when you're talking about this summary that Mr. Meadors was showing -- I'm not going to do it. He was standing up here leaning over you while he was showing it to you. That's information that the State has taken out of the records, the real records?
A The larger phone records. Right.
Q Right. That they want to go ahead and put in in its case?
A Right.

Q And I think I understood what you're saying. If you look at the records from my phone, you're going to see calls to all sorts of people or all sorts of places?

A All day to everybody. I made 100 calls a day. And that's not counting the calls other people made. So all day every day on my phone it was busy.

Q Okay. And actually if you look at the records through the other records that are in, you're going to find calls, a lot more calls than anything associated with this case, too. They're just taking out what they think is significant, right?

A I would agree with that. Yes.

Q What they think is significant?

A I would agree with that.

Q And Mr. Meadors wanted you to go ahead and draw conclusions based on something that he presented to you that he thinks is significant, not what you think is significant?

A I thought it was a misrepresentation.

Q Yes, sir.

MR. MEADORS: What was that last thing?

MR. STRICKLER: He thought it was a misrepresentation.

MR. MEADORS: Thank you, Doug.

MR. STRICKLER: Yes, sir. And with that, I don't think I have any further questions, Your Honor.

THE COURT: Mr. Milling.

MR. MILLING: Your Honor, we've got no questions.

THE COURT: Any redirect?

MR. DELGADO: I have no more questions.

THE COURT: All right. You may come down, sir.

THE WITNESS: Do I need to --

THE COURT: You can come down.

THE WITNESS: Okay.

THE COURT: Back to your seat. Approach the bench, counsel.

(Whereupon, a bench conference is had)

THE COURT: Just be at ease for a few minutes, ladies and gentlemen. We're trying to wind it up.

MR. DELGADO: Your Honor, do I need to place on the record?

THE COURT: Yes, sir. Mr. Delgado.

MR. DELGADO: Your Honor, the defense on behalf of Ken Joy rests.

THE COURT: Thank you very much.

MR. MEADORS: We've got nothing further.

THE COURT: Anything? That concludes the trial of this case as far as the evidence is concerned. Is

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that correct? From the State?

MS. MCDUFFIE: Yes, Your Honor.

THE COURT: From the defense?

MR. STRICKLER: Yes, sir.

MR. MILLING: Yes, Your Honor.

MR. DELGADO: Yes, Your Honor.

THE COURT: All right. Ladies and gentlemen, that will conclude the presentation of evidence in this case. The remaining portion of this trial will consist of the final arguments or summations by counsel and my charge to you on the law of the state of South Carolina as it applies to this case.

Graciously, you have agreed to return on Monday for that process. That probably will take the entire day. So I am going to release you now until Monday at 10:00 at which time we will conclude this trial. Again I will ask you to not discuss the case over the weekend with anyone outside the courtroom or among yourselves when you return to the jury room on Monday.

Have a pleasant weekend. And don't again avail yourself of any press releases if there are any. There haven't been any so far, but I need to continue that warning. I hope you have a pleasant weekend. Get all your Christmas shopping done, or some of it

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anyway. And we'll see you Monday at 10:00. Thank you very much.

(Jury out at 1:27 p.m.)

THE COURT: All right. Counsel as far as motions and a charge conference, would you from prefer to get lunch and then come back and do that or do that now?

MR. STRICKLER: I would prefer to take at least a break at this point. We've been here for a while. But if we're going to take a break, we might as well get a bite to eat.

THE COURT: Oh, that's fine. How about 2:30?

MR. STRICKLER: That's fine with me. I don't presume to speak for anyone else.

THE COURT: That should not take too long. But I'll give you an opportunity to mull it over a warm meal. 2:30.

MR. MILLING: Thank you, Your Honor.

(Whereupon, a lunch break is taken)

THE COURT: Any motions?

MR. STRICKLER: Your Honor, well, first of all, I don't guess the State has any motions. At this point in time I need to clear up finally the issue regarding Defendant Oliver's Exhibit No. 2. I have shown -- the PCR application.

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THE COURT: Yes.

MR. STRICKLER: I've shown the Court and I've shown Mr. Meadors my proposed redaction which encompasses page 3C and 3D which contains the sentence I cross examined him on which says: "The solicitor served the Applicant with", et cetera. And my proposal is to submit the cover of the PCR application --

THE COURT: I agree. I agree with that.

MR. STRICKLER: -- and the signature page in the case.

THE COURT: I agree with that.

MR. STRICKLER: Well, I haven't gotten Mr. Meadors from this morning to respond to that to tell me what the State's position is in that regard.

MR. MEADORS: This is actually the first time we've had the opportunity since cross.

THE COURT: Well, he objected to it. I overruled it.

MR. MEADORS: It sounds like it's done.

MR. STRICKLER: Well, subject to the redaction.

THE COURT: Subject to redaction.

MR. STRICKLER: We'll we've never gotten on the record what the redaction was.

MR. MEADORS: Your Honor, there was something on

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the front that had other charges on there which I don't think are related to this.

THE COURT: Well, it's sort of an introduction.

MR. STRICKLER: And I believe the exhibit is probably with you.

MR. MEADORS: Your Honor, we're fine of course.

THE COURT: It's got a blue sticker on it. And I don't have it.

MR. MEADORS: I had it last.

MR. STRICKLER: I saw you with it. That's all I'm saying.

MR. MEADORS: Yeah. I said I had it. I did have it. We'll find it.

THE COURT: That's a ministerial matter. Let's get to the substance.

MR. STRICKLER: All right.

COURT REPORTER: Should I re-mark that as Oliver's No. 4, next in order, the redacted portion?

THE COURT: The redacted exhibit.

COURT REPORTER: Right. The redacted exhibit.

THE COURT: I guess you'd have to have a new number. The earlier one was just for identification. However you do it. However you do it.

MR. STRICKLER: All right, Your Honor. I will move on as we look. I mean, I can't say for sure

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that it's not on the table here. All I know for sure is where I last saw it.

But moving on. Your Honor, at this point in time Defendant Oliver would renew his motions for directed verdict as expressed in the State's case on those same grounds at this point in time, sir; and submit that after the evidence in the defense case there is not evidence from which a jury could find beyond a reasonable doubt -- and I submit that's the standard under Jackson vs. Virginia -- that Mr. Oliver is guilty of the charges against him.

Specifically and especially as to the armed robbery alleged against Mr. Kevin Miller, I submit the standard is whether there is any evidence from which a jury could find beyond a reasonable doubt that Mr. Oliver was guilty of that. And I submit that's not the case here.

THE COURT: Okay.

MR. STRICKLER: That's it as to directed verdict motion. I have more motions.

THE COURT: All right.

MR. MEADORS: I didn't have it.

MR. STRICKLER: You didn't have it?

MR. MEADORS: Somebody else did.

COURT REPORTER: Do you have the redacted one I

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can mark yet?

(Pause)

(WHEREUPON, Defendant Oliver's Exhibit No. 4 is marked for identification and received in evidence.)

MR. STRICKLER: All right, Your Honor. That is marked as Defendant Oliver's 4 in evidence. 2 is still for I.D. I take it at this point in time.

THE COURT: Correct.

MR. STRICKLER: All right. Thank you very much, sir. And I made my D.V. motion, renew my directed verdict.

THE COURT: With respect to the directed verdict on behalf the defendant, Stanley Oliver, I feel there is sufficient evidence from which a jury could determine beyond a reasonable doubt the guilt or innocence of the defendant, Oliver, and must respectfully deny that motion.

MR. STRICKLER: Thank you, sir. At this point in time I would move for a mistrial. During Mr. Meadors' cross examination of Mr. Ken Joy he referred to phone numbers, specifically those of the Red Roof Inn and the Marlboro Inn, testifying himself that those were such phone numbers, asking him to compare them, asking him to account for telephone calls alleged to have been made by Mr. Joy to those numbers

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or from those numbers from him. I get confused at this point in time as to which way it went. Those numbers to the best of my knowledge are nowhere in evidence. Now, they certainly haven't been testified to.

Additionally, and of far getter concern to me, I submit it should be of far greater concern to the Court, is the fact that he then went on to cross examine Mr. Joy about alleged statements made by Mr. Joy regarding Stanley Oliver to Investigator Mead, Investigator Burns, Investigator Wilkerson on September 9th, 2005, in which among other things he alleges that Mr. Joy characterized Mr. Oliver as a jitterbug and characterized him as a -- I don't know -- criminal character, criminal type, all of which Mr. Joy denied having said, none of which are in the record in any other place other than the testimony of Mr. Meadors.

Now, we conducted an in camera hearing with Officer Burns in this regard. Okay? That was never in front of the jury. You know, the record will clearly reflect I did not object at that point in time. I felt certainly that Mr. Meadors would have a good faith basis for asking those type of questions and would put someone up to go ahead and testify to

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it. And he didn't. And he's rested. And I submit that a mistrial is the appropriate remedy in this case. So that's my motion at this point in time.

THE COURT: All right. There are two bases; one, the apparent -- as I understand it to the witness -- the appearance. I'm sorry. The appearance that the State had in its possession phone records involving Mr. Joy's phone connecting with the Red Roof Inn and the Marlboro Inn when in fact there are no such --

MR. STRICKLER: Well, to my knowledge, there is o testimony in that regard.

THE COURT: No testimony even though the records may reflect that.

MR. STRICKLER: They may very well reflect phone numbers which with proper testimony could have been established as those belonging to Red Roof Inn, Marlboro Inn.

THE COURT: By looking in the phone book.

MR. STRICKLER: Yes, sir. Or looking in the phone book.

THE COURT: That's the first one.

MR. STRICKLER: That's the first one. And the far more important one is the second one.

THE COURT: Is the questions about Mr. Oliver's

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reputation as far as Mr. Joy was concerned as testified to by Ms. Burns, that testimony not being, never having been heard by the jury.

MR. STRICKLER: Yes, sir.

THE COURT: It in fact injects into this trial the reputation I guess, so to speak, of your client which was not testified to other than in that cross examination.

MR. STRICKLER: Yes, sir. I think --

THE COURT: Does that encapsulate it?

MR. STRICKLER: -- that probably encapsulates it and states it better than I did. Yes, sir.

THE COURT: Mr. Meadors.

MR. MEADORS: Your Honor, I think the record will reflect, I think he responded. I didn't say he was a jitterbug before he even said, I'm not from around here. I didn't use that term before I even got to that point.

Second of all, that was his statement. I asked him if he talked. He admitted to everything except that. And again, he volunteered that to start with. Not that I think it would matter. He's subject to cross examination. There's clearly no issue on that. So I don't know what the problem is.

Second of all, as far as the phone records, I'm

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pretty sure the Red Roof number is in on that receipt.

MR. STRICKLER: And it may be. I know there is no testimony in that regard. It may be in on some document that identifies it. And if so, then I don't have a basis for an objection in that regard.

MR. MEADORS: The Marlboro Inn I thought was on those receipts from that, too. I don't know. But those were the bases I asked him on those. I just said, did you go to Marlboro Inn and make a call? I think I'm allowed to do that. I could have gone through and asked him what every one of these phone calls were, even if they were in evidence or not, just to see what he said. I don't know how else to respond to that.

THE COURT: Well, the testimony I think -- and I may be wrong -- about the reputation of your client; and I say the reputation of your client. It may or may not be the reputation of him, but it's what's testified in that vein characterizing your client as a jitterbug and involved in criminal activities. If I recall it, it's -- and I'm not trying to pick up on what Mr. Meadors said, but was that not volunteered in response to some question? I mean, I frankly didn't write it down. If he volunteered that

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information, even though there had been no foundation for it or no -- what's the basis of the -- what's the basis of the mistrial motion? If it's volunteered from a co-defendant that your client has the reputation of criminal activity and is subject to cross examination?

MR. STRICKLER: Yes, sir. I understand that. One, I don't think he volunteered it. Okay. You know, I'm not a court reporter. My fingers don't -- it's on the record. My fingers don't write that fast. Let me see. I had "didn't use jitterbug, didn't refer to the defendant as a criminal type". And my recollection is that's in response to questioning, questions directly on those terms by Mr. Meadors.

You know, as I've said a number of times, if I'm wrong, I'm wrong more often than I'm right, but that's what my memory is. I wrote a note in my contemporaneous record that I was keeping, writing it right directly adjacent to those statements.

THE COURT: You're perfectly within your rights to bring that to the attention of the Court. However, I don't feel that either of those two issues are grounds for a mistrial in this case. I must respectfully deny your motion.

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MR. STRICKLER: Thank you, sir. Then at this point in time I would move to strike the cross examination of Mr. Joy by Mr. Meadors on the same grounds.

THE COURT: That one -- are you talking the entire cross examination, or are you talking just the reference --

MR. STRICKLER: I would move to strike those references, the references to my client's character during the interrogation of Mr. Joy on October 9th, 2005, by Investigators Mead, Burns and Wilkerson from the record. And, you know, this is simple. I'm either right or I'm wrong in that regard. And I certainly don't want to generate any more work for Madam Court Reporter, but if she can locate where those are and determine whether it was volunteered or whether it's in response to questioning.

THE COURT: Well, and it may -- I would be -- if it were as you say, I would be inclined to strike it from the record. Even if stricken from the record, I still would not be inclined to grant the mistrial.

MR. STRICKLER: Well, I understand that. I have taken your ruling as your ruling. I'm not arguing with your ruling.

THE COURT: One, it's not a fortiori. I mean,

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one doesn't go with the other. If it those are out, then -- go ahead.

MR. STRICKLER: I agree. Well, that would be my next motion, Your Honor.

MR. MEADORS: Could I follow up just on that directly, please?

THE COURT: Yeah.

MR. MEADORS: Mr. Delgado brought in through Ken on direct -- Mr. Joy, excuse me -- that he sold marijuana or got marijuana from Stanley. It came out on direct that he was a drug dealer, his drug dealer. It brought his character in there. There was no objection there.

THE COURT: Well, he's not asking that be stricken.

MR. MEADORS: I just want the record to reflect that he's not arguing that. That was brought up previously. That reference was made.

THE COURT: I'll grant your motion in that regard, Mr. Strickler.

MR. STRICKLER: Thank you, sir.

MR. MEADORS: If it wasn't volunteered.

MR. STRICKLER: If it wasn't. Certainly. If it weren't volunteered.

THE COURT: If it were not volunteered. We'll

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have to --

MR. STRICKLER: Thank you, sir. Now, and I'm serious about this.

THE COURT: I know you're serious about everything.

MR. STRICKLER: Well, I'm serious about what's coming. Because some might consider it a joke in bad taste on my part. I don't I think so. I think I have an obligation as an officer of the court to draw the Court's attention to section 17-25-60 entitled: "Change of sentence where former convictions were not considered at time of imposition." Which it's in the life without parole section of the code.

And it reads: "If during the service of any such sentence, which is a nonlife sentence, it's made to appear to the Court that the defendant has been convicted of one or more crimes which were not taken into account at the time of the imposition of the original sentence", clearly the case with Mr. Jason Brown. He had a prior carjacking conviction and was sentenced for armed robbery, he should be serving a sentence of life without parole. There is no way around it.

The courts authorize -- "The court is authorized to issue a rule directing the defendant to require

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him to show cause before the court not less than ten days from the granting of the rule why the former sentence should not be revoked and the defendant be sentenced as required if all of the convictions had been brought to the attention of the court at the time of the imposition of the original sentence."

So I am just saying I feel I have an obligation to bring this to the attention of the Court. It is in the same section. It's in the same -- it's part of the statutory scheme for life without parole. That's all I have to say in that regard, sir.

THE COURT: Well, let me inquire, if I may.

MR. STRICKLER: Yes, sir.

THE COURT: And I certainly do not have -- I've obviously been trying to concentrate on this trial, not concentrate on Mr. Brown's record. And I recall your cross examination of him. But I was unclear at the time of that cross examination whether or not he pled -- not that he was charged with two most serious, but I think he had a most serious and pled to a lesser or may have pled to a lesser crime that took him out of the life without parole status. I mean, and I was somewhat confused when I heard that testimony.

MR. STRICKLER: He had a 1997 arrest and a '98

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conviction I believe for carjacking.

THE COURT: '98 for the carjacking.

MR. STRICKLER: Yes, sir.

THE COURT: That certainly qualifies.

MR. STRICKLER: And he's currently serving a sentence of ten years for armed robbery and attempted armed robbery, both of which --

THE COURT: That's what he pled to?

MR. STRICKLER: Yes, sir. That are the subject of the post conviction relief application. And, Your Honor, with that, that's all I have at this point as to post-trial matters until we get to charge conference.

THE COURT: Yes.

MR. MEADORS: Judge, to respond to that, I don't know how many cases he's got in his office where the same thing has been done. I've never heard him raise it before. But I think he's got some of his lawyers --

THE COURT: He says as an officer of the court.

MR. MEADORS: He needs to report those also that are from his office.

THE COURT: Well, maybe we'll just clean up the whole shooting match. Yes, Mr. Milling.

MR. MILLING: Thank you, Your Honor. May it

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please the court. On behalf of Mr. Gallman, at this point in time we would also like to renew our earlier motions for a directed verdict. I think that the evidence that has been elicited in the defense case combined with the evidence that was introduced and elicited in the State's case demonstrates that no reasonable juror in viewing the evidence as a whole, the character of the individuals who testified, their credibility, that no reasonable juror could find my client guilty beyond a reasonable doubt of these charges, especially the armed robbery of Mr. Kevin Miller which we discussed at length in my earlier motions.

So we would renew those motions, renew our earlier motions for a mistrial, and also join in Mr. Strickler's motion for a mistrial at this point in time as well.

THE COURT: All right. Well, I don't feel that after hearing the defense and after the jury hearing the defense of this case that nothing has given me reason to believe that my ruling on the original directed verdict motion was improper, and I must respectfully deny your motion for a directed verdict at this time. Thank you very much.

MR. MILLING: Thank you, Your Honor.

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MR. DELGADO: Likewise, Your Honor, --

THE COURT: Mr. Delgado.

MR. DELGADO: -- I make a motion for directed verdict on behalf of Mr. Joy as relates to his presentation before the jury in the same fashion that no reasonable juror or no reasonable jury could find him guilty beyond a reasonable doubt on the seven charges still pressed against him.

As relates to the mistrial motion, I take no position on that simply because it would not relate to Mr. Joy as a result of his being cross examined or his testimony. Thank you.

THE COURT: All right. Well, I think certainly Mr. Joy's testimony may have given rise to reasonable doubt. I don't know. But I think the evidence is still the same as it was at the time of your original directed verdict motion, and I must based on that respectfully deny your motion for a directed verdict at this time as to Mr. Joy.

MR. STRICKLER: Your Honor, if I could, please.

THE COURT: Yes.

MR. STRICKLER: I'm sorry. I lied earlier. I had one other thing to bring up. It's brought to my attention by Mr. Milling. I need to renew, if I do need to renew, I will renew at this point in time not

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only the directed verdicts that you have ruled on but the previously stated mistrial motions that were raised at the end of the State's case. No additional bases for those, but out of an abundance of caution, not wishing to waive anything by a procedural default on my part, I just go ahead and renew those at this time, sir.

THE COURT: Respectfully denied.

MR. STRICKLER: Thank you, sir.

THE COURT: Now, before we start this charge conference, does anybody have a Webster's dictionary?

MR. MILLING: I've got one back in my office.

THE COURT: I just wonder if there's such a word as "juree".

MR. STRICKLER: Not spelled with two E's that I know.

MR. MILLING: It's down near Horry County.

THE COURT: Oh, maybe that's low country.

MR. DELGADO: Your Honor, I --

THE COURT: Sir?

MR. DELGADO: Nothing further. All right.

MR. STRICKLER: Requests to charge?

THE COURT: I'm going to hand you a proposed set of charges. And if you'd like to take -- typically you have proposed charges.

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MR. STRICKLER: Yes, sir.

THE COURT: If you would take the next ten or fifteen minutes. Or if you'd rather do this Monday morning, we can do it Monday morning. Or in the alternative, if any party has a set of proposed charges, give them to me and I'll try to -- first I would want to eliminate duplications --

MR. STRICKLER: Of course, sir.

THE COURT: -- and see if there are any additional charges beyond that which --

MR. STRICKLER: Well, if I could just go ahead and get what I have.

THE COURT: Put it on the record.

MR. STRICKLER: Of course there's an original to Madam Clerk I'd ask to be made a part of the Clerk of Court's file. I have a copy for Madam Court Reporter, I'd ask to be marked as a Court's Exhibit.

(WHEREUPON, Court's Exhibit No. 16 is marked for identification.)

MR. STRICKLER: Certainly not in order that I should have delivered them, Your Honor, a copy for you, a copy for the State. You already have it. Right?

MR. DELGADO: Yes, sir.

MR. STRICKLER: And, Your Honor, in that regard

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I would just direct all parties' attention because this may be something that would require -- well, or not. My requested instruction 8 on a charge on failure to record statements, I'm relying on two out-of-state opinions in that regard which I can supply Your Honor copies of from the Commonwealth of Massachusetts. Not California. So they're certainly not putatively bad law in any way.

THE COURT: The Home of --

MR. STRICKLER: Sir?

THE COURT: The Home of Lights, such as Oliver Wendell Holmes.

MR. STRICKLER: Yes, sir. I would just inform the Court in that regard, and I'm not proposing to argue it fully because I don't know that Your Honor wants to hear argument about it.

THE COURT: I think the Court of Appeals might be interested.

MR. STRICKLER: Yes, sir. My information is that something akin to the charge, a charge based on these cases on failure to record statements has been charged in Charleston in 2006 in General Sessions Court I believe by Judge Nettles.

THE COURT: Nettles?

MR. STRICKLER: Nettles I believe. State v.

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Raymond Stehoff. Now, should Your Honor desire, I'll be happy to go ahead and discuss that with the Court and anyone else at whatever time you desire. But I wanted to give you and other counsel access to all that at this point in time.

THE COURT: Well, why don't you proceed with these.

MR. STRICKLER: I'm sorry?

THE COURT: Would you like to proceed with these as submitted? Mine are only basically the outline.

MR. STRICKLER: Yes, sir.

THE COURT: These are more specific.

MR. STRICKLER: What I have not had an opportunity to do is what I thought Your Honor wanted me to do, which was compare what I request with --

THE COURT: Well, I will tell you I don't think these are any duplication. I think these are all outside what I have presented to you.

MR. STRICKLER: All right, sir. Then I'll be happy to proceed at this point in time since I don't think we'll be covering any duplicative territory. I'll be happy to discuss it now if that suits Your Honor.

THE COURT: Yes. Let's do that.

MR. STRICKLER: Request 1 I submit is the law of

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credibility. I mean Your Honor I would assume will have a charge, general charge on credibility?

THE COURT: General credibility.

MR. STRICKLER: That's why I didn't submit anything regarding general credibility. It discussed whether an informant was an informant providing evidence for pay or a witness has been granted immunity from punishment. I mean, that actually cuts both ways because there is a witness here who ended up testifying against the State called by the State -- or I would characterize it that way -- who had been granted immunity. A plea after a bargain with the State, I think that's open to question. I think the jury is entitled to consider all these things.

THE COURT: What's the State's position? And I'm assuming these -- well, I won't assume anything.

MR. STRICKLER: I've shared these with counsel for counsel for co-defendants.

THE COURT: Are they submitted as sort of a joint --

MR. STRICKLER: They're submitted on behalf of Mr. Oliver.

THE COURT: I know that.

MR. STRICKLER: That's it.

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MR. MILLING: Your Honor, I would submit the same charges. I've got them here. I don't think there is any need for me to I guess submit another copy for Your Honor. But I would ask that Madam Clerk please file the same charges on behalf of Mr. Gallman which I have here.

THE COURT: 1 through 8?

MR. MILLING: Yes, sir, Your Honor.

THE COURT: So you're adopting the --

MR. MILLING: We've got several ones but they are identical.

MR. STRICKLER: Your Honor, do you have 1 through 8? You should have 1 through 9.

THE COURT: I removed 1 through 9. No. I have 1 through 9. I asked him if you wanted to consider 1 through 8.

MR. STRICKLER: Yes, sir.

THE COURT: I don't think that -- and, Mr. Delgado.

MR. DELGADO: Likewise, Your Honor.

THE COURT: Do you adopt 1 through 8?

MR. DELGADO: Yes, sir, I do.

THE COURT: You may have additional ones. But at this point it becomes a matter of between the defense and the State.

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MR. DELGADO: I agree.

(WHEREUPON, Court's Exhibit No. 17 is marked for identification.)

MR. MEADORS: Your Honor, your charge on credibility and believability I believe is the appropriate charge on page 9 of yours which would encompass their whatever, number 1. We think their number 1 is a charge on the facts, Your Honor. It's a charge on the facts. Specifically, in this case, Your Honor's credibility and believability charge, they can take everything into consideration, that's for the jury to decide and for the lawyers to argue. So we would take exception with number 1.

THE COURT: All right. Mr. Strickler.

MR. STRICKLER: Your Honor, I expressed myself fully. I think it's an accurate statement of the law. And I would submit it does not of course charge on the facts at all. I mean, any charge given has to -- you can't charge on --

THE COURT: Thin air.

MR. STRICKLER: You can't charge on something that's not in evidence. So obviously everything relates to something that is before the court. It's not a charge on the facts.

THE COURT: Okay. I'm making notes.

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MR. STRICKLER: All right, sir. As to number 2 --

MR. MEADORS: Your Honor, specifically, going back to that one, our individual case through his testimony, I've never seen that anyway. And I haven't responded to number 2 yet. So I think it --

THE COURT: Maybe it's in State v. Fairly.

MR. MEADORS: Not on these. No, sir. I am somewhat familiar with that. That case was different than this case. And these facts specifically here in in this charge, we would say it's a charge on the facts.

THE COURT: Number 2.

MR. STRICKLER: Thank you, sir. Moral turpitude, actually, a kind of old-fashioned term given the adoption of the rules of evidence. Crimes of moral turpitude, we're no longer impeaching based on crimes of moral turpitude. We're impeaching based on crimes of dishonesty, such as forgery or fraudulent checks; which, Your Honor, was the basis, the reason for my cross examination of, I believe it was Mr. Brown, regarding his earlier convictions that Your Honor granted the State's objection when I was trying to go into the nature of what a forgery was. I of course was not trying to go into the facts and

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circumstances of the case but to establish merely the fact that forgery involves lying. So --

MR. MEADORS: Your Honor, I don't have a problem with his number 2 at the same time.

THE COURT: I will call to your attention on page 10 a more general, less specific charge on that very point. But since the State agrees, I will adopt it.

MR. MEADORS: Well, Your Honor, I didn't see yours. I was asking for it earlier. Let me review yours.

THE COURT: Well, that's called Indian giving.

MR. MEADORS: Well, I asked it earlier and they said it wasn't in here and I was looking for it now.

THE COURT: Well, if you agree that's a statement of the law, then --

MR. MEADORS: Can we have a minute just to read through yours then before I answer the rest of them?

THE COURT: Well, I ought to --

MR. ROSS: The State doesn't agree with number 2. I think your general charge covers that. I don't think it needs to be this specific language that Mr. Strickler --

THE COURT: Now, wait a minute. Wait a minute. Wait a minute. You all are double-teaming him.

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MR. STRICKLER: Your Honor, I was taught how to split a double-team when I was playing tackle in the eleventh grade. I can deal with it.

THE COURT: All right. Well, maybe I will merge defense number 2 with the proposed charge on behalf of the State. Number 3.

MR. STRICKLER: Number 3. While I cite State v. Copeland, I believe this stands for the proposition that the request is that you can consider them both as to credibility and as substantive evidence. Okay. I cited State v. Copeland because I believe that's currently the status of the law under our rules of evidence. You consider them both. Copeland is cited because prior to Copeland you could only consider them for impeachment purposes, not as substantive evidence.

THE COURT: Now Copeland says you can.

MR. STRICKLER: Copeland says you can. And that's the standard under the rules of evidence. So I could dig through the rules and find the correct rule number, but --

THE COURT: I think I found it at some point in time during this trial.

MR. STRICKLER: Yes, sir.

THE COURT: But, you know, I always wonder --

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and this is an aside -- if jurors have any comprehension of the word "impeach".

MR. STRICKLER: Probably not. They think someone is going to jail.

THE COURT: Well, they think it's a fruit. So, I mean, I hate to talk to them about impeachment, but ...

MR. STRICKLER: And I'm not wedded to the use of the term "impeachment". It says discredited or impeached.

THE COURT: Discredited, that's a more understandable word.

MR. STRICKLER: And I actually agree with you in that regard, Your Honor.

THE COURT: Did you get that, Jenny?

COURT REPORTER: That's the first time I've heard it and I took it down.

MR. STRICKLER: Pardon me?

THE COURT: I just wanted to make sure the court reporter got that, your last comment.

MR. STRICKLER: That I agreed with you?

THE COURT: All right. As I said, moving right along.

MR. STRICKLER: Has Your Honor -- you're just going to consider it?

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THE COURT: Well, I haven't heard from the State.

MR. STRICKLER: All right, sir.

MR. ROSS: We object to number 3, Your Honor.

THE COURT: On what grounds?

MR. STRICKLER: I mean, your general charge covers credibility of witnesses.

THE COURT: It does.

MR. ROSS: So this is not necessary, nor do I think it's correct to point out this discredited or impeached and contradictory statements and all that. I mean, you're already telling them how to weigh a witness's testimony in your general charge. They can figure that out.

THE COURT: Well, the only -- I think that some mention of this subject should be made to the jury. And the reason I say that is because we have three inmates in this case all of whom are in different jails for different reasons, all of whom give statements. And not that they're not credible. I'm not saying they're not credible. I'm just -- I think some instruction would be -- should be given to the jury that perhaps they should weigh their testimony a little more carefully --

MR. MEADORS: That's a charge on the facts.

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THE COURT: I didn't even finish my sentence yet -- critically and perhaps in some -- I certainly can't -- I don't mean to say that their testimony should be discounted or discouraged, but that it ought to be looked at carefully.

MR. MEADORS: We strenuously object.

MR. ROSS: We object.

THE COURT: Which one of you is talking? Because the court reporter, I've said it before, cannot take down when both of you are talking at the same time.

MR. ROSS: I didn't know he stood up. I didn't know he stood up.

THE COURT: Well, *he* did.

MR. ROSS: Your Honor, I just don't think pointing out certain particular witnesses and telling the jury, hey, you'd better look at this guy because he's an inmate of a certain institution, you'd better look at his inconsistent statements --

THE COURT: I never said -- I didn't even indicate that.

MR. ROSS: And the way this is worded, Your Honor, this is not even a sentence. "You may reject all the testimony of that witness or give all of or a part of such testimony the credibility you think it

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deserves." It's a sentence but it's not a correct sentence. It's not reject all the testimony. I mean, the standard charge is that they can accept all of the testimony, part of the testimony or none of the testimony. I mean, he's trying to reword your general charge and make it specific to inconsistent statements. And I do not think that -- I mean, I've never seen this charge charged before. I know this case does not say this is a proper charge.

THE COURT: All right. I'll take it under advisement.

MR. STRICKLER: Thank you, sir. Of course, Your Honor, just as a general basis, in response to pretty much everything, my submission is of course, Your Honor, in all due respect to you and the State, Your Honor is required to charge the law that is applicable to the case and to the extent the law applicable to the case is dictated by the facts in the case, both the substantive law I would submit and the evidentiary law.

As to this, you know, 3, and I'll move on; it cuts both ways, quite frankly, because the people who are impeachable who have inconsistent statements certainly encompass more than people who are just in jail. One Ms. Robinson on the stand has been

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impeached, and they've got a copy of it in the jury room. So I'll move on.

4, it is what it is. I think it's significant the State tried their entire case in this matter without putting their chief investigating officer on stand. And even yet, at this point in time, we have not heard from the chief investigating officer on the charges that the Richland County Sheriff's Department investigated.

THE COURT: I'm not following you.

MR. STRICKLER: Well, --

THE COURT: When you say do you remember that A and B --

MR. STRICKLER: Well, okay. This was a general charge and I have to modify it. Just remember that B was not called to the witness stand to answer questions in this trial by the State.

THE COURT: Who are you --

MR. STRICKLER: Let me reconsider it.

THE COURT: Go ahead. I mean, it's not an invalid charge to draw an inference from a witness not called by the State. I've never had to identify them by name --

MR. STRICKLER: Yes, sir.

THE COURT: -- or what they would testify to.

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MR. STRICKLER: Well, I would ask that Your Honor provide me an opportunity to go ahead and consider how to rephrase it so it doesn't identify the witness. I agree. You shouldn't have to go ahead and identify the eye witnesses. But the gist of what I ask to be charged is that the inference may be drawn by the failure of the State to call a witness.

THE COURT: That is a fair statement of the law. And whether you argue it or not, you can argue it, but that's something -- I wouldn't charge any specifics on that.

MR. STRICKLER: All right. Well, I would ask that the charge be that the jury may draw an inference from the failure of the State --

THE COURT: Any problem with that, Mr. Ross?

MR. ROSS: Yeah. I object to it.

THE COURT: Okay.

MR. STRICKLER: Taking that as a full argument on the part of the State, Your Honor, moving on to instruction number 5, bad character of the defendant. It's in evidence. I'm entitled to an instruction on that.

THE COURT: That being the subject of Mr. Joy's testimony. Is that what you're referring to?

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MR. STRICKLER: Yes, sir. We were all trying hard to keep it clean in that regard, but I submit we aren't now.

THE COURT: Mr. Ross.

MR. STRICKLER: At least at this point we aren't.

MR. MEADORS: Your Honor, again, there was no objection on his direct testimony when he said he got marijuana from him. That's saying he's a drug distributor. Stanley Oliver. There's no objection to that. That put his reputation in it. That he's waived it, didn't object to that, actually didn't object the other times until after the case was closed. So you can't pick and choose what you want to object to and what you want the charge to be.

MR. STRICKLER: Well, --

MR. MEADORS: I don't know if I'm through or not.

MR. STRICKLER: Well, I'm certainly not going to interrupt you, sir.

MR. MEADORS: Is that included in your charge, Judge?

THE COURT: No, sir. Again, I've given you the outlines of the general charge that I will give in any case. We made everything plural and tried to --

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MR. MEADORS: Your Honor, I think the proper charge is State v. -- your Honor, we'd object at this point and ask if you'd just keep this under advisement if even for a little while and move on to the next one.

THE COURT: Let me just point out I have -- and I'm sure all of you have Hubbard's general instructions, criminal cases. As to -- I'll come back in just a minute. But I want to call to your attention, as to defendant's requested instruction number 3, there is a prior inconsistent statement charge, proposed charge in Hubbard that, I haven't compared it, but it seems to track somewhat the language of Mr. Strickler.

MR. MILLING: Your Honor, what page is that?

THE COURT: It's on page 433.

MR. STRICKLER: Your Honor just has it more recent. I have it on my computer. But it was back from when I was on the editorial committee with Professor Hubbard for the first issue.

THE COURT: Well, it's there. And, in other words, if it's not too trial specific, it is -- and I'll compare the two.

MR. STRICKLER: All right, sir.

THE COURT: So there is an accepted charge

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according to Hubbard. Now, let's get back to bad character, number 5.

MR. STRICKLER: The State has asked that you defer in that regard, Your Honor.

THE COURT: Just one minute.

MR. STRICKLER: And the only response I would have to the statement, if Your Honor is still dealing with this, is just to the fact that there was no objection raised at some point. You know, I don't know that I have to object in order for there to be a charge as to what the law is. So --

THE COURT: All right. I don't find a -- I mean, there's certainly character and reputation. There is a standard charge on that. And I'll consider that as requested by the State.

MR. STRICKLER: Yes, sir.

THE COURT: All right.

MR. STRICKLER: Yes, sir. Now, I prepared these -- oh, I don't know, at 6:00 this morning -- and prepared them in an anticipatory fashion thinking that the State may try to characterize Mr. Oliver's, the period of time between the incident and the time when word was out being broadcast that he was wanted and the time he turned himself in, that the State would attempt to characterize that as flight. And if

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indeed that is the case, then I'm asking for this instruction.

THE COURT: I don't recall hearing the word flight in this entire trial.

MR. MEADORS: Your Honor, State v. Grant, I don't think you're allowed to charge flight.

THE COURT: I know I'm not allowed to charge flight as an inference of guilt.

MR. MEADORS: Well, I would --

THE COURT: And I'm not sure -- I haven't read this. Mr. Strickler knows that. I just can't charge flight. You can argue flight but I can't charge flight.

MR. ROSS: I think that cuts both ways. You can't charge it as an inference of guilt.

THE COURT: That you didn't fly; so, therefore, you're not guilty?

MR. MEADORS: Well, an inference of innocence.

THE COURT: That's what I said.

MR. ROSS: He's got in here about "persons can be hesitant to submit to the law because they are not confident the jury will make the correct ruling."

MR. STRICKLER: Well, come on. Such as Mr. Joy who wanted to get his financial situation in order prior to turning himself in.

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MR. MEADORS: Innocent person.

MR. STRICKLER: Come on indeed.

MR. ROSS: That's a jury argument. That is not a proper statement of the law to be charged to the jury.

THE COURT: I'll consider that, but I am disinclined to charge or even raise the issue of flight.

MR. STRICKLER: All right, sir. Thank you, sir. 7?

THE COURT: 7.

MR. STRICKLER: I have nothing. It is what it is.

THE COURT: Number 7?

MR. STRICKLER: Yes, sir. Testimony of a police officer. I think you actually asked the jury whether they would lend greater weight to that during your Voir Dire of the panel.

MR. MEADORS: Actually we objected to that. I think there's a case on point saying you can't ask them that during the Voir Dire. And I don't think you did ask them that.

THE COURT: I did. I think I did because one of the --

MR. MEADORS: We objected.

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THE COURT: -- potential jurors had -- was either married to a police officer or had some police officer connection with the Richland County Sheriff's Department or something of that nature.

MR. MEADORS: Well, you followed up with the fact that he's a police officer. That was for could you be fair and impartial. But I don't think you had the general Voir Dire question.

THE COURT: No. Not general. Follow-up question.

MR. MEADORS: I thought that's what he was saying.

THE COURT: There was a follow-up question after a response.

MR. MEADORS: We certainly would object to this, Your Honor, it's a charge on the facts of the case. That's what the jury is to decide under credibility and believability. You're not supposed to highlight anything. You're pure, Judge. And that's what you're telling them to be, pure, and use their common sense in deciding credibility.

THE COURT: If I was real pure, I wouldn't give them any instruction at all.

MR. MEADORS: That would be fine with us, too, quite frankly.

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THE COURT: All right. I'll take that under consideration.

MR. STRICKLER: Number 8 is the recorded statements request, Your Honor. And, you know, I can encapsulate or summarize very briefly the two cases. Massachusetts. Actually the larger of the two cases, the name of which I will not even attempt to pronounce; it begins D, DI, and then goes on; or DE and goes on.

THE COURT: DeBaptiste (phonetic). But, anyway, sort of like Joey Buttafueco.

MR. STRICKLER: It stands for exactly the proposition that I have encapsulated in my request. And the previous case, and just to show the historical progression, had started the discussion, had begun with encouraging suggestions of law. Of course they would be encouraged to step into the then 20th, now 21st century as far as memorializing statements. The court in the second 2004 case finally threw its hands up and said enough is enough; you're entitled to this instruction.

It does note in that opinion that there are several states that require that either as a matter of Constitutional or statutory law. I believe there are three at this point prior other than

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Massachusetts. Three of them require either --

THE COURT: Construction or the actual recordation?

MR. STRICKLER: I believe the last case, if it's not recorded, then is inadmissible I believe. It's a matter of Constitutional law in Alaska, and I think statutory law in a couple of other jurisdictions.

Judge, all I have to say in this regard is I know what the law is in South Carolina and I know that there is no requirement in South Carolina it be done. This is 2007. As Mr. Delgado took some labors to point out, you know, we have video cameras if not in all police cars, then certainly in substantial numbers of police cars. We record in excruciating detail evidence to use in prosecuting people for driving under the influence of alcohol or drugs.

Yet, when you have people charged of a most serious crime cognizable under our law, take them back into rooms and put them behind closed doors, and we come out with something that is not memorialized in any fashion suitable to this day and time, you know.

And the 2004 Massachusetts opinion discusses the fact that there are -- there's now a substantial body of literature out there in the social science field

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that has refuted the complaints that this would be not cost effective, that it would result in fewer convictions, that it would somehow be an inefficient thing to do. In fact, exactly the contrary.

When such things are recorded, I mean, you can put the person up, qualify them, you know, play the recording; and I'm pretty much out of things I can ask them about. It's there and it is what it is. And the police officer either did exactly what he or she is testifying about. You know, they don't have to -- it's just right there. I'm out of arguments on that. And actually the literature in the social science shows that, eau contrair, as far as it being a problem, it clears up problems.

Now, I'm submitting that it's an appropriate charge given the nature of the statements in this particular case. Not only are they not videotaped or audio taped, we have some and especially the last one testified to by Mr. Joy that weren't even reduced to writing on the part of the person who's alleged to have given them. So all we have is an oral rendition. Well, we don't even have the officer's oral rendition of it. We have Mr. Meadors' oral rendition of it.

So I would submit that just on the basis of the

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facts in this case it's an appropriate charge. And, you know, as a statement from a court in 2007, it's an appropriate charge. We are in 2007. We can start with a tape recorder, if nothing more than a tape recorder. They practically give them away in cereal boxes these days. So I just ask it be submitted. It's not a charge on the facts, quickly, before I hear that.

THE COURT: All right.

MR. MEADORS: If it pleases the Court. Your Honor, we would stand with the 47 other states in this case. And, Your Honor, if you were going to charge this, we say it is a charge on the facts. "Since the alleged statement was not audio or videotape recorded, you should weigh the evidence of such statement with great caution or care."

You might as well add, like Mr. Delgado and Mr. Strickler were telling you, we'll cross examine them, because that's what they want.

And, Judge, Mr. Strickler is saying that would be it; I wouldn't question anything else. I tried a case with him with Dr. Dillard where the statement was taped. And he questioned whether it was taped on and off, whether it went from one room to another, when the tape player was on and off. So I'm

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respectfully disagreeing that he wouldn't question the tape if it was taped.

We object, Your Honor. I've never seen this charged. I do think it's a charge on the facts specifically in this case. And he just gave wonderful closing argument to why they shouldn't have it. And that's what it is.

MR. STRICKLER: And I certainly didn't mean to imply that I'd never seen it before, though I am informed it has been given before in this state, or a charge similar thereto.

THE COURT: All right.

MR. STRICKLER: Number 9, Your Honor.

THE COURT: For the record.

MR. STRICKLER: Well, I take it that Your Honor, by Your Honor's comment that you will not charge number 9.

THE COURT: I don't see how I can.

MR. STRICKLER: Your Honor does understand why I'm requesting it. I added a witness on the stand. This relates directly to Jason Brown. It doesn't go to sentencing as to any of the defendants in this particular case. It goes to what the law is. And it's directly impeaching of his testimony. States that, you know, conviction for a most serious, what

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the most serious, relevant most serious offenses are as far as Mr. Brown goes and that sentencing to life without parole in his case was mandatory and that did not occur in his case.

THE COURT: I understand. But, again, I'm just not in a position to know all of the facts of that case. It sounds cut and dried, simple, the way you've described it. But I don't know of the facts of any of those cases. I don't know what a judge did. I don't know what -- in other words, I don't -- plus the fact that I think it would lead to considerable confusion to the jury when I try to get into describing the statutory scheme and the mandatory sentences for various crimes and enhancement of sentences based on the two strikes law or three strikes law.

MR. STRICKLER: Your Honor, I understand your ruling. I'm not going to argue with Your Honor about it.

THE COURT: I want you to state it for the record.

MR. STRICKLER: Okay. I'm sorry.

THE COURT: I think it's not appropriate.

MR. STRICKLER: All right. Thank you.

MR. MILLING: And, Your Honor, just --

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THE COURT: Mr. Milling.

MR. MILLING: Just for the record, those same requests to charge are the same requests to charge that we have submitted. We would have the same arguments. For the sake of judicial economy, we would just rely on Mr. Strickler's --

THE COURT: All right. Mr. Delgado.

MR. DELGADO: The same for Mr. Joy, Your Honor.

THE COURT: No additional?

MR. DELGADO: No, sir.

THE COURT: Anything from the State?

MR. MEADORS: Your Honor, we'd just like, as far as character, to leave that out until Monday and just apparently leave it until Monday morning. I think Doug and I'm sure these other attorneys are -- I don't think that's --

THE COURT: Which one are you talking about?

MR. MEADORS: Well, what's still out? Is anything other than character evidence, I mean, that he hasn't been to? Co-counsel says we've been over all of them. I didn't think we had.

THE COURT: Yeah. We've been over all of them. I asked if there are any proposed charges from the State.

MR. ROSS: No, sir. I don't have anything to

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hand up.

MR. STRICKLER: Well, then I object. They're required to be submitted in writing.

MR. ROSS: Well, I will. I'm just telling the Court what it is. Duress is not a defense to murder. I'd like that charged. Because Mr. Milling brought that up. And I think that could be confusing to the jury that you've got testimony that one of the defendants pointed the gun at the other defendant that caused him to shoot the other (sic). Just that one sentence, that duress is not a defense to murder.

MR. MILLING: Your Honor, if I may respond briefly, if you're done with that, Mr. Ross, with that particular issue.

MR. MEADORS: Let him do it. Sit down. Go ahead, Mr. Milling. Go ahead.

MR. MILLING: No. Mr. Ross indicated --

MR. ROSS: And then the other charge is voluntary intoxication is not a defense. Because there was some testimony about one of the defendants being high on crack cocaine.

THE COURT: From where?

MR. ROSS: I think Leticia Jones. I think that was in her testimony, that she was talking about not Dominic Gallman but the person with Dominic Gallman

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flipped out because he was high on drugs or high on crack or something to that effect.

MR. MILLING: Your Honor, if I may respond on both of them. As to duress, while it is accurate that duress cannot be a defense in a murder case because you've got to establish that you've got some other -- if you're forced, that you're forced to do something that would be less harmful I guess. And murder being the type of charge it is, you just can't have it.

Likewise, or the flip side of it is, I don't think it's appropriate to charge that duress is not a defense. I think that duress is something that should properly not be charged to the jury at all. I think that would do nothing but confuse the issues.

As far as the voluntary intoxication, if there was anything mentioned in here about someone being high on cocaine, I think it was such a minimal part of the two weeks that we've been here that to interject that as a charge in this case would just confuse the issues and it would be inappropriate.

MR. ROSS: I don't know what's confusing about it. I mean, it's pretty clear cut, that being on drugs is not a defense and someone forcing you to supposedly commit murder is not a defense. But it

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could be thought of that way by the jury unless they're instructed that is what the law is.

THE COURT: All right. I will consider that.

MR. STRICKLER: Your Honor, just for the record, I join in the objection to both those charges. I'd further object in that we were to meet this afternoon for a charge conference. These charges have not been prepared in writing and submitted to the Court and, you know, perhaps to the other counsel in here containing these references to that which the State is relying on in support of those propositions. That's required by the rules of this court.

THE COURT: All right. Anything else? Anything else?

MR. STRICKLER: No, sir.

THE COURT: 10:00 Monday morning?

MR. ROSS: Yes, sir.

THE COURT: I'll have a -- if the charges are revised, I will give you a revised copy at that time. And there will be business that will have to be conducted in this courtroom between 9 and 10 regarding recommitments of bonds and estreatments of bonds. I have bonding court from 9 to 10.

MR. MEADORS: Your Honor, Mr. Ross will have those charges to Mr. Strickler by 5 if he would like

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those, and any other defendants.

(Whereupon, the proceedings are concluded for the day, to be reconvened Monday morning)

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Monday, December 17, 2007

THE COURT: Is the State ready to proceed?

MR. MEADORS: Judge, could we -- I have a copy of your -- there are a couple of highlighted portions. I didn't know. Are we going to go over those highlighted portions?

THE COURT: Well, you've got the floor.

MR. MEADORS: Thank you. On number 10 there are two highlighted. We won't argue the second highlighted portions, but we'd like to respectfully argue the first: "You may also consider whether a particular witness was an informant." I don't know of an informant in this case where somebody was working undercover and going and got information. So I don't think that's applicable to this case. If it was, it would be a charge on the facts we think. So we'd object to that.

THE COURT: Would you rather I say inmate?

MR. MEADORS: Judge, I think that's a charge on the facts. You had people in jail that came forward and said they made a statement. We didn't ask them to do that. I think highlighting that, that just goes to the general credibility of --

THE COURT: I'm not highlighting anything other than the highlight is merely to advise counsel as to

2107

what changes were made from the original set.

MR. MEADORS: Yes, sir. I didn't mean the highlight on here. But I'm saying the words in and of themselves highlight the testimony is what I meant, which we think is improper. They're just like anybody else, just like Renata, just like Tata. They happen to be in jail. So it would be like saying to ex girlfriends. And that would be our opinion. It just happens to be somebody they were a cell mate of. So we think their credibility should be judged like anybody else's.

THE COURT: What's the defense position?

MR. STRICKLER: Your Honor, I have no objection to the inclusion of that language.

THE COURT: I'm sorry?

MR. STRICKLER: I'm sorry. I have no objection to the inclusion of the language. I think it accurately states the fact that there is additional grounds for bias on the part of individuals in that situation. So I think it's appropriate.

THE COURT: Well, there was testimony about the fact of deals; and some were, some were not. Well, I take that back. Nobody was offered a deal. But the issue of whether or not they would benefit from testifying for the State I think can be considered by

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the jury.

MR. MEADORS: Yes, sir.

THE COURT: And I don't think it's a charge on the facts.

MR. MEADORS: Judge, it would be like saying --

THE COURT: Hold on. Anything from Mr. Gallman?

MR. MILLING: Your Honor, we would think this is an entirely appropriate charge.

THE COURT: From Mr. --

MR. DELGADO: The same from Mr. Joy. Yes, sir.

THE COURT: All right. Now, Mr. Meadors.

MR. MEADORS: I don't know of any case law. I don't know how that would be any different from saying Renata or Tatanisha Robinson or anybody else. These were just witnesses that happened to be in the jail cell with them. Highlighting it is saying look at their testimony more suspect. There are no deals with these people. It should be strictly the credibility and believability like any other witness. And that's left to these wonderful lawyers to charge why they shouldn't be believed, not a charge from the -- to argue. Excuse me. Not a charge from the judge saying, hey, look at this more closely. And there were no deals given to them. That's to me highlighting these witnesses' testimony, saying, hey,

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you need to look at them closer. Which I don't think they need to look at them closer more than anybody else.

THE COURT: Okay. I think it's appropriate. I'm going to leave it in. Next.

MR. MEADORS: I have never seen a charge on defendant's reputation. There is actually a case in here that says good reputation can raise reasonable doubt. I don't see how if that's the law, then a charge saying bad reputation, if any, may not be considered as evidence of guilt. I don't understand how that's consistent with the case law in this state. And I'd like to see their cite on that because I've never seen it charged, as I've never seen an inmate informant charge in my life. So we'd object to that one. Reputation.

THE COURT: What's the defendant's position? I think that was raised by Mr. Strickler.

MR. STRICKLER: Pardon? Pardon me, sir?

THE COURT: I think that was raised by you on Friday.

MR. STRICKLER: Yes, sir. And I think it was raised because, as I discussed with the Court, I submit the State injected evidence of his reputation in not through Gertrude Burns who had testified in

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camera but through State's witnesses and Mr. Moaney, Mr. Brown. And I think it's appropriate in that situation.

THE COURT: Well, is there any case law that supports that?

MR. STRICKLER: Give me a second, sir.

THE COURT: I have your requested instruction number 5.

MR. STRICKLER: Yes, sir. And the case law is as cited at the bottom of the instruction. This is from the initial Hubbard, not from the more recent.

THE COURT: Not in the more recent?

MR. STRICKLER: Not from the more recent. I don't have the more recent.

THE COURT: I don't know which -- I'm looking at 2001.

MR. STRICKLER: And it certainly is nothing other than the opposite of -- nothing other than the reverse of a good character charge.

MR. MEADORS: It's the exact opposite.

THE COURT: That's what he said.

MR. STRICKLER: That's what I said.

MR. MEADORS: Judge, State v. Gamble which he cites not only stands for the proposition that the State may not attack defendant's character unless

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defendant first put that in issue, there was testimony by Mr. Joy that Mr. Oliver was a drug dealer; no objection. And then again I think we left it that the testimony was Mr. Joy offered that language. Without being asked, he said, I didn't say he was that word, I didn't say all that. He's the one who brought it out.

MR. STRICKLER: Well, one, I don't concede that point. That's what he says, and I say not. And if I'm wrong, I'm wrong in that regard. All of that is against the backdrop of Omekas Moaney testifying about drug dealing, about Jason Brown testifying about him, about testimony from a parade of girlfriends on his part talking about his character, witnesses not called by us; a road traveled by the State, not raised by us.

MR. MEADORS: Your Honor, I guess our point is to charge good character, good character the law says could create reasonable doubt, but don't consider bad character at all. I don't think you can have your cake and eat it, too, which is what I think they'd be getting if they got this charge. Of course there's no evidence of good character.

THE COURT: Well, it's evidence of guilt. I mean, the way it reads, evidence of bad reputation

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may not be considered as evidence of guilt of the crime. Well, that's about all we've got in this case. So I'm going to leave it in.

