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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT.

Certiorari to Greenville County

Perry H. Gravely, Circuit Court Judge

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APR - 9 2016

SC SUPREME COURT

BRANDON HEATH CLARK

PETITIONER,

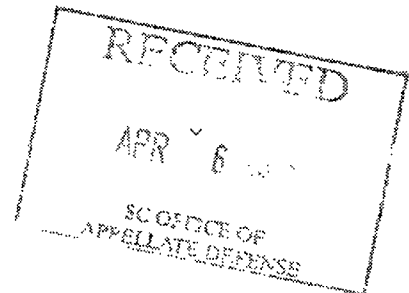
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001898

PETITION FOR WRIT OF CERTIORARI



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ISSUES PRESENTED

1. Did the PCR judge err in refusing to find trial counsel ineffective for failing to call Katye and Dustin Allison as witnesses to impeach the testimony of Josh Wood and David Murray about alleged conversations they had with Petitioner after the shooting?
2. Did the PCR judge err in refusing to find counsel ineffective for failing to object to the Judge's instruction to the jury that inferred malice may also arise when the deed is done with a deadly weapon when there was evidence in the record that would reduce the murder to involuntary manslaughter?

STATEMENT

In March of 2007, the Greenville County Grand Jury indicted Petitioner Clark for two counts of murder and two counts of possession of a weapon during the commission of a violent crime, indictments #2007-GS-23-2442, 2443. On November 2, 2009, Petitioner proceeded to jury trial before the Honorable Edward W. Miller. Scott Robinson represented Petitioner at trial. Bryna Seay prosecuted the case on behalf of the State. The jury found Petitioner guilty as charged. Judge Miller sentenced Petitioner to forty (40) years concurrent for each count of murder and five (5) years concurrent for each weapons charge. A timely notice of intent to appeal was filed and the direct appeal perfected. The South Carolina Court of Appeals affirmed the convictions and sentences. State v. Clark, Op. No. 2012-UP-549 (S.C.Ct.App. filed Oct. 10, 2012).

On March 7, 2013, Petitioner filed an application for post conviction relief. The State filed a return on October 23, 2013. On June 18, 2015, an evidentiary hearing was held before the Honorable Perry H. Gravely. In a written order signed July 30, 2015, Judge Gravely denied relief and dismissed the application. A timely notice of intent to appeal was served on September 5, 2015. This petition for writ of certiorari follows.

STATEMENT OF FACTS

On July 29, 2006, a crowd gathered to watch a fight between Cameron Wade and Joshua Wood. (App. p. 53, lines 4-17; p. 77, line 21 – p. 78, lines 1-8). Wood was angry with Wade because two weeks earlier the two were involved in a fight where Wood was hurt “pretty bad” and his pregnant girlfriend was knocked down. (App. p. 76, line 19 – p. 77, p. 78, lines 1-8). At trial Wood admitted that on the night of the scheduled second fight he was drinking and acting wild and out of control. (App. p. 78, lines 5-12). When asked what he meant, Wood testified, “I mean, I broke sticks, and acted – I was yelling, screaming, dancing around, and acting completely uncivilized, I guess.” (App. p. 78, lines 13-16).

Wood arrived at the scene with David Murray. (App. p. 82, lines 1-6). Wood testified that Wade arrived at the scene a bit later with Christopher Garland and four to five other cars. One guy got out of one of these other cars and Wood admitted to hitting that person with a stick. (App. p. 79, line 24 – p. 80, lines 1-12). Wood claimed that he heard gunshots after hitting the guy with the stick. (App. p. 80, lines 10-12). When asked where the shots appeared to be coming from Woods testified, “I heard a few shots behind me and then down on the road.” (App. p. 80, line 25 – p. 81, line 1). Wood testified that Petitioner was behind him and he saw Petitioner shoot into the air twice. (App. p. 81, lines 9-15). Wade and Garland were fatally shot while sitting in their car. Inside the car police found a nine millimeter handgun belonging to the deceased Garland. (App. p. 180, lines 6-24; p. 232, lines 4-20). Three casings fired from the nine millimeter handgun belonging to Garland were collected at the scene. (App. p. 247, lines 17-18)

Petitioner arrived at the scene with Christopher Allison and Jordan Mardis. At trial Allison testified as follows:

Q: Okay. What happened next?

A: Like I said, we got down -- we started heading down there and we heard the boy in the white hoodie say it was going to be a fair fight between Cameron and Josh.

Q: Right.

A: And then we saw the fire -- or gun -- muzzle fire, come above the hood of the car, the last car, the dark-colored Honda.

Q: One of the cars that was parked down there, one of the cars that came with Cameron Wade?

A: Yes.

Q: Okay.

A: We seen the muzzle fire and that's when Brandon shot his gun and we got in my car.

Q: What did -- did you see Brandon fire his gun?

A: Yeah, I see him fire it upwards.

Q: How many times did he shoot upwards?

A: About nine times.

Q: So it's your testimony he fired the gun in the air?

A: Yes, sir.

(App. p. 148, lines 4-23). Allison testified Petitioner's gun was a Smith and Wesson .40 caliber.

(App. p. 141, lines 16-17).

At trial the State and Petitioner entered into the following stipulation:

The defendant hereby stipulates or agrees that he was present at the scene at [address redacted] on July 29th, 2006. And that he fired his pistol nine times. He further stipulates or agrees that the nine .40 Caliber shell casings located at the scene are the results of his firing his pistol nine times.

(App. p. 166, lines 5-10). The .40 caliber shell casings were found at least 10 yards away from the car where Wade and Garland were shot. (App. p. 207, lines 7-11).

Allison testified that he, Petitioner and Mardis left after Petitioner fired the nine shots in the air. Importantly, Allison testified that Wade and Garland were alive when they left the scene. (App. p. 149, lines 10-25). "I remember looking through his car because the car in front of him had brake lights on. And I could see the two boys [Wade and Garland] look up when Josh Wade [Wood] run up the back of his car with an ax handle, I think it was, in his hand." (App. p. 149, lines 17-20).

Wood admitted that after shots were fired he threw a tire iron at the car and kicked in a rear window but he claimed that he thought the car belonged to the guy who he hit with a stick. (App. p. 82, line 13 – p. 83, lines 1-12). Wood admitted that he cut his leg when he kicked in the window of the car. (App. p. 95, lines 19-25). Wood claimed that he did not see Wade and Garland in the car. (App. p. 83, lines 1-7). Allison testified that he, Petitioner and Mardis left before Woods threw the tire iron and kicked in the window. (App. p. 150, lines 1-15). Murray confirmed that Petitioner, Allison and Mardis left before Wood threw the tire iron and kicked in the window of the car belonging to the deceased. (App. pp. 118-120).

The ballistic evidence showed that both a projectile retrieved from Garland's body and a projectile found in the car were consistent with being fired from a Smith and Wesson .40 caliber handgun. (App. pp. 245-251). While the two projectiles were consistent with one another, analysis as to whether they were fired by the same gun was inconclusive. (App. p. 251, lines 1-13). The firearm examiner was also unable to make any conclusions as to whether the gun that fired the nine casings found ten yards from the car was the same gun that fired the two recovered projectiles. (App. p. 256, lines 11-14).

After leaving the scene Christopher Allison, Petitioner and Mardis went to Dustin Allison's house, Christopher's brother. Dustin's wife Kayte was also at the house. (App. p. 150, lines 16-22; p. 143, lines 12-15). Wood, Murray and Timmy Brooks arrived at the Allison house about thirty minutes later. (App. p. 151, lines 6-15). Allison testified that Kayte would not allow Wood in the house because his leg was bleeding. (App. p. 151, lines 19-24). Wood admitted that his leg was bleeding when he arrived at the Allison house. (App. p. 98, line 21 v- p. 99, lines 1-13). Allison testified that he never saw Murray come in the house and talk with Petitioner. (App. p. 152, lines 1-8).

Murray claimed that while they were at the Allison house he overheard Petitioner say that Chris was supposed to throw Petitioner's gun in the river. (App. p. 115, lines 4-7). Wood claimed to have had a conversation with Petitioner at the Allison house. (App. p. 84, lines 10-16). Wood testified, "Well, when we got back he looked really scared and he had the gun in his hand and said, I think I shot them, I think I shot them. And I said, no, you didn't, you didn't shoot them, you shot in the air." (App. p. 84, lines 12-15). According to Wood Petitioner also said something about throwing the gun in the Saluda River. (App. p. 85, lines 1-4). The gun was never recovered. Petitioner did not present a defense.

ARGUMENTS

1. The PCR judge erred in refusing to find trial counsel ineffective for failing to call Kayte and Dustin Allison as witnesses to impeach the testimony of Josh Wood and David Murray about alleged conversations they had with Petitioner after the shooting.

During the PCR hearing Kayte Allison, Petitioner's cousin, testified that on the night of the shooting Petitioner, Christopher Allison, Kayte Allison's brother in law, and Jordan Martis¹ left the Allison house to attend a party. (App. p. 392, lines 4-7). Josh Wood told the three about the party earlier that afternoon. (App. p. 391, lines 17-22). Kayte testified that Petitioner, Christopher Allison, and Jordan Martis later returned to the Allison house. (App. p. 392, lines 8-23). Approximately forty five minutes later Wood knocked on the door of the Allison but Kayte testified that she would not allow Wood to come inside because he had blood running down his legs. (App. p. 393, line 3 – p. 394, lines 1-25). She testified that David Murray stayed in his truck and never came inside the house. (App. p. 393, line 10 – p. 394, lines 1-18). Kayte Allison also testified that Petitioner did not go outside to speak with either Wood or Murray. This is in contrast to the testimony of Wood and Murray at trial. At trial Wood testified, "Well, when we got back he [Petitioner] looked really scared and he had the gun in his hand and said, I think I shot them, I think I shot them. And I said, no, you didn't, you didn't shoot them, you shot in the air." (App. p. 84, lines 12-15). According to Wood Petitioner also said something about throwing the gun in the Saluda River. (App. p. 85, lines 1-4). At trial Murray claimed he overheard Petitioner say that Chris was supposed to throw Petitioner's gun in the river. (App. p. 115, lines 4-7).

Dustin Allison also testified at the PCR hearing. Dustin Allison testified that Wood and Murray arrived at the Allison house forty five minutes after his brother, Christopher Allison, the

¹ Referred to as Jordan Mardis in the trial transcript.

Petitioner and Martis returned from the party. (App. p. 402, line 9 – p. 403, lines 1-12). Dustin Allison testified that he did not see Petitioner with a gun. (App. p. 402, line 20 – p. 403, lines 1-5). Dustin Allison testified that Murray stayed on the front porch and never came inside the house. (App. p. 403, lines 21-22). Dustin Allison also testified that they would not allow Wood to come inside the house because he was bleeding. (App. p. 403, lines 13-21). Dustin Allison testified that Petitioner was upstairs putting a child back to sleep when Wood and Murray came to the house. (App. p. 404, lines 1-14).

Kayte Allison testified that she spoke with trial counsel and was subpoenaed to testify at trial but was never called as a witness. (App. p. 396, line 3 – p. 397, lines 1-4). Dustin Allison also testified that he spoke with trial counsel and was subpoenaed to testify at trial but was never called as a witness. (App. p. 408, line 19 – p. 409, 410, line 1).

Trial counsel did not recall issuing subpoenas for Kayte and Dustin Allison². (App. p. 355, line 15 – p. 356, lines 1-15). At the close of the evidentiary hearing PCR counsel argued:

If Mr. Robinson had called the Allison's to the stand, there would have been abundant evidence that those conversations between my client and Mr. Murray and Mr. Wood never could have taken place because those two never came into the house.

I believe that would have been very important, Judge, especially given the general questionable preparedness that counsel may have had in this trial. And I say that because within the first ten pages, one of counsel's arguments to the judge was that the State was not able to determine the caliber of the bullet. And within five lines, the State popped up and said "yes, we are."

Then, as we go further into this hearing, Judge, there's a general lack of preparedness as far as recollection about what witnesses were interviewed, what witnesses were subpoenaed. It seems from the Allison's testimony that both of them met with Mr. Robinson on a number of occasions at his office. And both were subpoenaed to come and testify in court. And they both showed up. I find it very hard to believe that they would not have come to court without a subpoena. No one

² It appears that on an earlier date a Judge ordered trial counsel to review the trial transcript and be prepared to testify. (App. pp. 344-345).

really wants to sit here for several days if they don't have to. So I think it's abundantly clear that they were subpoenaed and they just were never put on the stand.

(App. p. 436, line 11 – p. 437, lines 1-17).

In the order of dismissal the PCR judge wrote:

This Court finds the Applicant failed to meet his burden of proving trial counsel should have called witnesses to testify at trial. This Court finds the testimony of Katye and Dustin Allison would not have changed the outcome of the Applicant's trial. While these witnesses testified the Applicant did not have a gun when he arrived at their house after the party, this is irrelevant because the Applicant stipulated at trial that he had a gun at the party and fired nine times into the air. (Trial transcript, p. 11). While the Allisons could have testified about seeing Wood's bloody leg after the party, Wood and Chris Allison testified at trial about Wood's bloody leg. (Trial transcript, p. 99; p. 151). Further, Katye Allison testified only Wood exited the vehicle when it came to her house after the party, while Dustin Allison testified both Wood and Murray got out. This Court finds there is no reasonable probability that Katye and Dustin Allison's testimony would have changed the outcome of the trial. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

(App. p. 460)(footnote #3 omitted). The PCR judge erred. Trial counsel was ineffective in failing to call Katye and Dustin Allison as witnesses at trial to impeach Wood and Murray and show that they could not have had or overheard the alleged inculcating conversations with Petitioner they testified to at trial. There is a reasonable probability that if the Allisons had been called to testify at trial, the outcome of the trial would have been different.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under

this prong, “[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

Trial counsel was deficient in failing to call the Allison's to testify at trial. Petitioner was prejudiced by the deficient performance. Wood's testimony that Petitioner allegedly said, “I think I shot them, I think I shot them” was critical for the State's case because it is the only evidence indicating that Petitioner shot Wade and Garland instead of simply shooting into the air. The alleged statements about disposing of the gun in the river were particularly prejudicial given the fact that the firearms examiner was unable to make any conclusions as to whether Petitioner's .40 caliber gun that fired the nine casings found ten yards away from the car was the same gun that fired the two recovered projectiles resulting in the fatal shooting of Wade and Garland because the gun was never recovered. (App. p. 256, lines 2-14). The record does not support the PCR judge's finding that Petitioner suffered no prejudice from trial counsel's failure to call the Allison's to testify at trial.

2. The PCR judge erred in refusing to find counsel ineffective for failing to object to the Judge's instruction to the jury that inferred malice may also arise when the deed is done with a deadly weapon when there was evidence in the record that would reduce the murder to involuntary manslaughter.

During the instructions to the jury the trial judge stated, "Inferred malice may also arise when the deed is done with a deadly weapon." (App. p. 293, lines 22-23). Trial counsel did not object to the inferred malice charge. (App. p. 295, lines 15-17). In the application for post conviction relief Petitioner alleges that trial counsel was ineffective in failing to object to the inferred malice charge. (App. p. 323). During the PCR hearing trial counsel was asked about

State v. Belcher, 385 S.C. 597, 601, 685 S.E.2d 802, 804 (2009), decided one month prior to the trial in this case. (App. pp. 357-359). Trial counsel testified that he did not believe that he was aware of the case at the time of trial and could not recall the case at the time of the PCR hearing. (App. p. 358, lines 13-24).

In the order of dismissal the PCR judge wrote, "This Court finds Belcher is inapplicable in this case as there was no evidence presented at trial that would mitigate, reduce, excuse, or justify the murder for which a jury found the Applicant guilty. As such, trial counsel was not deficient in failing to object to this portion of the charge." (App. p. 462). The PCR judge erred.

In State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009), the South Carolina Supreme Court wrote:

Today we return to the rationale underlying Hopkins, Levelle and Jackson and hold that where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon. The permissive inference charge concerning the use of a

deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill).

(footnote #9 omitted). With the exception of the alleged statement "I think I shot them, I think I shot them" attributed to Petitioner by Wood and discussed above in issue one, the State's other evidence indicates that Petitioner shot nine times up in the air, not at anybody. There is also evidence that gunfire first came from the direction of where Wade and Garland's car was parked. (App. p. 148, lines 4-23). This evidence of shooting up in the air would reduce the homicide to involuntary manslaughter.

In State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) the South Carolina Court of Appeals wrote:

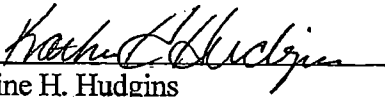
Involuntary manslaughter is (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009). "To constitute involuntary manslaughter, there must be a finding of criminal negligence, statutorily defined as a reckless disregard of the safety of others." State v. Crosby, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003). "Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating." State v. Pittman, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007). "A person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." Crosby, 355 S.C. at 52, 584 S.E.2d at 112. "The negligent handling of a loaded gun will support a charge of involuntary manslaughter." State v. Mekler, 379 S.C. 12, 15, 664 S.E.2d 477, 478 (2008).

The PCR judge found that there was no evidence presented at trial that would mitigate, reduce, excuse, or justify the murder. The finding is not supported by the record. The shooting in the air, under the facts of this case, would reduce the murder to involuntary manslaughter. Trial counsel was deficient for failing to object to the inferred malice charge. Petitioner was prejudiced by the deficient performance. The State did not present evidence of malice apart from the use of the deadly weapon and the error in charging inferred malice is not harmless.

CONCLUSION

Based on the above two arguments, this Court should grant the petition for writ of certiorari to allow further briefing on the issues.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of April, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Perry H. Gravely, Circuit Court Judge

BRANDON HEATH CLARK

PETITIONER,

V.

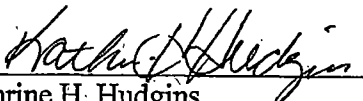
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001898

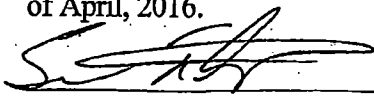
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 6th day of April, 2016.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day
of April, 2016.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

aps ✓

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2015-001898

Brandon Heath Clark, ...Petitioner,

v.

State of South Carolina, ...Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Did the PCR judge err in refusing to find trial counsel ineffective for failing to call Katye and Dustin Allison as witnesses to impeach the testimony of Josh Wood and David Murray about alleged conversations they had with Petitioner after the shooting?
2. Did the PCR judge err in refusing to find trial counsel ineffective for failing to object to the Judge's instruction to the jury that inferred malice may also arise when the deed is done with a deadly weapon when there was evidence in the record that would reduce the murder to involuntary manslaughter?

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Petitioner at the March 2007 term of General Sessions for two counts each of murder (2007-GS-23-2442, count 1 and -2443, count 1) and possession of a weapon during the commission of a violent crime (2007-GS-23-2442, count 2 and -2443, count 2). (App.pp.313-16). Scott D. Robinson, Esquire represented Petitioner.

After the State called the case to trial, Petitioner was found guilty. On November 4, 2009, the Honorable Edward W. Miller sentenced Petitioner to concurrent terms of forty (40) years for each count of murder and five (5) years on each count of possession of a weapon during the commission of a violent crime. (App.p.311; pp.317-20).

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense represented Petitioner on appeal. The Court of Appeals affirmed Petitioner's convictions and sentences. State v. Clark, Op. No. 2012-UP-549 (S.C. Ct. App. filed Oct. 10, 2012). The remittitur was sent on October 26, 2012.

Petitioner filed an application for post-conviction relief (PCR) on March 7, 2013 (2013-CP-23-1325) and an amendment on December 16, 2014. (App.pp.321-26; p.332). A hearing was held at the Greenville County Courthouse on June 18, 2015. (App.pp.333-447). Petitioner was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office represented Respondent. The Honorable Perry H. Gravely denied relief in an order filed August 6, 2015. (App.pp.456-64).

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC.

ARGUMENT

I. The PCR judge did not err in finding Petitioner failed to meet his burden of proving trial counsel was deficient in not calling Katye and Dustin Allison as witnesses.

Petitioner argues trial counsel was deficient in not calling Katye and Dustin Allison as witnesses at trial for the purpose of impeaching State witnesses about conversations with Petitioner after the shooting. (Pet. Cert., pp.8-11). This argument is without merit.

A.

The Party

On July 29, 2006, a party was held at Steven Watson’s house. (App.p.51; p.65; p.77; p.104; p.111; p.138). Several witnesses testified Cameron Wade¹ and Joshua Wood were going to fight that evening (and had already been involved in an altercation two weeks prior). (App.p.52; p.58; pp.65-66; pp.76-78; pp.87-88; p.104; pp.111-12). Witnesses provided different figures when asked how many people were at the party and law enforcement was told there were between twenty and 200 people present. (App.p.53; p.66; p.108; p.139; p.239).

Tiffany Saltz saw Petitioner with a gun at the party that evening and that “he just seemed

¹ Wade was one of the murder victims. The other victim was Christopher Garland.

like something was aggravating him. He was just kind of ill, you know.” (App.pp.104-05; p.107). Saltz did not see anyone else with a gun and did not witness the shooting. (App.p.107).

Wood arrived at the party with David Murray. (App.p.82; p.87). Wood admitted he was acting “ignorant” at the party and said “[y]ou know, I was drinking. I was acting wild and out of control.” (App.p.78). Wood stated he did not have a gun and did not see anyone with a gun that night. (App.p.79; p.85). Several witnesses indicated Wood was acting wild that evening but none testified they saw him with a gun. (App.p.53; p.66; p.112).

Murray confirmed he went to the party with Wood and that he understood Wood and Wade would fight that night. (App.p.111). Murray said that, when the victims arrived, “a bunch of people start running down there and they started running up there and it just got pretty crazy.” (App.p.112). Murray did not see anyone with a gun. (App.p.112).

The Shooting

Christopher Allison went to the party with Petitioner and Jordan Mardis. (App.p.139; p.143). Allison heard a gunshot and saw a shot being fired over the roof of a dark colored Honda. (App.p.141; p.148). In response, Allison said Petitioner fired his .40 caliber Smith and Wesson handgun approximately nine times in the air. (App.p.141; p.148). After Petitioner fired the shots, the two ran to Allison’s car with Mardis and Petitioner drove to Allison’s brother’s house. (App.pp.141-42; pp.148-50).

Murray heard gunshots but did not see who fired them.² (App.p.113). Murray and Wood started to leave. (App.p.82). Wood then got out of the truck, picked up a tire iron from the bed

² Two other witnesses testified they had not seen anyone with guns that night and that, while they heard gunshots, they did not see who was shooting. (App.pp.54-55; pp.68-69).

of the truck, and threw it at the victims' vehicle. (App.p.82; p.113). After they left, Murray and Wood went to Allison's brother's house and met up with Mardis, Allison and his brother Dustin, Katye Crawford, and Petitioner. (App.p.84; p.114). Murray recalled Petitioner said Christopher Allison was supposed to throw his gun in the river. (App.p.115). Murray did not see Petitioner with a gun but overheard that Petitioner believed "he had shot in the air." (App.p.115).

Wood saw Petitioner fire his gun twice into the air, but did not see what happened after that. (App.p.81). Wood spoke with Petitioner later at Allison's brother's house. (App.p.84). Wood stated, "[w]ell, when we got back [Petitioner] looked really scared and he had the gun in his hand and said, I think I shot them, I think I shot them. And I said, no, you didn't, you didn't shoot them, you shot into the air." (App.p.84). Wood said Petitioner indicated he was going to throw the gun in the Saluda River. (App.p.85).

The Physical Evidence

Each of the two victims was killed by a single gunshot wound. (App.p.170; pp.172-73). Nine .40 caliber shell casings were found 10-12 yards from the victims' vehicle. (App.pp.189-90; pp.204-09; p.233; p.238). The forensic firearms examiner stated these casings were all the same caliber of .40 caliber Smith and Wesson and fired from the same firearm. (App.pp.251-52; p.255). The forensic firearms examiner could not conclude the casings were fired from the same handgun as the projectile retrieved from one of the victim's bodies because there was no firearm for comparison. (App.pp.255-56). At trial, the parties stipulated Petitioner was present at the party on the night in question and fired his handgun nine times, which accounted for the nine .40 caliber casings recovered from the scene. (App.p.166).

B.

At the PCR hearing, Petitioner stated he had meetings with trial counsel to discuss his case and review discovery materials. (App.pp.414-15). Petitioner stated he wanted trial counsel to interview Katye and Dustin Allison and that they did speak to him about what they had seen and heard. (App.p.419). Petitioner stated trial counsel subpoenaed Katye and Dustin Allison but did not call them as witnesses at trial. (App.pp.420-21). Petitioner stated the jury wanted to re-hear testimony from Chris Allison and Josh Wood and he believed testimony from Katye and Dustin Allison "could have helped me out." (App.pp.425-26).

Katye Allison (hereinafter "Katye") stated she was married to Dustin Allison (Christopher Allison's brother) and that they were at their home on the night of the shooting. (App.pp.390-91; p.397). Katye is Petitioner's cousin. (App.p.391). Katye stated Petitioner, Christopher Allison, and Jordan Mardis all came to her house after the party and that Wood and Murray arrived approximately 45 minutes later. (App.pp.392-93). Katye stated Murray stayed in the truck but Wood got out and knocked on her door. (App.pp.393-94). Katye stated she did not let Wood inside, however, because he had "blood running all down his legs." (App.p.394). Katye stated neither Wood nor Murray entered her home and that – to her knowledge – Petitioner did not go outside to speak to them. (App.p.394). Katye said Petitioner did not have any weapons with him. (App.p.395). Katye said she spoke to trial counsel and told him about seeing Wood after the party. (App.p.396).

Dustin Allison (hereinafter "Dustin") confirmed he was with Katye at their home on the night of the shooting. (App.p.401). Dustin stated Petitioner and Christopher Allison came to the house and Wood and Murray arrived 45 minutes later. (App.pp.402-03). Dustin stated Murray

sat on his front porch and they would not let Wood into the house because his leg was bleeding. (App.p.403; pp.411-12). Dustin stated he did not see Petitioner go outside to speak to Wood or Murray. (App.pp.403-04). Dustin said he spoke to trial counsel about what he saw and heard at his house that night. (App.p.408).

Trial counsel testified he did not have notes from interviews with either Katye or Dustin Allison. (App.pp.355-56).

In denying Petitioner's application for post-conviction relief, the PCR judge found Petitioner "failed to meet his burden of proving trial counsel should have called witnesses to testify at trial." The PCR judge found "there is no reasonable probability that Katye and Dustin Allison's testimony would have changed the outcome of the trial." (App.p.460).

C.

For an applicant to be granted PCR as a result of ineffective assistance of trial 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. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. at 690, 104 S. Ct. at 2066. In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

D.

The PCR judge did not err in finding Petitioner failed to meet his burden of proving both that trial counsel erred in not calling Katye and Dustin Allison as witnesses and that he was prejudiced as a result. Petitioner contends testimony from Katye and Dustin could have assisted in impeaching State witnesses' testimony about conversations with Petitioner after the shooting. This contention is not supported by the record.

Petitioner failed to meet his burden of proving trial counsel's performance was deficient because it is clear trial counsel made a strategic decision in not presenting a defense case at trial. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). Trial counsel testified a decision was made for Petitioner not to testify at trial because "I didn't believe the State put up enough evidence in this matter for the jury to convict him of this crime." (App.p.362). Trial counsel testified he believed "the State had not proved their case beyond a reasonable doubt to the jury" and that "conflicting testimony" came out at trial. (App.p.368). Petitioner stated trial counsel discussed the "pros and cons of presenting a defense and not presenting." (App.p.418). Petitioner stated trial counsel did not want to call witnesses or present a defense but Petitioner could not recall why. (App.pp.421-22; pp.429-30). Based upon this testimony – and a review of the record – it is apparent that trial counsel's decision not to call Katye or Dustin Allison as defense witnesses was part of his trial strategy to refrain from presenting a defense case in order to have the final closing argument. A strategic or tactical decision does not have to be articulated by counsel on the record; counsel does not have to personally identify his or her thinking. It is enough that the record show a basis

for strategy, not that counsel announce that strategy on the record. Wood v. Allen, 558 U.S. 290, 130 S. Ct. 841 (2010). Trial counsel testified he had pointed out inconsistencies in witnesses' testimony and did not believe the State had met its burden of proof. As such, trial counsel decided not to present a defense case. It is clear from this testimony (and the record) that this a strategic decision to retain the final closing argument to the jury. Petitioner cannot rebut the presumption that trial counsel rendered adequate assistance and trial counsel cannot be deemed ineffective for choosing not to call Katye or Dustin as defense witnesses.

Regardless, Petitioner also failed to meet his burden of proving he suffered prejudice as the result of trial counsel's performance. Testimony from Katye and Dustin would not have changed the outcome of Petitioner's trial. One of the key points in their testimony at the PCR hearing was that Katye and Dustin had seen Wood with blood on his leg after the shooting. (App.p.394; p.403; pp.411-12). Both Christopher Allison and Wood testified at trial, however, about this fact. (App.pp.96-97; p.99; p.151). As such, the absence of additional testimony on this point is not prejudicial as it would have been merely cumulative to the trial testimony. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) ("We previously have held where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward.") (citations omitted). One of the other points Petitioner attempted to argue – based on Katye's and Dustin's testimony – was that these witnesses could have rebutted trial testimony that Petitioner spoke to Wood at their house after the shooting. At trial, Murray testified Petitioner said he shot his firearm into the air and Wood testified Petitioner said "I think I shot them." (App.p.84; p.115). Katye and Dustin stated that – to their knowledge – Petitioner never came out of their house to

speak to Murry and Wood. (App.p.394; pp.403-04). Further, testimony from the Allisons would not have assisted Petitioner's defense because Katye and Dustin contradicted each other on a very important point. Katye stated Murray stayed in the truck but Dustin stated both Murray and Wood got out of the truck. (App.pp.393-94; p.403). Based upon the content of Katye's and Dustin's purported trial testimony, Petitioner cannot demonstrate their testimony would have changed the outcome of his case. See id.

E.

Accordingly, Petitioner failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Petitioner also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. As Petitioner failed to meet his burden of proving ineffective assistance of trial counsel on this issue, the PCR judge did not err in denying the PCR application. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.").

II. The PCR judge did not err in finding Petitioner failed to meet his burden of proving trial counsel was deficient in failing to object to a jury instruction regarding inferred malice.

Petitioner argues trial counsel was deficient in failing to object to a jury instruction that referred to inferred malice because there was evidence in the record that would support involuntary manslaughter. (Pet. Cert., pp.12-13). This argument is without merit.

After advising Petitioner of his right to testify, there was a charge conference. Neither party requested jury charges of either involuntary or voluntary manslaughter. (App.pp.260-64). The following malice instruction was charged to the jury:

Therefore, there must be a combination of the previous evil intent and the act. Malice aforethought may be expressed or inferred. These terms, expressed and inferred do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved. Expressed malice is shown when a person speaks words which express hatred or ill-will toward another or when the person is prepared beforehand to do the act which was later accomplished. Malice may be inferred from conduct showing a total disregard from human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. And whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

(App.p.293).

At the PCR hearing, Petitioner stated there was a jury charge regarding an inference of malice and trial counsel did not object. (App.p.422). Trial counsel stated he did not object to the malice charge. (App.p.359).

In denying Petitioner's application for post-conviction relief, the PCR judge found Petitioner "failed to meet his burden of proving trial counsel should have objected to the jury charge regarding an inference of malice." The PCR judge found "[State v.] Belcher³ is inapplicable in this case as there was no evidence presented at trial that would mitigate, reduce, excuse, or justify the murder for which a jury found [Petitioner] guilty. As such, trial counsel was not deficient in failing to object to this portion of the jury charge." (App.pp.461-62).

The PCR judge did not err in finding Petitioner failed to meet his burden of proving both that trial counsel was deficient in not objecting to the malice instruction in this case and that he was prejudiced as a result. Petitioner bases his argument upon the holding in State v. Belcher. In Belcher, this Court held "the 'use of a deadly weapon' implied malice instruction had no place in

³ 385 S.C. 597, 685 S.E.2d 802 (2009).

a murder . . . prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing.” Belcher, 385 S.C. at 610, 685 S.E.2d at 809. The Court held further “the permissive inference charge concerning the use of a deadly weapon remains a correct statement under the law where the only issue presented to the jury is whether the defendant has committed murder.” Id. at 612, 685 S.E.2d at 810.

It was not incumbent upon trial counsel to have objected to the malice instruction in Petitioner’s case because the prohibition of the charge as explained in Belcher was not applicable. As stated supra, the permissive inference charge is still properly charged “where the only issue presented to the jury is whether the defendant has committed murder.” Id. That is precisely the case here. Christopher Allison, who was with Petitioner on the night in question, testified he saw a shot fired and that Petitioner fired in the air several times in response. (App.p.141; p.148). Petitioner stipulated to firing his handgun nine times – leaving behind the nine .40 caliber casings recovered at the scene that had all been fired from the same weapon. (App.p.166; pp.251-52; p.255). The trial judge did not charge the jury with involuntary manslaughter, voluntary manslaughter, the defense of accident, or self-defense. Rather, the jury solely considered whether or not Petitioner was guilty or not guilty of murder. As such, the malice charge in Petitioner’s case was proper. While trial counsel attempted to impeach the credibility of the State’s witnesses and make the implication that Wood was the actual perpetrator, the jury weighed the evidence and determined Petitioner was guilty of murder. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) (“The credibility of witnesses is for the triers of fact.”); see also Bruno v. State, 347 S.C. 446, 556 S.E.2d 393 (2001) (noting that, by its verdict, the jury clearly rejected the defendant’s account of what transpired).

As there was no need for an objection to the malice charge in this case, any purported error in conveying the malice charge was harmless.

Accordingly, Petitioner failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Petitioner also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. As Petitioner failed to meet his burden of proving ineffective assistance of trial counsel on this issue, the PCR judge did not err in denying the PCR application. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issues discussed above.

Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

August 22, 2016

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2015-001898

Brandon Heath Clark, ... Petitioner,

v.

State of South Carolina, ... Respondent.

CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same in inter-agency mail and addressed to:

Kathrine H. Hudgins, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served. This 22nd day of August, 2016.


KAREN C. RATIGAN
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ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

Brandon Heath Clark, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001898

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

FOR THE COURT

BY Jay A. Kilday
CLERK

Columbia, South Carolina

cc:

Kathrine Haggard Hudgins, Esquire
DeShawn Herman Mitchell, Esquire
Brandon Heath Clark, #336351
The Honorable Perry H. Gravely

RECEIVED

JUN 22 2018

APPELLATE DEFENSE

FILED

June 22, 2018
R7

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

BRANDON HEATH CLARK

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-001898

BRIEF OF PETITIONER

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ISSUES PRESENTED

1. Did the PCR judge err in refusing to find trial counsel ineffective for failing to call Kayte and Dustin Allison as witnesses to impeach the testimony of Josh Wood and David Murray about alleged conversations they had with Petitioner after the shooting?
2. Did the PCR judge err in refusing to find counsel ineffective for failing to object to the Judge's instruction to the jury that inferred malice may also arise when the deed is done with a deadly weapon when there was evidence in the record that would reduce the murder to involuntary manslaughter?

STATEMENT

In March of 2007, the Greenville County Grand Jury indicted Petitioner Clark for two counts of murder and two counts of possession of a weapon during the commission of a violent crime, indictments #2007-GS-23-2442, 2443. On November 2, 2009, Petitioner proceeded to jury trial before the Honorable Edward W. Miller. Scott Robinson represented Petitioner at trial. Bryna Seay prosecuted the case on behalf of the State. The jury found Petitioner guilty as charged. Judge Miller sentenced Petitioner to forty (40) years concurrent for each count of murder and five (5) years concurrent for each weapons charge. A timely notice of intent to appeal was filed and the direct appeal perfected. The South Carolina Court of Appeals affirmed the convictions and sentences. State v. Clark, Op. No. 2012-UP-549 (S.C.Ct.App. filed Oct. 10, 2012).

On March 7, 2013, Petitioner filed an application for post-conviction relief. The State filed a return on October 23, 2013. On June 18, 2015, an evidentiary hearing was held before the Honorable Perry H. Gravely. In a written order signed July 30, 2015, Judge Gravely denied relief and dismissed the application. A timely notice of intent to appeal was served on September 5, 2015. The petition for writ of certiorari was filed on April 6, 2016. The return was filed on August 22, 2016. On June 22, 2018, the South Carolina Court of Appeals granted the petition for writ of certiorari. This brief of petitioner follows.

STANDARD OF REVIEW

Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). We review questions of law de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014)). Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018).

