

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Edgar W. Dickson, Circuit Court Judge

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S.C. SUPREME COURT

TEVON MICHAEL JACKSON,

RESPONDENT/PETITIONER

V.

STATE OF SOUTH CAROLINA,

PETITIONER/RESPONDENT

APPELLATE CASE NO. 2017-000790

JOINT APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
APPLICANT’S EXHIBIT NO. 17 (Timeline Poster Board)**

WALLIS ALVES - DIRECT BY BLANCHETTE

1 behind them on State's Exhibit 36 or 54?

2 A. Yes.

3 Q. Does his testimony make sense?

4 A. Doesn't appear to.

5 Q. And did you ever explain to the jury that his
6 testimony didn't appear to make sense?

7 A. I'll have to stand by what the record says; I don't
8 know.

9 MR. BLANCHETTE: Your Honor, I may approach
10 the witness?

11 THE COURT: You may.

12 BY MS. BLANCHETTE:

13 Q. Ms. Alves, as part of your representation, would
14 you have received a complete copy of the sheriff's file
15 of all discoverable materials?

16 A. I would have received whatever the solicitor gave
17 me.

18 Q. Okay. And do you recall in this case being
19 provided pictures of the cell phones and the information
20 contained on the cell phones of Marcus Finklin?

21 A. I don't remember what I got.

22 Q. Okay. I'm going to hand you what's been marked as
23 Applicant's Number 16 and just see if that triggers a
24 memory for you at all.

25 A. It doesn't.

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1 Q. Okay. So you don't recall seeing this document as
2 part of your representation?

3 A. I can't say I did or didn't. I have not reviewed
4 the pictures that are on the disk.

5 Q. Okay. If this document contained information
6 regarding Marcus's cell phone, do you have any memory as
7 to why you did or didn't use that information?

8 A. I don't know if I got it, and if I did get it I
9 don't know why I didn't use it.

10 Q. Okay. Now, as already referenced, you objected to
11 the State's Number 36 but later you didn't enter an
12 objection to State's 54. Can you turn to your closing
13 argument on page 673 and look at lines six and seven?

14 Now, you objected to State's Number 36 and it
15 wasn't admitted. Is there any reason that you were
16 referencing that exhibit to the jury during your closing
17 argument and not State's Exhibit 54?

18 A. I guess I made a mistake.

19 Q. And in your closing, on page 684, you specifically
20 tell the jury on line 18, I mean, I think we can pretty
21 much take the word of the Verizon cell phone records
22 because I don't think a computer has anything to gain or
23 lose here in this case.

24 So you're asking the jury to believe these records
25 but based upon your review of the testimony today my

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1 questions about Mr. Hair, should you have asked the jury
2 to believe those records?

3 A. I guess I shouldn't.

4 Q. You also argued twice in your closing argument that
5 the State's just trying to use these records to get their
6 lying witnesses to look credible. Would it have hurt the
7 State's case for you to be able to exclude or suppress
8 these records?

9 A. It would have.

10 Q. And finally in your closing on page 685 regarding
11 these phone records, on line three you address phone
12 calls made by Tevon Jackson at 12:54 and 1:11. And in
13 your outline you address the facts that we've gone over
14 that there was a phone call made at 2:17. But if you
15 look at State's Exhibit 54, does it actually give two
16 calls connected to Tevon Jackson at 2:17?

17 A. It does.

18 Q. And do you have any reason why you didn't point out
19 that there were two calls at 2:17?

20 A. I don't remember.

21 Q. Okay. Well the record shows there were actually
22 two calls, not one call.

23 A. That's right.

24 Q. And, do you see what the code is listed next to the
25 first call reported at 2:17?

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1 A. MT.

2 Q. And do you have any reason why based upon what the
3 State's non-expert witness said that that meant it was an
4 incoming call and if there were seconds behind it it was
5 answered, why you didn't argue then that Tevon Jackson
6 spoke with Marcus Finklin at 2:17?

7 A. I can't answer that.

8 Q. And then what is the code behind the second phone
9 call?

10 A. MF.

11 Q. And based upon their -- William Hair's testimony,
12 MF means voice mail and that there should be no seconds
13 behind it. Did you address that with the jury?

14 A. I'll have to stand on whatever the record says.

15 Q. Okay. Were you present in the courtroom today when
16 Kalyn Floyd took the stand?

17 A. No.

18 Q. Okay. Had you heard the name Kalyn or Kayla prior
19 to trial?

20 A. I had heard the name Kayla.

21 Q. And what information did you have regarding a Kayla
22 prior to trial?

23 A. One moment. (Looking through records.) I'm
24 sorry. Just give me a moment to find the notes
25 specifically about that.

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1 On February 22nd at 11:30 I met with Solicitor Bill
2 Weeks, Solicitor Beth Ann Young and Investigator Norwood
3 Bodie. And they discussed new information that they had
4 gotten from Joseph Dicks and Jose Serrano when they met
5 with them the week before.

6 During that meeting and the solicitor, actually
7 Solicitor Weeks approached me and told me that they
8 wanted to meet with me to tell me about them. I took
9 notes about what they told me. And I was specifically
10 told that Tevon had gotten -- that Joseph Dicks said that
11 Tevon called him on the phone, and specifically that
12 Tevon had some stud coming to see Joseph who was bringing
13 him a package. And when I asked them more details about
14 what that meant by some stud, they told me it was a gay
15 woman who dressed like a woman named Kayla and they
16 didn't have any further information about that person.

17 Q. Prior to trial, did they give you any additional
18 information about that person?

19 A. No.

20 Q. If you could turn with me to page 235 of the
21 transcript when Joseph Dicks was testifying. I'm sorry,
22 233 through 235 is where he recounts that Kayla dropped
23 off a .38 for the Defendant and that he gave it to the
24 Defendant?

25 A. Yes.

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1 Q. And there he references, again, just the name
2 Kayla; is that correct?

3 A. Yes.

4 Q. And then on cross you asked him, on pages 260
5 through 261 again, about how that interaction with Kayla
6 took place and when he had disclosed the information.
7 And he indicates that he had disclosed the information
8 the Monday before.

9 And did that fit with the information that you had
10 been told?

11 A. Where are you referring to in this?

12 Q. On cross-examination, 260, beginning about line
13 11.

14 A. Okay. He said that the first time he told the
15 solicitor was last Monday.

16 Q. Okay. And he says again the person's name was
17 Kayla?

18 A. Yes.

19 Q. Okay. Did the solicitor ever disclose to you
20 whether or not they investigated Kayla and what if any
21 information they found out about her last name and if she
22 in fact had provided the murder weapon in this case?

23 A. They did not.

24 Q. Did you ever question why, if they knew this
25 person's name and Joseph Dicks could identify who she

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1 was, why she had not been charged in this case?

2 A. The only thing that I can tell you that I asked
3 about Kayla and that's just looking at the notes that I
4 took during the meeting with the solicitors and the
5 investigator, was that I asked what did they mean by stud
6 and they said what I told you, and the person's name was
7 Kayla. And then I put behind it NFI which means no
8 further information.

9 Q. And that did not change from your notes until the
10 time of trial as far as you remember?

11 A. Did not.

12 Q. Okay. And would you agree that New Ellenton is a
13 smaller community?

14 A. Than Aiken?

15 Q. Yes.

16 A. Yes.

17 Q. And specifically the area of Dry Branch Road where
18 this occurred, it's kind of a small cluster of homes
19 there?

20 A. Dry Branch Road.

21 Q. Dry Branch Road. And then he says that happened on
22 Nondron Road where she dropped that off. Have you been
23 out to that area?

24 A. I did. I went out there during the investigation
25 of this case. I really don't remember what it looks

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1 like. I mean, there's streets that branched off of
2 that. I can't really say it's a small cluster of homes
3 but I don't really remember.

4 Q. And you had an investigator working for the public
5 defenders office working on this case?

6 A. I did.

7 Q. Do you have any notes that indicate that after you
8 were told about this Kayla who was from the New Ellenton
9 area with a description of the fact that she was a stud
10 and what that meant and obviously knew Joseph Dicks and
11 the Defendant, did you have your investigator go try to
12 find this person?

13 A. We found out about Kayla at 11:30 on the 22nd.
14 According to the transcript, the trial started on the
15 22nd. I don't remember what we did after we got this
16 information but I do not recall having an investigator go
17 out and try to find Kayla.

18 Q. Did you ever tell Judge Early or make a motion
19 saying: The State has just given me information about
20 the person that provided the murder weapon, they've only
21 given me a first name, I need more time to investigate
22 this matter?

23 A. I did not ask.

24 Q. And do you have any reason why you did not?

25 A. I don't know.

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1 Q. Did you ever make any type of motion or raise any
2 concern to the Court that the State had potentially
3 withheld information from you?

4 A. I don't think so but I would have to stand by the
5 record.

6 Q. Okay. And they had just told you that the day of
7 trial versus the week before when Joseph Dicks had told
8 them, based upon your notes?

9 A. Yes.

10 Q. Is that typical that you get that type of
11 information the day of trial?

12 A. I can't say it's typical that I would get that type
13 of information. I mean, it just depends on the case. I
14 mean, sometimes I get information late but I'm not going
15 to say it's typical.

16 Q. And in this case your cross-examination, your
17 closing argument is all about the credibility of Joseph
18 Dicks and Jose Serrano. If Joseph Dicks was lying about
19 this and it could have been proven that Kayla was nowhere
20 in the area and did not provide the murder weapon,
21 wouldn't that have aided in your defense?

22 A. It would have tremendously aided in my defense.

23 Q. If you would have known Kayla testified today that
24 she was investigated and she was able to provide proof
25 that she wasn't present and she was informed essentially

WALLIS ALVES - DIRECT BY BLANCHETTE

1 that she was cleared and not needed, if you would have
2 known that information would you have raised that during
3 the trial or made necessary motions regarding it?

4 A. I would have.

5 Q. And if Kayla in fact had provided the murder weapon
6 based on your vast experience as a public defender, what
7 could she have been charged with in this case?

8 A. Accessory before the fact.

9 Q. And what type of time does that carry as -- well,
10 as compared to a murder charge, what type of time does
11 that carry?

12 A. I want to say it carries the same but I don't
13 really remember. I'd have to look it up. I'm sorry.

14 Q. Okay. Do you think it would be odd that if Joseph
15 Dicks in fact had provided credible information about the
16 person that provided the murder weapon that that person
17 was not charged?

18 A. I can't say that would be surprising. I mean, it
19 would depend. I mean, what knowledge did she have. I
20 mean, there's a lot more to whether or not she -- I mean,
21 if she's just giving him a gun, I mean, I don't know if
22 that necessarily would have been against the law. If
23 she's giving him a gun that had killed somebody, that's a
24 different situation.

25 Q. And I understand the late hour that you got this

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1 information in, but did you look into that yourself as to
2 why she wasn't charged if there was a basis for that?

3 A. I did not.

4 MR. BLANCHETTE: Your Honor, I beg the
5 Court's indulgence one moment.

6 THE COURT: Sure.

7 (Pause.)

8 BY MS. BLANCHETTE:

9 Q. I apologize. I'm going to jump back to a question
10 about the cell phone records here real quick. When
11 Latika Elliott was on the stand today she gave her cell
12 phone number. And the State questioned her about why her
13 cell phone number didn't show up on State's Exhibit 54.
14 Was it your understanding that there was multiple phones,
15 there should've been multiple sets of cell phone records
16 from Marcus Finklin?

17 A. It should have been.

18 Q. Okay. But that's not something that you tried to
19 obtain on your own in this case?

20 A. It's not.

21 Q. In the cases that you've handled here in Aiken
22 County, have there ever been matters brought up regarding
23 cell phone location and they used triangulation?

24 A. Yes.

25 Q. And typically are you given those reports when

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1 those things are looked into?

2 A. Yes.

3 Q. And did you get any such reports on anyone related
4 to this case?

5 A. Cell phone triangulation?

6 Q. Yes.

7 A. I don't think so.

8 Q. And let me be more specific. That just wasn't
9 fair.

10 Did you receive any reports regarding Kayla or
11 Kalyn Floyd and her cell phone in this case?

12 A. I don't think so.

13 Q. Okay. Now, you called Tevon Jackson as the only
14 defense witness in this case; is that correct?

15 A. Yes.

16 Q. What did you do to prepare him to take the stand?

17 A. I would have met with him and gone over what
18 questions I was going to ask him.

19 Q. Okay. And State's Exhibit 54, if you could just
20 reference back to that. On there there are notations of
21 a number of calls made by Tevon Jackson?

22 A. Yes.

23 Q. And that was an exhibit that the jury had. So the
24 jury had that information that the State was alleging
25 that all those calls were made by Tevon Jackson. And

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1 then in conjunction with that they had the unobjected to
2 testimony of William Hair.

3 In Tevon's testimony you do not reference those
4 phone records and those specific times that the State has
5 already put into the record. Is there any reason why you
6 did not address those with him during his testimony?

7 A. I don't remember.

8 Q. Now at the end of the case you gave a time line and
9 today I've been working on a time line that has a bunch
10 of additional entries. Is there any reason you didn't
11 use a specific time line with Tevon when he was on the
12 stand?

13 A. I don't remember.

14 Q. And if the record reflects you wouldn't dispute the
15 fact that the State really drilled him on the fact that
16 he could not give specific times in this case?

17 A. I'll have to defer to whatever the transcript says.

18 Q. Okay. Did you ever discuss what if any the time of
19 death was in this case that Tevon needed to be prepared
20 to defend against and testify about?

21 A. I don't remember.

22 Q. Now on pages 37 through 38 and 165 you disclose
23 that you had previously represented Jamar Green who was a
24 witness for the State in the trial. Is that something
25 you had disclosed to Tevon Jackson prior to the trial?

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1 A. I don't remember talking to Tevon about it or not.
2 I don't remember if Mr. Green was a witness, if he was a
3 long witness. I don't remember when I found out about
4 Mr. Green. I represented so many people from the public
5 defenders office. And I remember when the solicitor told
6 me that he was going to use Mr. Green because a lot of
7 times -- I mean, we have so many people who are victim's
8 witnesses in this case.

9 Like I told you earlier, that's how I knew the
10 Serranos. I usually ask the solicitor if they're going
11 to be using somebody as a witness and if they're not
12 going to be using them then I don't usually worry about
13 it. I usually do tell my clients when there's a
14 conflict.

15 I do remember in this case when the solicitor told
16 me he was going to use Mr. Green, I talked to Mr. Green's
17 attorney who at that point was another attorney in our
18 office, and Mr. Green waived the conflict.

19 Q. Okay. But did you ever discuss that with Tevon and
20 did he waive any conflict of interest in you having to
21 cross-examine Mr. Green?

22 A. I don't remember but Mr. Green waived the conflict
23 of interest so I would have been able to cross-examine
24 Mr. Green about anything including his record, including
25 any charge I represented him for.

WALLIS ALVES - DIRECT BY BLANCHETTE

1 Q. Okay. You've mentioned already that you knew the
2 Serranos because of working at the public defenders
3 office?

4 A. Yes.

5 Q. Did you disclose that to Tevon prior to trial and
6 address that at all in the record?

7 A. I don't know if I did or not. I don't think I
8 represented the Serranos.

9 Q. Okay.

10 A. I don't remember if I represented the Serranos. I
11 just knew them. They're always involved in -- they were
12 quite regularly involved in cases in our office.

13 Q. Did you feel that that hindered your ability to
14 cross-examine either Tracy or Joey Serrano in this case?

15 A. Not at all. Actually I felt stronger cross-
16 examining them because I didn't consider them to be
17 credible people.

18 Q. And let me ask you this. Typically in post-
19 conviction relief cases the State will make an argument
20 about overwhelming evidence of guilt. With your comments
21 that you made about the Serranos and their credibility in
22 this case, did you find that the State had overwhelming
23 evidence against Tevon Jackson?

24 A. At the time of the trial?

25 Q. Yeah. Would you have -- would you mark the

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1 evidence in this case as overwhelming?

2 A. Against Tevon?

3 Q. Uh-huh.

4 A. No.

5 Q. What were they mostly having to hang their hat on
6 in this case?

7 A. The testimony of Joseph Dicks and Jose Serrano.

8 Q. So therefore their credibilities and any witness or
9 evidence that could have impeached them was very
10 important to your case?

11 A. Very.

12 MS. BLANCHETTE: If I could beg the Court's
13 indulgence one moment.

14 (Pause.)

15 Q. Now one of the allegations is that you failed to
16 make all necessary contemporaneous objections and move to
17 suppress testimony. I've already asked you about some
18 specific things. There's just a couple more items that I
19 wanted to ask you about.

20 There was several guns and ballistics evidence
21 regarding guns that were introduced, specifically David
22 Black testified that there was a .380 that they had that
23 was not a match. That they had, Ira Pernell testified
24 about testing ballistics evidence that was not a match in
25 this case. And then in close the State said, none of the

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1 guns in evidence are the murder weapon.

2 Is there any reason why you didn't object to guns
3 and ballistics evidence coming in that the State conceded
4 were not the murder weapon in this case?

5 A. I thought I did.

6 Q. Now the State also, kind of towards the end of the
7 case, they introduced for lack of better words what I
8 call light pole evidence. I'm not going to go through
9 all of it. But in your closing argument you said, don't
10 get confused with all this light pole evidence. That's
11 on page 68 line 19. And they had called a Lawrence Baker
12 to testify about security lights and Norwood Bodie to
13 testify about the numbers of lights on poles.

14 If you didn't want them to be confused about that,
15 is there any reason you didn't object to it?

16 A. I can't remember whether I objected to it or not.
17 I have to stand on whatever the transcript says.

18 Q. Okay.

19 Your Honor, may I approach the witness
20 again?

21 THE COURT: You may.

22 BY MS. BLANCHETTE:

23 Q. As part of this case I received a discovery order
24 to get a complete copy of your file, the sheriff's
25 department file. If what I had pre-marked here as

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1 Applicant's Number 16 that you have identified, if that
2 was contained in those documents would you not dispute
3 that?

4 A. In my file?

5 Q. Yes.

6 A. If you're saying you got it out of my file, I'm not
7 going to dispute it.

8 Q. Is it something that you recall ever seeing in this
9 case going through the screen shots of Marcus Finklin's
10 phone?

11 A. I have not looked at this -- I did not look at the
12 pictures. I looked at the file when you asked me for
13 information on this file. I have not looked at the file
14 in great detail or any of the CDs since the trial which
15 was in 2011. Since then I've had hundreds of other
16 clients and I don't even know how many other trials.

17 So, I'm sorry. I don't remember any of the
18 pictures.

19 Q. And to be fair you are actually preparing for a
20 murder case for next week right now; is that correct?

21 A. I was until just last night.

22 Q. If you could just look at what has been pre-marked
23 here as Applicant's Number 16. What does it indicate on
24 that screen shot there? What's the title on it?

25 A. Missed calls.

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1 Q. And if you could look --

2 THE COURT: What was it?

3 THE WITNESS: Missed calls.

4 BY MS. BLANCHETTE:

5 Q. I'm sorry. If you could look at State's Exhibit 54
6 for me that we've been referencing, the one page of cell
7 phone records.

8 THE COURT: Applicant's Number seven.

9 MS. BLANCHETTE: Or Applicant's Number
10 Seven. Your Honor, I apologize.

11 THE COURT: That's okay.

12 BY MS. BLANCHETTE:

13 Q. Are there two recorded calls that they have listed
14 for Tevon Jackson at around 2:17 a.m., on State's Exhibit
15 54?

16 A. There are two calls at 2:17.

17 Q. And on the first one, what is the number listed
18 there as far as the phone number being -- that they're
19 associating with Tevon Jackson?

20 A. At the call on 2:17:73, the phone number is

21

22 Q. Okay. And can you look at the other number listed
23 on that line?

24 A.

25 Q. And then the other call, is that

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1 listed as well and associated with the call regarding
2 Tevon Jackson?

3 A. Yes.

4 Q. If you could look on the screen here that says
5 missed calls. Do you see two entries with that same
6 phone number there?

7 A. There is one at 2:18.

8 Q. Okay. And what's the number associated with that
9 missed call?

10 A.

11 Q. Okay. And then is there another one listed for
12 2:17 on the missed calls screen?

13 A. There's not.

14 Q. Do you see the one highlighted in red there?

15 A. Oh. I'm sorry. The one that's highlighted in red
16 is a missed call at 2:17 a.m.

17 Q. So those missed call screens that you have there in
18 your hand shows that there were actually two missed calls
19 from that number at 2:17 and 2:18 a.m.?

20 A. Yes.

21 Q. And based upon what William Hair testified to, the
22 Verizon cell phone records, State's Exhibit 54, there's
23 actually the initials MT and MF by two phone calls around
24 2:17 a.m.; is that correct?

25 A. Yes.

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1 Q. And based upon his testimony then, if we're taking
2 his testimony to be true, one of those calls was received
3 and one of those calls was missed?

4 A. That's right.

5 Q. And is that -- can you reconcile that with that
6 missed call screen shot that I handed you?

7 A. I cannot.

8 Q. If you would have had that information in your
9 file, the screen shots that I'm asking you about, is that
10 something that you would have used or should have used to
11 question the cell phone records introduced as State's
12 Exhibit 54?

13 A. Since you're telling me you got this information
14 from my file, obviously I had it and I should have used
15 it.

16 Q. And would that in fact potentially show that cell
17 phones do lie? You said in closing cell phone records
18 don't lie. But there appears to be not only an
19 inconsistency in Mr. Hair's testimony but one of the
20 screen shots say and what the written phone records say?

21 A. There's a discrepancy.

22 Q. Okay. And that was not something that you raised
23 at trial?

24 A. I did not.

25 MS. BLANCHETTE: Your Honor, if I could

WALLIS ALVES - DIRECT BY BLANCHETTE

1 just beg the Court's indulgence one moment?

2 THE COURT: Sure.

3 (Pause.)

4 MS. BLANCHETTE: Your Honor, since we have
5 moved further apart I think I failed to give you
6 a copy of the last exhibit that was entered.

7 THE COURT: Okay.

8 MS. BLANCHETTE: The evidence property
9 sheet.

10 THE COURT: That was number what?

11 MS. BLANCHETTE: I believe that was Number
12 15.

13 THE COURT: Okay.

14 (Applicant's Exhibit No. 15, evidence
15 receipt, received into evidence.)

16 MS. BLANCHETTE: And then, Your Honor, if I
17 could beg one more moment's indulgence.

18 THE COURT: Okay.

19 (Pause.)

20 MS. BLANCHETTE: Your Honor, at this time I
21 would move to admit Applicant's Number 16, the
22 exhibit regarding the screen shots that I've been
23 referencing with counsel.

24 MR. GOURLEY: Judge, I just don't think
25 Ms. Alves has authenticated it even though at

WALLIS ALVES - DIRECT BY BLANCHETTE

1 this point in time we've gone over it but just
2 for the record, Judge, I don't think Ms. Alves
3 has authenticated it or even identified it.

4 THE COURT: Well, she said she had it in
5 there. You don't know where that came from or
6 anything?

7 THE WITNESS: 16?

8 THE COURT: Yeah.

9 THE WITNESS: Ms. Blanchette said she got
10 it out of my file. I know she did come and make
11 a copy of my entire file but I didn't look at the
12 CDs before I came in here today. If you want, I
13 can look if somebody has a computer available.
14 We have one in the office. I can look at the --

15 THE COURT: Okay. I'll give you time to do
16 that and then we'll come back.

17 MS. BLANCHETTE: Also, Your Honor, the CD
18 that I was able to confirm it on, just because I
19 actually lent my PD's file to the AG's office
20 this week, it is contained on the sheriff's
21 department's file that was turned over to me as
22 part of discovery. It's my understanding the
23 State was not going to dispute that, the
24 authenticity of it, because I received it and I
25 do have that disk where it is contained on there.

WALLIS ALVES - DIRECT BY BLANCHETTE

1 THE COURT: All right. Have you had a
2 chance to look at that?

3 MR. GOURLEY: Judge, I may have.
4 Ms. Blanchette absolutely did send me her CDs
5 file. In regards to not disputing it, I do take
6 exception to that. I'm assuming Ms. Alves or
7 somebody, the appropriate people are going to be
8 in here today to authenticate it, but that's
9 another matter, Judge.

10 But I did -- Ms. Blanchette did provide the
11 CDs file.

12 THE COURT: Let me ask you a question. You
13 indicated to her that you had no objection to the
14 sheriff's department's --

15 MR. GOURLEY: I don't recall. I'm not --

16 THE COURT: Okay.

17 MR. GOURLEY: -- saying.

18 MS. BLANCHETTE: I had actually sent the
19 screen shots and asked if I needed to have
20 Lieutenant Fleury here who turned them over to me
21 to authenticate them. I didn't want to
22 inconvenience him. We exchanged e-mails.
23 Lieutenant Fleury wasn't necessary because I was
24 going to put him from under subpoena.

25 MR. GOURLEY: I may have.

WALLIS ALVES - CROSS BY GOURLEY

1 THE COURT: What I'll do is I'll let it
2 in. So 16 is in over objection.

3 MS. BLANCHETTE: And I just wanted to be
4 clear for the record and not misleading that I
5 was asking about having Lieutenant Fleury here
6 because I knew it was in the sheriff department's
7 file that had been turned over.

8 THE COURT: Thank you, ma'am.

9 (Applicant's Exhibit No. 16, screen shot of
10 cell phone records, received into evidence over
11 objection of the State.)

12 THE COURT: What else?

13 MS. BLANCHETTE: Your Honor, I have no
14 further questions of this witness.

15 THE COURT: Mr. Gourley.

16 MR. GOURLEY: Thank you, Judge.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. GOURLEY:

20 Q. Ms. Alves, how long have you been practicing law?

21 A. Since 1992.

22 Q. All right. And how long have you been with the
23 PD's office?

24 A. I started with the Aiken County Public Defenders
25 Office in 1993. I left in 1995 and went into private

WALLIS ALVES - CROSS BY GOURLEY

1 practice for a little under two years. Was at the Aiken
2 County Public Defenders Office from 1997 until 2004 --
3 no, 2001. I was at the Lexington Public Defenders Office
4 from 2001 to 2004, and I've been with the Aiken Public
5 Defenders Office ever since October of 2004.

6 Q. Is it fair to say you've got a vast amount of
7 criminal experience?

8 A. Yes.

9 Q. And how many murder cases do think you've tried
10 before?

11 A. Tried?

12 Q. Or prepared and represented?

13 A. I don't know; a lot.

14 Q. A lot. Okay. And, did you feel you had adequate
15 time to prepare this case?

16 A. Yes.

17 Q. Okay. And do you recall how many meetings,
18 roughly, did you meet with Mr. Jackson to prepare this
19 case?

20 A. I don't remember.

21 Q. But you had an investigator on this case, correct?

22 A. Yes.

23 Q. And what does a typical investigator do on murder
24 cases?

25 A. Talks to the witnesses, helps me go through the

WALLIS ALVES - CROSS BY GOURLEY

1 discovery, helps me with my investigation of the case,
2 talks to the police officers, meets with the Defendant.

3 Q. Okay. And I'm assuming you filed Rule Five and
4 Brady motions in this case?

5 A. I did.

6 Q. And you received various documents and witness
7 statements, so on and so forth?

8 A. I did.

9 Q. So in typical practice would your investigator have
10 gone out and looked at those witnesses?

11 A. Typically.

12 Q. Typically. But you can't recall specifically for
13 sure in this case? And I understand it's been years
14 since then.

15 A. I can't recall exactly what the investigators did
16 on this case. The investigators normally do notes on the
17 computer. I mean, sometimes we sit down and have
18 conversations. Sometimes they do written notes. A lot
19 of the times on a complicated case they might do notes on
20 a computer.

21 Q. Okay.

22 A. We would e-mail back and forth but my computer
23 crashed after this trial a couple years ago and I lost
24 every document I would have had. The investigator I had
25 is no longer here. I don't know where his notes would

WALLIS ALVES - CROSS BY GOURLEY

1 be.

2 Q. Yes, ma'am.

3 A. And we've gotten new computers in our office since.

4 Q. I understand. Let's just start from the beginning,
5 I guess, just to kind of a rough overview of the case. I
6 know Ms. Blanchette mentioned it, but there was some
7 witness statements against Mr. Jackson, correct, Joseph
8 Dicks and Joey Serrano, correct?

9 A. Yes.

10 Q. And then you had also had Tracy Serrano implicating
11 Mr. Jackson as well saying that Mr. Jackson said he was
12 going to rob the victim in this case, correct?

13 A. Yes.

14 Q. Okay. And there was also -- Mr. Jackson also
15 confessed, allegedly confessed to both Joseph Dicks and
16 Joey Serrano at their house probably around three
17 o'clock, correct?

18 A. That's what they said.

19 Q. That's what they said. Yes, ma'am. Okay. And
20 also a cigarette butt was found by the victim's car,
21 correct?

22 A. Yes.

23 Q. And it had Tevon Jackson's DNA on it, right?

24 A. Yes.

25 Q. Regarding Joseph Dicks and Joey Serrano, I think as

WALLIS ALVES - CROSS BY GOURLEY

1 you said, they were less than credible witnesses in your
2 opinion, correct?

3 A. Yes.

4 Q. And did you not do the best you could possibly do
5 on cross-examination as impeaching those witnesses?

6 A. At the time I thought I did.

7 Q. And actually Joseph Dicks and Joey Serrano were
8 changing their stories up until the day of trial, right?

9 A. They were.

10 Q. I mean, I think you actually got Joey Serrano to
11 admit he changed his story to conform to Joseph Dicks'
12 statement, didn't you?

13 A. I'll have to stand on whatever the record says.

14 MR. GOURLEY: Okay. Beg the Court's
15 indulgence, Your Honor.

16 THE COURT: Okay.

17 MR. GOURLEY: Judge, her cross-examination
18 432 to 433.

19 THE COURT: 432 to 433?

20 MR. GOURLEY: Yes, sir.

21 THE COURT: Okay.

22 BY MR. GOURLEY:

23 Q. Regarding these witness statements that
24 Ms. Blanchette has brought forward, again, you had copies
25 of those witness statements --

WALLIS ALVES - CROSS BY GOURLEY

1 A. Yes.

2 Q. -- in your file?

3 A. Yes.

4 Q. And is it your typical practice to review all the
5 witness statements and review the State's evidence in the
6 case?

7 A. It is.

8 Q. Okay. And is it reasonable to assume the reason
9 why you did not call those witnesses were for some sort
10 of reason? You obviously had some sort of reason behind
11 not calling those witnesses, correct, at the time?

12 A. I would have had reasons at the time, yes.

13 Q. Okay. And you just don't recall what they were?

14 A. I don't.

15 Q. But it wasn't just that, I didn't know about them
16 and I didn't think about it; it was a thoughtful,
17 strategic decision at that point in time during this
18 trial to not call these witnesses that you knew about?

19 A. Well, for the people that I talked to. I can't say
20 whether I talked to some of the people that I was asked
21 about. I can't say why I didn't talk to them if I
22 didn't; I don't remember. I'm sorry.

23 Q. That's fine.

24 A. But for the people that I had under subpoena,
25 obviously I had some sort of theory of the case. And I

WALLIS ALVES - CROSS BY GOURLEY

1 had hoped that my theory would be and my actions would be
2 successful and obviously they weren't.

3 Q. Do you recall what your theory of the case was or
4 what you tried to do?

5 A. I don't.

6 Q. Okay. Ms. Blanchette hammered, you know, this
7 time line aspect of it of why you didn't pin down the
8 time line of 12:40 to one o'clock or somewhere along
9 those lines, why you didn't pin down those people. I
10 think it was Tracy Serrano and Joseph Dicks, correct,
11 between that time frame of 12:40 to sometime around one
12 o'clock? Do you recall Ms. Blanchette asking you about
13 that?

14 A. She -- I think the question revolved around the
15 statement that he was at the house at 12 -- or he left at
16 12:40 and returned back 30 to 35 minutes later saying he
17 killed the victim.

18 Q. Okay.

19 A. And I didn't ask him about that. I don't remember
20 why. I don't know if I missed it. I can't say why.

21 Q. Well, isn't it true that the victim was ID'd with
22 the Defendant at 1:13 or 1:15 selling drugs with
23 Stephanie Green?

24 A. I don't remember the exact time but, yeah, I mean,
25 he was identified after. He --

WALLIS ALVES - CROSS BY GOURLEY

1 Q. And so it's your -- I'm sorry.

2 A. He was identified after their time frame by another
3 witness.

4 Q. Okay. So the victim was alive at least sometime
5 between 1:13 and, let's say, 1:25, 1:30, with the
6 Defendant according to Stephanie Green, correct, if the
7 transcript reflects that?

8 A. That's right.

9 Q. Okay. And he was also alive when he sold drugs to
10 Jabari Johnson, I believe was his name, at 1:30. Jabari
11 was certain that it was around 1:30, 1:35 when he pulled
12 up to the victim's house and the Defendant was with him,
13 with the victim.

14 A. If that's what the transcript says.

15 Q. Okay.

16 Give me one second, Judge. And, Judge, that's on
17 page 170.

18 THE COURT: Thank you, sir.

19 MR. GOURLEY: Yes, sir.

20 Q. So surely according to those two witnesses it
21 wouldn't have behooved you to try to pin down Joseph
22 Dicks and Joey Serrano to say that Tevon killed him
23 between 12:40 and 1:15 or 1:20 because you've got other
24 witnesses that are saying, hey, I saw the Defendant with
25 Marcus at 1:20 and 1:30, right?

WALLIS ALVES - CROSS BY GOURLEY

1 A. In looking at this and looking at the information
2 that was brought out, I probably should have pinned them
3 down on that because it would have showed that they were
4 lying.

5 Q. Okay. And, again, did you not cross-examine them
6 on their inconsistent statements? I mean, they gave
7 various statements throughout this entire case.

8 A. I did cross-examine them on that.

9 Q. And did you not impeach them with the fact that
10 they gave inconsistent statements, correct?

11 A. I made every effort to do so.

12 Q. Okay.

13 Beg the Court's indulgence, Your Honor.

14 THE COURT: Take your time.

15 BY MR. GOURLEY:

16 Q. Do you recall Felice Stallings' statement to the
17 police?

18 A. It was given to me earlier today, I think.

19 Q. And do you still have it -- or, I think I got it,
20 somewhere.

21 Ms. Alves, I'm going to show you Felice Stalling's
22 statement. I'm not sure what exhibit number it was. And
23 specifically the last couple lines there. Is
24 Ms. Stallings not putting the victim at her house,
25 pulling up to her house at or around two a.m. in his car?

WALLIS ALVES - CROSS BY GOURLEY

1 A. She says that he got back to her house. She says
2 he left at 12:31. Between that time and two a.m. I
3 didn't hear from Mark. He then pulled into the driveway
4 but pulled back out minutes later and she texted him at
5 2:45 and he never responded back.

6 Q. Okay..

7 A. So I can't say what exact time she means that he
8 got to her house.

9 Q. All right. Thank you.

10 Do you recall Ms. Ely's testimony during the trial?

11 A. What page is that?

12 Q. I've got it. Get my outline straight here. Give
13 me one second. Ms. Ely. Let's go to page 323, if you
14 will, please.

15 Do you have a copy of the transcript?

16 A. I do.

17 Q. Okay. Give me one second. I'm sorry.

18 And lines 14 through 20. And as Ms. Ely at that
19 point in time saying that she saw Marcus pull up to
20 Felice Stallings' house around two o'clock, something
21 close to two?

22 A. That's right.

23 Q. Okay. So at that point in time we know the victim
24 is still alive at two o'clock, according to Ms. Ely at
25 the very least, right?

WALLIS ALVES - CROSS BY GOURLEY

1 A. We know somebody driving his car was.

2 Q. Okay. Fair enough. Did you feel like this was a
3 third-party guilt case?

4 A. I did.

5 Q. You did?

6 A. I did.

7 Q. Okay. And who do you feel like was the third party
8 in this situation?

9 A. Joseph Dicks or Jose Serrano.

10 Q. Okay. And you didn't request a third-party defense
11 or pursue a third-party defense in this case?

12 A. I don't remember. I mean, obviously I didn't since
13 the transcript doesn't reflect that I did.

14 Q. Okay. Beg the Court's indulgence, Your Honor.

15 THE COURT: Take your time.

16 (Pause.)

17 BY MR. GOURLEY:

18 Q. Did you feel your prior representation of Jamar
19 Green in any way affected your representation of Tevon
20 Jackson?

21 A. No.

22 Q. Did you feel your prior knowledge of Tracy Serrano
23 and the Serrano family in any way affected your
24 representation of Tevon Jackson?

25 A. No. Actually I would have thought that would have

WALLIS ALVES - CROSS BY GOURLEY

1 helped.

2 Q. Okay.

3 A. And can I be honest? I don't remember if I
4 represented any of them. I may have represented --

5 Q. Yes, ma'am.

6 A. -- one of the brothers maybe, or the brother.
7 There's one brother and -- Jose has one brother and two
8 sisters as I recall. I just don't remember. And I think
9 that would have been in the record if I had.

10 Q. Okay. Now according to Joseph Dicks and Joey
11 Serrano Mr. Jackson showed up at their house sometime
12 after two o'clock with two weapons, cocaine, and money
13 and said that he shot the victim in the head and smoke
14 was coming out of his mouth, right?

15 A. I think that's what he said. That sounds familiar.

16 Q. Okay. And they said that Mr. Jackson was in a
17 sweaty kind of panic, correct?

18 A. Is that mentioned in the transcript specifically?

19 Q. It is. Let me point it out. I'm sorry. I should
20 have done that to begin with. Sorry, Judge.

21 THE COURT: Not hurting my feelings at all.

22 BY MR. GOURLEY:

23 Q. Judge, I seem to be missing a couple of pages of my
24 outline for whatever reason. We'll move on.

25 Regarding the cell phone records, did you feel it

WALLIS ALVES - REDIRECT BY BLANCHETTE

1 was in your benefit to have Mr. Ware {sic} qualified as
2 an expert so you could delve into the fact that the cell
3 phone records showed what they showed?

4 A. I don't remember what my thinking was about any of
5 this at this time.

6 Q. Did you not use the cell phone records to your
7 benefit to try to prove that Tevon Jackson was not the
8 person who did this crime though?

9 A. Yes, I tried to do that.

10 Q. Okay.

11 Judge, I don't have any other questions.

12 THE COURT: All right.

13 MR. GOURLEY: Thank you.

14 THE COURT: Anything on redirect?

15 MS. BLANCHETTE: One question, Your Honor.

16 THE COURT: Okay. I'm timing.

17 REDIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q. The State just asked you about Serrano and Dicks'
20 account of Tevon Jackson all sweaty and coming back and
21 claiming that he had murdered Mark. Today Christy Parker
22 testified about seeing them all together at two a.m. and
23 then talking to Tevon at 3:11 a.m., and he was still
24 waiting for Mark to come back.

25 Would her testimony have been pertinent to refute

WALLIS ALVES - RECROSS BY GOURLEY

1 the account giving by Serrano and Dicks?

2 A. It would have been.

3 MS. BLANCHETTE: Your Honor, I have no
4 further questions of this witness.

5 THE COURT: Anything on recross?

6 RECROSS-EXAMINATION

7 BY MR. GOURLEY:

8 Q. Ms. Wallis, it wasn't disputed that Tevon Jackson
9 was hanging out with Joseph Dicks and Joey Serrano, was
10 it?

11 A. I never disputed it.

12 Q. Okay. And it was never any question that he was
13 around these people pretty much the entire day, correct?

14 A. I don't remember. I'm sorry. And I don't remember
15 what Tevon testified to, but, I mean, if the testimony
16 reflects that then I don't dispute it.

17 MR. GOURLEY: Okay. Thank you. Thank you,
18 Judge.

19 THE COURT: May she be excused?

20 MS. BLANCHETTE: I have no objection.

21 MR. GOURLEY: Judge, I would just ask that
22 she stay until Mr. Jackson and the investigator
23 testify.

24 THE COURT: If you don't mind, Ms. Alves.

25 THE WITNESS: Yes, sir.

FELICE STALLINGS - DIRECT BY BLANCHETTE

1 THE COURT: Next witness.

2 MS. BLANCHETTE: Felice Stallings.

3 THE COURT: Say again.

4 MS. BLANCHETTE: Felice Stallings.

5 FELICE STALLINGS, having been duly sworn,
6 was examined and testified as follows:

7 THE CLERK: Have a seat and state your name
8 for the record, please.

9 DIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q. I think the court reporter would appreciate if you
12 could spell your name for the record.

13 A. F-E-L-I-C-E.

14 Q. And your last name is Stallings; is that correct?

15 A. Uh-huh.

16 Q. Ms. Stallings --

17 Your Honor, would you mind if I approached the
18 witness?

19 THE COURT: No.

20 BY MS. BLANCHETTE:

21 Q. -- I'm going to hand you what has been previously
22 marked as Applicant's Number 12. Can you identify what
23 that appears to be for the record, please?

24 A. My statement to the police.

25 Q. Okay. If possible I think you're going to need to

FELICE STALLINGS - DIRECT BY BLANCHETTE

1 talk just a little bit louder. What is that again?

2 A. My statement to the police.

3 MS. BLANCHETTE: Your Honor, at this time I
4 would move to introduce Applicant's Number 12 if
5 it has not already been admitted into the
6 record.

7 THE COURT: Any objection?

8 MR. GOURLEY: No, Your Honor.

9 THE COURT: Applicant's 12 is in without
10 objection.

11 (Applicant's Exhibit No. 12, Felice
12 Stallings' statement, received into evidence.)

13 BY MS. BLANCHETTE:

14 Q. Ms. Stallings, do you remember law enforcement
15 coming to talk to you about this case?

16 A. I do.

17 Q. And you gave that statement that you have there in
18 your hand; is that correct?

19 A. Yes, ma'am.

20 Q. Why did they want to talk with you about the case?

21 A. I guess because of the phone records or whatever,
22 must have appeared on his phone.

23 Q. And had you been with the victim that evening? You
24 had seen him that evening?

25 A. Yes, ma'am.

FELICE STALLINGS - DIRECT BY BLANCHETTE

1 Q. Okay. And I just want to go over with you what it
2 says there in the statement. You say here in your
3 statement that Mark had called you about 10:30 p.m. and
4 he came to your house at 10:45. Is that what you
5 remember?

6 A. That's correct. That's correct.

7 Q. And then he was at your house and he left about
8 12:31?

9 A. Correct.

10 Q. Okay. And at trial Tracy Serrano testified that
11 she saw Mark going towards your home between, around
12 12:30. Would that have been correct or was he at your
13 home and leaving at that time?

14 A. He was leaving my home at that time.

15 Q. Okay. So you could have testified differently from
16 what Tracy Serrano testified to?

17 A. Yes, ma'am.

18 Q. Okay. So he left your house around 12:31. Then in
19 the statement that you say -- you say you didn't hear
20 back from him but he pulled in your driveway about
21 two a.m. Do you mind recalling specifically what you
22 remember seeing that night after he had left at 12:31?

23 A. When he left at 12, I kept getting a phone call
24 from his brother to take him up the street to his
25 neighbor's house. He said I'll be right back, don't lock

FELICE STALLINGS - DIRECT BY BLANCHETTE

1 the door. He left. He came back around about two,
2 pulled in the back yard. He didn't get out. So I looked
3 out the window and he was parked right out front in my
4 front driveway. I was, like, what is he doing. So I
5 just laid back down and went to bed.

6 Q. And did you see him again that night?

7 A. No, ma'am.

8 Q. And your statement says that you sent him a text at
9 2:45 and he didn't respond?

10 A. Correct.

11 Q. Okay. Now you said that when he was there from
12 approximately, I believe it was 10:45 to 12:31, he was
13 receiving phone calls from his brother?

14 A. Yes, he was. That's what he told me.

15 Q. And did he seem pleased with the phone calls he was
16 receiving?

17 A. He was aggravated.

18 Q. Okay. And do you know his brother's nickname? Do
19 you recall what his brother's nickname was?

20 A. Yes. PooPoo.

21 Q. PooPoo. Okay.

22 THE COURT: PooPoo.

23 BY MS. BLANCHETTE:

24 Q. In this case obviously we have your statement here
25 you talked to law enforcement. Did anyone talk to you

FELICE STALLINGS - DIRECT BY BLANCHETTE

1 again after you gave that statement?

2 A. No, ma'am. I went to the solicitor's office.

3 Q. Okay. And what happened when you were at the
4 solicitor's office?

5 A. We went over my statement and he said I wasn't
6 needed.

7 Q. Okay. And do you specifically recall who you spoke
8 with at the solicitor's office?

9 A. Mr. Weeks.

10 Q. And can you identify him here in the courtroom
11 today?

12 A. In the middle.

13 Q. Okay. Did you receive a subpoena for trial?

14 A. No, ma'am.

15 Q. Okay. Did you ever hear anybody -- hear from
16 anybody from the public defenders office or an
17 investigator that was assisting with the case of Tevon
18 Jackson?

19 A. No, ma'am.

20 Q. If someone from the public defenders office or an
21 investigator working on the case of Tevon Jackson would
22 have contacted you prior to trial, would you have been
23 willing to talk with them?

24 A. Yes, ma'am.

25 Q. Okay. Would you have been willing to testify for

FELICE STALLINGS - DIRECT BY BLANCHETTE

1 the defense at trial?

2 A. No.

3 Q. You would not have been willing to testify to what
4 you testified to today?

5 A. I mean, I wouldn't have been on the defense case.

6 Q. Okay.

7 A. Because of the victim.

8 Q. Okay. Because of your feelings for him?

9 A. (Nods head.)

10 Q. Okay. But if you would have received a subpoena
11 you would have appeared in court and they would have
12 addressed that matter?

13 A. I would have had to.

14 Q. And if you were in fact listed on the defense
15 witness list, were you aware of that?

16 A. Ma'am?

17 Q. If you were on the defense witness list, were you
18 aware of that, that they had listed you as a witness?

19 A. No, I didn't know.

20 Q. Okay.

21 Your Honor, if I could just beg the Court's
22 indulgence one moment?

23 THE COURT: Okay.

24 (Pause.)

25 BY MS. BLANCHETTE:

FELICE STALLINGS - DIRECT BY BLANCHETTE

1 Q. Ms. Stallings, do you remember any reason that was
2 given as to why you weren't going to be called by the
3 State?

4 A. I was told that the other statements was more
5 incredible -- or credible than what I gave.

6 Q. Okay. And do you know who Melissa Ely is?

7 A. That was my next-door neighbor at the time.

8 Q. Okay. And were you aware that she was called to
9 testify about what she saw going on at your house?

10 A. No.

11 Q. Do you think it's odd that she was called to
12 testify about what she saw versus you who were actually
13 with Mark that night?