MR. MEADORS: Finally, for what it's worth, the testimony of police officers, State v. Adams, it's 306 S.E.2d 2008. It says that "where the jurors would believe one class over another, it's improper for Voir Dire", I would think if it's improper there, it would clearly be improper for a charge that police officers is not -- testimony is not entitled to more weight than that of any other witness. I would think your general charge on credibility and believability covers that. And again I would cite State v. Adams. It's still current law.

THE COURT: What are you citing?

MR. MEADORS: State v. Adams.

THE COURT: All right. Hand it to me. What's it say?

MR. MEADORS: Your Honor, it states in the Voir Dire background that should not be asked on Voir Dire. And if that's the case then, that you shouldn't weigh one class of a person's testimony versus another.

THE COURT: What's the defense position? The Hubbard manual says that -- it says this instruction

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is necessary to remind the jury of this point. That's what Hubbard says.

MR. STRICKLER: Yes, sir. That's what I say.

MR. MEADORS: Your Honor, Hubbard is a wish list for defense attorneys. Defendant's requested instructions. That's not an approved charge. I'd cite case law over a defendant's requested instruction book.

THE COURT: What's Gallman's position? Do you have a position?

MR. MILLING: Your Honor, we think it's an entirely appropriate charge in this case.

THE COURT: Mr. --

MR. DELGADO: As does Mr. Joy, Your Honor.

THE COURT: All right. Ms. McDuffie, you've handed me a 12-page -- do you know where it is in here that you're talking about?

MS. MCDUFFIE: Mr. Ross informs me that he thinks it's page 7.

THE COURT: All right, Mr. Strickler. This is not a new case. But when were the rules of evidence --

MR. STRICKLER: I'm sorry?

THE COURT: When were the rules of evidence adopted? '76?

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MR. STRICKLER: No.

MR. DELGADO: No, sir.

MR. STRICKLER: What? 1991.

MR. DELGADO: September the 3rd, 1991, Your Honor.

THE COURT: Good for you.

MR. DELGADO: How about that?

THE COURT: This case is an '83 case and does not refer to 608 and 609. But if it's the only case extant on this issue, it holds that: "It is the further holding of this court" -- and this court being the Supreme Court -- "that the subject matter of this question is improper; that is, to believe the police officer under Voir Dire as permitted by the Code of Laws, it calls upon the jury to make a determination in his own mind as to whether one class of persons is more credible than the other, the juror should not be required to assert which witnesses he will believe nor what type of witness he will believe. This is true because the juror should believe that those witnesses' credibility appeal to him after he's heard all the testimony, the question invades the province of the jury to determine individual credibility in the context of the entire case."

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MR. STRICKLER: Well, Your Honor, if you're -- I understand. I don't have it in front of me. But I'm sure you aptly quoted it to me. If you're dissing or is you're inclined to go ahead and remove that, I would ask that you leave in the following, it being last two lines of the charge: "As modified, rather you should" --

THE COURT: What page?

MR. STRICKLER: I'm sorry. This is page 11 of your instruction, sir.

THE COURT: I'm flipping back and forth.

MR. STRICKLER: Yes, sir. And I'm having the same problem.

THE COURT: All right. Go ahead.

MR. STRICKLER: "As modified, rather you should judge each witness's testimony by the same standards that you apply to all other witnesses." That's as neutral as can be; but, in essence, says that all witnesses belong to the same class; that is, people whose credibility you need to judge.

THE COURT: Give me your -- do that again.

MR. STRICKLER: The last two lines, reading: "Rather you should judge" --

THE COURT: -- but you're leaving in the body of it above that.

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MR. STRICKLER: No. No. That's where it talks about police officers. I just -- remove that if you're inclined to.

THE COURT: Just give me your proposed --

MR. STRICKLER: Yes, sir.

THE COURT: Strike starting at "the testimony".

MR. STRICKLER: Strike starting at "the testimony" down and leave in only the last two lines of that instruction. "The testimony" --

THE COURT: In other words, you take out "rather".

MR. STRICKLER: Yes, sir.

THE COURT: "You should judge an officer's testimony by the same standards."

MR. STRICKLER: No. My understanding is the problem with officers. So my response would be: "You should judge each witness's testimony by the same standards that you apply to all other witnesses." That emphasizes to the jury that they're all in one class, the class which includes credibility you are here to judge.

THE COURT: Any objection to that?

MR. MEADORS: Yes, sir. I think the objection, you're not supposed to mention police officer at all.

THE COURT: We're not. We're taking them all

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out, taking all police officers out. Starting at the top, strike all the way down to "because he is a police officer".

MR. MEADORS: What's the charge going to be, sir?

THE COURT: "You should judge each witness's testimony by the same standards as you apply to any other witness."

MR. MEADORS: Wouldn't that go in your credibility --

THE COURT: Well, it may be duplicative, but it's neutral.

MR. MEADORS: Judge, and we'd like the same thing for the informant. That case I think would apply to the informant which are in in this case. But you're trying to do a class of somebody there. We say that should cover that. What he's talking about there, it's no different. That's a class of person, just like a police officer. And you're highlighting it. So we would cite that case to say the same thing. Add that sentence on the end of his informant. Add it twice.

MR. STRICKLER: Well, them strike the whole instruction then, Your Honor.

THE COURT: Which one?

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MR. STRICKLER: The one that he's talking about. If we're going to go back and revisit what you've already ruled on again as a result of this, just strike the whole instruction. Just don't mention it.

MR. MEADORS: I don't think there's anything wrong with that since if we've gone through this analysis. In my view, this kind of highlights why informant shouldn't be in there."You should judge a person's testimony by the same standards you apply to other witnesses."

THE COURT: Well, there's a difference. I don't think police officers may consider the benefit of their testimony as having some benefit to themselves when it comes to sentencing or -- I mean, it's clear from the record to me that -- I forget the witness. I think it was -- let me try to be clear. Mr. Moaney testified in response to the solicitor's questions that the solicitor would talk with the authorities about -- would let them know that he testified. Which obviously he anticipates some benefit from the State offering that to the federal authorities.

So I think it's different. I don't think a police officer anticipates that he is going to get some benefit out of his testimony. An informant, an inmate who is serving time who still has pending

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sentencing issues when he's told -- or when he testifies that the state of South Carolina is going to go to the federal government and tell them that he testified for the State that he can -- I don't think that you can say that he anticipates no benefit from that. He obviously anticipates a benefit from it. And I think that differentiates him from a police officer. So I respectfully deny your request with regard to the informant.

MR. MEADORS: If I could say one other thing. That's for them to argue though. If your Honor mentions that, it's a charge on the facts. They can argue it. His statement --

THE COURT: I say it's not a charge on the law.

MR. MEADORS: His statement was given in October of 2005. He didn't know anybody. That's the question. Now afterwards we're changing this and we're going to tell the Feds he cooperated? Sure. They can argue that. Your Honor doesn't need to argue it.

THE COURT: I'm not arguing anything. I'm giving a -- what I'm trying to do is give an accurate statement of the law and not a factual 31-page charge.

MR. MEADORS: Yes, sir. I've just never seen

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it. And I would rely on State v. Adams. And that's a charge on a class of individuals.

THE COURT: Thank you. I'm striking the testimony of a police officer. Anything else from the State?

MS. MCDUFFIE: No, sir, Your Honor.

THE COURT: From the defense?

MR. STRICKLER: Two matters, Your Honor. On page 28, your discussion of malice, the only issue I have is with the first sentence. "Malice may be inferred from conduct showing a total disregard for human life." That's Mouzon language; in essence, used to elevate reckless conduct to malicious conduct because of the rising to that degree of recklessness.

I mean, these were intentional acts here. There is no question about that. You are certainly charging malice may be inferred from the use of a deadly weapon which is totally appropriate in this situation. And expressed and inferred, and you certainly deal with inference from the use of a deadly weapon. I just think to also charge total disregard for human life is, one, not appropriate under the facts; and, two, confusing to the jury.

THE COURT: You said you had two matters.

MR. STRICKLER: I'm sorry. Yes, sir. That was

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one. The other is just an informational question, Your Honor. Do you charge the bolded categories as you're charging it or just charge the language in the categories? If you charge the bolded categories --

THE COURT: No, I don't.

MR. STRICKLER: Okay.

THE COURT: I don't.

MR. STRICKLER: Page 31 says: "Failure of defendant to testify", and that's something I always have a problem with.

THE COURT: Judge Anderson has made it very clear you never use the word "failure" in an instruction to the jury.

MR. STRICKLER: All right. Well, that's all I have then, Your Honor.

THE COURT: All right. Yes, sir.

MR. MILLING: We would join in that, Your Honor, as it relates to the malice charge. And the Solicitor's Office has -- I guess they have emailed us on Friday those two proposed charges which were discussed and handed us I guess an original of them today regarding voluntary intoxication and duress. And as I mentioned on Friday, we would object to those two charges. We think that that's inappropriate in this case.

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THE COURT: Mr. Delgado.

MR. DELGADO: I have nothing further except to join in the comments of my colleagues, Your Honor, on behalf of Mr. Joy.

THE COURT: All right. Well, what's the State's position on inferred malice?

MR. ROSS: Your Honor, I think the charge is fine the way that you have it.

THE COURT: Well, I'm giving it probably 50 times. It may not be directly on point with the facts in this case, but it is -- I think it's helpful to the jury to understand what an inference of malice is. I don't say that there is any inference of malice in this case. It's more of an example of what inferred malice may be. So, all right. Anything further?

MR. MEADORS: Were voluntary intoxication and duress not included?

THE COURT: They're not in there.

MR. MEADORS: We would ask that you include them.

THE COURT: I thought we went over this Friday. But --

MR. MEADORS: I didn't know you had ruled on it.

THE COURT: Where is the voluntary intoxication?

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MR. MEADORS: Your Honor, I think there is clearly circumstantial evidence that drugs were being used, drugs were obtained throughout this. So that would be circumstantially voluntary intoxication, the crack cocaine. That kind of speaks for itself I think.

As far as duress, there have been two witnesses, I know at least two witness; Jason Brown one, and Ms. Leticia Jones who both said that -- through Jason Brown it came out Stanley Oliver said the other guy tried to give him the .38 and he told the other guy, no, you're going to or it's either you or her. Then Leticia Jones specifically says that Dominic told her, you were right, you were right. I went there. I shouldn't have been with him. And then he says after what happened in the house, we went out in the woods and he told me to shoot. The other person told me -- I gave him the gun. He said, no; it's you or her, and I shot her.

So, I mean, if they try to claim, Mr. Milling or something, that -- clearly if he tries to infer Mr. Oliver made him shoot the female, and there's testimony that Mr. Oliver wouldn't shoot a female, that duress is the law, which is not a defense to murder. I can't anticipate where their arguments are

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going, but that's a correct statement of the law and I think that's why Mr. Ross requested it.

THE COURT: Mr. Strickler, anything for the record?

MR. STRICKLER: Your Honor, given the extent of the testimony in relation to those two issues and the scope of this trial, I think they're extraneous and confuse the jury. But in all candor, I don't care.

THE COURT: All right. Mr. Gallman. I mean, sorry. Mr. Milling.

MR. MILLING: Thank you, Your Honor. Again, I don't think it's appropriate. I don't think there's sufficient evidence for which to justify the charges. And as Mr. Strickler said, it will confuse the issues for the jury.

THE COURT: Mr. Delgado.

MR. DELGADO: Representing Ken Joy, I'm not sure I have standing to argue that based on my --

THE COURT: All right. You're correct. All right. There is some evidence in the case that the jury may be able to infer some sort of voluntary intoxication and/or duress. I'll give those two charges, additional charges to what is already in the charge. Anything further before we bring the jury?

MR. MEADORS: Nothing from the State.

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MR. STRICKLER: Your Honor, if I could, just so the record is clear, I think I did this Friday. But I would just ask the record reflect the fact that I excepted to Your Honor's decision back on Friday to refuse to charge my requested instruction 8 on recorded statements and 9 regarding life without parole. That's all I have.

MR. MILLING: We would join in that as well.

MR. DELGADO: As does Mr. Joy relating to number 8.

THE COURT: All right. The State plan to open and close?

MR. ROSS: Yes, Your Honor.

THE COURT: How much time do you need? Time is going to be somewhat of a consideration in this case.

MR. ROSS: I don't think that I would need more than 30 minutes, maybe not even that.

THE COURT: How about closing?

MR. MEADORS: How much will you allow us? Judge, I don't think I'll be any longer than they will combined.

THE COURT: Well, --

MR. MEADORS: I don't think I'll need more than 45.

THE COURT: If you had an hour? If you had an

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hour?

MR. MEADORS: If I had an hour, I promise you I wouldn't need more than that. So an hour and a half for our side. I have tried to streamline it actually. Can I have his carry-over minutes if he doesn't use them?

THE COURT: Let me ask the defendants. From a combined standpoint, I mean, the rules of civil procedure suggest a two-hour limit. And, you know, there's the old axiom about brains and back sides. Have you discussed it?

MR. STRICKLER: As to this, no, Your Honor. I would hope that for Mr. Oliver I'll be able to accomplish what I need to accomplish in 45 minutes, no more than an hour. I'm aware of the maxim and happen to agree with it. I do happen to think that, with all due respect to co-counsel or counsel for co-defendants, the focus of this has been largely on Mr. Oliver. And I feel compelled to respond fully to the evidence in this case. And that's going to take me a little bit of time. And my response may take care of some more than I have to do. I don't know.

THE COURT: All right. Mr. Milling.

MR. MILLING: Thank you, Your Honor. I would tend to agree with Mr. Strickler that the way that

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the evidence has fallen --

THE COURT: Well, I'm asking you for a projection of your final argument in terms of time.

MR. MILLING: I would anticipate that mine would run probably between 30 and 45 minutes.

THE COURT: Mr. Delgado.

MR. DELGADO: Yes, Your Honor. I believe that's a realistic estimate, 30 to 45 minutes. Your Honor, inbetween that, sir, I think there's going to be a need for various folks to gather evidence so that we can make our presentation fluid. And that may require a couple of minutes just so we can get ourselves together. I think that may add to the overall time.

THE COURT: Are you talking about between each defendant? I'm just asking.

MR. DELGADO: Well, yes, sir. Unless we just stand at ease while we try to do this in front of the jury. That's the only thing I can think of.

THE COURT: Well, I think stand at ease is not a pad thing.

MR. MEADORS: I'd certainly request one before mine briefly, a brief recess.

THE COURT: Well, I will tell you 30, 45, that's an hour and 15. 2:15. I mean, two hours and 15

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minutes will get us to 1:00. This jury is going to have a lunch break probably before your final. Do you understand?

MR. MEADORS: Yes, sir.

THE COURT: That will give you plenty of opportunity. I'm not going to hold you to it. But if we start now, I would hope to finish the State's opening and the defendants' three closings by somewhere around 1:00 or 1:15. Somewhere. That's the way it adds up. You ready for the jury?

MR. MEADORS: The State's ready.

MR. DELGADO: Your Honor, if it doesn't add up to that --

THE COURT: Well, I'm only doing the best I can.

MR. DELGADO: I know. I understand.

THE COURT: I'm trying to manage the time, manage the jury, manage the defendants.

MR. DELGADO: Yes, sir.

THE COURT: Bring the jury, please. Then, believe it or not, after all that I've got to charge them.

MR. DELGADO: Yes, sir.

THE COURT: I mean, I'd like to finish at least the charge today.

MR. DELGADO: Yes, sir.

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THE COURT: And I will watch the clock. Is there one of those that buzzers when the time goes off? All right. Let's proceed.

(Jury in at 11:02 a.m.)

THE BAILIFF: The jury is present.

THE COURT: All right. Good morning, ladies and gentlemen. Again, we've had some post-trial matters that we needed to clear up and we're now ready to conclude the trial with final summations or arguments by counsel. The Solicitor's Office or the State will argue first, what's known as split an argument and will -- after which the defense counsel will present their presentation to you followed by a final summation by the state Solicitor's Office. So, Mr. Ross, you may begin.

MR. ROSS: May it please the Court. Good morning, ladies and gentlemen. As the judge told you, the Solicitor's Office gets to go first. And what I'm going to do is what's called open on the law. Then defense counsel for each defendant will have an opportunity to talk to you, and then Mr. Meadors will then get back up and talk to you at the final argument.

What I'm going to do is go over the elements of each of the crimes that are charged and talk to you a

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little bit about different things that you can take into account as far as testimony, evidence, those types of things. Mr. Meadors when he gets up will go more into the facts and the proof in the case and the evidence in the case as it's been presented.

As you know, there's three defendants in the case. Two defendants are charged with the same types of crimes. Mr. Joy is charged with accessory after the fact. So I'm going to go over burglary in the first degree first, and those charges both apply to Mr. Oliver and Mr. Gallman. I'm going to go through the indictments as we go through.

Dominic Gallman is charged with burglary first. Stanley Oliver is charged with burglary first. Mr. Kenneth Joy is charged with accessory after the fact to burglary first. So let's go through the burglary first, what the elements of burglary first are.

You've got to enter a dwelling, which will be a house in this case, a house or a dwelling, without consent. It means the homeowner did not give you consent to enter, or that the defendants entered under false pretenses; the owner didn't know what they were really there for, with the intent to commit a crime therein.

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It means when you enter the dwelling, the defendants, Mr. Oliver and Mr. Gallman, know that when they go in the house they're going to commit a crime when they get in there. While affecting entry or while in the dwelling or while in immediate flight therefrom he or another participant in the crime is armed with a deadly weapon, or causes physical injury to a nonparticipant in the crime, uses or threatens use of a dangerous instrument, displays what is or appears to be a weapon. So we've got entry without consent, and that while in the house armed with a deadly weapon, such as a gun, or causes physical injury to a nonparticipant, such as shooting and murdering; all of those qualify for burglary first. These are the elements the State has to prove, and the State has to prove these elements against Mr. Oliver and Mr. Gallman.

Accessory after the fact, let me just touch on it briefly and then we'll come back to it. This will go to Mr. Joy. Completed felony, knowledge that the principals committed the crime. The principals would be Oliver and Gallman, the two people who actually did the burglary. Harboring or assisting the principal with the intention of enabling the principal felon to escape detection or risk of

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punishment.

So basically Mr. Joy knows that Mr. Oliver and Mr. Gallman committed a burglary. When he helps them to get away with it, that's accessory after the fact. It's a simple term.

Let's talk about armed robbery. Again, Mr. Oliver and Mr. Gallman are charged with armed robbery of George Batie and also armed robbery of Kevin Miller. So there's two counts of armed robbery for Mr. Oliver, two counts of armed robbery for Mr. Gallman; and Mr. Joy, two counts of accessory after the fact of armed robbery; again, covering the victims George Batie and Kevin Miller.

The judge is also going to charge you on these elements pretty much the same way that I'm outlining them here. But armed robbery is the taking of property from the presence of another by means of force or intimidation while armed with a deadly weapon or purporting to be armed with a deadly weapon.

So if I have a gun and I take your property, money, watch, wallet, whatever, any kind of property from you, that is an armed robbery. Accessory after the fact, it's the same thing, knowing that the armed robbery as occurred, knowing that Gallman and Oliver

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committed the armed robbery, assisting them to get away with it by whatever means. It could be getting rid of the evidence. It could be getting rid of the weapons, all those things.

Mr. Gallman and Mr. Oliver are each charged with kidnapping, kidnapping of Desiree Felder. Again, Mr. Joy is charged with accessory after the fact of kidnapping; also Desiree Felder. This is an old statute, so it's written a little strange. Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law shall be guilty of kidnapping.

Common sense; you know what kidnapping is. It's taking another person away without their consent. You know what that is. But it doesn't have to be for any period of time. There's not a set amount of time. It could be seconds. A kidnapping can occur as seconds.

If I seize somebody or force them to go somewhere against their will, that's kidnapping. They actually don't have to be taken from one place to another, although that's what we have in this case. Under the law you don't have to do that to have kidnapping in South Carolina, but that's what we

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have. Which is pretty clear. When Ms. Desiree Felder was taken the home and taken out in the woods clearly against her will, that's kidnapping. And again, accessory after the fact, knowing that a kidnapping had occurred, that the principals had committed the crime, helping them to get away with it.

Mr. Oliver is charged with three indictments for murder, one for the murder of Desiree Felder, one for the murder of George Batie, one for the murder of Kevin Miller. The same with Mr. Gallman; three indictments for murder: Desiree Felder, George Batie, Kevin Miller. Mr. Joy is charged with three indictments for accessory after the fact of murder, the same victims: Desiree Felder, George Batie, Kevin Miller.

The same thing; you have certain elements for murder. The simple definition: The unlawful killing of any person with malice aforethought, either express or inferred. That's the definition of murder in South Carolina. The unlawful killing of any person -- that's pretty clear -- with malice aforethought.

Malice is a legal term that's used in South Carolina. In its popular sense the term murder

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conveys the meaning of hatred, ill will or hostility towards another. Malice is a term importing wickedness and excluding just cause or excuse, something that springs from wickedness or depravity from a heart devoid of social duty and fatally bent upon mischief. Malice may be inferred from the willful, deliberate and intentional doing of an unlawful act without just cause or excuse or from the use of a deadly weapon.

You don't have to have malice for any appreciable time. We don't have premeditated murder in South Carolina. You don't have to have premeditated to have murder. You just have to have malice. And that can be right before you pull the trigger, including pulling the trigger that malice is there.

And you can infer malice from what's going on, the commission of a robbery, a kidnapping, a burglary, that infers malice. The use of a deadly weapon because when you shoot somebody, a weapon, a gun is such a lethal weapon you can infer malice.

So it's the unlawful killing of any person with malice aforethought. That malice can exist right when you pull the trigger, either express or inferred. Express malice would be: "I'm going to

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kill you." I'm expressing it. Or it can be inferred from the actions of the defendant.

Again, accessory after the fact of murder, knowing that a murder has occurred, knowing that Mr. Gallman and Mr. Oliver committed the murder, assisting them with the intention of helping them get away with the murder; again, destruction of evidence, destruction of the means of committing the murder.

When two or more combine together to commit a burglary and during the robbery a homicide is committed as a natural and probable consequence, all present in participation of the robbery are as guilty as the one committing the homicide. If a person intentionally kills another during the commission of a felony, malice may be inferred.

So if you've got two people who are committing a robbery but only one of those actually murders, they're both guilty of murder. If you don't know who actually fired the gun, they're both guilty. The hand of one is the hand of all. This applies to Mr. Gallman and Mr. Oliver.

And you can infer malice from the fact, like I said before, committing a burglary, committing a robbery, committing a kidnapping. A principal in a crime, that's the person who actually commits the

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crime, is one who either actually commits the crime or who is present aiding, abetting or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all, just saying it a little bit differently.

If me and my partner go to commit a robbery but my partner actually does everything, I am just as guilty. I was there, I was participating. It doesn't matter that my partner does some things and I don't do those things or I do some things and my partner doesn't. Everything that's done, we are both guilty. We're guilty of all those things.

The judge is going to talk about this. These are things to consider when you're evaluating witnesses who testify here on the witness stand. Credibility. That's your role. We don't determine credibility. The judge doesn't determine credibility. Only you determine credibility.

What was the demeanor of the witness on the stand? Was the witness forthright or hesitant? Was

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the testimony of a witness consistent? Was the testimony of a witness corroborated? Does the witness have reason to be biased or prejudiced? Those are certain things you are free to consider, the same that you would consider when you were talking to somebody in general in everyday life.

If the testimony did change on the stand from what they said before, why did it change? Who were they trying to help or who were they trying to hurt? When were they telling the truth? Were they telling the truth on the stand, or were they telling the truth originally, or were they telling the truth both times? And you can believe part of a witness's testimony, none of a witness's testimony or all of it. That's for you to decide.

Two types of evidence in a case: Direct evidence and circumstantial evidence. People have a preconceived notion about circumstantial evidence, that circumstantial evidence is not as good as direct evidence. Not true. There are two types of evidence which are generally presented during a trial: Direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eye witness. Circumstantial evidence is proof of a

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chain of facts and circumstances indicating the existence of a fact.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case.

In this case circumstantial evidence will be the .40 caliber bullets. There were two shell casings in the Mildred Avenue house. The shell casings were testified to by SLED that they were fired from the same firearm. There was the one shell casing that was found in the closet. There was the one shell casing found in the couch. Both those shell casings, little brass empty container looking thing, fired by the same firearm.

The projectiles themselves in George Batie's head and Kevin Miller's head, the SLED agent testified they were consistent with being fired from the same firearm, but because of the damage couldn't say for sure. Well, circumstantial evidence tells you they were fired from the same firearm. Two shell casings in the house, two projectiles found in the bodies; because the shell casings match, you can say

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that the projectiles match. That's just one example of circumstantial evidence. Direct evidence would be: I saw something happen, and that testimony is given to you from the witness stand.

The judge is going to talk to you about -- he's going to give you a charge on voluntary intoxication, which basically says voluntary intoxication is never an excuse of a defense to a crime. A person who voluntarily renders himself intoxicated is no less responsible for his acts while in such condition.

If a person voluntarily drinks intoxicating liquors or takes drugs and becomes intoxicated and then while in that condition commits an act which would be a crime that would have been committed by a sober person, the fact of drunkenness or intoxication would not relieve the intoxicated person from responsibility.

In other words, if I go and commit a crime and I took drugs or drink alcohol or both, the fact that I took drugs or drank alcohol or both does not relieve me of responsibility of committing that crime. I am still just as guilty.

Also duress is not a defense to murder in South Carolina. If I put a gun to another individual's head, tell this individual to then murder the third

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person, the fact that somebody put a gun to my head and told me to murder the third person is not a defense. Because I am killing somebody else. The fact that somebody is threatening to kill me is not a defense for me of killing another person. No defense at all.

Reasonable doubt. I talked to you a little bit about this in the opening. Reasonable doubt is not beyond a shadow of a doubt. It's not beyond a shadow of a doubt. It's not beyond every I dotted, every T crossed, everything lined up exactly right. That's not beyond a reasonable doubt.

Beyond a reasonable doubt is common sense. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty; and in criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

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If, on the other hand, you think there is a real possibility, not some speculative doubt; you can speculate about anything, about why something is or isn't. But if you're firmly convinced, that's beyond a reasonable doubt. It's common sense. Do you believe the person did it and do you have a good reason for it?

I want to thank you for your attention. That's all the things that I'm going to cover with you. The defense then is going to talk you, and then the State will get back up after that and go over the facts of the case, go over the evidence and apply the law to the evidence. Thank you.

THE COURT: Mr. Strickler.

MR. STRICKLER: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. STRICKLER: Mr. Foreman, ladies and gentlemen of the jury, Ms. LaFave in her opening posed the question of what is truth. And Mr. Delgado in his quoted Seneca, Seneca the Younger, that "every man prefers belief to the exercise of judgment."

And I have another Seneca quote for you at this point. "I do not distinguish by the eye but by the mind which is the proper judge." I do not

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distinguish by the eye but by the mind which is the proper judge. Don't take things without evaluating them. And that's what I'm going to do here for a little longer. That's what I'm going to ask that you all do in a little while.

Ms. LaFave indicated at the end that we're going to ask that you find that Stanley is not guilty; and, indeed, that's what we are going to ask you to do. In discussing why that's the appropriate verdict in this case, I'm going to discuss what you've heard and why you've heard it. I'm also going to need to discuss what you haven't heard and why I submit you haven't heard it. I'll need to talk about what's been proven, what hasn't been proven. I'm going to talk with you about promises broken by the government, promises to you broken. I'll need to talk with you about science. And I'll need to talk with you about the nature of proof and the nature of truth.

That's somewhat of a big job at this point, but I'm going to go ahead and give it a shot. Ms. LaFave, may I have a box, please?

MS. LAFAVE: Yes, sir.

MR. STRICKLER: In doing it, I'm just going to try to run briefly through testimony of significant

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witnesses. Thank you, ma'am. I'm going to talk about what it says and what it doesn't say. But, see, we have Ms. Dutton, the first officer, on the scene. We have Mr. Felder. We have Kenny Parker. What do we know about Kenny Parker? You remember? He's the one who had the phone call or the meeting with Mr. Batie. And then the phone calls to him, you have this answering machine, CD. Okay. It reflects several phone calls from him.

All right. This is evidence. It reflects when those calls were made. 12:10, 1:26 and 2:29. And I submit the call immediately after he had been turned away at the door by Ms. Felder was the 12:10 call. Listen to the calls. Listen to what's said. See if that becomes clear. This is evidence. Okay. So I'm going to put that right here. All right?

What else do we know from him? He's a cocaine user. Now, you know, we all have our demons. So I don't indict him for that. But whether or not he was truthful on the stand with you when he talked about having a business deal, contract, this, that or the other, he's got a phone message in there. I gave you 20, owe you 5, this, that or the other. It's got nothing to do with a contract. It's got something to do with getting cocaine.

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Now, all that does is reflect on his truthfulness here in court. It doesn't cost him anything to say yeah. Listen to the phone calls. Listen to what he said. He was really anxious to get in touch with Mr. Batie. It wasn't about a contract. So that goes to his credibility.

Credibility is nothing but a legal word that means believability. Okay? And you can use your common sense. That's what you all bring here. There's nothing magic about it. You use your life experiences. Every day we evaluate people as to whether or not we believe what they're saying. We all bring that with us. Okay? So that's what you need to employ. And if he's going to lie about that, then he'd lie about what else? Okay.

The first topic. He put in a piece of evidence. Okay. Remember, he was the roommate of Mr. Miller. And it's a fairly important piece of evidence. And I'll tell you what. After I dig through all the stuff that's not evidence -- I'm going to do that -- I'll probably be left with this important piece of evidence because it establishes a time.

You get a withdrawal from the bank at 2:40 in the morning. So we know that Kevin Miller is alive at 2:40. Okay. I guess in theory the other stuff

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could have happened in the house before that, but I think it's unlikely. So Kevin Miller is alive at 2:40. It takes -- I don't know the testimony was -- what? It takes five to ten minutes to get from the ATM to the house. Okay. All right.

Zondria McKie. Remember, she is the lady who came to the house and came to the door, found Mr. Miller's body, looked through the house, called 911. You know, that is what she can testify to. That's a piece of evidence. That testimony is a piece of evidence because it helps establish, as I talked with Dr. Nichols about, a timeframe for when this happened.

It happened sometime after 2:40 in the morning. And when does she come in the house? I'm not sure if she's sure about when she came in the house. But we have the testimony of the first officer on the scene. It happened right about the shift change, right about 5:00 in the evening. All right.

So according Dr. Nichols' testimony, we've established the deaths took place between 2:40 in the morning, 2:50 in the morning and 5:00 in the afternoon. It's narrowed down into that timeframe.

And what else can we tell? Oh, she's a cocaine user, too. She's been over there on a number of

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times. She owed Ms. Felder money. I don't care, but Mr. Batie and Ms. Felder sold cocaine to lots of people I think. So there is lots of traffic through the house. There is lots of people that are aware of what's going on. I'm not smearing anyone's reputation. Let's just take a look at it. Take a look at it. All right.

Then we do get into something that I do need to talk about a while. And that's Pete Currie. And there's a piece of -- he is the fingerprint guy, the City of Columbia Police Department. You know, I have another Seneca quote for you. I just put it down here. I'm sorry. "We most often go astray on a well trodden and much frequented road."

And Pete Currie is going to walk you down a well trodden and much frequented road; that is, fingerprint identification. Now, you heard what Mrs. LaFave said in opening. That's Stanley's friend. Well, in all candor, Ms. LaFave and I didn't completely agree about that. We didn't completely agree about that. I'm going to tell you why.

MR. MEADORS: I'm going to object to any personal opinion. That is not in evidence.

THE COURT: Overruled.

MR. STRICKLER: Very well. I submit to you,

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ladies and gentlemen of the jury, that the evidence shows you that if you believe that these things match up where it says that they match up; all right, if you believe that, this area is not portrayed in this print. None of the other four fingers on that hand are portrayed in that print. None of the five fingers on the other hand are portrayed in that print. I don't even agree I submit to you; and if you look at it, you won't either, that all these areas match up. Okay. If they don't match and each print is unique, then it's not Stanley Oliver's print. Now, if you or Ms. LaFave happen to disagree with me in that regard, well, I spent some time --

MR. MEADORS: Your Honor, I object. He's not allowed to give his personal opinions.

THE COURT: Sir, overruled.

MR. STRICKLER: I spent some time speaking with John Barron about DNA a little later on. Okay? And I guess I'll take him out of sequence a little bit because I'd like to talk about science as opposed to opinion and truth as opposed to fiction.

Now, there's no doubt in my mind, from Mr. Currie's testimony, he firmly believes it's a match. It's clear that the science proved that no two prints are identical. There's no argument from

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me with him in that regard. What took me a number of minutes to drag out of him was the fact that there is no scientific study to say that this many points is sufficient to say those prints are identical, that there is not another print among the -- I don't know how many -- six, nine billion people on the earth now and all the people before us that no other print is it. There is no scientific basis for saying this is enough to declare that to be a match. There's none. None whatsoever. I'm going to compare and contrast that for you in just a little bit with the testimony of Mr. Barron.

Now, this however is something they found and a piece of evidence. Okay. Now, that wasn't all he found. He found other prints that weren't identifiable. That's not the same as saying he didn't find any prints. He didn't find any prints in blood. Well, there are prints in blood. And if I dig through the pictures, I'll find one of them. But didn't see enough ridge details, so he didn't dust it. Or at least that's what he says.

Now, he also found a print of one Rasheed Rucker on the door of Mr. Batie's car. Okay. Mr. Rasheed Rucker. And I talked with Mr. Mead about that a little further down the line. Mr. Mead actually

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tried to talk with Mr. Rucker on a couple of occasions. He didn't want to speak with him. And then subsequent -- I don't know how this arose, but subsequent to some -- on December 10th of 2007, Monday of last week, he actually went and interviewed Mr. Rucker in one of our penal institutions.

Now, I do need to get some pictures out of here. If I could just beg your indulgence one moment. Oh. Receipt. Okay? Evidence. All right. Let's see. Let me just ask you something and of course I can't address you individually. That's not permitted. So this is a hypothetical question or a rhetorical question.

How many times did you see and hear various witnesses say that's another picture of the same thing? Well, that's because they are. You've got pictures of two separate cars, I guess to prove that they're at the scene. If you want to call that evidence, I guess we can.

All right. Assuming that it is of some significance, all right, well, that's stuff. Assuming that's evidence, that's stuff. Okay. That's my term for it. That's not a legal term. That's my term for it. And "stuff" is what is presented to the jury by the prosecution for reasons

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other than prosecuting the case. Stuff, and the reasons usually fall into a couple of categories. One, to really upset you guys. We'll talk about some of that. And, two, to make it seem like they have more evidence than they do.

I'll just start with this. I'm just trying to sort through the stuff in this case. And it's just stuff at this point. Let's see. Let's see. It's a two-fer.

MR. MEADORS: Your Honor, I'm going to object to throwing evidence on the floor.

THE COURT: Overruled.

MR. STRICKLER: I could take a lot of time going through this. It's not the most exciting stuff in the world. But take your pick. Take your pick. I mean, this one shows a shell casing better than this one. Stuff, I mean, to the extent this proves anything.

Oh. They already did something with one of those. It's another picture of the closet. We get into multiple pictures of someone's body, multiple pictures of a safe, multiple pictures of multiple pictures of multiple pictures, ad nauseam. It's all stuff. Okay. This sort of stuff makes it look like there's more evidence in the case. All right.

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There is another class of stuff that serves that purpose and also serves I submit, the only other purpose is to try to upset you. And that's pictures of dead people. Violent death is not a pretty thing. There ain't no question about that. There also should be no question, I want to make it clear, that nothing I say stands for the proposition that anyone deserved to die. That's absolutely not the case. I don't care what kind of business they're involved in; no one deserves to die in this manner.

But let me just give you an example you've got in here. Here. Do you need this? No. Do you need this? No. Do you need this? No. I mean, do you need that? Same thing. Do you need that? Mm-hmm (affirmative), took pictures in there. You either need this or you need the pictures; one or the other, not both. Pictures look nastier. Do you need that? Well, there are pictures in there that show the same thing. I think there's probably another one in there also.

Here's what you've got from the pathologist versus stuff versus evidence. You have two doctors testify. There were autopsies conducted in Newberry on Ms. Felder and then the two autopsies conducted here in Columbia. Each of them demonstrated on the

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stand where their wounds were through their testimony, showed you and testified to the trajectory.

You then got pictures introduced demonstrating the wounds and exactly the positions that they testified to. Then you've got diagrams demonstrating the wounds in exactly the fashion they testified to. What are the pictures for? To offend you or to upset you. That's what they're for. The law would say to inflame your passions and your prejudices. The testimony is right there. And it's not like anyone had any question about the cause of death in this case. So, stuff. I'll move on.

Now, Renata Williams. She testified for a while, a former girlfriend of Stanley. She spoke to the police once, twice, three times. She testified to you that her first two statements to the police were truthful. She, I guess it's the 8th or the 9th that she spoke to them.

First of all, when the police came to search her apartment, did they find anything in her apartment? No. No evidence that's been introduced into evidence. You have to assume it's not hers. You have to assume it's not Mr. Oliver's I submit. You have to assume there is nothing on him anywhere that

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would link him to this crime.

She went down and talked with them, gave in her words a truthful statement at that point in time. Spoke with them again on the 13th, if I remember correctly, gave them then a truthful statement at that point in time. Whereupon the police arrested her and charged her with misprisonment of a felony. Not coming up with information about a crime that had been asked her by the police. And they put her in jail. And they kept her in jail until they spoke with her on the 19th. Whereupon she came up with a statement such as what you've heard her testify to, you heard here.

Those charges still are lodged against her. She is still charged with misprisonment of a felony. Now, you can consider that in evaluating her credibility. Does she have something to gain from testifying here in court? Yeah. A minor thing like her freedom.

What did she say about the questioning? On the 19th specifically, went out for an hour or two. The police are showing her pictures, threatening her regarding a murder charge.

You know, what else do we know about this? We know that there is no audio or videotape of that

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procedure. You heard myself and other attorneys ask that probably ad nauseam. Well, there would not be much to argue about on my part if there were an audiotape or a videotape. How expensive is that procedure? We have the police cruisers around. They have video, audio to record what happens when they pull people over for DUI. Nah, we're just talking about a murder charge here.

What's important is to get people behind closed doors where the only people who can testify about it are the officer and the person. That goes to defendants and witnesses. I mean, I submit to you that Mrs. LaFave handled an accurate picture of what was going on subsequent to this incident in the City of Columbia. The police go scrambling around leaning onto whoever they had to lean on to go ahead and make an arrest in this case.

So, no audio or video. You know, we've got this. We heard about another video that's related to this case. I don't know if they have the evidence in here now. It's sitting over there now I'm sure at the State's table. Video from the ATM machine showing Kevin Miller making a withdrawal. What does that matter? I'm getting ahead of myself a little bit, but I believe it was Mr. Mead who testified you

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could see him from the waist up. What can you see from the waist up? The presence or absence of a watch is what you can see. The presence or absence of a watch.

Every ATM machine in this town takes pictures of people doing business there. And the police won't record, audio record a statement given. What does it matter, the presence or absence of the watch? You all, the testimony you've been given is that Kevin's mother saw him with the watch on Thursday. Let's call this evidence too, this calendar. Okay? It's of some assistance anyway.

So, he had a watch on Thursday. Does it thereby follow that he had a watch on Sunday morning? Is that proven beyond a reasonable doubt? Well, I submit to you clearly not. He's a drug user. He's having to borrow money from his roommate to go ahead and buy drugs. There are pawn shops all over this town. You can drop something off, pawn it, pick it up later and, you know, like that. There is no proof whatsoever. You want to talk about what is proven? There is no proof whatsoever that he had a watch or a wallet for that matter at the time of this incident.

He did have $79 which is what he had I guess after the fee they charge you at the machine that he

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withdrew from the ATM. The only money he had was still on him. So, that goes to an armed robbery charge. What's taken from him? Well, what's proven that's been taken from him? Absolutely nothing.

All right. Mike Allen. We knew a few things from him testimony. Stanley is a drug dealer. Stanley is known as Solo. That means by yourself, not hooked up with several other people.

He told us that he got a spooky feeling when he went over there and got the money from Stanley. He ended up taking it. He also said that Stanley denied killing anyone. He denied -- he was speaking with him on the phone. He denied killing anybody. And then he gets into some statements that he alleges Ken Joy made with him, that Ken had just made everything disappear; everything has disappeared. And that they -- you know, that there were police witnesses, $50,000 taken.

Listen, my name is Doug Strickler. I'm the Public Defender for Richland County. Mrs. LaFave and 29 other attorneys work with me. We represent 10,000 people a year charged with crimes. It costs you $40 to have us represent you. It doesn't go to us. If you're in jail, you don't even pay $40. Okay. You make that much money off this heist and you've got a

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public defender representing you. Please.

I asked Mr. -- I think it was Mr. Allen. We talked about prior record. You're entitled to go into some prior records of people on the stand. And I believe I specifically asked him about some forgery charge and a fraudulent check charge or fraudulent check charges. Okay?

And I got objected to, and His Honor sustained it. And that's fine. I have no interest in the particulars of the charges. I go into forgery and fraudulent checks to try to develop what's involved in those charges in general because certain charges define the person who commits them.

Forgery and fraudulent checks are committed by liars. Forgery is taking someone else's check, filling it out and claiming that they filled it out so you can get the money. Fraudulent checks, taking your own check, filling it out, presenting it, claiming that you have the money when you don't.

Those are both misrepresentations of the truth. You're entitled to think about that and consider that in evaluating the quality of his testimony here at trial. That's all I tried to establish with him.

Also Mr. Mead took a statement from him. And every time I tried to ask him about the statement, he

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claimed he couldn't read the statement. He didn't deny having given the statement, but since he didn't want to agree with me about the contents of the statement, he claimed he couldn't read Mr. Mead's handwriting. That also was not recorded in any fashion.

There's a letter in here that was introduced from him to Ken Joy that I submit needs to be read in its entirety. You all just heard about the last couple of sentences. I submit it contains a threat against Stanley Oliver. "I may have to take care of my brother for a long minute. Take care of him for a of long minute."

Leticia Jones. Her testimony was she was upset and Gallman came in and told her all this stuff. Talked with cops a couple of times back in 2005. No mention, no mention, no mention. Child is taken away from her. Can't get the child back as long as she's got any association with Gallman. A month ago or so she talks with David Ross over there and comes up with what you've been told here, the first time she ever said it to anyone.

These guys, you need to remember another saying by Mr. Seneca the Younger which is: "One hand washes the other. We've all heard that statement, that

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saying. He's the guy who made it up. "One hand washes the other." Someone is going to get something for themselves in exchange for what they have to say to you.

Omekas Moaney. Stanley bought drugs from him. He's a drug dealer. On October 11th, 2005 he turns himself in. They had that drug bust at his place. He wasn't there. When he turns himself in he's questioned by a guy named Stan Smith. You haven't heard from Mr. Smith. He's one of the senior investigators with Richland County. He didn't testify here. The conversation was not recorded.

By that point in time, by November or October 11th, whatever had been developed from Mr. Allen was already developed. They had their game plan. They lined it up. They talked with him. They are able to fill him in. Do I know that they didn't fill him in? Of course not. I wasn't there. Do we know that they didn't? No. I wasn't there. Would we all know whether the police just sat down and said tell us what happened if they bothered to record it, videotape it? Yes. Is that significant? I submit yes, most definitely.

He also said, oh, something else that was most significant. Stanley Oliver did not have a cellphone

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in 2005. Stanley didn't have a cellphone in 2005. Omekas Moaney said that. Now, you also can consider that Mr. Moaney, he's doing 20 years on a federal bit right now. He was subject to a mandatory life sentence. He got down to -- pleaded it down to 20 to life. He got the minimum sentence on that. And can the prosecutors help with the penalty? The federal authorities, they can corroborate it with them, testified to you all, can go back to Federal Court and get down under the 20 years in prison. So does he have something to gain? Yes. Does one hand wash the other? Yes.

Shequitta Evans. She testified as to a cellphone number being Stanley Oliver's. That cellphone, there's a record in there. Okay. We have several cellphone records in there. A couple of them with subscriber information on them. The record she testified about has no subscriber information on it. There is no information in a written record that the number she identified as Stanley's was bought by Stanley. There is none. What do you have to prove that? Her statement.

What we do know is that from the fellow from Sprint Nextel I think it was, that the phone was activated on September 9th I believe. Stanley was

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locked up on the 13th.

Tatanisha Robinson. You have been treated to a parade of some interesting individuals in that regard. Denied everything. You've got a statement in here with a bunch of crossings, marking out on it that's alleging her statement from September 2005, and she denies virtually everything in there. She says she was never given a chance to read it. She says she was never given a copy of it then. She says that she wrote a letter. She was asked about it, denying all of that over a year ago. Okay.

She says she was mad at Stanley then. She was pregnant. Stanley wouldn't quit messing around with Renata. The police got her back there. She says -- what was it -- several officers working on her. She already knew two women, Shequitta and Renata, had been locked up. She didn't want to be the third; as to the statement she gave over a year ago.

Jason Brown. This again is one hand washing the other. I'm skipping a bunch of names. I'll skip down. One hand washing another. Jason came in here and got on the stand. He's doing time or was doing time down in Allendale apparently until a few minutes before, the day before I had an opportunity to speak with him.

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Here's some significant stuff about him. He's the one, remember, that says Stanley Oliver, they were cell mates down at the Alvin S. Glenn Detention Center. And sometime, I believe in December, Stanley, not telling the police he did anything, just decides to go ahead and 'fess up to everything to him. And then later, in January, Stanley offers to go ahead and get him or anyone else who can get out earlier $10,000 a head for hits on three named witnesses. That's because he has all this money that he used to hire private counsel to represent him. Okay.

But he does say some interesting things. Convicted of carjacking which is a most serious offense. You've heard this I think. Okay. Go back and forth, back and forth. That's a prior most serious prior offense. He then pleads in 2006 to attempted armed robbery and armed robbery himself. All right. Zero to twenty and ten to twenty, ten to thirty penalties on that. He gets the minimum sentence on that. He has received no assistance from the State. Okay.

Well, he also was supposed to have been served with life without parole notice. It's required. He's got a prior most serious offense or a

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subsequent, if the State prosecutes you for the subsequent most serious, they must seek life in prison without the possibility of parole. They didn't do it in that case. No cooperation, no assistance. Yeah.

He also -- and it's in there. This is in evidence. He also submitted what's called a post conviction relief application where he specifically alleges, yeah, they served me without life without parole. But something happened to that. Because he's doing a ten-year sentence now. And he's filed post conviction relief to try to get back in court and get that overturned so he can come back into court. And who knows why? Maybe get a little more help. He didn't have any problems with saying he didn't get any assistance.

Of course his statement is not recorded in any fashion. So we don't know whether he sat down with the police and they fed him information about, you know, what they developed during the course of their investigation in the case or whether he came in with these details himself. We don't even know who the officer was who questioned him because he wasn't called to testify. What's proven? What's not proven? What evidence is there and what evidence is

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there not in this case?

He did testify something interesting, that -- and I forget which victim he said it about. One of them was beaten in the head -- I think it was Mr. Batie -- beaten in the head with the butt of a pistol trying to get him to go ahead and get the safe open. Okay? Beaten in the head with the butt of a pistol. I talked with the good doctor about that. There is no evidence of head trauma consistent with being beaten with a pistol on any of the evidence in this case.

And he comes up with this statement about someone -- Stanley said someone else -- he made someone else do the shooting. And that person was standing behind Ms. Felder in the woods when he shot Ms. Felder. Sure. That's why it's to the side of the head from left to right, because the person that shot her was standing behind her. Right. And she was on her knees.

Take a look at the photographs. I mean, she wasn't on her knees either. Clearly. You can look at the position of the body. She wasn't on her knees when she was shot. One of the guys who was shot in the house was shot in the stomach according to Mr. Brown.

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John Barron, I spent a long time talking with him. And I talked with him about what science is. Now, what you have to do to establish a scientific fact, you have a theory, you have to test it, you have to publish it, it has to be replicated, it has to be tested by other people. There has to become a consensus in the scientific community. If it's agreed upon, it's a scientific fact. I went through some detail with him about how that applied as far as DNA testing went.

And you've got the next fellow from SLED, Mr. Bogan, who testified, yeah, one chance in 32 quadrillion. Okay. Well, that's what you can say about a scientific fact after you establish a scientific fact. What you can say about this is, it's my opinion that they are the same. Now, you know, I firmly -- well, I don't firmly expect anything. It would not surprise me if someone tried to portray me as some kind of medieval thinker that didn't accept fingerprints. And I would dispute that tremendously. You know, I believe in science. You heard an example of science and you heard an example of something that's not science.

I've got wrap this up. I still have a lot more. You had -- you had Joe Powell testify to some theory

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about -- he was the guy with the gunshot residue -- how it could consist of someone standing over Mr. Miller as he's on the floor like that. Not only is that in contradiction with what some of the street witnesses said they claimed heard how it happened; but there's a diagram in here, a couple of diagrams in here as to the trajectory of the bullet.

It comes in here to here, like that, which is not consistent with the positioning that Mr. Meadors had and that he reviewed with Mr. Powell. Just as Mr. Meadors' theory in his questioning of Dr. Nichols, well, that shot through the femur, he'd been on his knees when he was executed. Well, you know, femur, the biggest bone in your body. Dr. Nichols didn't have much hesitation in saying, no, you couldn't put any weight on that leg at all. I guess he'd been shot through the other leg with the bullet lodged in that leg, the femur shattered here. You could be balancing on the other leg to do the kind of shot that Mr. Meadors said.

You know what? Mr. Meadors lying on the floor is not evidence. Mr. Meadors' theories unsupported by testimony is not evidence.

Here's what we don't know. We don't know what happened in that house as far as how people were

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killed. We know they were killed. All right. That's one of the things they've established in the case. They were killed. It happened between two times. Three people were killed. We know the cause of death. There's no question about that. Okay?

Do we know what was taken from the safe? No. Do we know anything that was taken from the safe? I asked some people. No. Do we know drugs were taken from the safe? No. Do we know money was taken from the safe? No. We know money wasn't taken from the truck.

We know that -- let's see. The State came up with some theories in their opening statement as to Stanley Oliver, Gallman and Mr. Joy knew about the storage facility, which we have a bunch of pictures here, or the truck was, the $50,000, 49 and some change recovered from. Has there been any testimony that any of those guys knew about that storage facility? No. Okay? What they say is not evidence. They don't know and you don't know. There's nothing about proof involved in that.

Who haven't we heard from? You haven't heard from Stan Smith who was involved in the investigation on the Sheriff's side. You may have heard mention of the name of Investigator Burns. Okay. You never saw

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her. She was the chief investigator at the beginning of the case. When I talked with Investigator Mead, he mentioned that she started out as the chief investigator. You never heard from her. You never heard from this gentleman over here. This is Investigator Holdorf who is the chief investigator for the Sheriff's Department in this case. You never heard from him. Okay?

You did hear from Investigator Mead who was the chief investigator after Gertrude Burns got off the case for whatever reason. Who I had to call, who I had to call. The defense had to call him. The chief investigator on a triple homicide.

You get Mitch Wilkerson. Prior to that time agreed he interviewed Stanley. No recording made of it. He also claimed that this fellow, Gedson, per later he was Stanley's uncle, that during the conversation he claimed he had already interviewed Gedson. There is in here introduced by the defense a BOLO dated October something. Well, after he talked with Stanley that they were looking for him to talk with him about the incident. That means I submit that he lied to Stanley. That's perfectly all right. The Supreme Court of the United States says you can lie to defendants when you question them. All right.

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I don't think there's any doubt that's what the law is.

Okay. Mitch Wilkerson said that he was proud of being honest and impartial. Because what it comes down to as far as anything he alleges Stanley said rests on him being impartial and honest. Because we don't have any tapes. We don't have any other evidence. We don't have any kind of proof other than what he says.

We don't have any proof that all he meant was that they just recorded his reaction when he said in response to a couple of things Stanley just leaned back or Stanley just smiled. You know, that's some innuendo on his part, though he said he's just recording it.

There was a BOLO out that contradicts. There is also testimony from Mr. Mead that contradicts Mr. Wilkerson as to who was present at the time he talked to Stanley Oliver. Mr. Wilkerson said it was just him, just Solo and me. Paul Mead says, me, Gertrude Burns and Mitch Wilkerson. So, honest and impartial. There you have it.

I'm going to close up. You're here. Stanley is presumed innocent. If you can't abide by that presumption, you can raise your hand and get on out

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of here, because that's what the law says.

The state of South Carolina, the government has the burden of proving that he's guilty beyond a reasonable doubt. That's the highest standard known to the law of this country. All right. This is not some fender bender car wreck. Three people died that didn't deserve it. Three people are on trial. I'm representing one of them. He does not deserve to be convicted absent proof beyond a reasonable doubt. That's the highest standard known to law.

So what do you know? What do you know about what happened that night? Nothing. Who are the witnesses you've been presented with? Which of them have reason to lie about what they had to say to you or what they had to say back then? All of them.

Did the police make any effort to go ahead and memorialize what went on during this investigation? No. It's just, trust us, we're from the government and we're here to help you. When virtually they practically give tape recorders away in cereal boxes nowadays. Okay?

There's no evidence as to an armed robbery against Kevin Miller. There is the parade of people whose testimony has changed and whose testimony disagrees with each other and who have something to

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gain from their testimony who have come up to testify about what allegedly happened, none of whom were there.