STATEMENT OF FACTS

On July 29, 2006, a crowd gathered to watch a fight between Cameron Wade and Joshua Wood. (App. p. 53, lines 4-17; p. 77, line 21 – p. 78, lines 1-8). Wood was angry with Wade because two weeks earlier the two were involved in a fight where Wood was hurt “pretty bad” and his pregnant girlfriend was knocked down. (App. p. 76, line 19 – p. 77, p. 78, lines 1-8). At trial Wood admitted that on the night of the scheduled second fight he was drinking and acting wild and out of control. (App. p. 78, lines 5-12). When asked what he meant, Wood testified, “I mean, I broke sticks; and acted – I was yelling, screaming, dancing around, and acting completely uncivilized, I guess.” (App. p. 78, lines 13-16).

Wood arrived at the scene with David Murray. (App. p. 82, lines 1-6). Wood testified that Wade arrived at the scene a bit later with Christopher Garland and four to five other cars. One guy got out of one of these other cars and Wood admitted to hitting that person with a stick. (App. p. 79, line 24 – p. 80, lines 1-12). Wood claimed that he heard gunshots after hitting the guy with the stick. (App. p. 80, lines 10-12). When asked where the shots appeared to be coming from Woods testified, “I heard a few shots behind me and then down on the road.” (App. p. 80, line 25 – p. 81, line 1). Wood testified that Petitioner was behind him and he saw Petitioner shoot into the air twice. (App. p. 81, lines 9-15). Wade and Garland were fatally shot while sitting in their car. Inside the car police found a nine millimeter handgun belonging to the deceased Garland. (App. p. 180, lines 6-24; p. 232, lines 4-20). Three casings fired from the nine millimeter handgun belonging to Garland were collected at the scene. (App. p. 247, lines 17-18)

Petitioner arrived at the scene with Christopher Allison and Jordan Mardis. At trial Allison testified as follows:

Q: Okay. What happened next?

A: Like I said, we got down -- we started heading down there and we heard the boy in the white hoodie say it was going to be a fair fight between Cameron and Josh.

Q: Right.

A: And then we saw the fire -- or gun -- muzzle fire, come above the hood of the car, the last car, the dark-colored Honda.

Q: One of the cars that was parked down there, one of the cars that came with Cameron Wade?

A: Yes.

Q: Okay.

A: We seen the muzzle fire and that's when Brandon shot his gun and we got in my car.

Q: What did -- did you see Brandon fire his gun?

A: Yeah, I see him fire it upwards.

Q: How many times did he shoot upwards?

A: About nine times.

Q: So it's your testimony he fired the gun in the air?

A: Yes, sir.

(App. p. 148, lines 4-23). Allison testified Petitioner's gun was a Smith and Wesson .40 caliber.

(App. p. 141, lines 16-17).

At trial the State and Petitioner entered into the following stipulation:

The defendant hereby stipulates or agrees that he was present at the scene at [address redacted] on July 29th, 2006. And that he fired his pistol nine times. He further stipulates or agrees that the nine .40 Caliber shell casings located at the scene are the results of his firing his pistol nine times.

(App. p. 166, lines 5-10). The .40 caliber shell casings were found at least 10 yards away from the car where Wade and Garland were shot. (App. p. 207, lines 7-11).

Allison testified that he, Petitioner and Mardis left after Petitioner fired the nine shots in the air. Importantly, Allison testified that Wade and Garland were alive when they left the scene. (App. p. 149, lines 10-25). "I remember looking through his car because the car in front of him had brake lights on. And I could see the two boys [Wade and Garland] look up when Josh Wade [Wood] run up the back of his car with an ax handle, I think it was, in his hand." (App. p. 149, lines 17-20).

Wood admitted that after shots were fired he threw a tire iron at the car and kicked in a rear window but he claimed that he thought the car belonged to the guy who he hit with a stick. (App. p. 82, line 13 – p. 83, lines 1-12). Wood admitted that he cut his leg when he kicked in the window of the car. (App. p. 95, lines 19-25). Wood claimed that he did not see Wade and Garland in the car. (App. p. 83, lines 1-7). Allison testified that he, Petitioner and Mardis left before Woods threw the tire iron and kicked in the window. (App. p. 150, lines 1-15). Murray confirmed that Petitioner, Allison and Mardis left before Wood threw the tire iron and kicked in the window of the car belonging to the deceased. (App. pp. 118-120).

The ballistic evidence showed that both a projectile retrieved from Garland's body and a projectile found in the car were consistent with being fired from a Smith and Wesson .40 caliber handgun. (App. pp. 245-251). While the two projectiles were consistent with one another, analysis as to whether they were fired by the same gun was inconclusive. (App. p. 251, lines 1-13). The firearm examiner was also unable to make any conclusions as to whether the gun that fired the nine casings found ten yards from the car was the same gun that fired the two recovered projectiles. (App. p. 256, lines 11-14).

After leaving the scene Christopher Allison, Petitioner and Mardis went to Dustin Allison's house, Christopher's brother. Dustin's wife Kayte was also at the house. (App. p. 150, lines 16-22;

p. 143, lines 12-15). Wood, Murray and Timmy Brooks arrived at the Allison house about thirty minutes later. (App. p. 151, lines 6-15). Allison testified that Kayte would not allow Wood in the house because his leg was bleeding. (App. p. 151, lines 19-24). Wood admitted that his leg was bleeding when he arrived at the Allison house. (App. p. 98, line 21 v- p. 99, lines 1-13). Allison testified that he never saw Murray come in the house and talk with Petitioner. (App. p. 152, lines 1-8).

Murray claimed that while they were at the Allison house he overheard Petitioner say that Chris was supposed to throw Petitioner's gun in the river. (App. p. 115, lines 4-7). Wood claimed to have had a conversation with Petitioner at the Allison house. (App. p. 84, lines 10-16). Wood testified, "Well, when we got back he looked really scared and he had the gun in his hand and said, I think I shot them, I think I shot them. And I said, no, you didn't, you didn't shoot them, you shot in the air." (App. p. 84, lines 12-15). According to Wood Petitioner also said something about throwing the gun in the Saluda River. (App. p. 85, lines 1-4). The gun was never recovered. Petitioner did not present a defense.

ARGUMENTS

- 1. The PCR judge erred in refusing to find trial counsel ineffective for failing to call Kayte and Dustin Allison as witnesses to impeach the testimony of Josh Wood and David Murray about alleged conversations they had with Petitioner after the shooting.**

During the PCR hearing Kayte Allison, Petitioner's cousin, testified that on the night of the shooting Petitioner, Christopher Allison, Kayte Allison's brother in law, and Jordan Mardis left the Allison house to attend a party. (App. p. 392, lines 4-7). Josh Wood told the three about the party earlier that afternoon. (App. p. 391, lines 17-22). Kayte testified that Petitioner, Christopher Allison, and Jordan Mardis later returned to the Allison house. (App. p. 392, lines 8-23). Approximately forty-five minutes later Wood knocked on the door of the Allison home but Kayte testified that she would not allow Wood to come inside because he had blood running down his legs. (App. p. 393, line 3 – p. 394, lines 1-25). She testified that David Murray stayed in his truck and never came inside the house. (App. p. 393, line 10 – p. 394, lines 1-18). Kayte Allison also testified that Petitioner did not go outside to speak with either Wood or Murray. This is in contrast to the testimony of Wood and Murray at trial. At trial Wood testified, "Well, when we got back he [Petitioner] looked really scared and he had the gun in his hand and said, I think I shot them, I think I shot them. And I said, no, you didn't, you didn't shoot them, you shot in the air." (App. p. 84, lines 12-15). According to Wood Petitioner also said something about throwing the gun in the Saluda River. (App. p. 85, lines 1-4). At trial Murray claimed he overheard Petitioner say that Chris was supposed to throw Petitioner's gun in the river. (App. p. 115, lines 4-7).

Dustin Allison, Kayte's former husband and Christopher Allison's brother, also testified at the PCR hearing. Dustin Allison testified that Wood and Murray arrived at the Allison house forty five minutes after his brother, Christopher Allison, the Petitioner and Mardis returned from the party. (App. p. 402, line 9 – p. 403, lines 1-12). Dustin Allison testified that he did not see

Petitioner with a gun. (App. p. 402, line 20 – p. 403, lines 1-5). Dustin Allison testified that Murray stayed on the front porch and never came inside the house. (App. p. 403, lines 21-22). Dustin Allison also testified that they would not allow Wood to come inside the house because he was bleeding. (App. p. 403, lines 13-21). Dustin Allison testified that Petitioner was upstairs putting a child back to sleep when Wood and Murray came to the house. (App. p. 404, lines 1-14).

Kayte Allison testified that she spoke with trial counsel and was subpoenaed to testify at trial but was never called as a witness. (App. p. 396, line 3 – p. 397, lines 1-4). Dustin Allison also testified that he spoke with trial counsel and was subpoenaed to testify at trial but was never called as a witness. (App. p. 408, line 19 – p. 409, 410, line 1).

Trial counsel did not recall issuing subpoenas for Kayte and Dustin Allison¹. (App. p. 355, line 15 – p. 356, lines 1-15). Trial counsel testified that he decided not to call witnesses and present a defense because “I believed that the State had not proved their case beyond a reasonable doubt to the jury.” (App. p. 368, lines 6-8). Trial counsel went on to testify, “And they couldn’t really put – they didn’t have nothing that would indicate that the grooves or the exact bullets were the same bullets, even the same caliber or the gun that was fired.” (App. p. 368, lines 18-23). Earlier in the PCR hearing trial counsel testified that Petitioner’s gun did not match the bullets that killed the two men. “I think in the last part of the transcript, at some point, Mr. Armstrong stated that the shell casings did not match – that shot these two folks, whatever, did not match Brandon’s gun.” (App. p. 341, line 24 – p. 342, lines 1-3). Trial counsel also testified, “But we had a bullet that the casing didn’t match, the caliber and so forth.” (App. p. 342, lines 20-22). Trial counsel continued to testify that the bullets did not match Petitioner’s gun stating, “But the defense, as I said before, was that the bullets that killed these guys didn’t come from Brandon’s gun.” (App. p. 343, lines 3-6). Finally,

¹ It appears that on an earlier date a Judge ordered trial counsel to review the trial transcript and be prepared to testify. (App. pp. 344-345).

trial counsel testified, “And if they could pinpoint – if Brandon had shot these guys, we would have had nothing – this case wouldn’t have gone to trial, but the bullets did not match.” (App. p. 343, lines 22-25).

Although trial counsel testified at the PCR hearing that the bullets did not match Petitioner’s gun, the ballistic evidence showed that both a projectile retrieved from Garland’s body and a projectile found in the car were consistent with being fired from a Smith and Wesson .40 caliber handgun. (App. pp. 245-251). While the two projectiles were consistent with one another, analysis as to whether they were fired by the same gun was inconclusive. (App. p. 251, lines 1-13). The firearm examiner was also unable to make any conclusions as to whether the gun that fired the nine casings found ten yards from the car was the same gun that fired the two recovered projectiles. (App. p. 256, lines 11-14). Petitioner had a Smith and Wesson .40 caliber gun. (App. p. 141, lines 16-17). In a stipulation Petitioner admitted that nine .40 caliber shell casings located about ten yards from the car were the result of him firing his gun. (App. p. 166, lines 5-10; p. 207, lines 7-11). Although the ballistics evidence was inconclusive, the projectiles in question were at least consistent with being fired from a Smith and Wesson .40 caliber gun, the same type of gun Petitioner admitted to firing. In claiming that he did not present a defense because the State had not proved its case, trial counsel failed to recognize that the ballistic evidence did not exclude the possibility that the bullets in question came from Petitioner’s gun. The testimony from the Allison was critical because the ballistic evidence could not exclude Petitioner

At trial, during a pre-trial hearing, trial counsel told the judge, “James Armstrong does not know the type of bullet that killed the individual. He did recover the bullet from the other individual in this case but they do not have, as this other case talks about, any idea what type of bullet killed these individuals.” (App. p. 10, lines 5-10). The State corrected the misstatement stating, “James

Armstrong, it's my understanding from his report and from speaking with him, will testify that that was a .40 caliber bullet. So he does know the type of bullet that it is." (App. p. 11, line 24 – p. 12, lines 1-2). If trial counsel had not underestimated the strength of the State's ballistics evidence, although inconclusive, it would have been clear that the Allison testimony was necessary. As argued by PCR counsel:

Judge, this is a case that's no direct evidence that connected the killing to Mr. Brandon [Petitioner Brandon Clark]. There are also no witnesses that saw Mr. Clark pointing a gun at the victims and shoot them. There's certainly evidence that Mr. Clark shot into the air, and I think that's from his own admission. But this was certainly not a slam dunk for the State, Judge.

And it seems like this case was right down the middle and probably needed every ounce of testimony and evidence to push it over to the not guilty realm that – it needed as much evidence as it could get to help it get over there, Judge, which is why I believe that the Allison's testimony was so important.

(App. p. 435, lines 3-19).

The testimony from the Allisons that neither Murray nor Wood came into the house or came in contact with Petitioner after leaving the party was critical to refute the testimony from Murray and Wood that Petitioner allegedly stated that Chris Allison was supposed to have thrown the gun in the river and Wood's testimony that Petitioner allegedly stated that he thought he shot them. Refuting the testimony of Wood and Murray was especially important in light of the defense theory that Wood and/or Murray were the shooters. (App. p. 348, line 3 – p. 349, 350, lines 1-9).

At the close of the evidentiary hearing PCR counsel argued:

If Mr. Robinson had called the Allison's to the stand, there would have been abundant evidence that those conversations between my client and Mr. Murray and Mr. Wood never could have taken place because those two never came into the house.

I believe that would have been very important, Judge, especially given the general questionable preparedness that counsel may have had in this trial. And I say that because within the first ten pages, one of counsel's arguments to the judge was that

the State was not able to determine the caliber of the bullet. And within five lines, the State popped up and said "yes, we are."

Then, as we go further into this hearing, Judge, there's a general lack of preparedness as far as recollection about what witnesses were interviewed, what witnesses were subpoenaed. It seems from the Allison's testimony that both of them met with Mr. Robinson on a number of occasions at his office. And both were subpoenaed to come and testify in court. And they both showed up. I find it very hard to believe that they would not have come to court without a subpoena. No one really wants to sit here for several days if they don't have to. So I think it's abundantly clear that they were subpoenaed and they just were never put on the stand.

(App. p. 436, line 11 – p. 437, lines 1-17).

In the order of dismissal the PCR judge wrote:

This Court finds the Applicant failed to meet his burden of proving trial counsel should have called witnesses to testify at trial. This Court finds the testimony of Katie and Dustin Allison would not have changed the outcome of the Applicant's trial. While these witnesses testified the Applicant did not have a gun when he arrived at their house after the party, this is irrelevant because the Applicant stipulated at trial that he had a gun at the party and fired nine times into the air. (Trial transcript, p. 11). While the Allisons could have testified about seeing Wood's bloody leg after the party, Wood and Chris Allison testified at trial about Wood's bloody leg. (Trial transcript, p. 99; p. 151). Further, Katie Allison testified only Wood exited the vehicle when it came to her house after the party, while Dustin Allison testified both Wood and Murray got out. This Court finds there is no reasonable probability that Katie and Dustin Allison's testimony would have changed the outcome of the trial. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

(App. p. 460)(footnote #3 omitted). The PCR judge erred. Trial counsel was ineffective in failing to call Katie and Dustin Allison as witnesses at trial to impeach Wood and Murray and show that they could not have had or overheard the alleged inculcating conversations with Petitioner they testified to at trial. There is a reasonable probability that if the Allisons had been called to testify at trial, the outcome of the trial would have been different.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v.

Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

Trial counsel was deficient in failing to call the Allisons to testify at trial. Petitioner was prejudiced by the deficient performance. Wood’s testimony that Petitioner allegedly said, “I think I shot them, I think I shot them” was critical for the State’s case because, apart from the inconclusive ballistics evidence, it is the only evidence indicating that Petitioner shot Wade and Garland instead of simply shooting into the air. The alleged statements about disposing of the gun in the river were particularly prejudicial given the fact that the firearms examiner was unable to make any conclusions as to whether Petitioner’s .40 caliber gun that fired the nine casings found ten yards away from the car was the same gun that fired the two recovered projectiles resulting in the fatal shooting of Wade and Garland because the gun was never recovered. (App. p. 256, lines 2-14). The record does not support the PCR judge’s finding that Petitioner suffered no prejudice from trial counsel’s failure to call the Allisons to testify at trial.

2. The PCR judge erred in refusing to find counsel ineffective for failing to object to the Judge's instruction to the jury that inferred malice may also arise when the deed is done with a deadly weapon when there was evidence in the record that would reduce the murder to involuntary manslaughter.

During the instructions to the jury the trial judge stated, "Inferred malice may also arise when the deed is done with a deadly weapon." (App. p. 293, lines 22-23). Trial counsel did not object to the inferred malice charge. (App. p. 295, lines 15-17). In the application for post-conviction relief Petitioner alleged that trial counsel was ineffective in failing to object to the inferred malice charge. (App. p. 323). During the PCR hearing trial counsel was asked about State v. Belcher, 385 S.C. 597, 601, 685 S.E.2d 802, 804 (2009), decided one month prior to the trial in this case. (App. pp. 357-359). Trial counsel testified that he did not believe that he was aware of the case at the time of trial and could not recall the case at the time of the PCR hearing. (App. p. 358, lines 13-24).

In the order of dismissal the PCR judge wrote, "This Court finds Belcher is inapplicable in this case as there was no evidence presented at trial that would mitigate, reduce, excuse, or justify the murder for which a jury found the Applicant guilty. As such, trial counsel was not deficient in failing to object to this portion of the charge." (App. p. 462). The PCR judge erred.

In State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009), the South Carolina Supreme Court wrote:

Today we return to the rationale underlying Hopkins, Levelle and Jackson and hold that where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon. The permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill).

(footnote #9 omitted). With the exception of the alleged statement “I think I shot them, I think I shot them” attributed to Petitioner by Wood and discussed above in issue one, the State’s other evidence indicates that Petitioner shot nine times up in the air, not at anybody. There is also evidence that gunfire first came from the direction of where Wade and Garland’s car was parked. (App. p. 148, lines 4-23). This evidence of shooting up in the air would reduce the homicide to involuntary manslaughter.

In State v. Scott, 414 S.C. 482, 487, 779 S.E.2d 529, 531 (2015) the South Carolina Supreme Court, providing two definitions for involuntary manslaughter, wrote:

Involuntary manslaughter is a lesser-included offense of murder, and “is defined as the unintentional killing of another without malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others.” *Id.* at 309, 764 S.E.2d at 514 (citation omitted). Involuntary manslaughter requires a showing of criminal negligence, which “is defined as the reckless disregard of the safety of others.” S.C.Code Ann. § 16-3-60 (2003). “ ‘Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating.’ ” State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct.App.2010) (quoting Pittman, 373 S.C. at 571, 647 S.E.2d at 167).

In Scott the Court found that a charge on involuntary manslaughter was not necessary because there was no evidence that Scott was criminally negligent in executing a martial arts move that resulted in death. In contrast, in the present case Petitioner was criminally negligent in shooting the gun in the air.

In State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) the South Carolina Court of Appeals wrote:

“A person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.” Crosby, 355 S.C. at 52, 584 S.E.2d at 112. “The negligent handling of a loaded gun will support a charge of involuntary manslaughter.” State v. Mekler, 379 S.C. 12, 15, 664 S.E.2d 477, 478 (2008).

The evidence in the present case supports a charge on involuntary manslaughter. In Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991) the South Carolina Supreme Court wrote:

It has long been the law in this State that “to warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is *no evidence whatever* tending to reduce the crime from murder to manslaughter.” State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 565 (1969) [citing State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951)] (Emphasis supplied). Moreover, our cases consistently hold that a request to charge a lesser included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. See State v. Goldenbaum, 294 S.C. 455, 365 S.E.2d 731(1988).

If a charge on involuntary manslaughter had been requested, the trial judge would have erred in refusing to give the charge.

The evidence supports a jury instruction on involuntary manslaughter under either definition. Under the first definition of involuntary manslaughter as the unintentional killing of another without malice while engaged in the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily injury, Petitioner was engaged in the unlawful carrying of a pistol, a misdemeanor, when he fired the pistol in the air nine times. South Carolina courts have held that a defendant who shoots into a crowd or in the direction of an individual or group is not entitled to a charge on involuntary manslaughter. See Sullivan v. State, 407 S.C. 241, 754 S.E.2d 885(S.C. Ct. App. 2014); Douglas v. State, 332 S.C. 67, 504 S.E.2d 307 (1998); State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996). The act of firing the pistol in the air, however, is distinguished from firing a pistol into a crowd or firing shots in the direction of an individual or group of people. In Harris v. State, 354 S.C. 382, 389, 581 S.E.2d 154, 157 (2003) the South Carolina Supreme Court wrote:

This Court has stated, “[t]here is no error in the refusal to charge the law of involuntary manslaughter when the defendant admitted intentionally firing the gun, but claimed only he meant to shoot over the victim's head.” State v. Cooney, 320 S.C. 107, 112, 463 S.E.2d 597, 600 (1995); Bozeman v. State, 307

S.C. 172, 414 S.E.2d 144 (1992). Since Clifton admitted that he intentionally fired warning shots in the direction of Harold, he was not entitled to the involuntary manslaughter charge, and thus could not have been prejudiced by the Court's failure to charge it.

Although Petitioner intentionally fired his pistol in the air, he did not fire the shots into a crowd or in the direction of anybody. Unlawfully carrying a pistol and shooting it in the air is not an unlawful activity naturally tending to cause death or great bodily injury in the way that shooting into a crowd or in the direction of people would naturally tend to cause death or great bodily injury. Petitioner was entitled to an instruction on involuntary manslaughter under the first definition.

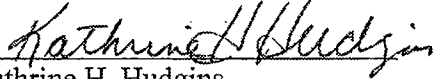
Under the second definition of involuntary manslaughter as the unintentional killing of another without malice while engaged in the doing of a lawful activity with a reckless disregard for the safety of others, Petitioner was entitled to lawfully arm himself in self-defense because shots were being fired in his direction. In State v. Crosby, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003) the South Carolina Supreme Court wrote, "In State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999), this Court held that a person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." Petitioner was engaged in a lawful activity because he was entitled to arm himself in self-defense, even though he was in unlawful possession of a weapon. By shooting into the air nine times, Petitioner was criminally negligent, acting with a reckless disregard for the safety of others. Petitioner was entitled to a charge on involuntary manslaughter.

The PCR judge found that there was no evidence presented at trial that would mitigate, reduce, excuse, or justify the murder. As discussed above, the finding is not supported by the record. The shooting in the air, under the facts of this case, would reduce the murder to involuntary manslaughter. Trial counsel was deficient for failing to object to the inferred malice charge.

Petitioner was prejudiced by the deficient performance. The State did not present evidence of malice apart from the use of the deadly weapon and the error in charging inferred malice is not harmless.

CONCLUSION

Based on the arguments above this Court should reverse the denial of relief by the PCR judge, grant post-conviction relief based upon prejudicial ineffective assistance of counsel and remand the case for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of July, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

BRANDON HEATH CLARK

PETITIONER,

V.

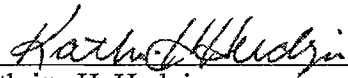
STATE OF SOUTH CAROLINA,

RESPONDENT

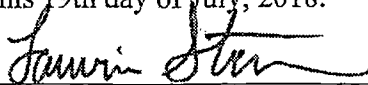
APPELLATE CASE NO. 2015-001898

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon DeShawn H. Mitchell, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner has been served on Brandon Heath Clark, #336351, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 19th day of July, 2018.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of July, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.

STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Post-Conviction Relief Court Judge
The Honorable Edward W. Miller, Trial Judge

Appellate Case No. 2015-001898

RECEIVED
NOV 19 2018
SC Court of Appeals

BRANDON HEATH CLARK,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

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ISSUES PRESENTED ON APPEAL

- I. Did the post-conviction relief court properly deny Petitioner's assertion that trial counsel was constitutionally ineffective for failing to present Petitioner's family members, Kayte and Dustin Allison, as defense witnesses to impeach the testimony of State's witnesses Joshua Wood and David Murray regarding conversations with Petitioner following the shooting, where the testimony of Kayte and Dustin Allison would not have had any impact on the outcome of the trial and counsel made a strategic decision to challenge the State's circumstantial case through cross-examination rather than presenting a defense?**
- II. Did the post-conviction relief court properly deny Petitioner's assertion that trial counsel was constitutionally ineffective for not objecting to the trial court's jury instruction that malice could be inferred from the use of a deadly weapon, where Petitioner never requested an involuntary manslaughter jury instruction nor ever alleged until now on appeal that he was entitled to one, and no evidence was presented that would reduce, mitigate, excuse, or justify the homicide, and accordingly, the jury instruction was proper?**

STATEMENT OF THE CASE

Petitioner Brandon Heath Clark is presently confined in the South Carolina Department of Corrections serving a forty-year sentence following convictions in Greenville County. During its March 2007 term, the Greenville County Grand Jury indicted Petitioner for two counts of murder and two counts of possession of a weapon during the commission of a violent crime following the fatal shooting of Christopher Garland and Cameron Wade¹ on July 29, 2006. (2007-GS-23-0002442, -002443). He was represented on these charges by Scott D. Robinson, Esquire. Assistant Solicitor Bryna Seay of the Thirteenth Circuit Solicitor's Office prosecuted the case on behalf of the State.

On November 2, 2009, Petitioner proceeded to a jury trial in the Greenville County Court of General Sessions before the Honorable Edward W. Miller, circuit court judge. Following a three-day trial, the jury convicted Petitioner as indicted. Judge Miller sentenced Petitioner to forty years' imprisonment for each count of murder and five years' imprisonment for each count of possession of a weapon during the commission of a violent crime, with the sentences to be served concurrently.

Petitioner filed a timely notice of appeal and an appeal was perfected on his behalf by Appellate Defender Elizabeth Franklin-Best of the South Carolina Commission on Indigent Defense. On appeal, Petitioner argued the trial court erred in denying his motion for a directed verdict because the State failed to establish the bullets from Petitioner's gun killed the victims. Respondent, represented by Assistant Attorney General Alphonso Simon, Jr. of the South Carolina Attorney General's Office, argued the State presented both direct evidence and

¹ Wade's name is spelled "Kamron" on the indictment (2007-GS-23-002443), but appears elsewhere in the Appendix spelled "Cameron." Respondent uses the most common spelling found in the Appendix, Cameron, through this brief.

substantial circumstantial evidence that Petitioner fired the shots that killed both victims. Following oral argument, the South Carolina Court of Appeals affirmed Petitioner's convictions and sentences by unpublished opinion, finding the record included sufficient evidence which tended to prove Petitioner's guilt. State v. Brandon Heath Clark, 2012-UP-549 (Ct. App. filed October 10, 2012). The Remittitur was returned to the circuit court on October 26, 2012.²

On March 7, 2013, Petitioner filed a *pro se* application for post-conviction relief (2013-GS-23-01325), alleging the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. "Trial [counsel] should have objected to Indictment of Possession of a weapon during commission of a violent crime."
 - b. "Trial [counsel] should have objected to State Attorney vouching for the truthfulness and validity of a states witness."
 - c. "Trial [counsel] should have objected to the charge of inferred malice because deed was done with a deadly weapon."

On October 23, 2013, Respondent filed its return to the application and requested an evidentiary hearing on the application. Thereafter, Petitioner, through counsel Caroline M. Horlbeck, served an amended application on December 16, 2014, adding an allegation "that evidence of material facts exist which have not been previously presented and heard by the Court. This material evidence requires vacation of the conviction and sentence."

An evidentiary hearing into the application and amendment was convened June 18, 2015, in the Greenville County Court of Common Pleas before the Honorable Perry H. Gravely, circuit court judge. Petitioner was present alongside counsel Horlbeck. Respondent was represented by

² The records from Petitioner's direct appeal were not included in the Appendix. As these were before the lower court, these records should have been included in the Appendix pursuant to Rule 243(f)(1), SCACR. See App. 328 (noting the appellate records were included as attachments to Respondent's return) and App. 445 (Judge Gravely indicates he has and wishes to review the appellate briefs before ruling). Respondent has conferred with counsel for Petitioner and based on this conversation, anticipates that Petitioner will be supplementing the Appendix with these materials.

Assistant Attorney General Karen C. Ratigan of the South Carolina Attorney General's Office. At the hearing, Petitioner testified on his own behalf and presented testimony from trial counsel Robinson and a variety of fact witnesses, including: Howard Stewart, who had engaged in several Facebook conversations with Petitioner's family members about the case but was not present at the scene and admitted he had no personal knowledge related to the shooting; Petitioner's cousin Kayte Allison and her former husband Dustin Allison, who were both with Petitioner before and after the party where the shooting occurred but were not present at the scene; Petitioner's mother Christy Clark, who had engaged in Facebook conversations with Stewart but was also not present at the scene. At the conclusion of the evidentiary hearing, Judge Gravely took the matter under advisement to review all the materials and evidence presented.

By letter dated July 1, 2015, Judge Gravely denied relief, specifically finding, "Pursuant to the hearing on June 18, 2015, in the above-referenced case, I have decided the matter as follows: Plaintiff's application for post-conviction relief is denied. State v. Belcher, 385 S.C. 597 (2009), is inapplicable in this case as there was no evidence presented that would mitigate, reduce, excuse or justify the murder for which a jury found Mr. Clark guilty. Further, Plaintiff did not meet his burden as to the remaining claims asserted in his petition." Judge Gravely instructed Respondent to prepare a proposed order denying relief. By order filed August 6, 2015, Judge Gravely denied post-conviction relief. Specifically, Judge Gravely found counsel was not ineffective for failing to present the testimony of Kayte and Dustin Allison, as it would not have changed the outcome of the trial, counsel was not ineffective for not objecting to the State's closing argument because the argument was proper, and counsel was not ineffective for not objecting the jury instruction on inferring malice from the use of a deadly weapon because the

charge was proper where no evidence was presented that would reduce, mitigate justify, or excuse the murder.

On September 1, 2015, Petitioner filed a notice of appeal. On April 6, 2016, Appellate Defender Kathrine H. Hudgins of the South Carolina Commission-on Indigent Defense filed the petition for a writ of certiorari and appendix on Petitioner's behalf. On August 22, 2016, Respondent, through Assistant Attorney General Ratigan, filed its return to the petition. Thereafter, on October 30, 2017, the South Carolina Supreme Court transferred this case to this Court pursuant to Rule 243(l), SCACR. On June 22, 2018, this Court granted certiorari and instructed parties to file briefs as provide by Rule 243(j), SCRCR.

STATEMENT OF FACTS

On July 29, 2006, Petitioner shot Christopher Garland and Cameron Jack Wade while they were inside a car outside of Steve Watson's house in Greenville County. Garland suffered a single gunshot wound; the bullet travelled through his back into his right chest, then his right lung, then his heart, and through his sternum, eventually lodging in the tissue just beneath the skin of his chest.³ (App. 170). Wade suffered a through and through gunshot wound to the head. (App. 172-73). The bullet entered in the area around his right temple, and exited through the back of his head.⁴ Id.

The Party Where the Shooting Occurred

On the late evening of July 29, 2006, a gathering was held at Steve Watson's home in celebration of Cameron Wade's ("Wade") birthday.⁵ (App. 51). Several witnesses testified that a physical altercation between Wade and Joshua Wood ("Wood") was also planned for that evening. (App. 52, 77, 104, 111). Wood and Wade had been involved in a physical confrontation within the two weeks prior to the July 29th gathering, where Wade had gotten the better of Wood, who suffered a black eye and bruised ego from the fight; Wood's pregnant fiancée had also been pushed to the ground during the altercation. (App. 58-59, 65-66, 76-77, 87-88, 111). While a third individual was involved in the first altercation, Wade and Wood were the only ones set to be involved in the second fight. (App. 51-52, 76-78, 104, 111-12).

³ The pathologist noted the wound indicated the bullet passed through something prior to hitting Garland. (App. 171-71).

⁴ The pathologist testified that it appeared Wade was sitting with his head turned distinctly to his right as if he was looking back over his right shoulder. (App. 173).

⁵ Watson testified that he was initially unaware a gathering was going to be at his house, but he learned of it on MySpace. (App. 52).

Witnesses gave different accounts regarding how many were at the gathering. Prior to the victims' arrival, Watson indicated no more than fifty people showed up for the party. (App. 53). Partygoer Tyler Stone indicated there were at least fifty people present, (App. 66), and another attendee Tiffany Saltz stated there were around a hundred people at scene. (App. 108). Altogether, law enforcement was told there were between twenty and two-hundred people at the gathering. (App. 239). Nearly everyone who testified established that it was a dark and chaotic scene.

Wood arrived at the party with his friend David Murray. Most of the witnesses indicated Wood was acting crazy that evening, running round shirtless and commenting that he was going to beat Wade. (App. 66, 78, 112; see App. 53). In fact, Wood even admitted that he was "acting ignorant," and that he was drinking, and acting wild and out of control. (App. 78). However, none of those witnesses testified they saw Wood with a gun. (App. 79, 112).

Saltz testified she saw Petitioner with a gun that evening. (App. 104, 105). She noted it was in his pants, and he had his shirt fashioned in a manner that allowed the gun to be visible. (App. 105). Saltz also testified it appeared Petitioner was aggravated and he was in an ill mood. (App. 105, 107). She admitted that in prior statements, she informed law enforcement that she told Petitioner not to shoot her. (App. 107). Saltz did not see anyone else with a gun. (App. 107). She also did not see the shooting. (App. 107). She also acknowledged she did not check everyone for guns. (App. 108).

David Murray testified he went to the gathering with Wood. (App. 111). It was his understanding that there would be a rematch of the prior fight between Wade and Wood. (App. 111). Murray was not present for the first fight. (App. 111). Murray noted when the other group arrived, "a bunch of people started running down there and they started running up there

and it just got pretty crazy.” (App. 112 | 20-22). Murray watched Wood hit one guy, and then the two heard gunshots. (App. 113). Murray could not recall where they were when he heard the shots. (App. 113).

Woods testified that he recalled when Wade and Garland arrived. (App. 79). Multiple cars pulled up alongside the road. He recalled there were five to six cars there. (App. 79). Woods saw one guy that he did not recognize get out of one of the cars. (App. 79-80). When Wood determined he did not know the guy, Wood hit the guy in the face with a stick. (App. 80). Shortly thereafter, Wood started hearing gunshots. (App. 80).

The Shooting and Immediate Aftermath

Christopher Allison, one of Petitioner’s friends, went to the gathering with Petitioner and Jordan Mardis. Christopher was standing by Petitioner when they saw Wade and Garland arrive. (App. 139, 141). Christopher indicated Wade and Garland were part of a four-car entourage. (App. 139-41, 147-48). Christopher heard a gunshot and saw a shot being fired over the roof of the last car of the entourage, a dark colored Honda. (App. 141, 148). In response, Petitioner fired his .40-caliber Smith and Wesson handgun approximately nine times, according to some witnesses, in the air. (App. 141, 148). After Petitioner fired the shots, the two ran to Christopher’s car. They drove away soon after with Mardis. (App. 141-42). Petitioner drove the group to the home of Dustin Allison, Christopher’s brother. (App. 142).

Murray did not see who was firing the shots. (App. 113). Murray and Wood then started to leave. They got into Murray’s truck and pulled out of the driveway. (App. 113, 116). However, they turned around to see if some of their friends were still at Watson’s house. (App. 113, 116). Wood then got out of the truck, picked up a tire iron from the bed of the truck, and threw the tire iron at the victims’ vehicle. (App. 113-14, 116, 117, 119, 120). Wood kicked the

back window of the car, shattering the window and cutting his leg, before getting back into Murray's truck and leaving. (App. 83, 96, 99). After they left, the three headed to Dustin Allison's house. (App. 114). At Dustin Allison's home, Murray, Wood, and Mardis met up with Christopher and Dustin Allison, Katye Crawford Allison, and Petitioner. (App. 114). Murray recalled Petitioner said Chris was supposed to throw his gun in the river. (App. 115). Murray did not see Petitioner with a gun, and Murray thought Petitioner had only fired shots into the air.⁶ (App. 115). Wood was not allowed inside the Allison home because he had blood on his leg and Kayte did not want him to bleed on the ground where her small child played. (App. 151).

Wood testified that he saw Petitioner at the time of the shooting. (App. 81). Petitioner was behind Wood. (App. 81). Wood saw Petitioner fire his gun twice into the air, but he did not see what happened after that. As soon as Wood saw the gunshots, he ran. (App. 81-82).

Wood testified that he spoke with Petitioner at the house. Wood stated, "[w]ell, when we got back he [Petitioner] looked really scared and he had the gun in his hand and said, I think I shot them, I think I shot them. And I said, no, you didn't, you didn't shoot them, you shot into the air." (App. 84 ll 12-16). Wood noted the gun Petitioner had that evening was one Petitioner carried in his pockets. (App. 84). Wood also testified Petitioner indicated he was going to throw the gun in the Saluda River. (App. 85).

