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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Clifton Newman, Circuit Court Judge

JABRIEL L. SINGLETON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001496

APPENDIX

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SW - J. SINGLETON - DIRECT

1 Q Okay. And I'm gonna stop you there. So your
2 testimony is that he had called and he was
3 repeatedly calling you but you weren't answering for
4 a while?

5 A Yes, sir.

6 Q Okay. And was your testimony that you all were
7 sitting around smoking and just talking?

8 A Yes, sir.

9 Q Okay. Then what happened?

10 A So as I told him that, I sat a little while.
11 After he call back and asked me where I been. I
12 said I told you I was coming, you ain't give me
13 enough time, I got it, you know what I'm saying. I
14 told him, you ain't got to rush me, I ain't in no
15 hurry and you shouldn't be in a hurry either.

16 Q All right.

17 A But he was sounding like he had something to do
18 like he was going to do something so I told him I'd
19 be there in a minute, just meet me at my girlfriend
20 house. So after me and Derrick left, he had dropped
21 me off at my girlfriend house. Breeze and Crash,
22 they was sitting in the yard waiting and I was like
23 right around the corner with it. They beat me there
24 so I guess they was already in the area, could be,
25 or something like that so.

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1 Q So your testimony is that they were already there
2 when you got there —

3 A Yes, sir.

4 Q —at your girlfriend's house, okay? And then
5 what happened?

6 A So as I got out — as Derrick dropped me off and
7 I got out the truck I went and said, what's up to
8 them. They was just sitting there and they had the
9 music on, I guess, just talking a little bit so I
10 told them I'd be right back out. I went in the
11 house. As I went in the house I already knew my
12 girlfriend had an interview, and she needed a ride.
13 She was supposed to catch the bus because she was
14 already running kind of late so —

15 Q So she had — your girlfriend had a job
16 interview?

17 A Yes, sir.

18 Q You remember where it was?

19 A At Zaxby's.

20 Q Okay. So you went inside and then what happened?

21 A So as I went inside and I told her — and she was
22 already running late. She was getting ready. She
23 was getting ready and she was supposed to catch the
24 bus. I told her that I see if they would give her
25 ride there so she won't be late. So I went outside

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1 and I asked them, they said yeah. So I went back
2 in, told her they'll give that her a ride, she need
3 to hurry up and come on.

4 Q Okay. And was anybody else there that went along
5 to Zaxby's?

6 A Her and her friend name Tishay (ph). Her name is
7 Tishay.

8 Q So it's your girlfriend and another female?

9 A Yes, sir.

10 Q Okay, and so you're at the house and then what
11 happens?

12 A So they were getting ready. Shakeen was getting
13 dressed. That's when we went outside and all of us
14 got in the back seat.

15 Q Okay. And let me stop you there. So all of
16 y'all got in the back seat so there's you and the
17 two females in the back and Breeze and Crash in the
18 front?

19 A Yes, sir.

20 Q Okay. And then what happened?

21 A So that's when we, we road and they went and
22 dropped her off Zaxby's. As we was dropping her off
23 she asked me to give her some money to get something
24 to eat so I gave her some money to get something to
25 eat. I gave her a kiss and stuff and gave her the

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1 money and give her a kiss and that's when they got
2 out the truck and they went in to Zaxby's.

3 Q Let me stop you briefly. The money that you gave
4 her, was this the money that you won earlier?

5 A Yeah, it was some of it. I already had money on
6 me and some that I won.

7 Q Okay. So she gave you a kiss. Did her female
8 friend go in with her to Zaxby's?

9 A Yes, sir.

10 Q Okay. So you all had gone from your girlfriend's
11 house, two people in the car, two females, and to
12 Zaxby's and the females get out. Then what
13 happened?

14 A So they got out and went in Zaxby's. That's when
15 he told me he wanted to meet -- his friend and
16 whoever else wanted to meet so I told him okay. So
17 we was riding. They rode up. If guess they already
18 had a little bit of weed. They rode up and had
19 smoked, but I also rolled up a blunt of weed that I
20 had got too because I had got some for him and his
21 friend, and like I said, I told him I had more too
22 just in case they want more so I rolled up some of
23 what I had where they could see what it smoke like.
24 So we was riding down to the country --

25 Q Let me stop you. So you said to see what it

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1 smokes like. So is this sort of testing what you
2 had, what you had brought?

3 A Yes, sir.

4 Q Okay. Please continue.

5 A So we was riding down to the country 'cause he
6 said that's where his friend supposed to meet us at,
7 at his house or somewhere down in the country
8 wherever it's at. So as we was riding down there
9 was we smoking. We got into the county and we
10 stopped at the store on the back road. We stopped
11 at the store, he got out the store -- I mean, he got
12 out the car, went into the store, and like before he
13 got into the store though he was talking to somebody
14 outside. I'm not sure, I don't know who he was but
15 he was talking to somebody outside and me and Crash
16 was just sitting in the truck. We was waiting on
17 him to come back to get in the truck. He talked to
18 him for a few minutes and then he came back to the
19 truck, and that's when we went down the road --

20 Q Okay. Let me stop you again, sorry to keep
21 interrupting. But you all had gone to the store and
22 he was speaking with somebody for a few minutes?

23 A Yeah, for a --

24 Q You and Crash were still in the vehicle?

25 A Yes, sir.

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1 Q Did you know the person he was talking to?

2 A No, sir, I don't know him.

3 Q Okay. And then y'all started heading down the
4 road, then what happened?

5 A So after we headed down the road we turned on a
6 little back road, and we turned down the back road
7 that lead into a dirt road, and that's when we was
8 starting, coming up the dirt road, that's when he
9 pulled into the house, I guess, the house that we
10 was at and backed in.

11 Q Is this the house that they'd been talking about
12 throughout the process here?

13 A Yes, sir.

14 Q Okay. Now how did — I mean, how did he, did he
15 pull up by the house or turn around or?

16 A Yeah, turned into the yard and just backed in and
17 backed up and backed up and like that.

18 Q Okay. Turned in the yard and backed in. Okay,
19 then what happened?

20 A So as he backed in he had cut the car off and
21 just — then he kept the radio on so we was sitting
22 in there listening to the radio. And we was sitting
23 there, like, when we was riding down towards the
24 country like we was talking, had a little
25 conversation. Then we got there, it was a little

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1 more quieter, we was just sitting in the car like
2 supposedly waiting I guess.

3 Q And you said supposedly waiting, so you're just
4 sitting there waiting on?

5 A The friend to arrive I guess.

6 Q And did you have -- did he identify who his
7 friend was or anything, did he say there's a guy,
8 what did he say?

9 A He just said there was a guy that wanted some.

10 Q Okay, then what happened?

11 A So as we was sitting there we was waiting. I
12 asked him how long it'll be before he get there. He
13 said it should be there in a minute. So that's when
14 he got out the truck and I guess he got on the phone
15 to see where he was supposed to be at. So as he was
16 on the phone I was just sitting in the back of the
17 truck listening to music. And Crash was also in the
18 truck too; he was smoking a cigarette. So we were
19 just sitting there waiting, and as we sitting there
20 waiting Crash got out the truck to talk to him so
21 ---

22 Q Okay. So briefly, when he was out he was on the
23 phone. Do you know whether he was really on the
24 phone? I mean, he just had the phone up to his ear?

25 A Yeah, I don't know if he was on phone.

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1 Q And then that was for a few minutes, and you
2 testified that Crash then got out went up to him?

3 A Yes, sir.

4 Q Okay. And then what happened?

5 A So as Crash went up and talked to him, you know,
6 like they was, had their backs turned to me. I
7 couldn't really hear exactly what they was talking
8 about because of the music was on in the car and
9 like they was a little distance from the truck.

10 Q You looked a little uncomfortable. Did you start
11 feeling weird or something at that time or was it
12 later?

13 A Yeah, like only time I start feeling some type of
14 way is like when they was — he was supposed to be
15 on the phone, he as supposed to be on the phone but
16 he was really like talking to Crash seem more like
17 to me. Then I seen —

18 Q Okay, so what you're saying is he has the phone
19 up here but he's actually talking to Crash?

20 A Yeah, it seem like he — I could see their lips
21 moving kind of back and forth on the side.

22 Q And did they, anybody turn around or anything or
23 look at you or?

24 A No, that's when Crash, he like, he just like
25 peeked back at me to see what I was doing.

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1 Q Okay.

2 A I was just sitting there. So as he peeked back
3 at me I got back in the truck, and he was just
4 sitting there so that's went Breeze supposedly — I
5 guess, he got off the phone. When he got off the
6 phone he came back and sat in the truck. The door
7 was like still kind of opened but he was turned
8 back, like talking to him. He asked me if I got
9 anything for me. I was like, I got what you wanted
10 and what the other person want. He was like, what
11 else you got for me. I was like, you —

12 Q Okay, let me stop you. So he turned around to
13 you and he said that you have everything for me?

14 A Yeah.

15 Q And he was talking about that green plant like
16 material?

17 A Yes, sir.

18 Q Okay. And then he said what else you got for me.
19 Then what happened?

20 A After he asked me what else you got for me, I
21 asked him, I was like, what you mean, I was, all you
22 wanted was the quarter pound, right.

23 Q Okay. So you said, what do you mean all, you
24 just asked for a quarter pound?

25 A Yes.

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1 Q So you still thought at that time that he was
2 asking if there was anymore weed?

3 A Yeah, I didn't —

4 Q Okay.

5 A I wasn't too sure.

6 Q Okay. And then what happened?

7 A So as he asked me, after he asked me what else I
8 got for him and I told him all you wanted was a
9 quarter pound, I got what you wanted and what the
10 other person wanted, he was like, naw, what else you
11 got in your pockets for me. That's about when he,
12 he like jumped, he like jumped up in his seat, like
13 he was kind of up in the seat, (indicating). He
14 grabbed at for my neck. I was reaching trying to
15 hold him down and go in my pocket and stuff like
16 that; he was trying to do that.

17 Q Okay. And let me stop you there, you might need
18 to place that a little bit. You at that point you
19 turned around. You said he had grabbed you, but you
20 also said something about your pockets. So just if
21 you could, just take us through. You say he turned
22 around and grabbed you?

23 A Yeah, turned around and grabbed me like by the
24 neck.

25 Q By your neck?

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1 A Then he grabbed me by my neck first trying to pin
2 me down.

3 Q He was trying to pin you down? Was he a big
4 fellow?

5 A Yeah, he a big fellow.

6 Q Okay. And then what happened?

7 A So he was — as he grabbed me by my neck with his
8 hands hurting I was like trying to grab his hands
9 and like push him off, you know what I'm saying. I
10 was kind of in shock, like, what was going on. So
11 as I was trying to push his hands off, he used his
12 arms to try to like pin me down like trying to grab
13 for my pockets with his hand and lift up 'cause I
14 was trying to grab my, pull up like my shirt and
15 stuff like this.

16 Q So if I can stop you right there. And just to be
17 clear, so you're saying that he had you pinned down
18 and he was attempting to go through your pockets?

19 A Yeah, my pockets that I had, that I had the weed.
20 I had like sitting on my lap.

21 Q Just sitting on your lap?

22 A Yeah.

23 Q Okay. And then what happened?

24 A So as he was doing that Crash got from out the
25 front seat and came and try to open the back door.

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1 I guess he was ---

2 Q Now which back door?

3 A He got out, came try to open the passenger side
4 back door.

5 Q Okay.

6 A So I guess it was locked so he came back and
7 jumped in the front; and as he jumped in the front,
8 he also got up in the seat and grabbed me too. As
9 he grabbed me he got trying to hit me in head and
10 stuff like that so as he was ---

11 Q Okay. So let me stop you right there. So both
12 guys had their hands on you at this point?

13 A Yeah.

14 Q Okay. Then what happened?

15 A So they was hitting me in the head. I was
16 struggling to keep them off, like, they couldn't
17 really get in my pockets. The car was, it was kind
18 of small anyway so it was kind of --- I was kind of
19 pushed up however they was trying to do it so they
20 couldn't really get me how they wanted to. I
21 couldn't really get them off me like I want to, but
22 I was able to keep them off me a little bit. So
23 they see they couldn't really get me how they wanted
24 to, that's when Breeze had turned around and I seen
25 him reach down the seat and I remembered from

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1 earlier that day that he was showing somebody a gun.
2 He put it down the seat so as he was reaching under
3 the seat --

4 Q Let me stop you real quick there again. So are
5 they both still got a hold of you or -- you said
6 that he reached under the seat. Did he take his
7 hands off of you or what happened?

8 A Yeah, he kind of like took his hands off me and
9 turned a little bit to reach under the seat. Crash
10 still had his hands on, was trying to like, he was
11 holding me trying to like pin me down too.

12 Q Okay, what you saw again?

13 A So as I seen Breeze turn, like, reach under the
14 seat that's when I kind of pushed Crash off me
15 'cause I feel like he was going to reach for the
16 gun. I got scared. I knew I seen him put it under
17 there. I ain't know exactly what he was doing, but
18 I knew the gun was under that seat earlier that day
19 when I seen him put it there. I don't know if he --
20 I don't know whether he still had it or not, but I
21 seen it.

22 Q Okay, now that's important though. You saw him
23 reach and you said that you had seen a firearm; but
24 you're saying, you're being straight forward, you
25 didn't know for sure. You'd just seen him one there

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1 earlier, but you didn't know for sure whether it was
2 still, there was a firearm there?

3 A Yeah.

4 Q Okay, fair enough. Then what happened?

5 A So as he was reaching under the seat I kind of
6 pushed Crash off me because I got scared, I ain't
7 know what to do. I kind of like got him off me a
8 little bit and I like raised up in the seat
9 (indicating) where he couldn't really grab me. And
10 as I raised up, that's when I pulled out my firearm
11 and they just kind of turned back around and ---

12 Q Okay.

13 A ---as he ---

14 Q So you got --- and where was your firearm on your
15 person?

16 A I had it like tucked on my side like
17 (indicating).

18 Q Was it like in the belt in your pants or
19 something?

20 A Yeah, like in the pants on the side.

21 Q Okay. And so you testified as he started turning
22 around that's when you had the firearm?

23 A Yeah, I was like raising up in the seat trying to
24 like get like all the way back as far as ---

25 Q Oh, I see. So raising and trying to go back

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1 (indicating) but there's no way to go, is there?

2 A Huh-uh.

3 Q Okay, I see. Okay, then what happened?

4 A So as I pulled out my firearm I just basically,
5 as I was raising up in the seat I just turned my
6 head and, like, I just started shooting until the
7 gun, until the gun clipped and as I was shooting I
8 was moving towards the back, the back driver's side
9 door and that's when I opened it. When I opened it
10 I fell out, like, I fell out on my back.

11 Q Okay. So let me stop you there again. So as you
12 were getting back up in the vehicle your testimony
13 is that you discharged the firearm until it was
14 empty?

15 A Yeah, yeah.

16 Q And at that time you fell out of the driver's
17 side of the vehicle?

18 A Yeah, I got to that side.

19 Q Okay, and then what happened?

20 A So as I fell out my leg kind of got, it kind of
21 got caught like in the car as I fell on by back.
22 And like, I was looking up, and as I seen Crash, he
23 was looking at me like from the front seat like he
24 was in shock. And I wasn't pretty sure what Breeze
25 was doing so I was like, I thought he was going to

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1 get out the car in case he would come back and try
2 to attack me again while he had the gun so I tried
3 to hurry up and reload. That's when I dumped out
4 the shells I had put as many as I could in. As I
5 put them in —

6 Q Do you remember how many or?

7 A I eventually — you know, I don't remember
8 exactly how many, but I think it probably — if I
9 didn't full it all it was pretty much all the way,
10 almost all the way full up.

11 Q Okay.

12 A 'Cause I was, I was trying to reload. I seen
13 Crash like reaching towards the seat like he was
14 going to — like under the driver's seat too, like
15 was Breeze when I seen him lean over. So as he
16 leaned over I was about to finish reloading, and I
17 had pushed the little thing back in as you reload.
18 As I pushed it back in I was trying to — I got my
19 leg out and like —

20 Q Okay, so your leg was still in the car, or in the
21 SUV?

22 A Yeah.

23 Q So the door was open?

24 A Yeah, the door was open 'cause the seat was far
25 back. The seat was like pushed back on it but I had

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1 fell out so I couldn't really get all the way out.

2 Q Okay, and then what happened?

3 A So as I got my leg out, I kind of, I pushed the
4 door. I was still on the ground I pushed the door
5 close to see where Breeze was at, to see if he was
6 getting out the truck. But after I pushed the door
7 closed to see where he was at, Crash had already, I
8 guess he already got out. I could see his feet
9 coming as I was getting up. I seen a firearm in his
10 hand like he was about ready to go. I just fired
11 one time and seen him about to raise the firearm up,
12 and he dropped the gun. After he fell to the ground
13 and as he got up and I -- I had ran, like I ran
14 towards the woods. As I was running towards the
15 woods the firearm dropped so I didn't stop to grab
16 it, I just kept running. I came out.

17 Q Okay. So, again, so your testimony is that he
18 got out of the passenger side of the vehicle and was
19 coming around the front side of the vehicle?

20 A Yes.

21 Q Now you just testified that you saw, you said
22 that saw the firearm at this time?

23 A Yes, sir.

24 Q You did see it?

25 A Yes, sir.

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1 Q Okay. And it was in his hand?

2 A Yes, sir.

3 Q Okay. And then you testified that he fell?

4 A Yes, sir.

5 Q And that you got up and ran into the woods?

6 A Yes, sir.

7 Q Okay. What happened -- we've -- what happened
8 after that?

9 A As I ran through the woods, like I say, my
10 firearm, it had like dropped out my pants, and I was
11 still too scared. I ain't know whether he was going
12 to get up and still try to come for me or not so
13 ain't turn around to get that. I kept running
14 through the woods.

15 Q Now when you say it dropped out of your pants,
16 were your pants sort of -- a lot of men wear them
17 sort of, is that what you mean by that?

18 A Yeah.

19 Q Okay, the baggy pants thing?

20 A Yeah, kind of big.

21 Q Okay. And so you're running in those woods
22 around there, and then what happens?

23 A So I was running through the woods and I came out
24 and ended up in somebody's yard. I don't know whose
25 yard it was, but I ran into their yard. I came out

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- 1 on the road. I'm not sure what road it was so I
2 looked around to see if I was familiar with
3 whichever road it was, and I went to the end so I
4 had went straight up the road. As I was going
5 straight up the road I started seeing like, I seen
6 like, I see like, a part of Cabin Creek that I knew
7 so I kept going straight up and that was Cabin Creek
8 Road. And as I got on Cabin Creek Road there was a
9 house that I knew, and I seen a car coming out.
10 That's when I had flagged him down and asked him
11 could I get a ride and he gave me ride to my house.
12 Q Okay. So once you had come off this dirt road,
13 you said you were on the dirt road and you saw part
14 of Cabin Creek?
15 A As I went through the woods.
16 Q Okay.
17 A And went through, like, people yard, whatever
18 yard it was that the woods dead to, that's when I
19 came, I went up toward the road, and I was trying to
20 look and see where I was at. I wasn't too familiar
21 with where I was at right then and there. As I kept
22 going up that's when it looked like I saw Cabin
23 Creek so I kept going up and that was Cabin Creek
24 Road.
25 Q Okay. And now Cabin Creek Road you know?

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1 A Yes.

2 Q And it turns, I mean, it turns out that this is
3 -- well, I mean, you knew you were out in the
4 country?

5 A Yes, sir.

6 Q But your testimony is just that, that particular
7 --

8 A Yeah, that particular back road I didn't know
9 that road.

10 Q Okay. And you testified that you got a ride from
11 somebody?

12 A Yes, sir.

13 Q And where did you go?

14 A I went to my house.

15 Q Okay, and went home. And as far as everything
16 with respect to this incident, this incident was
17 concluded. At that point there was no more
18 violence, there was no more craziness, you had
19 gotten away from the scene?

20 A Yes, sir.

21 Q Okay. Now later on -- Investigator Unger
22 testified that you didn't tell him the truth when
23 you told him you weren't there; do you remember
24 that?

25 A Yes, sir.

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1 Q And you obviously didn't tell him the truth. Is
2 there -- what was the reasoning?

3 A I was scared. I didn't know -- like I told him,
4 I ain't thought we had a self-defense law down in
5 South Carolina. I ain't want to be in trouble for
6 basically trying to fend myself when I fear for my
7 life. I thought that something was going to happen
8 to me. I was trying to protect myself. I didn't
9 want to get locked up for it. I was just scared.
10 and I felt uncomfortable when I was in there.

11 Q So your testimony is that you were uncomfortable
12 and that you were scared because you didn't think
13 there was a self-defense law in South Carolina?

14 A Yes, sir.

15 Q Okay. And they came to that hotel room. Do you
16 remember that?

17 A Yes, sir.

18 Q And they came and arrested you?

19 A Yes, sir.

20 Q Okay. And it was from there that they took you
21 to speak with Investigator Unger?

22 A Yes, sir.

23 Q I just -- I don't, really don't think I have
24 anymore questions for you at this time so I'm gonna
25 go ahead and turn it over to the government lawyers.

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1 MR. SUTHERLAND: No further questions at
2 this time.

3 THE COURT: Solicitor.

4 **CROSS - EXAMINATION**

5 **BY MS. CAVANAUGH:**

6 Q Where do you live, Jabriel?

7 A [REDACTED].

8 Q And is that -- is that in Hopkins?

9 A Yes, ma'am.

10 Q Whose house is that?

11 A My father.

12 Q And where did you grow up?

13 A I grew up right there at [REDACTED]?

14 Q In Hopkins?

15 A Yes, ma'am.

16 Q Is Hopkins a pretty big area of Columbia?

17 A Yes, it's a pretty nice sized area.

18 Q Oh, it is, okay. And does your mom also live in
19 Hopkins?

20 A Yes, ma'am, she stay in part of Hopkins too.

21 Q Do you have any, any of your other family live in
22 Hopkins?

23 A Yes, ma'am, a few other family members.

24 Q Like who?

25 A My auntie. I got an auntie stay down there, and

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1 my grandma stay down but she had passed away.

2 Q Okay. And you have any friends that live in
3 Hopkins?

4 A Yes, ma'am.

5 Q And who are they, just name a few.

6 MR. SUTHERLAND: Objection, relevance,
7 Your Honor.

8 THE COURT: Overruled.

9 MR. SUTHERLAND: Yes, sir.

10 THE WITNESS: Like, I got a few people I
11 know as, goes by the name Rondell, Terrance, and
12 Tommy. The person who I grew up with, the person
13 who gave me the ride.

14 BY MS. CAVANAUGH:

15 Q What's his name?

16 A His name is Junior.

17 Q Okay. Where did you go to high school?

18 A Lower Richland.

19 Q Did you graduate?

20 A No, ma'am.

21 Q What grade did you go up to?

22 A Tenth.

23 Q And where have you been since you were arrested
24 for this crime?

25 A Since I been arrested for this crime?

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1 Q Uh-huh.

2 A Alvin S. Glenn Detention Center.

3 Q And before this you knew Dashawn Jones pretty
4 well; is that right?

5 A Yes, ma'am.

6 Q About how long?

7 A I'd say I knew him since back when I was in
8 probably middle school.

9 Q Okay. And so y'all were pretty close?

10 A Yes, ma'am.

11 Q In fact, were you pretty upset that you couldn't
12 go to his funeral?

13 A Yeah, I would have gone. If I could have went
14 there, I would. I probably would have went. I
15 wouldn't say I was upset because of what had
16 happened, but we all can forgive and, yes, ma'am.

17 Q So you were upset or you weren't upset, I'm
18 sorry?

19 A I'm not gonna say I was upset. I was — I felt
20 bad for what had happened; but I, like, 'cause I
21 didn't mean for what happened to happen. But I felt
22 bad for what happened.

23 Q So are you saying that a couple days after the
24 funeral you did not say to your mom, and I quote, my
25 dog Breeze, I can't even go to his funeral?

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1 A I don't remember, but I probably could have said
2 it but I don't remember saying that.

3 Q Okay. Do you remember also in that conversation
4 saying to your mom, I want to know who did it too?

5 A I don't remember. I don't remember saying that
6 either.

7 Q I really want to know more than them?

8 A I don't ---

9 Q That was a couple of days after you were arrested
10 on January 28, 2012. You made a phone call around
11 4:25. Do you remember that?

12 A No, ma'am.

13 Q Okay. In fact, a couple of days later
14 January 31, 2012 around 11 p.m ---

15 MR. SUTHERLAND: Your Honor, may we
16 approach briefly?

17 THE COURT: Yes, sir.

18 (Whereupon, there was an off-the-record
19 Bench conference.)

20 THE COURT: Thank you, Mr. Sutherland.
21 Solicitor, you may continue.

22 BY MS. CAVANAUGH:

23 Q And you just stated that you've been in jail
24 since you were arrested for the crime; is that
25 right?

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- 1 A Yes, ma'am.
- 2 Q And are you aware that every single phone call
- 3 that you make is recorded?
- 4 A Yes, ma'am.
- 5 Q In fact, that recording actually is played before
- 6 you make any call; is that correct?
- 7 A Yes, ma'am.
- 8 Q So once again, on January 31, 2012, a couple of
- 9 days after you were arrested, didn't you tell your
- 10 mom you always go over there and chill with Breeze's
- 11 mom?
- 12 A No, I don't remember saying that either.
- 13 Q Didn't you ask your mom in that same situation to
- 14 go talk to her to see if she would talk in court on
- 15 your behalf?
- 16 A I don't remember that ether.
- 17 Q Okay. Now let's go back to when you started.
- 18 You said you started at the recording studio?
- 19 A Yes, ma'am.
- 20 Q What were y'all doing there again?
- 21 A Like a few people was making music. A lot of
- 22 people was chilling; some people were gambling.
- 23 That's when I had jumped in and started gambling
- 24 too.
- 25 Q And Breeze and Crash were outside talking?

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- 1 A They was inside at first when I was leaving out.
2 Breeze was outside talking to a few people.
- 3 Q Breeze was outside and where was crash?
4 A I'm not sure where he was at at that time.
- 5 Q Were they playing cards with you?
6 A No, they weren't playing cards.
- 7 Q And at that point you said that Breeze wanted to
8 buy some weed from you; is that right?
9 A Yes, ma'am, I can get some (inaudible).
- 10 Q Okay. And you agreed to sell it to him?
11 A Yes, ma'am.
- 12 Q And — I'm sorry, I wasn't following you. What
13 did you say happened after that? Someone else
14 wanted to buy weed from you?
- 15 A Yes. As I had left and I went to the person
16 house where I usually get weed from, he had called
17 and told me that somebody else wanted to purchase
18 some too.
- 19 Q Who called you?
20 A Breeze.
- 21 Q That someone else wanted to buy it from you too?
22 A Yes, ma'am.
- 23 Q Who was that?
24 A Someone he knew. I'm not too sure of the name.
25 He just said somebody else wanted some.

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1 Q And you stated you eventually went to your
2 girlfriend's house and met them there; is that
3 right?

4 A Yes, ma'am.

5 Q Because you told them to meet you there, then
6 there; is that right?

7 A Yes, ma'am.

8 Q And who is your girlfriend?

9 A Kenyatta Hickman.

10 Q Is she still your girlfriend?

11 A Yes, ma'am.

12 Q In fact, she's visited almost every week; isn't
13 that correct?

14 A Yes, she would visit.

15 Q And she was pretty stressed out over this, right?

16 A Yes, ma'am.

17 Q You initially tried to use her as an alibi?

18 A Yes, ma'am.

19 Q And she tried to help you with that too; didn't
20 she?

21 A Yes, ma'am.

22 Q And she was charged in this case as well. Are
23 you aware of that?

24 A Yes, ma'am.

25 Q You were pretty scared when you found out that

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1 she had a warrant for her arrest; weren't you?

2 A When I found out she had a warrant for her
3 arrest?

4 Q (Nodded head.)

5 A I'm not gonna say that I was, that I was scared,
6 but I didn't like the fact that she had a warrant
7 for her arrest too.

8 Q You knew that they had video at Zaxby's; didn't
9 you?

10 A I didn't know they had video; but after I think I
11 found that out after — I think after she after, I
12 had talked to her and she told me, like, she had
13 talked to the investigator. That's when I think I
14 found out about the video.

15 Q And at that point when you found out about the
16 video you knew — you knew that you were going to be
17 in trouble, right?

18 A After I knew they had a video?

19 Q Uh-huh?

20 A Pretty much, yes, ma'am.

21 Q Because you had stated that you were at her house
22 all day?

23 A Yes, ma'am.

24 Q And you knew that video, if it existed, would
25 potentially show you in the car?

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1 A Yes, ma'am.

2 Q So you were scared they would catch cut you in
3 one of your lies?

4 A Scared of what?

5 Q That they would catch you in one of your lies?

6 A What do you mean?

7 Q You tried to give yourself an alibi, correct?

8 A Yes, ma'am.

9 Q You said were at Kenyatta's house all afternoon?

10 A Yes, ma'am.

11 Q But when you find out they might have a video you
12 got nervous; is that correct?

13 A No, I didn't get nervous about they might have a
14 video. The only reason I just didn't tell what
15 happened is because I felt we didn't have
16 self-defense law. I was just scared. I didn't want
17 to get locked up, like I said, trying to defend
18 myself when I had fear for my life.

19 Q And in fact, you were still trying to tell your
20 mom early February that you were never in that car
21 dropping Kenyatha; is that — isn't that right?

22 A I don't — I'm not sure of that.

23 Q So February 7th, 2012, that was when your
24 girlfriend was arrested, right?

25 A I don't remember exactly when she was arrested.

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1 Q Weren't you still telling your mom that you were
2 at her house?

3 A I'm not sure; I don't remember.

4 Q That you didn't leave until you went to Club
5 Crush?

6 A I don't remember telling her that I was still at
7 her house, and I don't remember telling her I was to
8 Club Crush either. I don't think me and her even
9 talked about what really happened.

10 Q You and who?

11 A Me and my mom. I don't think we really talked
12 about it much.

13 Q That was because you were still denying to her
14 that you had anything to do with the shooting;
15 isn't that correct?

16 A I'm not sure. I'm probably was at the beginning
17 because like I said, I didn't -- I was scared. I
18 thought we didn't have no self-defense law, and I
19 was just trying to defend myself in fear for my
20 life. I know the phone recorded and I didn't want
21 to basically just let it all out over the phone
22 without -- and I was, I hadn't talked to my lawyer
23 either. I basically wanted to talk to my lawyer
24 first and let him know everything that happened.

25 Q You found out that Kenyatta was scared about her

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- 1 arrest warrant; didn't you?
- 2 A I'm pretty sure she was, but I —
- 3 Q You're pretty sure she was?
- 4 A Yeah, because I know she ain't never been to jail
- 5 before.
- 6 Q So she didn't call you on February the 8th at --
- 7 or you didn't call her February the 8th around 2:31
- 8 after she got out of jail and she was sobbing to you
- 9 on the phone? You don't remember that?
- 10 A No, ma'am.
- 11 Q You don't remember telling her when she was
- 12 sobbing to you on the phone, now it looks bad for
- 13 me, you're basically my alibi?
- 14 A No, ma'am.
- 15 Q You don't remember saying that?
- 16 A No, ma'am.
- 17 Q That same conversation you don't remember saying,
- 18 shit is looking bad for me now?
- 19 A No, ma'am.
- 20 Q Didn't she beg you to tell them what you have to
- 21 tell them?
- 22 A She what?
- 23 Q Wasn't she begging you to tell them, tell the
- 24 police, what you have to tell them?
- 25 A I'm not, you know, I'm not sure of that. She

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1 probably — if she was — I don't remember her
2 telling me that, but if she was she probably just
3 wanted me to just go ahead and just probably tell
4 them. She didn't know what happened but she just
5 want me, me and her — me and her basically straight
6 for them to leave her alone.

7 Q You knew police were looking for you; didn't you?

8 A Not at first, no, ma'am.

9 Q When did you first know they were looking for
10 you?

11 A Basically later on that night after I seen a lot
12 of them, I seen a lot them down when they came to
13 search for me down at my father's house later on
14 that night when I seen them on the news.

15 Q Oh, so that wasn't you in the woods that ran that
16 day?

17 A No, I didn't run through the woods.

18 Q That wasn't you that ran through the woods that
19 dropped your phone and the jacket?

20 A Like, well the jacket and phone that was a cut.
21 I had sat my jacket down like on a bucket. That was
22 on a cut that we usually sit on. I never ran
23 through no cut or nothing because I had, I had went
24 to a friend house who house been cut. I had walked
25 over there. I was walking. As they were searching

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1 and stuff I walked straight through. I was just —
2 I was looking at them as they was searching, and
3 that's when I walked across the street to a friend
4 house. After a while I had got a ride and I had
5 left from around there.

