

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of General Sessions

Roger M. Young, Sr., Circuit Court Judge

Case No. 2017-001950

The State,

Respondent,

v.

Appellant.

Santonio Torez Williams,

RECEIVED
MAY 09 2019
SC Court of Appeals

RECORD ON APPEAL
VOLUME II

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1 MS. HALL: Your Honor, may we approach?

2 (Sidebar conference.)

3 MR. BUSH: No further questions, Your Honor.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MS. HALL:

7 Q. Investigator Miano, of those messages you just
8 reviewed of Mr. Harris' Facebook, did any of those
9 messages state, this is my cell phone number?

10 A. No, ma'am, not to my knowledge.

11 Q. Through the course of your investigation, your
12 employment with the solicitor's office, your prior
13 law enforcement employment, have you had the
14 opportunity to get numerous search warrants for cell
15 phones and call detail records?

16 A. Yes, ma'am, numerous.

17 Q. And based on that, are you aware of how long
18 cell phone providers or cell phone companies
19 maintain historical call detail records before that
20 information is deleted?

21 MR. BUSH: Objection, Your Honor, outside the
22 scope of cross-examination.

23 THE COURT: Sustained.

24 MS. HALL: Your Honor, may we approach?

25 (Sidebar conference.)

1 BY MS. HALL:

2 Q. Investigator Miano, in your experience in
3 getting search warrants in the past, how long do
4 cell phone providers or cell phone companies
5 maintain those call detail records before that
6 information is deleted from their servers?

7 A. It's my experience from doing past search
8 warrants that that information is normally retained
9 by the cell phone provider for normally a year.

10 Q. And the search warrant that you got back on
11 Demorris Harris' Facebook, did you receive that on
12 the same date that you received Santonio Williams'
13 Facebook search warrant?

14 A. Yes, ma'am. Yes, ma'am, on the 16th.

15 Q. September of 2016 is when you received Demorris
16 Harris' Facebook data?

17 A. Yes, ma'am, it is.

18 Q. And that's over a year after the shooting on
19 Diamond Street?

20 A. Correct, over a year.

21 Q. So if you learned of a phone number possibly
22 connected to Demorris Harris in September of 2016
23 from these records, would the call detail records

24 for Mr. Harris' phone number be available April
25 14th?

1 A. From April 14th, 2015, it's my experience that
2 that telephone historical cell phone site data from
3 a provider would not be available at that time.

4 Q. So there's no point in doing a search warrant
5 at that time?

6 A. No, ma'am, not at that time. We most likely
7 would not receive any information back from the cell
8 phone provider.

9 Q. Yesterday we got into the fact that this
10 Facebook for Santonio Williams, the URL was Santonio
11 Jennings. And that's how it was provided on the
12 search warrant?

13 A. Yes, ma'am, it is.

14 Q. And based on your investigation in this case,
15 how -- what is the connection to the last name
16 Jennings?

17 A. During an interview that was conducted with
18 Mr. Demorris Harris, he actually explained that
19 Mr. Santonio Williams was essentially adopted, so to
20 say, by a family with the last name Jennings. So it
21 was apparent to me while I was doing my Facebook
22 investigation and search that not only the photo of
23 Mr. Williams and the screen name Torez Suava was
24 there, but it also matched up to the URL of Santonio
25 Jennings who, from the investigation, essentially

1 was taking that last name of the family that had
2 adopted him.

3 MS. HALL: I have no further questions.

4 THE COURT: Recross?

5 RECROSS-EXAMINATION

6 BY MR. BUSH:

7 Q. Investigator Miano, when did you first learn of
8 Demorris Harris' involvement in this case?

9 A. I do not know a specific date. I know that it
10 was some time after Mr. Williams had been arrested.

11 Q. And Mr. Williams was arrested in 2015?

12 A. Yes, sir.

13 Q. And your office got that report after he was
14 arrested or before he was arrested?

15 A. I believe it was after he was arrested.

16 Q. And at that point you knew Mr. Harris was
17 involved in this case, right?

18 A. I believe his name may have been mentioned in
19 the report, but our office did not know exactly who
20 he was.

21 Q. During the course of your investigation, did
22 you request a TLO report for his phone number at any
23 time?

24 A. I did not. I believe at one point in time we
25 did an accurate report on his cell phone, which is

1 essentially the same as a TLO report but just a
2 different company.

3 MR. BUSH: No further questions, Your Honor.

4 THE COURT: All right. You may step down.

5 Next witness.

6 MS. HALL: State calls Ashton Brighthop.

7 ASHTON BRIGHTHOP

8 being first duly sworn, testified as follows:

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Have a seat in the witness box.

11 State your full name and spell your last name.

12 THE WITNESS: My name is Ashton Jerod

13 Brighthop. Last name, B-R-I-G-H-T-H-O-P.

14 DIRECT EXAMINATION

15 BY MS. HALL:

16 Q. Good morning, Mr. Brighthop.

17 A. Good morning.

18 Q. How old are you?

19 A. Twenty.

20 Q. Where are you from?

21 A. North Augusta.

22 Q. How far did you go in school?

23 A. Through college.

24 Q. Where did you go to high school?

25 A. At North Augusta.

1 Q. And where did you complete college?

2 A. At Lincoln College of Technology.

3 Q. Are you currently employed?

4 A. Yes.

5 Q. Where at?

6 A. At Autoneum plant.

7 Q. How do you know Santonio Williams?

8 A. We grew up together and he's also my cousin.

9 Q. Back in October 24th of 2016, did you receive a
10 phone call from Santonio Williams at the Aiken
11 County Detention Center?

12 A. Yes.

13 Q. At that time did he ask you to call another
14 individual?

15 A. Yes, he did.

16 Q. Who did he ask you to call?

17 A. Christopher Gordon.

18 Q. Christian Gordon?

19 A. Yes.

20 MR. MCCARLEY: Objection, Your Honor, leading.

21 MS. HALL: I couldn't hear the witness.

22 THE COURT: Go ahead.

23 BY MS. HALL:

24 Q. Did Mr. Williams provide you with a phone
25 number to call Mr. Gordon?

1 A. Yes.

2 Q. So you were on the phone with Santonio Williams
3 on your cell phone?

4 A. Yes.

5 Q. How did you then call Christian Gordon?

6 A. Off another phone.

7 Q. Who had the other phone?

8 A. Mack Nelson.

9 Q. And so how then did Christian Gordon
10 communicate with Santonio Williams?

11 A. Over speaker.

12 Q. So you had two separate phones and they were
13 both on speaker phone?

14 A. Yes.

15 Q. During that conversation, what did you hear
16 Santonio Williams asking Christian Gordon to do?

17 A. To checkmate a king.

18 Q. Who did the king reference?

19 A. The only person I could think of was Demar.

20 MR. MCCARLEY: Objection; speculation. The
21 only person I could think of...

22 THE COURT: Overruled.

23 Q. What did you know at the time about
24 Mr. Jefferson? Why was Santonio Williams worried
25 about Mr. Jefferson?

1 A. That's just the only thing that was going
2 around in the street.

3 Q. That Mr. Jefferson had already gone to the
4 police?

5 A. Yes.

6 Q. And what does it mean to checkmate a king?
7 What does that mean?

8 A. To either get questions or either get back at
9 them or --

10 MR. MCCARLEY: I apologize. I couldn't hear,
11 Your Honor.

12 THE COURT: You need to speak up.

13 THE WITNESS: To get questions from him or
14 either get back at him.

15 BY MS. HALL:

16 Q. Get back at him? Okay. To cause harm to them?

17 A. I guess so.

18 Q. Mr. Brightshop, I'm showing you what has
19 previously been marked State's Exhibit 46. Do you
20 recognize this disc?

21 A. Yes, ma'am.

22 Q. How do you recognize it?

23 A. I've heard it.

24 Q. Are those your initials?

25 A. Yes.

1 Q. So you listened to this phone call and signed
2 it after listening to it?

3 A. Yes.

4 Q. And this is the phone call that you were part
5 of on October 24th, 2016?

6 A. Yes.

7 MS. HALL: Your Honor, at this time State moves
8 to introduce State's Exhibit 46.

9 THE COURT: Over objection, it's admitted.

10 (State's Exhibit No. 46 admitted into
11 evidence.)

12 BY MS. HALL:

13 Q. Mr. BrightHop, I'm now showing you what has
14 previously been marked as State's Exhibit 63. Do
15 you recognize this disc?

16 A. Yes.

17 Q. Is this also a CD of a phone call that you
18 listened to?

19 A. Yes.

20 Q. And you know you listened to this CD because
21 your initials are on it?

22 A. Yes.

23 Q. And the voice on this phone call, is that
24 Santonio Williams?

25 A. Yes.

1 MS. HALL: I have no further questions. Please
2 answer any the Defense may have.

3 THE COURT: Cross?

4 MR. MCCARLEY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MCCARLEY:

7 Q. The police came and interviewed you about this;
8 is that correct?

9 A. Yes.

10 Q. Okay. Where did they come get you?

11 A. From my house.

12 Q. From your house. Okay. Did they interview you
13 there at the house?

14 A. No.

15 Q. They didn't?

16 A. No, sir.

17 Q. Where did they interview you?

18 A. It was in North Augusta, the -- I can't think
19 of the place.

20 Q. Was it like a police station or a mall or a
21 restaurant?

22 A. Yes. It was -- I can't think of the name of
23 it.

24 Q. Was it a police station?

25 A. Yeah, it was.

1 Q. Okay. Thank you, sir. So they took you from
2 your house to a police station?

3 A. Yes.

4 Q. And did they video-record your conversation?

5 A. I have no idea, sir.

6 Q. Okay. Did they audio-record it?

7 A. I have no idea.

8 Q. Okay. Has anybody ever played it back for you,
9 what y'all talked about and everything like that?

10 A. No.

11 Q. Okay. When you talked with -- I keep saying
12 the police. It was SLED Agent Turner and Federal
13 Agent Morlan that day?

14 A. Yes.

15 Q. When they asked you what checkmate that king
16 meant, you said you weren't sure.

17 A. Yes, sir.

18 MS. HALL: Objection, Your Honor. I -- I don't
19 believe that's actually what's in the statement.

20 THE COURT: It's what he said. Overruled.

21 MR. MCCARLEY: I have no further questions,
22 Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. HALL:

25 Q. Mr. Brightshop, when Phillip Turner of SLED

1 asked you what checkmate that king meant, do you
2 admit or deny stating that it meant to get at
3 somebody?

4 A. I don't deny that, but I also said I was not
5 sure about that once I said that.

6 Q. Do you admit or deny stating that that could be
7 the only thing it means?

8 A. No, I don't deny it. I mean, like I said, it
9 could be just ask questions about the situation.

10 MS. HALL: No further questions.

11 MR. MCCARLEY: May I?

12 THE COURT: Uh-huh.

13 RECROSS-EXAMINATION

14 BY MR. MCCARLEY:

15 Q. Did you just tell the solicitor when she asked
16 you what checkmate that king meant that it said get
17 questions from them?

18 A. Yes.

19 MR. MCCARLEY: Thank you, sir.

20 THE COURT: All right. You can step down.

21 Next witness.

22 MR. THURMOND: Thank you, Your Honor. Your

23 Honor, the State calls Christian Gordon.

24 CHRISTIAN GORDON

25 being first duly sworn, testified as follows:

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Have a seat in the witness box.

3 State your full name and spell your last name.

4 THE WITNESS: My name is Christian Gordon,
5 G-O-R-D-O-N.

6 DIRECT EXAMINATION

7 BY MR. THURMOND:

8 Q. Good morning, Mr. Gordon. Where are you
9 currently being housed, sir?

10 A. Saluda.

11 Q. Saluda County? And how old are you,
12 Mr. Gordon?

13 A. Twenty-three.

14 Q. Where did you go to school?

15 A. Strom Thurmond.

16 Q. How far did you go in school?

17 A. Graduated.

18 Q. And you currently have a couple of pending
19 charges; is that correct, sir?

20 A. Yes, sir.

21 Q. You are charged with criminal conspiracy; is
22 that right?

23 A. Yes, sir.

24 Q. And intimidation of a witness?

25 A. Yes, sir.

1 Q. Related to this case; is that correct?

2 Please tell this jury what you've been promised
3 in exchange for your testimony today?

4 A. Nothing.

5 Q. I want to go back to January 11th, 2015. You
6 recall that day, I'm sure. Were you present at
7 Ridgeview Manor that day?

8 A. Yes, sir.

9 Q. Will you tell this jury what happened that
10 night?

11 A. My brother was murdered.

12 Q. Who is your brother, Mr. Gordon?

13 A. Donnie Brooks.

14 Q. And tell me about hanging out at Ridgeview
15 Manor that evening and what you observed.

16 A. That was a kickback going on, we was shooting
17 dice, and it was an altercation between us and some
18 people from Gloverville. Donnie, my brother, got
19 into a fight with one of the guys from Gloverville.
20 And everything calmed down and shots were fired and
21 they killed my brother. And the victim's brother, I
22 seen him running from the window and my brother got
23 killed.

24 Q. So there were gunshots and your brother was
25 killed?

1 A. Uh-huh.

2 Q. And you saw someone running from the window?

3 A. Uh-huh.

4 Q. And who was that person?

5 A. Taquan Coach.

6 Q. Did you provide that information to the North
7 Augusta Department of Public Safety?

8 A. Yes.

9 Q. Did this defendant, Mr. Santonio Williams, did
10 he know Donnie Brooks?

11 A. Yes.

12 Q. And the three of y'all were friends; you,
13 Mr. Brooks, and Mr. Williams? Is that correct?

14 A. Yes.

15 Q. Do you know an individual named Demorris
16 Harris?

17 A. Yes, sir.

18 Q. Are you friends with him?

19 A. No, sir.

20 Q. Let me show you a couple pictures that are in
21 evidence. State's No. 44?

22 A. That's my brother and me and Santonio.

23 Q. Lean forward and point them out for the jury so
24 they can see.

25 A. That's me, Santonio, and my brother.

1 Q. That's Mr. Brooks with his shirt off?

2 A. Yes, sir.

3 Q. And who's this gentleman right here with the
4 hat and the chain?

5 A. Mr. Brooks.

6 Q. What's this location?

7 A. Ridgeview.

8 Q. That's the place where he was murdered?

9 A. Yes, sir.

10 Q. And who are the three gentlemen in this
11 picture?

12 A. That's me, Santonio, and Mr. Brooks.

13 Q. You're in the middle, Mr. Williams on the
14 right, and Mr. Brooks on the left?

15 A. Yes, sir.

16 Q. Let me show you this, State's 54. All right.
17 Who is that big guy in the middle?

18 A. That's me.

19 Q. All right. And lean forward now and point out
20 who's on the left.

21 A. Santonio and --

22 Q. Who's here in this corner?

23 A. Mr. Brooks.

24 Q. By the way, who's this guy right here?

25 A. That's Mack Nelson.

1 Q. Mack Nelson.

2 What is your phone number?

3 A. (706) 840-5578.

4 Q. Let me show you what's marked as State's No. 54
5 [sic] and ask if you can identify that.

6 A. Yeah. That's my number.

7 Q. That's your phone number?

8 A. Uh-huh.

9 Q. And did you sign and date that document?

10 A. Yes, sir.

11 Q. What date did you date that, Mr. Gordon?

12 A. January 25th.

13 MR. THURMOND: Your Honor, we would offer
14 State's No. 54 [sic] into evidence at this time.

15 MR. MCCARLEY: No objection, Your Honor.

16 THE COURT: Admitted.

17 (State's Exhibit No. 64 admitted into
18 evidence.)

19 MR. THURMOND: Reflecting that Mr. Gordon's
20 phone number is (706) 840-5578.

21 BY MR. THURMOND:

22 Q. Mr. Gordon, did you communicate with this
23 Defendant, Santonio Williams, on the night of April
24 14th, 2015?

25 A. Yes.

1 MR. THURMOND: I beg the Court's indulgence for
2 just a second, Your Honor.

3 BY MR. THURMOND:

4 Q. All right. Let me show you what's in evidence
5 as State's Exhibit 59. This is the telephone number
6 of (706) 840-5578?

7 MR. THURMOND: May I approach the witness, Your
8 Honor?

9 THE COURT: You may.

10 Q. All right. At 8:23, Mr. Gordon, on the night
11 of April 14th, whose number is that?

12 A. Santonio -- well, that's mine right there..

13 Q. That's your phone number? So whose number did
14 you call?

15 A. Santonio.

16 Q. At 8:23; is that correct?

17 A. Yes, sir.

18 Q. All right. And then when did you call him
19 again? Look at this right here for me, at 8:57 that
20 evening. What is your number, (706) 840-5578?

21 A. Yes, sir.

22 Q. And then did he call you?

23 A. Yes.

24 Q. At 8:57. And then one more call, at 9:08, did
25 he call you again?

1 A. Yes.

2 Q. So he called you at 8:23, 8:57, and 9:08 on the
3 night of April 14th, 2015; is that correct, sir?

4 A. Yes, sir.

5 Q. Mr. Gordon, where were you that night?

6 A. At home.

7 Q. Where is that, sir?

8 A. Chalet North Condos.

9 Q. I want to fast-forward to October 24th, 2016.
10 Did you receive a call from Mr. Williams on that
11 date?

12 A. Yes, sir.

13 Q. Who called you?

14 A. Mack.

15 Q. Mack Nelson, is that the person you pointed out
16 for us in that picture?

17 A. (Nods head).

18 Q. And how were you able to communicate with
19 Mr. Williams?

20 A. They had the two phones on speakerphone.

21 Q. So Mr. Williams calls somebody on one phone,
22 Mack is next to him with another phone, both of
23 those phones are on speakerphone; is that correct?

24 A. Yes, sir.

25 Q. And that way, you can speak with Mr. Williams?

1 A. Yes, sir.

2 Q. Okay. And tell me about that conversation.

3 Tell me what specifically, Mr. Williams asked you to
4 do. What did he tell you?

5 A. He said go checkmate that king.

6 Q. Who is the king?

7 A. That's Demarius Jefferson.

8 Q. All right. How did you know Mr. Jefferson was
9 the king?

10 A. Because, street talk, they said it was -- that
11 he was the reason Santonio was locked up.

12 Q. Mr. Jefferson had cooperated?

13 A. Yeah.

14 Q. And tell me what checkmate that king means.

15 A. Whatever to keep them quiet.

16 Q. Silence him?

17 A. Yeah.

18 Q. To intimidate him?

19 A. Yeah.

20 Q. To hurt him?

21 A. Yeah.

22 Q. To get rid of him?

23 MR. MCCARLEY: Objection; leading.

24 THE COURT: Sustained.

25 BY MR. THURMOND:

1 Q. What else does checkmate that king mean?

2 A. It mean anything just to make sure he don't say
3 nothing.

4 Q. Including what, Mr. Gordon?

5 A. Harm him, kill him, whatever.

6 Q. All right. Let me show you what's marked as
7 State's No. 45 and 46. Can I just get you to pop
8 both of those open for me and take a look at them?
9 Have you reviewed that and listened to the contents
10 of that tape?

11 A. Yes, sir.

12 Q. Or CD.

13 A. Yes.

14 Q. How do you know that?

15 A. Because I put my initials on it.

16 Q. How about State's No. 46? Same thing?

17 A. Yes, sir.

18 Q. All right.

19 MR. THURMOND: Your Honor, at this time we
20 would move 45 and 46 into evidence and request
21 permission to publish these for the jury.

22 THE COURT: Any objection?

23 MR. MCCARLEY: Just same earlier ones.

24 THE COURT: Over objection, they're admitted.

25 (State's Exhibit Nos. 45 and 46 admitted into

1 evidence.)

2 MR. THURMOND: State's 45 first, which is the
3 October 22nd call.

4 BY MR. THURMOND:

5 Q. Mr. Gordon, just to clarify. You authenticated
6 two discs as being the voice of Mr. Williams. Only
7 one of those recordings you were a participant on
8 that call, correct?

9 A. Yes, sir.

10 Q. There's another call that we're playing now
11 where you've authenticated his voice; is that right?

12 A. Yes, sir.

13 (State's Exhibit 45 published.)

14 (State's Exhibit 46 published.)

15 MR. THURMOND: Your Honor, we'd stop the tape
16 at this point.

17 BY MR. THURMOND:

18 Q. Mr. Gordon, on that call is Mr. Williams asking
19 you to go look for Mr. Jefferson?

20 A. Yes.

21 Q. Where is he asking you to go look for him?

22 A. He said something about the campus.

23 Q. What's the campus?

24 A. Aiken.

25 Q. USC-Aiken?

1 A. Yes.

2 Q. He wants you to look for him at the campus?

3 A. Yes.

4 Q. Where do you tell him you've been looking for
5 him?

6 A. Ridgeview and everywhere.

7 Q. I believe you said one day you looked for him
8 for two hours.

9 A. Yeah.

10 Q. And your instructions were to checkmate him?

11 A. Yeah.

12 Q. Thank you, sir. That's all the questions I
13 have for you. Please answer any from Mr. McCarley.

14 CROSS-EXAMINATION

15 BY MR. MCCARLEY:

16 Q. You were originally arrested in Richmond
17 County, in Augusta?

18 A. Yeah.

19 Q. What were you arrested for there?

20 A. Conspiracy and intimidation of a witness.

21 Q. Is there a gun charge too?

22 A. No.

23 Q. There wasn't a gun charge in Georgia?

24 A. No.

25 Q. There wasn't a gun found in the apartment?

1 A. There was a gun found.

2 Q. What else was found in the apartment?

3 A. Marijuana and phone.

4 Q. Then they transported you over here?

5 A. Yeah.

6 Q. You didn't bond out over there?

7 A. No.

8 Q. You came straight here?

9 A. Yeah.

10 Q. And then you met with SLED Agent Phillip
11 Turner?

12 A. Yeah.

13 Q. Right? And y'all talked about this situation?

14 A. Yeah.

15 Q. This phone call?

16 A. Yeah.

17 Q. I have his report here about that. Were
18 there -- do you know if there were any video cameras
19 or anything?

20 A. I don't know.

21 Q. Do you know if it was audio-recorded, anything
22 like that?

23 A. No.

24 Q. Was there anybody like this sitting there
25 typing?

1 A. No.

2 Q. He asked you what this conversation meant?

3 A. Uh-huh.

4 Q. And you originally said it meant go holler at
5 him?

6 A. Yeah.

7 Q. And then his report says he challenged you?

8 A. Yeah.

9 Q. Okay. You actually saw Demarius Jefferson
10 after this phone call?

11 A. I seen him before.

12 Q. Okay. Did you see him after the phone call?

13 A. No.

14 Q. Okay. You didn't see him on November 1st on
15 Broad Street?

16 A. That was 2015.

17 Q. Okay. I'm going to ask you about those same
18 phone records.

19 MR. MCCARLEY: Permission to approach, Your
20 Honor?

21 THE COURT: Yes.

22 Q. The solicitor asked you about three phone calls
23 on April 14th at 8:23, 8:57, and 9:08.

24 A. Uh-huh.

25 Q. Your cell phone records reveal eight phone

1 calls between you and Santonio on April 14th and
2 April 15th. Does that sound about right?

3 A. Yeah.

4 Q. Y'all talk on the phone a lot?

5 A. Yeah.

6 Q. Y'all friends?

7 A. Yeah.

8 Q. On Facebook?

9 A. I think so. I don't know.

10 Q. Y'all friends in real life, right?

11 A. Yeah.

12 Q. Okay. And your friend Donnie Brooks got
13 murdered?

14 A. My brother.

15 Q. Your brother. Okay. And he's Santonio's
16 friend too, right?

17 A. Yes.

18 Q. Okay. Those charges you talked about that
19 you've got pending?

20 A. Uh-huh.

21 Q. Who are those charges with?

22 A. What you mean?

23 Q. Who's prosecuting those charges?

24 A. Strom Thurmond, I think. I don't know. I'm
25 not sure.

1 MR. MCCARLEY: No further questions.

2 THE COURT: Redirect?

3 MR. THURMOND: No, sir.

4 THE COURT: You can step down.

5 Next witness.

6 MR. THURMOND: Thank you, Your Honor. State
7 calls Agent Phillip Turner.

8 MR. MCCARLEY: Strom, can we have a sidebar
9 real quick?

10 (Sidebar conference.)

11 THE COURT: Okay. Folks, let's take a
12 10-minute break so you can use the restroom and
13 stretch your legs. Don't begin deliberations or
14 start any discussions.

15 (The jury exits the courtroom at 10:59 AM.)

16 (Brief recess 10:59 AM - 11:16 AM.)

17 THE COURT: All right. We've got the defendant
18 in the courtroom.

19 All right. Bring the jury in.

20 (The jury enters the courtroom at 11:17 AM.)

21 THE COURT: Okay. Welcome back, folks. I
22 understand there was some concern by some of the
23 jurors about whether or not photographs of the jury
24 have appeared in the newspaper. We have looked
25 online and on the print versions and do not see any

1 pictures that even remotely come close to putting
2 any members of the jury in a photograph, either
3 print or online version of the newspaper. And the
4 newspaper folks know not to do that. So I just
5 wanted to address that concern. Okay?

6 So we will resume now with the State calling
7 the next witness.

8 MR. THURMOND: Thank you, Your Honor. The
9 State calls Phillip Turner with the State Law
10 Enforcement Division.

11 PHILLIP TURNER

12 being first duly sworn, testified as follows:

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Have a seat in the witness box.
15 State your full name and spell your last.

16 THE WITNESS: Special Agent Phillip Turner,
17 P-H-I-L-L-I-P, T-U-R-N-E-R.

18 DIRECT EXAMINATION

19 BY MR. THURMOND:

20 Q. Good morning.

21 A. Good morning.

22 Q. Would you briefly take us through your
23 professional background?

24 A. My law enforcement background began in March of
25 2002. I began at the North Augusta Department of

1 Public Safety as a uniform patrol officer. In 2003,
2 I went to the Aiken bloodhound tracking team.

3 In 2006, I moved into criminal investigations
4 division at North Augusta Department of Public
5 Safety working narcotics, violent crime, and ATF
6 task force. In October of 2012, I was hired by the
7 South Carolina Law Enforcement Division, or SLED,
8 where I became a special agent in the Midlands
9 region where I'm still employed today.

10 Q. So if I understood you correctly, you've been
11 conducting investigations in the North Augusta area
12 for more than 10 years?

13 A. Yes, sir.

14 Q. I want to ask you about the murder of an
15 individual by the name of Donnie Brooks back on
16 January 11th, 2015. Were you involved in that
17 investigation?

18 A. Yes, sir, I was.

19 Q. Would you just tell the jury the substance of
20 that investigation?

21 A. On January 11th, North Augusta Public Safety
22 responded to 419 Bradleyville Road, which is the
23 Ridgeview Manor apartment complex, Apartment J-430
24 for a shooting investigation. The victim, the
25 deceased in the case, was a gentleman named Donnie

1 Lee Brooks who was laying in the floor of apartment
2 430.

3 We also had another young man, Shawn Lusowa,
4 who had been shot in the parking lot in the foot.
5 North Augusta Public Safety was the investigating
6 agency. They called SLED to work the crime scene,
7 our technicians responded, and they also asked for
8 regional assistance, which is investigative
9 assistance, being myself and Special Agent Clint
10 Busbee, who works alongside me.

11 Q. And you actually responded to that scene that
12 day?

13 A. Yes, sir.

14 Q. And did you observe Mr. Brooks deceased in that
15 apartment?

16 A. Yes, sir, I did.

17 Q. And what did he die from?

18 A. He died from a gunshot wound to his abdomen.

19 Q. What type of gunshot?

20 A. It was a shotgun blast.

21 Q. Let me show you, Agent Turner, what's in
22 evidence as State's No. 51. Do you recognize the
23 apartment complex there?

24 A. Yes, sir.

25 Q. What is that?

1 A. That's 419 Bradleyville Road, Ridgeview Manor
2 apartments.

3 Q. Let me ask you this: This is from the
4 defendant's Facebook page, it's dated January 11th,
5 2015. You were a former North Augusta Public Safety
6 officer?

7 A. Yes, sir.

8 Q. Do you see any emergency vehicles belonging to
9 that agency in that picture?

10 A. Yes, sir. There's a Tahoe right there to the
11 left I can see, and I also see our SLED crime scene
12 truck straight over there. Where you see building
13 J, right in the front parking lot, you can see the
14 silver truck with the bed cover over the back.

15 Q. So when this picture was taken, this crime
16 scene was still fresh?

17 A. Yes, sir.

18 Q. Still being worked by law enforcement?

19 A. Yes, sir.

20 Q. Were the witnesses on the scene cooperative?

21 A. No, sir.

22 Q. And at some point did you interview a gentleman
23 by the name of Christian Gordon?

24 A. Yes, sir, I did.

25 Q. Was he present that night?

1 A. Yes, sir.

2 Q. Did he cooperate with you that night?

3 A. No, sir.

4 Q. Did he give you a statement eventually?

5 A. Eventually.

6 Q. What date was that?

7 A. He came in -- you're talking about the North
8 Augusta statement?

9 Q. Yes, sir.

10 A. Let me look real quick.

11 Q. Would you disagree with February 19th?

12 A. Yes, sir. I'm looking at it now. Yes, sir.

13 Q. And as a result of that statement, was a
14 gentleman by the name of Taquan Coach implicated?

15 A. Yes, sir.

16 Q. Was there any other evidence implicating
17 Mr. Coach other than the statement of Mr. Gordon?

18 A. Direct evidence, no, sir. We had had
19 numerous other people come forward and tell us it
20 was Tay or Taquan. But --

21 Q. You knew him on the street at Tay?

22 A. Yes, sir.

23 Q. Let me ask you about some of this stuff, street
24 stuff. Based on your experience in the last 11
25 years, are you kind of intimately familiar with the

1 neighborhood groups and who's who and who lives
2 where?

3 A. Yes, sir.

4 Q. Are you familiar with a group called the Wolf
5 Pack?

6 A. Yes, sir, I am.

7 Q. Are you familiar with the membership of the
8 Wolf Pack?

9 A. Yes, sir.

10 Q. Is Taquan Coach within that membership?

11 A. Yes, sir.

12 Q. How about a gentleman by the name of Tyson
13 Coleman? Is he a member of the Wolf Pack?

14 A. Yes, sir.

15 Q. All right. Let me move to October -- well, no
16 arrests have ever been made in the murder of Donnie
17 Brooks, correct?

18 A. No, sir.

19 Q. That case is unsolved and remains open?

20 A. Yes, sir, open investigation.

21 Q. Moving to October 24th of 2016, how did you
22 come to be involved in the matter involving
23 Mr. Christian Gordon, Mr. Brighthop, et cetera?