The Police Investigation

Dar Shaw of the Greenville County Forensics Division processed the victims' vehicle. Shaw testified he saw a couple of possible projectile holes in the windshield. (App. 125). Shaw also noted a side vent wing window was broken, and there was a hole in the top of the roof from where photographs indicated a tire iron was removed. (App. 125). Investigator Fields also

⁶ Murray had surmised that the shots he heard were fired in the air. (App. 113).

testified that there were two large holes in the back windshield, and a small window behind the back window of the passenger side without glass in it. (App. 231). She also noted there appeared to be bullet holes in the door post between the driver's seat and the back passenger seat on the passenger side of the car. (App. 231).

A nine-millimeter handgun and a magazine that belonged to Garland were found beneath Wade in the passenger seat. (App. 180, 232). Three casings that were fired from the handgun were also collected at the scene. (App. 179, 245-47). Garland had a valid concealed weapon permit on his person. (App. 232).

Law enforcement was able to determine that a copper jacket from a projectile found behind the rear seat inside the victims' car was fired by a gun consistent with a firearm marketed by Smith and Wesson handgun. (App. 179, 245; 248-49). The jacket was inconsistent with being fired from Garland's handgun. (App. 248). The projectile that was recovered from Garland's body was determined to be a .40-caliber projectile that was consistent with being fired by a firearm marketed by Smith and Wesson. (App. 250-51). The two projectiles were consistent with one another, but analysis as to whether they were fired by the same firearm was inconclusive. (App. 251, 255). Nine .40-caliber shell casings were found at the scene. (App. 189-90, 197, 201, 202). They were found ten to twelve yards from the victims' vehicle. (App. 207, 208). Those were all fired by the same caliber of .40-caliber Smith and Wesson. (App. 251, 252, 255). The firearms and toolmarks analyst testified he could not make any conclusions as to whether the casings that were retrieved from the scene were fired by the same firearm as the projectiles because he did not have the firearm for comparison. (App. 255-56).

The Trial

At the start of the trial, the State made a motion to introduce Rule 404(b), SCRE, evidence of an incident that occurred two months prior to the homicide, wherein Petitioner shot his father in the leg and subsequently pled guilty to assault and battery of a high and aggravated nature. (App. 6-9). The State argued to the trial court the shell casings from that incident and the current homicides matched and would be necessary to prove identity as they anticipated Petitioner would put up a third party guilt defense. In response, Petitioner, through trial counsel, argued he was not disputing that he was present at the scene, had shot his gun nine times, and the shell casings were from his nine shots, but that he did not fire the shots that killed the victims. (App. 10-11). Petitioner stated that he had offered to stipulate to the aforementioned facts rather than have the evidence of the prior shooting introduced. (App. 10-11). The trial court reserved ruling until hearing the testimony unfold. (App. 12-14).

Petitioner then moved to present evidence of third party guilt, specifically that Wood and Murray were the shooters. In support of this motion, trial counsel noted Petitioner did not have a motive to kill the victims while Wood did. The State responded that it was not its burden to prove motive and Petitioner did not present sufficient evidence to formally proceed forward with a third party guilt defense. The trial court again decided to reserve its ruling until more evidence was presented. (App. 15-17).

Petitioner, through trial counsel, agreed to stipulate to chain of custody, noting that he had independently tested everything. (App. 41).

On the second day of trial, following an initial day of testimony from Watson, Stone, Wood, Saltz, Murray, Christopher Allison, and Sargent Dar Shaw, the parties entered into the following stipulation, which was read to the jury by the trial court:

The defendant hereby stipulates or agrees that he was present at the scene at [redacted address of the party] on July 29, 2006. And that he fired his pistol nine times. He further stipulates or agrees that the nine .40 caliber shell casings located at the scene are the result of his firing his pistol nine times. And that items D-02 through D-010, State's Exhibit 5, are admissible into evidence.

(App 165-166).

The State later renewed its motion to introduce the evidence of Petitioner shooting his father pursuant to Rule 404(b), SCRE, as Petitioner's intent to shoot the victims and absence of mistake or accident. The State argued the prior incident established Petitioner knew how to control his weapon, which was crucial to proving intent in the present case. (App. 192-93). In response, Petitioner, through counsel, noted the stipulation already covered any of the State's concerns or needs to introduce evidence of the prior shooting and argued it would be extremely prejudicial. The trial court agreed and refused to allow the State to present evidence of Petitioner's prior shooting. (App. 194-95).

Following the close of the State's case, the court advised Petitioner of his right to testify and gave Petitioner the lunch break to discuss the issue with trial counsel. (App. 257-58). Following the lunch break, Petitioner advised the trial court he did not wish to testify. (App. 259-60).

The court then held a charge conference. Petitioner asked for a jury instruction on third party guilt. The trial court declined to give a third party guilt instruction, noting the defense had been that Petitioner did not fire the shots that killed the victims. (App. 260-61). The State then requested a jury instruction on flight as evidence of guilt and Petitioner objected. (App. 262-63). The trial court ultimately did not give a jury instruction on evidence of flight, noting it was an impermissible instruction to give the jury. (App. 295). No jury instructions were requested or given on involuntary manslaughter, voluntary manslaughter, self-defense, accident, or anything

else what would reduce, mitigate, excuse, or justify the homicide. The jury was charged with solely with the crimes as indicted—murder and possession of a weapon during the commission of a violent crime.

Following deliberations, the jury return with guilty verdicts to all four charges.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

On appeal, Petitioner argues the post-conviction relief court erred in denying him relief as to two of his allegations: first, that trial counsel was ineffective for failing to present family members Kayte and Dustin Allison as defense witnesses to impeach the testimony of Woods and Murray; and second, that trial counsel was ineffective for failing to object to the trial court's jury instruction that malice could be inferred from the use of a deadly weapon because he was entitled to a jury instruction on involuntary manslaughter based on his conduct. Petitioner argues both of these errors or omissions by trial counsel rise to the level of constitutional ineffectiveness and warrant the reversal of his murder convictions and a remand for retrial. The post-conviction relief court properly found Petitioner did not meet his requisite burden of proof as to either allegation.

Petitioner, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Petitioner has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Petitioner must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at

625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner 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.

Petitioner failed to meet this high burden of proof required of him as to either allegation, and accordingly, the post-conviction relief court properly denied relief. This Court should affirm the post-conviction relief court's findings.

- I. **The post-conviction relief court properly deny Petitioner's assertion that trial counsel was constitutionally ineffective for failing to present Petitioner's family members, Kayte and Dustin Allison, as defense witnesses to impeach the testimony of State's witnesses Joshua Wood and David Murray regarding conversations with Petitioner following the shooting, where counsel made a strategic decision to challenge the State's circumstantial case through cross-examination rather than presenting a defense case and the testimony of Kayte and Dustin Allison would not have had any impact on the outcome of the trial.**

On appeal, Petitioner argues trial counsel should have presented his cousin, Kayte Allison and her former husband, Dustin Allison, as defense witnesses. Petitioner acknowledges that neither were present at the scene of the shooting, and therefore, presumably also acknowledges that neither had any firsthand knowledge of what actually happened at the scene when Petitioner elected to fire his weapon nine times at a crowded and tension-filled event. However, Petitioner argues Kayte and Dustin should have been presented as defense witnesses to testify as to whether

Petitioner had conversations with Wood and Murray following the shooting at the Allison home. Specifically, Petitioner asserts Kayte and Dustin should have been called to impeach Wood's testimony that Petitioner told Wood that he feared he shot the victims and Murray's testimony that he overheard Petitioner say Christopher was supposed to throw Petitioner's gun in the river. The basis for this impeachment is Kayte and Dustin's recollection nine years later at the post-conviction relief hearing that Wood never came inside their home due to bleeding on his leg and inconsistent testimony as to whether Murray ever exited his truck and came to their porch. Both Kayte and Dustin testified they spoke with counsel prior to trial and both were subpoenaed as potential defense witnesses for trial. Petitioner argues trial counsel was constitutionally ineffective for failing to present Kayte and Dustin for impeachment purposes as to what happened at their house after the shooting and the result of his trial would have been different had they been presented.

The post-conviction relief court rejected this argument, finding Kayte and Dustin's testimony would not have had any impact on the result of the trial, and therefore, Petitioner failed to meet his burden of proof. Petitioner argues the post-conviction relief court's factual findings are not supported, as "[t]he record does not support the PCR judge's finding that Petitioner suffered no prejudice from trial counsel's failure to call the Allisons to testify at trial." However, these factual determinations by the post-conviction relief court are supported by the any evidence standard and therefore, must be afforded a deferential standard of review by this Court. See Buckson, 423 S.C. at 320, 815 S.E.2d at 440 ("Under the proper standard of review, the appellate court's 'view' must be limited to whether there is probative evidence to support the PCR court's factual findings.").

A. The testimony of Kayte and Dustin Allison would not have had any impact on Petitioner's trial, and therefore, the post-conviction relief court properly found Petitioner failed to establish the requisite prejudice needed for relief.

Initially, the post-conviction relief court properly determined Petitioner failed to establish that the result of his trial would have been different, i.e., prejudice, from counsel's decision not to present Kayte and Dustin as defense witnesses. Their testimony could not rule out whether Petitioner ever spoke to Wood or Murray at their residence and was internally inconsistent between the two. Petitioner's assertion that Kayte testified Petitioner did not go outside to speak with Wood or Murray is not supported by the record. Crucially, Kayte testified that to her knowledge, Petitioner did not speak to Wood or Murray, not that she was physically with Petitioner all night and never saw them speak, which is an important distinction. (App. 392-94). The record established that there were several people coming and going from the Allison home that evening and Kayte did not purport to account for Petitioner's movements around the home and property the entire evening. Kayte also testified that Murray never exited his truck, which was directly contradicted by her former husband Dustin Allison, who testified Murray sat on the porch alongside Wood after Wood was denied entry to the home due to his bloody leg. (App. 392-94; 403). Dustin also testified similar to Kayte that he did not see Petitioner speak with Wood or Murray, but later acknowledged he did not know how long the men remained on his porch or when they left. (App. 404-05). Ultimately, the testimony presented by Kayte and Dustin did little to impeach the testimony of Wood and Murray and would not have affected the outcome of the trial.

Additionally, the testimony of Kayte and Dustin has no impact on the physical evidence presented, such as the firearms analysis establishing the bullet removed from one of the victims was a .40-caliber, the same as caliber as Petitioner's gun, and had similar markings to the shells

Petitioner admitted came from his weapon. Additionally, it does not lessen the acknowledgment from Petitioner that he fired a weapon in a crowded location nine times. The physical evidence and Petitioner's own admission were powerful evidence that resulted in Petitioner's conviction. Petitioner's attempts to hang the jury's verdict on the post-shooting statements he made to Wood and Murray, which he characterizes as "critical for the State's case", fall flat when compared to this other evidence. The post-conviction relief court properly reviewed the record and made proper factual determinations that the result of Petitioner's trial would not have been different had his family members testified. These factual findings are supported by probative evidence, and accordingly, must be affirmed.

B. Trial counsel had a reasonable trial strategy behind not presenting any witnesses, and therefore, the post-conviction relief court properly denied relief.

In addition to a complete lack of prejudice, the post-conviction relief court also properly denied relief because trial counsel's decision not to present Kayte or Dustin was not due to sheer neglect as he purports, but rather, was based on a valid trial strategy not to present defense witnesses. Both Kayte and Dustin had previously met with counsel and provided him with the basis for their testimony. Trial counsel subpoenaed both to be present for trial, but after hearing the State's case, counsel made a strategic decision not to present any defense witnesses.

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson, 423 S.C. at 320–21, 815 S.E.2d at 440 (citing Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64–65 (2011) (deferring to trial counsel's strategic considerations); Jackson v. State, 329 S.C. 345, 350, 495 S.E.2d 768, 770–71 (1998)).

(same); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (same)). “A PCR court’s analysis of counsel’s strategic decisions must be ‘highly deferential’ to counsel’s judgment, and ‘a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.’ ” Buckson, 423 S.C. at 321, 815 S.E.2d at 440 (quoting Strickland, 466 U.S. at 689)). “[A] court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Id.

Trial counsel testified the defense made a decision against Petitioner testifying because “[he] didn’t believe the State put up enough evidence in this matter for the jury to convict him of this crime.” (App.362). Trial counsel testified he believed “the State had not proved their case beyond a reasonable doubt to the jury” and that “conflicting testimony” came out at trial. (App. 368). Petitioner stated trial counsel discussed the “pros and cons of presenting a defense and not presenting.” (App. 418). Petitioner stated trial counsel did not want to call witnesses or present a defense but Petitioner could not recall why. (App. 421-22; 429-30). Based upon this testimony and a review of the record as required, it is apparent that trial counsel’s decision not to call Katie or Dustin Allison as defense witnesses was part of his trial strategy to refrain from presenting a defense case in order to have the final closing argument. A strategic or tactical decision does not have to be articulated by counsel on the record; counsel does not have to personally identify his or her thinking. It is enough that the record show a basis for strategy, not that counsel announce that strategy on the record. Wood v. Allen, 558 U.S. 290 (2010). Trial counsel testified he had pointed out inconsistencies in witnesses’ testimony and did not believe the State had met its burden of proof. As such, trial counsel decided not to present a defense case. It is clear from this testimony and the record as a whole that this a strategic decision to retain the final closing argument to the jury. Petitioner cannot rebut the presumption that trial

counsel rendered adequate assistance and trial counsel cannot be deemed ineffective for choosing not to call Katye or Dustin as defense witnesses based on a valid strategy.

In conclusion, the post-conviction relief court properly denied relief, as Petitioner failed to establish any constitutional ineffectiveness of counsel for electing not to present Kayte or Dustin Allison as defense witnesses.

II. The post-conviction relief court properly denied Petitioner's assertion that trial counsel was constitutionally ineffective for not objecting to the trial court's jury instruction that malice could be inferred from the use of a deadly weapon, where Petitioner never requested an involuntary manslaughter jury instruction nor ever alleged until now on appeal that he was entitled to one, and no evidence was presented that would reduce, mitigate, excuse, or justify the homicide, and accordingly, the jury instruction was proper.

For the first time on appeal, Petitioner argues the post-conviction relief court erred in finding trial counsel did not perform ineffectively in failing to object to the trial court's jury instruction that malice could be inferred from the use of a deadly weapon because there was evidence in the record to reduce the murder to involuntary manslaughter. Specifically, Petitioner asserts that his action of shooting a weapon into the air nine times at a densely crowded party entitled him to a jury instruction on involuntary manslaughter because either the unlawful act was not a felony and would not naturally tend to cause death or great bodily injury, or in the alternative, he lawfully armed himself in self-defense while acting recklessly in shooting the weapon into the air nine times. While Petitioner argued to the post-conviction relief court that trial counsel was ineffective for failing to object to the inferred malice jury instruction, he never argued it was because he was entitled to an involuntary manslaughter jury charge.

Regardless of preservation concerns, the post-conviction relief court properly found this argument to be without merit and concluded trial counsel was not ineffective in failing to object to the jury instruction as it was proper and did not run afoul of State v. Belcher, 385 S.C. 597,

685 S.E.2d 802 (2009), where there was nothing to reduce, mitigate, excuse, or justify the homicide. This Court should affirm the post-conviction relief court.

A. Petitioner's appellate argument that he was entitled to a jury instruction on involuntary manslaughter is being presented on appeal for the first time, and therefore, is not preserved for this Court's review.

Petitioner's assertion the inferred malice jury instruction was improper because he was entitled to a jury instruction on involuntary manslaughter was never raised to the post-conviction relief court and is only being raised not for the first time on appeal. Accordingly, it is not preserved for this Court's review.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity "to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). Although our courts have recognized the somewhat relaxed procedures in post-conviction relief cases and will excuse procedural defaults in extraordinary cases, "[i]n most PCR cases, however, [appellate courts] have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases." Mangal v. State,

421 S.C. 85, 97, 805 S.E.2d 568, 574 (2017). In Mangal, the South Carolina Supreme Court noted,

[T]here are situations where the interests of justice require PCR courts to be flexible with procedural requirements before PCR applicants suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of our Rules of Civil Procedure.⁹ These considerations should guide PCR courts when struggling to balance procedural requirements against the importance of the issues at stake in PCR proceedings. We encourage trial courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable ways—within the flexibility of our Rules—to reach the merits of substantial issues.

Mangal, 421 S.C. at 99–100, 805 S.E.2d at 575–76.

In the present case, Petitioner never raised or otherwise presented his claim that he should have received a jury instruction on the lesser-included offense of involuntary manslaughter until this appeal. In fact, the term “involuntary manslaughter” is not referenced once throughout the entire appendix. Despite never raising this claim before, it appears as though Petitioner is trying to bypass preservation requirements by weaving this argument into his assertion that trial counsel was ineffective for failing to object to the inferred malice charge on this ground. This issue is not properly before the Court and is not an extraordinary case where preservation deficiencies should be overlooked in the interest of justice.

B. Regardless of any preservation concerns, Petitioner was not entitled to a jury instruction on involuntary manslaughter.

On appeal, Petitioner argues, “[i]f a charge on involuntary manslaughter had been requested, the trial judge would have erred in refusing to give the charge.” Petitioner asserts the evidence established he merely discharged his weapon into the air, and accordingly, he was either engaged in a misdemeanor not naturally tending to cause death or great bodily harm, or in the alternative, had lawfully fired his weapon in self-defense with reckless disregard for the

safety of others. This argument is without merit, as Petitioner's conduct—shooting a firearm nine times in a populated area—did not entitle him to a jury instruction on involuntary manslaughter.

“Involuntary manslaughter is defined as the unintentional killing of another without malice while engaged in (1) an unlawful activity not naturally tending to cause death or great bodily harm or (2) a lawful activity with reckless disregard for the safety of others.” Sullivan v. State, 407 S.C. 241, 244–45, 754 S.E.2d 885, 887 (Ct. App. 2014) (citing State v. Smith, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011)).

Our case law is clear that a jury instruction on involuntary manslaughter is inappropriate when the defendant **intentionally** fired his weapon, regardless of whether he was lawfully armed in self-defense. See id. “When the victim was killed by a gunshot, and no evidence is presented showing the defendant fired the gun unintentionally, the defendant is not entitled to a charge of involuntary manslaughter.”); Douglas v. State, 332 S.C. 67, 74–75, 504 S.E.2d 307, 310–11 (1998) (holding involuntary manslaughter charge not warranted when defendant admitted he intentionally fired his gun in self-defense); State v. Pickens, 320 S.C. 528, 531–32, 466 S.E.2d 364, 366–67 (1996) (holding defendant who admitted intentionally shooting the gun was not entitled to involuntary manslaughter charge); State v. Cooney, 320 S.C. 107, 112, 463 S.E.2d 597, 600 (1995) (holding defendant not entitled to involuntary manslaughter charge when he intentionally shot towards the ground at the victim's feet); Bozeman v. State, 307 S.C. 172, 177, 414 S.E.2d 144, 147 (1992) (explaining involuntary manslaughter charge inappropriate when defendant “only meant to shoot over the victim's head” because he intended to shoot the gun); State v. Gibson, 390 S.C. 347, 357–58, 701 S.E.2d 766, 771–72 (Ct. App. 2010) (holding defendant not entitled to involuntary manslaughter charge where defendant intentionally fired the

gun); State v. Morris, 307 S.C. 480, 484, 415 S.E.2d 819, 821-22 (Ct.App.1991) (holding defendant who intentionally fired the gun not entitled to an involuntary manslaughter charge).

Despite the clear law establishing a defendant is not entitled to a jury instruction on involuntary manslaughter when he or she intentionally fires his or her weapon, which is the only evidence here, Petitioner nonetheless argues he would have been entitled to an involuntary manslaughter charge because "[t]he act of firing the pistol into the air, however, is distinguished from firing a pistol into a crowd of firing shorts in the direction of an individual or group of people." BOP 16. However, Petitioner cites to no authority to support this assertion, but rather, attempts to draw a distinction his actions and caselaw assigning no error in refusing to charge involuntary manslaughter when a defendant intentionally fired over the victim's head.

In conclusion, Petitioner was not entitled to a jury instruction on involuntary manslaughter where the uncontroverted evidence was he intentionally shot his weapon nine times. There was no evidence presented that would reduce his murder convictions to involuntary manslaughter.

C. Because there was no evidence to reduce, mitigate, excuse, or justify Petitioner's actions, trial counsel acted properly in not objecting to the trial court's jury instruction that malice could be inferred from the use of a deadly weapon.

The trial court gave the following instruction to the jury:

Therefore, there must be a combination of the previous evil intent and the act. Malice aforethought may be expressed or inferred. These terms, expressed and inferred do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved. Expressed malice is shown when a person speaks words which express hatred or ill-will toward another or when the person is prepared beforehand to do the act which was later accomplished. Malice may be inferred from conduct showing a total disregard from human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. And whether an instrument has been

used as a deadly weapon depends on the facts and circumstances of each case.

(App.p.293).

Petitioner argues this charge was improper in light of Belcher, and trial counsel was ineffective for failing to object. In Belcher, the South Carolina Supreme Court held “the ‘use of a deadly weapon’ implied malice instruction had no place in a murder prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing.” Belcher, 385 S.C. at 610, 685 S.E.2d at 809. The Supreme Court held further “the permissive inference charge concerning the use of a deadly weapon remains a correct statement under the law where the only issue presented to the jury is whether the defendant has committed murder.” Id. at 612, 685 S.E.2d at 810.

In denying Petitioner’s application for post-conviction relief, the post-conviction relief found Petitioner “failed to meet his burden of proving trial counsel should have objected to the jury charge regarding an inference of malice.” The court found “[State v.] Belcher⁷ is inapplicable in this case as there was no evidence presented at trial that would mitigate, reduce, excuse, or justify the murder for which a jury found [Petitioner] guilty. As such, trial counsel was not deficient in failing to object to this portion of the jury charge.” (App. 461-62).

The PCR judge did not err in finding Petitioner failed to meet his burden of proving both that trial counsel was deficient in not objecting to the malice instruction in this case and that he was prejudiced as a result. As discussed in full above, Petitioner was not entitled to a jury instruction on involuntary manslaughter and presented nothing that would “mitigate, reduce, excuse, or justify the murder.” Accordingly, the jury instruction was proper and trial counsel was not deficient for failing to object. It was not incumbent upon trial counsel to have objected to the

⁷ 385 S.C. 597, 685 S.E.2d 802 (2009).

malice instruction in Petitioner's case because the prohibition of the charge as explained in Belcher was not applicable. The inferred malice charge is still properly charged "where the only issue presented to the jury is whether the defendant has committed murder." Id. That is precisely the case here. Christopher Allison, who was with Petitioner on the night in question, testified he saw a shot fired and Petitioner fired in the air several times in response. (App. 141; 148). Petitioner stipulated to firing his handgun nine times—leaving behind the nine .40 caliber casings recovered at the scene that had all been fired from the same weapon. (App. 166; 251-52; 255). The trial judge did not charge the jury with involuntary manslaughter, voluntary manslaughter, the defense of accident, or self-defense. Rather, the jury solely considered whether or not Petitioner was guilty or not guilty of murder. As such, the inferred malice charge in Petitioner's case was proper.

In conclusion, the post-conviction relief court properly found trial counsel was not constitutionally ineffective for not objecting to the inferred malice instruction as the instruction was properly given. This finding is supported by the record and is not an error of law. This Court should affirm these findings.

CONCLUSION

Because Petitioner failed to meet his requisite burden of establishing constitutional ineffectiveness as to either of the allegations challenged on appeal, this Court should affirm the post-conviction relief court.

Respectfully submitted,

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Nov. 19th, 2018

STATE OF SOUTH CAROLINA
In the Court of Appeals

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Post-Conviction Relief Court Judge
The Honorable Edward W. Miller, Trial Judge

Appellate Case No. 2015-001898

BRANDON HEATH CLARK,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within **Brief of Respondent** on Petitioner by depositing two copies of the same in the interagency mail to be delivered to Petitioner at the address below:

Appellate Defender Kathrine Hudgins
South Carolina Commission on Indigent Defense—Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 19th day of November, 2018.


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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Perry H. Gravely, Circuit Court Judge

RECEIVED
FEB 24 2020
S.C. SUPREME COURT

BRANDON HEATH CLARK

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001898

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF GREENVILLE

4
5 STATE OF SOUTH CAROLINA :

6 :

7 -vs-

: TRANSCRIPT OF RECORD

8 :

9 BRANDON HEATH CLARK :

10
11 November 2, 2009

12 Greenville, South Carolina

13
14 B E F O R E:

15 HONORABLE EDWARD W. MILLER, Judge.

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

18 BRYNA SEAY, ESQ.

19 Attorney for the Plaintiff

20 SCOTT ROBINSON, ESQ.

21 Attorney for the Defendant

22
23
24 MARY E. SPRAGUE

25 Court Reporter

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20	CHARGE OF THE COURT	N/A	
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25			

1 THE COURT: All right. Anything before we -- it's
2 going to be a few minutes before we can get the jury
3 panel. Anything we need to talk about before? I've got
4 proposed voir dire from the defense. Any from the State?

5 MS. SEAY: No, nothing as far as voir dire from the
6 State, Your Honor. There will be a couple of pretrial
7 matters. I don't know when you'd like to handle those
8 but -- or we can handle those at your convenience.

9 THE COURT: Well, let's -- do we need the jury? I
10 mean, I don't know what they are. Okay. Go ahead.

11 MS. SEAY: The first motion on behalf of the State,
12 Your Honor, would be for the admission of some 404(B)
13 evidence under State v. Lyle and South Carolina Rules of
14 Evidence 404(B). As I know Your Honor is familiar with
15 the rule, it permits evidence of other crimes, wrongs or
16 other acts for the purposes -- of certain purposes not
17 admissible to prove the character of a person but
18 admissible to show motive, identity, the existence of a
19 common scheme or plan, the absence of mistake or
20 accident, or intent.

21 And in this case, Your Honor, the State would be
22 offering this evidence in order to show identity of
23 the -- of the shooter in this case. This is a case in
24 which the defendant fired nine shots and killed two
25 victims. There were nine shell casings collected at the

1 scene that the State will have forensic evidence --
2 testimony in the form of forensic evaluation to show that
3 those nine shell casings were all fired from the same
4 gun.

5 When this defendant became a suspect it was learned
6 that two months prior to the killing of these two
7 individuals the defendant had shot his father and he had
8 shot two times at that scene. There were two shell
9 casings collected at that scene, both .40 caliber shell
10 casings also. Those two shell casings were examined
11 microscopically by the examiner and determined to have
12 been fired from the same gun. They were also compared to
13 the nine .40 caliber shell casings from the murder scene
14 and determined to have all been fired from the same
15 weapon. We believe that identity is a critical issue
16 in this case and we would be offering the evidence from
17 the -- what we call the May incident where the defendant
18 shot his father as proof of identity that he possessed
19 and fired that gun in this situation in July. And I have
20 some case law for you.

21 Your Honor, the standard of proof, as you know, for
22 this type of evidence, this 404(B) type evidence is clear
23 and convincing. And the defendant plead guilty to
24 assault and battery of a high and aggravated nature in
25 regard to the incident where he shot his father. I have

1 a certified copy of that conviction as well as a
2 transcript of the guilty plea if the Court should so
3 desire to see that. He plead guilty on August 13th of
4 2009 to assault and battery of a high and aggravated
5 nature.

6 I would also like to hand up to Your Honor a couple
7 of cases in support of my position. The first one is
8 State V. Jillian, 373 SC 601, 647 SE 2nd 872. It's a
9 2007 case. And I have a copy for the defense. Your
10 Honor, this case was a defendant who was on trial for
11 murder where a previous crime of burglary was admitted to
12 show identity being that he was in possession of a stolen
13 gun consistent with the type that was used to kill the
14 murder victim. It was specifically admitted for
15 identity. A limiting instruction was given and the Court
16 pointed out in this opinion that the evidence was highly
17 probative to the issue of identity, in that the identity
18 of the perpetrator was an important issue in the trial,
19 and allowing the State to present evidence of the
20 burglary in an effort to show the alleged murder weapon.
21 was in the petitioner's hands immediately prior to the
22 murder was highly probative. So it was found to be more
23 probative than prejudicial in this case. They did find
24 that too much extraneous information about the previous
25 burglary was admitted. They found that to be harmless

1 error in this situation, but I think I have a proposed
2 solution for that if you should find that this
3 information should be admitted.

4 Your Honor, I also offer up State v. Cheesborrow
5 (phonetically), which is 346 SC 526, 552 SE 2nd 300.
6 That's a 2001 case. This is a case in which a defendant
7 was on trial for murder and they found that evidence of a
8 previous murder was admissible to show identity. The
9 same weapon used in both cases goes to show his identity
10 and they found that that was permissible for that
11 purpose.

12 And finally State v. Sutherland is another case that
13 I would hand up in support of, I'll have to get you
14 another copy of this, of evidence of other crimes being
15 admissible for purposes of showing identity.

16 Your Honor, we feel that based on the fact that the
17 defense has indicated that they wish to introduce the
18 issue of third party guilt as to a co-defendant in this
19 case that identity is clearly going to be a very
20 important issue in this trial and we think that this --
21 the shell casings from the May incident matching, as
22 being fired from the same gun, the shell casings that
23 were fired at the murder scene is highly probative to
24 that issue. We would ask that it be admitted for that
25 reason.

1 THE COURT: All right.

2 MR. ROBINSON: May it please the Court? First of
3 all, Your Honor, they don't know the type of bullets that
4 killed the two victims in this case. They did an
5 extensive forensic in this case. James Armstrong does
6 not know the type of bullet that killed the individual.
7 He did recover the bullet from the other individual in
8 this case but they do not have, as this other case talks
9 about, any idea what type of bullet killed these
10 individuals. This was a party between 40 to 100 people.
11 It was in the dark at Ken Watson's house.

12 Regarding the bullets, Your Honor, as far as what
13 they're doing, I actually had proposed to her we're not
14 arguing that the shell casings from the .40 caliber gun
15 belonged to Brandon. We're not arguing that point. I
16 put in an e-mail to her that we would stipulate that the
17 .40 caliber shell casings are Brandon Clark's without
18 having to go into the fact that he had an incident which
19 Ms. Seay prosecuted two months ago where he shot his
20 father in the leg. That's the solution that we had come
21 up with because we're not -- we're not disputing that the
22 shell casings, the nine shell casings in one part of the
23 scene are his.

24 There were also other shell casings from .9
25 millimeter guns found around the car, around the victim's

1 car, and right by the -- one of the victim's head. So
2 we're not disputing that his shell casings were found
3 about 60 feet away from the car where the victims were
4 found shot. We just -- what we're trying to do is not
5 have her put in the fact that he shot his father in the
6 leg two months before. And that was the solution that
7 we -- that's what I proposed to her last Monday in an
8 e-mail that ---

9 THE COURT: So you're not denying that he fired the
10 gun?

11 MR. ROBINSON: No. I -- what we're saying is the --
12 he fired gun in the air, Your Honor.

13 THE COURT: Well, okay. So you don't -- you are
14 acknowledging that the shell casings that -- from this
15 incident location were fired from the gun that was in the
16 hand of your client?

17 MR. ROBINSON: Yes, that's true. That's why we --
18 that's why we thought, because there's really no reason
19 to bring in all this other case from two months ago.

20 THE COURT: Well, all right. Let me hear -- Ms.
21 Seay.

22 MS. SEAY: Well, first of all, I'd like to clarify
23 that -- about the bullet that was retrieved from one of
24 the victims. James Armstrong, it's my understanding from
25 his report and from speaking with him, will testify that

1 that was a .40 caliber bullet. So he does know the type
2 of bullet that it is. In addition, Your Honor, I believe
3 that -- I was not clear on what Mr. Robinson was
4 proposing to stipulate to and I still don't know what
5 may -- what may flesh out here in testimony. So I'd
6 prefer not to stipulate to that. And I still think that
7 the issue of identity as to the shooter in this case is
8 important, because what we have here is we have nine
9 shell casings leading up to the scene where these two
10 victims were killed. We have the victims in possession
11 of a gun and three shell casings that will be matched to
12 that gun. And one extraneous shell casing that was fired
13 by the home owner out into a field doing some target
14 shooting that is of a completely different caliber, a .25
15 caliber. So we do believe that the identity of the
16 shooter and the killer is important in this case.

17 THE COURT: Well, he's not denying that he's a
18 shooter. From what I've heard he's not denying he's the
19 shooter. He's denying that he's a killer. Am I, right
20 Mr. Robinson?

21 MR. ROBINSON: That's correct, Your Honor. That's
22 why we submitted that that's -- a lot of people shot out
23 there and a lot of shooters out there that night, but
24 he's not the killer.

25 THE COURT: Okay.

1 MR. ROBINSON: And the shell casings, Your Honor,
2 the shell casings we actually went out and -- we were
3 concerned about this, the shell casings where my client
4 fired in the air, according to our witnesses, they're
5 about a good number away from the car.

6 THE COURT: Well, you know, at this point, Ms. Seay,
7 I don't know that -- we'll, I'm not going to rule on it
8 at this point. What was your -- logistically how were --
9 what's your plan?

10 MS. SEAY: Well, logistically I was going to suggest
11 that even though I'm prepared to call the defendant's
12 father as a witness to testify that his son shot him,
13 that in order to avoid that extraneous information
14 problem that was cited in that first case, that the Court
15 could inform the jury that the defendant possessed and
16 fired a gun during an incident on May 23, 2006. And that
17 would take away some of that extraneous information and
18 serve the same purpose. And my concern at this point
19 with some sort of a stipulation is what may actually take
20 place here. There is no -- the defendant is not required
21 to testify. Mr. Robinson is saying that he's going to
22 say that, but he's certainly not required to testify.
23 And the State has the burden of proof in this case and we
24 feel like that we need to prove the identity.

25 THE COURT: Okay. Well, let me just think on this a

1 little bit. Were you -- I mean, you weren't going to put
2 that information right up at the get go, were you?

3 MS. SEAY: No, sir. It will not come in until much
4 later into the case.

5 THE COURT: Okay. All right. Well, I'll certainly
6 think about it. Okay.

7 MR. ROBINSON: May it please the Court?

8 THE COURT: Yeah.

9 MR. ROBINSON: We would argue as far as putting
10 anything in regarding the father and shooting the father,
11 there are other cases, State v. Walls, which is the most
12 recent case on that, which is 683 SE 2nd 275. It's --
13 obviously there's a two-part analysis here, is the bad
14 act relevant and so forth as a prior incident and whether
15 or not it fits under an exception. And again, we would
16 stipulate that the nine shells that they found are his,
17 are his shells. As far as ---

18 THE COURT: Fired that night ---

19 MR. ROBINSON: Fired that night.

20 THE COURT: --- by your client?

21 MR. ROBINSON: That is correct, Your Honor.

22 THE COURT: All right. Well, we'll -- as I said,
23 I'm going to think about it, and we'll see what -- see
24 where we go.

25 MR. ROBINSON: And we have the report from Mr.

1 Armstrong, Your Honor, and it doesn't show any sort of a
2 .40 caliber ---

3 THE COURT: Okay. Well, that's -- I mean, that's a
4 matter of proof. Any other pretrial motions?

5 MR. ROBINSON: We have a motion regarding third
6 party guilt, Your Honor, in this case, that we've filed
7 in this matter. What we intend to do, Your Honor, is
8 show ---

9 THE COURT: I don't have that, so if you've got a
10 copy please provide it to me.

11 MR. ROBINSON: Yeah, we filed that last week, Your
12 Honor, but I have a copy of it. May I approach, Your
13 Honor?

14 THE COURT: Yeah.

15 MR. ROBINSON: Your Honor, we intend to put in our
16 case in chief, in the defense side of this case proof
17 that two individuals, two other individuals in this case
18 were the ones particularly responsible in this case for
19 this particular murder, these murders. The person that
20 we're speaking of is Josh Wood and David Murray, Your
21 Honor. Josh Wood is the person who had a big motive
22 according to witnesses. He threatened to kill this
23 Cameron Wade. He called him a walking dead man, Your
24 Honor. He had a motive in this case. At the party he
25 called him from Ken Watson's house to get him to the

1 party, calling him all sorts of expletives and names.

2 When he got to the party that's when -- that's when
3 this deed took place and they went to the house of Ms.
4 Kayte Allison and Mr. -- Mr. Josh Wood was coated in
5 blood when he went to the house with David Murray after
6 the scene -- after this incident occurred. We also have
7 information that Josh Wood blocked the car of Cameron
8 Wade and Chris Garland when they were trying to get out
9 to leave in this case.