14 A. Honestly I wasn't involved in the case, so I don't
15 know who was called, who was here to answer that.

16 Q. Okay.

17 Your Honor, I have no further questions of this
18 witness.

19 THE COURT: All right. Anything on cross?

20 MR. GOURLEY: No, Your Honor.

21 THE COURT: All right. Thank you, ma'am.
22 I appreciate it. You need any help?

23 THE WITNESS: I got it. Thank you.

24 MS. BLANCHETTE: I just ask that she be
25 released. We had her here under subpoena today.

PETER SKIDMORE - DIRECT BY BLANCHETTE

1 THE COURT: Any problems?

2 MR. GOURLEY: No, your Honor.

3 THE COURT: You're excused from your
4 subpoena. Thank you, ma'am.

5 Next witness.

6 MS. BLANCHETTE: Your Honor, I'd call Pete
7 Skidmore to the stand.

8 PETER GORDON SKIDMORE, having been duly
9 sworn, was examined and testified as follows:

10 THE CLERK: Have a seat. State your name
11 for the record, please.

12 THE WITNESS: Peter Gordon Skidmore.

13 DIRECT EXAMINATION

14 BY MS. BLANCHETTE:

15 Q. And, Mr. Skidmore, and I may slip and call you Pete
16 if that's okay?

17 A. That's fine.

18 Q. What is your profession?

19 A. I'm a licensed private investigator.

20 Q. And how long have you been licensed as a private
21 investigator?

22 A. Twenty-three years.

23 Q. And do you currently -- do you work for yourself or
24 do you work for someone else?

25 A. I work for myself.

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1 Q. Okay. And how long have you had your own private
2 investigation firm?

3 A. Twenty-three years.

4 Q. And during those 23 years have you had experience
5 working on murder cases in South Carolina?

6 A. I have. I've probably done over a hundred murder
7 cases and probably 30 death penalty cases.

8 Q. Okay. And have you testified in both circuit
9 and -- sorry, state circuit court and in federal court as
10 a private investigator?

11 A. Federal court, circuit court, family court,
12 magistrate's court.

13 Q. And do you know approximately how many times you've
14 testified?

15 A. No, I do not.

16 Q. Okay. And, do you carry any other licenses or have
17 any other type of associations that would be pertinent to
18 your work in criminal cases?

19 A. Yes. I was one of the founding members and past
20 president of the South Carolina Public Defender
21 Investigation Association as well as SCALI and also the
22 coroners, I've been a member of the Coroners Association
23 as well.

24 Q. And please explain further your familiarity with
25 the work of coroner's or the coroner's office.

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1 A. Back in 2008 I ran for coroner in York County.

2 Q. And as part of running for coroner did you have to
3 become familiar and be able to convince the public that
4 you were qualified for that role?

5 A. Yes.

6 Q. And what did you do to do that? What understanding
7 did you have at the coroner's office?

8 A. Well the coroner's office is a separate entity all
9 together than law enforcement. And they're supposed to
10 do their own investigation and not rely on any law
11 enforcement.

12 Q. Now, of the cases that you have worked on here in
13 South Carolina, have any of those cases reached the
14 United States Supreme Court?

15 A. They have.

16 Q. And specifically could you give us information on
17 any cases that you've handled that went up to the US
18 Supreme Court?

19 A. Yes. Bobby Lee Holmes and that was on third-party
20 guilt.

21 Q. And what capacity were you used in that case?

22 A. I was the lead investigator.

23 Q. And did you have any other cases that have gone to
24 the higher courts specifically?

25 A. South Carolina Supreme Court. Sterling Spann and

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1 several other cases.

2 Q. And what was your role on those cases?

3 A. I was lead investigator for the defense.

4 Q. And what was your role in Tevon Jackson's PCR
5 application that we're here for today?

6 A. I was the lead investigator for you.

7 Q. And were you in fact retained by Tevon Jackson's
8 family?

9 A. I was.

10 MS. BLANCHETTE: Your Honor, at this time
11 based upon his experience and the fact that I
12 believe his experience can assist the Court in
13 determining matters in this case, I would ask to
14 qualify Mr. Skidmore in the area of private
15 investigation.

16 THE COURT: He's qualified as a private
17 investigator but do you want him to testify as to
18 his opinion?

19 MS. BLANCHETTE: Well, we're going to be
20 going through the matters that he investigated in
21 this case and the opinions that he reached. And
22 I did not want the State to object because he
23 hadn't been qualified as an expert which is why I
24 went through his experience.

25 THE COURT: Okay.

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1 MS. BLANCHETTE: You know, his licenses,
2 those type of things.

3 MR. GOURLEY: As Ms. Blanchette knows and I
4 explained, that I would certainly object to his
5 opinion as to what should have been done in this
6 case. It's, you know, similar to having an
7 attorney set up there and say, "Well, this
8 attorney should have done XY and Z," Your Honor,
9 and that's Green V State 351 SC 184. It says:
10 We don't allow attorneys to get up there and give
11 their expert opinion as to what another attorney
12 should have done.

13 And I say that's fairly similar to the
14 situation where we have one private investigator
15 pitting against what the defense attorney and
16 their private investigators did in that case. So
17 I would say that it's not appropriate testimony
18 for the Court to consider.

19 THE COURT: All right. I don't have any
20 problems with him testifying to what he found or
21 what he discovered and things like that. I have
22 a concern about if he's going to tell me what an
23 attorney should or should not have done during a
24 trial.

25 MS. BLANCHETTE: Your Honor, all that I

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1 plan to go into with him -- and this is where I
2 disagree that it's different than Green because
3 I'm not bringing him to say what another attorney
4 should have done. And that case specifically
5 deals with attorneys. It doesn't say we can't
6 call a private investigator in PCR cases because
7 --

8 THE COURT: And you called him.

9 MS. BLANCHETTE: -- we're claiming that an
10 investigation should have been done. All I
11 intend to show is the investigation that he did
12 and why he thought that would have been pertinent
13 to the case. And I think to meet our prong of
14 failure to investigate, we have to go out and do
15 that investigation.

16 THE COURT: And he's done it. And I'm
17 going to let him testify about what he did and
18 why he went to -- why he did this to follow up on
19 that. That's fine.

20 He just can't give me an opinion that
21 somebody else should have done that. He can tell
22 me why he did it.

23 MS. BLANCHETTE: And I will go over his
24 findings with him then and not ask him if that
25 should have been done.

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1 THE COURT: Right.

2 MS. BLANCHETTE: Your Honor, can I ask him
3 if based upon his experience that's something he
4 would typically do in a murder case where he's
5 acted as the lead investigator?

6 THE COURT: You may phrase it that way.

7 MS. BLANCHETTE: Okay.

8 THE COURT: Okay.

9 MS. BLANCHETTE: I just wanted to make sure
10 that I understood, Your Honor. Thank you.

11 THE COURT: Okay.

12 BY MS. BLANCHETTE:

13 Q. Mr. Skidmore, let's talk about the work that you
14 did in this case. Did you have the opportunity to go out
15 to the crime scene in this case?

16 A. I did.

17 Q. And did you go out to the neighborhood that we've
18 been talking about today, the area of Dry Branch Road and
19 Dry Branch Court?

20 A. Yes.

21 Q. And did you observe Meat Man's house or Joseph
22 Dicks' home, where that's located?

23 A. I did.

24 Q. And did you have the opportunity to speak with
25 individuals in that neighborhood?

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1 A. I did.

2 Q. Now Kevin Parker testified today that he didn't
3 talk to law enforcement because essentially you don't
4 tell in that neighborhood. You don't tell law
5 enforcement information. Going out there and trying to
6 talk with witnesses, was that your understanding as kind
7 of the unwritten rule in that neighborhood?

8 A. Absolutely. I think he couldn't have said it any
9 better. They are not going to come forward to law
10 enforcement or even for a defense, but if you get out
11 there and canvas the area and talk to people and gain a
12 little rapport with them, they will open up. It took two
13 or three times on a couple of people that actually have
14 testified today of gaining their trust and confidence.

15 Q. Now based upon the information -- you went with me
16 to the Aiken County Public Defenders Office and went
17 through the file; is that correct?

18 A. I did.

19 Q. And I turned over to you what we received from the
20 coroner and the sheriff's department in this case?

21 A. Yes.

22 Q. And you thoroughly reviewed those files?

23 A. Yes.

24 Q. And did you also just a couple weeks back go with
25 myself and Mr. Gourley to review the evidence at the

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1 sheriff's department?

2 A. I did.

3 Q. Okay. Now based upon the information that was
4 contained in those files, did you make a list of
5 witnesses that you wanted to try to locate to assist us
6 in investigating this case?

7 A. Yes.

8 Q. And those witnesses that testified today, were they
9 all on that witness list of people that you were trying
10 to locate?

11 A. Yes. And there were additional folks that I could
12 not find at this late date.

13 Q. And you heard testimony today and I introduced
14 the -- proffered the statement of a Doris Jackson. Was
15 that someone that you tried to locate?

16 A. Yes.

17 Q. And -- I'm sorry. We had testimony about a Doris
18 Jackson and an Ivory Jackson. Did you try to locate both
19 of those people?

20 A. I did.

21 Q. And were you successful in doing that?

22 A. No, I was not.

23 Q. Okay. And when you say because of the late date,
24 please explain kind of what hurdles you ran into.

25 THE COURT: And, Ms. Blanchette, let me

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1 make sure. It was Ivory Jackson that we had the
2 statement that was proffered; is that correct?

3 MS. BLANCHETTE: I believe, yes. And Doris
4 Jackson was the reference in the coroner's notes
5 that I asked him about.

6 THE COURT: I wanted to make sure. You
7 could not find Ivory Jackson?

8 THE WITNESS: No, sir.

9 BY MS. BLANCHETTE:

10 Q. And you also tried to find Doris Jackson based upon
11 the notes with her address in the coroner's file. And
12 were you able to locate her?

13 A. No, I was not.

14 Q. Okay. And just going back, Mr. Skidmore. Can you
15 please explain what hurdles you ran into in your
16 investigation? You said because of the litigation.

17 A. Yes, because of the time frame from when the
18 incident actually happened until now, people move, you
19 know. We found people that were in other states that
20 voluntarily came today because we don't have subpoena
21 power in those other states. But it's sometimes
22 difficult to track down people when they have moved and
23 moved in with relatives and don't have power in their
24 name and other issues like that.

25 Q. Okay. And we had the statements with their

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1 information from back when they gave them in 2008; is
2 that correct?

3 A. Yes, you did.

4 Q. Okay. And that was the information you had to go
5 off versus -- and canvassing the local area?

6 A. Yes, even to the point where on one statement the
7 last name was not correct which threw hurdles in
8 everything.

9 Q. That would be Ernest Bull or Bush that testified
10 today?

11 A. That's correct.

12 Q. Okay. Now, when you reached out to each of the
13 witnesses that have testified today, did any of them
14 refuse to come or give you any type of push back or were
15 they willing, you know -- once you found them, were they
16 willing to come today to testify?

17 A. Some were willing. Some were hesitant about
18 coming. And then I even spoke to other witnesses that
19 said that they would come but then decided not to because
20 of pressure within the community.

21 Q. And this is a small community that we're talking
22 about; is that correct?

23 A. Very small community.

24 Q. And when you were back out on the scene, did you --
25 in fact, you were able to identify where Meat Man or

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1 Joseph Dicks lived; is that correct?

2 A. That is correct.

3 Q. And was it ever identified to you that he was one
4 of the individuals you would see hanging out outside
5 while you out there trying to do your investigation?

6 A. I believe so, yes.

7 Q. Okay. Mr. Skidmore, I know you did extensive work
8 out in that area in trying to locate witnesses. Is there
9 anything else about that that you'd like to tell the
10 Court today?

11 A. Just the canvassing. Had that been done shortly
12 thereafter, even six months to a year afterwards, I think
13 you would have found more people than what we found today
14 or in the last six months.

15 MR. GOURLEY: And, Judge, I'm going to
16 object to all of that. That's just giving his
17 opinion as to what should have been done at that
18 time. Exactly what you did not want to come out.

19 THE COURT: Okay. I understand your
20 objection, but --

21 MR. GOURLEY: Just for the record.

22 THE COURT: -- to me that's kind of a
23 common sense thing. The closer a thing is to a
24 trial date the more people are going to be
25 around. So I'll note your objection.

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1 MR. GOURLEY: Yes, sir.

2 THE COURT: Go ahead.

3 BY MS. BLANCHETTE:

4 Q. Mr. Skidmore, in working investigations is a
5 polygraph something that you typically like to review or
6 utilize?

7 A. Well, there are several tools that law enforcement
8 uses and the polygraph is one of the tools that they use
9 and it's strictly a tool that, that they're able to use.

10 In this case with our client saying that he was
11 innocent the whole time and maintaining that innocence,
12 that would have been a tool that not only I would have
13 felt law enforcement would have used because of the cases
14 that I've seen them use polygraphs if he were willing to
15 take one, and it would also be a tool that I would use
16 with defense lawyers particularly if somebody was adamant
17 that they were innocent so that possibly we could get a
18 reputable polygraph examiner that maybe the State of
19 South Carolina recognizes and therefore provide it to the
20 solicitor's office if he were to pass and work with them
21 in trying to find out who actually committed the crime.

22 Q. And you've heard mention today of cell phone
23 records, the cell phone records that were admitted.
24 You've reviewed all the cell phone records in the file,
25 the text message records that were in the file. You've

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1 reviewed all the pictures of the screen shots of cell
2 phones that were obtained.

3 Did you ever see anything in the file when you were
4 going through it working on your investigation regarding
5 cell phone triangulation in this case?

6 A. No. That just recently came up when we
7 interviewed -- and the name's left me, the young lady
8 that testified first this morning from Georgia. And she
9 was very adamant that she had met with the solicitor's
10 office as well as law enforcement because of the issue
11 that she provided the murder weapon.

12 And she told me -- and the only way she would
13 really know that is if somebody had told her that the
14 reason that they did not call her or charge her with a
15 crime was that they had reviewed her records as well as
16 used triangulation in the case to locate her when she was
17 out of town to prove that she was not here.

18 And that, that goes that cuts both ways because I
19 have seen the triangulation in cases where law
20 enforcement has actually used it to place somebody in the
21 vicinity of where a crime took place.

22 So it's not unusual that law enforcement uses
23 triangulation to place people in that area of where a
24 crime was committed. And in this case it appears that
25 they used that with her to show that she was not in the

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1 area where the crime took place.

2 Q. But you're basing that upon the information that
3 she gave you and the information that she testified to
4 under oath in court. You never saw any records in the
5 file pertaining to Kayla Floyd; is that correct?

6 A. No statements, no records, no nothing.

7 Q. And when you located her in Georgia a couple weeks
8 back --

9 A. Yes.

10 Q. -- was that the first you had essentially heard the
11 information that she gave you?

12 A. That's correct. And we were going through the
13 transcript and the closing arguments that the, I believe
14 the solicitor gave. And that's why we felt that she was
15 an important witness to locate.

16 Q. And, I'm sorry. I failed to ask you. You
17 thoroughly reviewed the transcript in this case as well;
18 is that correct?

19 A. Parts of the transcript, that's correct.

20 Q. Okay. And you met with me in my office probably
21 numerous times, have been called by me hundreds of times
22 sending you documents and referencing parts of the
23 transcript and the evidence in this case?

24 A. That is correct.

25 Q. So you're highly familiar with this case?

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1 A. Yes.

2 Q. Okay. Now, I mentioned already that you went to
3 the sheriff's department to review the evidence with us.
4 What was one of the items you were specifically
5 interested in looking at that day?

6 A. The cell phones, the additional cell phones. It
7 was very odd to me that there were no other records or no
8 other mention as far as what were on the other cell
9 phones that had been placed into evidence at the
10 sheriff's department.

11 Q. And I've already admitted into evidence the
12 property evidence receipt, the reports, five cell
13 phones. And based upon that property report and based
14 upon the testimony at trial, we were there looking for
15 five cell phones; is that correct?

16 A. That is correct.

17 Q. And how many did you actually find in that file?

18 A. There were six.

19 Q. And did you see -- Your Honor, I'll withdraw that
20 question.

21 And kind of what was your take away from seeing six
22 cell phones there?

23 A. Well, there again, you know, back when this
24 occurred our office now, today, has, and, you know, that
25 capability may not have been available to the sheriff's

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1 department, but there's a Cellebrite's machine that you
2 can even -- when there are messages or deleted numbers or
3 anything, that you can pull back up.

4 At the very least I would have tried to -- if I
5 were working on this case back then, I would have at
6 least tried to power up those phones and see what the
7 last calls missed, calls, voice mails on it, photographs,
8 anything like that.

9 And as far as I can tell within the sheriff's
10 department there was no mention of those additional
11 phones and what information was gathered if any.

12 Q. And through records, the text message records, the
13 phone records, which one page of was admitted at trial,
14 and screen shots that you've reviewed, those all seem to
15 pertain to one cell phone that was in the victim's
16 possession; is that correct?

17 A. Yes.

18 Q. And in reviewing the sheriff's department's file,
19 did you review screen shots that were reported to be the
20 victim's cell phone?

21 A. Yes.

22 Q. And did you have the opportunity to compare those
23 screen shots to the cell phone records that were admitted
24 at the trial?

25 A. Yes.

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1 Q. Okay.

2 Your Honor, if I could beg the Court's indulgence
3 one moment?

4 THE COURT: Okay.

5 BY MS. BLANCHETTE:

6 Q. I'm going to show to you what's been marked as
7 Applicant's Number Seven which was State's Exhibit 54
8 admitted at trial and then Applicant's Number 16. First,
9 Mr. Skidmore, are you familiar with Applicant's Number
10 Seven?

11 A. Yes.

12 Q. Okay. And I actually provided that to you after
13 going to the clerk's office and getting a copy of the
14 exhibits?

15 A. Yes.

16 Q. And then are you familiar with Applicant's Number
17 16?

18 A. Yes.

19 Q. And was that contained in the sheriff's department
20 file and the other files that I provided to you based
21 upon the discovery order we had in this case?

22 A. Yes.

23 Q. Okay. And I already asked defense counsel about an
24 inconsistency or an alleged inconsistency between those
25 records and the cell phone records and what was testified

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1 to at trial. If I could direct your attention to the
2 cell phone records and the entries there for 2:17 a.m.
3 for Tevon Jackson.

4 A. Yes.

5 Q. Was it your understanding based upon your review of
6 everything in the case that if you looked at the cell
7 phone record's custodian's testimony, William Hair, which
8 is what the State appeared to call him as, that he said
9 that if a call was a voice mail it had MF as the initials
10 beside it?

11 A. Yes.

12 Q. And that you could also tell that a call was
13 received if there were any seconds next to it?

14 A. Yes.

15 Q. And in reviewing that testimony and those records,
16 did you find that to be highly inconsistent and
17 inaccurate?

18 A. It's very inaccurate.

19 Q. And is that something that you would have pointed
20 out in reviewing those things in preparation for the
21 trial in this case if you were working as the
22 investigator at that time?

23 A. Absolutely. As well as the qualifications of him
24 being able to even allow those records in.

25 Q. And would you have thoroughly reviewed those

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1 records and gone over those records prior to trial?

2 A. Yes.

3 Q. And, in working on this PCR case, is there also an
4 inconsistency that was obvious to you from the records of
5 those screen shots?

6 A. Yes.

7 Q. And what is that?

8 A. Well, as you've just pointed out, the initials used
9 don't match up with the testimony of the screen shots.

10 Q. And based on the screen shots, those would have
11 both been missed calls from Tevon Jackson?

12 A. That is correct.

13 Q. But the jury was given information that would have
14 led them to believe that one was received and then one
15 was missed?

16 A. Yes.

17 Q. And would it have -- just based upon your knowledge
18 in this case, was it pertinent to you as to whether or
19 not Tevon Jackson talked to Marcus Finklin at 2:17 a.m.
20 or whether the call was missed?

21 A. Oh, absolutely.

22 Q. Why so?

23 A. Well, just going back and also showing the
24 inconsistencies of everything, I mean, and discrediting
25 the witness for Verizon.

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1 Q. And you're familiar with the transcript where
2 defense counsel says the cell phone records don't lie.
3 In working on this case, preparing for the PCR, reviewing
4 everything, would -- did you point out to me that it
5 appeared to you that the cell phone records were lying in
6 this case?

7 A. Yes, based on the test -- or, the arguments, yes.

8 Q. Okay. And is that something if you were working on
9 the original case that you would have brought to the
10 attention of trial counsel?

11 A. Absolutely.

12 Q. Mr. Skidmore, is there anything else regarding the
13 cell phones themselves, the records, and in the screen
14 shots that you encountered in your investigation or paid
15 attention to in investigation and that you'd like to
16 testify about today?

17 A. Well, I mean, it's obvious somebody made a mistake
18 somehow in the inventory if there were only five cell
19 phones noted and there are actually six cell phones
20 noted.

21 The other thing that I'd like to point out when I
22 was interviewing people out there, they made it very
23 clear to me and there was an issue about Mr. Jackson's
24 shoes that were taken into evidence and there was no mud
25 or dirt or anything or any signs of scuff marks. And the

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1 people that I interviewed told me that he was very
2 particular about that and would not have gone anywhere
3 but on the side of the road because of not missing up his
4 tennis shoes. He was very particular about them. And
5 there were no scuff marks in there, on his shoes as well.

6 Q. Okay. Now, I mentioned already that I obtained the
7 coroner's file as part of the discovery in this case and
8 forwarded it to you.

9 A. Yes.

10 Q. Why did you ask me to pay special attention to the
11 times listed in the coroner's report?

12 A. Well, as I stated earlier, it's the job of the
13 coroner's office to independently investigate murders,
14 deaths, and come up with their own conclusion which, what
15 I saw was very odd. And I asked you to, if you would,
16 check and see why I think it was LT was on there and
17 changed the time of death. And as was stated today law
18 enforcement contacted the coroner's office and asked the
19 coroner's office to change the time of death, I think,
20 from three-something to two-something.

21 Q. And why was that an important detail to you?

22 A. Well, because it's very apparent based on the
23 testimony today that he was alive and receiving telephone
24 calls still at 3:01, I believe.

25 Q. And, you've read the whole transcript. You looked

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1 at every piece of paper and CD that I could give to you.
2 Were you ever able to determine the time of death that
3 the State was alleging in this case?

4 A. No, because as I pointed out the most, I think,
5 {sic} piece of evidence is the fact that someone spoke to
6 him and testified to that at 3:01. And through my
7 interview of that person, that's what they had said as
8 well.

9 Q. But that information wasn't presented at trial,
10 that's just information we presented today.

11 A. That is correct. But it would have been very
12 important at trial.

13 Q. Okay. Now, wouldn't it have been key to an
14 investigation -- if you're given a murder investigation,
15 wouldn't it have been key to know the time frame that
16 you're working with?

17 A. Absolutely.

18 Q. Okay. And would you have wanted to go through as
19 you did in this -- would you want to in a typical murder
20 case go through and figure out everything regarding the
21 time if the State's not giving you a specific time?

22 A. Absolutely.

23 Q. Okay. And in this case in preparation for the PCR,
24 did you ultimately do that, put together an extensive
25 time line based upon the evidence presented at trial as

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1 well as the evidence presented here today and that you
2 were able to investigate and find?

3 A. Yes, as well as speaking to witnesses.

4 Q. Okay. And does this exhibit here -- or, I'm sorry,
5 does this poster board here accurately reflect the
6 information -- and I know I gave some shortened
7 abbreviations today for things, but does this accurately
8 reflect the information that you were able to ascertain
9 regarding the time line in this case?

10 A. Yes.

11 Q. And is this information that you provided to me and
12 went over with me?

13 A. Yes, a lot of it actually was provided to you
14 through files and through witness statements. And I just
15 followed up with those as well as other folks to come up
16 with the time line. So it actually was provided to
17 defense counsel at the time of trial as well.

18 Q. In your knowledge of this case and in your
19 experience, is this something you -- is this time line,
20 this complete, comprehensive time line, is that something
21 that you would have talked with counsel about and -- I'm
22 trying to pick my words here wisely -- would have urged
23 counsel to use in a case like this?

24 A. Yes. If you had had that time line as defense
25 counsel, you would have been able to discredit two of the

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1 very good and damning witnesses for the State.

2 Q. And those would be Jose Serrano and Joseph Dicks?

3 A. Yes.

4 Q. And does it also call into question the fact that
5 even defense counsel was arguing that Mark was killed
6 sometime between 2:17 and three a.m., and does this
7 time line call into question the fact that he was still
8 alive at three a.m.?

9 A. Yes, 3:01.

10 Q. And one of the witnesses that testified today,
11 Latika Elliott, actually gave you that information, gave
12 it to law enforcement and actually testified to that here
13 today?

14 A. Yes.

15 Q. Okay. I don't want to be redundant and the
16 testimony is already in the record of all the witnesses
17 so I'm not going to go over each of those with you, but
18 is there anything else regarding the witnesses that were
19 called today as it relates to the time line that you
20 would like to explain to the Court?

21 A. I think Christy Parker -- everybody on that in red
22 is very important in my opinion.

23 Q. And one thing that is not on here and we've talked
24 about today is that in Joseph Dicks' statement he says
25 that it's 12:40 when Tevon Jackson leaves and both him

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1 and Jose Serrano testify that Tevon is gone for about 30
2 to 35 minutes and commits the murder.

3 A. Yes.

4 Q. What time frame then would Tevon Jackson have
5 committed the murder in?

6 A. It would have had to have been after 3:01.

7 Q. Well, if -- sorry. If he had left at 12:40 --

8 A. Uh-huh.

9 Q. -- spends 30 to 35 minutes to commit the murder,
10 what time frame would have it had occurred in?

11 A. Shortly after one o'clock.

12 Q. And the State's own witnesses said that they saw
13 him alive after one a.m.; is that correct?

14 A. That is correct.

15 Q. And in your review of the trial transcript was that
16 issue ever brought out?

17 A. No. And there again, I go back to if you had done,
18 I don't want to say a simple time line but a time line
19 and called your witnesses, you would have been able to
20 discredit the two witnesses that really as I would say
21 put the nails in the coffin.

22 Q. And when we sat down in my office and did time
23 lines over and over again, did we continuously reach the
24 conclusion that this just does not make sense?

25 A. Well, it's just not factual.

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1 Q. And is that information that you think should have
2 been given to the jury in this case?

3 A. Absolutely, I don't -- yes.

4 Q. And you're familiar with the transcript and the
5 fact that the jury began deliberating on an afternoon on
6 a Friday and they went late into the night. I think it
7 might have been approximately nine hours they
8 deliberated. Based upon -- their deliberation followed
9 only the use of one witness, Tevon Jackson; is that
10 correct?

11 A. That's correct.

12 Q. And none of these witnesses that we've put up today
13 or the information that you were able to investigate and
14 find out was presented to that jury that deliberated for
15 that long?

16 A. That's right.

17 Q. Now I just want to go back to Kayla Floyd for a
18 minute and just make sure I am clear. You were able to
19 locate her and get her here for today; is that correct?

20 A. Yes.

21 Q. And that information started with seeing her name
22 in the transcript?

23 A. Yes.

24 Q. And then how did you find out her last name?

25 A. How did I find -- to be honest, I forgot that.

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1 Q. Was I easily able to give you her last name?

2 A. Yes.

3 Q. And then were you able to locate contact
4 information for her?

5 A. Yes.

6 Q. If you had been working this case and on the day of
7 trial you were told we have new information about Kayla
8 that provided a murder weapon, we need you to try to find
9 her, would you have told defense counsel, I'd be happy to
10 do it but we need more time? What would have been your
11 response to that?

12 A. Yes. There have been several cases right up to
13 going to trial that defense attorneys asked for more time
14 based on evidence that was just turned over. And she was
15 a key witness. As I said, apparently in closing, you
16 know, she provided the murder weapon which she did not
17 provide. And the -- law enforcement as well as what I've
18 been told the solicitor's office knew she didn't provide
19 the murder weapon because she wasn't in town. At that
20 time she lived on Dry Branch Road. It would have been a
21 lot easier to have located her.

22 Q. Pete, I know, like you said a couple times, you
23 worked extensively on this case. Is there anything else
24 regarding your investigation and work on this case that
25 you'd like to explain to the Court today?

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1 A. No. I think the most important thing is the two
2 witnesses that testified, we've gone over their testimony
3 today, and I hope the Court has seen that he was still
4 alive at 3:01. And so it should just discredit them and
5 it should have been handled at the time of trial.

6 Q. And based upon the State's own evidence at trial
7 and their witness Jose Serrano and the statements, he
8 says that he's going home at three o'clock a.m. by
9 himself; is that correct?

10 A. That's correct.

11 Q. So if Jose's going home -- based upon your
12 understanding of the case, if Jose is going home at
13 three a.m., and the victim's still alive talking to
14 Latika Elliott at 3:01 a.m., did that allow for an
15 opportunity for Jose Serrano to commit this crime on his
16 own?

17 A. I believe so. I would have pursued third-party
18 guilt in this case.

19 Q. And, that was going to be my next question. You
20 would have urged counsel to pursue a claim of third-party
21 guilt?

22 A. Absolutely.

23 Q. And not only against Jose Serrano but is there
24 another individual -- well, let me ask you this. Another
25 individual we've been talking about today, PooPoo, his

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1 brother, is that someone else that you would have
2 considered a potential third-party guilt?

3 A. I certainly would have looked into that aspect of
4 things.

5 Q. And you would have urged her to present the
6 testimony today regarding PooPoo that we provided today
7 regarding PooPoo?

8 A. Yes. This case as far as third-party guilt in my
9 investigation portion of it falls very closely into the
10 Jimmy White with Bobby Lee Holmes on third-party guilt.

11 Q. And most of us in this room have no working
12 knowledge of that.. So could you explain that further for
13 me?

14 A. Well there were just witnesses that put Jimmy White
15 in location and proximity as well as boasting and
16 bragging after Mr. Holmes had been sentenced and tried.

17 Q. And to you that was very similar to what you
18 discovered in this case?

19 A. Yes.

20 MS. BLANCHETTE: Your Honor, if I could beg
21 the Court's indulgence one moment.

22 THE COURT: Sure.

23 (Pause.)

24 MS. BLANCHETTE: Your Honor, at this time I
25 would move to introduce the time line exhibit

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1 that we've had here in Court as Applicant's
2 Number 17 based upon the testimony of all the
3 witnesses today and specifically based upon the
4 testimony of Mr. Skidmore.

5 THE COURT: It is demonstrative evidence.

6 MS. BLANCHETTE: Yes, Your Honor, just so
7 that we have it in the record.

8 THE COURT: Any objection?

9 MR. GOURLEY: No, sir, Judge.

10 THE COURT: Okay.

11 MS. BLANCHETTE: I will see that it's
12 marked and I have no more questions of
13 Mr. Skidmore.

14 (Applicant's Exhibit No. 17, time line,
15 received into evidence.)

16 THE COURT: And we'll take a break before
17 you cross-examine.

18 MR. GOURLEY: That's fine.

19 THE COURT: We'll take about a 10-minute
20 break. Mr. Skidmore, you know, you can step down
21 but you can't talk to anybody about your
22 testimony.

23 THE WITNESS: Yes, sir. Thank you.

24 THE COURT: About 10 minutes.

25 (Break taken at 3:47 p.m., at 3:58 p.m.,

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1 the hearing resumed:)

2 THE COURT: Mr. Gourley, are you ready?

3 MR. GOURLEY: Yes, Judge.

4 THE COURT: Okay.

5 CROSS-EXAMINATION

6 BY MR. GOURLEY:

7 Q. Mr. Skidmore, you mentioned something, a
8 Cellebrite. Is this something that recalls the stuff --
9 am I pronouncing that correctly?

10 A. I think so.

11 Q. Okay. And are you saying it was in existence in
12 2008 or was not in existence in 2008?

13 A. I said I did not know if it was in existence and
14 the Aiken County Sheriff's Department had access to it.

15 Q. Okay.

16 A. I know probably other government agencies on up the
17 chain probably had that capability but it's just been in
18 the last few years where local agencies have been using
19 that technology.

20 Q. Okay. And based off of your research in the case
21 you weren't able to discover any of those documents or
22 anything like that, that it had been done?

23 A. That's correct.

24 Q. And then did you interview all the witnesses
25 throughout this trial?

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1 A. I tried to locate and interview most of the
2 witnesses, yes.

3 Q. Okay. And are you saying that law enforcement did
4 a poor job or the attorney did a poor job or both?

5 A. I'm saying what I would have done. I'm not passing
6 judgment on either of those. If I had been involved as
7 the investigator, this is what I would have done and
8 passed on to the attorney and urged that some of them,
9 these witnesses be called because of the time line.

10 Q. Okay. Just be called but not -- you don't know
11 whether or not they were investigated, do you?

12 A. Well, they -- obviously a lot of them were
13 investigated because law enforcement did interview them
14 and they gave witness statements.

15 Q. So, if you were retained on this case you would
16 have just simply urged defense counsel to call these
17 witnesses and present this third-party guilt then?

18 A. Absolutely not. I would have gone out and
19 interviewed these people because what I found is
20 sometimes the statements don't reflect everything that
21 the witness would testify to in court. So I would have
22 gone out and interviewed all the witnesses that testified
23 today here that -- they've stated that nobody from the
24 defense team ever came out and interviewed them.

25 Q. Okay. But you agree with me they did give

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1 statements, the majority of them did give statements?

2 A. Yes, sir.

3 MR. GOURLEY: I have no other questions.

4 Thank you, Mr. Skidmore.

5 THE COURT: Anything on redirect?

6 MS. BLANCHETTE: No, Your Honor.

7 THE COURT: Thank you, sir. You may step
8 down.

9 THE WITNESS: Thank you.

10 THE COURT: Next witness.

11 MR. GOURLEY: Your Honor, I call my last
12 witness, Tevon Jackson.

13 TEVON JACKSON, having been duly sworn, was
14 examined and testified as follows:

15 THE CLERK: Have a seat and state your name
16 for the record.

17 THE WITNESS: Tevon Jackson.

18 DIRECT EXAMINATION

19 BY MS. BLANCHETTE:

20 Q. Can you spell your first name for us?

21 A. T-E-V-O-N.

22 Q. Okay. And, Tevon, you have filed the PCR
23 application docketed at 2013-CP-02-2693 that was filed on
24 November 27th, 2013, that we are here about today; is
25 that correct?

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1 A. Yes.

2 Q. And as your attorney I also made two additional
3 amendments on your behalf; is that correct?

4 A. Yes.

5 Q. -Actually three, but we had one supersedeas because
6 of my error; is that correct?

7 A. Say the question one more time.

8 Q. We -- I actually filed three amendments on your
9 behalf but one of them I made some errors in. So we're
10 going forward on two of the amendments today; is that
11 correct?

12 A. Yes.

13 Q. Okay. By way of those amendments and your
14 application, what is the relief that you're asking Judge
15 Dickson for today? What are you asking for him to do?

16 A. Grant a new trial.

17 Q. Okay. Now, Tevon, what sentence are you currently
18 serving?

19 A. Thirty-year sentence, mandatory, day for day.

20 Q. And you understand that murder actually carries a
21 sentence of 30 to life; is that correct?

22 A. Yes, ma'am.

23 Q. And I have advised you that there's a risk in
24 asking for a new trial. The State could take you to
25 trial again, even if you're successful here at your PCR,

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1 and they could seek the maximum sentence in your case?

2 A. Yes, ma'am.

3 Q. And you understand that risk and you still want to
4 go forward here today?

5 A. Yeah.

6 Q. Okay. Now, Tevon, I'm going to ask you a little
7 bit about -- I'm going to reference you to your
8 testimony. Do you have a copy of the transcript there in
9 front of you?

10 A. No. I said, kind of difficult to carry with these
11 cuffs on.

12 MS. BLANCHETTE: Your Honor, would you mind
13 if I approach with his copy of the transcript?

14 THE COURT: No, ma'am.

15 BY MS. BLANCHETTE:

16 Q. And, Tevon, you are a quiet talker. I usually talk
17 over you. So please make sure that everybody can hear
18 your voice in here today. Okay?

19 A. All right.

20 Q. At the beginning of your trial, and I know you
21 reviewed this so let me know if you need more time to
22 find the exact site, but the State in their opening
23 explains on page 51 that the incident happened in June of
24 2008 and it took so long to get to court -- it took three
25 years essentially, you were there in 2011 -- which is a

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1 reflection of the process.

2 What was the process like for you? Were you
3 wanting to get to court sooner than the three-year wait
4 you had?

5 A. Yes.

6 Q. And did you understand why you had not got into
7 court?

8 A. No, not really. I mean, I knew I was getting
9 tossed around from --

10 Q. When you say tossed around, at another point on
11 cross-examination on pages 635 through 636 the State is
12 trying to pin you down that you had two years to work on
13 your story and get all these things straight. And at
14 that point you explained to them that you've had three
15 different attorneys and you'd only meet with Ms. Alves
16 three to four times?

17 A. Yes.

18 Q. Is that essentially what you mean by being tossed
19 around?

20 A. Yeah. They was switching me from public defender
21 to public defender.

22 Q. And so you didn't have a sense of time with
23 Ms. Alves to actually work on your case; is that correct?

24 A. No, like she said, she had just got my case 2010
25 and I went to court for trial in February 2011. So I

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1 ain't had a whole year.

2 Q. Okay. And you received a copy of the discovery
3 from the public defenders office; is that correct?

4 A. Yes, ma'am.

5 Q. And you received a copy of the preliminary hearing
6 that we've introduced today?

7 A. Yes, ma'am.

8 Q. Now we have spent the whole day going through
9 issues with the evidence and witnesses that should have
10 been called and those type of things. And you and I have
11 gone over all the discovery very thoroughly together.
12 Did you ever have the opportunity to point those things
13 out in your discovery, the things that we've addressed
14 today, to Ms. Alves prior to your trial?

15 A. No.

16 Q. Okay. And if you could just answer a little bit
17 more loudly.

18 A. No.

19 Q. Okay. Thank you.

20 Now, she testified today that she had gotten
21 information from the solicitor the day of your trial
22 regarding what I'd like to call like a round table that
23 they had had with Dicks and Serrano where essentially
24 they changed their stories and then they gave information
25 about Kayla. Was that information conveyed to you?

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1 A. Which part?

2 Q. Did you know, up until -- before Dicks and Serrano?

3 THE COURT: Is it Kayla?

4 MS. BLANCHETTE: I'm sorry, Your Honor?

5 THE COURT: Is it Kayla?

6 MS. BLANCHETTE: they say Kayla in the
7 transcript.

8 THE WITNESS: It's Kalyn.

9 THE COURT: I thought she said Kalyn,
10 correct?

11 MS. BLANCHETTE: That is correct, Your
12 Honor.

13 THE COURT: Okay. Go ahead. That's okay.
14 I just wanted to make sure.

15 BY MS. BLANCHETTE:

16 Q. Prior to your attorney questioning Dicks and
17 Serrano about recently changing their stories, and Dicks
18 testifying using the name Kayla and giving that -- having
19 given that information about her providing the murder
20 weapon and the description of her, did your attorney tell
21 you the first day of trial, hey, the State has this new
22 information that we need to deal with?

23 A. Yeah. The first day of trial she informed me that
24 they had Jose Serrano and Joseph Dicks and they'd gave
25 basically brand new statements, not the statements that I

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1 have for the whole three years I was in the County. They
2 did completely new statements on.

3 Q. And had you essentially memorized their statements
4 in that discovery?

5 A. The original ones, yeah.

6 Q. And that's what you were prepared to respond to
7 when you took the stand at your trial?

8 A. Exactly.

9 Q. And what they testified to at trial was essentially
10 new to you?

11 A. Completely new.

12 Q. Okay. Now, when Joseph Dicks testifies about a
13 Kayla on pages 233 through 235 and then is asked about
14 her on cross-examination and how he describes her, did
15 you immediately know who they were talking about?

16 A. Immediately.

17 Q. And who did you know that person to be?

18 A. Kalyn.

19 Q. Kalyn. And did you know her last name?

20 A. Floyd.

21 Q. If your defense counsel would have told you, hey,
22 they're telling me about this Kayla and giving me the
23 description that Joseph Dicks gave, would you have been
24 able to tell her who that was?

25 A. Yeah. I went to school with her almost everyday if

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1 not every other day.

2 Q. And did you know that she lived in the Dry Branch
3 area at that time?

4 A. Stay about two or three houses down. I could walk
5 to her house.

6 Q. So you could have given your defense counsel
7 information on where she could have tried to locate Kalyn
8 at that point?

9 A. Easily.

10 Q. Now if she would have conveyed to you or when she
11 conveyed to you this new information, did she ever say
12 and I'm going to ask for a continuance so we have time to
13 prepare for the change in their statements and that
14 information about somebody providing the murder weapon
15 named Kayla?

16 A. No, I really was confused on them making new
17 statements. I asked her, they -- I asked her could they
18 even do that and she told me they could. So, just -- she
19 just went -- we just went along with it, you know. Ain't
20 stopped it. She ain't never tried to postpone or prepare
21 for it or nothing like that.

22 Q. Would you have wanted her to ask for more time to
23 prepare based upon the new information?

24 A. Very much so.

25 Q. Would you have wanted her to locate Kalyn Floyd and

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1 have her testify as we did here today?

2 A. Yeah. They said she gave me the murder weapon.

3 I'd like -- ask me the question again.

4 THE COURT: Hold on one second,

5 Mr. Jackson. Let me just tell you, you've got to

6 speak clearly and loudly. Okay?

7 THE WITNESS: All right.

8 THE COURT: Can you do that? You know, can

9 you? You're young. Okay. So let's try it.

10 Okay?

11 THE WITNESS: All right.

12 THE COURT: Go ahead.

13 BY MS. BLANCHETTE:

14 Q. And I won't even try to rephrase. I'll just ask
15 you another question. Would you have wanted your
16 attorney to locate and call Kalyn Floyd as a witness and
17 why?

18 A. Oh, yes, yes, yes, because they said she gave me
19 the murder weapon. So of course I had wanted her to come
20 to court and testify.

21 Q. And just with the basic knowledge that you have of
22 the criminal proceedings that you've been a part of, is
23 it a question to you as to why she wasn't charged in this
24 case?

25 A. That was the biggest question I ever had. If she

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1 gave me the murder weapon, my understanding of the law of
2 South Carolina, that was at least accessory. And if they
3 felt like it was true, I know for a fact the County would
4 have locked her up but they locked me up. So they would
5 have locked her up right along with me. I knew it wasn't
6 true because they ain't locked her up for it.

7 Q. And you had told them in your statement that you,
8 you know, did not kill Marcus Finklin and you gave the
9 whereabouts you had that evening but you got locked up;
10 is that correct.

11 A. Yeah. I'm the first person to write a statement,
12 to go to the police. Police didn't have to find me. I
13 found them and I gave my statement.

14 Q. And then were you arrested after Jose Serrano and
15 Joseph Dicks gave their original statements?

16 A. Yeah, I was let go. Everything, like I said,
17 matched up with the phone records. And then about a week
18 or so later, I was informed that the police was looking
19 for me again. So I thought maybe it was about the
20 polygraph test that I offered to take, you know, but
21 obviously it wasn't. It was to lock me up because they
22 said that two statements saying that I confessed the
23 murder to them.

24 Q. And when you were in the County, was it eating you
25 up as to what occurred during the meeting between law

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1 enforcement and Joseph Dicks and Jose Serrano?

2 A. Very much so because, I mean, from the last time I
3 had talked to them I was good. I was straight, you know,
4 but, you know, all of a sudden they're locking me up,
5 accusing me of murder. I was confused.

6 Q. Did you want to know what law enforcement had told
7 them and specifically if law enforcement told them that
8 they, that you had told on them?

9 A. Yeah, because I'm accused of a murder I didn't do
10 so of course I want to know what's going on.

11 Q. Did you reach out specifically to Joseph Dicks or
12 Meat Man when you were in the county detention center?
13 Did you try to call him?

14 A. Yeah, yes.

15 Q. Okay. And after that phone call took place did you
16 ask your defense attorney to get a recording of it?

17 A. Yes.

18 Q. Why? What happens during that recording that you
19 thought was pertinent to your case?

20 A. Because I was, I was -- I had them on the phone and
21 I was trying basically -- see why, you know, why was
22 these statements, why was these false statements given
23 against me, like, because I was confused on what
24 happened. And I was basically hoping that he would give
25 me some kind of reason why that he would make these

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1 statements on me.

2 Q. And when you asked him, did he convey to you that
3 law enforcement told him that you had told on him?

4 A. Yes, because I basically asked him that from, you
5 know, I, I figured that it had to be something like that
6 because I was kind of confused on it. And I really was
7 just young at the time and I was going off, you know,
8 watching shows like First 48. And I basically asked them
9 did they play good cop/bad cop, you know, like, they
10 trying to say that I pointed the finger at y'all or make
11 y'all point the finger at me. And he said yeah.

12 Q. And did he also convey to you that he had a concern
13 about being truthful because he didn't want to get a
14 false information charge?

15 A. Right.

16 Q. And that was information that you wanted, that you
17 asked your attorney to get via the jail calls and you
18 wanted her to ask him about it at trial?

19 A. Because, I mean, if he admitted to them treating
20 him to write the statements on me I feel like I needed to
21 know. That was very important.

22 Q. And did she ask him about that jail call at trial?

23 A. No.

24 Q. Now you've heard talk today about search warrants
25 and the fact that the evidence sheet shows that there

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1 were five phones, that Pete and I saw six phones and they
2 only obtained records and talked about one phone
3 essentially at trial.

4 A. Right.

5 Q. Did you know Mark to use multiple phones?

6 A. Yes, ma'am.

7 Q. And if your attorney would have asked you about it,
8 would you have urged her to get the records from those
9 phones located in his vehicle?

10 A. Of course.

11 Q. And did you feel that your trial, your defense was
12 limited by not having all those records?

13 A. Ain't no telling who called or who text or, you
14 know, what was going on with the other phones. Only had
15 phone records for one phone when he had multiple phones.
16 It don't make sense.

17 Q. Tevon, I'm going to kind of do a wide sweeping
18 question here. I'm not going to go through every
19 allegation that you have and everything as to your
20 defense counsel, but, each allegation in your amendment,
21 those are all things that you would have wanted your
22 defense attorney to do on your behalf, actions you would
23 have wanted her to take, and you are submitting to the
24 Court that the outcome of your trial was affected by her
25 failure to do everything listed in your amendments; is

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1 that correct?