6 Q So your phone just randomly ended up in the wood
7 line where someone was seen running?

8 A My phone was in the jacket. I guess I had left
9 it in the jacket, and I didn't go back to get it
10 after all them left because where it was, that's a
11 cut way we used a lot sit right there, just be
12 chilling right there.

13 Q But you weren't running?

14 A No, ma'am.

15 Q So your jacket and phone, you just happened to
16 leave it there that day when eight members of
17 fugitive team were looking for you?

18 A The sun had come kind of down (inaudible). I sat
19 on one of the buckets that we usually will sit on.
20 We got chairs and buckets back there that we would
21 sit on, and I just sat it on the bucket. And as I
22 sat there I seen all of them, I got up and walked to
23 a cut to go to my friend house to talk to them about
24 what was going on, now all of them was around there.

25 Q But you didn't know they were looking for you?

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- 1 A No, ma'am.
- 2 Q Later that afternoon you rented a hotel room?
- 3 A Yes, ma'am.
- 4 Q Why did you go stay at the motel?
- 5 A Because I seen it on the news that they was
- 6 looking for me; and I was basically trying to get,
- 7 trying to get my mind right. I was scared of what
- 8 was going on. I had knew what happened. I was just
- 9 scared of what was going on, was trying to think of
- 10 what I should do.
- 11 Q Who's Randal Dandy?
- 12 A I don't, I don't know Randal Dandy too. I don't
- 13 know him too well.
- 14 Q He rented a room for you?
- 15 A No, he rented the room for somebody else that I
- 16 knew and they was at the room when I went there.
- 17 Q Who's that?
- 18 A They call him little B.
- 19 Q Who?
- 20 A Little B.
- 21 Q Okay. How long did — I'm sorry, I can't hear
- 22 you. What's his name?
- 23 A We call him Little B.
- 24 Q Little B?
- 25 A Yes, ma'am.

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- 1 Q How long did Little B stay with you in the room?
- 2 A He stayed for a while. He stayed for a little
- 3 minute.
- 4 Q What did y'all do?
- 5 A We was just sitting there.
- 6 Q Just sitting there?
- 7 A Yes, ma'am, just sitting in the room.
- 8 Q And when did Kenyatta come?
- 9 A She came a little bit after I came.
- 10 Q And she was your girlfriend?
- 11 A Yes, ma'am.
- 12 Q Did you call her to come?
- 13 A Like before I had went to the room I had went to
- 14 her house, and she told, she wanted to come where I
- 15 was at. She told me to send somebody to get her.
- 16 Q Okay. So somebody went to go get her?
- 17 A Yes, ma'am.
- 18 Q And she was your girlfriend?
- 19 A Yes, ma'am.
- 20 Q And you knew that the police were looking for
- 21 you?
- 22 A At that time, yes, ma'am.
- 23 Q And you loved her?
- 24 A Yes, ma'am.
- 25 Q And you care about her?

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1 A Yes, ma'am.

2 Q But you had her, knowing that the sheriff's
3 department was looking for you, in the hotel room
4 with you?

5 A I didn't want to, but she just insisted on
6 coming, and she just wanted to come.

7 Q In fact, you tried to hide behind her when the
8 police were coming to look for her?

9 A No, I wasn't hiding behind her. They say we was
10 in the shower, but I was sitting like on the toilet
11 seat. I was sitting on the toilet seat smoking a
12 cigarette. She was kneeling there on the floor.

13 Q She was —

14 A She was there on the floor like right beside me,
15 a little bit in front of me.

16 Q She was kneeling on the floor?

17 A Yes, ma'am.

18 Q What was she doing?

19 A Basically just talking to me. She was scared how
20 they was at the door. Both of us just, we were just
21 scared, you know, nervous.

22 Q Did you hear the police knocking on the door?

23 A Yes, ma'am.

24 Q And you were just sitting on the toilet smoking a
25 cigarette?

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- 1 A Yes, ma'am.
- 2 Q So they're lieing about you being behind the
3 shower?
- 4 A Yes, ma'am.
- 5 Q Does Kenyatta smoke marijuana?
- 6 A No, she don't -- no, she don't smoke marijuana.
- 7 Q Okay. And does she -- does she know that you do?
- 8 A Yes, ma'am.
- 9 Q Were you -- you were still trying to that the
10 weed that was found in the motel room was even yours
11 to her later on; weren't you?
- 12 A No, ma'am.
- 13 Q You weren't so -- again, you didn't make a phone
14 call to her on January 29th of 2012 and still you
15 were denying to her that that weed was even yours?
- 16 A No, ma'am, I don't remember that.
- 17 Q Okay. You remember giving a statement to
18 Investigator Unger?
- 19 A I remember. Yeah, I remember some of it.
- 20 Q Okay. Do you remember when he went through this
21 form with you?
- 22 A Yes, ma'am.
- 23 Q You remember him reading your rights?
- 24 A Yes, ma'am.
- 25 Q You remember him checking off each one as he read

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1 them to you?

2 A Yes, ma'am.

3 Q Do you remember signing the waiver?

4 A Yes, ma'am.

5 Q And did you agree to talk to him?

6 A Yes, ma'am.

7 Q And he didn't force you to talk to him?

8 A No, ma'am.

9 Q And you remember giving him — talking to him
10 about what you did that day?

11 A Yes, ma'am.

12 Q And you told him about the recording studio?

13 A Yes, ma'am.

14 Q Did you mention anything to him about the
15 gambling?

16 A I'm not too sure. I probably don't remember. I
17 probably did because as I had told before,
18 everything wasn't in there that me and him talked
19 about. We talked about — he questioned me about a
20 lot of stuff but most of it wasn't in there, what he
21 say he questioned me about.

22 Q So you didn't tell him a key piece of information
23 that you're telling this jury today?

24 A I'm not sure. I probably did.

25 Q But you don't remember?

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- 1 A I don't remember. I can't remember exactly what
2 all I said that day so.
- 3 Q Don't you think it's pretty important to tell him
4 that you had 500 to 700 dollars on you?
- 5 A That could be important; but like I said, I was
6 uncomfortable, I was nervous. And I -- I had been
7 smoking that day and all. I basically just
8 uncomfortable and nervous. I don't remember exactly
9 what I told him that day. That was a while back.
- 10 Q You told him that you were never in Hopkins area
11 that afternoon; didn't you?
- 12 A Yes, ma'am, I did say this.
- 13 Q You told him that you were at Kenyatta's house
14 all afternoon?
- 15 A Yes, ma'am.
- 16 Q While she was at Zaxby's?
- 17 A Yes, ma'am.
- 18 Q And then he confronted you about your cell phone?
- 19 A Yes, he asked me about the cell phone.
- 20 Q And he asked you, how is it that you weren't in
21 Hopkins but your cell phone is bouncing off towers
22 in Hopkins?
- 23 A Yeah, I remember when he asked me that, but I
24 tried to tell them they had confused me with that
25 one. When he asked me if my phone was at the house

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1 I was talking about the day when they came looking
2 for me when the phone was sitting on the bucket that
3 was in the woods.

4 Q So you didn't tell him when he confronted you
5 with your first lie that your cell phone was at your
6 dad's house?

7 A I didn't mean it for that day. That's what I'm
8 saying, that they confused me about. I was talking
9 about that day that they came looking for me that it
10 was sitting in the woods.

11 Q And then you told them that you didn't leave your
12 girlfriend's house until you went to Club Crash
13 that night; is that right?

14 A Yes, ma'am.

15 Q And once again, the phone records don't show that
16 you went anywhere near Club Crash?

17 A I went there that night. If you'll check
18 probably later on, I did go there that night.

19 Q You said 9 to 10:00 to Investigator Unger?

20 A It could have been later than what time I have,
21 but I did go that night.

22 Q Okay. But you didn't go at 9 or 10:00?

23 A I probably — I know it was somewhere probably in
24 that time. It could have been a little bit after
25 that.

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1 Q But didn't you go to your girlfriend's house
2 after midnight?

3 A No, I went to her house after -- I told him that
4 I was at her, went to her house after I had left
5 Club Crush.

6 Q Let's talk about this glove, okay. That's one
7 that you did not mention earlier. You recognize
8 this?

9 A Yes, ma'am.

10 Q It's a knit black glove with a star on it?

11 A Yes, ma'am.

12 Q How do you recognize it?

13 A That's her -- that's my girlfriend's glove. She
14 left it in the truck that day, and I was supposed to
15 grab it for her I guess. There was another one --
16 it supposed to been another one too.

17 Q Oh, really, it just fell?

18 A I guess so, as I was, I guess as I was leaving
19 from the scene I guess it fell.

20 Q Right by the cartridge casing, it just fell right
21 there?

22 A It was out there; I guess it fell.

23 Q Right where you unloaded the gun?

24 A I don't know where I was at.

25 Q So when did you actually grab it for her?

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1 A As I was in the truck as we were riding she got
2 out, and I noticed that she got out and we was
3 riding heading to wherever we was supposed to be
4 going for the other person who wanted the marijuana.
5 That's when I had grabbed them and put it like in my
6 hoodie pocket.

7 Q Okay. Did you ever wear it?

8 A No, ma'am.

9 Q But your DNA is on the inside of it?

10 A I be playing with her. I never like wore it.

11 Q When you were playing with it?

12 A As I was in the truck when I grabbed it I was
13 just messing around with it.

14 Q When you left the car that afternoon, where was
15 everyone?

16 A When?

17 Q When you left?

18 A What you mean?

19 Q When you left 157 Prioleau Road, where was
20 Dashawn?

21 A Oh, I'm not sure. What do you mean? As I left
22 157 Prioleau Road?

23 Q Yes.

24 A At the scene?

25 Q Yes.

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1 A Oh, I don't know. As I took off running -- I was
2 scared. I didn't know where Breeze was at, what
3 happened.

4 Q And what about Jonathan Frazier?

5 A He had, as I said, as I fired one time he fell to
6 the ground and dropped the gun. That's when I took
7 off and just running.

8 Q So you don't know where Dashawn was, but you
9 noticed that Crash dropped the gun as you were
10 leaving?

11 A Yes, ma'am. Everything was just moving so fast
12 and all. Like I said, I was scared and I was
13 shocked at what was going on. I didn't know where I
14 was. I couldn't really focus on everything that was
15 going on especially once I seen get out the truck
16 and was coming around with a gun, I couldn't really
17 focus. I was paying attention to where he was at
18 when I seen him come around with a gun. That's all
19 I was thinking about.

20 Q And you stated that you had fallen out of the
21 back seat?

22 A Yes, ma'am.

23 Q The door of the back seat?

24 A Yes, ma'am.

25 Q How does that, how did that happen?

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1 A Like as I was firing I was going to open the odor
2 and I had opened it up. Like I had my head turned,
3 and i just started, like just I just started just
4 shooting. You know, when I had my head turned and I
5 was grabbing for the door. As I opened the door I
6 still was just shooting until the tape done fell
7 out.

8 Q And so you're falling out of the door
9 (indicating), right?

10 A Yes, ma'am.

11 Q Still shooting?

12 A I'm not sure if I was still shooting at that
13 time. I was peeking at that time.

14 Q You just said you were though?

15 A No, I said I was falling. I said I was shooting
16 as I was reaching for the door.

17 Q And what's going on right now while you're
18 shooting?

19 A Like, as I pushed, like I had pushed him back I
20 was like kind of up in the seat and I turned my head
21 as he was — as Breeze was about to turn back around
22 I just start, I was just shooting like as I was up
23 in the seat leaning towards trying to get out of the
24 truck 'cause I had kind of pushed Crash back off.
25 I had a little space where I can wiggle out and try

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- 1 to get from out as I started shooting.
- 2 Q And where, where is Breeze at this point?
- 3 A He was still in the front at this point, I guess.
- 4 He was still in the front.
- 5 Q And that's when you were firing all your shots?
- 6 A Yeah, I was shooting.
- 7 Q And Crash was where?
- 8 A I had pushed him off me a little bit I guess. He
- 9 was still in the front too.
- 10 Q And you said — what happened when you fell out
- 11 of the, fell out the front door?
- 12 A When I fell out the back?
- 13 Q Uh-huh.
- 14 A My leg, as I fell out, my leg got kind of got
- 15 caught and as my leg got caught and I was trying to
- 16 get it I seen him looking at me, looking kind of
- 17 shocked —
- 18 Q Who, who is him?
- 19 A Crash. I seen Crash looing at me. He was
- 20 looking kind of shocked. So as I seen him looking
- 21 —
- 22 Q Kind of what?
- 23 A He was looking like shocked.
- 24 Q Shocked?
- 25 A Yes, ma'am.

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1 Q Okay.

2 A And like as he was looking at me I was still
3 thinking like where Breeze could be, if he could
4 have a gun. That's how I knew about get out the
5 truck. So that's when I try to hurry up and reload.
6 But as I was reloading and was putting the bullet
7 back in, I guess Crash kind of came too. That's
8 when I seen him reaching like go under the driver
9 seat when Breeze was reaching out to where I
10 remember him putting the gun at.

11 Q So when did -- so as you're falling out the car
12 you're also able to reload the gun; is that right?

13 A As I fell out I had started reloading.

14 Q Okay, but you had to empty out all your fired
15 cartridges already?

16 A I had -- no, I had to empty them out like to
17 reload.

18 Q By that door?

19 A Right where I fell out, yes, ma'am.

20 Q So right by the door?

21 A Yeah, I guess by the door.

22 Q Uh-huh. And that's literally as you're falling
23 in the back of the car, out the back of the car?

24 A No, not while I'm falling out, as I hit the
25 ground. That when I said I saw him looking at me

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1 and he looking shocked. And I thought that Breeze
2 could be getting out with the gun. I didn't know
3 where he was at. That's when I started reloading.

4 Q And so what -- so did you ever see Dashawn moving
5 after that?

6 A I wasn't really paying attention. Everything was
7 going so fast I was just scared. My mind was just,
8 you know, it was just racing. I didn't know what to
9 think.

10 Q And you're shooting all throughout the front as
11 you're leaning back falling out?

12 A No, I was up in the seat. No, I'm not pretty
13 sure if I shooting. I was falling out -- I was
14 looking at the time 'cause I was up in the seat
15 reaching for the door, I was just shooting.

16 Q Just random shots?

17 A Yeah, just shooting. I was basically trying to
18 keep them off from me, and I ain't know if he
19 grabbed the gun or not. I was just, I was scared.

20 Q You never even saw the gun? You never saw them
21 try to shoot at you?

22 A I seen Crash once he went around the truck. I
23 seen Breeze reaching under the seat, and I knew he
24 had put the gun there earlier that day.

25 Q So let me get this straight, you see Breeze

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1 reaching up the seat?

2 A Yes, ma'am.

3 Q You pull out your gun?

4 A Yes, ma'am.

5 Q And you just start firing?

6 A Yes, I leaned up in the seat, then I seen him out
7 turning around, getting up, yeah, and just start
8 shooting.

9 Q And then you fall out of the car?

10 A Yeah, I fell out after I opened the door.

11 Q And you reload — you unload?

12 A Yeah, I unload and then reload.

13 Q Right there?

14 A Yeah, while I was on the back, yes, ma'am.

15 Q And then what?

16 A After I reloaded?

17 Q Uh-huh.

18 A That's when Crash had came. Like, I had closed
19 the door like to see if Breeze was like getting out
20 of, getting out of the truck too. I seen Crash
21 coming around. And as he was coming around I seen
22 the gun in his hand. Like, before he hit me as I
23 was getting up I already had mine, like pointing.
24 As he was coming around that's when I just fired one
25 time before he lift the gun. I fired one time. He

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1 fell and dropped the gun, and that's when I feel I
2 had enough time to run and get away so I just ran.

3 MS. CAVANAUGH: Beg the Court's
4 indulgence.

5 THE COURT: Yes, ma'am.

6 BY MS. CAVANAUGH:

7 Q All right. You're describing the shoulder,
8 right, and you said that earlier there was the bag
9 of marijuana on your lap; is that correct?

10 A Yes, ma'am.

11 Q What happened to that during the struggle?

12 A The bag of marijuana?

13 Q Uh-huh?

14 A Like it basically, how I had it in my lap like, I
15 like tuck it — I had like tucked my pants like some
16 of it in the lap like hanging out, like I had tucked
17 it in my pants.

18 Q Did you run with it after while you were running
19 from the scene?

20 A Yeah, it was still like hooked to my pants.
21 That's how I always carry it like it just sit right
22 there (indicating).

23 Q So the marijuana stayed with you but the glove
24 dropped?

25 A 'Cause the glove was in my pocket. The marijuana

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1 was in — it was like in my pants where I usually
2 keep it at.

3 Q And those — you had your gun on you at the
4 studio; is that right?

5 A Did I have it with me? Yes, I had it at the
6 time, but nobody new. I don't just go around
7 broadcasting it and showing it.

8 Q You mentioned a guy named Tim. Where does he
9 live?

10 A He stay off Leesburg.

11 Q It's — you said you grew up in Hopkins, right?

12 A Yes, ma'am.

13 Q And Breeze was the one who was directing you
14 where to go this day?

15 A Yes, ma'am.

16 Q Not you?

17 A No, ma'am.

18 Q You didn't think that Jonathan Frazier was gonna
19 live, did you?

20 A I didn't know whether he was or he wasn't.

21 Q In fact, you thought that it was just gonna be
22 his word against yours; didn't you?

23 A As I was coming to court? I didn't, I didn't
24 know.

25 Q You didn't know what — you didn't know what?

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1 A If it was going to be his words against mine.

2 Q You didn't know anything until today, is that
3 what you're saying?

4 A Like basically, as I was locked up and you live
5 or not, I heard about what he was trying to say what
6 I did, I basically knew he would come to court
7 but...

8 Q And so you didn't never — you never told your
9 mom that you don't wish death on no one, but it's
10 his word against mine and he doesn't need to make
11 it?

12 A I don't remember saying that.

13 Q On January 26, 2012 at 5:30, you didn't make that
14 call to your mom and say that?

15 A I don't remember saying that.

16 Q And on January 30th, 2012 at 10:22, again on the
17 phone to your mom, didn't you say Crash is on all
18 kinds of drugs, he can't say that's me?

19 A No, I don't remember saying that.

20 Q And again, that same conversation, they don't
21 know, they don't — they know they don't got
22 nothing, they just want to pin it on someone?

23 A I don't remember saying that either.

24 Q So once again, this glove with the DNA and GSR on
25 was randomly dropped in the front yard that day?

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1 A Yes, ma'am.

2 Q And you were not running from the police the next
3 day, right?

4 A No, ma'am.

5 Q Your phone just happened to be left right where
6 they saw you running, right?

7 A I was running, but it was left where we usually
8 sit and chill like in a little area. We had chairs
9 and buckets and all that we sit on back there.

10 Q And you went to the hotel that afternoon but you
11 were running, right?

12 A I went to the hotel after I seen it on the news.
13 I caught a ride to the Leesburg area.

14 Q And the room was put in Randall Dandy's name?

15 A Yeah, his name was Dandy. I seen him after that.

16 Q But you weren't running?

17 A No, ma'am, not that day.

18 MS. CAVANAUGH: Beg the Court's
19 indulgence.

20 BY MS. CAVANAUGH:

21 Q And you never told Investigator Unger where you
22 could find — where he could find the firearm that
23 you bought for your protection, right?

24 A No, ma'am, I probably didn't.

25 Q Probably didn't?

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1 A Yeah, I -- no, I didn't tell him that.

2 Q You probably didn't or you didn't?

3 A No, I didn't tell him where he could find it at.

4 MS. CAVANAUGH: Nothing further.

5 THE COURT: Redirect?

6 MR. SUTHERLAND: No redirect, sir. No
7 further questions.

8 THE COURT: Thank you, Mr. Singleton. You
9 may step down. All right, Mr. Sutherland, does the
10 Defendant intend to offer any additional evidence or
11 testimony?

12 MR. SUTHERLAND: No more witnesses, sir,
13 no more testimony.

14 THE COURT: The Defense rests?

15 MR. SUTHERLAND: The Defense does rest,
16 Your Honor.

17 THE COURT: Renew all motions?

18 MR. SUTHERLAND: Renewing all motions.

19 THE COURT: Noted for the record.

20 MR. SUTHERLAND: Yes, sir.

21 THE COURT: Thank you.

22 Does the State intend to offer any
23 evidence or testimony in reply?

24 MS. CAVANAUGH: No, Your Honor.

25 THE COURT: All right, thank you. Thank

1 you very much.

2 With that being said, ladies and
3 gentlemen, you've heard all of the evidence, all of
4 the testimony you're going to hear from the State
5 and from the Defense and the trial of the case.
6 We've now at the point of closing arguments by the
7 attorneys. I think what will be prudent for us to
8 do now is take our lunch recess. We'll start the
9 closing argument process upon y'all's return.
10 Please remember my instruction to you. Do not
11 discuss this case with anyone, your fellow jurors,
12 lunch mates, family, friends or anyone else. Do not
13 do any independent investigation or any
14 investigation on the internet in any manner.
15 Remember to keep an open mind. Do not begin your
16 deliberations until you're instructed to do so by
17 the Court. I would ask you to please be back
18 promptly at 2:00, at 1400 hours, 2:00. Leave your
19 notes on the chair. They will be secured by the
20 clerk's office. Thank you very much. Hope y'all
21 have a pleasant lunch.

22 (The jury was removed from the courtroom
23 at 12:45 p.m.)

24 THE COURT: All right. As far as the
25 requests to charge handed up from the State, the

1 first one, the charge on malice I think that will be
2 covered in the general charge. The second one
3 voluntary intoxication, how is that relevant?

4 MS. CAVANAUGH: Your Honor, if I may, I
5 believe there has been testimony, even the defendant
6 himself testified that he'd been smoking weed, that
7 they'd been smoking weed that day. Although it's
8 not drunkenness, it still is intoxication or under
9 the influence.

10 THE COURT: The third one on the Victor —
11 I'll charge that, Solicitor.

12 The third one on Victor versus Nebraska I
13 charge those. Victor versus Nebraska I need a name.
14 And then the fourth one, how is that relevant?

15 MS. CAVANAUGH: And I apologize, mine are
16 not in order. Is this the felony murder charge?

17 THE COURT: Yes, ma'am.

18 MS. CAVANAUGH: Your Honor, there has been
19 testimony — and this is where the State's case and
20 Defense's case diverge greatly — that there was,
21 possibly that this could have been initially an
22 armed robbery by the defendant. He clearly based on
23 the State's case and the evidence presented in the
24 State's case, he went out there, he was directing
25 where to go. They were supposed to meet up with T

1 man is what he was telling Jonathan Frazier and
2 Dashawn. Based on those. He did not have the
3 marijuana on him at the time. It was clear that
4 Dashawn was the buyer and that he was the seller.
5 He — there's nothing to show from the State's case
6 that he was ever going to sell the marijuana. And
7 Jonathan Frazier's testimony that he was tossing,
8 that Dashawn was tossing the money to the defendant
9 in the midst of all of the shooting. That money was
10 never recovered or found. So if you are to believe
11 the State's version of events conceivably from the
12 testimony it could be that he went to rob them; and
13 in the course of that robbery the homicide, the
14 murder, was committed as well.

15 THE COURT: I decline to charge that
16 felony murder charge. Were there any other requests
17 to charge from the State, Solicitor?

18 MS. CAVANAUGH: No, Your Honor.

19 THE COURT: All right. And the Defense,
20 what are your requests, Mr. Sutherland?

21 MR. SUTHERLAND: Oh, Your Honor, I had —
22 I'm sorry Your Honor doesn't have a copy. I tried
23 to submit them in two forms. And just on the law of
24 murder, the State versus Johnson language: Murder
25 is unlawful killing but rather, with malice

The State versus Wiggins language, sir,

1 the State's required to disprove self-defense once
2 raised by defendant beyond a reasonable doubt. And
3 their — they had the larger Victor versus Nebraska
4 charge and I had the Manning charge. And lets see,
5 I believe with respect to malice, what they had
6 presented didn't seem too objectionable. The Court
7 had indicated that what the State had presented was
8 contained in the Court's general charge on malice so
9 we'll be satisfied with the Court's general charge
10 on malice.

11 THE COURT: Thank you. Solicitor, do you
12 have any objection to any of the charges the Defense
13 requested?

14 MS. SIMPSON: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. SIMPSON: Your Honor, we would object
17 to self-defense being charged in this case. The
18 self-defense law requires that the defendant is
19 without fault in bringing on the difficulty; that
20 the defendant actually believed he was in imminent
21 danger of losing his life or sustaining serious
22 bodily injury and that a reasonably prudent person
23 of ordinary firmness and courage would have
24 entertained the same belief than he had essentially
25 no other means of avoiding the danger. In this

1 case, and it's our understanding of the law, that
2 all four prongs of self-defense must be met. We
3 believe that the defendant has failed on the first
4 prong with respect to being without fault in
5 bringing on the difficulty. He is the one who
6 brought the gun to the location and was engaging in
7 the selling of marijuana. So we would just ask that
8 self-defense not be charged in this case.

9 THE COURT: I think it's an issue for the
10 jury, Solicitor. I agree with you on those prongs.
11 I was sitting here trying to remember a couple of
12 those cases — of course, there's no testimony that
13 he was unlawfully armed; There's no testimony he
14 was. No testimony he was a concealed weapon permit
15 holder or not a concealed weapon permit holder. I
16 was thinking of those Castle cases and such when a
17 person arms themselves for self-defense and realize
18 there are different factors.

19 As I understand his testimony, he's gonna
20 assist in providing or selling marijuana to
21 Mr. Jones, Mr. Frazier. And after these phone calls
22 and such and they get together and they drive down
23 to the country area of Hopkins, and I believe his
24 testimony was they were going to see how it smoked.
25 I guess it's kind of like test driving a used car to

1 see how it smokes. So, they're clearly all engaged
2 in a unlawful activity of the possession and use of
3 marijuana. He testifies that where they were
4 driving it was being, he Mr. Singleton testifies
5 that where they were — that Mr. Singleton testifies
6 that Mr. Jones was driving, and he's kind of
7 directing where to go. Now I realize Mr. Frazier
8 testifies the opposite. He testifies that
9 Mr. Singleton is directing where they're driving to.
10 He then says that there in the front he'd seen the
11 gun earlier that day under the seat is his
12 testimony. I'm not here as a finder of fact or an
13 arbiter of the credibility at this point or any
14 point. Then he says sitting there waiting on this
15 additional buyer that Mr. Jones said wanted to buy.
16 He's in the back seat and then his basic testimony
17 becomes he's been attacked, he's been attacked by
18 Mr. Jones who thereafter he's assisted by Mr. Jones,
19 thereafter assisted by Mr. Frazier. He says that
20 Mr. Jones releasing Mr. Frazier, continues to
21 contain him and he sees Mr. Jones reaching under the
22 seat where he had seen this firearm earlier that
23 day. I'm just relating his testimony, of course. I
24 don't think — I don't think the mere fact that a
25 person smoking, possessing marijuana overrides a

1 person's self-defense rights, if he has it, if he
2 has it. I think it's a jury issue, Solicitor.

3 MS. SIMPSON: Thank you, Your Honor.

4 THE COURT: And I -- anything further,
5 Solicitor?

6 MS. CAVANAUGH: Nothing from the State.

7 THE COURT: All right. And anything
8 further from Defense?

9 MR. SUTHERLAND: No, sir.

10 THE COURT: You know, I -- I'm gonna look
11 back at Hendrix. Hendrix was an interesting case.
12 I think the Supreme Court offered a directed verdict
13 of not guilty in that case so that doesn't happen
14 often where you just reverse and remand it back.
15 But I think that was actually a direct gun battle by
16 a round of the muzzle of a shotgun went into the
17 barrel and was pretty direct. They were shooting at
18 each other.

19 MR. SUTHERLAND: Interesting names of the
20 heritage.

21 THE COURT: Solicitor, I neglected to
22 address two of yours. We've got this one, motive is
23 not an element of murder; and therefore, the State
24 would not prove motive. Typically I don't charge
25 that. Do you have an objection to that,

1 Mr. Sutherland? I certainly know that's the law. I
2 just typically don't charge it.

3 MR. SUTHERLAND: Briefly ---

4 COURT: Hawkins also bears interest in the
5 case that the current opinion by the Chief Justice
6 in Sanders about the word express. Not as good as
7 the rules of Queensberry but it's very good current
8 opinion.

9 MR. SUTHERLAND: Sir, I would just see it
10 as sort of almost superfluous. I mean, it's you
11 know, the instruction of malice, murder, unlawful
12 killing, malice, and just, there's no talk of motive
13 and I don't believe, of course, you know, you talk
14 about why would somebody do something or something
15 else. Maybe it's just not the element of it and the
16 jury I would imagine would be looking at certain
17 elements on their own when fulfilling their oath,
18 sir.

19 THE COURT: All right, Solicitor.

20 MS. SIMPSON: Just briefly with respect to
21 the jury and certain elements of their own, I mean,
22 that is kind of the purpose of the charge on the law
23 as Your Honor is to give it. We would just ask that
24 this is the law that it is not anything that would
25 be considered cumulative. I mean, you know, jurors

1 have a lot of common misconceptions about things and
2 definitions and there are a lot of legal terminology
3 and the fact of the matter is that motive does not
4 have to be proven by the State. So yes, while
5 malice addresses kind of the motive and
6 premeditation or in indirect way I think this
7 language is clear it's not inappropriate and can be
8 charged in this case.

9 THE COURT: All right, I'll look at that
10 part. And then the last one I believe is covered by
11 my general charge. I'll look at that about the
12 intersection of evil act, evil intent, and the act
13 reducing the result. I believe that's part of the
14 charge. All right, anything further?

15 MS. CAVANAUGH: Nothing from the State.

16 THE COURT: Is the State going to open?

17 MS. CAVANAUGH: We are.

18 THE COURT: All right. And then
19 Mr. Sutherland then the final. All right. How long
20 y'all need to argue?

21 MR. SUTHERLAND: I would for me 30, 45 —
22 maybe, I kind of intend to get the pin on things,
23 but maybe 30, 40 minutes.

24 MS. CAVANAUGH: Your Honor, with respect
25 to the State, we anticipate with both the law

1 portion and the fact portion of our case, a total of
2 maybe 45 minutes.

3 THE COURT: All right, thank you. Thank
4 you very much. I don't start tapping my pen or
5 anything. I just like to get an idea. Thank you.
6 Thank you very much. Court will be in recess until
7 2:00.

8 (Whereupon, a lunch recess was taken.)

9 THE COURT: Anything from the State before
10 we bring in our jury? I will charge that motive.

11 MS. CAVANAUGH: Okay.

12 THE COURT: Anything additional,
13 Solicitor?

14 MS. CAVANAUGH: No, Your Honor, nothing
15 from the State.

16 THE COURT: Defense.

17 MR. SUTHERLAND: Nothing from the Defense,
18 sir.

19 THE COURT: All right. For those of you
20 in the courtroom, spectators, I do not allow any
21 movement in and out during the time of which an
22 attorney is addressing the jury. You may certainly
23 leave between the arguments. In other words, the
24 Solicitor is going to open on the law. When the
25 Solicitor sits down before Mr. Sutherland begins,

1 you may step out, will not be able to come back
2 until Mr. Sutherland has completed his closing
3 argument or you may leave after Mr. Sutherland's.
4 That will also hold true for my charge to the jury,
5 but we'll probably have a break between the
6 arguments and the charge I do believe so please keep
7 that in mind.

8 All right, bring us our jury please.

9 (The jury was returned to the courtroom at
10 2:07 p.m)

11 THE BAILLIFF: The jury's seated, Your
12 Honor.

13 THE COURT: Thank you. Thank you very
14 much, thank you very much, Mr. Bailiff.

15 Welcome back, ladies and gentlemen of the
16 jury panel. I hope y'all had a pleasant lunch. We
17 not as you know, in the stage of closing arguments
18 to be presented to you by the attorneys. Closings
19 arguments are different from the opening statement.
20 They are true arguments. The attorneys may argue
21 the facts, reasonable inferences to be drawn from
22 the facts, the law, and how the facts apply to the
23 law in this case. The procedure we follow is the
24 Solicitor will open first briefly on the law,
25 thereafter followed by Mr. Sutherland on behalf of

1 his client Mr. Singleton, then followed by the
2 closing argument in full by the Solicitor. After
3 the closing arguments of the attorneys I would then
4 charge you or instruct you on the law in the case.
5 I would ask you again to please give the parties
6 your complete and undivided attention as you have
7 done throughout the trial of this case.