24 A. Yes, sir. Lead Investigator Steve Miano
25 contacted the South Carolina Law Enforcement

1 Division and requested that we become involved and
2 conduct an investigation.

3 Q. And what were you provided with?

4 A. I was provided a disc containing -- that day, I
5 was provided with a disc that contained some
6 recorded telephone calls, two recorded phone calls.

7 Q. And you, of course, listened to those calls?

8 A. Yes.

9 Q. And through your investigation, were you able
10 to identify everybody on those calls?

11 A. Yes, sir.

12 Q. And as a result, did you interview
13 Mr. Brighthop?

14 A. Yes, sir, I did.

15 Q. Did you interview Mr. Nelson?

16 A. Yes, sir, I did.

17 Q. Did you interview Mr. Gordon?

18 A. Yes, sir, I did.

19 Q. And after interviewing all of those
20 individuals, was there any confusion as to who the
21 king was?

22 A. No, sir.

23 Q. Was there any confusion as to what checkmate
24 meant?

25 A. No, sir.

1 Q. That's all the questions I have for you.

2 MR. THURMOND: One moment, Your Honor.

3 BY MR. THURMOND:

4 Q. The case we're trying this week, when was it
5 originally set for trial?

6 A. November.

7 Q. Thank you.

8 THE COURT: Cross?

9 MR. MCCARLEY: Yes, sir. Thank you.

10 CROSS-EXAMINATION

11 BY MR. MCCARLEY:

12 Q. Agent or special agent?

13 A. Good morning.

14 Q. How are you doing, sir?

15 A. I'm doing good. How about you?

16 Q. Struggling a little bit. I appreciate you
17 asking.

18 You interviewed both Christian Gordon and
19 Ashton Brighthop?

20 A. Yes.

21 Q. Okay. And when you interviewed them, did you
22 videotape those interviews?

23 A. No, sir.

24 Q. Is there any audio of those interviews?

25 A. No, sir.

1 Q. Mr. Brighthop, you found him at his house and
2 took him to where?

3 A. The Aiken County Sheriff's Office substation,
4 which is right where the magistrate's office is in
5 Belvedere. Right beside it there's an EMS station,
6 and then that -- most people don't realize there's a
7 little Aiken County substation for the deputies to
8 go to.

9 Q. So you took him to a police department?

10 A. Yes, sir.

11 Q. And then when you interviewed Christian Gordon,
12 where did you interview him?

13 A. I interviewed him at the Richmond County
14 Detention Center.

15 Q. Okay. Do they have cameras there?

16 A. Interview cameras?

17 Q. Uh-huh.

18 A. No, sir, not in the room we were in.

19 Q. You work at SLED?

20 A. Yes.

21 Q. Y'all got cameras?

22 A. No, sir.

23 Q. There's no cameras? South Carolina Law
24 Enforcement Division has no cameras?

25 A. We have no videotaped interview rooms.

1 Q. You have no audio? You don't have the
2 capability to record anything at South Carolina Law
3 Enforcement Division?

4 A. Do I have the capability --

5 Q. Do you have the capability --

6 A. I'm sure I could --

7 Q. Do you have an iPhone?

8 A. Yes, sir.

9 Q. Got video on it?

10 A. Yes, sir.

11 Q. Got audio on it?

12 A. Yes, sir. We have a policy that says that we
13 won't do that.

14 Q. I could imagine why.

15 MR. THURMOND: We'd object to the editorial
16 comments. They are completely out of line.

17 THE COURT: Sustained.

18 Strike the last comment.

19 BY MR. MCCARLEY:

20 Q. Was a warrant ever issued based on Christian
21 Gordon's statement about the Ridgeview Manor murder?

22 A. No, sir.

23 Q. No further questions.

24 THE COURT: Redirect?

25 MR. THURMOND: No, Your Honor.

1 THE COURT: All right. You can step down.

2 Any other witnesses from the State?

3 MS. HALL: Your Honor, at this time, the State
4 rests.

5 THE COURT: All right.

6 Well, folks, you have now heard all of the
7 evidence you're going to hear from the State in
8 their case in chief. So there's some legal matters
9 we have to take up at this point, so I'll send you
10 back to the jury room while we take of those and
11 decide what we're going to be doing for our schedule
12 for the rest of the.

13 So while you have heard all of the State's
14 evidence, doesn't necessarily mean you've heard all
15 of the evidence in this case.. So it's improper for
16 you to begin your deliberations or discussions about
17 the case. Just go ahead and go back, and we'll have
18 you back in a few minutes and let you know what
19 we'll be doing for lunch, et cetera. All right.

20 (The jury exits the courtroom at 11:29 AM.)

21 THE COURT: All right. Motions?

22 MR. BUSH: Yes, Your Honor. At this time, the
23 Defense moves for a directed verdict. We don't
24 believe that credible admissible evidence has been
25 presented by the State that would allow for this

1 case to go to the jury. And we'd also renew all of
2 our objections and motions at this time.

3 THE COURT: All right. You wish to respond?

4 MS. HALL: Your Honor, at this juncture, we're
5 not looking at the weight of the evidence, we're
6 looking at the existence of evidence. We have heard
7 Demorris Harris, who watched Santonio Williams pull
8 the trigger, he was in the car and witnessed the
9 actual act.

10 We've also heard from Mr. Jefferson and Davis
11 who corroborate Mr. Harris' statement just before
12 and just after the actual shooting incident. We've
13 also heard direct statements from the defendant
14 about actually committing this murder. Viewing the
15 evidence in light most favorable to the State,
16 directed verdict is not appropriate.

17 THE COURT: Well, I find there is existence of
18 some direct evidence and substantial circumstantial
19 evidence which would allow the jury to find the
20 defendant guilty of the indictment charged, so the
21 motion is denied.

22 Now, what's the Defense's plan at this point?

23 MR. MCCARLEY: Your Honor, the Defense is
24 planning on calling two witnesses.

25 THE COURT: And they are?

1 MR. MCCARLEY: One is Kahlo Calhoun and the
2 other is Cheryll Grubbs. My client has indicated to
3 me on numerous occasions, as well as Mr. Bush as
4 late as last night and me this morning here in
5 court, that he does not wish to testify. I know
6 Your Honor is going to once again discuss that with
7 Mr. Williams.

8 THE COURT: Okay. Kahlo Calhoun. What was the
9 other name?

10 MR. MCCARLEY: Cheryll, with two L's, Grubbs,
11 with two B's.

12 THE COURT: Neither of those was on the witness
13 list?

14 MR. MCCARLEY: Cheryll Grubbs was on the
15 original witness list and I emailed Your Honor and
16 the State Tuesday night, I believe it was, adding
17 Mr. Calhoun.

18 THE COURT: Okay. I just need to be sure to
19 ask the jury when they come back if they know Kahlo
20 Calhoun.

21 MR. MCCARLEY: It's Grubbs, G-R-U-B-B-S.

22 THE COURT: You said she was on the witness
23 list that I asked about?

24 MR. MCCARLEY: Yes, sir.

25 THE COURT: Yes, she was on that list.

1 All right. Mr. Williams, stand up. All right.
2 We talked earlier on this week about whether or not
3 you wanted to testify or not. We're at that point
4 now where you have to make a decision about whether
5 or not you want to testify. Your lawyer has
6 indicated to me that you have told them that you do
7 not want to testify.

8 As I told you earlier in the week, it's a right
9 that you have, it's a constitutional right that you
10 have. If you don't want to testify, I will instruct
11 the jury that they are not to consider that in any
12 way in deliberating their verdict. If you do want
13 to testify, you would be put under oath, you'd have
14 to answer truthfully the questions put to you by
15 your lawyer; but you also are subject to
16 cross-examination, you'd have to answer those
17 questions truthfully as well.

18 Again, you have the right to testify. You have
19 the right to not testify. Have you made your final
20 decision?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: What is your decision?

23 THE DEFENDANT: Not to.

24 THE COURT: Not testify. Okay. Well, then I
25 will instruct the jury that they are not to hold

1 that against you while they are deliberating. You
2 can be seated.

3 Now, as far as your case goes, it's 11:30. How
4 long are your witnesses going to take?

5 MR. MCCARLEY: In all honesty, I haven't had
6 very many discussions with them. They could be as
7 quick as five to 15 minutes on my part and they
8 could drag on depending on what they --

9 THE COURT: Well, let's go ahead and do them,
10 because, ideally, I'd like to finish the case in
11 chief this morning, then we'll break, let the jury
12 go to lunch, give you charges that we have or the
13 opportunity for you to look them over, and then
14 we'll come back, have a charge conference, and
15 deliberate this afternoon.

16 MR. MCCARLEY: Yes, sir, Your Honor.

17 MR. THURMOND: Your Honor, before Mr. Calhoun
18 testifies, I did want to get a little bit of
19 guidance so we're not disrupting the jury during
20 testimony about the breadth of cross-examination, of
21 what is fair game.

22 We've kind of stayed away from all of the gang
23 stuff, for lack of a better word, up until this
24 part. Mr. Calhoun does describe of himself as a
25 Boss and who he affiliates with and that his cousin,

1. Mr. Williams, is also a Boss and that Christian
2. Gordon is several rungs higher in that hierarchy.
3. And I think if he takes the stand, that
4. understanding, that organizational chart is --

5. THE COURT: Well, that's on the video. As far
6. as him testifying, I assume you're only going to ask
7. him about Mr. Harris' statement to him that would
8. implicate Harris and you'd be offering that to
9. impeach Harris, correct?

10. MR. MCCARLEY: That's correct.

11. THE COURT: So you don't plan to show the video
12. unless he denies that he ever said that to the agent
13. that was there?

14. MR. MCCARLEY: That's correct.

15. THE COURT: And I guess at that point, we
16. wouldn't need to play the entire thing anyway, just
17. play the part where he says that Mr. Harris told
18. Mr. Calhoun that he was the shooter. We don't need
19. to show the whole video.

20. MR. MCCARLEY: Correct.

21. THE COURT: So we don't need to show the whole
22. video that gets into the hierarchy about all that?

23. MR. MCCARLEY: That's correct.

24. MR. THURMOND: Well, Your Honor, it would be
25. evidence of bias if this witness and this defendant

1 are in the same affiliate and responsible to
2 answering to Christian Gordon.

3 And if Mr. Harris is in a rival affiliate, is
4 that evidence of bias? I don't know the answers to
5 those questions, but he's kind of put it out there
6 in this interview of who he is and who all these
7 people are.

8 THE COURT: Well, I mean, what are you asking
9 me?

10 MR. THURMOND: I'm asking you how far I can go
11 with this witness about this witness' gang
12 affiliation and if he and this defendant are in the
13 same gang and have the same rank and what that
14 structure is and where Mr. Gordon is in that
15 structure. I think it all ties back to almost 700
16 days after this, this guy is walking into court the
17 day after Mr. Harris has testified to say Mr. Harris
18 was the trigger man.

19 MR. MCCARLEY: Your Honor, this gentleman was
20 arrested and gave a statement to ATF that I had no
21 idea about. To think there's some conspiracy that
22 he engineered his own arrest and gave a statement to
23 ATF is -- as Your Honor said, I'm offering this to
24 impeach Mr. Harris about these statements.

25 Mr. Harris said what he said, and he told Kählo

1 Calhoun something very, very different.

2 And I literally think I'm going to ask him
3 three questions about that. Agent Morlan is here.
4 I was not able to get it transcribed and, obviously,
5 there's the video.

6 THE COURT: What is Mr. Calhoun's affiliation
7 in a gang?

8 MR. MCCARLEY: My understanding -- and I'm not
9 Investigator Turner, just from the video -- you
10 asked about Calhoun?

11 THE COURT: Correct.

12 MR. MCCARLEY: Boss is what I'm told, which is
13 a different group than is a Blood or a Wolf Pack.
14 But there may also be crossover, as I understand it.
15 I mean, this isn't Los Angeles. There's tons and
16 tons of crossover with Folk, Blood, Boss, Wolf Pack,
17 but I'm not telling you that I know nearly as much
18 about gangs as anybody.

19 THE COURT: Well, let me see y'all in the back
20 for a second.

21 (Brief recess.)

22 THE COURT: Which one are you calling first,
23 Grubbs or Calhoun?

24 MR. MCCARLEY: Calhoun, Your Honor.

25 Your Honor, Agent Morlan is in the hallway, the

1 gentleman he gave the interview to. I'd ask to lift
2 the sequestration for him to come in here and sit
3 and watch this.

4 THE COURT: No, he can't. We'll just leave him
5 out there.

6 MR. MCCARLEY: Yes, sir.

7 THE COURT: All right. The defendant is in the
8 courtroom.

9 Bring the jury back in.

10 (The jury enters the courtroom 11:43 AM.)

11 THE COURT: All right. Folks, we are going to
12 resume now with the Defense calling a couple of
13 witnesses. And one of the witnesses that they
14 intend to call was not on the witness list that I
15 read to you on Monday when we drew the jury, so let
16 me ask, is there any member of the jury panel who's
17 related by blood, marriage, or acquainted in any way
18 with Kahlo Calhoun? And he spells that K-A-H-L-O.

19 Let the record reflect all the jurors indicated
20 in the negative.

21 All right, Mr. McCarley.

22 MR. MCCARLEY: The Defense calls Kahlo Calhoun.
23 He's in the back.

24 KAHLO CALHOUN

25 being first duly sworn, testified as follows:

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Have a seat in the witness box.

3 State your full name and spell your last name.

4 THE WITNESS: Kahlo Calhoun, C-A-L-H-O-U-N.

5 DIRECT EXAMINATION

6 BY MR. MCCARLEY:

7 Q. Where are you currently incarcerated?

8 A. ACDC, Aiken County Detention Center.

9 Q. Do you have pending charges here in Aiken
10 County?

11 A. Yes, sir.

12 Q. What are you in jail for?

13 A. Simple larceny.

14 Q. Okay. You're on probation?

15 A. Yes, sir, in Edgefield County.

16 Q. What for?

17 A. Distribution -- possession with intent to
18 distribute.

19 Q. Okay. Do you remember me from Tuesday night?

20 A. Yes, sir.

21 Q. Where did I meet you?

22 A. Aiken County Detention Center.

23 Q. Okay. Is that the first time I've ever met
24 you?

25 A. Yes, sir.

1 Q. Am I your lawyer?

2 A. No, sir.

3 Q. How many times did I tell you I wasn't your
4 lawyer on Tuesday night?

5 A. Quite a few.

6 Q. Okay. On Tuesday night I asked you about a
7 conversation you had with Matt Morlan; is that
8 correct?

9 A. Yes, sir.

10 Q. Do you remember speaking with Federal Agent
11 Matt Morlan on Tuesday?

12 A. Yes, sir.

13 Q. Do you remember meeting my investigator, Todd
14 Gantt?

15 A. Yes, sir.

16 Q. He was there with me that night?

17 A. Yes, sir.

18 Q. And then he came back the next day?

19 A. Yes, sir.

20 Q. Did he show you a video?

21 A. Yes, sir.

22 Q. And was that a video of you speaking with Agent
23 Morlan?

24 A. Yes, sir.

25 Q. How do you know Bope?

1 A. We're all from the same neighborhood.

2 Q. Do you know his real name?

3 A. (Shakes head).

4 Q. Do you remember hearing about the shooting of a
5 little girl?

6 A. Yes, sir.

7 Q. Back in April of 2015?

8 A. Yes, sir.

9 Q. Did you see Bope the day after that happened?

10 A. Yes, sir.

11 Q. What did Bope tell you?

12 A. We discussed the shooting and he told me that
13 he pulled the trigger.

14 Q. Where were you when he told you that?

15 A. Pine Crest Apartments.

16 Q. You just said when you were talking to Bope
17 that he shot the girl. Who is he?

18 A. Well, Bope told me that -- I can't recall the
19 exact conversation. It was so long ago. But I
20 remember him telling me that --

21 MR. THURMOND: We can't hear him, Your Honor.

22 THE COURT: I need you to speak up.

23 THE WITNESS: I remember him telling me that he
24 was the shooter.

25 BY MR. MCCARLEY:

1 Q. He is who?

2 A. Bope.

3 Q. Bope told you he was the shooter?

4 A. Yeah.

5 Q. Nothing further.

6 THE COURT: Cross?

7 CROSS-EXAMINATION.

8 BY MR. THURMOND:

9 Q. All right. Mr. Calhoun, you just testified
10 that Mr. Harris made that statement to you on April
11 15th, 2015; is that correct?

12 A. I don't recall the exact date.

13 Q. Well, when do you claim he made it to you?

14 A. I remember him telling -- I mean, I don't
15 recall the exact date. It was years ago.

16 Q. Okay. And by my count, April 15th, 2015, is
17 658 days from this week. And you've let your
18 cousin, Mr. Williams, sit in jail and you've sat on
19 that information until the day before Demorris
20 Harris testified; is that right?

21 A. I don't know about none of that.

22 Q. Are you capable of telling the truth? What
23 gang are you in?

24 A. I'm not in a gang.

25 Q. Do you admit or deny telling Agent Matt Morlan

1 that you're a Boss?

2 A. That's not a gang.

3 Q. What is it?

4 A. It's an organization.

5 Q. An organization?

6 A. Yes, sir.

7 Q. Do you admit or deny telling Agent Matt Morlan
8 that your cousin, Santonio Williams, is a Boss?

9 A. I don't remember telling him that. No, sir.

10 Q. Do you remember telling him right when you sat
11 down, if I look out for y'all, y'all going to look
12 out for me, right?

13 A. Yes, sir.

14 Q. You also remember telling him you need to get
15 some idea of what you're going to get before you
16 threw your friends under the bus?

17 A. Yes, sir.

18 Q. You got the courage to tell these people who
19 sent you here this week?

20 A. What do you mean?

21 Q. That's all I got for you?

22 THE COURT: Redirect?

23 MR. MCCARLEY: No questions, Your Honor.

24 MR. THURMOND: Is this funny?

25 MR. MCCARLEY: Objection; move to strike.

1 THE COURT: Jury will disregard the last
2 statement by the Solicitor.

3 You may step down.

4 Next witness.

5 MR. MCCARLEY: The defense calls Cheryll
6 Grubbs.

7 CHERYLL GRUBBS

8 being first duly sworn, testified as follows:

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Have a seat in the witness box,
11 stating your full name and spelling your last.

12 THE WITNESS: My name is Cheryll Nicole Grubbs,
13 G-R-U-B-B-S.

14 DIRECT EXAMINATION

15 BY MS. MCCARLEY:

16 Q. Good morning.

17 A. Good morning.

18 Q. How are you?

19 A. Good.

20 Q. Okay. I met you at your house last week?

21 A. Yes, sir.

22 Q. Do you remember my investigator, Mr. Gantt, in
23 the red tie right there?

24 A. Yes, sir.

25 Q. You also met with Investigator Chuck Cain with

1 the Aiken County Sheriff's Office?

2 A. Yes, sir.

3 Q. Long time ago, right?

4 A. Yes. Just about two years ago.

5 Q. Yes, ma'am. I need you to speak up. Okay?

6 A. Yes, sir.

7 Q. You're currently on probation; is that correct?

8 A. Yes, sir.

9 Q. What are you on probation for?

10 A. Unlawful conduct towards a child.

11 Q. Okay. You got your kids back now though?

12 A. Yes, sir.

13 Q. Your DSS case is closed?

14 A. Yes, sir.

15 Q. I'm going to try to take you all the way back
16 to April of 2015. Okay?

17 A. Okay.

18 Q. How do you know Demarius Jefferson?

19 A. I met Demarius about nine years ago through
20 friends, high school friends.

21 Q. How well do you know him?

22 A. I would say pretty well. You know, ten-year
23 on-and-off-again, you know, friendship, drugs,
24 whatever.

25 Q. Okay. Does he have a nickname or a street

1 name?

2 A. DMob.

3 Q. DMob?

4 A. Yes, sir.

5 Q. Do you remember him coming over to your house
6 late one night in April?

7 A. Yes, sir.

8 Q. What kind of car was he driving?

9 A. It was a black four-door car. I can't tell you
10 the exact type, model, but it was just a dark car.

11 Q. How many people did he say were with him?

12 A. Just one.

13 Q. Did that person ever come in the house?

14 A. No, sir.

15 Q. Did that person stay in the car?

16 A. Yes, sir.

17 Q. What was Demarius' demeanor like that night?
18 What was he acting like?

19 A. Just a little nervous; but, you know, it's hard
20 to explain. It was just DMob. I mean, nothing out
21 of the ordinary. A little nervous, but --

22 Q. What did he tell you he had done that night?

23 A. Said he'd been involved in a drive-by.

24 Q. Did he tell you he was the driver?

25 A. Yes, sir.

1 Q. Did he tell you, man, we just did a drive-by
2 and ended up hitting a little girl?

3 A. Yes, sir.

4 Q. Did he say, I did a drive-by?

5 A. Yes, sir.

6 Q. Over in Clearwater?

7 A. Yes, sir.

8 Q. Did he tell you, I told him not to do it
9 because there were so many people standing out?

10 A. Yes, sir.

11 MR. MCCARLEY: Just a moment, Your Honor.

12 No further questions. Please answer any
13 questions that the Solicitor's Office has.

14 CROSS-EXAMINATION

15 BY MS. HALL:

16 Q. Good morning, Ms. Grubbs.

17 A. Good morning.

18 Q. Do you remember meeting with me and two
19 investigators back in November of 2016?

20 A. Yes, ma'am.

21 Q. So just a few months ago?

22 A. Yes.

23 Q. Okay. Do you admit or deny telling me at that
24 time that Demarius Jefferson did not actually make
25 the statements that you just testified to?

1 A. That he did not make the statements?

2 Q. Do you admit or deny telling me and two
3 investigators in my office that Demarius Jefferson
4 did not tell you he did a drive-by shooting?

5 A. I don't --

6 Q. Let me rephrase it.

7 A. Yeah. I'm sorry. I couldn't understand what
8 you were saying.

9 Q. Do you admit or I deny stating, I will put my
10 hand on the Bible, he did not say he was there or
11 involved, referring to Mr. Jefferson?

12 A. Oh, yes, ma'am. I did say that to you. I did
13 say that to you. I admit it. I'm sorry. I did say
14 that.

15 Q. Okay. Do you admit or deny telling me when you
16 gave your statement to Investigator Cain that you
17 were high on Xanax and methadone?

18 A. Yes, ma'am.

19 Q. Do you admit or deny telling me in November of
20 2016 that you had made up the statement when you
21 gave it to Investigator Cain?

22 A. I deny I said I made it up.

23 Q. Do you admit or deny telling me that you saw
24 the information on the news and then you called law
25 enforcement?

1 A. Oh, yeah. I did see it on the news. Yes,
2 ma'am.

3 Q. Do you admit or deny telling me that the only
4 statement Demarius Jefferson made to you that night
5 was, old boy is upset in the car because he was
6 involved in a shooting with a little girl?

7 A. Yes, ma'am. I admit to saying that.

8 Q. You told me that November 16th?

9 A. Yeah.

10 Q. All right. But today you're telling us
11 something different?

12 A. That's what -- he said old boy. I didn't get a
13 name, didn't look, didn't see the defendant.

14 Q. So your testimony today is that Demarius
15 Jefferson told you -- the only thing he told you is,
16 old boy in the car was involved in a shooting?

17 A. Yes, ma'am. That's what he said to me.

18 Q. Demarius Jefferson did not tell you that he did
19 a drive-by shooting?

20 A. He just said he was the driver in a drive-by
21 shooting. He didn't say that he did it. He didn't
22 say a name and I didn't look out and see anyone.

23 Q. So your testimony just now to Mr. McCarley was
24 based off of your initial statement to Investigator
25 Cain?

1 A. Yes, ma'am.

2 Q. Which was a lie?

3 A. Well, just -- no, ma'am. I told Investigator
4 Cain what Demarius said to me.

5 Q. Okay. I'm kind of confused because you told
6 Investigator Cain that Jefferson admitted to doing
7 the drive-by shooting, but you're telling me today
8 that Mr. Jefferson only said, my boy was involved in
9 a shooting with a girl?

10 A. Right.

11 Q. You see how those two things are different?

12 A. Yeah, I see what you're saying. Yes, ma'am.
13 Basically, I was told he was a driver in a drive-by
14 shooting and that it was his boy. That was it.

15 Q. He told you he was the driver?

16 A. That -- yeah, that he was driving when it
17 happened. Yes, ma'am.

18 Q. But you admit that you told me November 2016
19 that Demarius Jefferson never told you he was the
20 driver?

21 A. I did say that. Yes, ma'am.

22 Q. Do you admit or deny telling me back in
23 November of 2016 that when you're high on Xanax and
24 methadone, it makes you make things up?

25 A. I wouldn't say make things up. Make things

1 cloudy, you know. It does mess your memory up a
2 little bit. Yeah, definitely I'd say that.

3 Q. Do you admit or deny asking Investigator Cain
4 multiple times when you gave your initial statement
5 about reward money and what reward money you could
6 get for giving a statement?

7 A. I deny that.

8 Q. You never asked Investigator Cain about getting
9 reward money?

10 A. No, ma'am.

11 Q. But at that time, you were high on Xanax and
12 methadone?

13 A. When I gave my original statement, yes, ma'am.

14 Q. When you talked to me on November 16th of 2016,
15 were you high on methadone or Xanax?

16 A. No, ma'am.

17 Q. Just to clarify since we've gone back and
18 forth, November 16th, 2016, do you admit or deny
19 telling me that you would put your hand on the Bible
20 that Demarius Jefferson did not say he was involved?

21 MR. MCCARLEY: Objection, Your Honor; asked and
22 answered multiple times.

23 MS. HALL: We've gone back and forth.

24 THE COURT: Last time for asking it.

25 THE WITNESS: Yeah, I told you that. Yes,

1 ma'am.

2 MS. HALL: No further questions.

3 THE COURT: Redirect?

4 MR. MCCARLEY: No questions, Your Honor.

5 Thank you, Cheryll.

6 THE WITNESS: Yes, sir.

7 MR. MCCARLEY: May she be released from her
8 subpoena?

9 THE COURT: You may. You're free to go.

10 Does the Defense have any further witnesses?

11 MR. MCCARLEY: The Defense rests, Your Honor.

12 THE COURT: Anything in reply from the State?

13 MS. HALL: Yes, Your Honor, but we need a
14 minute.

15 THE COURT: All right. Folks, let me send you
16 out for just five minutes while we get ready for
17 another witness. Again, don't begin deliberations
18 or discussions. We'll be back in just a minute.

19 (The jury exits the courtroom at 12:19 PM.)

20 THE COURT: Okay. Mr. Solicitor, tell me what
21 your reply testimony is.

22 MR. THURMOND: Your Honor, we have three very
23 brief reply witnesses. We plan to call Agent Matt
24 Morlan concerning his interview with Mr. Calhoun.
25 We plan to ask him two questions that the witness

1 denied making to Agent Morlan.

2 THE COURT: Which were?

3 MR. THURMOND: About are you a Boss and is
4 Mr. Williams a Boss.

5 THE COURT: He denied he was a Boss --

6 MR. THURMOND: He denied he was -- he denied
7 making that statement.

8 THE COURT: He denied that a Boss was a gang.
9 He said Boss was an organization.

10 MR. THURMOND: Okay.

11 THE COURT: But he admitted he was a Boss. And
12 he said Mr. Williams was a Boss. But he denied --
13 as I recall it, he denied your characterization or
14 disagreed with your characterization it was a gang.

15 MR. THURMOND: Okay. I may have misunderstood
16 the testimony. If we're clear that he answered
17 affirmatively to both of those questions, I don't
18 need to call Agent Morlan.

19 THE COURT: Is that what your recollection of
20 the record was?

21 MR. THURMOND: We thought he denied saying
22 Mr. Williams was also a Boss.

23 MR. MCCARLEY: My recollection is the same as
24 Your Honor. He said he was in this organization and
25 that Mr. Williams was.

1 THE COURT: Okay.

2 Can you pull that up real quick? Because I
3 want to be sure about it.

4 I don't want to have you -- if he's going to
5 talk about that in closing, I want to make sure it's
6 in there.

7 MR. THURMOND: While she's looking for that, do
8 you want to know about the other two witnesses?

9 THE COURT: No, because she can't do two things
10 at once.

11 Okay. Here's what he says is that he admits
12 that he is a Boss and he's -- he disagrees with your
13 characterization that it's a gang. And then the
14 Solicitor asks: Do you remember -- is your cousin a
15 Boss? And he said: I don't remember making that
16 statement.

17 Stop for a second so I can go back.

18 THE COURT REPORTER: Okay.

19 THE COURT: I'm going to read you what that
20 portion of the testimony is.

21 (Off-the-record discussion.)

22 THE COURT: So you could -- because he did not
23 admit saying that Santonio was a Boss, you can bring
24 in impeachment for that. He admitted that he was a
25 Boss. He did not admit that he told the agent that

1 Santonio was a Boss. Okay?

2 MR. THURMOND: Yes, sir.

3 THE COURT: All right. What is your other --
4 you had two others?

5 MR. THURMOND: Two others, yes, sir.

6 Investigator Chuck Cain to impeach the testimony of
7 Cheryll Grubbs. She told him -- she made repeated
8 requests for reward money of him. And that would be
9 the substance of his testimony.

10 THE COURT: All right. And then was there
11 another one?

12 MR. THURMOND: Yes, sir. Captain Gallam with
13 the detention center to authenticate the tape that
14 we had discussed at sidebar. The voice on the tape
15 has already been authenticated through witnesses,
16 but we would need to lay the foundation for the tape
17 through the jail administrator.

18 THE COURT: And that substance of that portion
19 of the recording that you want to play says what?

20 MR. THURMOND: It --

21 MS. HALL: Your Honor, I don't know the words
22 verbatim, but it's something to the effect of
23 discussing the fact that Bope, Demorris Harris, had
24 been arrested -- do you have those? I know Bope
25 should GD be going home soon. They dropped his

1 shit -- they should drop his shit at preliminary
2 because he really ain't even in this shit. The only
3 reason they got him was because Demar brought him
4 in.

5 So this is the defendant's statement saying
6 "Demorris Harris ain't in this shit."

7 MR. MCCARLEY: It's not -- I don't know what
8 this S is.

9 THE COURT: Okay. Mr. McCarley?

10 MR. MCCARLEY: Yes, sir, Your Honor. In
11 regards to that jail phone call -- and, I apologize,
12 the mechanics, I'm struggling with them a little
13 bit, Your Honor. That was provided to me, the
14 interview, okay, that Kahlo Calhoun was provided to
15 me on Tuesday.