2 A. Absolutely.

3 Q. Okay. Now, I'm going to ask you a little bit about
4 the phone records. I'm not going to get into the details
5 of what should have been investigated and discovered
6 based upon those phone records. But did your attorney
7 prior to you taking the stand say: Here is what the
8 State is reporting to be as Marcus Finklin's phone calls;
9 here are calls they're going to allege that you made to
10 him; you need to address these calls while you're on the
11 stand and it will help you give the State a very specific
12 time line of your interaction with Marcus that night?

13 A. (Mumbling.)

14 Q. If you could just answer out loudly.

15 A. None of that happened. She didn't ask me none of
16 that.

17 Q. You've had a chance now to go over those records
18 with myself on several occasions --

19 A. Right.

20 Q. -- would you have wanted your defense attorney to
21 do that?

22 A. Yes.

23 Q. Now during your testimony on cross-examination the
24 State really questions you about you not being specific
25 and not giving times. If you would have known about

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1 State's Exhibit 54 that has your name next to certain
2 phone calls, would you have wanted to address that?

3 A. Yes. I mean, I couldn't say times because I didn't
4 have no help. They had help with them statements so they
5 could say specific times. I couldn't say specific times
6 because I didn't have no one cooperating with me and
7 trying to help me with my statement.

8 Q. And when you took the stand State's Exhibit 54 had
9 already been introduced. And your attorney at no time
10 put that in front of you and said, Tevon, please explain
11 about this call that's marked as 12:54 a.m., what
12 occurred during that call.

13 A. Right.

14 Q. And is that something you would have been
15 comfortable in going through and addressing each of those
16 times?

17 A. Yes.

18 Q. Now specifically the phone record report that you
19 made a call at 12:54 a.m., would that have helped you
20 explain how you interacted with Mark that night?

21 A. Say your question.

22 Q. The 12:54 a.m., would that time have helped you in
23 explaining, you know, when you met up with Mark that
24 night and what happened?

25 A. Yes.

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1 Q. Now you would have stuck to exactly what you said
2 at trial, you're not saying that was incorrect, but these
3 times would have aided in being able to help you be
4 specific; is that correct?

5 A. Correct.

6 Q. Okay. Now, I've pointed out through the witnesses
7 and through Ms. Alves specifically that the records that
8 were admitted and based upon their Verizon witness the
9 jury could have been led to the conclusion that at
10 2:17 a.m. you talked to Mark and then at 2:17 a.m. you
11 didn't get through to Mark?

12 A. Yeah.

13 Q. Did you talk to Mark at 2:17 a.m.?

14 A. No, ma'am.

15 Q. So that information --

16 THE COURT: I didn't hear the answer.

17 MS. BLANCHETTE: I'm sorry, Your Honor.

18 THE WITNESS: I said: No, ma'am.

19 THE COURT: You did not talk to him at

20 2:17?

21 THE WITNESS: No, sir.

22 THE COURT: You didn't talk to him in
23 either one of the two phone calls listed at
24 2:17?

25 THE WITNESS: No.

TEVON JACKSON - DIRECT BY BLANCHETTE

1 BY MS. BLANCHETTE:

2 Q. Now I've introduced to you screen shots that were
3 obtained from the evidence in your case that actually
4 have a 2:17 and 2:18 missed call from your phone number.
5 And is that what you recall, calling him back to back and
6 not being able to get through at that time in the
7 morning?

8 A. That was in my statement. I told them I talked to
9 him one time. I talked to him one time before he picked
10 me up and he told me what he was going to do. Then once
11 he dropped me off, I called him again. I told him make
12 sure he grabbed me a cigar and make sure he come back to
13 pick me up from Meat Man house because I couldn't get in
14 my house. I wanted to let him know I wasn't going to be
15 at my house. I tried to call him back, you know, a few
16 times during the night but he ain't never pick up but,
17 you know, my phone records say I did talk to him. I
18 never did talk to him.

19 Q. If you were to believe the testimony of William
20 Hair, the Verizon person and the records admitted to the
21 jury --

22 A. It looked like I lied.

23 Q. -- it looked like you lied when you testified; is
24 that correct?

25 A. Yes.

TEVON JACKSON - DIRECT BY BLANCHETTE

1 Q. Okay. And is that something you would have wanted
2 to address to the jury instead of them just having the
3 exhibit and the testimony of William Hair to consider
4 versus your testimony?

5 A. They use him as an expert and they're saying black
6 and white don't lie and obviously it did.

7 Q. From your defense attorney's closing argument it
8 appears that she believed those phone records hook, line
9 and sinker; is that correct?

10 A. She was wrong, too.

11 Q. And if you would have had the opportunity to sit
12 down and go over those things with her, you could have
13 shown her how what you were saying was actually correct?

14 A. Correct.

15 Q. But you weren't given that opportunity.

16 A. Never.

17 Q. Now Christy Parker testified today that she saw you
18 and she saw Jose Serrano and Joseph Dicks after she had
19 been to Mark's trailer around two a.m., and it was about
20 five minutes before her phone call with you at 3:11?

21 A. Right.

22 Q. Would her testimony have helped you as you were
23 trying to explain the events that took place that night?

24 A. Yes, because at one point they asked me who phone I
25 use that night. I couldn't even really remember because

TEVON JACKSON - DIRECT BY BLANCHETTE

1 it had been so long but I knew I had tried to contact
2 them off another phone prior to that, but I couldn't even
3 remember who that other person was that I had talked to.
4 I couldn't, I couldn't remember.

5 Q. So your first phone call to Mark that night,
6 jumping way forward, had been on somebody else's phone.
7 At the time you testified you didn't know who that was?

8 A. No, I couldn't remember.

9 Q. And Christy testified today that was her phone?

10 A. Right.

11 Q. But she also testified today that she had spoken to
12 you at 3:11 and seen you shortly before with Serrano and
13 Dicks and you had told her that you were still waiting on
14 Mark?

15 A. Right.

16 Q. So would that have verified what you were trying to
17 explain to the jury?

18 A. Very much.

19 Q. Okay. You heard the testimony of Kevin Parker
20 today about seeing yourself out in the vehicle with
21 Marcus. And he -- I'm sorry, Marcus was inside the gas
22 station. Would you have wanted your attorney to tell
23 talk to Kevin Parker and utilize him as a witness at your
24 trial?

25 A. Yeah.

TEVON JACKSON - DIRECT BY BLANCHETTE

1 Q. Now Felice Stallings just recently took the stand,
2 testified to the contents of her statement. Would you
3 have wanted your defense attorney to contact her and
4 utilize her as a witness at your trial?

5 A. Yes.

6 Q. We heard from Ernest Bull or Bush today. He
7 testified to the contents of his statement. Would you
8 have wanted him utilized as a witness at your trial?

9 A. Yes.

10 Q. We heard from Latika Elliott today. I apologize.
11 I'm not sure if I just changed her name.

12 A. You said it right.

13 Q. Yes. Latika Elliott. Would you have wanted your
14 defense attorney to speak with her and utilize her as a
15 witness at your trial?

16 A. Yes.

17 Q. And I called the deputy coroner, Jeff Smith, and
18 asked him questions about his coroner's report and
19 information contained in the coroner's file. Would you
20 have wanted your attorney to ask those questions at
21 trial?

22 A. Yes.

23 Q. And, finally, I called your mother, Sandra Smith.
24 She made a plea for you prior to sentencing. I went over
25 with her the things that she told the Judge at that point

TEVON JACKSON - DIRECT BY BLANCHETTE

1 and additional things she could have testified to at
2 trial. Would you have wanted her called as a witness at
3 your trial?

4 A. Yes.

5 Q. Did your defense attorney ever talk with you about
6 strategy and reasons for not calling witnesses at your
7 trial?

8 A. Only -- really, it was only one witness we spoke
9 on. And that was a potential alibi witness that I wanted
10 to bring up. But as far as strategy, no.

11 Q. Did she ever explain to you any reasons for not
12 calling the people that were called today?

13 A. No.

14 Q. Did she ever explain to you any reasons for not
15 going into any of the evidence that we have discussed
16 here today?

17 A. No.

18 Q. So, you were at a loss as to why those things
19 weren't addressed; is that correct?

20 A. Very much.

21 Q. And just make sure you're keeping your voice up.
22 I'm about ready to lose mine but we got to keep them up.
23 So if you could just talk a little bit louder.

24 Do you feel like you were properly prepared to take
25 the stand at your trial?

TEVON JACKSON - DIRECT BY BLANCHETTE

1 A. No.

2 Q. Do you feel like your attorney was properly
3 prepared to defend you at your trial?

4 A. No.

5 Q. Are you still left with the question of why
6 everything that we've gone into today wasn't addressed at
7 your trial?

8 A. Yes.

9 Q. I just want to take you back to your trial for kind
10 of what you remembered seeing. It was a full-week trial;
11 is that correct?

12 A. Right.

13 Q. And how much of that week was devoted to the
14 defense?

15 A. To me?

16 Q. Uh-huh.

17 A. It was a State show. It wasn't -- it wasn't --
18 only person that got up was me.

19 Q. Okay. And we've already said you wanted additional
20 witnesses called. After you testified and the case was
21 submitted to the jury, how long approximately do you
22 remember them testifying -- or, I mean, do you remember
23 them deliberating?

24 A. I mean, the trial ended on a Friday probably, like,
25 2:30 or something. I know we didn't get no verdict

TEVON JACKSON - DIRECT BY BLANCHETTE

1 probably until around 11 o'clock, something like that.

2 It took every bit of about nine hours because I know the
3 trial ended early Friday afternoon, like, two, 2:30,
4 didn't come to no verdict by 11, 11 o'clock.

5 Q. And this was a Friday night; is that correct?

6 A. Very much.

7 Q. Did you have concerns that the jury didn't want to
8 be kept any longer?

9 A. That and being all week, looking at the jurors
10 falling asleep in the trial, you know, Friday, people
11 ready to go home. I was surprised it lasted that long.

12 Q. Are you alleging today that your attorney did not
13 ensure that you had a fair trial in this case?

14 A. She didn't.

15 Q. And I asked her about a number of objections, about
16 evidence she failed to utilize, about witnesses she
17 failed to impeach. And based upon your allegations that
18 are written and already submitted to the Court, are you
19 alleging that that led to her not providing you with
20 effective assistance?

21 A. Right.

22 Q. And are you alleging that you were prejudiced, the
23 outcome of your trial was prejudiced?

24 A. Right.

25 Q. Okay. Were you aware prior to trial that she had

TEVON JACKSON - DIRECT BY BLANCHETTE

1 represented Jamar Green, one of the witnesses for the
2 State?

3 A. No.

4 Q. You heard her testimony about, today about the
5 Serranos. What did you take that to mean?

6 A. Obviously knew them on a personal level. Something
7 I didn't know.

8 Q. I'm sorry. What was your answer?

9 A. Obviously she knew them on a personal level.
10 Something I did not know.

11 Q. So you did not know when she was cross-examining
12 the Serranos who were key witnesses for the State that
13 she had previous interactions or knew them?

14 A. No.

15 Q. Is that something you would have wanted to know?

16 A. Yeah, because, you know, knowing Serranos on a
17 personal level could be biased in the situation, you
18 know. You could lean towards this side more than mine,
19 you know, on a personal level.

20 Q. Now she said both of those cases weren't conflicts
21 for her, Serrano or Jamar Green. If she would have asked
22 you, would you have told her you thought it was a
23 conflict?

24 A. Yeah, but that's just her opinion. In my eyes I
25 would have felt like that's a conflict.

TEVON JACKSON - DIRECT BY BLANCHETTE

1 Q. You heard the testimony of Pete Skidmore today.
2 Would you have wanted the investigation that he did prior
3 to your PCR done prior to your trial?

4 A. Yes.

5 Q. Would you have wanted your attorney to pursue any
6 and all exonerating evidence and potential third-party
7 guilt?

8 A. Yes.

9 Q. Now you testified, Tevon. Did you tell the truth
10 at trial?

11 A. Yes.

12 Q. And at your sentencing you maintained your
13 innocence. Are you still maintaining your innocence in
14 this case?

15 A. Yes.

16 Q. At the end of the trial, on page 742 lines three
17 through eight, Judge Early makes comments about your
18 attorney when she makes a motion for a new trial that she
19 really hadn't made any objection throughout the course of
20 the trial. Were you in agreement with his assessment of
21 her performance?

22 A. She didn't object. If she did I don't remember. I
23 don't think she hardly made no objections during the
24 whole trial.

25 MS. BLANCHETTE: Your Honor, if I could beg

TEVON JACKSON - DIRECT BY BLANCHETTE

1 the Court's indulgence one moment.

2 THE COURT: Sure.

3 (Pause.)

4 BY MS. BLANCHETTE:

5 Q. Now, Tevon, I'm going to refer to what has been
6 admitted for demonstrative purposes as Applicant's Number
7 17. It is a poster board that reflects in blue the
8 time line argument, time line entries given by your
9 attorney in her closing argument. In red it reflects
10 testimony and evidence that was presented today with
11 different time frames. And you've heard the questions
12 that I've asked the witnesses, Mr. Skidmore, your defense
13 counsel, about the time line.

14 Everything that we've presented today regarding the
15 time line, would you have wanted that presented at your
16 trial?

17 A. Yes.

18 Q. Would you have wanted your attorney to provide the
19 jury with a visual aid of what all of the evidence
20 portrayed in your case?

21 A. Yes.

22 MS. BLANCHETTE: Your Honor, I have no
23 further questions of this witness.

24 THE COURT: All right. Mr. Gourley?

25 MR. GOURLEY: Thank you, Judge.

TEVON JACKSON - CROSS BY GOURLEY

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. GOURLEY:

4 Q. Tevon, how many times did you meet with Ms. Alves?

5 A. Probably two or three times.

6 Q. Two or three times. And during those meetings did
7 you have an opportunity to go over the discovery?

8 A. Say again.

9 Q. Did you all have the opportunity to go over the
10 discovery?

11 A. Yeah, somewhat. Mostly arguing most of time.

12 Q. Did you get the opportunity to tell Ms. Alves what
13 took place that night?

14 A. She had my statement.

15 Q. Okay. Well, your statement was kind of brought out
16 during the trial. Did you have the opportunity to give
17 her the full version of events?

18 A. Yeah. I told her my statement.

19 Q. Okay. You told what?

20 A. Told her my statement.

21 Q. Just your statement. You didn't elaborate on it at
22 any point in time?

23 A. Anything she had asked me, I mean, but we never
24 really had time to go over nothing.

25 Q. Okay. During your trial testimony you never

TEVON JACKSON - CROSS BY GOURLEY

1 mentioned the fact that you went with the victim to the
2 gas station, did you? That's something new.

3 A. No.

4 Q. You never said that at trial, did you?

5 A. No.

6 Q. Okay. Why didn't you mention that?

7 A. Because I ain't never bring it up. They asked me
8 what I did that night. And I just spoke on really what
9 we did on Dry Branch. I ain't never speak on nothing
10 else.

11 Q. Okay. What time did you go with Mark to the gas
12 station that night?

13 A. I can't remember.

14 Q. How many times were you riding around with Mark?

15 A. What you mean? Like, that night?

16 Q. Yeah, that night. How many separate times did you
17 get in and get out of the car with Mark?

18 A. Got in the car once that night, once, because he
19 picked me up and he dropped me off. He's supposed to
20 come back. He didn't come back. So one time.

21 Q. One time. Okay. What did you do during that one
22 time?

23 A. He picked me up. I was supposed to drive him to
24 Georgia but he picked me up. We had a couple stops, did
25 some business with Stephanie Green and Jabar and dropped

TEVON JACKSON - CROSS BY GOURLEY

1 me to the house, dropped me back off. Told me he was
2 coming back to get me.

3 Q. Okay. At what point during that time frame did you
4 go to the gas station?

5 A. Don't know.

6 Q. Don't know. This was a kind of a short period of
7 time, wasn't it?

8 A. Yeah. It was a short period of time but it's been
9 a long time ago. He's saying that cameras showed up
10 stuff so I would have took it for that. I can't push
11 something that I didn't never say I wouldn't.

12 Q. I understand. Well, Mr. Parker also said there
13 were two other witnesses in the car. Was there anybody
14 else in the car with you and Marcus at any point in time
15 when you were riding around with him that night?

16 A. No, not that I can recall.

17 Q. Okay. And in fact you talked about doing business
18 with Stephanie. That was selling cocaine to Stephanie,
19 right?

20 A. You said what?

21 Q. You talked about doing some business with Stephanie
22 Green. That included selling cocaine to her, correct?

23 A. Who, me?

24 Q. Not you. Marcus.

25 A. Yeah, he did.

TEVON JACKSON - CROSS BY GOURLEY

1 Q. Okay. And then also doing some business with Jamar
2 and you also -- not y'all. I'm sorry. Marcus sold some
3 cocaine to Jamar as well, right?

4 A. Yeah.

5 Q. Okay. And then he dropped you off?

6 A. Yeah.

7 Q. At your mom's house?

8 A. Dropped me off at my mom house, said he was coming
9 back.

10 Q. Okay. And I think your testimony reflected that
11 you looked for the key, the key wasn't there, hung out
12 there for a couple minutes, and then you went on down to
13 Meat Man's house?

14 A. (Nods head.)

15 Q. Okay. And no one saw you between the time that
16 Marcus dropped you off and the time you arrived at Meat
17 Man's house, right?

18 A. No.

19 Q. Okay. What time did you get to Meat Man's house?

20 A. I can't, I can't say no exact time.

21 Q. Okay. What time do you think Marcus picked you up
22 at?

23 A. I'd be lying if I said a time. I don't think I
24 gave a time then. I can't remember. I'm not going to
25 lie and say I remember what time. I don't remember. I

TEVON JACKSON - CROSS BY GOURLEY

1 don't wear watches so I don't look at the clock every
2 time something happen.

3 Q. Okay. Well, according to State's Exhibit 54 you
4 called Marcus at 12:54, right?

5 A. Right.

6 Q. And you called Marcus at 1:11, right?

7 A. Right.

8 Q. What did y'all talk about during those
9 conversations?

10 A. 12:54 call was the call before he picked me up.

11 Q. Okay.

12 A. And was telling me that he wanted me to drive to
13 Georgia.

14 Q. Okay.

15 A. The 1:11 call was saying where he was at.

16 Q. Okay.

17 A. He's supposed to be coming back after he dropped me
18 off.

19 Q. Okay.

20 A. That was the last time I talked. He said he was
21 coming but he ain't never come. That was the last time I
22 talked to him.

23 Q. Okay. At what point in time did you call Marcus to
24 tell him to come pick you up to go do the business?

25 A. That's the 1:11 call.

TEVON JACKSON - CROSS BY GOURLEY

1 Q. That's the 1:11 call?

2 A. Yeah. The 12:54 call was the call telling him, he
3 was telling me that he wanted me to drive him to
4 Georgia. When he picked me up, all the stuff with
5 Stephanie and Jabar that happened. That wasn't -- I
6 don't know where that came from. That happened. That
7 must changed his mind for that second. When he said he
8 had to handle something real quick. So he dropped me
9 off. Once he dropped me off I called him again to make
10 sure -- to remind him to get the cigar that I wanted.
11 Asked him, you know, don't forget, come pick me back up.

12 Q. So between 12:54 and 1:11 is the time span that you
13 were riding around with Marcus is what you were saying?

14 A. 12:54. I can't say the 1:11, that's the time I was
15 talking with him. I didn't stay on the call that long
16 for that period of time. And that wasn't the time period
17 I was in the car with him because at 1:11 I called him to
18 come back and pick me up. I was already out of the car
19 and waiting for him to come back.

20 Q. After you all had already gone and done the drug
21 sales with Stephanie --

22 A. Not me.

23 Q. Or he had done the drug sales with Stephanie and
24 Jamar?

25 A. Right, right.

TEVON JACKSON - CROSS BY GOURLEY

1 Q. Okay. So that 1:11 call was your first phone call
2 to him after he had dropped you off, he had done his
3 business, and you were calling him to tell him to come
4 pick you up at Meat Man's house?

5 A. The 1:11 call was the second call.

6 Q. Right.

7 A. You said it was the first call.

8 Q. The first call was the 12:54.

9 A. Right.

10 Q. The second call, 1:11, was after y'all had -- or he
11 had already sold the drugs?

12 A. Right.

13 Q. He had dropped you off and you were calling to tell
14 him to go pick you up at Meat Man's house?

15 A. Right.

16 Q. At the 1:11 call.

17 A. Right.

18 Q. What's the 2:17 and the 2:18 calls for?

19 A. He still hadn't got there.

20 Q. Checking up on him?

21 A. Still hadn't came. I was trying to see where he
22 was at. I was still waiting.

23 Q. Okay. So the fact that Stephanie Green and Jamar
24 both say that y'all were selling drugs or he was selling
25 drugs at 1:15 and 1:30 is wrong?

TEVON JACKSON - CROSS BY GOURLEY

1 A. Wrong.

2 Q. Wrong. Okay. All right. How do you explain your
3 cigarette butt being found by the car with your DNA on
4 it?

5 A. I can't. I can't explain it. I told them that I
6 smoked. And I told them we was on, in that same spot. I
7 told them it ain't like they found it. I told them I was
8 already, I was there before they even found it and what
9 we was doing. So it wasn't like that they found that. I
10 told them that. So that's -- they didn't find nothing.
11 I told them.

12 Q. Okay. So you're telling me between 12:54 and 1:11,
13 that's roughly 17 minutes; would you agree with that?

14 A. Yes.

15 Q. Okay. So you're telling me between, in 17 minutes
16 you got picked up by Marcus?

17 A. Uh-huh.

18 Q. You went, and Marcus did two drug sales, one along
19 the street, one at his house, and then y'all also went to
20 the cul-de-sac there where he was eventually murdered and
21 also went to a gas station with Mr. Parker and had time
22 for Marcus to go in there and talk to Mr. Parker as well,
23 all in a span of 17 minutes?

24 A. No. New Ellenton ain't big at all. And far as by
25 themselves, it don't take two seconds. As soon as he

TEVON JACKSON - CROSS BY GOURLEY

1 picked me up, that's it, right there on the street. We
2 never got out of the car. He made that deal with
3 Stephanie right there in the middle of the street because
4 it wasn't no traffic that night. As soon as he picked me
5 up we was supposed to meet Stephanie at his house. As a
6 matter of fact, he was trying to meet up with Stephanie
7 at my house. I told him no. So Stephanie was coming
8 down the road and we met right there in the road. And
9 from there they went and did business with Jabar:

10 Two minutes. You can do all of that in two
11 minutes.

12 Q. Yeah, it's a close confined area, right?

13 A. Yeah. I said small, small.

14 Q. Close enough for you to walk around all these
15 places?

16 A. Yeah, don't take long to do nothing.

17 Q. How far would you say Meat Man's house is from the
18 cul-de-sac?

19 A. Probably -- I mean, on foot or what? Two minutes,
20 a minute, two minute.

21 Q. A minute, two minute?

22 A. In a car, seconds.

23 Q. Seconds. Okay. How far do you think that gas
24 station is that Mr. Parker worked at, the Hot Spot?

25 A. Probably about -- in the car, probably don't take

TEVON JACKSON - CROSS BY GOURLEY

1 no longer than about -- I mean, it depends on which way
2 you're going.

3 Q. Yeah.

4 A. You can ride the main road and you drive 35 miles
5 per hour or you can go the back road. It probably don't
6 take no more than about -- I would say it only take five
7 minutes to get to the Hot Spot. Probably take about
8 three or four minutes.

9 Q. Okay. And what is Meat Man's yard and BooBoo's
10 yard? Is that just like a hang out place that y'all hung
11 out at?

12 A. I think the dude name BooBoo.

13 Q. BooBoo?

14 A. I don't know. But, yeah, Meat Man stay on one side
15 of the street and directly across is where the dude,
16 BooBoo.

17 Q. Okay.

18 A. That's where he stay.

19 Q. Meat Man is your cousin?

20 A. Yeah.

21 Q. You hang out with Meat Man a lot?

22 A. I mean, some. I mean, ain't like he was always
23 there, you know. He was always in and out, you know. As
24 far as -- he didn't stay around. I start hanging around
25 him more once we got older.

TEVON JACKSON - REDIRECT BY BLANCHETTE

1 Q. Right. What about Joey Serrano?

2 A. I didn't really know him like that. He moved down
3 from New York. That was more Meat Man's social thing.

4 Q. Okay. All right.

5 I beg the Court's indulgence, Your Honor.

6 THE COURT: Okay.

7 (Pause.)

8 MR. GOURLEY: That's all I got. Judge.

9 Thank you. I appreciate it.

10 THE COURT: Anything on redirect?

11 MS. BLANCHETTE: Very briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. BLANCHETTE:

14 Q. Mr. Jackson, through your testimony and our
15 allegations you have stated today that your defense
16 attorney should have utilized State's Exhibit 54, the
17 cell phone record exhibit with you as you were going
18 through your testimony and Mr. Gourley asked you on cross
19 some questions about that. Do you still have State's
20 Exhibit 54 in front of you?

21 A. In front of me? No.

22 Q. Okay. Beg one moment.

23 THE COURT: Also known as Appellant's
24 Seven.

25 MS. BLANCHETTE: Yes, Your Honor, also

TEVON JACKSON - REDIRECT BY BLANCHETTE

1 known as Appellant's -- or Applicant's Seven.

2 THE COURT: Applicant's Seven.

3 MS. BLANCHETTE: Now I'm getting you
4 confused.

5 THE COURT: She'll correct that so I sound
6 better.

7 BY MS. BLANCHETTE:

8 Q. If I can direct your attention to a phone record
9 here listed at 054 and 20 seconds?

10 A. Right.

11 Q. It says MT -- wait. Make sure I'm following this
12 right. And beside that it has listed the name Tevon
13 Jackson.

14 A. Right.

15 Q. And then there's another entry at 1:11 a.m. with an
16 MT that if we're going to believe the State's witness
17 means that the call did not go to voice mail at 1:11 a.m.

18 Now the State asked you some questions about those
19 two phone calls that you're making to Mark. And I'm
20 afraid you may have gotten somewhat confused. At 12:54
21 were you talking with Mark about him coming to pick you
22 up?

23 A. Yeah.

24 Q. And then at 1:11, were you talking with him again
25 about coming to pick you up or had he already picked you

1 up?

2 A. He had already picked me up.

3 Q. Okay.

4 A. At 1:11 I was calling and asking him where he was
5 at, come back and pick me up because he dropped me off
6 and he was supposed to come back.

7 Q. So you weren't in the car with him from the 1:11
8 phone call to your 2:17 phone call?

9 A. No.

10 Q. Okay. So when you're calling him at 2:17 it's
11 because he still hasn't shown up?

12 A. He never showed up.

13 Q. Okay. And I just wanted to make sure I was clear
14 since we're alleging that your defense attorney should
15 have gone over these with you. I wanted to make sure
16 that you clearly testified to what you wanted to about
17 this phone record here.

18 Your Honor, if I could beg one moment.

19 THE COURT: Okay.

20 (Pause.)

21 MS. BLANCHETTE: Your Honor, I have no
22 further questions.

23 THE COURT: Anything on recross?

24 MR. GOURLEY: No, Your Honor.

25 THE COURT: All right. You may step down.

BILL WEEKS - DIRECT BY GOURLEY

1 Thank you, sir.

2 Ms. Blanchette, next witness.

3 MS. BLANCHETTE: Your Honor, I have no
4 further witnesses.

5 THE COURT: Okay. All right. State ready
6 to call its first witness?

7 MR. GOURLEY: Yes, we'd call Mr. Weeks to
8 the stand, please.

9 JOHN WILLIAM WEEKS, JR., having been duly
10 sworn, was examined and testified as follows:

11 THE CLERK: Have a seat and state your name
12 for the record, please.

13 THE WITNESS: My name is John William
14 Weeks, Jr., but I go by Bill. W-E-E-K-S.

15 THE COURT: All right. Mr. Gourley.

16 DIRECT EXAMINATION

17 BY MR. GOURLEY:

18 Q. Mr. Weeks, did you have the opportunity to
19 prosecute this case?

20 A. I did.

21 Q. And during the course of your prosecution did you
22 investigate the factual circumstances surrounding this
23 case?

24 A. Yes, I did, along with my office.

25 Q. And did that include going out to the crime scene

BILL WEEKS - DIRECT BY GOURLEY

1 and talking to various witnesses and kind of getting a
2 feel for the scene?

3 A. It involved getting intimately familiar with Dry
4 Branch Road and Dry Branch Court and Nondron Street and
5 we walked it, physically walked it, checked mileage,
6 checked times. Yes, we spent a lot of time during the
7 time I was getting ready to prosecute the case on Dry
8 Branch Road.

9 Q. Okay. And obviously there were two key witnesses,
10 I think you would agree, in this case, Joseph Dicks and
11 Joey Serrano; is that correct?

12 A. There were key witnesses. I don't think they were
13 the key witnesses.

14 Q. Right. And did they change their statements
15 leading up to the trial fairly frequently?

16 A. Joseph Dicks more so than Joey Serrano. Joey
17 Serrano was pretty consistent from my memory. Dicks
18 wasn't so much changing his statement as he was adding to
19 it all the time.

20 Q. Okay.

21 A. But he did change some stuff.

22 Q. And did that include naming Kayla Floyd as the
23 person who he received the .38 caliber weapon from that
24 he then gave to Tevon Jackson?

25 A. Yes. I don't know that that was a change. It

BILL WEEKS - DIRECT BY GOURLEY

1 might have been a change or it might have been an
2 addition to, but to the best of my memory that was in
3 pretrial preparation where Joseph told us that and so did
4 Joey.

5 Q. Okay.

6 A. It was at a joint meeting really when both of them
7 were there at the office at the same time.

8 Q. And did you disclose that information to Ms. Alves,
9 his public defender?

10 A. I can't swear I disclosed the indictment to her but
11 I know I always do.

12 Q. Yes, sir.

13 A. Standard rule in my office is we give them
14 everything. If a defense lawyer wants it -- if I would
15 want it as a defense lawyer, they get it.

16 Q. Okay.

17 A. I certainly would not have withheld this Floyd
18 woman's role in this from Ms. Alves.

19 Now, do things come up right before court? Oh,
20 yea. Because I'm pretty sure she was probably working,
21 the Sunday night before court started on Monday and I can
22 assure you we were.

23 But it wasn't a mystery. Once we knew about it we
24 told her everything we knew. And we do that with all the
25 witnesses. Before we have a major trial like this,

BILL WEEKS - DIRECT BY GOURLEY

1 Ms. Alves would come to our office, along with an
2 investigator more than likely, and go through every
3 single piece of paper in our file that isn't something
4 that we would say is work product.

5 In this case there were a number of witnesses.
6 There were a number of inconsistent witnesses. It was
7 like a parade for a couple of weeks trying to get people
8 in and out to interview them. I cannot remember whether
9 or not she talked about a particular witness.

10 Q. Uh-huh.

11 A. I cannot remember whether Ms. Floyd, whether I ever
12 met the lady. I have a note in my file that our
13 investigator said, interviewed her but it was dated
14 February 24th which would have been during trial.

15 Q. Okay.

16 A. From my understanding, I just do not recall her
17 being one of the witnesses that I interviewed.

18 Q. Okay.

19 A. And I certainly didn't call her as a witness in the
20 trial.

21 Q. Did your office look into any kind of cell phone
22 records or do any kind of triangulation with her cell
23 phone, Kayla Floyd's cell phone?

24 A. Yes. I don't think we did triangulations. And I
25 don't know whether we looked that hard for Ms. Floyd's

BILL WEEKS - DIRECT BY GOURLEY

1 phone records. We had Marcus Finklin's phone records, I
2 think. And I'm not sure if we had them all because there
3 was a bunch of phones in that car, some of them which
4 were dead, some of which we charged back up and were able
5 to at least see that they were working.

6 But, as far as going for Ms. Floyd's particular
7 phone records, Daniel, I don't remember doing that. I
8 don't think we did. I don't think we actually laid eyes
9 on her until late in the game.

10 Q. What was the State's theory of this case if you
11 will?

12 A. Well, obviously that Tevon Jackson shot Marcus
13 Finklin for money and/or drugs.

14 All of the people in this area, this community, Dry
15 Branch Road community, knew one another. Our theory was
16 that it was kind of like I argued, I think, that it
17 was -- we -- I don't know how many people we
18 interviewed. They all had some information. Marcus was
19 kind of up and down the road the night he was killed.

20 And, you know, everybody had some spotting of
21 Marcus and some time frame that may or may not have been
22 accurate. It's been my experience as a prosecutor the
23 most unreliable evidence you can ever find is somebody's
24 estimation of what time it is. And that's kind of what
25 we were dealing with.

BILL WEEKS - DIRECT BY GOURLEY

1 I was looking at that time line and thinking we put
2 together one and we spent more time crossing out things
3 because they contradicted one another than we spent
4 writing stuff down. But, we did. There were a bunch of
5 witness statements, investigators, as you've seen, the
6 statements -- if they're a whole page they're a very long
7 statement. Most of them are about, you know, a good
8 paragraph.

9 Q. Uh-huh.

10 A. And truly we tried to get every one of those or
11 either I went to the house and expounded on them,
12 expanded on them before telling Strom or before any trial
13 we do that. And in this same case Wallis Alves would not
14 let me not give her a piece of evidence. And if one came
15 up during trial that she hadn't been given, we'd have a
16 four-alarm fire in here.

17 Q. Yes, sir.

18 A. Unless it played into Wallis Alves' trial scheme.

19 MS. BLANCHETTE: Your Honor, at this point
20 I'd object based upon opinion testimony.

21 THE COURT: Say that again.

22 MS. BLANCHETTE: I would object. He's
23 offering opinion testimony and the State has
24 argued here multiple times today that one
25 attorney cannot offer opinion testimony as to the

BILL WEEKS - DIRECT BY GOURLEY

1 actions of another attorney.

2 MR. GOURLEY: And, Judge, he's just going
3 off of his personal observations with working
4 with Ms. Alves.

5 THE COURT: And, I understand your
6 objection. I'm going to overrule it.

7 He's not talking -- I think he's just
8 talking about his personal experience with her
9 and like that. And I'll take it for what it's
10 worth. I'll note your objection.

11 MS. BLANCHETTE: Thank you, Your Honor.

12 THE COURT: Thank you, ma'am. Go ahead.

13 BY MR. GOURLEY:

14 Q. Regarding the cell phone expert, did you plan on
15 moving to qualify him as an expert? Can you talk a
16 little bit or expound on that for me?

17 A. Obviously -- I don't know if it's obvious to
18 anybody but me but I know how to qualify an expert to
19 testify. And if I needed to have qualified him, I would
20 have. I personally believe that the cell phone records
21 hurt my case as much as helped my case and the hurt part
22 of my case was going to be expounded on by Ms. Alves.
23 She sure as hell didn't want those cell phone records
24 out.

25 Q. Yes, sir.

BILL WEEKS - DIRECT BY GOURLEY

1 A. So I think that's why we just went on into the meat
2 of the matter. As we had been told and I had explained
3 to her, I'm truly no cell phone expert and I don't know
4 what MF and MT means and all of that on there. That day
5 I did or at least that day I knew what the guy had told
6 me, but that's the reason we didn't qualify him as I
7 think both sides were using him for whatever it was
8 worth.

9 Because the cell phone records in this case were
10 enough to drive you to drink. It just didn't seem to
11 match up with any of the witness's time estimations. And
12 to some degree I'm not sure they matched up with
13 themselves.

14 So that's kind of what we had going on with the
15 cell phone.

16 Q. Okay. And in regard to --

17 MS. BLANCHETTE: Your Honor, just briefly.
18 I would object again and move to strike.

19 Once again, he's getting into opinion
20 testimony about why Ms. Alves didn't object. She
21 did not offer that testimony to the Court. He's
22 getting on the stand, giving reasonings and
23 opinions that she failed to give.

24 The State's simply trying to use him to
25 bolster her testimony at this point and I would

BILL WEEKS - DIRECT BY GOURLEY

1 object. I'd say this is improper.

2 MR. GOURLEY: Judge, I just merely asked
3 him as to why he was using cell phone records or
4 an expert in this situation. Ms. Blanchette has
5 accused Mr. Weeks of not being able to qualify an
6 expert and that's where we were going in that.

7 THE COURT: Okay. If -- as we go
8 forward --

9 MR. GOURLEY: Yes, sir.

10 THE COURT: -- if we just go forward with
11 just what you did, Mr. Weeks, and you can ask him
12 just about what he did.

13 MR. GOURLEY: Yes, sir.

14 THE COURT: I'll note your objection.

15 MS. BLANCHETTE: Thank you, Your Honor.

16 THE COURT: Thank you, ma'am.

17 MR. GOURLEY: Yes, Judge.

18 THE COURT: Okay. Go ahead.

19 MR. GOURLEY: Thank you, Judge.

20 Q. Mr. Weeks, do you have any familiarity with the
21 cell phone programing where you can download deleted
22 messages or anything of that? Are you aware of any
23 technology such as that?

24 A. Yes.

25 Q. Was that around in 2008 to your knowledge?

BILL WEEKS - CROSS BY BLANCHETTE

1 A. I hadn't heard of it.

2 Q. Okay.

3 A. Cellebrite Technology is what it's called.

4 Q. Cellebrite?

5 A. But I don't think it was in existence in our area
6 at that time.

7 Q. Again, Mr. Weeks, just to confirm. Everything that
8 you had, witness statements, evidence against
9 Mr. Jackson, everything like that was turned in to
10 Ms. Alves in a timely fashion in your opinion?

11 A. Turned in as soon as we get it.

12 Q. Okay.

13 A. Or a reasonable opportunity to give it to her. And
14 sometimes literally the morning of trial. Because we're
15 working and discovering stuff till all hours of the day
16 and night before trial, but we always give it to her.

17 Q. And obviously you can't control what a witness
18 tells you or when they decide to tell you something?

19 A. I have no control over that.

20 Q. Okay.

21 Judge, I don't have any other questions. Thank
22 you, Mr. Weeks.

23 THE COURT: All right. Ms. Blanchette?

24 MS. BLANCHETTE: Very briefly, Your Honor.

25

BILL WEEKS - CROSS BY BLANCHETTE

CROSS-EXAMINATION

BY MS. BLANCHETTE:

Q. Solicitor Weeks, if you could turn to page 261 of the transcript there in front of you. It's in that first file.

A. The first one?

Q. Yes. And on page 261 if you could look at line 10. This is Ms. Alves' cross-examination of your witness, Joseph Dicks. And beginning there she's asking about when he revealed the information about Kayla. And on line 15 she says, and the first time you told the solicitor was, what, last Monday. And he says, yes, ma'am.

So based upon your witness's testimony he had told you all about that the Monday prior to trial; is that correct?

A. That's what he said here.

Q. And you -- Ms. Alves testified today that that information was turned over to her the morning of trial?

A. That's not exactly what I heard. It's the first time she had a note of it, but that's not necessarily the first time she was told.

We met with Joseph Dicks. I had one consultation dated 2-21. If I know the calendar, I think that was the day before the trial started. 2-22 I think it started

BILL WEEKS - CROSS BY BLANCHETTE

1 which was a Sunday.

2 Q. Yes. The transcript reflects February 22nd is the
3 start date.

4 A. I can't tell you whether or not it was that Sunday
5 or it was the weekend before that or at some point the
6 week before that, but that's the first time we heard of
7 it.

8 Q. But your witness does say during cross-examination
9 that he had told the solicitor's office the Monday before
10 trial.

11 A. Joseph Dicks says that, yes.

12 MS. BLANCHETTE: Your Honor, if I could beg
13 the Court's indulgence one moment.

14 (Pause.)

15 Q. Do you have any specific reason that you can
16 provide to us today as to why Kalyn Floyd was not charged
17 in this case or anything pursued against her?

18 A. Absolutely. Because I didn't have a case against
19 her for anything. On the information that we had, you
20 heard the information that we had and I would be the most
21 neglectful prosecutor in the state if I had just hauled
22 out an arrest warrant for that woman who's never told me
23 to this day whether she gave him the gun or didn't. I'm
24 not sure what she said on the witness stand, I wasn't in
25 here.

BILL WEEKS - CROSS BY BLANCHETTE

1 But absolutely couldn't charge that woman based on
2 what we know then and couldn't charge her on what I know
3 today because none of it's very credible.

4 Q. And the information though was coming from your
5 witness, Joseph Dicks?

6 A. Coming from Joseph Dicks. I called Joseph Dicks as
7 a witness.

8 Q. And -- but you're saying the information that he
9 gave you was not credible?

10 A. No, I didn't say that.

11 Q. Okay. Then could you please clarify what you meant
12 by saying you couldn't charge her because the information
13 was not credible?

14 A. It was given three years later, for one thing. And
15 I never talked to Ms. Dicks -- or Ms. Floyd, or never
16 interviewed her to my knowledge. But if we did it was
17 late in the game. And I wasn't trying to put a gun in
18 Ms. Floyd's hand. I was trying to put a gun in Tevon's
19 hands.

20 Q. But you elicited testimony on direct of Joseph
21 Dicks that Kayla provided a .38 to him which was the
22 specific caliber of the murder weapon in this case, and
23 you went into detail with him about that. So you
24 submitted that information essentially to the jury in
25 this case to consider as part of the guilt or innocence

1 of Tevon Jackson.

2 A. I asked Mr. Dicks the questions that the record
3 reflects.

4 MS. BLANCHETTE: Your Honor, I have no
5 further questions of this witness,

6 THE COURT: All right. Mr. Gourley,
7 anything else? Anything on redirect?

8 MR. GOURLEY: Judge, really briefly.

9 REDIRECT EXAMINATION

10 BY MR. GOURLEY:

11 Q. Mr. Weeks, did Joey Serrano also identify
12 Mr. Jackson with a .38 to your knowledge?

13 A. Yes.

14 Q. Okay.

15 Judge, I don't have any other questions.

16 THE COURT: Anything on recross?

17 MS. BLANCHETTE: No, Your Honor.

18 THE COURT: Thank you, sir. You may step
19 down.

20 MR. GOURLEY: If I may have one second to
21 talk to Ms. Alves just very briefly, Judge.

22 THE COURT: Sure.

23 MR. GOURLEY: Thank you.

24 (Pause.)

25 MR. GOURLEY: Judge, I don't have any

1 additional witnesses. Thank you.

2 THE COURT: Does the State rest?

3 MR. GOURLEY: Yes, sir.

4 THE COURT: All right. Is the Applicant
5 recalling anyone?

6 MS. BLANCHETTE: No, Your Honor.

7 THE COURT: All right. Then we're done.

8 MS. BLANCHETTE: Your Honor, I have a
9 number of cases that I had printed if you would
10 like those.

11 THE COURT: I'd love to have them.

12 MS. BLANCHETTE: A copy -- or I provided
13 the citations to the Attorney General's Office.

14 As I told you on a break, I believe that
15 my clean copy of Fryberger, I sat it down in the
16 very first courtroom we were in this morning. I
17 have one that just has a little bit of my
18 scribbling at the top that I'm happy to give you
19 if you would like that --

20 THE COURT: Yes.

21 MS. BLANCHETTE: -- that I had in my
22 notebook.

23 THE COURT: Okay.

24 MS. BLANCHETTE: I also talked with my
25 client and I would be entering an order for the

1 transcript from this proceeding just because I
2 know the number of witnesses that were called, I
3 want to make sure I have that on hand if Your
4 Honor has any additional questions or if you'd
5 like a memo submitted or anything of that
6 nature, I want to make sure I have an accurate
7 reflection of all the testimony that was taken
8 today.

9 THE COURT: Yes, sir, Mr. Gourley.

10 MR. GOURLEY: Judge, I was going to
11 request that we be able to do memos being the
12 length of the day and the testimony that's been
13 taken and the factual --

14 THE COURT: That would be delightful.

15 MR. GOURLEY: Thank you, Judge.

16 THE COURT: Y'all tell me how long you
17 all need to do the memos.

18 I tell you what. You don't have to
19 decide right now. I'm going to let you and
20 Ms. Blanchette get together. You're all going
21 to send me an e-mail telling me when you're
22 going to do it.

23 MR. GOURLEY: Yes, sir, Judge. Thank
24 you.

25 MS. BLANCHETTE: And, your Honor, maybe

1 based upon my transcript request if it takes too
2 long I'd be happy to do the memo without it but
3 with all the testimony today I want to be as
4 accurate as possible with the Court.

5 THE COURT: I don't mind. I'd rather you
6 have accuracy than have to come back and correct
7 it later.

8 MS. BLANCHETTE: Exactly.

9 THE COURT: Thank y'all.

10 MR. GOURLEY: Thank you, Your Honor.

11 END OF PROCEEDINGS: 4:59 P.M.

12 ***

13 CERTIFICATE OF REPORTER

14 STATE OF SOUTH CAROLINA)

15 COUNTY OF AIKEN)

16 I, Cheri L. Young, Registered Professional
17 Reporter and Official Court Reporter for the State of
18 South Carolina, Second Circuit-At Large, do hereby
19 certify that the foregoing proceedings were written
20 stenographically by me using computer-aided translation;
21 further, that the foregoing is a true, accurate and
22 complete record, to the best of my skill and ability, of
23 all the proceedings had and evidence introduced in the
24 hearing of the captioned case, relative to appeal, in
25 the Court of Common Pleas for Aiken County, on the 10th

1 day of September, 2015.