8 With that being said, Solicitor, you may
9 address the jury.

10 MS. CAVANAUGH: Thank you. May it please
11 the Court.

12 Make no mistake about it, the only people
13 who should have been able to come in this courtroom
14 and take this witness stand and say they were acting
15 in self-defense are Dashawn Jones and Jonathan
16 Frazier.

17 MR. SUTHERLAND: Objection, she's arguing
18 the facts, Judge, versus the law.

19 THE COURT: Yes, sir, I think it's
20 appropriate.

21 MR. SUTHERLAND: Yes, sir.

22 THE COURT: Thank you.

23 You may continue, Solicitor.

24 MS. CAVANAUGH: The only people who had
25 the right to act in self-defense are Dashawn Jones

1 and Jonathan Frazier, but Dashawn never had a chance
2 to act or react in self-defense. And Jonathan
3 Frazier at the moment, he did try to act in
4 self-defense; it was too late because he was no
5 match for the defendant and his gun. Now this is
6 contrary to what the Defense would have you believe.
7 They would have you believe that Mr. Singleton is
8 the victim in this case. He is the victim of
9 Dashawn Jones. He is the victim of Jonathan
10 Frazier. But that's not all, he's the victim of the
11 State. He's the victim of government, law
12 enforcement and every witness that took that stand.
13 Poor, poor, Mr. Singleton. No, that is simply not
14 true and that is not the case. This is not a case
15 of self-defense. This is a case of cold-blooded
16 murder.

17 Now I want to take this time to thank you
18 again for your time, your patience, and your service
19 in this case. I'm sure when you got your notice for
20 jury duty you probably had plenty of other things
21 that you wanted to do, plenty of other things that
22 you needed to do, but you came and you were selected
23 and you have been very attentive throughout this
24 case and you've been patient as you've been shuffled
25 in and out the courtroom confined to a small place

1 with people you don't know. So I thank you because
2 this is an important case. And in a few moments
3 this case is going to be turned over to you for a
4 decision, and you must decide whether the defendant
5 is guilty of murder and guilty of attempted murder.

6 Now you've heard all the evidence that you
7 can consider, the testimony from the witness stand,
8 and the physical evidence that you will be able to
9 take back with you to your jury room to deliberate.
10 And you must base your verdict on that evidence.
11 Now what your verdict must not be based on questions
12 or commentary by the attorneys in this case or
13 conjecture, speculation, or just plain old wishful
14 thinking. Now I have this opportunity to talk to
15 you about the law in the case, and if I misquote the
16 law or misstate the law in any way, it is not
17 intentional. You are to take the law as His Honor
18 gives it to you. But with that said, if either
19 side, State or Defense, mischaracterizes the facts
20 in this case, you remember because you heard from
21 right here on this witness stand.

22 Now criminal cases are somewhat unique
23 because the defendant has the absolute
24 constitutional right, as he should, to confront each
25 and every witness against him. And what that means

1 is that as the State we must produce live testimony
2 from this witness stand. And you've heard reference
3 to a number of reports or statements in this case,
4 but we just couldn't produce a report by an officer
5 or investigator or by the experts in this case. We
6 had to bring them to appear before you so that you
7 could judge their credibility. Those reports, those
8 statements are not admissible.

9 Now, members of the jury, as I told you
10 earlier we bear the burden of proof in this case.
11 Now the defendant is presumed guilty — I mean,
12 innocent, until proven guilty beyond a reasonable
13 doubt. And we've talked a little bit about
14 reasonable doubt, and the judge will instruct you
15 further. So what is proof beyond a reasonable
16 doubt? Well, our courts have said that proof beyond
17 a reasonable doubt is proof that would cause a
18 reasonable person to hesitate to act. Now our
19 courts have gone further and said that proof beyond
20 a reasonable doubt is proof that leaves you firmly
21 convinced of the defendant's guilt.

22 Now there are very few things that we know
23 in this world with absolute certainty. In criminal
24 cases the law does not require proof that overcomes
25 every possible doubt or all doubt. And if based on

1 your consideration of the evidence you are firmly
2 convinced that the defendant is guilty of this
3 crime, you must find him guilty. If on the other
4 hand you think there's a real possibility that he is
5 not guilty, then you must give him the benefit of
6 doubt and find him not guilty.

7 So what must we prove? As I stated to you
8 before, murder is one of our most serious offense,
9 but it has a very short definition. Murder is the
10 killing of any person, unlawful killing of any
11 person with malice aforethought ether expressed or
12 inferred. Now attempted murder is very similar. It
13 is unlawful for a person with the intent to kill to
14 attempt to kill another person with malice
15 aforethought either expressed or implied or
16 inferred.

17 Now one term in there that you heard is
18 malice. So what exactly is malice? Well, our law
19 has defined malice. Malice is considered a hatred,
20 ill will, or hostility towards another person. It
21 is the intentional doing a wrongful act that is
22 without just cause or excuse and with intent to
23 inflict an injury or under circumstances that the
24 law will infer an evil intent. Now, expressed
25 malice is when a person speaks words which express

1 hatred or ill will for another or when a person
2 prepared to do the act beforehand. That, just to
3 give you an example, is essentially when a person
4 says I'm going to kill you, and he or she does. Or
5 when they lie in wait hiding, prepared to kill
6 another and they do. That's expressed malice. But
7 our law recognizes that in most cases, in a lot of
8 cases, you're not going to have expressed malice so
9 they've gone a little further and said that malice
10 may be inferred from conduct showing a total
11 disregard for human life.

12 Malice does not necessarily impart ill
13 will toward the individual injured, but signifies
14 whether a malignant recklessness of the lives and
15 safety of others are a condition of the mind which
16 shows a heart regardless of social duty and fatally
17 bent on mischief. As I said earlier, this case
18 wreaks of malice.

19 When you go back to that jury room and you
20 consider the testimony that you've heard, you pay
21 attention to Dashawn Jones who couldn't take this
22 witness stand. You look at his injuries. At least
23 six gunshots, eight gunshot wounds. Malice.
24 Jonathan Frazier, almost shot to death. His injury
25 would have been fatal had he not received help.

1 Malice.

2 MR. SUTHERLAND: Sorry, objection, Your
3 Honor. She's applying the facts to the law without
4 the law.

5 THE COURT: All right. I will allow it in
6 this regard, Mr. Sutherland.

7 MR. SUTHERLAND: Yes, sir.

8 MS. SIMPSON: Thank you, Your Honor.

9 Aforethought. Now as said, malice
10 aforethought. Now aforethought generally some
11 people may be inclined to think this means
12 premeditation, but it does not mean premeditation.
13 We don't have to prove premeditation in this case.
14 And our law says that malice must accompany the act
15 and that it does not have to exist for any
16 appreciable time, length of time, before the act
17 occurs. Malice may be conceived at the moment the
18 act occurs or at the moment the fatal blow is
19 struck.

20 Mr. Singleton didn't have to get in that
21 car that day and say I'm gonna kill him and intend
22 to kill him. It's when he picked up that a trigger
23 and began shooting that gun did he have malice in
24 his heart, and he did. Two unarmed men in the car
25 and he emptied the gun and reloaded it and fired

1 some more. And what'd he do? He ran. Malice.

2 As I said, what we don't have to prove is
3 motive. Maybe there is motive in this case; maybe
4 there isn't. But malice is not motive, although
5 here I submit that he was never going to sell them
6 that marijuana. And let's be clear, he is the
7 dealer by his own account. That marijuana was never
8 in that car that day and Dashawn threw money at him.
9 Maybe he was going to take their money or maybe he
10 just wanted to kill them. Whatever the case, malice
11 was in his heart.

12 Now the judge is going to instruct you
13 that there are two types of evidence. We call them
14 direct evidence and circumstantial evidence. Now
15 direct evidence is the testimony from a person who
16 asserts of claims to have actual knowledge of a
17 fact, such as an eyewitness. Well here you have
18 Jonathan Frazier, our living victim. He took the
19 stand and he told you what happened. And he's told
20 a number of people what happened; that's direct
21 evidence. You also heard from Monica Howard. She
22 is the one who Jonathan was able to get help from.
23 She's the one who called 9-1-1. She's the one who
24 saw the subject running away from the scene. That
25 is direct evidence.

1 But there's another type of evidence and
2 circumstantial evidence is considered to be a proof
3 of a chain of facts and circumstances that indicate
4 the existence of the facts. Now the law makes
5 absolutely no distinction between the two, between
6 weight or value to be given to either one. Nor is a
7 greater degree of certainty required of
8 circumstantial evidence than of direct evidence.
9 You should weigh all the evidence in this case. And
10 after weighing all the evidence, if you are not
11 convinced of the defendant's guilt beyond a
12 reasonable doubt, you must find him not guilty.
13 However, if on the other hand you are convinced of
14 the defendant's guilt beyond a reasonable doubt,
15 then you must find him guilty.

16 Now one of the examples that's often used
17 to kind of illustrate circumstantial evidence is
18 this: Essentially I go to sleep and it's not
19 snowing outside and there's snow on the ground, but
20 when I wake up, the fields outside my house, the
21 yard covered in snow. I can assume that it snowed
22 last night. That's the way circumstantial evidence
23 works. I submit to you it's more the silent
24 witnesses in the case, the forensics in this case,
25 the shell casings found at the scene, the DNA inside

1 the glove, the gunshot residue inside the car, and
2 on that glove that the defendant admits to, a short
3 distance away from the car, those types of things
4 are circumstantial evidence. And the law makes no
5 distinction between the two.

6 Now another thing that the State must
7 prove is criminal intent. In order to establish
8 criminal liability criminal intent is required. For
9 example, the mental state required to be proven by
10 the State for a particular crime might be some
11 purpose, some specific intent, knowledge of certain
12 facts or recklessness. Criminal intent must be
13 proven by the State beyond a reasonable doubt. It
14 is always a matter for you, the jury, to determine
15 from the circumstances surrounding the situation.
16 Now there's no way to prove intent to a mathematical
17 certainty. There's no way medical science can
18 dissect a person's brain and determine what that
19 person had in his mind. So the law says that
20 criminal intent may be inferred from the
21 circumstances shown to have — shown to have
22 existed. This is how you make the determination of
23 whether or not this element was present. Criminal
24 intent simply a mental state, a conscious
25 wrongdoing, and it is up to you to determine what

1 the defendant intended to do.

2 Here I think you will find that it's
3 clear. Now one of the things you can consider when
4 considering the facts and circumstance of the case
5 is evidence of flight as evidence of guilt. This is
6 considered to be a circumstance surrounding the case
7 so ask yourselves, are the defendant's actions
8 consistent with someone acting in self-defense. He
9 fled from the crime scene. He fled from the police
10 at his dad's house; and even in his own testimony,
11 tried to say, oh, I wasn't fleeing, I wasn't
12 running, my stuff just ended up there. I was even
13 watching them search but I didn't know they were
14 there for me. Really? Hotel in another person's
15 name, the day after this occurred. He got a room in
16 another person's name and where — this hotel room,
17 it's away from the crime scene, away from Hopkins.
18 He is fleeing. And in that time, mind you, he's not
19 arrested until two days later, he had plenty of time
20 to get rid of the evidence in this case. And he
21 thought he'd gotten rid of Jonathan Frazier.
22 Finally he was hiding in the hotel bathroom behind
23 his girlfriend Kenyatta Hickman. You can consider
24 evidence of flight as evidence of guilt.

25 And I will touch briefly on this because

1 as the State we must prove identification to you
2 beyond a reasonable doubt and that is simply that
3 the defendant is the person who did this crime.
4 Well you have Jonathan Frazier who picked him out
5 and who identified him, and he knew the defendant.
6 And the defendant admitted on the stand he knew
7 Jonathan, he new Dashawn, and he has admitted that
8 he is the shooter so I submit we have proven
9 identification beyond a reasonable doubt.

10 Now there was testimony on the defendant's
11 statement in this case, and I'm not referring yet to
12 his testimony from the witness stand, but the
13 testimony regarding the statement that he gave to
14 Investigator Unger. And one of the things you must
15 consider is the voluntariness of that statement.
16 Before you may consider it as evidence for any
17 purpose you must determine four questions: Did the
18 defendant make the statement; was the defendant
19 warned of his constitutional rights — those are the
20 Miranda rights, that is what the investigator
21 advised him of — did the defendant knowingly and
22 intentionally waive his constitutional rights; was
23 the statement given freely and voluntary. You also
24 have his demeanor on the witness stand. He seems to
25 understand things pretty well. Now was he advised

1 of his rights? Yes. Did he waive those rights?
2 Yes. And did he give the statement freely and
3 voluntarily? Yes. But what was that statement?
4 Self-defense, I had to do it, they came at me. They
5 were attacking me so I had to shoot at least nine
6 times emptying my gun and reloading it? Poor me,
7 I'm so scared, I was just terrified. No. In that
8 statement he says, I wasn't in Hopkins that day at
9 all. I was at my girlfriend's house until I went
10 over to the club off Broad River; I didn't do this.
11 I was nowhere there. Is that consistent with someone
12 acting in self-defense? You'll be able to judge his
13 credibility.

14 Now you've also heard from the expert
15 witnesses in this case. Now the rules of evidence
16 ordinarily do not permit witnesses to testify to
17 opinions or conclusions. An exception to this rule
18 exists for witnesses we call expert witnesses. A
19 witness who by education and experience has become
20 an expert in some art, profession, or calling may
21 state an opinion as to relevant material matter in
22 which the witness claims to be an expert and may
23 also state the reasons for the opinion. You should
24 consider the expert opinion received in evidence in
25 this case, and like any other evidence give it the

1 weight you think it deserves. If you decide that
2 the opinion of an expert witness is not based on
3 sufficient education on experience or if you
4 conclude that the reasons given in support of the
5 opinion are not sound, you don't have to find it
6 creditable.

7 You heard from a number of the expert
8 witnesses. You're gonna hear more about their
9 testimony later, but you heard from John Roberts,
10 the gunshot residue expert in this case. You heard
11 from Lieutenant Scott McDonald, who analyzed the
12 cell phone records in this case and testified about
13 the importance of cell phone records in today's
14 investigation. You also heard from Rachel Grant,
15 the DNA expert. There was a lot of math on the
16 board and a lot of stuff during cross, but she is an
17 expert in DNA analysis. And the defendant's DNA was
18 found on that glove and it was found on that
19 marijuana, that marijuana that was in his hotel room
20 that he claims he ripped off, or didn't sell, excuse
21 me, but was managed to get away from the crime scene
22 with that bag of marijuana and that's just some of
23 what was in that bag by the time the police get to
24 it. And Dashawn Jones and Jonathan Frazier, they're
25 eliminated from the DNA on that marijuana, even with

1 all that struggling, punching, pinning, grabbing of
2 the neck. Expert witnesses.

3 Now you've heard some testimony about
4 smoking marijuana. Now we don't have any alcohol in
5 this case, but our law has said that voluntary
6 intoxication is not, is never an excuse or defense
7 to a crime. A person who voluntarily renders
8 himself intoxicated is no less responsible for his
9 acts while in such a condition. If a person
10 voluntarily drinks intoxicating liquor or takes
11 drugs and becomes intoxicated and if while in that
12 condition commits an act which would be a crime if
13 it had been committed by a sober person, the fact of
14 drunkenness or intoxication would not relieve the
15 intoxicated person from responsibility.

16 Now finally, close to finally, the judge
17 is going to instruct you on self-defense. Now
18 self-defense -- I pause here -- because as the
19 State, when we prepare a case we try to anticipate
20 what any defense may be. You know, sometimes it's
21 that a person didn't do it so identity is an issue.
22 Or maybe it's -- I don't know -- alibi which is what
23 initially was the defense in this case when he gave
24 the statement to Investigator Unger. I wasn't
25 there, I was somewhere else, that's alibi. But

1 today we heard about self-defense. Now self-defense
2 isn't just some thought of, oh, I was acting in
3 self-defense.

4 Our law is very particular in its
5 definition. And our law as defined as self-defense
6 or a person in acting self-defense, the only way he
7 can be acting in self-defense is if he was without
8 fault in bringing on the difficulty and he actually
9 believed that he was in imminent danger of losing
10 his life or sustaining seriously, serious bodily
11 injury, or that he was in danger and that a
12 reasonable prudent man of ordinary firmness and
13 courage would have entertained the same belief and
14 that duty to retreat; that he had no other probable
15 means of avoiding the danger.

16 Now he's raised this defense but the
17 burden of proof is still on the State, and we must
18 prove to you this beyond a reasonable doubt. Here,
19 and I note the ands, each of these prongs must be
20 met in order to claim self-defense, in order to
21 relieve the defendant for shooting Dashawn Jones and
22 shooting Jonathan Frazier. Well, he fails on every
23 prong. First, he was without fault in bringing on
24 the difficulty. He brought the gun. He's the
25 seller of the drugs. Jonathan Frazier, unarmed;

1 Dashawn Jones unarmed. And in a little bit we're
2 gonna get to credibility because you do have the
3 defendant's version of events. He was not acting
4 without fault and, and, he actually believed that he
5 was in imminent danger of losing his life or
6 sustaining serious bodily injury. Well, I submit
7 from the State's case, he didn't believe he was in
8 danger; he had the gun. He carries it with him
9 often, always. The recording studio. He had it
10 that day when he went to Tim's house, whoever Tim
11 may be, when he got the weed. And when he was in
12 the car picking up with Dashawn and Jonathan as they
13 picked up his girlfriend. He was never in danger.
14 And as you heard Jonathan testify, everything was
15 fine, everything was good. And that a reasonably
16 prudent man of ordinary firmness and courage would
17 have entertained the same belief. This is
18 essentially just a reasonable person. Would a
19 reasonable person have been in fear of their life.
20 In the State's case, absolutely not, and we'll get
21 to the defendant's case, and that he had no other
22 probable means of avoiding the danger. Here's that
23 duty to retreat. And I submit even by his own
24 account, he could have left; he should have left.
25 But you heard Jonathan Frazier testify. There was

1 one person that had that gun that day, and that is
2 the defendant. He is the only person who had a gun
3 that day. He's the one who fired all the shots. He
4 was calling out the shots, directing them. And oh,
5 even after that first round of shots when he could
6 have easily ran away, now he's in his hometown, this
7 is his town. His family's around nearby. His dad's
8 only a few miles away. His friends live there. But
9 rather than leave or call for help, he reloads his
10 gun. And this is a revolver; it takes effort. It's
11 a process. No, members of the jury, there is no
12 self-defense in this case.

13 Credibility of witnesses, and this is key.
14 Credibility as the judge will instruct you is
15 essentially believability. And I told you in
16 opening that there were several things we wanted you
17 to consider, and that's still true. The demeanor of
18 the witness on the stand. And you look back. This
19 is where defense counsel and I get agree. We want
20 you to pay attention to the case. Go back to the
21 testimony, remember these witnesses who took the
22 stand. What was their demeanor? Was that witness
23 hesitant or forthright when testifying? Was the
24 testimony of that witness consistent? Was the
25 testimony of that witness corroborated? Did that

1 witness have any reason to be biased or prejudiced
2 in this case?

3 Now the defendant has the right not to put
4 up a case; but when he does, when he chooses to take
5 that stand and put up witnesses and put up evidence,
6 you judge his evidence by the same standards that
7 you would the State. I beg you, I implore you, was
8 the testimony of that witness consistent? I submit
9 the defendant's was not. But look back to Jonathan
10 Frazier, look back to Monica Howell, look back to
11 the investigators in this case. Was the testimony
12 of the witness corroborated? Again, look at
13 Jonathan Frazier's testimony, look at it carefully,
14 because you don't have to just believe him, although
15 I submit that would be enough. You can believe the
16 forensic evidence. I submit you even look at the
17 defendant's own statement, his credibility. But
18 Jonathan Frazier is corroborated. The phone records
19 in this case, look at it. And also look at the
20 defendant, is his testimony corroborated did he
21 have any reason, does he have any reason to be
22 biased or prejudiced in this case? Absolutely.

23 And when you're assessing credibility of
24 witnesses, consider the defendant's story. It's not
25 only improbable but it's impossible. Circumstances

1 of ending up on Prioleau Road, consider those. The
2 description of the shooting, and pay close attention
3 here. Pay very close attention here, and my
4 cocounsel is gonna talk to take you more about that.
5 Leaving the scene. Even from the time he exits
6 Prioleau Road to the time he's apprehended, every
7 step of the way, pay attention to what he said.
8 Does it make sense? Never really fleeing from
9 police, just watching them search but doesn't know
10 they're looking for him. Really? Ask yourselves
11 these questions. Yes, pay attention to the
12 testimony in this case.

13 And I ask that you find the defendant
14 guilty because when you apply the law to the facts
15 in this case I submit the verdict will be clear,
16 what happened will be clear. And I say facts, I
17 mean credible, believable testimony and facts in
18 this case. No man is above the law. No man is
19 below it. And we ask no man's permission when we
20 require them to obey it. This was not self-defense.
21 It was cold blooded murder. Thank you.

22 THE COURT: Thank you. Thank you very
23 much, Solicitor.

24 Mr. Sutherland.

25 MR. SUTHERLAND: Ladies and gentlemen,

1 rather than be scribbling up on the board there,
2 some of these things are actually what I was gonna
3 to talk to you about. Okay, you may have noticed --
4 and first before I start launching this, I do agree
5 with the Solicitor about thanking people for being
6 here. We've all been here. I imagine there's a
7 degree of, you know, being tired and paying
8 attention and everything, but we all got kids
9 they're where are we at, what are you doing. I
10 agree with the Churchill quote from the beginning
11 where the Solicitor talked about, you know,
12 greatest service that an individual in offering
13 peacetime in society to serve on a jury, I agree
14 with that. You know, I was an army guy before but
15 it really is important. It's, you know, the
16 context, we live our daily lives, we have certain
17 freedoms, you know, we sort of go about, we don't
18 really think about it. You know, we don't think
19 about our people overseas. We don't think about the
20 constitution. We don't think about the protections
21 that we all have until those protections are engaged
22 generally right in front of us. Maybe, each -- we
23 don't know each other very well because of limited
24 voir dire. Maybe everybody reads, you know, this
25 sort of publication or that or has particular

1 interest put this is really where the rubber meets
2 the road as far as the constitution is concerned. I
3 cant appreciate it enough, and I will as you may
4 have noticed I tend to cut right to the point so I
5 will not sit up here all afternoon. There are just
6 a few things I have to go through. Obviously there
7 are things I'd like to point out. And it's been my
8 hope throughout this process that by not belaboring
9 everything and going over every little thing, that
10 it actually draws closer attention to the particular
11 things that — that I'm concerned about that I
12 believe are relevant facts with respect to the case.

13 I just don't believe in the scatter shot approach
14 where, you know, what are you talking about, what
15 have you been up here talking about, you know, just
16 a certain number of things. And this is a pretty
17 one to get to obviously.

18 Let's see, self-defense which I would have
19 write it up there, and I appreciate them letting me
20 use their material. You do have to be without fault
21 in bringing on the difficulty. Now the State
22 apparently believes that someone who's sitting in
23 the back of an SUV, whether there's dope, whether
24 there's guns, whether there's money, whether there's
25 drugs afoot, you know, whether people are selling

1 weed to one another, or at least people are saying
2 they want to purchase some weed, that somehow, you
3 know, they're at fault in these circumstances that
4 pop up. That's just not the case. His testimony is
5 pretty clear; Mr. Frazier's testimony is pretty
6 clear. You got to decide, you know, which do you
7 believe, which is more credible. Just keep in mind
8 in making that comparison that the government spent
9 this entire week trying to convince you that his
10 testimony is credible so please give Mr. Singleton
11 his due. All he can do is just get up there and
12 tell the parties what he knows and tell the truth as
13 he knows it. He's not at fault in bringing on the
14 difficulty. His testimony, his testimony was that
15 they wanted some weed. They met earlier around a
16 card game or whatever, just a studio and this is
17 where people hang out and they smoke weed. Most
18 people don't, but this is just what these young
19 people do. And somehow in their conversation with
20 one another this weed deal comes up; and when they
21 take off in pursuit of this thing, ultimately when
22 it reaches its fruition, there's another fellow
23 that's supposed to go out and meet at the end of
24 the road. The Solicitor's tab over there says, you
25 know, not just improbable but impossible. Well,

1 what's impossible about it? If you're think about
2 the distinctions between the stories they're pretty
3 much — they're very similar except with respect to
4 what took place out there.

5 Now, Mr. Frazier had testified that there
6 was no weed. Beg the Court's indulgence.

7 Now because, well, there's more in there.
8 Because the government didn't lay the proper
9 foundation for this, it's green plant like material
10 for the purposes of this trial. It looks — you may
11 want to believe that it's weed; it's up to you. But
12 this, you know, just didn't appear out of thin air.
13 If there was no weed, then what is this and where
14 did it come from? And it's the evidence in the case
15 that everyone has to consider as far as where this
16 came from. The evidence in the case is they asked
17 him to get it; he went and got it. They called and
18 asked for some more, he got some more. Guess what?
19 Here it is. That's called corroboration. That's in
20 addition to what they were saying about the
21 pathologist and, you know, you got to pay attention
22 to what comes up with the pathologist. I want to
23 talk about that a little bit. But this is
24 corroboration that he is telling the truth, and he
25 doesn't have, you know, 50 government agents up hear

1 trying to get you to believe him. He just has
2 himself; he's an American citizen. That's just the
3 way it is.

4 He actually believed he was in imminent
5 danger of -- and this is pretty close but the judge
6 will instruct everybody on the law but this is just
7 about -- it's close enough. Actually believed he
8 was in imminent danger of losing life or sustaining
9 serious bodily injury. You know, the difference is
10 that belief or actually was. You know, either
11 someone is in the danger or they believe that
12 they're in the danger. Well, his testimony was
13 candid on this point: He said he'd seen a gun
14 earlier in the day, but he said he had not seen a
15 gun when he was in the vehicle and they were trying
16 to man handle him. He admitted, I had not seen the
17 gun in the car; I believed it was there. That would
18 go for the belief. And then there's actual imminent
19 danger where he said I saw a firearm. So there --
20 really there's a division here, and he actually
21 meets both sides of that division for self-defense
22 because at one point he couldn't be certain but he
23 believed it and at another point he saw a firearm.
24 That a reasonable prudent man of ordinary firmness
25 and courage -- it might be an older case. But a

1 reasonable person would have entertained the same
2 belief. Is it reasonable -- sometimes it just comes
3 down to plain English questions. Is it reasonable
4 to believe with 257-pounds, now I've lost a
5 considerable amount of weight during this trial, but
6 I was up around that area. You know, a big old
7 fella has a hold of you and his buddy has a hold of
8 you also. You believe there's a firearm under the
9 seat because you saw it earlier in the day at this
10 place where people are playing cards and smoking
11 weed and all that stuff. So is it reasonable under
12 those circumstances when you're being man handled,
13 his testimony was, you know, about that he was being
14 roughed around basically grabbed. I believe he did
15 testify about some punches or something. And the
16 Solicitor may come up and say, well, you know,
17 nobody said anything about any injuries. Well,
18 nobody said anything about tazer holes in his back
19 either. I asked several officers so it's not in
20 evidence. You know, maybe there were, maybe there
21 weren't. Lawyers questions aren't evidence, but I
22 did try to elicit that information. They do have
23 his medical records. They did not submit the
24 medical records. I'll leave it at that.

25 No other probable means of avoiding the

1 danger. This, I think, the Solicitor says he has a
2 duty to retreat; he has a duty to run away. The
3 circumstances are they're sitting there. He did
4 testify that he — that things were getting a little
5 bit weird, but he did not testify that they had
6 directly threatened him or had touched him in any
7 way until King Breeze turns around and says, what
8 have you got. He says, what do you mean, this is
9 everything that you asked for. He says, what else
10 do you got for me? What do you mean and then he is
11 seized. It is at that point, that point when he's
12 under the control of the driver. He's effectively
13 under control of Crash who was aiding and abetting
14 the driver in this assault on him. How could he
15 avoid the danger? How could he fulfill this duty to
16 retreat that they speak about? Well, he did testify
17 that he was pushing back and pushing back in the
18 vehicle and it sounded to me like he was almost
19 climbing with his hindquarters or something getting
20 up as far as he could to get back away from these
21 two men to get control of the situation. And it
22 happened very suddenly and it's an emergency for
23 him. They make fun of him for saying this is what
24 happened. All he could do is sit here and tell you
25 that this happened. You can look at, look through

1 the evidence in this case. I mean, the weed isn't
2 the only example over there. You all heard the
3 testimony. You all heard the individual witnesses.
4 You all are gonna make the decision. I can't make
5 it for you, and I don't even wish that I could
6 honestly, just because of the way that this country
7 is supposed to operate. But that is self-defense;
8 and frankly, I don't think they have a leg to stand
9 on in trying to knock out any of these prongs. And
10 the they're all in hands and then they're all, at
11 least to me -- you all have to decide -- they're all
12 clearly met.

13 Now I may, I may, actually have to write
14 some stuff up there. Well, okay. Their witness
15 credibility poster here, okay, what was the demeanor
16 of the witnesses on the stand? I told you earlier
17 on, I asserted it, I believe it's completely up to
18 you, every government agent who testifies in these
19 cases with a few exceptions is here for one
20 particular purpose, that is just me arguing to you
21 about their basis and, you know, their credibility.
22 Well, his demeanor on the stand to me, this is the
23 first time, you know, he's been in here all week
24 right in front of you butt his is the first time
25 y'all have been able to listen to him and to hear,

1 in my sincere belief, what actually happened but
2 what they would call his version of events that
3 they're continually making fun of and I imagine
4 they're gonna continue doing that. But I mean, how
5 did he seem? He was answering questions. I was
6 interrupting him, saying let me take you back, make
7 sure everybody hears, you know, this particular part
8 and that particular part. That's a judgment that
9 you have to make. Was he forthright or hesitant? I
10 didn't sense any hesitation. That's your call;
11 that's your decision to make. Was it consistent
12 now, the Solicitor has a point because he said
13 initially, I wasn't there, and they probably will
14 continue to go to great lengths to belabor this
15 point. He did say, I wasn't there, you know, I was
16 at my girlfriend's house and I went to some club
17 later, I wasn't anywhere near there. And then he
18 says, there's no defense law, no self-defense law in
19 South Carolina. This is their evidence. They're
20 gonna make a big deal about how the warrants come
21 out on the 25th and he didn't get arrested until the
22 26th. Mat Ellis said that's very common. I mean, I
23 should have followed up; but I imagine warrants can
24 sit out there for days, weeks, months, even years in
25 some cases. But was it consistent with that first

1 statement? No. He gets on the stand and he says,
2 this is why I did not tell him the trust initially.
3 Now is that corroborated by anything? Despite the
4 fact that admittedly Investigator Unger said he
5 didn't believe him for a second, that that was a
6 false statement. Well, it actually is. Something
7 that he told investigator Unger the same day, the
8 very same day. As soon as this business, well, you
9 know it was your dad's house moving, and I wasn't
10 trying to say that Investigator Unger was coercing
11 him or anything. Police officers got a job to do,
12 and they know how to it. You're lying to me
13 because next, facts out there frankly that's how
14 they get the job done. I'm not saying that he was
15 trying to coerce him. I where I do have a little
16 bit of difficulty is where we brought up that issue
17 of self-defense. People have a right to remain
18 silent in this country and the government can't make
19 us stop, it's not Pakistan or any place that.
20 People have a right to remain silent. He wasn't
21 remaining silent. He was saying there's no
22 self-defense law in South Carolina. And there's
23 just no followup after a continuing, you know,
24 series of questions about whether you're lying
25 because of X, you're lying because of Y, you're

1 lieing because of Z. Well, there's not self-defense
2 law in South Carolina and that's the end of it.

3 Well, it seems to me, and hopefully you all might
4 consider whether this is a, something that may been
5 something to follow up on when he was interviewing
6 him. You all heard his testimony, and it's just a
7 decision that you're gonna have to make.