10 Also, the -- there is going to be submissions from
11 Mary Fields, as far as the crime scene, showing that Josh
12 Wood, at the crime scene, besides blocking the car, also
13 put his foot through the back window. He also took a
14 tire arm -- a tire iron and struck it right in the top of
15 the car with such force it put -- went right into the
16 top of the vehicle right next to the head of Cameron Wade
17 in this case. We believe that we have sufficient reason
18 to -- or sufficient grounds to admit third party guilt in
19 this matter, Your Honor.

20 I would point out, Your Honor, in terms of case law,
21 a recent case, it's a South Carolina Court of Appeals
22 case, State v. Cope. In that case, Your Honor, they talk
23 about three -- or two different commissions of a crime by
24 another is limited to such facts that are inconsistent
25 with his own guilt and such facts as to reach a

1 reasonable inference or presumption as to his own
2 innocence. In this case we have the facts that I just
3 presented to Your Honor that are inconsistent with the
4 guilt of Brandon Clark. And also this information raises
5 a reasonable inference as to his innocence in this case.
6 Thank you.

7 THE COURT: Okay. I don't have to rule on that yet
8 either, I don't believe. But from the State? Yes,
9 ma'am.

10 MS. SEAY: Your Honor, the State's position would be
11 that all of this information as to motive is not relevant
12 as to the third party guilt. And I've already handed you
13 up this case that is State v. Sutherland that addresses
14 the identity issue, but also this third party guilt
15 issue. And it talks about motive not being a requirement
16 of the State's case so that any evidence indicating that
17 others had a reason to kill the victim wouldn't
18 necessarily exculpate the defendant. So we would submit
19 that for Your Honor's consideration.

20 THE COURT: Yeah, I don't think I can -- I
21 appreciate y'all alerting me to it but at this point I
22 don't think I can rule on it.

23 MR. ROBINSON: I can provide the Cope case, Your
24 Honor, if I can hand that up.

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

1 MS. SEAY: Your Honor, the State would need to
2 conduct a Jackson v. Deno hearing in regard to a
3 telephone call made by the defendant to Investigator Mary
4 Fields, and I think that would conclude our preliminary
5 matters.

6 THE COURT: All right. Anything from the defense?
7 Anything else?

8 MR. ROBINSON: We have a motion in limine, Your
9 Honor, to prevent -- to preclude the prosecution
10 witnesses from talking about -- or testifying about this
11 incident with his dad where he shot his dad in the leg.
12 That's the only other ---

13 THE COURT: Well ---

14 MR. ROBINSON: --- motion we have, Your Honor.

15 THE COURT: Okay. I mean, that's -- just have to
16 deal that -- deal with it when comes up. All right.
17 We've got a 35 member pool of jurors. So let's go bring
18 them up, Shirley. We're going to have to ask all the
19 spectators to exit the courtroom so we can pick this
20 jury.

21 (The jury panel entered the courtroom at 11:48 a.m.)

22 THE COURT: All right. Ladies and gentlemen,
23 welcome up to courtroom four. And we are -- as I told
24 you downstairs, I'm handling a term of general sessions
25 court this week. And the first case on the docket is a

1 two indictment case. It is the State versus Brandon
2 Heath Clark. And the first indictment before me is
3 2007-2442. It is a two count indictment. Count one is
4 for murder. It alleges that Brandon Heath Clark did in
5 Greenville County on or about January 29th of July 2006
6 (sic), unlawfully and with malice aforethought kill
7 Christopher Garland by means of shooting him. And that
8 Christopher Garland died as a proximate result thereof.
9 Count two, possession of a weapon during the commission
10 of a violent crime. It is alleges that Brandon Heath
11 Clark did in Greenville County, on or about the 29th day
12 of July, 2006, possess or visibly display an operable
13 firearm during the commission or attempted commission of
14 a violent crime, that is murder.

15 The second indictment is indictment number
16 2007-2443. The State of South Carolina versus Brandon
17 Heath Clark. And this is a two count indictment. Count
18 one is for murder. It alleges that Brandon Heath Clark
19 did in Greenville County, on or about July 29, 2006,
20 unlawfully and with malice aforethought kill Cameron Jack
21 Wade by means of shooting him and that Cameron Jack Wade
22 died as a proximate result thereof. Count two is for
23 possession of a weapon during the commission of a violent
24 crime. And it alleges that Brandon Heath Clark did in
25 Greenville County, on or about July 29, 2006, possess or

1 visibly display an operable firearm during the commission
2 or attempted commission of a violent crime, that is
3 murder.

4 Now, ladies and gentlemen, to these indictments Mr.
5 Clark has plead not guilty. And that attaches certain
6 rights attached to each and every citizen who is charged
7 with a criminal offense in this state. And that is that
8 every person charged with a crime is presumed to be
9 innocent unless and until the State can prove them guilty
10 to the satisfaction of 12 jurors beyond any reasonable
11 doubt of each and every element of each offense that that
12 person is charged with. Those are the basic -- some
13 basic building blocks in our criminal justice system. So
14 please keep those concepts in mind throughout the course
15 of these proceedings.

16 Now, ladies and gentlemen, before I go further, and
17 as I told downstairs I'm going to ask you a series of
18 questions to qualify to serve in this particular case.
19 Before I start asking those questions I'm going to ask
20 the attorneys to please stand and introduce themselves,
21 and your client as well, Mr. Robinson. Ms. Seay.

22 MS. SEAY: My name is Bryna Seay. I'm an Assistant
23 Solicitor with the 13th Circuit Solicitor's office.

24 THE COURT: Okay. Mr. Robinson.

25 MR. ROBINSON: Good morning. My name is Scott

1 Robinson. And I practice in Greenville. My client is
2 Brandon Clark. He's sitting to my left.

3 THE COURT: All right. Now, ladies and gentlemen,
4 is there any member of the jury panel who is related by
5 blood or marriage, or is a close personal friend, or have
6 a relationship with either Mr. Brandon Heath Clark, who
7 is the defendant in this case, or with either of the two
8 victims in the case, Cameron Jack Wade or Christopher
9 Garland, if so, please stand?

10 (No response from the jury panel.)

11 THE COURT: Is there any member of the jury panel
12 who is related by blood or marriage, or has a business,
13 personal, or social relationship with any of the
14 attorneys involved in this case, or any member of their
15 office, if so, please stand?

16 (No response from the jury panel.)

17 THE COURT: Okay. I'm going to read a list of
18 potential witnesses, ladies and gentlemen. Please pay
19 attention because I'm going to want to know the same
20 thing about each of these individuals. So please listen
21 carefully. Steven John Watson, Tyler James Stone, Joshua
22 Wood, Tiffany Saltz, David Murray, Christopher Allison,
23 Sergeant Dar Show, Dr. Michael Ward, Sara Brunson, Diane
24 Orlando Richter, Renee Pruitt, Israel Flounders, Kara
25 Bennick, Iva Bracken, Sergeant Michael McNamara, Sergeant

1 Paul Silvaggio, Investigator Mary Fields, Tony Clark,
2 James Armstrong, Jeremy Stephens, Tyler Stone, Demos
3 Sexton, Jordan Mardis, Brittany Richardson, Constance
4 Creamer, Casey Hardesty, Chris Allison, Kayte Allison,
5 Steven Jordan, Dustin Allison, Michael Parsons, Christy
6 Clark, Tony Clark, Jeremy Herring, Steven Roberts,
7 Zachary Taylor, Terri Woody, Brook Woody, Donnie
8 Greenway, Tim Greaves, Kelly Fite. Is there any member
9 of the jury panel who is related by blood or marriage, or
10 have a business, personal, or social relationship with
11 any of those potential witnesses whose names I have just
12 read, if so, please stand?

13 (No response from the jury panel.)

14 THE COURT: Okay. Is there any member of the jury
15 panel who has any knowledge about the events that are
16 alleged in these indictments, if so, please stand?

17 (No response from the jury panel.)

18 THE COURT: Is there any member of the jury panel,
19 or family member, or friend who has ever been a victim or
20 charged with this type of offense, or these types of
21 offenses, if so, please stand?

22 (No response from the jury panel.)

23 THE COURT: Is there any member of the jury panel
24 who is related by blood or marriage to anyone who is
25 employed in law enforcement, if so, please stand?

1 MR. WYNN: Judge as far as anybody been ---

2 THE COURT: Well, just -- what's your name, sir, for
3 the record?

4 MR. WYNN: Charles Wynn.

5 THE COURT: Yes, sir.

6 MR. WYNN: As far as being related to anyone charged
7 with this type of offense, I had a first cousin who was
8 charged with -- he was hunting and accidentally shot a
9 fellow. I don't know what the charge was.

10 THE COURT: All right. Would the fact that that
11 happened, would that impair your ability to be fair and
12 impartial in this case, and judge this case solely on the
13 law and the evidence presented in this courtroom?

14 MR. WYNN: No, sir.

15 THE COURT: Okay. Thank you. Yes, ma'am, your
16 name?

17 MS. MOTES: Sheila Motes.

18 THE COURT: Yes, ma'am, Ms. Motes.

19 MS. MOTES: My husband works for the sheriff's
20 office.

21 THE COURT: All right. And would the fact that your
22 husband works for the sheriff's office impair your
23 ability to be fair and impartial in this case and to try
24 this case and judge this case solely on the evidence and
25 the law that's presented to you in this courtroom?

1 MS. MOTES: I would hope not.

2 THE COURT: Okay. Well, could you follow your oath?

3 MS. MOTES: I think so, yes.

4 THE COURT: And your oath would be to be fair and
5 impartial and to judge, make your decision based solely
6 on the evidence presented in the courtroom. Could you do
7 that?

8 MS. MOTES: I think so.

9 THE COURT: All right. Thank you, Ms. Motes. I
10 appreciate that. Is there any member of the jury panel
11 who is aware ---

12 THE CLERK: Judge.

13 THE COURT: Huh? Oh, I'm sorry. Yes, ma'am, your
14 name.

15 MS. KEANEY: I'm sorry. My husband works at the Law
16 Enforcement Center. He's a detention officer, but I feel
17 like I can still be an impartial person.

18 THE COURT: All right. And your name, ma'am?

19 MS. KEANEY: Terri Keaney.

20 THE COURT: All right. Thank you very much.

21 MS. KEANEY: All right.

22 THE COURT: All right. Is there any member of the
23 jury panel who's aware of any bias or prejudice towards
24 either the State or the defendant, if so, please stand?

25 (No response from the jury panel.)

1 THE COURT: Is there any member of the jury panel
2 who is a contributor or a member of a group whose primary
3 concern is the promotion of law enforcement or victim's
4 rights, such as MADD, SADD, or CAVE, if so, please stand?

5 (No response from the jury panel.)

6 THE COURT: Is there any member of the jury panel
7 who knows of any reason whatsoever why you could not
8 serve in this case with particular emphasis on your
9 ability to be fair and impartial to both the State and
10 the defendant, if so, please stand?

11 (No response from the jury panel.)

12 THE COURT: Okay. And ladies and gentlemen, clearly
13 what we are interested in is a group of fair and
14 impartial persons who can listen to the evidence that is
15 presented in this case from the witness stand and by any
16 exhibits that might be introduced, and to follow the law
17 as I will give it to you throughout the course of the
18 case and at the end of the trial. So that -- that is
19 what we're interested in, and you will, if you are
20 selected swear an oath. Yes, ma'am?

21 MS. AZZARO: I have a question.

22 THE COURT: Your name, ma'am?

23 MS. AZZARO: Blynda Azzaro. In June at my job I was
24 robbed at gunpoint and tied up in the safe. And I mean,
25 I could give a fair judgment but I honestly cannot look

1 at a gun as -- as evidence.

2 THE COURT: Well, ma'am, I ---

3 MS. AZZARO: I'm in therapy so ---

4 THE COURT: Well, I can't tell you what the evidence
5 is going to be because I ---

6 MS. AZZARO: I just wanted you to know that, because
7 I could have a panic attack or something. So I just
8 wanted you to know that.

9 THE COURT: All right. Well, do you think that you
10 would be qualified to serve in this case?

11 MS. AZZARO: Yes.

12 THE COURT: Okay.

13 MS. AZZARO: But I just wanted you to know that that
14 did happen to me and ---

15 THE COURT: All right. Well, I appreciate that very
16 much. Thank you, ma'am. Okay. And one thing I want to
17 tell y'all is that these indictments that I have read to
18 you are not evidence. They're just allegations that are
19 printed on these two pieces of paper that allow the case
20 to wind its way through the justice system to arrive in
21 this courtroom where the evidence will be presented to
22 you from which you will render your judgement. So don't
23 consider these indictments as anything other than what
24 they are. They are pieces of paper, documents, and they
25 contain allegations. They are not proof. So please keep

1 that in mind as well. All right. Anything else from the
2 State?

3 MS. SEAY: Nothing further.

4 MR. ROBINSON: Nothing from the defense, Your Honor.

5 THE COURT: All right. Thank you very much. All
6 right, Shirley.

7 THE CLERK: Judge, do you want them to step up here?

8 THE COURT: Well, let's -- if you would, when your
9 name is called please stand in your -- where you are and
10 then you'll receive further instructions.

11 THE CLERK: Number 112, Thomas Harvey. What says
12 the State?

13 MS. SEAY: Please present this juror.

14 THE CLERK: What says the defendant?

15 MR. ROBINSON: Please seat the juror.

16 THE CLERK: You may have a seat in the juror's box.
17 Number 255, Sheri Summey. What says the State?

18 MS. SEAY: Please present this juror.

19 THE CLERK: What says the defendant?

20 MR. ROBINSON: Please excuse the juror from the
21 trial of this case.

22 THE CLERK: You're excused. Just have a seat.
23 Number 280, Charles Wynn. What says the ---

24 MS. SEAY: Please excuse him from this trial.

25 THE CLERK: You're excused from this case. 252,

1 Nancy Stunger. What says the State?
2 MS. SEAY: Please present her.
3 THE CLERK: What says the defendant?
4 MR. ROBINSON: Please seat this juror.
5 THE CLERK: You may have a seat in the juror's box.
6 Number 62, Carrie Creech. What says the State?
7 MS. SEAY: Please present the juror.
8 THE CLERK: What says the defendant?
9 MR. ROBINSON: Please excuse the juror from the
10 trial of this case.
11 THE CLERK: You're excused from this case. Number
12 42, Albert Canady. What says the State?
13 MS. SEAY: Please present this juror.
14 THE CLERK: What says the defendant?
15 MR. ROBINSON: Please excuse the juror from the
16 trial of this case.
17 THE CLERK: You're excused from this case. Number
18 151, Michael Leverette. What says the State?
19 MS. SEAY: Please present the juror.
20 THE CLERK: What says the defendant?
21 MR. ROBINSON: Please seat the juror.
22 THE CLERK: You may have a seat in the juror's box.
23 Number 99, Nicole Gaines. What says the State?
24 MS. SEAY: Please present the juror.
25 THE CLERK: What says the defendant?

1 MR. ROBINSON: Please excuse the juror from the
2 trial of this case.

3 THE CLERK: You're excused from this case. 196,
4 Kathryn Patterson. What says the State?

5 MS. SEAY: Please present the juror.

6 THE CLERK: What says the defendant?

7 MR. ROBINSON: Please seat the juror.

8 THE CLERK: You may have a seat in the juror's box.
9 Number 199, Joseph Petty. What says the State?

10 MS. SEAY: Please excuse him from this case.

11 THE CLERK: You're excused from this case. 177,
12 Sharon Monroe. What says the State?

13 MS. SEAY: Please present her.

14 THE CLERK: What says the defendant?

15 MR. ROBINSON: Please seat this juror.

16 THE CLERK: You may have a seat in the juror's box.
17 Number 268, Mark Wetzel. What says the State?

18 MS. SEAY: Please present the juror.

19 THE CLERK: What says the defendant?

20 MR. ROBINSON: Please excuse the juror from the
21 trial of this case.

22 THE CLERK: You're excused from this case. 135,
23 Terri Keaney. What says the State?

24 MS. SEAY: Please present the juror.

25 THE CLERK: What says the defendant?

1 MR. ROBINSON: Please excuse the juror from the
2 trial of this case.

3 THE CLERK: You're excused from this case. Number
4 130, Brenda Jamison. What says the State?

5 MS. SEAY: Please present the juror.

6 THE CLERK: What says the defendant?

7 MR. ROBINSON: Please seat this juror.

8 THE CLERK: You may have a seat in the juror's box.
9 182, Sheila Motes. What says the State?

10 MS. SEAY: Please present the juror.

11 THE CLERK: What says the defendant?

12 MR. ROBINSON: Please excuse the juror from the
13 trial of this case.

14 THE CLERK: You're excused from this case. 92,
15 Cynthia Fore. What says the State?

16 MS. SEAY: Please present the juror.

17 THE CLERK: What says the defendant?

18 MR. ROBINSON: Please seat this juror.

19 THE CLERK: You may have a seat in the juror's box.
20 Number 73, James Dias. What says the State?

21 MS. SEAY: Please present the juror.

22 THE CLERK: What says the defendant?

23 MR. ROBINSON: Please seat this juror.

24 THE CLERK: You may have a seat in the juror's box.
25 Number 8, Blynda Azzaro. What says the State?

1 MS. SEAY: May we approach, Your Honor?

2 THE COURT: Sure.

3 (A bench conference was held.)

4 THE CLERK: All right. Ms. Azzaro, I am going to
5 excuse you for cause from this case. It does involve --
6 obviously it -- okay. Thank you, ma'am.

7 MS. AZZARO: I appreciate it.

8 THE COURT: All right.

9 THE CLERK: Number 90, Leonard Few, Jr. What says
10 the State?

11 MS. SEAY: Please present the juror.

12 THE CLERK: What says the defendant?

13 MR. ROBINSON: Please excuse this juror from the
14 trial of this case.

15 THE CLERK: You're excused from this case. 103,
16 Judy Gault. What says the State?

17 MS. SEAY: Please present the juror.

18 THE CLERK: What says the defendant?

19 MR. ROBINSON: Please seat this juror.

20 THE CLERK: You may have a seat in the juror's box.
21 142, Jeff Landrum. What says the State?

22 MS. SEAY: Please present this juror.

23 THE CLERK: What says the defendant?

24 MR. ROBINSON: Please seat this juror.

25 THE CLERK: You may have a seat in the juror's box.

1 Number 88, Elbert Felder. What says the State?

2 MS. SEAY: Please present the juror.

3 THE CLERK: What says the defendant?

4 MR. ROBINSON: Please excuse the juror from the
5 trial of this case.

6 THE CLERK: You're excused from this case. Number
7 110, Peter Hansen. What says the State?

8 MS. SEAY: Please present the juror.

9 THE CLERK: What says the defendant?

10 MR. ROBINSON: Please seat this juror.

11 THE CLERK: You may have a seat in the juror's box.
12 230, Richard Schosky. What says the State?

13 MS. SEAY: Please present the juror.

14 THE CLERK: What says the defendant?

15 MR. ROBINSON: Please excuse this juror from the
16 trial of this case.

17 THE CLERK: You're excused from this case. Number
18 131, Ashley Jones-Major. What says the State?

19 MS. SEAY: Please present the juror.

20 THE CLERK: What says the defendant?

21 MR. ROBINSON: Please seat this juror.

22 THE CLERK: You may have a seat in the juror's box.

23 THE COURT: Let's get an alternate. One and two.

24 THE CLERK: 191, Theresa Pace. What says the State?

25 MS. SEAY: Please excuse her from this case.

1 THE CLERK: You're excused from this case. Number
2 52, Leslie Childers. What says the State?

3 MS. SEAY: Please preset the juror.

4 THE CLERK: What says the defendant?

5 MR. ROBINSON: Please seat this juror.

6 THE CLERK: You may have a seat in the juror's box.

7 THE COURT: All right. Ladies and gentlemen, I've
8 got two distinct groups in here. One of you thinks
9 you've won the lottery, and one thinks you've lost. And
10 I personally think the group that was selected has won
11 the lottery, because as I said downstairs, it is a great
12 privilege, a great honor and a heavy responsibility to
13 serve as a juror. I hope that y'all get an opportunity
14 to serve if not this week then at some point in the
15 future get a chance to serve your fellow citizens by
16 sitting on a jury. But not today in this court. So I'm
17 going to excuse y'all at this time and I'm going to ask
18 you to go back down to the jury assembly room and they
19 will tell you, give you instructions at that time. Thank
20 you very much.

21 (The jury panel exited the courtroom at 12:20.)

22 THE COURT: Let me see the lawyers up here for one
23 second.

24 (A bench conference was held.)

25 THE COURT: All right. Ladies and gentlemen, it's

1 sincere when I say I feel like you are the lucky ones,
2 it's -- out of the pool. And -- because it is a
3 tremendous honor, privilege and responsibility to serve
4 as jurors. As you can tell from the questioning and my
5 comments to you what we ask of you is that you be fair
6 and impartial, and that you judge the evidence as it is
7 presented in this courtroom, and apply the law to it as I
8 will give it to you, and render a fair decision.

9 I want to tell you that in this case, as in every
10 case tried up here with a jury, there is a dispute about
11 the facts. And it is a dispute that could be resolved
12 only by bringing the case to trial and presenting the
13 evidence in this courtroom and asking a jury to make the
14 decision about how to resolve the dispute. And that is
15 your job.

16 You might ask, well, how do we do that, and how do
17 we make that judgment? Well, I'll tell you what standard
18 that you use and that is proof beyond a reasonable doubt.
19 Whenever any citizen is charged with a crime the burden
20 is on the State at all times to prove that the defendant
21 is guilty of the crimes with which they are charged. And
22 you must remember that rights belong to every citizen in
23 this country, and that is any person who is charged with
24 a crime is presumed innocent unless and until the State
25 can prove them guilty beyond any reasonable doubt of each

1 and every element of each offense that they are charged
2 with. Okay. And each charge must be judged separately
3 and it must stand on its own merits. So keep that in
4 mind throughout the course of the -- of the trial.

5 Again, I remind you that the indictments are not
6 evidence and you should not consider them as evidence in
7 any manner whatsoever. They're just documents that
8 contain allegations that allows the Court -- the case to
9 be brought to court. So please keep that in mind as
10 well.

11 You can divide a trial into as many parts as you'd
12 like, and if you read some novels or watch some of these
13 TV shows they dissect they trials into minute little
14 parts. But for our purposes I divide it into five
15 different parts. And they're not of equal length. But
16 the first part would be the opening statements to you by
17 the attorneys. The second part is the meat and potatoes
18 of any case and that is the presentation of the evidence
19 in this case. The third part would be the closing
20 arguments to you by the attorneys where they advocate
21 their position. The fourth part would be when I give you
22 the charge on the law as it applies to this case. And
23 then the fifth part would be when y'all retire to your
24 jury room to deliberate the case and resolve the dispute.

25 So they're not of equal length, the parts. But

1 you'll have an idea, sort of a road map as to where we
2 are throughout the course of the trial.

3 I'll ask you to do probably a lot things throughout
4 the course of the case but three main things I ask you
5 now. The first is that you keep an open mind throughout
6 the course of the proceeding. We ask all these questions
7 to ensure that you are impartial. And so keep an open
8 mind. Don't make up your mind after the first witness or
9 even after the last witness has testified. Wait until
10 you're back in your jury room and you've heard all the
11 evidence and the law and the arguments before you make
12 your decision and you deliberate with your fellow jurors.

13 I'd ask you also to pay attention throughout the
14 course of the case. No one is probably more guilty of
15 daydreaming than me, but we all know it's a human
16 quality and some failing I guess, but if you daydream
17 throughout -- at some point during the trial and you
18 miss some testimony or some evidence then it may be when
19 you're back in deliberations with your fellow jurors
20 that you're at a disadvantage because of that lapse of
21 concentration. So we ask to pay attention and
22 concentrate throughout the course of the trial.

23 And then it's extremely important that you not
24 discuss this case with anyone at any time until you're
25 free to deliberate at the end of the case. And you might

1 think that that is a strange request. But -- and when I
2 say that, don't talk to the bailiffs about it. When we
3 break for lunch don't talk to your friends, or your
4 family, or coworkers or anybody about the case. When we
5 break, it may go over night, don't talk about it tonight.
6 And we all know that it's -- it's also a human quality to
7 want to talk about what you've done and your friends and
8 your family are going to want to talk to you about it.
9 And you might say, well, why do you ask me not to talk
10 about the case? And that is because those persons who
11 you might speak to are not going to make the decision in
12 this case. They are not up here making the sacrifices
13 that each of you are making. And even an innocent
14 comment from someone who you like and trust, or even
15 don't like or don't trust could have an impact on your
16 thought process. And that would not be fair to the
17 parties here. That would not be fair to your fellow
18 jurors and it wouldn't be fair to yourself. You're the
19 one making the sacrifice, and you should -- the only
20 thing you need to make the decision in this case, and the
21 only things you should consider are what's presented in
22 this courtroom, subject to Constitutional protections and
23 scrutiny, and the law that you will hear throughout the
24 course of the trial. So don't talk about the case. And
25 I know it's going to be hard to do.

1 And don't do any research on it. It's so easy to
2 get on the internet and go do something, read things.
3 Don't go visit the scene. It's real easy to do that, but
4 you're swearing an oath, you'll swear an oath in just a
5 second not to do that. And that's for the exact same
6 reason. Everything you need to know about the case will
7 be presented in this courtroom. Okay.

8 I want to tell you that y'all are the sole judges of
9 the facts in this case. No one else judges the
10 credibility, believability of the witnesses, or the
11 evidence. Y'all are the sole judges of the facts. And a
12 trial judge is not allowed to have an opinion about the
13 facts in the case. So don't think by anything I say or
14 do throughout the course of the trial I have an opinion,
15 because I don't. And that is entirely your province, and
16 that is your job.

17 Now, the same law the makes you the sole judges of
18 the facts in this case makes me the sole judge of the
19 law. So if you have any idea about what you think the
20 law is, or what the law should be and it disagrees with
21 what I tell you the law is throughout the case and at the
22 end of the trial, then you will swear an oath in just a
23 moment to set aside your opinion and apply the law
24 precisely as I give it to you. That pretty much wraps up
25 what I'm going to tell you.

1 We are going to -- logistically I think it's good to
2 probably break right now for lunch and we're going to cut
3 you loose and ask you to back at two o'clock. We have
4 some other matters we have to take care of and that
5 should give you plenty of time to -- to eat and take care
6 of whatever business you might have. And we'd ask you to
7 be back at 2:00.

8 And I'm going to ask you to do one more thing. When
9 you come back I would ask that among the first 12 who
10 were selected I would ask y'all to pick a foreperson,
11 someone who will be the -- your -- the jury's spokesman
12 in the -- spokesperson in the courtroom should that
13 become necessary, and also to moderate the discussions
14 during deliberations. So when you come back if you would
15 do that for me I would greatly appreciate it. If you
16 can't do it and we understand, you know, it may be
17 difficult to select a foreperson, but if you can't do it
18 I'll do it for you. We'll get a picture of each you. I
19 have a dart in my office, and I'll just throw it at the
20 wall and pick a guy. Actually I'd be a little more
21 scientific than that. But if y'all could select a
22 foreperson I would like you to do that.

23 And one last thing I'll tell you. From time to time
24 throughout the course of the trial I will perhaps have to
25 excuse y'all from the courtroom and it maybe -- and the

1 reason for that is we have to discuss with the attorneys
2 perhaps some point of law that y'all should not hear. We
3 are not trying to deceive you. We are trying to hide
4 something from you perhaps, but we're not trying to
5 deceive you. We just want to make sure that what you
6 hear is Constitutionally proper. And if you hear us
7 discussing the law and points of evidence perhaps you
8 would hear something that would not be appropriate. So
9 that's why from time to time I may ask y'all to leave the
10 courtroom, or they come up and we do a bench conference.
11 That's what's going on.

12 All right. I don't have anything further. And so
13 at this time I would ask y'all to stand and take your
14 oath.

15 (The jury was sworn to well and truly try this case
16 at 12:30 p.m.)

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: Well, no, y'all don't have to sit down.
19 Sorry, Shirley. We're going to go ahead and let y'all go
20 to lunch. And they will show you where to -- you'll be
21 going out the back door now and they'll show you how to
22 get in and out and where to come. Thank you very much.
23 Have a pleasant lunch.

24 (The jury exited the courtroom at 12:31 p.m.)

25 THE COURT: All right. I guess I should ask, any

1 exceptions or objections to the jury empaneled pursuant
2 to Batson or Jebb?

3 MS. SEAY: Nothing from the State.

4 MR. ROBINSON: Nothing from the defense, Your Honor.

5 THE COURT: Okay. Anything else we need to take up
6 before we break?

7 MS. SEAY: No, sir.

8 THE COURT: All right. How long do you anticipate
9 the trial will last?

10 MS. SEAY: I have about 18 witnesses. Some of them
11 will be very brief witnesses as far as chain of custody.
12 Mr. Robinson has not stipulated chain of custody on the
13 ballistic items, and so I intend to prove the chain as
14 far as practicable. That would involve a few extra
15 people.

16 THE COURT: Okay.

17 MS. SEAY: So I think probably a day.

18 THE COURT: All right. Mr. Robinson?

19 MR. ROBINSON: May it please the Court? Your Honor,
20 we would stipulate. I've seen the chain of custody and
21 we've actually had everything tested too. And I would
22 stipulate the chain of custody is true and accurate.

23 THE COURT: All right. Well, get together with Ms.
24 Seay and see if y'all can agree on which witnesses she
25 does not need to call so we don't spin our wheels

1 unnecessarily.

2 MR. ROBINSON: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. ROBINSON: And out of the witnesses that I have
5 they're not going to take very long. I would imagine
6 just a day.

7 THE COURT: Well, you don't have to -- I don't ask a
8 defendant, but okay. All right. Well, good. We'll be
9 back at 2:00 ready to go.

10 MR. ROBINSON: Thank you, Your Honor.

11 (A short recess was taken, after which, the trial
12 continued as follows:)

13 (State's Exhibit Numbers 1 through 56 were marked
14 for identification.)

15 THE COURT: All right. Y'all ready to go?

16 MS. SEAY: Yes, sir.

17 MR. ROBINSON: Your Honor, we would ask the Court
18 to -- I spoke to Ms. Seay about this, we would ask that
19 the witnesses be sequestered since there's a lot of stuff
20 in common, a lot that we need to make sure ---

21 MS. SEAY: And I said, I would leave that within the
22 Court's sound discretion.

23 THE COURT: Well, I don't -- all right, that's fine
24 with me.

25 MR. ROBINSON: Thank you, Your Honor.

1 THE COURT: Sequester the witnesses. Anybody that
2 is a potential witness needs to leave. And after you
3 testify you are not to discuss your testimony with anyone
4 who is going to be witness. Okay. Now we're ready. All
5 right. Let's bring them. And your foreperson, foreman
6 is Michael Leverette.

7 (The jury entered the courtroom at 2:12 p.m.)

8 THE COURT: All right. Ladies and gentlemen, I
9 understand there has been -- someone has requested
10 whether or not you can take notes. And I have no problem
11 with that, if y'all would like to take notes. Each one
12 of you has to have an opportunity to take notes. So if
13 you want to take notes please let us know right now and
14 we'll get the pads. How many pads do we need? Who all
15 would like to take notes, if you would just raise your
16 hand?

17 A JUROR: I have mine.

18 THE COURT: All right. What I must tell you, we
19 need -- well, let's just get a bunch of them in case we
20 need them. Okay. Let me just tell you this, remember
21 that -- well, you have to leave your notes here when you
22 go home. And just remember that when you're taking notes
23 while -- that you may miss -- while you're writing you
24 may miss someone's expression on the witness stand, and
25 it may affect their -- what you might consider to be

1 their credibility. So just keep that in mind. And I
2 want to tell you at the end of the trial when y'all are
3 deliberating one person's notes have no more value than
4 any other person's memory. Okay.

5 All right. With that ---

6 THE BAILIFF: Go and ahead and get them before we
7 start?

8 THE COURT: Yeah, go ahead and get -- collect them
9 and -- but we'll go with the opening. Would y'all want
10 them now or do you want to wait until after the opening
11 statements? Okay. All right. Ms. Seay.

12 MS. SEAY: Thank you, Your Honor. May it please the
13 Court? Mr. Foreman, ladies and gentlemen of the jury,
14 again my name is Bryna Seay. And I represent the State
15 in this case. It is my privilege to represent the people
16 of Greenville County for the 13th Circuit in criminal
17 prosecutions. We appreciate your service here today. I
18 know it is a personal sacrifice on the part of each one
19 of you in some different way and we appreciate that and
20 we thank you for it.

21 I want to tell you a little bit about the case that
22 you're going to hear. On July 29, 2006, Greenville
23 County sheriff's officers responded to shots fired at a
24 scene on in Greenville County. It's out in
25 the Pelzer area. When they got there they found a Honda

1 Accord with two dead men seated in it. Christopher
2 Garland was seated in the driver's seat dead. Cameron
3 Wade was seated in the passenger seat dead. The State is
4 going to present evidence to you from a forensic
5 pathologist who will explain to you that these two
6 victims died of gunshot wounds as they sat in the car.

7 Forensic officers responded to that scene and they
8 meticulously collected the available evidence that was
9 there. You're also going to hear that the victims
10 appeared to be in the process of leaving when this
11 happened. Law enforcement began an extensive
12 investigation into the deaths of these two men. You're
13 going to hear from officers who collected evidence, who
14 took photographs, processed the vehicle. And at the
15 conclusion of the testimony of the forensic officers and
16 the autopsy findings the evidence will prove beyond a
17 reasonable doubt that these victims died at the hands of
18 another.

19 Now, I submit to you that those hands belonged to
20 the defendant, Brandon Clark. I want you to be prepared
21 that there will be a lot of distractions forthcoming in
22 this case. And the reason that I say to be prepared for
23 that is because what you're going to find out is that
24 there was a gathering that night of a lot of young
25 people. Some people may say there were 20 people there.

1 Some people may say there were 200 people there. There
2 were a lot of people there and they were armed with
3 potentially deadly weapons such as bats, ax handles,
4 poles, sticks, because there was going to be a fight
5 between two groups of people.

6 Upon the victims arrival in their car, as well as
7 several other people, shots were fired. And after all
8 the shots rang out and the smoke had cleared these two
9 young men were dead and nine .40 caliber shell casings
10 that will be connected to one gun through testimony of an
11 analyst were found. Nine shell casings directly
12 connected to one gun.

13 You're further going to hear forensic evidence that
14 one of the bullets that struck one of the victims was a
15 .40 caliber round. You're also going to hear witnesses
16 who will tell you that the defendant armed himself with a
17 .40 caliber gun that night, that despite the fact that
18 all these people were gathered with these potentially
19 deadly weapons, he stayed there armed with a .40 caliber
20 weapon and he fired that weapon.

21 At the conclusion of the case you will be asked to
22 evaluate all of the evidence, so I ask that you listen
23 carefully to everything that is presented because you
24 will be charged with making a decision about whether the
25 defendant murdered these two young men. And again, we

1 thank you for your service.

2 THE COURT: All right, Mr. Robinson.

3 MR. ROBINSON: May it please the Court? You know
4 Harry Truman was our 33rd president had a saying, and he
5 said, I don't give them hell I just tell the truth and
6 they think it's hell. This case is about truth and lies.
7 That's what the case is about. You heard a second ago
8 that the solicitor says that she represents the State,
9 the citizens of this county. Brandon Clark who is
10 sitting to my left is a citizen of this county, just like
11 y'all are. And he's entitled, as the judge said, to the
12 presumption of innocence.

13 Now, it's not like a lot of things that you see on
14 TV, listen to on the radio or read, where you sometimes
15 see that law enforcement has caught somebody, you make
16 this presumption that, yeah, they must have got the guy
17 or girl that did it. That's a pretty natural presumption
18 that most of us would have. But in this court, when you
19 took an oath a few minutes ago, that presumption is gone.
20 The presumption now is that Brandon Clark, who is sitting
21 to my left with my assistant and my investigator, is
22 innocent. The presumption is that he is innocent. And
23 the State has to prove each and every element of their
24 case to y'all beyond a reasonable doubt.

25 Now, you may wonder why y'all were chosen in this

1 case. Why? Because you bring something very important
2 to the courtroom and to this case. And that's your
3 common sense, and the ability through your experiences
4 when you look at someone, when you listen to someone, and
5 you figure out what's going on, you can tell when someone
6 is lying, when someone has something to hide, when
7 someone is telling the truth.

8 Brandon Clark didn't know either of these two young
9 men. He never met them in his whole life. There is no
10 motive whatsoever in this case that the State can show
11 you.