2 I do further certify that I am neither of kin,
3 counsel, nor interest to any party hereto.

4 I have hereunder set my hand this Friday, the
5 13th day of May, 2016.

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Cheri L. Young, RPR
Official Court Reporter

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Time: 14:50 Date: 6/9/08Page 1 of 1 pagesLocation where statement was obtained: Jackson AveName: Latika ElliottDate of Birth: 11SSN: [REDACTED]Address: Chimebell Church RDCity: AikenState: SCZip: 29803I completed the 12th grade in school, and I CAN/CANNOT read and write. (Circle one)

I Latika Elliott got a phone call from Mark at 3:00am and he told me he was coming to my house and that was the last time I talk to him. He never came to my house. L.E

I have read or have had read to me this statement consisting of 1 page (s). This statement is true. I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will, without promise or reward, without fear or threat of physical harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 1455 a.m./p.m. on 4 day of June, 20 08Signature of person giving voluntary statement: Latika ElliottWitness: Inv. [Signature]

Witness

I have been given a copy of this statement consisting of 1 pages.Initials of person making statement: L.E

FILED September 19, 2008

[Signature]
[Signature]
5:05 pm

Voluntary Statement

ne: 2 : 80 Date: 6 / 9 / 08Page 1 of 1 pagesLocation where statement was obtained: DMV - AikenName: Ernest BualDate of Birth: - / - / -SSN: - - - - -Address: Boston StCity: AikenState: SCZip: 29803I completed the 12 grade in school, and I CAN/CANNOT read and write. (Circle one)

On June 4 after 300 am I saw three men walk down dry Branch road toward whiskey they were Black men, and one was wearing a dark colored shirt and blue jean shorts, another was wearing a dark blue t-shirt and kahi shorts. I didn't see the third one well, they looked away from me as I passed. EP

I have read or have had read to me this statement consisting of 1 page (s). This statement is true. I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will, without promise or reward, without fear or threat of physical harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 1500 a.m./p.m. on 9 day of June, 20 08.

Signature of person giving voluntary statement

Witness

Witness

I have been given a copy of this statement consisting of 1 pages.Initials of person making statement. EP

FILED

September 10, 2008

ACSO Form: AD189 (07/28/04)

Officer
Officer
6:05 pm

 PLAINTIFF'S
 EXHIBIT

2

AIKEN COUNTY CORONER'S OFFICE INVESTIGATION REPORT

Decedent Name: Marcus Lindsey Finklin Occupation: _____

Address: _____ Phone: _____

Mailing Address: Moonshadow Drive Aiken SC 29803

DOB: _____ AGE: 21 SSN: [REDACTED] RACE: W SEX: M

PLACE OF DEATH: 100 Block of Dry Branch Court Aiken SC 29803

DETAILS

	DATE	EST. TIME	CAUSE OF DEATH: Gun Shot	MANNER:	Accident	UD
Death Occurred:	06-04-08	0315	est. 0200 per LE	MVA		
Found Dead:	06-04-08	0800		SIDS		Natural
Pronounced:	06-04-08	0827		X Homicide		Suicide

Coroner Notified By: Aiken County EOC Date: 06-04-08 Time: 0805

Pronounced By: Jeff Smith Where: Place of Death

Death Certificate to be Signed By: Coroner Tim Carlton Phone: _____

Address: _____

BRT Completed By: ACCO Investigated By/Agency: ACCO / ACSO

Family Physician: _____ Phone: _____

Address: _____ Contacted: Yes: _____ No: _____

Next of Kin: Brenda Adams Relationship: Mother

Address: Jackson Ave New Ellenton SC 29809 Phone: _____ Cell: _____

Kin Notified By: Jeff Smith Date: _____ Time: 1035 Photos: Yes: X No: _____

Circumstances:

On June 4, 2008 DC Smith was notified by Aiken County EOC of a body found in a car at the end of Dry Branch Court in Aiken. DC Smith arrived on scene and met with investigators from the Aiken County Sheriff's Office. Investigator Lynn Ghant and Clay Adams were the lead investigators. DC Smith was shown the body of Mr. Marcus Finklin who was in the drivers seat of a 1989 Ford Crown Victoria with Georgia Tag which was not registered to Mr. Finklin. Mr. Finklin was cool to the touch rigor mortis was present in all extremities. Mr. Finklin has blood on his face and shirt. He had a wound to the right side of his head above the ear with a small amount of gray matter exposed. DC Smith pronounced Mr. Finklin dead at 0827 hours. Evidence of street drugs was present in the car. The scene was photographed. Mr. Finklin was ordered to Newberry Hospital where Dr Joel Sexton performed and autopsy that found that Mr. Finklin's death was due to a laceration of the brain due to a single gunshot wound to the head. A small caliber bullet was recovered from Mr. Finklin's head. Gun shot residue swabs were taken at autopsy and turned over to the Sheriff's Office. DC Smith transported the toxicology specimens to SLED lab for analyses.

FILED September 10, 2008

[Signature]
[Signature]
5:05 pm



DC Smith contacted Mr. Finklin's mother Ms. Brenda Adams and notified her of Mr. Finklin's death. Ms. Adams reported she last seen Mr. Finklin last night at 2100 hours at her home. Ms. Adams reported she attempted to call Mr. Finklin this morning around 0800 hours but did not make contact. The Sheriff's Office will continue to investigate this case. Mr. Finklin's manner of death was homicide. Coroner Tim Carlton will sign the death certificate. Cheatham Funeral Home was requested for the final arrangements.

Body Released To: Cheatham Funeral Home New Ellenton Date: 06-04-08 Time: 1630

Body Transported By: Rucker Transport / Funeral Home

MCG Tissue Donor Services Notified Date: _____ Time: _____ Accepted: _____

Type of Accident: Motorcycle _____ Pedestrian _____ Car _____ Semi _____ Other _____ Seatbelts Yes _____ No _____

Report Completed By: Jeff Smith D-ABMD9 Date: 06-04-08 Time: 1900

Title: Deputy Coroner Badge # 916 Weekend Coroner Call: _____ Scene: _____

6-04-08

ON SCENE 0826

ORY BRANCH CT. Aiken SC.

MARCUS Lindsey FINKLIN

MOONSHADOW DR

Aiken SC 29803

21 BM

NOK BRENDA ADAMS mother

JACKSON AVE notified AT
ADPS 1035

9

Found By Alex Smith Aiken County Public Works

GRAY CROWN VIC. GA TAG

JOHN DELITTLE 89 FORD CROWN VIC.

CROWFORD AVE. Augusta GA.

MARINO CROWFORD, 5

IDed MR FINKLIN from photo.

DARIS JACKSON

Seen CAR AT 330 AM ORY BRANCH CT.

LIGHT ON.

Gantham FH.

COPY



1142

Aiken County, South Carolina
CRCP1P1Office of the Coroner
Investigation Report
Case: 2008 5042/12/2009 08:40:04
CORW7D1 Page 1

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Complete: C

Deceased: FINKLIN, MARCUS LINDSEY Age: 21 M: Race: B Sex: MDate of Birth: Social Security #: Address: MOONSHADOW DR Telephone #: (000)000-0000City: AIKEN State: SC Zip: 29803Manner: HG Cause: GUNSHOTPlace of Death: BLOCK DRY BRANCH COURTCity: AIKEN State: SC Zip: 29803Coroner Notified: 6/04/2008 0805Death Occurred: 6/04/2008 0200Notified by: ACSO EOCFound: 6/04/2008 0800Pronounced: 6/04/2008 0827Photos: Y

Circumstances & Pertinent Information

ON JUNE 4, 2008 DC SMITH WAS NOTIFIED BY THE AIKEN COUNTY SHERIFF'S OFFICE EOC OF A BODY FOUND IN A CAR AT THE END OF DRY BRANCH COURT IN AIKEN, SC. DC SMITH ARRIVED ON THE SCENE AND MET WITH INVESTIGATORS FROM THE AIKEN COUNTY SHERIFF'S OFFICE. INVESTIGATOR LYNN GHANT AND CLAY ADAMS WERE THE LEAD INVESTIGATORS. DC SMITH WAS SHOWN THE BODY OF MR. MARCUS FINKLIN WHO WAS IN THE DRIVERS SEAT OF A 1989 FORD CROWN VICTORIA WITH GEORGIA TAG AJU 2073 WHICH WAS NOT REGISTERED TO MR. FINKLIN. MR. FINKLIN WAS COOL TO THE TOUCH, RIGOR MORTIS WAS PRESENT IN ALL EXTREMITIES. MR. FINKLIN HAD BLOOD ON HIS FACE AND SHIRT. HE HAD A WOUND TO THE RIGHT SIDE OF HIS HEAD ABOVE THE EAR WITH A SMALL AMOUNT OF GRAY MATTER EXPOSED. DC SMITH PRONOUNCED MR. FINKLIN DEAD AT 0827 HOURS. EVIDENCE OF STREET DRUGS WERE PRESENT IN THE CAR. THE SCENE WAS PHOTODOCUMENTED.

MR. FINKLIN WAS ORDERED TO NEWBERRY HOSPITAL WHERE DR. JOEL SEXTON PERFORMED THE AUTOPSY THAT FOUND THAT MR. FINKLIN'S DEATH WAS DUE TO A LACERATION OF THE BRAIN DUE TO A SINGLE GUNSHOT WOUND TO THE HEAD. A SMALL CALIBER BULLET WAS RECOVERED FROM MR. FINKLIN'S HEAD. GUN SHOT RESIDUE SWABS WERE TAKEN AT AUTOPSY AND TURNED OVER TO THE SHERIFF'S OFFICE. DC SMITH TRANSPORTED THE TOXICOLOGY SPECIMENS TO SLED LAB FOR ANALYSIS.

DC SMITH CONTACTED MR. FINKLIN'S MOTHER, MS. BRENDA ADAMS AND NOTIFIED HER OF MR. FINKLIN'S CAUSE OF DEATH. MS. ADAMS REPORTED SHE LAST SAW MR. FINKLIN LAST NIGHT AT 2100 HOURS AT HER HOME. MS. ADAMS REPORTED SHE ATTEMPTED TO CALL MR. FINKLIN THIS MORNING AROUND 0800 HOURS BUT DID NOT MAKE CONTACT. THE SHERIFF'S OFFICE WILL CONTINUE TO INVESTIGATE THIS CASE. MR. FINKLIN'S MANNER OF DEATH WAS HOMICIDE. CORONER TIM CARLTON WILL SIGN THE DEATH CERTIFICATE. CHEATHAM FUNERAL HOME WAS REQUESTED FOR FINAL ARRANGEMENTS. NO INQUEST PENDING.

Next of Kin: BRENDA ADAMS Relationship: MOAddress: JACKSON AVE Telephone #: City: NEW ELLENTON State: SC Zip: 29809

COPY

354
Aiken County, South Carolina
CRCP1P1

Office of the Coroner
Investigation Report
Case: 2008 504

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2/12/2009 08:40:04
CORW7D1 Page 2

Notified Next of Kin: 6/04/2008

1035

Notifier: DC SMITH

☒ Autopsy ☐ Alcohol ☐ Drugs ☐ Hospice ☐ Inquest
☐ Cremation ☐ Seatbelt ☐ Toxicology ☒ Transport
Funeral Home: CHEATHAM

Address: P.O. BOX 126

City: NEW ELLENTON State: SC Zip: 29809

BRT#: 507782 Issued by: ACCO

Remarks:

Coroner: 

STATE BIRTH NUMBER Department of Health and Environmental Control STATE OF SOUTH CAROLINA

1. DECEDENT'S LEGAL NAME (Include AKA's, if any) (First, Middle, Last)
Marcus Lindsey Finklin

2. SEX
Male

3. SOCIAL SECURITY NUMBER
[REDACTED]

4a. AGE-Last Birthday (Years)
21

4b. UNDER 1 YEAR
 Months Days Hours Minutes

4c. UNDER 1 DAY
 Hours Minutes

5. DATE OF BIRTH
06/04/2008

6. BIRTHPLACE (City and State or Foreign Country)
Augusta, Ga.

7a. RESIDENCE-STATE
S.C.

7b. COUNTY
Aiken

7c. CITY OR TOWN
New Ellenton

7d. STREET AND NUMBER
410 Jackson Avenue

7e. ZIP CODE
29809

7f. INSIDE CITY LIMITS?
☒ Yes ☐ No

8. EVER IN U.S. ARMED FORCES?
☐ Yes ☒ No

9. MARITAL STATUS AT TIME OF DEATH
☐ Married ☒ Married, but separated ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown

10. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage)
N/A

11. FATHER'S NAME (First, Middle, Last)
Jimmie Finklin

12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last)
Brenda Williams

13a. INFORMANT'S NAME
Brenda Williams Adams

13b. RELATIONSHIP TO DECEDENT
Mother

13c. HOME ADDRESS (Street and Number, City, State, Zip Code)
**8 Jackson Avenue
 New Ellenton, SC 29809**

14. PLACE OF DEATH (Check only one; see instructions)
☐ IF DEATH OCCURRED IN A HOSPITAL: ☐ IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice facility
☐ Inpatient ☐ Emergency Room/Outpatient ☐ Dead on Arrival ☐ Nursing home/Long term care facility ☐ Decedent's home ☐ Other (Specify)

15. FACILITY NAME (If not institution, give street and number)
100 Blk. of Dry Branch Ct.

16. CITY OR TOWN, STATE AND ZIP CODE
Aiken, SC 29803

17. COUNTY OF DEATH
Aiken

18. METHOD OF DISPOSITION ☐ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)
Four Mile Bapt. Ch. Cemetery

19. PLACE OF DISPOSITION (Name of cemetery, crematory, other place)
Four Mile Bapt. Ch. Cemetery

20. LOCATION-CITY, TOWN, AND STATE
New Ellenton, SC

21. NAME AND ADDRESS OF FUNERAL FACILITY
**Cheatham Funeral Homes, Inc.
 520 Hickory Ave., E./PO Box 126
 New Ellenton, SC 29809**

22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT
[Signature]

23. LICENSE NUMBER (Of Licensee)
2672

24. EMBALMER (Signature)
[Signature]

25. EMBALMER LICENSE NUMBER
2142

26. LICENSE NUMBER (Of Facility)
265

27. DATE PRONOUNCED DEAD (MM/DD/YYYY)
06/04/2008

28. TIME PRONOUNCED DEAD
0827

29. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable)
[Signature]

30. LICENSE NUMBER
06162008

31. DATE SIGNED (MM/DD/YYYY)
06/16/2008

32. ACTUAL OR PRESUMED DATE OF DEATH (Specify Month)
June 4, 2008

33. ACTUAL OR PRESUMED TIME OF DEATH
EST. 0200

34. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☒ Yes ☐ No

35. PART I. Enter the single disease, injuries, or complications that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.
1. LACERATION OF THE BRAIN
2. GUNSHOT WOUND OF THE HEAD

36. IMMEDIATE CAUSE (Final disease or condition resulting in death)
1. LACERATION OF THE BRAIN
2. GUNSHOT WOUND OF THE HEAD

37. SEQUENTIALLY list conditions, if any, leading to the cause listed on line 35. Enter the UNDERLYING CAUSE (Disease or injury that initiated the events resulting in death) LAST.
1. LACERATION OF THE BRAIN
2. GUNSHOT WOUND OF THE HEAD

38. PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.
1. LACERATION OF THE BRAIN
2. GUNSHOT WOUND OF THE HEAD

39. DID TOBACCO USE CONTRIBUTE TO DEATH?
☐ Yes ☐ Probably ☒ No ☐ Unknown

40. IF FEMALE:
☐ Not pregnant within past year
☐ Pregnant at time of death
☐ Not pregnant, but pregnant within 42 days of death
☐ Not pregnant, but pregnant 43 days to one year before death
☐ Unknown if pregnant within the past year

41. MANNER OF DEATH
☐ Natural ☒ Homicide ☐ Accident ☐ Pending investigation ☐ Suicide ☐ Could not be determined

42. DATE OF INJURY (Specify Month)
JUNE 4, 2008

43. TIME OF INJURY (e.g., Decedent's home, construction site, restaurant, wooded area)
EST. 0200 ROAD/STREET

44. INJURY AT WORK?
☐ Yes ☒ No

45. LOCATION OF INJURY: State: **SOUTH CAROLINA** City or Town: **AIKEN** County: **AIKEN**

46. Street and Number: **Block of Dry Branch Court** Apartment Number: **29803**

47. DESCRIBE HOW INJURY OCCURRED: **DECEDENT WAS SHOT WITH A 38 CALIBER HANDGUN.**

48. IF TRANSPORTATION INJURY, SPECIFY:
☐ Driver/Operator ☐ Pedestrian ☐ Passenger ☐ Other (Specify)

49. CERTIFIER (Check only one)
☐ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Pronouncing and Certifying physician-To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
☒ Coroner/Medical Examiner-On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.

50. Signature of certifier:
[Signature]

51. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32)
TIM CARLTON PO BOX 599 AIKEN SC 29802

52. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER
[REDACTED]

53. TITLE OF CERTIFIER
CORONER

54. LICENSE NUMBER
06162008

55. DATE CERTIFIED (MM/DD/YYYY)
06/16/2008

56. FOR REGISTRAR ONLY-DATE FILED (MM/DD/YYYY)

57. DECEDENT'S EDUCATION-Check the box that best describes the highest degree or level of school completed at the time of death.
☐ 8th grade or less
☐ 9th-12th grade: no diploma
☒ High school graduate or GED completed
☐ Some college credit, but no degree
☐ Associate degree (e.g., AA, AS)
☐ Bachelor's degree (e.g., BA, BS)
☐ Master's degree (e.g., MA, MS, MEd, MDiv, MBA)
☐ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LL.D., etc.)

58. DECEDENT OF HISPANIC ORIGIN?-Check the box that best describes whether the decedent is Spanish/Hispanic/Latino/Latina. Check the "No" box if decedent is not Spanish/Hispanic/Latino/Latina.
☒ No, not Spanish/Hispanic/Latino/Latina
☐ Yes, Mexican, Mexican American, Chicano/Chicana
☐ Yes, Puerto Rican
☐ Yes, Cuban
☐ Other Spanish/Hispanic/Latino/Latina

59. DECEDENT'S RACE-Check one or more races to indicate what the decedent considered himself or herself to be.
☐ White
☐ Black or African American
☐ American Indian or Alaska Native (Name of the enrolled or principal tribe)
☐ Asian Indian
☐ Chinese
☐ Filipino
☐ Japanese
☐ Korean
☐ Vietnamese
☐ Other Asian (Specify)
☐ Native Hawaiian
☐ Guamanian or Chamorro
☐ Samoan
☐ Other Pacific Islander (Specify)
☐ Other (Specify)

60. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED")
LABORER

61. KIND OF BUSINESS AND INDUSTRY
MANUFACTURING

Voluntary Statement

me: 11:45 Date: 6/9/08Page 1 of 2 pagesLocation where statement was obtained: 116 Million Ave., Aiken, SC 29803Name: Christy ParkerDate of Birth: 2SSN: [REDACTED]Address: Million Ave.City: AikenState: S.C.Zip: 29803I completed the 12th grade in school, and (CAN) read and write. (Circle one)

On the 4th I left my house about 2am to take Mark a graduation ticket. Marcus wasn't home so I left the ticket with his room mate. On my way back home I saw Terin, Jerry, Meattman (Joseph) standing in Meattman yard. About 5 mins. later at 3:11am Terin called me off of Jerry's phone and asked me was I coming back out or if I had a cigar and I said no. The next day Jaz called me and Terin was there, so I asked to speak to Terin and I ask him what did him and my cousin Marcus do that night. He told me that they had just chilled on Dry Branch then Marcus said he had to go handle some business and he'll be right back. So he gave mark an 1 to bring him a cigar back. So I asked him did he see mark go up the road he was found dead on, and he said no he left off Dry branch. So he started towards Meattman house so he would wait until Marcus got back. I asked him did he ever see mark come back and he said no. Later I spoke with Meattman I asked him where he was at that night and he told me that him and Terin

I have read or have had read to me this statement consisting of 2 page(s). This statement is true. I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will, without promise or reward, without fear or threat of physical harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 12:20 a.m./p.m. on 9 day of June, 20 08.

Christy D. Parker
Signature of person giving voluntary statement

Wiltona Jagger 4246
Witness

Witness

I have been given a copy of this statement consisting of 2 pages.

Initials of person making statement. _____

FILED

September 12, 15

[Signature]
[Signature]
5:05pm



TIME LINE

12:48 Marcus calls Kenesha (2199 seconds)

12:54 Tevon calls Marcus

1:11 Tevon calls Marcus

1:13 Stephanie calls Marcus

1:25 Jabari calls Marcus

1:30 Marcus sells cocaine to Jabari

2:00 Melissa sees Marcus in the driveway

2:17 Tevon calls Marcus

3:00 Jose Serrano goes home

FILED September 16, 15
Officer [Signature]
[Signature]
5:05pm



SWITCH	CALL DATE	CALL TIME	DIRECTION	CALL ID	CALL NO.	CALL TYPE	CALL STATUS
Atlanta_MTX04	6/4/2008	0:44:29	MO	8032958984	(706) 676-9555	(803) 295-8984	5
Atlanta_MTX04	6/4/2008	0:44:26	MO	8032958984	(803) 662-8635	(803) 295-8984	23
Atlanta_MTX04	6/4/2008	0:39:59	MT	8032958984	(803) 295-8984	(803) 507-0158	46
Atlanta_MTX04	6/4/2008	0:38:29	MT	8032958984	(803) 295-8984	(803) 507-0158	43
Atlanta_MTX04	6/4/2008	0:10:51	MF	8032958984	(803) 295-8984	(803) 624-9178	30
Atlanta_MTX04	6/4/2008	0:10:30	MO	8032958984	(706) 676-9771	(803) 295-8984	3
Atlanta_MTX04	6/4/2008	0:10:27	MO	8032958984	(803) 652-8535	(803) 295-8984	19
Atlanta_MTX04	6/4/2008	0:09:34	MO	8032958984	(803) 624-9178	(803) 295-8984	46
Atlanta_MTX04	6/4/2008	0:09:28	MO	8032958984	(803) 624-9178	(803) 295-8984	5
Atlanta_MTX04	6/4/2008	0:09:24	MF	8032958984	(803) 295-8984	(803) 624-9178	12
Atlanta_MTX04	6/4/2008	0:08:58	MT	8032958984	(803) 295-8984	(803) 624-9178	20
Atlanta_MTX04	6/4/2008	0:07:18	MO	8032958984	(706) 676-9463	(803) 295-8984	5
Atlanta_MTX04	6/4/2008	0:07:15	MO	8032958984	(803) 852-8535	(803) 295-8984	12
Atlanta_MTX04	6/4/2008	0:04:47	MF	8032958984	(803) 295-8984	(803) 852-8535	3
Atlanta_MTX04	6/3/2008	23:56:14	MT	8032958984	(803) 295-8984	(803) 624-9178	4
Atlanta_MTX04	6/3/2008	23:23:15	MF	8032958984	(803) 295-8984	(803) 293-5705	36
Atlanta_MTX04	6/3/2008	23:19:32	MT	8032958984	(803) 295-8984	(803) 293-5705	2
Atlanta_MTX04	6/3/2008	23:12:58	MF	8032958984	(803) 295-8984	(803) 508-2430	3
Atlanta_MTX04	6/3/2008	23:10:03	MF	8032958984	(803) 295-8984	(803) 508-2430	29
Atlanta_MTX04	6/3/2008	23:10:03	MT	8032958984	(803) 295-8984	(803) 508-2430	2
Atlanta_MTX04	6/3/2008	23:09:30	MF	8032958984	(803) 295-8984	(803) 508-2430	6
Atlanta_MTX04	6/3/2008	23:09:23	MT	8032958984	(803) 295-8984	(803) 293-5705	3
Atlanta_MTX04	6/3/2008	23:08:36	MO	8032958984	(706) 676-9464	(803) 295-8984	5
Atlanta_MTX04	6/3/2008	23:08:32	MO	8032958984	(803) 508-2430	(803) 295-8984	4
Atlanta_MTX04	6/3/2008	23:07:03	MO	8032958984	(803) 508-2430	(803) 295-8984	9
Atlanta_MTX04	6/3/2008	23:07:00	MF	8032958984	(803) 295-8984	(803) 508-2430	1
Atlanta_MTX04	6/3/2008	23:06:27	MF	8032958984	(803) 295-8984	(803) 508-2430	5
Atlanta_MTX04	6/3/2008	23:06:18	MO	8032958984	(706) 676-9986	(803) 295-8984	5
Atlanta_MTX04	6/3/2008	23:06:13	MO	8032958984	(803) 508-2430	(803) 295-8984	2
Atlanta_MTX04	6/3/2008	23:06:06	MF	8032958984	(803) 295-8984	(803) 508-2430	6
Atlanta_MTX04	6/3/2008	23:05:59	MO	8032958984	(706) 676-9609	(803) 295-8984	6
Atlanta_MTX04	6/3/2008	23:05:57	MO	8032958984	(803) 508-2430	(803) 295-8984	1
Atlanta_MTX04	6/3/2008	23:05:44	MF	8032958984	(803) 295-8984	(803) 508-2430	5
Atlanta_MTX04	6/3/2008	23:05:34	MF	8032958984	(803) 295-8984	(803) 508-2430	5
Atlanta_MTX04	6/3/2008	23:05:23	MO	8032958984	(706) 676-9914	(803) 295-8984	5

STATE'S
EXHIBIT

36

FILED September 10, 2001

John Lombard
John Lombard
5:05pm

**PLAINTIFF'S
EXHIBIT**

4

Call Date	Call Time	Dir	MDN	Call Ref	GN	32
Atlanta_MTX04 6/4/2008	08:25	MF	8032958964	(803) 295-8964 (803) 652-8535	34	Kerisha Jackson
Atlanta_MTX04 6/4/2008	8:06:50	MF	8032958964	(803) 295-8964 (803) 979-6117	32	
Atlanta_MTX04 6/4/2008	7:04:38	MF	8032958964	(803) 295-8964 (803) 652-8535	33	Kerisha Jackson
Atlanta_MTX04 6/4/2008	7:04:00	MF	8032958964	(803) 295-8964 (803) 652-8535	33	Kerisha Jackson
Atlanta_MTX04 6/4/2008	6:33:13	MF	8032958964	(803) 295-8964 (803) 652-8535	32	Kerisha Jackson
Atlanta_MTX04 6/4/2008	3:25:15	MF	8032958964	(803) 295-8964 (803) 834-0043	38	
Atlanta_MTX04 6/4/2008	2:23:28	MF	8032958964	(803) 295-8964 (803) 652-8535	62	Kerisha Jackson
Atlanta_MTX04 6/4/2008	2:20:44	MF	8032958964	(803) 295-8964 (803) 652-8535	38	Kerisha Jackson
Atlanta_MTX04 6/4/2008	2:17:59	MF	8032958964	(803) 295-3964 (803) 508-5038	32	Tevon Jackson
Atlanta_MTX04 6/4/2008	2:17:33	MT	8032958964	(803) 295-8964 (803) 508-5038	19	Tevon Jackson
Atlanta_MTX04 6/4/2008	2:02:47	MF	8032958964	(803) 295-8964 (803) 652-8535	33	Kerisha Jackson
Atlanta_MTX04 6/4/2008	1:25:05	MT	8032958964	(803) 295-8964 (803) 270-8196	35	Edward Johnson
Atlanta_MTX04 6/4/2008	1:13:51	MM	8032958964	(803) 295-8964 (803) 522-4812	29	Stephanie Green
Atlanta_MTX04 6/4/2008	1:11:22	MT	8032958964	(803) 295-8964 (803) 508-5038	45	Tevon Jackson
Atlanta_MTX04 6/4/2008	1:01:16	MT	8032958964	(803) 295-8964 (803) 270-8196	15	Edward Johnson
Atlanta_MTX04 6/4/2008	0:54:20	MT	8032958964	(803) 295-8964 (803) 508-5038	35	Tevon Jackson
Atlanta_MTX04 6/4/2008	0:43:56	MT	8032958964	(803) 295-8964 (803) 221-2340	15	
Atlanta_MTX04 6/4/2008	0:43:25	MO	8032958964	(706) 676-9813 (803) 295-8964	5	
Atlanta_MTX04 6/4/2008	0:48:22	MO	8032958964	(803) 652-8535 (803) 295-8964	2199	Kerisha Jackson

Call Date	Call Time	Dir	MDN	Call Ref	GN	32
Atlanta_MTX04 6/4/2008	0:44:29	MO	8032958964	(706) 676-9555 (803) 295-8964	5	
Atlanta_MTX04 6/4/2008	0:44:28	MO	8032958964	(803) 652-8535 (803) 295-8964	23	Kerisha Jackson
Atlanta_MTX04 6/4/2008	0:39:59	MT	8032958964	(803) 295-8964 (803) 507-0158	48	Chiquita Ingram
Atlanta_MTX04 6/4/2008	0:38:29	MT	8032958964	(803) 295-8964 (803) 507-0158	43	Chiquita Ingram
Atlanta_MTX04 6/4/2008	0:10:51	MF	8032958964	(803) 295-8964 (803) 824-9178	30	
Atlanta_MTX04 6/4/2008	0:10:30	MO	8032958964	(706) 676-9771 (803) 295-8964	4	
Atlanta_MTX04 6/4/2008	0:10:27	MO	8032958964	(803) 652-8535 (803) 295-8964	192	Kerisha Jackson
Atlanta_MTX04 6/4/2008	0:09:34	MO	8032958964	(803) 824-9178 (803) 295-8964	46	
Atlanta_MTX04 6/4/2008	0:09:28	MO	8032958964	(803) 824-9178 (803) 295-8964	5	
Atlanta_MTX04 6/4/2008	0:09:24	MF	8032958964	(803) 295-8964 (803) 824-9178	12	
Atlanta_MTX04 6/4/2008	0:08:58	MT	8032958964	(803) 295-8964 (803) 624-9178	20	
Atlanta_MTX04 6/4/2008	0:07:18	MO	8032958964	(706) 676-9463 (803) 295-8964	5	
Atlanta_MTX04 6/4/2008	0:07:15	MO	8032958964	(803) 652-8535 (803) 295-8964	121	Kerisha Jackson
Atlanta_MTX04 6/4/2008	0:04:47	MF	8032958964	(803) 295-8964 (803) 652-8535	34	Kerisha Jackson
Atlanta_MTX04 6/3/2008	23:56:14	MT	8032958964	(803) 295-8964 (803) 624-9178	48	
Atlanta_MTX04 6/3/2008	23:23:15	MF	8032958964	(803) 295-8964 (803) 293-5705	36	Nickessa Ealy
Atlanta_MTX04 6/3/2008	23:19:32	MT	8032958964	(803) 295-8964 (803) 293-5705	22	Nickessa Ealy
Atlanta_MTX04 6/3/2008	23:12:58	MF	8032958964	(803) 295-8964 (803) 508-2430	31	
Atlanta_MTX04 6/3/2008	23:10:03	MF	8032958964	(803) 295-8964 (803) 508-2430	29	
Atlanta_MTX04 6/3/2008	23:10:03	MT	8032958964	(803) 295-8964 (803) 508-2430	29	
Atlanta_MTX04 6/3/2008	23:09:30	MF	8032958964	(803) 295-8964 (803) 508-2430	6	
Atlanta_MTX04 6/3/2008	23:09:23	MT	8032958964	(803) 295-8964 (803) 293-5705	33	Nickessa Ealy
Atlanta_MTX04 6/3/2008	23:08:36	MO	8032958964	(706) 676-9494 (803) 295-8964	5	
Atlanta_MTX04 6/3/2008	23:08:32	MO	8032958964	(803) 508-2430 (803) 295-8964	44	
Atlanta_MTX04 6/3/2008	23:07:03	MO	8032958964	(803) 508-2430 (803) 295-8964	9	
Atlanta_MTX04 6/3/2008	23:07:00	MF	8032958964	(803) 295-8964 (803) 508-2430	13	
Atlanta_MTX04 6/3/2008	23:06:27	MF	8032958964	(803) 295-8964 (803) 508-2430	5	
Atlanta_MTX04 6/3/2008	23:06:18	MO	8032958964	(706) 676-9935 (803) 295-8964	5	
Atlanta_MTX04 6/3/2008	23:06:13	MO	8032958964	(803) 508-2430 (803) 295-8964	26	
Atlanta_MTX04 6/3/2008	23:06:06	MF	8032958964	(803) 295-8964 (803) 508-2430	6	
Atlanta_MTX04 6/3/2008	23:05:59	MO	8032958964	(706) 676-9609 (803) 295-8964	5	
Atlanta_MTX04 6/3/2008	23:05:57	MO	8032958964	(803) 508-2430 (803) 295-8964	13	
Atlanta_MTX04 6/3/2008	23:05:44	MF	8032958964	(803) 295-8964 (803) 508-2430	5	
Atlanta_MTX04 6/3/2008	23:05:34	MF	8032958964	(803) 295-8964 (803) 508-2430	5	
Atlanta_MTX04 6/3/2008	23:05:23	MO	8032958964	(706) 676-9914 (803) 295-8964	5	

FILED September 15 2008

Chiquita Ingram

5:05 pm

STATE'S EXHIBIT

54

PLAINTIFF'S EXHIBIT

7

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN)

DEFENDANT'S WITNESS LIST

STATE OF SOUTH CAROLINA)

vs.)

INDICTMENT #'S: 2009-GS-02-83 THRU 84

TEVON MICHAEL JACKSON)
DEFENDANT)

1. Kevin Chavous "aka" Bo Chavous
2. Brenda Adams
3. Chaquita Ingram
4. George Perry
5. Treshay Miller
6. Felice Michelle Stallings
7. James Dunbar
8. Kenisha Jackson
9. Sandra Smith
10. Wanda Green
11. Investigator Greg Savell, ACSO
12. Investigator Victoria Lager, ACSO
13. Investigator Mary Frances O'Grady-Watts, ACSO
14. Investigator Clay Adams, ACSO
15. Corporal Detroit Spires, NEPD
16. Nikki Perry, SLED
17. Jozetta Blair, SLED
18. Selena Kinard, SLED
19. Jasper Humbert, SLED
20. Charles David Hayes, Esquire

FILED September 15, 2009
[Signature]
5:05pm



Office of the Public Defender / Second Judicial Circuit
410 Barnwell Avenue N.W.
Post Office Drawer 2247
Aiken, South Carolina 29802

November 5, 2008

Mr. Tevon Jackson
Aiken County Detention Center
435 Wire Road
Aiken, South Carolina 29801

REF: Preliminary Hearing Transcript

Dear Mr. Jackson:

Enclosed please find a copy of your preliminary hearing transcript on your case. It is very important that you look over this transcript and make a list of things you would like to discuss with me. You should not show this transcript to or discuss your case with anyone.

You have been provided with this copy of your transcript. If you should need another set of this record, there might be a fee for providing you with another copy. If you have any questions, please feel free to contact me.

Sincerely,

M. Justin Mims

M. Justin Mims
Assistant Public Defender

MJM:tc

ENCLOSURE

FILED September 10, 2008
Aiken County
5:05 pm

Telephone: (803) 642-1732 Fax: (803) 642-1739



1 STATE OF SOUTH CAROLINA) IN THE COURT OF THE MAGISTRATE
2)
3 COUNTY OF AIKEN)
4)
5 THE STATE OF SOUTH CAROLINA)
6 PLAINTIFF(S))
7) PRELIMINARY HEARING TRANSCRIPT
8 VS.) WARRANT/TICKET NO.: K-331185
9) K-331192
10 TEVON JACKSON)
11 DEFENDANT(S))
12)
13)
14)

15 Magistrate Court is back in session for the
16
17 purpose of conducting a preliminary hearing on this 29th day of October,
18
19 2008. Let the record show we're now going into the case of the
20
21 *State v. Tevon Jackson*, who is charged under warrant K-331185 with
22
23 the offense of murder. Also, charged under warrant K-331192 with
24
25 possession of a firearm during commission of a violent crime. Let the
26
27 record show the defendant is present in court and represented by attorney
28
29 David Mauldin, with the public defender's office. Representing the State
30
31 is assistant solicitor Stephen Kodman. Let the record further reflect that
32
33 the preamble to this preliminary hearing will be the same as all prior
34
35 preambles with regards to any waivers and any stipulations. Is this
36
37 satisfactory with the defense?
38

39 COUNSEL FOR DEFENSE Yes, Your Honor.

40
41 THE COURT With the State?

42
43 THE STATE Yes, Your Honor.

44
45 THE COURT Before you call your witness let me ask Victim
46

1 Services have the victim's family been notified?
2
3 VICTIM SERVICES Yes, Your Honor.
4
5 THE COURT All right. Please call your witness.
6
7 THE STATE The State calls Investigator Greg Savell.
8
9 THE COURT Investigator Savell, if you'd raise your right
10
11 hand please, sir. Do you swear or affirm the
12
13 testimony you're about to give is the truth, the
14
15 whole truth, and nothing but the truth so help you God?
16
17 INV. SAVELL Yes, sir, I do.
18
19 THE COURT Please answer any questions.
20
21 THE STATE QUESTIONING WITNESS
22
23 Q: Investigator Savell, you're the chief investigating officer charging the
24
25 defendant in this case with murder and possession of a firearm during the
26
27 commission of a violent crime?
28
29 A: Yes, I am.
30
31 Q: Could you relay to the court the underlying facts to support the probable
32
33 cause in this case?
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35 A: Yes, sir. On June 4th, 2008, at approximately 8:01 in the morning, Deputy
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37 Lancaster was dispatched to the 100 block of Dry Branch Court in
38
39 reference to a dead body. Upon arrival, Deputy Lancaster spoke with
40
41 Robert Rollins, the complainant. Mr. Rollins stated that he works for the
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43 Aiken County Department of Public Works and they were supposed to be
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45 cutting trees down on Dry Branch Court and noticed the Ford Crown
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1 Victoria sitting in the middle of the cul-de-sac. Rollins stated that he
2 approached the vehicle and checked on the driver and found him
3 unresponsive, with a small amount of blood on his face. Deputy Lancaster
4 and Chief Hamilton, of the New Ellenton Police Department, checked the
5 vehicle and confirmed that the driver had been shot in the head and
6 requested CID and forensics to respond. On June 4th, 2008, at 8:30 in the
7 morning, Investigator Savell arrived on the scene and met with
8 Deputy Lancaster, who advised that the victim was found by Robert
9 Rollins and Alex Smith. Deputy Lancaster stated that both Rollins and
10 Smith work for Aiken County Public Works. On June 4th, 2008, at
11 8:35 Investigator Savell met with Rollins, the complainant, and he
12 stated that he and Smith were in the area to cut trees. Rollins stated that
13 they drove down to the end of the road to turn around and there was a
14 Crown Victoria sitting in the middle of the road. Rollins stated that he
15 could see in the vehicle and there was some blood on the face of the
16 driver. Rollins stated that they stopped and checked on the driver. Stated
17 that the blood looked dry and the victim wasn't breathing so he assumed
18 he was dead. Rollins stated that he called the called his office to report
19 the incident. And Rollins stated that he never touched the vehicle.
20 Investigator Savell spoke with Alex Smith and he stated that he was with
21 Rollins and they saw the Crown Victoria sitting in the middle of the
22 cul-de-sac. Stated that he could see blood on the victim's face so they
23 stopped to check on him. Smith stated that they approached the vehicle
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1 and observed the victim sitting in the driver's seat and not showing any
2 signs of life so they called their office to report the incident. A bystander
3 approached Chief Hamilton and advised them that Marcus Finklin was
4 driving the Ford Crown Victoria. Chief Hamilton ran Marcus Finklin's
5 information through South Carolina DMV and a photograph of Marcus
6 Finklin came back and he was identified. Chief Hamilton advised
7 Investigator Ghant that George Perry, who works at Carolina BBQ had
8 information about a gray Crown Victoria in the area selling drugs. On
9 June 4th, 2008 at 9:00 in the morning Investigator Ghant and Savell went
10 to 109 South Main Street, Carolina BBQ, and spoke with George Perry.
11 Perry stated that Marc was driving a gray Crown Victoria selling drugs
12 out of it. Perry stated that Marc was usually selling crack cocaine. Perry
13 stated that Marc would usually drive down Main Street and ride by the
14 bars. Perry stated that Marc's mother's name was Brenda Adams and she
15 lives on off Old Jackson Street in New Ellenton. On June 4th, 2008 at
16 9:30 in the morning Investigators Ghant and Savell returned back to the
17 incident location and met with Forensic Investigator Adams, who had
18 advised that the victim appeared to have a single gunshot wound to the
19 back of the head. Forensic Investigator Adams stated that a small
20 plastic baggie with an unknown white substance was found near the
21 victim's left leg and two more plastic baggies were found in the seat near
22 the victim's right leg. Adams stated that the entire crime scene was
23 photographed, along with the contents. Forensic Investigator Adams
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1 assisted Deputy Coroner Smith remove the body from the vehicle. Once
2 the body was removed from the vehicle Adams photographed the body
3 and found no other visible trauma to the body other than a gunshot wound
4 to the head. Deputy Coroner Smith took possession of the deceased and
5 transported him to Newberry, South Carolina for autopsy. Lt. Fleury
6 requested Wayne's Automotive to respond to the scene. The 1989 Crown
7 Victoria was towed to the Aiken County Sheriff's Office forensics section
8 for further investigation and examination. Forensics Investigator Adams
9 escorted the 1989 Crown Victoria to the Aiken County Sheriff's Office.
10 On June 4th, 2008, Investigator Savell received information that the '89
11 Ford Crown Victoria Finklin was driving belonged to Richard Doolittle.
12 Doolittle filed a breach of trust complaint on May 17th, 2008. Doolittle
13 stated that he let James Bower use his vehicle and Bower never returned
14 the vehicle. Doolittle was contacted and advised that his vehicle was
15 recovered by the Aiken County Sheriff's Office. Investigator Savell spoke
16 with Mario Crawford, who was at the incident location and he stated that
17 he knew the vehicle and Marcus was usually seen driving it. Crawford
18 stated that he didn't know Marcus last name. Mario stated that he thought
19 Marcus lived in Chime Bell Trailer Park. Investigator Savell and Ghant
20 went to Chime Bell Trailer Park and spoke with the manager and he stated
21 that no one with the name of Marcus Finklin lived there. Investigator
22 Savell received information from Deputy Coroner Smith stating that
23 Finklin's mother was living at Jackson Avenue. Investigator Savell
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1 and Ghant responded to the residence and no one was home. Investigator
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3 Savell spoke with a family friend and she stated that Brenda Adams,
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5 Marcus's mother, may be at Williams Avenue. Investigator Savell
6
7 responded to Williams Avenue in an attempt to contact Brenda
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9 Adams. Adams wasn't there. Investigator Savell spoke with Stanley
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11 Galloway and he stated that on the night of June 3rd, 2008, he saw his
12
13 cousin, Marcus Finklin, at the Sunshine Club. Galloway stated that he
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15 asked Finklin to drive him to a girl's house and Finklin stated that he
16
17 was going home and left. Galloway stated that after Finklin left he
18
19 never saw him again. Galloway stated that Finklin was living in the
20
21 Sunshine Trailer Park and his roommate's name was Jamar Green.
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23 Galloway stated that he wasn't sure what trailer what exact trailer
24
25 Finklin was living in. On June 4th, 2008, at 1055 hours, Investigator
26
27 Savell and Ghant arrived at Moon Shadow Street, a trailer in the
28
29 Sunshine Trailer Park. Investigator Savell spoke with Chaquita Ingram
30
31 and Dresay Miller and they advised that Marcus Finklin, in fact, lived at
32
33 Moon Shadow Street. Investigator Savell spoke with Chaquita
34
35 Ingram and she stated that she knew Finklin. Ingram, when asked
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37 Investigator Savell asked Ingram when was the last time she saw him?
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39 Ingram stated that on June 4th, 2008, at approximately midnight, she was
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41 at her residence at Dry Branch Road. Ingram noticed Finklin drive
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43 past her house. Ingram stated that a white car, possibly a police car,
44
45 was following him. Ingram stated that she called Finklin to tell him that
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1 he was being followed. Ingram stated that Finklin told her the vehicle
2 turned off. Investigator Savell spoke with Dresay Miller and she stated
3 that on June 3rd, 2008, at approximately 11:30 in the evening time or at
4 night time, she and Marcus were together at his house. Miller stated that
5 Finklin received a phone call and said that he had to go to the other end of
6 Dry Branch and would be right back. Miller stated that Finklin had
7 trouble with Bo Chavous in the past and he was known to drive a white
8 Crown Victoria. On June 4th, 2008, at 1402 hours, Investigator Savell
9 went to Jackson Avenue and spoke with Brenda Adams, Finklin's
10 mother. Adams stated that a few months prior to the incident someone
11 busted Finklin's door down. Adams went on saying that the next day she
12 called Finklin and told him that she was on her way to his house and he
13 asked how long it would be. Finklin replied ten minutes. Adams stated
14 that when she got to the house the door was open so she walked in and a
15 young man was holding a gun. Adams stated that she screamed and the
16 man turned and pointed the gun at her. Adams stated that she looked at
17 Finklin and he was holding a gun also. Adams stated that she screamed at
18 Finklin to put the gun down and he told her that he busted through the
19 door and pulled a gun on him. Adams stated that she continued to plead
20 with the young man to put the gun down and he finally did. Adams stated
21 that Finklin also put his gun down. Finklin stated that he was the one who
22 kicked the door in the day before. Adams stated that she asked the young
23 man to come outside and talk and he finally did. Adams asked his name
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1 Q: Did he state who that was that was calling?