8 Did he have a reason to be biased or
9 prejudiced? Well, I suppose they could say that
10 because they're saying he's a murderer and he's
11 saying, no, I'm not. So you know, depending on what
12 you believe the truth is — and everyone is
13 self-interested by the way — it's not, it's just I
14 don't know any other way to say it except that he
15 just got up there and told the truth the best he
16 could. They go and say, well didn't you tell your
17 mom on the phone you didn't do it? He said, I knew
18 I was being recorded. And aside from that I was
19 thinking to myself, you know, maybe it's not
20 something you want to talk to your mom about on the
21 phone from jail being recorded; I don't know. They
22 didn't introduce any telephone calls into evidence
23 so those are lawyers words. When I was
24 cross-examining Mr. Frazier about his prior story
25 that didn't match about following down the dirt road

1 and him getting out, and you know, confronting them
2 with the firearm, that — I followed up with
3 Investigator David Goff who said actually, yes. He
4 said these very things. He said no, I did not say
5 that. So you know, there's a contradiction right
6 there. Solicitor likes to make a point, well,
7 because he's because he scared, you know, he liked
8 about the weed or X, Y, Z. I mean, that's all well
9 and good. You know, this wasn't really — these
10 weren't misstatements about the weed; these were
11 misstatements about the material facts of the case.
12 His credibility is put into evidence by that; and
13 frankly, Mr. Singleton's credibility is put into
14 issue by his original statement. How do, does each
15 person in your mind best mitigate that initial
16 silencing. Ms. Simpson gave you a reason; he said
17 he was afraid, no self-defense. Mr. Frazier didn't
18 give you any reason; he denied it outright. His
19 contradiction is supported by Investigator Goff and
20 decide the credibility between those two witnesses
21 that and among other things that you heard. They'll
22 come up and speak about the pathologist. And when
23 they were examining the pathologist I remember
24 them — you know, whenever the government starts to
25 say something is consistent with something else,

1 consistent with means watch out, okay. I've got
2 keys in my pocket here. That's consistent with
3 driving a truck. It's consistent with driving a
4 car. It's consistent with driving a motorcycle.
5 It's consistent with driving a boat. It's
6 consistent with driving a RV. I happen to have a
7 Dodge Ram, but it's consistent with all of those
8 other things. Whenever anyone says something is
9 consistent with something you can bet that it's also
10 inconsistent at the same time. The reason for the
11 consistent language is, because to fit the theory of
12 their case some of the injuries could not have
13 occurred the way that in accordance with the
14 pathologist's testimony. Their testimony, the only
15 testimony they have in this case is a f firearm was
16 discharged in this case. It was discharged from the
17 passenger side of the vehicle into the vehicle.
18 That's their only evidence. That's their only
19 testimony about a firearm being discharged in this
20 case. You will be able to look at the SUV C and see
21 the position of everything. Frankly if there's a
22 front back wound here. Doctor Durso talked about
23 it. It's front to back. It's not side to side;
24 it's not up or down. It came from this direction.
25 It hit the top of the wound and became what's

1 called, the wound became atypical because it's
2 misshapen because originally when a bullet injures,
3 well any substance, it just keeps moving until it's
4 stopped. And there it was stopped by the clavicle.
5 There was other testimony about an atypical wound
6 down here above the waist line talking about that,
7 and I am gonna have to speak about things that are
8 uncomfortable. If there was a shot, you'd have
9 pictures of this. You'd have a doctor's diagram to
10 this injury of the forehead. And other people say,
11 you know, well, there's one angle or another angle
12 or twisting that's to explain the trajectory of the
13 back wounds was. It was consistent with someone
14 twisting away in terror or twisting away cowering,
15 you know, something to that effect. You have
16 experts sometimes come across a little bit
17 uncomfortable with this. Well, sure it's consistent
18 with that but they're trying to mold the actual
19 physical facts of forensic evidence in this case
20 that their theory of all these projectiles being
21 fired from here instead of being fired from inside
22 the vehicle which is where Mr. Singleton says they
23 were fired from. There was something else that was
24 consistent. Gunshot residue, the guy from Texas
25 A&M, Robins, he testified about gunshot residue. He

1 said if barium, lead, and antimony are on your hands
2 you have gunshot residue on your hands. That
3 combination of those three metals, you don't get
4 anywhere else. I think he said maybe fishing
5 weights and several others, and you have gunshot
6 residue on your hands. He also testified you have
7 to, you know -- trust your recollection on this over
8 anything that I would say -- that if you have
9 gunshot residue on the front palm, if you have
10 gunshot residue on the back you have discharged a
11 firearm. That's the testimony I recall. Just
12 recall as best you can. That's what he said on the
13 stand. At that point the Solicitor Says, well,
14 also isn't that consistent with someone, you know,
15 being in a car and maybe with their hands up or
16 something to that effect, and a firearm being
17 discharged very close to them. Well, what he said
18 was, sure but the gunshot residue would be on the
19 front. That was his testimony in that regard. I
20 mean, you all can review the record, you know, to
21 whatever degree you want. Review all the record or
22 anything you want. You can look at this green plant
23 material; you can smell it, it's sticky. I'm not
24 saying that type of thing but y'all have access to
25 all the evidence and just use your best judgment.

1 Never, never, let the government substitute their
2 judgment for yours on matters. Their judgment,
3 frankly, doesn't matter anymore. This is a
4 constitutional matter. You're here to scrutinize
5 their evidence, their accusation of murder on the
6 most great offenses in the history of mankind.
7 They're making it. They got to prove it beyond a
8 reasonable doubt, and they have to disprove this
9 self-defense beyond a reasonable doubt. They've got
10 a very high burden; there's good reason for that.
11 When anyone's liberty is impacted by an injustice,
12 it affects everyone, all of us. It may not be
13 today; it may not be tomorrow. He was innocent
14 then, he didn't kill anybody, he acted in
15 self-defense. And I'm gonna leave it there. Thank
16 you for your time. Thank you for your consideration
17 and just do your best, please do your best. Thank
18 you.

19 THE COURT: Thank you, Mr. Sutherland.

20 MR. SUTHERLAND: Thank you, sir.

21 THE COURT: All right, Solicitor.

22 MS. CAVANAUGH: May it please the Court.

23 Make no mistake about it, ladies and
24 gentlemen, on January 24, 25 and 26th Richland
25 County Sheriff's Department were looking for an

1 armed and dangerous individual. Yes, they did bring
2 out every research they possibly could in this case
3 to look for this defendant because this defendant
4 had just shot Dashawn Jones execution style bullet
5 to the forehead 6 to 18 inches away, downward
6 trajectory, shot him dead and left him in that car
7 for dead along with five, at least five additional
8 gunshot wounds. And he left Jonathan Frazier in
9 that passenger seat to die with three gunshot
10 wounds, one to the neck that could have killed him
11 and that I submit the defendant thought killed him.

12 Make no mistake about it, this was indeed
13 a coldblooded murder. Dashawn Jones never even had
14 the chance to give the defendant his couple of
15 hundred dollars before he was shot dead. After he
16 suffered numerous gunshot wounds he tried to give it
17 to him; and he did give it to him, but that wasn't
18 enough. The defendant walked around to the front of
19 the car, the driver's side of the car, unloaded his
20 revolver, loaded it back up, and make sure he
21 finished the job. Made sure that he shot Dashawn
22 Jones in forehead so that he would die. Jonathan
23 Frazier wakes up. He's laying, as he stated, over
24 the console. And the forensic evidence will over
25 this, over the console wakes up to see the defendant

1 on the driver's side. He's unconscious. He did not
2 see that last shot to his friend Dashawn Jones. He
3 knows what's about to happen to him. He knows his
4 best friend is dead in that front seat, and he knows
5 he doesn't have a chance. The defendant is
6 reloading his gun right before his eyes. He does
7 get up; he's already been shot. He's weak. He goes
8 around the front of that car, tries to get that gun
9 from the defendant, but the defendant is the only
10 one with a weapon in this case. He's got it; he
11 pushes him back around the front, pushing him back
12 into that car with that gun. He says give me the
13 keys, give me your phone, I've got to get out of
14 here, I got to get out of here. Jonathan knows if
15 he reaches for that, his keys, he's gone. He's got
16 to turn his keys; he's gone. So he doesn't. The
17 defendant fires another time, another two times, his
18 hand goes up, he shakes, and he falls back. The
19 defendant thinks that Jonathan Frazier is dead; he
20 flees the scene. And he drops that glove along with
21 those cartridges cases on his way to the woods.

22 Now you would think someone who is able to
23 evade the police for two days and who is able to
24 hide his firearm from the Richland County Sheriff's
25 Department who's been searching all over for him

1 would not be careless enough to leave that glove
2 behind; However, I submit he realized that he left
3 this glove behind and came back to get that glove
4 and that's when he noticed Jonathan Frazier was no
5 longer in that car. He might have even seen
6 Jonathan Frazier down Prioleau Road at this time.
7 He's going after him to finish the job, but he
8 doesn't get him in time. He knows that the police
9 are on the way. He has just fired nine shots;
10 someone has heard those shots. So he has to leave
11 the glove behind and he runs in the direction that
12 he knows to go because he's from Hopkins, has
13 friends there, he has family there. But he also
14 knows he has some time because he knows that he
15 doesn't really know Jonathan very well. He only
16 knows, he knows Jonathan only knows him by his first
17 name. And I submit he might think Jonathan is not
18 going to make it because he knows he shot him to the
19 neck, thought he was dead in that car. So he goes
20 to his dad's house and then he realizes the next day
21 when he realizes the next day when everything's been
22 released to the news and police is surrounding his
23 house, that they've got him. So once again he runs.
24 And he gets someone, Randal Dandy to take him to the
25 hotel or motel, wants to stay there for two days,

1 again, to hide from the police, even having Randal
2 Dandy put that room in his name.

3 The defense in his opening stated
4 something that, that's — this is the American —
5 this is the government trying to go after this
6 America citizen. That is, that is true; however,
7 this particular citizen has just shot Dashawn Jones
8 execution style in the middle of the afternoon on a
9 Tuesday when school children are getting ready to
10 come home from school, the middle of the afternoon
11 broad daylight. This particular citizen has left
12 Jonathan Frazier in that passenger car to die. And
13 this particular citizen actually tried to come back
14 multiple times, the State submits, to make sure that
15 he finishes the job but he was unsuccessful. And I
16 apologize if myself or either of my cocounsel have
17 offended you or irritated you in any way throughout
18 this trial. Yes, we had to piece evidence after
19 evidence after evidence, witness after witness after
20 witness, because this government system thank,
21 goodness, has to prove this defendant guilty beyond
22 a reasonable doubt. We have to prove each element
23 of this offense to you beyond a reasonable doubt.
24 And this is the perfect example of why as
25 Investigator Unger said, the investigation does not

1 end at arrest.

2 We have no idea what the defendant is
3 going to say when he takes the stand at trial. He
4 can say anything he wants. And we to have prepare
5 for that so that is exactly why we get evidence,
6 piece of evidence after evidence in front of you,
7 because we don't know which one will actually prove
8 to be necessary for our case and thank goodness
9 because as I'll get to in just a minute, there is
10 all of the forensic evidence in this case
11 corroborates every single thing that Jonathan
12 Frazier said and absolutely none of it corroborates
13 the defendant.

14 Now the first element other than the
15 unlawful killing which I'll get to in a minute, the
16 first element is murder and attempted murder that we
17 have to prove to you is malice. And malice is
18 hatred, ill will, or hostility towards another
19 person. It is the intentional doing of a wrongful
20 act without just cause or excuse and with intent to
21 inflict an injury or under circumstances that the
22 law will infer an evil intent. Expressed malice is
23 shown when a person speaks words which express
24 hatred or ill will for another or when the person
25 prepared beforehand to do the act. Malice may be

1 inferred from conduct showing a total disregard for
2 human life. And as my cocounsel said we have malice
3 all over this case, ladies and gentlemen.

4 As it relates to the victim Dashawn Jones
5 who's not here to speak for himself, gunshot wound
6 to the forehead, 6 to 18 inches away, eight total
7 gunshot wounds, six projectiles recovered.

8 Trajectories, all of them that she could determine
9 were downwards consistent with twisting away. Other
10 side of the car, gunshot to the back, twisting away.

11 Ladies and gentlemen, use your common sense. If
12 someone is shooting from the passenger side of the
13 car outside, the person is going to twist away to
14 protect themselves. One of the shots went through
15 the arm. Again, as Doctor Durso said, consistent
16 with protecting oneself.

17 As relates to Jonathan, Dashawn is already
18 dead. He's reloading the gun on the other side of
19 the car. He's pushing him back into the car with
20 the gun. Give me the keys. Jonathan says, look
21 what you did to my cousin, look what you did. He
22 reloads, gets those projectiles in the gun and he
23 was having a hard time doing, there you go. Give me
24 your phone, I've got to get away. More shots. The
25 State submits he comes back to finish the job when

1 he realizes that Jonathan Frazier is still alive.
2 That's why he was seen running down Prioleau Road
3 right beside Monica's house in the opposite
4 direction. Gunshot wound to the neck without an
5 airway only able to survive five minutes. As Monica
6 Howell told you, there was a lot of blood, a trail
7 of blood leading up to her driveway.

8 We use this term aforethought, malice
9 aforethought. What does that mean and how is it
10 shown in this case? Brings gun, 357 revolver, seven
11 total chambers potentially six to seven chambers;
12 and he has, we know, at least nine shots were fired
13 so multiple pieces of ammunition. He drives around
14 for 30 minutes, finds — and he's directing; he is
15 directing. Dashawn drives around for 30 minutes and
16 just happens to direct them to this remote area
17 which is surrounded by woods. Malice aforethought,
18 opportunity to get away. 2:30 in the afternoon,
19 doesn't even bother to ask Dashawn for the money
20 before he shoots him, just starts shooting. And
21 again, after he gets the money, doesn't even stop
22 there, reloads to finish the job. Again, malice
23 wreaks all over the case. You have the 9-1-1 tape,
24 you will be able to listen to that.

25 Monica Howell calls at 2:31. You can

1 listen to her recording. She's calling the police.
2 9-1-1 because Jonathan Frazier has left a extreme
3 amount of blood; he is dieing before her eyes. She
4 sees Jabriel running down Prioleau Road. You have
5 the phone records. You can see Jabriel Singleton's
6 phone records. His phone calls, the one that are
7 seven right in a row, they don't start until 2:30.
8 I submit that is after he sees that Jonathan Frazier
9 is still alive. He doesn't start those frantic
10 phone calls until after he realizes he's in trouble,
11 Jonathan Frazier is alive. The only living witness
12 who sees what happened is still alive; that's when
13 he starts to panic. Defendant's phone records,
14 2:30, 2:31, 2:31 2:33, 2:34, 2:35, 2:36, 2:48, none
15 are this consistent before he sees that Jonathan
16 Frazier is alive. We know that because Monica
17 called 9-1-1 at 2:31. That is on the 9-1-1 CD.
18 None after, at least none this frantic, outgoing
19 after 2:48 because somehow he's gotten away. He
20 doesn't start panicking until he realizes that he
21 didn't finish the job.

22 Ms. Simpson spoke about credibility of the
23 witnesses and Mr. Sutherland as well. I'm fixing to
24 go over those again. Demeanor of the witness on the
25 stand, was the witness forthright or hesitant, was

1 the testimony of the witness consistent, was
2 testimony of the witness corroborated, did witness
3 have reason to be biased or prejudiced. And I'm
4 gonna focus on these last three. Consistent,
5 Jonathan Frazier was consistent. And the evidence
6 in the case which I'm about to go through — and
7 don't worry, not all of those — I picked out the
8 ones that are extremely relevant to this case. The
9 evidence in this case corroborates every single
10 thing that Jonathan Frazier says. Did the witness
11 have reason to be biased or prejudiced. Why in the
12 world is Jonathan Frazier still maintaining what
13 happened on January 24th, 2012. He has no reason
14 to. The defendant has every single reason in the
15 world to. And I realize that you're not gonna be
16 able to read this. This helps me go through
17 Jonathan Frazier's statement because this is key.
18 He always maintains that Dashawn is the one who
19 wants to buy the marijuana; and as you can see from
20 the phone records, that is consistent with the
21 testimony because Dashawn is one what's making the
22 phone calls to the defendant or Jabriel to Dashawn.
23 And remember, Dashawn is — and Dashawn is also
24 waiting for the defendant at the girlfriend's house
25 for 30 minutes. So he is sitting there waiting, of

1 course he's gonna call the defendant over and over
2 again. He's at his girlfriend's house waiting for
3 him to show up.

4 And you'll have the phone records. You'll
5 see where within that 30 minute time frame that
6 Jonathan — and remember this about Jonathan
7 Frazier, this is key, Jonathan Frazier spends two
8 weeks in the hospital. He has no idea what is going
9 on with the forensic testing of evidence. He's in a
10 trauma unit; he's in critical condition.
11 Investigator Unger is not coming to him and giving
12 him updates on the case. Investigator Unger is
13 going to him to get his — to get what details of
14 what happened that day so he can investigate the
15 case. But Jonathan Frazier is not aware of the DNA
16 testing. Jonathan Frazier is not aware of the GSR
17 testing. Jonathan Frazier is not aware of the
18 latent print testing. He has no idea what's going
19 on; he's in the hospital.

20 Jabriel was sitting in the back behind me.
21 When he got out the car I heard him say, I want —
22 you want to shoot my gun. Okay, let's look at the
23 windows of the car. Again, corroboration,
24 credibility. The back window, down, consistent with
25 Jabriel sitting behind him. The other window is not

1 open, and you'll have an angle of that. The other
2 back passenger window is not open. I was sitting
3 in -- Jonathan Frazier sitting in the front, window
4 half way down. I heard Jabriel say, you want to
5 shoot my gun. The window is down; of course, he
6 heard that. Corroboration.

7 Told me it was a 357 revolver up to 7--
8 the forensic evidence according to the firearms
9 analyst can -- a 335 revolver can hold up to seven
10 chambers. We know at least there was at least nine
11 fired bullets. According to David Collins, firearm
12 analyst, all fired projectiles are from that same
13 weapon. All fired cartridge cases came from the
14 same weapon. The unfired cartridge found at the
15 scene can load a 357 revolver. Again,
16 corroboration.

17 Woke up -- I woke up to see Jabriel
18 reloading, what appeared to be reloading on the
19 driver's side of the vehicle. Five fired cartridge
20 casings on the driver's side of the vehicle. Close
21 range gunshot wound, only one left to right.
22 Remember, Jonathan Frazier was passed out for a
23 period of time. He said he woke up to find himself
24 laying over the center console. At that point he
25 saw the defendant on that side of the car. That

1 could have been when the defendant fired that last
2 shot to take care of Dashawn. Jonathan Frazier's
3 hat located on Monica's porch, blood around the
4 head. He was never shot in the head. Again,
5 leaning over his friend who has blood all over him,
6 corroboration consistent with the evidence.

7 Jonathan Frazier says Dashawn never got
8 out of the car. Doctor Annie Durso, all of the
9 trajectory patterns that she could determine except
10 for the ones that were consistent with someone
11 twisting away from gunshots front to back, downward
12 trajectories, standing up shooting at someone
13 sitting in the car. And Jonathan Frazier doesn't
14 try to tell what you he did not see. Glove, I saw
15 it in the back by him. He's not trying to say it
16 was on him. He says he saw it in the back. Again,
17 he is shot multiple times. It is a black glove. He
18 is unconscious. He might not have noticed the glove
19 when he's getting ready to die, but he sure did
20 notice it before he was shot. Sure, not that glove
21 proved to be extremely sufficient in the case.
22 Found at the scene defendant's DNA and GSR located
23 on that glove. Again, on the inside of the glove as
24 well. Two weeks in the hospital, no idea what's
25 going on with DNA testing, and just happens to

1 mention that glove?

2 We were waiting — we went over this. We
3 were waiting for him at the girlfriend's house.
4 Yes, you will have the phone records and the
5 continuous period of phone call for 25 minutes. The
6 phone calls stop around 1 p.m. which is when
7 Mr. Frazier says Jabriel came to his girlfriend's
8 house to meet him. He was on the phone while in the
9 car. Jonathan says Jabriel was on the phone while
10 he was in the car. The phone records will indicate
11 that every couple of minutes after 1 p.m. up until
12 the shooting, there are phone calls being made.
13 Second round of shots. And this is where it gets —
14 I mean, this, pay attention to the evidence. Second
15 round of shots my hand went up (indicating). Not
16 outside the car, okay, not outside the car. Inside
17 the car my hand went up. Well, low and behold —
18 I'm not trying to be smart here. This is the
19 passenger side photo of where Jonathan Frazier was
20 sitting. There is blood marked by T right there.

21 Monica Howell, he was holding a pack of
22 cigarettes to his hand because he had a poor size
23 hole in it. Found on the porch Jonathan Frazier
24 cigarettes, consistent, corroboration. I saw him
25 running down Prioleau Road. This is the view Monica

1 Howell's front porch. I saw him running down
2 Prioleau Road back out towards Masonry Circle.
3 Monica Howell sees this too, corroboration,
4 consistent. He told me give me your phone, I've got
5 to get out of here. No phone was found on the front
6 porch with the rest of the clothes. and again, EMT
7 cut off, took off his clothes and they need treat
8 him as he was laying there dying on the front porch.
9 Clothes all around, no weapon, no phone,
10 corroboration, consistent. I was in the front seat.
11 I crawled out of the car to get help. Police
12 arrived. The front passenger — Deputy Ellis and
13 Investigator Unger testified to this and
14 Investigator Polis. Police arrived, front passenger
15 side door opened. He's crawling for help. He gets
16 on his feet once he realizes he can walk; but again,
17 out the passenger side door. Corroboration ration
18 by other witnesses, consistent.

19 Fibers on the clothes. You remember
20 Investigator Holt testified that he removed several
21 fibers from Dashawn, actual deceased victim Dashawn
22 Jones' upper body, both at the autopsy and at the
23 stand. Jonathan Frazier, Dashawn never got out of
24 the car before the first shots were fired — excuse
25 me, Jonathan Frazier never got out of the car until

1 after the first shots were fired. Holes are in his
2 jacket, royal blue knit jacket. Same color fibers
3 are pulled from Dashawn Jones' upper body. Again,
4 consistent with someone shooting from the passenger
5 side while Jonathan Frazier with the bright blue
6 jacket is sitting in the passenger seat and Dashawn
7 Jones is on the other seat. Fibers lay right on his
8 stomach because of the explosion of the weapon. I
9 won't show you them all; but again, blue jacket,
10 blue fibers located on the deceased victim.

11 And I will briefly go through each of the
12 witnesses that you heard; and once again, the reason
13 we brought in witness after witness after witness is
14 because we have no idea what the defendant is gonna
15 testify to. That is why Investigator Unger said the
16 case does not end at the arrest. All that forensic
17 evidence, all this (indicating) comes into play
18 today. This is a perfect example of why the case
19 does not end after the defendant is arrested.

20 You heard from Deputy Kristen Ellis.
21 Jabriel, Jabriel, that is who shot me and he has
22 never, ever swayed from that. Monica Howell,
23 Jonathan Frazier kept telling me he wasn't gonna
24 hurt me, he wasn't gonna hurt me, he was trying to
25 hide. You'll have the 9-1-1 tape, and I want you to

1 think about this. He -- the defendant's testimony
2 is that Jonathan had the gun after Dashawn was
3 already dead. Jonathan had the gun, and that's why
4 he shot him again. Jonathan suffers a bullet wound
5 to the neck, to the back, and to the hand; but yet,
6 he has a wherewith all to have that weapon that he
7 supposedly had? The defendant never testified he
8 tried to take it away from him so as he's crawling
9 for help, as he's about to die, he has the wherewith
10 with all to hide the weapon? Listen to that 9-1-1
11 tape, remember the testimony from the doctor, and
12 you decide if that is credible.

13 Investigator Kristen Polis five fired
14 cartridge casings by the driver's car, two fired
15 casings by the road right near that glove, the glove
16 that just so happens to have the defendant's DNA and
17 GS -- and gunshot residue on it. It just so happens
18 to be located right by those casings where the
19 defendant fled from the scene which he now today for
20 the first time has an answer for. Investigator Sam
21 Richards and Investigator Anna Cavanagh processed
22 that car with extreme care, conducted gunshot
23 residue testing. And that's interesting that
24 Mr. Sutherland brought up the gunshot residue on the
25 deceased victim's hand who is not here to speak for

1 himself because even according to the defendant's
2 own testimony Dashawn Jones never even held a gun so
3 why does it matter? According to the defendant's
4 testimony why does it even matter that gunshot
5 residue was on Dashawn Jones' hand. According to
6 him he never fired a weapon. That is more
7 consistent with the State's case because as you
8 heard from John Roberts, if someone is firing at a
9 close range into a vehicle that cloud is not gonna
10 be able to leave the car so, yes, he does have
11 gunshot residue on his hand but it's not because he
12 handled a weapon or fired a weapon. It's because he
13 was in the car when he was shot and killed brutally.
14 You heard from Trish Collins they did everything
15 they could to fingerprint. Yes, they found a random
16 palm print from Grover Belton who is 60, almost 60
17 years old. His name never came up in the case
18 again. Of course, that's not unusual when you're
19 talking about the outside of a car, especially
20 someone who lets her boyfriend drive it around any
21 time he wants. It's not unusual, could have been
22 anybody. And you want to know what John Roberts
23 about it too, even according to the defendant's own
24 story it helps our case more than anything. And
25 again, GSR, which apparently now the defendant has a

1 story for, is on this glove, all over it.

2 Doctor Raymond Bynoe testified that
3 Jonathan Frazier had life threatening gunshot
4 wounds. He was in the trauma unit. He spent two
5 weeks in the hospital. Again, think about how that
6 relates to the statement two weeks later. He has no
7 idea what has been going on with the testing; but
8 yet, every single piece of evidence that I just went
9 through corroborates each part of his story.

10 Investigator Collins, all of the cartridge casings
11 fired — excuse me, oh, and this is actually key.
12 All of the cartridge casings and unfired cartridges
13 can fit in the same weapon. The ones that were
14 fired, same weapon, six projectiles recovered from
15 the victim, one fragment, all fired from the same
16 weapon.

17 MR. SUTHERLAND: Objections, misstatement
18 of the facts and evidence, sir.

19 MS. CAVANAUGH: Excuse me, the cartridge
20 casings fired from the same weapon was not able to
21 compare the two because he was unable to get the
22 firearm, but no other shots were fired that day,
23 only the defendant —

24 THE COURT: Excuse me, Solicitor, does
25 that resolve that issue, Mr. Sutherland?

1 MR. SUTHERLAND: It does, Your Honor, I
2 withdraw the objection.

3 MS. CAVANAUGH: I apologize.

4 THE COURT: That's all right. Excuse me,
5 Solicitor, for interrupting. You may continue.

6 MS. CAVANAUGH: Sergeant Caldwell and
7 Corporal Hagood with the Sheriff's Department, we
8 saw him standing at the wood line or what we
9 believed to be him. He ran, he dropped the phone
10 behind. We later located him at the motel hiding in
11 the shower behind his girlfriend. Of course today
12 the defendant has a story about that phone.
13 Coincidentally the day after the murder he sees a
14 bunch of investigators, doesn't really concern him
15 that much 'cause he doesn't know they're looking for
16 him. And he just happens to forget his phone as he
17 is -- wait a minute -- walking casually through
18 these woods. Somehow despite the fact that there
19 was about eight or nine investigators out there, if
20 not, more K-9 units tracking him, they could not get
21 him but he was just walking casually through those
22 woods and just coincidentally forgot his phone that
23 day.

24 Again, it's your job to judge the
25 credibility of these witnesses in this case. Now

1 you heard from Investigator David Goff who the
2 Defense bought up a couple of times in his closing.
3 Jonathan Frazier was in critical condition with an
4 oxygen mask on as he's trying to talk to
5 Investigator Goff. Is it actually possible that
6 Investigator misheard or misinterpreted ed what he
7 said? We were following Jabriel. Is it a
8 possibility that they were following his directions?
9 Yes, of course, that is a possibility.

10 You heard from Lieutenant Scott McDonald.
11 He's key in this case. As you heard from
12 Investigator Unger the defendant tried to deny he
13 was even in Hopkins that day. Cell phone was around
14 the incident location at the time of the murder.
15 Cell phone later that night at 9 or 10:00 was
16 nowhere near Club Crush. Concentrated period of
17 phone calls all from Dashawn to Jabriel, except for
18 one, on the run. Seven phone calls made from
19 Jabriel Singleton's phone in six minutes all
20 bouncing on the towers in Hopkins because he
21 realizes that Jonathan Frazier is still alive.

22 Again, another element that we have to
23 prove is that the victim died as a proximate may
24 result of a gunshot wanted wound. There is no
25 mistake about that, ladies and gentlemen. Gunshot

1 wound number one, — and I want you to think about
2 this very carefully in terms of what the defendant
3 said today. Remember what he said, he started
4 shooting — this is key. He started shooting as he
5 is falling out of the driver's side rear door.
6 That's when he starts shooting. So how is it that
7 most of these trajectories, right to left, downward
8 position. That makes no sense. Gunshot wound
9 number one, this is the only one that's been left to
10 right. It once again corroborates what Jonathan
11 Frazier said. He passed out, he wakes up, sees the
12 defendant on the other side of the car. It could be
13 that that is when the last shot was fired, left to
14 right. Again, downwards. And this is the one that
15 is the only one where she's able to determine the
16 intermediate range, right above the driver's window,
17 six to eighteen inches away. And you have that
18 photo. You can see the stippling that she talks
19 about. Again, pathology report consistent with
20 Jonathan Frazier's testimony. Definitely not the
21 victim's, I mean, excuse me, definitely not the
22 defendant's. How in the world does Dashawn Frazier
23 [sic] sustain a gunshot wound to his central
24 forehead that goes left to right (indicating) as
25 Jabriel Singleton is shooting from the back in

1 random directions. That makes no sense. Downward
2 trajectory.

3 Gunshot wound number two, indeterminate
4 range, that means more than 18 inches. Again, on
5 the passenger side of the car. Trajectory, right to
6 left, passenger side of the car. And I'm talking
7 about outside of it.

8 Gunshot wound number three, right
9 clavicle, that's the one that she believed -- I
10 believe it was a re-- you heard the testimony, but I
11 believe she thought that was a atypical wound
12 because it was a reentry wound from another, another
13 entry wound. But again, trajectory, front to back.
14 Again, shooting from the back seat firing. How in
15 the world does that go front to back. Gunshot wound
16 number four, right shoulder, chest, abdomen.
17 Indeterminate range, again, more than 18 inches
18 consistent with being on the passenger, outside the
19 passenger car, trajectory right to left, downwards.
20 Gunshot wound number five, right lower arm -- this
21 is I believe what she says. His arm could have been
22 in this direction. Trajectory posterior/anterior
23 which means it was up like this (indicating).
24 Again, indeterminate range more than eighteen inches
25 consistent with shooting from the passenger side of

1 the vehicle, not from the back of the car.

2 Gunshot wound number six, abdomen,
3 indeterminate range, more than eighteen inches,
4 trajectory right to left slightly downwards back the
5 front. . Again, consistent with twisting
6 (indicating), passenger side of the vehicle outside
7 of the car more than eighteen inches. Gunshot wound
8 number seven, indeterminate range, more than
9 eighteen inches, right to left, slightly downwards.
10 Again, outside of the car, passenger side. Left
11 upper thigh, more than eighteen inches, slightly
12 right to left, slightly front to back. According to
13 the defendant's own version of the story, how could
14 these gunshot wounds have traveled in this direction
15 according to his own version of events; it is
16 impossible.

17 Let's — I apologize; it has been a long
18 week. Let's get to his story. All right.
19 Investigator Unger, when he's arrested January 26,
20 2012, his first lie, at girlfriend's house all day,
21 did not leave her house until nine — excuse me,
22 after Zaxby's and after driving, after the recording
23 studio — well, he doesn't even mention Zaxby's.
24 I'm sorry, I'm getting this story all confused.
25 After the recording studio he went to the

1 girlfriend's house all day. He did not leave until
2 9 or 10 to go to Club Crush. He does admit that
3 Dashawn Jones wanted to buy marijuana from him. He
4 admits to that at least; but yet, he's not in
5 Hopkins at all that afternoon. He did not shoot
6 Dashawn or Jonathan. Investigator Unger confronts
7 him on that. He says, well, that's not probable
8 because you're making several phone calls throughout
9 the day and your phone is hitting off cell towers in
10 Hopkins. And then he says well, I must have left it
11 at father's house. That's after -- at my father's
12 house. That's after he says he's at his
13 girlfriend's house all day. Again, he's making
14 phone calls. Clearly Breeze called him several
15 times. He admits to that and buying marijuana. But
16 when he's confronted with the fact that his cell
17 phone is hitting in Hopkins because, again, neither
18 of these places are in Hopkins. That's when he
19 says, oh, I left it at my father's house. Fifth
20 lie, anything else -- well, not a lie, anything else
21 you want to add. At that point he says no. No, I
22 don't want to tell you about the self-defense right
23 now. No, I don't want to tell you that I was
24 actually there. No, I don't want to tell you
25 anything else. He had ample opportunity.

1 The next day when Richland County
2 Sheriff's Department has a warrant for his arrest
3 and they're coming to look for him, they see him
4 fleeing through the wood line toward the opposite
5 direction. His phone is left behind right where
6 they saw him, and I submit that is so he — they
7 cannot find him. He knows they are using his phone
8 to locate him. He leaves it behind so that he can
9 continue to run. That afternoon, once he realizes
10 that the police are on to him and they are going to
11 arrest him, he goes to the motel rented by someone
12 else in someone else's name, again evidence
13 of guilt. He's hiding in the shower behind the
14 girlfriend when the police come.