16 The State is telling Your Honor -- the State is
17 saying they had no idea this information existed.
18 The State provided it to me on Tuesday. They then
19 called Demorris Harris to the stand on Wednesday and
20 I crossed him based specifically on the information
21 the State had provided me. They were very
22 well-aware that this information was out there.

23 They're represented to Your Honor that they had
24 no idea that I was going to call him and cross
25 him -- and direct him on this and on this statement

1 that impeaches Demorris Harris. It's patently
2 false. They had the information, they could have
3 acted on it, they chose not to; they chose not to
4 call him themselves, they chose not to ask him about
5 it on cross, they chose not to ask him about it on
6 redirect after I specifically asked him about it on
7 cross.

8 I find -- I can't imagine they haven't had
9 every single opportunity to discuss this with the
10 witness I called, with the witness they called, and
11 to bring it out. There's no surprise here
12 whatsoever.

13 MS. HALL: Your Honor, what is new information
14 at this point is the fact they did, in fact, call
15 him. He was a potential witness until he testified
16 and made the statement that Bope was the shooter.
17 Until he made that statement, we were unaware that
18 he was going to actually say that in court.

19 MR. MCCARLEY: He made that -- I'm sorry, Your
20 Honor.

21 THE COURT: Well, no. I think that I have to
22 agree here. That issue of whether or not Bope was
23 the shooter was not in evidence until Mr. Calen --
24 or Calhoun, I guess it was, testified. And so that
25 would be new evidence that was not in during direct

1 of their case in chief, so it would be in reply.

2 MS. HALL: Thank you, Your Honor.

3 THE COURT: I understand the information may
4 have been available to them, but it wasn't an issue.
5 Nobody brought up that Bope was the shooter, in
6 fact, so there was no need to --

7 MR. MCCARLEY: May I? One more sentence, Your
8 Honor?

9 THE COURT: Sure.

10 MR. MCCARLEY: Does it affect you at all that I
11 did cross specifically on it? I asked Demorris
12 Harris if he was the shooter.

13 THE COURT: Yeah, but he denied it. There was
14 nobody that said that he was until a witness
15 testified today.

16 MR. MCCARLEY: Understood. Thank you, sir.

17 THE COURT: Okay?

18 MR. MCCARLEY: Yes, sir.

19 THE COURT: All right. So Matt Morlan was not
20 on the witness list, so we need to ask the jury
21 about that.

22 Will he be your first one?

23 MR. THURMOND: He will be our first witness
24 with one question.

25 THE COURT: Okay. The defendant is in the

1 courtroom.

2 Bring the jury back in, please.

3 (The jury enters the courtroom at 12:31 PM.)

4 THE COURT: Okay. Ladies and gentlemen, we're
5 going to have three short witnesses in reply by the
6 State. One of the witnesses was not on the witness
7 list. Is there any member of the jury panel related
8 by blood or marriage or acquainted in any way with
9 Matt Morlan? Okay. I find none.

10 Mr. Thurmond, you may begin.

11 MR. THURMOND: Your Honor, the State calls Matt
12 Morlan.

13 MATT MORLAN

14 being first duly sworn, testified as follows:

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Have a seat in the witness box,
17 stating your full name, spelling your last.

18 THE WITNESS: Matthew Emery Morlan,
19 M-O-R-L-A-N.

20 DIRECT EXAMINATION

21 BY MR. THURMOND:

22 Q. Good afternoon.

23 A. Yes, sir.

24 Q. You're an agent with the ATF?

25 A. Yes, sir.

1 Q. And on Tuesday, the 31st, did you have an
2 opportunity to conduct an interview with a Kahlo
3 Calhoun?

4 A. Yes, sir, we did.

5 Q. Was that interview recorded?

6 A. Yes, sir, it was.

7 Q. During the course of that interview, did
8 Mr. Calhoun tell you Santonio Williams was a member
9 of an organization known as Boss?

10 A. He referred to him as a Boss, yes, sir.

11 Q. Thank you.

12 THE COURT: Cross?

13 MR. MCCARLEY: Yes, sir, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. MCCARLEY:

16 Q. Good afternoon, sir.

17 A. Yes, sir.

18 Q. You just testified -- in that same interview,
19 did Calhoun tell you Bope was the shooter?

20 MR. THURMOND: I object.

21 THE COURT: What's your objection?

22 MR. THURMOND: I mean, it's just -- Your Honor,
23 I'll withdraw the objection.

24 THE COURT: Overruled. Go ahead.

25 MR. MCCARLEY: Yes, sir.

1 BY MR. MCCARLEY:

2 Q. Okay. To clarify due to the fact of the
3 break --

4 A. Yes, sir.

5 Q. -- and I know it's convoluted and I'm sorry,
6 Kahlo Calhoun told you Bope told him he was the
7 shooter; is that correct?

8 A. Yes, sir.

9 Q. Thank you, sir.

10 THE COURT: Redirect?

11 MR. THURMOND: No, sir.

12 THE COURT: All right. You can step down.

13 Next witness.

14 MS. HALL: Investigator Chuck Cain.

15 THE COURT: You were already sworn in, so I
16 remind you you're still under oath.

17 THE WITNESS: Yes, sir.

18 DIRECT EXAMINATION

19 BY MS. HALL:

20 Q. Investigator Cain, you are the lead
21 investigator on this case; is that correct?

22 A. Yes, ma'am.

23 Q. As part of your investigation, on April 26th,
24 2015, did you take a statement from a Cheryll
25 Grubbs?

1 A. Yes, ma'am.

2 Q. At some point while speaking with her on April
3 26th, 2015, did she ask you on multiple occasions
4 about reward money?

5 A. Yes, ma'am.

6 Q. Reward money in exchange for her statement?

7 A. Yes, ma'am.

8 Q. No further questions.

9 THE COURT: Cross?

10 MR. MCCARLEY: Just a moment, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MCCARLEY:

13 Q. I believe it was April 26th when you met with
14 Ms. Grubbs?

15 A. Yes, sir.

16 Q. Is that when you're telling the State she made
17 these comments about a reward?

18 A. Yes, sir.

19 Q. Okay. You spoke with her on the phone?

20 A. Yes, sir.

21 Q. And then you went to her home?

22 A. Yes, sir.

23 Q. And you recorded that phone call?

24 A. I did not. I requested the Aiken County
25 Sheriff's Office dispatcher record it.

1 Q. So there's a recording of that phone call?

2 A. To my knowledge, yes, sir. I did put in that
3 request.

4 Q. And when you went to her home, you recorded it?

5 A. Audio. Yes, sir.

6 Q. Have you reviewed those recordings?

7 A. Yes, sir, I reviewed them and transcribed them
8 into my investigative report.

9 Q. Is there any mention whatsoever in either of
10 those of a reward?

11 A. Not during the audio-recorded interview, no,
12 sir.

13 Q. Thank you, sir.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MS. HALL:

17 Q. At what point did Cheryl Grubbs ask for the
18 reward money?

19 A. That was after the audio interview was
20 concluded and prior to my leaving her residence.

21 MS. HALL: No further questions.

22 RECROSS-EXAMINATION

23 BY MR. MCCARLEY:

24 Q. Do you have your written report, Investigator
25 Cain?

1 A. I have it in the chair I was sitting in, sir.

2 Q. Okay. Would you mind if I got it or somebody
3 got it?

4 MR. MCCARLEY: May I approach, Your Honor?

5 THE COURT: You may.

6 MR. MCCARLEY: Yes, sir.

7 BY MR. MCCARLEY:

8 Q. Could you please point me to where in there she
9 asks for a reward?

10 A. It's not in here, sir.

11 Q. Okay. No further questions.

12 THE COURT: All right. You can step down.

13 Thank you.

14 Next witness.

15 MR. THURMOND: State calls Captain Gallam.

16 THE COURT: I'll remind you that you're still
17 under oath.

18 THE WITNESS: Yes, sir.

19 (State's Exhibit No. 65 marked for
20 identification.)

21 DIRECT EXAMINATION

22 BY MR. THURMOND:

23 Q. Welcome back.

24 A. Yes, sir.

25 Q. I want to show you what's marked as State's

1 Exhibit No. 65 -- just a second.

2 MR. THURMOND: We need a sidebar.

3 (Sidebar conference.)

4 BY MR. THURMOND:

5 Q. Let's try this again. I'm going to show you
6 State's No. 65 and ask you to take a look at that.
7 Can you identify it?

8 A. Yes, sir. It's a call detail report out of our
9 inmate telephone system at the Aiken County
10 Detention Center.

11 Q. I think on your testimony on Tuesday, maybe, we
12 talked about the Securus system and the call detail
13 platform documents at great length; is that correct?

14 A. Yes, sir.

15 Q. Can you tell this jury when that call was made,
16 the date and the time?

17 A. The call was made on June 10th, 2016, at 2:36
18 and 32 seconds from a phone in C4 which is a housing
19 unit at the Aiken County Detention Center to a phone
20 number of (803) 522-9458.

21 Q. And let me show you what's been marked as
22 State's 63 and ask if you can take a look at that
23 and identify that for me?

24 A. This is a downloaded call from the platform of
25 that particular call.

1 Q. The call that you just discussed?

2 A. Yes, sir.

3 Q. And have you initialed this as being a copy of
4 the call --

5 A. Yes, sir.

6 MR. THURMOND: Your Honor, we would offer 65
7 and 63 into evidence and would move to publish 63 at
8 this time.

9 THE COURT: Over objections, admitted. You may
10 publish.

11 (State's Exhibit Nos. 63 and 65 admitted into
12 evidence.)

13 MR. THURMOND: Your Honor, in the interest of
14 time, if we can go to, I think, 12 minutes on the
15 call and play this relative piece. The jury doesn't
16 need to hear 15 minutes of the call.

17 THE COURT: Okay.

18 MR. THURMOND: Your Honor, just for the record,
19 I believe Mr. Brighthop authenticated the voice of
20 Mr. Williams being on this CD.

21 THE COURT: All right.

22 (State's Exhibit No. 63 published.)

23 MR. THURMOND: No further questions of Captain
24 Gallam.

25 THE COURT: Anything else?

1 MR. MCCARLEY: No questions, Your Honor.

2 THE COURT: Do you have another excerpt as
3 well?

4 MR. THURMOND: No, sir.

5 THE COURT: Just the one?

6 MR. THURMOND: Yes, sir.

7 THE COURT: All right. You can step down.
8 Anything else from the State?

9 MR. THURMOND: We will re-rest, Your Honor.

10 THE COURT: All right. Now, folks, you have
11 heard all of the evidence that you are going to hear
12 in the trial. What we have to do is there are some
13 legal matters and have some discussion about the
14 jury charges, so I'm going to go ahead and send you
15 to lunch now. We'll take care of that, get a bite
16 to eat ourselves, and then we'll come back after
17 lunch and have the closing arguments and the charge
18 on the law.

19 Now, while you have heard all the evidence, it
20 is still improper for you to begin your
21 deliberations because, one, you haven't heard the
22 closing arguments, and, two, I haven't told you what
23 the law is that applies in this kind of case.

24 So, again, if you go to lunch with somebody,
25 don't talk about the case, don't discuss witness

1 demeanor, anything; don't try to find out about the
2 case on the internet, look in the news media or
3 anything to do with the case. Just go and enjoy and
4 have a nice lunch.

5 It's a quarter to one right now. If you would
6 be back in the jury room at 2:15; give you an hour
7 and a half, we should be ready to go at that time.
8 So we'll see you back at 2:15.

9 (The jury exits the courtroom at 1:43 PM.)

10 THE COURT: All right.

11 MR. BUSH: Your Honor, just for the record,
12 we'd like to renew our motion for directed verdict.

13 THE COURT: I was getting ready to ask you
14 that.

15 All right. For the same reasons, they're
16 denied.

17 Now, Dan has gone to go print off the jury
18 charges that we've worked on. You had earlier
19 indicated that you might be asking for a
20 lesser-included. I don't see any evidence on that,
21 but is that still your request?

22 MR. MCCARLEY: The only evidence I think, Your
23 Honor, that I would cite -- I'm having a little
24 trouble getting back to it right now. There was a
25 statement I asked Demarius Jefferson in regards to

1 his statement about tussling with the -- Brisco
2 pulling the trigger, tussling in the car and it went
3 off and that's why it hit her and not him. So I
4 believe the threshold is any evidence. And if
5 there's any evidence, then we get the involuntary
6 charge.

7 THE COURT: How would that get you to
8 involuntary manslaughter? At best, it would get you
9 a charge for accident. But I don't see involuntary
10 manslaughter.

11 MR. MCCARLEY: Yes, sir. I would then request,
12 at best, the charge for accident.

13 MS. HALL: Your Honor, the statement that he's
14 referring to, he did ask Mr. Jefferson if he made
15 that statement and he said no.

16 THE COURT: So he denied making the statement.
17 Well, then you're not entitled to it.

18 MR. MCCARLEY: Absolutely. Thank you, Your
19 Honor.

20 THE COURT: You handed me up a case asking for
21 a special charge on informant instruction. I
22 haven't had a chance to look at the case yet. I
23 have a, you know, general credibility of the witness
24 charge, which I'm inclined to say covers it. And
25 this might be a little bit fact-specific, but it's a

1 Fourth Circuit case, I'll read it during lunch, but
2 I haven't had a chance to yet.

3 Have you got any thoughts? Have you seen
4 his -- he sent me a case with some highlighted
5 circled language saying I want this charged.

6 MS. HALL: Yes, Your Honor. I received it when
7 you did, so I have not had an opportunity to review
8 the case in full. However, part of that jury
9 instruction is evidence against -- that testimony of
10 an informer who provides evidence against a
11 defendant for pay. There's no evidence in this case
12 that someone was paid to provide information or for
13 immunity from punishment. Both of those were
14 referenced and there's been no testimony to that
15 effect.

16 THE COURT: At first glance, I just was asking
17 there's no evidence of a witness who got paid
18 anything, everybody that testified said they didn't
19 get any plea deals, no -- I'm not seeing how it's
20 appropriate to any of the witnesses that testified.

21 MR. MCCARLEY: Well, the State just argued that
22 somebody asked for a reward, pretty vigorously
23 argued that point.

24 THE COURT: She didn't get paid a reward, she
25 just asked about it, correct?

1 MS. HALL: Correct, Your Honor.

2 MR. MCCARLEY: Does seem to be the current
3 stated situation.

4 THE COURT: Well, I'll read the case.

5 If you'll hang around a minute or two while Dan
6 brings y'all a copy, we'll give it to you and you
7 can look at it. How about let's meet back at 2:00
8 and have a charge conference?

9 (Luncheon recess 12:27 PM - 2:05 PM.)

10 THE COURT: Let's review the jury charges.

11 Is there anything from the State?

12 MS. HALL: Your Honor, no additions or
13 substractions from the jury charges provided by Your
14 Honor.

15 I would just further like to note as to the
16 requested defense jury instruction on paid
17 informants that it specifically is for evidence
18 testimony of an informer who was provided evidence
19 against a defendant for pay. There's absolutely no
20 one in this case who has provided testimony against
21 Santonio Williams that has been paid.

22 Even the reference that Mr. McCarley made about
23 Cheryll Grubbs asking for reward money, she was not,
24 in fact, paid nor did she testify against the
25 defendant, so that would not be applicable nor would

1 immunity from punishment. There's no evidence on
2 that.

3 Further, Your Honor, in this case, it states
4 that the government's case was built entirely on the
5 foundation of paid informant testimony. That's --
6 we don't even have a single witness whose testimony
7 is based off of paid information.

8 THE COURT: Okay.

9 MR. MCCARLEY: Nothing from the Defense.

10 MS. HALL: I would just like to note that Your
11 Honor's -- let's see -- proposed jury instruction on
12 credibility of witnesses does cover bias, prejudice,
13 or motive of the witnesses to testify.

14 THE COURT: All right. Mr. McCarley?

15 MR. MCCARLEY: Nothing from the Defense.

16 THE COURT: Well, that's just the easiest thing
17 we've done all week.

18 MR. MCCARLEY: We would like to bring Beatte to
19 Your Honor's attention, new case in regards to the
20 order of closing.

21 THE COURT: They go first, you go second, and
22 they have to limit their reply to whatever you bring
23 up in yours that was not covered in their opening.

24 MR. MCCARLEY: And, my understanding of the
25 case, they have to open in full, correct?

1 THE COURT: Yes, open in full on the law and
2 the facts. You have the middle argument, as they're
3 calling it now, in full, and then they are limited
4 to replying to what you argued and any new matter.

5 MR. MCCARLEY: Yes, sir.

6 THE COURT: Is that what you understand?

7 MS. HALL: Yes, sir.

8 THE COURT: How long do you think you'll need?

9 MR. THURMOND: About an hour maybe.

10 THE COURT: An hour?

11 MR. THURMOND: Maximum.

12 THE COURT: How long do you think you'll need?

13 MR. MCCARLEY: Fifteen to 30 minutes, probably
14 not even that.

15 THE COURT: All right. Well --

16 MR. THURMOND: I'll do better than an hour.

17 THE COURT: All right. I'll start coughing and
18 hacking around 45 minutes.

19 Okay. Well, then -- how are we doing on
20 jurors? Are they all here?

21 THE BAILIFF: Yes, sir.

22 THE COURT: Well, the defendant is in the
23 courtroom.

24 Bring them in.

25 THE BAILIFF: We're missing two.

1 THE COURT: Okay. Let me know when they're all
2 here.

3 THE BAILIFF: Okay.

4 THE COURT: Before I bring the jury in, there's
5 been some word passed on to me about people that are
6 in the audience have been taking pictures, posting
7 them on Facebook or different social media accounts.
8 I've allowed people to have their phones in an off
9 position in the courtroom, but you are not allowed
10 to take photographs in the courtroom without
11 permission of the Court, Newspaper reporters have
12 to sign a special form.

13 There is to be no photographs, no videos, no
14 audios taken of this. If the bailiffs bring that to
15 my attention that that is going on, we will seize
16 those phones. Is that understood by everyone?

17 (Audience answers in the affirmative.)

18 THE COURT: All right. Let's bring the jury
19 in.

20 (The jury enters the courtroom at 2:16 PM.)

21 THE COURT: Okay. Ladies and gentlemen,
22 welcome back. We're now into the final phase of the
23 trial in which you will have closing arguments by
24 the lawyers, and then I will charge you on the law,
25 then you will retire to consider your verdict.

1 Now, as I told you at the beginning of the
2 trial, closing arguments are the lawyers are going
3 to get up, they're going to review the evidence that
4 you've heard from witnesses and that you may have
5 seen in photographs or documents that came into
6 evidence. What they are saying now though is not to
7 be considered by you as evidence, it is only
8 argument.

9 They'll be previewing the law that I will be
10 charging you and making an argument to persuade you
11 to render a verdict on their client's behalf. But,
12 again, it's important you understand they're not
13 witnesses, they're not testifying. What they say is
14 not to be considered by you as evidence.

15 Now, our rules of procedure provide that
16 because the State has the burden of proof, they open
17 in full, then the Defendant makes their argument,
18 and then the State will have the right to come back
19 and reply to any argument that was made by the
20 Defense. So you will hear from the solicitor twice,
21 the defense attorney once.

22 All right. So, Mr. Solicitor, if you are
23 ready, you may begin.

24 MR. THURMOND: Thank you, Your Honor. May it
25 please the Court.

1 May it please you, Madam Forelady, and ladies
2 and gentlemen of the jury.

3 It's been a long few days and y'all have
4 probably had your fill of lawyers for a while. But
5 I ask you to listen to me now.

6 I have listened and watched and watched y'all
7 observe the witnesses, thoughtfully look at the
8 evidence, and a number of words come to mind as I
9 have participated in this trial this week: Sadness,
10 cruelty, inhumanity, unfairness, recklessness,
11 senseless, man's inhumanity to one's fellow man,
12 someone with a void of a conscience and
13 responsibility, and a complete and total disrespect
14 for the rule of the law, the rule of law in South
15 Carolina.

16 I spent some time thinking about
17 this precious child of our community. Y'all didn't
18 know her, I didn't know her. We've kind of had to
19 come to know her through some pretty tragic events.
20 And as I think about her laying on the ground out
21 there in front of Diamond Street, out in the dirt,
22 with her life truly running out of her, I think,
23 what was she thinking? Why me? This isn't fair. I
24 didn't do nothing. I hope to go to college, I want
25 to get married, I hope to have children. And,

1 folks, in the blink of an eye, it's all gone.

2 A 450-grain projectile used for hunting large
3 game is fired through her body at close range. I
4 hate that we had to show you photographs, but y'all
5 have kind of seen what we have to do to get every
6 bit of evidence in front of you. But this ripped
7 her to pieces and she died within minutes
8 afterwards; died senselessly, horribly, and
9 tragically. And for what? That bullet, ladies and
10 gentlemen, that's malice, it's meanness, it's evil.

11 I want to take just a few moments to talk about
12 the law of this case. And the law is really not
13 that complicated. This man has been charged with
14 murder, which is the unlawful, intentional killing
15 of a human being with malice. It isn't in dispute
16 that Ms. is deceased, what is in dispute is
17 this defendant's guilt.

18 Malice is not a really complicated term. You
19 don't need a law degree to understand it. Ms. Hall
20 probably said it pretty succinctly in her opening
21 statement: Malice is mean, malice is hateful,
22 malice is evil, malice is firing a shotgun into a
23 crowd of children and not caring who you hit. I
24 don't know what's worse, specifically targeting
25 somebody or just blasting into a crowd and not

1 caring and driving away. But malice is evil,
2 wicked, doesn't have to be some great plan.

3 I think you're going to hear in this case there
4 was some planning. Mr. Williams kind of had a plan.
5 It was poorly conceived and even more poorly
6 executed, but he had a plan to go there. But it can
7 develop in the blink of an eye. In this case I
8 think it developed considerably quicker than in a
9 blink. I think there was considerable calculation,
10 considerable planning.

11 The Judge is going to instruct you on a body of
12 law called transferred intent. And, again, that
13 sounds like kind of a 50-cent phrase, but it's just
14 a doctrine that if Santonio Williams has malice
15 towards Taquan Coach who is seated two positions
16 down from his sister on Diamond Street and as the
17 car is moving and he's aiming trying to shoot Taquan
18 Coach but misses just barely, just by a few feet,
19 and executes if he had that intent to
20 hurt Taquan Coach or anyone else there, that that
21 malice is transferred to the person who was struck
22 and the person who died. So keep those things in
23 mind.

24 You know, there's always an inference of malice
25 when a deadly weapon is used. And malice can be

1 just the complete outrageous reckless act of firing
2 a deadly weapon into a group of people, but just
3 keep thinking mean. That's what this case was, it
4 was just plain mean.

5 So we've talked a little bit about motive.
6 Motive is not an element of murder or any crime. We
7 don't have to prove a motive. And sometimes in a
8 case like this, we like to introduce motive evidence
9 because we think it helps explain the inexplicable.
10 And this child getting killed like she did is truly
11 inexplicable under any circumstances. But we have
12 talked a little bit about how we got to this point.

13 This malice and this motive began outside the
14 Ridgeview Apartments on January the 11th, 2015. The
15 detective testified that this picture, which was
16 uploaded on Mr. Williams' Facebook page, was taken
17 the day Donnie Brooks was killed on January the 11th
18 and was taken so soon after his murder that the
19 crime scene people were still there. So imagine
20 that, he's there across the street and that fuse has
21 been lit, that anger, they killed my brother.

22 And y'all saw all these posts. And I apologize
23 for all the language that y'all have heard this
24 week. I know most of us do not talk that way. Rest
25 in piece, I love you forever. Here is Donnie

1 Brooks. His nickname is Bad Ass. He's holding a
2 gold chain that looks like a chain saw blade. And I
3 suspect he earned his nickname. And the photographs
4 of the people closest to him and the photographs
5 that were all posted on Facebook the day of his
6 death. I think that is significant. I think that
7 helps you understand that rage and that lit fuse
8 that started that day.

9 Y'all heard from Agent Turner with SLED who
10 worked that crime scene, and it's one of those
11 situations where everybody scatters and nobody wants
12 to cooperate and law enforcement is there to do the
13 best they can. But Christian Gordon did come back
14 on the 21st of February, you know, a little more
15 than a month after Donnie Brooks' murder, and he
16 said, I saw Taquan Coach running away, was the only
17 person there from the direction of where the shots
18 were fired, I was there and he saw it.

19 So that's the evidence in that case that the
20 police have. That case is still open. Taquan Coach
21 is a suspect. Taquan Coach is a suspect in the eyes
22 of law enforcement and in the eyes of the streets.
23 And the streets were going to get their vengeance,
24 they were going to get their retribution. And they
25 ended up here on Diamond Street on the 14th of April

1 of 2015.

2 And you can see from the blood at the top of
3 this wall that that is where was
4 struck, sitting two positions from her brother,
5 Taquan Coach. I asked him that question, I said,
6 why in the world would anybody want to be shooting
7 at a 16-year-old girl? He said, they weren't
8 shooting at her. He knows who they were shooting
9 at.

10 I want to talk with you a little bit about
11 witnesses and witnesses generally, and then we'll
12 kind of cut into this case. It's been quite a web,
13 and y'all have been most patient as you've been
14 ushered in and out throughout the week. And we have
15 plucked evidence from here and evidence from here to
16 get as full a picture as we can for you of what
17 happened on that fateful evening.

18 We brought some witnesses in in orange
19 jumpsuits. We run 22 weeks of court a year here in
20 Aiken and we're all used to it, maybe y'all aren't.
21 We don't have the luxury of going to the local
22 rotary club to scoop up some witnesses to come
23 testify for us in court, we kind of take them how we
24 find them.

25 You'd probably be surprised to know that

1 drive-by shootings don't happen at high noon in
2 front of nice places. They are cowardly acts that
3 happen late at night in parts of this county where
4 many of you may have never frequented or even knew
5 exist.

6 But Mr. Harris, Demorris Harris, he goes by
7 Bope, he was here, orange jumpsuit; we had Victor
8 Mercuri here in an orange or red jumpsuit, Christian
9 Gordon here in his jumpsuit. I don't try to play
10 dress-up with these guys. I'm not going to put them
11 in front of you in a cardigan and turtle neck and
12 hide their tattoos. I want you to see them for who
13 they are. That's what real life is.

14 I want y'all to be able to step out of the jury
15 box and participate in the case inasmuch as trying
16 to put yourself there at the scene and who the
17 players are. And if you see somebody in prison garb
18 and your first instance is they've been arrested, I
19 would never believe a word out of their mouth, that
20 really misunderstands the context that we try to
21 show with all of these witnesses.

22 Our name of the game here is to corroborate.
23 We don't ask you to believe one person in a vacuum.
24 We don't want to take just one little data point and
25 ask you to believe it as fact. Our burden of proof

1 is proof beyond a reasonable doubt. We welcome that
2 burden. That's all we do. That's what my office
3 does is prove cases beyond a reasonable doubt.

4 And it's not some distant theory that you can't
5 grasp and the line is here, then it's here, then
6 it's here, it's just being firmly convinced of the
7 guilt of the defendant. And you get firmly
8 convinced by listening to the witnesses, by looking
9 at the evidence, by using your God-given common
10 sense that you don't leave out in the parking lot.
11 It's with you here, it's with you all the time and
12 your life experiences.

13 You know, I know when my kids are telling the
14 truth. Y'all do too. Y'all know how to size up
15 people, observe their body language, consider why
16 they might have a reason to lie. Or do you believe
17 part of their testimony or some of it or none of it?
18 And we did this exchange with these folks with
19 pending charges.

20 And, again, we always like to get it out there
21 in front of you. This is never a hide-the-ball
22 endeavor with the Solicitor's Office. So we ask
23 them, what are your pending charges and what promise
24 has been made? Well, guess what? There's two ways
25 to get this evidence in, and the wily defense lawyer

1 knows that too. We've got to get the evidence in.

2 So it's either your case was resolved and you
3 got a deal and your testimony has been bought and
4 paid for or your case has not been resolved yet so
5 you're going to be willing to say or do anything and
6 everything to achieve a desired effect. We've got
7 to pick one, you know, we've got to get the
8 information to you.

9 So we had Mr. Harris, Mr. Jefferson, and
10 Mr. Davis. They're kind of the key people, the
11 central players in this thing. And we really sought
12 to corroborate everything that any one of them said.
13 When they gave us all this information, I don't
14 think they knew what the others were saying. And I
15 can assure you they've never heard of the FBI cell
16 phone mapping team, which completely corroborated
17 where those three guys said they were on the night
18 of the 14th with key geographic locations with key
19 moments in time. And I'll get into all that in a
20 little bit.

21 So be looking where we have sought to establish
22 or corroborate information. We didn't have one
23 person say it was a black car. Everybody who was
24 involved, we had them identify that as a Mercedes
25 Navas' car. You know, every location they went, we

1 didn't just ask one person, we confirmed it with all
2 three of them. Every place they went, we sought to
3 add additional bits of information to corroborate
4 what they said.

5 And this is just a couple of examples: Both
6 Harris, Jefferson, and Davis, they say Mr. Williams
7 was with them. They say, we went to 200 Philpot
8 Street to play basketball and we were there till
9 about dark and we left because it was getting dark,
10 and the four of us were there and there was a lot of
11 dirt around the basketball court. We said, oh,
12 really?

13 So then we ask them about this and we showed
14 them these, State's 7, State's 6 and State's 8.
15 And, my goodness, there's dirt from around that
16 basketball court in every passenger seating position
17 in the car. So it's things like that that we are
18 always seeking to do.

19 Like this picture right here. You know,
20 Mr. Jefferson had Mercedes Navas' cell phone with
21 him that day. She had her iPad so they could,
22 essentially, send a text message and it would allow
23 them to communicate. And he said his cell phone
24 died while they were at the basketball courts, but
25 he communicated on her phone all day. And when

1 Mr. Harris and Mr. Williams got back from committing
2 this horrible deed, he was able to get power to his
3 phone. Well, my goodness, they corroborate that.
4 That's her pink cell phone charger that she told us
5 about.

6 You know, I hope you looked at the body
7 language of the State's witnesses, the lay witnesses
8 of Harris, Jefferson, Davis. They didn't want to be
9 here, they were here pursuant to a subpoena. They
10 acted scared to be here. You heard Investigator
11 Cain tell you when Mr. Harris was driving him
12 around, he was like a scared cat with the jacket up,
13 the hood down, and every time they'd stop, he'd
14 hunker down.

15 The streets are tough. There's all kinds of
16 pressure not to cooperate. There's all kinds of
17 retribution for being a snitch. There's all kinds
18 of pressure to run, to stay away, to don't come
19 forward, to do what's right. Folks, that's the law
20 of the streets. That's not the law of the land, but
21 it's the law of the streets.