12 Now, the solicitor a moment ago told you that there
13 was evidence, that they're going to put up evidence that
14 they meticulously went through this crime scene and they
15 talked about this tie-in between these .40 caliber
16 bullets that they found at the scene a distance from the
17 vehicle and Brandon Clark and these young men. The
18 evidence instead will show there is no tie-in between the
19 two of them. The State cannot show you, the evidence
20 will -- we present not through our witnesses but through
21 the State's own witnesses that they're going to put up,
22 this forensic person that they're talking about, they
23 can't tie the bullets that killed these young men to
24 Brandon Clark. But you're going to hear in a few moments
25 from their forensic person that's going to talk about

1 bullets and so forth, he's going to probably tell you
2 that he can't tell you that Brandon Clark fired these
3 shots. He can't tell you that. So when the solicitor
4 says that there's a tie-in in this case we're going to
5 show you there is no tie-in, that these bullets could
6 have come from five or six different types of guns, and
7 five or six different manufacturers. They're not even
8 sure whether the shells that were found at the scene
9 fired from this car came from the gun that shot these
10 guys. He didn't know these folks. I just told you that.

11 But ladies and gentlemen, Brandon Clark has waited
12 three years for this case to come to court. He's waited.
13 He's waited to be able to present his side of the story,
14 and to have 12, with the alternate 13 jurors, 13 citizens
15 of this county to judge another citizen of this county
16 using the standard that all of us are under, and that is
17 the State must prove to you, using all the common sense
18 and collective wisdom that you have, that they can prove
19 beyond a reasonable doubt that Brandon Clark is guilty.
20 And I suggest to you, I submit to you that they couldn't
21 do it. Thank you for your time. I look forward to
22 working with you. Thank you.

23 THE COURT: All right. Call your first witness.

24 MS. SEAY: Your Honor, the State calls Steven John
25 Watson.

1 THE CLERK: Mr. Watson, if you'll step up here,
2 please. Place your left hand on the Bible and raise your
3 right hand. Left hand. Change.

4 STEVEN WATSON

5 Having first been duly sworn, testified as follows:

6 THE CLERK: Thank you. You may be seated. And
7 state your full name for the record, please.

8 THE WITNESS: Steven John Watson.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. SEAY:

12 Q Mr. Watson, will you pull the microphone down just a
13 little bit. I want to make sure that every one back here
14 can hear you. Now, will you state your full name,
15 please?

16 A Steven John Watson.

17 Q Mr. Watson, how old are you?

18 A Twenty-six.

19 Q What do you do for a living?

20 A I'm a cook at a Clock Diner.

21 Q How long have you been so employed?

22 A About three months.

23 Q Are you married?

24 A Yes, ma'am.

25 Q And do you have any children?

1 A Yes, ma'am.

2 Q Can you please briefly tell us what your educational
3 background is?

4 A Finished high school, went to Greenville Tech for
5 two years in auto body repair.

6 Q Do you recall the night of July the 29, 2006?

7 A Yes, ma'am.

8 Q Okay. Well, I want to ask you if you recall that
9 night to go back in time a couple weeks before that. Do
10 you recall that period of time?

11 A Yes, ma'am.

12 Q Did you have a gathering at your house?

13 A Yes, ma'am.

14 Q Where is your house?

15 A Pelzer, South Carolina.

16 Q Okay. And tell us about that gathering that you had
17 at your house about a couple weeks before July 29th?

18 A It was a get together for Cameron's birthday. And
19 something happened that it went out of control, a bunch
20 of fights started, and Cameron and Josh got into a fight
21 that night.

22 Q All right. And when you say it was for Cameron's
23 birthday, are you referring to Cameron Wade?

24 A Wade, yes, ma'am.

25 Q Okay. Was Cameron Wade a good friend of yours?

1 A Yes, ma'am.

2 Q All right. So you said things went awry and he got
3 into fight with who?

4 A Josh Wood.

5 Q All right. And do you know Josh Wood?

6 A Yes, ma'am.

7 Q Is he a friend of yours?

8 A He was a co-worker at McDonald's with me at one
9 point in time.

10 Q Okay. Do you know what happened at that particular
11 fight? Do you know what the circumstances were?

12 A No, ma'am, I don't know why it started.

13 Q Okay. Let me take you -- take your attention then
14 to the date we first spoke of which is July 29, 2006.
15 What happened on that day?

16 A I was on Myspace seeing that there was supposed to
17 be gathering at my house, which I did not know about.
18 That night Josh, Brandon and a bunch of other people
19 showed up at my house to supposedly fight Cameron.

20 Q All right. So you said on Myspace it said there was
21 a party at your house?

22 A Yes, ma'am.

23 Q You did not know -- you did not plan this party?

24 A No, ma'am, I did not.

25 Q All right. Do you know who did?

1 A A guy named David Killgore.

2 Q And did people show up at your house that night?

3 A Yes, ma'am.

4 Q Do you know about how many people showed up?

5 A I would say no more than 50.

6 Q Okay. How were those people acting?

7 A Very out of control.

8 Q Can you explain what you mean by that?

9 A Josh was running around with no shirt on, swinging
10 baseball bats and stuff like that around. Everybody else
11 was pretty much calm except for Josh.

12 Q Okay. Was there any alcohol being consumed?

13 A By the people that came, not that I know of. I was
14 drinking, but nobody else was, as far as I know.

15 Q All right. Were there any drugs being used that you
16 know of?

17 A Yes, ma'am.

18 Q All right. You said that Brandon showed up. Are
19 you referring to Defendant Brandon Clark?

20 A Yes, ma'am.

21 Q How well did you know him?

22 A I worked with him at McDonald's and we spoke a
23 couple times outside of work.

24 Q Did any of the people there have any kind of things
25 that could be used as weapons?

- 1 A Yes, ma'am.
- 2 Q Can you describe what you mean by that?
- 3 A Baseball bats, sticks, chains, beside that I did not
4 actually see like no knives or guns. I did not see any
5 of those.
- 6 Q Do you know where those items came from?
- 7 A Some came with the people. Some were grabbed --
8 taken out of my garage.
- 9 Q Okay. And I believe you just testified to this, I
10 want to make sure I heard you correctly, did you ever see
11 anyone with a gun that night?
- 12 A No, ma'am.
- 13 Q Were there phone calls back and forth amongst the
14 parties who were going fight?
- 15 A Yes, ma'am.
- 16 Q Did you ever speak to Cameron, one of the victims?
- 17 A Yes, ma'am.
- 18 Q On the phone?
- 19 A Yes, ma'am.
- 20 Q What did you say to him?
- 21 A I called Cameron and told him not to come. And by
22 that time Josh grabbed the phone out of my hand and threw
23 it across the yard.
- 24 Q Tell me what happened after Cameron arrived?
- 25 A I was in the house getting people out of my house.

1 I heard gunshots. I come outside. There were more
2 gunshots. I ran in the backyard, laid down. When the
3 gunshots were over with I got up and there was nobody
4 left in my yard but me and TJ Stone and I think two other
5 people. Well, I seen a car sitting at the end of the
6 yard with people in it. I was hollering trying to see
7 who it was. Nobody answered me. So me and TJ walked
8 down to the car and seen it was Cameron and Chris.

9 Q Okay. What kind of car was it, do you recall?

10 A It was a Honda Accord, four door.

11 Q All right. And where on your property was it
12 parked?

13 A It's like half in the ditch, half in the road.

14 Q Okay. When Mr. Garland and Mr. Wade arrived, did
15 you actually see them when they arrived to your house?

16 A No, ma'am.

17 Q Okay. So you never saw them until you walked down
18 there later, is that correct?

19 A Yes, ma'am.

20 Q Okay. Do you know what happened to all the people
21 who had been at the party after these gunshots rang out?

22 A No, ma'am.

23 Q What did you and TJ Stone observe when you walked
24 down to the car?

25 A We seen Cameron in the passenger side with his head

1 laid over on the door and Chris in the driver's side just
2 laid back. There was bullet holes all over the car and
3 after that is when I called 911.

4 Q Did either one of them appear to be alive to you?

5 A No, ma'am.

6 Q And so you actually called 911 at that time?

7 A Yes, ma'am.

8 Q Did y'all do anything to disturb the scene as you
9 found it?

10 A No, ma'am.

11 Q Did the police come and respond to your call?

12 A Yes, ma'am.

13 Q And did y'all answer the questions they had for you
14 then?

15 A Yes, ma'am.

16 Q I want to ask you, did you have a gun that night?

17 A No, ma'am, I didn't.

18 Q Have you ever had a gun on your property?

19 A Yes, ma'am.

20 Q What kind of gun?

21 A It was .25 caliber automatic.

22 Q Okay. And have you ever discharged or fired that
23 .25 caliber automatic gun on your property?

24 A Yes, ma'am.

25 Q Do you know when that was?

1 A I believe, say a month before anything ever happened
2 at my house.

3 Q Okay. What were you doing at the time?

4 A A buddy of mine that does my tattoos had bought it
5 and was bringing it over to show it to me, and we shot it
6 out in the field just to see how good it shoots.

7 Q Is that an open area where no one would be in any
8 danger if you shot into this area?

9 A Yes, ma'am.

10 Q Where were you standing when you fired the pistol?

11 A In my backyard toward the field.

12 Q Okay. So if I told you that a .25 caliber shell
13 casing was collected on your property, would that
14 surprise you?

15 A No, ma'am.

16 Q Did -- did you come here today to testify freely and
17 voluntarily?

18 A Yes, ma'am.

19 Q And you're currently charged with two counts of
20 lynching in relation to this case, isn't that right?

21 A Yes, ma'am.

22 Q And that is for your role in participating in this
23 scene, is that correct?

24 A Yes, ma'am.

25 Q And have you testified without any bargains or

1 anything from the State today? Have I promised you
2 anything?

3 A No, ma'am.

4 Q And have you testified truthfully?

5 A Yes, ma'am.

6 MS. SEAY: Those are all the questions I have for
7 you. Please answer any that Mr. Robinson might have.

8 MR. ROBINSON: May it please the Court?

9 THE COURT: Yep.

10 CROSS-EXAMINATION

11 BY MR. ROBINSON:

12 Q Mr. Watson, you admit that Josh had been -- Josh
13 Wood, who's not in the courtroom today, was in a fight
14 with Cameron Wade? You would agree with that, correct?

15 A Yes, sir.

16 Q And you would agree that -- did you see the fight by
17 the way?

18 A I seen parts of it, yes, sir.

19 Q And isn't it true that Josh was very irritate, upset
20 after this fight?

21 A Yes, sir.

22 Q Really upset, was really mad, wasn't he?

23 A Yes, sir.

24 Q In fact, when he came to the party in two weeks,
25 after two weeks, he was really pumped up, wasn't he,

1 really upset?

2 A Yes, sir.

3 Q Wasn't he?

4 A Yes, sir.

5 Q And in fact, when you testified a moment ago
6 about -- about calling Cameron Wade and then handing
7 the phone to Josh Wood, he threw that phone out of your
8 hand in anger, didn't he?

9 A Yes, sir.

10 Q And he had made statements during the -- when he got
11 there in your presence that he was going to get even or
12 do something about this, didn't he?

13 A Yes, sir.

14 Q And in fact, he actually threatened this guy with
15 death, didn't he?

16 A That I did not hear.

17 Q Didn't hear that?

18 A No, sir.

19 Q Okay. But this fight that you had that you -- two
20 weeks ago that he had with Cameron Wade, Brandon Clark
21 was never there, was he?

22 A No, sir.

23 Q And in fact, when you said a second ago about
24 Brandon and Josh being there, coming there, they didn't
25 come together, did they?

1 A They showed up at the same time, but actually riding
2 together, no, I do not know that for a fact.

3 Q Actually Brandon showed up with Chris Allison,
4 didn't he?

5 A I don't know.

6 Q Do you know Chris Allison?

7 A Yeah, I know Chris, but I did not see who got out of
8 the car with who.

9 Q Okay. And how many gunshots did you hear when you
10 were in the house, I think, wherever you were?

11 A Several.

12 Q Several?

13 A Several.

14 Q Now, did they -- did some of the gunshots hit the
15 house?

16 A I honestly don't know but I'm pretty sure they did.

17 Q Okay. And were the -- can you estimate for this
18 jury how many shots you heard?

19 A Lots.

20 Q Over 50?

21 A Yes. There was a lot of gunshots.

22 Q Okay. Now, you stayed in the house, or in the back
23 of the house until after everyone had left, didn't you?

24 A Yes, sir.

25 Q So you didn't get an opportunity to see what anyone

1 did at that time, is that correct? You have no idea at
2 that time, correct?

3 A No, sir, I do not.

4 Q You weren't -- you were -- your head was down on the
5 floor or wherever you were, just heard a lot of these
6 shots, right?

7 A Yes, sir.

8 Q Okay. And I wanted to make sure I got this
9 description of Josh down right. Was he -- what was he
10 wearing that night?

11 A A pair of pants and shoes and that was it. He was
12 shirtless.

13 Q Are you sure it was a pair of pants?

14 A I'm -- I'm thinking. Honestly, I don't know. I
15 didn't -- I don't know what he was wearing. I know he
16 did not have a shirt on.

17 Q Okay. Do you know a guy named David Murray?

18 A No, sir.

19 Q No, okay. Did Josh have anyone with him when he
20 came in, came to the party?

21 A I mean, like I said, they showed up -- there was a
22 bunch of people that showed up when Josh showed up. So I
23 don't know who was with him or who just happened to come
24 up at the same time he did.

25 Q What were the color of his -- his outfit, what

1 color?

2 A I thought it was blue jeans.

3 Q Blue jeans, not sure though?

4 A Yeah, I'm not sure.

5 Q So if I told you it was Khaki, it could be Khakis,
6 you're really not sure?

7 A No, sir, I'm not sure.

8 Q And as far as this scene, this was at what time of
9 night?

10 A I'd say about 9:00 or 10:00.

11 Q Was it dark out?

12 A It was dark.

13 Q Dark outside?

14 A Yes, sir.

15 Q And kind of describe for the jury the lighting
16 situation you have at your house?

17 A There's only one light and it's the one above the
18 garage and it's a motion light.

19 Q Is there a lot of -- when these people were showing
20 up are there -- weren't there some dark areas around it,
21 by the roadway?

22 A Yeah, my whole front yard is dark and then over in
23 my shop area is dark.

24 Q Okay. Now, as far as where you found the car, the
25 Honda Accord that -- that Chris Garland and Cameron Wade

1 were in, weren't they close to the electric fence on your
2 property?

3 A Yes, sir.

4 Q Wasn't it pretty close?

5 A Yes, sir.

6 Q And that's probably how far -- you know where the
7 telephone pole is on your property, right?

8 A Yes, ma'am (sic).

9 Q How many yards do you think that is away from there?

10 A About 30, 40 yards.

11 Q Thirty, 40 yards away?

12 A Yeah.

13 Q And that's where the car was because you own the
14 property with the electric fence?

15 A All the way up to the electric fence.

16 Q All the way up, okay. And that electric fence on
17 the corner has like three pillars or three pieces of
18 wood, correct?

19 A Yes, sir.

20 Q Is that what that is? And the car -- would you
21 estimate how many feet was it away from that little area
22 right there, where that electric fence is?

23 A About 20, 25 feet.

24 Q Pretty close?

25 A Yes, sir.

1 MR. ROBINSON: That's all the questions I have.

2 THE COURT: All right. Any redirect?

3 MS. SEAY: Nothing further from this witness. May
4 he be excused at this time?

5 MR. ROBINSON: No objection, Your Honor.

6 THE COURT: All right. You're excused. Thank you
7 very much.

8 MS. SEAY: The State calls Tyler Stone.

9 THE CLERK: Mr. Stone, if you would step up here.
10 Please place your left hand on the Bible and raise your
11 right hand.

12 TYLER STONE

13 Having been first duly sworn, testified as follows:

14 THE CLERK: Thank you. You may be seated.

15 DIRECT EXAMINATION

16 BY MS. SEAY:

17 Q Mr. Stone, please state your first name so I can
18 make sure everyone back here can hear you.

19 A Tyler Stone.

20 Q How old are you, Mr. Stone?

21 A Twenty-five.

22 Q And what do you do for a living?

23 A Right now, nothing.

24 Q Are you married?

25 A No, ma'am.

1 Q What is your educational level?

2 A High school diploma.

3 Q Okay. Can you speak up just a little bit. I'm
4 having trouble hearing you.

5 A High school diploma.

6 Q Okay. Do you know Steve Watson?

7 A Yes, ma'am.

8 Q Okay. Have you ever been to any gatherings at his
9 house?

10 A Yes, ma'am.

11 Q Were you present the night of July 29, 2006, when
12 there was a gathering at his house?

13 A Yes, ma'am.

14 Q Who did you go with?

15 A I went by myself.

16 Q By yourself?

17 A Yes, ma'am.

18 Q Do you know what the purpose of that get together
19 was?

20 A It was just we was going to have a little party.

21 Q Were you aware that there had been a previous
22 gathering that turned into a fight there a couple weeks
23 earlier?

24 A Yes, ma'am.

25 Q You were aware that?

- 1 A Yes, ma'am.
- 2 Q Did you attend that?
- 3 A No, ma'am, I wasn't there.
- 4 Q When you got there, approximately how many people
5 were there?
- 6 A Five, six, when I got there.
- 7 Q Okay. And did a lot more people come?
- 8 A Yes, ma'am.
- 9 Q Approximately how many people would you say came?
- 10 A I would say at least 50.
- 11 Q How were people acting?
- 12 A Well, one particular guy was running around with his
13 shirt off beating on his chest saying where is Cameron
14 at.
- 15 Q And who was that?
- 16 A Josh Wood.
- 17 Q All right. How well do you know Josh Wood?
- 18 A I've never seen him before that night.
- 19 Q That was the first time you had ever seen him?
- 20 A Yes, ma'am.
- 21 Q Okay. Were there any other guys with their shirts
22 off?
- 23 A Not that I remember, no, ma'am.
- 24 Q Not that you recall. Did you know Cameron Wade?
- 25 A Yes, ma'am.

1 Q How well did you know him?

2 A I knew him pretty good. We hung out a lot.

3 Q What about Christopher Garland, did you know him?

4 A No, ma'am.

5 Q Did Cameron Wade and Christopher Garland come to
6 that party that night, or that gathering?

7 A Yes, ma'am.

8 Q Did you see them when they arrived?

9 A No, ma'am.

10 Q Did -- or were you aware of any phone calls back and
11 forth amongst the parties that were gathering?

12 A Yes, ma'am.

13 Q Did you ever speak to Cameron?

14 A Yes, ma'am, I did.

15 Q What did you say to him?

16 A I asked him if he was coming over that night. At
17 this time there wasn't probably maybe 15 people. Then
18 we -- I talked to him again. He said he was on his way.

19 Q Okay. Do you know Brandon Clark?

20 A No, ma'am.

21 Q Do you know if you saw him that night?

22 A I do not recall seeing him that night.

23 Q Okay. Did you see anybody with any potential
24 weapons that night?

25 A The guy, Josh, had a baseball bat.

1 Q Did see any other kinds of weapons?

2 A No, ma'am.

3 Q Did you see anyone with a gun?

4 A No, ma'am.

5 Q Where were you during this gathering?

6 A During the ---

7 Q When you got there where did you go? Did you go
8 inside the house?

9 A Yes, ma'am.

10 Q Who were you with?

11 A John Watson and Jacob Hamby.

12 Q At some point did you go outside and see the victims
13 car pull up?

14 A We seen the headlights coming down the road, pull on
15 the side of the road, and we was going outside. And by
16 the time I made it to the garage is when I started
17 hearing the shots.

18 Q By the time you made it to the garage you started
19 hearing gunshots?

20 A Yes, ma'am.

21 Q Could you tell where those gunshots were coming
22 from?

23 A They had to be at least I'd say 30 feet from me. It
24 was close.

25 Q Okay. From the garage area?

1 A Yes, ma'am.

2 Q What did you do when you heard the gunshots?

3 A I ducked down first thing.

4 Q And do you know approximately how many shots you
5 heard?

6 A I would say six to nine.

7 Q What did you do after that?

8 A I got up and everybody was just running everywhere.
9 And I noticed that there was a car stalled along the side
10 of the road. And I went down there and it was Cameron
11 and Chris. And Chris' foot, the car was still in drive.
12 Chris' foot was on the brake pedal. And they were both
13 deceased.

14 Q And you noted that the car was still in drive?

15 A Yes, ma'am.

16 Q And did anybody walk down there with you?

17 A John Watson did.

18 Q And John called 911, is that right?

19 A Yes, ma'am.

20 Q When the police came, did you talk to them and tell
21 them what you knew about the situation?

22 A Yes, ma'am.

23 Q And I want to go ahead and ask you about the fact
24 that you're also charged with two counts of lynching in
25 this case, is that correct?

1 A Yes, ma'am.

2 Q And did you come here today freely and voluntarily
3 to testify?

4 A Yes, ma'am.

5 Q Have I made any promises to you about any kind of
6 leniency, or sentence, or anything like that?

7 A No, ma'am.

8 MS. SEAY: Those are all the questions I have for
9 you, Mr. Stone. Please answer any that Mr. Robinson has.

10 THE WITNESS: Okay.

11 MR. ROBINSON: Please the Court?

12 THE COURT: Yeah.

13 CROSS-EXAMINATION

14 BY MR. ROBINSON:

15 Q Tyler, you said a moment ago on direct examination
16 that you had not gone to this party a couple weeks
17 beforehand?

18 A No, ma'am -- I mean, no, sir.

19 Q No, sir, okay. Now, do you remember giving
20 statements to the police on two different dates?

21 A Um-hm.

22 Q You do? Do you recall that -- the number of shots
23 that you told the police you heard?

24 A I was approximating.

25 Q Would it help you to look at the statement to

1 refresh your memory?

2 A Yeah, I'd like to, yeah.

3 MR. ROBINSON: May I approach the witness, Your
4 Honor?

5 THE COURT: Yep.

6 BY MR. ROBINSON:

7 Q This is your statement. This is the statement you
8 gave on -- it looks like the 30th of July of 2006. Do
9 you recognize that statement?

10 A Yes, sir.

11 Q Is that your signature on the bottom?

12 A Yes, sir.

13 Q Why don't you review that for a second and pay
14 particular attention to the last paragraph, as far as the
15 number of shots that you heard, if you can tell that to
16 the jury?

17 A Where is it at?

18 Q I apologize, Mr. Stone. Let me take that back.
19 This is the statement that you gave October 16, 2006. Do
20 you recognize that statement?

21 A Yes, sir.

22 Q Is that your signature on the bottom?

23 A Yes, sir.

24 Q Okay. I want to you look at the bottom of this as
25 far as what you stated to the police under oath on that

1 date as far as how many shots you heard?

2 A Yes, sir.

3 Q Can you tell the jury what shots you heard?

4 A Nine shots.

5 Q Then what did you hear next?

6 A Then there was three more.

7 Q Then three more after the nine?

8 A Yes, sir.

9 Q And that was -- what did you say in between there,
10 though, between the nine and the three, what did you
11 say?

12 A When the shooting stops I walked out of the garage,
13 everybody was scattering, running to their cars, running
14 around. There were three more shots.

15 Q Three more gunshots?

16 A Yes, sir.

17 Q Okay. So actually there were 12 gunshots, correct?

18 A Yes, sir.

19 Q That you heard?

20 A Yes, sir.

21 Q Does that refresh your memory a little bit, that
22 statement?

23 A Um-hm.

24 Q And do you recall giving a statement on July 30,
25 2006, regarding this get together you had with Cameron

1 Wade at -- Cameron Wade and Josh Wood at Ken Watson's
2 house?

3 A I said I had heard about them getting into it.

4 Q Okay. Let me show you your statement and pay
5 particular close attention to the second paragraph. That
6 is your statement from July 30, 2006, correct?

7 A Yes, sir.

8 Q That is your signature?

9 A Yes, sir.

10 Q Can you please -- what do you say right there in the
11 second paragraph?

12 A About a month ago we had a get together. Cameron
13 and Josh would have gotten into a fight at John's house.
14 And Josh said the next time he saw Cameron he was going
15 to kill him.

16 Q Okay. When you gave that statement that was the
17 truth, wasn't it?

18 A Do what?

19 Q When you gave that statement that's the truth, is
20 that right.

21 A Yes, sir.

22 Q You had never seen Brandon Clark before, had you?

23 A No, sir.

24 Q You don't know Brandon Clark, do you?

25 A No, sir.

1 Q And when you saw Josh Wood that night, what did he
2 have on, do you remember?

3 A I can't recall. I think a wife beater, I believe.

4 Q Okay. Did he have shorts on or pants?

5 A I can't remember.

6 Q Not sure? Okay. And did you -- you know who Josh
7 Wood is, correct?

8 A I don't know him, no.

9 Q But you know what he looked like that night,
10 correct?

11 A Yeah, that's when somebody told me that's who he
12 was, yes.

13 MR. ROBINSON: Okay, gotcha. That's all the
14 questions I have. Thank you.

15 THE COURT: Redirect.

16 MS. SEAY: I don't have anything further from him.
17 May he be excused, Your Honor?

18 THE COURT: Any objection?

19 MR. ROBINSON: No objection, Your Honor.

20 THE COURT: All right. You're released from
21 subpoena.

22 MS. SEAY: The State calls Joshua Wood.

23 THE CLERK: Mr. Wood, if you'll step up here to the
24 Bible, please. Place your left hand on the Bible and
25 raise your right hand.

1

JOSHUA WOOD

2

Having been first duly sworn, testified as follows:

3

THE CLERK: Thank you. You may be seated.

4

DIRECT EXAMINATION

5

BY MS. SEAY:

6

Q Mr. Wood, would you please state your full name once again so I make sure we hear you back here?

7

8

A Joshua David Wood.

9

Q Okay. Mr. Wood, how old are you?

10

A Twenty-three.

11

Q What is your educational background?

12

A I graduated high school in 2004.

13

Q Where did you graduate from?

14

A Palmetto.

15

Q Okay. What do you do for a living?

16

A I'm an electronic sales person.

17

Q Where did you work?

18

A HH Gregg.

19

Q How long have you worked at HH Gregg?

20

A Four years.

21

Q Okay. What is your marital status?

22

A I'm engaged.

23

Q Do you have children?

24

A Yes, ma'am, I have two.

25

Q Okay. Do you know Brandon Clark?

1 A Yes, ma'am.

2 Q How long have you known him? How do you know him?

3 A We used to be really good friends. I've known him
4 for probably six or seven years.

5 Q Did y'all go to school together?

6 A Yes, ma'am.

7 Q I want to take you back to July of 2006. And I want
8 to ask you about a gathering that took place at Mr.
9 Watson's house. Do you recall that?

10 A Yes, ma'am.

11 Q And I'm referring to the first gathering, okay.
12 Tell us what happened at the first gathering at Mr.
13 Watson's house?

14 A We were actually going to a party. One of our good
15 friends had died a few weeks before so we were going to
16 kind of reminisce, Justin Mahaffey. And a fight had
17 broken out and I tried to separate the fight. There were
18 two guys. One who -- we knew one of the guys and I don't
19 have any idea who the other guy was. And another guy
20 came up and said something to me. We started fighting.
21 And then Cameron jumped on me and they both beat me up
22 really bad. One of them pushed my girlfriend down and
23 she was pregnant.

24 Q All right. Who -- they say they both beat me really
25 bad. Who beat you up really bad?

- 1 A It was Cameron and I believe Dusty Valdez.
- 2 Q How well did you know Cameron Wade?
- 3 A I didn't know him.
- 4 Q Did you only become involved with him because you
- 5 tried to intervene and break up this other fight?
- 6 A Yes, ma'am.
- 7 Q What about this Dusty Valdez, how well did you know
- 8 him?
- 9 A I didn't know him either.
- 10 Q Okay. So that was your first encounter with them?
- 11 A Yes, ma'am.
- 12 Q And how badly were you hurt?
- 13 A It was pretty bad. I had black eyes, a cut on my
- 14 face. It was -- I mean, I looked pretty rough.
- 15 Q Were you upset about that?
- 16 A Yes, ma'am.
- 17 Q So as I understand it then, there was a second
- 18 gathering, is that right?
- 19 A Yes, ma'am.
- 20 Q How did that come about?
- 21 A I got off work one night and one of our friends
- 22 called and had said that there was going to be a party
- 23 over at John's house again, and that Cameron was going to
- 24 be there. They pretty much wanted to set up like a fight
- 25 between us so ---

1 Q And why was that?

2 A Because we were mad at each other because he had
3 beaten me up two weeks before and pushed my girlfriend
4 down.

5 Q All right. So you went to this gathering for the
6 specific purpose of you and Cameron were supposed to
7 fight?

8 A Yes, ma'am.

9 Q Okay. Tell us how you were acting when you were
10 there?

11 A Ignorant. You know, I was drinking. I was acting
12 wild and out of control.

13 Q Describe what you mean by wild and out of control?

14 A I mean, I broke sticks, and acted -- I was yelling,
15 screaming, dancing around, and acting completely
16 uncivilized, I guess.

17 Q And were you intending on fighting Cameron Wade?

18 A Yes, ma'am.

19 Q Did you ever in any time during this period of time
20 where you were waiting on them to get there, did you ever
21 have any weapons in your hands?

22 A I had a few sticks, yes, ma'am. I broke sticks and
23 I was throwing things.

24 Q What about a baseball bat, did you ever have a
25 baseball bat in your hand?

1 A I don't believe so, no, ma'am.

2 Q Is it possible?

3 A I mean, it's possible. I had a few sticks, just not
4 sure exactly what they were.

5 Q But you will concede that you.

6 Were acting foolish?

7 A Yes, ma'am.

8 Q Did you ever have a weapon, such as a gun or a
9 knife?

10 A No, ma'am.

11 Q Did you see anyone there with a gun that night?

12 A No, ma'am.

13 Q All right. At some point did Cameron Wade and
14 Christopher Garland arrive at this gathering?

15 A Well, yes, ma'am, it was actually multiple cars that
16 pulled up along side on the road, on the darker side of
17 the yard that we were on.

18 Q All right. When you say darker side of the yard,
19 what was the lighting like?

20 A It was pitch black.

21 Q All right. So how many cars approximately pulled up
22 in that area?

23 A Five to six.

24 Q Okay. And did anybody get out of the car, cars?

25 A I seen one guy get out of the car and I'm not sure

1 who he was.

2 Q All right. What did you do?

3 A I hit him with a stick.

4 Q Okay. And why did you do that?

5 A He was the first guy that approached me and he
6 looked at me and pretty much, we said our word, I asked
7 him -- I couldn't even tell who he was. Like I didn't
8 know if he was on our side or the other side because it
9 was so dark. And he says, man, I'm from Easley, so I hit
10 him with a stick, and then that's when I heard the,
11 gunshots. He went back towards the cars when we heard
12 the gunshots. And I ran back towards the driveway.

13 Q Did you ever see Christopher Garland and Cameron
14 Wade get out of the car?

15 A No, ma'am.

16 Q Okay. And so it was at that point had -- you had
17 approached those cars sort of, is that what you're
18 saying?

19 A I had gotten close at first when the guy walked up
20 the hill, and then I ran back toward the driveway.

21 Q All right. And when did you hear shots?

22 A Within seconds of -- after the guy got hit with the
23 stick.

24 Q Okay. Where did they appear to be coming from?

25 A I heard a few shots behind me and then down on the

1 road.

2 Q Did you see anybody shooting a gun?

3 A I didn't see it. I heard it, but no, ma'am, I
4 didn't actually physically see the gun.

5 Q Okay. Did you see Brandon Clark fire a gun?

6 MR. ROBINSON: Objection, Your Honor, leading.

7 THE COURT: Okay. Don't lead.

8 BY MS. SEAY:

9 Q Did you see Brandon Clark at that time?

10 A At the time of the shooting?

11 Q Yes.

12 A Well, yes, ma'am, he was behind me.

13 Q Okay. And did you see him firing a gun?

14 A I seen him shoot into the air twice and then I don't
15 know what happened after that.

16 Q All right. Why do you not know what happened after
17 that?

18 A As soon as I seen the gunshot I kind of ran back. I
19 didn't -- I was still running while the guns were being
20 shot.

21 Q Okay. But you know you saw him fire a gun two times
22 in the air?

23 A Yes, ma'am.

24 Q Okay. What were all the other people doing when the
25 gunshots rang out?

1 A It was just -- everybody laying all kinds of
2 different ways. I don't really -- I was just trying to
3 watch myself really. So I kind of ran behind a tree up
4 running over toward the car that I rode in.

5 Q All right. Who had you ridden there with?

6 A David Murray.

7 Q All right. And so you went over to David Murray's
8 car?

9 A Yes, ma'am.

10 Q And did you leave then?

11 A No, ma'am, I didn't.

12 Q What did you do?

13 A One of my other friends had gotten left. He had
14 actually rode with Brandon and Chris and Jordan. His
15 name was Timmy Brooks. They had left him in the
16 driveway. So he stopped and the car that was still
17 parked on the side of the road and he said, look, Josh,
18 that guy left his car. I thought, you know, it was the
19 guy I had hit with the stick, we thought he had left his
20 car there. He threw something at the car and I threw a
21 tire iron at the car.

22 Q You threw a tire iron at the car?

23 A Yes, ma'am.

24 Q Okay. Where did you get the tire iron from?

25 A It was in David's truck.

1 Q All right. And when you did that did you see the
2 victims in the car?

3 A No, ma'am.

4 Q What -- why do you think you didn't see them?

5 A It was extra dark that night. I mean, nobody knew
6 they were in the car. Nobody in that truck knew they
7 were in the car.

8 Q What did you do after you threw the tire iron?

9 A The car was on a hill, it was kind of like in a
10 ditch like, and I kicked the back -- the rear window and
11 then I went and got back into the car and we drove off.
12 We had still not known anyone had gotten shot.

13 Q Where did y'all go?

14 A We were on our way back to Dustin Allison's house
15 and then one of our friends had called us and said that,
16 look ---

17 Q Well, don't say what anybody else said. But you
18 were on your way to Dustin Allison's house?

19 A Yes, ma'am.

20 Q Okay. Who is that?

21 A That's Chris Allison's brother.

22 Q All right.

23 A One of our friends.

24 Q One of -- a friend of yours?

25 A Yes, ma'am.

1 Q Where did you go?

2 A We went to Dustin's. He lives in Pelzer on

3

4 Q All right. Who was present at Dustin's house?

5 A It was me, David Murray, Jordan, Dustin, Chris,
6 Kayte, his wife, and I believe that's it, Timmy, Timmy
7 Brooks.

8 Q Was Brandon Clark present?

9 A Yes, ma'am.

10 Q Did you have a conversation with Brandon Clark at
11 the Allison's house?

12 A Well, when we got back he looked really scared and
13 he had the gun in his hand and said, I think I shot them,
14 I think I shot them. And I said, no, you didn't, you
15 didn't shoot them, you shot into the air. And after that
16 I left. I went back to my apartment.

17 Q What kind of gun did he have in his hand?

18 A I'm not exactly -- I'm not positive what kind of gun
19 it was. I know it was a pistol.

20 Q Had you ever seen it before?

21 A Yes, ma'am.

22 Q When had you seen it before?

23 A It was one he carried on him before. Just, I mean,
24 he carried it in his pockets a lot, but I didn't know
25 that he would he actually use it, I mean, to that extent.

1 Q Did he say anything about what he was going to do
2 with the gun?

3 A No, he said something about throwing it in the
4 river, the Saluda River.

5 Q How long did you stay at the Allison's house?

6 A I left immediately afterwards?

7 Q And who did you leave with?

8 A David Murray, and Timmy.

9 Q Okay. And what did you do the next day?

10 A I turned myself in. I went and gave my statement.

11 Q What were you turning yourself in for?

12 A I was just -- I heard, you know, that just
13 everything that had went down, and then everybody was
14 saying I done it. So I just wanted to get it straight, I
15 did not do it.

16 Q Did you have a gun that night?

17 A No, ma'am.

18 Q Did you go to the police department and ask to speak
19 to somebody about what had happened?

20 A Yes, ma'am.

21 Q And did you tell them about your involvement?

22 A Yes, ma'am.

23 Q - And as a result of that you were charged with two
24 counts of lynching in this case, is that correct?

25 A Yes, ma'am.

1 Q Now, have I made any promises to you about what
2 might happen with your charges if you came and testified
3 today?

4 A No, ma'am.

5 Q Have you testified freely and voluntarily of your
6 own freewill?

7 A Yes, ma'am.

8 Q And have you testified truthfully?

9 A Yes, ma'am.

10 MS. SEAY: Please answer any questions that Mr.
11 Robinson has for you.

12 THE WITNESS: Yes, ma'am.

13 MR. ROBINSON: May it please the Court?

14 THE COURT: Um-hm.

15 CROSS-EXAMINATION

16 BY MR. ROBINSON:

17 Q Josh, you were wearing khaki shorts that night,
18 weren't you?

19 A Yes, sir.

20 Q Khaki shorts. Khaki is like a brown color, cream
21 clear?

22 A I believe so, yes, sir.

23 Q You weren't wearing a shirt, were you?

24 A Nope, no, sir.

25 Q And did you have a baseball cap on?

1 A I don't remember.

2 Q What did -- your friend David Murray, did he go with
3 you to this party?

4 A Yes, sir.

5 Q I think you drove in a Dodge Dakota, is that
6 correct?

7 A Yes, sir.

8 Q And what was David Murray wearing that night?

9 A I don't remember.

10 Q You don't remember what he was wearing?

11 A No, sir.

12 Q Were you wearing a baseball cap that night?

13 A I believe so. I'm not positive.

14 MS. SEAY: Objection, he's asked and answered that
15 question.

16 MR. ROBINSON: I'm ---

17 THE COURT: Well, that's all right. Go ahead.

18 BY MR. ROBINSON:

19 Q And you weren't wearing a shirt, correct?

20 A No, sir.

21 Q Okay. Now, this incident that occurred a couple
22 weeks beforehand at Ken Watson's place, that was a fight
23 between you and Cameron Wade, correct?