15 Today for the first time we hear that he
16 was actually gambling that morning at the recording
17 studio and won 500 to 700 dollars. When I asked him
18 why he didn't tell Investigator Unger that, he said,
19 or whether he even told Investigator that, he says
20 he doesn't remember. Clearly that would be a key
21 piece of information to tell Investigator Unger
22 during his interview. Today for the first time we
23 hear that Breeze had a gun under his seat earlier
24 that afternoon. Today for the first time we hear
25 that Breeze was the one who was making decisions

1 about where they were going to go, not him. Today
2 for the first time we hear that he thought Breeze
3 was reaching for a gun. Today for the first time we
4 hear that he was firing as he was following out of
5 the car. But see, this is where he messes up,
6 because he cannot keep up with all of his lies.

7 MR. SUTHERLAND: I'm sorry, Judge, I
8 object, facts not in evidence. He didn't say he was
9 firing as he was falling out the car.

10 THE COURT: All right.

11 Ladies and gentlemen, the jury finders,
12 the determination of the facts are in evidence
13 solely for, you the jury, to decide based on your
14 individual and collective memory in that regard.
15 All right, thank you, Mr. Sutherland.

16 MR. SUTHERLAND: Yes, sir.

17 THE COURT: Solicitor, you may continue.

18 MS. CAVANAUGH: You remember what he said.
19 He said he was falling, as he was falling out of the
20 car, as he was getting out of the car that's when he
21 was shooting like crazy. That's the first time we
22 heard it today. And again, this is where he starts
23 to mess up because he cannot keep up with all of the
24 forensic evidence. He can make up lies about the
25 easy stuff. He can make up lies about the black

1 glove. He can make up lies about things that he's
2 able to get around fairly easy, such as, I
3 accidentally left the phone in the back when all the
4 fugitive team was coming to arrest me. But he
5 cannot keep up with the forensic evidence, ladies
6 and gentlemen. I was unloading and reloading as I
7 was falling out of the car. And I want you to look
8 at those photos, and you can see that the five
9 concentrated area of the cartridge casings are
10 actually pretty far away from where the back seat is
11 so I'm not even sure that's even possible to do.
12 But you have the picture, you can see. That is when
13 Crash comes around with the gun, and that's when we
14 shoots him again and then he runs because he was
15 scared. For the first time we hear all of that
16 today.

17 Credibility, he's got an answer for
18 everything, at least he tries to give an answer for
19 everything. I dropped the glove accidentally; but
20 yet, he managed to take the marijuana with him. He
21 dropped the phone in the woods; but yet, he
22 coincidentally left the phone that day when the
23 fugitive team was looking for him with his jacket,
24 but he wasn't running. He cannot keep up with what
25 the evidence actually proves 'cause I submit he's

1 trying to make it up as he goes along and as he
2 hears the evidence in this case. Even then it
3 doesn't work.

4 As Ms. Simpson stated earlier in this
5 case, two witnesses that we did not call are human
6 nature and common sense. Ladies and gentlemen,
7 please don't forget that when you go back to the
8 jury room. Human nature and common sense. Common
9 sense, has an answer for everything. Human nature,
10 has every reason to lie. But I'm also asking you to
11 look beyond your common sense and beyond your human
12 nature because you have the forensic evidence in
13 this case. I just went through every piece of
14 evidence; not every, but the ones that are critical
15 to this case that corroborate Jonathan Frazier's
16 statement and that do not corroborate, actually
17 contradict the defendant's statement.

18 Today is the first day that we ever hear
19 anything about self-defense as far as other than his
20 brief comment to Investigator Unger after he can't
21 continue to make up lies anymore. Today's the first
22 day. But ladies and gentlemen, he is trying to
23 evade his guilt just like he was for two days after
24 this brutal murder. Hold him responsible for his
25 actions that day. Do not let him get away with the

1 lives that he put up with for the first time today.
2 Dashawn Jones is not here to speak for himself;
3 Jonathan Frazier is. I'm asking you to hold Jabriel
4 Singleton responsible for the murder of Dashawn
5 Jones and the attempted murder of Jonathan Frazier.
6 Find the defendant guilty. Do not let him continue
7 to evade justice. Thank you.

8 THE COURT: Thank you. Thank you,
9 Solicitor.

10 Mr. Foreman, ladies and gentlemen of the
11 jury, why don't we take about a 15 minute recess.
12 Leave your notes during this brief recess. Do not
13 discuss this case in any manner. Thank you very
14 much. You may go with your bailiff.

15 (The jury is removed from the courtroom at
16 3:54 p.m.)

17 THE COURT: Court will be recess 15
18 minutes.

19 (Whereupon, there was a break in the
20 proceedings.)

21 THE COURT: Mr. Sutherland, when I review
22 Hendrix —

23 MR. SUTHERLAND: Yes, sir.

24 THE COURT: Hendrix indicates that there's
25 an additional part. It says the rule is that

1 ordinarily one is not justified in shooting or
2 employing a deadly weapon after the additur has been
3 disarmed or disabled. The rule is also that when a
4 person is justified in firing the first shot, he is
5 justified in continuing to shoot until it is
6 apparent that the danger to the life and body has
7 ceased. Both of them citing 40 CFJ homicide section
8 131(b) at 1020 so I'm gonna charge the totality —

9 MR. SUTHERLAND: Yes, sir. Thank you,
10 Your Honor, and it wasn't intentional.

11 THE COURT: No, no, I didn't take it, I
12 didn't take it as that. It's all in one paragraph
13 and the Court's decision.

14 MR. SUTHERLAND: Yes, sir.

15 THE COURT: So I'm gonna charge that whole
16 paragraph.

17 MR. SUTHERLAND: Thank you, sir.

18 THE COURT: All right, thank you. Bring
19 us our jury please.

20 (The jury was returned to the courtroom at
21 4:09 p.m.)

22 THE BAILIFF: The jury's seated, Your
23 Honor.

24 THE COURT: Thank you. Thank you,
25 Mr. Bailiff.

1 Mr. Foreman, ladies and gentlemen of the
2 jury, it not becomes my responsibility to charge or
3 instruct you on the law that you must apply to the
4 facts in this case. I will advise you at the outset
5 it's wrote, it's routine, it's very important. The
6 procedure I follow in instructing a criminal jury is
7 I charge the general criminal law that applies to
8 all criminal trials in South Carolina. I will
9 usually tell you the subject matter at the beginning
10 of the paragraph, that area I'm fixing to cover.
11 But when I change from one area to another I will
12 give you the subject matter so I follow the general
13 criminal law first. I will then cover the specific
14 charges in two indictments, murder and attempted
15 murder. Thereafter I will charge self-defense.
16 Finally I will charge forms of the verdict. If you
17 will please give me your complete and undivided
18 attention.

19 The charge, arrest, indictment is not
20 evidence. The indictments in this case charge the
21 defendant with murder and attempted murder. I will
22 remind you again that the fact the defendant was
23 arrested, charged, and indicted in this case is not
24 evidence in this case and cannot be considered by
25 you as evidence of guilty; nor does it create any

1 presumption or inference of guilty. These
2 documents. these indictments, are simply the written
3 instruments which contain the charges made against
4 the defendant. They are the formal documents by
5 which this case is brought into court. There are
6 multiple charges.

7 The indictments in this case allege
8 different offenses against the defendant, murder and
9 attempted murder. Each indictment charges a
10 separate and distinct offense. You must decide each
11 indictment separately on the evidence and the law
12 applicable to it uninfluenced by your decision as to
13 the other indictment. The defendant may be
14 convicted or acquitted on any or all of the offenses
15 charged. You'll be asked to write a separate
16 verdict of guilty or not guilty for each indictment.

17 Presumption of innocence. The defendant
18 has pled not guilty to these indictments and that
19 plea puts the burden on the State to the defendant
20 guilty. A person charged with committing a criminal
21 offense in South Carolina is never required to prove
22 himself innocent. I instruct you that it is a
23 important rule of the law that a defendant in a
24 criminal trial, no matter what the seriousness of
25 the charge may be, will always be presumed to be

1 innocent of the crime for which the indictment was
2 issued unless guilt has been proven by evidence
3 satisfying you, the jury, of that guilt beyond a
4 reasonable doubt. This presumption of innocence
5 does not end when you begin your deliberations, but
6 it accompanies the defendant throughout the trial
7 until you reach a verdict of guilt based on the
8 evidence satisfying you of that guilt beyond a
9 reasonable doubt. The presumption of innocence is
10 like a robe of righteousness placed about the
11 shoulders of the defendant which remain with the
12 defendant until it has been stripped from the
13 defendant by evidence satisfying you of the
14 defendant's guilt beyond a reasonable doubt. The
15 presumption of innocence is not a mere legal theory.
16 It is not a just legal phrase. It is a substantial
17 right to which every defendant is entitled unless
18 you, the jury, are satisfied from the evidence of
19 the defendant's guilt beyond a reasonable doubt.

20 What is a reasonable doubt in the law? A
21 reasonable doubt is the kind of doubt that would
22 cause a reasonable person to hesitate to act. The
23 State has the burden of proving the defendant guilty
24 beyond a reasonable doubt. Some of you may have
25 served as jurors in the past in civil cases where

1 you were told that it is only necessary to prove
2 that a fact is more likely true than not true such
3 as by the greater weight or a preponderance of the
4 evidence. In criminal cases the State's proof must
5 be more powerful than that. It must be proof beyond
6 a reasonable doubt. Proof beyond a reasonable doubt
7 is proof that leaves you firmly convinced of the
8 defendant's guilt.

9 There are very few things that we know in
10 this world with absolute certainty and in criminal
11 cases the law does not require proof that overcomes
12 every possible doubt. If based on your
13 consideration of the evidence, you are firmly
14 convinced that the defendant is guilty of the crime
15 or crimes charged, you must find the defendant
16 guilty. If on the other hand you think there is a
17 real probability that the defendant is not guilty,
18 you must give the defendant the benefit of the doubt
19 and find him not guilty.

20 Duties of the jury and trial judge. I
21 remind you that during this trial you and I have
22 certain duties to perform. As the trial judge it is
23 my responsibility to preside over the trial in this
24 case, and I also have the duty to rule on the
25 admissibility of the evidence offered during this

1 trial. You are to consider only the competent
2 evidence before you. You are to consider only the
3 testimony which has been presented from the witness
4 stand and any exhibits which have been made a part
5 of the record. I have the additional duty to
6 instruct you on the law that applies in this case.
7 As the presiding judge I am the sole judge of the
8 law of the case, and it is your duty as jurors to
9 accept and apply the law as I now state it to you.
10 If you already have any idea as to what that the law
11 is or what the law ought to be and it does not agree
12 with what I now tell you the law is, you must
13 abandon your idea because you are sworn. You have
14 taken an oath to accept the law and apply the law
15 exactly as I state it to you.

16 In every case tried in this court before a
17 jury the jury becomes the sole and exclusive judge
18 of the facts in a case. A trial judge cannot
19 intimate, state, comment on, or make any statement
20 to a trial jury about the facts in a case. Since
21 you, the jury, are the sole judge of the facts in
22 this case you are not to infer from what I have said
23 during the progress of this trial in ruling upon the
24 admissibility of evidence, or otherwise, or anything
25 that I say now during the course of this instruction

1 to you that I have any opinion about the facts in
2 this case. The law does not allow me to have an
3 opinion about the facts in this case. That is a
4 matter solely for you, the jury, to determine. As
5 jurors it is your duty to determine the effect, the
6 value, the weight, the truth of the evidence that
7 has been presented during this trial.

8 Direct and circumstantial evidence. There
9 are two types of evidence which are generally
10 presented during a trial, direct evidence and
11 circumstantial evidence. Direct evidence is the
12 testimony of a person who claims to have actual
13 knowledge of a fact such as an eyewitness or an ear
14 witness. It is evidence which immediately
15 establishes the main fact to be proved.
16 Circumstantial evidence is proof of a chain of facts
17 and circumstances indicating the existence of a
18 fact. It is evidence which immediately establishes
19 a collateral fact or facts from which the main fact
20 may be inferred. Circumstantial evidence is based
21 on inference and not on personal knowledge or
22 observation.

23 The law, our law, makes absolutely no
24 distinction between the weight or the value to be
25 given to either direct or circumstantial evidence.

1 Nor, is there a greater degree of certainty required
2 of circumstantial evidence than of direct evidence.
3 You, the jury, should weigh all of the evidence in
4 the case. After weighing all of evidence if you're
5 not convinced of the guilt of a defendant beyond a
6 reasonable doubt you must find that defendant not
7 guilty.

8 Credibility of a witness. Necessarily you
9 must determine the credibility of the witnesses who
10 have testified in this case. As you all know,
11 credibility simply means believability. It becomes
12 your duty as jurors to analyze and evaluate the
13 evidence and determine which evidence convinces you
14 of its truth. In determining the believability of
15 witnesses who have testified in this case you may
16 believe one witness over several or several over
17 one. You may believe a part of the testimony of a
18 witness and reject the remaining part of the
19 testimony of that same witness. You may believe the
20 testimony of a witness in its entirety or reject the
21 testimony of a witness in its entirety. You may
22 consider whether any witness has exhibited to you
23 any interest, any bias, any prejudice, or other
24 motive in this case. You may consider the demeanor,
25 the manner of the witness on the witness stand,

1 whether he or she was hesitant or forthright. You
2 may consider the -- whether or not the witness's
3 testimony was corroborated or consistent with other
4 testimony or other witnesses in the case. You would
5 do this all against the background of your good
6 judgment and your common sense individually and
7 collectively as a juror.

8 Expert witnesses. And you've heard me say
9 this several times. This is somewhat of an extended
10 charge rather than the one I give throughout the
11 trial of a case. Again, ladies and gentlemen, the
12 rules of evidence ordinarily do not permit witnesses
13 to testify to opinions or conclusions. An exception
14 to this rule exists to witness that we call expert
15 witnesses. A witness who by education and
16 experience has become expert in some art, science,
17 profession or calling, may state an opinion as to
18 relevant and material matter in which the witness
19 claims to be an expert and may also state the
20 reasons for that opinion. You should consider any
21 expert opinion received in evidence in this case;
22 and like any other evidence, give it the weight you
23 think it deserves. If you decide opinion of an
24 expert is not based on sufficient education an
25 experience or if you conclude that the reasons given

1 in support of the opinion are not sound or that the
2 opinion is outweighed by other evidence, you may
3 disregard the opinion entirely. An expert witness's
4 testimony is to be given no greater weight than of
5 other witnesses simply because the witness is
6 designated an expert. Further, you are not required
7 to accept an expert's opinion even though it is not
8 contradicted.

9 Statement of the defendant. A statement
10 alleged to have been made by the defendant has been
11 admitted into evidence in this case. While the
12 Court has determined that the statement is
13 admissible, I instruct you that you make the
14 ultimate decision of whether or not the defendant
15 made the statement. If the defendant did make the
16 statement you must determine whether the statement
17 was made by the defendant voluntarily and of his own
18 free will. This means that the statement was not
19 caused by pressure, force, fear, threats, coercion,
20 intimidation, or hope or promise of leniency, or
21 reward of any kind.

22 In determining whether the statement was
23 voluntary you should consider both the
24 characteristics of the defendant and the details of
25 the questioning. Some of the factors that you may --

1 must consider are: The age of the defendant, the
2 defendant's education or lack of education, the
3 defendant's mental ability or capacity, the
4 defendant's IQ or intelligence, the defendant's
5 background and environment, the place and length of
6 detention, the nature of the questioning, and the
7 advice or lack thereof to the defendant of his
8 constitutional rights including but not limited to
9 the right to remain silent; that any statement could
10 be used against him in a court of law; the right to
11 have a lawyer present; that if he could not afford a
12 lawyer a lawyer would be appointed to him without
13 any cost, and that he could stop making a statement
14 at any time. You must carefully consider of the
15 surrounding circumstances before you give any weight
16 to any alleged statement. The State has the burden
17 of proof beyond a reasonable doubt that the alleged
18 statement was voluntary. If you determine it was,
19 you may give the statement any further consideration
20 that you deem proper. You must decide what weight,
21 if any, should be given to the alleged statement.
22 If you determine the alleged statement was not the
23 free and voluntary statement of the defendant, you
24 should not consider the statement at all.

25 Identification. An issue in this case is

1 the identification of the defendant as the person
2 who committed the crimes charged. The State has the
3 burden of proving identification beyond a reasonable
4 doubt. You must be satisfied beyond a reasonable
5 doubt of the accuracy of the identification of the
6 defendant before you may convict the defendant.
7 Identification testimony is an expression of belief
8 or impression by a witness. You must determine the
9 accuracy of the identification of the defendant.
10 You must consider the believability of each
11 identification witness in the same manner, the same
12 way as any other witness. You may consider whether
13 the witness had an adequate opportunity to observe
14 the offender at the time of the offense. This will
15 be affected by things like how long or short a time
16 was available, how far or close the witness was, the
17 lighting conditions, and whether the witness had a
18 chance to see or know the person in the past. Once
19 again, I instruct you the burden of proof on the
20 State extends to every element of the crimes charge
21 and this specifically includes the burden of proving
22 beyond a reasonable doubt the identity of the
23 defendant as the person who committed the crime. If
24 after examining the testimony you have a reasonable
25 doubt as to the accuracy of the identification, you

1 must find the defendant not guilty.

2 Intent. In order to establish criminal
3 liability criminal intent is required. For example,
4 the mental state required to be proven by the State
5 for a particular crime might be purpose, intent,
6 knowledge, recklessness or criminal negligence.
7 Criminal intent must be proven by the State beyond a
8 reasonable doubt. Criminal intent is always a
9 matter that must be determined by the jury from the
10 circumstances surrounding the situation. There's no
11 way to prove intent to a mathematical certainty.
12 There's no way that medical science can dissect a
13 person's brain and determine what the person had in
14 mind. So the law says that criminal intent may be
15 inferred from the circumstances shown to have
16 existed. This is how you make a determination of
17 whether or not the element requiring intent was
18 present. It is not necessary to establish intent by
19 direct or positive -- and positive evidence, but
20 intent may be established by inference in the same
21 way as any other fact by taking into consideration
22 the acts of the parties and all of the surrounding
23 facts and circumstances of the case.

24 Criminal intent, ladies and gentlemen, is
25 a mental state, a conscious wrongdoing. It is up to

1 you to determine what the defendant intended to do
2 based on the circumstances shown to have existed.
3 Criminal intent can rise from action or a failure to
4 act. It may arise from negligence, recklessness, or
5 indifference to duty, or to consequences that is
6 considered by the law to be the equivalent of
7 criminal intent.

8 Oow, ladies and gentlemen, that covers the
9 general criminal law that applies to all criminal
10 cases in South Carolina. I'm now going to address
11 the charges in the indictments of murder and
12 attempted murder. I would ask you to please
13 continue to give me your complete and undivided
14 attention throughout my instructions to you.

15 Murder. The defendant is charged with
16 murder. The State must prove beyond a reasonable
17 doubt that the defendant killed another person with
18 malice aforethought. What is malice? Malice is
19 hatred, ill will or hostility towards another
20 person. It is the intentional doing of a wrongful
21 act without just cause or excuse, and with the
22 intent to inflict an injury or under circumstances
23 that the will infer an evil intent.

24 Malice aforethought does not require that
25 exists for any particular period of time before the

1 time the act is committed; but malice must exist in
2 the mind of the defendant just before and at the
3 time of the act being committed. Therefore, there
4 must be a combination of the previous evil intent
5 and the act. Malice aforethought may be expressed
6 or inferred. These terms expressed or inferred do
7 not mean different kinds of malice, but merely the
8 manner in which malice may be shown to exist. That
9 is by either direct evidence or by inference from
10 the facts and circumstances which are proved.
11 Expressed malice is shown when a person speaks words
12 which express hatred or ill will for another or when
13 the person prepared beforehand to do the act which
14 was later accomplished. For example, lying in wait
15 for a person or any other acts of preparation going
16 to show that the deed was within the defendant's
17 mind would be expressed malice.

18 Malice may be inferred from conduct
19 showing a total disregard for human life. You would
20 look at all the surrounding facts and circumstances
21 to determine if malice may be inferred. I further
22 instruct that you that motive is not an element of
23 murder; and therefore, the State need not prove
24 motive. Again, the definition of murder, the State
25 must prove beyond a reasonable doubt that the

1 defendant killed another person with malice
2 aforethought. I've explained the definition of
3 malice. I've explained the definition of malice
4 aforethought. I've explained that malice
5 aforethought may be expressed or inferred. That is
6 not two separate and distinct types of malice in the
7 manner in which it may be exhibited.

8 Attempted murder. Attempted murder in the
9 statute of South Carolina 16-3-29: The defendant is
10 charged with attempted murder. In order to prove
11 this crime the State must prove the defendant
12 attempted to kill another person with malice
13 aforethought expressed or implied. So you will hear
14 much of the same terminology and the same definition
15 again in my explanation to you of the charge of
16 attempted murder. And we look at the term attempt I
17 look to the case, some case law in South Carolina.
18 To constitute an attempt there must be an intent to
19 commit a particular criminal in this case. In my
20 instruction to you as I explain to you now, the
21 attempt to commit the crime of murder. Again,
22 malice, the definition of malice under attempted
23 murder is the same as the definition of malice under
24 murder. It is hatred, ill will, or hostility
25 towards another person. It is the intentional doing

1 of a wrongful act without just cause or excuse and
2 with an intent to inflict an injury or under
3 circumstances that the law will infer an evil
4 intent. Again, malice aforethought does not require
5 that malice exist for any particular period of time,
6 but malice must exist in the mind of the defendant
7 just before and at the time the act was committed.
8 Therefore, there must be a combination of the
9 previous evil intent and the act. Malice
10 aforethought may be expressed or inferred. These do
11 not mean different types of malice but merely the
12 manner in which malice may be shown to exist.
13 Malice may be inferred from conduct showing a total
14 disregard for human life.

15 A specific intent to kill is not an
16 element of attempted murder, but there must be a
17 general intent to commit serious or grievous bodily
18 injury. Intent means intending the result which
19 actually occurs, not accidentally or involuntary.
20 Intent may be shown by acts and conduct of the
21 defendant and other circumstances from which you may
22 naturally and reasonably infer intent. Evidence of
23 the character of the act or acts, the character of
24 the instrument used, the manner in which it was
25 used, the purpose to be accomplished and the

1 resulting wounds or injuries may be considered in
2 determining the intent with which the act was
3 committed. Intent may also be inferred when it is
4 demonstrated that the defendant voluntarily and
5 willfully committed an act the natural tendency of
6 which is to destroy another's life. That is the
7 charge on attempted murder.

8 I further charge you that voluntary
9 intoxication is never an excuse or a defense to a
10 crime. A person who voluntarily renders himself
11 intoxicated while is no less responsible for his act
12 while in such condition. If a person voluntarily
13 drinks intoxicating liquors and/or takes drugs and
14 becomes intoxicated, if while in that condition
15 commits an act which would be a crime if it had been
16 committed by a sober person, the fact of
17 intoxication or being under the influence of
18 alcohol, would not relieve the intoxicated person
19 from responsibility. Voluntary intoxication is not
20 an excuse for or a defense to a crime. This rule
21 also extends to the voluntary ingestion of drugs.

22 Ladies and gentlemen, I assure you the end
23 is in sight for you having to listen to me. I am
24 now going to cover the law of self-defense and after
25 that the form of the verdict so if you will please

1 continue to give me your complete and undivided
2 attention.

3 The defendant has raised the defense of
4 self-defense. Self-defense is a complete defense;
5 and if it is established, you must find the
6 defendant not guilty. The State has the burden of
7 disproving self-defense by proof beyond a reasonable
8 doubt. If you have a reasonable doubt of the
9 defendant's guilt after considering all of the
10 evidence including the evidence of self-defense,
11 then you must find this defendant not guilty. If on
12 the other hand, if you have no reasonable doubt as
13 to the defendant's guilt after considering all of
14 the evidence including the evidence of self-defense,
15 then you must find the defendant guilty.

16 There are four elements required by law to
17 establish self-defense in this case. First, the
18 defendant must be without fault in bringing on the
19 difficulty. Second, the defendant must actually
20 have believed he was in imminent danger of losing
21 his life or sustaining serious bodily injury or he
22 actually was in such imminent danger. Three, if the
23 defense is based upon his belief of imminent danger,
24 a reasonable prudent person of ordinary firmness and
25 courage would have entertained the same belief, if

1 the defendant actually was in imminent danger, the
2 circumstances were such as would warrant a person of
3 ordinary prudence, firmness and courage to strike
4 the fatal blow in order to save himself from serious
5 bodily harm or losing his own life. And four, the
6 defendant had no other probable means of avoiding
7 danger of losing his own life or sustaining serious
8 bodily injury other than to act as he did in the
9 particular circumstances. Those are the four
10 elements of self-defense.

11 I will further charge you as to the law of
12 self-defense, one may act on appearances.

13 Appearances may be mistaken. The law does not hold
14 one who acts on appearances to a refined assessment
15 of the danger provided, of course, he acted as a
16 person of ordinary coolness would have acted or
17 should have acted in meeting the appearances of
18 danger. One does not have to wait until an
19 assailant gets the drop on him. One has the right
20 to act under the law of self-preservation and
21 prevent his assailant from getting the drop on him.
22 If it is apparent or reasonably apparent his
23 assailant is taking steps to get the drop on him, he
24 must take steps first to prevent such assailant from
25 getting the drop on him.

1 I would further charge you the rule is
2 that ordinarily one is not justified in shooting or
3 employing a deadly weapon after the adversary has
4 been disarmed or disabled. The rule further is that
5 when a person is justified in firing the first shot
6 he is justified in continuing to shoot until it is
7 apparent that the danger to his life and body has
8 ceased. Now, ladies and gentlemen, that is the
9 charge and instruction on the law of self-defense.

10 Finally, ladies and gentlemen, there are
11 two possible verdicts you may reach as to each
12 indictment, guilty or not guilty. There's no
13 significance whatsoever in the manner in which I
14 have stated or in the manner in which I have listed
15 those two possible verdicts that you may render in
16 this case. Mr. Foreman, you will have with you in
17 the jury room a form of verdict. It will have the
18 caption of the case, the case name, and then it will
19 indicate as to the charge of murder: We, the jury,
20 unanimously find the defendant guilty, under that
21 not guilty. There will be a line to the left of
22 guilty, a line to the left of not guilty. If after
23 your consideration of the evidence in the case and
24 facts as you determine them to be, if you find that
25 the State has met its burden of prove in its case

1 beyond a reasonable doubt as to the charge of
2 murder, I would ask you to check to the left of the
3 word guilty. Circle both your check and the word
4 guilty. If you find the State has failed to meet
5 its burden of proof beyond a reasonable doubt I
6 would ask you to check to the left of the two words
7 not guilty and circle both your check mark and the
8 word of the same as to attempted murder. Again,
9 there's no significance whatsoever in the order in
10 which I've just explained where the check mark would
11 go. It's nothing whatsoever; it's just that one's
12 got to go first. The order in which you consider
13 the indictments also is the way I have them on the
14 form of verdict is not sufficient. It's however the
15 jury wants to consider it and what order they want
16 to consider it remembering they are separate and
17 distinct.

18 I would advise you, ladies and gentlemen,
19 your verdict must be unanimous. All twelve of you
20 must agree. They must be based on the evidence, the
21 inferences you may draw from the evidence, and the
22 law as I have told it. They may not be — your
23 verdict may not be based on conjecture, speculation,
24 surmise, passion, prejudice, or any other emotion
25 not in evidence in this case. Once the jury has

1 reached those unanimous verdicts, Mr. Foreman, then
2 at the bottom of the form there's a signature line
3 for presiding juror and today's date. If you would
4 sign that for us please knock on the jury room door,
5 notify the bailiff you have reached those unanimous
6 verdicts, we will receive you back into the
7 courtroom for the publication of those verdicts.

8 If you have any questions during the
9 course of your deliberations, if would you write me
10 a note. I know you know how to write me notes so
11 just write me a note. We're not going to abandon
12 you. We'll be here. And give it to the bailiff and
13 they'll bring it directly to me. Do not begin your
14 deliberations until you're directed to do so by the
15 court. The clerk -- the law requires I meet with
16 the attorneys one final time outside of your
17 presence in case I have to give you further
18 instructions or clarification on the charge. You
19 may take your notes now. Again, do no begin your
20 deliberations until you're instructed to do so by
21 the court. Thank you. Thank you very much. You
22 may now go with your bailiff.

23 (The jury is removed from the courtroom at
24 4:49 p.m.)

25 THE COURT: Any objections or additions,

1 Solicitor?

2 MS. SIMPSON: No, Your Honor, no
3 objections by the State.

4 MR. SUTHERLAND: No, sir.

5 THE COURT: Thank you. Thank you very
6 much. Have y'all got the evidence ready?

7 MS. SIMPSON: We've started.

8 MR. SUTHERLAND: Subject to limitation I
9 believe is just —

10 THE COURT: Yes, sir.

11 MR. SUTHERLAND: —the remaining thing.
12 I think he's working on it.

13 MS. SIMPSON: And, Your Honor, just so
14 we're clear for the record on State's 159 this is
15 where defense objected to the clothings'
16 admissibility until he could go through it. He's
17 done that at this point we would ask that it be
18 entered formally.

19 (Attorneys review the exhibits.)

20 MR. SUTHERLAND: May it please the Court,
21 I withdraw my objection to 159.

22 THE COURT: Wait.

23 MR. SUTHERLAND: I withdraw my objection
24 to 159.

25 THE COURT: Thank you.

1 (State's Exhibit No. 159 was admitted into
2 evidence.)

3 THE COURT: Get them ready, and you and
4 the solicitor check the exhibits.

5 MR. SUTHERLAND: Yes, sir.

6 THE COURT: Are you satisfied with the
7 ones —

8 MR. SUTHERLAND: Yes, sir.

9 THE COURT: Are they the ones that were
10 introduced, some subject to your objection?

11 MR. SUTHERLAND: Yes, sir.

12 THE COURT: And the ones that are I.D.
13 have been extracted from them?

14 MR. SUTHERLAND: Yes, sir, I am satisfied.

15 THE COURT: All right. And you're
16 satisfied with that, Solicitor?

17 MS. SIMPSON: I am, Your Honor.

18 THE COURT: Okay, that's the form of
19 verdict.

20 MR. SUTHERLAND: Thank you, sir.

21 THE COURT: So whenever you get it to the
22 jury.

23 (Whereupon, court was in recess during jury
24 deliberations.)

25 THE COURT: All right, anything from the

1 State before bringing out the jury?

2 MS. CAVANAUGH: No, Your Honor.

3 THE COURT: It is.

4 MR. SUTHERLAND: No, sir.

5 THE COURT: I will remind those in
6 attendance in the courtroom, many times the taking
7 of a verdict can be an emotional time for the
8 families of the victim, the victim, for families of
9 the defendant. Please keep that in mind. I do not
10 allow any show of emotion. If you do not feel like
11 you can control your emotions, I would ask you to
12 leave at this time. I assume if you remain, then
13 you are indicating to me that you can control your
14 emotions. Thank you. Thank you very much.

15 (Whereupon, the jury was returned to the
16 courtroom at 7:28 p.m.)

17 BAILIFF: Jury's all seated, Your Honor.

18 THE COURT: Thank you. Thank you,
19 Mr. Bailiff.

20 Madam Clerk.

21 THE CLERK: Mr. Foreman, has the jury
22 reached a verdict?

23 THE FOREMAN: We have.

24 THE COURT: Please hand it to the bailiff.
25 (Verdict from was tendered to the Court.)

1 THE COURT: All right. The verdict
2 appears to be in the proper form. Madam Clerk, if
3 you would publish the verdict.

4 CLERK: Yes, Your Honor. Indictment
5 number 2012-GS-40-02982, indictment number
6 2012-GS-40-02986, the State of South Carolina versus
7 Jabriel Laprinice Singleton, indictment number
8 2012-GS-40-02982 as to murder: We, the jury,
9 unanimously find the defendant guilty. Indictment
10 number 2012-GS-40-02986, as to attempted murder:
11 We, the jury, unanimously find the defendant guilty.
12 Signed, number 219, foreperson, March the 8th, 2013.

13 Mr. Foreman, were these your verdicts and
14 the verdicts of the entire jury?

15 THE FOREMAN: They were.

16 THE CLERK: Thank you.

17 THE COURT: Anything further from the jury
18 from the State, Solicitor?

19 MS. CAVANAUGH: No, Your Honor.

20 THE COURT: From the Defense?

21 MR. SUTHERLAND: Might the jury be polled,
22 sir?

23 THE COURT: All right. Thank you,
24 certainly.

25 Madam Clerk, would you explain the

1 procedure to the jury, the polling of the jury.