22 But, you know, Mr. Jefferson, warrants and all,
23 he had some courage. He had some courage. He knew
24 something was not right. He knew when that car came
25 back, something was not right. And he had seen

1 Santonio Williams with a shotgun and he had heard a
2 statement that Santonio Williams made, that I was
3 shooting at the Wolf Pack, and put two and two
4 together.

5 And that Friday -- you don't have to take my
6 word for it. These are Mercedes' cell phone
7 records. Investigator Cain sat up there, and every
8 time Mr. Jefferson called the sheriff's office on
9 that Friday, something is wrong, something is wrong.
10 I guessed it crossed the line of whatever code is
11 out there when an innocent little girl who had
12 absolutely nothing to do with this is killed. He
13 came forward. He had a conscience. This isn't
14 right. I don't know if that's the first time in his
15 whole life he's ever done something right. This
16 case was absolutely a whodunit until he did that.

17 Anyway, I want to talk with you a little bit
18 about some of the admissions made by Santonio
19 Williams in this case as well as some of the
20 deceptions in the case.

21 So if we can pull that up!

22 Admissions by the Defendant. Keep your mouth
23 closed, wipe the car down with bleach. That's what
24 Mr. Jefferson told us. You know what makes that a
25 true statement? Mr. Jefferson says, yeah, I wiped

1 the car down with bleach. It would have been so
2 easy for him to say, I ignored him, I didn't do it,
3 and kind of further distance himself from this
4 thing. All these guys want to be as far away from
5 it as possible. But keep your mouth closed, wipe
6 the car down with bleach. Somebody who says that
7 would have a reason to want Mr. Jefferson to keep
8 his mouth closed, would have a reason to want the
9 car wiped down.

10 Have you mentioned my name to the police?
11 That's what Mercedes Navas said. She don't have a
12 dog in this fight. USC-Aiken student, loaned her
13 car to her boyfriend, boyfriend loans her car to
14 Santonio Williams. Have you mentioned my name to
15 the police? Why, ladies and gentlemen, would that
16 question need to be asked? What had he done that
17 required asking the question have you mentioned my
18 name to the police shortly after the murder?

19 I was shooting at the Wolf Pack. That's what
20 Mr. Jefferson told us. Two days after this murder,
21 he says he's at the Thomas Park basketball courts
22 and he sees Santonio Williams speaking with some
23 other people and overhears him saying that shooting
24 at the Wolf Pack.

25 Agent Phillip Turner told us about the Wolf

1 Pack. And, my goodness, Taquan Coach is in the Wolf
2 Pack. And oh, my goodness, Tyson Coleman, whose
3 birthday party it was, is in the Wolf Pack. And oh,
4 my goodness, both of them were together there on
5 Diamond Street on the night of April the 14th, 2015.

6 Mr. Mercuri, I meant to kill them both, but I
7 missed the N and shot the bitch. Victor Mercuri.
8 Let's talk about that for a moment. That's a brag.
9 That's in response to Mr. Williams being teased by
10 people in his pod, teasing him for not being a
11 better shot, teasing him for not shooting his
12 intended target. And he's got to turn it into a
13 boast, I meant to shoot both of them, I was going to
14 shoot both of them.

15 And he goes on, Santonio Williams, saying, I
16 was supposed to kill the guy responsible for killing
17 my brother and obtain a higher rank within the gang.
18 Mr. Mercuri. We don't ask you to accept those
19 statements by Mr. Mercuri, again, in a vacuum. We
20 seek to corroborate.

21 You heard from Captain Nick Gallam with the
22 detention center. And we talked about the housing
23 arrangements there. And he showed us the charts and
24 who was in the pods. And he told you there was a
25 20-day period where Mr. Santonio Williams and

1 Mr. Victor Mercuri were on the same pod and a period
2 of six hours a day to recreate for a total of 120
3 hours where they could have been in each other's
4 presence.

5 Another interesting thing that Mr. Mercuri
6 said, this conversation right here, I was supposed
7 to kill the guy responsible for killing my brother
8 and get a higher rank within the gang. He's got a
9 specific recollection that he and his roommate,
10 Mr. Pownall, were both on lockdown that day. And
11 even though they're on lockdown, Mr. Pownall could
12 get to the front door. Everybody else out on rec.
13 Mr. Santonio Williams is out on rec. And that
14 conversation is through the door.

15 So what did we do? We went back and looked at
16 the records. And, my goodness, on May 20th of 2016,
17 Mr. Pownall and Mr. Mercuri have been written up for
18 discipline and they both lost their recreation
19 privileges on May the 20th and would have both been
20 in that cell while everybody else was out on rec.
21 So I suggest to you that statement has been
22 corroborated with facts that we know to be true.

23 Checkmate that king. We got till November.

24 Santonio Williams. I want to take a little bit of
25 time just to talk about the grave seriousness of

1 checkmate that king, we got till November. Y'all
2 heard some testimony this case was supposed to be
3 tried back in November, so everybody is in kind of
4 hurry up, giddy-up mode to get the case ready for
5 trial.

6 Well, back on October 22nd of 2016,
7 Mr. Santonio Williams makes a call on Terence
8 Wideman's PIN, not his PIN number. Nick Gallam
9 talked about that, that that's a frequent tactic of
10 inmates in the detention center trying to evade
11 detection, trying to evade investigators from
12 listening to their phone calls by using someone
13 else's PIN. And y'all heard that first call about
14 checkmate and trying to find Christian Gordon.

15 Two days later, he finds him, October 24th,
16 2016, again, not using his own identity, using
17 Terence Wideman's PIN number. And he calls a guy
18 named Ashton Brighthop, who testified this morning,
19 I believe, testified reluctantly, but came in here
20 and told you the truth.

21 And how this works: So you've got layer of
22 deception, number one, calling from the jail on
23 Terence Wideman's PIN, calling Ashton Brighthop;
24 layer of deception number two, a guy named Mack
25 Nelson is standing next to Brighthop; Mack Nelson

1 then calls Christian Gordon, they're on
2 speakerphone, thus allowing Santonio Williams and
3 Christian Gordon to carry on what they believe to be
4 a high-level conversation, to use Santonio Williams'
5 term.

6 And y'all heard what they said. I suppose we
7 can pretend that this is some kind of, you know, a
8 chess tournament and this is chess talk, but that is
9 not common sense, that's not reality, and it's not
10 the facts of this case. Everybody heard Christian
11 Gordon saying, you told me where to look. You heard
12 Santonio Williams saying, have you been? Have you
13 been here? Have you been to the USC-Aiken campus?
14 Are you kidding me? To go eradicate a witness in a
15 criminal trial? Have you made sure you looked at
16 USC Aiken?

17 Christian Gordon said, I've looked for him
18 here, I've looked for him here. Santonio Williams,
19 kind of getting upset, if the shoe was on the other
20 foot, I'd be beating the bushes, I'd be out all the
21 time, I'd find him. How bad does Santonio Williams
22 not want Demarius Jefferson to offer his testimony?

23 How bad did he not want him to testify before
24 this jury? How bad did he want to conceal the truth
25 of this case from you? Up to killing, that's what

1 Christian Gordon said. I saw Christian Gordon
2 sitting up there. If he said that, I tend to
3 believe him. Hurt him, harm him, silence him, get
4 rid of him, to include killing him, if necessary.

5 That's what you call consciousness of guilt, to
6 go to that length to prevent his trial from seeing
7 the light of day. Well, folks, it has seen the
8 light of day. Christian Gordon came in and
9 testified. Demarius Jefferson, thank God didn't get
10 checkmated, and he was able to participate in the
11 trial.

12 Deception. Tell my lawyer you was with me.
13 Santonio Williams trying to secure a false alibi to
14 Santana Nesbitt, a sergeant in the Marine Corps. I
15 don't think she fell for it. Speaking of her, there
16 was some testimony that had to be corrected by the
17 judge when, I believe, Mr. Bush was asking her about
18 text messages with Santonio Williams. And they made
19 a big fuss about this UTC time and how it went back
20 five hours.

21 And the point of what they were trying to do
22 was represent or misrepresent that Santonio Williams
23 was sending text messages to Santana Nesbitt at 9:03
24 and 9:04 on the night of April the 14th and,
25 therefore, couldn't be pulling the trigger on a

1 shotgun at the same time. Oops, UTC time, as it had
2 to be corrected, was minus four hours, not minus
3 five hours. So now these are the facts: An hour
4 after Santonio Williams has slaughtered little
5 he's text messaging his girlfriend at
6 10:03 and 10:04, and those are the correct times.

7 Tell my lawyer you was with me. So she, this
8 sergeant in the Marine Corps, was supposed to
9 contact his attorney and tell a lie, tell a story,
10 be an alibi. And she's got some sense. They went
11 on to some other conversation and then she went back
12 and said, you mean on the phone with you?

13 She wasn't buying it. She wasn't going to draw
14 herself in the middle of this. She was not going to
15 alibi him. She was not going to tell his attorneys
16 or this jury or anybody else that she was with him
17 when she was not. If you hadn't done anything
18 wrong, if you hadn't been in the wrong spot, why you
19 got to ask someone else to say, tell them you was
20 with me? Deception.

21 I've mentioned this already, using Terence
22 Wideman's PIN number to circumvent the jail
23 monitoring system. That's what he would do when he
24 needed to talk about high-level stuff. We talked
25 about this too, Ashton Brighthop and Mack Nelson to

1 send a secret high-level message to Christian
2 Gordon.

3 More deception: The use of a Facebook alias,
4 Torez Suava. So whatever he wants to put on
5 Facebook, whether it's his phone number or all these
6 pictures of Donnie Brooks, you're not going to find
7 them under Santonio Williams, the authorities
8 aren't; it's going to be under this guy, Torez
9 Suava. He did use his middle name.

10 Deception. Was found hiding in Augusta on
11 April 28th, 2015, two weeks after the murder. Chuck
12 Cain said he got that warrant on April 21st, went to
13 the warrant division. They immediately go looking
14 for him. They go look at all the places he is
15 supposed to be. Nobody finds him. He's holed up in
16 an apartment in Augusta.

17 How about this one? We got this from his phone
18 call with Ms. Santana Nesbitt. Immediately after
19 the murder, he changed his phone number. Why in the
20 world would he want to do that? Because he wanted
21 to disassociate himself from that number? And
22 speaking of trying to disassociate himself from his
23 number, (706) 755-9252, guess what, folks, that's
24 his cell number.

25 We first learn from the TLO report that

1 Investigator Chuck Cain ran and he told us it's kind
2 of like a law enforcement search engine. You can
3 type in someone's name and date of birth and it
4 draws information from all sources, to include a
5 phone number, if they can find one. And very early
6 on, he was able to get a phone number associated
7 with Santonio Williams.

8 Navas' phone records. Again, this is
9 Mr. Jefferson's girlfriend. Jefferson was using her
10 phone. (706) 755-9252 is in her phone records.
11 That (706) 755-9252 was identified by Santana
12 Nesbitt as the number that she called him on and he
13 called her on.

14 And, again, we probably could have stopped with
15 the TLO report. But our entire theme and our entire
16 way of doing business is trying to prove, try to
17 corroborate, don't do just one or two steps, let's
18 see what we can put together to get a credible,
19 believable concrete package that said that that
20 number is his. And that number is important.

21 I hope y'all have seen how hard the Defense has
22 tried to disassociate themselves from this number
23 and get as far away from it and run from it as fast
24 as they can, that phone number IDed by Demarius
25 Jefferson. All right. Now we've got four sources

1 IDing it.

2 And how about this one, we got into his
3 Facebook page. Investigator Miano was able to get a
4 search warrant and get into the nonpublic posts and
5 texts on his Facebook. He gave out his number 137
6 times. He represented that number was, in fact,
7 his, and just today from this witness stand,
8 confirmed by Christian Gordon.

9 Christian Gordon confirmed that 30 minutes
10 before was killed, he called Santonio
11 Williams; ten minutes before she was killed,
12 Santonio Williams called Christian Gordon; one
13 minute after was killed, Santonio
14 called Christian Gordon. I could only imagine
15 driving through there, target acquired, one minute
16 after, mission accomplished.

17 All right. These are the cell towers in our
18 coverage area. And there's, I don't know, 100, 120
19 of them. FBI agent testified that there are three
20 sectors. So if there are 100 of them, there are 300
21 sectors and 300 opportunities for Mr. Williams to
22 not be using the same tower as Mr. Demarius
23 Jefferson at every moment.

24 Let's go to the next slide, please.

25 Okay. I want to run back through this with

1 y'all. This right here is 629 Celeste. That is
2 where Darian Davis was picked up, that is where
3 Mr. Harris and Mr. Jefferson say they went to get
4 him with Mr. Williams in the car. That's this
5 sector right here. Mr. Jefferson is using his phone
6 and Mr. Williams is using his phone. That makes
7 sense, that corroborates what Mr. Harris and
8 Mr. Jefferson, and Mr. Davis have said. They came
9 and picked me up, we were all together, corroborated
10 by the cell phone mapping with the FBI.

11 They then go down and travel through here --
12 and this is kind of our next geographic marker.
13 This is the 200 Philpot Lane. That's where
14 Mr. Harris, Mr. Jefferson, and Mr. Davis said they
15 played basketball at Mr. Jefferson's grandmother's
16 house with Santonio Williams. Again, while at this
17 location, they're using their phones, Mr. Jefferson
18 a number of times, Mr. Williams a number of times,
19 utilizing that sector, both using the same sector,
20 the three witnesses saying, the four of us were all
21 plying basketball together.

22 And incidentally, that was the court with the
23 dirt on it, where they got dirt on their shoes,
24 where they got dirt all in Ms. Navas' car, who said
25 she kept a very clean car, and there was dirt in all

1 four seating locations in that car.

2 Next slide, please -- oh, go back, sir.

3 This call here is kind of sad. That's the 8:23
4 call. 8:23, that's the incoming call from Christian
5 (Gordon to Santonio Williams. And it's at that
6 moment that there is a timer, a countdown, I submit
7 to you, on the life of

8 Next slide.

9 This is a critical slide too. 495 Brookside,
10 that's the city basketball courts. Why did they all
11 go there? Because it had gotten dark. There
12 weren't lights at the Philpot address. There were
13 lights here. Again, that makes sense. And, again,
14 Mr. Harris, Mr. Jefferson, and Mr. Davis, they say
15 we were all there at those basketball courts with
16 Santonio Williams, corroborated by the fact that
17 Mr. Williams' cell phone is utilizing that tower
18 right next to the basketball courts as is
19 Mr. Jefferson's. They are still together. But look
20 at this change right here. At 8:35, Mr. Williams
21 and Mr. Harris were rolling and they're rolling
22 towards Diamond Street.

23 Next slide.

24 This location right here is significant.

25 That's 710 Seymour Drive. Mr. Williams' cell phone

1 is utilizing that sector on that tower. Well, guess
2 what that is? It's the house that Mr. Harris said
3 they stopped at. It's the house that Mr. Harris
4 said, I stayed out front, Santonio Williams went
5 inside, came back with something, asked me to pop
6 the trunk. It's the house that was occupied by
7 Mr. Williams' sister.

8 Nobody in this case saw Demorris Harris show up
9 at that gas station toting a shotgun with him. The
10 only thing he and Mr. Jefferson and Mr. Davis were
11 toting was a basketball. But at some point between
12 the basketball court and Diamond Street, they arm
13 themselves. And Mr. Williams armed himself with a
14 shotgun and Mr. Williams got in the back seat of
15 that black four-door Honda at that point.

16 Again to corroborate what the other witnesses
17 said, Mr. Davis who testified, and clearly did not
18 want to be here, he really does not have a dog in
19 this fight, and Mr. Jefferson both say Santonio
20 asked to borrow the car.

21 And isn't it funny that as they're playing
22 basketball that afternoon -- funny is the wrong
23 word. Isn't it peculiar that everything is great
24 until 8:23 when Santonio Williams gets that call
25 from Christian Gordon, Donnie Brooks' brother? He

1 leaves, there's four guys playing, and it's .

2 Mr. Harris driving the car.

3 Mr. Harris tells you he's driving the car.

4 Mr. Jefferson tells you Mr. Harris is driving the

5 car. I wasn't going to let Mr. Williams drive the

6 car. Again, they all corroborate each other.

7 So they pick up this shotgun there at 710

8 Seymour Drive and are traveling to the incident

9 location. Okay? This next call down here is the

10 most critical. And at this point, little [REDACTED]

11 [REDACTED] is quickly running out of the hourglass.

12 8:57 PM, again, I showed y'all the chart of all

13 of the towers in Aiken County. There are a bunch of

14 them. Is that not just the worst possible luck in

15 the world, of all these towers at 8:57 PM, ten

16 minutes before she's murdered, that his phone is

17 using sector two on this tower, 1.8 miles from 219

18 Diamond Street? What an extraordinary coincidence,

19 folks.

20 Next slide, please.

21 Okay. This kind of tells it all right here.

22 911 call to Diamond Street. That call is made at

23 9:07. 9:07. Deputy Bruce Turner told us that. He

24 was the first on the scene. He responded literally

25 within two or three minutes of that call. One

1 minute. One minute after that 911 call goes out,
2 Santonio Williams, at 9:08, is using this sector one
3 on this tower. One minute. Guess who he's calling.
4 Christian Gordon, Donnie Brooks' brother, Taquan
5 Coach's nemesis. And then back over here, Mr.
6 Harris has driven back over here back to the
7 basketball court.

8 You know -- and, again, it's one of those
9 things that defense lawyers are well skilled at
10 playing both ways. If you say something different
11 than you said before, you're a liar; if you say
12 exactly the same thing you said before, you're also
13 a liar because nobody can say the same thing twice.
14 He's got an initial gap, Mr. Harris does, to his
15 story because he doesn't initially remember going
16 back to the basketball courts. He thought he went
17 to this other location, but then after he's had time
18 to think about it, he has a rock-solid memory that
19 he took Darian Davis home with Mr. Jefferson. And
20 logically, the only way he could take Darian Davis
21 home is if they had gone back to the basketball
22 courts first.

23 Next slide, please.

24 Again, that's the gas station where everybody
25 met up that day. I don't think Mr. Harris showed up

1 there toting a shotgun with him.

2 All right. We're having technical
3 difficulties, as they say, so I'm going to use the
4 smaller one.

5 Okay. Now, they all say, Mr. Harris
6 Mr. Jefferson, Mr. Davis, they took Darian Davis
7 home first with Mr. Williams in the car with them.
8 All right? There is Darian Davis' address. And
9 there are several calls from Jefferson's phone and
10 several calls from Williams' phone utilizing the
11 same tower. Logic tells you they are all still
12 together at that point. It corroborates what
13 Mr. Harris says and what Mr. Jefferson says and
14 Mr. Davis says: We were all back together at that
15 point, we left the basketball court together.

16 From there, they go to Chalet North, Jasmine
17 Allison's house. That is where both Mr. Jefferson
18 and Mr. Harris tell you that they saw Mr. Santonio
19 Williams with a shotgun and that he tried --
20 Mr. Jefferson said it was kind of wrapped up with a
21 towel at one point, they tried to stash it, they
22 tried to leave it there, and that Jasmine Allison
23 was having none of it. And that is when Mr. Harris
24 and Jefferson leave Mr. Williams.

25 And how do we know that, folks? Because at

1 10:53 PM, Mr. Jefferson is up here and at 10:54 PM,
2 Mr. Williams is down here. Their cell phones are
3 utilizing sectors of different towers. The logic
4 will tell you is they couldn't possibly be together
5 at that point and it corroborates that they split
6 up. It corroborates that Mr. Jefferson and
7 Mr. Harris went to Cheryll Grubbs' house. That was
8 the lady who testified this morning who was probably
9 still using methadone and Xanax and trying to tell
10 us what she recalled. I would encourage you to
11 judge her testimony very harshly.

12 And let me say this about Mr. Kahlo Calhoun: I
13 should have had a slide under my category of
14 deception for him as well. If you believe what he
15 came up here and said, he waited some 600 days with
16 really important exculpatory information relating to
17 a family member of his and, by the way, didn't come
18 forward and share it until the day after Demorris
19 Harris was to testify.

20 That is extraordinarily suspicious. That gets
21 put in the category of deception, it gets put in the
22 category of checkmate, it gets put in the category
23 of antics going on outside of a courtroom when we're
24 all wanting to try the case here and have the
25 evidence and testimony come from the witness stand

1 and have a jury of 12 citizens sit in judgment of
2 somebody, not that kind of stuff.

3 We put this tape in and then we had to -- got a
4 little messy there at the end. We had to call the
5 ATF in to correct his testimony that Mr. Calhoun
6 said he was in the community neighborhood group
7 called Boss and that his little brother, Little Red,
8 Little Santonio Williams, was also a member of Boss.
9 Matt Morlan had to come in and fix that.

10 And then, I don't know if y'all heard it, it
11 was the last thing we played, a tape that we put in
12 after Mr. Calhoun came up and told the story he
13 wanted to tell you. And it was a story that, oh, by
14 the way, Mr. Harris was, in fact, the shooter almost
15 two years after the fact in the middle of a trial.

16 So we played another tape from Santonio
17 Williams from the jail and it says this, pardon my
18 language: Bope should Goddamn go home soon. This
19 shit going to be dropped in the preliminary because
20 he really even ain't in the shit. The only reason
21 they got him was because DMob brought his name up.
22 That's what Santonio Williams had to say about the
23 complicity of Demorris Harris. That's what you need
24 to believe. Believe that from the defendant's
25 mouth.

1 I am just about to sit down. Y'all have seen a
2 number of these photos. This was, of course, the
3 basketball court. And we showed you on the graph
4 where that was and all these guys said, yeah, we
5 were there, we were there. They all corroborated
6 each other. They all said they went to this
7 location and that's where they dropped off the
8 shotgun and that's where they left Santonio
9 Williams, and that's all corroborated by the cell
10 phone mapping.

11 Again, when these guys give their stories and
12 with very few distinctions, the statements that they
13 gave and that they testified to, they largely
14 corroborated each other. I mean, seriously, for
15 guys whose day doesn't seem to start till about 2:00
16 every afternoon and don't do much, they pretty much
17 told it like it was. Their stories, with very few
18 exceptions, were overlays of each other. And then
19 when you add that to it, folks, that's proof beyond
20 a reasonable doubt. That's absolute proof beyond a
21 reasonable doubt.

22 I'm getting ready to sit down and I don't know
23 if I'm going to have an opportunity or not to speak
24 to you again. Y'all are getting ready to get
25 Defense Lawyer 101, if you will. They're going to

1 call all of our witnesses liars, they're going to
2 take a big old bucket of mud and dump it all over
3 the exhibits, they're going to impugn Investigator
4 Chuck Cain with his 25 years' experience and all the
5 things he did wrong and all the mistakes he made.
6 That's just part of it. I encourage you to listen
7 to what you've heard from the witness stand, to look
8 at the evidence, but use your God-given common
9 sense. We know what happened here, folks. We know
10 what happened.

11 This family -- that's Ms. Beverly Coach. She's
12 been sitting here all week. She's been waiting
13 almost two years for this moment. She's been
14 waiting for justice. Hold that man responsible,
15 hold him accountable, tell him what he did was wrong
16 to this child, to this family, and bring us a guilty
17 verdict. Thank you.

18 THE COURT: All right. Defense?

19 MR. MCCARLEY: Thank you very much, Your Honor.

20 I think the main difference between what the
21 government is asking you to do and what the actual
22 evidence is, is they're asking you to believe bits
23 and pieces. They're asking you to believe all of
24 it, everything they said, but that's not what came
25 from this witness stand. And I'm not asking you to

1 believe anything that came from that witness stand
2 because everything that came from that witness stand
3 had a plus and a minus. Almost everything that went
4 up there was a coin. It had a head and it had a
5 tail.

6 The most serious evidence in this case is
7 Demorris Bope Harris, says he was the driver of the
8 vehicle, told y'all that, said that my client was in
9 the back seat, saw a barrel of a shotgun go out the
10 window. That's what he told y'all. That's what he
11 waited a year -- almost a year, almost a year to
12 tell investigators. And he waited until he had a
13 kidnapping charge, completely unrelated kidnapping
14 charge.

15 And they want you to believe him, but they
16 don't want you to believe Kahlo Calhoun, who waited
17 600 days. So I guess the difference between 330
18 with a kidnapping charge and 600 days when they
19 don't have any leverage on him is the whole
20 difference. That's what they want you to hang your
21 hat on. That's what they want you to go back in
22 that jury room and hang your hat on.

23 They also want you to hang it from a cell phone
24 tower because a phone was in a vector; said that was
25 the worst luck in the word, worst possible luck in

1 the world was that your cell phone was in a vector.
2 The worst possible luck in the world was that little
3 girl. That's the worst possible luck in the world,
4 not your cell phone being in a vector.

5 Solicitor's Office said that my client or me
6 ran from the cell phone. That's not correct at all.
7 I asked Christian Gordon, you called him, you called
8 him, you called him eight more times, you called him
9 three times. They talked on the phone. It's very
10 clear that they're friends. Nobody -- I haven't
11 said y'all are friends. I'm not asking you to
12 believe Christian Gordon. I'm telling you, you
13 can't believe any of them. And that is reasonable
14 doubt from that stand.

15 The cell phone expert. I can't help thinking
16 about my grandmother telling me you can't put
17 lipstick on a pig. That's a smart man who works for
18 the FBI for a reason and does this. It's not GPS.
19 It's not GPS, it's just not. If it was, he would
20 have said it. If they had evidence beyond a
21 reasonable doubt, they would have absolutely found
22 it, I trust that.

23 And I personally disagree with the fact that I
24 would impugn Chuck Cain, Investigator Chuck Cain,
25 for who I have a lot of respect, if not the utmost.

1 If there was evidence beyond a reasonable doubt in
2 this case, they would have found it. They would
3 have found it with the ATF, the FBI, South Carolina
4 Law Enforcement Division, SLED, Aiken County
5 Sheriff's Office, North Augusta Department of Public
6 Safety, the Solicitor's Office. Y'all have seen
7 these people. Y'all have seen them take the stand.

8 The people who investigate, these are smart,
9 good people doing everything they can, but it's just
10 not there. And when it's just not there, you can't
11 make it up. And I'm not telling you they're making
12 anything up, but they've shown you what's there.

13 You know what's there? Dirt in the floorboard
14 of a car, a guy's friend getting killed. What's
15 this evidence of? I mean, being kids? What's this
16 evidence of? My friend got killed and I'm sad and I
17 posted it on Facebook. Heaven forbid a friend of
18 mine gets killed and I post about it on Facebook.
19 He didn't say anything malicious in there. He uses
20 some awful language that makes me cringe. That
21 doesn't prove anything.

22 Solicitor's Office told you that it was never a
23 hide-the-ball endeavor. Then why don't they record
24 everything? Just give me some audio, give me some
25 video. It's amazing how you hold people's feet to

1 the fire when there's video out there, isn't it?
2 And I'm not asking you to believe them. I'm just
3 telling you the difference -- telling you, trying to
4 show you from the witness stand the difference,
5 something is video-recorded, something is
6 audio-recorded, you can't argue about it because you
7 pop a video in and you play it.

8 The Solicitor's Office doesn't want to hide the
9 ball? Why didn't they call Cheryll Grubbs who
10 they've known said where it was and call a spade a
11 spade and say, hey, you said this and that, but you
12 were on methadone or Xanax? That's taking them like
13 you see them because Chuck Cain went and talked to
14 her. Chuck Cain goes and talks to everybody, and
15 that's a fact. Why didn't they call Kahlo Calhoun
16 and discredit him? They don't take them like they
17 see them, they pick them and choose them.

18 Solicitor's Office told you that Victor
19 Mercuri, the gentleman that was in the cell block
20 and said that Santonio said those things,
21 corroborated testimony, corroborated other people's
22 testimony. You know he was the only person, only
23 person who said that anyone was trying to hurt that
24 little girl? Y'all have been hearing about this for
25 two days, two days, and he's the only one who said

1 anybody wanted to hurt that little girl.

2 The Solicitor's Office is arguing something
3 called transferred intent. If he was trying to hurt
4 the little girl, no need to transfer any intent.
5 And I'm not asking you to believe him, I'm just
6 telling you what he said.

7 The Solicitor's Office just asked you to
8 believe Santonio Williams, that Demorris Harris is
9 innocent of a charge they've got him charged with,
10 said words out of his mouth, you should believe.
11 Bope should be going home, but you can't believe the
12 words out of Bope's mouth because Bope contradicted
13 himself. Was I the driver or was I the shooter?
14 The night afterwards, he told somebody he was the
15 shooter. A year later with a kidnapping charge,
16 walking that fine line between helping himself and
17 getting charged with murder, he says what he said.

18 One of the most interesting things about
19 Demorris Harris' testimony, Bope, is that he said
20 after this happened, I got away from those people;
21 if I saw them, I'd go the other way. Then the phone
22 number he posted on Facebook called Demarius
23 Jefferson 55 times.

24 And I apologize on Mr. Bush's behalf that he
25 had to stand up here and read those 55 calls out,

1 but that's just 55 times that he made an
2 inconsistent statement. I'm not calling him -- you
3 want to call it a pretty little word, inconsistent
4 statement or lie. There are inconsistent
5 statements, people do forget things, don't they?
6 Demarius Jefferson forgot Demorris Harris was in the
7 car, went and talked to Chuck Cain, sat down on a
8 video, never mentioned it. People forget things.

9 Does the good Samaritan that the Solicitor's
10 Office just painted Demarius Jefferson to be? We
11 didn't have a break in the case till he called. And
12 then he omitted the truth, told me he was either
13 drunk, didn't remember, or not under oath. But they
14 want you to believe him. They want you to believe
15 him only on the points they want you to believe him
16 on because you've got to take all the rest and throw
17 it out. It's not correct. You've got to take it
18 all together. You've got to consider everything.
19 And I know it's a lot. And I know it's a lot
20 because it's a lot for me. I can barely keep it
21 straight.

22 In the very beginning, I discussed the fact
23 that the Solicitor's Office was absolutely and
24 completely able to prove there was a tragedy,
25 absolutely fact. And I told you that they would not

1 be able to prove the identity of who is responsible
2 for that tragedy. And they're not able to prove
3 that because of the two pillars of the American
4 criminal justice system, the presumption of
5 innocence and reasonable doubt.

6 In their opening, they said reasonable doubt
7 was a mirage. Judge is not going to tell you about
8 mirages in a couple minutes, but he's going to tell
9 you about reasonable doubt. And, ladies and
10 gentlemen, if you want to know for a fact it's not a
11 mirage, it came and it sat here and it talked to
12 you.