Now, I'm going to ask you all at this time not to distinguish by the eye but to distinguish by the mind which is the proper judgment in a case like this. Use your mind. I'm going to ask that you not go astray. And now I'm almost through.

What their theory is, there's no scientific basis. I'm going to ask that you not credit testimony of those who have testified when one hand washes the other. And I'm going to ask that you do your duty and find Stanley not guilty, as Mrs. LaFave said you would at the beginning of this case, because it's not because things are difficult that we do not dare; it's because we do not dare that things are difficult. It's not because things are difficult that we do not dare; it's because we do not dare that things are difficult. Seneca said that, too.

And doing your duty requires that you dare to evaluate the evidence or the lack of evidence, that you dare to do what you believe, that you act on the law without passion and that you apply the law in order to determine whether Mr. Oliver over there is guilty of these crimes beyond a reasonable doubt.

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You know, what you've sworn to do is well and truly try and true deliverance make between the State of South Carolina and the defendant whom you shall have in your charge once it's all over, okay, and a true verdict render. You are not here because you have any friends to reward or enemies to punish. You're not here because -- you're certainly not here because you're making money for it. You're not here because you're here for the State of South Carolina. You are here. You took an oath. You know, it's kind of like registering to vote or getting a driver's license or I.D. card sometimes. That's what it flows from. This. Okay?

You have an obligation to hold the government to proving its case. You were sworn to do that. And I submit, and I use a couple of terms in regards to this. Because I submit to you that what this is, with due respect to the courtroom and everyone involved, is a sham, a farce and a mockery.

And you need to do your duty. The way you do your duty in this case is to return verdicts that speak the truth. And as to Stanley Oliver, those verdicts will be not guilty as to each and every one of the charges. I ask that you do so. Thank you.

THE COURT: Mr. Milling.

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MR. MILLING: Your Honor, may it please the Court. Good afternoon, ladies and gentlemen. Innocence. I talked to you all about that two weeks ago today when we first came here and I had the first opportunity to speak with you.

You've heard the testimony of many witnesses. You've seen a lot of parcels placed into evidence, some of which is probative evidence of what might have happened here, some of which is not, as Mr. Strickler said.

It is a great tragedy for George Batie, Kevin Miller and Desiree Felder who are no longer here, but it's your jobs as jurors to make sure that another tragedy doesn't occur. My client's fate is in your hands.

My client is seated right over here, Dominic Gallman. And I want to reintroduce him because you didn't hear a whole lot about him from the witness stand. There were things which were said from the witness stand. You've heard things which were not said. Evidence which was introduced, witnesses which were called; evidence which was not introduced and witnesses who were not called.

Ladies and gentlemen, it is your job as jurors to evaluate everything here to determine whether the

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government has met its burden of proof in establishing my client, Dominic Gallman, was involved in this in any way whatsoever.

Dominic Gallman came into this courtroom an innocent man. He remains that way until and unless the state of South Carolina through this witness stand is able to prove differently. Not just that he might have done it, not that he could have done it; but the State's burden is to prove my client guilty beyond a reasonable doubt. Beyond a reasonable doubt.

And I submit to you that that's that doubt which would cause a reasonable person to hesitate to act. To hesitate. When you all are polling each other back in the jury room, if you hesitate in making a decision on my client, I submit to you, ladies and gentlemen, that is reasonable doubt.

While we're here in the holiday season, there is much talk about belief and faith. Belief and faith are not sufficient to convict someone. It's got to be proved by evidence, proof beyond a reasonable doubt.

Now, ladies and gentlemen, my client is charged here before you on seven indictments. You have heard Mr. Ross talk about what those charges are.

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Burglary. Ladies and gentlemen, as Mr. Ross said, burglary is the unlawful entry into the dwelling of another with the intent to commit a crime therein. Murder is the unlawful and intentional killing of a person with malice aforethought. Armed robbery is the taking of personal possessions from the person of another through the use of a deadly weapon. And kidnapping, while sometimes hard to define, I think it's something that everyone knows; moving or restricting someone against their will unless you've got the legal authority to do so.

The first thing that you as jurors have to determine is whether or not any of these crimes have been committed at all by anyone. The State would submit to you that there has been three murders because Mr. Batie, Mr. Miller and Ms. Felder are no longer here. You have seen evidence, you have seen photographs, you have heard testimony that these three individuals are no longer with us.

The State also would submit that Mr. Batie and Mr. Miller were robbed through the use of a deadly weapon. Now, Mr. Strickler touched on this; but I ask you, ladies and gentlemen, what evidence has been presented that an armed robbery occurred? The State is going to stand there and say the house was

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ransacked. There are statements about people who have seen drugs and guns and money. Ladies and gentlemen, what evidence is there that Mr. Batie actually had those items before September the 4th of 2005?

There has been no testimony from this witness stand as to what items were in Mr. Batie's house on Mildred Avenue prior to September 4th of 2005. If nothing was taken, if they haven't met their burden of proof, there can be no armed robbery.

Likewise, ladies and gentlemen, when it comes to Mr. Miller; as Mr. Strickler pointed out, the State is relying upon apparently an allegation that Mr. Miller's watch and wallet were taken. His mother testified she had seen the watch the Thursday before but acknowledged that she didn't know what had happened between Thursday and that early Sunday morning.

We do know from the witness stand from the evidence introduced that there was an ATM transaction at 2:40 in the morning on September the 4th, that there was a video. The video showed Mr. Miller from his waist up. As Mr. Strickler pointed out, as he would have been using his card withdrawing the money, his hands would have been shown.

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Ladies and gentlemen, we are left to conclude, if the State didn't introduce it, it would not have helped them. Don't you think that if it had shown a watch that they would have brought it to your attention? I submit that it wasn't there.

What did Mr. Miller have on his person when law enforcement saw him? $79 and some change. I submit to you that that's the same $79 and some change that he had just withdrawn from the ATM machine using Mr. Cochran's card.

Mr. Cochran did testify that when he went to the Mildred Avenue address he took Mr. Miller's keys and he took the receipt. He didn't say anything about a wallet, whether or not he saw Kevin with a wallet that night or a watch.

But I submit to you, ladies and gentlemen, when Officer Mead was questioned, he could have told us defensively, he could have shown us defensively whether there was or was not a watch. And by the State not showing that, I submit to you, ladies and gentlemen, that it wasn't there.

With the burglary, the unlawful entry into the dwelling of another; you heard testimony that there was no forced entry. You have heard testimony from witnesses that a knock was made and people were

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allowed to come into the residence. It's up to you to decide whether or not first off a burglary occurred.

And finally, ladies and gentlemen, you've got to determine whether or not you believe there was a kidnapping. While we've heard testimony from the witness stand about Ms. Felder being found in the woods, shot in the head, we don't know anything about when she arrived at Mildred Avenue, when she left, what she observed at Mildred. There is no testimony on that.

The only testimony that I recall came from Jason Brown who said that she was involved in it, that she left the house before the shootings. She didn't have her shoes on when she was found in the woods. We don't know what happened. I asked the officer specifically whether or not she had any scratches or scrapes or anything like that on her body consistent with a struggle. No. There was no evidence of scratches even on her feet. There was nothing underneath her fingernails to implicate anyone else in this. Ladies and gentlemen, it's up to you to decide whether or not a kidnapping even occurred, whether or not the government has met their burden of proof.

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The first incident location we get to, ladies and gentlemen, is Mildred Avenue. That was investigated by the Columbia Police Department. That is where the bodies of Mr. Batie and Mr. Miller were found.

I told you when we first spoke back in opening statements that CSI, crime scene investigation, is something that really does happen. Mr. Ross told you it doesn't look like TV. Several of the State's witness told you it does. They told you that they've got the technology to perform a lot of these tests.

You heard testimony about a fingerprint. You didn't hear testimony about Dominic Gallman's fingerprint though. No fingerprint of Mr. Gallman was found at the scene.

You heard testimony of witnesses that they have got the capability to do DNA sampling. Don't you think if they had been able to match some type of DNA up to my client, Dominic Gallman, it would have been introduced? No DNA.

Fabric samples, shoe casts, all of that technology is available. SLED, Columbia Police Department, the Richland County Sheriff's Department, they talked about it. They said what they can do. How many witnesses did we have talk about forensics

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and bullets and things like that?

But What evidence was removed from the Mildred Avenue address; what physical evidence exists to implicate my client, Dominic Gallman, was involved in this event in any way whatsoever? None.

Now, looking at what happened at Mildred Avenue when the police got there, I submit to you that's why there was nothing, that there are no tests that they could testify to. They don't know who secured the scene. There were a lot of people there outside. They even missed a shell casing on the first way through.

They didn't find anything. Despite all of that, despite going through a second time, despite all of the dusting for prints, taking items back to the Columbia Police Department lab for further analysis, despite all these things, they did not find a single piece of evidence linking my client to the scene. No prints, no DNA, no hair, nothing.

So we move on to September the 7th, the dirt road of Donald and Nina Lee where Ms. Felder's body was found. We talked to the crime scene investigator there who confirmed they've got the technology to perform all these tests. But despite that, no prints, no DNA there.

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They also picked up a couple of items there, a purse that belongs to we don't know who that's not related to Ms. Felder. Some fabric. We don't know who it was. They assume it was not related to the case. They picked up an item which they referred to as a feathery material which turned out to be a seed spore. The officer indicated that he did not know, did not know how Ms. Felder's body would have gotten into the woods or out of the woods, didn't see any footprints that they tried to match up, nothing.

The Sheriff's Department picked up things that weren't related to the case, but they picked them up nonetheless. The City Police back at Mildred missed it the first time through and even when they went back a second time didn't find anything linking my client to the scene. So we've got no evidence, physical evidence at either Mildred Avenue or Donald and Nina Lee which indicates my client had ever been in those locations.

Oh, wait a second. Maybe they found something in response to a search warrant. Maybe they gathered something that they could identify as having been at the scene and show that it's related to my client. Guns, money, drugs is what they claim would have been there and been taken from him.

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I submit to you, ladies and gentlemen, that if law enforcement did execute a search warrant at my client's residence, if they had found anything, don't you think they would have told you about it? If they had found any of the cocaine which was allegedly taken, don't you think we would have heard about it? Do we have any money, any gun in my client's possession? Don't you think we would have heard about it?

We know that they've got the technology to do the crime scene investigations, like one witness even said, like on TV. If they had found fabric samples, that they were consistent with either Mildred Avenue or Nina Lee, if they had found those in my client's residence, don't you think you would have heard about it? If they had found any other items of evidentiary value at my client's residence, don't you think we would have heard about it?

They are here charging my client with three murders, two armed robberies, a burglary and a kidnapping. They've got the burden of proof. Don't you think if they had any physical evidence linking my client up to the scene, to either scene, it would have been testified to from this witness stand? We haven't heard it because it doesn't exist.

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Why are we here as it relates to Dominic Gallman? We don't have any physical evidence. The State would say because we have statements. We've got statements from people who claim that my client allegedly said something to them. Statements.

I submit to you, ladies and gentlemen, that the reason my client is here, something that Ms. LaFave referred to in her opening statement: It's the tunnel vision. It's the blinders that law enforcement put on in this case. They found a print inside the residence which they say belongs to Oliver. Never mind that they also found one of Mr. Rucker whom they waited to interview or even attempt to interview until a month after this, after everybody had already been arrested.

My client is here because he knew Stanley Oliver. That's why he is here. Ladies and gentlemen, Mr. Miller and Mr. Batie's bodies were found on September the 4th; Ms. Felder's on the 7th. And you heard Mr. Joy testify on September the 9th that law enforcement was already asking him about Dominic Joy -- Dominic Gallman. Why? It's two days after Ms. Felder's body was found, five days after the other two bodies were found.

What do we have over here linking my client to

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the incident locations? Nothing. Law enforcement had put their blinders on. They thought they had something here because they found one print there at the scene.

You've heard law enforcement testify that they could verify Mr. Batie was there, Mr. Miller was there, Ms. Felder was there. Mr. Oliver had been there at some point in time. Mr. Rucker had been there. But it wasn't until October that Officer Mead tried to do anything with regards to Rucker.

I asked the Columbia Police Department specifically, when we're talking about fingerprints, if you've got a print outside, if you've got a print outside, how long is it going to last? Is it going to last longer than something that's inside, something that's preserved, or is it going to last a shorter period of time? He said that the weather and the elements is going to cause it to deteriorate more quickly than something inside. So Mr. Rucker had to have been there within a short period of time in relation to the murders.

There has also been testimony that Mr. Rucker's phone called Mr. Batie's residence earlier on the night of the murders and that Mr. Batie returned the call. A phone call; we've got a print, and they wait

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a month to talk to him. He says I don't have time for that, I don't want to talk to you. So they move on. They already had their blinders on and felt like they had who had been involved.

As early as the 9th they were already trying to finger my client just because he knew Stanley Oliver. And I submit to you, ladies and gentlemen, there hasn't been a whole lot else testified to beyond that.

Now, we have heard statements from other people, other witnesses not law enforcement. And I'm not going to do through each and every law enforcement's testimony. Because the truth is law enforcement doesn't link my client to the scene. There is not a single police officer from the City of Columbia or Sheriff's deputy from Richland County, forensic officer, SLED agent; there was not a single law enforcement officer who implicated my client in this crime. Nobody.

The State is relying solely upon other individuals, many of whom have prior records, many of whom have incentive to fabricate the story, have incentive to change their story, I believe all of whom have changed it in some regard.

Renata Williams was I believe the first of one

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of these types of witnesses to come forward. She indicated that my client, Dominic Gallman, and Stanley Oliver knew each other. So what? Knowing somebody is not enough.

She indicated that she had seen a large amount of drugs and money, I think it was the Sunday night after the murders. She didn't say she saw my client, not at all. Did not see Dominic Gallman that whole evening.

Now, ladies and gentlemen, if somebody had committed this crime and gotten the kind of money that the State is talking about, don't you think that they wouldn't let that out of their sight? She didn't see Dominic. There were two people she saw that night: Oliver and Ulicen Allen. The only thing she said about Dominic was that she knew who he was and he is an acquaintance of Mr. Oliver's.

We also have heard from Mr. Allen. Mr. Allen testified that he went over to Renata's that night, saw drugs, guns and money. He acknowledged he was at Renata's. He didn't say anything about Dominic being over there, about seeing Dominic. In fact, he says that he only had met Dominic six weeks before and that he had only met Mr. Joy two to two and a half months before. So eight to ten weeks.

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Mr. Allen, if he is to be believed, says that Mr. Joy came over, talks about getting rid of the weapon, getting rid of the clothes, getting rid of the vehicle. I think Mr. Delgado's reference in opening to, I believe he referred to Mr. Joy as David Copperfield if you believe the State, to be able to get rid of all of these things without a trace.

Somebody who Mike Allen had met eight to ten weeks earlier is going to talk about something like this with him? It just doesn't add up, ladies and gentlemen.

Mike turns his brother in, has a conversation with law enforcement, doesn't say a word about Dominic Gallman. After that conversation though he goes out and tries to play detective himself. Claims that he had been to my client's residence two times before. He said that he had been to the old apartment and the new apartment. But, ladies and gentlemen, if you go back and look, six weeks before puts him as having met Dominic at the end of July 2005. Leticia Jones testified that they had already moved out of the old residence and were already in the new one.

Somebody had to put that in his head, ladies and gentlemen. Somebody had to put my client's name in

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his mind. I submit to you it's the same people who were asking Mr. Joy about my client. It's law enforcement. He says, hmm, let me go out and see what can I see, see what I can find out. And Mike Allen says, if he is to be believed, that my client, somebody who has known him for six weeks, allegedly talked to him about this case. Does that make sense? I submit to you that it doesn't.

Ladies and gentlemen, part of your job is to look at the credibility of the witnesses. Mr. Ross talked about that; Mr. Strickler talked about that, and I submit to judge is going to talk to you about that. You can look at the witness's demeanor. You can look at their reaction. You can look at their prior record in determining what, if anything, you want to believe that they might say.

Ladies and gentlemen, interestingly enough, Mike Allen acknowledged that he's got prior armed robbery convictions. Interestingly enough, he says, I've got no problem with armed robbery. Interestingly enough, he was the only one to be in close contact with the drugs the night after it occurred. Not my client.

Ladies and gentlemen, Mike Allen came here before you, put his hand on the Bible and swore to tell the truth, later told you that he's a Muslim and

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that's his belief. How then can he swear on a Bible, a book that he does not believe in? It's not his belief. It's nothing against Islam, this is not the Koran. He wasn't asked to do that.

Someone who goes out and tries to investigate this on behalf of law enforcement. He also testified, ladies and gentlemen, that he took some of the money. Mr. Oliver gave him some money and he told the police that. If the State believes that money was stolen and Mr. Allen is to be believed, why wasn't he charged with receiving stolen goods? Because he was singing a song they liked. He was telling them what they wanted to hear, so the State looked out for him.

Renata Williams didn't. Not when she gave the first statement, not when she gave the second statement. It was only after they put her in jail, arrested her for misprisonment of a felony. She testified they threatened her, they coerced her and eventually put her in jail to get her to say what they wanted her to.

Omekas Moaney some of the witnesses knew as Blue, he's somebody who gave multiple statements in this case, too. He acknowledged in his first statement to the police he did not say anything

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implicating Dominic Gallman in this case. He said he knew who he was. That's about it.

He talks about Mr. Oliver and Mr. Joy going over to his house to get some drugs. He doesn't say Dominic. It's not until he comes here and testifies that for the first time he mentioned my client's name as having been over to his house. He tried to work things out. See, ladies and gentlemen, I didn't want to say everything in that first statement because it might hurt me. I didn't want to say anything that would get me in trouble.

How does when giving a statement about Dominic Gallman in his first statement get Omekas Moaney in trouble? It wouldn't. Ladies and gentlemen, his statements have changed over time. I submit to you the reason lies in his charges. Mr. Moaney acknowledged that he's in federal custody now. He acknowledged that when he was arrested he was facing life because of his prior convictions. He acknowledged also that after he started cooperating they dropped one of those enhancements, and so he was only looking at a 20-year sentence.

He also acknowledged that the government, the United States government through the U.S. Attorney's Office, did not move to have his sentence cut because

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of cooperation. He said it was only because his cooperation had not yet come to fruition.

The United States Attorney's Office acknowledged that as a part, but the United States Attorney's Office in a responsive pleading, Defendant Gallman Exhibit 1, says, and I quote: "Assuming Moaney's assistance was substantial at this time, the United States believes that some statements made by Moaney are not credible or truthful."

They're not credible or truthful. So, in other words, the U.S. Attorney's Office doesn't believe him; and yet, the State in this case decides to bring him here to testify to you folks and let him change his stories and let you all just sort of sort it out.

Ladies and gentlemen, you're entitled to look at this, to determine whether or not these witnesses are believable, to determine whether or not they've got anything to say in the case. Mr. Moaney, if you believe him, would have you believe that he took all these drugs, was selling it, that he would just send them the money from time to time and that he's told this to the State and that he's told it to the FBI, although he acknowledged that he didn't mention my client's name to the FBI.

But you know what, ladies and gentlemen? Omekas

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Moaney wasn't charged either. He acknowledged distribution of drugs. No charges. No charges were filed. He was singing the same song that the government liked. He didn't implicate my client. It's only after he didn't get a second break from the U.S. Attorney's Office that he starts changing his story again. He starts singing their song in order to avoid prosecution.

Tatanisha Robinson. You heard Ms. Robinson say that she was told by the police somebody, another woman in this case, had been arrested; two women. You heard her say that they threatened her. You heard her say that she was three and a half months pregnant and just wanted to get out of there. She said those weren't her words, that those were the words put in her mouth. She wasn't read the statement. She wasn't given a copy. She wanted to get out of there.

Ladies and gentlemen, I told you that this is a lot like a TV show. This is the script. The testimony that we have is that this was written by officer Wilkerson. Ms. Robinson said they're not her words; they put the words in her mouth after they threatened her, after they told her about two other women having been arrested.

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She couldn't live with herself though, and she signed an affidavit, went out, prepared another document, notarized, confirming that these were not her words, confirming that she didn't see my client that whole weekend. Which is exactly what she told you up here. She did not see my client. He did not talk to her, despite what law enforcement wrote in here.

My client wasn't bragging to her about anything. My client didn't say, we can get out of this if you all keep your mouth shut. Ladies and gentlemen, if this script is to be believed and the other witnesses are to be believed, why would he have said that to one person and then told Mike Allen whom he met six weeks earlier that he had done it? It doesn't make sense.

Tatanisha Robinson told you that she was mad at Stanley Oliver because he wouldn't leave Renata. She told you she was mad at Dominic Gallman and Ken Joy because she didn't think that they liked her and she thought they were trying to keep Stanley away from her and that's why she lied.

She told you from the witness stand that she didn't see Dominic, didn't talk to Dominic and has nothing to add to this case about my client, Dominic

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Gallman. And she wasn't charged, ladies and gentlemen, because you heard Mr. Strickler ask her, she got an immunity agreement.

Jason Brown, the jailhouse snitch, who in one breath says, I wasn't served with a life notice and on the other hand says, yes, I was. Someone who we have confirmed in the evidence has filed a post conviction relief action trying to get out of his sentence. But you also heard him say that he doesn't know Dominic Gallman. Mr. Oliver allegedly made a statement in the jail. Mr. Brown confirmed that he does not know my client, Dominic Gallman.

Now, what Mr. Brown alleges is that somebody by the name of McQuay put Stanley on the house. Where is this McQuay guy? That he is the one who put him on the house, that the female was involved. The female was on her knees when she was shot, shot in the back of the head. He also says that Mr. Miller was shot in the stomach.

Ladies and gentlemen of the jury, I've been looking at the evidence in the case, listening very intently to the witness stand, like I know you have. Is there any anybody who's said; Mr. Miller, any forensic pathologist, anybody who is a doctor who did the report, any police officer who said Kevin Miller

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was shot in the stomach? No.

No evidence to show that Ms. Felder was shot in the back of the head. If the trajectory was through the side of the head at an upward angle, how then would she have been on her knees?

He also said she was involved in the case and left before the shootings inside the house. Again, ladies and gentlemen, a jailhouse snitch trying to do anything he can to catch a break. And he doesn't have it right.

Ladies and gentlemen, we've got so many different versions of what happened in the house, we don't know what happened. But I submit to you we know that my client, Dominic Gallman, wasn't involved.

Now, Leticia Jones came in and testified before you as well. She acknowledged in her first statement Dominic didn't have anything to do with it, she had been seeing him all weekend. The second statement; likewise, she says, I've got no knowledge about this. She speaks with Lee Connelly. Ms. Connelly said that it was not just one conversation; several conversations over the phone. In all those conversations Ms. Jones said, I don't know anything about it. It doesn't make any sense.

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In fact, during this same time period Ms. Jones acknowledged: I wrote some letters to Dominic. In those letters she professes his innocence. She refers to the government's allegations as lies. She acknowledged that she in one letter said she wanted to sue the paper for slander for publishing these allegations against Dominic. And she said through those letters she was preparing for a life together with Dominic.

Two years she took this position. Something had to change. I submit to you what changed was Rara, her son, her nine-year-old son who her parents took away. Her parents didn't like Dominic, didn't like the fact that he was charged in this case. They took him away and said, the only way we'll let you have your son back is if you sever ties with Dominic and demonstrate a willingness to move away from him. That's why she changed her story.

Law enforcement sent her a subpoena, went out and talked to her at her job. She saw that as a way to get her son back. That's why she was here and changing her story. But even then, even when changing her story, she tried to minimize his involvement.

She said he said he didn't know about Stanley

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Oliver. She said, I was forced to do it. Ladies and gentlemen, I submit to you that sounds like somebody who knew that she was doing something she had to do to get her son back. She had to change her story but at the same time was trying to minimize his involvement. She said if I change it a little bit, it won't make it that much worse. She changed it nonetheless. Ladies and gentlemen, she was not truthful with you whatsoever. She was truthful when she gave all these other statements. It's like Omekas Moaney. Whether he was truthful or not, you can understand that.

MR. MEADORS: Your Honor, I'm going to object. May we approach?

THE COURT: Yes, sir.

(Whereupon, a bench conference is had)

MR. MILLING: Ladies and gentlemen, in looking at the testimony, there's something else you can do to determine what might be believable and what won't be believable. We've got multiple different stories about how the entry was gained, whether Mr. McQuay put them on the house; I guess that's the set up, whether Mr. McQuay put them on the house, whether or not it was somebody, Mr. Joy put them on the house or whether or not somebody else.

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We've got different stories from different people. Entry into the house. We've got somebody who says they knocked on the door; somebody who says they waited on Mr. Miller to get there and then rushed in, somebody who says Ms. Felder let them in. Inconsistencies.

With regard to Mr. Batie, we've got testimony that Mr. Batie was pistol whipped. There's no evidence to support that. We've got evidence, witnesses claiming that Mr. Miller was shot in the stomach. Again, there's no evidence of that.

We've got evidence that Ms. Felder was shot while she was kneeling in the back of the head. There is no evidence of that.

The drugs and the money, nobody puts my client as being around the drugs and the money the night after it happened. Nobody.

Disposal of the clothes, the firearm and the vehicle. Somebody said Mr. Joy did it. Mr. Brown said that it was given to Renata. Leticia said she saw them being burned at her house on Monday. Leticia said that Dominic and his father were burning the clothes Monday. Ladies and gentlemen, I submit to you, if the State believed her, why isn't Dominic's father charged here rather than Mr. Joy?

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Because the State doesn't even believe her.

What makes common sense, ladies and gentlemen? The State is going to stand up here and show you I submit a lot of phone records to try and show that my client knew Oliver, that my client knew Mr. Joy. I want you to look at a different part of those phone records, ladies and gentlemen. We've never said that my client didn't know Mr. Oliver. But look at the phone calls on the early morning of September the 4th. I submit to you there were six phone calls made between 2 and 4, the time that the State of South Carolina believes that the murders occurred.

If my client is committing a triple homicide, robbing two people, breaking into a house and kidnapping somebody else, do you think he's going to be making phone calls and receiving six phone calls in a two-hour period? It doesn't make sense.

Conversations. Somebody who he had only known for six weeks beforehand, Mike Allen; do you think, does it make sense my client would have been talking to him about something this serious? Does it make sense that my client would have been upset and talking with Leticia and bragging and talking to Tatanisha Robinson? It doesn't make sense that somebody would have said if we just keep our mouths

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shut nobody can be convicted, and then everybody else allegedly is going out, making all these statements. Ladies and gentlemen, I submit that it doesn't make sense.

That Leticia Jones would stand beside Dominic Gallman for two years and then change her story; the only thing that makes sense there is that she was trying to get her son back.

You've got my client's fate in your hands. The State has the burden of proving him guilty beyond a reasonable doubt. I submit to you, ladies and gentlemen, that the burden and the standard is so high, as our legal judicial process is premised upon the concept that it's better to let a guilty man go free than an innocent man go to jail. And I submit to you that's what Dominic Gallman is: An innocent man.

This is the last time you're going to hear from me, the last time that I'll be able to respond to the evidence. Mr. Meadors will have an opportunity to try and respond to what I've said. I ask you to please think about my response, think about the evidence, determine whether or not the State did anything to corroborate the evidence. I submit they didn't because they have so many different

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inconsistent stories; whether or not the State met their burden of proving my client guilty, which I submit that they didn't.

My client still sits here an innocent man. Ladies and gentlemen, I ask that you return a verdict which speaks the truth, which looks at the evidence in this case and the lack thereof, and that you return a verdict of not guilty on all counts. Thank you.

THE COURT: All right, ladies and gentlemen of the jury. Let's take our lunch break at this time. We've ordered -- as you know, we've ordered lunch for you. Let's plan to reassemble at 2:15. That will give you 45 minutes to eat your lunch, maybe take a short walk. And we'll be prepared to keep moving at 2:15. So, don't discuss the case among yourselves while you're in the jury room and have a pleasant lunch.

(Jury out at 1:25 p.m.)

THE COURT: We'll stand at ease until 2:15.

(Whereupon, a lunch break is taken)

THE COURT: Mr. Meadors, you're stealing five minutes from Mr. Ross. Is that --

MR. MEADORS: I really don't think I'll need that, Judge.

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THE COURT: Well, whatever. I'll tell you I'm reluctant to give this case to the jury this afternoon and may charge in the morning as opposed to turning it over to them this afternoon. All right. Ready for the jury? The State ready for the jury?

MR. MEADORS: Yes, sir.

THE COURT: Defense ready?

MR. DELGADO: Yes, sir.

MR. STRICKLER: Thank you, Your Honor.

MR. MILLING: Yes, Your Honor.

THE COURT: Bring the jury, please.

(Jury in at 2:22 p.m.)

THE BAILIFF: All the jury is present, Your Honor.

THE COURT: All right. Thank you very much. All right, Mr. Delgado. You may proceed.

MR. DELGADO: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. DELGADO: Solicitors. Ladies and gentlemen, let me say something to you that everyone in this courtroom wants to extend to you, everyone. That is our thanks for your service. The nature of this case, the length of these proceedings, your commitment and your sacrifice we can only begin to

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guess; acknowledge it physically, emotionally psychologically at this time of our trial. Thank you. Thank you. My friends I am certain will say the same thing. But I wish to say that to you. Thank you first.

The other thing wish I wish to say to you is something that you've seen that you haven't seen. Downstairs -- and I hadn't seen it. And I have been seeing it for years. Downstairs on the very first floor when you come in on the elevator there's a plaque. It has a quotation. I've seen it and it never registered until the other day waiting interminably for the elevators to bring us to the third floor.

It said: "Justice will guide our course." And that is what we are here to do. Justice for the State of South Carolina and justice for Ken Joy. Justice will guide your course.

And in doing that, let me begin where I began, it seems like years ago, Wednesday, the 5th, when I said to you that "every man prefers belief than the exercise of judgment." It's so easy to believe rather than have to discern, have to evaluate and have to decide.

We do this all the time. Do you all remember

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the Olympic park bombing in 1996 in Atlanta, the centennial park bombing? It was on TV. There was a big explosion. They had a security guard by the name of Richard Jewell. J-E-W-E-L-L I believe is how you spelled his name. He was a security guard there.

And for whatever reason the FBI focused on him and we saw for over an interminable period of time when they did a search warrant of his apartment that he lived in Dunwoody, Georgia, or North Atlanta, Alpharetta or someplace, the FBI was on TV carting things out of his apartment.

And all of us say, oh, my goodness, isn't that tragic? How could that happen? Look what possessed that young man to do that. Because we believed it. How could this occur in the public? What would possess an individual to do that? Which of us didn't want that solved? Which of us didn't believe that was the man?

Until Eric Rudolph found in the mountains of North Carolina scavenging through a garbage bin, do you remember up in Murphy, North Carolina? He was then charged with that and some bombings in Birmingham, Alabama. Richard Jewell was absolved. But which of us didn't think, oh, it was Richard Jewell. He was there. He was a security guard. Of

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course he'd have access to the scene.

In 2004, in London, you all recall the open air bombings of their two-decker buses in the tunnels? I mean the tunnels, the subways, killing six, eight people or more? The police started to look for a profile of individuals, the London police, Scotland Yard to solve that horrible crime. And all of us thought: Absolutely, get somebody, do it.

And a young man by the name of John Charles Menendez, a 27-year-old Brazilian electrician who understood very little English rushing to the Subway did not understand that he was supposed to stop when commanded to by police. They thought he fit the profile, and Mr. Hernandez was shot twice point blank in his head on the floor of the Subway. And Scotland said the next day, oh, we apologize. We're sorry. He had nothing to do with those bombings.

You see how we want to believe? It easy for you. I'm not blaming anybody. That's me. That may be you.

You know the tragedy still as an unsolved murder of that little girl, Jon Bonet Ramsey, from Colorado? Remember just within the past year or so somebody named John Mark Karr, K-A-R-R, he was extradited from Thailand. And I'll bet there's some of us who said,

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oh, thank God. Somebody, we've really got somebody now to solve that child's murder. Because that's what we wanted to believe.

Only when he comes back after an international voyage, now, there were TV cameras of what he was eating on the international flight across the Pacific, only to find out, oh, he didn't do that. The DNA doesn't match.

You see, what we want, because we want belief rather than evaluation and decision making, rather than judgment. And that's why Seneca the Younger speaks to us today. Because he's talking about our character. He's talking at our soul. He's talking about us as human beings.

And so this quality control inspector wants now to report to you, the quality control supervisors, his report on this case. The State's case is a contradiction. It's manipulation. Other than that, it's just a lie. Let me say that to you again. It's contradiction and manipulation. Other than that, it's not true. It's hyperbole. The State's case is suspicion. The State's case is conjecture. Other than that, it ain't so.

That's what I report to you. And I say that to you because I wanted to hold a magnifying glass to

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those witnesses that hopefully would help you understand this case.

Folks, I know you all are so tired. I know you are. If I have to write another thing on the board, you are going to die. I know that. I'm tired of me having to write. I'm tired of having to hear myself talk. I know that. And so you are. But that's our job now. That's our role now, to say to you as the supervisors in this production line of justice, look what we've produced, an injustice for Ken Joy.

Folks, you'll remember this. Hold on for just one second. Do you all remember when I put that on the board a week ago Wednesday? You remember I put that up there? I talked to you about the charges against Ken. Well, see, the problem with it is now, he's not charged with that any more.

Let me say that to you again. He ain't charged with that any more. There were six counts of that. He is not charged with that any more. And you know why? Because the judge has ruled that there's not enough competent evidence to even have you consider it against Ken Joy. That's gone.

And do you all remember Mr. Ross in his opening statement: We're going to prove to you that Ken Joy to focused on these folks. It was Ken Joy who was

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the mastermind. No, it wasn't. Never mind. That's not so. It hasn't ever been so, and now you don't have those counts against you, against him. Those are no longer for your consideration. Instead of 16, now there's seven counts against Ken Joy. And I'll tell you about those in one second.

What happened, folks? I'll tell you what happened. Do you remember this man? Mike Allen? He lied right in front of you. He put his hand on this Bible, he swore he would tell the truth. But what he didn't know is that we knew who he was and that we were going to prove it to you.

And when he starts lying and we caught him, when he starts crying, let me just ask you all this: If the reverse were true and you're a Christian, would you swear on the Holy Koran? What do you think?

He lied to you right there, right here on this spot and got up on the stand. That's why those counts are no longer in front of you.

MR. MEADORS: No, sir. That's an improper statement of the law. That is not correct. I except to that, Judge. That's wrong.

THE COURT: I'll explain to the jury. That's not the State's position to explain to the jury what the charges are. The Court will do that. That's

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enough, Mr. Meadors.

MR. DELGADO: There's only seven counts now. Those counts now are the indictments against Ken Joy for accessory after the fact of murder on George Batie, accessory after the fact of murder of Kevin Miller, accessory after the fact of Desiree Felder.

Folks, let me just say this to you. That's what these are. This is a horrific scene. It's exactly what happened. I am not going to -- as a result of this, all these families suffer and request understanding of their children and their loved ones. I'm not going to enjoy this, but I'm not going to run from this either. These are horrific. These are horrific.

Can you imagine? Can you imagine? Kenny is charged with accessory after the fact of armed robbery of George Batie. He's charged with being an accessory after the fact of armed robbery of Kevin Miller. He is charged with being an accessory after the fact of a burglary in the Mildred Street house where Mr. Batie lived. He is charged with being an accessory after the fact of kidnapping against Desiree Felder. Those seven charges. Not that.

And when were these returned? You all know. September 17th, a little over a month ago, November

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the 14th of 2007. He was originally charged November 15th of 2005. He's spent all that time since his arrest in jail. He was charged like the other fellows, indicted in November of 2005, and we just changed it. I wonder why. I'll see if I can give you an explanation, or at least as I see it.

Judge Cooper and Mr. Ross have already talked to you about some things, but I want to go through it very, very quickly. We use it. I think maybe since the OJ Simpson case, we have just kind of used it. It's kind of common parlance now. We know the phrase but I've certainly never had to use it. I hope you never have to use it.

Proof beyond a reasonable doubt. You know what that means? That means not in every decision you have to make in your life, but in weighing the decisions of your life that you hesitate to act because it's so important. To give you a hesitancy to proceed without thinking something through, like whether or not Ken Joy killed anybody.

Do I go to graduate school? Do I take out the loan? Do I suffer the financial stress that's going to cause me for years to come to go to graduate school? Is this the person who I want to be the co-parent of my children? Do I want to make this

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church my church home? Do I take the keys from mother and put her in that assisted living facility?

And is Ken Joy guilty? But you see, those decisions and however else you decide those decisions, that's what reasonable doubt is all about. If you hesitate to act, unless you are firmly convinced of his guilt, you have to resolve that in favor of the defendant. It protects all of us and Ken Joy here today. That's what reasonable doubt means. The judge is going to tell you about that.

The first thing back in your jury room, on your blackboard, someone put, please, reasonable doubt. Put the phrase up there. Share your reasonable doubts among each other. Talk with each other. Well, you know, I kind of thought that was interesting. I don't know what I really think about that but let's talk about it. Share your doubts. Talk about it. That's your responsibility. That's your role. And you must do that for Ken.

The presumption of innocence, everybody in the United States of America is presumed when they're charged with a criminal offense, whether it's shoplifting or a murder case and everything inbetween, is presumed by our Constitution to be innocent. And that presumption carried with him

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since the 3rd of December up through your deliberations in the jury room right now.

Let my talk to you about three things. Credibility of witnesses. Credibility of witnesses. Credibility of witnesses? Let's read this together, Mr. Ross. The demeanor of the witness on the stand? Are we talking about Mike Allen? Was a witness forthright or hesitant? Mr. Blue Moaney. Was the testimony of the witness consistent? It was only when Mike Allen and Blue understood that they were inconsistent with their testimony here that all of a sudden things get very, very nervous for them. Was the testimony of a witness corroborated? Well, I wish it had been corroborated for you all.

Let me just say this to you. You deserve better than this. As I am speaking now, the court reporter is taking down what I say. When you all are on the interstate, we have video cameras to see who may or may not have been speeding or whether or not there's a car that's escaping. I'm sorry to say we have a society that preserves and memorializes all sorts of things.

The United States Supreme, in its arguments, when lawyers are before the United States Supreme Court, that's documented. There's a tape recording

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of that that's kept forever.

How many photographs do we have, and do we have one tape recording of one of these witnesses to be able to say to, oh, I heard it; oh, I see, mm-hmm (affirmative). Oh, yeah, she can't get out of that. Wouldn't that have been something you would have wanted? But that's just not our procedure. We just don't do that.

I wish we'd use something better because that's what a consistent is statement is all about. Ladies and Gentlemen, can I just say something to you about Tatanisha Robinson? To get out of the City of Columbia Police Department, that interrogation room, she would have confessed to being George Washington, to get out of there. They were charging her. She was thinking they were going to charge her with a crime. They're showing her these photographs. She said whatever it took to get out of there for herself.

Can I just say something to you about Tatanisha for a second? Remember I asked her. She's from -- you all know where Pageland, South Carolina is? That's in Lancaster, South Carolina, Lancaster County. It's a small place. That's where she is from. She doesn't know North Main Street from Atlas

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Road. She doesn't know Richland Memorial from Palmetto Richland. She doesn't know first Baptist Church from Brooklyn Baptist Church. She don't know nothing.

Why? Because this is not where she's from. So how could she say Richland Memorial? Isn't that an interesting concept? Why would she say Richland Memorial? Only one of us that's been here for a while, like the good doctor, Clay Nichols, and even Mr. Meadors said, that's what I call it, too; only those of us that have been here for a while would call it that. Everybody else knows it by the new corporate name or the name they're trying to have us begin to understand, Palmetto Richland like Palmetto Baptist.

How could she have known that from Pageland, South Carolina? I sure wish you'd have had that. She said in her statement, she said to you, oh, it's in there, but how would I know that? Because she wanted out of there. I'll get back to her in a few minutes.

Credibility of witnesses. Did the witness have a reason to be biased or prejudiced? You think Mike Allen wants some assistance? Do you think he wants some help? Do you think Blue wants to get his

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sentence cut? Now you juxtapose all that. You put all that against Ken Joy. He ain't never been -- that's not true. He has been arrested. For what? Something when he was college, a ticket for his car; plates I think he said. Juxtapose them against Ken Joy. That's what you have to do. Confident in your verdict, does it make you? Cause you to hesitate to act, does it?

I'll talk to you about these statements and the verdicts you have to return. There are seven verdicts against Ken. And Ken has to be judged separate and apart. He has to have an individualized verdict on each of those seven counts by you all. I don't represent either of those other two fellows. But he deserves, and the judge will tell you, an independent, individualized separate verdict for Ken Joy.

That's the law in this state. Folks, now I'm going to ask to you do something that is just a very difficult thing for you to do. I'm not going to say it's inconvenient but it might be not insensitive, but it's something that the law requires of you. And I can only do it by visualizing it. I want to say this to you, too. I'm a visual learner. That's the only way I can learn something. If I can visualize

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it, I can maybe share it.

I want to say to you that the judge will tell you that you're not to be bound, and your verdicts are not to be as a result of sympathy for anyone in this case. They're right up here. And any of us whose hearts don't ache for those families, we all do. And yet the law is going to require of you something more. And the only way I can ask it of you is to say you have got to empty yourself of sympathy, for regret and their loss. It's hard to do, easy to say.

So I'm going to ask you right now, I'm going to put this right here. I want you all to look at this little box and I want you to put every bit of that here right now. Put it here. Because that's what the law asks you to do, and to be super human and to be super non involved by placing all of your sentiment, all your regret, all your loss over these folks who for whatever reason are now not with us. Put it right here. That's what we must do. Because then we have to close it and we have to put it away. Because that's how you decide as judges. That's what you are. You're 12 judges, based on the facts that you've heard and the law that the judge will tell you about.

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I promised myself I wouldn't get so angry that I didn't make sense. But I must say to you that Mike Allen is a demoralized, hypocritical, HIV-infected, ex-con loser who comes in here and lies to you. He lied right here. The reason he lied was because he had something to gain.

And my friend, Mr. Meadors, he was aghast at this, as he should be. You know why? Because he didn't know about it. They didn't know about it. Remember a week ago Wednesday I said they don't know what they've got on their hands? That's what I'm talking about right here. You all will have this. They didn't know that because they didn't know Mike Allen. You know Mike Allen now. Excuse me. I'm sorry. As you heard him refer to himself, Allah soldier, right here.

I am the State's key witness. Folks, let me just ask you all this. How would he know that he would be the State's key witness? I wonder if somebody in law enforcement, somebody when they went to see him, as he said they did, somebody said that to him. Oh, man, you're our key witness, man. How would he put that in? Why would he put that in? What does he know? I am the State's -- I want to make sure I say this correctly.

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"I am the State's key witness. I will either send you to prison for the rest of your natural life or walk away. What would you like me to do", question mark. "I need to be able to take care of my brother for what may be a very long minute. And since Allah has endowed me with this task of implementing Allah's justice, I would rather you tell me what Allah wants me to do. Allah Hu Akbar, Mike Ulicen C. Allen", at the Lexington County Detention Center.

I would almost put this on top of the Bible, but I think that might be a sacrilege, too. And I hesitate to say this to you. But, you know, in another Biblical story; maybe it's time we ran some money changers out of the temple. Because that's what this man is. He's no better than that. He's a hypocrite, he's a liar, and he did it right in front of you. And that's what they case base their case on, is it?

Oh. Do you all remember this? He doesn't have any problem now with this. You all understand me? This is a guy who used to do the same, who used to do the same thing. He would rob drug dealers, too. I ain't got any problem with it now. Can you imagine saying that in this place and time? I don't have any

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problem with this. I don't have any problem with this. The State's key witness. See, because that's what he used to do, too.

What was the demeanor of the witness on the stand, says Mr. Ross? You saw him. Did you see him start ranting and raving, speaking Arabic in an attempt to start justifying his position? Firmly convinced of his credibility, are you? Does that help you come to the decision that you make about whether or not Ken Joy is guilty beyond a reasonable doubt? Does it cause you to hesitate to act?

And when does he give this? Sometime right after he gets arrested. Excuse me. Not for this. Just before -- excuse me. Just before November the 14th, right here, just before November the 14th he is visited, the latter part of October he is visited at the Lexington County jail, and that's when everything changed.

What does he want from Ken? Mr. Strickler has a theory that he wanted to do something to Stanley. I wonder if he wanted some money. "You decide. What would you like me to do? I need to be able to take care of my brother for a long minute or for what may be a long minute, and since Allah has endowed me with this task of implementing Allah's justice, I would

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rather you tell me what Allah wants me to do."

I say it to you again. Remember, this fellow has got more faces than you can shake a stick at. He'll talk out of both sides of his mouth, whichever face he is trying to show you. You wouldn't trust this man with anything concerning anything important in your life. And now the State brings him to you and says, oh, trust him. He said that Ken told him everything would be all right. He disposed of all the guns, the money, the car, the clothes. Do you remember that? That's the fellow who's saying that. You trust that, do you? Cause you to act, does it? Firmly convinced, are you?

And can I ask just this one question? You all remember he said he worked a double on Saturday, the -- he worked a double on Saturday, the 3rd. That's from like 9:00 in the morning 'til 11:00 at night. He says he worked a double on Sunday.

Now, this is the fellow who may or may not have told Smokey Bones that he has HIV. He may or may not have told Rush's, his manager, that he had HIV. That's what they're going to ask you to trust? If he is off at 3:00 on Saturday night, where was he at 3:00 in the morning when this takes place? Where is he? Where is Mike Allen? The person who has done

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exactly this type of thing before, where was he? Do you think he's got something he wants to shade his testimony, something you want to cover up for Mike Allen? What do you think?

Pancho? Pancho ain't nothing, any part of Ken Joy. That fellow is from Memphis, Tennessee. He ain't got a soul in Columbia, South Carolina. He ain't got any relatives. Pancho is Stanley's nephew. And Mike and Stanley consider themselves relatives. Pancho is Mike Allen's friend, associate, neighbor, relative. He ain't nothing to do with Ken Joy. That's just a fill-in-the-blank so that it makes his testimony more believable. That's all that is.

Mr. Moaney, Mr. Omeksa "Blue" Moaney, remember him? He's the one that's doing federal time right now for drugs. He makes a statement on October the 11th, 2005, six pages. Six pages. And he doesn't say anything about Ken on September the 5th in that statement. Oh, he does now. He doesn't say anything about how Ken brought him -- oh, he gave Ken money on September the 20th. He doesn't say anything about that then. None of that. Contradicted, is it? Credibility of the witness? Cause you to hesitate to act? Firmly, convinced, are you, of Ken Joy's guilt?

That's Mr. Blue Moaney, the fellow they'll bring

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up here. This is the one who was shot by the FBI. You remember? Shot by the FBI, in October of 2006 pled guilty. And then this is the one, as Mr. Milling said, the government doesn't believe him. But we'll bring him up here and he'll tell you the truth. Except he didn't on October the 11th. Firmly convinced, are you? Hesitate to act? Cause you to pause?

And Tatanisha Robinson. She is who she is. And who she is somebody that got in over her head and would have said anything to the City of Columbia Police Department to get herself out of it. This is her statement, folks. Verbatim, exactly as written down, without any hesitations, directly as she said it, without any pausing, she goes on for three pages. Three pages. Ain't no questions in there. It's just -- she just rolls right on. And my friend, Sergeant Wilkerson, just writes it straight on down. Absolutely verbatim, complete, accurate and thorough. I say to you again she'd have confessed to being George Washington to get out of there. But that's what they want you to believe?

One thing about Tatanisha Robinson; she knows this. She may be a lot of things. Without any prompting, without anybody saying anything to her at

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all, she writes this notarized statement from Baltimore, Maryland, where she was living saying to Ken: I apologize. What I said in this was wrong. It's not true. And that's what she said here. Oh, it may be in here. Oh, yeah, it may be in here. Is it true? Oh, no. I didn't get a copy of this. I wanted out of there. I was pregnant. They showed me pictures of it, they were going to charge me with a crime. I'd already known that two other females had been charged with this.

And so she signs this. She gets out of there. And a year later she realizes and acknowledges I was wrong. She is who she is, but she says to you now here this is the truth. Cause you to hesitate to act, Mr. Meadors?

MR. MEADORS: Your Honor, I have no objection if he wants to offer that now. He's showing them something that's not in evidence, but I don't have any problem with it. He's not supposed to do that. That's the defense.

MR. DELGADO: Of course it's in evidence, Your Honor. I wouldn't have picked it up if it wasn't in evidence. Hold him to answering those questions. That's your responsibility. I'm sorry I have to say this to you, but that's what you are now called upon

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to do. As difficult it as that is.

I will say one thing about Ken saying supposedly to these folks if he had burned clothes, that's what he's supposed to have said and Mike Allen supposedly said it to him and Tatanisha. What is he charged with about burning clothes? Who says something about him burning clothes? Hey, Renata takes the clothes in a plastic bag. Do you remember that? Jason Brown says that.

And what does that young lady, Leticia Brown, she says Stanley and his dad are burning something on the grill on Labor Day, on Sunday, the 5th. They were burning something, some fabric. I asked her was it clothes? She said, I don't know; I didn't see it. But it was something on the grill. It was fabric, material.

I wonder what that was. That didn't have anything to do with Ken Joy burning anything. Two different people have now been revealed to you as burning something, getting rid of something. Not Ken Joy.

And Ken Joy, he testifies and tells you exactly the truth. This is the corner of McDuffie -- I'm sorry. This is where Blue lived. This is his apartment. McDuffie and Washington Street. I

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apologize. This is McDuffie and that's Washington Street going that way. This is where Blue lived with his mom. His mom lives here. He supposedly lived with his mom, 2528 Washington Street. This is this tan and green colored house here. This is where he was selling drugs from. And if you notice the stairs going upstairs, that's where he would operate out of.

And what did Ken tell you? Oh, yeah, I went there with Stanley. Stanley was my connection. Stanley was the reason that I would go there. And why? Because Stanley was getting me marijuana. That's exactly right. That's what he was doing.

And if there are phone calls from that phone that Ken had for Advantage Building Systems, the reason for that, if it's to Blue, it's either from Stanley. If it's to buy drugs, yeah, marijuana for Ken. That's what that's about. The close ups are here. You'll have them right here. Go right up those steps and that's the door. That's where Blue operated out of.

And Ken Joy may be somebody -- he is who he is, too. He's college graduate, army brat. He came to Columbia as a result of his wife I think; but anyway, he came back to Columbia, tried a number of entrepreneurial exercises to see if he could get

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himself in better financial shape. And what does he wind up doing? Employing several folks that probably are not going to be able to be employed otherwise in a rough area, Tremain Street here in Columbia.

And he has a business phone, a phone that everybody uses. Tatanisha has used that phone. Stanley has used that phone. If there are phone calls between that phone call and Dominic, that's going to be Stanley calling. Do you know what Ken said? Do you remember what Ken said? I don't know Dominic. I know that he's a voice on the phone. How could that have happened? Because Stanley would call Dominic or Dominic would call Stanley back at that number. And he would scroll through it and see and call back and it would be Dominic.

Tatanisha has used that phone to call Stanley. Stanley had -- and probably some of Stanley's other lady friends' houses. Stanley would use that phone to call Blue or to call Renata. Everybody used that phone. Do you remember when Tatanisha got on the stand and she said -- Mr. Meadors asked her, well, how many people would he call with that phone? She said, we could be here all afternoon for me to tell you how many people used that phone.

That's Ken Joy's problem. That phone is what

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they say connects him to this. Being an accessory after the fact? Where are the clothes? Where is the car? Where is the gun? Mr. Meadors asked him a question last Friday afternoon; and he said, I wouldn't know how to do that. I wouldn't know how to get rid of a gun. I wouldn't know how to get rid of a car. Where am I going to burn clothes? That's Ken Joy. You evaluate him. He was right here in front of you. He took an oath, swore to tell the truth. You evaluate his credibility. Because that's what you're called upon to do now. That's what you are supposed to do.

No prior record. Did he have any? Zero. None. Nothing. Did he say to Stanley or to Mike Allen, I'll see if I can Stanley some help? You know, I'll give him $500 towards the attorney fees. I ain't going to be spending big money because if I invest $500, that's $500 I've made down the road when Stanley works for me in my business.

And I'm going to call the attorney that I do business with because I might be able to get a discount for Stanley. And I go to Stanley's -- to that lawyer, Mr. Jimmy Rogers, and I say what would this case cost? I'm just here to spread information. I want to see what this would cost so I can see.

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Stanley has got to get with his people. That makes you an accessory after the fact, does it, to go to an attorney and ask what the price would be? That's what this case is about. That's why he's here. Firmly convinced, are you? Hesitate to act, does it?

The Columbia Police Department showed him papers. Do you remember when Ken went down on the 8th? Excuse me. On the 9th. He gets the card from Mr. Mead, callid him, comes in the 9th. And do you know what they start to do? They start showing him these pictures right here. And all of a sudden what was, you know, an interview becomes -- he becomes a subject. And all of a sudden he understands, oh, my goodness, something has changed now. They think that I am involved with this. How did that happen?

Because he was trying to help Stanley Oliver with $500, that's why he's here. That $500, as he said. You know, Mr. Meadors may say, well, he changed his phone on the 16th. Yeah. Do you know why he changed his phone? Because he started getting phone calls from Investigator Coronet. Do you remember that about? That's some fellow named Gene who had used a credit card and floated bad checks. And Gene, like everybody else at Advantage, used that number as a contact number.