24 A And Dusty Valdez.

25 Q And Dusty Valdez, okay.

- 1 A Yes, sir.
- 2 Q Brandon Clark wasn't there, was he?
- 3 A No, no, sir.
- 4 Q And this was a pretty bad fight, wasn't it, for you?
- 5 A Yes, sir.
- 6 Q He actually knocked you out -- this is true, right,
- 7 he actually knocked you out with one punch, didn't he?
- 8 A No, sir.
- 9 Q He didn't?
- 10 A No, sir, they kept punching me.
- 11 Q Kept punching you.
- 12 A And I ran out into the road and I seen my fiance who
- 13 was pregnant, I seen she got pushed down and I remember
- 14 yelling to two of my friends, I said, get her out of
- 15 here, get her out of here. And I ran back and I finally
- 16 jumped in I think Chris' car and he was still punching me
- 17 when I got into the car so ---
- 18 Q You admit you lost this fight?
- 19 A Yes, sir.
- 20 Q You did?
- 21 A Yes, sir.
- 22 Q Now, you had made different threats against Mr.
- 23 Cameron Wade, hadn't you?
- 24 A No, sir.
- 25 Q You didn't make any threats in the presence of Ken

1 Watson?

2 A I told him I was going kick his butt.

3 Q Did you ever make any threats in the presence of
4 Tyler Stone that you were going to kill this guy, kill
5 Cameron Wade?

6 A No, sir.

7 Q Never said that to anyone?

8 A No, sir.

9 Q So when you called him on the phone that night --
10 you did call him on the phone that night, correct?

11 A I didn't call him, somebody else called him and
12 handed me the phone.

13 Q Handed you the phone. What did you do with the
14 phone when you got the phone?

15 A I actually -- well, I mean we were yelling back and
16 forth on the phone, and then someone else come and
17 brought another phone. And I thought he was giving me a
18 five or whatever, and I gave him -- you know, like I
19 said, I was acting ignorant and I went to give him a
20 five. I didn't know he had the phone in his hand and I
21 knocked it out of his hand.

22 Q So you were talking on the phone with him on a
23 different phone, is that correct?

24 A Yes, sir.

25 Q And you guys were shouting back and forth, is that

1 right?

2 A Yes, sir.

3 Q And you weren't making any threats against him at
4 all?

5 A I mean just, I'm going to kick your butt, or
6 whatever, you know, maybe ---

7 Q So you didn't make any threats towards him? You
8 didn't make any threats that he was a dead man walking?

9 A No, sir.

10 Q Okay. It must have been pretty humiliating, wasn't
11 it, getting beat up like that?

12 A Yes, sir, it actually was.

13 Q And you're really not used to getting beat up very
14 much, are you?

15 A No, sir.

16 Q Kind of bothered you, didn't it?

17 A Yes, sir, it did.

18 Q Did you tell your friend David Murray about it?

19 A I mean, all my friends knew about it. They were
20 pretty much all there, yes, sir, I did.

21 Q They all knew about it. How many friends did you
22 have there, that saw this beat up?

23 A I don't know for sure. I mean, probably a dozen
24 give or take.

25 Q So you told a dozen of your friends you were beat up

1 by this Cameron Wade?

2 A And that I was jumped by two people, yes, sir.

3 Q Okay. Did you help set up this meeting with Cameron
4 Wade at the -- at Ken Watson's house?

5 A No, sir, I did not.

6 Q Nothing to do with it?

7 A I went, yes, sir. But actually I had people that
8 called me and told me that he's going to be at this
9 party, if you guys are going to fight then you can come
10 on over to the party.

11 Q All right. So when you went to the party though you
12 knew that you wanted Cameron Wade to be there, didn't
13 you?

14 A Yes, sir.

15 Q Because you wanted to get even with him, didn't you?

16 A Yes, sir.

17 Q Now, in your statement that you gave you don't deny
18 in your statement -- you did give a statement to the
19 police, correct?

20 A Yes, sir, I did.

21 Q And you've seen a copy of your statement, right?

22 A Yes, sir.

23 Q Okay. You would agree that you said in your
24 statement you had been mad at Cameron Wade, isn't that
25 correct?

1 A Yes, sir.

2 Q And I think you said in your statement that -- and
3 let me ask you this. How many people were at this party?

4 A I mean, between 50 to 60, maybe more.

5 Q Okay. And you say that -- I think you said to Ms.
6 Seay that you said it was dark outside, pitch black?

7 A Yes, sir.

8 Q Is that correct? And you also stated that you were
9 drunk and you got pissed off, is that right?

10 A Yes, sir.

11 Q You were -- you were going around this party beating
12 your -- beating your chest weren't you?

13 A Yes, sir.

14 Q With your shirt off? And besides the bat that you
15 talked about a moment ago, you actually had an ax too,
16 didn't you?

17 A No, sir, I did not have an ax.

18 Q You don't recall an ax?

19 A No, sir.

20 Q And when you say that you threw a tire arm at
21 Cameron Wade's Honda Accord, you actually went up to that
22 car and planted it in the top of the car, didn't you?

23 A No, sir.

24 Q You didn't?

25 A Absolutely not.

1 MR. ROBINSON: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes, sir.

4 MR. ROBINSON: I'm going to have you look at a
5 picture for a second. I'm going to mark this as Defense
6 Exhibit 1 for identification purposes only.

7 (Defendant's Exhibit Number 1 was marked for
8 identification.

9 BY MR. ROBINSON:

10 Q I'm going to let you look at what's been marked
11 Defendant's Exhibit 1 for identification purposes only.
12 Is that your -- do you recognize this picture? Do you
13 recognize this vehicle?

14 A I do now, yes, sir.

15 Q Is that the vehicle that -- that Cameron Wade and
16 Chris Garland were in?

17 A I guess so, yes, sir.

18 Q Okay. Is that your -- is that your tire arm in the
19 car, in the top of the car?

20 A Yes, sir.

21 Q And is that tire arm -- is that -- I want you to --
22 is that inside the top of the car?

23 A It is, yes, sir.

24 Q It is. So you didn't just throw this tire arm, did
25 you?

1 A Yes, sir, I did. I have two witnesses that were
2 standing right near me and seen me throw it.

3 Q How far away were you when you threw the tire arm?

4 A Probably 15 or 20 yards.

5 Q 15 or 20 yards?

6 A Yes, sir.

7 Q And you impacted it with such force that it drove
8 into the top of the car?

9 A I guess so. I didn't know it was in there when ---

10 Q How did you get the -- how you did you throw this
11 tire arm -- tire iron, excuse me, and have it lodged in
12 the top of car? How did you do that?

13 A I have no idea.

14 Q No idea? But it lodged, you can see from the
15 picture you just identified, it actually lodged in the
16 top of the car, didn't it?

17 A Yes, sir.

18 Q And it's your testimony under oath that you didn't
19 go up and plant it inside the car?

20 A No, sir, I did not.

21 Q You threw it such force that it happened to land on
22 top of the car, is that right?

23 A Yes, sir.

24 MR. ROBINSON: Let you look at picture two if I can
25 get this marked as defense exhibit number 2 for

1 identification purposes.

2 (Defendant's Exhibit Number 2 was marked for
3 identification.)

4 BY MR. ROBINSON:

5 Q And again, Mr. Wood, looking at Defense Exhibit
6 Number 2, this is again the tire arm that you put in the
7 top of that car?

8 A Yes, sir.

9 Q And you're standing by your testimony that you threw
10 that?

11 A Absolutely.

12 Q Now, looking back at Defense Exhibit Number 1 for
13 identification purpose only, how far away is your tire
14 arm from the passenger side of that vehicle?

15 A It's lodged in it. I mean, it's close to the door,
16 yes, sir.

17 Q Close to it?

18 A Yes, sir.

19 Q Okay. Do you have a scar on your leg by the way?

20 A I have a small one, yes, sir.

21 Q Did you get that scar from that night?

22 A Yes, sir.

23 Q And is that from putting your leg through the
24 back -- one of the back windows of the car?

25 A Yes, sir.

1 Q Which window did you put it through?

2 A I think it was the back window, the back corner of
3 the window.

4 Q So you threw a tire arm at this car, and you put
5 your foot -- or your leg through the back window of this
6 car. So you knew that Cameron Wade was in that car,
7 didn't you?

8 A No, I did not.

9 Q So you took a random car that -- and you had no idea
10 whose car this was and you put a tire arm and you busted
11 the back of the window, back of the car, is that correct?

12 A Well, I thought it was the guy that ran off. That's
13 the only reason I even did anything because Timmy Brooks
14 said, look that guy left his car here. He threw
15 something at the car. I had no idea what he threw. I
16 threw the tire iron and walked down the top of the hill
17 and I kicked the back window.

18 Q So you would admit that you were in a rage at that
19 point, weren't you?

20 A Yes, sir, I was acting stupid, yes, sir.

21 Q And you were drunk, weren't you?

22 A Half way.

23 Q And you had been -- you had also been doing some
24 drugs that night too, hadn't you?

25 A No, sir.

1 Q No, just enraged, just mad, wanted to get even,
2 didn't you?

3 A Yes, sir.

4 Q I want you to look at -- do you remember giving a
5 statement to the police, Mr. Wood?

6 A Yes, sir, I do.

7 Q Do you recall in your statement that you actually
8 said that -- that you thought Brandon was shooting in the
9 air, didn't you?

10 A I did, yes, sir.

11 Q Okay. And you said it sounded like eight shots, is
12 that correct?

13 A Somewhere around there, yes, sir.

14 Q Okay. And I think you also stated that you don't
15 remember what Cameron Wade looked like, is that correct?

16 A No, sir.

17 Q So if Cameron Wade popped up, you had no idea what
18 he looked like?

19 A Yes, sir.

20 Q You just had had a fight with him and he had beat
21 you up real badly, and you had no idea what he looked
22 like?

23 A No, sir. I knew he was a bigger guy. I mean, I got
24 beat up in the same area that all this happened in. You
25 know, it was really dark both times.

1 Q Now, that night you drove with David Murray in the
2 car, is that correct?

3 A I rode with him, yes, sir.

4 Q You rode with David Murray in his white Dakota, is
5 that right?

6 A Yes, sir.

7 Q Now, at some point before you got to the party, you
8 actually stopped at Kayte Allison's house, didn't you?

9 A No, sir.

10 Q You never did?

11 A No, sir. We went to Derek Johnson's, which there's
12 a couple of friends that we used to have that lives side
13 by side on the , and there were a bunch of
14 people that were already going to that party over there.

15 Q So Brandon Clark did not go with you to -- did not
16 ride with you to the party, correct?

17 A Not in the car, no, sir.

18 Q Did you arrive before them or after them?

19 A We were all in a line. The cars, we all followed
20 each other up there to go to the party.

21 Q Okay. Now, do you recall going to Kayte and her
22 husband's house after this incident?

23 A Yes, sir.

24 Q What time did you arrive at their house, do you
25 recall?

- 1 A I'm not positive, no, sir.
- 2 Q Did you have blood on you?
- 3 A Just my leg.
- 4 Q Had blood on you?
- 5 A Yes, sir, a little bit, not much.
- 6 Q Did you ever -- did you ever apply any sort of
- 7 bandages or anything to that?
- 8 A No, sir.
- 9 Q Didn't do that? Were you bleeding pretty profusely?
- 10 A No, I've got the scar on my leg. You can say it.
- 11 It's not a bad cut. I was just bleeding. I was really
- 12 sweaty, so that made it run down my leg a little bit, but
- 13 it was nothing profuse, no, sir.
- 14 Q What kind -- what kind of gun do you have, Josh?
- 15 A I don't own a gun.
- 16 Q Don't own a gun? Never owned a gun?
- 17 A I mean, it was two years ago, I don't know ---
- 18 Q What did you own two years?
- 19 A A .357.
- 20 Q Is that a magnum?
- 21 A Yes, sir.
- 22 Q What caliber is that?
- 23 A I have no idea.
- 24 Q Do you recall making -- or ever having a
- 25 conversation with Kayte Allison that night when you

1 returned to their house?

2 A No, sir.

3 Q And you said a few moments ago that you, David and
4 Brandon and these other folks were all in the house when
5 Brandon made the statement you said, is that right?

6 A Yes, sir.

7 Q Now, do you recall ever telling Kayte Allison that
8 you thought that -- that Cameron Wade and Chris Garland
9 were attempting to follow Brandon and Chris out of the --
10 out of the party?

11 A No, sir.

12 Q Never told her you and David blocked the way with
13 your car?

14 A No, sir.

15 Q This gun that you had two years ago, did you
16 purchase that in your name?

17 A No, sir.

18 Q Whose name did you purchase it?

19 A Nobody's.

20 Q Where did you get it from?

21 A One of my friends.

22 Q One of your friends gave it to you?

23 A No, sir.

24 Q Just -- you just bought it from him?

25 A Yes, sir.

1 Q How much did you pay for it?

2 A Two hundred dollars.

3 Q And it was .357?

4 A Yes, sir.

5 Q How many rounds does that carry?

6 A Six. Like I said, I've gotten rid of this gun
7 probably five years ago. Sold it to my stepfather back
8 then.

9 Q So you got it allegedly two years ago and you sold
10 it five years ago?

11 A It was two years before that event ever occurred. I
12 haven't had a gun.

13 MR. ROBINSON: Oh, okay. Thank you. That's all the
14 questions I have.

15 THE WITNESS: Yes, sir.

16 THE COURT: Any redirect?

17 REDIRECT-EXAMINATION

18 BY MS. SEAY:

19 Q I just want to clarify a couple questions that were
20 just asked.

21 A Yes, ma'am.

22 Q Did you own this gun before this incident happened?

23 A It was several years prior to this event, yes,
24 ma'am. He had asked me if I had owned a gun in my life
25 and I'm just telling the truth.

1 Q Did you own the gun at the time that this happened?

2 A No, ma'am.

3 Q Okay. What had you done with it?

4 A I had sold it to my father-in-law.

5 MS. SEAY: Okay. Okay. I don't have any further
6 questions. May this witness be excused, Your Honor?

7 MR. ROBINSON: No objection, Your Honor.

8 THE COURT: All right. You're released from your
9 subpoena. All right, ladies and gentlemen. We've been
10 going about an hour and a half. Let's take a short
11 break. Okay. Please remember not to talk about the
12 case. Everyone else remain seated until the jury is gone
13 from the courtroom.

14 (The jury exited the courtroom at 325 p.m.)

15 THE COURT: All right. We'll be at ease.

16 (A short recess was taken, after which, the trial.
17 continued as follows:)

18 THE COURT: Okay. We ready? Y'all ready?

19 MS. SEAY: Yes, sir.

20 THE COURT: Okay.

21 (The jury entered the courtroom at 3:50 p.m.)

22 THE COURT: All right, Ms. Seay.

23 MS. SEAY: Thank you, Your Honor. The State calls
24 Tiffany Saltz.

25 THE CLERK: Ms. Saltz, if you'd step up here,

1 please. Place your left hand on the Bible and raise your
2 right hand.

3 TIFFANY SALTZ

4 Having been first duly sworn, testified as follows:

5 THE CLERK: Thank you. You may be seated.

6 DIRECT EXAMINATION

7 BY MS. SEAY:

8 Q Ms. Saltz, please state your full name so I can make
9 sure we hear you back here?

10 A Tiffany Ann Saltz.

11 Q Can you pull that microphone up to you just a little
12 bit more, please? How old are you, Ms. Saltz?

13 A I'm 20 years old.

14 Q You're going have to speak up just a little bit.

15 A I'm 20 years old.

16 Q Okay. What do you do for a living?

17 A I'm a security officer at two different locations.

18 Q Where are -- where are you employed?

19 A Greenville Technical College and Allan Barton
20 Security Services.

21 Q Okay. And what's your educational background?

22 A I have been at Greenville Tech. for three years now.
23 I'm still pursuing an associate degree in criminal
24 justice technology.

25 Q Okay. What's your martial status?

1 A I'm single and I have son.

2 Q Okay. Let me take you back to July of 2006. Did
3 you go to a gathering at Steve Watson's house on that
4 evening?

5 A Yes, ma'am.

6 Q How did it come about that you ended up there?

7 A I had heard that there was going to be party so I
8 got a ride with one of my girlfriends and rode on up
9 there.

10 Q Okay. Did you know that there was going to be a
11 fight at this gathering? Did you hear that?

12 A Yes, ma'am, there was supposed to be a fight, that
13 was my understanding.

14 Q Okay. And who was that fight suppose to be between?

15 A Josh Wood, Dustin Mason (sic), Cameron Wade.

16 Q Okay. And did you see Brandon Clark at this
17 gathering that night?

18 A Yes, ma'am.

19 Q How long had you known him?

20 A Maybe two years at the most, on the average.

21 Q How did you know him?

22 A Through friends and hanging out at the same
23 locations with the same people.

24 Q All right. When you saw him that night, did you see
25 him with a gun?

1 A Yes, ma'am.

2 Q Where did he have the gun?

3 A I do not remember the particular like side, but just
4 from being able to visualize it I remember it in his
5 pants and his shirt was up where you could see it.

6 Q Where were you at the gathering when you saw him
7 with the gun?

8 A I was sitting right outside the garage.

9 Q And he was in that area also?

10 A He was to the right of me with a good little bit of
11 distance.

12 Q What did his mood or demeanor appear to be that
13 evening?

14 MR. ROBINSON: Objection, Your Honor, calls for
15 speculation.

16 THE COURT: She can testify to what she knows.

17 THE WITNESS: He was pretty calm, but he just seemed
18 like something was aggravating him. He was just kind of
19 ill, you know. He didn't want to talk.

20 BY MS. SEAY:

21 Q Okay. Did you have a conversation with him?

22 A Yes, ma'am, but I do not remember the particular
23 conversation, what was said and what was not said,
24 because it's been so long ago.

25 Q All right. Do you recall giving a statement to

1 Investigator McNamara with the sheriff's office on July
2 30th of 2006, the next day?

3 A Yes, ma'am.

4 Q Okay. If I showed you that would it refresh your
5 memory about the conversation that you had with him?

6 A Somewhat and maybe some of it not. It just -- like
7 I said, some of it I cannot remember particularly word
8 for word, but I do remember certain things we talked
9 about.

10 Q Okay. I want to point to you this second paragraph
11 and ask you to read -- or refresh your memory about ---

12 A This one?

13 Q --- the conversation that you had with him.

14 A Read it, or just read it for myself?

15 Q Just read it to yourself. Does that refresh your
16 memory?

17 A Yes, ma'am.

18 Q Okay. What was the conversation?

19 A I remember asking him if Josh and Cameron were going
20 to fight one on one. I do not remember his response. I
21 remember him asking -- I asked him about if my friend
22 Tonya was there because I had been looking for her that
23 night, but I do not remember a particular statement that
24 was said in that statement.

25 Q Do you remember telling him to please not to shoot

1 you?

2 A No, I do not remember saying that.

3 Q Do you remember him saying, well, if you're on their
4 side I don't know what to tell you?

5 A No, ma'am, I do not. But I remember, like I said,
6 he was in an ill mood, but I don't remember the
7 particular word for word what was said and what was not
8 said.

9 Q Do you admit that those statements are in the
10 statement that you gave the day after this incident
11 happened?

12 A Yes, ma'am, they were in the statement.

13 Q Did you see anyone else at that gathering with a gun
14 that night?

15 A No, ma'am.

16 Q Where were you when shots were fired?

17 A I was in the house in a back bathroom at the back of
18 the house with some other girls that had been pushing to
19 the bathroom.

20 Q Okay. So is it safe to say that you did not see
21 anyone who was shooting?

22 A No, ma'am, I only heard shots.

23 MR. ROBINSON: Okay. Please answer any questions
24 that Mr. Robinson may have for you.

25 MR. ROBINSON: May it please the Court?

1 THE COURT: Um-hm.

2 CROSS-EXAMINATION

3 BY MR. ROBINSON:

4 Q Tiffany, how many people were there that night?

5 A At least 100 if not more.

6 Q At least 100 if not more? And it was pretty dark
7 that night, wasn't it?

8 A Yes, sir.

9 Q And out of that 100 did you check out all these 200
10 (sic) people to see if they had guns or not?

11 A No, sir.

12 Q So they could have had some guns in that party,
13 correct?

14 A Yes, sir, I was not looking for guns.

15 Q And did you ever hear Josh say anything to Cameron
16 Wade on the phone?

17 A On the phone?

18 Q Yeah.

19 A I remember John Watson being on the phone speaking
20 with him back and forth. That is the one I remember
21 constantly calling and asking questions.

22 Q Was it -- was it a pretty heated kind of a
23 conversation?

24 A Yes.

25 Q And you were in the back of the house, is that

1 right?

2 A In a back bathroom, yes, sir.

3 Q In a back bathroom. And how many shots did you
4 hear?

5 A It was so many I couldn't count to be honest with
6 you. It sounded -- I referred to it sounded like a war.

7 Q Over 100, do you think?

8 A No, not 100, but it was at last 20.

9 Q Wow, kind like of a war zone, huh?

10 A That's what it sounded like.

11 Q Do you recall what Josh Wood was wearing that night?

12 A No, sir.

13 Q Do you recall his mood that night, what he was like
14 that night?

15 A He was just jumping around, anxious, ready to fight.

16 MR. ROBINSON: That's all the questions I have.

17 Thank you.

18 MS. SEAY: I have nothing further. May this witness
19 be excused?

20 MR. ROBINSON: No objection.

21 THE COURT: All right. You're released from
22 subpoena. Thank you.

23 MS. SEAY: The State calls David Murray.

24 THE CLERK: Mr. Murray, if you'll walk up to the
25 witness stand. If you would stand up here, please.

1 Place your left hand on the Bible and raise your right
2 hand.

3 DAVID MURRAY

4 Having been first duly sworn, testified as follows:

5 THE CLERK: Thank you. You may be seated.

6 DIRECT EXAMINATION

7 BY MS. SEAY:

8 Q Mr. Murray, please state your full name so I can
9 make sure we hear you back here?

10 A David Michael Murray.

11 Q All right. And if you will, just speak a little bit
12 into that microphone. That's helpful. Mr. Murray, how
13 old are you?

14 A Twenty-three.

15 Q And are you currently employed?

16 A Yes, ma'am.

17 Q Where do you work?

18 A Lockheed Martin.

19 Q How long have you worked at Lockheed Martin?

20 A For the past two years. I got laid off for six
21 months last year.

22 Q What do you do there?

23 A Instruction mechanic.

24 Q What is your educational background?

25 A I got an airframe license to do my job, and pursuing

1 an associate's degree in aircraft maintenance, and then a
2 Bachelor's Degree in aircraft business management.

3 Q Okay. Are you married?

4 A No, common law.

5 Q Okay. I want to draw your attention to July 29th of
6 2006. Did you go to a gathering at Steve Watson's house
7 that night?

8 A Yes, ma'am.

9 Q Who did you go with?

10 A Josh Wood.

11 Q Do you know Josh Wood pretty well?

12 A Yeah.

13 Q How long have y'all known each other?

14 A We've known each other since high school.

15 Q What was the purpose of Josh going over there that
16 night?

17 A Originally we were going for a party, and he kept
18 getting phone calls that a guy Cameron was going to be
19 there and they were going to have a rematch of the
20 previous week. I wasn't there the previous week, or
21 whenever it was, when they got into a fight the first
22 time, but they were both supposed to fight one on one
23 again, or whatever.

24 Q So Josh was going to go and fight, that was your
25 understanding?

1 A Well, when we got there, yeah.

2 Q Okay. Did you observe Josh's behavior that evening?

3 A Yes, ma'am.

4 Q Can you describe what he was acting like?

5 A He was acting like he wanted to fight the guy.

6 Q Was -- was he pumped up and acting crazy, and acting
7 like he wanted to fight?

8 A Yeah.

9 Q Did you ever see him with any potential weapon in
10 his hands?

11 A I think he had -- he hit a guy with a stick or
12 something.

13 Q Did you ever see anyone at the party with a gun?

14 A I didn't see a gun, no.

15 Q Okay. Did you ever see Josh with a gun?

16 A No, Josh didn't have a gun.

17 Q At some point, as I understand it, the victims
18 arrived at this party. Did you observe that when they
19 came driving up?

20 A Yeah, it was kind of crazy. They all pulled up and
21 a bunch of people start running down there and they
22 started running up there and it just got pretty crazy.

23 Q Okay. What was the lighting situation where this
24 was taking place?

25 A The lighting.

1 Q Yeah, what was it like?

2 A It was pretty dark. I mean, you could see maybe 10
3 foot ahead of you, besides around the street lights or
4 whatever, or whatever was out there. You could see a
5 little bit but not really.

6 Q And at some point did you hear any gunshots?

7 A Yeah, I heard some gunshots.

8 Q Where were you when you heard gunshots?

9 A Josh had hit this guy and then we heard gunshots. I
10 don't remember exactly where we were in the yard or
11 whatever.

12 Q Did you see who was firing the gun?

13 A I didn't see.

14 Q What did you do when you heard the shots?

15 A Told Josh, let's go, because I figured somebody had
16 shot up in the air, and I told him, let's go, that we --
17 before the cops get there, before we get in any trouble.
18 And we got in my truck and we pulled out of the driveway
19 and then he thought that our friends were still there so
20 as soon as we pulled out of the driveway we turned back
21 around and that's when he got out of the car -- the truck
22 and threw the tire iron through the car.

23 Q Okay. So you saw him throw the tire iron at the
24 car?

25 A Well, I knew he did. I wasn't really paying

1 attention to him, I was talking on my phone.

2 Q Did you see him kick out the window, or kick the
3 window?

4 A No, I didn't see him. I was just honking the horn
5 telling him, let's go.

6 Q And did he then get in the car with you and leave?

7 A Yes, ma'am.

8 Q Where did y'all go?

9 A We went to Dustin Allison's house.

10 Q Okay. Is he a friend of yours?

11 A Not really.

12 Q Why did you go to his house?

13 A We had heard -- we got a phone call on the way back
14 from one of our friends that said that two guys had got
15 killed.

16 MR. ROBINSON: Objection, Your Honor, hearsay.

17 THE COURT: Sustained.

18 BY MS. SEAY:

19 Q Without saying what somebody else said, can you say
20 why you went over there, without repeating what somebody
21 else said?

22 A Well, that's why we went over there.

23 Q Okay. So when you got over there who was there?

24 A It was me, Josh Wood, Jordan Mardis, Chris Allison,
25 Dustin Allison, Kayte Crawford and Brandon Clark.

1 Q All right. Did you see Brandon Clark with a gun at
2 that time?

3 A I didn't see him with a gun.

4 Q Did you overhear Brandon Clark say anything about a
5 gun at that time?

6 A He said Chris was supposed to throw the gun in the
7 river. That's all I heard.

8 Q Did you hear Brandon say anything about having shot
9 those people at the party?

10 MR. ROBINSON: Objection, leading, Your Honor.

11 THE COURT: Overruled. Go ahead.

12 THE WITNESS: What was the question?

13 BY MS. SEAY:

14 Q Did you overhear Brandon say anything about having
15 shot those people at the party?

16 A No, we thought -- we thought he had shot in the air.

17 MS. SEAY: That's all the questions I have. Please
18 answer any that Mr. Robinson has for you.

19 CROSS-EXAMINATION

20 BY MR. ROBINSON:

21 Q David, I don't know if Ms. Seay asked you this, but
22 how many people were at the party in your estimate?

23 A I don't even have a clue. I mean, a lot.

24 Q A lot. And it was a pretty dark, you said?

25 Couldn't see more than 10 feet ahead of you, is that

1 right?

2 A I mean, that's just a guess. It was three years
3 ago. I really don't know.

4 Q Now, you said at some point after you heard shots
5 you left with -- with Josh, right?

6 A And Timmy Brooks.

7 Q And Timmy Brooks. And the cars were still there,
8 isn't that right, when you guys were leaving?

9 A Yeah.

10 Q Okay. And you backed up at some point, is that
11 right?

12 A I turned around somehow. I don't remember how, but
13 I pulled out of the drive and we thought that our friends
14 were still back there, and so we turned around to see
15 what was going on, and when I pulled back in the driveway
16 and Josh got out of the truck and threw the tire iron,
17 and I was honking.

18 Q All right. So -- okay. So there were still cars
19 around while you were -- while you were there with Josh,
20 right?

21 A Yeah.

22 Q Josh and Timmy, excuse me, right?

23 A Yeah.

24 Q And at some point during that time Josh got out of
25 the Dodge Dakota, right?

1 A Yes, sir.

2 Q Got out of the Dodge Dakota and threw a fire -- what
3 is it, a tire arm at this car?

4 A Yeah.

5 Q Do you know what the tire arm looked like?

6 A I don't exactly remember. It come out of my truck.

7 Q Oh, it came out of your truck?

8 A Um-hm.

9 Q So you had the tire arm in your Dodge Dakota?

10 A Yeah, right there in between the seats where my
11 floor jack and everything else to change tires was at.

12 MR. ROBINSON: Can I approach the witness, Your
13 Honor?

14 THE COURT: Yeah.

15 BY MR. ROBINSON:

16 Q Let me show you what's been marked Defense Exhibits
17 1 and 2 for identification purposes only. Do you
18 recognize this picture, these pictures?

19 A No.

20 Q Is this the car -- well, is this the car that you
21 saw that night?

22 A That's not my tire iron.

23 Q That's not your tire arm?

24 A No.

25 Q So which tire arm did he throw at the car?

1 A It's a little hollow piece of tubing.

2 Q So what happened to that tire arm?

3 A I don't know. A couple people grabbed them out of
4 my truck.

5 Q A couple people grabbed tire arms of out your truck?

6 A Um-hm.

7 Q And who were these people that grabbed tire arms out
8 of your truck?

9 A I think Timmy Brooks was one of them and it got left
10 on the ground or something, I don't know.

11 Q Okay. So there was another tire arm that was thrown
12 by Josh at the car, is that right?

13 A I guess.

14 Q Excuse me, at the Accord, right?

15 A I guess.

16 Q So you had backed up, Josh gets out. You don't see
17 him do it but you are on the phone talking and he throws
18 this tire arm at the car, correct?

19 A Yeah.

20 Q Your tire arm, correct?

21 A I -- can I see the picture again?

22 Q Sure.

23 A I don't know if that was mine or not.

24 Q Okay. So you're ---

25 A I'm not 100 percent sure.

1 Q So you're not sure at this point whether it's
2 yours on not, correct? But it's your testimony that
3 Josh got the tire arm that you saw out of the back -- or
4 in between the seat of your car, your Dodge Dakota,
5 right?

6 A Yep.

7 Q So Josh gets out, you back up, Josh gets out, and
8 you didn't see what he was doing when he went back there,
9 did you?

10 A No, I wasn't paying attention. I was trying to get
11 out of there, because we heard gunshots and we were
12 scared, I was scared.

13 Q And the cars were still all in place when you guys
14 were trying to back out, isn't that right?

15 A I don't exactly remember.

16 Q Not sure. Weren't Brandon and Chris already gone?

17 A Yeah, they were.

18 Q They were already gone. And the cars were still
19 around there when they were already gone, there was still
20 other cars parked in front there, right?

21 A Yeah, we didn't know they were gone. We thought
22 they were still there, that's why I turned, immediately
23 turned back around. Instead of pulling out of the
24 driveway, stopped to see if Brandon and them was still
25 there. So we turned around to see if they got hurt or

1 whatever, and they were already gone, so we took off.

2 Josh threw the tire iron and we took off.

3 Q So when -- when you noticed that Brandon and Chris
4 were gone, that's when you turned around and went back --
5 when Josh went back and put the tire arm and so forth in
6 that vehicle, isn't that correct?

7 A I would say after we realized they were gone.

8 Q Well, soon after?

9 A We realized they were gone and we left.

10 Q Okay. At what point did you figure that the -- at
11 what point did he put the tire arm -- or throw the tire
12 iron at the car?

13 A I told you, as soon as I turned around he got out of
14 the car and he didn't know anybody was in the car so he
15 just threw it at the car.

16 Q You testified a moment ago too that there were other
17 cars in the same area at the same time, correct?

18 A I don't exactly remember ---

19 Q Okay.

20 A --- how many cars were there or whatnot. I mean, I
21 seen a car that was grey and I thought it was red, that's
22 how much I remember.

23 Q What -- what friends did you back up for? Who were
24 the friends you say ---

25 A Brandon, Chris, Josh and Jordan.

1 Q So you backed up the car and you were going to go
2 try to find them, is that what you were doing?

3 A We were making sure they were okay.

4 Q But they were already gone?

5 A Yeah.

6 Q Correct?

7 A Um-hm.

8 Q These other cars was sitting there, right?

9 A Yep.

10 Q That's when Josh got out and threw the tire arm and
11 so forth, is that right?

12 A Yes.

13 Q Did you notice -- did you ever see Josh put his foot
14 through the window?

15 A No, I didn't see that part.

16 Q Never saw that part?

17 A Um-hm.

18 Q And Josh wasn't bleeding, was he?

19 A No.

20 Q Wasn't bleeding at all? Okay. Now, you say that
21 your relationship with Josh Wood, it's a pretty close
22 relationship, isn't it?

23 A Yeah.

24 Q In fact, you guys -- would you consider you're
25 pretty much best friends, aren't you?

1 A Not really, we don't really talk any more.

2 Q But at the time back in ---

3 A No, at the time we wasn't really talking either.

4 Q Back in the 2006 ---

5 A I had come over to his house. We were all at his
6 house hanging out, all of us together. I hadn't seen
7 none of them in a long time.

8 Q Now, were you there in the first incident when he
9 got in a fight with ---

10 A No, I wasn't.

11 Q You weren't there? Did Josh, whatever, talk to you
12 about that?

13 A Yeah, he told me about it.

14 Q Was he pretty pissed, pretty mad?

15 A I guess he was. I would have been.

16 Q You would have been too?

17 A (Witness nodded his head.)

18 Q Do you know when he threw the tire arm in this
19 case?

20 A What do mean when, like what time?

21 Q Were you in the driveway when he threw it?

22 A I was either in the driveway or the yard, I was in
23 my truck. I don't remember exactly. I mean, I don't
24 remember all these details. I wasn't questioning the
25 night of the incident.

1 Q Where was -- where was Cameron Wade and Chris
2 Garland's car?

3 A I don't know what car they were in. I don't even --
4 I never met the guys. I don't know what they look like
5 to this day.

6 MR. ROBINSON: Okay. That's all the questions I
7 have, Your Honor.

8 MS. SEAY: I have nothing further from him. May he
9 be excused?

10 MR. ROBINSON: No objection.

11 THE COURT: Okay. You're released from your
12 subpoena.

13 MS. SEAY: The State calls Christopher Allison. I
14 think we need to approach, Your Honor?

15 (A bench conference was held.)

16 THE COURT: Okay. All right. Call your next
17 witness.

18 MS. SEAY: All right. The State calls Sergeant Dar
19 Shaw.

20 THE CLERK: Sergeant Shaw, if you would step up
21 here, please. Place your left hand on the Bible and
22 raise your right hand.

23 DAR SHAW

24 Having been first duly sworn, testified as follows:

25 THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MS. SEAY:

Q Sergeant Shaw, where are you employed?

A Greenville County, forensic division.

Q How long have you been employed with the forensics division?

A It will be 11 years next month.

Q And do you have prior law enforcement experience?

A I do. 21 years with another department, seven years as a road officer and a little over 14 years as an investigator.

Q Okay. What are some of your duties as a forensic officer with Greenville County?

A Respond to crime scenes, process for latent fingerprints, take photographs, collect evidence that's necessary, and write a report, and provide a report for court purposes if necessary.

Q What is your training and your education to perform those duties?

A I have several homicide investigation classes that I have gone to, schooling, also it's on-the-job training as far as the forensic division is concerned, working several either death investigation cases or weapons cases.