13 The two best definitions we have in law of
14 reasonable doubt are firmly convinced. Are you
15 firmly convinced of a fact? If you're firmly
16 convinced of a fact, then you believe that fact
17 beyond a reasonable doubt. The other definition is
18 a reasonable doubt is one that would cause someone
19 to hesitate to act. On the information of who took
20 that stand, are you going to act?

21 Who that took that stand are you firmly
22 convinced of? Are you firmly convinced that
23 Santonio had his phone? Demarius Jefferson didn't
24 have his, he had Mercedes Navas'. And Demorris
25 Harris didn't have his, he had his auntie's, or

1 didn't have one.

2 The presumption of innocence, another thing
3 that's not a mirage. It's a very real -- very, very
4 real thing and we all walk around with it all day
5 every day as American citizens, thank God. And
6 nobody can take that away besides the jury. Okay?
7 Not the full weight of the government brought to
8 bear on someone can that be taken away because y'all
9 are the final judges of that, absolutely and
10 completely. Y'all are the only ones who can do
11 that. And it's a very, very serious and very, very
12 special oath and charge that y'all are now
13 responsible for.

14 When I'm done and if the Solicitor's Office
15 says anything after that, the Judge is going to do
16 what's called charge you on the law. He's going to
17 give you the law to which you apply the facts that
18 you learn from that witness stand. And he's going
19 to talk to you a little bit about direct and
20 circumstantial evidence.

21 The law makes no distinction between the weight
22 or value to be given to either direct or
23 circumstantial evidence; however, to the extent the
24 State relies on circumstantial evidence, all of the
25 circumstances must be consistent with each other and

1 when taken together point conclusively to the guilt
2 of the accused beyond a reasonable doubt.

3 If these circumstances merely portray the
4 defendant's behavior as suspicious, the proof has
5 failed. That's circumstantial evidence. You know
6 what the only direct evidence in this case is?
7 Demorris Harris, who the day afterwards told
8 somebody he was the shooter.

9 I'm going to ask you to do the exact same thing
10 the solicitor asked you to do and take your common
11 sense back there, but also take an understanding of
12 the law as the Judge gives it to you about what
13 reasonable doubt is, about what the presumption of
14 innocence is, about what it means to be able to
15 remain silent.

16 Santonio and I, being his lawyer, don't have to
17 prove anything. You can't prove a negative.
18 Obviously y'all know what I do for a living, and I
19 love to talk, so I want to get up and I want -- you
20 know, you want to just say things and prove things.
21 But he doesn't have to prove anything, that's the
22 law.

23 They've got to prove it beyond a reasonable
24 doubt, and they haven't. Because all of the
25 reasonable doubt that was in the witness chair --

1 I'm not asking you to believe one thing, two things,
2 three things, four things. I'm asking you to take
3 it all together, because that's the law. You can't
4 pick. It's okay to be sad about it, to be mad about
5 it. It's a tragedy, absolutely a tragedy. But it's
6 not okay and it's not legal to convict the wrong
7 person of it.

8 THE COURT: Anything else from the State?

9 MR. THURMOND: No, Your Honor.

10 THE COURT: All right. Well, folks, I'm
11 getting ready to charge you on the law, probably
12 take me about 15 or 20 minutes. We've been at it a
13 while. Does anyone need to use the restroom?

14 No? Okay. Well, I told you several times
15 throughout the trial that you have certain duties, I
16 have certain duties. As the trial judge, it was my
17 responsibility to preside over the trial of the
18 case. I also have the duty to rule on things like
19 admissibility of evidence during the trial.

20 And I want to remind you, you're only to
21 consider the evidence that was presented to you in
22 this courtroom. That takes the form of testimony
23 from witnesses that you heard from the witness
24 stand, any exhibits that were made part of the
25 record, and any stipulations that we had of counsel.

1 Now, I also have the additional duty to charge
2 you on the law that applies to this kind of case.
3 It's your duty as jurors to accept this law and
4 apply the law as I now state it to you. If you
5 think you have some idea of what the law is or what
6 the law ought to be and it does not agree with what
7 I tell you the law is, you must forget that idea,
8 because you have sworn to accept the law and apply
9 the law exactly as I state it to you.

10 You are the judges of the facts. You are the
11 sole judges of the facts. I, as the trial judge,
12 cannot state, comment, or make any statement to the
13 jury about the facts in the case. You, the jury,
14 are the sole judges of the facts and you should not
15 infer from anything that I said during the progress
16 of the trial in ruling on admissibility of evidence
17 or otherwise or anything that I now state that I
18 have any opinion about the facts in this case. The
19 law does not allow me to have an opinion about the
20 facts of the case; that is solely a matter for you,
21 the jury, to determine.

22 As jurors, it is your duty to determine the
23 effect, the value, the weight, and the truth of the
24 evidence that was presented during this trial. I
25 want to remind you some of the things are new and

1 some things I told you before. And I want to remind
2 you, because I've already told you this, the fact
3 that the Defendant was arrested, charged and
4 indicted in this case is not evidence in the case,
5 it cannot be considered by you as evidence of guilt
6 in this case, nor does it present any presumption or
7 inference of guilt.

8 The indictment is simply the formal written
9 notice that contains the charges made against the
10 defendant. It's the formal document by which this
11 case is brought into the court. Again, the
12 indictment in this case alleged the following
13 offense against the defendant: Indictment
14 2016-GS-02-274 charged the defendant with murder.
15 The defendant pled not guilty to that indictment and
16 that plea puts the burden on the State to prove the
17 defendant guilty beyond a reasonable doubt.

18 I tell you that the -- a person that is charged
19 with committing a criminal offense in South Carolina
20 is never required to prove himself innocent. This
21 is an important rule of law in this country, that
22 the defendant in a criminal trial will always be
23 presumed to be innocent of the crime for which he is
24 indicted unless and until his guilt has been proven
25 by evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 This presumption of evidence [sic] is not a
3 mere legal theory, this is not just some legal
4 phrase, this is a substantial constitutional right
5 to which every defendant is entitled. This
6 presumption of innocence accompanies the defendant
7 from the time he is charged, throughout the trial,
8 unless and until you reach a verdict of guilt based
9 upon the evidence satisfying you of that guilt
10 beyond a reasonable doubt.

11 Again, you've heard this phrase. The State has
12 the burden of proving the defendant guilty beyond a
13 reasonable doubt. And I told you at the beginning
14 of the trial some of you may have served as a juror
15 in a civil case where you were told that it was only
16 necessary to prove that a fact is more likely true
17 than not true, such as by a greater weight or
18 preponderance of the evidence.

19 But in criminal cases, the State's proof must
20 be more powerful than that. It must be beyond a
21 reasonable doubt. Proof beyond a reasonable doubt
22 is proof that leaves you firmly convinced of the
23 defendant's guilt. Reasonable doubt has also been
24 defined as the kind of doubt that would cause a
25 reasonable person to hesitate to act.

1 There's very few things in this world that we
2 know with absolute certainty. And in criminal
3 cases, the law does not require proof that overcomes
4 every possible doubt. If, based on your
5 consideration of the evidence, you are firmly
6 convinced the defendant is guilty of the crime
7 charged, then you must find the defendant guilty.
8 If, on the other hand, you think there is a real
9 possibility the defendant is not guilty, then you
10 must give the defendant the benefit of the doubt and
11 find him not guilty. /

12 Now, during a trial, generally speaking, there
13 are two types of evidence that is presented.
14 There's direct evidence and there's circumstantial
15 evidence. Direct evidence directly proves the
16 existence of a fact and it does not require
17 deduction. Circumstantial evidence is a proof of a
18 chain of facts and circumstances that indicate the
19 existence of a fact. Crimes can be proven by
20 circumstantial evidence.

21 The law makes no distinction between the weight
22 or value to be given either direct or circumstantial
23 evidence; however, to the extent that the State
24 relies on circumstantial evidence, all of the
25 circumstances must be consistent with each other

1 and, when taken together, point conclusively to the
2 guilt of the accused beyond a reasonable doubt. If
3 these circumstances merely portray the defendant's
4 behavior as suspicious, the proof has failed.

5 The State has a burden of proving the defendant
6 guilty beyond a reasonable doubt and this burden
7 rests with the State regardless of whether the State
8 relies on direct evidence, circumstantial evidence,
9 or some combination of the two. I'll also remind
10 you that the statements made by the attorneys in
11 this case are not evidence.

12 Now, as jurors, you must necessarily determine
13 the credibility of witnesses who testify in this
14 case. Credibility simply means believability. It's
15 your duty as jurors to analyze and to evaluate the
16 evidence and determine which evidence convinces you
17 of its truth.

18 In determining the believability of witnesses
19 who testified in this case, you may believe one
20 witness over several witnesses or several witnesses
21 over one witness; you may believe the testimony of a
22 witness in its entirety or you can reject the
23 testimony of a witness in its entirety; you may
24 believe a part of the testimony of a witness and
25 reject the remaining part of the testimony of that

1 same witness. If you reject part, you may still
2 accept the remainder of a witness' testimony.

3 You may consider whether any witness has
4 exhibited to you any interest, bias, prejudice, or
5 any other motive in this case. You may consider the
6 appearance and demeanor of a witness while on the
7 witness stand. You are not bound to decide the case
8 based on the number of witnesses a side produces.

9 Now, I instruct you that the testimony of a
10 witness may be discredited or impeached by showing
11 that a witness has been convicted of a crime. Prior
12 conviction does not render a witness incompetent to
13 testify or necessarily indicate that the witness is
14 not reliable. Such conviction is merely a
15 circumstance which you may consider in determining
16 the credibility of a witness. It's for you to
17 determine the weight, if any, to be given to any
18 prior conviction as impeachment in determining
19 credibility.

20 You have also heard evidence that some
21 witnesses may have made statements outside of court
22 prior to testifying that are inconsistent with the
23 testimony that they gave at trial this week. The
24 evidence of a prior statement may only be considered
25 by you, the jury, to impeach or discredit the

1 witness. It may not be considered by you as
2 competent evidence of the fact to which the former
3 statements relate nor may it be used to establish
4 the existence of a fact in dispute.

5 I also talked to you about expert witnesses and
6 told you that we don't ordinarily let witnesses
7 testify about their opinion about evidence. We do
8 make an exception for expert witnesses, and those
9 are people who are experts because of education,
10 experience, specialized training in some field.
11 They can give their opinion and they can state their
12 reasons for their opinion.

13 You can give an expert's testimony as much or
14 as little weight as you think it deserves. If you
15 don't think it's based on sufficient education or
16 experience or you conclude the expert's opinions are
17 not sound or that they're outweighed by other
18 evidence, you may disregard the opinion entirely.

19 In other words, you are not compelled to
20 blindly accept an expert's opinion. You have the
21 right to consider the testimony in light of all of
22 the circumstances and give it such weight, if any,
23 as you think it is entitled to.

24 Now, in order to establish criminal liability,
25 criminal intent is required. For example, the

1 mental state required to be proven by the State for
2 a particular crime might be purpose, intent,
3 knowledge, recklessness or criminal negligence.
4 Criminal intent must be proven by the State beyond a
5 reasonable doubt. Criminal intent is always a
6 matter that must be determined by the jury from the
7 circumstances surrounding the situation.

8 There's no way to prove intent to a
9 mathematical certainty. There's no way medical
10 science can dissect a person's brain and determine
11 what the person had in mind, so the law says that
12 criminal intent may be inferred from the
13 circumstances shown to have existed. This is how
14 you make a determination of whether or not the
15 element requiring intent was present.

16 It's not necessary to establish intent by
17 direct and positive evidence, but intent may be
18 established by inference in the same way as any
19 other fact, by taking into consideration the acts of
20 the parties and all of the facts and circumstances
21 of the case. Criminal intent is a mental state, a
22 conscious wrongdoing. It's up to you to determine
23 what the defendant intended to do based on the
24 circumstances shown to have existed.

25 Criminal intent can arise from action or

1 failure to act. It may also arise from negligence,
2 recklessness, or an indifference to duty or
3 consequences that are considered by the law to be
4 the equivalent of criminal intent.

5 Now, as I told you, the defendant was charged
6 with murder. In order to prove murder, the State
7 must prove beyond a reasonable doubt that the
8 defendant killed another person with malice
9 aforethought. Malice is hatred, ill-will or
10 hostility towards another person. It is the
11 intentional doing of a wrongful act without just
12 cause or excuse and with an intent to inflict an
13 injury or under other circumstances that the law
14 will infer an evil intent.

15 Malice aforethought does not require that
16 malice exist for any particular time before the act
17 is committed, but malice must exist in the mind of
18 the defendant just before and at the time the act is
19 committed. Therefore, there must be a combination
20 of the previous evil intent and the act.

21 Malice aforethought may be expressed or
22 inferred. The terms expressed or inferred do not
23 mean different kinds of malice, but merely the
24 manner in which malice may be shown to exist; that
25 is, either by direct evidence or by inference from

1 the facts and circumstances which are proved.

2 Expressed malice is shown when a person speaks
3 words which express hatred or ill-will for another
4 or when the person prepared beforehand to do the act
5 which was later accomplished. For example, lying in
6 wait for a person or any other acts of preparation
7 going to show that the deed was within the
8 defendant's mind would be expressed malice.

9 Malice may be inferred from conduct showing a
10 total disregard for human life. If facts are proved
11 beyond a reasonable doubt sufficient to raise an
12 inference of malice to your satisfaction, this
13 inference would simply be an evidentiary fact to be
14 considered by you along with the other evidence in
15 the case and you may give it the weight you decide
16 it should receive.

17 If the defendant with malice aforethought
18 attempts to kill another person, but by mistake
19 injures or kills a different person, the defendant
20 still has the intent to kill. The intent to kill is
21 merely transferred from the original person the
22 defendant attempted to kill to the actual person
23 killed or injured. The defendant would be guilty of
24 murder just as if the attempt had resulted in the
25 death of the person the defendant attempted to kill.

1 Now, in determining your verdict of guilty or
2 not guilty, you are not to consider any possible
3 penalty for any particular crime. The punishment
4 for a crime is a matter for me to determine and
5 should never be considered by you in any way
6 whatsoever in arriving at a verdict of guilty or not
7 guilty. Your verdict must be unanimous, that means
8 all 12 of you have to agree.

9 Now, there are two possible verdicts in this
10 case. And there's no significance in the fact that
11 I give them to you in any particular order, I just
12 have to give one first. And in this case, there are
13 two possible verdicts, guilty of murder or not
14 guilty of murder.

15 Now, Madam Foreman, this is the indictment.
16 You'll see on here, there's a red stamp up there
17 where they got the true bill from the grand jury
18 with the date on it. And down on this bottom part
19 right here, it says verdict. That's where you write
20 the verdict, either guilty or not guilty. Once the
21 jury has reached a unanimous verdict, you write that
22 in, write your name, date it, and let the bailiff
23 know you've reached a verdict.

24 Now, I'm going to send you back. Don't begin
25 your deliberations just yet. I have to give the

1 lawyers an opportunity to me know if I misspoke in
2 any way and then we get the evidence together. And
3 as soon as I send the evidence back, along with the
4 indictment, the bailiff will tell you the Judge says
5 it's okay to begin your deliberations. But don't
6 begin just yet until I send the evidence back along
7 with the word from the bailiff. Okay? This just
8 takes a few minutes. Thank you for your patience.

9 (The jury exits the courtroom at 3:51 PM.)

10 THE COURT: All right. Well, I did leave out
11 one very important thing. I did not charge them --
12 although I told them a number of times that they are
13 not to hold it against the defendant for not
14 testifying. I don't know how it got past all of us,
15 but it did. So I need to recharge them on that.

16 Did anybody else pick up on anything?

17 MS. HALL: Nothing from the State, Your Honor.

18 MR. MCCARLEY: The Defense did not.

19 THE COURT: Do y'all care if I send the jury
20 charges back once we get that added in to the jury
21 while they're deliberating?

22 MR. THURMOND: We don't have an objection to
23 that.

24 MR. MCCARLEY: I apologize. I was talking to
25 co-counsel.

1 THE COURT: Are you all right with me sending
2 the jury charges back with the jury once we get it
3 corrected?

4 MR. MCCARLEY: Yes, sir.

5 THE COURT: You're okay with that?

6 MR. MCCARLEY: Absolutely.

7 THE COURT: Okay. Bring the jury back in.

8 (The jury enters the courtroom at 3:54 PM.)

9 THE COURT: Well, folks, I got just a little
10 egg on my face because I called this one on myself.
11 But I forgot to charge you one very important thing,
12 although I did mention this to you during the trial
13 and at the beginning of the trial, and that is that
14 the defendant -- about the defendant not testifying.

15 And I told you and I instruct you and I want to
16 emphasize, the fact that the defendant did not
17 testify is not a factor to be considered by you in
18 any way in your deliberation and in your
19 consideration on the question of the guilt or
20 innocence of the defendant. It must not be
21 considered by you in any manner whatsoever. A
22 defendant has a constitutional right to remain
23 silent, and the assertion of this right must not be
24 considered by you in your deliberations.

25 I repeat, under your oath, you are to draw no

1 conclusions whatsoever from the fact that the
2 defendant in this case did not testify. The fact
3 that this defendant did not testify should not even
4 be discussed in the jury room. The burden of proof,
5 as I stated to you, is on the State. The defendant
6 is not required to prove his innocence. The burden
7 of proof remains on the State to prove guilt beyond
8 a reasonable doubt. All right?

9 Now I'm going to send you back. Everything
10 will be fine on that, but I have to get that
11 evidence together. I'm going to send a copy of the
12 jury charges back to you. These, again, are not
13 evidence. You're taking them back simply as an aid
14 to refer to. Don't spend any particular time
15 concentrating on one part to the exclusion of the
16 other.

17 If you need me to explain anything to you about
18 them, you let me know, send me a note. But I will
19 send them back to you. It just simply makes it
20 easier to try to remember what I just told you.
21 Again, don't begin deliberations until I send this
22 back along with that evidence. It will just take a
23 couple minutes. All right?

24 (The jury exits the courtroom 3:56 PM.)

25 THE COURT: Okay. Do y'all want to

1 double-check and make sure everything is together
2 there?

3 MR. THURMOND: Yes, sir.

4 MS. HALL: Judge, if we could take up one issue
5 real quick on the record. The last jail phone call
6 admitted into evidence, and I can get you a number
7 in a minute, we only played a one-minute excerpt
8 from a full 15-minute call. What was admitted into
9 evidence was the full 15-minute call. We have
10 agreed we're going to redact that now and then
11 switch out those copies so that what goes back to
12 the jury and what is admitted into evidence --

13 THE COURT: They don't have a device to play
14 it, do they?

15 MS. HALL: Well, they can be sent one. We have
16 a court computer that will just allow --

17 THE COURT: We'll do that.

18 MS. HALL: But we'll get that redacted so that
19 only the portion that was played in court will be
20 sent back. That is 63, Your Honor.

21 (Jury begins deliberations at 4:16 PM.)

22 THE COURT: Let the record reflect I discharged
23 the alternate.

24 (The jury begins their deliberations at 4:16
25 PM.)

1 THE COURT: All right. Let the record reflect
2 the defendant is in the courtroom. We've got
3 everybody here.

4 Bring the jury in, please.

5 (The jury enters the courtroom at 5:06 PM.)

6 THE COURT: Madam Foreman, I understand the
7 jury has reached a verdict. Is that correct?

8 THE FORELADY: We have, Your Honor.

9 THE COURT: Is it unanimous?

10 THE FORELADY: It is.

11 THE COURT: Give it to the bailiff, please.

12 All right. You can publish.

13 If the defendant will rise.

14 THE CLERK: Your Honor, Indictment

15 2016-GS-02-00274, the State of South Carolina vs.
16 Santonio Torez Williams, indicted for murder, the
17 petit jury finds the defendant guilty, signed this
18 day, February 2nd, 2017, by the forewoman,
19 Ms. Lindale.

20 THE COURT: All right.

21 THE CLERK: Ladies and gentlemen of the petit
22 jury, if this is your verdict, please indicate so by
23 raising your right hand.

24 Let the record reflect all of the jury have
25 raised their right hand.

1 you know, you certainly don't deserve less than life.
2 for these actions. But I think what I'm going to do
3 is I'm going to give you a 50-year sentence, that
4 could very well be the rest of your life, day for
5 day. You're not eligible for parole, you don't get
6 off any for good behavior or anything.

7 But you're 21 years old. And at 70 years old,
8 you know, that will give you something to have a
9 little bit of hope to live for that you might one
10 day be outside and can appreciate that you have a
11 life. You took a life. You don't deserve that
12 little bit of mercy, but I'm giving you a little bit
13 of mercy simply because you're so young and so
14 clearly ignorant of what you are doing in life at
15 this point.

16 If you don't have it by the time you're 70,
17 you'll never get it. But you don't deserve to be
18 alive or out in the streets while any of these
19 people are alive. And they don't have to worry
20 about you. And maybe by the time you get to be an
21 old man, you can appreciate what few years that
22 you'll have outside.

23 So that is the sentence of the Court, 50 years
24 in the department of corrections, give you credit
25 for any time that you've served in jail awaiting

1 trail. Good luck to you.

2 All right. Well, we're adjourned.

3 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Aiken County, South Carolina, on the 30th and 31st days of January, 1st and 2nd days of February, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 1, 2018.

*s/Bethanie K. Creppon*Bethanie K. Creppon
Circuit Court Reporter

1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3 Indictment No.: 2016GS0200274
4

5
6 State of South Carolina,)
Plaintiff.)

7
8 vs.)

Transcript of Record

9
10 Santonio Williams,)
Defendant.)

11
12 August 14, 2017
Aiken, South Carolina
13

14 B E F O R E:

15 The Honorable Roger M. Young, Sr., Judge.
16

17 A P P E A R A N C E S:

18 J. William Weeks, Deputy Solicitor
19 Cassie W. Hall, Assistant Solicitor
Attorneys for the State

20 Tristan M. Shaffer, Esquire
21 Attorney for the Defendant
22

23
24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Doyet A. Early III
25 P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 THE COURT: All right. Have we got everybody here?
2 The defendant's in the courtroom.

3 You handling this?

4 MR. WEEKS: Your Honor, I'm going to be
5 representing the State on this motion.

6 THE COURT: All right. State versus Santonio
7 Williams motion for a new trial. Originally there was a
8 motion for me to reconsider my sentence. I don't know if
9 it's been supplemented or just in place of a motion to
10 reconsider the sentence or what.

11 MR. SHAFFER: Thank you, Your Honor, it's actually,
12 I guess, a supplementary, additional motion filed under
13 29(b) under the information act where I think we've got a
14 year of that.

15 THE COURT: You're Mr. Shaffer?

16 MR. SHAFFER: Yes, Your Honor.

17 THE COURT: Okay. Well, it's your motion. Go
18 ahead.

19 MR. WILLIAMS: Thank you, Your Honor. Before we
20 begin, and I think the Court has at least a little bit of
21 background of the nature of this motion to -- at least the
22 motion for a new trial.

23 Your Honor, before we begin, I would actually ask
24 -- we're probably going to have a little bit of testimony
25 here in the motion and I ask that anyone that the State

1 plans to present as a witness be sequestered for the
2 purposes of this hearing. And I'm not sure if they plan to
3 present any witnesses or not.

4 THE COURT: Who you got? Are you planning to call
5 any witnesses?

6 MR. WEEKS: Well, it's not our motion to start
7 with. So I don't know what he's going to put up. But we
8 do have people that we will call if necessary. But they
9 are, you know, officers of the Court.

10 THE COURT: They're the lawyers.

11 MR. WEEKS: Who are officers of the Court.

12 THE COURT: I assume it's Mr. Thurmond and
13 Ms. Hall.

14 MR. WEEKS: The allegation is that they promised
15 something and they say they didn't; so that's kind of where
16 we're at. But I don't know that there's going to be any
17 specific complicated testimony in this case that would
18 require sequestration.

19 THE COURT: Well, they have the right to
20 participate. So -- you called them. This is your motion,
21 but they're the lawyers, so I don't know that that's a
22 proper motion to exclude the two solicitors that handled it
23 because they have the right to be here and participate and
24 defend the State's position.

25 MR. WILLIAMS: And, Your Honor, while I understand

1 the Court's ruling, I -- I would actually ask that since
2 the Court brought that up that they not be allowed to
3 actually participate and the reason is, is that it would
4 create a conflict for them to actually participate and I
5 believe if there are witnesses in the case, there's
6 obviously rules of professional ethics that say that you
7 can't -- you can't be in -- you can't represent a party and
8 be a witness in the exact same action. Therefore, I would
9 ask that they be excluded from participating in the defense
10 of this motion.

11 And, Your Honor, I just bring that up because of
12 the fact that the Court mentioned that. And I understand
13 the Court's ruling, Your Honor. Normally I would never ask
14 to sequester lawyers in cases, but in this particular
15 situation, I think they probably are more fact witnesses to
16 this motion today.

17 THE COURT: Well, right now, he's handling it. I
18 don't know that any purpose is served by excludeing them.
19 It doesn't sound like there's any surprise as to what you
20 just said. You put it in the form of your motion and this
21 post-plea statement and as I say, they're officers of the
22 Court, they have a right to be here so -- and I'm not going
23 to sequester them.

24 MR. WILLIAMS: Thank you, Your Honor.

25 Your Honor, I would ask that before we begin one

1 thing I wanted to put on the record, I have a -- obviously,
2 the -- and the Court tried this case. I'm not sure how
3 much you recall of this because it was several months ago,
4 but there was a witness named -- -- Mercuri who has given a
5 post-trial statement, which is the basis of our motion.
6 His testimony essentially at trial was that he had
7 overheard my client essentially confess to this crime when
8 he was talking with another inmate at the Aiken Detention
9 Center. That inmate's name was Austin Pawnall. Your
10 Honor, I have made attempts to try to get ahold of Austin.
11 He is currently out on probation. Closest I've gotten is
12 his mom telling me not to call him anymore.

13 THE COURT: Call who?

14 MR. SHAFFER: Her -- Austin Pawnall, the other
15 inmate, Your Honor.

16 Essentially Mr. Mercuri had overheard or testified
17 at trial he had overheard Austin Pawnall and my client
18 discussing this shooting and that this shooting -- and that
19 this defendant -- in this conversation my client
20 essentially admitted to it. I have made attempts to try to
21 get ahold of Mr. Pawnall who's on probation and currently
22 lives in Kershaw from the best I can tell. I have not been
23 able to get ahold of him. I did -- I'm not sure if the
24 State's had any attempt to -- has made any attempt or been
25 able to be successful in getting that information, but,

1 Your Honor, I did want to put it on the record, at least I
2 have tried to make attempts to contact him and have him
3 here today and I haven't been successful in doing so.

4 THE COURT: Did you subpoena him?

5 MR. SHAFFER: No, Your Honor. I didn't have an
6 address. I mean -- I actually considered filing a motion
7 or trying to compel probation to actually provide me with
8 his contact information because I do not have it. I do
9 have a phone number, an old phone number, that was provided
10 by trial counsel before. I've made attempts to do that,
11 but I have not been able to be successful in doing so.

12 Your Honor, the one thing that I did not do is
13 actually try to compel probation to actually provide it for
14 me, Your Honor, which possibly could have been a route and
15 maybe I could have subpoenaed it. Then I'm subpoenaing the
16 opposing side, which may create some problems as well. But
17 I do not -- actually --

18 THE COURT: Are you asking me to do something? Or
19 are you just putting this on the record.

20 MR. SHAFFER: No, Your Honor, I just wanted to put
21 this on the record that I have made attempts and that's the
22 reason he's not present because I think that's going to
23 come in part down to his credibility, the credibility of
24 the witnesses in the case and I wanted to at least put on
25 the record that I had made attempts and I didn't want the

Victor Mercuri - Direct Examination by Mr. Shaffer

1 Court to infer something that maybe I'm hiding him or I did
2 not present him because he was not in my control and I just
3 wanted to put that on the record, Your Honor.

4 THE COURT: All right.

5 MR. WILLIAMS: The defense would go ahead and call
6 Victor Mercuri.

7 THE COURT: Okay.

8 VICTOR MERCURI,

9 having been duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness box. State
11 your full name for the Court and spell your last.

12 THE WITNESS: My name is Victor Mercuri,
13 M-E-R-C-U-R-I.

14 **DIRECT EXAMINATION**

15 **BY MR. SHAFFER:**

16 Q Mr. Mercuri, my name is Tristan Shaffer. I
17 represent Santonio Williams. I know we haven't met.

18 A No, sir.

19 Q You have had some discussions with his other
20 attorney; is that correct?

21 A Yes, sir.

22 Q Okay. Now, tell us a little bit -- obviously,
23 you're incarcerated?

24 A Yes, sir.

25 Q Okay.

Victor Mercuri - Direct Examination by Mr. Shaffer

1 A Sentenced to 18 years.

2 Q Okay. When did you get sentenced?

3 A March 2, 2017.

4 Q And was that related to charges out of this County?

5 A Yes, sir.

6 Q Do you have any other charges on you?

7 A No, sir.

8 Q Okay. Now, you testified in the trial of
9 Mr. Williams, correct?

10 A Yes, sir.

11 Q I'm not asking you what happened, I'm asking you
12 what you testified to. What did you say happened?

13 A What I said and what really happened is two
14 different things though. So I don't know if there's
15 relevancy of what I said.

16 Q Okay.

17 A I testified in this man's case --

18 MR. WEEKS: Your Honor, the transcript will reflect
19 what he said during trial and we have no objection to
20 entering that as an exhibit.

21 MR. SHAFFER: And, Your Honor, if that's the case,
22 we can maybe streamline some of the stuff he said at trial.
23 Obviously, I don't have a problem entering the transcript
24 as an exhibit for this hearing.