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So Ken says, wait a minute. They're focusing in on me. I'm getting phone calls. Now they're going to try to close my business down. They're going to have the IRS or the licensing people coming down on me. You know, I'm going to change the number so nobody can contact me. That's why he changed the numbers. The same business, the same location, the same spot.

And on October 23rd he turned himself in to the police after his face had been shown on the 21st. Do you remember he talked to Mr. Ken Davis, the fellow at Austin Woods, the apartment complex? And Ken said, yeah, I just saw your picture in the paper. Yeah, I understand you're in trouble. I understand they're looking for you. Yeah, they are. I've got to get my affairs in order. That was on the 21st. On the 23rd he turned himself in.

Wait a minute now. Let me see if I can get this right. He's got 20 or $30,000 worth of accounts receivable out there, and he's robbing drug dealers? Is that right? Is that correct? That's what he does, does he? And helps those who do when he's got that money out there?

Ladies and gentlemen, I just want to say this to you. My time in Ken Joy's life is almost over,

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almost over. Two weeks here with you in our production of justice, but my time is over now. I can't do anything else for him. So I'm going to hand him to you. I'm asking you to take him.

And I'm going to ask you to find him not guilty on every one of those charges, not guilty to being an accessory after the fact of murder of George Batie, not guilty to being an accessory after the fact of Kevin Miller, not guilty to being an accessory after the fact of the murder of Desiree Felder, and not guilty of being an accessory after the fact of the armed robbery of George Batie and Kevin Miller, not guilty as an accessory after the fact of the burglary of Mildred Street, the home owned by Mr. Batie, not guilty as an accessory after the fact of kidnapping of Desiree Felder.

Each of those seven counts, I give him to you. And as the plaque says downstairs: May justice guide your journey. May justice guide your journey. Thank you.

THE COURT: Mr. Delgado, approach the bench, sir.

(Whereupon, a bench conference is had between the Court and Mr. Delgado)

MR. MEADORS: May it please the Court?

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THE COURT: Yes, sir.

MR. MEADORS: Mr. Strickler, Ms. LaFave, Mr. Milling and Mr. Delgado. Ms. McDuffie, Mr. Ross. Mr. Foreman. Good afternoon, ladies and gentlemen. Enough is enough. Enough is enough. This has got to stop. That's what the evidence has shown in this case, what the witnesses have done. Enough is enough. It's got to stop today.

This is as important a case as will ever be tried in this courtroom, important for these defendants, important for the victims and their families, important for the State, important for this community. This has got to stop.

Everybody has got a line. No. I need this. I need this. Everybody has got a line. I guess the most spiritual is, and the one we ought to follow the most is, The Golden Rule. That's a line. "Do unto others as you would have them down unto you." That's a line. A line most everybody follows is the law. Follow the law. That's a line. That's a line.

Well, then there's people that speed and there's road rage and other types of acts where people cross that line. But that's a line most people follow. And then there is a line of folks that violate the law and who maybe do stuff that's bad. But they even

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have a line. They have a line that this is too much. This has got to stop.

Everybody has got a line, except maybe these three. Stanley Oliver might have a line. It's a dotted line maybe that says I won't kill a woman but I'll get somebody else to. Everybody has got a line. That's what this case is about.

When I was little -- and I wasn't planning on saying this until just now. When I was little I'd go to visit my granddaddy in Florence, Jack Meadors. And in the late sixties I was seven or eight years old. And I can remember being stopped down there in Florence. He'd stop, somebody would greet him. And I remember this one lady had her little daughter I think and said, "That's jack Meadors. He is a lawyer. He is a good man. He trace to do what's right." Those days are gone. Those days are gone.

My name is John Meadors. I am the Deputy Solicitor for the Fifth Judicial Circuit. I work for Solicitor Barney Giese, the elected solicitor. On behalf of David Ross, Joanna McDuffie, the Richland County Sheriff's Department and the Columbia Police Department, I also want to thank you for being here. Thank you for the attention you've given this case. Thank you for your lives.

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We've spent a lot of time here. We've spent a lot of time together. We haven't been able to talk. But two weeks of your life, especially during time of year, that's a lot to ask somebody. But thank you. And thank you for listening. You all are the Lady of Justice. Justice will direct your course. You sit there blindfolded. You listen. You decide what's right, what's credible or believable. You drop that little blindfold down and watch the witnesses. You do. You see them. But you judge their demeanor. You watch them. That's all you can do.

What I'm doing now is called closing arguments, but the name is terrible. You might want to say, John, what about this? What about that? I want to tell you all this and that. But it's a chance for us to tell you all what we think the evidence is and the reasonable inferences are. We can't go beyond that. We're not allowed to say stuff that's not in evidence. That's improper. That's not following the rules. My granddaddy wouldn't have done that. You can only testify to what's come out in the evidence.

And I'm going to go through several times, which I've gone through some of this, I don't think that was in evidence, what they argued. You can only decide this case what comes out of that witness

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stand. You take the law His Honor will charge you and you decide what's believable, what's credible. We're here all the time. This is what I do. I love my job. I hope I never do anything else. Just trying to get to the truth.

Every week, week in and week out, you all come in here. And I say you all. The jury comes in here. And it's like the most valuable player comes in every week. And it's true. The most valuable player comes in every weeks, listens to the evidence, takes the law the judge gives you and says this is what's right. And that's all we can ask of you. And you all have been listening. And thank you.

I'm going to try to be short. Please give me as much attention as you have everybody else. I've got a lot of boards that I think will help keep me focused, quite frankly, as I go through this evidence.

Quality control? He is talking about quality control? He gets up here a minute ago and implies that this is why these indictments got thrown out. That's not right. He tried to imply because he took an oath on a Bible that that's why those indictments are thrown out. That's why I objected. That is wrong. That is not right.

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The judge decided, because no evidence -- this letter wasn't read into the record to you. Blame me for that. Where it says in here "I know you planned it", it's got nothing to do with him putting his hand on this Bible, which he tried to imply. Quality? And I'm going to go through several times in this trial where quality has nothing to do with what was going on here. Quality control. Misdeception? Credibility?

We've all got a line. Now, you all know what happened here. And one other thing. When you came in here last Monday or two Mondays ago, you didn't go to Ms. Scott. Ms. Scott didn't have a school to tell you how to be a juror. But you've been learning how to be a juror your whole life. It's your common sense. That's what beyond a reasonable doubt is, your common sense.

You all know what happened here. I'm going to go into detail about it, but you all know what happened here. Some forces were put into motion. I don't know who did it. I don't know why. I don't know whether somebody told them to. But on the early morning hours of September 4th, 2005 Stanley Oliver and Dominic Gallman decided they were going to rob, with all due respect to the families, someone who

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deals in drugs. They're going to rob him. They're going to rob him of his money. They're going to rob him of his drugs. And that led them to Jim Batie's house.

Kevin Miller was coming to get drugs. Kevin Miller was in the wrong place at the wrong time. Kevin Miller is shot in the back of the head by Stanley Oliver with a .40. Jim Batie will not tell them, doesn't went to cooperate. He's been out drinking with K.P. And we'll get to that in a minute. Shot here, goes through here, another shot here. And then he gets shot in the top of the head.

And those pictures, you noticed Mr. Delgado showed them to you. I didn't. As Mr. Strickler said, they're not going to show them to you. I'm not going to show them to you. They were put in to show how the head was. I'm not trying to inflame your passions. Quality? They were put in for that reason.

And I wouldn't have put these heads in that trashcan, the heads of these three victims where they all said, oh, there's nothing here. We're not trying to say it's not a tragedy. Yet they're talking about the drugs and every time, everything they can do, they get into about that. Quality? That's why they

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were put in.

Jim Batie is shot twice here. He won't tell them where it is. One witness, I believe he said, and I'm going to get to in a minute, said he wouldn't cooperate. Wouldn't cooperate. He's down. Yes. He goes down. Blood is on the wall showing you all what happened to him. The safe is open. Do you think he wasn't telling them where it was, wasn't going to tell them where the money was, didn't want to tell them? He's shot. He goes down. The safe is open. Two .38's in the floor. There's no question what happened.

And then they go out and they take Desiree in the woods. Excuse me. Dominic Gallman shoots her in the head. Now, we know that's what happened. We know what happened. I'm going to go through it in a minute and show you how we know what backs it up, what corroborates it. But that's what happened.

Now, we started off with this point in our line. Everybody's got a line. Let's go through and show how we got to what I just told you. The timeline, Zondria McKie talks to Desiree. They've known each other. Talked to her. She talked to her about going to church the next day. That came out on the stand. I'm not making that up.

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At 1:30, William Felder, just raise your hand, William. Right back here. Ex-husband. Talking, said he was returning her phone call. Says something about their relationship. They're still talking. Not too bad. At 1:30 everything seemed fine. She seemed okay, going to church tomorrow.

Then 2:08 Miller calls Batie. Miller calls Batie. I'm coming over to get something. You hear it on the answering machine. About this time, about this time, and I think you hear a few phone calls before this from K.P. Where are you? I'm waiting on you. You all know K.P., Kenny Parker. You know, I talked with him. I'd love to have a pop with K.P. sometime.

He's over there. And what's K.P. say? I'm out here waiting on him. I met him a couple or three months ago either at Greenview or either at VFW or at Green's on Farrow I think he said. He's supposed to meet me out here this night. You're not here. Where are you? He called him. Man, I'm waiting on you. He was down there selling drugs to Rasheed Rucker. That's where he was, down in the Vista. That's how Rasheed's fingerprint got on there.

And you know what? If we had gone and arrested Rasheed right then, that would be like the park, Mr.

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Delgado. That would be like the Olympic park and all that if they rushed out and did that.

Finally K.P. hooks up with Jim Batie. I think they say they go to Green's first and they go to VFW and then they leave. VFW is closed I think. They are leaving to go home. K.P. goes to a convenience store I think to get cigarettes. Jim Batie goes on home.

By the time K.P. gets back to Mildred Avenue, knocks on the door and hears a voice he's heard many times before: Now is not a good time. No truer words were ever spoken. Now, I don't know if Desiree and Jim are fighting because he's been out drinking with his buddies. I don't know. But K.P. said in answer to one of Mr. Strickler's questions, saved my life. I went on home. Gets back. And immediately timeline, at 2:29, calls back and says, look, I just came back, sorry, had a good time and leaves. That establishes a timeline.

Next we have Kevin Miller going by the ATM, goes to the ATM, gets his money out. Now, under State v. Sharp and the case law, once they put up evidence -- and they say we didn't call somebody. I'm allowed to respond that they could have called them. If they wanted that videotape in, do you think they wouldn't

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have put it in?

ATM at 2:40, what happens? That's a timeline witness. He then comes, I think one of them said, five to ten minutes after that. He gets over to Mildred Avenue. So we know he's not dead at 2:40. I agree with Mr. Strickler on that.

4:20, Chris Cochran calls. I don't know if he regrets these words or not, but they kind of speak volumes. Chris was mad because he gave his ATM to K.P. to go get some stuff and to come back. He's not back. He thinks he's probably got more than he should have. He said, "You'd better be dead or in jail." Well, unfortunately, he was in jail. "You'd better be dead or in jail."

7 to 8, he comes looking for him. He comes looking for him. Gets in his car, gets his stuff out of the car, goes to the door. He says I've got a funny feeling and don't go inside. You've got calls from K.P. and Cochran throughout the morning looking. I don't know if K.P. was into drugs with him or not. I don't care. He was getting a little intoxicated that night. Maybe that's why Jim Batie, another reason he put up a little fight. He said he was .25. He was not taking this stuff. I don't know if there were any drugs or not. He said he was in the

2242

business. I tell you one thing he did say though, K.P. said. He said, I don't care; jim Batie was a good man. I'm not approving what he did, but he didn't need to be shot three times. Everybody has got a line.

Zondria McKie comes, picks up the paper at 5:13 p.m., comes in and tells you what she sees, see the body. Tells law enforcement, look, somebody else stays here. So we know they're missing somebody there. They don't have Kevin identified at that point, Kevin Miller. Robin Dutton comes and starts the investigation at that point.

Now, let me throw up that same timeline, ladies and gentlemen. And, no; you didn't hear or see any of these folks talk about phone calls. And am I going to talk to them about it? Yes, ma'am. Because Barney Giese would fire me if I didn't. That's what helps tie them together.

Let's look at that same timeline. One 12:45 and 1:30, 1:43 a.m. a number which has been testified to that Dominic used as his cellphone calls Renata's, 779-6080, which is testified somewhere Stanley Oliver stayed. 1:53, phone call there also, Dominic's cell to Renata that Stanley uses. Throw that in the timeline.

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I'm going to go back in here. You all remember it? Nobody talked about this. You notice the particulars of the testimony when they get up here, they didn't want to ask them about the particulars? What happened right up here in this same time? Do you remember Renata? I'm going to get to it again. You remember Renata said, I was watching Comedy View or Comic Vision or whatever it was late that Saturday, Sunday morning. And she hears Stanley say something about Freaky's name. That's when they were getting together that night fixing to go and do their robbery. Their plan started off as a robbery.

And then Batie's calls, K.P, the same timeline. You get down to 11:28 p.m., a call from Renata, identified as Stanley, to Kenneth Joy. Kenneth Joy, less than seven hours I submit after the murders, Joy's phone is being called. Joy to Renata. That's Stanley Oliver. Joy to Renata. Joy to Blue. Blue was the man they took the drugs to. And they had a lot of drugs. And I'm going to talk to them in a minute. He said these guys never brought me drugs. Now they're bringing me all these drugs. Is that unusual? Yes. Joy to Blue.

Let me follow that up now with some phone calls. And, folks, when you all get back there, if you all

2244

want to jot this down, jot this down. These are the numbers that have been testified to to Omekas Moaney, aka Blue, 665-2996, 237-6224. Mr. Blue told you that up there. Mike Allen, 551-0973. Dominic's cell, 599-0434. Dominic, home, 234-2621. Stanley's cell, 479-2583. He got that on 9-8. We'll talk about that in a little bit.

Renata Williams' home, Stanley had access, 779-6080. Kenneth Joy, 463-2210; changed 9-16 to 238-7294 because we needed to talk to him and then because somebody named Gene was approached. But he doesn't know Gene's last name and he can't tell you and he's not going to tell us who Gene is. But then he changed his number because Gene was getting harassed about some kind of forged or fraudulent checks.

I'm going to leave that up there and come back. But here is where we go to the 4th, these cellphones. 1:43, Dominic's cell to Renata, 1:53. And these are summaries from the records you're going to have back there of these phone numbers I just showed you all of these parties. That's it. Are there other phones in there? Yes, ma'am. Yes, sir. And you're going to have them. These are summaries provided, accumulated or assimilated by this lady, Ms. Outen, involving the

2245

phone numbers that are in the record to each other. Are there other numbers in there? Yes, ma'am. Yes, sir. You'll have them.

I think it was Mr. Milling that said inbetween here, his client, are there other phone calls inbetween there, between 1:53 and 4:34 when the murder happened, I respectfully submit the evidence shows. There a few incoming calls to him and a few outgoing calls. I don't know who they are. It shows one thing. Dominic Gallman is out with his cellphone. That's what it shows. And it shows he's got an hour, an hour of free time out on the streets with his cellphone calling.

4:34 a.m. there's a call back from Dominic to Renata. Now, that's either Stanley using Dominic's phone to call Renata coming back, or they've already done the deed and that's Dominic calling back to Renata's house looking for Stanley. This is good evidence. None of them talked about the phone calls. It ties them altogether. You'll have them back there with you.

Let's keep going on the 4th. 11:28, I just went over these to you a minute ago, Renata calling Joy, Joy calling Renata, Joy calling Blue, Joy calling Renata, Renata to Blue. 9-5, 12:47 a.m., Renata to

2246

Dominic, Renata to Joy, Renata to Mike. Let me star that one right now. 1:24 on 9-5. Don't let me forget to come back to that.

Let's go back, back to our timeline, after Ms. Dutton gets there, it's now 9-4. 9-4, Currie and Rose are there. You know, Ms. LaFave said it's his fingerprint. I'm not sure what Mr. Strickler is saying now. This case is so strong against Stanley Oliver, they questioned whether it was his to start with. It's Stanley Oliver's print.

They come in. They take pictures. All of these pictures up here, if we laid the foundation, they agreed they come in. There's a far away picture of the shell casing. There's a close up picture. Don't use that against us for trying to inflame your passions or your prejudice. We aren't. We're showing you pictures of inside Mildred Avenue, how it looked.

And Currie took us painstakingly, it may be my fault, through the house, taking pictures of the front room, going back to the bedroom, the hallway, showing where the shell casings were picked up. Went back and showed the blood. I won't show them to you. They showed the blood on the side of the wall. Yes, I believe it's blood that came back to Jim Batie as

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Jim Batie's as he's coming down because he wasn't going to give him what he wanted, blood on the side of the wall, on the door, that he finally opened the safe and was rewarded with a bullet to the head for.

Processes the scene, gathers evidence, tries to get DNA off of it. No DNA. Comes back, collects the evidence. And what does he find back there? You all have seen the pictures. I usually show them. But they're ransacked. They're looking for something. Is there any question about it? Finds that Wilson box in the back.

Rose comes and helps him process the scene. The next day, on the 5th, there's no -- everybody testified the scene was secured. The police officers were there around the clock until they finished the search. They find the initial .40. They don't see anything else around Mr. Batie's body, so they figure it's not a semi-automatic. So they find that.

The next day the autopsy says, hey, Jim Batie tells you. You talk about star witnesses. The star witnesses in this case are Jim Batie, Kevin Miller and Desiree Felder because their bullets from their body lead police to connecting these. And then from there, they say, well, you know, there's another .40 in his body. That's when Rose goes back and collects

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the other .40 underneath the stuff that Currie had been trying to find evidence. And they find the other shell casing. And they do come back. And they are consistent with each other. As Mr. Ross told you, circumstantial evidence. That's the same gun. A .40 to the head of Batie, .40 to the head of Miller.

Swabs are done then of Jim Batie. Kevin Miller is I.D.'d at that point. So we know our two victims at that point. We still don't know where Desiree is. We know she's missing because of Zondria McKie.

9-6, Wilson shoebox print matches Stanley Oliver inside the house. Here it is. Go back and look at it. He showed you where he did it. It's not one of those pop off. It's like this. He's looking for money. He's looking for drugs. Thank you, Pete Currie, for finding it.

9-7, Desiree is found off Wilson Boulevard, found off Wilson Boulevard. There's been some testimony about she was on her knees begging. She was begging. Could she have been on her knees first begging? She is begging for her life. Do you think she wasn't begging for her life? And she's shot here. If it's not here, here, or the back or the side of the head, could she have turned? And she

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ends up lodged between a tree. She's not begging for her life?

9-8, law enforcement working together: County, City, SLED, matches the .380, .357 to both scenes. Hey, you all, this matches. These things are connected. They then go to the storage facility. They processed it, couldn't find any prints, did confirm there's $49,000 there. It's a lot of money there in the back of that storage shed. That's the motive for these folks robbing Jim Batie.

Did they get a lot of money? Yes. Did they get a lot of drugs? Yes. Was there more? Yes. Would Desiree tell them where it was? No. Did it lead to a bullet in the back of her head? Yes. Did she already know she'd probably get killed seeing two people who were dead in her house? Yes. You're going to award them for two murders and then kill me? No.

And here's the bullet. Here's what law enforcement did. I don't get into that scientific stuff. I don't know. I understand it. But here is the way I like to look at it. Kevin Miller has got a .40. Jim Batie has got a .40. Those two shell casings came from the same gun. They're consistent. .38 and .357 in Desiree's head, these two are the

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same. That's the same. It's all the same fired by the same gun. There is no question about it. It's not in dispute.

Kenneth Joy comes down to police headquarters on September 9th, 2005. He said he doesn't know Stanley Oliver very well, does not associate with him. He said he has occasionally given Stanley work but doesn't use him often. He told the police he doesn't trust Stanley and he would not use him on jobs like the post office because he thought he might steal from the place.

He tried to avoid that a little bit on cross, but then I said, did you let him work at the post office? He said no. He said he didn't use drugs. He said he did not know Dominic Gallman, did not know Dominic Gallman and could not pick him out of a photo line-up.

Now, credibility, believability. And I want to thank Mr. Joy for his testimony last Friday. And I thought about it all weekend. I worried about it some. But then I said, you know, he corroborated everything. He corroborated everything except right when it implicated him. But everything else he corroborated, as to the dent in the gray Taurus that Tatanisha had put in her statement that he had in his

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car. Mitch Wilkerson wouldn't know about that. That's corroboration. So thank you for that.

He told police he lived with his girlfriend on Percival Road but I didn't really live there. Why would you not tell the police where you live? Why were you trying to distance yourself from them? You're a businessman. That doesn't make sense.

And then on his testimony which I'm going to get to in a little bit, he says, well, I knew of him. Well, no, sir, that's not what you said down there. There might have been some twisting on some questions; but, no, sir. And then he says, well, it was in the backdrop of a triple murder. So are you saying you're admitting now you didn't tell them the truth because of the backdrop of a triple murder, you didn't want to give them your address?

Stanley Oliver has been identified, his fingerprint. And then he takes the stand and confirms they are checking out his folks that he knows, they ran around with, Dominic Gallman, Kenneth Joy. What does Stanley Oliver say? Oh, and by the way threaten, coercion. Kenneth Joy walked out of there September 9th. It wasn't the park in Atlanta. It wasn't the Jon Bonet Ramsey. He walked out of there. I said, were they nice to you? Yeah, they

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were nice here. Were they nice? Yeah, everything was fine, oh, until right there. They didn't get nice. That's when it starts affecting him.

Stanley Oliver to Columbia Police said he went to Jim Batie's house once but never went in the bedroom or in the back part of the house. When asked if he said he had been in the house because Renata told him his fingerprint was there, he smiled and said, I don't want to answer that.

Now, at this point you do have to judge the credibility and believability of Mitch Wilkerson and Stanley Oliver. You have to do that. I want you to do that. You know, if Mitch; and you saw his demeanor, was cheating or lying, why didn't he say, I killed him? I did it? But, no. He says, I don't want to answer that, and puts that in here. Does that make sense? He said, well, I did do it. You know, I did do it. I didn't want to say it. I killed him. Somebody else was with me. Somebody else was with me. But he doesn't do that. He puts in here that he sat back and smiled and said, I didn't want to answer that. And he didn't want to answer that. And that's what Mitch put down right after he left the room in his computer.

And Mr. Strickler was going on and on and trying

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to make a reasonable doubt out of that audio or video. You tell me Mr. Strickler wouldn't be up here if it was on audio saying, did you stop it, did you do that, did you ask him other questions? And comparing the Highway Patrol where people are on the road to this? That hasn't been their practice at the Columbia Police. Do people talk as easily when they're being videotaped or taped? It's been their practice not to do it. You have to judge his credibility. He's never done it.

And if you're going to cheat, why didn't he say he admitted to doing it? Read him his rights. Stanley Oliver signed his rights, said I understood it. He checked his background. Tenth grade education. Didn't make him sign that. It's in here. Did he make Stanley Oliver sign his name?

When asked where he was during the time of these murders, Oliver said that he was with Renata or William Gedson. When told that the police had already talked to them and they said that Stanley was not with them, Stanley smiled and sat back in his chair and said, I guess I don't have an answer to that.

Now, there's been some talk. Did you talk about Renata? Yeah. And mead said, did you talk to

2254

Gedson? Yeah, I did. Somebody crossed about, where is it in your notes? Well, I think Mr. Joy even verified the other day that Mr. Mead left his card with Mr. Gedson when he was down on Tremain Street. So clearly he had talked to both of them.

I guess I don't have an answer. He admitted he knew Freaky. When asked how he had no money a week ago and how he had a large amount of money, buying boots and CD's, he said, "I have to do what I have to do on the street. I have to do what I have to do on the street."

That's kind of a theme throughout here. He didn't have any money. Somebody sees him with a bag of quarters getting weed. He borrowed some money from Mike Allen the week before. And how he's paying him $100 bills. I'm not saying he's wrong for paying with $100 bills. I wish I had that to pay with. But when you go from; it's another great circumstantial evidence from no money to this and you're tied into a triple murder, where do you think he got it from?

And he mentioned Mike Allen. I submit to you Mr. Delgado is worried about Mike Allen. Mike Allen who did tell you, I worked a single, a double and a double; Thursday, Friday, Saturday, worked it Thursday, Friday, Saturday. I worked it. Get off at

2255

about 12:00 from Smokey Bones, go home, wasn't feeling good. I got a call from my brother, my brother who had introduced me to these other folks as my brother.

I think that when he came down, you heard about his past. And he came down. And tell it all. You know, you know who brought us to these witnesses. They did. "Judge not lest you be judged" is the way I was brought up. But they brought us these witnesses. And now they're going to say because this is who we're hanging around with, that they have a past, don't believe them. Do you know what they're going through to testify up here? Do you know what they're afraid of? And they came up here and testified. They said it's enough. Enough is enough.

He gets off at 12, goes home. He's tired. He said he gets a phone call from his brother to come on over, I need to talk to you. Well, folks, 1:24 a.m. Renata to Mike. Renata to Mike. And you'll remember I'm getting to Renata's. And that's Stanley's telephone number calling Renata. The night before -- I'll get to a Renata in a minute -- but Renata says she watched Comedy Vision. Remember? Then there was a phone call from Dominic's cell over to Renata's. They leave.

2256

And then she says the next day, sometime that next day Mike comes over. That's Renata and Mike. That's corroboration. That's corroboration. I'll show you Renata's in a moment. Mike comes over at 1:24. None of them talk about that. You can't get around that right there. That's a phone call at 1:24 after he gets off from Smokey Bones right there from Renata's house, Renata to Mike and Stanley to Mike. Come on over there. He does.

And what happens again when he gets there? He comes in. I think he comes in. There was an aunt there. He comes in and he sees a lot of drugs. He sees a .12 gauge shotgun and some guns. And what does he tell them? He said, man, what about all this? He said, you ain't got to worry about that. There ain't nothing wrong. You ain't got to worry about that. Nothing is coming back on this.

And Mike says, at first he said I thought he'd done a perfect robbery. I didn't know. Had lent him some money before, lent him money before. When he didn't have money the week before, he gave him what? 100, 150? I don't remember. He said it was a good A lick, a good A lick.

Then he tells him later, I robbed them. Not killed them. But he said, I did not kill the woman.

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How can you make that up? I don't care if, you know, put his hand on here, the Muslim faith, he said he didn't believe in killing women. I didn't kill no woman. That's his brother who he does love.

9-13 he takes him to CPD. They call Jimmy Rogers to meet with Joy. And I'm going to go over this in a little more detail. Meets with Gallman. And then there's a statement with the police. And let's get into that specifically.

Early morning hours he sees Stanley with drugs and money. Stanley tells him you don't have to worry about them coming after me. I robbed them. Stanley tells Mike, I didn't kill the woman.

Now, look on here, too, after -- do you remember when Mike said, I was sick, I wasn't feeling good? The two days after that, the 6th and 7th, you'll see one call from Mike. One, because he's sick, he's not feeling good. Then he sees the news and he hears about it. He calls Stanley. He said he might be up in Charlotte. He talks to him. Then he says the second time, you don't have to worry. I robbed them. And then he tells him later, I didn't kill the woman.

He goes and stays with him either that Sunday or that Monday. He talks to him. And then what happens next? What happens next? He tells -- and maybe

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Stanley at that point knew he'd crossed the line. Because he went, he went with Mike, his brother, to the Sheriff's Department, to the police department. Maybe even Stanley in some way knew I crossed the line because he went with him. And he goes down there and turns himself in with Mike. He turns himself in. Stanley does. He tells the police what we just went over.

Stanley then comes back. And who does he call? This is the day before Stanley turned himself in. Look at the phone calls: Stanley to Renata, Stanley to Dominic, Stanley to Renata, Dominic to Stanley, Mike to Joy. The day before: Stanley to Renata, Stanley to Joy, Joy to Stanley. Look at the phone calls. The day he turns himself in is the 13th.

And after he turns himself in, do you remember he said, he being Mike Allen, I kept Stanley's phone? Here they are. Calls from Stanley's phone to Mike's phone checking back on his residence. And look later on. There's testimony that Mike Allen said that Joy wanted to keep him posted. He calls him. Mike calls Joy. Joy to Renata, Joy to Mike. Joy to Mike. And that's where they meet. That's why they had to concede that meeting. They had to. Because these tolls back that up, they had to concede that meeting.

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He's turned himself in, he being Stanley Oliver with Mike Allen. And they go back and they meet with Pancho again. Pancho comes with Ken Joy to the residence. And what does Ken tell us up here? Well, he knows we've got these phone tolls. He's knows he's over there. He knows Mike. He knows the credibility of Mike Allen. Okay. I went over there. Yes, we went in the back bedroom. Well, that's what Mike said.

We go back there. Yeah, I tell him, look, I'll help out some, but I didn't tell him everything after that. He corroborates everything right up to, well, right up to -- well, he corroborated you don't have to worry about your brother. But then he stops. Everything else happened; and then, lo and behold, Mike Allen is going to decide Ken Joy is going to get into this. Why?

I got rid of the guns. They were different for the man than the woman. Boy, if that doesn't sum it up. How would Mike Allen know that? Ken Joy. They were different for the man and the woman. I got rid of the clothes. I made the car disappear. He's got a car in Alabama. Somebody called him a magician. And there are no witnesses. If anyone says anything, they won't say it again. That's what this case is

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about, is all about. Enough is enough.

They got rid of the weapons. These lawyers said there are no witnesses. There is no evidence. Well, they tried to clean up. There are no witnesses because they killed them all. You don't get frequent flier bonus points when you kill your witnesses and nobody can come in and testify. The star witnesses are these three men right here who ran their mouths.

He goes back to the police the next day. The next day Mike Allen goes to the police the next day and tells them this. No dispute about it. He goes to call them to tell them this is what he told him. That's pure. Somebody used the word "slush" earlier. That's pure.

First he goes with his brother who he loves. And the line is enough is enough. Yeah, maybe I've robbed some people. Maybe that's wrong. Maybe that wouldn't be it. But when you kill people in the head like that, that's enough. Mike Allen knows it. Jason Brown knows it. Tata knew it until she's scared to death later. She knew it. Everybody knew it. This is too much. It's got to stop.

He then goes and talks to Dominic. And Dominic, he goes and sees him. He said he'd been to his address I thought once, maybe twice earlier. Maybe

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the old place or the new place. He said, why didn't you make my brother, why didn't you make him wear gloves? You know how your brother is. Then he went bad. You know how your brother is.

We went in with the white guy. You can't make that up. That's credible. That's believable. Did Mike Allen say that? Yes, he did. Did Mike Allen know about these other phone calls putting them together? No. Mike Allen loves his brother but he knew this was enough.

What motive did Mike Allen have to tell you? No charges. Done his time. He's out, married to Eunice Nelson, somebody he met in prison. No motive. Nothing, nothing, nothing, nothing, nothing. Except being scared and having his family threatened. What motive did he have to come forward? No charges, nothing on him, no motive whatsoever. No motive, except in his world finally the line had been crossed.

Renata Williams, do you know what I remember about old Renata? She liked working at Rest Assured after all this. You can even see the smile. She helped people there, people in the nursing home. She liked doing that. 9-3 to 9-4, Comic View she's watching. Hears the name Freaky, Dominic Gallman.

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The next day which would be the 4th into the 5th, the 4th, the first day she hears Comic View Saturday night/Sunday morning, the tolls are in there, I think I showed you that earlier, Dominic calls her cellphone 1:43 and at 1:48, 1:48 and 1:58. It's in there on 9-3 morning. She hears the name Freaky. That toll backs that up.

The next day when Mike comes over, there's the toll for that. You saw that on the early morning hours of the 5th, I think 1:24 when Renata's phone which is when Stanley calls Mike. She sees the drugs, she sees the guns, she sees the money. And she hears them talking, Stanley and him saying that's a lick, I did a good ass like. Excuse me my language.

Renata corroborating Mike. And Renata's first two statements, she didn't deny anything. She said I told them what they wanted, that we spent a lot of money. We went to Marlboro Inn. He had some $1000 bills? Did I tell them everything else? No. Wait until I get to Jason Williams here in a minute. You all see why Renata didn't tell right then, why she waited to tell when Stanley Oliver was in jail? She talks about the 9-6 shopping spree, the big bills, the food, the DVD, the boots, The Shoe Show. Look at

2263

the boots back here. Spending that kind of money. Where did he get it from? From Jim Batie.

9-6 night, you all know where he goes to. He goes to the Red Roof Inn after this. And I'm going to get to that in a minute. And then 9-7 he goes to the Marlboro Inn. The TV, hangs out with Dominic and K. K called and said Stanley was arrested. This is her testimony. The Marlboro Inn, the TV. And I've got more on the TV here in a minute. She said he hangs out with Dominic and K. K called, said Stanley arrested. Checking.

Gave me $250 and $50 back. That's what when she's going through her testimony, I said, did he give you any money? She said, yeah, he gave me 250 but he took 50 of it back. His earrings he bought weren't even for me.

And then and then and then over there they start to ask him about the threats, to ask her about the threats and all this. And I don't remember testimony that showed him these pictures. I don't know. If that was it, I don't know. But I don't remember that testimony. But I do remember she said at one point they were just doing their jobs. Renata knew the line had been crossed.

What did Renata say when they were watching TV

2264

at the Marlboro Inn? And the same Mitch Wilkerson, John Meadors, Davis Ross, JoAnna McDuffie, if I go to jail for the rest of my life, will you still tell other men that I am your husband? That's real.

And then we go to Tatanisha Robinson. Quality control. Quality control. By the way, that thing he showed you all up here and said it's in evidence, it is not in evidence. I don't care if it was. He said, oh, I wouldn't be showing it to you if it wasn't. It's not in evidence.

It's that letter she sent somehow, too. Quality? It's that letter she sent to somebody a year ago, Stanley Oliver, which we never saw, saw in here, saw during this trial, when she references back to this statement correcting it. And I even asked her, well, you corrected it every way you did it? I sure did. She didn't have that. Quality control? Search for justice? Truth?

Mike Allen who they want to sit up here on cross -- and do you remember? I think there was a colloquy back and forth here. Do you remember D? And he said no. Do you remember T? No. Do you remember you talking about whatever the lady's name that he told her I had HIV? That's quality?

Oh, he works at the restaurant. I bet you

2265

didn't tell them that. Quality control? That's the only motive they've got in this case, is somehow they said something about his HIV, so he's going to go do all this, have his life threatened, come in here? Quality?

Tatanisha Robinson and gives a statement. And, lo and behold, come trial time she's giving another statement denying this? And he's got an attorney. Mr. Quality, quality control guy. Somebody new? Bill Nettles. He knows him. It's his friend. That's quality.

Do you have any information about the September 4th Mildred Avenue murders? "Yes, I do. I'm the girlfriend of Stanley Oliver. I call him Solo. About a day after the murders Stanley drove up in a cab on Tremain Street. I think the cab driver is Renata Williams' cousin."

Well, you know, first of all, I thought they she said she gave this stuff because she was had at Renata. Well, no, it's because she's mad at the police.

"I think cab driver is Renata Williams' cousin. That's what Solo had told me. Solo was nervous, real uneasy. He had a lot of money on him." Those were her words, her observations. This speaks for itself.

2266

"Solo said he had 800 in his wallet and another $1500 at his house. He also had a clear plastic sandwich bag in his sock. It had about three or four ounces of cocaine. He was worried about the news. He told me that he just hoped he didn't get caught and had to do 25 to life for what he'd done." Her words repeating him. Nobody made this up and told her what to say. Those are real.

Page 2. "While at Tremain Street with Solo, K came by in a gray Taurus. It had a dent on his hood." Well, he confirmed that. Mitch couldn't have made that up. He came out of the door and said he had a dent on his hood. Yes, that's true. I had a dent on my hood. It's in Alabama. It's dented on the hood. K is Kenneth Joy.

"K wanted to talk to Solo real bad but not on Tremain Street. K and Solo went off in the Taurus." They're so worried about this statement that he says, you know, I didn't like Tata and I figured I want to get him away and have a talk with him because I didn't like Tata. That's how he tries to explain that. They're talking about the drugs that are with Blue, who is going to get the money back.

"I don't know where they went. I went over to Hughes Street to visit a friend of Freaky's."

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Dominic Gallman's. Well, there's Dominic coming in. Her name is Juliana Hamilton. She lives at [redacted] Hughes Street. Did Mitch make that up? He knows who a friend of hers is and where she lives? Quality?

"After a few minutes K and Solo came by Hughes Street and picked me up." Well, why is he driving around and picking Solo up? Where is Solo's car? He's driving him everywhere. Of course he told the police to start with -- do you remember -- well, I don't know him that well. He told you all up here on the stand the other day, well, you know, I only used him once or twice a month. Then he later on tells you, well, he's my security. Credibility? Believability?

"K drives us to the Red Roof Inn on Two Notch." Phone calls throughout the night to the Red Roof Inn. Phone calls throughout the night to the Red Roof Inn from K to him. "We stayed the night there. He came and picked us up the next morning. At the motel Solo was scared. He just kept watching the news. He stayed up all night. He used the cocaine he had with him to stay awake." That's credible. That's believable. She's telling what happened. Nobody is putting those words in her mouth.

"He just kept saying he got himself in something

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and it could get him life. I saw something on the news about the murders, and I knew what Solo had done. I asked Solo about it, but he was so emotional that he couldn't talk about it. He said he didn't want to go back to jail. We were close. I'm having Solo's baby." They were close. She was having Solo's' baby. She has a tattoo on her neck.

"K picked us up the next morning, took us to Tremain Street. Me and Solo stayed on Tremain Street. Solo got some sleep there. Solo told me" -- I mean, this is her recanting and talking about what she had. Is this somebody making this up? He got some sleep there? Do they know that he was tired?

"Solo told me to look out for him, to wake him if the police came or something looked suspicious. Solo ended up leaving just before investigators came by. Then the day before Solo was arrested, K came by Tremain Street and picked me up. We met Solo on North Main Street at Zesto's. We got some food and went to a friend of K's."

I think he said he had friends over there. He wouldn't be specific. By Richland Memorial Hospital. I mean, is that all they've got? Richland Memorial Hospital?

"Solo was like he was saying goodbye to me."

2269

That's real. "He said this could be his last day before he gets locked up. Solo was arrested the next day."

Good law enforcement question? "During this time period did you have any conversation with Dominic or K?"

"Well, at first right after the murders Dominic is bragging about it."

This is a big lick. There's a lot of money. He can pay Juliette, give her some money to do the laundry. Freaky was paying her laundry.

"Freaky had just gave her $50 to do the laundry. After Solo went to jail, Freaky came around Tremain Street and had $1,000 to use for Solo's lawyer. I gave Freaky the information to get ahold of K to handle it."

"Did Dominic speak about any specific details concerning the Mildred Avenue murder?"

"He just was proud of the lick at first, but once Solo went to jail, he didn't say anything more. He wouldn't answer the phone calls or come by. He was real quiet."

"Have you seen him with guns?"

"Yes. Freaky has several. Dominic has a .40."

A .40.

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"Dominic has other guns, too. Solo has a revolver. It's a .38."

A .38.

"K also has a 9-millimeter. Solo has a .12 gauge shotgun. K has an old .38."

Well, on the stand he denied I think the .38 and said he had a 9-millimeter. But we don't know where that gun is. It wasn't given to law enforcement.

"Did Dominic say anything else?"

"He learned about the fingerprint being found at the victim's house. He said they couldn't convict on the fingerprints being there because the neighbors and everyone else had been in that house. He wasn't worried about the fingerprint being found there. He said they would not have enough evidence to prove he did it. He said if everyone just kept quiet about it, no way they could convict."

Well, that's your decision. And they didn't keep quiet about it. And that's Freaky.

"Are you sure about the guns?"

"Yes. I've seen them. I've seen Dominic, Solo and K with those guns."

"Did you have a conversation with K about the murders?"

"Yes. K came by Tremain Street after Solo had

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gone to jail. He was keeping me informed about Solo on his charges. He was arranging for a lawyer for Solo. He said he came up with some money for Solo's lawyer from his money, but he wanted to find out from Solo where his share of the" -- and you all know what the next word is; they didn't want it to come out, tried to say Mr. Wilkerson wouldn't put that in there -- "robbery money was so he could pay the lawyer $15,000."

See, he didn't want to pay the lawyer from all his share. I'll help. I'm helping folks out there. But my money, where is your share of the money? His share of the money.

"He didn't want to pay the lawyer with just his share. He also talked about the evidence in the case. He had seen the article in the newspaper about the stolen watch and wallet. He showed me the article."

He showed me the article. I mean, is this real?

"He had kept the whole paper. He said the cops would never find the watch and the wallet."

And they want to argue about watch on an ATM? Where is the wallet? There isn't a robbery? And Mr. Milling talks about the kidnapping. No kidnapping, no shoes, no license? Ladies don't go out without

2272

their purse and their cellphone. No kidnapping? Shot in the back of the head?

"Did K say anything else? He said he gave the drugs in the robbery to a dealer named Blue. He lives in a brick house by McDuffie Street. Blue was going to pay every week for what he got for the cocaine. Blue knows Solo and Dominic real good."

All we've got is Mike Allen? And then she comes up after getting a lawyer, after sending a letter to To Whom it May Concern, by the way. Isn't that interesting? To Whom it May Concern. Did Stanley tell her, you know, go get a lawyer, do it To Whom it May Concern, get it stamped? Who told her to do that? Reference back to certain parts. Quality?

"Dominic was bragging about the murders."

Donald Lane is 1.38 miles from Shequitta Evans' house. I had a board on that because he didn't want me to forget it. Blue. Blue. I don't have enough room up here. Blue. We were customers. I'd give them some drugs. I've give Stanley some drugs. They brought this large amount. Unusual? Yeah, it never happened. Knew something was up. Joy brought Oliver over. Brought him over. Maybe that is the first time he'd met him there. He calls him later about the drugs. What do I do with this money after

2273

Stanley is locked up?

Eventually he says -- I'm covering stuff they didn't even cover. In the statement he said I said it was the earlier part of the week because I wanted to get away from this; I wanted to distance myself. You can go look at the tolls. Monday, Tuesday, they're dealing with Blue. They've got the drugs. They're trying to get rid of it. These tolls back that up.

A lot of powder. Six or eight circles. Explain that. We've learned a little about the drug world in particular. I made enough, gave them some. Gave them some, kept the rest of it. There was enough. I had a big sale the next day and still had several ounces left of it. This was a big heist. I hope Jim Batie didn't front that drug to anybody. There was a lot of drugs gone.

And then finally toward the end of the week Blue says, look, I don't know where you all got this. And it was just said the old dude got out of hand. It wasn't meant to go down that way. Maybe that's true. Doesn't that just kind of sum it up? We were just going to rob him but it got out of hand? That's murder, malicious murder, malicious.

Twice here, Dominic shot with .38's, once here.

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Stanley. Kevin, Stanley. Wasn't supposed to go down like that. No. Dominic Gallman is all alike. He said this in his statement. Other questions were in there that were not allowed where we redacted certain parts. But he did say in that statement, I had known him, had known him my whole life. Met Stanley in 2003, 2004; met Joy through Oliver.

You know, they're attacking every little thing. Again, these witnesses were brought to us by them. We didn't bring these witnesses. It's something about what's Blue? Looking at blue. Oh, I think it was Mr. Milling talking about there's some document here, that the federal government doesn't believe him.

Well, I think an FBI agent shot him. If you look at the document, he gives a version. He was holding a kid coming up, and that's why he didn't have a gun. And that's why the Feds said, well, they didn't find that version believable. Well, I bet the Feds didn't. That's what it was about, about the shooting when he got shot by an FBI agent.

Okay. He's doing 20 years because they had the local charges adopted by the Feds. He's doing 20 years. Am I going to tell the Feds he cooperated? Yeah. Does that mean it had anything to do with his

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statement back then that he gave that he knew them? Initially he gives a statement, yeah, they came to me, they had a lot of drugs. That enough is pure. That corroborates the drugs.

Jason Brown. It's getting late. I'm sorry. I hope you all will bear with me. Jason Brown, known Oliver for years. You know, the testimony is, last few times I saw him at Heartbreakers, Broad River Road 2004. Then I see him early 2005 with a bag of quarters trying to buy some weed.

Then I see him at intake at Alvin S. Glenn on 9-20-2005. Dorm room. They call it a dorm room. It's Hotel 36. He asked for me. He wanted me to come downstairs and live with him. No cross on that.

Stanley shoots two in the house. And this information is coming from Stanley. Is it all exactly right? I don't know. But I tell you one thing: Two shot in the house and a woman in the woods. Stanley shoots two. Girl knocked on the door. Didn't say it was Desiree Felder that knocked on the door. Said a girl knocked on the door. Did a girl knock on the door? Is there somebody else who's involved in it that we don't have the information? I don't know. Didn't say Desiree knocked on the door.

Other person holding the two down with guns

2276

while Stanley searched. Man wouldn't tell S.O., Stanley Oliver, where the money was. So he beat him with the gun. Don't have injuries of beatings. That's what Stanley told Jason Brown.

Found money in the shoebox. Found cocaine. Stanley wiped it down. Other person shot in the stomach. Goes out outside with the lady. Well, Jim Batie was shot down here. Kevin Miller was just shot once in the head. Other person tried to give Stanley the .38. Takes the woman to the woods. Other person tried to give Stanley .38. Stanley tells other person shoot her. Other person shoots female. My hands are dirty. Now yours are going to be dirty. One shot. That's pure. Desiree Felder wouldn't disagree with that.

Female on her knees begging for life. That's what he told him. She was begging. .40 caliber were the kill shots he tells him. That's true. He got rid of the guns, got rid of the clothes. There were thousands of dollars.

Do you know what else he tells her? You know why Renata may not have come clean those first few times? While all these people are up here, I'm not going to say it, but I don't think it's too strong a word, the courage they had to come forward up here.

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Nothing to gain. Mike Allen has no motive whatsoever.

What does Jason Brown say Stanley Oliver told him? I want Renata, Mike and Blue dead. That's real. And Renata tells what happened after he's in jail. I don't blame her. I want them dead. I'll pay for it. This has got to stop. The line has been crossed.

Just a few more boards. Dominic Gallman's girlfriend, there are three dead. "You're right about the other person. The other person got me in some trouble. The other person had a plan to make some money. I went with them. It was a robbery. The man wouldn't give up the money and the other person went crazy. The other person shot the man in the house.

"Me and another person took the girl with us. She wouldn't tell us where the rest of the money was. Me and the other person took the woman into the woods. The other person wanted to rape her but I stopped him. That might be his line. Maybe that's Dominic's line. No, that's enough. You're not going to do that.

"The other person said, I got any hands dirty now. You have to get your hands dirty. The other

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person put a gun to my head and said either you shoot her or I'll shoot you. I Dominic Gallman, shot her."

Mr. Felder didn't do nothing. Jim Batie hadn't done nothing. Maybe he deserved to be in jail for selling drugs. He didn't deserve to be in the cemetery for eternity. That's not their decision.

Shequitta Evans, not locked up. They're saying two women were locked up. They were not. Renata was the only one. That's not right. 1.38 miles from Desiree's body, Stanley's cellphone. And they were in relations. I think she might have said she was a sex buddy. He's tied, knows the area 1.38 miles away from there.

Now, these last two, when Kenneth testified, Joy, the other day, he's only known -- has known Stanley for many years, sees him almost every day on Tremain Street. Inconsistent with what he said to the police. He testified he would use Stanley one or two times a month, later testified Stanley helped protect his business with security.

He testified Stanley would purchase weed from Blue for him every week. He knows the phone bills have got him tied in. He testified he knew Dominic Gallman. When asked why he told the police he did not know him, he said it was against the backdrop of

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a triple murder, would not explain the phone call to Gallman on his cellphone prior to the night. Because there were a bunch of them. I was going to show them to you, but I'm running out of time. Phone calls on here, the 4th, 5th, 6th from Dominic to Joy.

Stanley can't have his phone all the time, and I tried to get him to do that. When he'd quit working, he'd take his phone with him. And then the night in question, the 4th, you remember he had his daughter's birthday party. I'm all for that. I'm not trying to say celebrating a birthday isn't right, but he said from 3 to 8 they were there. I said, well, how do you explain these phone calls from your home phone to your cellphone then?

Well, well, I had to go back. I must have stopped by Wal-Mart and did something else. Well, then what about these phone calls later from you to Dominic, five, when I think you said on the 19th or several days later you didn't even know him? What about these phone calls? Tremain Street. That was his answer whenever we'd get it, Tremain Street. Anything that didn't come back, Tremain Street. I'm back on Tremain Street. Somebody must have had my phone.

He could not explain why his cellphone received

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two calls from his house. Couldn't explain why his 9-millimeter gun was not found at his house when in his home was searched by law enforcement. He got rid of all the guns.

He said he changed his cell number because police were calling him about the triple murders and his bad checks from Gene. Didn't nope Gene's last time. You remember Mike Allen said on the 16th Joy came to his house and wouldn't talk to him on the phone because he thought his phone was bugged. And he gets this new phone but it's not on his stationery. I mean, he's a businessman.

I'm about through, ladies and gentlemen. This kind of sums up this case. The evidence that's been attempted to get to you all, the evidence from Mike Allen, the evidence from Renata, the evidence from Tata which all corroborates each other, the phone tolls which are -- and look on September 20th. They had to explain that phone call there because blue was trying to get to Kenneth Joy and figure out what to do with the rest of the money. And he says, well, Blue is now selling me a little weed. Quality control?

Do you remember, on this letter, go back and look at the letter. He said he'd been threatened.

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His family has been threatened. He'd wrote the letter and said enough is enough. I'm going to testify. I don't know, understand their religion. I'm not going to judge other people and their religion. My daddy is a Methodist Bishop. I probably ought not to do that. I'm not going to attempt to call somebody else about somebody else's religion. That's not appropriate. You judge their credibility and believability. You look at them.

But what's this quality control in here? And look at that letter in response. I'm going to tell the truth. It says in there, do you remember when you came to see me? He actually calls him Coach K. We didn't get that to you all, so you didn't get to hear it directly. He calls him Coach K. You put it in motion. And then you told me in that back room what you did with the stuff.

It's in there. Just like he told police on the 14th, right after he walked his brother in on the 13th, told the police on the 14th and go and talks to Dominic Gallman who said the same thing the whole time. The only thing different, their investigator, Lee Connelly, went out there, the nice young lady who testified, just testified that Gallman had a DUS.

She got up there and said the only thing he said

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different was he that he didn't take the $150. Everything else was the same when she talked to him. Do you think if it hadn't been they would have her testify to it? He's never changed. He doesn't have a motive. Phone tolls back him up.

Quality control? Tata. Mitch versus Tata. Tata, too, said, I'm not in here right now, Mr. Meadors. I'm not in here. Was I nice to you? Was Mitch nice to you? Yes. Did anybody threaten you? No. We didn't threaten her.

She came up here and she testified. Did she want to? No. But she did it. She knew the line had been crossed in her first statement. Somebody tried to get her to undo it. But she came up here. The statement came out. She knew the line was crossed back then.

Do you remember the question Mr. Strickler initially asked Investigator Mead when he said, wouldn't you have liked to have known that Rasheed Rucker had a .38 when he was arrested? Wouldn't you like to know that? We've got a document. This document shows that. And then Mr. Delgado got up and said, wouldn't it be important to know that Rasheed Rucker had a .38? And I said, objection, Your Honor. What's he reading that off of? He said, well, what

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Mr. Strickler had. Okay. And I got back up and I said, Investigator Mead, look at Rasheed Rucker, the search warrant when it came back. What's it got on here about a .38? Nothing. A .380 and a .22.

Quality control? Deception? That's what this case is about from back then 'til today through closing arguments. It's time for the truth to come out. It's time for justice. A sham, a farce, a mockery. A sham, a farce and a mockery?

It was Jason Brown who said there was 50,000, by the way, not Mike Allen. I wrote down what I thought was inconsistent with what he said. Mitch Wilkerson versus Tata.

Ladies and gentlemen, when you go back to your jury room the judge is going to charge you the law. When I was in -- that wasn't in evidence. This ain't in evidence. So I guess I can use it. My daddy gave me this in college. He came here to watch a few days of this trial. He gave this to me. He said, you know what your greatest power is? Your greatest power is to choose. Whether you drink too much, you drink and drive, do things you shouldn't do. It's your greatest power. Remember that. I have.

Their greatest power is the power to choose. Everybody's is. They chose to rob Jim Batie. They

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chose to cross everybody's lines, Mike's line, Renata's line, Tata's line initially. The phone calls corroborated it. They chose to do it. And they chose not only to rob them, enough is enough; as Mr. Ross said, they wanted more. They didn't want witnesses. They didn't want us to be able to prove it. They killed them.

They took Desiree out looking for more. I want more, I want more, I want more. They chose to take her out there without her shoes and her license, her cellphone, her pocketbook. They chose to take her out there. She wouldn't tell them where it was. Tried to rape her. One of them stopped him. And they shot her in the head. Her body was decomposed. They chose to do that.

And whatever role he had, he chose to try to cover it up. Three witnesses tell you that. Phone calls back it up. Beyond a reasonable doubt? Beyond all doubt. We've gone beyond the burden. Sometimes we have questions; they're just questions. We can't prove everything. We can prove it beyond a reasonable doubt, and we have. He chose to try to cover it up.