Q Were you assigned to work on the processing of a

1 1991 Honda that was involved in the death investigation
2 at issue in this case?

3 A Yes, I was.

4 Q Can you tell us in general what you observed about
5 that vehicle when you got it?

6 A When I first looked at the vehicle I saw the rear
7 window was shattered, saw what looked like possibly a
8 couple projectile holes in the windshield, side vent wing
9 window was broken on the right passenger side. There was
10 a tire iron sticking through the -- I take that back.
11 There was a hole in the top of the roof where photographs
12 I had seen before showed a tire iron that had been taken
13 out. I also observed suspected blood on the interior of
14 the vehicle, mainly in the front compartment.

15 Q So was it your understanding that the tire iron had
16 been removed by another forensic officer?

17 A That's correct.

18 Q I would like to show you some photographs, State's
19 Exhibits 38, 39, 40, 41, 42, 43, 44, 45 and 46 for
20 identification purposes and ask if you recognize those?

21 A Yes, ma'am, I do.

22 Q Okay. How do you recognize them?

23 A These are photographs that I took at our office.

24 Q Okay. Are these fair and accurate representations
25 of your observations?

1 A They are.

2 Q Okay. Now, next let me show you this group of
3 photographs, State's exhibit 47, 48, 49, 50, 51, 52, 53,
4 54, and 55 and ask if you recognize those?

5 A Yes, I do.

6 Q Okay. How do you recognize them?

7 A These are also photographs that I took while
8 processing the vehicle.

9 Q Okay. And are they fair and accurate
10 representations of what you observed?

11 A Yes, they are.

12 MS. SEAY: Your Honor, at this time I want to move
13 these photographs into evidence.

14 THE COURT: Has he seen them?

15 MS. SEAY: He has seen them.

16 MR. ROBINSON: I want to see them one more time.
17 Without objection.

18 THE COURT: All right. No objection.

19 (State's Exhibit Numbers 37 through 55 were filed.)

20 BY MS. SEAY:

21 Q Sergeant Shaw, would it assist you if I showed this
22 photograph and allow you to explain what is depicted in
23 each one?

24 A Yes, it would.

25 Q Okay. This is number 38. Would you describe what

1 the photograph illustrates?

2 A This is a photograph of the rear passenger window --
3 I'm sorry, rear window. It also is a photograph of the
4 speaker that was on the back deck where there appears to
5 be a projectile hole in the top of the speaker.

6 Q And number 39 I think is a little closer look?

7 A That's just a little closer photograph. It shows
8 also the relationship of the hole in the speaker as well
9 as a hole in the head rest which is above that.

10 Q This is number 40.

11 A This is a photograph -- I put tape on there to show
12 the -- the angle of where it appeared to be a projectile
13 entered. On the very left of the screen would be the
14 back of the speaker and it looked like a projectile went
15 across the top of the fabric which would be on the right
16 side of the photograph.

17 Q This is State's 41.

18 A This again is a photograph of a hole in the back of
19 the head rest on the right rear seat.

20 Q Okay. This is number 42.

21 A That is a photograph taken from the inside of the
22 vehicle showing where the projectile entered into the
23 front of the head rest from the back.

24 Q Number 43, what does this show?

25 A This is showing a -- what I was trying to do was to

1 locate any projectiles inside of the vehicle and with the
2 damage that I observed I used a trajectory rod to try to
3 assist with trying to locate where a projectile may have
4 been inside of the vehicle.

5 Q How does a trajectory rod assist you in doing that?

6 A A projectile will travel in a straight line unless
7 it's deflected in some way. So if I put a trajectory rod
8 in through a hole I can follow that straight line to try
9 to find out where a projectile impacted.

10 Q Okay. Were you able to make any kind of conclusion
11 based on this trajectory?

12 A No, ma'am, there was no -- it didn't enter into the
13 seat. There was no damage to the steering wheel, to the
14 dash, to the floor board. I did not find a projectile
15 in relationship to where that trajectory rod went
16 through.

17 Q Okay. I think State's 44, this is just a closer
18 look, I believe?

19 A That's correct.

20 Q This is State's 45.

21 A That is just a different angle showing with the rear
22 passenger door open, a photograph taken -- I tried to
23 take it at a 90 degree angle showing the angle that the
24 projectile would have traveled.

25 Q Okay. And 46, what does this show?

1 A Those are areas in the front windshield that were
2 damaged. The one on the top left, I don't believe that
3 there was an exit to that hole. Something struck the
4 windshield and broke it. However, on the bottom right
5 where the tape is at there's actually a hole in the
6 windshield itself which indicated that to me that some
7 type of projectile went through the windshield at that
8 point.

9 Q All right. Let me show you State's 47, and can you
10 describe what this depicts?

11 A There was a hole in the plastic, be on the inside of
12 the vehicle, where normally your lap harness or the
13 safety harness would be for your seatbelt. There was a
14 hole in the plastic. And in opening up the rear door I
15 observed a mark going through the rubber, the rubber rain
16 guard for your -- where your door closes. There was a
17 hole that went from the rubber and went through into the
18 interior of the vehicle through the plastic, that plastic
19 strip.

20 Q Okay. This is number 48.

21 A That again is just a different angle showing the --
22 the angle that the projectile went in and went towards
23 the front of the vehicle.

24 Q And this again depicts a trajectory rod that you
25 placed in order to determine this?

1 A That's correct, I did. Yes, I did.

2 Q And number 49.

3 A That's a photograph taken with the trajectory rod in
4 place. When I added extensions to the trajectory rod it
5 extended from the rubber molding in through the hole in
6 the -- in the plastic side trim and actually extended and
7 went to the hole that was in the windshield in front of
8 the driver's compartment, in front of the steering wheel.
9 It lined up with that.

10 Q Okay. And what does number 50 show us?

11 A That just the -- that's a photograph without the
12 trajectory rod in place.

13 Q Okay. Number 51.

14 A That's just a close up photograph where the
15 projectile penetrated the rubber molding in front of the
16 rear door.

17 Q And 52?

18 A Again, that is a photograph with the trajectory rod
19 in place that extended through the rubber molding into
20 the interior of the vehicle.

21 Q This is number 53.

22 A That's the area on the inside of the car that was
23 broken. A piece had -- had been broken out and that's
24 when further examination is where the projectile hole was
25 found in the rubber trim and the two corresponding.

1 Q Okay. This is 54.

2 A That is a photograph with the trajectory rod in
3 place showing that the trajectory of that projectile went
4 to that hole in the windshield in front of the steering
5 wheel.

6 Q Okay. And number 55.

7 A Again, that's just another photograph with the
8 trajectory rod in place showing that it extended through
9 the passenger compartment and up to the windshield.

10 Q Sergeant Shaw, were you also assigned to attend the
11 autopsies of the victims and collect any potential
12 evidence there?

13 A Yes, I was.

14 Q And did you attend the autopsy of Christopher
15 Garland on July 31, 2006?

16 A I did.

17 Q And Sergeant Shaw, let me show you State's Exhibit 4
18 for identification purposes, along with the
19 documentation, and ask if you recognize that?

20 A Yes, ma'am, I do.

21 Q How do you recognize it?

22 A This is a -- it's marked by Dr. Ward. This was a
23 projectile that was removed from the victim, given to
24 Investigator Wes Smith, who in turn signed it over to me,
25 and I placed it into property and evidence.

1 Q Okay. Were you present when this was removed from
2 the victim?

3 A Yes, I was.

4 MS. SEAY: Okay. And I would ask that State's
5 Exhibit 4 be moved into evidence at this time.

6 MR. ROBINSON: No objection.

7 THE COURT: All right. Without objection.

8 (State's Exhibit Number 4 was filed.)

9 BY MS. SEAY:

10 Q Did you take photographs documenting the autopsies,
11 Sergeant?

12 A Yes, I did.

13 MS. SEAY: Those are all the questions I have.
14 Please answer any that Mr. Robinson may have for you.

15 MR. ROBINSON: May it please the Court?

16 THE COURT: Yeah.

17 CROSS-EXAMINATION

18 BY MR. ROBINSON:

19 Q Officer, in one of your pictures that you have --
20 may I approach witness, Your Honor? If I can get this
21 marked as Defense Exhibit 3 for identification?

22 (Defendant's Exhibit Number 3 was marked for
23 identification.)

24 BY MR. ROBINSON:

25 Q Do you recognize what's been marked as Defendant's

1 Exhibit Number 3, Officer Shaw?

2 A Yes, I do.

3 Q And what does that represent?

4 A It's a photograph showing areas on the back of the
5 vehicle where I processed for fingerprints.

6 Q And did you identify those fingerprints?

7 A They were forwarded to our latent division.

8 Q Okay. You don't know who the fingerprints belong
9 to?

10 A No, sir, I don't do the examination.

11 MR. ROBINSON: Okay. And -- get this marked as
12 Number 4 for identification purposes.

13 (Defendant's Exhibit Number 4 was marked for
14 identification.)

15 BY MR. ROBINSON:

16 Q Do you recognize this marked Defense Exhibit Number
17 4 for identification purposes only?

18 A Yes, I do.

19 Q Did you take that picture?

20 A Yes, I did.

21 Q Okay. In that picture there looks -- it appears
22 that there's a handprint, do you see that?

23 A I see some type of a smudge on the seat cushion.

24 Q It looks like a hand, doesn't it?

25 A No, sir, I wouldn't say it does.

1 Q Okay. Now, when you did your directional part of
2 this, when you were testifying a moment ago with Ms.
3 Seay, was that the side that was kicked -- kicked in by
4 Josh Wood, or the other side? Do you have any idea?

5 A I have no idea.

6 Q So when you did your reconstruction, our your --
7 when you were doing your -- when you were poking the
8 holes through the spots and so forth, you're not sure
9 whether that was the spot where Josh Wood kicked in the
10 window or not?

11 A I'm not aware of any window being kicked in, no,
12 sir.

13 Q You're not aware of that? And how many shots were
14 actually -- did you notice a lot of shots as far as to
15 the vehicle, other shots in the door, or any parts of the
16 vehicle?

17 A The only ones are what were -- are in the
18 photographs. The back window, of course, was shattered
19 when I got to the vehicle. I did look at the scene
20 photographs, and there was a secondary hole in the
21 driver's side of the rear window, and a -- I think there
22 was a copper jacket on the rear deck. But that back
23 window was gone. It had been shattered by the time I saw
24 the vehicle.

25 MR. ROBINSON: Okay. Can I get this marked for

1 identification as Defense Exhibit Number 5 for
2 identification purposes.

3 (Defendant's Exhibit Number 5 was marked for
4 identification.)

5 BY MR. ROBINSON:

6 Q Do you recognize the car in this picture, Officer
7 Shaw?

8 A This is the same vehicle that I processed at the
9 crime scene office.

10 Q And there -- were there any holes in the door of
11 that vehicle, of the driver's side?

12 A No, sir, not that I'm aware of.

13 Q Okay. Now, you testified a moment ago when you were
14 talking about the -- those two shots in the front -- in
15 the front window of the vehicle. You identified two
16 shots that they had -- had like little tapes next to
17 them?

18 A Yes, sir.

19 Q Were those entrance marks, or exit marks, what were
20 they?

21 A We didn't determine whether it was inter- -- from
22 the inside or from the outside. I believe there's only
23 one hole. The other one just -- the windshield had been
24 struck and broken but didn't penetrate.

25 Q So you're not sure if it was from the outside,

1 someone hitting it from the outside or from the inside,
2 correct?

3 A That's correct.

4 Q Okay. Regarding the one that's a hole that you
5 spoke of a second ago, the hole that you noticed in
6 there, you don't know whether -- which direction that
7 came from, do you?

8 A No, it just -- no, sir.

9 Q It could have actually come from the front of the
10 vehicle, it could have? It could have been shot from the
11 front, isn't that correct, of the vehicle?

12 A No, sir.

13 Q Okay. But you're not sure which direction that
14 came from either, from the inside or the outside,
15 correct?

16 A It did not -- it couldn't have come from the front
17 or there would have been a projectile inside the vehicle
18 that would have corresponded with that -- with that hole.

19 Q Okay. Do you know how many bullet holes were in
20 that car?

21 A I feel comfortable that I found two, but to say that
22 there was more, possibly, but not that I found.

23 MR. ROBINSON: Okay. That's all the questions I
24 have. Thank you.

25 MS. SEAY: I have nothing further. May this witness

1 be excused?

2 MR. ROBINSON: Yes, no objection.

3 THE COURT: All right. Thank you, sir, you're
4 released. Thank you.

5 MS. SEAY: May we approach just for scheduling
6 purposes, Your Honor?

7 THE COURT: All right.

8 (A bench conference was held.)

9 MR. ROBINSON: May we approach, Your Honor.

10 THE COURT: Yep.

11 (A bench conference was held.)

12 THE COURT: All right. You going to call a
13 witness?

14 MS. SEAY: It's my understanding is he's on his way
15 up to the courtroom, Your Honor.

16 THE COURT: Oh, okay. All right.

17 MS. SEAY: And we will be calling Chris Allison.

18 THE COURT: All right. Ladies and gentlemen, if
19 y'all want to stand and stretch a minute, we're just
20 waiting for a witness to get up here, just whatever you
21 would like to do.

22 MS. SEAY: Take the witness stand, please.

23 THE CLERK: Mr. Allison, if you'll step up here to
24 the Bible, please. Place your left hand on the Bible and
25 raise your right hand.

1 CHRISTOPHER ALLISON

2 Having been first duly sworn, testified as follows:

3 THE CLERK: Thank you. You may be seated.

4 DIRECT EXAMINATION

5 BY MS. SEAY:

6 Q Mr. Allison, you're under subpoena by the State to
7 be here today?

8 A Yes, ma'am.

9 Q Would you please state your full name so I can make
10 sure we hear you back here?

11 A Christopher Eugene Allison.

12 Q How old are you, Mr. Allison?

13 A Twenty-three.

14 Q What do you do for a living?

15 A I work at the mill in Piedmont. I'm a machine
16 operator.

17 Q How long have you been employed there?

18 A Three years.

19 Q Okay. What is your educational background?

20 A Tenth grade.

21 Q Let me draw your attention to July 29th of 2006.

22 Did you go to a gathering, or a party, or whatever you
23 want to call it, at Steve Watson's house?

24 A Yes, ma'am.

25 Q Who did you go with?

1 A Me, Brandon Clark and Jordan Mardis rode in the same
2 car.

3 Q All right. Are you friends with Brandon Clark?

4 A Yes, ma'am.

5 Q How long have you known him?

6 A Middle school, early middle school. I've known him
7 for a while.

8 Q All right. What were the people at the gathering
9 doing when y'all got there?

10 A Hanging out, just parting, drinking, having fun.

11 Q Okay. Approximately how many people do you think
12 were there?

13 A Roughly 30, 40 people.

14 Q Okay. Did some other people arrive?

15 A Yeah.

16 Q Please describe that?

17 A Well, I'd say a buddy of ours that met up with us at
18 my brother's house showed up about 40, 45 minutes after
19 we did. They were supposed to be following us but they
20 got lost. And an hour, hour and a half later is when
21 Cameron and his friend showed up.

22 Q Okay. Did you ---

23 A But that's all who showed up while we was there.

24 Q Did you know Cameron?

25 A No.

1 Q Did you know Christopher Garland? You have to
2 answer out loud.

3 A No, ma'am, sorry.

4 Q So when these cars arrived, where did they park?

5 A Opposite side of the driveway from the mailbox, so
6 further down

7 Q What was the lighting like in that area where they
8 parked?

9 A Not very, very good.

10 Q What happened when these cars pulled up and parked?

11 A That's when everybody started going down to the end
12 of the driveway to see what was going on because there
13 was supposedly going to be a fight.

14 Q Okay. And this fight was going to be between?

15 A Josh Wood and Cameron.

16 Q Okay. Had you been present for the first fight
17 that ---

18 A I was there but I never got out of my car.

19 Q Okay.

20 A I seen Josh running down to the end of the road when
21 Cameron and somebody supposedly jumped on him.

22 Q All right. What happened when people started
23 walking down towards the cars?

24 A Somebody come from one of the vehicles saying it was
25 going to be a fair fight, and that's when me and Brandon

1 stopped, because I never -- me and Brandon stayed beside
2 each other the whole time. But me and Brandon started
3 slowing down to a stop and we saw the gunshot from the
4 last car, because there was four cars. The very last car
5 we seen a gunshot over the roof of the car, and that's
6 when Brandon fired off his gun and we ran to my car and
7 got out of there.

8 Q You said Brandon fired off his gun then?

9 A Yes, ma'am.

10 Q Do you know how many times he fired it?

11 A About nine.

12 Q Okay. And there were -- all these people had walked
13 down in this area?

14 A Yes, ma'am. There were people in front of us and
15 behind us.

16 Q What kind of gun did Brandon have?

17 A A Smith and Wesson .40 caliber.

18 Q Had you ever seen him carry that gun before?

19 A I've seen that gun plenty of times, but he only
20 carried when he felt threatened or had the need of it.

21 Q Can you point out the person that you just described
22 that fired those nine shots that night?

23 A Right over there.

24 Q Okay. What did you do when the gunshots had ended?

25 A When they ended me and Brandon was already at my car

1 and I tossed him the keys because I had been drinking and
2 I don't drink and drive. He drove me home and when I
3 went around to get in the passenger seat that's when
4 Jordan showed up and hopped in the back seat and we went
5 to my brother's house.

6 Q Okay. Who all was at your brother's house?

7 A When we got there just my brother and his wife, and
8 their son was upstairs in bed.

9 Q Did you have a conversation with Brandon about what
10 had happened at the party?

11 A Didn't nobody really talk about that, what happened.
12 All -- I filled my brother in on what happened, but other
13 than that we didn't talk about it.

14 Q The fact that he had fired his gun nine times never
15 came up?

16 A No. We just -- it was just one of those things that
17 you just don't want to talk about because we don't know
18 what happened, or all we knew is we had to get out of
19 there. We were scared. We got out of there. That was
20 it.

21 Q Okay. Did you see anyone else with a gun that
22 night?

23 A No.

24 MS. SEAY: Thank you. Please answer any questions
25 that Mr. Robinson has?

1 THE WITNESS: All right.

2 CROSS-EXAMINATION

3 BY MR. ROBINSON:

4 Q So you went to the party with Brandon and Jordan,
5 correct?

6 A Yes, sir.

7 Q Had you seen Josh Wood previous to that, when you
8 first got ---

9 A Yeah, he came by to my brother's house and was
10 getting ready because he just had gotten off work at
11 McDonald's and had to change out of his uniform.

12 Q Is that your -- your brother is Dustin Allison?

13 A Yes.

14 Q Is that right? Is he was married to Kayte?

15 A Yes, sir.

16 Q And he came by there to change?

17 A Change out of his uniform from work.

18 Q Did he come with anybody?

19 A He got dropped off, that's as far as I know, unless
20 they sat outside and waited on him, because when we went
21 to leave that's when Murray and Timmy Brooks was outside
22 in their -- his -- Murray's truck.

23 Q Right.

24 A And that's who he rode with.

25 Q So he rode with the two of them?

1 A Yes.

2 Q So y'all kind of grouped together at the house at
3 the same time, is that right?

4 A Yes, sir.

5 Q So it was you, Brandon and Jordan in one car?

6 A Yes, sir.

7 Q And what car did you drive?

8 A I drive my '96 Dodge Avenger, red.

9 Q And what car did Josh, and David and Timmy drive?

10 A It was a white pickup. I believe it was a Dodge.
11 I'm not 100 percent sure.

12 Q Okay. Did y'all leave at the same time?

13 A Yes, sir.

14 Q Okay. Did you get to the party at the same time?

15 A No.

16 Q Who got there first?

17 A We did. On our way there they called us and said
18 that they had gotten lost, and that they would meet us
19 there, and we were there a good 30 minutes before they
20 got there, 30 to 45 minutes.

21 Q Who said they got lost?

22 A Yes.

23 Q Who said they got lost?

24 A I can't remember if it was Josh or Murray, but I do
25 know it was Murray's cell phone.

1 Q But they were about how many minutes after y'all
2 arrived when they arrived?

3 A About 30, 45 minutes.

4 Q Okay. And did you see David and -- David Murray and
5 Josh Wade -- Josh Wood together after that, after they
6 arrived?

7 A Yes.

8 Q And where did they go to?

9 A Well, Josh went up in to the garage to see where --
10 really what was going on.

11 Q Okay.

12 A And I guess just mingle.

13 Q And where did you go -- when you guys got there
14 where did you go?

15 A We parked -- well, see, I passed the house because
16 it was the first time I had drove there. I passed the
17 house and had to swing back around. So I parked right
18 where the mailbox is, facing the way we came. So it was
19 actually opposite way everybody else's car was facing.

20 Q And where did -- where did -- did you see David and
21 Josh, where they parked?

22 A It was either the car right in front of me, the next
23 car in front of us on the side of the road, same -- on
24 the driveway, or the driveway -- mailbox side of the
25 driveway.

1 Q And when you went toward the house, did Brandon go
2 with you?

3 A When I went towards the house?

4 Q When you went towards the house?

5 A When we got out of the car?

6 Q When you first got there, yes?

7 A Yeah. We went up and seen who was all there, all
8 three us, me, Jordan and Brandon went to see who was
9 there, and then me and Brandon kind of ended up off by
10 ourselves behind the driveway.

11 Q Where did -- as far as the drive -- did you stand
12 next to the garage or ---

13 A Yeah, we were right there at the garage on the
14 backside, towards the field, the back side of the house,
15 just sitting on the back side of the garage.

16 Q Okay. Do you remember -- you know Josh Wood, right?

17 A Yes, I went to school with Josh.

18 Q What was he wearing that night, do you remember?

19 A White shirt and some shorts. I can't remember, blue
20 jeans or khaki, but I know it's probably khaki because he
21 always wore khaki shorts.

22 Q Khaki shorts. Did he take his shirt off at some
23 point?

24 A Yeah, after a while, after he got pumped up with him
25 and Cameron -- him and John calling that Cameron boy.

1 Q Did you -- were you privy, or did you hear any of
2 the conversation between Josh Wood and Cameron?

3 A I heard the -- Josh calling him a pussy a bunch of
4 times.

5 Q Did you hear any threats?

6 A That he was going to kick his butt, yeah.

7 Q Okay. And so tell me -- tell me what happened next?
8 What happened next, when you guys where standing up
9 there, you were listening to Josh and Mr. Watson on the
10 phone with Cameron Wade? At some point did Cameron Wade
11 show up?

12 A Yeah.

13 Q And ---

14 A It was about an hour later when Cameron and ---

15 Q And what happened after he showed up?

16 A That's when Josh took off down to the end of the
17 driveway and a bunch of people, like I said, followed him
18 down to the end of the driveway to see what was going to
19 happen, and that's when some boy and -- he was wearing a
20 white hoodie, come out from one of the cars in front of
21 Cameron's car and Chris' car.

22 Q Is that -- was he in one of the cars that came with
23 Cameron Wade?

24 A Yes, yes.

25 Q How many cars came with Cameron Wade?

1 A Four.

2 Q Four cars?

3 A Yes.

4 Q Okay. What happened next?

5 A Like I said, we got down -- we started heading down
6 there and we heard the boy in the white hoodie say it was
7 going to be a fair fight between Cameron and Josh.

8 Q Right.

9 A And then we saw the fire -- or gun -- muzzle fire
10 come above the hood of the car, the last car, the dark
11 colored Honda.

12 Q One of the cars that was parked down there, one of
13 the cars that came with Cameron Wade?

14 A Yes.

15 Q Okay.

16 A We seen the muzzle fire and that's when Brandon shot
17 his gun and we got in my car.

18 Q What did -- did you see Brandon fire his gun?

19 A Yeah, I see him fire it upwards.

20 Q How many times did he shoot upwards?

21 A About nine times.

22 Q So it's your testimony he fired the gun in the air?

23 A Yes, sir.

24 Q Okay. What happened after he fired the gun in the
25 air?

1 A We got in my car as fast as we could and got out of
2 there.

3 Q Did Jordan get in the car too?

4 A Well, he showed up after we got to my car. He
5 showed up on my -- the passenger side of the car and I
6 let him in the back.

7 Q Okay. And then did you leave?

8 A Yes.

9 Q Did you see anything when you were leaving?

10 A Well, I remember when I got in, because my car was
11 real small, and I'm big, I had to duck in to get in
12 there. I remember looking through the back window and I
13 seen into -- because my car was on the other side of the
14 driveway, and then Cameron and Chris' car was on the --
15 our back ends were facing each other.

16 Q Right.

17 A I remember looking through his car because the car
18 in front of him had brake lights on. And I could see the
19 two boys look up when Josh Wade run up the back of his
20 car with an ax handle, I think it was, in his hand.

21 Q Could it have been -- could it have been a tire
22 arm?

23 A It might have been. I mean, it was something -- a
24 large object, and I couldn't really tell. All I know
25 is ---

1 Q Did he -- did he throw it or did he get on top of
2 the car?

3 A I didn't see that part. We was gone.

4 Q Did he see ---

5 A I seen him going up to the back side of the car.

6 Q Back side of the car?

7 A Yes.

8 Q And what did you see him do?

9 A He was -- had a big object in his hand like he was
10 going to swing it, but we were gone before I witnessed
11 anything of him doing anything. I just know when we was
12 leaving he was on top of the car.

13 Q Okay. Did you see him ever put his foot through the
14 back of the car?

15 A No.

16 Q Okay. What did you do after -- after you Brandon
17 and Jordan left? Where did you go to?

18 A Straight to my brother's house.

19 Q And that's Dustin?

20 A Yes, sir.

21 Q And who was there when you got there?

22 A Dustin, his wife and their son.

23 Q Okay. Do you have any idea why Brandon fired in the
24 air like nine times?

25 A I guess just to cover ---

1 MS. SEAY: Objection, as to ---

2 THE COURT: Speculation.

3 MS. SEAY: --- state of mind.

4 MR. ROBINSON: Withdraw the question.

5 BY MR. ROBINSON:

6 Q And at some point did Josh show up?

7 A At my brother's house?

8 Q Yeah.

9 A Yes, sir. A good while after we got there, a good
10 30 minutes after we got there?

11 Q And who was him?

12 A Murray and Timmy were in the truck.

13 Q Did you -- can you describe Josh Wood's demeanor?

14 A Like he'd just come down from an adrenalin rush, out
15 of breath and looking still pumped up.

16 Q All right. Was he bleeding at all?

17 A He had a cut on the back of his leg.

18 Q Okay.

19 A But I really didn't see him because he never came in
20 the house. My sister-in-law stopped him on the porch
21 because he was bleeding out of the back of his leg, and
22 she didn't want him to come inside while he was bleeding,
23 because her son crawled around on the ground. She just
24 didn't want that.

25 Q Did -- did you ever see Brandon come in -- did you

1 ever see David Murray come in the house and talk to
2 Brandon?

3 A No.

4 Q And you were in the house?

5 A Yes. I was in the house. But the way my brother's
6 living room is, he's got two big windows that show his
7 front porch off, and that's the only person I seen was
8 Josh.

9 Q Have you ever seen Josh Wood with a gun?

10 A No.

11 Q Ever seen David Murray with a gun?

12 A Yes.

13 Q What kind of gun?

14 A I have seen him with a black -- a small black
15 revolver, say .25, .38 somewhere around in there. And
16 then I've seen him with I think it was a .38. I'm not
17 sure. I didn't really get along with David all that
18 much.

19 Q Okay. When you look back, actually look back when
20 you were leaving or whatever, did you notice whether or
21 not Josh had his shirt off or ---

22 A Yeah, he had his shirt off.

23 Q Okay.

24 A He always takes it off before he gets in a fight.

25 Q Did you -- when you looked back, did you see any

1 movement in the car?

2 A Yeah, I seen Cameron and Chris, I believe that's who
3 it was, the driver and the passenger of that car look up
4 as Josh was running up the car.

5 MR. ROBINSON: Okay. That's all the questions I
6 have. Thank you.

7 MS. SEAY: I don't have anything further. May this
8 witness be excused?

9 THE COURT: Yeah. You can step down.

10 MR. ROBINSON: No objection.

11 THE COURT: All right. Mr. Foreman, ladies and
12 gentlemen of the jury, five -- right at five o'clock,
13 surprising. We're going to break for the day. And I
14 understand the next witness is scheduled to be here first
15 thing in the morning. So I'd ask y'all to be back at --
16 in your jury room about 9:15, let's say 9:30, that will
17 give you plenty of time to take care of a little business
18 in the morning.

19 Remember, don't talk about this case with anybody.
20 People are going to want to talk to you about it, and
21 that's understandable. Just tell them please wait, and
22 you can explain to them why, but don't talk about the
23 case, don't go to the scene, don't do any type of
24 research. And we'll see you back in the morning. Thank
25 you very much.

1 (The jury exited the room at 5:05 p.m.)

2 THE COURT: All right. Anything else before we
3 break?

4 MS. SEAY: Nothing further.

5 MR. ROBINSON: No, sir.

6 THE COURT: All right. So you've got Dr. Ward in
7 the morning? How many more witnesses do you think you
8 have.

9 MS. SEAY: There will be six including, Dr. Ward.

10 THE COURT: Okay. All right. See y'all in the
11 morning.

12 (Court adjourned for the evening.)

13 (Reporter's Note: Another reporter took the rest of
14 the trial.)

15 - - -END OF TRANSCRIPT OF RECORD- - -

16

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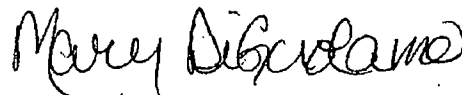
25

C E R T I F I C A T E

I, the undersigned Mary E. DiGirolamo, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 2nd day of November, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 20, 2010



Mary E. DiGirolamo

Official Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2007-GS-23-2442; 2443

ORIGINAL

STATE OF SOUTH CAROLINA)

PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

BRANDON CLARK)

DEFENDANT)

November 3-4, 2009
Greenville, South Carolina

B E F O R E:

MILLER: THE HONORABLE EDWARD W. MILLER, Judge; and a jury.

A P P E A R A N C E S:

BRYNA SEAY, ASSISTANT SOLICITOR
Attorney for the State

SCOTT ROBINSON, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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(State's Exhibits 38-55 were previously entered on 11/2/09
by another court reporter.)

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV.</u>
1	9 mm Magazine		27
2	Concealed Weapons Permit		79
3	Three Shell Casings, 1 Copper Jacket		26
5	Nine .40 caliber shell casings	44	44
	Shell Casing		
8	Photograph		24
9	Photograph	24	24
10	Photograph	24	24
11	Photograph	24	24
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DEFENDANT EXHIBITS

(Defendant's Exhibits 1-5 were previously marked on
11/2/09 by another court reporter.)

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
6	Forensics Report	28	
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COURT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Stipulation	10	10
2	Note from Jury	146	146
3	Note from Jury	146	146

1 THE COURT: All right, you've informed me there were
2 a couple of issues that we needed to address, so let's
3 address them.

4 MR. ROBINSON: May it please the Court, Your Honor,
5 as I said before, last night on Channel 4 on the local
6 news they had broadcast a piece on this. And they
7 mentioned the fact this case was going on. They also
8 mentioned he had pled guilty or had some charge for
9 shooting his father before. That he was serving a five
10 year sentence on. And I was concerned that if any of the
11 jury watched that as far as what kind, if any, if they had
12 any exposure or anything like that too it. I was going to
13 ask that the Judge poll the jury.

14 THE COURT: All right.

15 MS. SEAY: No objection from the state as polling the
16 jury on that issue.

17 THE COURT: Okay, all right. We'll do that when they
18 come out.

19 State had an issue as well?

20 MS. SEAY: Your Honor, there is one person who tells
21 me they overheard that comment and I have advised
22 Mr. Robinson of that. He said that there are five other
23 people who didn't. Who claimed that it was not said. So
24 I don't know if that's something that we want to open up
25 or not.

1 THE COURT: Well, that's up to you. If you want to.

2 MS. SEAY: Can I reserve the right to do that at a
3 later time?

4 THE COURT: Yeah.

5 Okay. Okay, all right. Anything else before we
6 bring them?

7 There was no response.

8 All right, let's get them.

9 MS. SEAY: Your Honor.

10 THE COURT: Yeah.

11 MS. SEAY: We do have a stipulation prepared.

12 THE COURT: Okay.

13 MS. SEAY: May I hand that up to you?

14 THE COURT: Yeah, you want me to read it or one of
15 you want to read it? However you want to do it.

16 MS. SEAY: It's fine for the Court to read it.

17 MR. ROBINSON: Yes.

18 THE COURT: When do you want me to read that?

19 MS. SEAY: I would like for you to go ahead and do
20 that now.

21 THE COURT: Okay.

22 MS. SEAY: If that's acceptable.

23 (WHEREUPON, Court's Exhibit No. 1 was marked for
24 identification and received into evidence.)

25

1 (WHEREUPON, the jury came into open court at
2 approximately 9:00 a.m.)

3 THE COURT: All right, welcome back, ladies and
4 gentlemen. I hope y'all had a pleasant evening. Couple
5 of things I want to tend to before we resume the
6 testimony. The first is that I understand that one of the
7 local news channels ran an article or a story on this
8 trial. And I wanted to inquire of you all if any of you
9 had the opportunity to watch that?

10 There was no response.

11 THE COURT: No one indicates that they saw it.
12 Great. Thank you, very much. And I guess I should have
13 specifically want you not to look for news articles on it
14 but since there weren't any news folks in here yesterday I
15 didn't think it was necessary. So I'm glad y'all didn't
16 see that. The second thing I want to the tell you is
17 that, I guess, it's important for y'all to know that you
18 receive evidence in three ways in a trial. The first way
19 is the most commonly known way and that is by testimony.
20 And y'all heard testimony in this case. The second way is
21 by the introduction of physical evidence, which these
22 photographs would be that and anything else of that
23 nature, tangle documents or property would be a second
24 type of evidence introduced. Then the third way to
25 receive evidence is by way of stipulation of the

1 attorneys. When the attorneys agree that a fact is not in
2 dispute. And so the attorneys have entered into a
3 stipulation in this matter and I'm going to read it to
4 you. And you all can accept this as true.

5 The defendant hereby stipulates or agrees that he was
6 present at the scene at on July 29th,
7 2006. And that he fired his pistol nine times. He
8 further stipulates or agrees that the nine .40 Caliber
9 shell casings located at the scene are the results of his
10 firing his pistol nine times. And that items D-02 through
11 D-010, State's Exhibit 5, are admissible into evidence.

12 So you all can accept that fact or what I've just
13 read to you as true. Okay.

14 All right, ready to resume testimony.

15 MS. SEAY: Thank you, Your Honor. May it please the
16 Court. The State calls Dr. Michael Ward.

17 THE COURT: All right.

18 THE CLERK: Dr. Ward, if you would step up here,
19 please. Place your left hand on the Bible, raise your
20 right hand.

21 MICHAEL WARD, after being duly sworn, testified
22 as follows:

23 THE CLERK: Thank you, you may be seated.

24 THE COURT: And before we start let me just say, if
25 you all, any members of the jury have trouble hearing any

1 of the witnesses, please signal to me either directly to
2 me or to the bailiff and let me know and we'll make sure
3 that we get them to speak up or increase the volume. All
4 right, thank you, very much.

5 Thank you, Ms. Seay.

6 DIRECT EXAMINATION

7 BY MS. SEAY:

8 Q Dr. Ward, please state your full name so that we can
9 make sure they hear you over here.

10 A Michael Eugene Ward.

11 Q Dr. Ward, where are you employed?

12 A I'm employed by Pathology Associates of Greenville
13 here in Greenville, South Carolina. As well as by the
14 county as the chief medical examiner.

15 Q What is your occupation?

16 A I'm a forensic pathologist.

17 Q Would you, please, tell us what your education and
18 training is to be a forensic pathologist?

19 A I have a Bachelor's Degree in Biology from the
20 University of Alabama. I received my Master's Degree in
21 Forensic Science from the University of Alabama in
22 Birmingham. I received my Medical Degree from the
23 University of South Alabama in Mobile. I did a four year
24 anatomic pathology residency at the Medical University of
25 South Carolina in Charleston. And a one here fellowship

1 is forensic pathology at the University of New Mexico in
2 Albuquerque. I'm board certified by the American Board of
3 Pathology in both anatomic and forensic pathology.