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3 A: Give me just a moment to look at his statement form please. No, it
4
5 doesn't say. It just says that he received a phone call and then he said he
6
7 called his cousin back, who was a she. I didn't do this interview.
8

9 Q: Okay.

10
11 A: So I don't have that information on who he called. On June 4th, 2008, at
12
13 1450 hours, Investigator Savell spoke with Latika Elliott and she stated
14
15 that she got a phone call from Finklin at 3:01 in the morning on June 4th
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17 telling her he was coming to her house. Elliott stated that was the last time
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19 she spoke with Finklin and he never showed up. On June 5th, 2008, at
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21 1145 hours, Investigator Savell spoke with Ingram. Ingram stated that she
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23 saw Poo Poo, Finklin's brother, leave her house at approximately 11:00 at
24
25 night on June 3rd. Ingram stated that Poo Poo was wearing all black and
26
27 walked off and she never saw him again. Ingram stated that Poo Poo was
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29 acting suspicious and she felt he was taking advantage of Finklin.
30
31 June 6th, 2008, at 1150 hours, Lt. Fleury spoke with Felicia Stallings.
32
33 Stallings stated that Finklin called her on June 2nd, that should be a
34
35 correction, it's June 3rd, 2008, at 2230 hours and then came over to her
36
37 house at 145 Dry Branch Road 2245 hours. Stallings stated that Finklin
38
39 got a phone call from her neighbor and they talked. Stallings stated that
40
41 Finklin's phone kept ringing and at approximately 1216 hours Finklin got
42
43 up and said his brother kept aggravating him to give him a ride to Walt's
44
45 house. Stallings stated that Finklin told her that he would be back and
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1 left the house at 12:31. Stallings stated that she didn't hear from Finklin
2
3 between 12:30 and 2:00. Stallings stated that after 2:00, Finklin pulled
4
5 into her driveway and backed out minutes later. Stallings stated that she
6
7 texted him at 2:45 and he never responded back. On June 5th, 2008, at
8
9 12:00, Lt. Fleury spoke with Lois Ealy and she stated that on the morning
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11 of June 3rd, 2008, at approximately 2:00, Finklin sat at the end of her
12
13 driveway for approximately five minutes. Ealy stated that she didn't see
14
15 anything suspicious. On June 5th, 2008, at 1338 hours, Investigator Ghant
16
17 spoke with Kenisha Jackson and she advised that she spoke with Finklin
18
19 on the phone about midnight to 1:00 in the morning of June 3rd. Jackson
20
21 stated that during their conversation Finklin was driving around and he
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23 went back to his house. Jackson stated that she heard Finklin tell someone
24
25 he would make them walk to the other end of Dry Branch. Jackson stated
26
27 Finklin got back in his vehicle and she assumed he was dropping someone
28
29 off. Jackson stated that Finklin told her that she was going to come by her
30
31 house and see her. Jackson stated that Finklin never came to her house.
32
33 June 5th, 2008, at 1445 hours, Lt. Fleury spoke with Finklin, correction on
34
35 that. That should be Tevon Jackson, at the Aiken County Sheriff's Office.
36
37 Tevon stated that he spoke with Finklin on June 2nd, 2008. Finklin asked
38
39 him to go to Georgia with him. Tevon stated that he and Finklin went to
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41 Dry Branch Court and stayed for about ten seconds. Tevon stated that
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43 Finklin got a call at 12:30 and he said he was on his way back to his
44
45 house. Tevon stated that as soon as they got on the road Finklin made a
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1 sale to Stephanie and then went to the house. Tevon stated that Finklin
2 sold a sack to Jabari and went back to the spot. Tevon stated that they
3 were there less than a minute and Tevon stated that he had to make a run
4 and dropped them off at his house. Tevon stated that he was on his way
5 to Joseph's house and he called Finklin and asked him to pick him up
6 and pay Bo at approximately 1:00. Tevon stated that Finklin said he
7 was on his way; however, he never showed up. Tevon stated he wasn't
8 around when Tevon died and had no idea who killed him. On June 6th,
9 2008, at 1430 hours, Investigator Lager spoke with Erica Green at the
10 Aiken County Sheriff's Office. Green stated that on June 4th, 2008,
11 between 1500 and 1600 hours she observed Tevon Jackson, Joseph Dicks,
12 and David Jarr at the Dollar General store in New Ellenton. Green stated
13 that Tevon was the only person to buy a pack of white tee shirts. Green
14 stated that Jarr stood at the window looking out. Green stated that when
15 they were leaving Tevon asked if she saw Jamar and Tev, Green stated
16 that she told Tevon that they were at Finklin's mother's house. Green
17 stated that she watched them leave in the opposite direction and turn
18 back into the plaza. Green stated that they went back into the Dollar
19 General. Green went on saying that her sister went back into the store
20 and saw Tevon steal a pack of batteries. Green stated that Sherri told
21 her that Tevon had something on his shirt that looked like blood. Green
22 stated that Jamar spoke with Tevon's girlfriend, Sherita Carter, and she
23 told him that she was on the phone with Tevon when he was with

1 Finklin. Carter stated that Tevon told Finklin to pull the car over and shut
2 the lights off. Carter stated that Tevon then stated that he would call her
3 back because he had to handle something real quick. On June 6th, 2008,
4 at 10:45, Investigator Savell spoke with Sherita Carter, Tevon's
5 girlfriend, at the New Ellenton Police Department. Carter stated that she
6 received a phone call from Tevon at approximately 2:30 or 3:00 in the
7 morning. Carter ---
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15 Q: What day is she referring to for that phone call?

16
17 A: She is referring to June 4th. Carter stated that, Carter advised that she
18 asked Tevon what he was doing and he didn't answer. Carter stated that
19 Tevon was talking to someone and she asked who he was with. And
20 again, he didn't answer. Carter stated that she heard Tevon tell the person
21 that he was with that they went down the wrong road and that they needed
22 to go down the road with no street lights. Carter stated that it sounded
23 like they picked someone else up and she asked Tevon who he was with
24 and he didn't answer. Carter stated that Tevon kept talking with someone
25 in the car and hung up the phone on her. Carter stated that Tevon called
26 her back and was with his cousin, Meat Man. Carter stated that she went to
27 bed and called Tevon later in the day and asked him if he had anything to
28 do with the murder of Finklin. Carter stated that Tevon asked her what
29 she thought and started to laugh at her. Carter stated that she spoke with
30 Joe Dicks and asked him if Tevon had anything to do with the murder and
31 he stated Tevon didn't have anything to do with it.
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1 Q: Do you know who his cousin, Meat Man, is?

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3 A: That would be Joseph Dicks. On June 09, 2008, at 12:20, Investigator
4
5 Lager spoke with Christy Parker at 16 Millon Avenue. Parker stated that
6
7 on June 04, 2008, at approximately 2:00 in the morning she left her
8
9 residence and went to Finklin's house to give him a graduation ticket.
10
11 Parker stated that Finklin wasn't home so she left the ticket with his
12
13 roommate. Parker stated that she was walking back home and saw Tevon,
14
15 Joey or Jose, and Joseph standing in front of Joseph's front yard. Parker
16
17 stated that approximately five minutes later Tevon called her and asked
18
19 if she was coming back out or if she had a cigar and she stated no. Parker
20
21 stated that she spoke with Tevon the next morning and asked what he and
22
23 Marcus did last night. Tevon told her that they just hung out on Dry
24
25 Branch. Tevon told her that Marcus had to go take care of some business
26
27 and would be back. Tevon told Parker that he gave Finklin a dollar
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29 (\$1.00) to get a cigar. Parker asked Tevon if he saw Finklin drive down
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31 the road he was found dead on and Tevon stated, no, he left off Dry
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33 Branch. Tevon told Parker that he went to Meat Man's house to wait for
34
35 Finklin. On June 9th, 2008, at 1242 hours, Investigator Savell spoke with
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37 Kevin Chavous, also known as Bo Chavous, at Beech Island substation.
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39 Investigator Savell advised Chavous of the incident. Chavous stated
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41 that they had their problems in the past; however, he had not been to
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43 New Ellenton in the at least a month. Chavous stated that he had no
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45 information on the murder and said that he had nothing to do with it.
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1 June 9th, 2008, at 1300 hours, Lt. Fleury spoke with Joseph Dicks at the
2 Aiken County Sheriff's Office. Dicks stated that on June 3rd, 2008,
3 Tevon got a 9mm from Serrano and said that he was going to rob the
4 pizza man. Dicks stated that later in the night Joey Serrano and Tevon
5 were walking, he, Joey Serrano and Tevon were walking Tracy Serrano
6 home. Dicks stated that Finklin drove by at approximately 1230 hours.
7 Dicks stated that while they were walking Tracy home she stated that
8 she lost fifty dollars (\$50.00) and a pack of cigarettes. Dicks stated
9 that he, Joey, and Tevon went back into the house and talked with his
10 girlfriend on the phone. Dicks stated that Tevon left the house and didn't
11 say where he was going. Dicks stated that his cousin, K.C., came to the
12 house and drank a beer and Joey and K.C. left to smoke a joint. Dicks
13 stated that Joey, K.C., and Tevon came back to the house. Dicks stated
14 that K.C. left and Tevon said, "I did it." Dicks asked, "Did what?" And
15 Tevon stated, "Kill Little Marc." Dick's said, "For real?" And Tevon said
16 that he got out of Finklin's car and acted like he was going to piss and shot
17 him. Dicks stated that Tevon told him that he seen smoke come out of his
18 head. Dicks stated that he couldn't believe it and went to bed. Dicks
19 stated the next morning he asked Tevon if he still had it, meaning the gun,
20 and Tevon stated he did. Dicks stated that he couldn't keep it there
21 because of his mother. Lt. Fleury asked Dicks where Tevon said he was
22 sitting in the car and Dicks replied, on the passenger side of the car. And
23 acted, got out of the car and acted like he was going to piss and shot him.
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1 Lt. Fleury asked Dicks if he or Serrano were with Tevon he shot him
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3 and Dicks replied, no. Lt. Fleury asked if any money or drugs were seen
4
5 and Dicks said, no. On June 09, 2008, at 1450 hours, Investigator Lager
6
7 spoke with Ernest Bull, at the Aiken Department of Motor Vehicle. Bull
8
9 stated that he was driving down Dry Branch on June 4th, 2008, at
10
11 approximately 3:00 in the morning. Bull stated that he observed three
12
13 black males walking down Dry Branch heading toward Whiskey Road.
14
15 Bull stated that one of the subjects was wearing a dark shirt and blue jean
16
17 shorts, and the other was wearing a blue shirt and tan shorts. Bull stated
18
19 that he didn't get a good enough look at the third subject. June 9th, 2008,
20
21 at 1520 hours, Investigator Savell spoke with Stephanie Green at St. Paul
22
23 Methodist Church in New Ellenton. Green stated that she called Finklin
24
25 on June 4th, 2008, at approximately 0118 hours in the morning. Green
26
27 stated that she asked Finklin where he was and he stated that he was at
28
29 his trailer. Green stated that she had to get up with him and she was on
30
31 her way over to his trailer. Green stated that she was driving down Dry
32
33 Branch Road and passed Finklin's car so she called him and asked why
34
35 he left his trailer when he knew she was on her way. Green stated that
36
37 Finklin told her to turn around and meet him in front of Sandra's trailer
38
39 because he had to go and pick up someone. Green stated that she drove up
40
41 next to Finklin's car and gave him the money and he gave her the stuff.
42
43 Green stated that the person Finklin was supposed to pick up wasn't in the
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45 car with him. Green stated that Tevon was standing on the side of
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1 Finklin's car hiding behind the door frame. Green stated that Tevon was
2 holding his head down and acting real crazy. Green stated that she asked
3 Finklin what he was getting ready to do and he stated that he had to make
4 a run. Green stated that Finklin told her to call him. And she stated that it
5 wasn't going to do any good and she got back in her car with Jimmy.
6
7 Green stated that Tevon finally got into the car with Finklin. Green said
8 that Tevon got in the passenger side of Finklin's car real fast and then hid
9 his head behind the head rest so no one could see his face. Green stated
10 that she pulled away and drove down the street and Finklin's car was still
11 sitting there. Green stated that she knew that Tevon was spending the
12 night at Finklin's house. Green stated that when she bought her stuff she
13 saw around twelve hundred to two thousand dollars cash in Finklin's lap.
14
15 Green also stated that Finklin had a sandwich bag full of small baggies
16 containing powder. On June 9th, 2008, at 1610 hours, Lt. Fleury spoke
17 with Joey Serrano at the Aiken County Sheriff's Office. Serrano stated
18 that on June 3rd, 2008, at approximately 2245 hours, he left his house and
19 went to Joseph Dicks or Meat Man's house. Serrano stated that he got
20 there and his mother was leaving the house to go home. Serrano stated
21 that he, Joseph, and Tevon walked his mom, Tracy Serrano home.
22
23 Serrano stated that they were walking Tracy home and they saw Finklin go
24 to a house. Serrano stated that Tevon stated that he was thinking about
25 robbing Finklin. Serrano stated that Tracy asked him to go back to
26 Joseph's house and look for some money and a pack of cigarettes she
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1 had dropped. Serrano stated that they went back to Joseph's house and
2 didn't find anything. Jose stated that Tevon came up to him and showed
3 him a 38 caliber pistol and said that he was going to catch a lick.
4
5 Serrano stated that Tevon left the house for about 30 to 35 minutes.
6
7 Serrano stated that Tevon returned and said he did it. Serrano stated
8 that he shot him, meaning Finklin, and saw smoke come from his mouth.
9
10 Serrano stated that Tevon showed him some money and wasn't sure if
11 it was his or where it came from. On June 9th, 2008, at 1700 hours,
12
13 Lt. Fleury spoke with Tracy Serrano at the Aiken County Sheriff's Office.
14
15 Tracy stated that on June 4th, at approximately 12:00 or 12:30 in the
16 morning she was walking home with Serrano, Joseph, and Tevon. Tracy
17 stated that they saw Finklin drive by. Tracy stated that Tevon said, "I
18 should go rob that nig." Tracy stated that she told him to behave. On
19
20 June 10th, 2008, Lt. Fleury obtained arrest warrant K-331185 for murder
21 and K-331192 for possession of a firearm during the commission of a
22 violent crime. On June 10th, 2008, Tevon Jackson was arrested and
23 warrants were served. On June 30th, 2008, at 1340 hours, Investigator
24
25 Savell spoke with Sherita Carter at her residence, on East Pine Street.
26
27 Carter stated that she knew what road Tevon was on without lights.
28
29 Sherita stated that she saw the road on the news and recognized it
30 because she used to live on the road with her aunt. Sherita stated that
31 she saw Joseph at the store and he said that she had a big mouth and
32 it was her fault Tevon was in jail and she needed to keep her mouth
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1 closed. Sherita stated that the day after the murder she received a phone
2 call from Tevon and she asked him what happened and Tevon told her to
3 keep her mouth closed. Sherita stated that approximately three to four
4 weeks before the murder Tevon showed her a silver gun that he had just
5 got. Investigator Savell asked if Sherita knew what kind of gun and she
6 stated that it was the kind that you had to load in little holes on the side
7 like a revolver. On June 30th, 2008, at 1340 hours, Investigator Savell
8 spoke with Maria Carter, Sherita's mother, at East Pine Street.
9 Maria stated that her step-son came to her house after it happened and
10 explained what happened. Merita stated that her daughter was on the
11 phone with Tevon when it happened. Maria stated that Sherita stated to
12 her that she was on the phone with Tevon when the incident happened.
13
14

15 Q: Was any fingerprint evidence gathered from the scene of the crime?
16

17 A: Yes.
18

19 Q: Are there any results back from that yet?
20

21 A: I do not have the results back.
22

23 Q: And what about any ballistics testing. Is there any of that being done in
24 this case?
25

26 A: The ballistics that were recovered at autopsy were sent to SLED.
27

28 Q: That's pending from SLED?
29

30 A: Yes.
31

32 Q: And what was the cause of death listed at the autopsy?
33

34 A: Cause of death was gunshot wound to the head laceration of the brain.
35
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1 Q: Please answer any questions Mr. Mauldin may have for you.

2
3 A: Yes, sir.

4
5 COUNSEL FOR DEFENSE ON CROSS EXAMINATION

6
7 Q: Thank you. Where did the bullet enter Mr. Finklin's head? Which side
8
9 of the head did it enter?

10
11 A: The back side of the head. The back left side of the head according to the
12
13 photographs that I saw from the autopsy.

14
15 Q: Okay. Back left side. All right. Okay. Now were you present during the
16
17 interviews of Joey Serrano or Joseph Serrano and Joseph Dicks?

18
19 A: No, sir, I wasn't.

20
21 Q: Not present during those interviews. Were they recorded in any fashion
22
23 such as video?

24
25 A: It's just written.

26
27 Q: Okay. Do you know if they were asked to come to the Sheriff's Office or
28
29 if they came of their own volition?

30
31 A: To the best of my knowledge I believe they came up there on their own.
32
33 I was doing other interviews when they came up to the office.

34
35 Q: You're not sure about that?

36
37 A: I'm not exactly sure.

38
39 Q: Were they ever questioned why they waited five days after the murder
40
41 when somebody supposedly confessed to it that night, that they wait five
42
43 days to go to the Sheriff's Office and say that somebody confessed to it?

44
45 A: I can't answer. I'm not sure if they were asked or not why they waited.
46

1 Q: Now Meat Man or Joseph Dicks said that, I guess, Mr. Serrano had given
2
3 Tevon a 9mm gun. Is that correct?
4

5 A: Yes, it was.
6

7 Q: That day? Okay. And Mr. Serrano said that Tevon had showed him a .38
8
9 pistol. Is that correct?
10

11 A: That's correct.
12

13 Q: Okay.
14

15 A: Let me go look over my -- yeah, Serrano said that he showed him a .38.
16

17 Q: And Mr. Dicks said he did not see any money?
18

19 A: Mr. Dicks was asked, did you see any money or drugs? And he said,
20
21 no.
22

23 Q: Whereas Mr. Serrano said Tevon showed the money? He didn't know if
24
25 it was his.
26

27 A: Yes, he said, he showed me some money but I didn't know if it was his.
28

29 Q: And Mr. Dicks said that when Tevon had returned that evening he actually
30
31 returned with Mr. Serrano and a fellow named K.C.?
32

33 A: Yeah. They left to smoke a joint and came back with K.C.
34
35 and Joey and Tevon.
36

37 Q: Where Serrano's statement seems to reflect that he was with Dicks the
38
39 whole time and then Tevon came back while he was at Dicks house. Is
40
41 that correct?
42

43 A: Yeah. They went back to the house to look for the cigarettes and the
44
45 money that was dropped.
46

1 Q: I'm talking about they alleged that Tevon went away by himself and he
2
3 came back. Dicks said that when Tevon went away he came back later.
4
5 He came back with K.C. and Serrano. Whereas, Serrano appears to say
6
7 he was at Dicks house the whole time. Tevon came back and then K.C.
8
9 came some time after Tevon.
10
11 A: K.C. came over and that's when they smoked a joint.
12
13 Q: Okay. And I'm recalling some of the statements she made to other people.
14
15 Sherita Carter had said in her statement that she had talked with Joseph
16
17 Dicks prior to his statement to the police and Dicks had told her that
18
19 Tevon had nothing to do with the murder?
20
21 A: That's right.
22
23 Q: And in Christy Parker's statement, which was given before Mr. Dicks
24
25 went to the Sheriff's Office, she had talked with Mr. Dicks and again he
26
27 had said that Tevon had been with him all day and had nothing to do with
28
29 the murder.
30
31 A: That's was Christy Parker you say?
32
33 Q: That's correct.
34
35 A: Just bear with me for a moment. I'm not seeing that in the statement.
36
37 Q: It's right here. Hold on a second. It's towards the bottom of the first page
38
39 going on to the second page.
40
41 THE COURT Let me interrupt you just a minute. We need to
42
43 change the tape.
44
45 END OF TAPE 1, BEGINNING TAPE 2
46

1 COUNSEL FOR DEFENSE CONTINUING CROSS

2
3 A: Now your question to me was as far as Christy Parker what now?

4
5 Q: Well, basically, that Joseph Dicks had told her that Tevon had been
6
7 with him the whole day and hadn't even been with Marcus that night.

8
9 A: She did say that he and Tevon and been chilling and smoking all that
10
11 day. And he was with Tevon all day.

12
13 Q: And doesn't it further go on so she says to Mr. Dicks, so you was
14
15 with Marc, too? And he said, no. So then I said, but Tevon was with
16
17 Marcus. And he said, no he wasn't.

18
19 A: That's correct.

20
21 Q: Okay. All right. And Mr. Serrano has a pending armed robbery charge.
22
23 Does he not? Are you aware of that fact?

24
25 A: Mr. Serrano?

26
27 Q: Yes, sir.

28
29 A: No, I wasn't.

30
31 Q: Now the interview with, Ms., I believe it's Stephanie Green, the lady that
32
33 bought cocaine from Marcus, that was conducted after Tevon had given
34
35 his statement stating that they had sold to her. Is that correct?

36
37 A: Stephanie, your question was Stephanie Green's statement was given
38
39 when?

40
41 Q: After Tevon's statement the time period.

42
43 A: Yes, her statement was given after this.

44
45 Q: Okay. Beg the Court's indulgence one moment. All right. I have no
46

1 further questions, but I do have a motion, Your Honor.

2
3 THE COURT

Go ahead, Mr. Mauldin.

4
5 COUNSEL FOR DEFENSE

6 Thank you, Your Honor. I'd move to dismiss
7 these charges for lack of probable cause. It
8 appears that the only evidence against Mr.
9

10 Jackson in this case is the statement of these two individuals, Mr. Dicks
11 and Mr. Serrano. The statements are highly inconsistent on several
12 counts. Both the fact of what gun was used. Mr. Dicks says that Mr.
13 Serrano had provided Tevon with a 9mm, whereas Mr. Serrano said
14 Tevon already had a .38. They have varying accounts. One says there
15 was no money. The other one said Tevon was showing around money.
16 They both have varying accounts as far as when Tevon supposedly
17 returned after committing the murder. Mr. Dicks said that he came back
18 with Mr. Serrano and K.C., whereas Mr. Serrano says that Tevon came
19 back by himself and K.C. came afterward. Mr. Dicks has given several
20 other statements to other individuals saying that Tevon had nothing to
21 do with the murder. Both of these individuals came to the sheriff's
22 office five days after the murder occurred alleging that somebody had
23 confessed the night of the murder. That, in itself, seems to me
24 suspicious. The State may point out that Ms. Green indicated that
25 Mr. Jackson was with Mr. Finklin that night and acting suspicious;
26 however, she did give her statement after Mr. Jackson had said they had
27 sold her drugs. Obviously, the sheriff's department had called her in
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1 and said, look this guy said that you had bought drugs. So she has some
2 bias against Mr. Tevon Jackson. There's been no forensics. It's been
3 here four months. All you've got is the statement of these two fellows
4 and Mr. Jackson has been sitting in jail. I don't think that rises to the
5 level of probable cause and therefore move that the charges be dismissed.
6
7
8
9

10 THE COURT

Thank you. State's position?

11 THE STATE

12 The State's position is there is probable cause,
13 Judge. These are credibility issues that are
14 best left for a jury to decide. We've got two
15 people who the defendant confesses to shooting the victim in this case.
16 He told three people that he was going to go do the robbery before it
17 happened. He told two about it after it happened. He told both of the
18 individuals and they were consistent that he saw some kind of smoke
19 coming from the victim's head after he shot him. Where the bullet
20 went into the victim's head is consistent with the evidence was whereas
21 the defendant's statement was that he to the others was that he got out
22 of the vehicle and then walked around and shot him. We have a witness
23 seeing blood on the defendant's shirt. We have another witness having
24 him putting him at the Dollar General buying a pack of white shirts.
25 It would be the State's position that these issues that Mr. Mauldin's
26 bringing up are credibility issues left for a jury to determine and that
27 they clearly rise to the level of probable cause.
28
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45 THE COURT

All right. Thank you. Thank you, Mr.

1 Mauldin. I'm going to deny your motion at
2
3 this time. I believe that is correct as far as
4
5 the believability of witnesses. Of course, there's no ballistics back yet,
6
7 but then again they're back logged, I'm sure, on ballistics testing. So
8
9 probable cause purposes, I believe, have been met by the State and I
10
11 bound both cases over.
12
13
14
15

16 S. L. LYNN, JR., MAGISTRATE
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1 STATE OF SOUTH CAROLINA) IN THE COURT OF THE MAGISTRATE
2)
3 COUNTY OF AIKEN)
4)
5 THE STATE OF SOUTH CAROLINA)
6 PLAINTIFF(S))
7) PRELIMINARY HEARING TRANSCRIPT
8 VS.) WARRANT/TICKET NO.: K-331185
9) K-331192
10 TEVON JACKSON)
11 DEFENDANT(S))
12)
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Magistrate Court is back in session for the
purpose of conducting a preliminary hearing on this 29th day of October,
2008. Let the record show we're now going into the case of the
State v. Tevon Jackson, who is charged under warrant K-331185 with
the offense of murder. Also, charged under warrant K-331192 with
possession of a firearm during commission of a violent crime. Let the
record show the defendant is present in court and represented by attorney
David Mauldin, with the public defender's office. Representing the State
is assistant solicitor Stephen Kodman. Let the record further reflect that
the preamble to this preliminary hearing will be the same as all prior
preambles with regards to any waivers and any stipulations. Is this
satisfactory with the defense?

39 COUNSEL FOR DEFENSE Yes, Your Honor.

40 THE COURT With the State?

41 THE STATE Yes, Your Honor.

42 THE COURT Before you call your witness let me ask Victim

1 Services have the victim's family been notified?
2
3 VICTIM SERVICES Yes, Your Honor.
4
5 THE COURT All right. Please call your witness.
6
7 THE STATE The State calls Investigator Greg Savell.
8
9 THE COURT Investigator Savell, if you'd raise your right
10 hand please, sir. Do you swear or affirm the
11 testimony you're about to give is the truth, the
12 whole truth, and nothing but the truth so help you God?
13
14
15
16
17 INV. SAVELL Yes, sir, I do.
18
19 THE COURT Please answer any questions.
20
21 THE STATE QUESTIONING WITNESS
22
23 Q: Investigator Savell, you're the chief investigating officer charging the
24 defendant in this case with murder and possession of a firearm during the
25 commission of a violent crime?
26
27
28
29 A: Yes, I am.
30
31 Q: Could you relay to the court the underlying facts to support the probable
32 cause in this case?
33
34
35 A: Yes, sir. On June 4th, 2008, at approximately 8:01 in the morning, Deputy
36 Lancaster was dispatched to the 100 block of Dry Branch Court in
37 reference to a dead body. Upon arrival, Deputy Lancaster spoke with
38 Robert Rollins, the complainant. Mr. Rollins stated that he works for the
39 Aiken County Department of Public Works and they were supposed to be
40 cutting trees down on Dry Branch Court and noticed the Ford Crown
41
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1 Victoria sitting in the middle of the cul-de-sac. Rollins stated that he
2
3 approached the vehicle and checked on the driver and found him
4
5 unresponsive, with a small amount of blood on his face. Deputy Lancaster
6
7 and Chief Hamilton, of the New Ellenton Police Department, checked the
8
9 vehicle and confirmed that the driver had been shot in the head and
10
11 requested CID and forensics to respond. On June 4th, 2008, at 8:30 in the
12
13 morning, Investigator Savell arrived on the scene and met with
14
15 Deputy Lancaster, who advised that the victim was found by Robert
16
17 Rollins and Alex Smith. Deputy Lancaster stated that both Rollins and
18
19 Smith work for Aiken County Public Works. On June 4th, 2008, at
20
21 8:35 Investigator Savell met with Rollins, the complainant, and he
22
23 stated that he and Smith were in the area to cut trees. Rollins stated that
24
25 they drove down to the end of the road to turn around and there was a
26
27 Crown Victoria sitting in the middle of the road. Rollins stated that he
28
29 could see in the vehicle and there was some blood on the face of the
30
31 driver. Rollins stated that they stopped and checked on the driver. Stated
32
33 that the blood looked dry and the victim wasn't breathing so he assumed
34
35 he was dead. Rollins stated that he called the called his office to report
36
37 the incident. And Rollins stated that he never touched the vehicle.
38
39 Investigator Savell spoke with Alex Smith and he stated that he was with
40
41 Rollins and they saw the Crown Victoria sitting in the middle of the
42
43 cul-de-sac. Stated that he could see blood on the victim's face so they
44
45 stopped to check on him. Smith stated that they approached the vehicle
46

1 and observed the victim sitting in the driver's seat and not showing any
2 signs of life so they called their office to report the incident. A bystander
3 approached Chief Hamilton and advised them that Marcus Finklin was
4 driving the Ford Crown Victoria. Chief Hamilton ran Marcus Finklin's
5 information through South Carolina DMV and a photograph of Marcus
6 Finklin came back and he was identified. Chief Hamilton advised
7 Investigator Ghant that George Perry, who works at Carolina BBQ had
8 information about a gray Crown Victoria in the area selling drugs. On
9 June 4th, 2008 at 9:00 in the morning Investigator Ghant and Savell went
10 to 109 South Main Street, Carolina BBQ, and spoke with George Perry.
11 Perry stated that Marc was driving a gray Crown Victoria selling drugs
12 out of it. Perry stated that Marc was usually selling crack cocaine. Perry
13 stated that Marc would usually drive down Main Street and ride by the
14 bars. Perry stated that Marc's mother's name was Brenda Adams and she
15 lives on off Old Jackson Street in New Ellenton. On June 4th, 2008 at
16 9:30 in the morning Investigators Ghant and Savell returned back to the
17 incident location and met with Forensic Investigator Adams, who had
18 advised that the victim appeared to have a single gunshot wound to the
19 back of the head. Forensic Investigator Adams stated that a small
20 plastic baggie with an unknown white substance was found near the
21 victim's left leg and two more plastic baggies were found in the seat near
22 the victim's right leg. Adams stated that the entire crime scene was
23 photographed, along with the contents. Forensic Investigator Adams
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1 assisted Deputy Coroner Smith remove the body from the vehicle. Once
2
3 the body was removed from the vehicle Adams photographed the body
4
5 and found no other visible trauma to the body other than a gunshot wound
6
7 to the head. Deputy Coroner Smith took possession of the deceased and
8
9 transported him to Newberry, South Carolina for autopsy. Lt. Fleury
10
11 requested Wayne's Automotive to respond to the scene. The 1989 Crown
12
13 Victoria was towed to the Aiken County Sheriff's Office forensics section
14
15 for further investigation and examination. Forensics Investigator Adams
16
17 escorted the 1989 Crown Victoria to the Aiken County Sheriff's Office.
18
19 On June 4th, 2008, Investigator Savell received information that the '89
20
21 Ford Crown Victoria Finklin was driving belonged to Richard Doolittle.
22
23 Doolittle filed a breach of trust complaint on May 17th, 2008. Doolittle
24
25 stated that he let James Bower use his vehicle and Bower never returned
26
27 the vehicle. Doolittle was contacted and advised that his vehicle was
28
29 recovered by the Aiken County Sheriff's Office. Investigator Savell spoke
30
31 with Mario Crawford, who was at the incident location and he stated that
32
33 he knew the vehicle and Marcus was usually seen driving it. Crawford
34
35 stated that he didn't know Marcus last name. Mario stated that he thought
36
37 Marcus lived in Chime Bell Trailer Park. Investigator Savell and Ghant
38
39 went to Chime Bell Trailer Park and spoke with the manager and he stated
40
41 that no one with the name of Marcus Finklin lived there. Investigator
42
43 Savell received information from Deputy Coroner Smith stating that
44
45 Finklin's mother was living at Jackson Avenue. Investigator Savell
46

1 and Ghant responded to the residence and no one was home. Investigator
2
3 Savell spoke with a family friend and she stated that Brenda Adams,
4
5 Marcus's mother, may be at 418 Williams Avenue. Investigator Savell
6
7 responded to 418 Williams Avenue in an attempt to contact Brenda
8
9 Adams. Adams wasn't there. Investigator Savell spoke with Stanley
10
11 Galloway and he stated that on the night of June 3rd, 2008, he saw his
12
13 cousin, Marcus Finklin, at the Sunshine Club. Galloway stated that he
14
15 asked Finklin to drive him to a girl's house and Finklin stated that he
16
17 was going home and left. Galloway stated that after Finklin left he
18
19 never saw him again. Galloway stated that Finklin was living in the
20
21 Sunshine Trailer Park and his roommate's name was Jamar Green.
22
23 Galloway stated that he wasn't sure what trailer what exact trailer
24
25 Finklin was living in. On June 4th, 2008, at 1055 hours, Investigator
26
27 Savell and Ghant arrived at Moon Shadow Street, a trailer in the
28
29 Sunshine Trailer Park. Investigator Savell spoke with Chaquita Ingram
30
31 and Dresay Miller and they advised that Marcus Finklin, in fact, lived at
32
33 Moon Shadow Street. Investigator Savell spoke with Chaquita
34
35 Ingram and she stated that she knew Finklin. Ingram, when asked
36
37 Investigator Savell asked Ingram when was the last time she saw him?
38
39 Ingram stated that on June 4th, 2008, at approximately midnight, she was
40
41 at her residence at Dry Branch Road. Ingram noticed Finklin drive
42
43 past her house. Ingram stated that a white car, possibly a police car,
44
45 was following him. Ingram stated that she called Finklin to tell him that
46

1 he was being followed. Ingram stated that Finklin told her the vehicle
2 turned off. Investigator Savell spoke with Dresay Miller and she stated
3 that on June 3rd, 2008, at approximately 11:30 in the evening time or at
4 night time, she and Marcus were together at his house. Miller stated that
5 Finklin received a phone call and said that he had to go to the other end of
6 Dry Branch and would be right back. Miller stated that Finklin had
7 trouble with Bo Chavous in the past and he was known to drive a white
8 Crown Victoria. On June 4th, 2008, at 1402 hours, Investigator Savell
9 went to Jackson Avenue and spoke with Brenda Adams, Finklin's
10 mother. Adams stated that a few months prior to the incident someone
11 busted Finklin's door down. Adams went on saying that the next day she
12 called Finklin and told him that she was on her way to his house and he
13 asked how long it would be. Finklin replied ten minutes. Adams stated
14 that when she got to the house the door was open so she walked in and a
15 young man was holding a gun. Adams stated that she screamed and the
16 man turned and pointed the gun at her. Adams stated that she looked at
17 Finklin and he was holding a gun also. Adams stated that she screamed at
18 Finklin to put the gun down and he told her that he busted through the
19 door and pulled a gun on him. Adams stated that she continued to plead
20 with the young man to put the gun down and he finally did. Adams stated
21 that Finklin also put his gun down. Finklin stated that he was the one who
22 kicked the door in the day before. Adams stated that she asked the young
23 man to come outside and talk and he finally did. Adams asked his name
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1 and he stated Bo Chavous and Adams stated that she knew his mother.
2
3 Adams stated that she asked him to leave and when he was walking off he
4
5 told her, "Either you will be burying your son or my mother will be
6
7 buying her son." Adams stated that when she left them she called Sandra
8
9 Chavous and told her what happened. Adams stated that Sandra told her
10
11 she believed what her son said because Bo's father taught him how to
12
13 shoot a gun. Adams stated that she heard about two weeks prior to the
14
15 incident Bo pulled a gun on Finklin at the Sunshine Club, also. On
16
17 June 4th, 2008, at 1412 hours, Richard Doolittle came to the Aiken County
18
19 Sheriff's Office and spoke with Sgt. Funk. Doolittle stated that he let
20
21 James Bower use his 1989 Crown Victoria to drive his girlfriend to the
22
23 bank. Doolittle stated that Bower was supposed to return his vehicle on
24
25 April 9th, 2008. Doolittle stated that he had never seen his car since then.
26
27 June 4th, 2008, at 1439 hours, Investigator Ghant spoke with Jamar Green,
28
29 Marcus Finklin's roommate. Green stated that he was sitting in his yard
30
31 hanging out with Finklin. At approximately 1:30 in the morning on
32
33 June 4th, Finklin told him that he'd be right back. Green stated that he
34
35 went inside and went to bed. Green stated that he received a phone call
36
37 at 10:30 later that morning asking if Finklin was there. Green stated
38
39 that he looked for him and told that he wasn't there. Green stated that
40
41 they told him he was dead. Green stated that he called his cousin to come
42
43 pick him up. Green stated that he put a chair in front of the door because
44
45 it wouldn't lock and he left.
46

1 Q: Did he state who that was that was calling?

2
3 A: Give me just a moment to look at his statement form please. No, it
4
5 doesn't say. It just says that he received a phone call and then he said he
6
7 called his cousin back, who was a she. I didn't do this interview.

8
9 Q: Okay.

10
11 A: So I don't have that information on who he called. On June 4th, 2008, at
12
13 1450 hours, Investigator Savell spoke with Latika Elliott and she stated
14
15 that she got a phone call from Finklin at 3:01 in the morning on June 4th
16
17 telling her he was coming to her house. Elliott stated that was the last time
18
19 she spoke with Finklin and he never showed up. On June 5th, 2008, at
20
21 1145 hours, Investigator Savell spoke with Ingram. Ingram stated that she
22
23 saw Poo Poo, Finklin's brother, leave her house at approximately 11:00 at
24
25 night on June 3rd. Ingram stated that Poo Poo was wearing all black and
26
27 walked off and she never saw him again. Ingram stated that Poo Poo was
28
29 acting suspicious and she felt he was taking advantage of Finklin.
30
31 June 6th, 2008, at 1150 hours, Lt. Fleury spoke with Felicia Stallings.
32
33 Stallings stated that Finklin called her on June 2nd, that should be a
34
35 correction, it's June 3rd, 2008, at 2230 hours and then came over to her
36
37 house at 145 Dry Branch Road 2245 hours. Stallings stated that Finklin
38
39 got a phone call from her neighbor and they talked. Stallings stated that
40
41 Finklin's phone kept ringing and at approximately 1216 hours Finklin got
42
43 up and said his brother kept aggravating him to give him a ride to Walt's
44
45 house. Stallings stated that Finklin told her that he would be back and
46

1 left the house at 12:31. Stallings stated that she didn't hear from Finklin
2
3 between 12:30 and 2:00. Stallings stated that after 2:00, Finklin pulled
4
5 into her driveway and backed out minutes later. Stallings stated that she
6
7 texted him at 2:45 and he never responded back. On June 5th, 2008, at
8
9 12:00, Lt. Fleury spoke with Lois Ealy and she stated that on the morning
10
11 of June 3rd, 2008, at approximately 2:00, Finklin sat at the end of her
12
13 driveway for approximately five minutes. Ealy stated that she didn't see
14
15 anything suspicious. On June 5th, 2008, at 1338 hours, Investigator Ghant
16
17 spoke with Kenisha Jackson and she advised that she spoke with Finklin
18
19 on the phone about midnight to 1:00 in the morning of June 3rd. Jackson
20
21 stated that during their conversation Finklin was driving around and he
22
23 went back to his house. Jackson stated that she heard Finklin tell someone
24
25 he would make them walk to the other end of Dry Branch. Jackson stated
26
27 Finklin got back in his vehicle and she assumed he was dropping someone
28
29 off. Jackson stated that Finklin told her that she was going to come by her
30
31 house and see her. Jackson stated that Finklin never came to her house.
32
33 June 5th, 2008, at 1445 hours, Lt. Fleury spoke with Finklin, correction on
34
35 that. That should be Tevon Jackson, at the Aiken County Sheriff's Office.
36
37 Tevon stated that he spoke with Finklin on June 2nd, 2008. Finklin asked
38
39 him to go to Georgia with him. Tevon stated that he and Finklin went to
40
41 Dry Branch Court and stayed for about ten seconds. Tevon stated that
42
43 Finklin got a call at 12:30 and he said he was on his way back to his
44
45 house. Tevon stated that as soon as they got on the road Finklin made a
46

1 sale to Stephanie and then went to the house. Tevon stated that Finklin
2 sold a sack to Jabari and went back to the spot. Tevon stated that they
3 were there less than a minute and Tevon stated that he had to make a run
4 and dropped them off at his house. Tevon stated that he was on his way
5 to Joseph's house and he called Finklin and asked him to pick him up
6 and pay Bo at approximately 1:00. Tevon stated that Finklin said he
7 was on his way; however, he never showed up. Tevon stated he wasn't
8 around when Tevon died and had no idea who killed him. On June 6th,
9 2008, at 1430 hours, Investigator Lager spoke with Erica Green at the
10 Aiken County Sheriff's Office. Green stated that on June 4th, 2008,
11 between 1500 and 1600 hours she observed Tevon Jackson, Joseph Dicks,
12 and David Jarr at the Dollar General store in New Ellenton. Green stated
13 that Tevon was the only person to buy a pack of white tee shirts. Green
14 stated that Jarr stood at the window looking out. Green stated that when
15 they were leaving Tevon asked if she saw Jamar and Tev, Green stated
16 that she told Tevon that they were at Finklin's mother's house. Green
17 stated that she watched them leave in the opposite direction and turn
18 back into the plaza. Green stated that they went back into the Dollar
19 General. Green went on saying that her sister went back into the store
20 and saw Tevon steal a pack of batteries. Green stated that Sherri told
21 her that Tevon had something on his shirt that looked like blood. Green
22 stated that Jamar spoke with Tevon's girlfriend, Sherita Carter, and she
23 told him that she was on the phone with Tevon when he was with

1 Finklin. Carter stated that Tevon told Finklin to pull the car over and shut
2 the lights off. Carter stated that Tevon then stated that he would call her
3 back because he had to handle something real quick. On June 6th, 2008,
4 at 10:45, Investigator Savell spoke with Sherita Carter, Tevon's
5 girlfriend, at the New Ellenton Police Department. Carter stated that she
6 received a phone call from Tevon at approximately 2:30 or 3:00 in the
7 morning. Carter ---
8
9

10
11
12
13
14
15 Q: What day is she referring to for that phone call?

16
17 A: She is referring to June 4th. Carter stated that, Carter advised that she
18 asked Tevon what he was doing and he didn't answer. Carter stated that
19 Tevon was talking to someone and she asked who he was with. And
20 again, he didn't answer. Carter stated that she heard Tevon tell the person
21 that he was with that they went down the wrong road and that they needed
22 to go down the road with no street lights. Carter stated that it sounded
23 like they picked someone else up and she asked Tevon who he was with
24 and he didn't answer. Carter stated that Tevon kept talking with someone
25 in the car and hung up the phone on her. Carter stated that Tevon called
26 her back and was with his cousin, Meat Man. Carter stated that she went to
27 bed and called Tevon later in the day and asked him if he had anything to
28 do with the murder of Finklin. Carter stated that Tevon asked her what
29 she thought and started to laugh at her. Carter stated that she spoke with
30 Joe Dicks and asked him if Tevon had anything to do with the murder and
31 he stated Tevon didn't have anything to do with it.
32
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1 Q: Do you know who his cousin, Meat Man, is?

2
3 A: That would be Joseph Dicks. On June 09, 2008, at 12:20, Investigator
4
5 Lagger spoke with Christy Parker at Millon Avenue. Parker stated that
6
7 on June 04, 2008, at approximately 2:00 in the morning she left her
8
9 residence and went to Finklin's house to give him a graduation ticket.
10
11 Parker stated that Finklin wasn't home so she left the ticket with his
12
13 roommate. Parker stated that she was walking back home and saw Tevon,
14
15 Joey or Jose, and Joseph standing in front of Joseph's front yard. Parker
16
17 stated that approximately five minutes later Tevon called her and asked
18
19 if she was coming back out or if she had a cigar and she stated no. Parker
20
21 stated that she spoke with Tevon the next morning and asked what he and
22
23 Marcus did last night. Tevon told her that they just hung out on Dry
24
25 Branch. Tevon told her that Marcus had to go take care of some business
26
27 and would be back. Tevon told Parker that he gave Finklin a dollar
28
29 (\$1.00) to get a cigar. Parker asked Tevon if he saw Finklin drive down
30
31 the road he was found dead on and Tevon stated, no, he left off Dry
32
33 Branch. Tevon told Parker that he went to Meat Man's house to wait for
34
35 Finklin. On June 9th, 2008, at 1242 hours, Investigator Savell spoke with
36
37 Kevin Chavous, also known as Bo Chavous, at Beech Island substation.
38
39 Investigator Savell advised Chavous of the incident. Chavous stated
40
41 that they had their problems in the past; however, he had not been to
42
43 New Ellenton in the at least a month. Chavous stated that he had no
44
45 information on the murder and said that he had nothing to do with it.
46

1 June 9th, 2008, at 1300 hours, Lt. Fleury spoke with Joseph Dicks at the
2
3 Aiken County Sheriff's Office. Dicks stated that on June 3rd, 2008,
4
5 Tevon got a 9mm from Serrano and said that he was going to rob the
6
7 pizza man. Dicks stated that later in the night Joey Serrano and Tevon
8
9 were walking, he, Joey Serrano and Tevon were walking Tracy Serrano
10
11 home. Dicks stated that Finklin drove by at approximately 1230 hours.
12
13 Dicks stated that while they were walking Tracy home she stated that
14
15 she lost fifty dollars (\$50.00) and a pack of cigarettes. Dicks stated
16
17 that he, Joey, and Tevon went back into the house and talked with his
18
19 girlfriend on the phone. Dicks stated that Tevon left the house and didn't
20
21 say where he was going. Dicks stated that his cousin, K.C., came to the
22
23 house and drank a beer and Joey and K.C. left to smoke a joint. Dicks
24
25 stated that Joey, K.C., and Tevon came back to the house. Dicks stated
26
27 that K.C. left and Tevon said, "I did it." Dicks asked, "Did what?" And
28
29 Tevon stated, "Kill Little Marc." Dick's said, "For real?" And Tevon said
30
31 that he got out of Finklin's car and acted like he was going to piss and shot
32
33 him. Dicks stated that Tevon told him that he seen smoke come out of his
34
35 head. Dicks stated that he couldn't believe it and went to bed. Dicks
36
37 stated the next morning he asked Tevon if he still had it, meaning the gun,
38
39 and Tevon stated he did. Dicks stated that he couldn't keep it there
40
41 because of his mother. Lt. Fleury asked Dicks where Tevon said he was
42
43 sitting in the car and Dicks replied, on the passenger side of the car. And
44
45 acted, got out of the car and acted like he was going to piss and shot him.
46

1 Lt. Fleury asked Dicks if he or Serrano were with Tevon he shot him
2
3 and Dicks replied, no. Lt. Fleury asked if any money or drugs were seen
4
5 and Dicks said, no. On June 09, 2008, at 1450 hours, Investigator Lager
6
7 spoke with Ernest Bull, at the Aiken Department of Motor Vehicle. Bull
8
9 stated that he was driving down Dry Branch on June 4th, 2008, at
10
11 approximately 3:00 in the morning. Bull stated that he observed three
12
13 black males walking down Dry Branch heading toward Whiskey Road.
14
15 Bull stated that one of the subjects was wearing a dark shirt and blue jean
16
17 shorts, and the other was wearing a blue shirt and tan shorts. Bull stated
18
19 that he didn't get a good enough look at the third subject. June 9th, 2008,
20
21 at 1520 hours, Investigator Savell spoke with Stephanie Green at St. Paul
22
23 Methodist Church in New Ellenton. Green stated that she called Finklin
24
25 on June 4th, 2008, at approximately 0118 hours in the morning. Green
26
27 stated that she asked Finklin where he was and he stated that he was at
28
29 his trailer. Green stated that she had to get up with him and she was on
30
31 her way over to his trailer. Green stated that she was driving down Dry
32
33 Branch Road and passed Finklin's car so she called him and asked why
34
35 he left his trailer when he knew she was on her way. Green stated that
36
37 Finklin told her to turn around and meet him in front of Sandra's trailer
38
39 because he had to go and pick up someone. Green stated that she drove up
40
41 next to Finklin's car and gave him the money and he gave her the stuff.
42
43 Green stated that the person Finklin was supposed to pick up wasn't in the
44
45 car with him. Green stated that Tevon was standing on the side of
46

1 Finklin's car hiding behind the door frame. Green stated that Tevon was
2 holding his head down and acting real crazy. Green stated that she asked
3 Finklin what he was getting ready to do and he stated that he had to make
4 a run. Green stated that Finklin told her to call him. And she stated that it
5 wasn't going to do any good and she got back in her car with Jimmy.
6
7 Green stated that Tevon finally got into the car with Finklin. Green said
8 that Tevon got in the passenger side of Finklin's car real fast and then hid
9 his head behind the head rest so no one could see his face. Green stated
10 that she pulled away and drove down the street and Finklin's car was still
11 sitting there. Green stated that she knew that Tevon was spending the
12 night at Finklin's house. Green stated that when she bought her stuff she
13 saw around twelve hundred to two thousand dollars cash in Finklin's lap.
14
15 Green also stated that Finklin had a sandwich bag full of small baggies
16 containing powder. On June 9th, 2008, at 1610 hours, Lt. Fleury spoke
17 with Joey Serrano at the Aiken County Sheriff's Office. Serrano stated
18 that on June 3rd, 2008, at approximately 2245 hours, he left his house and
19 went to Joseph Dicks or Meat Man's house. Serrano stated that he got
20 there and his mother was leaving the house to go home. Serrano stated
21 that he, Joseph, and Tevon walked his mom, Tracy Serrano home.
22
23 Serrano stated that they were walking Tracy home and they saw Finklin go
24 to a house. Serrano stated that Tevon stated that he was thinking about
25 robbing Finklin. Serrano stated that Tracy asked him to go back to
26 Joseph's house and look for some money and a pack of cigarettes she
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1 had dropped. Serrano stated that they went back to Joseph's house and
2 didn't find anything. Jose stated that Tevon came up to him and showed
3 him a 38 caliber pistol and said that he was going to catch a lick.
4
5 Serrano stated that Tevon left the house for about 30 to 35 minutes.
6
7 Serrano stated that Tevon returned and said he did it. Serrano stated
8
9 that he shot him, meaning Finklin, and saw smoke come from his mouth.
10
11 Serrano stated that Tevon showed him some money and wasn't sure if
12
13 it was his or where it came from. On June 9th, 2008, at 1700 hours,
14
15 Lt. Fleury spoke with Tracy Serrano at the Aiken County Sheriff's Office.
16
17 Tracy stated that on June 4th, at approximately 12:00 or 12:30 in the
18
19 morning she was walking home with Serrano, Joseph, and Tevon. Tracy
20
21 stated that they saw Finklin drive by. Tracy stated that Tevon said, "I
22
23 should go rob that nig." Tracy stated that she told him to behave. On
24
25 June 10th, 2008, Lt. Fleury obtained arrest warrant K-331185 for murder
26
27 and K-331192 for possession of a firearm during the commission of a
28
29 violent crime. On June 10th, 2008, Tevon Jackson was arrested and
30
31 warrants were served. On June 30th, 2008, at 1340 hours, Investigator
32
33 Savell spoke with Sherita Carter at her residence, on East Pine Street.
34
35 Carter stated that she knew what road Tevon was on without lights.
36
37 Sherita stated that she saw the road on the news and recognized it
38
39 because she used to live on the road with her aunt. Sherita stated that
40
41 she saw Joseph at the store and he said that she had a big mouth and
42
43 it was her fault Tevon was in jail and she needed to keep her mouth
44
45
46

1 closed. Sherita stated that the day after the murder she received a phone
2 call from Tevon and she asked him what happened and Tevon told her to
3 keep her mouth closed. Sherita stated that approximately three to four
4 weeks before the murder Tevon showed her a silver gun that he had just
5 got. Investigator Savell asked if Sherita knew what kind of gun and she
6 stated that it was the kind that you had to load in little holes on the side
7 like a revolver. On June 30th, 2008, at 1340 hours, Investigator Savell
8 spoke with Maria Carter, Sherita's mother, at East Pine Street.
9 Maria stated that her step-son came to her house after it happened and
10 explained what happened. Merita stated that her daughter was on the
11 phone with Tevon when it happened. Maria stated that Sherita stated to
12 her that she was on the phone with Tevon when the incident happened.
13
14
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25 Q: Was any fingerprint evidence gathered from the scene of the crime?