And now, ladies and gentlemen, it's time for you to exercise your greatest power. It's time for you

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to choose. Enough is enough. On behalf of the State of South Carolina, the victims and these families, I ask you based on the evidence and the law the judge is going to charge you to find on September 4th of 2005 Dominic Gallman, Stanley Oliver murdered, murdered Kevin Miller as he walked in, murdered Jim Batie, murdered him, and then took Desiree out on Wilson Boulevard and murdered her. Malicious, shooting in the head, malicious; and that Kenneth Joy tried to make it where we'd never get to this point, where we'd never have any evidence, to cover it up and then take control like he took control when he was on the stand of me and everything, take control; and find them all guilty. Thank you.

THE COURT: All right, ladies and gentlemen of the jury. I think that will be sufficient for today. I'm going to excuse you now until 9:30 in the morning at which time I will go over the law of the State of South Carolina at it applies to this case. Just from a timing standpoint, that procedure may take close to an hour. I don't want to burden you with that and then send you home. I think it would be better if it was fresh in your mind when you begin your deliberations tomorrow morning.

I had no intentions of keeping you here late

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tonight. And the arguments of counsel have been complete and thorough and it's now 4:30. So I'm going to dismiss you now until 9:30 in the morning at which time we will conclude this trial with the final instructions of the Court, and at that point the case will be turned over to you for deliberation.

We'll see you at 9:30 in the morning. Again, do not discuss the case among yourselves when you return to the jury room or with anyone else over the evening hours. And again, I'll ask you not to expose yourself to press reports if they indeed are in the media. Thank you very much. We'll see you at 9:30 in the morning.

(Jury out at 4:25 p.m.)

THE COURT: All right, Madam Court Reporter.

COURT REPORTER: Yes, sir.

THE COURT: The document that was referred to by Mr. Delgado and is marked as Defendant's Oliver No. 1, was that document ever placed into evidence?

COURT REPORTER: No, sir, it was not.

THE COURT: All right.

MR. DELGADO: Your Honor, I did realize that after I sat down here. I want to tell you and the solicitor that was not an intentional thing. I did not know that. I saw it as a blue sticker. I did

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not. I apologize to you and to the solicitor.

THE COURT: All right. I want to make that a part of the record because I think I need to make that announcement in the morning. Anything else?

MR. MEADORS: No, thank you.

THE COURT: Stand at ease until 9:30.

(Whereupon, the proceedings are concluded for the day, to be reconvened tomorrow morning)

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Tuesday, December 18, 2007

THE COURT: The State ready for the jury?

MR. MEADORS: Your Honor, we'd like a couple of minutes. The family is coming in. Just a few more minutes if you don't mind.

THE COURT: Defense ready for the jury?

MR. STRICKLER: Yes, sir.

MR. MILLING: Yes, Your Honor.

MR. DELGADO: Yes, Your Honor. Your Honor, may I just make one comment? I just feel awful about --

THE COURT: I'm sorry?

MR. DELGADO: I just feel awful about what I said in closing argument yesterday. I saw that as blue. I didn't see it for identification. And we had been back and forth about who is going to put something in evidence, who is not going to put something in evidence, whether or not that waives final argument. I apologize to the Court. I apologize to the solicitor. I just want to make certain that you understand that.

THE COURT: Yes, sir. I fully understand. Your explanation yesterday was satisfactory to the Court. I do need to mention it to the jury I believe so they won't be looking for that piece of evidence.

MR. DELGADO: I understand. Absolutely.

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THE COURT: Other than that, I plan to make no further comment.

MR. MEADORS: Is Your Honor just going to say it's not in evidence and that's it?

THE COURT: Yeah. Or I could say that that piece of evidence that you objected to most vehemently is not in evidence.

MR. MEADORS: May I approach, Your Honor?

(Pause)

THE COURT: The State ready to proceed? All right. Bring the jury, Mr. Bowen.

(Jury in at 9:40 a.m.)

THE BAILIFF: The jury is all present, Your Honor.

THE COURT: All right. Thank you very much. Good morning, ladies and gentlemen. I hope you had a pleasant evening. We're now ready to conclude this trial. A couple of things I want to mention to you before we begin my actual final instructions. There was a comment made during one of the attorney's final arguments yesterday regarding a particular document that he represented was in evidence. As it turns out that document was never entered into evidence and will not be with the evidence when it comes to you in the jury room. That was just an inadvertent comment

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by the attorney. It never was entered into evidence.

And the second thing I want to mention to you is that at an earlier stage of this trial I determined that there was insufficient evidence to proceed on the charges of accessory before the fact of the several different crimes as to Kenneth Joy.

And as mentioned to you perhaps by one of the counsel yesterday, when you begin the consideration of all the defendants in this case, you will not be asked to make a decision with regard to accessory before the fact of the crimes, but the remaining indictments as to accessory after the fact are still for your consideration.

Now, ladies and gentlemen, you've heard all of the testimony in this case. In other words, you're going to hear no more testimony. You will take with you to the jury room all the evidence in this case that's been introduced. In other words, what will be brought to you, the evidence in the case, is all the evidence. And sometimes jurors come back, and it happens occasionally, and request more evidence. Well, I can't do that because only the evidence that's been produced and admitted into evidence in this trial is what you will be considering.

You've heard the arguments of both the State and

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each of the defendants, and now I will explain to you the law as it applies to this case. Under our Constitution and Code of Laws, only the jury can make the findings of fact in this case. I am not permitted to indicate to you how I may feel about the facts.

If I have said anything or done anything in this case which would indicate that you that I have an opinion concerning the facts in this case, you should disregard that. The jury must independently weigh the evidence presented in this trial and render a verdict based solely on that evidence.

And the same Constitution and laws which designate and make you the finders of fact also make me the instructor of the law. If you have some idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you are obligated under the oath that you have taken to abandon this preconception on your part and accept and apply the law precisely as I now state it to you.

I charge you that there are three defendants in this case. The case of each defendant and the evidence and law concerning that defendant should be considered separately and individually. Your verdict

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does not have to be the same for all the defendants. The fact that you may find one defendant guilty or not guilty should not control your verdict as to any other defendant.

Where more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other or you may acquit all or you may convict all. It will depend on your view of the testimony and the evidence. You must take each defendant and consider the evidence as to that defendant and my instructions to you on the law. You will then write a separate verdict of guilty or not guilty for each individual defendant.

The indictments in this case, as you know, allege several different offenses against each of the defendants. They are: As to Stanley Oliver, three counts of armed robbery, three counts of murder, one count of kidnapping, and one count of burglary in the first degree. As to Dominic Gallman, three counts of murder, three counts of armed robbery, three counts -- I'm sorry -- one count of kidnapping and one count of burglary in the first degree.

And as to -- I'm sorry. I beg your pardon. Let me go back. At an earlier stage of the trial, as to the armed robbery of Desiree Felder, that case has

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also been dismissed. So let me reiterate the charges just to be absolutely clear for the record.

As to Stanley Oliver, there are three murder indictments, three charges. As to Stanley Oliver there are two armed robbery charges, that being the armed robbery of Kevin Miller and the armed robbery of George Batie, not of Desiree Felder. And as to Stanley Oliver, one count of burglary and one count of kidnapping. I apologize for that oversight.

As to Dominic Gallman, there are three counts of murder; that is, to Kevin Miller, Desiree Felder and George Batie. There are two counts of armed robbery, that being of Kevin Miller and George Batie, not of Desiree Felder; one count of kidnapping, one count of burglary.

As to Kenneth Joy, there are three counts of accessory after the fact of murder. There are two counts of accessory after the fact of armed robbery. There is one count of accessory after the fact of kidnapping and one count of accessory after the fact of burglary.

Those are the charges. And you will have each of these indictments in the jury room with you for your consideration. Now, each indictment charges a separate and distinct offense. You must decide each

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indictment separately on the evidence and law applicable to it uninfluenced by your decision as to any other indictment. Each of the defendants may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment.

I remind you again that the fact that the defendants were arrested, charged and indicted in this case is not evidence in this case, cannot be considered by you as evidence in this case, nor does it create any presumption or inference of guilt. These documents which you will have with you in the jury room are simply the formal written instruments which contain the charges made against each defendant. These documents are the formal documents or the way the case is brought into this court.

Now, each of the defendants has pled not guilty to each of these indictments, and those pleas put the burden on the State to prove the defendant is guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself or herself innocent. I charge you this is an important rule of law, that the defendant in a criminal case, no matter what the seriousness of the charge may be, will always be presumed to be innocent

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of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end even when you begin your deliberations, but it accompanies each defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

Presumption of innocence is not a mere legal phrase. It's not a theory. It's a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

Well, what is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. You've heard some of the counsel refer to this theory. What is a reasonable doubt? Let me repeat that. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. That's the law.

The State has the burden of proving each defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told it's only necessary to prove that a

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fact is more likely true than not true, such as by the greater weight or preponderance of the evidence. In criminal cases however the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

Now, there are very few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If on the other hand you think there is a real possibility that the defendant is not guilty, you must give that defendant the benefit of the doubt and find him not guilty.

Now, generally there are two types of evidence which are presented during a trial: Direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eye witness. It is evidence which immediately establishes the main fact to be proved.

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However, on the other hand, circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It's evidence which immediately establish collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. But the law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence, nor is a greater degree of certain required of circumstantial evidence than of direct evidence.

You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of each of the defendants beyond a reasonable doubt, you must find each of the defendants not guilty. Again, you are not to consider the defendants -- you are to consider the defendants individually and not collectively.

Now, some of the evidence in this case may have been admitted solely because of its relationship to the case against one of the defendants. As I am trying to make clear, this evidence cannot be considered in the case against any other of the defendants.

Now, necessarily you must determine the

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credibility of the witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of a witness who has testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness, reject the remaining part of the testimony of the same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider whether a particular witness was an informant providing evidence which he may perceive would be beneficial for himself, one of the defendants or for the State. You may also consider the appearance and manner of a witness while on the witness stand.

The testimony of a witness may be discredited by showing that he or she previously made statements which were or are inconsistent with his present testimony. You may consider earlier contradictory

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statements to determine the truth of the testimony of that witness. It's for you, the jury, to determine the credibility of any statements given by the witnesses prior to his or her testimony.

Now, the fact that a person has a past criminal record, that person is competent to testify at a trial. A past record does not affect the ability of that witness to testify. A past record may only be considered by you, if at all, in determining the witness's believability. Remember you are the soul judges of the facts in this case and of the believability of any and all of witnesses.

Now, normally, and I think I explained this earlier in the trial, a person cannot give opinion testimony. Normally when a person testifies, they must testify as to what they either saw, heard, sensed by smell or something of that nature. However, there is an exception to this rule; and that is when someone is qualified because of their education or experience, they are permitted to give their opinion in certain areas if the Court qualifies them in that way, and there were several such witnesses in this case.

Now, a statement is alleged to have been made by one or more of the defendants and has been admitted

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into evidence in this case. While the Court has determined that the statements are admissible, or the statement is admissible, I instruct you that you make the ultimate decision of whether or not the defendant made the statement.

If the defendant did make the statement, you must determine whether the statement was made by the defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion or intimidation or by hope or promise of leniency or a reward of any kind.

In determining whether a statement was voluntary, you should consider both the characteristics of the defendant and the details of the questioning. Some of the factors you must consider are the age of the defendant, the defendant's education or lack of education, to defendant's mental ability or capacity, the place and length of detention, the nature of the questioning, the advice or lack thereof to the defendant of his Constitutional rights, including but not limited to the right to remain silent, that any statement could be used against him in a court of law, the right to have a lawyer present, that if he could not afford a lawyer, a lawyer would be appointed to represent him

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without any cost, and that he could stop making a statement at any time. You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement.

Now, the State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to the alleged statement. If you determine the alleged statement was not the free and voluntary statement of the defendant, you should not consider that statement at all.

Now, evidence of bad reputation, if any, may not be considered by you as evidence of guilt of the crime with which the defendant is now charged. In other words, must judge each defendant solely on the evidence presented in this case.

In order to establish criminal liability, criminal intent is require. For example, the mental state required to be proven by the State for some particular crime might be some particular purpose, some obvious intent, knowledge of certain facts or recklessness. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is

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always a matter that must be determined by the jury from the circumstances surrounding the situation.

There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain to determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have existed at the time and place.

This is how you make a determination of whether or not the element requiring intent was present. It's not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all of the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It's up to you to determine what each of the defendants intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness or indifference to duty or to consequences that are considered by the law to be the equivalent of criminal intent.

Now, ladies and gentlemen, if a crime is

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committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose.

For example, two people can be guilty of killing another person and only one of the two had a gun, there was only one bullet and only one of the two fired the shot that caused the death. If two or more people are acting together and are together assisting each other in committing the offense, the act of one is the act of all; or, as it is sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime even if the defendant is present when the crime is committed is not sufficient to convict a defendant as a principal.

Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, the finding of a prior arranged plan or common scheme is necessary for a

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finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

A principal in a crime is one who either actually commits the crime or who is present aiding, abetting or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

And being present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting.

Intent is also a necessary element, for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act.

Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent

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may be shown by acts and conducts of the defendant and other circumstances from which you may naturally and reasonably infer intent. And the State again must prove these elements beyond a reasonable doubt.

Now, as to the specific charges in this case, first, take armed robbery first. Two of the defendants, Dominic Gallman and Stanley Oliver, are charged with armed robbery in two counts, as I stated earlier, those being the armed robbery of George Batie and Kevin Miller.

In order to prove this offense the State must first prove beyond a reasonable doubt that each defendant took personal property from the person or presence of another person. Property is in the presence of a person if it is within the person's reach, inspection, observation or control so that the person could if not overcome by violence or prevented by fear keep possession of their own property.

The State must also prove beyond a reasonable doubt that the defendant carried the property away intending to permanently deprive the owner of the property and keep the property for the defendant's own use. The slightest removal of the property or the complete possession of the property even for an instant by the defendant is sufficient to show a

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taking and carrying away of the property.

A taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence. And finally, the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon during the robbery or that the defendant alleged either by action or words that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon.

A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. And some examples of instruments which may be deadly weapons are a pistol, a shotgun, a rifle, dagger, or a knife.

Now, two of the defendants, Dominic Gallman and Stanley Oliver, are charged with kidnapping. The State must prove beyond a reasonable doubt that each defendant knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped or abducted or carried away another person without authority of law.

Those words are statutory words and I will

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define them to you. To do a thing unlawfully is to do it willfully and against the law. Knowingly means with knowledge, consciously, not accidentally. To seize means to take hold of suddenly or forcibly. Confine means to limit, restrict or enclose within bounds, imprison or shut or keep in.

Inveigle means to lure, entice or lead astray by false representations, promises or other deceitful means. And decoy means to lure by or as if by decoy. A decoy is something to entice a person into a trap. To kidnap is to remove a person against his will by unlawful force or by fraud. Abduct means to carry off secretly or by force for an illegal purpose. To carry away means to remove.

The State does not have to prove that each defendant did all of these things. Instead, if you find beyond a reasonable doubt that each defendant did any of these things, you may find each defendant guilty of kidnapping. Something done without authority of law is something which the law does not sanction, permit, allow, condone or provide justification for. Kidnapping does not have to be for any personal or monetary gain, for any illegal purpose, but may be for any reason whatsoever.

Two of the defendants are charged -- Dominic

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Gallman and Stanley Oliver are charged with first degree burglary. The State must prove beyond a reasonable doubt that each defendant entered a dwelling without consent. A dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied cannot be considered a dwelling for purposes of a dwelling, but a building is a dwelling even if the residents are temporarily absent from the building.

In order to prove that each defendant entered the dwelling, the State does not have to show that the defendant's entire body entered the building. The smallest entry is sufficient. It may be any part of a body, such as a hand or a foot or even an instrument. In addition, the State does not have to prove that force was used to gain entry. If a person enters a building by using deception, artifice, trick or misrepresentation to get consent to enter, this is an entry without consent.

Next the State must prove beyond a reasonable doubt that each defendant intended to commit a crime, either a felony or a misdemeanor, at the time of the entry. The mere entry into a dwelling without consent is not a burglary. If the intent to commit a

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crime is formed after the entry, it's not a burglary. On the other hand, if the defendant intended to commit a crime at the time of the entry, it is a burglary even if the attempt was abandoned after the entry. It does not matter that the intended crime is not completed. Intent may be shown by acts and conducts of the defendant and other circumstances from which you may naturally and reasonably infer intent.

Finally, the State must prove beyond a reasonable doubt when entering, while in the dwelling or when fleeing the defendant or an accomplice was armed with a deadly weapon or explosive. A deadly weapon is previously defined as any article, instrument or substance which is likely to cause death or great bodily harm. And whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. And again, some examples are a pistol, a shotgun, a rifle or dagger or knife.

Or when entering while in the dwelling or when fleeing the defendant or an accomplice cause physical injury to anyone not participating in the crime, or when entering, while in the dwelling or when fleeing the defendant or an accomplice used or threatened to

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use a dangerous object, or when entering, while in the dwelling or when fleeing the defendant or an accomplice displayed what appeared to be a knife, pistol, revolver, rifle or shotgun or other firearm, or the defendant entered or remained in the dwelling in the nighttime. And nighttime is the period between sunset and sunrise during which there is not enough daylight to recognize a person's face.

Two of the defendants, Dominic Gallman and Stanley Oliver, are charged with murder. The State must prove beyond a reasonable doubt that each defendant killed another person or persons with malice aforethought. Malice is hatred, ill will or a hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time that the act is committed. Therefore, there must be a combination of the previous evil intent and the act itself.

Malice aforethought may be express or inferred.

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These terms express and inferred do not mean different kinds of malice but merely the manner in which the malice may be shown to exist; that is, either by direct evidence or by inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words which express hatred or ill will toward another or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts of preparation going to show that the deed was within each defendant's mind would be express malice.

On the other hand, malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon, as I defined earlier, is any article, instrument or substance which is likely to cause death or great bodily harm. And whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. And again, examples may be a pistol or shotgun, a rifle or a knife.

Now, ladies and gentlemen, voluntary intoxication -- those are the specific charges I've just outlined as to Mr. Gallman and Mr. Oliver.

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Voluntary intoxication is never an excuse or a defense to a crime. A person who voluntarily renders himself intoxicated is no less responsible for his acts while in such condition. If a person voluntarily drinks intoxicating liquors or takes drugs and becomes intoxicated and if while in that condition commits an act which would be a crime if it had been committed by a sober person, the fact of drunkenness or intoxication would not relieve the intoxicated person from that responsibility.

And by the same token; not exactly by the same token, but I charge you that duress is also not a defense to murder. This legal concept is because the murder of an innocent person is at least as great as the threat and harm of the death of the defendant.

Now, one of the defendants, Kenneth Joy, is charged with being an accessory after the fact of the several crimes as I have outlined with regard to Mr. Gallman and Mr. Oliver. In order to prove this crime, the State must prove beyond a reasonable doubt that the defendant knew that another person or persons, the principals, committed a felony and after the crime intentionally helped the principals to escape from arrest, conviction or punishment.

Intentionally means willfully, intending the

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result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conducts of the defendant and other circumstances from which you may naturally and reasonably infer intent.

Absence is not an element of the crime of accessory after the fact. If you find the defendant was merely present at the scene of a crime and did not participate in the crime but became involved after the commission of the crime, you may find the defendant guilty of being an accessory after the fact.

Although the actions of the defendant may have helped the principal or principals to escape detection or arrest, this is not enough to be an accessory after the fact. The State must also prove that the defendant acted with the intention or with the purpose of helping the principal to escape detection or arrest.

So if a person charged with being an accessory after the fact did not intend that his acts should help the principal escape detection or arrest, then he's not an accessory after the fact even though his acts in fact may have resulted in helping the principals escape detention or arrest.

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There must be some affirmative act tending toward concealment of the commission of the crime. Silence alone is not sufficient to make a person an accessory after the fact to a felony.

Now, ladies and gentlemen, I want to emphasize this point most strongly. I instruct you and emphasize the fact that a defendant or that any defendant does not testify is not a factor to be considered by you in any way in your deliberation and in your consideration of the guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant, any defendant, has the Constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations.

I repeat: Under your oath you are to draw no conclusion whatsoever from the fact that a defendant in this case did not testify. The fact that a defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have stated to you throughout these instructions, is on the State. A defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, as I stated at the beginning of these

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instructions, ladies and gentlemen, nothing that I may have said or done during the course of this trial has been in any way intended to express or suggest a view of the case or an opinion of the facts in this case, the weight of the evidence or the credibility of the witnesses. If any of my actions or words have so seemed to indicate, you must disregard such and form your own opinion as to these matters.

I am required to declare the law as I've done through these instructions to help and guide you to a just and lawful verdict. Whether some of these instructions will apply will depend on what you find to be the facts. The fact that I have instructed on various subjects in this case must not be taken as indicating an opinion of this Court as to what you should find to be the facts or to which party should be entitled to your verdict.

Your verdict must represent the considered judgment of each juror. In order to return a verdict it's necessary that each juror agree. Your verdict must be unanimous in other words. It's your duty as jurors to consult with one another to deliberate with a view to reaching an agreement if you can do so without violence to your individual judgments. Each of you must decide the case for himself or herself,

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but do so only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous, but do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times that are you not partisans favoring one party over the other. Are you judges, judges of the facts. Your sole interest is to seek the truth from the evidence in this case.

Now, Mr. Foreman, I'm going to ask you to retire to the jury room in just a minute. But before I do, I need to tell you that you can begin your deliberations when you receive all of the evidence. All the evidence is going to be brought to the jury room by the bailiffs along with these indictments.

As you already know, there are several indictments. On each indictment, on what we call the face of the indictment, in the bottom, left-hand corner there is a place for your verdict. Once you have made a determination of either guilt or innocence on the particular indictment, I'll ask you

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to sign, I mean, to indicate not guilty or guilty, sign your name and date each indictment as you go through them.

Oh, the other thing is, I noticed throughout the trial many of you have been taking your own notes. I want to remind you again that those notes are for your benefit, for your recollection as you're discussing the various elements of this case and the various indictments.

They're not to be used to try to convince somebody else that you wrote something down that perhaps they thought they heard, didn't hear. I'm just cautioning you that your notes are for your own benefit, not to try to convince other jurors as to what you may have heard or didn't hear.

So, with those two comments, I'm going to ask you to retire to the jury room. As you know, we have ordered lunch for you. It should be here somewhere around 12:30. All right, ladies and gentlemen. I'll ask you to retire to the jury room at this time. Do not begin your deliberations until you receive all the evidence and the indictments, at which time you may begin your deliberations. Thank you very much.

(Jury out at 10:21 a.m.)

THE COURT: Any exceptions to the charge from

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the State?

MR. MEADORS: Beg the Court's indulgence, Your Honor. As far as accessory, absence is not an element of the crime of accessory if you find the defendant was merely present and did not participate but became involved later; would Your Honor consider also, if you find that he was not present but then, I guess in the alternative. That makes it seem kind of my thinking this morning that someone could read that he -- I'm not saying all counsel agrees with me, but it almost infers that he needs to be present.

MR. DELGADO: Your Honor.

MR. MEADORS: And sort of like in the alternative, if you find that he was not present but did become involved after the commission of the crime, you may find the defendant guilty. I guess saying it doesn't matter whether he was there or not. We'd just ask that that just be made a little more clear. But other than that, that's all we have.

THE COURT: All right. For mr. Oliver.

MR. STRICKLER: It doesn't directly relate to Mr. Oliver. But are you asking my response to that or whether I have an exception?

THE COURT: Both.

MR. STRICKLER: My response to that, that's why

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I thought we had a charge conference yesterday. You know, I had a thought that occurred to me as we were going through this that I'm going to keep to myself because we had a charge conference yesterday.

At this point in time, however, I would renew my previously stated exceptions to your decision not to charge Defendant's Requests 8 and 9. That's all.

THE COURT: From Mr. Milling.

MR. MILLING: Your Honor, we would likewise join in those same exceptions earlier mentioned in the charge conference.

THE COURT: Mr. Delgado.

MR. DELGADO: Your Honor, I agree with my co-counsel for Mr. Oliver and Mr. Gallman. I think the solicitor now if we go back and reemphasize that, I think we give undue inference to whether or not presence or actions after the occurrence that would denigrate Mr. Joy's case. I think the charge as a whole and sum adequately conveys the law. And I would object to that recharge or clarification.

THE COURT: All right. Well, I think these matters were fully discussed yesterday. And I understand sometimes when you hear it, it sounds a little different than it looks on paper. But I think the charge accurately reflects the state of the law,

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and I respectfully deny your request for an additional charge or a clarification.

All right, counsel. Is the evidence -- is everybody convinced that the evidence is all in place and ready to be submitted to the jury? We're going to take it as it is?

MR. MEADORS: I think we'll review it with whoever wants to.

MR. DELGADO: Yes, Your Honor. Just to make certain.

THE COURT: Let's get it ready to go.

(Pause)

THE COURT: We'll stand at ease.

(Whereupon, the jury begins deliberating at 10:40 a.m.)

THE COURT: Any objection to releasing the alternate? Alternate?

MR. MILLING: No.

MR. STRICKLER: I think you have to release the alternate at this point.

THE COURT: I think I do. There's one solicitor that says, oh, no, wait until they start deliberating, we're sure that they're deliberating before. But I'm prepared to release the alternate. Any objection?

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MR. MILLING: None, Your Honor.

MR. STRICKLER: No, sir.

THE COURT: All right. Just have a seat, please, just for one second. Mr. Bowen, will you bring the alternate?

(Whereupon, the alternate is excused from the trial of the case)

THE COURT: All right, Madam Clerk. Go ahead and deal with that. It's a request for a chart, a flip chart and some magic markers. I will have the clerk deliver those. Mr. Bowen.

THE BAILIFF: Yes, sir.

THE COURT: We'll stand at ease.

THE BAILIFF: They don't want the safe back there unless they call for it.

THE COURT: Go put it out in the hall so it will be close to them if they want it. Now, they need that chart right there and some magic markers.

(Whereupon, a break is taken)

THE COURT: Counsel, the jury has indicated -- I'm just going to read the note from the jury. "The jury has answered all indictments." I take it to mean that that's a verdict. I just thought I'd let you know. I've never heard it phrased in that manner. All right. The State ready to receive the

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verdict?

MR. MEADORS: The State's ready.

THE COURT: Defense ready to receive the verdict?

MR. STRICKLER: Your Honor, the only question I have is, does Your Honor intend to ask the defendants to rise at the time the verdicts are given? Because they're handcuffed at this point in time, and I'd prefer not.

THE COURT: I've never done that. Some courts do that traditionally. But I don't think that's necessary.

MR. STRICKLER: Thank you, sir.

THE COURT: Anything else?

MR. STRICKLER: No, sir.

MR. MILLING: No, sir.

THE COURT: Mr. Delgado.

MR. DELGADO: No, Your Honor.

THE COURT: Ladies and gentlemen in the audience, this has been a lengthy trial. I'm sure that people in the audience are vested with some emotional connection with this case. I am going to ask you as the verdicts are delivered that you not express any outward signs of emotion. If you do, I'm going to have to ask that you be removed from the

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courtroom because this is an orderly process and it's going to be conducted in an orderly fashion. So I just -- I'm just giving you -- I just need to say that. I don't expect any untoward activity on the part of the audience. But if there is, I'll just have to have you removed from the courtroom.

All right, Mr. Bailiff. Bring the jury, please.

(Jury in at 1:52 p.m.)

(WHEREUPON, Court's Exhibit No. 18 is marked for identification.)

(WHEREUPON, Court's Exhibit No. 19 is marked for identification.)

(WHEREUPON, Court's Exhibit No. 20 is marked for identification.)

THE BAILIFF: The jury is all present, Your Honor.

THE COURT: All right. Thank you very much. Mr. Foreman, has the jury reached a verdict as to all charges?

FOREPERSON: Yes, Your Honor, we have.

THE COURT: All right. Will you hand them to the bailiff, please.

(Foreman complies)

(Whereupon, a bench conference is had between the Court and the clerk).

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THE COURT: Madam Clerk, publish the verdicts, please.

THE CLERK: Yes, sir. As to Stanley Oliver, indictment number 2005-GS-40-11412, the State of South Carolina vs. Stanley Oliver, indictment for kidnapping; we, the jury, find the defendant guilty.

Indictment number 2005-GS-40-11411, the State of South Carolina vs. Stanley Oliver, indictment for burglary first degree; we, the jury, find the defendant guilty.

Indictment number 2005-GS-40-11415, the State of South Carolina vs. Stanley Oliver, indictment for armed robbery; we, the jury, find the defendant not guilty.

THE COURT: Read that as to which victim.

THE CLERK: As to Kevin Miller.

Indictment number 2005-GS-40-11414, the State of South Carolina vs. Stanley Oliver, indictment for armed robbery; we, the jury, find the defendant guilty as to George Batie.

Indictment number 2005-GS-40-11582, the State of South Carolina vs. Stanley Oliver, indictment for murder; we, the jury, find the defendant guilty. And this is for Desiree Felder.

Indictment number 2005-GS-40-11416, the State of

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South Carolina vs. Stanley Oliver, indictment for murder; we, the jury, find the defendant guilty. And this is for Kevin Miller.

Indictment number 2005-GS-40-11417, the State of South Carolina vs. Stanley Oliver, indictment for murder; we, the jury, find the defendant guilty. And this is for George Batie.

Mr. Foreman, was this your verdict and the verdict of the entire jury?

FOREPERSON: Yes, ma'am.

THE CLERK: Thank you.

THE COURT: Any desire to poll the jury?

MR. STRICKLER: Please, sir.

THE COURT: Poll the jury.

THE CLERK: Ladies and gentlemen of the jury, I'm going to ask you two questions relating to your verdicts. Please answer yes or no to both questions as I call out your number. Number 229, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 148, were these your verdicts?

JUROR: Yes.

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THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 197, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 216, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 1, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 168, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 192, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

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JUROR: Yes.

THE CLERK: Number 171, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 243, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 162, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 76, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 158, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

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THE CLERK: The jury has been polled on Stanley Oliver, Your Honor.

THE COURT: All right.

THE CLERK: As to Dominic Gallman, indictment number 2005-GS-40-9699, the State of South Carolina vs. Dominic Gallman, indictment for kidnapping; we, the jury, find the defendant guilty.

Indictment number 2005-GS-40-9696, the State of South Carolina vs. Dominic Gallman, indictment for burglary first degree; we, the jury, find the defendant guilty.

Indictment number 2005-GS-40-9697, the State of South Carolina vs. Dominic Gallman, indictment for armed robbery; we, the jury, find the defendant guilty.

Indictment number 2005-GS-40-9695, the State of South Carolina vs. Dominic Gallman, indictment for armed robbery; we, the jury, find the defendant not guilty. And this is as to Kevin Miller.

Indictment number 2005-GS-40-11581, the State of South Carolina vs. Dominic Gallman, indictment for murder; we, the jury, find the defendant guilty. And that is as to Desiree Felder.

Indictment number 2005-GS-40-9700, the State of South Carolina vs. Dominic Gallman, indictment for

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murder; we, the jury, find the defendant guilty. And that's as to Kevin Miller.

Indictment number 2005-GS-40-9701, the State of South Carolina vs. Dominic Gallman, indictment for murder; we, the jury, find the defendant guilty. And that's as to George Batie.

Mr. Foreman, was this your verdicts and the verdicts of the entire jury?

FOREPERSON: Yes.

THE COURT: Any desire to poll the jury?

MR. MILLING: Yes, please.

THE COURT: Poll the jury.

THE CLERK: Number 229, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 148, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 197, were these your verdicts?

JUROR: Yes.

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THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 216, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 1, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 168, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 192, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 171, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

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JUROR: Yes.

THE CLERK: Number 243, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 162, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 76, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Number 158, were these your verdicts?

JUROR: Yes.

THE CLERK: Are they still your verdicts?

JUROR: Yes.

THE CLERK: Thank you. The jury has been polled, Your Honor, on Dominic Gallman.

As to Kenneth Joy, indictment number 2007-GS-40-11487, the State of South Carolina vs. Kenneth Joy, indictment for accessory after the fact

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of kidnapping; we, the jury, find the defendant not guilty. This is as to Desiree Felder.

Indictment number 2007-GS-40-11488, the State of South Carolina vs. Kenneth Joy, indictment for accessory after the fact of burglary first degree; we, the jury, find the defendant not guilty. And that's as to George Batie.

Indictment number 2007-GS-40-11491, the State of South Carolina vs. Kenneth Joy, indictment for accessory after the fact of armed robbery; we, the jury, find the defendant not guilty. And that's as to Kevin Miller.

Indictment number 2007-GS-40-11490, the State of South Carolina vs. Kenneth Joy, indictment for accessory after the fact of armed robbery; we, the jury, find the defendant not guilty. And that's as to George Batie.

Indictment number 2007-GS-40-11486, the State of South Carolina vs. Kenneth Joy, indictment for accessory after the fact of a murder; we, the jury, find the defendant not guilty. And that's as to Desiree Felder.

Indictment number 2007-GS-40-11485, the State of South Carolina vs. Kenneth Joy, indictment for accessory after the fact of murder; we, the jury,

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find the defendant not guilty. That's as to Kevin Miller.

Indictment number 2007-GS-40-11484, the State of South Carolina vs. Kenneth Joy, indictment for accessory after the fact of murder; we, the jury, find the defendant not guilty. That's as to George Batie.

Mr. Foreman, was this your verdict and the verdict of the entire jury?

FOREPERSON: Yes.

THE CLERK: Thank you.

THE COURT: Any desire to poll the jury?

MR. DELGADO: No, Your Honor.

THE COURT: From the State? Mr. Meadors?

MR. MEADORS: (Shakes head negatively).

THE COURT: All right. All right, ladies and gentlemen of the jury, thank you very much. That will conclude your service in this case. I want to take this opportunity on behalf of the entire court system, myself, the attorneys in this case, the litigants in this case, to thank you. It's been a fairly lengthy trial, a difficult one at times. But you have showed resilience, conscientiousness, attention to your duty; and for those things I want to thank you.

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I always tell jurors this system can do without me, it can do without these attorneys; it cannot do without you. You are such a vital part, an integral part of the judicial justice system in this county, in this state, in this country. You are the third leg of the triangle. And without your assistance and willingness to come and sit and hear these matters, resolve these matters, because these matters must be resolved in our community, the system would break down.

So I want you to -- I hope you feel perhaps you have learned something these two weeks. I hope you feel that your service has been vital and very important to the citizens of this county. So I want to thank you as much as I possibly could for your willingness to sit and serve and make these tough decisions. Some of the decisions I make are not so tough. The decisions you make are truly difficult and affect a lot of people's lives. I hope you know that.

All right. The remaining portion of this trial will consist of the sentencing of the defendants. Now, there's a fair amount of paperwork that needs to be done before that takes place. But as not as in Law & Order or some of the other ones, television

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shows, where they say, we'll sentence at some later date, we have to -- because of the volume of business here in Richland County, we just have to move on with sentencing immediately following a trial because we've got another one waiting for us on Monday, so to speak.

So the sentencing will take place in about 15 minutes. Now, you may stay for that if you wish. I'll ask you to take a seat in the audience. You can sit as a group if you wish. You need not stay. I understand this has taken a lot of time out of your busy schedule at this time of year. You're free to go. And that's fine. If you wish to stay, that's fine. But as I say, the paperwork will take probably 15, 20 minutes before we actually start that procedure.

You are free to talk to anybody about your decision if you wish to do so as you leave the courtroom or leave the courthouse. If the attorneys want to talk to you; sometimes they do, sometimes they don't, you are free to talk to anybody about the case now. But you don't have to. If anybody -- if you'd rather not talk to anybody about the case, all you have to do is tell them. And if that doesn't satisfy them, you let the bailiff know or either a

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deputy know and I'll take care of it.

So, with those parting words, I hope you have a pleasant season, Christmas season. Good luck to all of you and thank you again so much. You are now dismissed.

(Whereupon, the jury is excused from the trial at 2:09 p.m.)

THE COURT: All right. Any motions? Somebody pull that door to. Oh. That's all right, Mr. Bowman.

MR. STRICKLER: Thank you, sir. As to Mr. Oliver, of course at this point in time I would again renew all our previously stated objections and exceptions both during the State's and the defense case, renew again directed verdict motions at the end of the State's and defenses' case. I renew the mistrial motions that we made during the State's case and the defense case. I'd renew my objection to Your Honor's refusal to decline my request to charges number 8 and 9. Your Honor, I would move for a new trial based on all those renewals and previously stated motions at this point in time.

Additionally, I would move for a new trial based on the length of deliberations in this matter. The record will reflect that deliberations lasted

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something shortly a little less than three hours by my count. The record will also reflect that we had a week and a half's worth of testimony, some 40 witnesses, I believe in excess of 215 exhibits. With all due respect to jury in this case, I'd submit the length of their deliberations supports a request for a new trial in this matter.

THE COURT: All right. Any response from the State as to the defense motions?

MR. ROSS: Nothing from the State, Your Honor.

THE COURT: All right. All right, Mr. Strickler. I believe from the -- I think the jury certainly had sufficient evidence with which to reach the verdict they reached. The length of time, although apparently brief, I noticed throughout the trial that the jurors took copious notes, that they paid attention. I feel that, well, although it hasn't been mentioned, the Foreman of the jury I'd be willing to bet at one time in the past was a school teacher who asked for a pad to write things down on. But I don't feel that the verdict was rendered in haste, and I must respectfully deny your motions.

MR. STRICKLER: Thank you, sir.

THE COURT: Mr. Milling.

MR. MILLING: Thank you, Your Honor. May it

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please the Court. I would also move to renew our previously stated objections, exceptions, motions for a mistrial, as well as the motion for a directed verdict made after the State's case and after the defense case. I would submit to you, as Mr. Strickler, that a new trial should be properly granted as a result of those; in addition, as a result of the short period of time with which the jury deliberated in this case.

Your Honor, I would further move for a new trial based upon inconsistent verdicts in this case. The evidence to be believed would have put my client in the same boat as Mr. Joy who received not guilty verdicts on each of these counts. As such, the verdict would be inconsistent. And I would submit that the jury did not properly weigh the evidence in the case, did not properly deliberate, could not have properly evaluated the 35 to 40 witnesses and 215 some odd documents which were introduced in this case. Based on those reasons, Your Honor, we would move for a new trial.

THE COURT: All right. Well, in a similar vein, I feel the evidence was sufficient to allow the jury to come to the conclusion it did as to your client. I don't see any particularly inconsistency in the

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verdicts. If I recall, one of the witnesses testified that your client said he shot Desiree Felder. And that doesn't have anything to do with being an accessory after the fact. That's a principal. And so I disagree with your analysis of the inconsistency of the verdicts.

And given all the facts of the case and the way the case was presented and the time the jury, as I said, apparently took good notes, listened intently, I feel that they were well within reason to reach a verdict in three hours. I must respectfully deny your motions. Mr. Delgado.

MR. DELGADO: I have nothing to say. Thank you very much.

THE COURT: All right. All right. Counsel, approach the bench just for a minute, please. Mr. Delgado, you need not approach.

MR. DELGADO: Yes, sir.

(Whereupon, a bench conference is had)

THE COURT: Mr. Delgado.

MR. DELGADO: Yes, Your Honor.

THE COURT: Let me see you.

(Whereupon, a bench conference is had between the Court and Mr. Delgado).

THE COURT: We'll stand at ease for about ten

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minutes.

(Whereupon, a break is taken)

THE COURT: All right, Solicitor. Mr. Ross, you ready to proceed?

MR. ROSS: Yes, sir.

THE COURT: Come around.

MR. MEADORS: Your Honor, just one person would like to speak. It's Mr. Charles Everette. He would be the best friend, like family, of Mr. Jim Batie. That is the only person though out of -- Kevin Miller's family is present, has been here. I want to thank them for their cooperation and patience. I don't know if any may want to speak. But as far as Desiree Felder's family, they're also here. I want to thank them also. And I don't know if anyone wants to speak. But on behalf of Mr. Batie, at this point this is Mr. Charles Everette, and he has a few words he'd like to share with this court.

THE COURT: Yes, sir, Mr. Everette. I'll be glad to hear from you.

MR. EVERETTE: Good afternoon, Your Honor. During this trial we heard one side of Jim. I just wanted to enlighten you on the side. There was another side of him. He was a businessman. Maybe he choose the wrong business, and that was his love of

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money. But he was non-violent. He never carried guns or anything.

He graduated from Benedict College in English. He was an avid writer. He majored in English. He was an avid writer. He even loved kids. He started his own tutoring business. His mission statement was, is, GLB Professional Tutoring System. It's a system that believes that each and every child is a rising star that dares to dream. Every child is intellectually gifted with creativity and uniqueness.

This is just something that he loved to do. He loved to write. He loved kids. He talked about his drugs experience. But this is a side I want you to be aware of him. Grief is messy. Beyond the tears, the pain and loss, there is hope. We never say goodbye for the last time, for we shall meet again. Because Christ lives, death is not a tragedy but a triumph.

I read something one time said a living dog is better than a dead lion. And I just wanted to reflect those words for the family, Ms. Miller, Ms. Dupree, to all of us. Even though they are gone, one day we shall see them again. Thank you, Your Honor.

THE COURT: Thank you very much, sir.

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MR. MEADORS: And again for the record, I want to thank all the family. It's been a long two and a half years. But thank you, ladies and gentlemen. Mr. Ross and Ms. McDuffie have the rest.

THE COURT: All right.

MR. ROSS: Your Honor, Mr. Oliver was served with notice to seek life without parole. His prior --

THE COURT: He was served?

MR. ROSS: Served --

THE COURT: All right.

MR. ROSS: -- with life without parole. I believe he was served on November 5th. It was clocked on November 5th. He and his attorney were both served here in the courtroom. The prior basis for that was an assault and battery with an intent to kill. Your Honor, I can go over the rest of his prior record. That assault and battery with intent to kill conviction was 1992.

THE COURT: '92?

MR. ROSS: Yes, sir. He received a 15-year sentence at that time. His record starts in 1990, criminal domestic violence; '91, malicious jury to personal property. He got probation. Then he received assault and battery with intent to kill,

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received 15 years. He also had a conspiracy to distribute crack cocaine, received 15 years, assault and battery of a high and --

THE COURT: Was that the same time?

MR. ROSS: Yes, sir. Assault and battery of a high and aggravated nature, ten years.

THE COURT: Is that the same time?

MR. ROSS: Yes, sir. P.W.I.D. crack or cocaine, crack cocaine within a half mile of a school, ten years; the same timeframe, Your Honor. That's the extent of his record.

THE COURT: All right. Anything further from the State?

MR. MEADORS: No, sir.

THE COURT: Mr. Strickler.

MR. STRICKLER: Your Honor, of course now would be the time to go ahead and ask the Court for mercy in this case. Of course even if the Court in this matter, if you were inclined to exercise clemency is not able to. Mr. Oliver knows what sentence Your Honor has to impose on the charges in this case.

I'll just tell you that it's been my privilege to represent Mr. Oliver since I believe it was September 15th of 2005. I first met him down at the Yankee Dorm at Alvin S. Glenn. I have had numbers of

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discussions with him over that time. I've found him to be an intelligent, engaging individual. I have found him to be someone who was actively interested in the defense of his case.

I can affirmatively state to the Court that the entire time I represented him he did not so much as hint at being guilty of this offense. He also expressed a great deal of concern -- I don't think he'd mind me telling you this -- over the fact that both Mr. Joy and Mr. Gallman have been charged in this matter, not because he was guilty of it himself, but he felt they'd just gotten charged because he had been charged. So I think and at times was concerned over those gentlemen being charged which seemed to be greater than his concern of being charged himself. I think that says something about him as a human being. So, I've already reviewed the procedure with him. I'll just tell the Court --

THE COURT: You've reviewed with him his appellate rights?

MR. STRICKLER: Yes, sir. Both direct appeal and post conviction relief. I'll get started on that. Well, the paperwork will be filed and initiated this week. So I'd just like to acquaint the Court with that because just as the Court has

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heard one side, I guess Mr. Batie as we were just told has heard one side of Stanley Oliver. And there's very human beings that are one dimensional, Stanley no less than any other.

And regardless of the Court or anyone else's feelings about the appropriateness of the verdict in this case, which I am not taking issue with the verdict at all at this point in time, I've expressed myself from the legal standpoint in that regard, Stanley is a unique human being. And it's been my privilege, as I say, starting to get to know him for the last two years and three months. Stanley, do you have anything you wish to tell the judge?

MR. OLIVER: Yeah. No disrespect to you. I know you're the judge. I have a higher judge to be judged by. If I was guilty of these crimes, that would be the judge that I would be worried about more so than anything.

I'm hurt at the fact that this case was initiated behind me, just being in the wrong place at the wrong time. I didn't witness a murder. I didn't commit a murder. I didn't accompany nobody who committed a murder or witness the murder. The fact that my friends had to go through this and their family had to go through this because I had to go

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through this is outrageous.

I want to tell the victims, the family members as elated as you may be that you think justice has been served, justice hasn't been served. Because the person that did this to your people, they're still free. And by my judge one day I'll be free from this illegal prosecution that John Meadors put down.

I don't ask for no leniency or nothing. I mean, you're going to do what you've got to do. And I'm going to pray, and my God is going to do what He do.

MR. STRICKLER: Thank you, sir.

THE COURT: Ms. LaFave.

MS. LAFAVE: Thank you, Your Honor. If it pleases the Court. Your Honor, I will say just on a personal note that I met Mr. Oliver in July or August of this year. I will say that there is another dimension to him. He is a spiritual man. He is an articulate man. And, Your Honor, I do believe that we stand before you today in this particular situation not because of the failure of Stanley Oliver but because of the failure of many people and many institutions throughout his life. And it is a true tragedy on the part of Desiree Felder, Kevin Miller and George Batie, but this is also a tragedy as to Stanley Oliver. I have nothing else to say,

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Your Honor.

THE COURT: All right, Mr. Oliver. The jury has found you guilty. Under our statutory law, your attorney tells me he has made you aware of the punishment that I must impose. It's not arbitrary or discretionary on my part.

Therefore, with regard to the charge of armed robbery; that is, indictment number 05-40-11414, the sentence of the Court is you be committed to the State Department of Corrections for a period of 30 years.

On your kidnapping charge, indictment number 05-40-11412, kidnapping, the sentence of the Court is you be committed to the State Department of Corrections for a period of 30 years.

On your burglary in the first degree charge the sentence of the Court is -- that is indictment number 05-40-11411, the sentence of the Court is you be committed to the Department of Corrections for the remainder of your natural life; that is, life without parole.

On your murder charge, 05-40-11416, the sentence of the Court is you be committed to the State Department of Corrections for the remainder of your natural life; that is, life without parole.

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As to the charge of murder, 05-40-11582, the sentence of the Court is you be committed to the State Department of Corrections for the remainder of your natural life, that being life without parole.

And on murder indictment 05-40-11417, the sentence of the Court is you be committed to the State Department of Corrections for the remainder of your natural life, that being life without parole. All sentences to run concurrent. Good luck to you, sir.

MR. STRICKLER: Thank you, sir.

THE COURT: Thank you very much. Solicitor.

MR. ROSS: Your Honor, as to Mr. Dominic Gallman, he was also served and his attorney was served with notice to seek life without parole. His prior LWOP conviction was an armed robbery, sentenced in 1996 to 14 years on armed robbery.

THE COURT: 14 years?

MR. ROSS: Yes, sir.

THE COURT: All right.

MR. ROSS: He also had an assault and battery with intent to kill at that same time. He received a ten-year sentence.

THE COURT: At the same time?

MR. ROSS: Yes, sir. On July 9th, '96, armed

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robbery.

THE COURT: Was that a concurrent sentence?

MR. ROSS: Yes, sir.

MR. MILLING: I believe it was actually AWIK.

MR. ROSS: Oh, AWIK. All right. Assault with intent to kill, ten years.

THE COURT: All right.

MR. ROSS: He also later, on November 5th, '97, had accessory after the fact to a felony, received a ten-year sentence.

THE COURT: Do you know what that was, what the penalty was?

MR. ROSS: Burglary and armed robbery I believe, Your Honor.

THE COURT: From '97?

MR. ROSS: Yes, Your Honor. Then in 2004 he was arrested for unlawful carrying of a weapon, was convicted to 60 days in 2005. That's the extent of his record.

THE COURT: Any testimony from the victims?

MR. MEADORS: Your Honor, again on behalf of the families, you know, none of them deserved to die. They all love their family and wish they were still here. I was just told to say that on their behalf.

THE COURT: All right. Mr. Milling.

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MR. MILLING: Thank you, Your Honor. May it please the Court. I started representing Mr. Gallman in early to mid 1990 -- or 2006 -- when his prior counts with Ms. Hudgins took the position with the office of Appellate Defense. Throughout that time period I've always had good meetings and conversations with Dominic. Dominic is someone who has maintained and professed his innocence throughout the entire process. It is a tragedy, what happened to Mr. Batie, Mr. Miller and Ms. Felder; but an equal tragedy is if an innocent man goes to jail. Dominic Gallman is 31 years of age.

THE COURT: Who? Who did you say is an innocent man?

MR. MILLING: I said if an innocent man goes to jail.

THE COURT: If an innocent man.

MR. MILLING: Yes.

THE COURT: Go ahead.

MR. MILLING: Your Honor, he's 31 years of age, had a long life ahead of him. It's been a pleasure to represent him. We have talked about what the Court must do at this point in time based upon the service of the notice of intent to seek life without the possibility of parole.

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We would have asked for leniency but we understand that that's outside of the Court's discretion. We have talked about the procedures where we go from here, and I would continue to discuss those options with Mr. Gallman.

THE COURT: Mr. Gallman, do you have anything you want to say?

MR. GALLMAN: Yes, sir. This is a real tragic thing what happened to the families of Ms. Felder, Mr. Miller and Mr. Batie. I wish I could say that I'm up here being prosecuted for that act, but I'm not. I didn't commit those crimes. I have never killed anybody in my life.

It's even more tragic that I had two brothers get killed on the same side of town not even ten blocks from where that incident happened at. My family must go through the same thing that your families are going through now. I'm going to be taken away from my family the same way your families were taken away from you.

I wish the right person was up here so they could receive this punishment other than me. The only thing I can now is I hope my family just keep their heads up, and I hope that you all keep your heads up as a family. I mean, my condolences to all

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of you all. It's a tragic thing that happened. I'm not the individual that committed those crimes.

THE COURT: All right, Mr. Gallman. The jury has found you guilty in this case and as such it becomes my responsibility to impose a sentence which is dictated by law, one I cannot -- I don't have any discretion about the imposition of the sentence, although I will tell you -- I probably should have told Mr. Oliver -- that were this not a life without parole case, I probably would have imposed it anyway because I sat and listened to the heinous nature of these murders, robberies. And if a jury had found you guilty and you didn't have this prior record which makes this is a life without parole case, I probably would have still imposed life without parole.

As to your indictment for kidnapping, indictment number 05-40-9699, the sentence of the Court is you be committed to the State Department of Corrections for a period of 30 years.

As to the armed robbery, indictment number 05-40-9697, the sentence of the Court is you be committed to the State Department of Corrections for a period of 30 years.

As to your burglary in the first degree charge,

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the sentence of the Court is -- that is on indictment 05-40-9696, the sentence of the Court is you be committed to the State Department of Corrections for the remainder of your natural life; that is, life without parole.

As to your murder conviction, 05-40-9700, the sentence of the Court is you be committed to the State Department of Corrections for the remainder of your natural life; that is, life without the possibility of parole.

As to your murder indictment, number 05-40-11581, the sentence of the Court is you be committed to the State Department of Corrections for the remainder of your natural life; that is, life without the possibility of parole.

As to your murder indictment, your murder conviction, indictment number 05-40-9071, the sentence of the Court is you be committed to the State Department of Corrections for the remainder of your natural life, that being life without the possibility of parole. Good luck to you, sir.

Any further business to come before the Court?

MR. ROSS: No, Your Honor.

THE COURT: Court's adjourned.

(Whereupon, the proceedings are concluded)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 3rd, 4th, 5th, 6th, 7th, 10th, 11th, 12th, 13th, 14th, 17th and 18th days of December, 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 15, 2008

Jenny H. Williams

Jenny H. Williams, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMINIC GALLMAN,

APPELLANT

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by refusing to declare a mistrial where state's witness Jason Brown testified co-defendant Oliver told him in jail that he and appellant rushed into the drug dealer's house and committed the murders and that he told the police this in his statement, since defense counsel correctly argued this violated the principles of Bruton v. United States and Crawford v. Washington since appellant was denied the opportunity to cross-examine Oliver about making that alleged statement which implicated appellant in the murders?

2.

Whether the court erred by allowing co-defendant Oliver's girlfriend, Renata Williams, to testify that Oliver came to her apartment in the middle of the night around the time of the murder, and telephoned appellant since the state failed to lay the necessary evidentiary predicate to show how Williams knew appellant was "on the other end of the phone" since her testimony clearly implied Oliver called appellant about the crimes?

3.

Whether the court erred by allowing the admission of Tatanisha Robinson's redacted statement into evidence since it called undue attention to that statement, the redaction was so sloppily done that it was obvious matters were being hid from the jury, and Robinson's admissions and explanations regarding the statement during her testimony made admission of the statement itself improper under Rule 613 (b), SCRE?

been done. R. 1086, ll. 3 – 21. The judge disagreed, stating that he thought his instruction was sufficient, and he denied the mistrial motion. R. 1086, ll. 22 -25.