25 THE COURT: All right.

Victor Mercuri - Direct Examination by Mr. Shaffer

1 BY MR. SHAFFER:

2 Q Now, you said that what you said in the transcript
3 and what actually happened are two different things?

4 A Yes, sir. I alleged (verbatim) false statements.

5 Q So you're saying that you testified falsely
6 whenever you testified at trial?

7 A Yes, sir. I had several meetings with solicitors
8 from the Aiken County circuit where they -- the first one
9 that they kind of -- I gave vague statements, you know,
10 because I was --

11 THE COURT: Hold on a minute. Has he been
12 cautioned or given his rights? He's sworn under oath here
13 and apparently he's getting ready to report something
14 different than he did at trial --

15 THE WITNESS: It's called perjury.

16 THE COURT: -- that may put him up for perjury.

17 MR. WEEKS: I haven't called him. I haven't talked
18 to him. We haven't advised him of anything.

19 MR. SHAFFER: Your Honor, I don't believe he has
20 been advised. Well, actually, to be honest with you, Your
21 Honor, I don't know that. After -- my understanding after
22 his plea, he immediately told -- after he was already
23 sentenced, he immediately told his attorney that he --

24 THE WITNESS: Yes, sir.

25 MR. SHAFFER: -- wanted to -- that he had lied

Victor Mercuri - Direct Examination by Mr. Shaffer

1 previously and wanted to correct the record. And --

2 THE WITNESS: Right.

3 MR. SHAFFER: -- so perhaps he had been cautioned
4 by his previous attorney.

5 THE COURT: Okay. Well, you understand that if you
6 testified under oath at trial, you now are getting ready to
7 testify under oath something differently, that --

8 THE WITNESS: It's called perjury.

9 THE COURT: -- opens you up to potentially be
10 charged for perjury for which you can go to prison. That
11 statement that you make voluntarily --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- you don't have to make a statement
14 and subject yourself to criminal prosecution. You have the
15 right to remain silent and anything you say can and will be
16 used against you in a court of law. You understand that?

17 THE WITNESS: Yes, sir.

18 THE COURT: Have you talked to a lawyer about this?

19 THE WITNESS: I don't need to, sir. I'm here to do
20 today what's right.

21 THE COURT: You don't want the talk to a lawyer
22 about this before you proceed?

23 THE WITNESS: No, sir. I'm already in prison, sir.

24 THE COURT: All right. Go ahead.

25 THE WITNESS: Yes, sir.

Victor Mercuri - Direct Examination by Mr. Shaffer

1 BY MR. SHAFFER:

2 Q All right. So after your plea you ended up making
3 a statement to Mr. Williams's previous attorney, correct?

4 A Yes, sir, because two different things. I was
5 supposed to get something in return for what I did. But it
6 was also led on by the solicitors -- well my lawyer into
7 what I said and what I testified to was -- I gave vague
8 statements originally and they kind of showed me some dates
9 and times where I should correct things to put me and him
10 together in the same pod so it would look better. And I
11 went with it because it was supposed to lessen my charge to
12 strong-armed robbery. That's what my lawyer told me.

13 But I couldn't ever get anything in writing, so I
14 went against what I wanted to do, you know, I got two kids,
15 so I wanted to try to help myself out, obviously, and then
16 after I did that I was going to turn around and do this
17 anyways because they shouldn't come to people and do things
18 like they did, you know, kind of leading me on. So I hope
19 they -- there's a lesson to be learned here. You know, I
20 was an inmate same as him and I was facing 30 years, you
21 know. They ended up giving me 18. They was supposed to
22 give me a totally different charge and then turned around
23 and double crossed me.

24 So I'm just -- want to make things right with this
25 man. He was sentenced to 55 years wearing the same color.

Victor Mercuri - Direct Examination by Mr. Shaffer

1 I just want to make things right. If I face more time,
2 more charges, that's on me. But if y'all charge that man
3 and convict that man, that's on y'all's end. It's not on
4 mine anymore.

5 Q So Mr. Mercuri, tell us about this first statement
6 you made to law enforcement concerning my client.

7 A Yes, sir.

8 Q Was it -- well, who was present during that
9 statement?

10 A My lawyer and the investigator from the solicitor's
11 office.

12 Q Okay. And what -- what did you initially tell
13 them?

14 A That I overheard this man talking about his case
15 inside of our recreation room, C-3, in between -- maybe
16 April was the month, maybe about April 2016. We were
17 together in a pod, but he never talked about his case. And
18 I heard a few things, you know, around the pod, what he was
19 charged for, so I took a cumulation of things I heard, you
20 know, and put them together and concocted a story. Told
21 that man right over there sitting in a chair about it and
22 together we kind of collaborated the statement that I gave
23 during his trial.

24 Q Okay. What do you mean together you collaborated
25 it? What -- what part came from you, what part came from

Victor Mercuri - Direct Examination by Mr. Shaffer

1 the State?

2 A Say if I was trying help myself out so I went in
3 there and gave some vague statements, you know, and they
4 kind of said things about his case that I feel like they
5 shouldn't have said, you know, that I gained more
6 information from them to better my statement, you know.

7 Q And what type of information did they provide you?

8 A What type of crime exactly it was. Who actually
9 got shot, a female, male. I just know that it was a
10 shooting really, that's all I knew about his case from
11 being in jail around him. But everything else was
12 accumulated over a couple of meetings between them and my
13 lawyer.

14 Q Okay. Now, you said you overheard it. In that
15 initial statement, do you recall where you said you
16 overheard it?

17 A The recreation room.

18 Q Okay..

19 A But it's a dayroom in the middle of the pod.

20 Q And you said that that was in April?

21 A I can't really remember, but I think I told this
22 man that it was sometime around April that I overheard this
23 man talking about his case. I was, like I said, just
24 trying to help myself. But it also -- I don't know what
25 all you want to know. I mean...

Victor Mercuri - Direct Examination by Mr. Shaffer

1 Q Well, by the time you went to trial, you said that
2 they gave you some dates?

3 A Right, right, yes, sir.

4 Q Okay.

5 A Actually I gave them the wrong date whenever --
6 because I made up this story so I gave them the wrong date.
7 They came -- I won't say exactly -- they came and visited
8 me and said that there was no way that he could have said
9 that at that date and time because we weren't in the same
10 pod together at that time. So I guess he was scared that
11 the defense was going to find out that and then come and
12 ask me about it, you know. So he came and said to me, held
13 up a piece of paper, stuck it up to the window that was
14 highlightered (verbatim), the actual dates that me and him
15 were together in the pod; and I said yes, sir.

16 Well, he basically led me on without -- you know,
17 he held it up to the window and said maybe it was closer to
18 this date so that's where I got the date from --

19 Q Okay.

20 A -- to make it actually true that me and him were in
21 the same pod together.

22 Q Now, at trial, you testified that you had overheard
23 them while you were locked in the cell; is that correct?

24 A Yes, sir.

25 Q Okay. But you said initially you told them that it

Victor Mercuri - Direct Examination by Mr. Shaffer

1 was in a recreation --

2 A It was describe two different occasions.

3 Q Okay.

4 A That's what I said, it was two different occasions.

5 One was in the rec room, one was behind the door. The one

6 behind the door, I just fully made up. If I'm facing more

7 charges, I'm not -- I mean --

8 Q Okay. The one in the reck room, is that a

9 fabrication as well?

10 A Yes, sir, that was help from the solicitor's

11 office.

12 Q Okay. Now, why did you make these statements to

13 the solicitor's office?

14 A Because I have children. I was a drug addict. I
15 came down off the drugs in jail. Spent about a year clean.

16 I was ready to get back to my life and they were supposed
17 to help me lessen my charges. So, obviously, if you were
18 facing 30 years and they laid something out in front of you

19 where you were going to get 5 years nonviolent and then at
20 the same time you could take the 5 years nonviolent and

21 then once the plea is set in stone and I come in here and

22 take my plea I'd get 5 years nonviolent, I do what I did

23 anyways which is what I was going to do in the beginning,

24 to tell my lawyer that I lied.

25 And then turn around and get 5 years nonviolent for

Victor Mercuri - Direct Examination by Mr. Shaffer

1 burglary. Okay. So I'm looking at 10 years nonviolent,
2 that's 5 years. I was facing 30 violent and I ended up
3 getting 18 violent, so, you know, if you can understand
4 what I'm saying.

5 Q Well, who told you this idea about 5 nonviolent?

6 A My lawyer.

7 Q Okay.

8 A Said they would try to talk to the solicitor for
9 getting nonviolent time and, well, didn't none of that
10 happen because I didn't get it in writing, they actually
11 gave me 18 years violent.

12 Q Who all from the solicitor's office did you speak
13 to while you were in jail concerning this case?

14 A This woman, that man, that man, and that man back
15 there.

16 Q Okay. So you indicated --

17 A Cassie Hall, Strom Thurmond, I don't know his name
18 and I don't know his name.

19 Q You're speaking of the investigators, correct?

20 A Yes, sir. I never talked to the man with the
21 mustache. I talked with the man with the tie, the red tie.

22 Q Okay.

23 MR. WEEKS: Excuse me, Your Honor, that's Steve
24 Miano in the red tie.

25 THE COURT: Okay.

Victor Mercuri - Direct Examination by Mr. Shaffer

1 BY MR. SHAFFER:

2 Q Did any of those people tell you that if you were
3 to cooperate they would give you something in return?

4 A Yes, sir.

5 Q Who told you that?

6 A That man back there. Said he was going to help me.

7 Q Which man?

8 A Strom Thurmond said it was going to help me.

9 Q He said it would help you?

10 A Yes.

11 Q Okay. Did he specifically tell you what -- how it
12 was going to help you?

13 A He said it was going to lessen my sentence.

14 Q Okay. Did he specifically tell you what you would
15 be sentenced to?

16 A He didn't, but my lawyer did.

17 Q Okay. And what did your lawyer tell you about it?

18 A Nonviolent, not a strong-armed robbery.

19 Q Okay. Now, did anyone else other than Strom
20 Thurmond tell you anything about -- or tell you that your
21 testimony would assist you in getting a reduced sentence?

22 A Her.

23 Q Okay. Are you talking about -- about Ms. Hall?

24 A Cassie Hall.

25 Q Okay. Can you tell us -- do you recall

Victor Mercuri - Direct Examination by Mr. Shaffer

1 specifically what she said about it?

2 A She said that it would help me out, but her office
3 wasn't in the business of making deals before I was --
4 whatever I was supposed to do I was supposed to do it first
5 and then I was supposed to get the deal.

6 Q Okay.

7 A But then when it came down to it, that woman over
8 there, my solicitor, Ms. Beth Ann Young, I guess, wanted to
9 fry me even though I confessed to help them. They led me
10 on to making statements for him and basically -- I mean I
11 got screwed.

12 Q So did he --

13 A So did she.

14 Q Ms. Hall had said that their office wasn't in the
15 business of making deals beforehand, correct?

16 A Right.

17 Q Did she say that it would benefit you, though?

18 A Yes, sir.

19 Q Okay. But she wasn't specific about how it would
20 benefit you; is that fair to say?

21 A Not her, no, sir.

22 Q Okay. Who was specific about how it would benefit
23 you?

24 A Strom Thurmond.

25 Q Okay. And what did he specifically say about how

Victor Mercuri - Direct Examination by Mr. Shaffer

1 it would benefit you?

2 A He said it would go to nonviolent strong-armed
3 robbery.

4 Q Okay. And did they tell you anything about what to
5 say -- well, first of all, let me ask you this: Before you
6 testified, did they brief you and tell you what they were
7 planning on asking you?

8 A Yes, sir.

9 Q Okay. Did they tell you they planned on asking you
10 if you'd been promised anything or --

11 A Yes, sir. They told me not to say nothing because
12 it would stop the -- something -- they said I had to say
13 nothing, that I wasn't promised anything.

14 Q Okay.

15 A That was what they told me whenever I went to go
16 take my plea too.

17 Q That you hadn't been promised anything?

18 A Right.

19 Q Okay. Who told you not to say, or to say that you
20 hadn't been promised anything?

21 A Strom Thurmond.

22 Q Okay.

23 A And my lawyer.

24 Q Okay.

25 A Or my public defender.

Victor Mercuri - Direct Examination by Mr. Shaffer

1 Q Based off your discussions with the State were you
2 under the impression that you were going to receive some
3 sort of a benefit from testifying?

4 A Yes.

5 Q Okay. And why were you under that impression?

6 A Because I was told that.

7 Q Now, since the trial of this case, has anyone
8 threatened you or intimidated you to try to get you to
9 testify here today?

10 A No.

11 Q Have you ever spoken to me before?

12 A No, I've never spoken to you. First time I've come
13 in this courtroom and seeing you. I've been in prison.

14 Q Okay. But no one has made any threats against you
15 to testify this way?

16 A No, sir. I'm doing what's right. What's right is
17 right and what's wrong is wrong. What I did was wrong.
18 The man deserves a retrial. I never heard him say what he
19 said. I don't -- I ain't seen him. We were in prison
20 together but we were in separate areas. He was on a
21 different yard; I'm on a different yard. I took it upon
22 myself. If I face more charges, I face more charges. I
23 was going to do this from jump street which is why they
24 shouldn't make deals with people in jail. Even if they did
25 give me a deal I was still going to come back and get on

Victor Mercuri - Cross-Examination by Mr. Weeks

1 this stand and tell you that I didn't hear of him saying
2 anything. So y'all shouldn't make deals with people. And
3 especially you shouldn't make deals with people and double
4 cross them. You shouldn't do it at all.

5 Q Thank you.

6 MR. SHAFFER: No further questions.

7 THE COURT: Cross?

8 **CROSS-EXAMINATION**

9 BY MR. WEEKS:

10 Q Basically we shouldn't make deals with liars,
11 right?

12 A If you make me one.

13 Q Well you are one, aren't you?

14 A Y'all are too.

15 Q Are you?

16 A That's true.

17 Q A liar?

18 A No.

19 Q Well, you know what an oath is? You know what it
20 is when you put your hand on the Bible and swear to tell
21 the truth?

22 A Yes, sir.

23 Q You recall doing that?

24 A Yes, sir, I recall the people standing behind you,
25 I was going to get a lot lesser sentence to go do that.

Victor Mercuri - Cross-Examination by Mr. Weeks

1 Q I didn't ask about the people behind me. You
2 recall --

3 A That's irrelevant, sir.

4 Q It is?

5 A Yes, sir.

6 Q So it doesn't matter whether you put your hand on
7 this Bible, you're going to lie every time you think it's
8 going to do you any good?

9 A I read it from the beginning to the end, I read
10 that Bible.

11 Q Yeah, I bet. You're going to lie if it does you
12 good, aren't you?

13 A No. I want to do what's right.

14 Q To do what's right. And that means lying whenever
15 you get a chance?

16 A No, sir.

17 Q If you think it's going to help you?

18 A No, sir.

19 Q Well, you do recall when you testified at trial,
20 don't you? In the trial of Mr. Williams?

21 A Yes, sir.

22 Q Before you went and took the stand, you swore under
23 oath you were going to tell the truth?

24 A Right.

25 Q And you didn't say the first word about anybody

Victor Mercuri - Cross-Examination by Mr. Weeks

1 promising you anything?

2 A Obviously not because I'm trying to get a deal. I
3 see where you're going with this, but it's not going to
4 work because obviously I tried to lie because I was told I
5 was going to get a 5 year nonviolent sentence which is 2
6 years and a half over a 30 year sentence and I'm supposed
7 to help y'all, help me, help everybody. But I understand
8 what you're trying to come up here and lying today because
9 I put my hand on the Bible again, but what I'm giving to
10 you today is God's honest truth.

11 Q Well --

12 A Through and through, there's evidence to prove it.

13 Q So --

14 A What evidence did you have to prove that I didn't
15 make up a story.

16 Q Can you count to three?

17 A Yes, sir.

18 Q So three times that I'm aware of, you put your hand
19 on this Bible and swore to tell the truth?

20 A Two times.

21 Q Well, there was a trial; there was a guilty plea.
22 You recall pleading guilty?

23 A Yeah.

24 Q You recall them swearing you before you pled
25 guilty?

Victor Mercuri - Cross-Examination by Mr. Weeks

1 A Yes, sir.

2 Q You lied to that judge too, didn't you?

3 A About what?

4 Q About whether you'd been promised anything.

5 A The people told me to say I wasn't promised
6 anything.

7 Q Did you lie to the judge based on your testimony
8 today?

9 A I'm not going to say that.

10 Q Why not?

11 A You're trying to make me a liar.

12 Q Well you are a liar. You've already admitted it?

13 A Your office made me a liar.

14 Q Well, did you lie to the judge at the time of your
15 plea?

16 A I'm -- I'd rather not answer that.

17 Q It's easy. It's yes or no.

18 A It depends on what you mean. To lying about what?

19 Q Do you know the difference between yes and no?

20 A Yes, sir.

21 Q Okay. Did you lie to the judge -- after you swore
22 to tell the truth, did you lie to the judge that sentenced
23 you?

24 A I'll put it to you this way: I told him what I was
25 told to say.

Victor Mercuri - Cross-Examination by Mr. Weeks

1 Q Did you lie?

2 A I told him what I was told to say, sir. I mean, I
3 don't know...

4 Q Now, going back to the very beginning of this --

5 A Yes, sir.

6 Q -- you were the one that contacted the State
7 through your lawyer or by yourself because you had
8 overheard some conversation. They didn't come to you and
9 ask you to give testimony, did they?

10 A No.

11 Q You contacted them and said I got something.

12 A Right.

13 Q So you were looking for a deal back then?

14 A Right.

15 Q And when they first came and talked to you, this is
16 Steve Miano in the red tie. And your lawyer?

17 A Right.

18 Q Met with you?

19 A Uh-huh.

20 Q Went over the facts. Did they make up the
21 statements that you said you heard or are you saying they
22 make up the dates --

23 A They helped them along.

24 Q They helped them along. So they made up the
25 statement that you say you overheard and then just to be

Victor Mercuri - Cross-Examination by Mr. Weeks

1 good, they decided to make up another statement to have two
2 statements that you say you overheard.

3 A (Gesture.

4 Q What does this mean, Mr. Mercuri? Does this mean
5 you're just got going to talk or you're not going to tell
6 the truth?

7 A What do you want me to say, sir.

8 Q I want you to answer my questions. Did they give
9 you the second statement?

10 A They gave me all the statements, sir.

11 Q They gave you all the statements?

12 A That man deserves a retrial. I believe I came here
13 to do what I came here to do. If I'm not needed anymore,
14 I'd like to go back to my prison yard. If that's okay with
15 y'all.

16 THE COURT: No --

17 BY MR. WEEKS:

18 Q Mr. Mercuri, I'm certain that's exactly where
19 you're going to go after this hearing, but I'm trying to
20 get you to answer questions. Once again under oath as to
21 what you say the State did to you.

22 A Like I told this man earlier if you were listening.
23 I made up the story fully about talking behind the door.

24 Q Completely that was on you?

25 A Yes, sir.

Victor Mercuri - Cross-Examination by Mr. Weeks

- 1 Q You just thought that would sound good?
- 2 A Yes, sir.
- 3 Q Okay. And you told your lawyer all that too?
- 4 A Yes, sir.
- 5 Q Now, after you pled guilty and you got 18 years --
- 6 A Yes, sir.
- 7 Q -- do you recall the judge going through or the
- 8 prosecutor, Ms. Young going through all the charges the
- 9 State was dismissing at the same time you were pleading
- 10 guilty to one charge?
- 11 A Yes, sir.
- 12 Q Was it manufacturing methamphetamine?
- 13 A Yes, sir.
- 14 Q Was it possession of a stolen vehicle?
- 15 A Yes, sir.
- 16 Q Was it malicious injury to the jail?
- 17 A Yes, sir.
- 18 Q Was it possession of a weapon during the commission
- 19 of a violent crime?
- 20 A Yes, sir.
- 21 Q All those were being dismissed?
- 22 A To take the plea, yes.
- 23 Q And you pled guilty to armed robbery?
- 24 A Yes, sir.
- 25 Q Okay. And the judge, of course, told you that the

Victor Mercuri - Cross-Examination by Mr. Weeks

1 maximum sentence for armed robbery, which you seem to know
2 is 30 years?

3 A Yes, sir.

4 Q But you were told that the State was going to
5 recommend a cap of 20?

6 A Yes, sir.

7 Q You knew that before you ever came up here and put
8 your hand on the Bible and lied again, didn't you? You
9 knew that? That that was going to happen?

10 A That I was going to get 12 years -- I mean --

11 Q No, you knew that when you stood up here and pled
12 guilty that the State was going to be dismissing some
13 charges?

14 A That's usually what they do when you take a plea,
15 sir.

16 Q Did you know before you stood up here and put your
17 hand on the Bible that the State was going the dismiss
18 those charges?

19 A No, sir.

20 Q You didn't know that?

21 A I didn't know that.

22 Q You don't recall -- or do you recall talking to
23 your girlfriend or talking to a lady on the phone from the
24 jail telling them you were going to be pleading to between
25 10 and 20 years, violent time?

Victor Mercuri - Cross-Examination by Mr. Weeks

1 A (Witness shook head.)

2 Q You sure? Before you put your hand on the Bible
3 and took the plea?

4 A But I didn't know they were going to drop those
5 charges. I know I was taking a 10 year plea for the armed
6 robbery. I have no way of knowing they were dropping the
7 other charges. I mean that wasn't set in stone until after
8 they came in here and dropped the charges.

9 Q And you didn't know that was going to go on?

10 A No, sir.

11 Q Mr. Mercuri, you did have representation by a
12 lawyer throughout this whole thing; is that correct?

13 A David Hayes.

14 Q Same one, David Hayes, was in every meeting with
15 the solicitor. David Hayes was the one negotiating with
16 the other prosecutor?

17 A He wasn't -- he was there -- he missed a good part
18 of one of them.

19 Q A good part of one of what?

20 A The meetings.

21 Q With the solicitor's office? He was late --

22 A Yes, sir.

23 Q -- getting there?

24 A Yes, sir.

25 Q Did it change what you said?

Victor Mercuri - Cross-Examination by Mr. Weeks

1 A Yes, sir.

2 Q What -- how did it change when -- that he was late?

3 A That's when the dates changed.

4 Q I see. While David wasn't in the room is when you
5 changed the dates or they changed the dates?

6 A That's when they showed me a piece of paper.

7 Q They showed you a piece of paper about where -- who
8 you were in the cell with at the department, at the
9 detention center; is that correct?

10 A Yes, sir.

11 Q And that's what your story was is when you heard
12 him say something, y'all were in the same pod?

13 A Yes, sir.

14 Q Okay. But that's when you say they changed the
15 dates, they slipped it past him or something?

16 A No, they held it up to the window.

17 Q Held it up to the window and showed it to you and
18 you agreed?

19 A Yes, sir.

20 Q Okay. If I understood it right, right after you
21 pled guilty in front of Judge Jack Early, you answered all
22 the questions that the transcript reflects that you weren't
23 made any promises; is that right?

24 A Yes, sir.

25 Q And then right after you swore under oath on this

Victor Mercuri - Cross-Examination by Mr. Weeks

1 Bible in front of Jack Early, Judge Early, you went back in
2 that little room back in there and lied like a rug again;
3 didn't you?

4 A I didn't lie in that room.

5 Q Well, you went back there and said you just lied
6 like a rug in court under oath?

7 A Not that day. I said I lied the day of trial.

8 Q How about the day you took your guilty plea? Did
9 you tell them you lied then too?

10 A I never thought about that until just now. I mean
11 they told me to say I wasn't promised nothing so that's
12 what I said. I mean...

13 Q They told you to say that before you stood up here
14 and pled guilty?

15 A Yes, sir.

16 Q Who told you that?

17 A My lawyer.

18 Q Your lawyer?

19 A Yes, sir.

20 Q Not the State's lawyers, your lawyer?

21 A They told me too back at the jail, make sure that I
22 said -- they came about a week before trial.

23 Q Okay.

24 A Meeting --

25 Q But you didn't plead guilty --

Victor Mercuri - Cross-Examination by Mr. Weeks

1 A I pled guilty.

2 Q -- the day of trial?

3 A No, sir.

4 Q It was sometime after, wasn't it?

5 A Yes, sir.

6 Q In fact, it wasn't even in front of the judge that
7 tried Mr. Williams, was it?

8 A No.

9 Q Okay. Now, which one of the State's lawyers came
10 back there and told you before you pled guilty to lie?

11 A They told me at the jail to say I was promised
12 nothing.

13 Q When you testified.

14 A That I wasn't promised anything. When I took my
15 plea. They're not going to ask me if I was promised -- and
16 they asked me if I was promised something when I testified
17 too. I said no.

18 Q Mr. Mercuri, are you making up lies as you go along
19 here?

20 A No --

21 Q Are you saying the State met with you --

22 MR. SHAFFER: Objection, Your Honor.

23 THE COURT: Hold on.

24 MR. SHAFFER: Your Honor --

25 THE COURT: What?

Victor Mercuri - Cross-Examination by Mr. Weeks

1 MR. SHAFFER: He's making an argument. He's not
2 really asking a question there. I mean, he's making a
3 statement.

4 THE COURT: It's cross-examination go ahead.
5 Overruled.

6 BY MR. WEEKS:

7 Q The only time the State, good lawyers,
8 Mr. Thurmond, Ms. Hall, met with you and your lawyer were
9 prior to the testimony at trial?

10 A Yes, sir.

11 Q They didn't meet with you after you testified?

12 A No. I was chop liver then, sir.

13 Q Chop liver.

14 A They got what they wanted and -- I was -- I mean --

15 Q Okay.

16 A But they never met with me after that --

17 Q Didn't meet with you before your guilty plea?

18 A No, sir. That was already supposed to be set in
19 stone, sir.

20 Q Didn't say what you're supposed to say when the
21 judge asks you questions?

22 A No, sir.

23 Q And you did all that on your own?

24 A To -- talked to the judge?

25 Q Uh-huh.

Victor Mercuri - Cross-Examination by Mr. Weeks

1 A Early?

2 Q Uh-huh.

3 A Yes, sir.

4 Q But the plea the State offered you wasn't good
5 enough in your mind?

6 A I mean --

7 Q That's a yes or no?

8 A No.

9 Q And that's when you immediately went out and
10 started crying about how they had promised you something?

11 A Well, if I told you I was going to do something and
12 then, you don't get mad until after I tell -- didn't do it,
13 obviously. Not going to get mad before I don't do it.

14 Q Mr. Mercuri, I know we've already established that
15 you're a liar. But when you talked to Mr. Miano, and your
16 lawyer present, did you make up statements about somebody
17 else in the jail?

18 A I don't see a relevancy pertaining to his case.

19 Q I realize you don't see but what you want to see,
20 but did you make statements about another person in jail?

21 A This man told me before I didn't have to say
22 anything I didn't want to say to further incriminate
23 myself.

24 THE COURT: You don't make the rules. I hear you.
25 He's asking you a question and I'm telling you to answer

Victor Mercuri - Redirect Examination by Mr. Shaffer

1 it.

2 THE WITNESS: I didn't make up lies, but I told him
3 about another statement, yes, sir.

4 BY MR. WEEKS:

5 Q You didn't make up lies about the other person
6 that'd been charged with murder?

7 A No, sir.

8 Q So there's a truth to what you told him about
9 Reggie Hamilton?

10 A Yes, sir.

11 Q Is it still the truth?

12 A I don't know.

13 MR. WEEKS: I don't have any further questions of
14 this witness.

15 THE COURT: You got anything on redirect?

16 MR. SHAFFER: Just a couple, Your Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. SHAFFER:

19 Q Mr. Weeks said that you lied if it does you any
20 good. What benefit did you have in coming up here and
21 testifying today?

22 A Benefit? I'm actually going to get more charges.

23 Q Okay. Can my client change your time?

24 A Who?

25 Q Can my client cause you to get a time cut?

Victor Mercuri - Redirect Examination by Mr. Shaffer

1 A I don't think anybody can help me at this point in
2 time.

3 Q Okay.

4 A I got a 18 year sentence.

5 Q Okay. And you said that you were going to tell the
6 truth even if they would have given you the offer of
7 nonviolent time; is that right?

8 A Yes, sir. I don't --

9 Q Prior to giving any statement, had you heard any
10 rumors about my client's case while locked up?

11 A Yes, sir.

12 Q Had you heard that the State was looking for
13 someone to testify against him?

14 A Yes, sir. Or he was going to walk. I heard a
15 rumor about it from a dude named Tim Osborne.

16 Q Okay. And what -- I think you just said it, but I
17 want you to say it again just so I make sure I got it.
18 What did you say this rumor you heard was?

19 A That they needed help in this case. From a dude
20 named Tim Osborne told me that. We were...

21 Q Okay. Is that why you decided to give a statement
22 related to my client?

23 A Yes, sir.

24 Q You also stated something, and perhaps I misheard
25 you, but you said something along the lines of the State

Victor Mercuri - Redirect Examination by Mr. Shaffer

1 gave you all the statements. Did you testify to that?

2 A That the State gave me all the statements?

3 Q Yeah.

4 A When?

5 Q Just a second ago. I didn't understand --

6 A I said they helped my statements along so it would
7 help them.

8 Q Okay, they helped them along?

9 A I mean they helped it along.

10 Q Okay.

11 A Helped form it.

12 Q Okay.

13 A Make it not so vague. You know what I'm saying?

14 When you know just something about his case, you can make a
15 vague statement, just say hey, I overheard so and so say he
16 killed somebody and all of a sudden, you don't know -- they
17 help it along.

18 Q Okay.

19 MR. SHAFFER: No further questions.

20 THE COURT: Recross examination?

21 MR. WEEKS: Nothing, Your Honor.

22 THE COURT: Okay. Hold on. I've got a couple I
23 want to ask you.

24 So, as I understand this, you changed your
25 testimony because you didn't get the strong-armed robbery

1 deal that you were -- said you were promised?

2 THE WITNESS: No, sir.

3 THE COURT: Well, why did you change your
4 testimony?

5 THE WITNESS: Because I never heard that man talk
6 about his case and he deserves a retrial.

7 THE COURT: So you're saying that even if you had
8 gotten strong-armed robbery you would have come in here and
9 recanted?

10 THE WITNESS: Yes, sir.

11 THE COURT: So when you went up to plead in front
12 of Judge Early, you knew you were going to recant your
13 testimony? At your guilty plea? You knew you were going
14 to change your testimony?

15 THE WITNESS: Yes, sir.

16 THE COURT: And you didn't say anything to him?

17 THE WITNESS: No, sir.

18 THE COURT: You don't think that would have been a
19 good thing for him to know?

20 THE WITNESS: Not to a man that's fixing to
21 sentence me to time, no.

22 THE COURT: So was it already lined up when you
23 finished pleading that you were going to recant your
24 testimony?

25 THE WITNESS: Yes, sir.

Victor Mercuri - Redirect Examination by Mr. Shaffer

1 THE COURT: So that's why you went -- I saw on the
2 notes, the transcript said you were -- your plea ended at
3 4:16 and you signed a statement recanting your testimony an
4 hour later at 5:25. So you went before Judge Early. You
5 knew you were going to recant that testimony, you didn't
6 say anything to him.