2 CLERK: Yes, Your Honor.

3 Ladies and gentlemen of the jury, I'm
4 gonna ask you two questions related to your verdict.
5 Please answer yes or no to each question as I call
6 out your number.

7 Number 219, were these your verdicts?

8 JUROR 219: Yes.

9 CLERK: Are they still your verdicts?

10 JUROR 219: Yes.

11 CLERK: Number 39, are these your
12 verdicts?

13 JUROR 39: Yes.

14 CLERK: Are they still your verdicts?

15 JUROR 39: Yes.

16 CLERK: Number 66, were these your
17 verdicts?

18 JUROR 66: Yes.

19 CLERK: Are they still your verdicts?

20 JUROR 66: Yes.

21 CLERK: Number 115, were these your
22 verdicts?

23 JUROR 115: Yes.

24 CLERK: Are they still your verdicts?

25 JUROR 115: Yes.

1 CLERK: Number 152, were these your
2 verdicts?
3 JUROR 152: Yes.
4 CLERK: Are they still your verdicts?
5 JUROR 152: Yes.
6 CLERK: Number 215, are these your
7 verdicts?
8 JUROR 215: Yes.
9 CLERK: Are they still your verdicts?
10 JUROR 215: Yes.
11 CLERK: Number 185, were these your
12 verdicts?
13 JUROR 185: Yes.
14 CLERK: Are they still your verdicts?
15 JUROR 185: Yes.
16 CLERK: Number 10, were these your
17 verdicts?
18 JUROR 10: Yes.
19 CLERK: Are they still your verdicts?
20 JUROR 10: Yes.
21 CLERK: Number 189, were these your
22 verdicts?
23 JUROR 189: Yes.
24 CLERK: Are they still your verdicts?
25 JUROR 189: Yes.

1 CLERK: Number 170, were these your
2 verdicts?

3 JUROR 170: Yes.

4 CLERK: Still your verdicts?

5 JUROR 170: Yes.

6 CLERK: Number 63, were these your
7 verdicts?

8 JUROR 63: Yes.

9 CLERK: Are they still your verdicts?

10 JUROR 63: Yes.

11 CLERK: Number 161, were these your
12 verdicts?

13 JUROR 161: Yes.

14 CLERK: Are they still your verdicts?

15 JUROR 161: Yes.

16 CLERK: The jury has been polled, Your
17 Honor.

18 THE COURT: Thank you. Thank you very
19 much.

20 Anything further for the jury from the
21 Defense?

22 MR. SUTHERLAND: No, sir.

23 THE COURT: All right. Madam Clerk, do
24 you need to see...

25 All right, Mr. Foreman, ladies and

1 gentlemen of the jury, momentarily I'm gonna ask you
2 to step back to your jury room, and the clerk will
3 meet with you concerning work excuses and such like
4 that, but to make some final comments to you to make
5 them somewhat briefly, I never criticize nor commend
6 a jury for their verdict. That is not the position
7 of the Court to do that; however, if in the future
8 you find yourself a part of the system again whether
9 by way of juror or witness or otherwise which I hope
10 you don't, but if do you, I hope the panel that sits
11 on that case is as hard working and diligent and
12 focused and as attentive as you have been throughout
13 the trial of this case. Very important case to the
14 State and to many members of the victim's family.
15 And it's very important to Mr. Singleton and it's
16 citizens like yourself that make our system of
17 criminal justice work. We would not be able to do
18 it without you and your participation. I thank you
19 for it. It was my pleasure to work with y'all
20 throughout the trial of this case. With that being
21 said I am going to ask you to step back to your jury
22 room.

23 By the way, how do they get paid?

24 CLERK: I have their checks.

25 THE COURT: You have their checks?

1 CLERK: Yes, sir.

2 THE COURT: Usually it's in the mail. She
3 has your checks. I will say this, it's pitiful
4 compared to the work and service that y'all give to
5 your community during such case. With that being
6 said, thank you very. Again, it's been my pleasure
7 and privilege.

8 (The jury is removed from the courtroom at
9 7:35 p.m.)

10 THE COURT: All right, any motions from
11 the State, Solicitor?

12 MS. SIMPSON: None from the State, Your
13 Honor.

14 THE COURT: From the Defense?

15 MR. SUTHERLAND: Yes, sir, just renewing
16 all my previous motions and objections. We would
17 move at this time for a new trial, sir.

18 THE COURT: Thank you. Thank you very
19 much. I would renew all my previous trial rulings,
20 both evidentiary as far as motions and all that and
21 I would respectfully deny motion for new trial.

22 MR. SUTHERLAND: Yes, sir.

23 THE COURT: I believe the jury had
24 adequate, if not overwhelming evidence of the
25 defendant's guilt to reach the verdicts that they

1 returned in this case.

2 Solicitor, any reason that sentencing
3 should not be imposed at this time?

4 MS. CAVANAUGH: No, Your Honor. We would
5 ask that sentence be imposed at this time.

6 THE COURT: Mr. Sutherland?

7 MR. SUTHERLAND: No, sir.

8 THE COURT: All right. If you would have
9 Mr. Singleton come around please.

10 Anything additional from the State,
11 Solicitor?

12 MS. CAVANAUGH: Your Honor, beg the
13 Court's indulgence.

14 THE COURT: All right, Solicitor.

15 MS. CAVANAUGH: Thank you, Your Honor.
16 Obviously you've heard the evidence in this case. I
17 think the trial speaks for itself. The actions of
18 the defendant on January 24th, 2012 speaks for
19 themselves. I would for the Court's knowledge just
20 let you know that we did offer the minimum 30 years
21 in this case for Mr. Singleton which he declined,
22 and we therefore proceeded with this trial.

23 As far as his prior record is concerned,
24 he does have juvenile adjudications. I'd be happy
25 to hand that up.

1 THE COURT: If you'd just tell me what
2 they are.

3 MS. CAVANAUGH: Yes, sir.

4 THE COURT: Solicitor.

5 MS. CAVANAUGH: 2007 -- no, excuse me.
6 Well, I'm not sure in 2007 what he had a probation
7 violation for, but it was a juvenile probation
8 violation in 2007. And then in November 2008 he was
9 adjudicated for assault of a high and aggravated
10 nature and strong armed robbery in November of 2008
11 as well. It looks like those were from the same
12 incident. He had pending charges in our office for
13 burglary first degree, possession of a weapon during
14 a violent crime, and armed robbery from 2010;
15 however, those are still pending and are not
16 convictions.

17 THE COURT: Are you saying that -- are you
18 saying that Mr. Singleton was out on bond for
19 burglary, armed robbery, and possession with intent
20 to distribute at the time these homicides happened?

21 MS. CAVANAUGH: Yes. In February 4th of
22 2010 he was arrested for burglary in the
23 first-degree, possession of a weapon during a
24 violent crime, petty larceny, and armed robbery. He
25 was out on bond for those charges when this murder

1 occurred a year later.

2 THE COURT: And I think I said FWID. I
3 couldn't read my writing. Correct myself,
4 possession of a weapon during commission of a
5 violent crime.

6 MS. CAVANAUGH: Yes, sir.

7 MR. SUTHERLAND: Yes, sir.

8 MS. CAVANAUGH: And while none of the
9 members of Mr. Jones's family want to speak or
10 Mr. Frazier, Ms. Webster does have a statement that
11 she would like to read on behalf of the families.

12 THE COURT: All right, certainly, I'll be
13 glad to hear from anyone you want me to hear
14 from, Solicitor.

15 MS. CAVANAUGH: This is just our victim
16 advocate who is going to read a letter.

17 THE COURT: All right.

18 THE VICTIM ADVOCATE: Your Honor, we, the
19 family of the late Dashawn Jones would like to
20 express to you and the Court the impact that this
21 senseless crime on behalf of Jabriel Singleton has
22 caused the family. From the date we lost our loved
23 one it has been very, very hard for us to pick up
24 and carry on with life. There has been moments of
25 depression and times where we had no clue how to

1 move on, kind of sense of failing to thrive at life.
2 Dashawn is no longer with us. We can't see or talk
3 to him. All we can do cherish the memories. His
4 mother has been admitted into the hospital behind
5 this crime. She also feels that loss of appetite
6 where she can't do anything but sit and mourn. She
7 is in fear of being alone. She tends to live a life
8 of fear. His mother and grandmother have not since
9 that day of the death been able to look at pictures
10 of Dashawn. They're not able to go to the burial
11 site because they are in fear reliving this event
12 all over again. Effects of this loss is ongoing and
13 will be for the rest of our life. No day or holiday
14 will ever be the same because our loved one has been
15 taken from us. Aylia, Lauren, Alea, Jayla and
16 Molique, all the little ones that looked up to
17 Dashawn, and the loss of him has truly impacted
18 their life. They all went weeks without going to
19 school trying to cope with the loss of Dashawn. His
20 daughter goes -- faces or talking to herself
21 questioning the why the monster took her daddy. She
22 spent her fifth birthday opening gifts saying she
23 wished her daddy was here with here, and now she has
24 to be raised without her father and will be able to
25 develop -- and won't be able to develop a bond that

1 little girl could learn from her daddy because of
2 someone who chose to take his life. Aylia will pray
3 for her daddy in heaven and she also has been taken
4 to the pediatrician for medical treatment to see if
5 counseling was needed. But thankful so far it's not
6 needed. But who knows how little Aylia will cope
7 with this in the future. I, Ashley, the mother of
8 his daughter have moments of depression and hard
9 times of raising my daughter alone, but I know this
10 is something I have to do and Dashawn would want me
11 to do my best at making sure Aylia is raised to the
12 best of my ability. The love and bond that we
13 shared will forever last in my heart. The pain that
14 I feel can't be explained in words. How do we begin
15 to enjoy anything in life without Dashawn. He was
16 the smile of the family, the life of every family
17 event. He will truly be missed. From day one of
18 this murder we sat and cried and questioned why and
19 how could something like this happen. The murder
20 sent a shock wave through our lives. This trial has
21 been really hard as well and to sit through this
22 trial listening to all of the witnesses especially
23 Jonathan Frazier's statement is what really hurt the
24 most to listen to the events that took place to a
25 murder and to think just that quick and such a

1 senseless act Dashawn was gone.

2 People tend to say it will all get better
3 in due time, but it won't because we will never see
4 our loved one in this lifetime or get back what's
5 lost. With all the above being said, we the family,
6 ask you to sentence the man that is responsible for
7 loss of our loved one to the maximum that is allowed
8 by law. Sincerely, the family of Dashawn Jones.

9 THE COURT: Thank you. Thank you very
10 much.

11 Anything further, Solicitor?

12 MS. CAVANAUGH: No, Your Honor.

13 THE COURT: Thank you. Mr. Sutherland.

14 MR. SUTHERLAND: May it please the Court,
15 sir. Certainly this is a -- this has been a tragic
16 time over the past year for everybody involved. I
17 first met Mr. Singleton in May, discussed the case
18 with him, asked him what happened. He told me what
19 happened. I have consistently been able to see in
20 reviewing the evidence how I could understand how
21 what he said happened that day could have really
22 happened. I've had complete faith in him. I
23 understand the verdict. I'm terribly sorry. It's
24 difficult to listen to that letter. Terribly sorry
25 to the family, to everyone involved in this

1 situation. I guess the — the most significant
2 thing I can point out to the Court as far a
3 mitigation is that you — I mean, certainly he had
4 problems as a juvenile and those were adjudicated
5 and they were dealt with as a juvenile. As an adult
6 he does not have a criminal record. Mr. Singleton's
7 got a loving family. He's got some other people
8 present throughout the trial and other family
9 members, who have been very supportive of him and
10 been in regular contact with me.

11 He had mentioned early on when he took the
12 stand, you know, he had a GED. He didn't finish
13 high school, but he did take that step in attempting
14 to better himself and improve himself. He has a
15 five year old daughter also who was born to him when
16 he was very young. It would be — it's true that
17 the Solicitor offered the 30 years last week. It
18 would be my sincere hope that the Court would impose
19 that minimum sentence. If that were the case being
20 day for day he'd be 50 years old.

21 I understand that Mr. Jones is never
22 coming back. I understand that. I understand that,
23 that, you know, Mr. Frazier has difficulties that
24 are going to continue. As I said, you know, I
25 believed in him and I've respected him to best of my

1 ability and I just pray the Court attempt to find
2 mercy based on his youth. I know in considering the
3 jury's finding which I respect, it may be difficult
4 but I would ask the Court to consider the minimum
5 sentence on murder, sir.

6 THE COURT: Thank you. Thank you,
7 Mr. Sutherland. You did an outstanding job for your
8 client throughout your representation of him in this
9 court.

10 MR. SUTHERLAND: Thank you, sir.

11 THE COURT: All right. Anyone else want
12 to speak on Mr. Singleton's behalf?

13 MR. SUTHERLAND: I don't think anybody is
14 able to speak, sir.

15 THE COURT: All right, thank you. Thank
16 you very much.

17 Anything you'd like to say to
18 Mr. Singleton.

19 THE DEFENDANT: I just want to say I'm
20 sorry what all happened, sir, but I am innocent,
21 sir.

22 THE COURT: Can I have the sentencing
23 sheet. The attempted murder carries?

24 MS. CAVANAUGH: 0 -- 0 to 30.

25 THE COURT: 0 to 30, all right. I have

1 taken into account the facts of the case presented
2 by the State and by the Defense. I've taken into
3 account the defendant's testimony. I've taken into
4 account his age, the fact that he has no adult
5 criminal record. I've taken into account his prior
6 juvenile delinquency findings. The evidence in the
7 case is really the holy trinity, as they say, in
8 police work. It's witnesses, confession we're gonna
9 have in this case and physical evidence. You have
10 two out of three.

11 Mr. Frazier, in my opinion, was in route
12 to his road but for the millimeter one way or the
13 other. Everything in life's timing may have been
14 position of Mr. Frazier's body at the time the round
15 shot into him were saved his life might have been in
16 the position of Mr. Singleton's hand when he
17 intentionally pulled the trigger. This is just a
18 millimeter away from being a double homicide in my
19 opinion and to continually pull the trigger at least
20 six times and then reload and pull the trigger
21 multiple more times takes a degree of malice that is
22 hard to comprehend. If you look up the synonyms for
23 the word wreak you see a host of verbs that none of
24 us really want to think about. Then you have
25 overwhelming physical evidence in the case, the

1 glove, the DNA with the gunpowder residue, it just
2 fathoms my mind.

3 I hope in the world there's balance to
4 what people get what they deserve, but there's not
5 because Dashawn didn't get what he deserved. His
6 family did not get what they deserved. Jonathan
7 Frazier did not get what he deserved. Your family
8 is not getting what they deserved. They would want
9 your presence just like the Jones family wants his
10 presence. I can't give them what they deserve, nor
11 can I give your family what they want or they
12 deserve. But justice is done when the person in my
13 opinion gets what he deserves.

14 2012-GS-40-296, Jabriel Singleton
15 attempted murder, the defendant is committed to the
16 State Department of Corrections for a determinate
17 term of 30 years. 2012-GS-40-292, Jabriel
18 Singleton, murder, the defendant is committed to the
19 State Department of Corrections for life without
20 parole. Good luck to you, Mr. Singleton. Thank
21 you. Thank you very much.

22
23 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

24

25

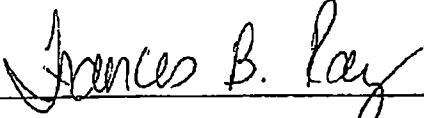
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered
Professional Reporter (RPR), court reporter for the
State of South Carolina, Twelfth Judicial Circuit,
do hereby certify that the foregoing proceeding was
transcribed by me for Crystal Holmes through
computer-aided transcription and audio; that the
foregoing transcript contains a true record of the
proceedings to the best of my ability.

I further certify that I am neither
counsel for, nor related to nor employed by any of
the parties connected to the action, nor am I
financially interested in the action.

Witness my hand at Florence, South
Carolina, this 1st day of December, 2013.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JABRIEL L. SINGLETON,

APPELLANT

APPELLATE CASE NO. 2013-000543

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to remove a juror who concealed a relationship with a State's witness after removing another juror earlier in the trial for a nearly identical relationship when the trial judge's decision was likely influenced by the fact that no alternates were available to replace the juror and, under South Carolina law that should be overturned, he had no ability to allow the defendant to proceed with a jury of less than twelve members, leaving the trial judge with the stark choice of declaring a mistrial or keeping a possibly biased juror?

STATEMENT OF THE CASE

On July 18, 2012, a Richland County grand jury indicted appellant for murder and attempted murder. R. 1175. On March 4, 2013, the trial court heard pretrial motions and selected the jury. R. 1036. On March 5, 2013, appellant was tried before the Honorable R. Knox McMahon and a jury. R. 1. Kathryn Cavanaugh, Nicole Simpson, and John Steadman represented the State. R. 1. Tivis Sutherland represented appellant. R. 1. The jury convicted appellant. R. 1019, ll. 4 – 12. This appeal follows.

ARGUMENT

Whether the trial court erred in refusing to remove a juror who concealed a relationship with a State's witness after removing another juror earlier in the trial for a nearly identical connection when the trial judge's decision was likely influenced by the fact that no alternates were available to replace the juror and, under South Carolina law that should be overturned, he had no ability to allow the defendant to proceed with a jury of less than twelve members, leaving the trial judge with the stark choice of declaring a mistrial or keeping a possibly biased juror?

Relevant Facts

The State claimed this was a case of "coldblooded" and premeditated murder. R. 964, ll. 12 – 13. R. 970, ll. 8 – 24. The evidence showed little, if any, planning. The State's theory was that appellant—who was alone—concocted a plan to rob two men (nicknamed "King Breeze" and "Crash") who appellant well, who numerous people saw him with that day, who were larger than him, in the driveway of someone he did not know located in a remote part of Richland County, in the two men's car, without any escape plan other than running through the woods, and in broad daylight. R. 83, l. 9 – 127, l. 14. R. 963, l. 23 – 992, l. 7.

Appellant testified that he acted in self-defense. Appellant testified that King Breeze and Crash wanted to purchase marijuana from him, drove him to this remote location, and then tried to rob him inside the car. R. 857, l. 15 – 871, l. 24. Appellant was seated in the backseat of the car. R. 868, ll. 10 – 21. Fearing for his life because he earlier saw King Breeze with a gun, appellant pulled his own pistol and fired into the front seats until it was empty. R. 873, l. 6 – 876, l. 15. Appellant got out of the driver's

side backseat door. R. 876, ll. 16 – 18. He saw the two men still in the front seat and feared they would attempt another attack. R. 876, ll. 16 – 877, l. 5. Appellant dumped the shells out of his gun and reloaded. R. 876, l. 19 – 877, l. 19. Appellant saw Crash reaching under the driver's seat where he believed their gun was located. R. 877, ll. 11 – 19. Appellant's leg was stuck in the car and by the time he freed it, Crash had a gun and was out of the car coming toward him. R. 878, ll. 3 – 16. Appellant fired. R. 878, ll. 3 – 16. Crash fell to the ground. R. 878, ll. 3 – 16. Appellant ran into the woods. R. 878, ll. 3 – 16. He dropped his gun, but did not stop to grab it and just ran. R. 878, ll. 3 – 16.

Even though Crash was shot in the neck and hand, bleeding, and having trouble breathing he walked past several houses where he could have asked for help in favor of a route to a more distant house that took him by a heavily wooded area. R. 104, ll. 2 – 23. R. 54, l. 18 – 55, l. 1. Crash claimed that no one other than appellant had a gun. R. 105, ll. 18 – 20. No gun was ever found in the case. R. 638, ll. 5 – 7. The police used a dog to search for a gun, but only searched near the house where Crash asked the owner to call 911. R. 263, l. 1 – 265, l. 17. The police did not take the dog near the crime scene. R. 265, ll. 15 – 17.

King Breeze died at the scene. R. 54, ll. 4 – 17. R. 55, ll. 9 – 17. The police found him in the car behind the steering wheel unresponsive. R. 54, ll. 4 – 17. Crash survived his wounds and testified at trial. Crash stated that he and King Breeze wanted to buy "a couple of ounces of weed and an X-box" from appellant. R. 87, ll. 6 – 23. After hanging out with appellant and multiple other people at a recording studio, they drove to meet appellant at his girlfriend's house. R. 84, l. 15 – 88, l. 19. King Breeze and Crash drove appellant, appellant's girlfriend, and another girl to Zaxby's. R. 90, l. 15 – 91, l. 9.

The two girls were dropped off at Zaxby's. R. 91, ll. 2 – 7. Appellant got in the back seat. R. 91, ll. 8 – 9.

Crash claimed appellant directed them out into the country to Hopkins. Tr. 91, l. 23 – 92, l. 17. They sat in the car. R. 96, ll. 8 – 25. Even though the State claimed this was a cold-blooded case of premeditated murder, and appellant was in the back seat and could have simply shot both King Breeze and Crash in the head from behind, Crash testified that appellant got out of the car and offered to let Crash shoot his gun. R. 96, l. 24 – 97, l. 11. The three men laughed that Crash was "a punk" because he was scared to shoot appellant's gun. R. 96, l. 24 – 97, l. 6. Crash said then, "a few seconds later I just heard shots." R. 97, ll. 5 – 6.

According to Crash, appellant fired into the car through the passenger's side window. R. 97, l. 9 – 98, l. 15. Crash's "window was kind of down." R. 97, ll. 16 – 18. Appellant fired multiple shots through this window, hitting King Breeze and Crash and shattering the driver's side window. R. 98, ll. 1 – 10. R. 283, ll. 13 – 22. Somehow, the window on the passenger side closest to where appellant was supposedly firing suffered no damage. R. 283, ll. 13 – 22. No police witness testified there were any bullet holes on the outside of the vehicle. R. 227, ll. 16 – 20.

Crash blacked out, but remembered King Breeze throwing money at appellant during the shooting. R. 99, ll. 14 – 24. Crash blacked out again. R. 100, ll. 2 – 4. When Crash regained consciousness, he saw appellant on the driver's side reloading. R. 100, ll. 7 – 12. Crash "rushed him." R. 100, ll. 7 – 12. After a tussle, appellant pointed the gun at Crash and backed him into the car. R. 101, ll. 1 – 20. Appellant demanded Crash's phone. R. 101, l. 21 – 102, l. 8. After Crash gave him the phone, appellant fired

two more times with one of the shots hitting Crash's hand, and Crash passed out again. R. 102, l. 24 – 103, l. 11. When Crash awoke, King Breeze was dead and appellant was gone. R. 103, l. 12 – 104, l. 13.

While the State claimed that the forensic evidence overwhelmingly supported Crash's version of events, the forensic evidence was far from conclusive. Gunshot residue was found on King Breeze and on multiple places inside of the car. R. 512, l. 20 – 516, l. 18. The State's gunshot residue witness admitted that if a gun were fired inside of the vehicle, some residue could escape through the windows, "otherwise, it's contained in them – I mean, it's like shooting a gun inside the box. Everything is going to be inside the box." R. 520, ll. 17 – 24. When asked on cross-examination whether gunshot residue would be found inside a car if someone was standing outside of the vehicle shooting, the State's witness equivocated, "It can be; but depending on how far away and the position of the gun and all of that other stuff, it can be." R. 520, l. 25 – 521, l. 5.

One of King Breeze's gunshot wounds to his head had stippling, which indicated the gun was fired at very close range. R. 583, ll. 16 – 584, l. 8. This wound went from left to right and downwards, which would be consistent with a shot from the back seat, although the State argued this meant appellant had executed King Breeze after he reloaded from the driver's side. R. 585, ll. 1 – 7. R. 964, ll. 12 – 22. King Breeze's other gunshot wounds had a right-to-left trajectory. R. 585, l. 13 – 592, l. 25. The State's pathologist claimed these wounds would be consistent with someone twisting to shield themselves; however, it would also seem consistent with someone twisting away from the back seat to retrieve a firearm. R. 590, l. 24 – 591, l. 5. R. 591, ll. 16 – 24.

The pathologist admitted that he would have no way to know whether someone was turned or how someone was sitting from analyzing these wounds. R. 620, ll. 21 – 35. Shell casings were recovered from the driver's side of the vehicle which would be consistent with both appellant's and Crash's version of events. R. 181, ll. 4 – 6.

At voir dire, the court asked whether any member of the panel was employed by the Richland County Sheriff's Department. R. 1055, l. 25 – 1056, l. 5. During the trial, the solicitor's investigator recognized one of the jurors as a volunteer with the sheriff's department. R. 136, l. 22 – 137, l. 14. This juror did not reveal his relationship during voir dire. R. 137, l. 21 – 140, l. 12. The trial judge removed him and replaced him with one of the alternates. R. 144, l. 2 – 145, l. 24.

At voir dire, the trial judge asked whether any potential juror knew "Investigator Mat Ellis, South Carolina Attorney General's Office." R. 1072, ll. 14 – 15. There was no response. R. 38, l. 5. During the trial, Juror 151 revealed that he was a member of the same club as Mat Ellis and knew him through a mutual friend. R. 402, ll. 16 – 403, l. 19. They attended cookouts together. R. 403, ll. 21 – 22. The juror claimed he did not know during voir dire "whether it was the same Mr. Ellis." R. 484, ll. 17 – 22. The trial judge removed this juror and replaced him with an alternate. R. 406, ll. 1 – 19. Only two alternates were selected, so at this point in the trial, no alternates were remaining. R. 1085, ll. 5 – 24.

When David Collins ("Collins"), the State's firearms expert, arrived at trial, he immediately recognized Juror 219. R. 556, ll. 5 – 10. Collins and Juror 219 attended Cardinal Newman high school together and graduated in the same class. R. 556, ll. 4 – 16. R. 561, ll. 19 – 24. The solicitor originally told the court that Collins "doesn't have

any interaction with that juror.” R. 556, ll. 12 – 13 (emphasis added). The attorneys and the trial court questioned Collins and he testified that he had seen Juror 219 “at a few social functions at a mutual friend’s house, but we don’t have any direct social interaction.” R. 557, ll. 21 – 25. Collins stated the last time he saw Juror 219 was “approximately one-and-a-half to two years ago at the same mutual friend’s house.” R. 558, ll. 4 – 7.

When Juror 219 was brought before the court, he readily admitted that he knew Collins, graduated from high school with Collins, and saw Collins “maybe once every couple of years, one year or something.” R. 560, ll. 6 – 563, l. 12. The juror admitted hearing the name “David Collins” during voir dire, but he did not bring this to the court’s attention because he thought that the “David Collins” he knew worked for SLED, and during voir dire the trial judge stated that David Collins worked for Richland County. R. 562, ll. 12 – 18.

Appellant moved that Juror 219 be removed from the jury because of the relationship with Collins. R. 564, l. 9 – 566, l. 7. Appellant stated that he would have struck Juror 219 had he known about the relationship with Collins. R. 564, l. 9 – 565, l. 2. Juror 219 was the first juror seated. R. 566, ll. 2 – 4. The solicitor argued that Juror 219 should stay on the jury because the juror claimed he could be fair and impartial, the juror did nothing intentional, and excusing the juror “leaves us with no alternates as well.” R. 565, ll. 11 – 23. The trial judge denied the motion to remove the juror, finding that Juror 219 “did not conceal any information requested during voir dire.” R. 566, l. 8 – 568, l. 19.

Discussion

“All criminal defendants have the right to a trial by an impartial jury.” State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). The test for whether a new trial is required when a juror fails to disclose information is: (1) whether the concealment was intentional, and (2) whether the information would have been a material factor in the use of a peremptory challenge or would have supported a challenge for cause. Id. at 587-88, 550 S.E.2d at 284. “Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial.” Id. If the concealment is intentional, a prejudice inquiry is not required because it is “clear that where a juror’s response to *voir dire* amounts to an intentional concealment, the movant need only show that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party’s peremptory challenges.” Id. at 588, 550 S.E.2d at 285. State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002). McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013).

The trial judge erred in finding the juror’s concealment was unintentional. The juror stated that he heard the name of his high school classmate and social companion during *voir dire*, but elected not to respond because he thought the “David Collins” he knew worked for another branch of law enforcement. Even if the concealment was unintentional, the failure to bring this to the attention of the court was certainly grossly negligent.

It also seems clear that the only reason the trial judge refused to remove Juror 219 was because he had no alternates remaining. Juror 151’s relationship with Mat Ellis was nearly the same as Juror 219’s relationship with Collins. The trial judge did not find any

intentional concealment with respect to Juror 151, yet removed him. The only real difference between the two situations is that the court had no alternates remaining and would have been forced to declare a mistrial. This consideration should play no role in the Woods analysis.

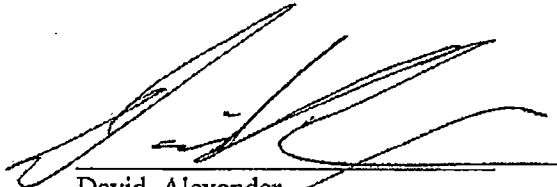
While appellant admits that trial counsel did not ask or proffer that he would have proceeded with a jury of less than twelve members, this Court should disregard any error preservation problems and address this issue. Raising the issue of proceeding with less than twelve jurors would have been futile, as binding precedent from our Supreme Court states that defendants cannot waive their right to proceed with less than twelve jurors. State v. Hall, 137 S.C. 261, 101 S.E. 662 (1919). In Hall, a juror became sick and the defendant agreed to proceed with eleven jurors. Id. The conviction was reversed on appeal, finding this right could not be waived. Id. Since Hall controls, even had appellant raised this issue, it would have been futile because the trial court would have been bound to follow precedent and only our Supreme Court may overturn Hall.

Hall should be overturned. Federal courts allow a defendant to waive his right to twelve jurors. United States v. Fisher, 912 F.2d 728, 731-33 (4th Cir. 1990). Overturning Hall would keep trial judges from facing the choice faced by Judge McMahon in this case: either dismiss Juror 219 and declare a mistrial or keep the problematic juror and impair the defendant's right to an impartial jury. Trial judges should have the discretion to accept a waiver from a defendant of the right to twelve jurors that would allow a jury free from any taint and prevent mistrials.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JABRIEL L. SINGLETON,

APPELLANT

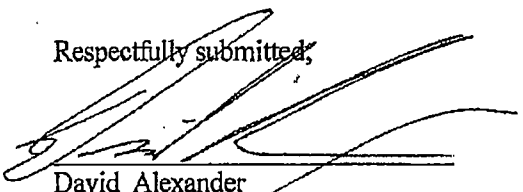
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jabriel L. Singleton states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on March 8, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Jabriel L. Singleton.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of September, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JABRIEL L. SINGLETON,

APPELLANT

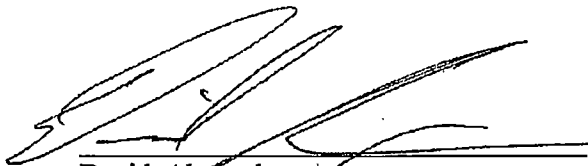
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial Transcript
- (3) Transcript dated March 4, 2013

I certify that this designation contains no matter which is irrelevant to this appeal.

September 19th, 2014



David Alexander
Appellate Defender

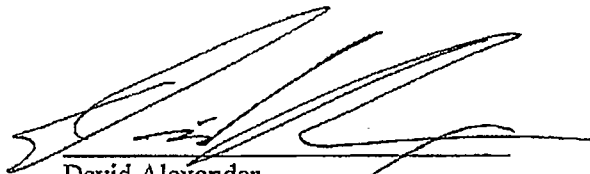
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 19th, 2014

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line.

David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

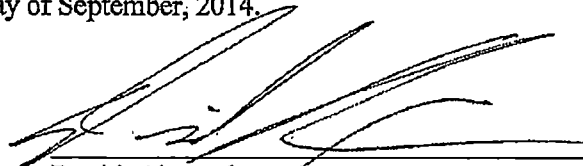
V.

JABRIEL L. SINGLETON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and a true copy of the Record on Appeal in the above referenced case have been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Mr. Jabriel L. Singleton, #331891 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of September, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of September, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jabriel L. Singleton, Appellant.

Appellate Case No. 2013-000543

Appeal From Richland County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2015-UP-239
Submitted February 1, 2015 – Filed May 6, 2015

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, LOCKEMY, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

IN THE COURT OF COMMON PLEAS

Jabriel L. Singleton
Full name and prison number (if any) of Applicant.2016 CP 400 1936

v.