During the testimony of Columbia Police Investigator Mitch Wilkerson, he acknowledged that co-defendant Oliver made statements to him about appellant. Wilkerson confirmed that Oliver "implicated Mr. Gallman as having known Jim Batie [the decedent]." Mr. Wilkerson also acknowledged Oliver told him appellant had been to Batie's house on a prior occasion. R. 5, l. 12 – 6, l. 19.

Each of the attorneys earlier had joined in warning the court that Bruton problems were "part and parcel" of the state's case" in putting "these three individuals together in some way, shape, form or fashion." Defense counsel Milling specifically informed the court of Bruton problems where appellant was being implicated but he could not cross-examine the person who allegedly implicated appellant. R. 12, l. 21 – 20, l. 9.

Defense counsel also noted that there would be potential Bruton problems with other witnesses -- including Renata Williams -- which is the next issue before this Court. R. 95, l. 4 – 97, l. 17.

Discussion

The introduction of a non-testifying co-defendant's statement which implicates another co-defendant violates the co-defendant's right to confrontation because he has no opportunity to cross-examine the co-defendant who allegedly implicated him in the crime. Bruton v. United States, 391 U.S. 123 (1968). The right to confrontation is so fundamental that limiting instructions are not an adequate substitute for the right to confront the co-defendant. State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999).

Here, there was testimony that Brown told the police that Oliver confessed to him that he committed the murders, and he alleged Oliver named appellant as his accomplice in the three murders. That was fundamentally unfair because Oliver did not testify in this case, and consequently appellant was denied his fundamental right to confront and cross-examine Oliver.

Defense counsel also correctly argued that the principle of Crawford v. Washington, 541 U.S. 36 (2004) applied. Oliver's alleged confession implicating appellant was introduced through a statement Brown gave to the police, Investigator Witherspoon. While Oliver's alleged statement to Brown was surely a statement against his penal interest, appellant was still denied the opportunity to cross-examine Oliver about the statement. See State v. Mitchell, 378 S.C. 305, 662 S.E.2d 493 (Ct. App. 2008) (wherein this Court held that the admission of an accomplice's prior statement to the police under a hearsay exception nonetheless violated the confrontation clause and entitled Mitchell to a new trial).

Appellant is fully aware that a classic Crawford v. Washington error would involve introducing a statement Brown gave to the police where appellant could not cross-examine Brown. However, the fact remains that Brown told the police that Oliver confessed to him, and that he implicated appellant in the murders, and appellant could not cross-examine Oliver about his purported confession that was memorialized by Investigator Witherspoon. Counsel for Oliver was using the statement at the time this improper testimony came before the jury. Consequently, the principles of Bruton and Crawford were violated because appellant was denied his right to confront and cross-examine Oliver.

Further, our Supreme Court, years ago, in State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987) warned the state "to carefully consider all available alternatives before

deciding to try co-defendants jointly. . ." The Court in Bellamy noted the inherent problems, such as attempting to redact statements to protect other co-defendant's rights, which arise during joint trials.[3]

It was appellant's right to confront and cross-examine Oliver about this alleged statement to Brown, which Brown related to the police in his own statement. Since appellant was denied his fundamental right to confront and cross-examine Oliver, and because the "curative instruction" in this case did not solve the extreme prejudice to appellant of the jury learning Oliver named appellant as his accomplice in the murders in his confession -- anymore than a limiting instruction can cure the prejudice of a co-defendant's inculpatory statement implicating another co-defendant -- the court erred by refusing to declare a mistrial. State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999).

[3] State v. Bellamy, reversed on other grounds. State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

2.

The court erred by allowing co-defendant Oliver's girlfriend, Renata Williams, to testify that Oliver telephoned appellant from her apartment in the middle of the night where the state failed to establish the evidentiary predicate - - such as the fact she recognized appellant's voice on the other end of the phone - - necessary for its admission. Williams' testimony clearly implied that Oliver called appellant shortly before or after the robbery and murders to discuss the situation. This testimony impermissibly implicated appellant in the robbery-murder scheme.

Relevant Facts

The present issue arose while the attorneys were discussing Oliver's alleged statement to his girlfriend, Renata Williams, "that he and Gallman done a lick. He called Dominic Freaky. That's what I called him, too." R. 469, ll. 18 -23. Deputy Solicitor Meadors acknowledged this was "street talk" for a robbery. R. 469, l. 24 – 470, l. 8.

Meadors said he would instruct Williams not to say this in the presence of jury. However, Meadors stated that he did want Williams to testify that she "heard him [Oliver] calling Freaky [appellant]. She heard him calling Dominic. We think that would be admissible. So that's going to be her testimony. She actually heard it with her own ears." R. 470, ll. 18 – 21.

Defense counsel Milling objected to William's testimony that she heard Oliver telephoning and talking with appellant "unless she heard my client on the other end of the phone, she is still listening to what Mr. Oliver said, which we can't cross-examine Mr. Oliver to ask him whether or not he actually called my client or called someone else."

The attorneys then discussed this being a Bruton v. United States, supra, or a Crawford v. Washington, supra problem. R. 470, l. 7 – 474, l. 11. Defense counsel Milling also expressed his reservations about Williams testifying that appellant must have picked up Oliver from her house "because he was gone a little later." R. 473, l. 4 – 474, l. 11.

Appellant's counsel also requested that the judge clearly instruct the jury that evidence implicating co-defendant Oliver in the crime "cannot be construed against the other defendants." R. 473, l. 23 – 474, l. 11. As to Bruton and Crawford, the judge told the attorneys that he had already ruled on the matter, and that he was not going to change his ruling. He said that he had already instructed the jury that evidence of one co-defendant could not be used to implicate another co-defendant. R. 472, l. 15 – 474, l. 15.

Jury in

Renata Williams then testified that she lived at Palmetto Terrace Apartments in Columbia. R. 478, ll. 13 – 14. She said that she met co-defendant Oliver towards the end of 2003 and that he moved in with her at Palmetto Terrace Apartments. R. 480, l. 25 – 4811, l. 15. Williams said she had a "land line" telephone in her apartment. R. 482, ll. 11 – 14.

Williams further testified she met appellant through Oliver. She noted that she saw them "off and on, during the summer of 2005, up through Labor Day [when the murders occurred]." R. 483, ll. 14 – 20.

Williams remembered that during the Labor Day weekend she saw Oliver "off and on" the whole weekend. R. 486, ll. 8 – 14. Williams testified that, on the night in question, she was watching "Comic View" on television. The show went off at 2:00 in the morning. Williams fell asleep, but that she remembered Oliver coming into her bedroom. R. 486, ll. 21 – 25. Williams remembered Oliver "saying something, but I don't quite remember what

it was. Then he got on the phone and was talking to someone and left." R. 486, l. 11 – 487, l. 4.

The solicitor then asked Williams: "Did you hear him call anybody on the phone?" At this point defense counsel Milling objected. The judge overruled the objection. Williams answered: "I didn't hear him on the phone. I saw that he had called someone on the phone." Williams then testified that Oliver had called appellant, "Dominic" – whose nickname was "Freaky -- and that Oliver left after that phone call. Williams said she saw Oliver the next day when he returned to her apartment and she heard him talking to someone else about money and drugs. Williams said she saw Oliver counting the money in her apartment. R. 487, l. 7 – 489, l. 1.

Williams testified that she had also heard Oliver talking about "doing a lick." Williams said a lick meant robbing someone. R. 489, ll. 1 – 22. Williams then testified about the shopping trip Oliver took her on after he acquired all of this money, and she said Oliver gave her $350.00 but he ultimately took half of that amount back. Williams acknowledged that she had never seen Oliver with such a large amount of cash in the entire time she had known him. R. 489, l. 23 – 494, l. 2.

Williams also said Oliver paid for their motel room at the Marlboro Inn off of Forest Drive in Columbia. R. 494, l. 10 – 495, l. 8. Williams said while they watched television at the Marlboro Inn, the news carried a story about the murders. Williams recalled she remarked to Oliver about "how crazy people are" to do things like that and that Oliver responded: "If something was to happen to him and he'd be locked up, would I let people know that he was my husband." Williams said during this same time period she was

questioned by the police, and she identified Oliver and appellant in the courtroom for the jury. R. 495, l. 9 – 496, l. 10.

Discussion

As seen, defense counsel argued that Williams should not be allowed to testify that Oliver telephoned appellant on the night in question unless she could identify appellant's voice on the other end of the telephone line. Counsel renewed that objection at the time of Williams started to testify about the matter, and the judge overruled the objection.

Williams was then allowed to testify that she knew Oliver telephoned appellant early that morning, and then he left her apartment. He returned to her apartment the next day with a large amount of money and he talked about drugs.

Williams said Oliver then took her shopping, and he gave her $350.00. Williams said she had never seen Oliver with such a large amount of money before. The clear import of all this was that Oliver telephoned appellant concerning the large robbery, "the lick," and this testimony implicated appellant in the crime. However, in this case there was absolutely no legitimate and competent testimony offered by Williams to establish that Oliver was indeed talking to appellant on the telephone as Williams alleged.

In State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980) our Supreme Court noted that a witnesses' testimony that he can identify a person by having heard his voice before has been regarded as legitimate and competent manner of establishing identity in a criminal or civil case. State v. Plyler, 270 S.E.2d at 127–128. In State v. Plyler, Plyler's ex-wife telephoned her sister who was alone at the time of the conversation. During the conversation, the sister excused herself to answer a knock at the door. Because the receiver of the phone was still off the hook, the ex-wife overheard the resulting conversation and

recognized the voice of Plyler as that of the person talking to her sister. Several gunshots were then heard. The ex-wife rushed to her sister's residence, and she found her sister unconscious and shot several times.

The Supreme Court noted after hearing the conversation and the ensuing shots over the telephone, the ex-wife dropped the phone and exclaimed: "Harry [Plyler] just shot Linda." Under these circumstances the telephone evidence was properly admitted.

In State v. Smith, 307 S.C. 376, 415 S.E.2nd 409 (Ct. App. 1992) this Court held that a sheriff's dispatcher was qualified to identify the defendant as the anonymous telephone caller even if the dispatcher had no training in voice identification, since the dispatcher immediately recognized the defendant's voice as that of the anonymous caller when the defendant came to the sheriff's office less than twenty-four hours after the phone call, and where the defendant also had a distinctive voice. In State v. Smith, this Court stressed that it is proper to allow a voice identification where the witness is able to legitimately testify that he or she recognizes the voice on the phone from having heard it on another occasion.

Here, Williams was clearly unable to testify that she heard appellant's voice on the other end of the telephone. Her bare claim that she knew Oliver was calling appellant should have been excluded since there *was not any competent evidence* establishing that Williams knew Oliver was talking to appellant on the telephone. The jury received evidence that Williams knew Oliver was telephoning appellant. The phone was a "land line," and there was absolutely no indication of how Williams could have instantly known that Oliver telephoned appellant, *and talked to appellant.*

A witness must be able to authenticate the conversation by testifying she recognizes and can identify the parties to the conversation by hearing their voices. State v. Stewart, 275

S.C. 44, 47, 272 S.E.2d 628 (1980). See Collins S.C. Evidence §13.8 (Authentication through voice identification) at pages 383 – 304. Further, Rule 901(5), SCRE, provides that a voice can be identified by an opinion based on hearing the person's voice at another time under circumstances connecting it with the alleged speaker.

There was no competent evidence which allowed Williams to testify that Oliver telephoned appellant in the middle of the night in question, and that Oliver left after talking to appellant. The direct examination of Williams was a continues chronology of events from the time of this phone call to the spending of the proceeds of the robbery. Oliver was said by Williams to return with a large sum of money the next day – or later that same day -- and Oliver was talking about drugs, and acting in manner totally consistent with having committed the robbery and murders in this case, and having come into a large sum of money. The admission of this incompetent evidence was highly prejudicial to appellant, and appellant should be granted a new trial.

3.

The court erred by allowing the admission of Tatanisha Robinson's redacted statement into evidence since it called undue attention to Robinson's statement implicating appellant in the robbery-murders. The redaction of the statement was so sloppily done that it was obvious matters were being hid from the jury. Moreover, Robinson's admissions and purported explanations regarding the statement during her testimony clearly left the correct impression that Robinson had made the statement, and that she now regretted having given the statement, and that she wished to disavow it. The admission of the statement itself under these circumstances was improper under Rule 613 (b), SCRE.

Relevant Facts

Tatanisha Robinson was another one of Oliver's girlfriends, and she was given transactional immunity in return for her testimony for the state. R. 818, l. 23 – 860, l. 23. As will be seen infra, Robinson would admit on cross-examination that she was angry with Oliver at the time she gave her statement because he had an ongoing relationship with Renata Williams while Robinson was pregnant with Oliver's child. Robinson said she later realized how serious the charges against Oliver were in this case.

It had to be abundantly apparent to the jury that Robinson regretted giving her statement, and that she no longer wished to help the state convict Oliver through her testimony. However, she would acknowledge that she told the police that Oliver told her he had done something that "could get him life." R. 854, ll. 13 – 24. Robinson also admitted that while she was at a motel with Oliver after the murder that Oliver told her to "wake him if the police came or something looks suspicious." R. 856, ll. 6 – 10. In addition, Robinson

acknowledged Oliver told her at a friend's house shortly before his arrest that "this could be the last day before he gets locked up." R. 858, ll. 10 – 24.

Robinson admitted in her statement that she was alleged to have said that appellant was bragging about the murders after they occurred. Robinson acknowledged the appellant "bragging allegation" was in her statement, but she said she did not write the statement. Robinson admitted it was also in her statement that "they must have got a lot of money" because "Freaky [appellant] was excited" about the robbery and murder. R. 859, ll. 7 – 21. Robinson also admitted it was in her statement that appellant spoke of specific details regarding the murder and that appellant had a thousand dollars to attempt to get Oliver an attorney. R. 860, l. 12 – 861, l. 12.

On cross-examination, Robinson admitted that "the truth about the situation" was that she angry with Oliver at the time of her statement because she was pregnant with his child, and Oliver was having an ongoing relationship with Renata Williams that he refused to end. R. 909, ll. 8 – 18. Williams admitted she was sorry about the statement because "I did not know how serious the situation was." Williams said she later sought to limit or correct the damage she had done through her statement to the police. R. 911, ll. 5-22.

The state would later move to allow the admission of Robinson's statement to the police under Rule 613(b), SCRE. Defense counsel Milling objected, noting that Robinson acknowledged it was her statement and that she had signed it. Defense counsel said the admission of the statement itself was not within the intent of Rule 613(b), SCRE, and counsel for the co-defendant's agreed that taking Robinson's testimony, her admissions, and her explanations about the statement in context, that admission of the statement itself would be improper under Rule 613(b), SCRE. It would be improper under the intent of that

evidentiary rule. R. 1191, 12 – 1208, l. 3. The judge ruled he was going to allow the statement into evidence. R. 1207, l. 24 – 1208, l. 3.

Defense counsel also objected to the admission of the statement on the grounds of "physical appearance of the document" which showed it was "replete with deletions" and on the grounds that it would unduly emphasize the importance of Robinson's statement. R. 1286, l. 12 – 1289, l. 6.

Robinson redacted statement, state's exhibit 203, was then admitted into evidence over objection. R. 1242, l. 6 – 1243, l. 19. R. 1829.

The statement is badly redacted but it does state that "Dominic was bragging about the murders," and then the next sentence is redacted." See State's Exhibit 203 at page 3. R. 1831. The redactions throughout the statement, particular on page 6 of the document, show that the jury had to know that important matters were being hidden from it, and it was highly prejudicial since the jury was left to speculate about what was redacted from the statement, and what else it said about the defendant's conduct.

Counsel properly cited State v. Gulledge, 277 S.C. 368, 287 S.E.2d 488 (1982), where the Supreme Court held that the trial judge abused his discretion by allowing the jury to take into the jury room a transcript of the tape between a highway patrolman who had been shot and the patrolman who received the call because it unduly emphasized that evidence. The defense attorneys here correctly argued the situation was the same in this case regarding giving undue emphasis to Robinson's statement.

As seen, Robinson admitted it was in her statement to the police that appellant was bragging about the murder. The jury fully understood this was diametrically at odds with appellant's girlfriend, Laticia Jones's, testimony that appellant came to her apartment after

the botched robbery and was crying about it. Jones claimed appellant told her that she "was right about Oliver, that Oliver had gotten him into trouble and that "his friend shot the guy that opened the door." Jones also said that appellant told her that he had to stop Oliver from attacking "the lady, from like raping her and stuff," and that a gun was held "to his head and [Oliver] told him that if he didn't shoot the lady that he would shoot him." Jones said appellant therefore shot the third victim in the woods. R. 677, l. 3 – 682, l. 1.

Appellant would later call Lee Connelly, the defense investigator, to testify that Jones told her throughout that she "knew nothing" about the murders, and that she did not even see appellant over the Labor day weekend. R. 1469, l. 1 – 1472, l. 25. Jones admitted on cross-examination that she had to "cut off all ties with Dominic" to attempt to get her nine-year-old back from her parents in Georgia, and she admitted she never told the defense about this alleged conversation with appellant after the murders. R. 691, l. 19 – 696, l. 25.

Discussion

The admission of Robinson's statement under Rule 613(b), SCRE, was improper for several reasons. Rule 613(b), SCRE, allows extrinsic evidence of a prior *inconsistent* statement to be admitted if the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and the witnesses is given the opportunity to explain or deny the statement. The rule states that if the witness does not admit that she had made the prior inconsistent statement, extrinsic evidence of the statement is admissible. The rule also provides that if the witness admits making the prior statement, that extrinsic evidence that the prior statement was made is inadmissible.

Here, Robinson repeatedly acknowledged that matters the state wished to impeach her on were indeed in her statement to the police. It was clear to the jury that Robinson was

unhappy that certain matters prejudicial to Oliver -- and thereby appellant -- were in her statement and that she now sought to distance herself from them.

However, this was not a situation within the meaning of Rule 613(b), SCRE where it was disputed whether or not Robinson gave the statement to the police. Robinson acknowledged during her testimony that she was given a copy of the statement and that she signed it.

It was undisputed and the jury was well aware from Robinson's testimony that she acknowledged signing the statement, and, as seen, she claimed at trial she made the statement because she mad at Oliver for having a relationship with Williams while she was pregnant with his child. She admitted she did not "know how serious the situation was" at the time she gave the statement to the police. The admission of Robinson's statement under these circumstances was improper under Rule 613 (b), SCRE, and it unduly emphasized the importance of that evidence. See State v. Gulledge, supra.

Further, as stated, defense counsel was correct in arguing that the admission of Robinson's statement itself would only draw undue attention and emphasis to that statement, and the statement in the Record on Appeal was surely going to get the jury's attention, and its curiosity given the redactions. See State v. Gulledge, supra. R. 1829. Further, the redactions in the statement were so bad, and so in depth that the jury knew considerable important matters where being hidden from it and that also called undue attention to Robinson's written statement. The jury was left to speculate about what Robinson told the police that the jury was not allowed to know because of the extensive redactions.

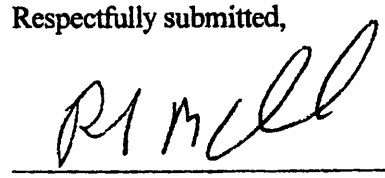
Even if impeachment evidence was proper regarding Robinson's testimony – and appellant submits it was not – it should have ended with Investigator Wilkerson's testimony

about the statement, and the admission of the statement itself was improper. For all of these reasons, the admission of Robinson's statement was improper under Rule 613(b), SCRE and its admission was highly prejudicial to appellant. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed, and his case should be remanded to the Richland County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

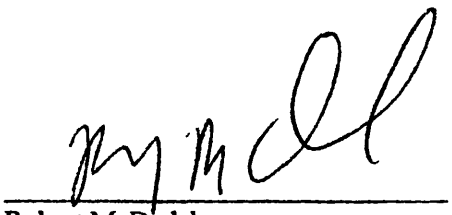
ATTORNEY FOR APPELLANT.

July 27, 2009

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 27, 2009



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMINIC GALLMAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 27th day of July 2009.

Robert M. Dudek
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ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2009.

(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2018 .

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMINIC GALLMAN,

APPELLANT

FINAL BRIEF OF RESPONDENT

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II.

Appellant's issue presented is procedurally barred from review as appellant failed to object to testimony that Renata Williams heard Oliver call appellant on the night of the crimes based on a perceived faulty predicate for admission of the evidence. Rather, the only specific objection made was *in limine* in reference to another statement that was not introduced. At any rate, there could be no reversible error in the admission of Williams' testimony that Oliver called appellant from her home on the night of the crimes where no hearsay was introduced, the evidence was of little to no value, and admission could only be harmless in light of the overwhelming evidence of guilt. 14

III.

The trial judge did not abuse his discretion in admitting Tatanisha Robinson's statement as evidence of a prior inconsistent statement after Robinson testified that, while she acknowledged the fact of the statement shown, it was not her statement but a statement written and or suggested by law enforcement; therefore, not her own. 18

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by refusing to declare a mistrial where state's witness Jason Brown testified co-defendant Oliver told him in jail that he and appellant rushed into the drug dealer's house and committed the murders and that he told the police this in his statement, since defense counsel correctly argued this violated the principles of Bruton v. United States and Crawford v. Washington since appellant was denied the opportunity to cross examine Oliver about making that alleged statement which implicated appellant in the murders?

2.

Whether the court erred by allowing co-defendant Oliver's girlfriend, Renata Williams, to testify that Oliver came to her apartment in the middle of the night around the time of the murder, and telephoned appellant since the state failed to lay the necessary evidentiary predicate to show how Williams knew appellant was "on the other end of the phone" since her testimony clearly implied Oliver called appellant about the crimes?

3.

Whether the court erred by allowing the admission of Tatanisha Robinson's redacted statement into evidence since it called undue attention to that statement, the redaction was so sloppily done that it was obvious matters were being hid from the jury, and Robinson's admissions and explanations regarding the statement during her testimony made admission of the statement itself improper under Rule 613 (b), SCRE?

(BOA, p. 1).

STATEMENT OF THE CASE

A Richland County Grand Jury returned indictments against appellant, Dominic Gallman, and co-defendant Stanley Oliver, charging each defendant with three counts of murder; three counts of armed robbery; burglary first degree; and kidnapping. (R. p. 2, lines 15 - p. 3, line 11). Kenneth Joy was also indicted as an accessory before and after the fact of the crimes. (R. p. 3, line 18 - p. 4, line 10). A jury trial on all the charges was held December 3-18, 2007, before the Honorable G. Thomas Cooper, Jr, with all three defendants tried together. The trial judge directed a verdict at the close of the State's case acquitting appellant, and co-defendant Oliver, of the charge of armed robbery of victim Felder. (R. p. 1403, line 24 - p. 1404, line 3; R. p. 1401, line 23 - p. 1402, line 2). The trial judge also directed a verdict on the accessory before the fact charges for co-defendant Joy, and accessory after the fact of armed robbery of victim Felder. (R. p. 1405, line 10 - p. 1406, line 2). The jury found appellant, and co-defendant Oliver, not guilty of the charge of armed robbery against victim Miller, but convicted appellant, and co-defendant Oliver, of all the remaining charges. (R. p. 1806, line 4 - p. 1807, line 6; p. 1802, line 3 - p. 1803, line 7). The jury acquitted co-defendant Joy on the accessory after the fact charges. (R. p. 1809, line 23 - p. 1811, line 7). At sentencing, the judge determined that the State had noticed Petitioner of the intent to seek life without parole under the recidivist statute based on his prior conviction for armed robbery in 1996. (R. p. 1812, lines 13 - 17). The judge sentenced appellant to life without the possibility of parole on all three murder convictions; life without the possibility of parole on the burglary first degree conviction; thirty (30) years imprisonment for armed robbery; and thirty (30) years for kidnapping. (R. p. 1815, line 3 - p. 1816, line 21). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

Zondria McKie, a friend of victim Desiree Felder, was attempting for find victim Desiree Felder to repay a loan Felder had made to McKie. (R. p. 254, line 4 - p. 255, line 16). Shortly before 5:00 in the afternoon on September 4, 2005, Zondria went to the home on Mildred drive that Ms. Felder had shared with boyfriend, George "Jim" Batie. (R. p. 255, line 17 - p. 256, line 3; p. 263, line 4 - p. 264, line 6; 192, lines 17-22; p. 161, line 22 - p. 162, line 23). Ms. Felder found victim Miller and victim Batie dead in the home, and called 911. (R. p. 257, line 16 - p. 259, line 17). She could not, however, find victim Felder, though she searched the home looking for her friend. (R. p. 260, line 15 - p. 261, line 21).

Victim Batie was a known drug dealer. Victim Kevin Miller was at Victim Batie's home to buy drugs for his friend, Christopher Cochran, during the early morning hours of September 4, 2005. (R. p. 222, line 1 - p. 227, line 10). Victim Felder, though she had recently moved out of the home and was somewhat estranged from her boyfriend, was known to stay at the home and help distribute drugs. She was at the home during the early morning hours of September 4, 2005. (R. p. 263, line 4 - p. 264, line 6; p. 249, lines 2-9; p. 194, line 8 - p. 197, line 10). While at Victim Batie's house, Victim Miller was shot once in the back of the head. (R. p. 1318, line 2-p. 1319, line 2). The house was ransacked, and a nearby safe opened but empty, with blood smears evident on the outside. (R. p. 258, lines 15-22; p. 293, line 8 - p. 295, line 18). Victim Batie was shot three times, once in his hip, once in his thigh, and the fatal wound - - a shot to the head. (R. p. 1326, line 7 - p. 1329, line 15; p. 1337, line 3 - p. 1339, line 18). Victim Felder's body was found off a dirt road in Richland County three days later, when a nearby resident walking his dog investigated a decomposition smell that he had noticed for "more than a day." (R. p. 420, line 1 - p. 4229, line 25). Her body was wedged between two trees. She had been

shot in the head. (R. p. 434, line 7 - p. 435, line 17; p. 438, lines 3-9; p. 1147, line 5 - p. 1149, line 12).

Investigation of the scene revealed co-defendant Oliver's fingerprint on a shoe box in the ransacked home. (R. p. 331, lines 8-11). Two .40 caliber shells were also recovered. (R. p. 286, lines 7-11; p. 392, line 2 - p. 393, line 13).

Oliver's girlfriend, Renata Williams, testified that Oliver came into the apartment at Palmetto Terrence that the two occasionally shared sometime after 2:00 a.m. on September 4, 2005, and that he called appellant. The next day, she overheard him tell "Mike" about "doing a lick" and she also saw that Oliver had a large of amount of drugs and money. (R. p. 481, lines 2-23; p. 486, line 5 - p. 489, line 16). The two would later go on a spending spree. (R. p. 489, line 17 - p. 494, line 25). After seeing a news report on the murders, Oliver asked if she would tell people that he was her husband should he be "locked up." (R. p. 495, lines 1-19).

Oliver's longtime friend Ulicen "Mike" Allen, testified that Oliver (whom he called his "brother"), called him in the early morning hours of September 4, 2005, and asked him to come over to the apartment at Palmetto Terrace, and he did. When he arrived, he saw "guns", a .12 gauge shotgun, bundles of money, crack cocaine, and digital scales. Oliver admitted he had robbed someone, and when Allen expressed concern that the victim may come after Oliver, Oliver advised, "[t]he guy we got this from ain't going to be looking for us." (R. p. 553, line 4 - p. 555, line 15). He testified that Oliver had a .40 caliber gun and a 9 mm gun. (R. p. 579, line 25 - p. 580, line 4). Oliver would later again admit the robbery to Allen and that his fingerprint was at the scene, but maintained that he did not kill victim Felder. (R. p. 559, line 20 - p. 561, line 22). Allen testified that he knew appellant to be "associated" with his friend Oliver, and confronted appellant about the incident, asking why appellant "let him" leave fingerprints at the

scene, "why did [he] let him leave his prints all over the place if it was going to go down like this" and appellant responded, "you know how your brother be. Your brother was all on that cocaine. Man, I couldn't tell your brother that. You know, your brother wanted to do what he wanted to do...." Appellant further admitted his involvement in the crime, telling Allen that he and Oliver gained entry "[w]hen the white boy got out the car, they rushed the white boy into the house. That is how they gained entrance." (R. p. 575, line 17 - p. 579, line 17).

Appellant's girlfriend, Leticia Jones, testified that appellant tearfully confessed to her in the early morning hours of September 4, 2005, (R. p. 677, line 1 - p. 678, line 4), telling her:

> ... [she] was right about his friend, that he had gotten him into trouble and that - - said, Leticia, listen to me. He said that - - he said that he had gotten him into trouble and that he made him do something that he didn't want to do and that he didn't know what to do. He couldn't - - he just was upset and that he didn't know how to handle it.
>
> He said that his - - his friend had - - had some idea to make someone and that he didn't really know what was involved but he went with him and it just turned out to be not what he thought it was.
>
> He said that they went to the house and that his friend, that they knocked on the door and somebody opened the door and his friend shot the guy that opened the door. And then they - - that the guy he was with shot the other guy that was in the house and that then they were trying to rob the man and that the man wouldn't tell him where his - - his money was. And so the guy he was with just flipped out and got really made and angry and just shot the man. ...

(R. p. 678, line 15 - p. 679, line 9).

He also confessed to the murder of Victim Felder:

> The person that he was with said that they had to take her because she probably knew where... the money was. And so he put her in the car and they drove with the lady. And I don't - - I don't know what happened. But that the person that he was with told him that he had gotten his hands dirty and he had to do the same thing and

> that he was like crazy and he tried to hurt the lady and that Dominic had to stop him from him - - from attacking the lady, from like raping her and stuff. But that he put the gun to his head and told him that if he didn't shoot the lady that he would shoot him. So Dominic said he didn't know what to do. And he had just closed his eyes and pulled the trigger. And that was it.

(R. p. 680, line 16 - p. 681, line 4).

She would later see appellant with his father, burning something - - some kind of material - - on the grill the next day. (R. p. 681, line 21 - p. 682, line 16).

Omekas Moaney, a/k/a "Blue," testified that he had met Oliver in 2003, but had known appellant since childhood. (R. p. 724, lines 16-25; p. 744, lines 10-11). He testified that Ken Joy dropped Oliver at Moaney's home on September 5, 2005. Appellant came by approximately thirty minutes later. They asked him to cook a large amount of cocaine into crack and distribute it. The money from the subsequent sales went to Oliver and appellant. (R. p. 728, line 8 - p. 734, line 1). Oliver eventually told Moaney that he obtained the drugs through robbery, and asserted "they didn't intend to harm anybody. They did not go there with the intentions of harming anybody but things got out of hand, things went wrong." (R. p. 738, lines 3-13).

Tatanisha Robinson, another of Oliver's girlfriends, gave a statement to investigating officers that Oliver had admitted he had done something that could possibly send him to jail for life, and that Oliver had a significant amount of cash and cocaine the day following the murders. She also noted that appellant was "bragging" about the murders until Oliver was arrested. (State Exhibit 203, pp. 3-4).

Jason Brown, a longtime friend of Oliver's who was with Oliver in the Detention Center in October of 2005, testified that Oliver confessed his involvement in the crimes. Oliver told him that he had killed two people at a house on Mildred Avenue over drugs and money, and had taken another from the house and killed that victim at another location. He told Brown that he

trashed the home, "looking through shoe boxes" and under furniture. He also said that two guns were used, a .40 caliber that Oliver had, and a .38 the other person involved had. Oliver told Brown that he had "made" the other individual with him kill the woman at the second location. (Tr. p. 1412, line 8 - p. 1415, line 23). Oliver would later ask Brown to kill Renata Williams, Omekas " Blue" Moaney, and Ulicen "Mike" Allen, for giving statements to the police. (R. p. 1051, line 21 - p. 1053, line 16).

The bullets recovered from autopsy showed that two guns were used, a .40 caliber and a .38 or .357, and the bullet fragment recovered from Victim Felder's wound was fired by the same weapon that fired the bullet fragment from Victim Batie. (R. p. 993, line 2 - p. -995, line 22; p. 1023, line 9 - p. 1024, line 11).

ARGUMENT

I.

Appellant is incorrect in premising his argument on the assertion that Jason Brown testified to any fact regarding appellant's participation in the armed robbery and murder in the Mildred Street home as the record conclusively shows that the witness avoided any mention of appellant in his testimony. As no incompetent evidence was received, there is no error to warrant a mistrial.

Relevant Facts:

Jason Brown, a longtime friend of Oliver's who was with Oliver in the Detention Center in October of 2005, testified that Oliver confessed his involvement in the crimes. (R. p. 1046, line 8 - p. 1049, line 23). Throughout his direct testimony, Brown testified Oliver and "another individual" or "another guy" were involved, without mention of any name other than Oliver's. (See R. p. 1046, lines 13-14; p. 1047, lines 1-4; p. 1047, lines 15-17; p. 1049, lines 1-2; p. 1049, lines 9-23). Defense counsel for co-defendant Oliver, on cross-examination, questioned Brown about his statement to investigators. The following exchange takes place:

> Q My understanding is that your statement indicates that they went down there and had the girl, knocked on the door to try to buy something, correct?
>
> A That's correct.
>
> Q All right. She indeed did knock on the door, correct?
>
> A That's correct.
>
> Q A man opened the door. Stanley and Dominic rushed in, correct?

(R. p. 1071, line 19 - p. 1072, line 2).

Defense counsel for appellant immediately objected before an answer was given. (R. p. 1072, lines 3-4). After a bench conference, the judge gave the following instruction:

> All right, ladies and gentlemen. An objection has been lodged as to that last question and answer. I'm going to ask you to disregard that question and answer. Strike it from the record and just, as I say, disregard the answer. So move ahead, Mr. Strickler.

(R. p. 1072, lines 6-11).

Defense counsel asked to place a motion on the record. (R. p. 1072, lines 6-11). Defense counsel for Oliver continued his cross-examination. Defense counsel for appellant cross-examined Brown, and elicited that Oliver had informed Brown that a "Mr. McQuay" "end[ed] up being dead had something to do with what went on." (R. p. 1079, lines 4-16). Brown also testified that he did not know appellant. (R. p. 1080, lines 19-22). After completion of testimony from the witness, and outside the presence of the jury, defense counsel moved for a mistrial:

> For the record, at this point in time we would move for a mistrial based upon the reference in Mr. Strickler's question to my client being involved with this case. I think Mr. Strickler's question was something to the effect of, in reading or questioning Mr. Brown about this, he said, "The man opened the door and Stanley and Dominic rushed in."
>
> We have taken very careful, painstaking efforts to try and keep any Crawford or Bruton materials out of this case. This just opens the door. I don't think any instruction that you can give can cure this. I have no right or ability to examine Mr. Oliver as to this statement. I would submit that the jury now has been - - the cat's out of the bag, so to speak, Your Honor. So we would move based upon the prejudice that my client has suffered and that no charge can cure this problem.

(R. p. 1086, lines 3-21).

The trial judge denied the motion finding the curative instruction was sufficient to cure any possible prejudice. (R. p. 1086, lines 22-25).

On appeal, appellant argues the trial judge erred in refusing to grant a mistrial. (BOA, p. 8). He argues error in Brown's statement that "Oliver told him that Oliver and appellant rushed

into the drug dealer's house and that they shot the drug dealers." (BOA, p. 3). (See also BOA, p. 7, "Here, there was testimony that Brown told the police that Oliver confessed to him that the committed the murders, and he alleged Oliver named appellant as his accomplice in the three murders."). He claims that "[i]t was appellant's right to confront and cross-examine Oliver about this alleged statement to Brown, which Brown related to the police in his own statement" and a curative instruction was not sufficient. (BOA, p. 8).

Discussion:

It is well settled that the decision to grant or deny a mistrial motion is in the discretion of the trial judge, and will not be disturbed on appeal "absent an abuse of discretion amounting to an error of law." *State v. Edward*, 373 S.C.230, 236, 644 S.E.2d 66, 69 (Ct.App. 2007). "If the trial judge sustains a timely objection to testimony and gives the jury a curative instruction to disregard the testimony, the error is deemed to be cured." *State v. George*, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996). "The trial judge should first exhaust other methods to cure possible prejudice before aborting a trial." *State v. White*, 371 S.C. 439, 444, 639 S.E.2d 160, 162 (Ct.App. 2006), *citing State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508 (1999). "A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have curred any alleged error in its admission." *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 130 (Ct.App. 2005). Here, the trial judge apparently sustained the objection to counsel's question, and, further, instructed the jury to disregard the question and answer. (Tr. p. 1438, lines 6-11). Moreover, the instruction was carefully crafted to firmly instruct that the question should not be considered, without placing emphasis on the question by repeating same before the jury. Therefore, the curative instruction was sufficient to cure any conceivable prejudice. *See Edwards*, 373 S.C. at 237, 644 S.E.2d at 69 (approving of an instruction that "was

simple and refrained from reiterating or emphasizing the statement as much as possible"). *See also State v. Smith,* 290 S.C. 393, 395, 350 S.E.2d 923, 924 (1986)("Great care should be exercised" in crafting and "instructing the jury"); *State v. Jones*, 325 S.C. 310, 323, 479 S.E.2d 517, 524 (Ct.App. 1996)(same). In sum, no evidence was received and any possible prejudice from the mere posing of a question by counsel for the co-defendant Oliver was swiftly blunted. Nothing in the record supports that the drastic relief of a mistrial was warranted.

As noted, a curative instruction is generally sufficient to cure any possible prejudice. *Walker, supra.* However, "a mistrial may still be required if on the facts of the particular case it is probable, notwithstanding such instruction or withdrawal, the accused was prejudiced." *White*, 371 S.C. at 447, 639 S.E.2d at 164. "Analogously, even without a curative instruction, an error not shown to be prejudicial to the appellant does not constitute grounds for reversal." *Id.* Here, contrary to appellant's assertions, there was no "testimony that Brown told the police that Oliver confessed to him that he committed the murders, and he alleged Oliver named appellant as his accomplice in the three murders." (BOA, p. 7).

"[E]vidence is but any matter of fact, the effect, tendency, or design of which is to produce in the mind of a persuasion, affirmative or disaffirmative, of the existence of some matter of fact." *State v. Heavener*, 146 S.C. 138, 143 S.E. 674, 676 (1928)(internal punctuation omitted). Questions or arguments of counsel are not evidence. *See, e.g., State v. Kelsey*, 331 S.C. 50, 74-75, 502 S.E.2d 63, 75-76 (1998)(noting with favor trial judge's charge "an attorney's question is not evidence"); *Ex parte Morris,* 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006)("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence"). In fact, the trial judge initially instructed the jury that argument

by counsel was not evidence. (R. p. 158, lines 13-23). Moreover, he specifically defined what would constitute evidence in the trial:

> The evidence in this case will be presented to you by the testimony of sworn witnesses from the witness stand and by any exhibits that may be introduced during the course of the trial.

(R. p. 158, line 24 - p. 159, line 3).

In short, the extent of any possible prejudice is greatly reduced where no improper evidence is actually introduced. *State v. Harris*, Op. No. 4514 (S.C.Ct.App. filed March 4, 2009)(Shearouse Adv. Sh. No. 11 at 96)("a defendant must show both error and resulting prejudice in order to be entitled to a mistrial...we fail to see how Harris suffered any prejudice in light of the fact the witness did not answer the question"). Moreover, even if prejudice could be found in this context, which Respondent maintains it cannot, such prejudice is harmless in light of the other overwhelming evidence of guilt.

A *Bruton*[1] violation is subject to a harmless error analysis. *Schneble v. Florida*, 405 U.S. 427, 430, 92 S.Ct. 1056 (1972). *See also State v. Miller*, 266 S.C. 409, 413, 223 S.E.2d 774, 776 (1976). Any "violation of a defendant's Sixth Amendment right to confront the witness is not *per se* reversible error; instead, this Court must determine whether the error was harmless beyond a reasonable doubt." *State v. Davis*, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006). First, as the record clearly reflects, Brown never testified that Oliver told him that appellant was with him when they rushed into the home, much less the greater allegation that he was involved in all three murders, as appellant has argued. (See BOA, p. 7). This must necessarily affect the entire

[1] *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620 (1968)(holding a defendant's Sixth Amendment right of confrontation is violated by presentation of a nontestifying co-defendant's confession that incriminates defendant).

analysis. Second, even if one mere reference had been made to appellant, such a reference must still be considered harmless in light of the overwhelming direct and clear evidence of guilt in the record. Far from being the "star witness" in this case as appellant alleges in his brief, (BOA, p. 4), the record shows that other witnesses gave much more detailed testimony demonstrating guilt of both defendants. For instance, Ulicen "Mike" Allen, testified that Oliver called him to his apartment the day of the murder and that he saw the money and drugs from the robbery, and, further testified that after Oliver was arrested, he confronted appellant about his participation, which appellant directly admitted to him. (R. p. 553, line 4 - p. 561, line 22; p. 575, line 17-p. 579, line 17). Moreover, appellant's girlfriend, Leticia Jones, testified that appellant confessed his participation directly to her, including describing in detail the way he killed Victim Felder with his own gun. (R. p. 678, line 15 - p. 679, line 9; 680, line 16 - p. 681, line 4). And, Omekas "Blue" Moaney testified that both Oliver and appellant came to him to sell the drugs they acquired from the robbery and admitted that "things got out of hand." (R. p. 738, lines 3-13). Investigation of the scene revealed that Oliver left his print on a shoe box in the ransacked home. (R. p. 331, lines 8-11). And the bullet fragments from the autopsies confirmed two guns were used in the murders. (R. p. 993, line 2 - p. 995, line 22; p. 1023, line 9 - p. 1024, line 11). In light of the wealth of evidence in the record, uncontested on appeal, that clearly indicates appellant's participation, one question during Brown's cross-examination by co-defendant Oliver suggesting reference to appellant's name can simply not be anything other than harmless.

Appellant's argument to the contrary must be rejected.

II.

Appellant's issue presented is procedurally barred from review as appellant failed to object to testimony that Renata Williams heard Oliver call appellant on the night of the crimes based on a perceived faulty predicate for admission of the evidence. Rather, the only specific objection made was *in limine* in reference to another statement that was not introduced. At any rate, there could be no reversible error in the admission of Williams' testimony that Oliver called appellant from her home on the night of the crimes where no hearsay was introduced, the evidence was of little to no value, and admission could only be harmless in light of the overwhelming evidence of guilt.

Relevant Facts:

The trial court held an *in camera* hearing concerning Williams testimony. During the hearing, defense counsel objected to any testimony that appellant came by to pick up Oliver after Oliver called him on the night of the crimes. He argued the such an assertion would be mere speculation, and asserted the witness had "no personal knowledge *of whether or not my client arrived or not.*" (R. p. 473, lines 4-16)(emphasis added). The trial judge advised that counsel should object when the question is asked. (R. p. 473, lines 18-19). The anticipated testimony was taken from assertions in a written statement, and not proffered testimony. (R. p. 473, lines 4-5). The solicitor stated that he "doubt[ed] its going to come out word for word from this stand, quite frankly." (R. p. 473, lines 20-21). Williams was then called to testified.

Williams testified that Oliver came home sometime after 2:00 a.m. September 4, 2005, and called someone:

A ... he got on the phone and was talking to someone and left.
Q okay.
A And - -
Q Did you hear him call anybody on the phone?

(R. p. 487, lines 2-7).

Defense counsel then objected, and the trial judge overruled the objection at that time. (R. p. 487, lines 8-9). The witness continued her answer:

A I didn't hear him on the phone. I saw that he had called someone on the phone.
Q Do you know who he called?
A Yeah.
Q Who?
A Dominic
Q And does Dominic have a nickname?
A Freaky.
Q Freaky?
A Yes, sir.
Q So after you heard that, what happened after that?
A After that he left..
Q Okay. When did you see, if ever, Stanley Oliver again?
A The next day.
Q Tell us about that....

(R. p. 487, lines 10-25).

Appellant complains on appeal that the trial judge erred in admitting the testimony because there "there *was not any competent evidence* establishing that Williams knew Oliver was talking to appellant on the telephone." (BOA, p. 13).

Discussion:

As this argument was not presented below, it is procedurally barred from review. First, the specific objection raised *in camera* did not preserve any issue for review. It is well settled that a motion *in limine* does not preserve an issue for appeal. *See, e.g. State v. Smith*, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999)("pretrial ruling on the admissibility of evidence is preliminary and is subject to change based on developments at trial"); *State v. Fletcher*, 363 S.C.

221, 250, 609 S.E.2d 572, 587 (Ct. App. 2005)("motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a ruling in limine is not a final determination"). Clearly here there was no ruling at all, and the trial judge certainly invited defense counsel to object if and when the question was asked. Therefore, nothing could be preserved for review. Second, the objection at trial is not specific. A proper "objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error." *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). "A general objection which does not specify the particular ground on which the objection is based is insufficient to preserve a question for review." *State v. Rice*, 375 S.C. 302, 323, 652 S.E.2d 409, 419 (Ct. App. 2007). If, however, one assumes the objection made during the trial testimony was based on the argument made *in camera*, then the issue is procedurally barred as the issue now presented is different than the argument made below. *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (issue not preserved when one ground is raised to the trial court and another ground is raised on appeal). On appeal, appellant complains of the testimony "that she knew Oliver was calling appellant" (BOA, p. 13); however, at trial, he argued that Williams should not have been allowed to testify that Oliver called appellant and that appellant came over and picked Oliver up, (Tr. p. 822, lines 4-16), - - clearly a different issue and barred. *Id.* At any rate, even if the admission of testimony was error, it could only be harmless.

"[A]n insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *State v. Price*, 368 S.C. 494, 500, 629 S.E.2d 363, 366 (2006), *citing State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "Where a review of the entire record establishes the error is harmless beyond a

reasonable doubt, the conviction should not be reversed." *Price*, 368 S.C. at 499, 629 S.E.2d at 366, *citing State v. Pickens,* 320 S.C. 528, 531, 466 S.E.2d 364, 366 (1996). First, the testimony actually received was at best vague, and reflects only that Oliver called appellant, not even that he spoke to appellant. He could have well attempted to call appellant only to be told he was not available. No statement from appellant was ever elicited. Second, there is ample direct and clear evidence of guilt in the record independent of this minor testimony. The record shows that Ulicen "Mike" Allen testified he confronted appellant about his participation in the crimes, which appellant directly admitted to him. (R. p. 553, line 4 - p. 561, line 22; p. 575, line 17-p. 579, line 17). Moreover, appellant's girlfriend, Leticia Jones, testified that appellant confessed his participation directly to her, including describing in detail the way he killed Victim Felder with his own gun. (R. p. 378, line 15 - p. 679, line 9; 680, line 16 - p. 681, line 4). And, Omekas "Blue" Moaney testified that both Oliver and appellant came to him to sell the drugs they acquired from the robbery and admitted that "things got out of hand." (R. p. 738, lines 3-13). In light of the wealth of evidence in the record already clearly indicating appellant's guilt, the brief testimony that co-defendant Oliver called appellant on the night of the crimes can simply not be anything other than harmless.

Appellant's argument to the contrary must be rejected.

III.

The trial judge did not abuse his discretion in admitting Tatanisha Robinson's statement as evidence of a prior inconsistent statement after Robinson testified that, while she acknowledged the fact of the statement shown, it was not her statement but a statement written and or suggested by law enforcement; therefore, not her own.

Relevant Facts:

Tatanisha Robinson was one of Oliver's former girlfriends. On September 21, 2005, she gave a written statement to law enforcement detailing that Oliver saw her the day after the crimes were committed, and was "worried" about the news reports on the murders. He had a lot of cash and "about 3 or 4 ounces of cocaine." (State Exhibit 203, p. 1; R. p. 1829). He was concerned that if captured, he would spend the rest of his life in jail. (Id.). The statement also reflected that she told investigators that she also saw appellant, and he "was bragging about the murders" but later became silent when Oliver was arrested. She noted appellant gave away $50.00 dollar just for laundry, and also that he had a .40 caliber gun. (State Exhibit 203, pp. 3-4; R. pp. 1831-1832).

Robinson was granted transactional immunity to testify, as, after making the first statement, she submitted another sworn statement which was apparently contrary to her first sworn statement. (See R. p. 818, line 23 - p. 830, line 18). The State called Robinson at trial. Robinson was considered a hostile witness after several fruitless attempts to seek answers concerning her knowledge of the events, including having received one answer that the witness simply could not remember, that she had "bad brain cells." (R. p. 836, line 18 - p. 841, line 20). The solicitor asked about her written statement to investigators. She volunteered that she did not write the statement. (R. p. 843, lines 1-5). She went on to testify that she did not remember the statement. (R. p. 846, lines 15-16). When asked if she put in the statement that Oliver was nervous when she saw him after the murders, she replied, "I guess." (R. p. 847, line 24 - p. 848,

line 1). She denied saying Oliver "had a lot of money on him." (R. p. 848, lines 15-20). She denied making several statements in the written statement, such as referring to a specific amount of money or an amount of cocaine. (R. p. 849, lines 12 - 23). (See also R. p. 853, lines 21-24). When asked if she put in a statement that appellant was excited and they must have gotten a lot of money, she replied, "Did they put it in the statement? Yes." (R. p. 859, lines 19-21). Ultimately, the solicitor asked the witness if the identified statement was her statement. She denied the statement was hers. (R. p. 890, lines 20-23). (See also R. p. 891, lines 10-11, "... I did not write this and half the stuff in here I don't even remember saying.").

Defense counsel objected to references to other robberies in the statements, and the statement was redacted as to those matters. (See R. p. 882, line 9 - p. 883, line 23). During the *in camera* hearing held to review the requested redaction, (R. p. 1186, lines 12-18), defense counsel also argued that the statement cannot be admitted as the witness did not deny making the statement, but recanted the statement. (R. p. 1191, line 13 - p. 1192, line 8; p. 1207, lines 9-23). Defense counsel for co-defendant Joy reiterated that position, but, when the trial judge suggested that her testimony can be interpreted as "playing with the court," defense counsel for co-defendant Joy responded, "I understand how you say that, Your Honor." (R. p. 1193, line 15 - p. 1194, line 4). The trial judge ruled:

> Well, she not only recanted, but she denied it and recanted it, both. The objection is overruled. I'm going to allow it subject to, as I indicated earlier in the week, authenticity.

(R. p. 1207, line 24 - p. 1208, line 2).

The investigator who took the statement, Mitch Wilkerson, testified and identified the statement that Robinson gave on September 21, 2005. (R. p. 1233, lines 7-18). He further testified that he merely took down Robinson's words for the statement, and that she received a

copy of the statement after it was made. (R. p. 1235, line 4- p. 1242, line 5). The solicitor then offered the statement and the trial judge admitted the statement, "subject to the previous objections." (R. p. 1242, lines 6-8). Defense counsel offered another, unspecified, objection and a bench conference was held, after which the statement was admitted over the objections of the defendants. (R. p. 1243, lines 8-19). At the conclusion of testimony, defense counsel placed on the record that he objected to the redaction itself, and argued admission of the physical document was duplicative and placed undue emphasis on the statement already reviewed in testimony. (R. p. 1286, lines 12 - p. 1664, lines 6). The trial judge noted there were cases where both too little and too much information had been sent back that resulted in reversible error, and, in his discretion, denied the motion to disallow admission of the written statement. (R. p. 1288, lines 6-15; p. 1289, lines 5-6).

Discussion:

The admission of evidence is in the discretion of the trial judge. *State v. McLeod*, 362 S.C. 73, 79-80, 606 S.E.2d 215, 218 (Ct.App. 2004). "Evidentiary rulings of the trial court will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant." *State v. Rice*, 375 S.C. at 314, 652 S.E.2d at 415. *See also State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *State v. Irick*, 344 S.C. 460, 463, 545 S.E.2d 282, 284 (2001). Moreover, the error must be prejudicial to the appellant to support reversal. *McLeod*, 362 S.C. at 73, 606 S.E.2d at 219.

"A prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination." *State v. Stokes*, 381 S.C. 390, ___, 673 S.E.2d 434, 438 (2009). "Under Rule 613(b), extrinsic evidence of the statement is not

admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made." *State v. McLeod*, 362 S.C. at 81, 606 S.E.2d at 219. "Only if the witness denies having made the prior inconsistent statement is extrinsic evidence admissible." *State v. Sierra*, 337 S.C. 368, 372-373, 523 S.E.2d 187, 189 (Ct.App. 1999). Here, the witness was so advised, and the evidence was properly admitted in reply pursuant to Rule 613(b), SCRE. The only issue is whether the witness actually failed to acknowledge making the statement. (BOA, p. 19, "Here, Robinson repeatedly acknowledged that matters the state wished to impeach her on were indeed in her statement to the police.")(See also Tr. p. 1568, line 13 - p. 1569, line 8; p. 1584, lines 9-23). The record is replete with her denials. (See R. p. 859, lines 19-21; p. 890, lines 20-23; p. 891, lines 10-11). Appellant's argument lacks factual support.