7 THE WITNESS: No, sir.

8 THE COURT: You had already had it lined up to go
9 back in the room there afterwards and tell -- and recant?

10 THE WITNESS: Yes, sir, because I never heard the
11 man talk about his case.

12 THE COURT: All right. You got any questions you
13 want to ask him based on that?

14 MR. SHAFFER: Your Honor, I do have one.

15 THE COURT: Go ahead.

16 MR. SHAFFER: Well, one or two.

17 **REDIRECT EXAMINATION**

18 **BY MR. SHAFFER:**

19 Q Do you believe that it would have been harmful for
20 you to tell Judge Early that you planned on recanting?

21 A Yes, sir.

22 Q Do you think you would have gotten more time had
23 you told Judge Early you were planning on recanting?

24 A Yes, sir.

25 Q Is that why you did not tell him that?

Victor Mercuri - Recross-Examination by Mr. Weeks

1 A I didn't tell him that, no. I mean -- the man's
2 fixing to sentence me in between 10 to 30 years.

3 MR. SHAFFER: Thank you. No further questions.

4 THE COURT: You want to ask anything.

5 **RECROSS EXAMINATION**

6 **BY MR. WEEKS:**

7 Q So when you stood up here in front of Judge Early
8 and swore under oath and when you stood up here in front of
9 Judge Young under oath, twice now, you knew when you got up
10 here that third time that you were lying?

11 A About what, sir?

12 Q Huh?

13 A About what?

14 Q About the statements you made against this man.

15 A Today?

16 Q When you testified under oath previously according
17 to what you're saying today, you were lying?

18 A I don't understand.

19 Q When you took the Bible in your hand today and
20 swore before you got on the stand, just like when you took
21 it before going up in front of Judge Early, you knew you
22 were going to lie, didn't you?

23 A I haven't lied today if that helps your question.

24 Q You haven't lied at all today?

25 A No, sir.

Victor Mercuri - Recross-Examination by Mr. Weeks

1 Q So the judge is supposed to believe that the third
2 time you take the Bible in your hand and swear to tell the
3 truth's going to be the magic time?

4 A All I can say is I never heard this man talk about
5 his case. I made a majority of it up. He deserves a
6 retrial without my testimony. As she said during my plea
7 that my statement was particularly helpful to her case and
8 I'm sure that's in the transcript as well. So the man
9 deserves a retrial, does he not?

10 I mean, if she said that my statement was helpful
11 in his trial then -- I mean, you know, she said that, I
12 didn't say it was helpful, she said that, so obviously she
13 thought it helped them convict this man. I came here to
14 make what was right. My conscience is clear. That's all I
15 can really say.

16 Q Before she ever said a word, you already knew that
17 you were going to go back there and recant?

18 A I'm talking about what she said about my statement
19 at trial in front of the jurors, she said it was helpful.
20 That's all I'm saying is she said it was helpful. My
21 statement was a lie during this man's trial. I mean,
22 that's all I can say.

23 Q You were pleading guilty in front of Judge Early,
24 was there --

25 A What does my plea have anything to do with this

Victor Mercuri - Recross-Examination by Mr. Weeks

1 man's trial, though? I don't understand that part. What
2 does my plea have to do with that man's trial? That's two
3 totally separate things I thought.

4 Q When you were pleading --

5 A Yes, sir.

6 Q -- in front of Judge Early --

7 A Yes, sir.

8 Q -- and telling him you hadn't been promised
9 anything --

10 A Yes, sir.

11 Q -- threatened in any way --

12 A Yes, sir.

13 Q When Judge Early -- didn't he call upon one of the
14 solicitors to say whether or not your testimony at trial
15 they thought was helpful?

16 A Yes, sir, he did.

17 Q You didn't disagree with them there, even though
18 you knew you were going to go back in the back --

19 A I feel like the question --

20 Q -- and --

21 A -- wasn't aimed towards me, it was aimed towards
22 her.

23 Q I see. But you knew when all that was happening,
24 as soon as the judge dropped the gavel on your case you
25 were going to go back there and change your story. If I

Victor Mercuri - Recross-Examination by Mr. Weeks

1 understand your testimony right and your answers to Judge
2 Young's questions; is that what you were going to do?

3 A Sir, I don't know what y'all want from me, man. I
4 feel like I came to do what I felt like I needed to do. I
5 don't know what else y'all want from me, expect from me. I
6 don't want nothing else from y'all. I got my sentence, I'm
7 going to do my time. If y'all come at me with more time
8 for what I told y'all today, that's another thing I'll have
9 to accept and do my time. I just want what's fair.

10 Q Now, my question was when you stepped out here to
11 plead guilty, you knew you were going to go back there
12 afterwards and say you lied?

13 MR. SHAFFER: Objection, asked and answered he's
14 asked it probably five times. He's answered it several of
15 those times.

16 MR. WEEKS: He's not answering the question period.

17 THE COURT: He hasn't. But I got your point.

18 MR. WEEKS: No further questions.

19 THE COURT: All right. Take him back. You can
20 step down.

21 You got any other witnesses?

22 MR. SHAFFER: No, Your Honor, not at this time.

23 THE COURT: You got any you want to call?

24 MR. WEEKS: Just a second, Your Honor, if I could.

25 (There was a pause in the proceedings.)

Strom Thurmond - Direct Examination by Mr. Weeks

1 MR. WEEKS: Your Honor, the State would call
2 Solicitor Strom Thurmond.

3 STROM THURMOND,
4 having been duly sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box. State
6 your full name for the court, spell your last, please.

7 THE WITNESS: James Strom Thurmond,
8 T-H-U-R-M-O-N-D.

9 **DIRECT EXAMINATION**

10 BY MR. WEEKS:

11 Q Mr. Thurmond, you are the elected solicitor of the
12 2nd Judicial Circuit?

13 A I am.

14 Q And you were acting in that capacity since 2008?
15 '09?

16 A January of 2009.

17 Q And were you helping to and assisting in the
18 prosecution of Santonio Williams during his trial for
19 murder?

20 A I was.

21 Q Who all was participating in that trial with you?
22 From a lawyer's standpoint and from an investigative
23 standpoint?

24 A I was co-counsel with Ms. Cassie Hall and we were
25 provided trial support by Investigator Steve Miano and

Strom Thurmond - Direct Examination by Mr. Weeks

1 Norwood Bodie, all of who are present in the courtroom.

2 Q Who was representing Mr. Williams during that
3 trial?

4 A Mr. Dave Hayes with the public defender's office.
5 I'm sorry. Mr. -- representing Mr. Williams was Mr. Nick
6 McCarley and Mr. Derrick Bush.

7 Q Okay. And at some point in time during the
8 prosecution of Mr. Williams, were you advised that Victor
9 Mercuri had some information that they wanted -- he wanted
10 to share?

11 A Yes, Mr. Hayes was representing Mr. Mercuri,
12 reached out to Deputy Solicitor, Beth Ann Young via
13 e-mail -- she was prosecuting Mr. Mercuri -- that
14 Mr. Mercuri had information related to a couple of cases.

15 Q Okay. More than just Mr. Williams?

16 A Yes.

17 Q All right. And as a result of getting that
18 information, what did you do?

19 A I obviously didn't know what the information was,
20 but I sent Investigator Steve Miano to the Aiken County
21 Detention Center to meet with Mr. Dave Hayes and Mr. Victor
22 Mercuri.

23 Q Did you authorize Mr. Miano to promise him
24 anything, give him any power at all to grant immunity or
25 anything to Mr. Mercuri?

Strom Thurmond - Direct Examination by Mr. Weeks

1 A Absolutely not. And I was not present, neither was
2 Ms. Hall.

3 Q And after that meeting, did Mr. Miano prepare a
4 written document outlining what Mr. Mercuri had told him?

5 A He did.

6 Q What did you advise Steve Miano to do after that
7 meeting? Or what did he do after that meeting at your
8 behest to corroborate any information Mr. Mercuri had given
9 you?

10 A Ultimately to obtain records from the Aiken County
11 Detention Center about housing assignments and disciplinary
12 actions.

13 Q And what was the purpose of that?

14 A The purpose -- following that meeting, we met with
15 Mr. Hayes and Mr. Mercuri. I say we, Ms. Hall, Mr. Miano,
16 and myself, on November 9th, 2016 and interviewed
17 Mr. Mercuri. Following that interview, we took the
18 information that he had provided and sought to corroborate
19 it with the jail records and the disciplinary records
20 maintained by the Aiken County Detention Center.

21 Q And why was that significant based on what he had
22 told you?

23 A A couple of reasons. Some of the information that
24 he told us with consistent with our theory of the case that
25 the shooting of [REDACTED] McFadden was a retaliation killing for

Strom Thurmond - Direct Examination by Mr. Weeks

1 a Mr. Donny Brooks and we knew that Tayquan (phonetic)
2 Coach was a suspect and that homicide had been in proximity
3 on the brick wall to his sister. Additionally, by giving
4 their proximity, the fact that Mr. Mercuri told us he was
5 shooting at somebody else but missed and shot [REDACTED] McFadden
6 was consistent with where individuals were situated on that
7 brick wall. And as importantly we were able to corroborate
8 with the detention center housing assignments that on two
9 separate occasions that Mr. Mercuri was in the same pod
10 with Mr. Williams, that his roommate, Mr. Mercuri's
11 roommate had been this Pawnall, it's P-A-W-N-A-L-L and that
12 they had been childhood friends, I believe Mr. Mercuri had
13 told us.

14 Additionally with the disciplinary records
15 information that Mr. Mercuri had provided us, at some point
16 he and Mr. Pawnall were on lock down and that is when he
17 heard the conversation through the door. I believe his
18 testimony was he saw Mr. Williams's lips moving, but that
19 would have also been consistent with the statement he gave
20 of what we could independently corroborate, so we did not
21 accept Mr. Mercuri's statement in a vacuum. We sought to
22 corroborate it with all other available information.

23 Q If I understood it right, you personally, along
24 with some members of your staff, met with Mr. Mercuri two
25 different times?

Strom Thurmond - Direct Examination by Mr. Weeks

1 A Correct. On November 9th and prior to his
2 testimony in January of 2017.

3 Q Okay. And prior to the testimony that he was
4 offered or that he offered in the trial of Santonio
5 Williams?

6 A It was prior to the testimony, correct.

7 Q At any time, at any of those meet -- those two
8 meetings, did you promise him anything, offer him any plea,
9 threaten him in any way to get him to testify?

10 A We made Mr. Mercuri no offer, no deal, no promise,
11 period.

12 Q Did you imply that he would get the benefit of
13 whatever if he testified?

14 A I did not. One of the -- the first time we met
15 with him, he kind of blurted out that he wanted to plead to
16 strong-armed robbery. I told him that I was not
17 prosecuting his case, I'm not handling his case I didn't
18 know anything about his case and that he needed to listen
19 to his attorney and to tell the truth.

20 Q Did anybody else on the trial team or on the
21 investigative team make any promises in your presence at
22 any of those two meetings?

23 A Ms. Hall never spoke one word to Mr. Mercuri. I
24 drove the meeting and the conversation both in November and
25 in January. Investigator Bodie was at the second meeting

Strom Thurmond - Direct Examination by Mr. Weeks

1 along with Investigator Miano. Neither of them made any
2 statements to Mr. Mercuri as far as statements. Mr. Miano
3 was at the November 9th meeting and again made no
4 statements to Mr. Mercuri making any offer or promise or
5 deal with him whatsoever.

6 Q Now, during this period of time Deputy Solicitor
7 Beth Ann Young was prosecuting Mr. Mercuri. Did she ever
8 meet with y'all and Mr. Hayes in any of those meetings?

9 A No, the conversations I had with Ms. Young was
10 following Mr. Williams's trial.

11 Q Okay. And after the trial were there conversations
12 about offering him something to clock in a plea?

13 A Yes.

14 Q And did that ultimately happen?

15 A Yes.

16 Q Prior to that had you -- did you meet with David
17 Hayes, promise him anything or prior to the plea -- between
18 the trial and the plea, did you promise Mr. Hayes anything
19 or Mr. Mercuri anything --

20 A No, I did not.

21 Q -- or did Beth Ann Young prosecute him fully?

22 A I did not have any conversation with Mr. Hayes via
23 in person or electronically until after Mr. Williams's
24 trial.

25 Q Okay. And then after that a plea was worked out

Strom Thurmond - Direct Examination by Mr. Weeks

1 with Mr. Mercuri?

2 A It was. And I relayed to Ms. Young that
3 Mr. Mercuri had provided truthful testimony in our case and
4 felt he was entitled to some consideration for it. I was
5 out of town on the day of Mr. Mercuri's plea. Ms. Cassie
6 Hall was present and relayed that same information to Judge
7 Early.

8 Q Okay. And as a result of pleading guilty -- I
9 mean, there was at least 30 years of charges dismissed?

10 A Correct.

11 Q And he got 18 years?

12 A He did, for the armed robbery of an elderly lady.

13 Q Okay. And then you, like everybody else, when did
14 you get informed that Mr. Mercuri said he was lying when he
15 took the stand and when he pled guilty?

16 A In the days after Mr. Mercuri's plea, I'm sure I
17 was advised immediately. I was not personally present for
18 his plea.

19 Q Okay. Strom, did you say anything to Dave Hayes
20 outside of Mr. Mercuri's presence promising his client any
21 consideration?

22 A I did not.

23 Q Did you know of -- or were you present when any
24 member of your staff made any such promises?

25 A They did not.

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 Q Okay. Answer any questions Mr. Shaffer has for
2 you.

CROSS-EXAMINATION

3
4 BY MR. SHAFFER:

5 Q Solicitor Thurmond, so your testimony is you did
6 not offer Mr. Mercuri any strong-armed robbery deal, right?

7 A I absolutely did not.

8 Q You didn't tell him we're going to offer this to
9 you?

10 A I did not.

11 Q Okay. But he brought it up at some point; is that
12 fair to say?

13 A It's accurate to say.

14 Q Okay. So it's accurate that he brought it up at
15 some point during the November meeting?

16 A During the November 9th meeting, we made
17 introductions and he kind of blurted out at some point he
18 wanted to plead guilty to strong-armed robbery.

19 Q Okay.

20 A And -- let me make sure you understand.

21 Q Okay.

22 A I was not involved in his case. I was not
23 prosecuting him and the notion that we would have offered
24 anything having not talked to the attorney who has his
25 case, the solicitor who has his case, the victim and law

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 enforcement, is simply, you know, nonsensical.

2 Q Okay. Did it appear from your conversation on
3 November 9th that Mr. Mercuri was expecting some
4 consideration?

5 A I don't know what his expectations were. He
6 testified today he had expectations, but I -- it would not
7 have been as a result of any promise, offer, deal made by
8 any member of my staff.

9 Q And I know that you're not -- and Mr. Mercuri said
10 and -- I understand that.

11 Thinking back to that November 9th conversation,
12 did it appear to you that Mr. Mercuri was expecting
13 something, some sort of benefit from testifying?

14 A He stated that he wanted to plead guilty to
15 voluntary manslaughter and once we quickly shut that down,
16 said we're not offering you anything, he should not have
17 had any expectations from my office after that.

18 Q Okay. But y'all shut it down? Shut his
19 expectation down?

20 A Immediately. Yeah.

21 Q Okay. How did you shut it down? Do you recall?

22 A I told him that we were not going to taint his
23 testimony and I did not have any promise, plea offer, or
24 deal to make with him, that all he needed to do to listen
25 to his attorney and to tell the truth.

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 Q Okay.

2 A And at that point I read the statement to him that
3 he had given to Investigator Miano and asked him if it was
4 true and he said it was.

5 Q Okay. Now --

6 A And it's -- at that point I think -- I think that
7 meeting start to finish was less than 30 minutes. But once
8 he -- once the prosecutors had talked, we then wanted to
9 independently corroborate as much from him as we could.

10 Q Mr. Hayes was in that meeting, correct?

11 A Absolutely.

12 Q Okay. Now, did Mr. Hayes tell him that he would
13 receive any sort of benefit in your presence?

14 A Not in my presence.

15 Q Okay. And you don't know if Mr. Hayes did or did
16 not tell him he would receive any benefit?

17 A I have no idea about the private conversations
18 between Mr. Hayes and Mr. Mercuri.

19 Q Is it easy to get people in jail to cooperate and
20 testify against other inmates?

21 A I can't answer that question. I can tell you that
22 we did not make any promises or offers to Mr. Mercuri.

23 Q Are you confronted with this situation on a regular
24 basis when you have someone who potentially wants to
25 cooperate in prison where they say I want a deal in it?

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 A People in trouble frequently wish to cooperate.

2 Q Okay. And part of that is so that they'll possibly
3 can get some consideration later on; is that fair to say?

4 A Well, what -- again what's fair to say is we made
5 none of those offers. You're kind of asking me to get in
6 the head generally --

7 Q Yeah.

8 A -- of criminal defendants. And you know, I -- I
9 can tell you what we told Mr. Mercuri and what we didn't.

10 Q Okay. Well, and I'm not talking about Mr. Mercuri,
11 I am talking about generally. Generally, whenever they --
12 whenever someone comes forward, they want some sort of
13 consideration; is that fair to say in your experience?

14 MR. WEEKS: Your Honor, objection. General is not
15 relevant here.

16 THE COURT: It's speculative.

17 BY MR. SHAFFER:

18 Q In your experience, does --

19 MR. SHAFFER: And I'll rephrase the question if
20 that's okay, Your Honor.

21 THE COURT: Okay.

22 BY MR. SHAFFER:

23 Q In your experience is it a common practice for a
24 cooperating inmate to request some consideration?

25 A I have seen that happen and I have seen it not

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 happen.

2 Q Do you have a statement, normal thing you say,
3 whenever that does happen? Do you tell them we can't
4 promise you anything right now?

5 A We generally say -- we wouldn't have the right now,
6 those are your words.

7 Q Okay.

8 A Yeah. Testify truthfully, we make you no promises,
9 no offers, no deals.

10 Q Say we'll look at it later?

11 A I did not say that in Mr. Mercuri's case.

12 Q Okay. But you have said that in past?

13 A I don't know if I've said that in the past. I've
14 handled thousands and thousands of criminal cases. I can
15 tell you what I said and what I didn't say in Mr. Mercuri's
16 case.

17 Q That's fair. But you weren't present for all of
18 the conversations with Mr. Mercuri; is that fair to say?

19 A I mean --

20 Q The first conversation you weren't?

21 A I wasn't present at the first meeting with
22 Mr. Mercuri that he asked for.

23 Q Okay. Did you do anything to -- well -- I guess
24 let me ask this: Specifically -- and I know I've already
25 asked this question, but I want to make sure that I have it

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 correct in your words. Specifically whenever he indicated
2 that he wanted to plea the strong-armed robbery, what did
3 you specifically say to him?

4 A I said we are not going to take your testimony -- I
5 said initially, I'm not handling your case, don't know
6 anything about your case. Your case is being handled by
7 somebody else. I'm not going to taint your testimony and
8 will make you no plea offer, no deal, no promises. And you
9 just need to follow the advice of your attorney and tell
10 the truth.

11 Q What did you mean by we're not going to taint your
12 testimony?

13 A We're not going to taint your testimony.

14 Q Well, what do you mean by tainting of testimony?
15 Can you explain that just --

16 A Entering into a conversation about what if's. I
17 was not interested in having that conversation with him. I
18 told him again I'm not making you a deal, I'm not making
19 you an offer, I'm not making you a promise. Testify
20 truthfully --

21 Q Okay.

22 A -- or not. Cooperate or not.

23 Q Why would it taint his testimony for him to -- him
24 to talk to you about a plea offer?

25 A Because he was -- I'm sorry. Because his testimony

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 under oath that he had not been made any promises or any
2 deals or any offers was important to me in this case and in
3 other cases. And you know, it can kind of be spun either
4 way by a defense attorney that you've either got a deal or
5 you're getting a deal and, you know, we elected to not make
6 him any offer and would not be in a position to consider
7 his testimony until after he had testified.

8 Q Okay. Have you ever explained your thought on that
9 to -- to either Mr. Mercuri or his attorney, David Hayes?

10 A In those discussions, the two conversations I've
11 had with Mr. Mercuri, no. I don't recall if I ever had
12 that conversation with Mr. Hayes.

13 Q Did you ever disclose the fact that Mr. Mercuri
14 asked for a plea, a specific plea offer during your
15 conversations?

16 A I don't recall if I did.

17 Q So whenever you shut him down and saying that,
18 saying we're not going to taint your testimony, is it fair
19 to say you didn't want to go down that path to lead to a
20 possible offer?

21 A I -- I was not interested in having any
22 conversation with Mr. Mercuri about how his case would
23 ultimately be resolved.

24 Q Okay.

25 A Which is why he was very directly told we're not

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 promising you anything. I didn't want -- I didn't want him
2 to start with a -- with a well, why or what about this. We
3 just were not going there with him.

4 Q Because if you went there, it might taint his
5 testimony, right?

6 A I'm -- it wasn't going to be tainted by anything I
7 was going to say.

8 Q But it may have been -- it would have been tainted
9 had you gone into a conversation about plea offer, right?

10 A Potentially.

11 Q Okay.

12 A Yeah.

13 Q And you wouldn't have wanted that to come out at
14 trial that he was under the expectation of getting a plea
15 offer in order to testify; is that fair to say?

16 A Which is why it didn't happen.

17 Q But is it fair to say though? You didn't want that
18 coming out at trial?

19 A Please ask your question again.

20 Q Okay. You didn't want it to come out at trial that
21 he was expecting a plea offer in exchange for his
22 testimony?

23 A He didn't -- he was not made a plea offer, so it
24 would not have come out at trial because it didn't happen.

25 Q I understand that, but you didn't want the -- his

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 expectation to come out at trial, did you? Did you want --

2 A Which is why he was not made a plea offer.

3 Q Okay. But -- I understand that that's why you
4 didn't make him a plea offer. I understand that part of
5 your testimony. But you're saying yes, you did not want
6 him -- want the jury to hear that he had expectation?

7 A You're asking me to opine on Mr. Mercuri's
8 expectations. I can tell you what we told Mr. Mercuri and
9 what we didn't.

10 Q And I apologize if I haven't phrased the question
11 properly, because it could completely be my fault, but what
12 I'm trying to ask you is you, as a solicitor, as the trial
13 attorney prosecuting the case, would not have wanted the
14 jury to hear that he was testifying with the expectation of
15 a plea offer, correct?

16 A Unless we had made that expectation.

17 Q Okay. But you wouldn't have wanted them to hear
18 that, correct?

19 MR. WEEKS: Your Honor, he's answered that.

20 BY MR. SHAFFER:

21 Q I mean, it's a yes or no question. Did you -- did
22 you want the jury to hear that he had the expectation of a
23 plea offer or not.

24 A There was not an expectation of a plea offer from
25 my office because we told him we're not making you any plea

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 offers. I'm --

2 Q I understand your testimony related to that. What
3 I'm asking you is whether or not you would have wanted them
4 to hear, them being the jury, to hear that he had an
5 expectation of some consideration. Not whether or not it
6 happened. I'm asking you whether or not you would have
7 wanted them to hear that, what his expectation was?

8 A You know, I just -- I just don't know how to answer
9 that question.

10 Q All right.

11 A Sorry.

12 Q You didn't bring up at trial the fact that he had
13 previously asked you to give him a plea offer, correct?

14 A That did not come out at the trial. I remember --
15 I laid all of his charges out there, what his exposure was,
16 what his prior record was, and then Mr. McCarley crossed
17 him on the same subject matter.

18 Q Okay. Now, you're saying you don't recall ever
19 disclosing this fact that he asked for a plea offer,
20 correct?

21 A Yeah, I don't believe that came out in trial.

22 Q Okay. And you don't recall disclosing it to
23 counsel, do you?

24 A I do not recall.

25 Q Okay. In your opinion, do you think that him

Strom Thurmond - Cross-Examination by Mr. Shaffer

1 asking for a plea offer indicated that he had an
2 expectation or --

3 A I don't know what -- I can't get into the mind of
4 Mr. Mercuri.

5 Q Okay. Objectively, do you think it would be more
6 likely that he would have an expectation of consideration
7 if he had been asking about a plea offer?

8 A If Victor Mercuri asked if he could plea to
9 strong-armed robbery, I assume that would have been his
10 expectation, but, again, whatever his expectations were, we
11 told him immediately, clearly that no promises, no deals,
12 no offers.

13 Q And you told him that you didn't want to taint the
14 testimony, correct?

15 A I did.

16 Q And you told him to listen to the advice of his
17 attorney, correct?

18 A And to tell the truth.

19 Q Okay. And that is correct, you told him to listen
20 to the advice of his attorney, right?

21 A Absolutely.

22 Q And in previous -- previous cases, you and --
23 Mr. Hayes has had clients testify as cooperating witnesses
24 on cases that you've handled; is that fair to say?

25 A I can't remember specific names of defendants, but

1 I'm sure I've had a number of cases with Mr. Hayes.

2 Q Okay. As a general rule, you have given -- given a
3 defendant who testified in a case some consideration during
4 a plea later on?

5 A I mean that's all very fact and case specific. If
6 a defendant testifies meaningfully and truthfully they can
7 frequently get some consideration by us and/or the
8 sentencing judge.

9 Q From your course of dealing with -- dealings with
10 Mr. Hayes, do you think that that -- that he understood
11 that to be the case?

12 A I don't know.

13 MR. SHAFFER: No further questions.

14 THE COURT: Any redirect?

15 MR. WEEKS: None, Your Honor.

16 THE COURT: You may step down, thank you.

17 Anymore witnesses?

18 MR. WEEKS: Just a second, Your Honor.

19 (There was a pause in the proceedings.)

20 MR. WEEKS: No further witnesses from the State
21 with regard to this.

22 THE COURT: All right. You want to make your
23 argument?

24 MR. SHAFFER: Yes, Your Honor.

25 Your Honor, obviously there's two separate issues

1 here. There's one related to the factual events that
2 Mr. Mercuri or Mr. Mercuri testified to which he said are
3 now false. Obviously, that would be grounds for a new
4 trial based off of the fact that it was, in fact, evidence
5 used at trial that turned out to be false, Your Honor. I
6 believe that his testimony would qualify as newly
7 discovered evidence in this case because it's not just mere
8 impeachment, it's him saying hay I made all that stuff up
9 in order to get a deal.

10 Your Honor, obviously this relies on the
11 credibility of the Court and I understand that you're here
12 to make a credibility determination and in many situations,
13 if this had been a situation where, you know, some third
14 party off the street had come up and said he did it and
15 then came back later on and said no, he didn't do it, that
16 might be really, really suspect, the fact that he's
17 recanting. No, we're not dealing with a normal person
18 here. What we're dealing with is a jailhouse snitch, Your
19 Honor. He basically got up here and testified, Hey, I'm --
20 I was doing that to save my skin because I thought it might
21 benefit me. He's testified completely against his
22 interests here today because as the Court informed him and
23 I think he got the idea that he may very well get charged
24 and get additional time for this. So I think that that
25 lends to the credibility of his recantation, Your Honor.

1 Your Honor, any time you're dealing with someone
2 who had an expectation, which I think that easily as the
3 fact finder you can say that he had the expectation that he
4 might get something beneficial from this. I think that
5 that's pretty clear from the evidence you have before you
6 that he would have been expecting to get something. Your
7 Honor, I think that obviously he had a motive to lie in the
8 first place during the trial -- my client's trial. He has
9 no motive to lie here today, but he's here giving a
10 statement saying that that's completely false, so -- and
11 really what we have, the only -- the only -- you know --

12 THE COURT: He's lied so much prior to today that I
13 should believe him today; is that what you're saying?

14 MR. SHAFFER: No, Your Honor. Actually, I'm not
15 saying that --

16 THE COURT: He's lied in my court, is what he said,
17 back in -- at the trial. He lied in front of Judge Early,
18 but you're telling me I should believe him today despite
19 the fact that he already lied in my court once and he lied
20 to Judge Early.

21 MR. SHAFFER: Your Honor, I'm saying that --

22 THE COURT: That makes him believable.

23 MR. SHAFFER: No, Your Honor. I'm saying that he's
24 completely not credibility. His testimony in front of the
25 trial court is completely not credible. Whenever you were

1 trying the case, he had a motive to lie; where today he
2 does not have to lie because obviously the Court's going to
3 have to determine one of two things. Either he's lying
4 today or he lied on the stand. The Court basically has to
5 choose one of them, is my understanding, is to believe
6 either his testimony at trial, which he had a motive to lie
7 about, or his testimony today, which he's disincentivised
8 in lying about because basically he gets an additional
9 charge.

10 THE COURT: Well, what about his testimony in front
11 of Judge Early? When he was giving his plea that he had
12 not been promised anything; and that he certainly remained
13 silent when the solicitor told the judge that he had been
14 helpful at trial in convicting him. He obviously was
15 willing to accept the benefit of the solicitor's statement
16 without correcting the judge, Oh, I know that they said I
17 cooperated at trial and that's part of this deal that we
18 recommend you get no more than 20 years. But they didn't
19 know he was getting ready to walk in from this room to the
20 adjacent room and recant his testimony in its entirety.
21 But yet he testified that that's exactly what he planned to
22 do. He didn't enlighten the judge, he let them state
23 something that -- I think they believed was true, but that
24 he knew to be untrue. That's what his testimony boiled
25 down to. Well, he lied then too.

1 MR. SHAFFER: And, Your Honor, I think it's
2 probably a continuation of the same motive to lie. Your
3 Honor, he -- I mean, obviously, I didn't pick him as a
4 witness. I'm calling him today to --

5 THE COURT: You're telling me he's here today to
6 earn a boy scout badge because he's decided to become a
7 good citizen.

8 MR. SHAFFER: Your Honor, what I'm trying to
9 convince the Court of is that he had a reason -- his
10 testimony today is more likely the truth than the testimony
11 at trial, whenever he had a motive -- whenever he was
12 trying to get something. And did he do the solicitor's
13 office wrong? Yes, he did. I mean, I'm not saying that he
14 didn't, you know, basically -- if there was a deal in
15 place, he didn't sort of crawfish his way out of it and try
16 to mess up the solicitor's office. He did. You know, Your
17 Honor, I'm not saying --

18 THE COURT: It's becoming very difficult for me to
19 figure out what I'm supposed to believe he's saying when he
20 says it.

21 MR. SHAFFER: And, I understand.

22 THE COURT: You're saying today, believe what he
23 says.

24 MR. SHAFFER: Well, Your Honor, I'm trying to say
25 that you can't believe what he said at trial. I'm saying

1 that it's more likely that he's --

2 THE COURT: And I can't believe what he said in
3 front of Judge Early. You can't leave that one out either.

4 MR. SHAFFER: And, Your Honor, the second time he
5 got up there, she said that there was no deal and he said
6 that the reason that he would -- he said that is because
7 Judge Early was about to sentence him and he thought it
8 would be beneficial to him. The State made a point.
9 Mr. Weeks made a point whenever he first got up there, he
10 said you lie whenever it's convenient to you. Okay. And
11 I'm not disputing that.