#331891

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2016 MAR 25 PM 2:53

RICHLAND COUNTY
FILED**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Inst.
2. Name and location of Court which imposed sentence Richland County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Attempted murder 2012-GS-40-02986
 - (b) Murder 2012-GS-40-02982
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 30 yrs (attempted murder) March 2013 term of life
 - (b) life imprisonment (murder) March 2013 term of life

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ Trial by jury
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed: Appeal Dismissed
- i. _____
- ii. State v. Jabriel L. Singleton
- iii. Unpublished opinion No. 2015-UP-239 (May 6, 2015)
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel
 (b) Surors and Prosecutors ^{Witness} were acquaintances
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Direct Appeal
Sec of Appeals
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? N

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Trial - Tivis Sutherland
- ii. Sentencing Tivis Sutherland
- iii. Direct Appeal - David Alexander (Appellate Defense)
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jabriel Singleton

SWORN to and subscribed before me this 24
day of March, 2016.

James C. Hopkins (L.S.)
Notary Public

My Commission Expires: 4-20-22

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jabriel L. Singleton, #331891,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2016-CP-40-1936

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on March 25, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted by the July 2012 term of the Grand Jury for Richland County for murder (2012- GS-40- 2982) and attempted murder (2012- GS-40-2986). Tivis Sutherland, Esquire represented Applicant. Assistant Solicitor Katherine Cavanaugh, Esquire prosecuted the case. On March 8, 2013, the Honorable R. Knox McMahon found Applicant guilty of murder and attempted murder. Applicant was sentenced to life imprisonment for murder and thirty years for attempted murder to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by David Alexander, Esquire of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction on May 6, 2015. State v. Singleton, Op. No. 2015-UP-239 (S.C. Ct. App. filed May 6, 2015).

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Jurors and Prosecutor's witness were acquaintances"

III.

Applicant claims ineffective assistance of counsel. Respondent contends that Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this

presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant's alleges specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina

Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim of ineffective assistance of counsel.

(signature block to follow)

Respectfully submitted,

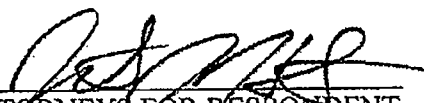
ALAN WILSON
Attorney General

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Chief Deputy Attorney General

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Senior Assistant Deputy Attorney General

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By: 
ATTORNEYS FOR RESPONDENT

_____, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JABRIEL L. SINGLETON, #331891,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

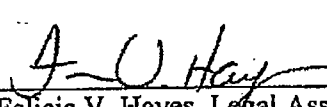
2016-CP-40-01936

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 30th day of June, 2017.



Felicia V. Hayes, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) COMMON PLEAS
3 COUNTY OF RICHLAND) OF THE FIFTH
4) JUDICIAL CIRCUIT
5 JABRIEL L. SINGLETON,)
6 Applicant,) TRANSCRIPT OF RECORD
7 vs.) 2016-CP-40-01936
8 THE STATE OF SOUTH CAROLINA,)
9 Respondent.)

10
11 December 11, 2017
12 Columbia, South Carolina

13 B E F O R E:

14 HONORABLE CLIFTON NEWMAN, Judge.
15

16 A P P E A R A N C E S

17 JONATHAN D. WALLER, ESQUIRE
18 For The Applicant

19 JESSICA E. KINARD, ASSISTANT ATTORNEY GENERAL
20 For The State
21
22

23 Julie A. Ashbrook,
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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EXHIBITS

MARKEDENTERED

NO EXHIBITS PROFFERED

JABRIEL SINGLETON VERSUS THE STATE OF SOUTH CAROLINA

MS. KINARD: The next case, that would be Jabriel Singleton.

THE COURT: A bigger box.

MS. KINARD: Yes, sir. This was a lengthy trial.

THE COURT: Let's swear Mr. Singleton in.

THE CLERK: State your full name, please.

THE WITNESS: Jabriel Singleton.

THE CLERK: Do you solemnly swear that the testimony you're about to give in this case will be the truth, the whole truth and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Thank you.

THE COURT: All right.

MS. KINARD: Thank you, Your Honor. May it please the Court. This is the matter of Jabriel L. Singleton versus the State of South Carolina. It's Case Number 2016-CP-40-1936. We're before the Court on an application for postconviction relief that was filed March 25th, 2016.

Mr. Singleton is presently residing in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk of Court. He was indicted at the July 2012 term for murder and

1 attempted murder. He proceeded to trial with Tivis
2 Sutherland, and Assistant Solicitor Kathryn Cavanaugh
3 prosecuted the case.

4 On March 8th of 2013, the Honorable Knox McMahon
5 found him guilty of murder and attempted murder. Well,
6 a jury found him guilty. Applicant was sentenced to
7 life imprisonment for murder and 30 years for attempted
8 murder to be served concurrently.

9 A timely notice of appeal was filed, which was
10 perfected by David Alexander of the office of Appellate
11 Defense. The South Carolina Court of Appeals affirmed
12 his conviction on May 6th of 2015 in an unpublished
13 opinion filed on that same day.

14 The State is present and ready to proceed. Mr.
15 Singleton is present and represented by Jonathan Waller.

16 THE COURT: All right. Mr. Waller.

17 MR. WALLER: Thank you, Your Honor. Your Honor,
18 Mr. Singleton has raised an issue of ineffective
19 assistance of trial counsel and that's what we are
20 proceeding under for today.

21 THE COURT: All right.

22 MR. WALLER: If it please the Court, I will call
23 Jabriel Singleton.

24 THE COURT: All right.

25 (Whereupon, witness comes forward.)

1 MR. WALLER: Thank you, Your Honor. May it
2 please the Court?

3 THE COURT: Yes, sir.

4 JABRIEL L. SINGLETON,
5 having been previously sworn, testified as follows:

6 DIRECT EXAMINATION:

7 BY MR. WALLER:

8 Q. Good morning, Mr. Singleton, how are you today?

9 A. I'm fine. And you?

10 Q. I'm doing well. Mr. Singleton, you're doing a
11 good job. I need you to talk into that microphone so
12 everybody can hear you. Particularly, obviously, the
13 judge, as well as the lady sitting next to you. She's
14 our court reporter.

15 Mr. Singleton, I want to, I guess, take you back
16 to when you were first arrested on this murder charge
17 and the attempted murder charge. Do you remember that?

18 A. Yes, sir.

19 Q. Okay. And you were arrested and then you got a
20 lawyer; is that right?

21 A. Yes, sir.

22 Q. Who was your lawyer?

23 A. Tivis Sutherland.

24 Q. Okay. How did Mr. Sutherland come to be your
25 attorney?

1 A. I was referred to him.

2 Q. Okay. So you hired him, you paid him?

3 A. Yes, sir.

4 Q. Okay. You were arrested. You were charged with
5 murder and attempted murder. Were you able to bond out
6 or were you given bond?

7 A. No, sir.

8 Q. Okay. So you were incarcerated the whole time?

9 A. Yes, sir.

10 Q. Okay. How many times do you think you met with
11 Mr. Sutherland?

12 A. I would say a good, a good few times before my
13 trial.

14 Q. Okay. Did you all have a chance to discuss the
15 elements of the crimes of murder and attempted murder?

16 A. Yes, sir.

17 Q. Okay. Did you all have a chance to discuss the
18 penalties that you were facing?

19 A. Yes, sir.

20 Q. Okay. So you knew you were facing a minimum of
21 30 up to life on the murder?

22 A. Yes, sir.

23 Q. Okay. Did you all discuss your constitutional
24 rights, your right to a jury trial, your right to remain
25 silent?

1 A. Yes, sir.

2 Q. Okay. At the time you had already -- you had
3 hired Mr. Sutherland you had given a statement; is that
4 correct?

5 A. Yes, sir.

6 Q. Did you all discuss your statement?

7 A. Yes, sir.

8 Q. Okay. What did you all talk about with regards
9 to your statement?

10 A. Um, basically the only relatives that we just
11 talked about, like, if I signed any, like, I was forced
12 into writing a statement and stuff like that.

13 Q. Okay. Let me, let me back you up a little bit so
14 the judge can understand. You met with law enforcement
15 when you were arrested.

16 A. Yes, sir.

17 Q. And talked to them.

18 A. Yes, sir.

19 Q. Okay. And then at the conclusion of that or near
20 the end of that, a statement was typed that was supposed
21 to be what you were telling them and they asked you if
22 you wanted to sign it and you said no; is that right?

23 A. Yes, sir.

24 Q. Okay. What did you and Mr. Sutherland discuss as
25 far as the unsigned portion of your statement?

1 A. What do you mean? As far as?

2 Q. Did you all discuss whether the unsigned portion
3 can be used against you or what you talked about could
4 be used against you? Just, what did you all discuss
5 about you giving a statement to law enforcement?

6 A. I can't really recall exactly what we discussed
7 on that part.

8 Q. Okay. Did you and Mr. Sutherland talk about any
9 of the potential witnesses the State might have?

10 A. Yes, sir, we talked about things.

11 Q. Okay. Did you give Mr. Sutherland any
12 information or the names of any witnesses who you wanted
13 him to talk to?

14 A. Yes, sir.

15 Q. Okay. Who did you tell him?

16 A. I gave him a friend of mine, name is Desmond. It
17 was just like Desmond and Derrick.

18 Q. Okay. And what -- how did they fit in?

19 A. Well, the day of the crime before it happened and
20 stuff like that, me and Derrick were together. And as
21 far as with the victim, like, me and Desmond, like,
22 we're all in the black community. He gonna be in a
23 situation where we grew up in the same area that we did
24 and also...

25 Q. Okay. So this Derrick person saw you on the day

1 of the incident?

2 A. Yes, sir.

3 Q. The other person would have been more knowing the
4 character of some of the people?

5 A. Yes, sir.

6 Q. Okay. Do you know if Mr. Sutherland ever talked
7 to any of those people?

8 A. Yes, sir. I believe, I believe, you know, he
9 never got a chance to.

10 Q. Okay. He didn't get the chance to? What do you
11 mean by that?

12 A. As far as having an investigation, for like a
13 followup investigation he never got around to it.

14 Q. Okay. You were with your girlfriend right before
15 this incident took place; is that right?

16 A. Yes, sir.

17 Q. Okay. How about your girlfriend, did
18 Mr. Sutherland, to your knowledge, ever talk to her?

19 A. No, sir.

20 Q. And she was charged kind of related to this; is
21 that right?

22 A. Yes, sir.

23 Q. Okay. She had a lawyer?

24 A. Yes, sir.

25 Q. Okay. Did you and Mr. Sutherland ever discuss

1 hiring a private investigator?

2 A. Yes, sir.

3 Q. Okay. What, what did you all talk about?

4 A. Basically I didn't have a private investigator to
5 speak with the witnesses that I wanted to speak with and
6 do a full investigation on the case and basically do a
7 lot of input on basically what happened.

8 Q. Okay. Did Mr. Sutherland ever hire a private
9 investigator?

10 A. No, sir.

11 Q. Okay. Do you know why he didn't after you all
12 had talked about it?

13 A. No, sir.

14 Q. Okay. Did you ask him to?

15 A. Yes, sir.

16 Q. Okay. Did you ever get a reason why he did not
17 do so?

18 A. No, sir.

19 Q. Okay. Did you and Mr. Sutherland ever talk about
20 hiring any experts?

21 A. No, sir.

22 Q. Okay. There were some, some testing done in your
23 case; is that right?

24 A. Yes, sir..

25 Q. There were some fingerprints taken?

1 A. Yes, sir.

2 Q. DNA?

3 A. Yes, sir.

4 Q. Gunshot residue?

5 A. No, sir.

6 Q. Not necessarily from you but in your case, did
7 you all talk about gunshot residue?

8 A. Yeah.

9 Q. Okay. There was an autopsy done?

10 A. Yes, sir.

11 Q. Did you all ever talk about hiring an expert for
12 possibly any of those things or all of those things?

13 A. No, sir.

14 Q. Okay. When you and Mr. Sutherland met, what was
15 you all's strategy?

16 A. Basically, you know, look into the fact that
17 stand my ground wasn't gonna work and just like self
18 defense.

19 Q. Okay. So you all had a self-defense strategy?

20 A. Yes, sir.

21 Q. Okay. And what was your -- so Judge Newman is
22 aware, what was your understanding of what the State
23 said happen?

24 A. Could you say it one more time?

25 Q. Actually, I can move on from that.

1 Once the trial started, okay, do you remember
2 that?

3 A. (Witness nods head up and down.)

4 Q. Did you and Mr. Sutherland have a chance to talk
5 while the trial was going on? Not, you know, during the
6 actual court, but at breaks or before you were actually
7 in court?

8 A. Yes, sir.

9 Q. Okay. What did you all talk about then?

10 A. Basically just if I feel comfortable in wanting
11 to go forward with it.

12 Q. Okay. And obviously you did go forward with it.

13 A. Yes, sir.

14 Q. And you were convicted; is that right?

15 A. Yes, sir.

16 Q. Okay. Mr. Singleton, what do you think Mr.
17 Sutherland could have done differently or could have
18 done better?

19 A. Well, I feel he did pretty good, but as far as
20 the investigation part, I feel he could have put more
21 effort into hiring an investigator a little bit more for
22 my benefit on my behalf.

23 Q. To help with your self defense?

24 A. Yes, sir.

25 Q. Okay. And, again, you might have already

1 answered this, but do you know why an expert wasn't
2 hired after you all talked about it?

3 A. No, sir.

4 Q. Mr. Singleton, I've asked you all the questions
5 that I have for you. Is there anything you think I've
6 left out that the judge needs to be aware of about Mr.
7 Sutherland representing you?

8 A. No, sir.

9 Q. All right. Please answer any questions Ms.
10 Kinard has.

11 CROSS-EXAMINATION

12 BY MS. KINARD:

13 Q. Good morning, Mr. Singleton.

14 A. Good morning.

15 Q. Now, you testified that you discussed a lot of
16 the, what we call, basic information about your case
17 with Mr. Sutherland. So you discussed the different
18 charges you were facing and what the State had to prove;
19 is that correct?

20 A. Yes, ma'am.

21 Q. And you discussed your constitutional rights as
22 far as a jury trial goes; is that correct?

23 A. Yes, ma'am.

24 Q. Did you ever talk about whether you wanted to
25 plead guilty?

1 A. No, ma'am.

2 Q. You always wanted to go to trial?

3 A. Yes, ma'am.

4 Q. Okay. I'm sorry, I can't hear very well today.

5 A. Yes, ma'am.

6 Q. But earlier did you testify that you didn't feel
7 comfortable and you didn't want to go forward?

8 A. No, ma'am.

9 Q. Okay. I'm sorry, I must have misheard that. So
10 when talking about strategy, you mentioned self defense
11 as well as stand your ground; is that correct?

12 A. Yes, ma'am.

13 Q. And you explored both of those with Mr.
14 Sutherland; is that correct?

15 A. As far as self defense, yes, ma'am.

16 Q. Okay. But you talked to him about stand your
17 ground and you all decided together that that was not
18 gonna be an effective defense. Is that a fair
19 statement?

20 A. Yeah. We didn't, we didn't speak on that. Seems
21 like it wasn't ---

22 Q. Not viable?

23 A. Yes, ma'am.

24 Q. Okay. And you said you gave names of potential
25 witnesses to Mr. Sutherland.

1 A. Yes, ma'am.

2 Q. And did you testify that you weren't sure if he
3 went and visited them?

4 A. Well, I know he didn't.

5 Q. You know he didn't?

6 A. Yes, ma'am.

7 Q. How do you know he didn't?

8 A. As far as me being down incarcerated, during that
9 time that I spoke with him.

10 Q. So when you spoke with him, he never told you
11 about any conversations he had with witnesses or
12 anything like that?

13 A. No, ma'am.

14 Q. Okay. Did you give him information on how to
15 find any of these people?

16 A. Yes, ma'am.

17 Q. Names and addresses and phone numbers, things
18 like that?

19 A. Yes, ma'am.

20 Q. Okay. Now, did you present a defense in this
21 case?

22 A. Yes, ma'am.

23 Q. You did?

24 A. (Witness nods head up and down.)

25 Q. Did you testify in this case?

1 A. Yes, ma'am.

2 Q. Okay. Was that your decision to testify?

3 A. Yes, ma'am.

4 Q. Okay. And you stated you met with Mr. Sutherland
5 several times. Did you feel prepared to testify?

6 A. I say I was, I was comfortable with it. I
7 wouldn't say I was fully prepared, but I was ready to go
8 forward with everything.

9 Q. Okay. Did you feel you had a chance to ask Mr.
10 Sutherland all the questions that you needed to ask of
11 him?

12 A. Yes, ma'am.

13 Q. Okay. I have no further questions. Thank you.

14 MR. WALLER: Just very briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. WALLER:

17 Q. Mr. Singleton, you testified at your trial; is
18 that right?

19 A. Yes, sir.

20 Q. You all put up a defense?

21 A. Yes, sir.

22 Q. Okay. You were the only witness that was called;
23 is that right?

24 A. Yes, sir.

25 Q. And no one else testified for you?

1 A. No, sir.

2 Q. None of these other witnesses that you gave the
3 names to Mr. Sutherland?

4 A. No, sir.

5 Q. Nothing further. Thank you.

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

7 (Whereupon, witness leaves witness stand.)

8 MR. WALLER: Your Honor, the Applicant would call
9 Tivis Sutherland.

10 THE COURT: All right.

11 (Whereupon, witness comes forward.)

12 THE CLERK: Raise your right hand. (Complies.)
13 Would you state your full name, please.

14 THE WITNESS: Tivis Collin Sutherland, IV.

15 THE CLERK: Would you spell your first name,
16 please.

17 THE WITNESS: Tango, India, Victor, India,
18 Sierra, T-I-V-I-S. It's unusual, I know.

19 THE CLERK: It is. Do you solemnly swear that
20 the testimony you're about to give in this case will be
21 the truth, the whole truth and nothing but the truth so
22 help you God?

23 THE WITNESS: Yes, ma'am.

24 THE CLERK: Thank you. You can have a seat.

25 THE COURT: How did that name go again?

1 THE WITNESS: Tango, India, Victor, India,
2 Sierra. T-I-V-I-S.

3 THE COURT: Okay.

4 MR. WALLER: Thank you, Your Honor.

5 TIVIS C. SUTHERLAND, IV,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WALLER:

9 Q. Good morning, Mr. Sutherland.

10 A. Morning. Sorry.

11 Q. How are you today?

12 A. Well enough.

13 Q. Mr. Sutherland, do you remember representing Mr.
14 Singleton?

15 A. I sure do.

16 Q. Okay. If you could, particularly so the judge is
17 aware, what was -- give us a quick factual rundown, if
18 you can, of the allegations.

19 A. Okay. The allegations were that he had somehow
20 finagled these people to go down this semi-deserted road
21 and then just killed them and took their stuff. That
22 was the State's presentation. I mean, that's pretty
23 much the bottom line.

24 Our defense was that they had actually tried to
25 rob him. I mean, they were the ones who controlled the

1 vehicle and everything. They went down this road
2 because these fellows wanted to go down this road and
3 they wanted to rip him off with his weed and his money,
4 so...

5 Q. Okay. He was driving the car with the two
6 individuals?

7 A. Yes.

8 Q. Okay. He was supposed to be selling them some
9 marijuana; is that right?

10 A. Yes.

11 Q. And that was undisputed from both sides, right?

12 A. Yeah, we didn't deny that. They just didn't lay
13 the proper foundation to get the weed in, so I was
14 talking to the jury about the green leafy material.

15 Q. But after that is where kind of different stories
16 emerged; is that right?

17 A. It is.

18 Q. Okay. And what was your defense theory?

19 A. Well, the defense was that one of the key
20 ingredients, I think, was this was -- the trial was a
21 while ago. But one of the fellows just reached around
22 and grabbed him, one of the guys, at the end of this
23 road. And was asking him, give him the weed, give him
24 the money, what he has on him. They started struggling
25 and the other guy had reached under the seat where he

1 had seen a firearm earlier in the day.

2 Q. When you say "he", you're talking about Jabriel?

3 A. Yes. He had seen the firearm earlier in the day
4 and that he pulled out his firearm and just started
5 firing at him and fell out of the car, reloaded, and
6 fired some more.

7 Q. Okay. So that was you all's self-defense theory?

8 A. That was it.

9 Q. Okay. How many times did you and Mr. Singleton
10 meet in preparation?

11 A. We met a bunch of times. I don't know exactly
12 how many, but the week before probably three times, but
13 it was almost hundred percent about his testimony. We
14 set up the way that I always do with my guys, is there's
15 a window in the multi-purpose room and there's always a
16 lot of racket in the dorm.

17 So I set my guy up beside the window to have
18 human beings over here. You know, juries are quiet, but
19 you can still feel them and they're looking at you. And
20 we went through the process. I told him, you know, I
21 couldn't believe him so he needed to just tell me what
22 happened and that I was just basically be questioning
23 him. And then what happened and then what happened.
24 Let me stop you right there and go back over some -- and
25 go back over things that were said. You can't introduce

1 these things yourself.

2 So we met three times the week prior. The first
3 time was to sort of -- the first couple times were
4 really going over what he said and better ways to pare
5 it down so that the solicitor can't pick and twist words
6 and terms against him. And then the third time was to
7 pretty much do a run through of the testimony.

8 Q. Okay. What kind of investigation did you do in
9 this case?

10 A. I just read the discovery. I did not send an
11 investigator out to interview the witnesses. It was
12 pretty straight forward. And, really, the only people
13 that -- there were a small nexus of people who were out
14 there.

15 Q. Okay.

16 A. Not many.

17 Q. Okay. Mr. Singleton -- I'm sorry, I'm getting
18 you all's names confused. Mr. Singleton gave a
19 statement to law enforcement. Is that your
20 understanding?

21 A. It's my recollection of it. I think that
22 although I wasn't there, I was somewhere else. But I
23 also remember him telling them that -- was it Dave
24 Unger, the investigator, that there's no self-defense
25 law in South Carolina. So later on addressing the jury,

1 it's like, look, you know, he was dishonest, he was
2 worried, he didn't know there was a self-defense law in
3 South Carolina and here Unger is raking him over the
4 coals when he says that. He was a followup on that.
5 And, you know, there are other guys up here, lined up
6 seven ways from Sunday, so just comparative credibility.

7 Q. Okay. When Mr. Singleton was interviewed by law
8 enforcement, he talked to them after having being read
9 his Miranda rights. And then he was presented with a
10 written statement that he refused to sign. Do you
11 recall that?

12 A. That's -- I think that may -- that's ringing a
13 bell. I think so.

14 Q. Okay. When you got to the trial, did you make
15 any motions regarding a written unsigned portion of his
16 statement? That you recall.

17 A. I'd have to look.

18 Q. Okay. If I could get you -- do you have a copy
19 of the transcript?

20 A. I sure do.

21 Q. If I could get you to -- the record on appeal
22 actually has pretrial motions in -- well, let me make it
23 simple. If you can turn to page 10. That's in Volume
24 I.

25 A. 10, Volume I.

1 Q. Judge McMahon's ruling on the unwritten or the
2 unsigned portion.

3 A. Yeah, that's what he said. Do not take the
4 documents. So, yeah, that's basically what it said.

5 Q. Okay.

6 A. Not the document, the testimony about it's
7 typically what is said in a situation like that.

8 Q. Okay.

9 A. The rule from the ---

10 Q. Do you recall when that actually became the issue
11 when Detective Unger or Investigator Unger was
12 testifying and how that -- and how it was presented?

13 A. It was, it was a lot. I mean, I think it was a
14 week. It was a long trial. I don't, but point me to it
15 and it will ring a bell.

16 Q. Sure. If I can get you to turn to page 814.

17 A. All right. Let's see. 8 -- let's see. 814.

18 Q. At the very, very bottom. And then continuing on
19 the next page.

20 A. Okay. I appreciate it. Oh, it looks like I was
21 arguing that it was civil court versus a statement,
22 which is true. I mean, you can...

23 Q. And Judge McMahon ruled that, then, an unsigned
24 statement is essentially a report. Is that your
25 understanding?

1 A. Sure, yeah.

2 Q. And the -- your objection was the officer, which
3 was reading it directly from, directly from the piece of
4 paper when Judge McMahon had ruled that it could not be
5 published to the jury.

6 A. Right.

7 Q. You made an objection and then had an
8 off-the-record bench conference. Do you have any
9 recollection of what was said?

10 A. I do not.

11 Q. Do you have any recollection of why you did not
12 renew your objection following the bench conference?

13 A. I should have, yes.

14 Q. There was a significant amount of testing done in
15 this case; is that right?

16 A. (Witness nods head up and down.)

17 Q. I believe the State had 255 exhibits maybe?

18 A. A bunch.

19 Q. What, what conversations did you and Mr.
20 Singleton have regarding that testing and what you-all's
21 response to it was gonna be?

22 A. Well, we weren't denying that he shot people. We
23 weren't denying that he was there, that the defense was
24 that they were trying to rob them. So, honestly, other
25 than pecking over any mistakes or anything, then they,

1 you know, that wasn't the issue. The issue, the old
2 issue came in of self-defense.

3 Q. Okay. Did you ever consider retaining the
4 experts in this case?

5 A. I did not.

6 Q. Did you ever -- did you take any issue with the
7 State's presentation of the accident scene or the
8 incident scene?

9 A. Well, we had our interpretation of it that we
10 laid out and they had theirs.

11 Q. Did you ever consider hiring an incident
12 reconstruction or crime scene reconstruction expert to
13 present your version?

14 A. I would have had concerns about that in that it
15 may not have been helpful.

16 Q. Okay. Why potentially would it not have been
17 helpful?

18 A. Well, if -- I just don't -- I didn't feel that it
19 would be helpful to us to have someone reconstruct the
20 scene.

21 Q. Okay. Beg the Court's indulgence, please.

22 Mr. Sutherland, do you recall some issues with
23 some jurors on this case?

24 A. I do. One, two. Some jurors were excused and
25 one that was an acquaintance, I would say, a friend of

1 their ballistic's guy, I think it was, was not excused
2 from the jury and he did not reveal initially that he
3 was a friend of the guy, of the cop. And his excuse was
4 that I thought that the guy was at SLED and not the
5 sheriff's department, so, yeah, that one was an issue.

6 Q. Okay. And both alternates were excused; is that
7 right?

8 A. We had that -- we would have been down to 11 if
9 that guy would have been gone.

10 Q. Just a couple of questions. Was Mr. -- Mr.
11 Singleton was in the detention center leading up to
12 trial; is that right?

13 A. He was.

14 Q. How was he dressed for the trial? Was he in
15 street clothes?

16 A. For some reason I can't pull it up. I know he
17 had clothes.

18 Q. Okay. Do you know if he was shackled during the
19 trial?

20 A. He was shackled during the trial, is my
21 recollection.

22 Q. Okay. His testimony, was there any reason to
23 believe the jury may have seen him in those shackles or
24 anything like that?

25 A. I don't believe so.

1 Q. Okay.

2 A. But...

3 Q. If I can get you to -- I'm sorry, I've got too
4 much. If I could get you to turn to page 884, and look
5 at the bottom, 23, line.

6 A. I see it.

7 Q. Did you ever consider objecting to the jury
8 knowing that he's been incarcerated the whole time?

9 A. Well, it, it is improper for a jury to know that
10 someone is incarcerated because it leads them to believe
11 that the person is guilty of the crime for which they're
12 on trial. So I should have objected there.

13 Q. Okay. Do you have any strategy decision for not
14 objecting?

15 A. None.

16 MR. WALLER: Beg the Court's indulgence one
17 second. I'm just making sure I've covered everything.

18 THE COURT: You mentioned page 884.

19 MR. WALLER: Yes, sir, Your Honor.

20 THE COURT: The transcript that I'm looking at,
21 884 is cross-examination. Is that a different numbering
22 system?

23 MR. WALLER: No, sir, that's ---

24 THE COURT: Well, I have this is a record on
25 appeal and you're looking at the trial transcript?

1 MR. WALLER: I'm looking at the same thing you
2 are, Your Honor. It tracks the cross-examination of Mr.
3 Singleton, him testifying. So it's a question asked by
4 the State.

5 THE COURT: Oh. And where have you been since
6 you were arrested for these crimes?

7 MR. WALLER: Yes, ma'am -- yes, sir.

8 THE COURT: Okay, I see it. I see it, okay.

9 BY MR. WALLER:

10 Q. You received some discovery when the trial was
11 going on. Do you recall that?

12 A. I want to say many times, but I could have been
13 just so aggravated that it was only a few times. But it
14 was irritating.

15 Q. Okay. Did you ever consider asking for a
16 continuance?

17 A. I think what I ended up saying, I remember
18 telling Judge -- because I got a whole thing of
19 ballistics. I don't want to cuss here, but the whole
20 packet. And I remember speaking with Judge McMahon and
21 I just told him, you know, I told him I didn't think it
22 was right, I didn't think it was proper, it should be
23 excluded. But I did tell him that I would look at it
24 overnight.

25 And I believe -- I don't know if this is on the

1 record or not, but I believe I said when I had been --
2 had other things to do, I'll go ahead and push those
3 aside and look at this new discovery tonight. Because,
4 you know, these are 20-hour days. But, yeah, it
5 happened several times. I'm comfortable saying that.

6 Q. Did you feel you had enough time to review
7 everything?

8 A. Ultimately I reviewed, I remember reviewing all
9 the ballistics and, frankly, it didn't hurt us. And as
10 an officer of the court, that's what I told Judge
11 McMahon, that there's nothing, nothing here that's
12 sideways. Now, maybe somebody else would have done it
13 different, but it didn't fall outside of the defense.
14 It didn't throw me off, other than having to go through
15 this stuff for a few hours, versus getting a little
16 sleep or something.

17 Q. Okay. Let me ask you one final thing. Was there
18 ever any evidence presented that Mr. Singleton had gone,
19 had left the scene and come back to finish off the, the
20 victims in this case?

21 A. My recollection -- you'd have to point me to it,
22 if it's in there.

23 Q. Well, the State argues it in their closing and I
24 -- you did not object to it and you had objected several
25 times during closing already.

1 A. Oh, facts not in evidence?

2 Q. Correct.

3 A. Yeah.

4 Q. And I was wondering if you recalled any evidence
5 or any evidence that leads to that conclusion that if
6 there was a strategy behind not objecting to it.

7 A. No, there's not. So if there wasn't an objection
8 to that, there should have been because I just keep
9 remembering somebody talking about it and supposedly him
10 running through the trees or something like that. But
11 I'm not -- it was a pretty -- the closing that the State
12 did would go off on a tangent here and there. I do
13 remember that.

14 MR. WALLER: And, Your Honor, I'm referring to
15 page 967, Lines 9 through 15 of that questioning.

16 I have nothing further. Please answer any
17 questions Ms. Kinard has.

18 CROSS-EXAMINATION

19 BY MS. KINARD:

20 Q. Thank you for being here Mr. Sutherland.

21 A. Sure.

22 Q. I want to start by getting some basic background
23 information about your representation of Mr. Singleton.

24 A. Sure.

25 Q. You were retained by him; is that correct?

1 A. I think. It was three or four months after he
2 had been arrested, I think. Just, I keep seeing May and
3 I think he was arrested in February.

4 Q. And you stated that you met with him many times,
5 including approximately three times a week before trial;
6 is that correct?

7 A. We did. Again, the meetings the week before
8 trial were, I'm sure, we might have talked about a
9 couple other things, but it's 100 percent about -- 99
10 percent about testifying, so...

11 Q. In some of your earlier meetings did you discuss
12 his indictments and the elements and the offenses the
13 State had to prove?

14 A. Oh, sure. It's, you know, unlawful killing,
15 malice, so forth.

16 Q. And was he aware of the possible punishments he
17 faced with these charges?

18 A. He was.

19 Q. And did you inform him of his constitutional
20 rights, including right to a jury trial, to remain
21 silent, to confront his accusers?

22 A. Yeah. We went through a list, sort of standard
23 stuff. Most of the time lawyers sort of run them
24 through the case.

25 Q. And so did he in those discussions relay his

1 version of events to you?

2 A. He, he did.

3 Q. What did he tell you? Did what he tell you end
4 up being what you presented as his self-defense
5 argument?

6 A. Sure. It's in the transcript.

7 Q. Okay. Do you believe he understood all the
8 questions you asked him and all of your discussions?

9 A. Oh, sure. I mean, we worked well together and
10 got along. He was more mature. You know, a lot of
11 times, like these 16, 17 year-old kids that are wrapped
12 up in similar situations. He was fine to work with and
13 a mature guy, so...

14 Q. At some point in time did you file a discovery
15 motion?

16 A. I sure did.

17 Q. And you discussed some on the record about that,
18 the discovery materials were received during the trial.
19 The discovery you received prior to trial, did you
20 review it with Mr. Singleton?

21 A. Yeah, we went through everything. Now, there's
22 always a bunch of junk in there and rap sheets and
23 people's driving records and all that, but stuff that
24 was relative to defending the case.