At any rate, the admission, if error, could only be insubstantial and harmless in light of the other conclusive evidence of guilt in the record, the relatively little probative value compared to other direct evidence of guilt, and the largely cumulative nature of the testimony. *Price, supra*; *State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003) (improper evidence harmless where merely cumulative to other evidence); *State v. Evans*, 378 S.C. 296, 300, 662 S.E.2d 489, 491 (Ct. App. 2008)(evidence "merely cumulative, insubstantial" did not affect the result of trial and considered harmless). The statement that appellant was bragging and had a gun is persuasive circumstantial evidence of guilt; however, it paled in comparison to other evidence, such as the testimony from Ulicen "Mike" Allen that he confronted appellant about his participation in the crimes, which appellant directly admitted to him, (R. p. 553, line 4 - p. 561, line 22; p. 575, line 17-p. 579, line 17), and the testimony from appellant's girlfriend, Leticia Jones, that appellant confessed his participation directly to her, including describing in detail the way he killed Victim

Felder with his own gun, (R. p. 678, line 15 - p. 679, line 9; 680, line 16 - p. 681, line 4), and, the testimony from Omekas "Blue" Moaney that both Oliver and appellant came to him to sell the drugs they acquired from the robbery and admitted that "things got out of hand." (R. p. 738, lines 3-13). This evidence has not been contested on appeal. In light of the wealth of uncontested evidence in the record clearly indicating appellant's guilt, the additional merely cumulative evidence of appellant's talking about the murders at the time in question can simply not be anything other than insignificant and harmlessly cumulative.

As to appellant's argument that the redaction was "sloppy," (BOA, p. 15), no such specific objection was made. Though appellant did object to the fact of the redaction, he objected because of context, arguing, "its just too prejudicial because it's not an accurate reflection of what she allegedly said the first time." (R. p. 1207, lines 9-23). Later, counsel would argue that the written statement shows the redaction, as a basis for disallowing the written statement to be admitted where the essence of the statement was already admitted in testimony. (R. p. 1286, line 12 - p. 1288, line 24). Therefore, the argument presented i.e. "sloppy redaction" is not preserved for review. *Freiburger, supra.* Moreover, the court held a detailed hearing on redaction that all counsel joined in, in which defense counsel argued that the references to other robberies were not admissible, (R. p. 871, line 2 - p. 879, line 6), and the trial judge agreed with defense counsel that the portions related to other crimes must be redacted, and could not be used for impeachment, (R. p. 882, line 9 - p. 883, line 23). Counsel cannot complain of that which he requested. *State v. Bryant,* 372 S.C. 305, 314, 642 S.E.2d 582, 587 (2007), *quoting State v. Babb,* 299 S.C. 451, 455, 385 S.E.2d 827, 829 (1989) ("[A] party cannot complain of an error which his own conduct has induced.").

As to appellant's argument that the admission of the redacted statement was needlessly or improperly duplicative, (BOA, p. 19), the trial judge did not abuse his discretion. As noted above, such a statement is admissible as substantive evidence. *Stokes, supra.* Therefore, the trial judge did not commit an error of law, and there is no basis for finding an abuse of discretion. *Rice, supra.*

Appellant's argument to the contrary must be rejected.

CONCLUSION

For all the foregoing reasons, respondent, the State, submits that the judgment, conviction, and sentence of the lower court should be affirmed.

Respectfully submitted,

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July 27, 2009.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

The State,

Respondent,

v.

Dominic Gallman,

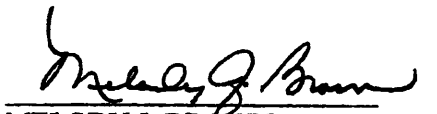
Appellant.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the Final Brief of Respondent on Appellant by depositing three (3) copies of same in the United States mail, postage prepaid, addressed to her attorney of record:

Robert M. Dudek, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
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This 27th day of July, 2009.



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMINIC GALLMAN,

APPELLANT

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

1.

It is clear that counsel for co-defendant Oliver, when questioning jail house snitch Jason Brown *read into the record* Oliver's alleged statement to Brown *that was contained in a police report* which stated that "Stanley and Dominic (appellant) rushed in [the drug dealers home]." This was the equivalent of testimony, it clearly put before the jury that Oliver said appellant was involved in the crime, and a mistrial should have been granted since appellant could not cross-examine Oliver.

The state seeks to make much of the fact that Oliver's attorney, when questioning Brown, read from a police statement that Oliver allegedly told Brown while they were in jail that "a man opened the door. Stanley and Dominic (appellant rushed in." Brief of Respondent at 9. This was the equivalent of Brown's testimony *because his alleged statement to Brown was read from a police report in the presence of the jury.* This was the publication of a police report which contained hearsay where appellant was denied the opportunity to confront and cross-examine Oliver about his accusation that appellant was involved in this crime.

Brown earlier testified he had known Oliver for about ten years at the time they were both in the detention center following Oliver's arrest for the charges in this case. R1044., l. 6 – 1046, l. 7. To put this matter into context, Brown claimed that while they were in jail, Oliver told him that "he and another individual had robbed a house on Mildred Avenue where two people had been shot and killed and another person was taken to another location and they too were killed for an undisclosed amount of money and a lot of cocaine." R.

1046, ll. 11 – 17. Brown said Oliver made this confession to him in October of 2005. R. 1046, ll. 18 -22.

As seen, on cross-examination by Oliver's attorney, Doug Strickler, Brown acknowledged he contacted the police about this alleged statement. Brown then gave the police a statement on December 22, 2005, wherein he told them "they went down there and had the girl, knocked on the door to try to buy something." R. 1071, ll. 9 – 21. Defense counsel for Oliver then read from the statement that "a man opened the door. Stanley and Dominic (appellant) rushed in." Appellant's counsel, Milling, immediately objected and a bench conference was held. The judge then told the jury to "disregard that question and answer, from the record, and, just, as I say, disregard the answer and move ahead . . ." R. 1072, ll. 1 – 14. Defense counsel Milling then told the judge he had a motion outside the presence of the jury at the conclusion of Brown's testimony. R. 1072, ll. 12 – 14.

The cross-examination then continued. Brown acknowledged he told the police that Oliver told him that the girl that knocked on the door went outside and got back into the car. Brown acknowledged all of the information he gave the police was based on what Oliver told him, and that the women that knocked on the door "was involved in getting Oliver inside the home." Oliver told Brown that the drug dealers, Batie and Miller, were shot inside the house. R. 1071, l. 9 – 1075, l. 17.

Defense counsel Milling moved for a mistrial at the conclusion of Brown's testimony. He argued that the use of the statement by defense counsel for Oliver to get before the jury that "the man opened the door and Stanley and Dominic rushed in" violated

the principles of Bruton v. United States[1] and Crawford v. Washington[2] since appellant had "no right or no ability to cross-examine Mr. Oliver as to his statement." Defense counsel said no curative instruction could solve the prejudice that appellant had suffered at that point. Counsel also noted that appellant had "painstakingly" attempted to keep co-defendant statements that could not be cross-examined from the jury, and that the damage had now been done. R. 1086, ll. 3 – 21. The judge disagreed, stating that he thought his instruction was sufficient, and he denied the mistrial motion. R. 1086, ll. 22 -25.

From this it should be clear that Brown was saying Oliver implicated appellant in the crime. However, if there was any doubt about that the testimony of Columbia Police Investigator Mitch Wilkerson had to remove all doubt. Wilkerson acknowledged that co-defendant Oliver made statements to him about appellant. Wilkerson confirmed that Oliver "implicated Mr. Gallman as having known Jim Batie [the decedent]." Mr. Wilkerson also acknowledged Oliver told him appellant had been to Batie's house on a prior occasion. R. 5, l. 12 – 6, l. 19.

Defense counsel Milling, as seen, had noted that there would be potential Bruton problems with other witnesses -- including Renata Williams -- which was the second issue in appellant's initial brief. R. 95, l. 4 – 97, l. 17.

It is elementary that the introduction of a non-testifying co-defendant's statement which implicates another co-defendant violates the co-defendant's right to confrontation because he has no opportunity to cross-examine the co-defendant who allegedly implicated

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[1] 391 U.S. 123 (1968).

[2] 541 U.S. 36 (2004).

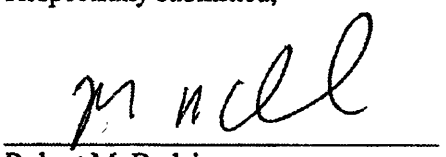
him in the crime. Bruton v. United States, 391 U.S. 123 (1968). The right to confrontation is so fundamental that limiting instructions are not an adequate substitute for the right to confront the co-defendant. State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999).

Defense counsel also correctly argued that the principle of Crawford v. Washington, 541 U.S. 36 (2004) applied. Oliver's alleged confession implicating appellant was introduced through a statement Brown gave to the police, Investigator Witherspoon. The court abused its discretion by refusing to declare a mistrial given this fundamentally unfair denial of the right to confrontation and the Crawford v. Washington violation. State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999).

CONCLUSION

By reason of the foregoing argument, and the arguments in appellant's initial brief, appellant's conviction should be reversed and this case remanded for a new trial.

Respectfully submitted,



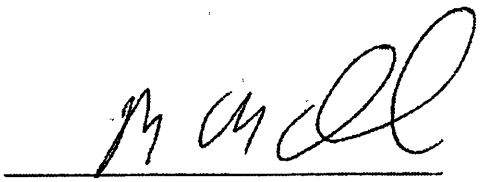
Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT.

July 27, 2009

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



Robert M. Dudek
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ATTORNEY FOR APPELLANT.

July 27, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMINIC GALLMAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 27th day of July, 2009.

Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2009.

(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2018 .

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Dominic Gallman, Appellant.

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-006
Submitted October 1, 2010 – Filed January 20, 2011

AFFIRMED

Appellate Defender Robert M. Dudek, of Columbia, for Appellant.

Attorney General Henry D. McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenda, Assistant Attorney General Melody J. Brown, and Solicitor W. Barney Giese, all of Columbia, for Respondent.

PER CURIAM: Dominic Gallman appeals his convictions for three counts of murder, burglary in the first degree, armed robbery, and kidnapping. We affirm[1] pursuant to Rule 220(b), SCACR, and the following authorities: Issue 1: State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (finding a trial court should first exhaust other methods to cure possible prejudice before aborting a trial); State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005) (stating a curative instruction is usually deemed to have cured any alleged error). Issue 2: State v. Allen, 269 S.C. 233, 242, 237 S.E.2d 64, 68 (1977) (holding overwhelming proof of guilt rendered harmless any error in the admission of the evidence in question). Issue 3: Rule 613(b), SCRE (providing for admission of a prior inconsistent statement if the witness does not admit making the statement); State v. Carmack, 388 S.C. 190, 201, 694 S.E.2d 224, 229-30 (Ct. App. 2010) (finding where the witness has responded with anything less than an unequivocal admission, trial courts are granted wide latitude to allow extrinsic evidence proving the statement).

AFFIRMED.

SHORT, THOMAS, and LOCKEMY, JJ., concur.

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

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DOMINIC GALLMAN,

PETITIONER

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

Opinion No. 2011-UP-006

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, petitioner seeks rehearing because this Court may have overlooked the fact that when jailhouse snitch Jason Brown testified Oliver confessed to him in prison and Brown gave a statement to the police informing them of Oliver's confession wherein Oliver told Brown that Oliver and petitioner rushed into the drug dealer's house and shot the drug dealers that the prejudice was irreparable. Defense counsel correctly argued Brown's testimony violated the principles of Bruton v. United States, 391 U.S. 123 (1968) and Crawford v. Washington, 541 U.S. 36 (2004) since petitioner was denied the opportunity to cross-examine co-defendant Oliver about the fact he allegedly made these admissions to Brown which the police memorialized. A mistrial should have ordered since petitioner was named as a participant in the crime where he was denied his right of cross-examination.

As this Court will recall, on cross-examination by Oliver's attorney, Doug Strickler, Brown acknowledged he contacted the police about this alleged statement. Brown then gave the police a statement on December 22, 2005, wherein he told them "they went down there and had the girl, knocked on the door to try to buy something." R. 1071, ll. 9 – 21. Defense counsel for Oliver then read from the statement that "a man opened the door. Stanley and Dominic (petitioner) rushed in." Petitioner's attorney counsel, Jonathan Milling, immediately objected and a bench conference was held. The judge then told the jury to "disregard that question and answer, from the record, and, just, as I say, disregard the answer and move ahead . . ." R. 1072, ll. 1 – 14. Defense counsel Milling then told the judge he had a motion outside the presence of the jury at the conclusion of Brown's testimony. R. 1072, ll. 12 – 14.

"Disregard that question and answer, from the record, and, just, as I say, disregard the answer and move ahead . . ." was, as trial counsel correctly argued wholly insufficient to cure this incurable event. R. 1072, ll. 1 – 14. Counsel argued that the use of the statement by defense counsel for Oliver to get before the jury that "the man opened the door and Stanley and Dominic rushed in" violated the principles of Bruton v. United States and Crawford v. Washington since appellant had "no right or no ability to cross-examine Mr. Oliver as to his statement." Defense counsel vividly told the judge that no curative instruction could solve the prejudice that petitioner had suffered at that point. Counsel also noted that appellant had "painstakingly" attempted to keep co-defendant statements that could not be cross-examined from the jury, and that the damage had now been done. R. 1086, ll. 3 – 21.

This Court cites State v. Council, 335 S.C. 1, 515 S.E.2d 508, 514 (1999), for the correct proposition that the Court should first attempt to cure prejudice if possible before declaring a mistrial. State v. Dominic Gallman, 2011-UP-066 (January 20, 2011) at p. 1. In Council, the

remark in question *did not necessarily* indicate Council had a prior record. Respectfully, that is no comparison to a witness testifying a co-defendant confessed and named *petitioner as the other participant in the crime* where petitioner did not have the opportunity to cross-examine that person.

Here, there was testimony that Brown told the police that Oliver confessed to him that he committed the murders, and he alleged Oliver named petitioner as his accomplice in the three murders. That was fundamentally unfair because Oliver did not testify in this case, and consequently petitioner was denied his fundamental right to confront and cross-examine Oliver. The truncated curative instruction was insufficient to cure this prejudice. Most respectfully, the short summary opinion of this Court does not do justice to the merits of this case and petitioner requests that this Court grant rehearing.

Harmless error

Defense counsel Milling objected to Renata Williams' testimony that she heard Oliver telephoning and talking with petitioner "unless she heard my client on the other end of the phone, she is still listening to what Mr. Oliver said, which we can't cross-examine Mr. Oliver to ask him whether or not he actually called my client or called someone else."

Williams testified she met petitioner through Oliver. She noted that she saw them "off and on, during the summer of 2005, up through Labor Day [when the murders occurred]." R. 483, ll. 14 – 20. Williams testified that, on the night in question, she was watching "Comic View" on television. Williams remembered Oliver "saying something [when he got home], but I don't quite remember what it was. Then he got on the phone and was talking to someone and left." R. 486, l. 11 – 487, l. 4.

The solicitor then asked Williams: "Did you hear him call anybody on the phone?" At this point defense counsel Milling objected. The judge overruled the objection. Williams answered: "I

didn't hear him on the phone. I saw that he had called someone on the phone." Williams then testified that Oliver had called petitioner, "Dominic" – whose nickname was "Freaky -- and that Oliver left after that phone call. Williams said she saw Oliver the next day when he returned to her apartment and she heard him talking to someone else about money and drugs. Williams said she saw Oliver counting the money in her apartment. R. 487, l. 7 – 489, l. 1. Williams also testified that she had also heard Oliver talking about "doing a lick."

This Court correctly found this to be error since there was no testimony as in State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980) where our Supreme Court noted that a witnesses' testimony that *he can identify a person by having heard his voice* before has been regarded as legitimate and competent manner of establishing identity in a criminal or civil case. State v. Plyler, 270 S.E.2d at 127–128. This Court in State v. Smith, 307 S.C. 376, 415 S.E.2nd 409 (Ct. App. 1992) held that a sheriff's dispatcher was qualified to identify the defendant as the anonymous telephone caller even if the dispatcher had no training in voice identification, since the dispatcher *immediately recognized the defendant's voice* as that of the anonymous caller when the defendant came to the sheriff's office less than twenty-four hours after the phone call, and where the defendant also had a distinctive voice. Here, Williams was clearly unable to testify that she heard petitioner's voice on the other end of the telephone. Her bare claim that she knew Oliver was calling petitioner should have been excluded since there *was not any competent evidence* establishing that Williams knew Oliver was talking to petitioner on the telephone. The jury received evidence that Williams knew Oliver was telephoning petitioner. The phone was a "land line," and there was absolutely no indication of how Williams could have instantly known that Oliver telephoned petitioner, *and talked to petitioner.*

A witness must be able to authenticate the conversation by testifying she recognizes and can identify the parties to the conversation by hearing their voices. State v. Stewart, 275 S.C. 44, 47, 272 S.E.2d 628 (1980). See Collins S.C. Evidence §13.8 (Authentication through voice identification) at pages 383 – 304. Further, Rule 901(5), SCRE, provides that a voice can be identified by an opinion based on hearing the person's voice at another time under circumstances connecting it with the alleged speaker.

This Court respectfully erred by finding this error harmless. State v. Dominic Gallman, 2011-UP-066 (January 20, 2011) at p. 1 The state's allegation of harmless error focused much on the allegations of Oliver and the evidence against Oliver. Respondent's brief at 17. The error here was not harmless since it was another inadmissible accusation of petitioner's involvement in the crime, and the cumulative errors in this case denied petitioner a fair trial.

The admission of the admission of Tatanisha Robinson's redacted statement

The redaction of Robinson's statement was so sloppily done that it was obvious matters were being hid from the jury. The admission of the statement itself under these circumstances was improper under Rule 613 (b), SCRE. This Court found the statement was admissible. State v. Dominic Gallman, 2011-UP-066 (January 20, 2011) at p. 1. Petitioner requests rehearing for the reasons below.

Tatanisha Robinson was another one of Oliver's girlfriends, and she was given transactional immunity in return for her testimony for the state. R. 818, l. 23 – 860, l. 23. Robinson admitted on cross-examination that she was angry with Oliver at the time she gave her statement because he had an ongoing relationship with Renata Williams. Robinson acknowledged that she told the police that Oliver told her he had done something that "could get him life." R. 854, ll. 13 – 24. Robinson also admitted that while she was at a motel with Oliver after the murder that Oliver told her to "wake

him if the police came or something looks suspicious." R. 856, ll. 6 – 10. In addition, Robinson acknowledged Oliver told her at a friend's house shortly before his arrest that "this could be the last day before he gets locked up." R. 858, ll. 10 – 24.

Robinson admitted in her statement that she was alleged to have said that petitioner was bragging about the murders after they occurred. Robinson acknowledged the petitioner "bragging allegation" was in her statement, but she said she did not write the statement. Robinson admitted it was also in her statement that "they must have got a lot of money" because "Freaky [petitioner] was excited" about the robbery and murder. R. 859, ll. 7 – 21. Robinson also admitted it was in her statement that petitioner spoke of specific details regarding the murder and that petitioner had a thousand dollars to attempt to get Oliver an attorney. R. 860, l. 12 – 861, l. 12.

On cross-examination, Robinson admitted that "the truth about the situation" was that she was angry with Oliver at the time of her statement because she was pregnant with his child, and Oliver was having an ongoing relationship with Renata Williams that he refused to end. R. 909, ll. 8 – 18. Williams admitted she was sorry about the statement because "I did not know how serious the situation was." Williams said she later sought to limit or correct the damage she had done through her statement to the police. R. 911, ll. 5-22.

After all of these admissions defense counsel Milling objected when the state went to introduce this statement under Rule 613(b), SCRE. He noted that Robinson acknowledged it was her statement and that she had signed it. Defense counsel said the admission of the statement itself was not within the intent of Rule 613(b), SCRE, and counsel for the co-defendant's agreed that taking Robinson's testimony, her admissions, and her explanations about the statement in context, that admission of the statement itself would be improper under Rule 613(b), SCRE. It would be

improper under the intent of that evidentiary rule. R. 1191, 12 – 1208, l. 3. The judge ruled he was going to allow the statement into evidence. R. 1207, l. 24 – 1208, l. 3.

Defense counsel also objected to the admission of the statement on the grounds of "physical appearance of the document" which showed it was "replete with deletions" and on the grounds that it would unduly emphasize the importance of Robinson's statement. R. 1286, l. 12 – 1289, l. 6.

Robinson redacted statement, state's exhibit 203, was then admitted into evidence over objection. R. 1242, l. 6 – 1243, l. 19. R. 1829. The badly redacted statement does state that "Dominic was bragging about the murders," and then the next sentence is redacted." See State's Exhibit 203 at page 3. R. 1831. The redactions throughout the statement, particular on page 6 of the document, show that the jury had to know that important matters were being hidden from it, and it was highly prejudicial since the jury was left to speculate about what was redacted from the statement, and what else it said about the defendant's conduct.

Counsel Milling properly cited State v. Gulledge, 277 S.C. 368, 287 S.E.2d 488 (1982), where the Supreme Court held that the trial judge abused his discretion by allowing the jury to take into the jury room a transcript of the tape between a highway patrolman who had been shot and the patrolman who received the call because it unduly emphasized that evidence. The defense attorneys here correctly argued the situation was the same in this case regarding giving undue emphasis to Robinson's statement.

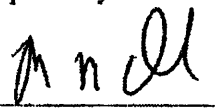
As seen, Robinson admitted it was in her statement to the police that petitioner was bragging about the murder. The jury fully understood this was diametrically at odds with petitioner's girlfriend, Laticia Jones's, testimony that petitioner came to her apartment after the botched robbery and was crying about it. Jones claimed petitioner told her that she "was right about Oliver, that Oliver had gotten him into trouble and that "his friend shot the guy that opened the door." Jones

also said that petitioner told her that he had to stop Oliver from attacking "the lady, from like raping her and stuff," and that a gun was held "to his head and [Oliver] told him that if he didn't shoot the lady that he would shoot him." Jones said petitioner therefore shot the third victim in the woods. R. 677, l. 3 – 682, l. 1.

Petitioner respectfully submits given all of Robinson's admissions about her statement that it was not admissible under ule 613(b), SCRE, as extrinsic evidence of a prior *inconsistent* statement. The rule states that if the witness does not admit that she had made the prior inconsistent statement, extrinsic evidence of the statement is admissible. The rule also provides that if the witness admits making the prior statement, that extrinsic evidence that the prior statement was made is inadmissible.

Here, Robinson repeatedly acknowledged that matters the state wished to impeach her on were indeed in her statement to the police. It was clear to the jury that Robinson was unhappy that certain matters prejudicial to Oliver -- and thereby petitioner -- were in her statement and that she now sought to distance herself from them. However, this was not a situation within the meaning of Rule 613(b), SCRE where it was disputed whether or not Robinson gave the statement to the police. Robinson acknowledged during her testimony *that she was given a copy of the statement and that she signed it.* Petitioner respectfully requests that this Court reconsider its holding on these three issues and grant rehearing on one or all of them.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 4th day of February, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMINIC GALLMAN,

PETITIONER

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Melody J. Brown, Esquire, this 4th day of February, 2011.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day
of February, 2011.

(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-006 (S.C.Ct.App. filed January 20, 2011)

The State,

Respondent,

v.

Dominic Gallman,

Petitioner.

RETURN TO PETITION FOR REHEARING

This Court issued an opinion in the captioned case on January 20, 2011, affirming Petitioner Gallman's convictions for murder (three counts), burglary first degree, armed robbery, and kidnapping. Petitioner filed a petition for rehearing on February 4, 2011. By letter dated February 7, 2011, this Court requested respondent file a return to the petition. Pursuant to Rules 221 and 240, SCACR, and at the request of the Court, respondent makes its return, and submits the petition for rehearing should be denied. In support of this position, respondent would respectfully show the Court:

1. In regard to Issue One (the mistrial issue), petitioner suggests the panel "overlooked the fact ... that prejudice was irreparable." (Petition for Rehearing, p. 1). Petitioner's argument first must fail as the panel never found that improper evidence was actually received and error evident, but merely that "any *possible* prejudice" would have been cured. *State v. Gallman*, Unpublished Opinion No. 2011-UP-006 (S.C.Ct.App. filed January 20, 2011), p. 1, *citing State v. Council*, 335

S.C. 1, 13, 515 S.E.2d 508, 514 (1999)(emphasis added). The record clearly demonstrates that counsel for petitioner immediately objected to co-defendant counsel's question to Brown before an answer was given. (R. p. 1072, lines 3-4). The witness never stated to the jury that petitioner was named in his statement. Even so, petitioner argues the question was the "equivalent" to testimony because counsel for co-defendant read from Brown's statement. (Petition for Rehearing, p. 2; Final Reply Brief of Appellant, p. 3). However, even if true, the jury did not know that (it was not formally announced and published as such, see R. p. 1071, line 19 - p. 1072, line 2, counsel for co-defendant begins his question, "My understanding is that your statement indicates that" followed by a series of information), thus, the jury could just have easily assumed a misreading or misstatement in posing the question. The possibility of prejudice is erased where no improper evidence is actually introduced. *State v. Harris*, 382 S.C. 107, 119, 674 S.E.2d 532, 538-39 (Ct. App. 2009), *cert. denied* (2010)("the record reveals the witness did not answer the question asked by the State. The State asked the witness whether Harris ever struck him, and before the witness could respond, Harris objected ... we fail to see how Harris suffered any prejudice in light of the fact the witness did not answer the question"). At any rate, to guard against any possibility of prejudice, the trial judge specifically instructed the jury to disregard the question and answer (though there technically was not one). (R. p. 1072, lines 6-11). In sum, any possible prejudice from the mere posing of a question by counsel for co-defendant was swiftly and effectively blunted.

"A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission." *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 130 (Ct.App. 2005). The instruction here was carefully crafted to firmly instruct that the question should not be considered, without placing emphasis on the question by repeating same before the jury. *Id*, 366 S.C. at 660, 623 S.E.2d at 130 ("In compliance with the law

extant on curative instructions, the trial judge responded with alacrity and exactitude when the inadmissible evidence was offered. The potency of the judge's curative instructions expunged and extirpated any alleged error."); *State v. Ferguson*, 376 S.C. 615, 621, 658 S.E.2d 101, 104 (Ct. App. 2008)(noting with favor that the "curative instruction was simple, and the court refrained from reiterating or emphasizing the unresponsive answer"). Therefore, as this Court reasonably and correctly found, the instruction was sufficient to cure any conceivable prejudice.

Further, even if prejudice could be found in this context, which respondent maintains it cannot, such prejudice is harmless in light of the other overwhelming evidence of guilt. Petitioner simply does not address the fact that confrontation issues are subject to harmless error analysis. *State v. Davis*, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006)("violation of a defendant's Sixth Amendment right to confront the witness is not *per se* reversible error; instead, this Court must determine whether the error was harmless beyond a reasonable doubt."). However, that is clearly so, and the record here supports that even if error, such error can only be harmless in light of the remaining evidence.

The record shows testimony demonstrating guilt of both defendants in this joint enterprise. For instance, Ulicen "Mike" Allen, testified that he confronted petitioner about "allowing" Oliver to leave prints[1] at the home during which petitioner admitted being with Oliver. (R. p. 577, line 17-p. 579, line 17). Additionally, petitioner's girlfriend, Leticia Jones, testified that petitioner confessed his participation not only in the burglary and robbery, but also described in detail the way he killed victim Felder. (R. p. 678, line 15 - p. 679, line 9; 680, line 16 - p. 681, line 4). Further still, Omekas "Blue" Moaney testified that both Oliver and petitioner came to him to sell the drugs they acquired

[1] The evidence did show that co-defendant Oliver left his print on a shoe box in the ransacked home. (R. p. 331, lines 8-11).

from the robbery and admitted that "things got out of hand." (R. p. 738, lines 3-13). In light of the wealth of evidence in the record, uncontested on appeal, that clearly indicates petitioner's participation, one question during Brown's cross-examination by co-defendant Oliver suggesting reference to petitioner's name can simply not be anything other than harmless.

However, the instruction here cured any possible error from defense counsel's question which may have suggested the statement reflected petitioner's name.

2. Petitioner next submits that the panel "correctly found ... error" in regard to Issue 2 (the telephone call testimony issue), (Petition for Rehearing, p. 4); however, again, there is no ruling on the error. The panel, in disposing of the issue, merely cites to *State v. Allen*, which held no error in the admission of evidence, but noted that "[i]n any event" that "the overwhelming proof of guilt rendered harmless the admission of the evidence in question." *State v. Allen*, 269 S.C. 233, 242, 237 S.E.2d 64, 68 (1977). Respondent agrees with the panel, however, that even if error could be found, the error was harmless.

First, the testimony actually received was at best vague, and reflects only that Oliver called petitioner, not even that he spoke to petitioner. (R. p. 487, lines 7-19). He could well have attempted to call petitioner only to be told he was not available. No statement from petitioner was ever elicited. Second, there is ample direct and clear evidence of guilt in the record independent of this minor testimony.

The record shows that Ulicen "Mike" Allen testified he confronted petitioner about his participation in the crimes with Oliver, which petitioner admitted to him. (R. p. 553, line 4 - p. 561,

line 22; p. 575, line 17-p. 579, line 17).[2] Moreover, petitioner's girlfriend, Leticia Jones, testified that petitioner confessed his participation directly to her, including describing in detail the way he killed victim Felder. (R. p. 378, line 15 - p. 679, line 9; 680, line 16 - p. 681, line 4). And, Omekas "Blue" Moaney testified that both Oliver and petitioner came to him to sell the drugs they acquired from the robbery and admitted that "things got out of hand." (R. p. 738, lines 3-13). In light of the wealth of evidence in the record already clearly indicating petitioner's guilt, the brief testimony that co-defendant Oliver made a call to petitioner on the night of the crimes can simply not be anything other than harmless. *State v. Price,* 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006), *citing State v. Pickens,* 320 S.C. 528, 531, 466 S.E.2d 364, 366 (1996)("Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed.").

3. Next, petitioner argues cumulative error entitles him to relief. (Petition for Rehearing, p. 5). Petitioner has not previously argued such a ground for relief. It is inappropriate to raise a new theory in the petition for rehearing, and such a theory will not be entertained. *Kennedy v. South Carolina Retirement Sys.*, 349 S.C. 531, 564 S.E.2d 322 (2001). At any rate, there are no multiple findings of error here to even vaguely support an argument that petitioner was denied a fair trial. *See State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999)("Respondent must demonstrate more than error in order to qualify for reversal on this ground. Instead, the errors must adversely affect his right to a fair trial."); *State v. Nicholson*, 366 S.C. 568, 581, 623 S.E.2d 100, 106 (Ct. App. 2005)("we have determined that the trial judge did not err in any of the particulars alleged in this appeal, we likewise hold the cumulative error doctrine is inapplicable"). Petitioner's argument is

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[2] Petitioner's collateral suggestion that Respondent's offered argument on the overwhelming evidence of guilt in support of finding harmless error was "focused" more on Oliver than Petitioner is misguided. (Petition for Rehearing, p. 5). Clearly, as referenced above, the evidence shows a joint enterprise. Evidence of Oliver's participation lends credence and support to the joint participation allegations.

without merit.

4. Lastly, in regard to Issue 3 (admission of prior inconsistent statement issue), petitioner simply argues that evidentiary ruling was incorrect. He fails to point to any matter overlooked or misapprehended. Thus, petitioner fails to present any cause to review the issue again. *See Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, __, 167 S.E. 234, 238 (1933)("the purpose of a petition for rehearing is not just to have the case tried in this court a second time" but to point out facts or argument that may have been overlooked). Even so, the record fully supports the ruling.

Petitioner is correct that the witness must deny the statement for extrinsic evidence of a prior inconsistent statement to be admissible. *State v. Sierra*, 337 S.C. 368, 372-373, 523 S.E.2d 187, 189 (Ct.App. 1999)("Only if the witness denies having made the prior inconsistent statement is extrinsic evidence admissible."). The record here is replete with her denials. (See R. p. 859, lines 12-21; p. 890, lines 20-23; p. 891, lines 10-11). Thus, the statement was properly admitted. To the extent that petitioner also argues the redaction was "sloppily done," (Petition for Rehearing, p. 5), there is no apparent finding by the panel to contest, and nothing to revisit. Moreover, petitioner did not make a specific objection to admissibility based on appearance alone at trial. Though appellant did object to the fact of the redaction, he objected because of context, arguing, "its just too prejudicial because it's not an accurate reflection of what she allegedly said the first time." (R. p. 1207, lines 9-23). Thus, an independent argument for error based only on the appearance of the redacted statement is not preserved for review. *See, e.g., State v. Orr*, 389 S.C. 286, 292, 698 S.E.2d 633, 637 (Ct. App. 2010)(issue must be presented to the trial court and ruled upon to be available for review on appeal).

Moreover, the admission, if error, could only be insubstantial and harmless in light of the other conclusive evidence of guilt in the record, the relatively little probative value compared to other direct evidence of guilt, and the largely cumulative nature of the testimony. *Price, supra*; *State*

v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) (improper evidence harmless where merely cumulative to other evidence); *State v. Evans*, 378 S.C. 296, 300, 662 S.E.2d 489, 491 (Ct. App. 2008)(evidence "merely cumulative, insubstantial" did not affect the result of trial and harmless).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the petition for rehearing should be denied. Petitioner has shown no error in this Court's opinion. Additionally, respondent adheres to, and reasserts all additional arguments and defenses as presented in the Brief of Respondent as if repeated verbatim.

Respectfully submitted,

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Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
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MELODY J. BROWN
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ATTORNEYS FOR RESPONDENT

February 17, 2011.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-006 (S.C.Ct.App. filed January 20, 2011)

The State,

Respondent,

v.

Dominic Gallman,

Petitioner.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the Return to the Petition for Rehearing on petitioner by depositing a copy of same in the United States mail, postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office 11589
Columbia, South Carolina 29211-1589

This 17th day of February, 2011.

MELODY J. BROWN
Senior Assistant Attorney General
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Columbia, SC 29211
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The South Carolina Court of Appeals

The State, Respondent,

v.

Dominic Gallman, Appellant.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2005-GS-40-09696
2005-GS-40-09697
2005-GS-40-09699
2005-GS-40-09700
2005-GS-40-09701
2005-GS-40-11581

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

Paul E. Short, J. Short, J.

Paula H. Thomas, J. Thomas, J.

James E. Lockemy, J. Lockemy, J.

Columbia, South Carolina

cc: Chief Appellate Defender Robert M. Dudek
Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Melody Brown
Warren Blair Giese, Esquire

FILED
FEB 2 8 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

Opinion No. 2011-UP-006 (S.C. Ct. App. filed 1/20/2011)

05-GS-40-9696-9697, 9699-969701 and 11581.

THE STATE,

RESPONDENT,

V.

DOMINIC GALLMAN,

PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on February 28, 2011.

QUESTION PRESENTED

1.

Whether the Court of Appeals erred by summarily holding it was not error for the trial court to refuse to declare a mistrial where state's witness Jason Brown testified co-defendant Oliver told him in jail that he and petitioner rushed into the drug dealer's house and committed the murders and that he told the police this in his statement, since defense counsel correctly argued this violated the principles of Bruton v. United States and Crawford v. Washington since petitioner was denied the opportunity to cross-examine Oliver about making that alleged statement which implicated petitioner in the murders?

2.

Whether the Court of Appeals erred by summarily holding it was harmless error for the trial court to allow co-defendant Oliver's girlfriend, Renata Williams, to testify that Oliver came to her apartment in the middle of the night around the time of the murder, and telephoned petitioner since the state failed to lay the necessary evidentiary predicate to show how Williams knew petitioner was "on the other end of the phone" since her testimony clearly implied Oliver called petitioner about the crimes?

3.

Whether the Court of Appeals erred by summarily holding it was not error for the trial court to allow the admission of Tatanisha Robinson's redacted statement into evidence since it called undue attention to that statement, the redaction was so sloppily done that it was obvious matters were being hid from the jury, and Robinson's admissions and explanations regarding the statement during her testimony made admission of the statement itself improper under Rule 613 (b), SCRE?

STATEMENT OF THE CASE

Petitioner was indicted along with co-defendant Stanley Oliver for three counts of murder, burglary in the first degree, two counts of armed robbery and kidnapping in a drug related crime. R. 1817 - 1828. The state also indicted co-defendant Kenneth Joy for being an accessory after the fact in each of these crimes.

The joint trial of Stanley Oliver, Kenneth Joy and petitioner came on for trial on December 3, 2007 before the Honorable G. Thomas Cooper, Jr., and a jury. Jonathan Milling represent petitioner. Douglas Strickler and Mary LaFave represented co-defendant Oliver. John Delgado represented co-defendant Kenneth Joy. R. 1.

The judge directed a verdict for petitioner on one count of armed robbery. R. 1403, l. 25 – 1404, l. 3. At the conclusion of the trial on December 18, 2007 the jury found petitioner and co-defendant Oliver guilty on all of the remaining counts. R. 1802, l.3 – 1809, l. 20. The jury found co-defendant Kenneth Joy not guilty on all of the charges against him. R. 1809, l. 21 – 1811, l. 7.

The Court of Appeals summarily affirmed finding harmless error as to issue two and no error as to issues one and three. State v. Dominic Gallman, 2011-UP- 006 (filed January 20, 2011), App. 1-2. Petitioner sought rehearing. App. 3-11. The state filed a return to the rehearing petition at the request of the Court of Appeals. App. 12-19. Rehearing was denied. This petition for a writ of certiorari follows.

ARGUMENT

1.

The Court of Appeals erred by summarily holding it was not error for the trial court to refuse to declare a mistrial where state's witness Jason Brown testified co-defendant Oliver told him in jail that he and petitioner rushed into the drug dealer's house and committed the murders and that he told the police this in his statement, since defense counsel correctly argued this violated the principles of *Bruton v. United States* and *Crawford v. Washington* since petitioner was denied the opportunity to cross-examine Oliver about making that alleged statement which implicated petitioner in the murders

Introduction

The state's theory of the case was that Stanley Oliver and petitioner planned to rob large drug dealer George Batie at his house where he was living with Desiree Felder who assisted him at times with his drug business. Another man, Kevin Miller, who also dealt in drugs, was also at Batie's house at the time of the robbery. Batie and Miller were shot to death during the robbery, and the evidence showed Felder was taken from the house and shot out in the woods at another location. A large amount of money and a large amount of cocaine was stolen during the robbery. The state alleged Kenneth Joy was an accessory after the fact in each of the crimes. As seen, the jury acquitted Joy on all of the accessory counts.

Relevant Facts

Career criminal Jason Brown was the jailhouse snitch and a star witness for the state in this case. Brown testified he first went to prison in the tenth grade after he was convicted of carjacking and attempted armed robbery. R. 1038, ll. 22 – 25. Brown was again in jail when he testified during petitioner's trial. Brown's latest arrest was on September 20, 2005, and he was placed in the Alvin

Glenn Detention Center where he claimed to have discussions with co-defendant Stanley Oliver. R. 1043, l. 18 – 1044, l. 2.

Brown testified he had known Oliver for about ten years at the time they were both in the detention center following Oliver's arrest for the charges in this case. R. 1044, l.6 – 1046, l. 7. Brown claimed that while they were in jail, Oliver told him that "he and another individual had robbed a house on Mildred Avenue where two people had been shot and killed and another person was taken to another location and they too were killed for an undisclosed amount of money and a lot of cocaine." R. 1046, ll. 11 – 17. Brown said Oliver made this confession to him in October of 2005. R. 1046, ll. 18 -22.

On cross-examination by Oliver's attorney, Doug Strickler, Brown acknowledged he contacted the police about this alleged statement. Brown then gave the police a statement on December 22, 2005, wherein he told them "they went down there and had the girl, knocked on the door to try to buy something." R. 1071, ll. 9 – 21. Defense counsel for Oliver then read from the statement that "a man opened the door. Stanley and Dominic (petitioner) rushed in." Petitioner's counsel, Milling, immediately objected and a bench conference was held. The judge then told the jury to "disregard that question and answer, from the record, and, just, as I say, disregard the answer and move ahead . . ." R. 1072, ll. 1 – 14. Defense counsel Milling then told the judge he had a motion outside the presence of the jury at the conclusion of Brown's testimony. R. 1072, ll. 12 – 14.

The cross-examination then continued. Brown acknowledged he told the police that Oliver told him that the girl that knocked on the door went outside and got back into the car. Brown acknowledged all of the information he gave the police was based on what Oliver told him, and that the women that knocked on the door "was involved in getting Oliver inside the home." Oliver told

Brown that the drug dealers, Batie and Miller, were shot inside the house. All of this cross-examination by defense counsel for Oliver clearly showed that Brown said Oliver implicated petitioner as his partner in the murder. R. 1071, l. 9 – 1075, l. 17.

Defense counsel Milling moved for a mistrial at the conclusion of Brown's testimony. He argued that the use of the statement by defense counsel for Oliver to get before the jury that "the man opened the door and Stanley and Dominic rushed in" violated the principles of Bruton v. United States[1] and Crawford v. Washington[2] since petitioner had "no right or no ability to cross-examine Mr. Oliver as to his statement." Defense counsel said *no curative instruction could solve the prejudice* that petitioner had suffered at that point. Counsel also noted that petitioner had "painstakingly" attempted to keep co-defendant statements that could not be cross-examined from the jury, and that the damage had now been done. R. 1086, ll. 3 – 21. The judge disagreed, stating that he thought his instruction was sufficient, and he denied the mistrial motion. R. 1086, ll. 22 -25.

The Court of Appeals summarily held that it was not error to refuse to grant a mistrial and that the curative instruction seemingly cured the prejudice. App. 2. On rehearing petitioner argued:

> This Court cites State v. Council, 335 S.C. 1, 515 S.E.2d 508, 514 (1999), for the correct proposition that the Court should first attempt to cure prejudice if possible before declaring a mistrial. State v. Dominic Gallman, 2011-UP-066 (January 20, 2011) at p. 1. In Council, the remark in question *did not necessarily* indicate Council had a prior record. Respectfully, that is no comparison to a witness testifying a co-defendant confessed and named *petitioner as the other participant in the crime* where petitioner did not have the opportunity to cross-examine that person.
>
> Here, there was testimony that Brown told the police that Oliver confessed to him that he committed the murders, and he alleged Oliver named petitioner as his accomplice in the three

[1] 391 U.S. 123 (1968).

[2] 541 U.S. 36 (2004).

> murders. That was fundamentally unfair because Oliver did not testify in this case, and consequently petitioner was denied his fundamental right to confront and cross-examine Oliver. The truncated curative instruction was insufficient to cure this prejudice. Most respectfully, the short summary opinion of this Court does not do justice to the merits of this case and petitioner requests that this Court grant rehearing.

App. 4-5.

During the testimony of Columbia Police Investigator Mitch Wilkerson, he acknowledged that co-defendant Oliver made statements to him about petitioner. Wilkerson confirmed that Oliver "implicated Mr. Gallman as having known Jim Batie [the decedent]." Mr. Wilkerson also acknowledged Oliver told him petitioner had been to Batie's house on a prior occasion. R. 5, l. 12 – 6, l. 19.

Each of the attorneys earlier had joined in warning the court that Bruton problems were "part and parcel" of the state's case" in putting "these three individuals together in some way, shape, form or fashion." Defense counsel Milling specifically informed the court of Bruton problems where petitioner was being implicated but he could not cross-examine the person who allegedly implicated petitioner. R. 12, l. 21 – 20, l. 9. Defense counsel also noted that there would be potential Bruton problems with other witnesses -- including Renata Williams -- which is the next issue before this Court. R. 95, l. 4 – 97, l. 17.

Discussion

The introduction of a non-testifying co-defendant's statement which implicates another co-defendant violates the co-defendant's right to confrontation because he has no opportunity to cross-examine the co-defendant who allegedly implicated him in the crime. Bruton v. United States, 391 U.S. 123 (1968). The right to confrontation is so fundamental that limiting instructions are not an adequate substitute for the right to confront the co-defendant. State v. Dennis, 337 S.C. 275, 523

S.E.2d 173 (1999). Here, as seen, there was testimony that Brown told the police that Oliver confessed to him that he committed the murders, and he alleged Oliver named petitioner as his accomplice in the three murders. That was fundamentally unfair because Oliver did not testify in this case, and consequently petitioner was denied his fundamental right to confront and cross-examine Oliver.

Defense counsel also correctly argued that the principle of Crawford v. Washington, 541 U.S. 36 (2004) applied. Oliver's alleged confession implicating petitioner was introduced through a statement Brown gave to the police, Investigator Witherspoon. While Oliver's alleged statement to Brown was surely a statement against his penal interest, petitioner was still denied the opportunity to cross-examine Oliver about the statement. See State v. Mitchell, 378 S.C. 305, 662 S.E.2d 493 (Ct. App. 2008) (wherein this Court held that the admission of an accomplice's prior statement to the police under a hearsay exception nonetheless violated the confrontation clause and entitled Mitchell to a new trial).

Petitioner is fully aware that a classic Crawford v. Washington error would involve introducing a statement Brown gave to the police where petitioner could not cross-examine Brown. However, the fact remains that Brown told the police that Oliver confessed to him, and that he implicated petitioner in the murders, and petitioner could not cross-examine Oliver about his purported confession that was memorialized by Investigator Witherspoon. Counsel for Oliver was using the statement at the time this improper testimony came before the jury. Consequently, the principles of Bruton and Crawford were violated because petitioner was denied his right to confront and cross-examine Oliver.

Further, this Court in State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987) warned the state "to carefully consider all available alternatives before deciding to try co-defendants jointly. . ." The

Court in Bellamy noted the inherent problems, such as attempting to redact statements to protect other co-defendant's rights, which arise during joint trials.[3]

It was petitioner's right to confront and cross-examine Oliver about this alleged statement to Brown, which Brown related to the police in his own statement. Since petitioner was denied his fundamental right to confront and cross-examine Oliver, and because the "curative instruction" in this case did not solve the extreme prejudice to petitioner of the jury learning Oliver named petitioner as his accomplice in the murders in his confession -- anymore than a limiting instruction can cure the prejudice of a co-defendant's inculpatory statement implicating another co-defendant -- the court erred by refusing to declare a mistrial, and the Court of Appeals erred by affirming. See State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999).

[3] State v. Bellamy, reversed on other grounds. State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

2.

The Court of Appeals erred by summarily holding it was harmless error for the trial court to allow co-defendant Oliver's girlfriend, Renata Williams, to testify that Oliver came to her apartment in the middle of the night around the time of the murder, and telephoned petitioner since the state failed to lay the necessary evidentiary predicate to show how Williams knew petitioner was "on the other end of the phone" since her testimony clearly implied Oliver called petitioner about the crimes

Relevant Facts

The present issue arose while the attorneys were discussing Oliver's alleged statement to his girlfriend, Renata Williams, "that he and Gallman done a lick. He called Dominic Freaky. That's what I called him, too." R. 469, ll. 18 -23. Deputy Solicitor Meadors acknowledged this was "street talk" for a robbery. R. 469, l. 24 – 470, l. 8. Meadors said he would instruct Williams not to say this in the presence of jury. However, Meadors stated that he did want Williams to testify that she "heard him [Oliver] calling Freaky [petitioner]. She heard him calling Dominic. We think that would be admissible. So that's going to be her testimony. She actually heard it with her own ears." R. 470, ll. 18 – 21.

Defense counsel Milling objected to William's testimony that she heard Oliver telephoning and talking with petitioner "unless she heard my client on the other end of the phone, she is still listening to what Mr. Oliver said, which we can't cross-examine Mr. Oliver to ask him whether or not he actually called my client or called someone else." The attorneys then discussed this being a Bruton v. United States, supra, or a Crawford v. Washington, supra problem. R. 470, l. 7 – 474, l. 11. Defense counsel Milling also expressed his reservations about Williams testifying that petitioner must have picked up Oliver from her house "because he was gone a little later." R. 473, l. 4 – 474, l. 11.

Milling also requested that the judge clearly instruct the jury that evidence implicating co-defendant Oliver in the crime "cannot be construed against the other defendants." R. 473, l. 23 – 474, l. 11. As to Bruton and Crawford, the judge told the attorneys that he had already ruled on the matter, and that he was not going to change his ruling. He said that he had already instructed the jury that evidence of one co-defendant could not be used to implicate another co-defendant. R. 472, l. 15 – 474, l. 15.

Renata Williams then testified that she lived at Palmetto Terrace Apartments in Columbia. R. 478, ll. 13 – 14. She said that she met co-defendant Oliver towards the end of 2003 and that he moved in with her at Palmetto Terrace Apartments. R. 480, l. 25 – 4811, l. 15. Williams said she had a "land line" telephone in her apartment. R. 482, ll. 11 – 14. Williams further testified she met petitioner through Oliver. She noted that she saw them "off and on, during the summer of 2005, up through Labor Day [when the murders occurred]." R. 483, ll. 14 – 20.

Williams testified that, on the night in question, she was watching "Comic View" on television. The show went off at 2:00 in the morning. Williams fell asleep, but that she remembered Oliver coming into her bedroom. R. 486, ll. 21 – 25. Williams remembered Oliver "saying something, but I don't quite remember what it was. Then he got on the phone and was talking to someone and left." R. 486, l. 11 – 487, l. 4. The solicitor then asked Williams: "Did you hear him call anybody on the phone?" At this point defense counsel Milling objected. The judge overruled the objection. Williams answered: "I didn't hear him on the phone. I saw that he had called someone on the phone." Williams then testified that Oliver had called petitioner, "Dominic" – whose nickname was "Freaky -- and that Oliver left after that phone call. Williams said she saw Oliver the next day when he returned to her apartment and she heard him talking to someone else

about money and drugs. Williams said she saw Oliver counting the money in her apartment. R. 487, l. 7 – 489, l. 1.

Williams testified that she had also heard Oliver talking about "doing a lick." Williams said a lick meant robbing someone. R. 489, ll. 1 – 22. Williams then testified about the shopping trip Oliver took her on after he acquired all of this money, and she said Oliver gave her $350.00 but he ultimately took half of that amount back. Williams acknowledged that she had never seen Oliver with such a large amount of cash in the entire time she had known him. R. 489, l. 23 – 494, l. 2.

Williams also said Oliver paid for their motel room at the Marlboro Inn off of Forest Drive in Columbia. R. 494, l. 10 – 495, l. 8. Williams said while they watched television at the Marlboro Inn, the news carried a story about the murders. Williams recalled she remarked to Oliver about "how crazy people are" to do things like that and that Oliver responded: "If something was to happen to him and he'd be locked up, would I let people know that he was my husband." Williams said during this same time period she was questioned by the police, and she identified Oliver and petitioner in the courtroom for the jury. R. 495, l. 9 – 496, l. 10.

The Court of Appeals held this error was harmless. App. 2.

Discussion

The Court of Appeals correctly found this to be error since there was no testimony as in State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980) where this Court noted that a witnesses' testimony that *he can identify a person by having heard his voice* before has been regarded as legitimate and competent manner of establishing identity in a criminal or civil case. State v. Plyler, 270 S.E.2d at 127–128. See, also, State v. Smith, 307 S.C. 376, 415 S.E.2nd 409 (Ct. App. 1992). The phone was a "land line," and there was absolutely no indication of how Williams could have instantly known that Oliver telephoned petitioner, *and talked to petitioner*. See State v. Stewart,

275 S.C. 44, 47, 272 S.E.2d 628 (1980); Collins S.C. Evidence §13.8 (Authentication through voice identification) at pages 383–304; Rule 901(5), SCRE.

Th Court of Appeals erred by finding this error harmless. State v. Dominic Gallman, 2011-UP-066 (January 20, 2011). App. 2. The state's allegation of harmless error focused much on the allegations of Oliver and the evidence against Oliver. Respondent's brief at 17. The error here was not harmless since it was *another* inadmissible accusation of petitioner's involvement in the crime, and the cumulative errors in this case denied petitioner a fair trial. It is apparent here that petitioner was implicated in this crime through inadmissible unreliable evidence – a jailhouse snitch saying Oliver implicated petitioner and the present incompetent testimony of Oliver's girlfriend.

As seen, defense counsel argued that Williams should not be allowed to testify that Oliver telephoned petitioner on the night in question unless she could identify petitioner's voice on the other end of the telephone line. Counsel renewed that objection at the time of Williams started to testify about the matter, and the judge overruled the objection.

Williams was then allowed to testify that she knew Oliver telephoned petitioner early that morning, and then he left her apartment. He returned to her apartment the next day with a large amount of money and he talked about drugs.

Williams said Oliver then took her shopping, and he gave her $350.00. Williams stated she had never seen Oliver with such a large amount of money before. The clear import of all this was that Oliver telephoned petitioner concerning the large robbery, "the lick," and this testimony implicated petitioner in the crime. However, in this case there was absolutely no legitimate and competent testimony offered by Williams to establish that Oliver was indeed talking to petitioner on the telephone as Williams alleged.

In State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980) this Court noted that a witnesses' testimony that he can identify a person by having heard his voice before has been regarded as legitimate and competent manner of establishing identity in a criminal or civil case. State v. Plyler, 270 S.E.2d at 127–128. In State v. Plyler, Plyler's ex-wife telephoned her sister who was alone at the time of the conversation. During the conversation, the sister excused herself to answer a knock at the door. Because the receiver of the phone was still off the hook, the ex-wife overheard the resulting conversation and recognized the voice of Plyler as that of the person talking to her sister. Several gunshots were then heard. The ex-wife rushed to her sister's residence, and she found her sister unconscious and shot several times.

The Supreme Court noted after hearing the conversation and the ensuing shots over the telephone, the ex-wife dropped the phone and exclaimed: "Harry [Plyler] just shot Linda." Under these circumstances the telephone evidence was properly admitted.

In State v. Smith, 307 S.C. 376, 415 S.E.2nd 409 (Ct. App. 1992) the Court of Appeals held that a sheriff's dispatcher was qualified to identify the defendant as the anonymous telephone caller even if the dispatcher had no training in voice identification, since the dispatcher immediately recognized the defendant's voice as that of the anonymous caller when the defendant came to the sheriff's office less than twenty-four hours after the phone call, and where the defendant also had a distinctive voice. In State v. Smith, the Court stressed that it is proper to allow a voice identification where the witness is able to legitimately testify that he or she recognizes the voice on the phone from having heard it on another occasion.