26 A: Yes.

27 Q: Are there any results back from that yet?

28 A: I do not have the results back.

29 Q: And what about any ballistics testing. Is there any of that being done in
30 this case?

31 A: The ballistics that were recovered at autopsy were sent to SLED.

32 Q: That's pending from SLED?

33 A: Yes.

34 Q: And what was the cause of death listed at the autopsy?

35 A: Cause of death was gunshot wound to the head laceration of the brain.
36
37
38
39
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41
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43
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1 Q: Please answer any questions Mr. Mauldin may have for you.

2
3 A: Yes, sir.

4
5 COUNSEL FOR DEFENSE ON CROSS EXAMINATION

6
7 Q: Thank you. Where did the bullet enter Mr. Finklin's head? Which side
8
9 of the head did it enter?

10
11 A: The back side of the head. The back left side of the head according to the
12
13 photographs that I saw from the autopsy.

14
15 Q: Okay. Back left side. All right. Okay. Now were you present during the
16
17 interviews of Joey Serrano or Joseph Serrano and Joseph Dicks?

18
19 A: No, sir, I wasn't.

20
21 Q: Not present during those interviews. Were they recorded in any fashion
22
23 such as video?

24
25 A: It's just written.

26
27 Q: Okay. Do you know if they were asked to come to the Sheriff's Office or
28
29 if they came of their own volition?

30
31 A: To the best of my knowledge I believe they came up there on their own.
32
33 I was doing other interviews when they came up to the office.

34
35 Q: You're not sure about that?

36
37 A: I'm not exactly sure.

38
39 Q: Were they ever questioned why they waited five days after the murder
40
41 when somebody supposedly confessed to it that night, that they wait five
42
43 days to go to the Sheriff's Office and say that somebody confessed to it?

44
45 A: I can't answer. I'm not sure if they were asked or not why they waited.

46

1 Q: Now Meat Man or Joseph Dicks said that, I guess, Mr. Serrano had given
2
3 Tevon a 9mm gun. Is that correct?
4

5 A: Yes, it was.
6

7 Q: That day? Okay. And Mr. Serrano said that Tevon had showed him a .38
8
9 pistol. Is that correct?
10

11 A: That's correct.
12

13 Q: Okay.
14

15 A: Let me go look over my -- yeah, Serrano said that he showed him a .38.
16

17 Q: And Mr. Dicks said he did not see any money?
18

19 A: Mr. Dicks was asked, did you see any money or drugs? And he said,
20
21 no.
22

23 Q: Whereas Mr. Serrano said Tevon showed the money? He didn't know if
24
25 it was his.
26

27 A: Yes, he said, he showed me some money but I didn't know if it was his.
28

29 Q: And Mr. Dicks said that when Tevon had returned that evening he actually
30
31 returned with Mr. Serrano and a fellow named K.C.?
32

33 A: Yeah. They left to smoke a joint and came back with K.C.
34
35 and Joey and Tevon.
36

37 Q: Where Serrano's statement seems to reflect that he was with Dicks the
38
39 whole time and then Tevon came back while he was at Dicks house. Is
40
41 that correct?
42

43 A: Yeah. They went back to the house to look for the cigarettes and the
44
45 money that was dropped.
46

1 Q: I'm talking about they alleged that Tevon went away by himself and he
2 came back. Dicks said that when Tevon went away he came back later.
3
4 He came back with K.C. and Serrano. Whereas, Serrano appears to say
5
6 he was at Dicks house the whole time. Tevon came back and then K.C.
7
8 came some time after Tevon.
9

10
11 A: K.C. came over and that's when they smoked a joint.

12 Q: Okay. And I'm recalling some of the statements she made to other people.
13
14 Sherita Carter had said in her statement that she had talked with Joseph
15
16 Dicks prior to his statement to the police and Dicks had told her that
17
18 Tevon had nothing to do with the murder?
19

20
21 A: That's right.

22 Q: And in Christy Parker's statement, which was given before Mr. Dicks
23
24 went to the Sheriff's Office, she had talked with Mr. Dicks and again he
25
26 had said that Tevon had been with him all day and had nothing to do with
27
28 the murder.
29

30
31 A: That's was Christy Parker you say?

32 Q: That's correct.

33 A: Just bear with me for a moment. I'm not seeing that in the statement.

34
35 Q: It's right here. Hold on a second. It's towards the bottom of the first page
36
37 going on to the second page.
38

39
40
41 THE COURT Let me interrupt you just a minute. We need to
42
43 change the tape.
44

45 END OF TAPE 1, BEGINNING TAPE 2
46

1 COUNSEL FOR DEFENSE CONTINUING CROSS

2
3 A: Now your question to me was as far as Christy Parker what now?

4
5 Q: Well, basically, that Joseph Dicks had told her that Tevon had been
6
7 with him the whole day and hadn't even been with Marcus that night.

8
9 A: She did say that he and Tevon and been chilling and smoking all that
10
11 day. And he was with Tevon all day.

12
13 Q: And doesn't it further go on so she says to Mr. Dicks, so you was
14
15 with Marc, too? And he said, no. So then I said, but Tevon was with
16
17 Marcus. And he said, no he wasn't.

18
19 A: That's correct.

20
21 Q: Okay. All right. And Mr. Serrano has a pending armed robbery charge.
22
23 Does he not? Are you aware of that fact?

24
25 A: Mr. Serrano?

26
27 Q: Yes, sir.

28
29 A: No, I wasn't.

30
31 Q: Now the interview with, Ms., I believe it's Stephanie Green, the lady that
32
33 bought cocaine from Marcus, that was conducted after Tevon had given
34
35 his statement stating that they had sold to her. Is that correct?

36
37 A: Stephanie, your question was Stephanie Green's statement was given
38
39 when?

40
41 Q: After Tevon's statement the time period.

42
43 A: Yes, her statement was given after this.

44
45 Q: Okay. Beg the Court's indulgence one moment. All right. I have no
46

1 further questions, but I do have a motion, Your Honor.
2
3 THE COURT Go ahead, Mr. Mauldin.
4
5 COUNSEL FOR DEFENSE Thank you, Your Honor. I'd move to dismiss
6
7 these charges for lack of probable cause. It
8
9 appears that the only evidence against Mr.
10
11 Jackson in this case is the statement of these two individuals, Mr. Dicks
12
13 and Mr. Serrano. The statements are highly inconsistent on several
14
15 counts. Both the fact of what gun was used. Mr. Dicks says that Mr.
16
17 Serrano had provided Tevon with a 9mm, whereas Mr. Serrano said
18
19 Tevon already had a .38. They have varying accounts. One says there
20
21 was no money. The other one said Tevon was showing around money.
22
23 They both have varying accounts as far as when Tevon supposedly
24
25 returned after committing the murder. Mr. Dicks said that he came back
26
27 with Mr. Serrano and K.C., whereas Mr. Serrano says that Tevon came
28
29 back by himself and K.C. came afterward. Mr. Dicks has given several
30
31 other statements to other individuals saying that Tevon had nothing to
32
33 do with the murder. Both of these individuals came to the sheriff's
34
35 office five days after the murder occurred alleging that somebody had
36
37 confessed the night of the murder. That, in itself, seems to me
38
39 suspicious. The State may point out that Ms. Green indicated that
40
41 Mr. Jackson was with Mr. Finklin that night and acting suspicious;
42
43 however, she did give her statement after Mr. Jackson had said they had
44
45 sold her drugs. Obviously, the sheriff's department had called her in
46

1 and said, look this guy said that you had bought drugs. So she has some
2
3 bias against Mr. Tevon Jackson. There's been no forensics. It's been
4
5 here four months. All you've got is the statement of these two fellows
6
7 and Mr. Jackson has been sitting in jail. I don't think that rises to the
8
9 level of probable cause and therefore move that the charges be dismissed.

10
11 THE COURT

Thank you. State's position?

12
13 THE STATE

The State's position is there is probable cause,

14
15 Judge. These are credibility issues that are

16
17 best left for a jury to decide. We've got two

18
19 people who the defendant confesses to shooting the victim in this case.

20
21 He told three people that he was going to go do the robbery before it

22
23 happened. He told two about it after it happened. He told both of the

24
25 individuals and they were consistent that he saw some kind of smoke

26
27 coming from the victim's head after he shot him. Where the bullet

28
29 went into the victim's head is consistent with the evidence was whereas

30
31 the defendant's statement was that he to the others was that he got out

32
33 of the vehicle and then walked around and shot him. We have a witness

34
35 seeing blood on the defendant's shirt. We have another witness having

36
37 him putting him at the Dollar General buying a pack of white shirts.

38
39 It would be the State's position that these issues that Mr. Mauldin's

40
41 bringing up are credibility issues left for a jury to determine and that

42
43 they clearly rise to the level of probable cause.

44
45 THE COURT

All right. Thank you. Thank you, Mr.

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

**NOTICE OF MOTION AND
MOTION IN LIMINE**
Indictment Numbers:
2009-GS-02-0083
2009-GS-02-0084

The Defendant was arrested and charged with the above crimes on June 10, 2008. The weapon used to kill the victim has not been recovered. Jose Serrano (a.k.a. "Joey") and Joseph Dicks provided statements to the Aiken County Sheriff's Office implicating the Defendant in this murder. On January 1, 2010, Jose "Joey" Serrano was arrested on two charges, originating from a traffic stop, of Unlawful Possession of a Firearm by a Felon and Possession of a Firearm with a

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, the undersigned, Clerk of Court for the County of Aiken and Gen. ral
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
two charges, originating from
FEB 22 2011
possession of a Firearm with a
C.C.P. & G. S., Aiken County, S.C.
Barbara M. Bell Jr
County Clerk

Removed serial number. The weapon confiscated was a .357 caliber handgun along with six .38 caliber bullets. This firearm and these bullets were analyzed by the South Carolina Law Enforcement Division. The firearm was not the firearm that fired the fatal gunshot to the victim in this case. The bullets obviously were not used to kill the victim in this case.

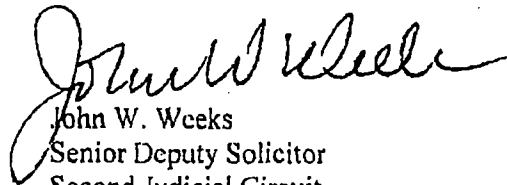
Joseph Dicks was arrested after a traffic stop on November 18, 2010, and was charged with Possession of a Firearm. The firearm confiscated was a Ruger 9 mm handgun. This handgun was not the same class of weapon used to fire the .38 caliber bullet that killed Marcus Finklin in June of 2008 as established by the SLED analysis of the projectile recovered from the victim. The charges against both of these potential witnesses have not been resolved by conviction; the charges are still pending

The State would allege that neither of the firearms in question has been connected in any manner to the death of Marcus Finklin. The State alleges that it would be an improper attack on the character of these witnesses to refer to these subsequent and unconnected alleged violations of the law after the commission of this murder.

These pending charges or any comment on them would be improper evidence of character, conduct, and bias of a witness as indicated in Rule 608 of the South Carolina Rules of Evidence.

February 22, 2011
Aiken, South Carolina

Respectfully submitted,


John W. Weeks
Senior Deputy Solicitor
Second Judicial Circuit

Time: 9:45 Date: 6/4/08Page 1 of 1 pagesLocation where statement was obtained: Dry Branch ct. AikenName: Ivory JACKSON 41Date of Birth: 1SSN: ██████-██-████Dry Branch Ct.City: AIKENState: SCZip: 29803I completed the 14th grade in school, and (C)CAN/CANNOT read and write. (Circle one)

6/4/08 3:30 LEFT RESIDENCE ON WAY TO
WORK I SAW A light [Dim] in the circle, but
I did not see A vehicle.

I have read or have had read to me this statement consisting of 1 page (s). This statement is true. I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will, without promise or reward, without fear or threat of physical harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 9:49 (a.m./p.m.) on 4th day of June, 20 08.Ivory Jackson

Signature of person giving voluntary statement

Witness

Witness

I have been given a copy of this statement consisting of 1 pages.Initials of person making statement. lg

FILED

September 10, 2008

ACSO Form: AD189 (07/26/04)

John W. ...
Deputy Clerk
5:05 PMPLAINTIFF'S
EXHIBIT

10



STATE OF SOUTH CAROLINA
OFFICE OF THE SOLICITOR, SECOND JUDICIAL CIRCUIT
J. Strom Thurmond, Solicitor

February 9, 2009

Tim Carlton
Coroner
Room 219
109 Park Avenue SW
Aiken, SC 29801

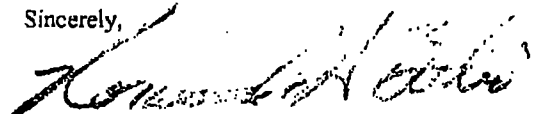
Re: The State of South Carolina vs. Tevon Jackson

Mr. Carlton:

Please provide to the Solicitor's Office any information on the decedent Marcus Finklin, DOD 06-04-08, victim in the above referenced case, including, but not limited to: compact discs, photographs, reports, death certificate, etc. This information is needed for the prosecution of the above referenced defendant. Thank you for your assistance in this matter.

If I can provide any further assistance, please do not hesitate to contact me at your convenience.

Sincerely,


Norwood A. Bodie

FILED September 10, 2009
Sign
pa
Amel
5:05pm





02/20/09
A. A. A.



LAST NAME <u>Stallings</u>	FIRST NAME <u>Felice</u>	MIDDLE NAME <u>Michelle</u>	AGE <u>36</u>	D.O.B. <u>[REDACTED]</u>
NICKNAME/AKA	M ☒ F ☐ SSN <u>[REDACTED]</u>	STREET ADDRESS <u>[REDACTED] Dry Branch Rd.</u>		
CITY <u>Alhambra</u>	STATE <u>CA</u>	ZIP <u>[REDACTED]</u>	MAILING ADDRESS IF DIFFERENT	
HOME TELEPHONE	WORK TELEPHONE <u>803 652 1110</u>	CELL TELEPHONE <u>803 439 2839</u>	OCCUPATION	
EMPLOYER		EMPLOYER ADDRESS		
DRIVER'S LICENSE NUMBER/STATE		DATE AND TIME OF INTERVIEW		
LOCATION OF INTERVIEW				
INTERVIEWING AGENT <u>Perry & Flynn</u>	DEPARTMENT <u>SLD/Alhambra</u>	INTERVIEWING AGENT	DEPARTMENT	

I, Felice Stallings understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can read and write and completed the 12th grade in school.

(3) Mark called me @ 10:30pm. He came to the house @ 10:45pm. We talked down as he received a phone call from my next door neighbor and had a long talk. I got a phone call from a friend about 11:14pm. His phone kept ringing so about 12:16am he got up and got dressed, saying his brother is aggravating him to take him to Walt's house, so he told me he will be back and he loved me, so he left @ 12:31 between that time and 2:00am I didn't hear from Mark. He then pulled into the driveway but pulled back out minutes later. I text him @ 2:45am. He never responded back (3m)

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 10-5-08 Time: 12:50am Signature of person giving voluntary statement Felice Stallings

WITNESS: Sgt H.M. Ray WITNESS: [Signature]

I certify that I have been given a copy of this statement consisting of 1 pages.

FILED September 10, 2008

[Signature]
5:05pm



VOLUNTARY STATEMENT

Time: 11:45 AM Date: 06/05/08Page 1 of 1 pagesLocation where statement was obtained: 11 Moon Shadow St.Name: Christa Ingram Date of Birth: 1/1 SSN: ██████-██-████Address: Day Branch Rd City: New Ellenton State: SC Zip: 29803I completed the 12 grade in school, and I CAN/CANNOT read and write. (Circle one)

I seen Mark brother Pooh-Pooh leave his house
 at around 11:00pm dressed in all black Pooh-Pooh left
 my house walking and I never seen him return. Pooh-
 Pooh was acting suspicious that night and I always thought
 was taking advantage of Mark.

Q. How was Pooh-Pooh acting suspicious?

A. He was quiet just acting weird.

B. He's usually mouthy but that night he was quiet, TM

I have read or have had read to me this statement consisting of 1 page (s). This statement is true. I have
 initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary
 statement is made of my own free will, without promise or reward, without fear or threat of physical
 harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 12:00 a.m./p.m. on 5th day of June, 20 08.Signature of person giving voluntary statement Christa IngramWitness [Signature] SVB

Witness

I have been given a copy of this statement consisting of 1 pages.Initials of person making statement. T.M. September 12th 2008

VOLUNTARY STATEMENT

Time: 11:06 Date: 6/4/08Page 1 of 1 pages

Location where statement was obtained:

Moore Shadow SFName: Chiquita IngramDate of Birth: SSN: Address: Dry Branch RD City: New Ellenton State: SC Zip: 29803I completed the 12 grade in school, and I CAN/CANNOT read and write. (Circle one)

Midnight he passed by me on dry branch
and a white car was behind him. But he
said it turned off.

Q Who is he

A. Marcus Franklin Adel

I have read or have had read to me this statement consisting of page (s). This statement is true. I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will, without promise or reward, without fear or threat of physical harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 1112 a.m./p.m. on 4 day of June, 20 08Chiquita Ingram

Signature of person giving voluntary statement

Witness

Witness

I have been given a copy of this statement consisting of 1 pages.Initials of person making statement.

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

417

Joseph Dicks

am not under arrest for, nor am I being detained for

any criminal offenses concerning the events I am about to make known to LT. Bill Fluvy & S/A M.K. Perry
I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for
whatever purposes it may serve.

I am 17 years of age, and I live at Nondrons street Aiken S.C.

I can cannot read and write and completed the 10th grade in school. DOB: _____

I Joseph Dicks on Tuesday the 3rd of June Teron Jackson got a 9mm from
Joey and he was going to rob the pizza man. Around 2-3 somewhere
that day later on that night we (Joey, me and Teron) walk Mrs. Tracey home
and seen lil mark pass us by around 12:30 going to girl house. And
we kept on walking Mrs. Tracey home and she said she lost fifty
dollars and a pack of cigarettes. So me Teron, and Joey went back to my
house about 12:40 on the phone talking to girls and Teron left to
go somewhere but I never ask were. Then 30-35 minutes pass me
and Joey was steal at my house. My cousin KC came over for a beer.
left with Joey to smoke a joint. came back with KC and
Joey Teron. did KC left. Teron was like I did it, I said did
what he said kill lil mark. I said what for real he said I act like
I was going to piss and shot him, I seen smoke come
out his head. I couldn't believe it went to sleep. 9D
The next morning I said you still got that, talking bout the gun.
he said yes! I said my mommy you can't keep it here 9D

Q: Where did Teron say he was sitting in the car?

A: 9D on the passenger side and went around to take a piss and shot him.

Q: Were you and Joey with Teron during the shooting?

A: No sir. I Joseph and Joey were at my home on the phone, and talking 9D
to girls 9D

Q: Did you see any money, or drugs?

A: No 9D

I have read each page of this statement consisting of _____ page(s), each page of which bears
my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 1:00 P M. on the _____ day of June, 2008.

SWORN TO AND SUBSCRIBED TO BEFORE

THIS 9 DAY OF June, 2008

Victoria Perry #246
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 9-2-2013

Joseph Dicks

Signature of person giving voluntary statement

WITNESS: [Signature]

WITNESS: H.M. Perry

I certify that I have been given a copy

PLAINTIFF'S
EXHIBIT

14

isting of

pages:

Joseph Dicks 9D



Aiken County Sheriff's Office

Evidence/Property Receipt

Case Number: 08 - 029263				
Officer: Savell		Employee Number: 4976		Crime Type: Murder
Name of Person Received From: Search Warrant (vehicle)				
Defendants:	1.	unknown	2.	
	3.		4.	
Victims:	1.	Finklin, Marcus L.	2.	
	3.		4.	
Physical Address: ACSO Forensic Lab			Time: 12 : 15	Date: 06/04/08
Laboratory examination to be performed (i.e. Latent, AFIS, Serology): GSR, Latents, AFIS				
Item #	Quantity	Item Description (include color, brand, serial number, condition, unusual markings)		
1	20	Large latent fingerprint lift cards		
2	1	Gun Shot Residue Kit from driver's door area		
3	1	Swab from passenger seat area		
4	1	Swab from driver's door handle		
5	1	Swab from rear driverside door handle		
6	1	Swab from rear passengerside door handle		
7	1	Swab from front passenger door handle		
8	1	Silver in color "LG" Verizon cell phone (front seat area)		
9	1	Silver in color "Samsung" Verizon cell phone (front seat area)		
10	1	Black in color Verizon Blackberry cell phone (front seat area)		
11	1	Silver in color "Nokia" cell phone (front seat area)		
12	1	Black in color "Nokia" cell phone w/ no battery (front seat area)		
13	1	JVC CD reciever model KD-G120 serial #170P8548 (rear seat)		
14	1	Kenwood power amplifier #70200807 (behind driver's seat)		
Chain of Custody				
Item #	Date	Print Name	Signature	Purpose for Change
1-14	06/04/08	Inv. Clay Adams		collection of evidence



September 10, 2015
 FILED
 J. L. Linder
 5:05 pm



Evidence/Property Receipt

Case Number: 08 - 029263				
Officer: Savell		Employee Number: 4976		Crime Type: Murder
Name of Person Received From: Search Warrant (vehicle)				
Defendants:	1.	unknown		2.
	3.			4.
Victims:	1.	Finklin, Marcus L.		2.
	3.			4.
Physical Address: ACSO Forensic Lab			Time: 12 : 15	Date: 06/04/08
Laboratory examination to be performed (i.e. Latent, AFIS, Serology): GSR, Latents, AFIS				
Item #	Quantity	Item Description (include color, brand, serial number, condition, unusual markings)		
15	1	Powerade Fruit Punch drink bottle (front passenger seat area)		
16	1	"Crystalline" fruit punch 20oz bottle (center front seat area)		
17	1	"Glad" fold-Top sandwich bag box (passenger floor board)		
18	1	Pringles "Extreme" chip container (middle front seat area)		
19	1	White in color styrofoam cup (drivers floorboard)		
20	1	"Margaretta" style glass (rear passenger seat area)		
21	1	Black in color remote for vehicles radio (front seat)		
22	1	"Bluetooth" ear piece (center consol under radio)		
23	1	Purple colored Bic lighter (drivers floorboard)		
24	1	Black leather like Verizon cell phone case (center seat area)		
25	1	Black in color CD case (rear seat area)		
26	2	STP "Son of a Gun" cleaner cans (rear seat area)		
27	1	Aquafina water bottle (rear seat area)		
28	5	Ford owners manual, registration holder, glasses, Suncom manual, CD case		
Chain of Custody				
Item #	Date	Print Name	Signature	Purpose for Change
15-28	06/04/08	Inv. Clay Adams		collection of evidence

☒ 803-852-8535 Wed Jun 4 2:03am
☒ Pu Pu Wed Jun 4 12:00pm
☒ 803-852-8535 Wed Jun 4 10:00am
☒ 803-293-5705 Tue Jun 3 10:00am
☒ 803-293-5705 Tue Jun 3 10:00am
☒ 803-508-2430 Tue Jun 3 11:02pm
☒ 803-508-2430 Tue Jun 3 11:02pm
☒ 803-508-2430 Tue Jun 3 11:02pm
☒ 803-508-2430 Tue Jun 3 11:02pm

Message OPEN Options

FILED September 10, 2001
Shirley R. Riedel
Deputy Clerk
 5:05 pm



1 设置

☒	803-652-8535	Wed Jun 4 10:11am
☒	803-652-8535	Wed Jun 4 10:11am
☒	Restricted	Wed Jun 4 10:11am
☒	803-634-0043	Wed Jun 4 10:11am
☒	803-652-8535	Wed Jun 4 10:11am
☒	803-652-8535	Wed Jun 4 10:11am
☒	803-652-8535	Wed Jun 4 10:11am
☒	803-508-5038	Wed Jun 4 2:17am

Message OPEN Options

STATE OF SOUTH CAROLINA

County of _____

COURT OF COMMON PLEAS

Case # 2013-CP-02-02693Tevon Michael Jackson

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

TEMPORARY ORDER

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

- ☒ 1. The application for post-conviction relief is hereby: _____ denied _____ granted ☒ under advisement; a formal order will be filed (see below - No.6)
- _____ 2. Motion(s) was/were heard in this case and the court orders:
 _____ The motion to dismiss and/or for summary judgment is hereby _____ granted _____ denied under advisement based upon the _____ statute of limitations and/or _____ the successive nature of the application or _____ other reason as follows:

- _____ 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:
 _____ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
 _____ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
- _____ 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.
- _____ 5. Other:

- ☒ 6. The court further orders:
 _____ The _____ Attorney General _____ Applicant's counsel is/are directed to submit to the court a proposed order and to serve the order on opposing counsel within _____ days. The court reserves the right to issue an order prior to the submission of any proposed orders.
☒ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 9 / 10 / 15

[Signature]
 Presiding Judge

Court Reporter

C. Young

Attorney for Applicant

Tricia Blanchette

Attorney for Respondent

Daniel GourleyFILED September 10, 2015

[Signature]
 DEPUTY CLERK
[Signature]
 Deputy Clerk

5:05pm

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Tevon Michael Jackson, #344982,	)	2013-CP-02-2693
Applicant,	)	
v.	)	
	)	MEMORANDUM IN SUPPORT OF
State of South Carolina,	)	APPLICATION FOR POST
Respondent.	)	CONVICTION RELIEF

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on November 27, 2013. That State filed a Return on May 13, 2014. By way of his first Amendment filed prior to the evidentiary hearing, Applicant made the following claims of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel for failure to properly prepare and investigate prior to trial, which resulted in prejudice to Applicant.
2. Ineffective assistance of trial counsel for failure to utilize witnesses at trial, which resulted in prejudice to Applicant.
3. Ineffective assistance of trial counsel in preparation for and at trial for failure to do the following, which resulted in prejudice to Applicant:
 - a. Failure to fully cross-examine and/or impeach the State's witnesses.
 - b. Failure to pursue available defenses, including but not limited to alibi, third party guilt and exonerating evidence.
 - c. Failure to properly prepare and utilize Applicant as a witness at trial.
 - d. Failure to disclose to Applicant representation by counsel of Jamar Green, witness for the State at trial.
 - e. Failure to make contemporaneous objections and/or move to suppress irrelevant evidence and testimony.
4. Ineffective assistance of trial counsel for failure to fully put the State's case to the test and/or fully refute the State's theory of the case with available evidence and witnesses, which resulted in prejudice to Applicant.
5. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal.
6. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

By way of his second Amendment filed prior to the evidentiary hearing, Applicant made

FILED
Shirley Godard
 L. J. GODARD
William M. Page
 8:30 Deputy Clerk

the following additional allegations:

1. Ineffective assistance of trial counsel for failure to move to suppress and/or object to the phone records admitted as State Exhibit #54 and any testimony pertaining to such records. Failure to impeach the State's witnesses with evidence obtained from the victim's cell phone.
2. Prosecutorial misconduct and/or Brady violation for failing to disclose the interview and investigation into Kalyn Floyd prior to and/or during Applicant's trial based upon information received from Joseph Dick's that she provided Applicant with the murder weapon. Alternatively, if said information was not subject to disclosure by the State, ineffective assistance of trial counsel for failure to investigate the matter, locate Kalyn Floyd and utilize her as a witness for the defense

On September 10 2015, an evidentiary hearing was convened in front of the Honorable Edgar W. Dickson at the Aiken County Courthouse. Applicant was present and represented by Tricia A. Blanchette, Esquire. The State was represented by Daniel F. Gourley, Assistant Attorney General. At the close of the hearing, this Court requested memorandums in lieu of closing argument and granted Applicant's counsel's request to obtain the evidentiary hearing transcript prior to the submission of her memorandum.

In complying with this Court's request to submit a memorandum in summation of the testimony and evidence offered at the evidentiary hearing, Applicant through counsel would ask this Court to consider the following summation and argument of the primary issues presented at the evidentiary hearing and find that relief must be granted.

1. Trial counsel provided ineffective assistance when she failed to utilize available witnesses and evidence to refute the State's theory of the case, properly cross-examine the State's witnesses and/or attack their credibility, and present a defense beyond merely calling Applicant to the stand.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Without a doubt, a criminal defense attorney has a duty to

investigate, but that duty is limited to reasonable investigation. When evaluating the reasonableness of counsel's conduct, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). Moreover, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007).

In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court of South Carolina reversed the lower court and granted PCR relief when counsel failed to conduct a reasonable investigation. The Court held that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts of the case. Lounds, 380 S.C. at 460, 670 S.E.2d at 649, See Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). In McKnight, the South Carolina Supreme Court held: "This Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable 'only to the extent that reasonable professional judgment supports the limitations on the investigation.'" McKnight v. State, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (quoting Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004)).

During the course of Applicant's trial, the State called thirty-six witnesses. Applicant was the lone witness for the defense. At the evidentiary hearing, eight witnesses were called, in addition to Applicant, to demonstrate counsel's lack of preparation and prejudicially deficient performance. In Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1999), the South Carolina Supreme Court addressed whether trial counsel was ineffective for failing to call a witness at trial. The Court reasoned as follows:

This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)(applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995)(where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); see also Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, supra, S.C. at 498-99, S.E.2d at 540.

Bannister, 333 S.C. at 303, 509 S.E.2d at 809.

On February 22, 2011, Applicant was called to trial in Aiken County South Carolina in front of the Honorable Doyet A. Early on Indictment No. 2009-GS-02-0083 (murder) and 2009-GS-02-0084 (possession of a weapon during the commission of a violent crime). After the jury rendered a verdict of guilty on both charges, Judge Early sentenced Applicant to a term of thirty years and a concurrent term of five years.

In opening argument, the State submitted to the jury that the murder of Marcus (Marc) Finklin occurred in the early morning hours of June 4, 2008. By the time closing argument rolled around, the State argued: "Well, the State's theory is Marcus Finklin died and didn't answer Kenisha Jackson's last phone calls, that he was dead by the time Joey Serrano walked back to his house that night.¹" Trial p. 706, Ins. 7-11. At the evidentiary hearing, defense counsel admitted that she failed to address that Kenisha made multiple unanswered phone calls at varying times

¹ At trial, Serrano testified that he walked home at 3:00 a.m. Trial p. 439, Ins. 20-25.

and she emphasized that it was important for the State to place the time of death prior to the time Jose Serrano (hereinafter "Serrano") admitted walking home alone. PCR pp. 124, 126.

During her closing argument, defense counsel provided the jury with the timeline of events as had been presented by the State. This timeline was listed on a sheet of paper from counsel's file marked as Applicant's Exhibit 5, placed on the timeline exhibit (Applicant's Exhibit #17) prior to the start of the evidentiary hearing, and listed in black ink in the timeline attached herein. PCR pp. 9, 122-23, Trial pp. 684-688. Counsel admitted she should have provided the jury with a visual aid regarding the timeline. PCR p. 123. She also agreed that the timeline was an important issue for the State, yet she failed to nail the State down to a specific time of death. PCR p. 124. Essentially, counsel argued that it was impossible for Applicant to commit the murder and complete all the actions testified to by Joseph Dicks (hereinafter "Dicks") and Serrano in a forty-three minute window from 2:17 a.m. to 3:00 a.m. Trial pp. 688-9. Never once did defense counsel mention all of the other entries on the timeline created at the evidentiary hearing that completely called the State's timeline into question.

When the State was attempting to dispel the importance of the timeline at the evidentiary hearing and counsel's failure to utilize the time frame given in Dicks and Serrano's original statements, counsel responded: "In looking at this and looking at the information that was brought out, I probably would have pinned them down on that because it would have showed that they were lying." PCR pp. 202, 203, Ins. 1-4. Counsel explained that the evidence at trial was not overwhelming and it boiled down to the timeline and the stories of Dicks and Serrano. As a result, the credibility of the State's witnesses was very important. PCR p. 186, Ins. 5-11.

At the evidentiary hearing, Applicant called a number of witnesses and addressed evidence from the discovery not utilized at trial. The witnesses that were called at the evidentiary

hearing that were not called at trial either gave a statement to law enforcement or were easily located as testified to by Pete Skidmore, private investigator. The purpose in calling each of these witnesses was to demonstrate how defense counsel could have utilized these witnesses in preparation of her strategy for trial or during the course of trial to compromise the State's timeline and theory of the case. When asked, defense counsel repeatedly admitted that she should have utilized the witnesses and evidence offered and she had not excuse for not doing so. Counsel surmised that the witnesses and evidence offered demonstrated that she should have pinned Dicks and Serrano down on their timeline and shown the jury how the testimony and evidence showed they were lying. PCR p. 203. When asked by the State, she recalled thinking it was a third party guilt case, with the third parties being Dicks and Serrano. PCR p. 205. She conceded that she had no reason for failing to raise a third party guilt defense. PCR p. 205.

Turning to the witnesses and testimony offered, Applicant's counsel called Jeff Smith, Deputy Coroner for Aiken County, who had responded to the scene, conducted the coroner's investigation and testified at trial. Trial p. 355, PCR p. 53. He identified and Applicant's counsel admitted a packet containing his report, notes and the coroner's report. Applicant's Exhibit 3. He acknowledged that the estimated time of death on the first report was 3:15 a.m., which was changed to 2:00 a.m. on the final report per "L.E." – meaning law enforcement. PCR p. 56. He further acknowledged that he had notes from speaking with Doris Jackson who lived one hundred yards from the murder scene and saw a car in the cul-de-sac with its lights on at 3:30 a.m. PCR p. 57-8. He could not provide any notes indicating that trial counsel had contacted him. PCR p. 59. In response, defense counsel conceded that she had the coroner's report in her file and was not sure what investigation she did into the neighbor's sighting. PCR pp. 136-137.

Latika Elliott testified at the evidentiary hearing and identified the statement she provided to law enforcement, which clearly indicated that she last spoke with the victim at 3:01 a.m and then he failed to show up as they had planned. PCR transcript p. 22-23. Ms. Elliott explained that she was present through the entire trial and wondered why she was not called by either side. PCR p. 27. She explained that she knew the victim and Applicant, and she knew Applicant did not do what the State alleged at trial and that Applicant was not a threat to victim. PCR p. 27-28, 32. She candidly admitted that she told law enforcement she was holding drugs at her home for victim because he did not trust leaving them at his house since people had been stealing from him. PCR p. 24. She also explained that she had first-hand knowledge of Stephanie Green's (state's witnesses) drug use and could have refuted her trial testimony that the night of the murder was the first time she had bought cocaine. PCR p. 28, Trial p. 315.

When asked, defense counsel admitted that she had the statement of Latika Elliott and she was mentioned in the preliminary hearing transcript, along with the 3:01 phone call. PCR p. 131. She acknowledged that Latika's testimony would have been helpful and she did not have a reason for not calling her at trial. PCR p. 134. In response to why she did not call Latika to refute Stephanie Green, counsel stated: "I don't know if I knew about that." PCR p. 161.

In the same vein, Felice Stallings testified at the evidentiary hearing and affirmed her statement about being with victim on the night of his death and him leaving her home at 12:30 a.m. PCR p. 210-1. When asked about Tracy Serrano's testimony that she saw victim going to Felice's home at 12:30 a.m., she said that testimony was not correct as he was leaving at that time. Trial p. 187, PCR p. 211. She recalled victim becoming aggravated by phone calls he was receiving while at her house from his brother "Poo-Poo" and that he left because his brother

needed a ride.² PCR pp. 211-12. She recalled seeing his car pull into her back yard and then parking in her driveway around 2:00 a.m. PCR p. 212. She indicated that she would not have willingly testified for the defense at trial, but she would have complied, as she did at the evidentiary hearing, if she was under subpoena. PCR p. 213-4. She also testified that she was unaware that she was on the defense witness list since she did not talk with anyone from the defense. PCR p. 213-4. She recalled Solicitor Weeks telling her she was not needed at trial. PCR p. 213.

When asked about Ms. Stallings, defense counsel indicated she had notes in someone's handwriting about a Michelle Stallings. PCR p. 144-5. After acknowledging that she was on the defense witness list, she admitted that she did not have a reason why she did not call Ms. Stallings at trial. PCR p. 146. She also admitted that she had not contemplated why the State may have called Ms. Ealy, her neighbor, about the 2:00 a.m. sighting of the victim versus calling Ms. Stallings.³ PCR p. 161.

Thereafter, Kevin and Christy Parker were called to the stand. Both explained that they were raised as "cousins" to victim and where regularly with victim. Both also acknowledged being familiar with Applicant and their opinion that he would not have murdered victim. Specifically, Kevin recalled seeing victim on the night of his murder during his midnight shift at

² Defense counsel admitted that she failed to ask Chiquita Ingram about her statement, which was also recounted at the preliminary hearing, stating that victim's brother was acting suspicious and was taking advantage of victim. PCR p. 150. She further admitted that she should have cross-examined Ms. Ingram on her testimony that she spoke to victim at 12:00 a.m. When the phone records admitted by the State recorded the phone call at 12:38 a.m. Trial p. 528. Counsel agreed that the 12:38 a.m. time reflected on the phone records fell into the window of time given (Applicant left at 12:40 and returned within 30-40 minutes) in the statements of Dicks and Serrano that also were not addressed by counsel at trial. PCR p. 149-150, 156-8.

³ Counsel also admitted that she did not have a reason for failing to refute Ms. Ealy's testimony about the number and length of calls with the victim versus what was reflected on the phone records admitted by the State at trial and by Applicant at the evidentiary hearing. Applicant's Exhibit 7, State's Trial Exhibit 54. At trial, Ms. Ealy testified that she spoke with the victim for a long time at 11:00 p.m., yet the phone records list a call at 11:09 for 33 seconds, 11:19 for 22 seconds and 11:23 for 36 seconds. Trial p. 322.

a local gas station. He testified that no one from law enforcement or the defense ever contacted him or tried to obtain the gas station video. PCR p. 67-8. He recalled victim telling him about having a baby on the way and they discussed how he needed to leave the drug business alone. PCR p. 66. He testified that victim told him he was going to "do this one last thing with the drugs" the night he died. PCR p. 66, lines 19-22. When asked why he did not contact law enforcement regarding his belief that Applicant did not commit the murder and about his encounter with victim, he explained that he was "hurting" and it was against the rules in his neighborhood to go to the police. PCR pp. 68, 76, 80. When asked by the State about his opinion of who was violent in the neighborhood, he responded that the Serranos are "bad people" and Serrano is known for being violent. PCR pp. 71, 79.

Christy Parker affirmed the contents of her statement given to law enforcement. PCR p. 84. She testified that she saw Applicant, Dicks and Serrano together when she was leaving victim's residence after 3:00 a.m., which she later estimated to be 3:06 a.m. PCR p. 86, 90. She also explained that the phone call she got from Applicant at 3:11 a.m. was from Serrano's phone. PCR p. 86. She testified about Dicks stating Applicant was with him and at his house all night and her conversation with Applicant about waiting on victim to return. PCR p. 87. She explained that Applicant was always around victim's house when she was there and Applicant was "quiet." PCR p. 88. As to Serrano's reputation, she testified that he is known for fighting and being a violent person. PCR p. 91. She explained that she was subpoenaed to court by the State and never contacted by the defense. PCR pp. 88-9. She said she sat through each day of trial and was never called. PCR p. 89. She said she would have been willing to testify for the defense. PCR p. 89.

As to Kevin Parker, defense counsel testified that she did not have any notes regarding speaking with Kevin Parker. PCR pp. 134-5. She explained that she represents up to one hundred fifty clients at any given time, so she did not have a specific memory of him or reason for not utilizing him. PCR p. 135. She testified that she had Christy's statement, which was also addressed at the preliminary hearing. PCR p. 135. She indicated that she did not know of a reason why she did not utilize her at trial. PCR p. 135. When asked about Christy's testimony about seeing Applicant with Dicks and Serrano after the time Serrano was allegedly home alone (3:00 a.m.), she agreed that eliciting such testimony probably would have hurt the State's case. PCR p. 163. Later, she concluded that she should have also pinned Dicks and Serrano down on the window of time they provided in their statements, which was omitted from their testimony and would have shown that they were lying. PCR pp. 156-8, 203. She made it clear that their credibility was very important to the State's case against Applicant. PCR p. 186. Also, she admitted that she recognized that it was a third party guilt case, with the third parties being Dicks and Serrano. PCR p. 205.

Sandra Smith, Applicant's mother, was also called at the evidentiary hearing to demonstrate how she should have been utilized at trial. She acknowledged her statements to the trial court at sentencing and explained that she truly questioned why counsel did not discuss some of those matters with her prior to trial or call her at trial. Specifically, she explained that she could have told the jury how she had removed the house key and gone through the events of that day leading up to Applicant being locked out of the house and not being able to get in while she was away. PCR pp. 102-3. She also testified regarding Applicant's love of his clean shoes, the reason he left the area and that she did not work with Applicant on his story. PCR pp. 101, 107. She also testified that her home and Applicant's car were not searched by law enforcement,

despite the murder weapon being unaccounted for at trial. PCR p. 105. She simply did not understand why her son was left on an island, as the lone witness for the defense. She further explained that Applicant was truly devastated when he found out his friend was murdered PCR p. 101-2.

Finally, Applicant took the stand to explain how defense counsel's lack of preparation with him and the changes to the stories of Dicks and Serrano impacted his testimony and overall trial. Applicant also testified to the importance of the testimony elicited and evidence addressed at the evidentiary hearing. PCR pp. 268-70. Additionally, Applicant made it clear that he would have wanted defense counsel to utilize the timeline compiled at the evidentiary hearing to refute the State's timeline / theory of the case. PCR p. 274.

Applicant would ask this Court to consider the testimony and evidence addressed at the evidentiary hearing and summarized above and find that defense counsel provided ineffective assistance when she failed to call witnesses and utilize evidence that would have refuted the State's timeline and theory presented by the State to convict Applicant at trial. Defense counsel repeatedly offered no legitimate reason or strategy for failing to utilize witnesses, evidence, or cross-examine witnesses on the matters raised at the evidentiary hearing. Additionally, counsel repeatedly answered that the witnesses or evidence discussed would have aided the defense or hurt the State's case. If this Court properly considers the testimony and evidence presented at the evidentiary hearing, Applicant submits that this Court must find that both prongs of Strickland have been met and a new trial is warranted.

2. Defense counsel rendered ineffective assistance when she failed to move to suppress and/or object to the phone records (State's Exhibit 54) admitted at trial and the testimony elicited regarding the phone records.