25 Q. And you testified a little bit about potential

1 witnesses. Did Mr. Singleton give you a list of
2 witnesses he thought may be helpful?

3 A. I don't recall that, but there's no reason for me
4 to dispute it as a recollection.

5 Q. Regardless, you testified that, I will use the
6 word nexus, a small nexus of people that were involved
7 in a crime could be a nexus; is that correct?

8 A. It should. I mean, it's just out in this area.
9 Now, people were living around out there, but it seems
10 that the point was to get away to where something
11 untoward could happen.

12 Q. So in your understanding of the facts there just
13 wouldn't be that many people to talk to in the first
14 place. Is that a fair statement?

15 A. Nobody saw anything.

16 Q. Mr. Singleton testified that other than self
17 defense, you discussed stand your ground and quickly
18 ruled that out. Is that a fair statement?

19 A. Well, that is, that is a problem. If you're in
20 someone else's vehicle and, you know, it's Wii and Xbox
21 money. It's -- it didn't, it didn't seem right to try
22 to present that defense under the circumstances.

23 Q. I'd like to move to the juror issues,
24 specifically the one that Investigator Collins
25 recognized. He was characterized as a friend by Mr.

1 Waller. Did you have a chance to review that portion of
2 the transcript?

3 A. I have looked -- I have looked at it briefly.

4 Q. Is it a fair statement, based on the transcript,
5 that these men both testified that they only saw each
6 other maybe once every couple years?

7 A. It is. I mean, I still didn't -- I still wanted
8 to strike the juror, but... You know, I see it, as a
9 defense attorney I see it a little bit differently. I'm
10 like, okay, they knew each other for 30 years and there
11 were barbecues in about every year or so running into
12 each other at ball games, the guy's got to go.

13 Q. And do you believe you made all appropriate
14 motions and efforts to remedy that situation?

15 A. I remember objecting to it, and I remember the
16 judge going through a number of cases telling me that I
17 wasn't correct, so...

18 Q. Mr. Waller questioned you about a few things that
19 could be considered with objections, and I'm not gonna
20 re-question you on those, but is there anything else
21 that you'd like the Court to know about your
22 representation of Mr. Singleton or anything you were
23 asked about that you'd like to share?

24 A. I would say not really. I mean, you know, we're
25 human beings, we're not robots. You get a week-long

1 trial, you're gonna smudge something. But, I mean,
2 that's why we're here. And that's not to diminish the
3 significance. It was one of those things that I had
4 been questioned about earlier, because clearly Ms.
5 Singleton received a life sentence. So that's something
6 that's gonna be considered that's gonna be ruled upon.

7 MS. KINARD: Thank you, Mr. Sutherland. I have
8 no further questions.

9 THE COURT: Yes, sir.

10 MR. WALLER: Judge, I have no further questions
11 for this witness.

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

13 THE WITNESS: Thank you, Judge.

14 (Whereupon, witness leaves witness stand.)

15 THE COURT: Yes, sir.

16 MR. WALLER: I have no further witnesses, Your
17 Honor. I would make a Motion to Amend the pleadings to
18 conform with the, the evidence presented under Rule
19 15(b). Just some of the specific things. His
20 application was a little bit general, but just some of
21 the specific questions that were asked. I think we need
22 to be a little more specific now when presenting the
23 cases. And so I would make that motion at this time.

24 THE COURT: Ms. Kinard.

25 MS. KINARD: I would certainly oppose that

1 motion, Your Honor. We have a lot of -- well, the
2 Attorney General's office asks for amendments well in
3 advance of hearings. That information was provided to
4 Mr. Waller, as well as published on the roster itself.
5 I didn't receive any amendments.

6 The way the application itself is presented, it
7 appears that there's a general allegation of ineffective
8 assistance of counsel. And then the one particular
9 issue, being that the juror issue. And it was this
10 office's understanding that we were going forward
11 basically on that one issue.

12 So for that reason we would argue that a motion
13 under 15(b) would be improper at this time, certainly
14 based on the amount of testimony provided, as well as
15 the requests from this office to get any amendments
16 beforehand.

17 THE COURT: All right.

18 MR. WALLER: Your Honor, I would just note that
19 there wasn't any objections made to any of the evidence
20 as it was presented.

21 THE COURT: All right. I note the roster says
22 that consent, there would be a consent to amendments up
23 until December 1st and then they -- that would be
24 opposed. You knew that, didn't you?

25 MR. WALLER: I did, Your Honor.

1 THE COURT: And you just opted not to amend?

2 MR. WALLER: Your Honor, I don't -- as I was
3 preparing for this case, Your Honor, or for the actual
4 hearing new things kind of popped out to me. And so I
5 obviously questioned the witnesses about them.

6 THE COURT: All right. Well, you're right the
7 State did not object to any of the questions that were
8 outside of the scope of the application. I heard the
9 testimony, and I have to base my decision on what I've
10 heard and not based on what's the remedy of the issue.

11 MS. KINARD: Thank you, Your Honor.

12 MR. WALLER: Thank you, Your Honor.

13 THE COURT: All right. Anything else?

14 MR. WALLER: Nothing further from the applicant,
15 Your Honor.

16 MS. KINARD: The State doesn't have any
17 witnesses, but we would request a brief summary.

18 THE COURT: All right. Let me hear that summary.

19 MR. WALLER: Your Honor, there was testimony from
20 both the applicant, as well as Mr. Sutherland, that
21 there was essentially a difference in their version
22 versus the State's version. Your Honor, as the case, as
23 the trial progressed, it's the testimony of
24 Mr. Sutherland that there was no -- excuse me, no
25 experts consulted. That it was just a difference of two

1 possible stories.

2 Your Honor, Mr. Sutherland has testified, I
3 believe quite candidly, that there were some things that
4 were presented that, that he did not object to that he
5 probably should have, particularly in the solicitor's
6 closing arguments and also in the testimony of the
7 applicant, who was the defendant at that time.

8 Your Honor, um...

9 THE COURT: Well, this reading about the
10 survivor's account, it seems that there was a shooting.
11 Who was killed, King Breeze?

12 MR. WALLER: Yes.

13 THE COURT: Or Crash?

14 MR. WALLER: Yes, sir.

15 THE COURT: King Breeze was killed, Crash was
16 shot. The defendant reloads and shoots them again or...
17 I mean, that's what the version how the survivor told
18 it.

19 MR. WALLER: That is, Your Honor. And it was
20 undisputed that he did bring one of them.

21 (Whereupon, alarm goes off in courtroom.)

22 THE COURT: Okay. What is that for?

23 THE BAILIFF: Fire drill.

24 THE COURT: Fire drill. So what do we need to
25 do?

1 THE BAILIFF: Leave.

2 THE COURT: Okay. We'll be in recess.

3 (Whereupon, hearing was interrupted for fire
4 drill from 11:03 a.m. - 11:06 a.m.)

5 THE COURT: Okay. Thank you all.

6 Yes, sir. You may continue.

7 MR. WALLER: Your Honor, I was essentially
8 finished. I would just ask the Court to consider the
9 evidence presented today, review the sections of the
10 transcript that were presented to the Court that were
11 referred to during the testimony and consider the
12 applicant's application.

13 THE COURT: Well, I was curious about you asked
14 him about not objecting about him being locked up since
15 the arrest. And I know the solicitor was asking the
16 question in connection with the fact that they did
17 record conversations from the jail in which he,
18 according to them, was trying to get his mother to come
19 up with an alibi on the issue of whether he was at the
20 scene or wasn't at the scene and all those things. But
21 in the instances where -- and that's becoming the most
22 prevalent court trial matter is jailhouse recording
23 phone conversations from the jail. How are the lawyers
24 supposed to handle that when the State is gonna use it
25 to impeach the defendant on the stand concerning

1 conversations were about people, admissions, et cetera.

2 MR. WALLER: Your Honor, in this particular
3 situation, I could tell you that the question that I
4 raised was on the second page of the solicitor's
5 cross-examination, that they have not yet gotten into
6 any of the phone calls at that point. The question
7 right before that was where he went to school and what
8 grade he went to. And so the next question after that
9 was where have you been since you were arrested for this
10 crime.

11 I would also note that the State, while they
12 referenced several phone calls to his mother and calls
13 to his girlfriend, they never introduced any of those
14 phone calls. So they were, I guess, trying to impeach
15 his testimony or impeach his credibility by asking some
16 questions. But they were never, the calls were never
17 presented to the jury.

18 Your Honor, this was the first thing that was
19 presented. It is more of a where are you from and where
20 do you live type thing, as opposed to questioning about
21 some of the communications he had had through the jail
22 phone system. And so I think that it was not in
23 response to that. It wasn't following up on that, it
24 was purely to show the jury that he had been
25 incarcerated.

1 THE COURT: All right.

2 MS. KINARD: Thank you, Your Honor. Quite
3 simply, the State believes that the burden was not met
4 by the applicant, in that there were several items were
5 presented, none of these rise to the level of possible
6 prejudice to the applicant. For example, the potential
7 mis-instructions, if we could phrase them in that way,
8 evidence was produced about the trial that would kind of
9 lead to the same place.

10 In other words, for example, with the objections
11 about discovery received during trial, there's certainly
12 other discovery. There's this issue with the closing
13 argument. Other objections were made. They were
14 claiming things that Mr. Sutherland did that led to a
15 very effective representation.

16 I would look to the case of *Strickland versus*
17 *Washington*, as we always do. Not only was there no
18 deficiency, there is no prejudice and that we should do
19 our best to avoid looking back with the benefit of
20 hindsight for the judgement during performance.

21 Both of this evidence, including that of the
22 surviving victim, was that he did, he did fire his
23 weapon multiple times. He did take the time to stop and
24 reload. And I believe all that came up before the jury,
25 despite the best efforts of Mr. Sutherland. And that

1 overall his case was tried well and efficiently. There
2 was plenty of preparation and time for Mr. Singleton to
3 be comfortable with the entire matter, as he testified
4 he was.

5 So overall, I believe that there was no
6 deficiency or prejudice and the burden has not been met
7 by the applicant.

8 THE COURT: How about the part of him being in
9 jail the entire time up to trial? He believes the
10 prejudice or the significance or lack of significance is
11 not ineffective here.

12 MS. KINARD: I agree that there is no
13 significance. He's on trial for these crimes, of which
14 the jury is aware of the indictments and the charges
15 against him. Though I understand the concern about
16 causing any prejudice or any pre-implications of the
17 mind of jury, it's a matter of fact that he has been
18 arrested and he has been awaiting trial. And that is
19 always a fact that is in the jury's mind.

20 THE COURT: All right. Anything further?

21 MR. WALLER: Nothing further from the applicant,
22 Your Honor.

23 MS. KINARD: Thank you, Your Honor.

24 ORDER OF THE COURT

25 THE COURT: Well, one is entitled to effective

1 representation and a fair trial and due process. I find
2 that Mr. Sutherland's representation did not rise to the
3 level of ineffective assistance of counsel and that he
4 provided reasonable and professional representation to
5 the defendant.

6 All the issues were presented to the jury. The
7 jury considered the defense and rejected the defense
8 itself and had under their consideration that the
9 defendant initially denied being on the scene. Gave law
10 enforcement the statement that he wasn't even there.
11 And then decided that, yes, I was there, but I was
12 acting in self-defense.

13 He had survivor's testimony. The evidence was
14 overwhelming. Obviously he's guilty based on the jury's
15 verdict. And I deny the postconviction relief. Prepare
16 and order for me.

17 MR. WALLER: Yes, Your Honor.

18 MS. KINARD: Yes, Your Honor. Thank you.

19 MR. WALLER: Thank you, Your Honor.

20 (Whereupon, hearing concluded at 11:13 a.m.)

21

22 --- THIS ENDS REQUESTED TRANSCRIPT ---

23

24

25

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the Family
10 Court for Richland County, South Carolina, on the 11th
11 day of December, 2017.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17

18 s/Julie A. Ashbrook.
19 Julie A. Ashbrook
20 Circuit Court Reporter
21 Seventh Judicial Circuit
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jabriel L. Singleton, #331891,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2016-CP-40-1936

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2019 AUG 28 AM 11:29
JEANETTE W. MCBRIDE
C.C.P., G.S., & F.C.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed March 25, 2016. The State made its return on June 30, 2017. A hearing on the matter was convened at the Richland County Courthouse on December 11, 2017. Applicant was present and represented by Jonathan D. Waller, Esquire. The State was represented by Assistant Attorney General Jessica Kinard.

Applicant testified on his own behalf and presented his trial counsel, Tivis Sutherland, Esquire, as a witness. This Court also had before it the transcript of Applicant's trial, the Applicant's records from the South Carolina Department of Corrections, the clerk of court records regarding the subject convictions, and the pleadings from both parties.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted by the July 2012 term of the Grand Jury for Richland County for murder (2012- GS-40- 2982) and attempted murder (2012- GS-40-2986). Tivis Sutherland, Esquire represented Applicant.. On March 8, 2013, a jury found Applicant guilty of murder and attempted murder. The Honorable

R. Knox McMahon sentenced Applicant to life imprisonment for murder and thirty years imprisonment for attempted murder to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by David Alexander, Esquire of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction on May 6, 2015. State v. Singleton, Op. No. 2015-UP-239 (S.C. Ct. App. filed May 6, 2015).

FACTS AT TRIAL

The State's theory of the case was that Applicant set up a transaction to sell marijuana and a video game console to the murder victim, Deshawn Jones, nicknamed "Breeze." Jonathan Frazier, the second victim, who survived the shooting, was also present. Frazier explained Applicant was supposed to sell Breeze an X-box and four ounces of marijuana. They drove to Hopkins from Columbia to get the X-box. Applicant rode in the back seat. Applicant had a gun in his lap, which at the time did not concern Frazier. He also noticed a glittery black glove in the back seat. They reached a remote road in Hopkins. Frazier testified that when they arrived, Applicant offered to let Frazier shoot his gun. Frazier declined. Applicant got out of the car. Frazier testified he was not looking, but heard several shots. At first, Frazier was not concerned because he thought Applicant was merely shooting in the air or at a target. But Frazier realized he was hit and saw Breeze was also shot. Breeze threw out money for Applicant to take, but Applicant kept firing. Frazier testified he then blacked out. Tr. pp. 87-100.

Frazier came to and Applicant was in the driver seat reloading his gun. Frazier tried to rush Applicant. Applicant demanded Frazier throw down the car keys and phone. When Frazier failed to comply, Applicant fired more shots. Frazier was hit in the hand, and he once again blacked out and lost consciousness. Tr. pp. 100-03. When Frazier came to, he crawled, then

walked, to get help. He reached a house and an older woman answered the door who called 911. Tr. pp. 104-06.

Monica Howell was the lady who answered the door. She testified she answered a knock at the door and saw a man covered with blood at the door. The man asked for somewhere to hide. She called 911, and at the 911 operator's request, asked the man who the shooter was. The man answered Jabriel. When Frazier said "there he go" and exclaimed he "was going to kill me" Howell looked and saw a man dressed in black, running into the woods while trying to hold up his oversized pants. Tr. pp. 148-59.

No weapons were found at the scene. Tr. p. 198; 263-64. Frazier suffered bullet wounds to the neck, shoulder, and hand. A bullet fragment remained in Frazier's jaw and he had to have his mouth wired shut when he was treated. Tr. pp. 248-54. When Deputy David Goff responded to the hospital to speak with Frazier, Frazier was having trouble breathing and speaking, but before medical personnel put a breathing tube on Frazier, Goff asked who the shooter was and Frazier said something to the effect of "Jabriel." Tr. pp. 335-37.

When law enforcement went to Applicant's father's house in Hopkins to effect an arrest, they saw a person flee into the woods. A few yards into the woodline, they recovered a hoody, jacket, and cell phone. The phone was Applicant's cell phone. Applicant was apprehended the next day at a hotel. No one answered the hotel door when deputies knocked on the door. Law enforcement used a key to the room to enter, but they needed to break open the locked bathroom door. Applicant and his girlfriend were found standing behind the drawn shower curtain in the bathtub, fully clothed. Tr. pp. 375-83; pp. 547-49.

A black glove found at the crime scene had gunshot residue consistent with being worn by a person firing a weapon. Tr. p. 517. DNA recovered from inside the glove matched

Applicant's DNA. Tr. pp. 747-48.

The pathologist performing the autopsy on the deceased victim testified he suffered multiple gunshot wounds to the head, chest, and abdomen. Only one injury, a shot to the head, had stippling, indicating the victim was shot at close range. The trajectory of that injury was from right to left, whereas other injuries on the victim indicated a bullet trajectory of left to right. Victim was shot at least six times. Tr. pp. 581-94.

Seven fired cartridges were recovered from the crime scene. Ballistics examination revealed they were all fired by the same gun. Tr. pp. 629-36. Six bullets were recovered from the deceased. They all were capable of being fired by the same gun as the spent cartridges found at the crime scene. Tr. pp. 634-36.

Applicant gave a statement to law enforcement after he was arrested in which he claimed he smoked marijuana with the victims at a recording studio in Columbia, won between five and seven hundred dollars playing cards, but then left and went to his girlfriend's house in Columbia and stayed there all day until he went to a bar in Columbia at night. When he was confronted with records showing his cell phone was used in Hopkins, Applicant claimed he left his cellphone at his father's residence in Hopkins. Tr. pp. 810-13.

Phone records and cell phone records show that Applicant made several phone calls from Hopkins around the time of Howell's 911 call and later in the evening. Tr. pp. 680-700. This contradicted Applicant's later alibi statement to law enforcement.

Applicant testified before the jury. He was no longer asserting alibi, he was now asserting self-defense. Applicant agreed that he was going to sell marijuana to Jones. He testified after providing marijuana to Jones, Jones demanded more. According to Applicant, Jones grabbed his neck and tried going through Applicant's pockets. Frazier started hitting

Applicant in the head. Jones started reaching down below the car seat. Applicant saw Jones put a gun underneath the seat before, so he thought Jones was going for the gun. Applicant started firing his weapon until it was empty. He did not know where Jones was, so he reloaded. He saw Frazier get up with a gun, so he fired. Frazier dropped the gun and fell to the ground. Applicant ran. Tr. pp. 858-880. Applicant admitted the glove found at the scene was his girlfriend's glove. He said he did not wear the glove that day, but put it on as a joke on a previous occasion. Tr. p. 903. Applicant claimed that when he ran from his father's residence, he did not realize law enforcement was looking for him. Tr. pp. 895-96.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

I. Ineffective Assistance of Counsel

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant

must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons: "Ineffective Assistance of Counsel[.] a. "Jurors and Prosecutor's witness were acquaintances[.]" Applicant did not amend the pleadings. However, Applicant moved at the conclusion of evidence to conform the pleadings to the evidence he presented over the State's objection.

This Court will now address each allegation of ineffective assistance of trial counsel below:

Failure to call witnesses/ retain an investigator/ retain experts

Applicant alleges counsel should have hired an investigator to speak with two fact witnesses, his girlfriend at the time and a friend. Neither witness testified at the PCR hearing. Further, Applicant alleges counsel should have retained an expert. No expert testimony was presented at the PCR hearing and it was unclear what experts should have been hired and how they would help the Applicant's case. Counsel testified that Applicant may have provided witnesses to him, but he has no recollection of that occurring. Counsel testified that the case essentially came down to a credibility contest between Applicant, who claimed self-defense, and the surviving victim, who claimed he and the other victim were robbed and Applicant was the aggressor. Counsel explained that the defense was not denying Applicant shot the people and he

did not think an accident reconstruction expert was likely to be helpful. He did not consider hiring any experts. Counsel testified that nearly all the time he spent with Applicant the week before the trial was focused on preparing Applicant to testify at trial.

This Court finds Applicant failed to meet his burden of proving counsel was ineffective. Applicant did not present any evidence to show what evidence the fact witnesses or expert witnesses would have been able to provide that would assist Applicant's case. Applicant further failed to show what benefits, if any, a private investigator would have provided or what beneficial evidence an investigator would have found. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to relief because no evidence was presented to show how additional preparation would have affected the result of trial); Bannister v. State, 333 S.C. 298, 302-03, 509 S.E.2d 807, 809 (1998) (allegation that counsel was ineffective for failing to call a witness must be supported by testimony of the favorable witness at the PCR hearing or the applicant must otherwise offer the testimony under the rules of evidence).

Failure to object to publishing Applicant's statement to law enforcement

Applicant alleges counsel should have renewed his objection to Investigator David Unger publishing Applicant's statement. Before the jury, Unger first testified as to what Applicant told him. He testified he wrote a statement based on their conversation, but Applicant did not want to sign the statement. Unger then published the statement to the jury, which was consistent with his prior testimony about his conversation with Applicant. Tr. pp. 810-17. Previously, during the pretrial Jackson v. Denno hearing,¹ Applicant admitted that most of the written statement was correct but testified he did not want to sign the statement because some of what he told Unger

¹ Jackson v. Denno, 378 U.S. 368 (1964)

was not in the written statement. March 4, 2013 transcript, pp. 111-116. During the Denno hearing, Counsel did not have an argument that the oral statement was not voluntarily made, but he objected to the written statement being admitted because it was unsigned. Mar. 4 tr. pp. 120-22. The trial court ruled that the physical statement itself could not be admitted, but that Investigator Unger would be able to publish the statement to the jury. Trial counsel seemed to agree with the ruling. Tr. pp. 10-13. Trial counsel did not renew any prior objections when the statement was published to the jury. Tr. p. 813.

This Court finds counsel was not ineffective. Counsel was successful in suppressing the physical exhibit. Further, Investigator Unger testified without having his memory refreshed by the statement as to the conversation. The statement itself was consistent with Investigator's testimony. This Court finds publishing the statement was not consequential to Applicant's defense, but was cumulative to Investigator Unger's testimony about the conversation and publication of the statement was not prejudicial to Applicant. This Court finds Applicant did not meet his burden of proving either prong of Strickland.

Applicant's testimony that he was incarcerated since arrested

When Applicant was cross-examined at trial, the prosecutor asked Applicant where he resided since his arrest and Applicant testified at the Alvin Glenn jail. Tr. pp. 884-85. Applicant alleges counsel should have objected. The prosecutor later asked Applicant about phone calls he made to his mother and girlfriend from jail. Applicant admitted he was aware that phone conversations from jail are recorded. He asked his mother to see if the deceased mother's victim would testify on his behalf. He admitted his girlfriend visited him in jail and tried to help him with his alibi. He told his mother he was at his girlfriend's when the shootings occurred. He admitted telling his mother he was not involved in the shooting. Tr. pp. 884-92. The prosecutor

asked, but Applicant denied, that during a phone conversation from jail Applicant told his girlfriend that "your basically my alibi." Tr. p. 893.

This Court finds the question about Applicant being in jail was proper and not unfairly prejudicial. First, a jury would expect it likely that a defendant in a murder and attempted murder prosecution would be subject to pretrial incarceration. Second, the question was probative to establish foundation for the series of cross-examination questions about Applicant's post-arrest conversations with his mother and girlfriend in which he pursued the abandoned alibi defense and gave statements inconsistent with the self-defense testimony he was now presenting at trial. This Court finds counsel's performance was not deficient for failing to object to the question and finds that Applicant was not prejudiced as the question was a proper foundation question and Applicant's admission to pretrial incarceration was unlikely to have affected the outcome of trial in light of the abundant evidence of his guilt.

Failure to object to closing argument

Applicant alleges counsel was ineffective for failing to object to the prosecutor's argument that Applicant "actually tried to come back multiple times, the State submits, to make sure that he finishes the job but he was unsuccessful." Tr. p. 967, lines 12-15. This Court finds that the comments reflect a reasonable inference from the evidence presented at trial and was not an improper argument. Frazier testified that Jones and him were both shot before he lost consciousness. He regained consciousness at some point and Applicant was next to him. He struggled with Applicant and was shot again. When Frazier managed to make it to a neighbor's house, Applicant appeared again in close proximity and Frazier was worried Applicant was going to get him. Physical evidence indicated that Jones received one shot at close range in a

trajectory going the opposite direction from the other shots. The State further theorized Frazier was not conscious when Applicant inflicted the close range shot on Jones.

Further, counsel made two objections on the basis that the prosecution was arguing facts not in evidence. The first time, the State agreed and made a correction sufficient for counsel to withdraw the objection. Tr. pp. 981-82. The second time counsel objected, the trial court gave the following instruction: "All right. Ladies and gentlemen, . . . the determination of the facts are in evidence solely for, you the jury, to decide based on your individual and collective memory in that regard." Tr. p. 989, lines 10-15.

The prosecution "may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony." State v. New, 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999). The solicitor's closing argument is permissible where it stays within the record and reasonable inferences to it. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002); State v. Condrey, 349 S.C. 184, 562 S.E.2d 320, 325 (Ct. App. 2002) ("A trial judge is allowed broad discretion in dealing with the range and propriety of closing argument to the jury.").

The United States Supreme Court observed:

[The prosecution's] arguments, like all closing arguments of counsel, are seldom carefully constructed in toto before the event; improvisation frequently results in syntax left imperfect and meaning less than crystal clear. While these general observations in no way justify prosecutorial misconduct, they do suggest that a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.

Donnelly v. DeChristoforo, 416 U.S. 637, 646-47, 94 S.Ct. 1868, 1873, 40 L.Ed.2d 431 (1974).

Appellate courts should be "careful and critical" in finding allegedly improper statements of counsel to be reversible error, and "[e]very case must necessarily depend upon its own particular circumstances." State v. Gilstrap, 205 S.C. 412, 415, 32 S.E.2d 163, 164 (1944).

Trial counsel testified he did not recall a strategic reason for not objecting. However, this Court finds the prosecution's argument is a reasonable inference from the evidence presented, and on the balance, the argument was not critical to the prosecution or unduly prejudicial to the defense. Ample evidence supports malice and the absence of self-defense, including the evidence of the number of shots Applicant fired, his conduct following the shooting, and his failed pursuit of an alibi defense before resorting to a self-defense claim at trial. Further, the trial court's subsequent instruction to the jury in response to counsel's later objection put the jury on notice that it needed to determine the facts based on its own collective memory of the evidence presented. This Court finds Applicant failed to prove either prong of Strickland and denies this allegation.

Juror issue

The only allegation actually contained in the application was a complaint that one of the jurors was acquainted with one of the witnesses. The parties chose twelve jurors and two alternates. During the course of trial, two jurors were excused because they realized they knew witnesses as the trial progressed. Then David Collins, a ballistics expert with the Richland County Sheriff's Department reported to the prosecution that he recognized a juror. Collins reported he went to high school with the juror. They both graduated in 1980. He reported he never had direct social interaction with the juror, but they had seen each other a number of times. Tr. pp. 556-59.

The trial court then questioned the juror. The juror admitted he recognized the name, but when the trial court indicated Collins was with Richland County, and he thought the Collins he knew worked for SLED. The juror advised that he went to high school with David Collins and he remembered Collins saying he worked for SLED. He advised the trial court he does not see Collins much. He told the trial court they both went to Cardinal Newman together. When he was advised that Collins used to work for SLED, but now works for Richland County, the juror apologized. The juror indicated he could be fair and impartial. The juror told the trial court he would have disclosed the relationship if he realized it was the same David Collins he knew. Tr. pp. 560-63.

Trial counsel moved to have the juror excused due to the relationship between the witness and the juror. Trial counsel noted that while the social action was limited, it spanned thirty years. Tr. p. 564-65. However, the trial court found that the juror did not intentionally conceal any information and indicated he could be fair and impartial. The trial court denied the motion and cited a number of cases in making his ruling.

If jurors give false or misleading answers during voir dire, the parties may mistakenly seat a juror who could have been struck through a preemptory challenge, challenged for cause, or excused by the court. State v. Gullede, 277 S.C. 368, 371, 287 S.E.2d 488, 490 (1982). If the juror's concealment was intentional, the challenging party is not required to show prejudice, the prejudice is inferred. However, if the nondisclosure is unintentional, the trial court may exercise its discretion to determine whether to proceed with the trial with the juror in place, replace the juror with an alternate, or declare a mistrial. State v. Coaxum, 410 S.C. 320, 328, 764 S.E.2d 242, 245-46 (2014). The trial court "should not grant a mistrial based on a juror's concealment of information unless absolutely necessary." Id. The denial of a new trial motion based on an

allegation that a juror concealed information during voir dire will be affirmed absent a prejudicial abuse of discretion. State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004).

The issue was presented as a direct appeal issue in the PCR application, and neither Applicant nor PCR counsel explained at the PCR hearing how counsel's performance was supposed to be ineffective. This Court finds counsel made the requisite motion and stated the grounds sufficiently. Obviously, it is beyond the purview of this Court to determine direct appeal issues. However, this Court believes the trial court acted within its discretion in denying the motion to excuse the juror. This Court notes that Collins was not a fact witness to the crime or involved directly in the investigation, but merely analyzed some of the State's evidence in the role of a ballistics expert. Therefore, his credibility and involvement were not central to the State's case. Further, no misconduct occurred as the juror thought the David Collins referenced was another David Collins and their relationship was not a close one. The juror indicated he could be fair and impartial, and by its ruling, the trial court obviously believed the juror. This Court finds counsel's performance was not deficient and Applicant was not prejudiced by any deficiency. This allegation is denied.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant the PCR application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

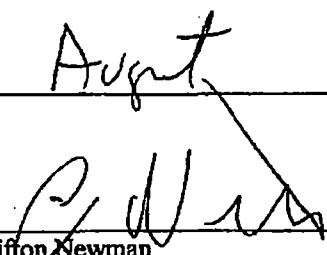
The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See

Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. This Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 9th day of August, 2019.


Clifton Newman
Presiding Judge
Fifth Judicial Circuit

Conway, South Carolina

WITNESSES

(S) Inv. David Unger - RCSD

ARREST WARRANT NUMBER

1902594

ACTION OF GRAND JURY

TRUE BILL

Jill Koenigs
Foreperson of Grand Jury
Date: **JUL 19 2012**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-40-02982

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2012

116

**THE STATE
vs.**

Jabriel Laprinice Singleton

**Indictment for
MURDER**

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Janetta W. M. Bude
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Jabriel Laprince Singleton did in Richland County, on or about
January 24, 2012, willfully, feloniously, and intentionally kill the victim,
Dashawn Jones, with malice aforethought, either express or implied, by
means of gunshot wound, and the victim did die as a proximate result
thereof on or about January 24, 2012 in Richland County, in violation of
Section 16-03-0010, S. C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. David Unger - RCSD

ARREST WARRANT NUMBER

1902595

ACTION OF GRAND JURY

TRUE BILL

Jill Koenig
Foreperson of Grand Jury
Date:

JUL 19 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-40-02986

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2012

116

**THE STATE
vs.**

Jabriel Laprinice Singleton

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029
CDR Code: 3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
JUL 19 2012
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Jabriel Laprince Singleton did in Richland County on or about
January 24, 2012, did with the intent to kill, attempt to kill JONATHAN
FRAZIER with malice aforethought, either expressed or implied, to wit:
defendant did shoot the victim multiple times. All in violation of § 16-3-29 of
the S.C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.


DAN JOHNSON, SOLICITOR

RECEIVED
CLERK OF COURT
JUL 20 2012
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATEAKA: Jabriel SingletonRace: B Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MurderIn violation of § 16-03-010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Kathy Carmichael 77690

Solicitor

SC Bar # _____

Defendant

Attorney for Defendant

SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 13-65-40-2986☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7(SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	_____

Clerk of Court/Deputy Clerk: Janette W. McBricker
Court Reporter: Holmes

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012 -GS- 40 - 2982AW#: 1902594Date of Offense: January 24, 2012S.C. Code §: 16-03-010CDR Code #: 0116

SENTENCE SHEET

Random Drug/Alcohol Testing ☐
Fine may be pd, in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or approved other counsel

\$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: JohnJudge Code: 2145Sentence Date: 8 March 13

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichlandJabriel Singleton

AKA:

Race: BSex: M

Age:

DOB: [REDACTED]SS#: [REDACTED]

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012 -GS- 40 - 2986A/W#: 1902595Date of Offense: January 24, 2012S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

TO: Attempted Murder ☒ CONVICTED OF or ☐ PLEADSIn violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser included Offense,☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kathryn Caraway77690

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation; which are

incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 13-65-40-2982☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION; ☐ Deferred ☐ Def. Waives Hearing. ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$14-1-211 (A)(2)(DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

\$47.12 (Public Def/Prob)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

\$90.7(SCCJA Surcharge)

3% to County (If paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter: NolmesJeanette M. M. BrickerRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$

\$

Other: Jeanette M. M. Bricker

C.C.C.P. & G.S.

RICHLAND COUNTY
SOUTH CAROLINA☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]Judge Code: 2143Sentence Date 8 March 13