12 But what I'm saying is that today it's not
13 convenient to him. It was convenient for him to lie in
14 front of this Court and in front of the jury. It was
15 convenient to him to lie to Judge Early. And it's
16 completely not convenient for him to lie here today and I
17 think the Court is going to have to make a determination as
18 to which one of those statements is credible.

19 THE COURT: Well, I'm going to help you out because
20 I already have. Because I listened to him and I listened
21 to the solicitor and I wouldn't believe Mr. Mercuri if he
22 said the sun rose in the east and the sky was blue outside.
23 So if that's all I got to do to make a decision on that, I
24 don't find his testimony to be the slightest bit credible.
25 And it's just a matter of figuring out when he lied and

1 when he's telling the truth, I'm not capable of picking up
2 on all the nuances of when to believe him and when not. I
3 choose not to believe that he is a credible witness. So
4 when he testifies here today, it's as likely to me that he
5 is lying today as it was when he lied in front of Judge
6 Early and when he lied in my courtroom when we had the
7 trial. So he is not a credible witness and I do not
8 believe a word that he said today.

9 Maybe his name, but that's about it. All right.
10 So I think that probably shuts that motion down.

11 MR. SHAFFER: And, Your Honor, if -- I'm assuming
12 you're finding essentially that he's not credible across
13 the board; is that fair to say?

14 THE COURT: I think that's pretty fair to say.

15 MR. SHAFFER: Okay. Your Honor, related to the
16 second issue -- and obviously, I'm not going to argue any
17 further on the 29(b) issue.

18 Related to the second issue of a offer, Your Honor.
19 There is testimony basically that was uncontradicted. The
20 State never put up Mr. Miano to testify as to what was
21 promised or what was not promised during that first
22 meeting. I think that at this point, you know, obviously,
23 Mr. Thurmond wasn't present during the first meeting, okay.
24 He can't testify to what happened and what was said during
25 that first meeting.

1 THE COURT: You could have called him as well.

2 MR. SHAFFER: Well --

3 THE COURT: It's your motion.

4 MR. SHAFFER: And, Your Honor, I --

5 THE COURT: You had the burden of going forward
6 with it.

7 MR. SHAFFER: And, Your Honor, I put evidence in
8 the record that is basically contradicted at this point,
9 which is that there is contradicted testimony right now
10 that Mr. Miano basically said that there will be some sort
11 of benefit. I mean I could call him now if the Court will
12 allow me to. But I mean, I think it's contradicted right
13 now. The State chose not to put him up. They're under --
14 he's under their control. He's their witness.

15 THE COURT: There's absolutely nothing that would
16 have prohibited you from calling him.

17 MR. SHAFFER: Well, Your Honor --

18 THE COURT: If he wouldn't have testified, I would
19 have made him get up here and testify if you had called
20 him.

21 MR. SHAFFER: Your Honor, may I call him now?

22 THE COURT: Well, you already know how I'm going to
23 rule. You could have done it already.

24 MR. SHAFFER: Well, Your Honor. I don't know how
25 you're going to rule on the second part of the issue.

1 THE COURT: You had the opportunity to put up any
2 evidence that you want. So I said we're moving to
3 arguments.

4 MR. SHAFFER: Okay. Your Honor, I still believe
5 that it would be -- that there is absolutely no evidence in
6 the record to contradict the fact that Mr. Mercuri or
7 Mr. Mercuri had been told that he would benefit in some way
8 from -- by Mr. Miano. I don't believe that there's any
9 evidence in the record to dispute that. I don't -- so I
10 believe that that might be grounds for a new trial in and
11 of itself.

12 Also, related to Mr. Thurmond's or Solicitor
13 Thurmond's testimony, he basically testified that he does
14 not recall disclosing that there was -- that Mr. Mercuri
15 had asked a plea offer. Your Honor, I think that that
16 evidence should have been disclosed. I think it should
17 have been brought up in front of the Court because whenever
18 he got up there, it makes it more likely that he has some
19 sort of bias. It is -- I believe it is -- it does go to --
20 it is relevant to whether or not he would expect some
21 benefit from testifying, the fact that he actually
22 requested a plea offer.

23 THE COURT: But he didn't have a plea offer
24 according to Mr. Thurmond.

25 MR. SHAFFER: Well, it determines how you -- and I

1 -- I will agree that he did not -- that Mr. Thurmond
2 testified that he -- that it was not a straight plea offer.
3 This -- the problem is, is whether or not he was given any
4 consideration, Your Honor. If he's up there expecting
5 consideration --

6 THE COURT: Any consideration he got was after the
7 trial.

8 MR. SHAFFER: Your Honor, whenever he went up there
9 and had the expectation of consideration, I believe that
10 whenever he actually said that then that should have been
11 disclosed because it goes to whether or not -- he was
12 receiving -- whether or not he had a motive to lie. It is
13 Brady material. It is information whenever he gets up
14 there and says, Well, I had, you know, he gets up there and
15 says I want the plea offer. Your Honor, I think it goes to
16 his expectations and coming forward. It's relevant to
17 that.

18 It is -- it could make a difference in the way the
19 jury views the case and the way the jury views his
20 testimony because the way it stood was he got up there and
21 merely said, you know, I -- there's no reason for me to
22 testify. I'm not getting any benefit from this. But if
23 the solicitor understood that he had some sort of
24 expectation of that, due to the fact that he's actually
25 requesting it during their meeting, that should have been

1 disclosed. I think that would have been discoverable. I
2 think that -- that it -- had defense counsel known that,
3 they probably would have brought it up. Well, you say that
4 you didn't -- you weren't promised anything, but weren't
5 you asking for a plea offer whenever you met with the
6 solicitor on this case? That's legitimate material that
7 should have been disclosed under Brady and Giglio and Napoo
8 and the State case I cited Riddle v Osborne. That is
9 legitimate information that should have been disclosed.

10 The State indicates, we don't know if we -- we
11 don't recall disclosing it. Your Honor, that is
12 information that should have been disclosed. That in and
13 of itself, which the solicitor admitted to, regardless of
14 his testimony, is Brady material that was not disclosed,
15 Your Honor.

16 THE COURT: Does the State wish to respond?

17 MR. WEEKS: Your Honor, if I could have a minute
18 before I respond? Just a short break.

19 THE COURT: We'll take 5 minutes.

20 (A brief recess was observed.)

21 THE COURT: All right. Back on the record. The
22 defendant's in the courtroom.

23 Mr. Weeks, you want to make your argument.

24 MR. WEEKS: Thank you. First thing, I agree, is
25 you can't believe a word out of Victor Mercuri's mouth; and

1 I think that's been proven by his testimony. The two times
2 before today that he's put his hand on the Bible and was
3 under oath, he said he wasn't promised anything any way,
4 shape, or form to get him to testify. He said that before
5 two different judges under oath. The failure to call Mr.
6 Miano when the solicitor, the head prosecutor for the 2nd
7 Circuit says that none of his people have promised
8 Mr. Mercuri a deal of any sort, that he read him the
9 statement prepared by Mr. Miano after their first
10 interview. He said it was true. Nobody promised him
11 anything in exchange for the testimony he gave during the
12 trial of this case.

13 As you correctly pointed out, Mr. Shaffer has the
14 ability to call every lawyer that's ever talked to
15 Mr. Thurmond or Ms. Hall or Mr. Miano to contradict what
16 Mr. Thurmond testified under oath, including the lawyer
17 that was representing him in these meetings and who
18 represented him at trial, as well as the lawyer who
19 represented Santonio Williams at trial to contradict
20 anything the solicitor said about there being no promises
21 or inducements made to testify.

22 The solicitor correctly said I can't tell you
23 what's in that man's mind, whether he hopes to get a
24 reward, whether he hopes to get, you know, a kiss and a
25 presidential award after he testifies. I can't tell you

1 that. I can just tell you I didn't promise him anything
2 and he made it real clear that he hadn't promised him
3 anything and I think you correctly stated and our law is
4 replete with instances that says this is a credibility
5 determination. It's a determination by the trial judge or
6 by the judge hearing the motion and I suggest that the
7 substantial evidence based upon Mr. Mercuri's admitted
8 perjury is sufficient to deny the motion.

9 I would point out a couple of cases just for the
10 record and I think as I indicated the law is pretty clear,
11 but the one I particularly like is one that -- I got a
12 little note here, Judge. State v Mayfield, a lot of them
13 cite when they're talking about after-discovered evidence
14 in situations where somebody decides after a trial or after
15 the testimony -- I don't know if you have a copy of it,
16 judge, but I'll pass up one. But I like it for the quote.
17 It says and he points out that the perjury is the one
18 asking --

19 THE COURT: What page are you at?

20 MR. WEEKS: Sir?

21 THE COURT: What page?

22 MR. WEEKS: Yes, I think that particular quote is
23 right toward the end. It is. It's the last paragraph in
24 the order, Your Honor. The person whose testimony is here
25 offered in support of the motion for new trial because of

1 newly-discovered perjury are those who now profess to be
2 perjurers.

3 I think that's clearly the situation with
4 Mr. Mercuri. He's admitted to lying at least two times
5 under oath, which is a confession of perjury and wants you
6 to believe him on the last time he testifies. I don't
7 think he's credible and I'd ask Your Honor to deny their
8 motions.

9 THE COURT: You have anything in closing? It's
10 your motion.

11 MR. SHAFFER: Your Honor, one thing that you -- the
12 Court had said and the State had echoed was that I could
13 have called Mr. Miano myself. The State also said I could
14 have called Mr. Mercuri's trial attorney. Your Honor, I
15 would state that first of all outside of my going out and
16 subpoenaing these people, none of them are in my control to
17 draw some adverse inference against my client because of
18 it. Secondly, Your Honor --

19 THE COURT: I'm just saying today's the day. If
20 you wanted them here you could have asked them nicely or if
21 they said I'm not coming unless you subpoena me, subpoena
22 me. I'm not drawing an adverse inference. I'm saying I've
23 had this on my calendar for several months now and I drove
24 all the way from Charleston this morning and this is it.

25 MR. SHAFFER: I understand, Your Honor.

1 THE COURT: Okay.

2 MR. SHAFFER: I'm just hoping that the Court isn't
3 drawing some adverse inference in my failure to call trial
4 counsel in this particular situation, or Mr. Mercuri's
5 trial counsel, Your Honor. I don't think it would be
6 appropriate to do so.

7 THE COURT: Well, you could have. In fact, I got
8 an odd e-mail from Mr. Gibbons who's the chief public
9 defender that said he in essence got an e-mail that they
10 were notified by you this morning that their presence was
11 required at this hearing, even though they've been given no
12 notice and had other things to do. He instructed them to
13 voluntarily attend. I haven't seen them, but then, you
14 haven't called them, so I gather you guys worked something
15 out.

16 MR. SHAFFER: Your Honor, actually that was a big
17 miscommunication. I had been talking with other members of
18 the PD's office before this and Mr. Bush, I believe
19 Mr. Bush might have misunderstand something I told him over
20 the phone this morning and then passed it along the
21 everybody else.

22 THE COURT: Well, they were planning to be here. I
23 guess you told them not to come.

24 MR. SHAFFER: Your Honor, I said the reason I would
25 call them is to rebut certain testimony if necessary, that

1 I didn't anticipate calling them, but I would have them
2 here to rebut certain testimony if necessary, Your Honor.
3 I was in communication with them. I don't want to mislead
4 the Court and say I wasn't communicating with them or that
5 they gave me a problem. Obviously, they told me that
6 they're right down the street. The PD's office here is
7 great, dealing with them. The solicitor's office has been
8 great dealing with them as well. I'm not saying anyone's
9 given me any problems with -- with producing them as
10 witnesses. I'm just saying that given this nature of this
11 motion, the fact that it's a post-trial motion in general
12 sessions; it's not a PCR, I'm not -- I don't believe that I
13 have the burden to produce some witnesses not necessarily
14 under my control and I think it would be unfair if you were
15 to somehow view that negatively as a lack of evidence, Your
16 Honor; because of the fact that I didn't produce the
17 witness or infer something that they would have testified
18 to.

19 Which is reason I bring this up, once again, the
20 State mentioned I didn't call trial counsel. Well, Your
21 Honor, I didn't call trial counsel, but I don't think the
22 that the Court can assume because I did not call trial
23 counsel that -- and I didn't call Mr. Mercuri's trial
24 counsel -- that somehow that would have -- that they would
25 have testified negatively against my client. I think the

1 Court has to deal with the testimony in the record
2 currently.

3 THE COURT: All right. Well, you know, the way you
4 posit my choice of I've either got to believe Mr. Mercuri
5 at trial or today or maybe in front of Judge Early or not,
6 I don't believe it's an either/or choice. He's come in
7 today. He said believe me today. But the first time I was
8 in your court I flat out lied because I thought I was going
9 to get something. I -- he's committed perjury one way or
10 the other. I don't even know what you would prosecute him
11 for as to which statement was false; but he's clearly come
12 in and said I lied in your court, but out of some sense of
13 civic duty, he seems to feel compelled. One could argued
14 that he might have other motives in coming forward. I
15 don't know. He denied that anybody had threatened him to
16 tell him he needed to come in and testify.

17 Be that as it may, I choose not to believe
18 basically his testimony today. And his credibility is
19 zero. I don't believe anything he said. So for that
20 reason, the motion for a new trial is denied.

21 Now, do you want to pursue the motion to reconsider
22 sentence?

23 MR. SHAFFER: Yes, Your Honor.

24 THE COURT: All right. What do you want to say.

25 MR. SHAFFER: Your Honor, I know that you've heard

1 the facts of this case. I know that you're probably more
2 familiar than I am because the trial of this case, I'm
3 looking at through the lens of a transcript and not
4 necessarily through -- through, you know, being there,
5 seeing the witnesses; and you certainly have a better sense
6 of the case than I do. I would ask the Court the
7 reconsider the case or reconsider the sentence of the case.

8 Your Honor, my client's fairly young and I know
9 that you get plenty of young people in front of you. I --
10 I've had the privilege fairly recently of taking on a new
11 client that was convicted of murder in 1964; and other than
12 about two years has been locked up at the department of
13 corrections ever since '64. He was 15, he's now 69. I
14 bring this up because I'm sure -- his name is Mr. Bailey,
15 Christopher Bailey. And I bring this up because of the
16 fact that people change and, you know, obviously, there's a
17 bunch of cases -- I'm sure the Court's familiar with the
18 fairly recent U.S. Circuit Court trends related to juvenile
19 convictions, so I'm not going to go through them. But I
20 will say that people change. I'm sure Mr. Bailey is not
21 the same person he was in 1964.

22 We're dealing with, now, a similar amount of time.
23 He's coming up on being locked up as long as my client will
24 be locked up. I'm sure he has developed and changed and
25 possibly for the better, you know. He seems honest. I

1 certainly didn't know him in '64. You know, that was way
2 before I was born, but, Your Honor. I would ask that the
3 Court reconsider based off my client's age and think about
4 the fact that, you know, he may not be above changing and
5 rehabilitating. We're not asking, obviously, for the
6 minimum here. I understand that the Court wouldn't do
7 that. What I'm asking for is a reduction, Your Honor. I
8 would ask for somewhere in the range of 40 years, that the
9 Court reflect on the fact that right now, he could be
10 locked up for the next 50 years, and, I mean, you know,
11 that he -- that maybe more time than what is needed to
12 change him and maybe more than what is just to punish
13 someone who is young.

14 So I just ask the Court to reconsider it's
15 sentencing. I'm not here to try to tell you that my
16 judgment is better than the Court's. Obviously, it's not
17 in this situation. I'm very far removed from what the
18 Court's seen and the Court has a better idea of what kind
19 of sentence he deserves, but I just ask the Court to
20 reconsider the sentence based on that.

21 THE COURT: Ms. Hall, are you going to handle this?

22 MS. HALL: Yes, Your Honor. On behalf of the
23 State, the defendant was looking at 30 years up to life in
24 prison. The victim's family at sentencing asked for a life
25 sentence. He was given a middle-of-the-road sentence.

1 Nothing that has been presented today changes the fact that
2 the defendant murdered an innocent 16-year-old girl in
3 front of her family in a senseless act of retaliatory
4 violence and it's the State's position that this motion
5 should be denied.

6 THE COURT: Well, you know, it used to really
7 bother me a lot when I started to do this for a long time
8 and after a while you just kind of get hardened to the fact
9 that there's a lot of young people out there in particular
10 that are doing things that clearly they don't understand
11 the magnitude of or they have a complete disregard for life
12 and other people. I don't know how to fix that. And I
13 often just say, well, you know, based on what you do, maybe
14 you got a chance to do something better in life and I go
15 with 30 on a murder case.

16 Sometimes it's, I don't think you've got any chance
17 at all and I give you life and, you know, life could be a
18 lot longer than 30. You know, what struck me so much about
19 this case is these gangs and gang-related things that, you
20 know, people get wrapped up into this lifestyle and
21 suddenly you're retaliating for things that are considered
22 fronts and other things, other people, happened to them
23 and, you know, don't consider their actions.

24 And in this case here, you know, this young girl,
25 her entire life was gone in an instant and all she was

1 doing was standing on -- sitting on a, you know, a row -- a
2 fence on a sidewalk enjoying a party and she's just a
3 child. And because of the defendant's actions, her life's
4 over. She's never going to get to graduate from high
5 school or go to a prom, get married, have children, have
6 any kind of a life and, you know, the defendant has a long,
7 long sentence, but he'll have a chance one day to walk the
8 streets again and, you know, maybe time will get him to
9 change his mind, but I suspect with this particular young
10 man it's going to take a long time to get him to see the
11 errors of his ways, so I will deny the motion to reconsider
12 the sentence. Good luck.

13 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

2 County of Aiken)

Certificate of Reporter

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5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions in and
12 for the State of South Carolina on the 14th day of August,
13 2017.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 12th day of January, 2018.

18
19
20
21
22 *Brenda J. Sigwald*

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020

presented by the State at the trial of this case. During Mercuri's direct examination at trial he was questioned regarding charges pending against him and the potential penalty for those charges upon conviction². Mercuri was further questioned regarding whether he had entered into a 'deal' with the State in exchange for his testimony:

Solicitor: Do you want to tell this jury what promises or deals the State has made with you in exchange for your testimony?

Mercuri: Absolutely none at all. No promises, no deals, nothing like that.

(Trial Transcript)

Further, the Defendant's trial counsel cross-examined Mercuri regarding the existence of any promises made in exchange for his testimony and he again denied the existence of any promises. Trial counsel continued questioning Mercuri regarding the possible punishment he could receive for his charges.

Following the trial of this case, Mercuri's charges were resolved in a guilty plea to Armed Robbery on March 2, 2017, before the Honorable Doyet Early, III. At Mercuri's guilty plea, he was again questioned regarding the existence of any promises, other than the plea agreement on the record at that time.³ Again, Mercuri testified under oath that no other promise existed. Mercuri received an eighteen (18) year sentence for Armed Robbery. Mercuri's other pending charges were dismissed as a condition of the plea. Immediately following his guilty

² At the time of the trial in this matter, Mercuri had pending charges for Armed Robbery, Possession of a Weapon During the Commission of a Violent Crime, Possession of a stolen vehicle \$2,000 to \$10,000, Manufacturing Methamphetamine, and Malicious Injury to a Jail.

³ A recommendation of a maximum sentence (cap) of 20 years was made in addition to the dismissal of other pending charges in exchange for Mercuri's plea of guilty to Armed Robbery.

plea, Mercuri provided a written statement (statement) to Defendant's trial counsel recanting his trial testimony regarding statements made by the Defendant and alleging that he had in fact been promised a reduction in his charge to strong arm robbery in exchange for his testimony.

Subsequent to that statement, Defendant filed the Motion for a New Trial.

II. Motion Hearing

At the hearing in this matter, Defendant presented testimony from Mercuri in support of his motion for new trial. Mercuri testified his prior sworn testimony regarding statements made by the Defendant was a lie. Further, Mercuri testified his prior sworn statement regarding the existence of a 'deal' with the State in exchange for his testimony was a lie because he believed that the State had promised him something. Mercuri testified he had expected his charge to be reduced from Armed Robbery to Strong Arm Robbery. Mercuri stated the Defendant should have a new trial. Mercuri testified he had always intended to recant his trial testimony regarding incriminating statements made by the Defendant after his case was resolved and had calculated that he may even be charged with perjury for that action. Mercuri acknowledged he told Judge Early at the time of his plea, under oath, that no other promises had been made other than his plea offer and that the State had indicated to Judge Early during his plea that his trial testimony was helpful. However, he testified at the hearing in this matter that he had already planned to recant his trial testimony after his guilty plea.

Under cross examination, Mercuri's testimony was evasive at times and at other times he outright acknowledged lying. It was clear from Mercuri's testimony he was dissatisfied about the resolution of his charges.

Following Mercuri's testimony, Solicitor Thurmond testified his office had made no deals and no promises to Mercuri in exchange for his testimony. Solicitor Thurmond stated the first time he spoke to him, Mercuri indicated a desire to plea to strong arm robbery, but upon hearing that statement, Solicitor Thurmond immediately advised Mercuri that no offers or deals were being made. Solicitor Thurmond further testified that Mercuri's case was assigned to another prosecutor in the office and that Mercuri's plea offer was made by that prosecutor after the trial of this case.

Following testimony in the hearing, the Defense argued Mercuri's testimony before the Court today was to be held more credible than prior testimony and the Defendant should be granted a new trial. The Defense further argued, in the alternative, the Defendant should be granted a new trial due to the non-disclosure that Mercuri told the State he wanted a reduction in his charge to strong arm robbery.

III. Motion for New Trial – Recantation of Trial Testimony

a. Law

"To obtain a new trial based upon after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Jamison v. State, 410 SC 456, 467 (2014), citing McCoy v. State, 401 SC 363, 368 (2013), quoting Clark v. State, 315 SC 385, 387-88 (1993).

Generally, "[t]he assessment of witness **credibility** is within the exclusive province of the jury." Tappeiner v. State, 416 SC 239, 250 (2016), quoting State v. McKerley, 397 S.C. 461,



464, 725 S.E.2d 139, 141 (Ct.App.2012). However, “[a] motion for new trial on after-discovered evidence is addressed to the sound discretion of the trial court.” State v. Mayfield, 235 SC 11, 13 (1959) *citing* State v. Clamp, 225 SC 89 (1954). Further, “the credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered. In him, not [the Supreme Court], resides the power to weigh such evidence; and his judgment will not be disturbed except for error of law or abuse of discretion.” State v. Porter, 269 SC 618, 621 (1977), *quoting* State v. Mayfield, 235 SC 11, 34 (1959), *citing* State v. Corn, 224 SC 74 (1953). “‘The granting of a new trial because of after-discovered evidence is not favored,’ and [the Court of Appeals] will affirm the trial court’s denial of such a motion unless the trial court abused its discretion.” State v. Harris, 391 SC 539, 545 (2011) *quoting* State v. Irvin, 270 SC 539, 545 (1978).

“Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.” *Id.*, *quoting* State v. Whitener, 228 SC 244, 264 (1955).

b. Findings of Fact and Conclusions of Law

The Court notes that Mercuri testified under oath at the trial of this case that no ‘deal’ existed between himself and the State in exchange for his testimony. He again testified, under oath, at his guilty plea that no other promise had been made to him. At the hearing in this matter, he testified that those statements were untrue. Mercuri testified at the trial to hearing the Defendant make certain statements only to later recant that testimony at the hearing under oath. Mercuri’s statements under oath cannot be reconciled in any way to avoid a conclusion of perjury. Mercuri even indicated that he had planned to present perjured testimony. While the



credibility of Mercuri's trial testimony is a determination for the jury,⁴ his credibility at this hearing is within the discretion of the Court. The Mayfield Court noted "the persons whose testimony is here offered in support of the motion for new trial because of newly-discovered perjury are those who now profess to be perjurers. The primary issue on the motion was their credibility." Mayfeild, at 37. The Court finds the testimony of Mercuri at the hearing to be unreliable and not credible.

Conversely, the Court finds the testimony of the Solicitor Thurmond to be credible and reliable. Having presented no other evidence to support his motion,⁵ the Court finds that the Defendant has presented **no credible or reliable evidence to support his motion** for new trial and hereby **denies** the motion.

IV. Motion for New Trial – Non-disclosure

a. Law

The law regarding claims under Brady are discussed at length in Gibson. Gibson v. State, 334 SC 515 (1999). "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 the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Id., citing Kyles v. Whitley, 514 US 419 (1995). Brady v. Maryland, 373 US 83 (1963), State v. Dohlen, 322 SC 234 (1996). "This rule applies to impeachment evidence as well as exculpatory evidence." Id., citing United States v. Bagley, 473 US 667 (1985); State v. Von Dohlen, 322 SC 234 (1996).

Whether requested by the defense or not, "favorable evidence is material, and constitutional error

⁴ Mercuri was subjected to the 'crucible of cross-examination' at trial, including questioning regarding possible motivation to lie.

⁵ Although other persons were present during meetings between the State and Mercuri, the Defense did not present testimony from those persons nor Mercuri's counsel to support Mercuri's assertion.

results from its suppression by the government if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different...A reasonable probability of a different result is accordingly shown when the Government's evidentiary suppression undermines confidence in the outcome of the trial." *Id.*, quoting *Whitley*, at 432-36. "The court must consider the suppressed evidence collectively, not on an item-by-item basis." *Id.*, quoting *Whitley*, at 436-38.

b. Findings of Fact and Conclusions of Law

The Defense contends that Mercuri's statement alone, (absent any actual agreement with the State), indicating he wanted a reduced charge was discoverable and should have been disclosed to the defense. It is clear from testimony at the hearing that the Solicitor "shut down" that remark and told Mercuri that no promises or deals would be made. The Defense now claims that Mercuri's basic desire to have a favorable outcome in his case was somehow unknown and undisclosed to the Defendant. However, at the trial of this case the Defendant's trial counsel cross-examined Mercuri regarding his possible sentence exposure and regarding who was prosecuting his case.⁶ Moreover, a criminal defendant's desire to have a favorable outcome in his case is such a basic and inherent desire, a mere statement to that regard does not create new and discoverable impeachment evidence. Likewise, non-disclosure of such a statement in no way undermines the confidence in a fair trial – particularly when the party making the statement was impeached on those grounds during the trial. Mercuri's testimony at trial was in addition to significant direct and circumstantial evidence presented by the State and knowledge of the

⁶ Trial Counsel: Okay. And you're looking at 35 years?

Mercuri: Yes, sir.

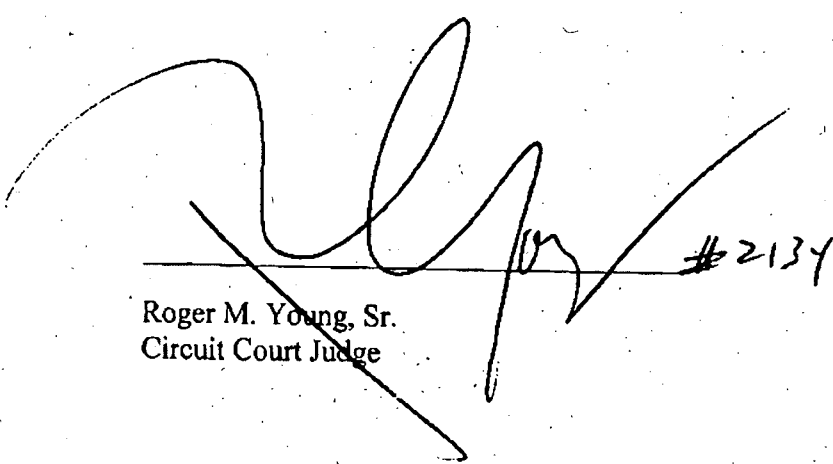
Trial Counsel: And those 35 years are in the hands of these folks (indicating)?
(Trial Trans.)

remark in question would not have created a 'reasonable probability of a different result.' Therefore, the Court finds the Defendant's claim on this motion for new trial to be **without merit** and the motion is **denied**.

V. Motion to Reconsider the Sentence

The Defendant next requested that the Court reconsider the Defendant's sentence of fifty (50) years. The Court heard from the Defense in support of this motion. The State opposed a reduction in sentence. No new material, mitigating evidence was presented during the hearing. This case involves the Defendant killing a 16 year old child as a result of a botched attempt to kill another individual during an act of retaliatory gang violence. The Court finds that the **sentence imposed in this matter was appropriate** and declines to modify the sentence. Accordingly, the Motion for Reconsideration of Sentence is **denied**.

AND IT IS SO ORDERED.



Roger M. Young, Sr.
Circuit Court Judge

#2134

August 25, 2017
Chambers, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
MURDER

§ 16-03-0010; 16-03-0020

At a Court of General Sessions, convened on February 15, 2016, the Grand Jurors of Aiken County present upon their oath:

That **SANTONIO TOREZ WILLIAMS** did, while either acting alone or with others, in Aiken County on or about April 14, 2015, feloniously, wilfully and with malice aforethought, murder [REDACTED] by means of shooting her at 219 Diamond Street, Aiken County, South Carolina and the victim did die as a proximate result thereof on April 14, 2015. 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.

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

WITNESSES

628 Aiken County Sheriff

Chuck Cain

Law Enforcement Case #: 15-021005

CWH

ARREST WARRANT NUMBER

2015A0210700179

FILED February 11 2016

Liz Godard
A.C.P. & G.S.

Amy Sanders as
Deputy Clerk

ACTION OF GRAND JURY

TRUE Bill

Gerald Ussery
Foreperson of Grand Jury
Date: February 11, 2016 *Gerald Ussery*

VERDICT

Guilty

628 Foreperson of Petit Jury
Date: 2-2-17
Amy Sanders

DOCKET NO. 2016GS0200274

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2016

THE STATE

vs.

SANTONIO TOREZ WILLIAMS

CDR #: 0116

Indictment for

MURDER

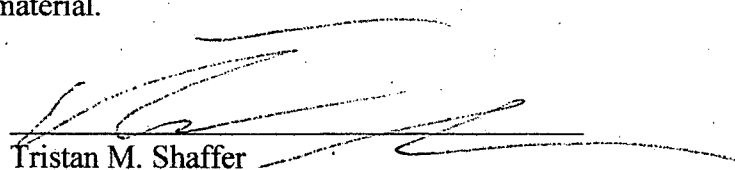
§ 16-03-0010; 16-03-0020

J. STROM THURMOND, SOLICITOR

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 8, 2019



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Attorney for Appellant

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SC Court of Appeals