At trial, the State called William Hare from the local Verizon branch to introduce and interpret the records obtained from one of the phones (phone number:) found in the possession of victim. Trial pp. 137, 139. When asked by the State if he could tell from the records if a call was answered, he replied that he could since an answered call listed a time, in seconds, and a call that wen to voicemail was marked "MF". Trial p. 141, Ins. 5-7, 15. He further explained that "MT" equaled incoming call and "MF" equaled voicemail. Trial p. 141, Ins. 11-22. During very brief cross-examination, he stated that "MT" equaled answered. Trial p. 144, Ins. 3-8. Defense counsel also asked him if he had records for the other four phones that were found, to which he responded in the negative. Trial pp. 143-44.

Despite asking Mr. Hare about records for the four other phones at trial, counsel admitted at the evidentiary hearing she did not attempt to obtain the records for those phones prior to trial. PCR pp. 166-7. She admitted that she failed to consider whether he was qualified to interpret the records as he did at trial, and she also concluded that his interpretation of the records did not appear to make sense. PCR p. 170-1. When counsel was shown pictures of the screen shots from victim's phone located in the Aiken County Sheriff's Office's file, she could not say if she had reviewed them. PCR p. 172. When shown the records, screen shots and testimony of Mr. Hare, she noted the inconsistencies and concluded that his testimony appeared incorrect. PCR pp. 190-1. She admitted that she should have used the information contained in the screen shots at trial. PCR p. 191. She further admitted that she should have not made the following statement in closing argument: "We can take the word of the cell phone records because a computer has nothing to gain or lose in this case." Trial p. 684, Ins. 18-24. She also agreed, as she argued in close, that the State used the cellphone records to make their witnesses appear credible, so it

would have hurt the State's case if she would have moved to suppress or further objected to the introduction of the records and testimony of Mr. Hare. PCR p. 173.

When Applicant took the stand at the evidentiary hearing, he made it clear that he would have wanted defense counsel to obtain all of victim's cell phone records and that counsel did not review the cell phone records with him prior to testifying nor use the records during his testimony to help him establish a timeline. PCR pp. 261, 262-4. As a result, the State utilized the phone records against him in a way that he felt made him look like a liar to the jury. PCR p. 265. He explained that the prejudicial use of the records was further compounded by defense counsel's argument to the jury that records do not lie. PCR pp. 265-6.

At the evidentiary hearing, Pete Skidmore, private investigator, took the stand and explained the investigation her undertook in preparation for the evidentiary hearing. PCR p. 216. Regarding the issue of cell phone and cell phone records, he recalled reviewing the evidence at the Aiken County Sheriff's Department and being surprised by finding six cell phones, when the evidence records reported five. PCR p. 231. He also reviewed the pictures of the screen shots from victim's phone and explained how the information on the screen shots conflicted with the interpretation of the cell phone records at trial by William Hare. Trial pp. 139-144. He made it clear that he would have raised this issue with defense counsel prior to trial if he was investigating the case then as he did prior to the evidentiary hearing. PCR p. 234.

When Solicitor Weeks took the stand as the State's lone witness at the evidentiary hearing, he explained that he did not need to qualify the "Verizon guy" as an expert and his understanding of the cell phone records as follows:

So I think that's why we just went on into the meat of the matter. As we had told and I had explained to her, I'm truly no cell phone expert and I don't know what MF and MT means and all of that on there. That day I did or at least that day I knew what the guy had told me, but that's the

reason we didn't qualify him as I think both sides were using him for whatever it was worth.

Because the cell phone records in this case were enough to drive you to drink. It just didn't seem to match up with any of the witnesses' time estimation. And to some degree I'm not sure they matched up with themselves. So that's the kind of what we had going on with the cell phone.

PCR p. 295, lns. 1-15.

Here, trial counsel admitted that Mr. Hare's testimony was not correct and it was inconsistent with victim's phone screen shots, which were available for her to utilize at trial. She further admitted that she failed to obtain or look into records for victim's additional phones. While on the stand, Solicitor Weeks said the "Verizon guy" was being used for what it was worth, which was clearly not the understanding of defense counsel. In complete contrast to her conclusion at the evidentiary hearing, defense counsel told the jury that the records had no reason to lie and that the State was using the records to bolster the credibility of the witnesses. In her own argument, counsel demonstrated that she had not properly investigated or attempted to suppress the records that she argued the State needed to bolster their witnesses. In a case where credibility was key, her error was inexcusable. Clearly, the State got the upper hand thanks to defense counsel's lack of preparation and advocacy in regards to the phone records. Instead of mounting a viable defense to the phone records and exposing the testimony of Mr. Hare that simply did not make sense, counsel prejudicially aided the State with her closing argument. In closing, she not only told the jury to believe the records but she also told the jury that the records were used so they would believe the witnesses. Ironically, Solicitor Weeks admitted on the stand that the records and witnesses' accounts did not match up but this obvious revelation came too late to positively impact the outcome of Applicant's trial. The

damage was down by defense counsel, nevertheless, the error and resulting prejudice can be properly corrected by granting a new trial.

3. Defense counsel rendered ineffective assistance when she failed to ask for a continuance for time to locate Kalyn (Kayla) Floyd and/or failed to locate and utilize her as a witness upon receiving information and hearing testimony regarding her. The actions of the prosecutor's office also amounted to misconduct for failing to properly disclose information regarding Ms. Floyd completely and timely to defense counsel and for admittedly eliciting false testimony.

On the first day of trial, the jury was selected and court was recessed. Trial p. 31. On the second day of trial, Joseph Dicks was called to the stand. While on the stand, he recounted the events of the night in question, which differed from his written statement. He recalled Applicant leaving for a "little period" and his "friends came through and dropped something off." Trial p. 233, lns. 15-22. He said the "something" was a loaded .38 caliber gun. Trial pp. 233, ln. 23, 234, lns. 5-6. He said the person's name was Kayla and she was a "dude, girl" or "like a man/female" who dressed like a man and he thought was gay. Trial pp. 234-5. He further recalled seeing her with Applicant occasionally. Trial p. 234.

On cross examination, Dicks further expanded upon his story by adding that he met Ms. Floyd on Nondrum Street because that is where Applicant told him to wait for her. Trial p. 260. He further admitted that he did not include any information about Ms. Floyd in his statement to police, after which defense counsel asked the following:

Question: And the first you told the solicitor was what, last Monday?

Answer: Yes, ma'am.

Trial p. 261, lns. 10-17.

At the evidentiary hearing, Kalyn Shantay Floyd was called as Applicant's first

witness. PCR p. 10. She explained that she knew Applicant from growing up on the same street.

PCR pp. 11-12. Thereafter the following testimony was elicited:

Question: Okay. Now, Kalyn, let me take you back to the time shortly before Tevon Jackson was tried in 2011. Did you come in contact with law enforcement in this case?

Answer: Yes, I did.

Question: Okay. And what happened with that?

Answer: I was subpoenaed to go talk to the solicitor. And I went to go talk to him. He asked me what happened because Meat Man said I brought Tevon the murder gun but I was actually out of town that whole week. And I had to give him my cell number so he could track my towers of where I was and I was never called.

Question: Okay. So, shortly before the trial is when you remember it, you were contacted that you had to go to the solicitor's office. Were you concerned when they contacted you?

Answer: Yes.

Question: And did you know what it was about at that point.

Answer: Yes.

Question: Okay. You talked to them, you provided them cell phone records?

Answer: Yes.

Question: And as a result, what did they tell you? Did they tell you those showed you were involved or did they give you any information back?

Answer: They said they were going to give me a call if I needed to take the stand, but I never received a call.

Question: Okay. And did you ever get a subpoena during the course of the week of trial and think that you were going to be needed to be there?

Answer: No. Just when I had to go talk to the solicitor.

PCR p. 12, ln. 18 – 13, ln. 23. She further recalled meeting at the Aiken County Detention Center on Hampton Avenue. PCR p. 14. She testified that no one from the public defender's office ever contacted her and no one had contacted her since besides PCR counsel. PCR P. 14. She clearly answered "yes" when asked if she would have been willing to testify for the defense at trial. PCR p. 15, lns. 1-4.

When asked if she was on Nondrum Street that night and provided Joseph Dicks with a gun as he testified to at trial, she responded: "No." PCR p. 15. She explained that she was out of town that whole week and, she was with a friend that could have attested to her whereabouts. PCR p. 15. She also answered the obvious question that she was never charged in connection with the murder of the victim. PCR p. 16.

On cross-examination, she recalled providing a written statement during her meeting with the prosecution. PCR p. 17. She further stated that she was with Kayla Murray in Augusta, Georgia on the night in question. PCR p. 17. She recalled providing two cell phone numbers and being told that they were going to track her location via cell phone tower records. PCR p. 18. When asked about the subpoena, she recalled receiving it the first day of trial and meeting with the solicitor around five that afternoon. PCR p. 18-19. On redirect, she recalled being at home on Dry Branch Road and her mother answering the door when she received the subpoena. PCR p. 19-20.

While defense counsel was on the stand, she remembered hearing the name Kayla prior to trial then looked through her records / notes to provide a more specific answer. PCR p. 174. Then, she responded as follows:

On February 22nd at 11:30 a.m. I met with Solicitor Bill Weeks, Solicitor Beth Ann Young and Investigator Norwood Bodie. And they discussed new information that they had gotten from Joseph Dicks and Jose Serrano when they met with them **the week before**. During that meeting the Solicitor, actually

Solicitor Weeks approached me and told me that they wanted to meet with me to tell me about them. And I was specifically told that Tevon had gotten – that Joseph Dicks said that Tevon called him on the phone, and specifically that Tevon had some stud coming to see Joseph who was bringing him a package. And when I asked them for more details about what they meant by some stud, they told me it was a gay woman who dressed like a woman named Kayla and they didn't have any further information about that person.

PCR p. 175, Ins. 1-16.

When asked about whether or not she utilized her investigator on the case to attempt to locate Ms. Floyd, counsel responded that she found out about her on 11:30 during the first day of trial and did not recall attempting to find her. PCR P. 178. She further admitted that she did not ask the court for more time to investigate the matter and she had no reason for not addressing the matter with the court. PCR p. 178. She also deferred to the record when asked about raising the late disclosure of in the information by the Solicitor's Office to the court. PCR p. 179.

Thereafter, the following testimony was elicited:

Question: And in this case your cross-examination, your closing argument is all about the credibility of Joseph Dicks and Jose Serrano. If Joseph Dicks was lying about this and it could have been proven that Kayla was nowhere in the area and did not provide the murder weapon, wouldn't that have aided in your defense?

Answer: It would have tremendously aided my defense.

Question: If you would have known Kayla testified today that she was investigated and she was able to provide proof that she wasn't present and she was informed essentially that she was cleared and not needed, if you would have known that information would you have raised that during the trial or made necessary motions regarding it?

Answer: I would have.

Question: And if Kayla in fact had provided the murder weapon based on your vast experience as a public defender, what could she have been charged with in this case?

Answer: Accessory before the fact.

PCR p. 179, ln. 16 -180, ln. 8.

When Applicant took the stand, he said he knew immediately that Dicks was referring to Kalyn Floyd. PCR p. 255. If counsel had asked him about her, he said he could have provided her last name and location since she lived just a couple houses down from him. PCR p. 255-6. When asked if he would have wanted counsel to ask for a continuance based upon the new information provided and for time to locate Ms. Floyd, he responded: "Very much so." PCR pp. 256-7. He testified that he wanted Ms. Floyd to come to court to testify since she allegedly supplied him with the murder weapon. PCR p. 257. He considered her not being charged as "the biggest question I ever had." PCR p. 257-8. He explained: "I knew it wasn't true because they ain't locked her up for it." PCR p. 258, lns. 5-6.

After the State called Bill Weeks, Solicitor, to the stand, he was asked about Dicks and Serrano changing their statements, which he characterized as Dicks adding to his statement all the time but he conceded "he did change some stuff." PCR p. 289, lns. 14-21. After which, the following testimony was elicited,

Question: And did that include naming Kayla Floyd as the person who he received the .38 caliber weapon from that he then gave to Tevon Jackson.

Answer: Yes. I don't know that that was a change. It might have been a change or it might have been an addition to, but to the best of my memory that was in pretrial preparation where Joseph told us that and so did Joey.

Question: Okay.

Answer: It was at a joint meeting really when both of them were there at the office at the same time.

Question: And did you disclose that information to Ms. Alves., his public defender?

Answer: I can't swear I disclosed the indictment to her but I know I always do.

Question: Yes, sir.

Answer: Standard rule in my office is we give them everything. If a defense lawyer want it – if I would want it as a defense lawyer, they get it.

Question: Okay.

Answer: I certainly would not have withheld this Floyd woman's role in this from Ms. Alves. Now do things come up right before court? Oh, yea. Because I'm pretty sure she was probably working the Sunday night before court started on Monday and I can assure you we were.

But it wasn't a mystery. Once we knew about it we told her everything we knew. And we do that with all the witnesses. Before we have a major trial like this, Ms. Alves would come to our office, along with an investigator more than likely, and go through every single piece of paper in our file that isn't something that we would say is work product.

In this case there were a number of witnesses. There were a number of inconsistent witnesses. It was like a parade for a couple weeks trying to get people in and out to interview them. I cannot remember whether or not she talked about particular witnesses.

PCR p. 289 ln. 22 – 291, ln 9. He further testified that he could not recall whether he ever met Ms. Floyd but he had a note in his file that his investigator interviewed her on February 24th.

PCR p. 291. He also was unsure if they "looked that hard" for her phone records. PCR pp. 291-2.

On cross-examination, he acknowledged that Dicks testified that he told him about Ms. Floyd the Monday before trial. When asked about defense counsel's testimony that the information was not turned over to her until the morning trial started, he responded: "That's not exactly what I heard. It's the first time she had a note of it, but that's not necessarily the first time she was told." PCR p. 298, lns. 20-22.

Turning to the issue of charging Ms. Floyd, the following testimony was elicited:

Question: Do you have any specific reason that you can provide to us today as to why Kalyn Floyd was not charged in this case or anything pursued against her?

Answer: Absolutely. Because I didn't have a case against her for anything. On the information we had, you heard the information we that we had and I would be the most neglectful prosecutor in the state if I had hauled out an arrest warrant for that woman who's never told me to this day whether she gave him the gun or didn't. I'm not sure what she said on the witness stand, I wasn't in here.

But absolutely couldn't charge that woman based on what we know then and couldn't charge her on what I know today because none of its very credible.

Question: And the information though was coming from your witness, Joseph Dicks.

Answer: Coming from Joseph Dicks. I called Joseph Dicks as a witness.

Question: And – but you're saying the information that he have you was not credible?

Answer: No, I didn't say that.

Question: Okay. Then could you please clarify what you meant by saying you couldn't charge her because the information was not credible?

Answer: It was given three years later, for one thing. And I never talked to Ms. Dicks – or Ms. Floyd, or never interviewed her to my knowledge. But if we did it was late in the game. And I wasn't trying to put a gun in Ms. Floyd's hand. I was trying to put a gun in Tevon's hands.

Question: But you elicited testimony on direct of Joseph Dicks that Kayla provided a .38 to him which was the specific caliber of the murder weapon in this case, and you went into detail with him about that. So you submitted that information to the jury in this case to consider as part of the guilt or innocence of Tevon Jackson.

Answer: I asked Mr. Dicks that question that the record reflects.

PCR p. 299, ln. 15-301, ln 3.

Our judicial system relies upon the integrity of the participants. State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000). With this in mind, the Constitution requires only that a defendant receive a fair, not a perfect trial. U.S. Const. Am. VI; State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999), Riddle v. Ozmint, 369 S.C. 69, 631 S.E.2d 70 (2006). In Berger v.

United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935), the Supreme Court of the United States explained the importance of the prosecutor's role in the judicial process:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Applicant urges this Court to find that relief must be granted on the basis of a Brady violation and prosecutorial misconduct. Applicant submits that this basis for granting relief on post conviction relief is commonly accepted in South Carolina. Similarly to the instant case, in Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999), the prosecution failed to disclose that a witness, whose credibility was already in question, was taken to the scene and gave an additional version of events. After Gibson pled guilty this information was discovered during the course of a civil trial. The South Carolina Supreme Court addressed prosecutorial misconduct in the form of a Brady violation and reasoned:

The prosecutor committed a Brady violation by not disclosing certain evidence to Gibson. A Brady violation is one type of prosecutorial misconduct. It is misconduct of a different type than, for instance, an attempt to introduce inadmissible evidence, tamper with the jury, or some other inappropriate action. E.g., United States v. Alderdyce, 787 F.2d 1365, 1370 (9th Cir. 1986) (finding no evidence of prosecutorial misconduct giving rise to a Brady violation); Buffington v. Copeland, 687 F. Supp. 1089, 1095-96 (W.D. Tex. 1988) (distinguishing Brady violations from other types of prosecutorial misconduct in which, for example, a prosecutor tries to inject prejudice into a trial by introducing inadmissible evidence or making inappropriate opening statements or closing arguments). We affirm the PCR

judge's decision to set aside Gibson's guilty plea and grant him a new trial based on the Brady violation.

Id. at 528-9, 514 S.E.2d at 327.

A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of, or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555, 1565-69, 131 L. Ed. 2d 490, 505-10 (1995); Brady, 373 U.S. at 87, 83 S. Ct. at 1196, 10 L. Ed. 2d at 218; State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996). This rule applies to impeachment evidence as well as exculpatory evidence. United States v. Bagley, 473 U.S. 667, 676, 105 S. Ct. 3375, 3380, 87 L. Ed. 2d 481, 490 (1985).

Here, the testimony clearly reflects that the Solicitor and/or his representatives met with Ms. Floyd and the decision was made not to call her at trial and not to charge her because the information implicating her was not credible. At the evidentiary hearing, defense counsel referred to her notes and the minimal information she received from the Solicitor during the first day of trial. Despite the Solicitor attempting to convince this Court that he errs on the side of disclosure and provides everything needed to defense attorneys, his testimony regarding his usual practices does not line up with what was done in this case. Here, he did not fully disclose in a timely or complete manner the information that he had regarding Ms. Floyd, which was favorable to Applicant and material to his guilt or innocence. Counsel made it clear that if she would have known that Ms. Floyd was met with and the decision was made not to call or charge her, she would have used such information at trial.

Additionally, counsel's reasoning for not charging Ms. Floyd reeks of violation of the Solicitor's duty to not simply win a case but see that justice is done. Essentially, the Solicitor testified under oath that he did not charge Ms. Floyd because he would be the "most neglectful prosecutor" in the State due to the timing of the change to Dicks' story and since none of the information regarding her was credible. Yet, he elicited that exact information from Dicks at trial to place the caliber gun of the murder weapon in the hand of Tevon Jackson to win at trial. At this point, the record speaks for itself, and it clearly speaks to prosecutorial misconduct.

Alternatively, Applicant submits that trial counsel provided deficient assistance when she failed to inform the court that she had received the information regarding Ms. Floyd in an untimely matter (one week after it was known by the Solicitor and during the first day of trial) and ask for a continuance to investigate the matter. Even though it was not disclosed to defense counsel, the Solicitor's Office was able to locate Ms. Floyd at her residence on Nondrum Street, and Applicant submits that defense counsel should have asked for more time to do the same and/or done the same during the course of trial.⁴ Defense counsel referenced that she had an investigator, but she failed to even ask Applicant about Ms. Floyd or if he knew where she could be located. Applicant testified if she had asked he could have assisted defense counsel in locating Ms. Floyd. When on the stand, Ms. Floyd made it clear she would have testified for the defense and counsel responded that such testimony "would have tremendously aided my defense."

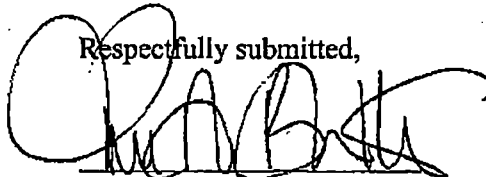
⁴ Additionally, Applicant submits that counsel's testimony was that the Solicitor did not provide her the full name of Ms. Floyd and her notes reflect no further information regarding her, so it is clear the Solicitor was not forthcoming with defense counsel since his office located and met with Ms. Floyd. As already addressed, Applicant urges this Court to make a finding of prosecutorial misconduct in the handling of Ms. Floyd and the testimony elicited from Mr. Dicks.

As a result, Applicant urges this Court to see the prejudice that resulted from Ms. Floyd and information pertaining to her not being properly disclosed by the prosecutor and not being pursued by defense counsel. It is abundantly clear that the outcome of Applicant's trial would have been different if the jury knew that the Solicitor found the testimony elicited from his witness was not credible and reliance upon such testimony to charge Ms. Floyd would brand him the "most neglectful prosecutor in the State."

CONCLUSION

Based upon the foregoing and in consideration of the testimony and evidence offered at the evidentiary hearing, Applicant would respectfully request that this Court determine that relief should be granted by way of a new trial.

Respectfully submitted,



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June 29, 2016
Columbia, SC

TIMELINE

- 12:00 Ingram testifies call took place (528)
12:30 Tracy Serrano: Victim passed by headed to Stalling's house
(182-83, 187)
12:31 Victim leaves Stallings' house
12:38 Chiquita Ingram phone call
12:40 Dicks says D. leaves and returns w/in 30-35 minutes
12:48 Marcus calls Kenesha
12:54 Tevon calls Marcus
- 1:10-1:20 Dicks says D. returned and had committed murder (706 ln.7-11)
1:11 Tevon calls Marcus
1:13 Stephanie calls Marcus
1:25 Jabari calls Marcus
1:30 Marcus sells cocaine to Jabari
1:30 AW time of death
- 2:00 Melissa sees Marcus in the driveway
2:00 Christy Parker sees Dicks, D, and Serrano on way home from
Victim's trailer
2:00 Death Certificate time of death
2:02 Call from Kenesha, no answer (State's closing argument:
Victim was dead when she was calling him- 706)
2:17 Tevon calls Marcus (twice)
2:45 Text from Stallings, no response

- 3:00 Jose Serrano goes home
- 3:00 Ernest Bull (Bush) sees 3 black males walking on road
(Prelim p.15)
- 3:01 Latika Elliott receives call from Victim, he does not arrive
(Prelim p.9)
- 3:11 Christy Parker phone call with Tevon
- 3:15 Coroner's original time of death
- 3:30 Statement from Doris Jackson re: what she saw in cul-de-sac

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

Tevon Michael Jackson, #344982,)
 Applicant,)

2013-CP-02-2693

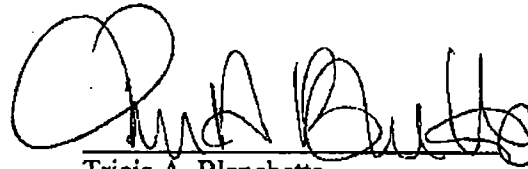
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 8th day of September 2016, a copy of Memorandum in Support of Application for Post Conviction Relief, to Julie Coleman of the Attorney General's Office, at:

Office of the Attorney General
 Att: Julie Coleman, Ast. AG
 PO Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008

September 8, 2016

FILED 9/12/2016
 Clerk of Court
 Ashley M. Payne
 8:30

Respondent.

**RESPONDENT'S MEMORANDUM
IN SUPPORT OF DENYING
PCR APPLICATION**

FILED 8/12 2006
Eric G. Bond
 J. C. CRANE
William M. Payne
 8:30 8/12/06

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the January 2009 term of the Aiken County Grand Jury for Murder and Possession of a Firearm During Commission of a Violent Crime (2009-GS-02-83; -84). Wallis Alves and Michael Routzong, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was subsequently convicted as indicted on all counts. Judge Early sentenced Applicant to thirty years imprisonment for Murder and five years imprisonment for Possession of a Weapon During the Commission of a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Breen Stevens, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Tevon Jackson, Op. No. 2013- UP- 024 (Ct. App. filed January 16, 2013). The Remittitur was issued on February 4, 2013.

Applicant filed a timely application for post-conviction relief on February 27, 2013 alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
 - a. "Failure to prepare and investigate."
 - b. "Failure to call witnesses at trial."
2. Ineffective Assistance of Appellate Counsel.
 - a. Failure to raise all meritorious issues on appeal

On August 13, 2015, Applicant amended his application to include the following additional allegations:

1. Ineffective assistance of trial counsel for failure to properly prepare and investigate prior to trial, which resulted in prejudice to Applicant.
2. Ineffective assistance of trial counsel for failure to utilize witnesses at trial, which resulted in prejudice to Applicant.
3. Ineffective assistance of trial counsel in preparation for and at trial for failure to do the following, which resulted in prejudice to Applicant:
 - a. Failure to fully cross-examine and/or impeach the State's witnesses.
 - b. Failure to pursue available defenses, including but not limited to alibi, third party guilt and exonerating evidence.
 - c. Failure to properly prepare and utilize Applicant as a witness at trial.
 - d. Failure to disclose to Applicant representation by counsel of Jamar Green, witness for the State at trial.
 - e. Failure to make contemporaneous objections and/or move to suppress irrelevant evidence and testimony.
4. Ineffective assistance of trial counsel for failure to fully put the State's case to the test and/or fully refute the State's theory of the case with available evidence and witnesses, which resulted in prejudice to Applicant.
5. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal.
6. Pursuant to Rule 15(b), SCRPC, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On August 31, 2015, Applicant further amended his application to include the following additional allegations:

1. Ineffective assistance of trial counsel for failure to move to suppress and/or object to the phone records admitted as State Exhibit #54 and any testimony pertaining to such records. Failure to impeach the State's witnesses with evidence obtained from the victim's cell phone.
2. Prosecutorial misconduct and/or Brady violation for failing to disclose the interview and investigation into Kalyn Floyd prior to and/or during Applicant's trial based upon information received from Joseph Dick's that she provided Applicant with the murder weapon. Alternatively, if said information was not subject to disclosure by the State, and/or was disclosed by the State ineffective assistance of trial counsel for failure to investigate the matter, locate Kalyn Floyd and utilize her as a witness for the defense.

On September 10, 2015, an evidentiary hearing was held at the Aiken County Courthouse in front of the Honorable Edgar W. Dickson. Applicant was present and represented by Tricia A. Blanchette, Esquire. The State was represented by Assistant Attorney General Daniel Gourley. This memorandum follows.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

ARGUMENT

I. INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raises several allegations arguing that Counsel was ineffective in his representation surrounding his trial. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)).

1. Failure to Prepare and Investigate

In general, Applicant has failed to present any evidence that satisfies the Strickland test for trial counsel's failure to prepare or investigate for trial.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (citing Edwards v. State, 392 S.C. at 456, 710 S.E.2d at 64). At the PCR hearing, trial counsel testified about the preparation and investigation she did for this case.

Trial counsel testified that she felt that she had adequate time to prepare this case. She stated that she had an investigator to assist her with this case who spoke with witnesses, helped with investigation, went through discovery, talked to police officers, and spoke with the defendant. She stated that she filed Rule 5 and Brady motions and reviewed all of these materials with the investigator. She stated that she would have had typed notes from her investigator and all of her discussions with him, but her computer crashed after the trial and she no longer has copies of these notes, so she cannot remember specifically which witnesses were investigated.

Trial counsel clearly was well-prepared for this trial and spent more than an adequate amount of time preparing and investigating potential witnesses, leads, and defenses. Applicant has not met their burden of proof in showing that trial counsel was deficient in any way in this manner or that any mistakes were prejudicial to the outcome of this case. This allegation should be denied and dismissed.

a. Kalyn Floyd

Applicant alleges that trial counsel was ineffective for failing to investigate, locate, and use Kalyn Floyd as a witness at trial. This argument is meritless and should be dismissed.

Joseph Dicks, a witness at trial, informed the Solicitor's Office shortly before the trial about the involvement of a potential witness, Kalyn Floyd. He alleged that she gave him the .38 caliber murder weapon that he then gave to Applicant before the murder. Kalyn Floyd was investigated and interviewed by the Solicitor's Office but was not called as a witness at trial by either the State or the defense.

Summary of Testimony

At the PCR hearing, Kalyn Floyd testified that she told the Solicitor in her interview that she was out of town the entire week of the murder and did not give Joseph Dicks the murder

weapon. She testified that she gave her cell phone information to the Solicitor so that they could investigate her whereabouts to confirm that she was not in town that weekend. She stated that she was never charged with any crime in connection to this case. She further stated that she was never contacted by trial counsel, but, had she been subpoenaed to testify at trial for the defense, she would have been willing to do so.

Kalyn Floyd testified that she gave the Solicitor's Office a statement of her testimony that she wrote and signed, but she did not have a copy of the statement. She stated that Kayla Murray could testify that she was out of town that weekend, but Kayla Murray was not present at the hearing to do so. She further testified that she did not have a copy of the subpoena with which she was served and her mother was not there to testify that she was served with a subpoena from the Solicitor's Office.

Regarding Kalyn Floyd, trial counsel testified that she was informed by Solicitor Bill Weeks, Solicitor Beth Ann Young, and Investigator Norwood Bodie about the information they received on Kalyn Floyd at a meeting on February 22 before the trial. She stated that Joseph Dicks told them that Applicant had told him on the phone that a stud (who they described as "a gay woman who dressed like a woman") named Kayla coming to see Joseph Dicks and bring him a package. She stated that they gave her no other information on Kalyn Floyd.

Trial counsel testified that she did not have an investigator look into Kalyn Floyd as a potential witness because they found out about her at 11:30 on the first day of trial. She stated that she did not ask the trial judge for more time to investigate and she did not recall why she did not make that motion. She testified that, had she known about Kalyn Floyd at the time, she would have used her as a witness at trial.

Argument

Trial counsel's failure to investigate or use Kalyn Floyd as a witness is neither deficient performance nor prejudicial, and thus meets neither prong of the Strickland test.

Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation." Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); see also Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. 2052. When evaluating the reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland v. Washington, 466 U.S. at 690, 104 S.Ct. 2052.

Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). Trial counsel clearly performed a reasonable investigation in this case. Criminal defense attorneys should not be expected to drop everything to investigate a potential witness about whom they have received very limited information after the trial has already begun. "Indeed, it would be an absurdity to require criminal defense lawyers to interview every potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011). Trial counsel had no indication at the time that this witness would have been helpful to Applicant's case or that there was any reason to investigate her. The lack of investigation in this situation was reasonable and cannot be deficient.

Furthermore, the failure to present this witness at trial was not prejudicial. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.

Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

The details of how Applicant got the murder weapon in this case are not extremely relevant. The State presented testimony at trial from multiple witnesses that Applicant confessed to shooting and killing the victim, as well as details about how he shot him. A witness that would have testified that she was out of town and did not give a gun to Applicant before the murder would not likely change the jury's opinion of the credibility of the witnesses recounting Applicant's confessions. Regardless of where he got the gun, the jury believed beyond a reasonable doubt that Applicant shot and killed the victim. Kalyn Floyd would not have changed the outcome of this case.

Because Applicant can show no deficient performance by trial counsel and no prejudice resulting from such performance, this allegation should be denied and dismissed.

2. Failure to Utilize Witnesses at Trial

In order to succeed on this allegation, Applicant must show that the proper utilization of any witness at trial would have changed the outcome of the case. Applicant has failed to meet this burden and this allegation should be denied and dismissed.

"This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

While Applicant did present witnesses at the evidentiary hearing which he alleges would have contradicted the State's timeline or weakened the credibility of some of the State's witnesses, Applicant has not proven that this testimony would have changed the outcome of the jury's verdict. The discrepancies pointed out in the testimony of the witnesses presented at the PCR hearing, which was years after the trial, were minor and inconsistent. Their testimony was speculative and vague. None of the witnesses could say with credible, exact certainty that Applicant did not or could not have committed this crime. Some of these witnesses had criminal records that could have been used to impeach them if they had testified at trial.

Not only was it reasonable for trial counsel to strategically chose not to use these witnesses, but there is no evidence that this testimony would have changed the outcome of the trial. Because Applicant has failed to meet his burden of proof, this allegation should be denied and dismissed.

3. Failure to Cross-Examine and Impeach State's Witnesses

Applicant has failed to meet his burden of proof in this allegation by failing to show how trial counsel's cross-examination was deficient and prejudicial. In order to prove this allegation, Applicant should have presented the State's witnesses and elicited testimony from these witnesses showing how trial counsel should have cross-examined and impeached them.

See, e.g., Fugate v. Head, 261 F.3d 1206, 1219 (11th Cir. 2001) ("The decision as to whether to cross-examine a witness is a tactical one well within the discretion of a defense attorney.... Absent a showing of a single specific instance where cross-examination arguably could have affected the outcome of either the guilt or sentencing phase of the trial, a[n] [applicant] is unable to show prejudice necessary to satisfy the second prong of Strickland") (citations and internal quotation marks omitted); Delaware v. Fensterer, 474 U.S. 15, 20 (1985)

(per curiam) ("the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish") (emphasis in original); Mills v. Singletary, 161 F.3d 1273, 1288 (11th Cir. 1998) (defendant's Sixth Amendment right to confront witnesses is satisfied where the cross-examination permitted exposes the jury to facts sufficient to evaluate the witness' credibility and "enables defense counsel to establish a record from which he can properly argue why the witness is less than reliable").

Applicant has failed to meet his burden of proof and this allegation should be denied and dismissed.

4. Failure to Pursue Defenses

a. Third-Party Guilt

Applicant alleges that trial counsel should have pursued a third-party guilt defense. Trial counsel testified that has notes in her file indicating that she considered a third-party guilt defense based on the possible involvement of Joseph Dicks or Jose Serrano. For some reason which she could not recall, she chose not to pursue it. Trial counsel clearly considered this defense, investigated and looked into it, and made a conscious decision not to pursue it. The failure to use this defense at trial clearly was not deficient nor prejudicial. Applicant has failed to meet his burden of proof, and this allegation should be dismissed.

b. Alibi

Applicant further alleges that trial counsel was ineffective to failing to present alibi witnesses.

To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant

to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

None of the witnesses presented at the evidentiary hearing met the requirements to qualify as an alibi witness that should have been presented at trial. These witnesses were speculative, inconsistent, and could not prove that Applicant was with them in a different location at the exact time that the victim was killed. Since no witness could successfully testify that it would have been physically impossible for Applicant to commit the crime, these witnesses could not have affected the outcome of the trial. Thus, this allegation is meritless and should be denied and dismissed.

5. Failure to Prepare and Utilize Applicant as Witness

Applicant testified at the evidentiary hearing that he did not feel like he was properly prepared to take the stand at his trial. However, this alone cannot prove any deficiency or prejudice by trial counsel, and this allegation should be dismissed.

Applicant testified in his defense at trial. The trial record reflects (on page 585) that the court informed Applicant of his right to remain silent and went through the normal colloquy regarding his choice to testify at trial. He told his side of the story and answered under oath any questions that trial counsel and the State asked of him. He gave no confessions or incriminating testimony that worked against his favor. While he might have been nervous to take the stand in a

courtroom where he is on trial for murder, as anyone would be, he has failed to prove exactly what more trial counsel should have done to prepare him to testify or how this would have changed the outcome of the trial. This allegation is meritless and should be denied and dismissed.

6. Failure to Disclose Representation of Jamar Green

Applicant alleges that trial counsel was ineffective by failing to disclose to Applicant that she had previously represented Jamar Green, one of the State's witnesses. At the evidentiary hearing, trial counsel also testified that she had represented one of the Serranos, who were also witnesses at trial, and Applicant felt this failure to disclose was also ineffective assistance of counsel. Applicant cannot prove any prejudice resulting from this failure to disclose, and this allegation should be dismissed.

At the evidentiary hearing, trial counsel testified that, if anything, her representation of Serrano helped Applicant's case because she personally knew more about him and knew that he was not a credible witness, which helped her cross-examine and impeach him before the jury. This evidence is contradictory to the argument that this failure to disclose prejudiced Applicant in any way. Since he has not proven that the disclosure of this representation would have changed the outcome of the trial, this allegation should be dismissed.

7. Failure to Object and Move to Suppress

Applicant has failed to meet his burden of proof in showing that trial counsel failed to object or move to suppress any evidence that was prejudicial to Applicant's case, and this allegation should be dismissed.

a. Exhibit #54 Phone Records

Applicant alleges that trial counsel was ineffective for failing to object to the victim's phone records that were admitted as the State's exhibit at trial. He alleges these phone records showed several phone calls from a witness to the victim throughout the course of the night and the State never clarified to the jury exactly which phone call was the last time the witness spoke to the victim. Applicant contends that, had trial counsel successfully suppressed these phone records, the jury would not have been confused about the timeline of the State's case and would have been more likely to believe that the victim was still alive after the time that the State argued he was deceased, which was sometime between 12:40 A.M. and 1:20 A.M. This argument is meritless.

Even if Applicant had moved to suppress these phone records, Applicant has shown no reason why a motion to suppress could have been successful in keeping these records out of trial. These were the verified phone records of one of the five cell phones in the victim's vehicle. The custodian of the records from the cell phone company testified at trial to explain and verify the records. There is no reason why these would not have come into evidence at trial.

Furthermore, these records likely did not sway the jury's mindset about whether Applicant was guilty of this crime, and the suppression of these records would not have changed the outcome of the case. Trial counsel testified at the evidentiary hearing that there was testimony from multiple witnesses at trial that contradicted the State's timeline in the same way that suppressing these records might have. For example, there was testimony presented that Applicant was seen with the victim at 1:20 A.M. and at 1:30 A.M., which pointed out to the jury that it would have been impossible for the victim to be deceased by 1:20 A.M. Trial counsel cross-examined the witnesses on their inconsistent statements regarding the timeline in this case and impeached them with the fact that they gave inconsistent statements. Because these

inconsistencies were elicited at trial, any discrepancies in the timeline created by the cell phone records were cumulative and therefore not prejudicial. This allegation should be dismissed.

8. Failure to Fully "Put State's Case to the Test"

Applicant alleges that trial counsel failed to "fully put the State's case to the test" which resulted in prejudice to Applicant. This allegation is so vague it is impossible to address. Applicant has not shown how trial counsel should have fully put the State's case "to the test." Applicant has failed to meet his burden of proof in showing that trial counsel was deficient for any reason in this regard, and this allegation should be dismissed.

II. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Applicant alleges that appellate counsel failed to present all meritorious issues on appeal. Applicant has failed to present sufficient evidence at the evidentiary hearings to support his allegations of ineffective assistance of appellate counsel, and thus has failed to meet his burden of proof. Therefore, these allegations should be denied and dismissed.

III. PROSECUTORIAL MISCONDUCT

Applicant alleges prosecutorial misconduct for failing to disclose to defense counsel the State's investigation and interview of Kalyn Floyd, a potential witness who was alleged to have provided Applicant with the murder weapon. This allegation is meritless and should be dismissed.

At the evidentiary hearing, Bill Weeks, who prosecuted Applicant's case, testified about the State's investigation into Kalyn Floyd as a potential witness. He stated that her name was mentioned as the person who gave the .38 caliber murder weapon to Joseph Dicks, who then passed it on to the Applicant before the murder. He stated that Joseph Dicks, who gave him this information, had changed his story several times before the trial to add details such as this one.

Although he could not swear that he absolutely remembered sharing that information with trial counsel, Mr. Weeks testified that he always discloses information that he would want as defense counsel and he is sure that he would have disclosed it in this situation.

Mr. Weeks did not recall personally interviewing Kalyn Floyd, but there was a note in his file that someone from his office had interviewed her on February 24, which would have been during the trial. He stated that they certainly did not use her as a witness at trial. He stated that his office did not investigate Kalyn Floyd's cell phone records because they did not interview her until the time of trial and did not have time. Mr. Weeks testified that he believes he told trial counsel about Kalyn Floyd at the consultation they had on the day before the trial began.

Mr. Weeks is a very credible witness. His testimony about disclosing the existence of this potential witness to trial counsel paired with his regular practice of disclosing everything he believes relevant to defense counsel support the argument against prosecutorial misconduct. Based on this testimony, Applicant can show no evidence that the State did not disclose the information about Kalyn Floyd to trial counsel. Applicant has failed to meet his burden of proof and this allegation should be dismissed.

CONCLUSION

Based on all the foregoing, Respondent asserts that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief should be denied and dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

September 8, 2016.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
Tevon Michael Jackson, #344982,)	2013-CP-02-2693
Applicant,)	
v.)	
State of South Carolina,)	ORDER GRANTING APPLICATION
Respondent.)	FOR POST CONVICTION RELIEF

POST CONVICTION PROCEDURAL HISTORY

This matter comes before this Court pursuant to an Application for Post Conviction Relief filed on November 27, 2013. That State filed a Return on May 13, 2014. By way of his first Amendment filed prior to the evidentiary hearing, Applicant made the following claims of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel for failure to properly prepare and investigate prior to trial, which resulted in prejudice to Applicant.
2. Ineffective assistance of trial counsel for failure to utilize witnesses at trial, which resulted in prejudice to Applicant.
3. Ineffective assistance of trial counsel in preparation for and at trial for failure to do the following, which resulted in prejudice to Applicant:
 - a. Failure to fully cross-examine and/or impeach the State's witnesses.
 - b. Failure to pursue available defenses, including but not limited to alibi, third party guilt and exonerating evidence.
 - c. Failure to properly prepare and utilize Applicant as a witness at trial.
 - d. Failure to disclose to Applicant representation by counsel of Jamar Green, witness for the State at trial.
 - e. Failure to make contemporaneous objections and/or move to suppress irrelevant evidence and testimony.
4. Ineffective assistance of trial counsel for failure to fully put the State's case to the test and/or fully refute the State's theory of the case with available evidence and witnesses, which resulted in prejudice to Applicant.
5. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal.

FILED 1-13 20 17

1/25 ms

Ashleigh M. Payne
CCJP & CS
Deputy Clerk 12:15

6. Pursuant to Rule 15(b), SCRPC, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

By way of his second Amendment filed prior to the evidentiary hearing, Applicant made the following additional allegations:

1. Ineffective assistance of trial counsel for failure to move to suppress and/or object to the phone records admitted as State Exhibit #54 and any testimony pertaining to such records. Failure to impeach the State's witnesses with evidence obtained from the victim's cell phone.
2. Prosecutorial misconduct and/or Brady violation for failing to disclose the interview and investigation into Kalyn Floyd prior to and/or during Applicant's trial based upon information received from Joseph Dick's that she provided Applicant with the murder weapon. Alternatively, if said information was not subject to disclosure by the State, ineffective assistance of trial counsel for failure to investigate the matter, locate Kalyn Floyd and utilize her as a witness for the defense

On September 10, 2015, an evidentiary hearing was convened in front of the Honorable Edgar W. Dickson at the Aiken County Courthouse. Applicant was present and represented by Tricia A. Blanchette, Esquire. The State was represented by Daniel F. Gourley, Assistant Attorney General. At the close of the hearing, this Court requested memorandums in lieu of closing argument and granted Applicant's counsel's request to obtain the evidentiary hearing transcript prior to the submission of her memorandum. After careful consideration of the memorandums from both parties, this Order follows.

GENERAL SESSIONS PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. Applicant was true bill indicted at the January 2009 term of the Aiken County Grand Jury for Murder and Possession of a Firearm during the Commission of a Violent Crime (2009-GS-02-083, 084). Wallis Alves, Esquire, and Michael Routzong, Esquire, represented Applicant. Applicant proceeded to a jury

2/25 

trial before the Honorable Doyet A. Early, III. On February 28, 2011, Applicant was found guilty as indicted and sentenced to a term of thirty years and a concurrent term of five years.

A timely notice of appeal was perfected on Applicant's behalf by Breen Stevens, from the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Tevon Jackson, Op. No. 2013-UP-024 (Ct. App. filed January 16, 2013). The Remittitur was issued on February 4, 2013.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Defense counsel provided ineffective assistance when she failed to prepare and investigate Applicant's case prior to trial, which was prejudicially evidenced by her failure to utilize available witnesses and evidence to refute the State's theory of the case, properly cross-examine the State's witnesses, and present a defense beyond merely calling Applicant to the stand.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). Where an application for post-conviction relief alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. 466 U.S. at 686; see Butler v. State, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 691. The applicant must overcome this presumption in order to receive relief. Bell v. State, 321 S.C. 238 (1996); see also Cherry v. State, 300 S.C. 238 (1989); Rule 71.1(e), SCRCP.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. This court finds that Applicant's trial attorney rendered ineffective assistance of counsel by failing to properly prepare and investigate prior to trial, which resulted in prejudice to Applicant. See Ard v. Catoe, 372 S.C. 318 (2007) (stating that counsel has a duty to interview potential witnesses and to make an independent investigation of the facts); See also Lounds v. State, 380 S.C. 454 (2008) (holding that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts). In McKnight, the South Carolina Supreme Court held: "This Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable 'only to the extent that reasonable professional judgment supports the limitations on the investigation.'" McKnight v. State, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (quoting Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004)).

As a result of defense counsel's lack of investigation and preparation, she failed to pursue available defenses. As such, she failed to call witnesses and utilize evidence that would have refuted the State's timeline and theory of the case. Defense counsel repeatedly offered no legitimate reason or strategy for failing to utilize or cross-examine witnesses on the matters raised at the evidentiary hearing, oftentimes stating that she neglected to interview witnesses whose testimony would have been beneficial to Applicant's defense. Counsel repeatedly answered that the witnesses or evidence produced therefrom would have either aided the defense or been detrimental to the State's case. In a case where credibility was essential to the State's case, this Court finds that

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defense counsel's failure to do the above constituted a violation of Applicant's Sixth and Fourteenth Amendment right to the effective assistance of counsel.

On February 22, 2011, Applicant was called to trial in Aiken County South Carolina in front of the Honorable Doyet A. Early on charges of murder and possession of a weapon during the commission of a violent crime. During the course of Applicant's trial, the State called thirty-six witnesses. Two of the State's witnesses, Joseph Dicks and Joey Serrano testified to being with Applicant before and after the murder and hearing Applicant admit to and brag about committing the murder. Applicant was the lone witness for the defense. After the jury rendered a verdict of guilty on both charges, Judge Early sentenced Applicant to a term of thirty years and a concurrent term of five years.

In opening argument, the State submitted to the jury that the murder of Marcus (Marc) Finklin occurred in the early morning hours of June 4, 2008. During closing, the State argued: "Well, the State's theory is Marcus Finklin died and didn't answer Kenisha Jackson's last phone calls, that he was dead by the time Joey Serrano walked back to his house that night."¹ Trial p. 706, lns. 7-11. At the evidentiary hearing, counsel admitted that she failed to address that Ms. Jackson made multiple unanswered phone calls at varying times and she emphasized that it was important for the State to place the time of death prior to the time Mr. Serrano admitted walking home alone. PCR pp. 124, 126.