Here, Williams was clearly unable to testify that she heard petitioner's voice on the other end of the telephone. Her bare claim that she knew Oliver was calling petitioner should have been excluded since there *was not any competent evidence* establishing that Williams knew Oliver was

talking to petitioner on the telephone. The jury received evidence that Williams knew Oliver was telephoning petitioner. The phone was a "land line," and there was absolutely no indication of how Williams could have instantly known that Oliver telephoned petitioner, *and talked to petitioner*.

A witness *must* be able to authenticate the conversation by testifying she recognizes and can identify the parties to the conversation by hearing their voices. State v. Stewart, 275 S.C. 44, 47, 272 S.E.2d 628 (1980). See Collins S.C. Evidence §13.8 (Authentication through voice identification) at pages 383–304; Rule 901(5), SCRE.

There was no competent evidence which allowed Williams to testify that Oliver telephoned petitioner in the middle of the night in question, and that Oliver left after talking to petitioner. The direct examination of Williams was a continues chronology of events from the time of this phone call to the spending of the proceeds of the robbery. Oliver was said by Williams to return with a large sum of money the next day – or later that same day -- and Oliver was talking about drugs, and acting in manner totally consistent with having committed the robbery and murders in this case, and having come into a large sum of money. The admission of this incompetent evidence was highly prejudicial to petitioner, it was not harmless, and petitioner should be granted a new trial.

3.

The Court of Appeals erred by summarily holding it was not error for the trial court to allow the admission of Tatanisha Robinson's redacted statement into evidence since it called undue attention to that statement, the redaction was so sloppily done that it was obvious matters were being hid from the jury, and Robinson's admissions and explanations regarding the statement during her testimony made admission of the statement itself improper under Rule 613 (b), SCRE

Relevant Facts

Tatanisha Robinson was another one of Oliver's girlfriends, and she was given transactional immunity in return for her testimony for the state. R. 818, l. 23 – 860, l. 23. As will be seen infra, Robinson would admit on cross-examination that she was angry with Oliver at the time she gave her statement because he had an ongoing relationship with Renata Williams while Robinson was pregnant with Oliver's child. Robinson said she later realized how serious the charges against Oliver were in this case.

It had to be abundantly apparent to the jury that Robinson regretted giving her statement, and that she no longer wished to help the state convict Oliver through her testimony. However, she would acknowledge that she told the police that Oliver told her he had done something that "could get him life." R. 854, ll. 13 – 24. Robinson also admitted that while she was at a motel with Oliver after the murder that Oliver told her to "wake him if the police came or something looks suspicious." R. 856, ll. 6 – 10. In addition, Robinson acknowledged Oliver told her at a friend's house shortly before his arrest that "this could be the last day before he gets locked up." R. 858, ll. 10 – 24.

Robinson admitted in her statement that she was alleged to have said that petitioner was bragging about the murders after they occurred. Robinson acknowledged the petitioner "bragging

allegation" was in her statement, but she said she did not write the statement. Robinson admitted it was also in her statement that "they must have got a lot of money" because "Freaky [petitioner] was excited" about the robbery and murder. R. 859, ll. 7 – 21. Robinson also admitted it was in her statement that petitioner spoke of specific details regarding the murder and that petitioner had a thousand dollars to attempt to get Oliver an attorney. R. 860, l. 12 – 861, l. 12.

On cross-examination, Robinson admitted that "the truth about the situation" was that she angry with Oliver at the time of her statement because she was pregnant with his child, and Oliver was having an ongoing relationship with Renata Williams that he refused to end. R. 909, ll. 8 – 18. Williams admitted she was sorry about the statement because "I did not know how serious the situation was." Williams said she later sought to limit or correct the damage she had done through her statement to the police. R. 911, ll. 5-22.

The state would later move to allow the admission of Robinson's statement to the police under Rule 613(b), SCRE. Defense counsel Milling objected, noting that Robinson acknowledged it was her statement and that she had signed it. Defense counsel said the admission of the statement itself was not within the intent of Rule 613(b), SCRE, and counsel for the co-defendant's agreed that taking Robinson's testimony, her admissions, and her explanations about the statement in context, that admission of the statement itself would be improper under Rule 613(b), SCRE. It would be improper under the intent of that evidentiary rule. R. 1191, 12 – 1208, l. 3. The judge ruled he was going to allow the statement into evidence. R. 1207, l. 24 – 1208, l. 3.

Defense counsel also objected to the admission of the statement on the grounds of "physical appearance of the document" which showed it was "replete with deletions" and on the grounds that it would unduly emphasize the importance of Robinson's statement. R. 1286, l. 12 – 1289, l. 6.

Robinson redacted statement, state's exhibit 203, was then admitted into evidence over objection. R. 1242, l. 6 – 1243, l. 19. R. 1829.

The statement is badly redacted but it does state that "Dominic was bragging about the murders, and then the next sentence is redacted." See State's Exhibit 203 at page 3. R. 1831. The redactions throughout the statement, particular on page 6 of the document, show that the jury had to know that important matters were being hidden from it, and it was highly prejudicial since the jury was left to speculate about what was redacted from the statement, and what else it said about the defendant's conduct.

Counsel properly cited State v. Gulledge, 277 S.C. 368, 287 S.E.2d 488 (1982), where this Court held that the trial judge abused his discretion by allowing the jury to take into the jury room a transcript of the tape between a highway patrolman who had been shot and the patrolman who received the call because it unduly emphasized that evidence. The defense attorneys here correctly argued the situation was the same in this case regarding giving undue emphasis to Robinson's statement.

As seen, Robinson admitted it was in her statement to the police that petitioner was bragging about the murder. The jury fully understood this was diametrically at odds with petitioner's girlfriend, Laticia Jones's, testimony that petitioner came to her apartment after the botched robbery and was crying about it. Jones claimed petitioner told her that she "was right about Oliver, that Oliver had gotten him into trouble and that "his friend shot the guy that opened the door." Jones also said that petitioner told her that he had to stop Oliver from attacking "the lady, from like raping her and stuff," and that a gun was held "to his head and [Oliver] told him that if he didn't shoot the lady that he would shoot him." Jones said petitioner therefore shot the third victim in the woods. R. 677, l. 3 – 682, l. 1.

Petitioner would later call Lee Connelly, the defense investigator, to testify that Jones told her throughout that she "knew nothing" about the murders, and that she did not even see petitioner over the Labor Day weekend. R. 1469, l. 1 – 1472, l. 25. Jones admitted on cross-examination that she had to "cut off all ties with Dominic" to attempt to get her nine-year-old back from her parents in Georgia, and she admitted she never told the defense about this alleged conversation with petitioner after the murders. R. 691, l. 19 – 696, l. 25.

The Court of Appeals held that the statement at issue was a prior inconsistent statement, and that where a witness does not "unequivocally" admit the truth of the statement that trial judges have wide latitude to allow extrinsic evidence proving the statement. App. 2.

Discussion

The admission of Robinson's statement under Rule 613(b), SCRE, was improper for several reasons. Robinson repeatedly acknowledged that matters the state wished to impeach her on were indeed in her statement to the police. *It was clear to the jury that Robinson was unhappy* that certain matters prejudicial to Oliver -- and thereby petitioner -- were in her statement. She nonetheless admitted they were in the statement.

Rule 613(b), SCRE, allows extrinsic evidence of a prior *inconsistent* statement to be admitted if the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and the witnesses is given the opportunity to explain or deny the statement. The rule states that if the witness does not admit that she had made the prior inconsistent statement, extrinsic evidence of the statement is admissible. The rule also provides that if the witness admits making the prior statement, that extrinsic evidence that the prior statement was made is inadmissible.

Further, the redaction of Robinson's statement was so sloppily done here that it was obvious matters were being hid from the jury. The admission of the statement itself under these circumstances was improper under Rule 613 (b), SCRE. It made it appear that the defense was "hiding" even more information from the jury. Robinson admitted on cross-examination that she was angry with Oliver at the time she gave her statement because he had an ongoing relationship with Renata Williams. Robinson *acknowledged* that she told the police that Oliver told her he had done something that "could get him life." R. 854, ll. 13 – 24. Robinson also *admitted* that while she was at a motel with Oliver after the murder that Oliver told her to "wake him if the police came or something looks suspicious." R. 856, ll. 6 – 10. In addition, Robinson *acknowledged* Oliver told her at a friend's house shortly before his arrest that "this could be the last day before he gets locked up." R. 858, ll. 10 – 24.

In addition, Robinson *admitted* in her statement that she was alleged to have said that petitioner was bragging about the murders after they occurred. Robinson also *acknowledged* the petitioner "bragging allegation" was in her statement, but she said she did not write the statement. Robinson *admitted* it was also in her statement that "they must have got a lot of money" because "Freaky [petitioner] was excited" about the robbery and murder. R. 859, ll. 7 – 21. Robinson also *admitted* it was in her statement that petitioner spoke of specific details regarding the murder and that petitioner had a thousand dollars to attempt to get Oliver an attorney. R. 860, l. 12 – 861, l. 12.

On cross-examination, Robinson *admitted* that "the truth about the situation" was that she was angry with Oliver at the time of her statement because she was pregnant with his child, and Oliver was having an ongoing relationship with Renata Williams that he refused to end. R. 909, ll. 8 – 18. Williams *admitted she was sorry about the statement* because "I did not know how serious

the situation was." Williams *admitted* she later sought to limit or correct the damage she had done through her statement to the police. R. 911, ll. 5-22.

After all of these admissions defense counsel Milling objected when the state went to introduce this statement under Rule 613(b), SCRE. He noted that Robinson acknowledged it was her statement and that she had signed it. Defense counsel said the admission of the statement itself was not within the intent of Rule 613(b), SCRE, and counsel for the co-defendant's agreed that taking Robinson's testimony, her admissions, and her explanations about the statement in context, that admission of the statement itself would be improper under Rule 613(b), SCRE. It would be improper under the intent of that evidentiary rule. R. 1191, 12 – 1208, l. 3. Moreover, the physical appearance of this horribly redacted statement was reason alone to exclude it but when coupled with all of the above it should be apparent the judge erred in admitting the statement into evidence. R. 1207, l. 24 – 1208, l. 3.

Defense counsel correctly noted that "physical appearance of the document" which showed it was "replete with deletions" and on the grounds that it would unduly emphasize the importance of Robinson's statement. R. 1286, l. 12 – 1289, l. 6. The badly redacted statement does state that "Dominic was bragging about the murders," and then the next sentence is redacted." See State's Exhibit 203 at page 3. R. 1831. The redactions throughout the statement, particular on page 6 of the document, show that the jury had to know that important matters were being hidden from it, and it was highly prejudicial since the jury was left to speculate about what was redacted from the statement, and what else it said about the defendant's conduct.

Counsel Milling properly cited State v. Gulledge, 277 S.C. 368, 287 S.E.2d 488 (1982), where this Court held that the trial judge abused his discretion by allowing the jury to take into the jury room a transcript of the tape between a highway patrolman who had been shot and the

patrolman who received the call because it unduly emphasized that evidence. The defense attorneys here correctly argued the situation was the same in this case regarding giving undue emphasis to Robinson's statement.

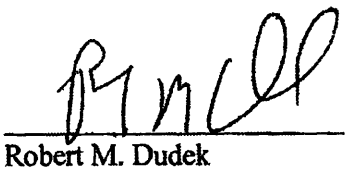
Petitioner respectfully submits given all of Robinson's admissions about her statement that it was not admissible under Rule 613(b), SCRE, as extrinsic evidence of a prior *inconsistent* statement. The rule states that if the witness does *not admit* that she had made the prior inconsistent statement, extrinsic evidence of the statement is admissible. The rule also provides that if the witness admits making the prior statement, that extrinsic evidence that the prior statement was made is inadmissible. Here, Robinson repeatedly acknowledged that matters the state wished to impeach her on were indeed in her statement to the police. It was clear to the jury that Robinson was unhappy that certain matters prejudicial to Oliver -- and thereby petitioner -- were in her statement and that she now sought to distance herself from them. However, this was not a situation within the meaning of Rule 613(b), SCRE where it was disputed whether or not Robinson gave the statement to the police. Robinson acknowledged during her testimony *that she was given a copy of the statement and that she signed it.*

Even if impeachment evidence was proper regarding Robinson's testimony – *and petitioner submits it was not* – it should have ended with Investigator Wilkerson's testimony about the statement, and the admission of the statement itself was improper. For all of these reasons, the admission of Robinson's statement was improper under Rule 613(b), SCRE and its admission was highly prejudicial to petitioner, and the Court of Appeals erred by holding otherwise. This is a case where the trial judge's evidentiary rulings denied petitioner a fair trial and the Court of Appeals erred by holding otherwise.

CONCLUSION

By reason of the foregoing arguments, a writ of certiorari should be issued to allow full briefing on these issues.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 31st day of May, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

Opinion No. 2011-UP-006 (S.C. Ct. App. filed 1/20/2011)
05-GS-40-9696-9697, 9699-969701 and 11581.

THE STATE,

RESPONDENT,

V.

DOMINIC GALLMAN,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Melody J. Brown, Esquire, and the S.C. Court of Appeals this 31st day of May, 2011.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 26th day
of May, 2011.

(L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-006 (S.C.Ct.App. filed January 20, 2011)

The State, Respondent,

v.

Dominic Gallman, Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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II.

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PETITIONER'S STATEMENT OF QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred by summarily holding it was not error for the trial court to refuse declare a mistrial where state's witness Jason Brown testified co-defendant Oliver told him in jail that he and petitioner rushed into the drug dealer's house and committed the murders and that he told the police this in his statement, since defense counsel correctly argued this violated the principles of Bruton v. United States and Crawford v. Washington since petitioner was denied the opportunity to cross examine Oliver about making that alleged statement which implicated petitioner in the murders?

2.

Whether the Court of Appeals erred by summarily holding it was harmless error for the trial court to allow co-defendant Oliver's girlfriend, Renata Williams, to testify that Oliver came to her apartment in the middle of the night around the time of the murder, and telephoned petitioner since the state failed to lay the necessary evidentiary predicate to show how Williams knew petitioner was "on the other end of the phone" since her testimony clearly implied Oliver called petitioner about the crimes?

3.

Whether the Court of Appeals erred by summarily holding it was not error for the trial court to allow the admission of Tatanisha Robinson's redacted statement into evidence since it called undue attention to that statement, the redaction was so sloppily done that it was obvious matters were being hid from the jury, and Robinson's admissions and explanations regarding the statement during her testimony made admission of the statement itself improper under Rule 613 (b), SCRE?

(Cert. Pet., p. 4).

STATEMENT OF THE CASE

A Richland County Grand Jury returned indictments against petitioner, Dominic Gallman, and co-defendant Stanley Oliver, charging each defendant with three counts of murder; three counts of armed robbery; burglary first degree; and kidnapping. (R. p. 2, lines 15 - p. 3, line 11). Kenneth Joy was also indicted as an accessory before and after the fact of the crimes. (R. p. 3, line 18 - p. 4, line 10). A jury trial on all the charges was held December 3-18, 2007, before the Honorable G. Thomas Cooper, Jr, with all three defendants tried together.

The trial judge directed a verdict at the close of the State's case acquitting petitioner, and co-defendant Oliver, of the charge of armed robbery of victim Felder. (R. p. 1403, line 24 - p. 1404, line 3; R. p. 1401, line 23 - p. 1402, line 2). The trial judge also directed a verdict on the accessory before the fact charges for co-defendant Joy, and accessory after the fact of armed robbery of victim Felder. (R. p. 1405, line 10 - p. 1406, line 2). The jury found petitioner, and co-defendant Oliver, not guilty of the charge of armed robbery against victim Miller, but convicted petitioner, and co-defendant Oliver, of all the remaining charges. (R. p. 1806, line 4 - p. 1807, line 6; p. 1802, line 3 - p. 1803, line 7). The jury acquitted co-defendant Joy on the accessory after the fact charges. (R. p. 1809, line 23 - p. 1811, line 7).

At sentencing, the judge determined that the State had noticed petitioner of the intent to seek life without parole under the recidivist statute based on his prior conviction for armed robbery in 1996. (R. p. 1812, lines 13 - 17). The judge sentenced petitioner to life without the possibility of parole on all three murder convictions; life without the possibility of parole on the burglary first degree conviction; thirty (30) years

imprisonment for armed robbery; and thirty (30) years for kidnapping. (R. p. 1815, line 3 - p. 1816, line 21). Petitioner appealed.

On January 20, 2011, the South Carolina Court of Appeals affirmed the convictions by unpublished opinion that rejected each of the three issues presented by petitioner. *State v. Gallman*, Unpublished Opinion No. 2011-UP-006 (S.C.Ct.App. filed January 20, 2011). (App. pp. 1-2). The Court of Appeals disposed of Issues 1 and 2 on the finding of lack of prejudice, and did not specifically rule on error.[1] (App. p. 2). The Court of Appeals found no error as to Issue 3. (App. p. 2). Petitioner filed a petition for rehearing on February 4, 2011. (App. pp. 3-10). Respondent filed a return on February 17, 2011. (App. pp. 12-18). The Court of Appeals denied the petition on February 28, 2011. (App. pp. 20-21).

Petitioner filed a petition for writ of certiorari on May 31, 2011. The petition is currently pending. This return follows.

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[1] Respondent disagrees with petitioner's assertion that the Court of Appeals found "harmless error as to issue two and no error as to issues one and three." (Cert. Pet., p. 5). Respondent will address the Court of Appeals findings in discussion of each of the questions presented within this return.

RESPONDENT'S STATEMENT OF FACTS

This case involves the murder of three victims, Desiree Felder, George Batie, and Kevin Miller. The testimony at trial established the following facts:

Zondria McKie, a friend of victim Desiree Felder, was attempting to find victim Desiree Felder to repay a loan Felder had made to McKie. (R. p. 254, line 4 - p. 255, line 16). Shortly before 5:00 in the afternoon on September 4, 2005, Zondria went to the home that Ms. Felder had shared with boyfriend, George "Jim" Batie. (R. p. 255, line 17 - p. 256, line 3; p. 263, line 4 - p. 264, line 6; 192, lines 17-22; p. 161, line 22 - p. 162, line 23). McKie found Miller and Batie dead in the home, and called 911. (R. p. 257, line 16 - p. 259, line 17). She could not, however, find Felder, though she searched the home looking for her friend. (R. p. 260, line 15 - p. 261, line 21).

Batie was a known drug dealer. Miller was at Batie's home to buy drugs for his friend, Christopher Cochran, during the early morning hours of September 4, 2005. (R. p. 222, line 1 - p. 227, line 10). Miller was shot once in the back of the head. (R. p. 1318, line 2- p. 1319, line 2). Batie was shot three times, once in his hip, once in his thigh, and the fatal wound - - a shot to the head. (R. p. 1326, line 7 - p. 1329, line 15; p. 1337, line 3 - p. 1339, line 18). Batie's house was ransacked, and a nearby safe opened but empty, with blood smears evident on the outside. (R. p. 258, lines 15-22; p. 293, line 8 - p. 295, line 18).

Felder's body was found off a dirt road in Richland County three days later, when a nearby resident walking his dog investigated a decomposition smell that he had noticed for "more than a day." (R. p. 420, line 1 - p. 4229, line 25). Her body was wedged

between two trees. She had been shot in the head. (R. p. 434, line 7 - p. 435, line 17; p. 438, lines 3-9; p. 1147, line 5 - p. 1149, line 12).

Investigation revealed co-defendant Oliver's fingerprint on a shoe box in the ransacked home. (R. p. 331, lines 8-11). Two .40 caliber shells were also recovered from the home. (R. p. 286, lines 7-11; p. 392, line 2 - p. 393, line 13).

Oliver's girlfriend, Renata Williams, testified that Oliver came into the apartment that the two occasionally shared sometime after 2:00 a.m. on September 4, 2005, and that he called petitioner. The next day, she overheard him tell "Mike" about "doing a lick" and she also saw that Oliver had a large of amount of drugs and money. (R. p. 481, lines 2-23; p. 486, line 5 - p. 489, line 16). Williams and Oliver would later go on a spending spree. (R. p. 489, line 17 - p. 494, line 25). After seeing a news report on the murders, Oliver asked Williams if she would tell people that he was her husband should he be "locked up." (R. p. 495, lines 1-19).

Oliver's longtime friend Ulicen "Mike" Allen, testified that Oliver (whom he called his "brother"), called him in the early morning hours of September 4, 2005, and asked him to come over to the apartment, and he did. When he arrived, he saw "guns", a .12 gauge shotgun, bundles of money, crack cocaine, and digital scales. Oliver admitted he had robbed someone, and when Allen expressed concern that the victim may come after Oliver, Oliver advised, "[t]he guy we got this from ain't going to be looking for us." (R. p. 553, line 4 - p. 555, line 15). He testified that Oliver had a .40 caliber gun and a 9 mm gun. (R. p. 579, line 25 - p. 580, line 4). Oliver would later again admit the robbery to Allen and that his fingerprint was at the scene, but maintained that he did not kill victim Felder. (R. p. 559, line 20 - p. 561, line 22). Allen testified that he knew

petitioner to be "associated" with his friend Oliver, and confronted petitioner about the incident, asking why petitioner "let him" leave fingerprints at the scene, "why did [he] let him leave his prints all over the place if it was going to go down like this" and petitioner responded, "you know how your brother be. Your brother was all on that cocaine. Man, I couldn't tell your brother that. You know, your brother wanted to do what he wanted to do...." Petitioner further admitted his involvement in the crime, telling Allen that he and Oliver gained entry "[w]hen the white boy got out the car, they rushed the white boy into the house. That is how they gained entrance." (R. p. 575, line 17 - p. 579, line 17).

Petitioner's girlfriend, Leticia Jones, testified that petitioner tearfully confessed to her in the early morning hours of September 4, 2005, (R. p. 677, line 1 - p. 678, line 4), telling her:

> ... [she] was right about his friend, that he had gotten him into trouble and that - - said, Leticia, listen to me. He said that - - he said that he had gotten him into trouble and that he made him do something that he didn't want to do and that he didn't know what to do. He couldn't - - he just was upset and that he didn't know how to handle it.
>
> He said that his - - his friend had - - had some idea to make someone and that he didn't really know what was involved but he went with him and it just turned out to be not what he thought it was.
>
> He said that they went to the house and that his friend, that they knocked on the door and somebody opened the door and his friend shot the guy that opened the door. And then they - - that the guy he was with shot the other guy that was in the house and that then they were trying to rob the man and that the man wouldn't tell him where his - - his money was. And so the guy he was with just flipped out and got really made and angry and just shot the man. ...

(R. p. 678, line 15 - p. 679, line 9).

He also confessed to the murder of Felder:

> The person that he was with said that they had to take her because she probably knew where... the money was. And so he put her in the car and they drove with the lady. And I don't - - I don't know what happened. But that the person that he was with told him that he had gotten his hands dirty and he had to do the same thing and that he was like crazy and he tried to hurt the lady and that Dominic had to stop him from him - - from attacking the lady, from like raping her and stuff. But that he put the gun to his head and told him that if he didn't shoot the lady that he would shoot him. So Dominic said he didn't know what to do. And he had just closed his eyes and pulled the trigger. And that was it.

(R. p. 680, line 16 - p. 681, line 4).

She would later see petitioner with his father, burning something - - some kind of material - - on the grill the next day. (R. p. 681, line 21 - p. 682, line 16).

Omekas Moaney, a/k/a "Blue," testified that he had met Oliver in 2003, but had known petitioner since childhood. (R. p. 724, lines 16-25; p. 744, lines 10-11). He testified that Ken Joy dropped Oliver at Moaney's home on September 5, 2005. Petitioner came by approximately thirty minutes later. They asked him to cook a large amount of cocaine into crack and distribute it. The money from the subsequent sales went to Oliver and petitioner. (R. p. 728, line 8 - p. 734, line 1). Oliver eventually told Moaney that he obtained the drugs through robbery, and asserted "they didn't intend to harm anybody. They did not go there with the intentions of harming anybody but things got out of hand, things went wrong." (R. p. 738, lines 3-13).

Tatanisha Robinson, another of Oliver's girlfriends, gave a statement to investigating officers that Oliver had admitted he had done something that could possibly send him to jail for life, and that Oliver had a significant amount of cash and cocaine the day following the murders. She also noted that petitioner was "bragging" about the murders until Oliver was arrested. (State Exhibit 203, pp. 3-4).

Jason Brown, a longtime friend of Oliver's who was with Oliver in the Detention Center in October of 2005, testified that Oliver confessed his involvement in the crimes. Oliver told him that he had killed two people at a house on Mildred Avenue over drugs and money, and had taken another from the house and killed that victim at another location. He told Brown that he trashed the home, "looking through shoe boxes" and under furniture. He also said that two guns were used, a .40 caliber that Oliver had, and a .38 the other person involved had. Oliver told Brown that he had "made" the other individual with him kill the woman at the second location. (Tr. p. 1412, line 8 - p. 1415, line 23). Oliver would later ask Brown to kill Renata Williams, Omekas " Blue" Moaney, and Ulicen "Mike" Allen, for giving statements to the police. (R. p. 1051, line 21 - p. 1053, line 16).

The bullets recovered from autopsy showed that two guns were used, a .40 caliber and a .38 or .357, and the bullet fragment recovered from Felder's wound was fired by the same weapon that fired the bullet fragment from Batie. (R. p. 993, line 2 - p. -995, line 22; p. 1023, line 9 - p. 1024, line 11).

ARGUMENT

I.

The Court of Appeals correctly found no possible prejudice could ensue from counsel for co-defendant's reference to petitioner in regard to witness Jason Brown's statement where the witness avoided any mention of petitioner in his testimony regarding same. As no incompetent evidence was received, there is no error to warrant a mistrial. Consequently, there could be no prejudice. Any possible prejudice was forestalled by the giving of a curative instruction.

Relevant Facts:

Jason Brown, a longtime friend of Oliver's who was with Oliver in the Detention Center in October of 2005, testified that Oliver confessed his involvement in the crimes. (R. p. 1046, line 8 - p. 1049, line 23). Throughout his direct testimony, Brown testified Oliver and "another individual" or "another guy" were involved, without mention of any name other than Oliver's. (See R. p. 1046, lines 13-14; p. 1047, lines 1-4; p. 1047, lines 15-17; p. 1049, lines 1-2; p. 1049, lines 9-23). Defense counsel for co-defendant Oliver, on cross-examination, questioned Brown about his statement to investigators. The following exchange takes place:

Q My understanding is that your statement indicates that they went down there and had the girl, knocked on the door to try to buy something, correct?
A That's correct.
Q All right. She indeed did knock on the door, correct?
A That's correct.
Q A man opened the door. Stanley and Dominic rushed in, correct?

(R. p. 1071, line 19 - p. 1072, line 2).

Defense counsel for petitioner immediately objected *before* an answer was given. (R. p. 1072, lines 3-4). After a bench conference, the judge gave the following instruction:

> All right, ladies and gentlemen. An objection has been lodged as to that last question and answer. I'm going to ask you to disregard that question and answer. Strike it from the record and just, as I say, disregard the answer. So move ahead, Mr. Strickler.

(R. p. 1072, lines 6-11).

Defense counsel asked to place a motion on the record. (R. p. 1072, lines 6-11). Defense counsel for Oliver continued his cross-examination. Defense counsel for petitioner cross-examined Brown, and elicited that Oliver had informed Brown that a "Mr. McQuay" "end[ed] up being dead had something to do with what went on." (R. p. 1079, lines 4-16). Brown also testified that he did not know petitioner. (R. p. 1080, lines 19-22). After completion of testimony from the witness, and outside the presence of the jury, defense counsel moved for a mistrial:

> For the record, at this point in time we would move for a mistrial based upon the reference in Mr. Strickler's question to my client being involved with this case. I think Mr. Strickler's question was something to the effect of, in reading or questioning Mr. Brown about this, he said, "The man opened the door and Stanley and Dominic rushed in."
>
> We have taken very careful, painstaking efforts to try and keep any Crawford or Bruton materials out of this case. This just opens the door. I don't think any instruction that you can give can cure this. I have no right or ability to examine Mr. Oliver as to this statement. I would submit that the jury now has been - - the cat's out of the bag, so to speak, Your Honor. So we would move based upon the prejudice that my client has suffered and that no charge can cure this problem.

(R. p. 1086, lines 3-21).

The trial judge denied the motion finding the curative instruction was sufficient to cure any possible prejudice. (R. p. 1086. lines 22-25).

On appeal, petitioner argued the trial judge erred in refusing to grant a mistrial. (BOA, p. 8). The Court of Appeals, in a Rule 220(b), SCACR opinion, affirmed on the following basis:

> Issue 1: State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999)(finding a trial court should first exhaust other methods to cure possible prejudice before aborting a trial); State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct.App. 2005)(stating a curative instruction is usually deemed to have cured any alleged error).

(App. p. 2).

In the petition for rehearing, petitioner argued that the Court of Appeals erred because "the prejudice was irreparable." (App. p. 3). Here, petitioner argues a *Bruton*[2] error occurred, and he was prejudiced. (Cert. Pet., pp. 9-11).

Discussion:

The Court of Appeals did not rule that the mistrial would have been warranted absent the curative instruction; rather, the Court of Appeals simply held that any possible prejudice would have been prevented by virtue of the curative instruction. The record, in fact, demonstrates that mistrial was not warranted as no improper evidence was received.

Counsel for petitioner immediately objected to the question by co-defendant's counsel *before* an answer was given. (R. p. 1072, lines 3-4). The witness never stated to the jury that petitioner was named in his statement. Though petitioner maintains that counsel for co-defendant read from the actual statement, (Cert. Pet., p. 7), therefore, it is one and the same as testimony, he is incorrect. As a first matter, the jury did not know

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[2] *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620 (1968)(holding a defendant's Sixth Amendment right of confrontation is violated by presentation of a nontestifying co-defendant's confession that incriminates defendant).

that (it was not formally announced and published as such, see R. p. 1071, line 19 - p. 1072, line 2, where counsel for co-defendant begins his question, "My understanding is that your statement indicated that" followed by a series of information points), thus, the jury could just have easily assumed a misreading or misstatement in posing the question. At any rate, questions or arguments of counsel are not evidence. *See, e.g., State v. Kelsey*, 331 S.C. 50, 74-75, 502 S.E.2d 63, 75-76 (1998)(noting with favor trial judge's charge "an attorney's question is not evidence"); *Ex parte Morris,* 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006)("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence"). In fact, the trial judge initially instructed the jury that argument by counsel was not evidence. (R. p. 158, line 13- p. 159, line 3). Thus, contrary to petitioner's assertions, Jason Brown did not testify that Oliver implicated petitioner. (See Cert. Pet., pp. 6 and 10).

The possibility of prejudice is erased where no improper evidence is actually received. *State v. Harris*, 382 S.C. 107, 119, 674 S.E.2d 532, 538-39 (Ct. App. 2009), *cert. denied* (2010)("the record reveals the witness did not answer the question asked by the State. The State asked the witness whether Harris ever struck him, and before the witness could respond, Harris objected ... we fail to see how Harris suffered any prejudice in light of the fact the witness did not answer the question"). Given that no such evidence was received here, there could be no prejudice.

At any rate, to guard against any possibility of prejudice, the trial judge specifically instructed the jury to disregard the question and answer (though there technically was not one). (R. p. 1072, lines 6-11). In sum, any possible prejudice from

the mere posing of a question by counsel for co-defendant was swiftly and effectively blunted.

"A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission." *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 130 (Ct.App. 2005). The instruction here was carefully crafted to firmly instruct that the question should not be considered, without placing emphasis on the question by repeating same before the jury. *See Walker*, 366 S.C. at 660, 623 S.E.2d at 130 ("In compliance with the law extant on curative instructions, the trial judge responded with alacrity and exactitude when the inadmissible evidence was offered. The potency of the judge's curative instructions expunged and extirpated any alleged error."). Therefore, as the Court of Appeals reasonably and correctly found, the instruction was sufficient to cure any conceivable prejudice.

Further, even if prejudice could be found in this context, which respondent maintains it cannot, such prejudice is harmless in light of the other overwhelming evidence of guilt. Petitioner simply does not address the fact that confrontation issues are subject to harmless error analysis. *State v. Davis*, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006)("violation of a defendant's Sixth Amendment right to confront the witness is not *per se* reversible error; instead, this Court must determine whether the error was harmless beyond a reasonable doubt."). Specifically, a *Bruton* violation is subject to a harmless error analysis. *Schneble v. Florida*, 405 U.S. 427, 430 (1972). The purported *Bruton* error here could only be harmless in light of the remaining evidence.

The record shows testimony demonstrating guilt of both defendants in this joint enterprise. For instance, Ulicen "Mike" Allen, testified that he confronted petitioner

about "allowing" Oliver to leave prints[3] at the home during which petitioner admitted being with Oliver. (R. p. 577, line 17-p. 579, line 17). Additionally, petitioner's girlfriend, Leticia Jones, testified that petitioner confessed his participation not only in the burglary and robbery, but also described in detail the way he killed Felder. (R. p. 678, line 15 - p. 679, line 9; 680, line 16 - p. 681, line 4). Further still, Omekas "Blue" Moaney testified that both Oliver and petitioner came to him to sell the drugs they acquired from the robbery and admitted that "things got out of hand." (R. p. 738, lines 3-13). In light of the wealth of evidence in the record that clearly indicates petitioner's participation, one question during Brown's cross-examination by co-defendant Oliver suggesting reference to petitioner's name can simply not be anything other than harmless. Far from being the "star witness" in this case as petitioner alleges in his petition, (Cert. Pet., p. 6), the record shows that other witnesses gave much more detailed testimony demonstrating guilt of both defendants.

However, the instruction here cured any possible error from defense counsel's question which may have suggested the statement reflected petitioner's name. The extraordinary relief of a mistrial was simply not warranted. *State v. Council*, 335 S.C. at 13, 515 S.E.2d at 514 ("the trial judge should exhaust other methods to cure possible prejudice before aborting a trial"). Petitioner has shown no error in the Court of Appeals' opinion.

---

[2] The evidence did, in fact, show that co-defendant Oliver left his print on a shoe box in the ransacked home. (R. p. 331, lines 8-11).

II.

The Court of Appeals ruling that if Renata Williams' testimony that Oliver called petitioner from her home on the night of the crimes was erroneously admitted, the admission could only be harmless in light of the overwhelming evidence of guilt is well supported by the record.

Relevant Facts:

Williams testified that Oliver came home sometime after 2:00 a.m. September 4, 2005, and called someone:

A ... he got on the phone and was talking to someone and left.
Q okay.
A And - -
Q Did you hear him call anybody on the phone?

(R. p. 487, lines 2-7).

Defense counsel then objected, and the trial judge overruled the objection at that time. (R. p. 487, lines 8-9). The witness continued her answer:

A I didn't hear him on the phone. I saw that he had called someone on the phone.
Q Do you know who he called?
A Yeah.
Q Who?
A Dominic
Q And does Dominic have a nickname?
A Freaky.
Q Freaky?
A Yes, sir.
Q So after you heard that, what happened after that?
A After that he left..
Q Okay. When did you see, if ever, Stanley Oliver again?
A The next day.
Q Tell us about that....

(R. p. 487, lines 10-25).

Petitioner complained on appeal that the trial judge erred in admitting the testimony because there "there *was not any competent evidence* establishing that Williams knew Oliver was talking to petitioner on the telephone." (BOA, p. 13). The Court of Appeals resolved the issue on lack of prejudice, but did not specifically find error:

> Issue 2: State v. Allen, 269 S.C. 233, 242, 237 S.E.2d 64, 68 (1977)(holding overwhelming proof of guilt rendered harmless any error in the admission of the evidence in question).

(App. p. 2).

Discussion:

Petitioner incorrectly assumes that the Court of Appeals found error. The panel, in disposing of the issue, merely cites to *State v. Allen*, which held no error in the admission of evidence, but noted that "[i]n any event" that "the overwhelming proof of guilt rendered harmless the admission of the evidence in question." *State v. Allen*, 269 S.C. 233, 242, 237 S.E.2d 64, 68 (1977). Respondent agrees with the Court of Appeal's panel, however, that even if error could be found, the error was harmless.

First, the testimony actually received was at best vague, and reflects only that Oliver called petitioner, not even that he spoke to petitioner. (R. p. 487, lines 7-19). He could well have attempted to call petitioner only to be told he was not available. No statement from petitioner was ever elicited.

Second, there is ample direct and clear evidence of guilt in the record independent of this minor testimony. For instance, the record shows that Ulicen "Mike" Allen testified he confronted petitioner about his participation in the crimes, which petitioner directly

admitted to him.[4] (R. p. 553, line 4 - p. 561, line 22; p. 575, line 17-p. 579, line 17). Moreover, petitioner's girlfriend, Leticia Jones, testified that petitioner confessed his participation directly to her, including describing in detail the way he killed Felder with his own gun. (R. p. 378, line 15 - p. 679, line 9; 680, line 16 - p. 681, line 4). And, Omekas "Blue" Moaney testified that both Oliver and petitioner came to him to sell the drugs they acquired from the robbery and admitted that "things got out of hand." (R. p. 738, lines 3-13).

In light of the wealth of evidence in the record already clearly indicating petitioner's guilt, the brief testimony that co-defendant Oliver called petitioner on the night of the crimes can simply not be anything other than harmless. *See State v. Price,* 368 S.C. 494, 500, 629 S.E.2d 363, 366 (2006), *citing State v. Bailey,* 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)("[A]n insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached."). Petitioner has failed to show error in the Court of Appeals opinion.

---

[4] Petitioner's collateral suggestion that Respondent's offered argument on the overwhelming evidence of guilt in support of finding error was "focused" more on Oliver than Petitioner is misguided. (Cert. Pet., p. 15). Clearly, the evidence shows a joint enterprise. Evidence of Oliver's participation lends credence and support to the joint participation allegations.

III.

The Court of Appeals correctly found the trial judge did not abuse his discretion in admitting Tatanisha Robinson's statement as evidence of a prior inconsistent statement after Robinson testified that, while she acknowledged the fact of the statement shown, it was not her statement but a statement written and or suggested by law enforcement; therefore, not her own.

Relevant Facts:

Tatanisha Robinson was one of Oliver's former girlfriends. On September 21, 2005, she gave a written statement to law enforcement detailing that Oliver saw her the day after the crimes were committed, and was "worried" about the news reports on the murders. He had a lot of cash and "about 3 or 4 ounces of cocaine." (State Exhibit 203, p. 1; R. p. 1829). He was concerned that if captured, he would spend the rest of his life in jail. (Id.). The statement also reflected that she told investigators that she also saw petitioner, and he "was bragging about the murders" but later became silent when Oliver was arrested. She noted petitioner gave away $50.00 dollar just for laundry, and also that he had a .40 caliber gun. (State Exhibit 203, pp. 3-4; R. pp. 1831-1832).

Robinson was granted transactional immunity to testify, as, after making the first statement, she submitted another sworn statement which was apparently contrary to her first sworn statement. (See R. p. 818, line 23 - p. 830, line 18). The State called Robinson at trial. Robinson was considered a hostile witness after several fruitless attempts to seek answers concerning her knowledge of the events, including having received one answer that the witness simply could not remember, that she had "bad brain cells." (R. p. 836, line 18 - p. 841, line 20). The solicitor asked about her written statement to investigators. She volunteered that she did not write the statement. (R. p. 843, lines 1-5). She went on to testify that she did not remember the statement. (R. p.

846, lines 15-16). When asked if she put in the statement that Oliver was nervous when she saw him after the murders, she replied, "I guess." (R. p. 847, line 24 - p. 848, line 1). She denied saying Oliver "had a lot of money on him." (R. p. 848, lines 15-20). She denied making several statements in the written statement, such as referring to a specific amount of money or an amount of cocaine. (R. p. 849, lines 12 - 23). (See also R. p. 853, lines 21-24). When asked if she put in a statement that petitioner was excited and they must have gotten a lot of money, she replied, "Did they put it in the statement? Yes." (R. p. 859, lines 19-21). Ultimately, the solicitor asked the witness if the identified statement was her statement. She denied the statement was hers. (R. p. 890, lines 20-23). (See also R. p. 891, lines 10-11, "... I did not write this and half the stuff in here I don't even remember saying.").

Defense counsel objected to references to other robberies in the statements, and the statement was redacted as to those matters. (See R. p. 882, line 9 - p. 883, line 23). During the *in camera* hearing held to review the requested redaction, (R. p. 1186, lines 12-18), defense counsel also argued that the statement cannot be admitted as the witness did not deny making the statement, but recanted the statement. (R. p. 1191, line 13 - p. 1192, line 8; p. 1207, lines 9-23). The trial judge ruled:

> Well, she not only recanted, but she denied it and recanted it, both. The objection is overruled. I'm going to allow it subject to, as I indicated earlier in the week, authenticity.

(R. p. 1207, line 24 - p. 1208, line 2).

The investigator who took the statement, Mitch Wilkerson, testified and identified the statement that Robinson gave on September 21, 2005. (R. p. 1233, lines 7-18). He further testified that he merely took down Robinson's words for the statement, and that

she received a copy of the statement after it was made. (R. p. 1235, line 4- p. 1242, line 5). The solicitor then offered the statement and the trial judge admitted the statement, "subject to the previous objections." (R. p. 1242, lines 6-8). Defense counsel offered another, unspecified, objection and a bench conference was held, after which the statement was admitted over the objections of the defendants. (R. p. 1243, lines 8-19). At the conclusion of testimony, defense counsel placed on the record that he objected to the redaction itself, and argued admission of the physical document was duplicative and placed undue emphasis on the statement already reviewed in testimony. (R. p. 1286, lines 12 - p. 1664, lines 6). The trial judge noted there were cases where both too little and too much information had been sent back that resulted in reversible error, and, in his discretion, denied the motion to disallow admission of the written statement. (R. p. 1288, lines 6-15; p. 1289, lines 5-6).

On appeal, petitioner argued that the statement was not admissible, and the redaction "sloppily done." (FBOA, p. 1, Issue 3). The Court of Appeals found the trial judge did not abuse his discretion in admitting the statement:

> Issue 3: Rule 613(b), SCRE (providing for admission of a prior inconsistent statement if the witness does not admit making the statement); State v. Carmack, 388 S.C. 190, 201, 694 S.E.2d 224, 229-30 (Ct.App. 2010)(finding where the witness has responded with anything less than unequivocal admission, trial courts are granted wide latitude to allow extrinsic evidence proving the statement).

(App. p. 2).

Discussion:

Petitioner is correct that the witness must deny the statement for extrinsic evidence of a prior inconsistent statement to be admissible. *State v. Sierra*, 337 S.C. 368,

372-373, 523 S.E.2d 187, 189 (Ct.App. 1999)("Only if the witness denies having made the prior inconsistent statement is extrinsic evidence admissible."). The record here is replete with her denials. (See R. p. 859, lines 12-21; p. 890, lines 20-23; p. 891, lines 10-11). Thus, the statement was properly admitted.

"Evidentiary rulings of the trial court will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant." *State v. Rice*, 375 S.C. at 314, 652 S.E.2d at 415. *See also State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *State v. Irick*, 344 S.C. 460, 463, 545 S.E.2d 282, 284 (2001). Moreover, the error must be prejudicial to support reversal. *McLeod*, 362 S.C. at 73, 606 S.E.2d at 219. Petitioner cannot show error.

"A prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination." *State v. Stokes*, 381 S.C. 390, ___, 673 S.E.2d 434, 438 (2009). "Under Rule 613(b), extrinsic evidence of the statement is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made." *State v. McLeod*, 362 S.C. at 81, 606 S.E.2d at 219. "Only if the witness denies having made the prior inconsistent statement is extrinsic evidence admissible." *State v. Sierra*, 337 S.C. 368, 372-373, 523 S.E.2d 187, 189 (Ct.App. 1999). Here, the witness was so advised, and the evidence was properly admitted in reply pursuant to Rule 613(b), SCRE. Moreover, as noted, the record is replete with her denials. (See R. p. 859, lines

19-21; p. 890, lines 20-23; p. 891, lines 10-11). Petitioner has shown no error in the ruling or in the Court of Appeals' decision.

Additionally, the admission, if error, could only be insubstantial and harmless in light of the other conclusive evidence of guilt in the record, the relatively little probative value compared to other direct evidence of guilt, and the largely cumulative nature of the testimony. *Price, supra*; *State v. Haselden,* 353 S.C. 190, 577 S.E.2d 445 (2003) (improper evidence harmless where merely cumulative to other evidence); *State v. Evans*, 378 S.C. 296, 300, 662 S.E.2d 489, 491 (Ct. App. 2008)(evidence "merely cumulative, insubstantial" did not affect the result of trial and considered harmless). The statement that petitioner was bragging and had a gun is persuasive circumstantial evidence of guilt; however, it paled in comparison to other evidence, such as the testimony from Ulicen "Mike" Allen that he confronted petitioner about his participation in the crimes, which petitioner directly admitted to him, (R. p. 553, line 4 - p. 561, line 22; p. 575, line 17-p. 579, line 17); the testimony from petitioner's girlfriend, Leticia Jones, that petitioner confessed his participation directly to her, including describing in detail the way he killed Felder with his own gun, (R. p. 678, line 15 - p. 679, line 9; 680, line 16 - p. 681, line 4); and, the testimony from Omekas "Blue" Moaney that both Oliver and petitioner came to him to sell the drugs they acquired from the robbery and admitted that "things got out of hand." (R. p. 738, lines 3-13). This evidence has not been contested on appeal. In light of the wealth of uncontested evidence in the record clearly indicating petitioner's guilt, the additional merely cumulative evidence of petitioner's talking about the murders at the time in question can simply not be anything other than insignificant and harmlessly cumulative.

To the extent that petitioner also argues the redaction was "sloppily done," (Cert. Pet., pp 18 and 22), there is no apparent finding by the panel to contest, and nothing to revisit. Moreover, petitioner did not make a specific objection to admissibility based on appearance. Though he did object to the fact of the redaction, he objected because of context, arguing, "its just too prejudicial because it's not an accurate reflection of what she allegedly said the first time." (R. p. 1207, lines 9-23). Thus, an independent argument for error based only on the appearance of the redacted statement is not preserved for review. *See, e.g., State v. Orr*, 389 S.C. 286, 292, 698 S.E.2d 633, 637 (Ct. App. 2010)(issue must be presented to the trial court and ruled upon to be available for review on appeal). Further, counsel requested the redaction. The trial judge held a detailed hearing on redaction that all counsel joined in, in which defense counsel argued that the references to other robberies were not admissible, (R. p. 871, line 2 - p. 879, line 6). The trial judge agreed with defense counsel that the portions related to other crimes must be redacted. (R. p. 882, line 9 - p. 883, line 23). Counsel cannot complain of that which he requested. *State v. Bryant*, 372 S.C. 305, 314, 642 S.E.2d 582, 587 (2007), *quoting State v. Babb,* 299 S.C. 451, 455, 385 S.E.2d 827, 829 (1989) ("[A] party cannot complain of an error which his own conduct has induced.").

As to petitioner's argument that the admission of the redacted statement was needlessly or improperly duplicative, (Cert. Pet., pp. 23-24), the trial judge did not abuse his discretion. As noted above, such a statement is admissible as substantive evidence. *Stokes, supra.* Therefore, the trial judge did not commit an error of law, and there is no basis for finding an abuse of discretion. *Rice, supra.* Petitioner has shown no error in the Court of Appeals' opinion.

CONCLUSION

For all the foregoing reasons, respondent, the State, submits that the petition for writ of certiorari should be denied.

Respectfully submitted,

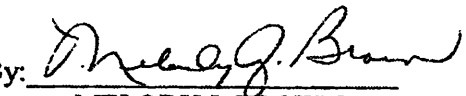
HENRY D. MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

By: 
MELODY J. BROWN

Office of the Attorney General
Post office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

August 1, 2011.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-006 (S.C.Ct.App. filed January 20, 2011)

The State, Respondent,

v.

Dominic Gallman, Petitioner.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the Return to Petition for Writ of Certiorari on petitioner by depositing a copy of same in the United States mail, postage prepaid, addressed to his attorney of record as follows:

Robert M. Dudek, Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office 11589
Columbia, South Carolina 29211-1589

This 1st day of August, 2011.

MELODY J. BROWN
Senior Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

The Supreme Court of South Carolina

The State, Respondent,

v.

Dominic Gallman, Petitioner.

Appellate Case No. 2011-188628

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeal's decision in *State v. Gallman*, Op. No. 2011-UP-006 (S.C. Ct. App. filed Jan. 20, 2011). We deny the petition.

C. J.

FOR THE COURT

Columbia, South Carolina
June 7, 2012
cc:
Melody Jane Brown
John W. McIntosh
Warren Blair Giese
Alan McCrory Wilson
Robert Michael Dudek
Donald J. Zelenka
Honorable Jenny Kitchings

RECEIVED
JUN 7 2012
SC OFFICE OF
APPELLATE DEFENSE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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FAX: (803) 734-1839
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June 12, 2012

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

RECEIVED
JUN 12 2012
SC OFFICE OF
APPELLATE DEFENSE

REMITTITUR

Re: The State v. Gallman, Dominic
Lower Court Case No. 2005GS4009700, 2005GS4009699, 2005GS4011581, 2005GS4009701, 2005GS4009697, 2005GS4009696
Appellate Case No. 2008-076647

Dear Ms. McBride:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

cc: Robert Michael Dudek
Melody Jane Brown
Daniel E. Johnson

2493

FORM 5

2012CP4005000

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of Richland)

Dominic A. Gallman #234627)
Full name and prison number (if any) of Applicant)
)
v.)
)
) APPLICATION FOR
)
State of South Carolina) POST-CONVICTION RELIEF
)
)
)

RICHLAND COUNTY FILED
2012 JUL 20 PM 3:43
JEANNETTE W. MCBRIDE C.C.P. & G.S.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution

2. Name and location of Court which imposed sentence Richland County Court House; 1701 Main St., Cola, S.C. 29201

3. Name(s) of co-defendant(s) (if any) Stanley Oliver; Kenneth Jay

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 05-40-9697 (Armed Robbery); 05-40-9696 (Burglary 1st); 05-40-9700-01 (X2 Murder

(b) 05-40-11581 (murder)

(c) 05-40-9699 (kidnapping)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) December 18, 2007 - Sentence to term of life

(b)

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Direct Appeal - S.C. Court of Appeals

ii. Direct Appeal - S.C. Supreme Court

iii.

(b) the result in each such Court to which you appealed:

i. Denied / Upheld Conviction

ii. Denied / Upheld Conviction

iii.

(c) the date of each such result:

i. January 20, 2011

ii. June 7, 2012

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. n/a

ii. n/a

iii. n/a

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) n/a

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Improper Jury Deliberations

(c) After Discovered Evidence / Actual Innocence

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

(a) failure to object to irrelevant & prejudical evidence

(b) Jury verdict rendered on evidence not presented at trial

(c) Prosecutorial Misconduct / Not the perpetrator of crime.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. Direct Appeal-S.C. Court of Appeals / S.C.

ii. Supreme Court.

iii. Petition for Rehearing

iv. Writ of Certiorari

(b) the name and location of the Court in which each was filed:

i. Court of Appeals-Columbia, S.C.

ii. South Carolina Supreme Court-Columbia, S.C

iii. _____

iv. _____

(c) the disposition thereof:

i. Denied / Upheld Convictions

ii. Denied / Upheld Convictions

iii. _____

iv. _____

(d) the date of each such disposition:

i. January 20, 2011

ii. June 7, 2012

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

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

(a) which grounds have been presented:

i. n/a

ii. n/a

iii. n/a

(b) the proceedings in which each ground was raised:

i. n/a

ii. n/a

iii. n/a

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

(a) Not the proper Venue

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?. yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Jonathan Milling - 1614 Taylor St. Suite C Columbia, S.C. 29201

ii. Robert Dudek - S.C. Comm. Indigent Def. Div. App Def. P.O. Box 11589, Cola, S.C. 29201

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii. Direct Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

Sentence Vacated / New Trial

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

I, Dominic Gallman, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Dominic Gallman

SWORN to and subscribed before me this 17th day of July, 2012.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Dominic Gallman, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Dominic Gallman
Applicant

SWORN or affirmed to and subscribed before me this 17th day of July, 2012.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

RICHLAND COUNTY
FILED
2012 JUL 20 PM 3:43
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
GALLMAN Dominic A - # 00234627,	)	**2012CP4005000**
Applicant,	)	
v.	)	**RETURN**
State of South Carolina,	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 20, 2012, would respectfully show this Court:[1]

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted at the November 2005 term of the Richland Grand Jury for two (2) counts of Armed Robbery, Murder and Kidnapping (2005-GS-40-9697;9701;96978701; -11581).[2] He was represented by Jonathan Milling, Esquire, on the charge(s). On December 3, 2007, Applicant proceeded to jury trial before The Honorable G. Thomas Cooper, Jr., and a jury. On December 18, 2007, after a twelve day trial, Applicant was found guilty of the charges as indicted and sentenced to thirty (30) years imprisonment for Kidnapping, life imprisonment without parole each for Burglary – First Degree and the three Murder.

[1] http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP4005000&CourtType=G&CaseType=Civil&CourtAgency=40002

[2] https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00234627