During her closing argument, defense counsel provided the jury with the timeline of events presented by the State. This timeline was listed on a sheet of paper from counsel's file marked as Applicant's Exhibit 5, and placed on the timeline exhibit (Applicant's Exhibit 17) prior to the start of the evidentiary hearing. PCR pp. 9, 122-23, Trial pp. 684-688. Counsel

¹ At trial, Mr. Serrano testified that he walked home at 3:00 a.m. Trial p. 439, lns. 20-25.

admitted she should have provided the jury with a visual aid regarding the timeline. PCR p. 123. She also agreed that the timeline was an important issue for the State, yet she failed to nail the State down to a specific time of death. PCR p. 124. During her closing, counsel argued that it was impossible for Applicant to commit the murder and complete all the actions testified to by Mr. Dicks and Mr. Serrano in a forty-three minute window from 2:17 a.m. to 3:00 a.m. Trial pp. 688-9. Never once did defense counsel mention all of the other entries on the timeline created at the evidentiary hearing that this Court finds refuted the State's timeline and theory of the case. When asked about this failure and the timeline exhibit at the evidentiary hearing, counsel testified: "In looking at this and looking at the information that was brought out, I probably would have pinned them down on that because it would have showed that they were lying." PCR pp. 202, 203, lns. 1-4. Counsel explained that the evidence at trial was not overwhelming and it boiled down to the timeline and the stories of Mr. Dicks and Mr. Serrano. As a result, the credibility of the State's witnesses was very important. PCR p. 186, lns. 5-11.

When Applicant took the stand at the evidentiary hearing, Applicant explained that during his three year wait for trial, he was "tossed around" to several public defenders. PCR p. 252, lns. 2-21. He acknowledged that he testified at trial that he had only met with Ms. Alves three to four times. PCR p. 252, lns. 10-17. He stated that he did not have the opportunity to review the discovery with defense counsel prior to trial. PCR p. 253, lns. 8-15. He explained that he had memorized Mr. Dicks' and Mr. Serrano's statements from the discovery, but he found out from counsel on the first day of trial that they had given new statements, which were not discussed with him by counsel. PCR pp. 254-6. He made it clear that he would have wanted a continuance for counsel to properly prepare. PCR p. 256, lns. 10-24. He stated that he would have wanted each witness from his evidentiary hearing called at his trial. PCR p. 268. He

explained that counsel did not discuss any of the witnesses called with him nor did they discuss a trial strategy. In sum, he testified that counsel was not prepared for trial. PCR pp. 269-71.

In Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1999), the South Carolina Supreme Court addressed whether trial counsel was ineffective for failing to call a witness at trial. The Court reasoned as follows:

This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)(applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995)(where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); see also Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, supra, S.C. at 498-99, S.E.2d at 540.

Bannister, 333 S.C. at 303, 509 S.E.2d at 809.

At the evidentiary hearing, Applicant called a number of witnesses and addressed evidence from the discovery not utilized at trial. The witnesses that were called at the evidentiary hearing that were not called at trial either gave a statement to law enforcement or were easily located as testified to by Pete Skidmore, private investigator. This Court finds the witnesses called, including Applicant and trial counsel, to be credible. This Court further finds that the witnesses called and discussed herein clearly demonstrate how counsel could have properly prepared and investigated Applicant's case resulting in the utilization of witnesses to call into

question the State's timeline and theory of the case. When asked, counsel repeatedly admitted that she should have utilized the witnesses and evidence offered and she had ~~no~~^{an} excuse for not doing so. Defense counsel surmised that the witnesses and evidence offered demonstrated that she should have pinned Mr. Dicks and Mr. Serrano down on their timeline and shown the jury how the testimony and evidence showed they were lying. PCR p. 203. When asked by the State, she recalled thinking it was a third party guilt case, with the third parties being Mr. Dicks and Mr. Serrano. PCR p. 205. She conceded that she had no reason for failing to investigate and raise a third party guilt defense. PCR p. 205.

Turning to the witnesses and testimony offered, Jeff Smith, Deputy Coroner for Aiken County, testified. He acknowledged that he responded to the scene, conducted the coroner's investigation and testified at trial. Trial p. 355, PCR p. 53. He identified and counsel admitted a packet containing his report, notes and the coroner's report. Applicant's Exhibit 3. He acknowledged that the estimated time of death on the first report was 3:15 a.m., which was changed to 2:00 a.m. on the final report per "L.E." – meaning law enforcement. PCR p. 56. He further acknowledged that he had notes from speaking with Doris Jackson who lived one hundred yards from the murder scene and saw a car in the cul de sac with its lights on at 3:30 a.m. PCR p. 57-8. He could not provide any notes indicating that trial counsel had contacted him. PCR p. 59. In response, trial counsel conceded that she had the coroner's report in her file and was not sure what investigation she did into the neighbor's sighting. PCR pp. 136-137.

Latika Elliott testified at the evidentiary hearing and identified the statement she provided to law enforcement, which clearly indicated that she last spoke with the victim at 3:01 a.m. and then he failed to show up as they had planned. PCR transcript p. 22-23. Ms. Elliott explained that she was present through the entire trial and wondered why she was not called by either side. PCR

p. 27. She explained that she knew the victim and Applicant, and she knew Applicant did not do what the State alleged at trial and that Applicant was not a threat to victim. PCR p. 27-28, 32. She candidly admitted that she told law enforcement she was holding drugs at her home for victim because he did not trust leaving them at his house since people had been stealing from him. PCR p. 24. She also explained that she had first-hand knowledge of Stephanie Green's (state's witnesses) drug use and could have refuted Ms. Green's trial testimony that the night of the murder was the first time she had bought cocaine. PCR p. 28, Trial p. 315.

When asked, trial counsel admitted that she had the statement of Latika Elliott and she was mentioned in the preliminary hearing transcript, along with the 3:01 phone call. PCR p. 131. She acknowledged that Ms. Elliott's testimony would have been helpful and she did not have a reason for not calling her at trial. PCR p. 134. In response to why she did not call Ms. Elliott to refute Stephanie Green, counsel stated: "I don't know if I knew about that." PCR p. 161.

In the same vein, Felice Stallings testified at the evidentiary hearing and affirmed her statement about being with victim on the night of his death and him leaving her home at 12:30 a.m. PCR p. 210-1. When asked about state's witness Tracy Serrano's testimony that she saw victim going to Ms. Stallings' home at 12:30 a.m., she said that testimony was not correct as he was leaving at that time. Trial p. 187, PCR p. 211. She recalled victim becoming aggravated by phone calls he was receiving while at her house from his brother "Poo-Poo" and that he left because his brother needed a ride.² PCR pp. 211-12. She recalled seeing his car pull into her back yard and then parking in her driveway around 2:00 a.m. PCR p. 212. She indicated that she

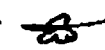
² Defense counsel admitted that she failed to ask Chiquita Ingram about her statement, which was also recounted at the preliminary hearing, stating that victim's brother was acting suspicious and was taking advantage of victim. PCR p. 150. She further admitted that she should have cross-examined Ms. Ingram on her testimony that she spoke to victim at 12:00 a.m. When the phone records admitted by the State recorded the phone call at 12:38 a.m. Trial p. 528. Counsel agreed that the 12:38 a.m. time reflected on the phone records fell into the window of time given (Applicant left at 12:40 and returned within 30-40 minutes) in the statements of Mr. Dicks and Mr. Serrano that also were not addressed by counsel at trial. PCR p. 149-150, 156-8.

would not have willingly testified for the defense at trial, but she would have complied, as she did at the evidentiary hearing, if she was under subpoena. PCR p. 213-4. She also testified that she was unaware that she was on the defense witness list since she did not talk with anyone from the defense. PCR p. 213-4. She recalled Solicitor Weeks telling her she was not needed at trial. PCR p. 213.

When asked about Ms. Stallings, defense counsel indicated she had notes in someone's handwriting about a Michelle Stallings. PCR p. 144-5. After acknowledging that she was on the defense witness list, she admitted that she did not have a reason why she did not call Ms. Stallings at trial. PCR p. 146. She also admitted that she had not contemplated why the State may have called Ms. Ealy, her neighbor, about the 2:00 a.m. sighting of the victim versus calling Ms. Stallings.³ PCR p. 161.

Thereafter, counsel called Kevin and Christy Parker. Both witnesses explained that they were raised as "cousins" to the victim and ~~where~~^{were} regularly with victim. Both witnesses also acknowledged being familiar with Applicant and their personal opinion that he would not have murdered victim. Specifically, Kevin recalled seeing victim on the night of his murder during his midnight shift at a local gas station. He testified that no one from law enforcement or the defense ever contacted him or tried to obtain the gas station video. PCR p. 67-8. He recalled victim telling him about having a baby on the way and they discussed how he needed to leave the drug business alone. PCR p. 66. He testified that victim told him he was going to "do this one last thing with the drugs" the night he died. PCR p. 66, lines 19-22. When asked why he did not

³ Defense counsel also admitted that she did not have a reason for failing to refute Ms. Ealy's testimony about the number and length of calls with the victim versus what was reflected on the phone records admitted by the State at trial and by Applicant at the evidentiary hearing. Applicant's Exhibit 7, State's Trial Exhibit 54. At trial, Ms. Ealy testified that she spoke with the victim for a long time at 11:00 p.m., yet the phone records list a call at 11:09 for 33 seconds, 11:19 for 22 seconds and 11:23 for 36 seconds. Trial p. 322.

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contact law enforcement regarding his belief that Applicant did not commit the murder and about his encounter with the victim, he explained that he was "hurting" and it was against the rules in his neighborhood to go to the police. PCR pp. 68, 76, 80. When asked by the State about his opinion of who was violent in the neighborhood, he responded that the Serranos are "bad people" and Mr. Serrano is known for being violent. PCR pp. 71, 79.

Christy Parker affirmed the contents of her statement given to law enforcement. PCR p. 84. She testified that she saw Applicant, Mr. Dicks and Mr. Serrano together when she was leaving victim's residence after 3:00 a.m., which she later estimated to be 3:06 a.m. PCR p. 86, 90. She also explained that the phone call she got from Applicant at 3:11 a.m. was from Serrano's phone. PCR p. 86. She testified about Mr. Dicks stating Applicant was with him and at his house all night and her conversation with Applicant about waiting on victim to return. PCR p. 87. She explained that Applicant was always around victim's house when she was there and Applicant was "quiet." PCR p. 88. As to Mr. Serrano's reputation, she testified that he is known for fighting and being a violent person. PCR p. 91. She explained that she was subpoenaed to court by the State and never contacted by the defense. PCR pp. 88-9. She said she sat through each day of trial and was never called. PCR p. 89. She said she would have been willing to testify for the defense. PCR p. 89.

As to Kevin Parker, counsel testified that she did not have any notes regarding speaking with Kevin Parker. PCR pp. 134-5. She explained that she represents up to one hundred fifty clients at any given time, so she did not have a specific memory of him or reason for not utilizing him. PCR p. 135. She testified that she had Christy's statement, which was also addressed at the preliminary hearing. PCR p. 135. She indicated that she did not know of a reason why she did not utilize her at trial. PCR p. 135. When asked about Christy's testimony about seeing Applicant

with Mr. Dicks and Mr. Serrano after the time Mr. Serrano was allegedly home alone (3:00 a.m.), she agreed that eliciting such testimony probably would have hurt the State's case. PCR p. 163. Later, she concluded that she should have also pinned Dicks and Serrano down on the window of time they provided in their statements, which was omitted from their testimony and would have shown that they were lying. PCR pp. 156-8, 203. She made it clear that their credibility was very important to the State's case against Applicant. PCR p. 186.

Sandra Smith, Applicant's mother, testified and acknowledged her statements to the trial court at sentencing and explained that she truly questioned why counsel did not discuss some of those matters with her prior to trial or call her at trial. Specifically, she explained that she could have told the jury how she had removed the house key and gone through the events of that day leading up to Applicant being locked out of the house and not being able to get in while she was away. PCR pp. 102-3. She also testified regarding Applicant's love of his clean shoes, the reason he left the area and that she did not work with Applicant on his story. PCR pp. 101, 107. She also testified that her home and Applicant's car were not searched by law enforcement, despite the murder weapon being unaccounted for at trial. PCR p. 105. She simply did not understand why her son was left on an island, as the lone witness for the defense. She further explained that Applicant was truly devastated when he found out his friend was murdered PCR p. 101-2.

By way of the Amendment and at the evidentiary hearing, Applicant raised allegations of ineffective assistance and/or prosecutorial misconduct regarding the witness Kalyn Floyd. This Court finds that trial counsel's ineffective assistance derived from her failure to prepare and investigate and resulting prejudice is further evidenced by her failure to locate Ms. Floyd and call her as a witness at trial.

On the first day of trial, the jury was selected and court was recessed for the day. Trial p. 31. On the second day of trial, Mr. Dicks was called to the stand. While on the stand, he recounted the events of the night in question, which differed from his written statement. He recalled Applicant leaving for a "little period" and his "friends came through and dropped something off." Trial p. 233, lns. 15-22. He said the "something" was a loaded .38 caliber gun. Trial pp. 233, ln. 23, 234, lns. 5-6. He said the person's name was Kayla and she was a "dude, girl" or "like a man/female" who dressed like a man and he thought was gay. Trial pp. 234-5. He further recalled seeing her with Applicant occasionally. Trial p. 234.

On cross examination, Mr. Dicks further expanded upon his story by adding that he met Ms. Floyd on Nondrum Street because that is where Applicant told him to wait for her. Trial p. 260. He further admitted that he did not include any information about Ms. Floyd in his statement to police, after which defense counsel asked the following:

Question: And the first you told the solicitor was what, last Monday?

Answer: Yes, ma'am.

Trial p. 261, lns. 10-17.

At the evidentiary hearing, Kalyn Shantay Floyd was called to the stand. PCR p. 10. She explained that she knew Applicant from growing up on the same street. PCR pp. 11-12.

Thereafter the following testimony was elicited:

Question: Okay. Now, Kalyn, let me take you back to the time shortly before Tevon Jackson was tried in 2011. Did you come in contact with law enforcement in this case?

Answer: Yes, I did.

Question: Okay. And what happened with that?

Answer: I was subpoenaed to go talk to the solicitor. And I went to go talk to him. He asked me what happened because Meat Man said I brought Tevon the murder gun but I was actually out of town that

whole week. And I had to give him my cell number so he could track my towers of where I was and I was never called.

Question: Okay. So, shortly before the trial is when you remember it, you were contacted that you had to go to the solicitor's office. Were you concerned when they contacted you?

Answer: Yes.

Question: And did you know what it was about at that point.

Answer: Yes.

Question: Okay. You talked to them, you provided them cell phone records?

Answer: Yes.

Question: And as a result, what did they tell you? Did they tell you those showed you were involved or did they give you any information back?

Answer: They said they were going to give me a call if I needed to take the stand, but I never received a call.

Question: Okay. And did you ever get a subpoena during the course of the week of trial and think that you were going to be needed to be there?

Answer: No. Just when I had to go talk to the solicitor.

PCR p. 12, ln. 18 – 13, ln. 23. She further recalled meeting at the Aiken County Detention Center on Hampton Avenue. PCR p. 14. She testified that no one from the public defender's office ever contacted her and no one had contacted her since besides PCR counsel. PCR P. 14. She clearly answered "yes" when asked if she would have been willing to testify for the defense at trial. PCR p. 15, lns. 1-4.

When asked if she was on Nondrum Street that night and provided Joseph Dicks with a gun as he testified to at trial, she responded: "No." PCR p. 15. She explained that she was out of town that whole week and, she was with a friend that could have attested to her whereabouts.

PCR p. 15. She also answered the obvious question that she was never charged in connection with the murder of the victim. PCR p. 16.

On cross-examination, she recalled providing a written statement during her meeting with the prosecution. PCR p. 17. She further stated that she was with Kayla Murray in Augusta, Georgia on the night in question. PCR p. 17. She recalled providing two cell phone numbers and being told that they were going to track her location via cell phone tower records. PCR p. 18. When asked about the subpoena, she recalled receiving it the first day of trial and meeting with the solicitor around five that afternoon. PCR p. 18-19. On redirect, she recalled being at home on Dry Branch Road and her mother answering the door when she received the subpoena. PCR p. 19-20.

While defense counsel was on the stand, she remembered hearing the name Kayla prior to trial then looked through her records / notes to provide a more specific answer. PCR p. 174. Then, she responded as follows:

On February 22nd at 11:30 a.m. I met with Solicitor Bill Weeks, Solicitor Beth Ann Young and Investigator Norwood Bodie. And they discussed new information that they had gotten from Joseph Dicks and Jose Serrano when they met with them the week before. During that meeting the Solicitor, actually Solicitor Weeks approached me and told me that they wanted to meet with me to tell me about them. And I was specifically told that Tevon had gotten – that Joseph Dicks said that Tevon called him on the phone, and specifically that Tevon had some stud coming to see Joseph who was bringing him a package. And when I asked them for more details about what they meant by some stud, they told me it was a gay woman who dressed like a woman named Kayla and they didn't have any further information about that person.

PCR p. 175, Ins. 1-16.

When asked about whether or not she utilized her investigator on the case to attempt to locate Ms. Floyd, counsel responded that she found out about her on 11:30 during the first day of trial and did not recall attempting to find her. PCR P. 178. She further admitted that she did not

ask the court for more time to investigate the matter and she had no reason for not addressing the matter with the court. PCR p. 178. She also deferred to the record when asked about raising the late disclosure of in the information by the Solicitor's Office to the court. PCR p. 179.

Thereafter, the following testimony was elicited:

Question: And in this case your cross-examination, your closing argument is all about the credibility of Joseph Dicks and Jose Serrano. If Joseph Dicks was lying about this and it could have been proven that Kayla was nowhere in the area and did not provide the murder weapon, wouldn't that have aided in your defense?

Answer: It would have tremendously aided my defense.

Question: If you would have known Kayla testified today that she was investigated and she was able to provide proof that she wasn't present and she was informed essentially that she was cleared and not needed, if you would have known that information would you have raised that during the trial or made necessary motions regarding it?

Answer: I would have.

Question: And if Kayla in fact had provided the murder weapon based on your vast experience as a public defender, what could she have been charged with in this case?

Answer: Accessory before the fact.

PCR p. 179, ln. 16 -180, ln. 8.

When Applicant took the stand, he said he knew immediately that Mr. Dicks was referring to Kalyn Floyd. PCR p. 255. If counsel had asked him about her, he said he could have provided her last name and location since she lived just a couple houses down from him. PCR p. 255-6. When asked if he would have wanted counsel to ask for a continuance based upon the new information provided and for time to locate Ms. Floyd, he responded: "Very much so." PCR pp. 256-7. He testified that he wanted Ms. Floyd to come to court to testify since she allegedly supplied him with the murder weapon. PCR p. 257. He considered her not being charged as "the

biggest question I ever had." PCR p. 257-8. He explained: "I knew it wasn't true because they ain't locked her up for it." PCR p. 258, lns. 5-6.

After the State called Bill Weeks, Solicitor, to the stand, he was asked about Mr. Dicks and Mr. Serrano changing their statements, which he characterized as Mr. Dicks adding to his statement all the time but added "he did change some stuff." PCR p. 289, lns. 14-21. After which the following testimony was elicited,

Question: And did that include naming Kayla Floyd as the person who he received the .38 caliber weapon from that he then gave to Tevon Jackson.

Answer: Yes. I don't know that that was a change. It might have been a change or it might have been an addition to, but to the best of my memory that was in pretrial preparation where Joseph told us that and so did Joey.

Question: Okay.

Answer: It was at a joint meeting really when both of them were there at the office at the same time.

Question: And did you disclose that information to Ms. Alves., his public defender?

Answer: I can't swear I disclosed the indictment to her but I know I always do.

Question: Yes, sir.

Answer: Standard rule in my office is we give them everything. If a defense lawyer want it - if I would want it as a defense lawyer, they get it.

Question: Okay.

Answer: I certainly would not have withheld this Floyd woman's role in this from Ms. Alves. Now do things come up right before court? Oh, yea. Because I'm pretty sure she was probably working the Sunday night before court started on Monday and I can assure you we were.

But it wasn't a mystery. Once we knew about it we told her everything we knew. And we do that with all the witnesses. Before we have a major trial like this, Ms. Alves would come to our office, along with an investigator more than likely, and go through

every single piece of paper in our file that isn't something that we would say is work product.

In this case there were a number of witnesses. There were a number of inconsistent witnesses. It was like a parade for a couple weeks trying to get people in and out to interview them. I cannot remember whether or not she talked about particular witnesses.

PCR p. 289 ln. 22 – 291, ln 9. He further testified that he could not recall whether he ever met Ms. Floyd but he had a note in his file that his investigator interviewed her on February 24th.

PCR p. 291. He also was unsure if they "looked that hard" for her phone records.⁴ PCR pp. 291-2.

⁴ When asked about the issue of charging Ms. Floyd, the following testimony was elicited:

Question: Do you have any specific reason that you can provide to us today as to why Kalyn Floyd was not charged in this case or anything pursued against her?

Answer: Absolutely. Because I didn't have a case against her for anything. On the information we had, you heard the information we that we had and I would be the most neglectful prosecutor in the state if I had hauled out an arrest warrant for that woman who's never told me to this day whether she gave him the gun or didn't. I'm not sure what she said on the witness stand, I wasn't in here.

But absolutely couldn't charge that woman based on what we know then and couldn't charge her on what I know today because none of its very credible.

Question: And the information though was coming from your witness, Joseph Dicks.

Answer: Coming from Joseph Dicks. I called Joseph Dicks as a witness.

Question: And – but you're saying the information that he have you was not credible?

Answer: No, I didn't say that.

Question: Okay. Then could you please clarify what you meant by saying you couldn't charge her because the information was not credible?

Answer: It was given three years later, for one thing. And I never talked to Ms. Dicks – or Ms. Floyd, or never interviewed her to my knowledge. But if we did it was late in the game. And I wasn't trying to put a gun in Ms. Floyd's hand. I was trying to put a gun in Tevon's hands.

Question: But you elicited testimony on direct of Joseph Dicks that Kayla provided a .38 to him which was the specific caliber of the murder weapon in this case, and you went into detail with him about that. So you submitted that information to the jury in this case to consider as part of the guilt or innocence of Tevon Jackson.

Answer: I asked Mr. Dicks that question that the record reflects.

On cross-examination, he acknowledged that Mr. Dicks testified that he told him about Ms. Floyd the Monday before trial. When asked about defense counsel's testimony that the information was not turned over to her until the morning trial started, he responded: "That's not exactly what I heard. It's the first time she had a note of it, but that's not necessarily the first time she was told." PCR p. 298, lns. 20-22.

By counsel's own admission she failed to attempt to locate Ms. Floyd or ask for more time to locate Ms. Floyd. The failure of counsel to properly prepare and investigate further prejudiced Applicant when Ms. Floyd was not located and utilized since Ms. Floyd "would have tremendously aided" the defense and completely called the veracity of the State's witnesses and theory of the case into question.

In conclusion, this Court finds that Applicant has carried his burden and clearly shown that but for counsel's failure to prepare and investigate there is a reasonable probability the outcome of his trial would have been different. As a result of counsel's lack of investigation and preparation, she failed to pursue available defense strategies and failed to call and/or cross-examine certain witnesses as discussed in detail above. This Court finds that defense counsel rendered ineffective assistance of counsel in violation of Applicant's Sixth and Fourteenth Amendments. Therefore, this Court finds that a new trial must be granted.

2. Defense counsel was not ineffective when she failed to move to suppress and/or object to the phone records (State's Exhibit 54) admitted at trial and the testimony elicited regarding the phone records.

At trial, the State called William Hare from the local Verizon branch to introduce and interpret the records obtained from one of the phones (phone number:) found in

the possession of the victim. Trial pp. 137, 139. When asked by the State if he could tell from the records if a call was answered, he replied that he could since an answered call listed a time, in seconds, and a call that went to voicemail was marked "MF". Trial p. 141, Ins. 5-7, 15. He further explained that "MT" equaled incoming call and "MF" equaled voicemail. Trial p. 141, Ins. 11-22. During very brief cross-examination, he stated that "MT" equaled answered. Trial p. 144, Ins. 3-8.

At the evidentiary hearing, defense counsel explained that she did not consider whether Mr. Hare was qualified to interpret the records as he did at trial. PCR p. 170-1. When counsel was shown pictures of the screen shots from victim's phone located in the Aiken County Sheriff's Office's file, she could not say if she had reviewed them. PCR p. 172. When shown the records, screen shots and testimony of Mr. Hare, she noted the inconsistencies and concluded that his testimony appeared incorrect. PCR p. 190-1. She admitted that she should have used the information contained in the screen shots at trial. PCR p. 191. She further admitted that she should have not made the following statement in closing argument: "We can take the word of the cell phone records because a computer has nothing to gain or lose in this case." Trial p. 684, Ins. 18-24.

When Applicant took the stand at the evidentiary hearing, he made it clear that he would have wanted counsel to obtain all of the victim's cell phone records and that counsel did not review the cell phone records with him prior to testifying nor use the records during his testimony to help him establish a timeline. PCR pp. 261, 262-4. As a result, the State utilized the phone records against him in a way that he felt made him look like a liar to the jury. PCR p. 265. He explained that the prejudicial use of the records was further compounded by defense counsel's argument to the jury that records do not lie. PCR pp. 265-6.

At the evidentiary hearing, Pete Skidmore, private investigator, took the stand and explained the investigation ~~he~~ undertook in preparation for the evidentiary hearing. PCR p. 216. Regarding the issue of cell phone and cell phone records, he recalled reviewing the evidence at the Aiken County Sheriff's Department and being surprised by finding six cell phones, when the evidence records reported five. PCR p. 231. He also reviewed the pictures of the screen shots from victim's phone and explained how the information on the screen shots conflicted with the interpretation of the cell phone records at trial by William Hare. Trial pp. 139-144. He made it clear that he would have raised this issue with counsel prior to trial if he was investigating the case then as he did prior to the evidentiary hearing. PCR p. 234.

When Solicitor Weeks took the stand as the State's lone witness at the evidentiary hearing, he explained that he did not need to qualify the "Verizon guy" as an expert and his understanding of the cell phone records as follows:

So I think that's why we just went on into the meat of the matter. As we had told and I had explained to her, I'm truly no cell phone expert and I don't know what MF and MT means and all of that on there. That day I did or at least that day I knew what the guy had told me, but that's the reason we didn't qualify him as I think both sides were using him for whatever it was worth.

Because the cell phone records in this case were enough to drive you to drink. It just didn't seem to match up with any of the witnesses' time estimation. And to some degree I'm not sure they matched up with themselves. So that's the kind of what we had going on with the cell phone.

PCR p. 295, lns. 1-15.

After careful consideration of the record, testimony and evidence presented, this Court is not convinced that Applicant has shown that counsel failed to provide representation within the range of competence required in criminal cases in her handling of the testimony elicited from William Hare. Additionally, this Court finds that Applicant has failed to establish prejudice and

show how counsel's alleged failure affected the outcome of his trial. Therefore, this Court finds that this claim must fail.

3. The actions of the prosecutor's office did not amount to misconduct for failing to properly disclose information regarding Ms. Floyd completely and timely to defense counsel or for eliciting false testimony.

Our judicial system relies upon the integrity of the participants. State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000). With this in mind, the Constitution requires only that a defendant receive a fair, not a perfect trial. U.S. Const. Am. VI; State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999), Riddle v. Ozmint, 369 S.C. 69, 631 S.E.2d 70 (2006). In Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935), the Supreme Court of the United States explained the importance of the prosecutor's role in the judicial process:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Here, Applicant has alleged a Brady violation and prosecutorial misconduct in the handling of matters related to Ms. Floyd. In Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999), the prosecution failed to disclose that a witness, whose credibility was already in question, was taken to the scene and gave an additional version of events. After Gibson pled guilty this information was discovered during the course of a civil trial. The South Carolina Supreme Court addressed prosecutorial misconduct in the form of a Brady violation and reasoned:

The prosecutor committed a Brady violation by not disclosing certain evidence to Gibson. A Brady violation is one type of prosecutorial misconduct. It is misconduct of a different type than, for instance, an attempt to introduce inadmissible evidence, tamper with the jury, or some other inappropriate action. E.g., United States v. Alderdyce, 787 F.2d 1365, 1370 (9th Cir. 1986) (finding no evidence of prosecutorial misconduct giving rise to a Brady violation); Buffington v. Copeland, 687 F. Supp. 1089, 1095-96 (W.D. Tex. 1988) (distinguishing Brady violations from other types of prosecutorial misconduct in which, for example, a prosecutor tries to inject prejudice into a trial by introducing inadmissible evidence or making inappropriate opening statements or closing arguments). We affirm the PCR judge's decision to set aside Gibson's guilty plea and grant him a new trial based on the Brady violation.

Id. at 528-9, 514 S.E.2d at 327.

A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of, or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555, 1565-69, 131 L. Ed. 2d 490, 505-10 (1995); Brady, 373 U.S. at 87, 83 S. Ct. at 1196, 10 L. Ed. 2d at 218; State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996). This rule applies to impeachment evidence as well as exculpatory evidence. United States v. Bagley, 473 U.S. 667, 676, 105 S. Ct. 3375, 3380, 87 L. Ed. 2d 481, 490 (1985).

Here, the testimony clearly reflects that the Solicitor and/or his representatives met with Ms. Floyd and the decision was made not to call her at trial and not to charge her in the matter. The testimony from defense counsel also establishes that she was on notice of this information and failed to investigate it and/or call Ms. Floyd as a witness as discussed above. This Court has carefully considered Applicant's claims involving the handling of matters related to Ms. Floyd and finds no prosecutorial misconduct and specifically no Brady violation since the information

was not suppressed by the prosecution. Therefore, Applicant's claim of prosecutorial misconduct must fail.

4. Appellate counsel was not ineffective for failing to raise all meritorious issues on appeal.

In analyzing a claim of ineffective assistance of appellate counsel, the South Carolina Supreme Court has held that the lower court must apply the two prong Strickland test just as it would be to a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). In Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 277 (2009), the South Carolina Supreme Court explained that the lower court should "ask 1) whether appellate counsel's performance was deficient, and 2) whether Petitioner was prejudiced by appellate counsel's deficient performance."

By way of his Amendment and at the evidentiary hearing, Applicant alleged ineffective assistance of appellate counsel for failing to raise all meritorious issues on appeal. This Court finds that Applicant has failed to establish that appellate counsel's performance was deficient or he was prejudiced by such deficient performance. Therefore, this Court finds that this claim must fail.

CONCLUSION

Based upon the foregoing, this Court orders that the Application for Post Conviction Relief is hereby granted. This Court further finds that no other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

24/25 

IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to his specific allegation of ineffective assistance of trial counsel as detailed above, but has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel as detailed above;
2. That Applicant has not met his burden of proof as to his allegation of prosecutorial misconduct and ineffective assistance of appellate counsel;
3. That the Application for Post Conviction Relief be granted and the Applicant's convictions be vacated and he be granted a new trial;
4. That Applicant be transferred from the custody of South Carolina Department of Corrections to the custody of Aiken County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDERED this 30th day of December, 2016


Honorable Edgar W. Dickson
Circuit Court Judge
First Judicial Circuit

Orangeburg, South Carolina

25/25

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Tevon Michael Jackson, #344982,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2013-CP-02-02693

**MOTION TO RECONSIDER
PURSUANT TO RULE 59(e) SCRPC**

FILED 2.1 2017

Robert J. White
C.C.P. & G.S.
Anita Knoepfle 130adh
Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 27, 2013. Respondent moves for this Court to alter or amend its prior Order granting post-conviction relief filed on January 13, 2017. Respondent submits the following in support of its motion:

I. PREJUDICE

The Court erred by improperly analyzing the prejudice prong of Strickland v. Washington, 466 U.S. 668 (1984) and applying an incorrect standard. Furthermore, the Court erred in failing to properly address the prejudice prong for each alleged instance of ineffective assistance of counsel.

Relevant Law

Strickland provides a two-part test for finding ineffective assistance of counsel; the Court must first find that Trial Counsel was ineffective in their representation, and then find that this ineffective representation resulted in prejudice to the Applicant. In order to prove prejudice, Applicant must show that but for this ineffectiveness, the result of the trial would have been different.

An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment. The purpose of the Sixth Amendment guarantee of counsel is to ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Accordingly, any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.

Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense.

Strickland at 693, 104 S.Ct. at 2067. "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding." Id.

Furthermore, failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). To show prejudice, Applicant must prove that Trial Counsel's failure to investigate directly affected the outcome of the trial.

Analyzing With Incorrect Standard

In the Order, the Court granted post-conviction based on its finding that "Defense counsel provided ineffective assistance when she failed to prepare and investigate Applicants case prior to trial, which was prejudicially evidenced by her failure to utilize available witnesses and evidence to refute the State's theory of the case, properly cross-examine the State's witnesses, and present a defense beyond merely calling Applicant to the stand." Order at 3. In other words, this Court found that (1) Trial Counsel was ineffective because she failed to investigate; and (2) this failure to investigate prejudiced Applicant because witnesses and evidence were not

presented at trial and a proper defense was not developed. This standard is incorrect and cannot prove ineffective assistance of counsel under Strickland.

In order to prove prejudice under the proper standard, Applicant must show that but for Trial Counsel's failure to investigate, the result of the trial would have been different. The only thing Applicant proved through his application for PCR is that these witnesses could have testified at trial if Trial Counsel had investigated them. This alone does not prove that the jury would have found Applicant not guilty if these witnesses had testified.

Under the standard that this Court applied in its Order, Applicant cannot prove ineffective assistance of counsel. Because Applicant failed to prove that the result of the trial would have been different but for Trial Counsel's alleged failure to investigate, this application for post-conviction relief should be denied and dismissed.

Failure to Address Prejudice

In its Order, the Court failed to address the prejudice prong of the Strickland test for each individual allegation of ineffective assistance of counsel for failure to investigate. The Order improperly groups several allegations of failure to investigate into one overarching allegation (this will be addressed further under the "Cumulative Error" analysis below) and finds prejudice for all of them combined. This is improper.

Applicant presented at least ten claims of ineffective assistance of counsel. The following allegations were addressed in the Order as proving ineffectiveness: (1) Failure to prepare and investigate, page 7; (2) Failure to investigate and raise a third party guilt defense, page 8; (3) Failure to call witness Jeff Smith, page 8; (4) Failure to call witness Latika Elliott, page 8; (5) Failure to call witness Felice Stallings, page 9; (6) Failure to call witness Kevin Parker, page 10; (7) Failure to obtain video from gas station, page 10; (8) Failure to call witness Christy Parker,

page 10; (9) Failure to call witness Sandra Smith, page 12; and (10) Failure to call witness Kalyn Floyd, page 12.

Applicant must prove in *each* of these ten allegations that Trial Counsel was ineffective, and that this ineffectiveness changed the outcome of the trial. The Court must address both prongs of this test for each allegation that it finds deprived Applicant of effective counsel. The Court did not make these individual findings, but instead stated in sum, "In conclusion, this Court finds that Applicant has carried his burden and clearly shown that but for counsel's failure to prepare and investigate there is a reasonable probability that the outcome of the trial would have been different." Order at 19. This conclusive summary is improper, and the Court should not have granted any of these individual allegations without first finding that each one of them individually changed the outcome of the trial.

II. CUMULATIVE ERROR

The Court improperly used a cumulative error analysis in finding ineffective assistance of counsel. As explained in the section above, Applicant alleged at least ten separate allegations of ineffectiveness. In its Order, the Court combined all ten of these into one broad overarching allegation and granted post-conviction relief on that basis. This was improper.

South Carolina courts have consistently declined to apply a cumulative error analysis in PCR actions. See e.g., Green v. State, 351 S.C. 184, 196-97, 569 S.E.2d 318, 324-25 (2002) (declining to address whether applicant was entitled to relief based on supposed cumulative effect of counsel's alleged errors); Simpson v. Moore, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006) (finding PCR court did not err in failing to conduct a cumulative error analysis where only one allegation had merit and the "record simply did not contain 'several errors' for the judge to cumulatively assess"). In addition, a number of other jurisdictions, including the Fourth

Circuit Court of Appeals, have held a cumulative effect analysis is inappropriate and that the appropriate analysis focuses upon each individual allegation of ineffective assistance. See Fisher v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998); Wainwright v. Lockhart, 80 F.3d 1226 (8th Cir. 1996); Jones v. Sotts, 59 F.3d 143, 147 (10th Cir. 1995).

Because South Carolina Courts do not recognize a cumulative error analysis, this Court's finding of ineffective assistance of counsel based on a combination of ten different allegations is inappropriate. Unless Applicant can prove that any one of these ten allegations on its own would have single-handedly changed the outcome of the trial, he cannot meet his burden of proof, and post-conviction relief must be denied. Respondent submits that none of these allegations alone would have changed the outcome of the trial, and the application should be denied and dismissed.

III. HINDSIGHT

This Court's finding of ineffective assistance of counsel is inappropriate because it was found entirely with the benefit of hindsight, which holds Trial Counsel to an unreasonable standard under Strickland.

The Supreme Court of the United States has consistently ruled that defense attorneys should be held by PCR courts to a reasonable standard of professional competence based on their perspective at the time of their representation. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065 (1984). Strickland also explains that defense counsel's duty to investigate should be assessed from counsel's view at the time of the investigation:

[T]he Sixth Amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options. The court observed that counsel's investigatory decisions must be assessed in light of the information known at the time of the decisions, not in hindsight, and that "[t]he amount of pretrial investigation that is reasonable defies precise measurement."

Id. at 680, 104 S.Ct. at 2060-61 (citations omitted).

"[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough v. Gentry, 540 U.S. 1, 6, 124 S.Ct. 1, 157 L.Ed.2d 1 (2003). Applicant must prove that it was unreasonable at the time of her representation for Trial Counsel to fail to investigate each of these witnesses that were not presented at trial. This includes witness Kalyn Floyd, whose existence was not revealed to Trial Counsel until the end of the first day of trial. See PCR Tr. page 18 line 14; page 175. Respondent submits that it was reasonable at the time of the trial for Trial Counsel to strategically choose not to stop the trial after it had already begun to have more time to investigate a witness who likely was not very prejudicial to Applicant's case. "Indeed, it would be an absurdity to require criminal defense lawyers to interview every potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011).

It is clear from the trial transcript and testimony presented at the evidentiary hearing that Trial Counsel tried this case as well as she could based on her theory of defense at the time of trial. It is improper to compare that theory, which was not successful at trial, to a new theory on which to try the case with the benefit of hindsight that may or may not have been successful.

After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an

unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind.

Harrington v. Richter, 131 S. Ct. 770, 790, 178 L. Ed. 2d 624 (2011). Trial Counsel's strategy and investigation were well within reasonable professional norms at the time of the trial, and she should not be held ineffective just because her defense was not successful before the jury.

Because Applicant failed to prove that Trial Counsel was unreasonable in her performance based on her knowledge at the time of her representation, post-conviction relief should be denied.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

Trial Counsel Was Not Ineffective

Trial counsel testified that she felt that she had adequate time to prepare this case. She stated that she had an investigator to assist her with this case that spoke with witnesses, helped with investigation, went through discovery, talked to police officers, and spoke with the defendant. She stated that she filed Rule 5 and Brady motions and reviewed all of these materials with the investigator. She stated that she would have had typed notes from her investigator and all of her discussions with him, but her computer crashed after the trial and she no longer has copies of these notes, so she cannot remember specifically which witnesses were investigated.

Trial counsel clearly was well-prepared for this trial and spent more than an adequate amount of time preparing and investigating potential witnesses, leads, and defenses. Applicant has not met their burden of proof in showing that trial counsel was deficient in any way in this manner.

Furthermore, Applicant has not proven that any of these alleged deficiencies were prejudicial to the outcome of this case. While Applicant did present witnesses at the evidentiary hearing which he alleges might have contradicted the State's timeline or weakened the credibility

of some of the State's witnesses, Applicant has not proven that this testimony would have changed the outcome of the jury's verdict. The discrepancies pointed out in the testimony of the witnesses presented at the PCR hearing, which was years after the trial, were minor and inconsistent. Their testimony was speculative and vague. None of the witnesses could say with credible, exact certainty that Applicant did not or could not have committed this crime. Some of these witnesses had criminal records that could have been used to impeach them if they had testified at trial.

Not only was it reasonable for trial counsel to strategically chose not to use these witnesses, but there is no evidence that this testimony would have changed the outcome of the trial. Because Applicant has failed to meet his burden of proof, this allegation should be denied and dismissed.

Overwhelming Evidence of Guilt

Finally, Respondent submits that Applicant cannot prove prejudice as to any of these allegations because there is overwhelming evidence of Applicant's guilt.

Where there is overwhelming evidence of an applicant's guilt, deficiencies in defense counsel's representation cannot, as a matter of law, be prejudicial enough to change the outcome of the case. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606

(1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

At trial, the State presented 36 witnesses to testify about evidence of Applicant's guilt. A cigarette butt was introduced containing Applicant's DNA that was found on the ground at the scene right next to the car where the Victim was shot in the head and killed. Witnesses Joseph Dicks and Jose Serrano both testified that Applicant confessed that he killed the Victim and gave exact details of how and where he did it. Multiple witnesses testified that they had seen Applicant with the Victim in his car on the evening of the murder.

Respondent submits that this is overwhelming evidence of Applicant's guilt. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial, and these allegations should be denied.

CONCLUSION

Based on all the foregoing, Respondent asserts that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief should be denied and dismissed with prejudice.

[Signature page to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

January 30th, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2013-CP-02-2693

TEVON MICHAEL JACKSON, #344982,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

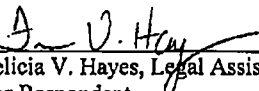
STATE OF SOUTH CAROLINA,

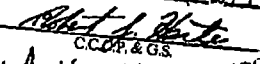
Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion to Reconsider Pursuant to Rule 59(e) SCRPC in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
PO Box 2147
Leesville, SC 29070

DATED this the 30th day of January, 2017.


Felicia V. Hayes, Legal Assistant
For Respondent

FILED 2-1-2017

C.C.P. & G.S.
Anita Knoepfel
Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Tevon Michael Jackson, #344982,)

Case No.: 2013-CP-02-02693

Applicant,)

vs.)

**ORDER DENYING RESPONDENT'S
MOTION TO RECONSIDER**

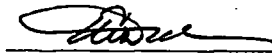
State of South Carolina,)

Respondent.)

This matter comes before the court on Applicant's Motion to Reconsider the Order of this court pursuant to Rule 59(e), SCRCP, denying Applicant's claim and dismissing it with prejudice. After due deliberation and review of the case law and motion of counsel, this Court finds that there is nothing warranting reconsideration.

THEREFORE, Applicant's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge, Second Judicial Circuit

March 14, 2017
Orangeburg, South Carolina

FILED 3.17.17
Robert L. White
C.C.P. & G.S.
Aritza Knoerle 100
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Tevon Michael Jackson, #344982,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2013-CP-02-02693

CORRECTED
**ORDER DENYING RESPONDENT'S
MOTION TO RECONSIDER**

This matter comes before the Court on Respondent's Motion to Reconsider the Order of this court pursuant to Rule 59(e), SCRCP, granting Applicant's application for post-conviction relief. An Order denying this motion was signed by this Court on March 14, 2017, and filed March 17, 2017, which contained inadvertent erroneous findings. The proper findings are as follows.

After due deliberation and review of the case law and motion of counsel, this Court finds that there is nothing warranting reconsideration.

THEREFORE, Respondent's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.

FILED 3-27-17 12:25 SP
Robert J. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk



Edgar W. Dickson
Presiding Judge, Second Judicial Circuit

March 21, 2017
Orangeburg, South Carolina

WITNESSES

L. Ghant, A.C.S.O.

#11 #11

January 16, 2009
[Signature]
D.C.P. & G.S.
[Signature]
Deputy Clerk

ARREST WARRANT NUMBER

K-331185

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury
Date: January 15, 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-02- 83

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

January 19, Term 2009

THE STATE

vs.

TEVON JACKSON

Indictment for

MURDER

SC Code 16-3-10

CDR Code 116

Class FEL-EXM

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on January 19, 2009, the
Grand Jurors of Aiken County present upon their oath:

MURDER

That TEVON JACKSON did in Aiken County on or about June 4, 2008,
feloniously, wilfully and with malice aforethought, then and there kill and murder [REDACTED]
[REDACTED] by means of shooting [REDACTED] with a handgun and that the victim did die
in Aiken County at Dry Branch Court as a proximate result thereof on the 4th day of
June, 2008. All in violation of Section 16-3-10 of the South Carolina Code of Laws
(1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

L. Gant, A.C.S.O.

FILED

January 16, 2009

[Signature]
K.C.P. & G.S.
[Signature]
Deputy Clerk

ARREST WARRANT NUMBER

K-331192

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: January 15, 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-02-

84

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JANUARY 19, TERM 2009

**THE STATE
vs.**

TEVON JACKSON

**Indictment for
POSSESSION OF FIREARM
DURING COMMISSION OF A
VIOLENT CRIME
SC Code: 16-23-490
CDR Code: 549
Class FEL-F**

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on January 19, 2009, the Grand Jurors of Aiken County present upon their oath:

POSSESSION OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

That TEVON JACKSON did in Aiken County on or about June 4, 2008, possess or visibly display a firearm during the commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS.Tevon Jackson

AKA:

Race: 2 Sex: M Age: 20DOB: SS#Address: Dry Branch RoadCity, State, Zip: AIKEN, SC 99999DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS0200083A/W#: K331185Date of Offense: 6/4/2008S.C. Code § : 16-03-0010; 16-03-0020CDR Code #: 0116SENTENCE SHEET 30 years - Life☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John W. Weeks
Weeks, John W. "Bill"5989
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk: Shanna ThorneCourt Reporter: Lisa H. Davern

SCCA/217 (06/2010)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge: MR. [Signature]Judge Code: 0130Sentence Date: Feb 28, 2011

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS.Tevon Jackson

AKA:

Race: 2 Sex: M Age: 20DOB: SS#:Address: Dry Branch RoadCity, State, Zip: AIKEN, SC 99999DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Weeks, John W. "Bill" SC Bar# 5989 Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-65-02-83
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
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§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk Ann SandersCourt Reporter: Lisa Wamport

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS0200084A/W#: K331192Date of Offense: 6/4/2008S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

5 years☒ CONVICTED OF or ☐ PLEADS in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Weeks, John W. "Bill" SC Bar# 5989 Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-65-02-83
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
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§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge W. B. CarlsJudge Code: 0136Sentence Date: Feb 28, 2011