4 Q Thank you. Have you testified in the courts of South
5 Carolina before?

6 A Yes, I have.

7 Q Approximately how many times?

8 A At least 100 times.

9 Q Have been qualified as an expert in courts of South
10 Carolina before?

11 A Yes, I have.

12 Q Do you know approximately how many times?

13 A The same number of times.

14 MS. SEAY: Your Honor, at this time I would offer
15 Dr. Ward as an expert in anatomic and forensic pathology.

16 THE COURT: All right, any voir dire?

17 MR. ROBINSON: No, voir dire. No objection.

18 THE COURT: Okay, he's admitted.

19 BY MS. SEAY:

20 Q Dr. Ward, were you employed in your current position
21 in July of 2006?

22 A Yes, I was.

23 Q Could you, please, just give us a brief overview of
24 the field of pathology and forensics.

25 A Pathology is the study of disease and how that

1 disease process effects man. Forensic pathology takes
2 that one step further. Deals with disease injury and how
3 persons die. Interpretation of wounds and how they die
4 and the presentation of that information in the courtroom.

5 Q Can you, please, tell us what is an autopsy?

6 A An autopsy's a detailed physical examination
7 performed on a person after they die. For most part it
8 includes an external examination to document any injury or
9 natural disease that may be present. And then a
10 continuation of that examination internally to look at
11 internal organs to not only to determine whether there's
12 natural disease process but to see if any of the external
13 injuries that were present were all manifested internally.

14 Q Did you conduct an autopsy on Christopher Garland.

15 A Yes, I did.

16 Q On what date did you do that?

17 A July 31st, 2006.

18 Q Did you determine what his height and weight were?

19 A Yes, I did.

20 Q Would you, please, tell us what those are?

21 A Mr. Garland was 71-inches or 5 feet 11 inches and
22 weighed 151 pounds.

23 Q And would you, please, describe in general the
24 examination that you performed and findings that you made?

25 A On the external examination of Mr. Garland, he had

1 only one injury. There were -- generally he appeared to
2 be in good health. His hair was relatively long, he had
3 multiple tattoos. Other than that he appeared normal. He
4 had one injury to his back.

5 Q Can you, please, describe the injury to his back?

6 A Yes, I can. On the right mid-back of Mr. Garland was
7 a gunshot wound of entry. This was a slightly a-typical
8 gunshot wound of entry. Generally our gunshot wounds are
9 round. When a bullet leaves the barrel of a gun it
10 travels in such a way that it spins. So that it strikes
11 nose first creating a relatively round hole.
12 Mr. Garland's gunshot wound of entry was irregular in that
13 it was more diamond shape as opposed to round. This wound
14 penetrated through the skin and musculature of his back
15 and into his right chest, through the right lung, through
16 the heart, exiting the heart, passing through the bone of
17 the sternum, or the breast plate and became lodged within
18 the fatty tissue just beneath the skin of his left
19 anterior chest. From there -- from the skin just beneath
20 his chest we removed a moderately deformed, medium
21 caliber, fully jacketed missile.

22 Q Dr. Ward, I want to show you what has been admitted
23 as State's Exhibit No. 4. I'm going to ask if you
24 recognize that?

25 A Yes, I do.

1 Q How do you recognize it?

2 A This missile has been placed into a container that we
3 use at the hospital, sealed. It has Mr. Garland's unique
4 autopsy number and my sealing initials.

5 Q Thank you. Dr. Ward, when you're speaking about the
6 irregularity of the entrance wound, what does that
7 indicate to you?

8 A A non-round gunshot wound of entry generally
9 indicates that the bullet has passed through something
10 else prior to striking the target. In this case we would
11 call that an intermediate target. So it passed through
12 something else before it struck Mr. Garland.

13 Q Dr. Ward, I'd like to show you couple of photographs
14 they have been admitted into evidence, specifically
15 State's Exhibit 43. Would the wound that you observed be
16 consistent with such an intermediate target as this
17 headrest?

18 A Yes, it would.

19 Q Dr. Ward, I'd like to show you another photograph or
20 the same photograph actually and another photograph. And
21 ask you to look at State's Exhibit 43 again. This shows
22 trajectory, the projectile. And I would like to ask you
23 that if Mr. Garland were seated in the driver seat of the
24 vehicle, is the wound that you found consistent with this
25 trajectory? This scenario that I presented to you?

1 A Yes, it is.

2 Q Did you also conduct a toxicological examine as part
3 of your autopsy, Dr. Ward?

4 A Yes, I did.

5 Q And what were the results?

6 A A toxicological examination was performed on femoral
7 blood removed from Mr. Garland at the time of the autopsy.
8 It showed methamphetamine and methamphetamine metabolite
9 amphetamine.

10 Q Did you also conduct an autopsy on Cameron Wade?

11 A Yes, I did.

12 Q What date did you conduct that autopsy?

13 A July 31st, 2006.

14 Q Did you determine his height and weight?

15 A Yes, ma'am, I did.

16 Q What were they?

17 A Mr. Wade was 75-inches or 6 feet 3-inches and weighed
18 315 pounds.

19 Q Could you, please, tell us in general what your
20 examine consisted of and your findings?

21 A Mr. Wade had a gunshot wound to the head. The
22 entrance was in the region of the right temple. It was
23 two inches -- two inches from the top of the head. It
24 passed through the bone of the right temple, through the
25 right side of the brain passing towards the back entering

1 the left side of the brain and then exiting the back of
2 the head, just to the left of the midline. It was less --
3 it was just half an inch to the left of the midline.
4 There was associated bleeding around the brain as well as
5 within the substance of the brain. Again, the entrance
6 wound on Mr. Wade's right temple was not round. It was
7 slightly irregular. In this case it was oval as opposed
8 to being round. Again, indicating passage through a
9 previous target. We did not -- we were unable to recover
10 a missile from Mr. Wade because that missile had exited
11 the back of his head.

12 Q I'm going to show you State's Exhibit 47, indicating
13 the protectory through the panel of the passenger area
14 there, would this be consistent with the wound that you
15 observed?

16 A If Mr. Wade is seated in the usual fashion in that
17 right front passenger seat, this would not be consistent
18 with the path through his head. The location is
19 consistent, the path through his head is not. Indicating
20 that Mr. Wade's head was not in the usual position but
21 turned distinctly to the right looking back over his right
22 shoulder with an impact to the right side of his head and
23 the exit the left back of the head.

24 Q Thank you, Dr. Ward. Did you conduct a toxicological
25 examine as part of the autopsy?

1 A Yes, I did.

2 Q What were those results?

3 A Toxicological analysis of Mr. Wade's was negative.
4 There were no drugs found.

5 MS. SEAY: Thank you, Dr. Ward, please answer any
6 questions Mr. Robinson has for you.

7 MR. ROBINSON: May it please the Court.

8 CROSS-EXAMINATION

9 BY MR. ROBINSON:

10 Q Dr. Wade, I wanted to go back, I think the prosecutor
11 touched on the autopsy of Mr. Garland. I think you said
12 in here -- can you look at the report for a second? You
13 admit that you said in here that it was a fully jacketed
14 round nose missile; is that correct?

15 A That's correct.

16 Q And you also say on the same page of your opinion
17 that the shot was to the left and slightly upward, isn't
18 that correct?

19 A It was from the decedent's back to front, from his
20 right to his left and slightly upward, yes.

21 Q Slightly upward. So going this way how would you
22 describe the path?

23 A I would describe it being from his back to his front,
24 from his right to his left and slightly from below upward.
25 At an upward angle through his body.

1 Q So the shot would have come lower than where he was
2 placed, is that correct?

3 A No, it would have passed through his body entering
4 lower than where it nearly exited. If he's leaned forward
5 then the -- and the shot is passing horizontal to the
6 ground then that would cause and an upward trajectory.

7 Q And no missile was ever recovered from Mr. Wade, is
8 that correct?

9 A Not from the body of Mr. Wade, no.

10 MR. ROBINSON: That's all I have, thank you, Doctor.

11 THE COURT: Any redirect?

12 MS. SEAY: Nothing further. May Dr. Ward be excused
13 at this time?

14 MR. ROBINSON: No objection.

15 THE COURT: Thank you, very much, doctor, you're
16 excused.

17 MS. SEAY: The State calls Sara Brunson.

18 THE CLERK: Please place your left hand on the Bible,
19 raise your right hand.

20 SARA BRUNSON, after being duly sworn, testified
21 as follows:

22 THE CLERK: Thank you, you may be seated.

23 DIRECT EXAMINATION

24 BY MS. SEAY:

25 Q Ms. Brunson, where are you currently employed?

1 A I'm currently unemployed at the moment.

2 Q What was you previous employment?

3 A For Greenville Forensics.

4 Q And when did you work for Greenville Forensics?

5 A From October 2005 until October 2008.

6 Q Did you have interim employment between 2008 and the
7 present?

8 A Yes and no. I've done some taking care of my
9 grandmother.

10 Q Okay. As a forensic employee, could you describe
11 what some of your duties were?

12 A Yes, they were to respond to crime scenes and
13 photograph, collect evidence, right a report and such
14 things.

15 Q What was your training and your education in order to
16 perform those duties?

17 A I was in the criminal justice forensic program at
18 Greenville Tech and did an internship with Greenville
19 Forensics. Was hired on about a year later for part-time
20 work processing evidence. And then was hired subsequently
21 as a full-time forensics. And a lot of in-house training
22 and other things like that.

23 Q Do you have any idea approximately how many crime
24 scenes you worked during your employment?

25 A Probably several hundred, I'm not quite sure how

1 many.

2 Q Were you assigned to work the incident scene at
3 on the evening of July 29th, 2006?

4 A Yes, I was.

5 Q Were you the only forensic technician or did you have
6 help that evening?

7 A I had help.

8 Q Who was with you?

9 A It was forensic investigator Orlando.

10 Q Okay. Could you, please, describe the weather
11 conditions and the lighting conditions, the general
12 conditions of the scene when you arrived?

13 A If I believe the weather was pretty clear. It was
14 late so it was dark and there were street lights lighting
15 it.

16 Q Did you secure photographs of the scene?

17 A I did.

18 Q I want to show you State's Exhibit 8 through 37. Ask
19 you to look through those and ask if you recognize them.

20 A Yes, these are the photographs that were taken. That
21 I took.

22 Q Are they accurate representation of things as they
23 appeared that evening?

24 A Yes, ma'am.

25 MS. SEAY: Your Honor, I would offer State Exhibits 8

1 through 37 into evidence at this time.

2 MR. ROBINSON: No objection.

3 THE COURT: All right.

4 (WHEREUPON, State's Exhibit Nos. 8 through 37,
5 having been marked in previous testimony, were
6 received into evidence.)

7 BY MS. SEAY:

8 Q Ms. Brunson, this is Exhibit 3 for identification, do
9 you recognize what these items are?

10 A Yes, I do.

11 Q How do you recognize those?

12 A I collected these myself at the crime scene.

13 Q Okay. Did you mark them to indicate that you were
14 the person who collected them?

15 A Yes, I did. They were packaged and initialed with my
16 initials.

17 Q And what did you do with the items?

18 A These items were packaged and placed into property
19 and evidence.

20 Q Okay. What is property and evidence?

21 A It is where the evidence is kept at the law
22 enforcement center.

23 Q Okay. Could you please describe what each of those
24 items are?

25 A Yes, this would be the shell casings from above and

1 around the vehicle.

2 Q Okay. Can you specifically describe where each shell
3 casing was located?

4 A Yes, item SB-2 is a casing from the roof above the
5 passenger seat of the vehicle. SB-3, it was also a casing
6 from the ground below the passenger door. SB-6 was a
7 casing from the roof near the driver side door of the car.
8 And SB-7 was a copper jacket from a projectile that was
9 behind the rear seat inside the car.

10 Q Okay. What caliber did you have -- I'm sorry, did
11 you have the caliber noted of the shell casings that you
12 collected?

13 A I did, they were 9 millimeter.

14 Q Okay. And let me show you a photograph of, I
15 believe, what you just described as SB-7 located in the
16 rear of the car?

17 A Uh-huh.

18 Q Is this the SB-7 that you just described? A copper
19 jacket from behind the rear seats beside the speaker?

20 A It is.

21 Q Okay.

22 MS. SEAY: Your Honor, I would ask that these items,
23 State's Exhibit identification No. 3 be admitted into
24 evidence at this time.

25 MR. ROBINSON: No objection.

1 THE COURT: All right, without objection.

2 (WHEREUPON, State's Exhibit No. 3, having been
3 marked in previous testimony, was received into
4 evidence.)

5 BY MS. SEAY:

6 Q Ms. Brunson, I'm going to show you what's been
7 labeled as State's Exhibit 1 for identification purposes.
8 Ask if you recognize these?

9 MS. SEAY: Your Honor, this has been dully secured by
10 the officers.

11 THE COURT: All right.

12 THE WITNESS: Yes, I recognize.

13 BY MS. SEAY:

14 Q How do you recognize them?

15 A These are the items that I collected. And packaged
16 and secured with my initials.

17 Q Okay. Where did you collect items SB-9 and what is
18 it?

19 A SB-9 is the magazine and 12 cartridges from inside
20 the firearm, SB-10.

21 Q Okay. What is SB-10?

22 A It is a six hour model pistol 9 mil -- excuse me,
23 yeah, 9 millimeter from underneath one of the victims in
24 the passenger seat.

25 MS. SEAY: Your Honor, I would offer these into

1 evidence at this time.

2 MR. ROBINSON: No objection.

3 THE COURT: All right, without objection.

4 (WHEREUPON, State's Exhibit No. 1, having been
5 marked in previous testimony, was received into
6 evidence.)

7 BY MS. SEAY:

8 Q Did you place those items into property and evidence
9 as well?

10 A Yes, ma'am.

11 Q Ms. Brunson.

12 A Uh-huh.

13 MS. SEAY: Those are all the questions I have for
14 you. Please, answer any that Mr. Robinson may have.

15 MR. ROBINSON: May it please the Court.

16 CROSS-EXAMINATION

17 BY MR. ROBINSON:

18 Q Ms. Brunson, how long after the call came out did you
19 arrive at the scene? How many minutes was it?

20 A That I'm not sure.

21 Q Would it be fair to say it was over 30 minutes?

22 A I'm not sure what time they requested that we respond
23 out there and what time we made it there. So I can't say
24 without my report in front of me.

25 Q Do you have your report in front of you?

1 A I do not.

2 Q Would it refresh your memory if I showed you a report
3 that you did?

4 A Sure.

5 MR. ROBINSON: Approach the witness, Your Honor?

6 THE COURT: Sure.

7 BY MR. ROBINSON:

8 Q First of all, I want to see, is this the report that
9 you're referring to?

10 A Yes, this would be my report.

11 Q Can you tell me -- can you tell the jury how many
12 minutes elapsed between the time you were called and the
13 time you actually got out to the scene?

14 A It looks about a little bit less than 30 minutes.

15 Q Okay. So approximately about 30 minutes may be?

16 A Yes, sir.

17 Q Okay. Now, in your report that you did, I'm going to
18 let you hold this and I'm going to get this marked up.
19 Defendant's Exhibit No. 6 for identification purposes
20 only.

21 (WHEREUPON, Defendant's Exhibit No. 6 was marked
22 for identification only.)

23 BY MR. ROBINSON:

24 Q Turning to this report, Ms. Brunson, you
25 discovered -- you found when you went out there a tire

1 iron in the top of the vehicle, is that correct?

2 A That is correct.

3 Q And that was lodged in the top of the vehicle, is
4 that correct?

5 A That is correct.

6 Q Was it actually right inside the roof of the vehicle?

7 A I believe it had pierced the metal from the top of
8 the vehicle and was lodged on top.

9 Q Okay. So it was 30 minutes time between the time you
10 were called and the time you actually, went out there.
11 When you went out there, weren't there other people out
12 there at that time?

13 A There were.

14 Q And there were some other young men out there in hats
15 and so forth when you went out there? There were other
16 people out there when you went out there; is that correct?

17 A Yes, there were people at the scene when I arrived.

18 Q So other people had access to the crime scene as well
19 as; isn't that correct?

20 A Well when we arrived there was a perimeter set up and
21 we just walked straight in and spoke with the officers
22 that were securing it.

23 Q But you don't know how many minutes elapsed between
24 the time the police were called and how many people were
25 still out there at the scene. You don't know that, do

1 you?

2 A No, I don't.

3 Q Now in your report -- I'm going to let you look at
4 these exhibits real quick, at your report. Do you
5 recognize these pictures, these three pictures?

6 A I believe so.

7 Q And those were -- those are -- let me let you look
8 at --

9 Get this marked -- marked as Defendant's Exhibit
10 seven through nine for identification purposes only.

11 (WHEREUPON, Defendant's Exhibit Nos. 7-9 were
12 marked for identification only.)

13 BY MR. ROBINSON:

14 Q Ms. Brunson, turning what's been marked Defendant's
15 seven through 9 for identification purposes only, these
16 were bullets that were in the vehicle belonging to the
17 victims, isn't that correct?

18 A I'm not sure the to tell you the truth. I'm not
19 quite sure. I don't remember every single picture that I
20 took but these -- they would have been photographed.

21 Q They would be the photographs; is that correct?

22 A I believe so.

23 Q And those are bullets, is that right?

24 A Yes.

25 Q And how many bullets do you see in there? If you can

1 tell the jury how many bullets you see in total.

2 A In total right there appears to be five.

3 Q Okay. Five?

4 A Uh-huh.

5 Q Now, can you tell this jury, where in your report you
6 ever mention these bullets that you found that were
7 photographed?

8 A No, I can't. No.

9 Q Okay.

10 MR. ROBINSON: That's all the questions I have.

11 Thank you.

12 REDIRECT EXAMINATION

13 Q Ms. Brunson, it is possible that you didn't take
14 these photographs, that they were taken when the car was
15 process?

16 A That is true.

17 Q Okay. You don't seem to recognize them, do you.

18 A Huh-uh.

19 MS. SEAY: Thank you, no further questions.

20 MR. ROBINSON: No recross.

21 THE COURT: Thank you, ma'am, you may step down.

22 MS. SEAY: State call Diane Richter.

23 THE COURT: All right.

24 THE CLERK: Step up here, place your left hand on the
25 Bible, raise your right hand.

1 DIANE RICHTER, after being duly sworn, testified
2 as follows:

3 THE CLERK: Thank you, you may be seated.

4 DIRECT EXAMINATION

5 BY MS. SEAY:

6 Q Ms. Richter, please state your name for the record.

7 A It's Diane Clair Richter.

8 Q Were you formally of the last name Orlando?

9 A Yes, ma'am, I was.

10 Q Okay. Ms. Brunson, the forensic technician that just
11 testified, stated that a technician by the name of Orlando
12 was present with her on July 29th, 2006, would that be
13 you?

14 A Yes, it would.

15 Q Okay. Where are you currently employed?

16 A I work for Greenville City Police Department.

17 Q What do you for them?

18 A I'm a police officer.

19 Q How long have you been employed by the Greenville
20 City Police?

21 A I've been employed since 2007. But before that I was
22 with them 2002 to 2004. And 2004 to 2007 I was with
23 Greenville County Forensics.

24 Q Okay. Were you a forensic technician?

25 A Yes, ma'am.

1 Q Okay. What was your training and education to
2 perform the duties of forensic technician?

3 A I completed several classes with crime scene
4 investigation. I went to a week long training class in
5 basic homicide investigation. I have self -- I trained
6 with the FBI for a week in Quantico, Virginia. Strictly in
7 crime scenes. And just several other classes I cannot
8 name of the top of my head. Anthropology, other things
9 like that.

10 Q What were your general duties as a forensic
11 technician?

12 A To respond to crime scenes for the purpose of
13 processing evidence and collecting evidence so it could be
14 processed at a later time.

15 Q Were you employed in that capacity on July 29th,
16 2006?

17 A Yes, I was.

18 Q Were you assigned to work an incident scene at
19 in Greenville County?

20 A Yeah, I was.

21 Q And were you and Ms. Brunson the two forensic
22 technicians assigned?

23 A Yes, we were.

24 Q Can you, please, describe the lighting there and the
25 scene in general as you recall it?

1 A Well, it was an outside scene. Everything had
2 happened outside. You want me to just describe what I saw
3 when I pulled up?

4 Q Yes.

5 A There was a vehicle off to the side of the road where
6 the deputies said that the two victims were--

7 MR. ROBINSON: Objection, Your Honor. Objection,
8 Your Honor, hearsay.

9 THE COURT: Well don't testify to what someone else
10 said.

11 THE WITNESS: Okay. We went there, the fire
12 department was there so we had lights. So it was dark at
13 the time and we were just responding and finding out what
14 happened.

15 BY MS. SEAY:

16 Q Okay. What do you mean when you say the fire
17 department was there so we had light?

18 A Every time there is either an accident scene or any
19 type of homicide scene or a shooting scene, any kind of
20 scene, the fire department will sometimes show up and
21 almost every time that I've worked an outside scene they
22 were there. And they set up these big lights on the top
23 of the truck so we're able to see what we're doing. And
24 they pretty much light it up as if it were daylight.

25 Q Okay. I want to show you exhibit five for

1 identification purposes and ask if you recognize these
2 items.

3 A You want me to open it?

4 Q That's fine if you need to.

5 (WHEREUPON, the witness opened State's
6 Exhibit No. 5.)

7 A These would be the shell casings that I collected on the
8 scene and it's got my initials on it and what the head
9 stamp on the actual shell casing was.

10 Q Okay. Can you, please, describe each and every item
11 there that you collected?

12 A Okay.

13 Q Well, let me ask you this, did you complete a
14 property and evidence sheet with a description of each
15 item?

16 A Yes, I did. It's labeled DO, which was my initials
17 at the time, Diane Orlando, and it's 2, 3, 4, 5, 6, 7, 8,
18 9 and 10. And all of them are shell casings. And it has
19 the exact time it was collected.

20 Q Can you, please, describe each item?

21 A DO-2 is a .40 caliber shell casing and actual head
22 stamp on it was Winchester .40 Smith and Wesson. And it
23 was collected at 4:44 hours. DO-3 was one shell casing
24 .40 caliber head casing, head stamped Winchester .40 Smith
25 and Wesson at 4:45 hours, which was a minute later. DO-4

1 was one .40 caliber shell casing, head stamped Winchester
2 .40 Smith and Wesson at 4:47 hours? DO-5 was a .40
3 caliber shell casing, head stamped Winchester .40 Smith
4 and Wesson at 4:48 hours. DO-6 was a .40 caliber shell
5 casing, head stamped Winchester .40, Smith and Wesson at
6 4:48 hours. DO-7 was a .40 caliber shell casing, head
7 stamped Federal .40 Smith and Wesson at 4:52 hours. DO-8
8 was one .40 caliber shell casing, head stamped Federal .40
9 Smith and Wesson, 4:53 hours. DO-9 was a .40 caliber
10 casing, head stamped Federal .40 Smith and Wesson, 4:54
11 hours. And DO-10 was a .40 caliber casing, head stamped
12 Winchester .40 Smith and Wesson at 4:54 hours.

13 Q Do you know exactly where you collected those casings
14 from?

15 A Yes, I did.

16 Q Okay. Did you prepare a diagram indicating where you
17 collected the shell casings?

18 A Yes, I did.

19 Q Would it assist you if I showed you that diagram?
20 Would it assist you in explaining to the jury where you
21 located the shell casing?

22 A Yes, that's fine.

23 MR. ROBINSON: Your Honor, May I have a motion
24 outside the presence of jury?

25 THE COURT: All right. Ladies and gentlemen,

1 let's -- probably pretty good time to take a short break
2 as it is. Please don't discuss the case. We'll get back
3 to you as quickly as we can.

4 (WHEREUPON, the jury left open court at
5 approximately 10:30 a.m.)

6 THE COURT: All right, you say you have a motion?

7 MR. ROBINSON: It not really a motion, Your Honor,
8 it's a matter outside the presence of the jury. Your
9 Honor, we've looked at -- I've looked the pictures from
10 the scene where the car was located, when they went out
11 there. That picture is the same picture which puts the
12 car right in front of where the bullet casings were. The
13 car was not -- was about 20 yards away from the bullet
14 casings. And I would ask the Court not to permit this
15 particular exhibit come into evidence.

16 THE COURT: On what grounds?

17 MR. ROBINSON: It's not an accurate picture, Your
18 Honor.

19 THE COURT: Well that's a matter for
20 cross-examination. That's a matter of credibility.
21 Doesn't go to the admissibility but the weight to be
22 assigned to that diagram.

23 MR. ROBINSON: That's -- my motion would be to
24 exclude that picture.

25 THE COURT: The diagram?

1 MR. ROBINSON: The diagram, excuse me. Correct.

2 THE COURT: Is it marked so we know what we're
3 talking about?

4 MS. SEAY: It's State Exhibit 56 for identification.

5 THE COURT: Is that what you're talking about?

6 MR. ROBINSON: That's what I'm talking about.

7 THE COURT: Okay, I'm going to deny that motion.

8 We'll take about 10, 15 minute break.

9 Officer, you may stand down, please do not discuss
10 your testimony with anyone.

11 (WHEREUPON, a short break was taken.)

12 (WHEREUPON, Defendant's Exhibit Nos. 10-12 were
13 marked for identification only.)

14 THE COURT: Okay, y'all ready?

15 MS. SEAY: Yes, Your Honor, we're ready. However, I
16 wanted to ask the Court for permission, while the jury's
17 out in order to avoid having to send them out again, if I
18 may briefly address the previous motion that I've made.

19 THE COURT: Okay.

20 MS. SEAY: Your Honor, I previously made a motion for
21 the admissibility of the shell casings and the incident
22 from May where the defendant shot his father to come into
23 evidence for proof of identity in this case. And I think
24 that what -- what I would like to do is modify that
25 motion. Because I think what we now is the defendant has

1 now stipulated that he has fired his weapon at the scene,
2 nine times. There has been some testimony from a witness
3 and what I expect from what Mr. Robinson has said, that
4 there will be additional testimony that the defendant
5 fired his weapon into the air. And what I think now is
6 that this evidence is extremely relevant to come in as to
7 the defendant's intent and to the absence of mistake or
8 accident in this situation.

9 In the case of his shooting his father, he fired two
10 shots, one into the ground, one into his father's leg.
11 He's clearly showing that he has control over this weapon
12 and knows how to fire it. And knows how to aim to fire
13 it. And I think this becomes extremely relevant and
14 probative as to intent. And also to the lack of mistake
15 or accident in this case. And I want to renew that motion
16 as modified because it will effect how the State proceeds
17 with the rest of its case in terms of particular witnesses
18 that we would need to call. And particular questions we
19 would need to ask.

20 THE COURT: All right, Mr. Robinson, what do you want
21 to tell me?

22 MR. ROBINSON: Your Honor, my understanding is that
23 they've called pretty much all their witnesses. And we
24 have a couple more witnesses, I think, to go. I think
25 that the stipulation that we have would cover everything

1 without having to go into the prior bad acts where he shot
2 his father in the leg. We don't feel that -- I disagree
3 with her based on the existing case law. I think the
4 Coates case that came out recently. And we think it's
5 extremely prejudicial to allow that to come in in this
6 matter. And we ask --

7 THE COURT: The Coates case?

8 MR. ROBINSON: I submitted it to the Court, in the
9 Court of Appeals.

10 THE COURT: I thought you submitted that to me on
11 third party guilt.

12 MR. ROBINSON: I think that -- you are absolutely
13 right, Your Honor, you're right, my mistake.

14 THE COURT: Well without question, it doesn't go to
15 show anything about identity. Particularly now in light
16 of the stipulation that's been entered. And the State is
17 urging me to -- this is clearly prejudicial evidence.
18 Clearly puts his character into issue. I don't know how
19 it shows motive. I don't see -- and the State is a making
20 a quantum leap that the fact that he shot one into the
21 ground and one into his father's leg, makes him some sort
22 of shark shooter. That he could have -- I mean, I don't
23 know what happened at that scene and we're not going to go
24 into depth but for me the conclude from what I hear about
25 it, that he's a shark shooter and he can -- whatever he

1 aims at he hits. That's too big of a leap for me to take
2 and I'm not going to do that.

3 You know, intent, I don't see how it goes to his
4 intent in this case. It shows that he's -- I mean, it
5 certainly puts his character into issue about pulling the
6 trigger. There's no question about that. But I'm afraid
7 that the prejudice outweighs the probative value. And
8 it's more a question of -- this is really just a question
9 of credibility, whether or not the jury's going to believe
10 that he shot all nine times into the air or not. And
11 unless something else comes up, I'm going to deny your
12 motion at this time.

13 MS. SEAY: And is that even as to the issue of
14 absence of mistake or accident in this situation?

15 THE COURT: Yeah. I mean, how -- there's nothing
16 there for me to draw that conclusion. Nobody has said
17 that he drew down, I don't know what happened. If he
18 fired nine times in the air or not. I mean, that one guy
19 said he did. But yeah, at this point denied. Unless
20 something else comes up that changes --

21 MS. SEAY: Thank you, Your Honor.

22 THE COURT: Okay.

23 All right, you ready?

24 MS. SEAY: Yes, sir. And thank you for letting me
25 take that up --

1 THE COURT: Sure.

2 MS. SEAY: --I just didn't want to -- I wanted to
3 avoid another --

4 THE COURT: Thank you for doing that.

5 MS. SEAY: Absolutely.

6 THE COURT: Yeah.

7 Y'all are going to take the rest -- how many more
8 witnesses you got?

9 MS. SEAY: After Ms. Richter I will have three more
10 witnesses.

11 THE COURT: Okay.

12 MS. SEAY: And we'll have a brief Jackson v. Denno
13 hearing prior to Ms. Fields' testimony.

14 THE COURT: Okay. And is the defense, do you know
15 what you're doing to do? Have you made your decision?

16 MR. ROBINSON: We haven't decided yet.

17 THE COURT: Okay. All right.

18 (WHEREUPON, the jury came into open court at
19 approximately 11:00 a.m.)

20 THE COURT: All right, thank you, ma'am, you may
21 resume.

22 MS. SEAY: Thank you, Your Honor.

23 BY MS. SEAY:

24 Q Ms. Richter, we were getting ready to talk about a
25 diagram. Let me ask you in the course of your duties was

1 it common procedure for you to prepare diagrams of scenes
2 that you processed?

3 A Yes.

4 Q Did you routinely do that personally?

5 A Yes.

6 Q Okay. Let me show you State's Exhibit 53 for
7 identification. And ask, do you recognize this?

8 A Yes, I do. It's a diagram I did of the scene that
9 night.

10 Q Okay. You personally prepared this?

11 A Yes.

12 Q Does the diagram indicate where the shell casings
13 that you were just talking about having collected, does it
14 indicate where those shell casings were collected from?

15 A It's a rough estimate, more of a visual aid. The
16 small circles with the initials and then the numbers,
17 those are where the shell casings were.

18 MS. SEAY: Your Honor, may the witness step down and
19 point to the actual items on the diagram?

20 THE COURT: Certainly.

21 (WHEREUPON, the witness steps down.)

22 BY MS. SEAY:

23 Q Please point out where you collected the nine .40
24 caliber shell casings.

25 A The nine .40's. Like I said, they had different head

1 stamps but it 1, 2, 3, 4, 5, 6, 7, 8, 9.

2 Q Okay. All right. I'll get to that other one in just
3 a moment. Can you give us a brief overview of this
4 diagram of what it portrays?

5 A This is the address as . That's the
6 house and this is just the lawn area in front. We have
7 the driveway here. These are where the shell casings were
8 collected and this is the vehicle. And then this was a
9 structure. I don't think it was on the property but you
10 need to have fixed point to run measurements off of and
11 that's what we used because there was really nothing else
12 out there to use. This is just . And
13 this is what Sara Brunson collected which is a baseball
14 bat over here.

15 When we go to these scenes we don't know what's
16 actually part of the scene, we pretty much collect
17 everything that we can find. And then let the
18 investigators figure it out.

19 Q Okay. Thank you. If you will --

20 Your Honor, at this time, I'm going to offer the nine
21 .40 caliber shell casings into evidence. I think there's
22 already been a stipulation that those are admissible.

23 THE COURT: Right, I think they're in evidence.

24 MS. SEAY: Okay, So.

25

1 BY MS. SEAY:

2 Q Did you, in addition, did you all take photographs of
3 each shell casings at its location prior to collecting it?

4 A Sara Brunson did.

5 Q Okay.

6 A Her and I went through the whole scene together.
7 That's why if you see that she took a picture of it, that
8 I ended up collecting it.

9 Q Okay.

10 A It's just easier that way, having two people do it.

11 Q Let me show you State's Exhibits eight through 37, do
12 you recognize those?

13 A These are just various things that we collected like
14 the flip-flop and cigarette container. And then these are
15 the shell casings right here.

16 Q Would it assist you if I projected those and let you
17 explain what each one of those is?

18 A Yeah, I mean, that would be fine.

19 Q Okay. All right, State's Exhibit 8, what is that?

20 A That's the house at

21 Q That's the incident location?

22 A Yes.

23 Q All right. And State's Exhibit 9, what is number one
24 placard represent?

25 A I think that was one of the shell casings.

1 Q Let me show you State's Exhibit 7, for identification
2 purposes, do you recognize that?

3 A Yeah, it's the first, I think, shell casing that we
4 collected. It was in the driveway. And this my
5 handwriting where I collected it and then packaged it
6 inside the container.

7 Q Okay. And what is the description of that item?

8 A I wrote , then the address, my last
9 name, unit number. And it's a .25 auto shell casing.

10 Q Okay. So that would be a .25 caliber shell casing?

11 A Yes.

12 Q Okay.

13 Would offer this into evidence at this time, Your
14 Honor?

15 MR. ROBINSON: No objection.

16 THE COURT: All right.

17 BY MS. SEAY:

18 Q Okay. And so number one indicates where that shell
19 casing was collected near the garage?

20 A Yes, in the driveway.

21 Q State's Exhibit 10, can you describe that?

22 A These are the other shell casings which were not in
23 the driveway. In the diagram you can see where the one in
24 the driveway was, where I just described. Then the other
25 ones were scattered in the yard leading up to the victim's

1 vehicle.

2 Q And you're referring to the .40 caliber shell
3 casings?

4 A Yes.

5 Q And is this a photograph of where the shell casings
6 were prior to their collection?

7 A Yes.

8 Q And this a photograph of 7, 8, 9 and 10 prior to
9 their collection?

10 A Yes, it is.

11 Q Now, can you describe what's in this photograph?

12 A That is the victim's vehicle and the crime scene tape
13 where it was roped off.

14 Q Is that the fire department vehicle you previously
15 described providing lighting?

16 A Yeah, with the light source on top.

17 Q Did you go over that entire crime scene area looking
18 for any items of potential evidence?

19 A Yes, we did.

20 Q Do you know whether you're looking for something in
21 particular or you just collected whatever might be of
22 potential value?

23 A If there is a gum wrapper, we're going to collect it.
24 So it might not even seem -- I think Sara Brunson
25 collected a toy, which probably wasn't even related. But

1 at the time we don't know what we're looking at so we
2 collect everything that we can find.

3 Q Okay. And the shell casings that you collected
4 consist of what? The nine .40 caliber shell casings and
5 the one .25 caliber shell casing, is that correct?

6 A Yes.

7 Q Did you collect various items such as empty beer
8 cans, cigarette packs at this location also?

9 A Yeah, I did.

10 Q Okay.

11 MS. SEAY: Your Honor, I would move at this time that
12 Ms. Richter's diagram, State's Exhibit for identification
13 number 56 be brought into evidence.

14 MR. ROBINSON: Your Honor, I object on the basis of
15 foundation in this case. Foundation.

16 THE COURT: No, just clear it up.

17 It's not drawn to scale, is it, ma'am?

18 THE WITNESS: No, Your Honor, it's not.

19 THE COURT: Just offered for sort of a general
20 overview?

21 THE WITNESS: It's just for a visual aid. Diagrams
22 are used in court, that's all they're used for. And if we
23 did a scale diagram, a lot of people would not understand
24 it.

25 THE COURT: All right, I'm going to overrule the

1 objection.

2 MS. SEAY: Thank you, Ms. Richter, please answer any
3 questions that Mr. Robinson may have.

4 CROSS-EXAMINATION

5 BY MR. ROBINSON:

6 Q Ms. Richter, you would admit that's a rough diagram,
7 wouldn't you?

8 A I would admit -- I would say that that's a diagram
9 that overlooked the scene as we saw it.

10 Q All right. I want you to tell this jury under oath,
11 when you were out there, this car was this close to the
12 shell casings.

13 A Why would I say that?

14 Q You put these in your picture, ma'am, right next to
15 these shell casings.

16 A Okay. And where else would I have put them?

17 Q Well, ma'am, let me look at the pictures that you say
18 you looked at when you were out there. I think one of the
19 pictures was -- let me look at this for identification
20 purposes, this is Defendant's Exhibit No. 10 for
21 identification purposes only. Do you recognize that
22 picture?

23 A Yes, I do.

24 Q Who took that picture?

25 A Sara Brunson.

1 Q And does that represent where the bullets were?

2 A Yes.

3 Q Tell me -- tell the jury where this vehicle is that
4 was that was the victim's vehicle was in relation to these
5 bullets. How many yards a way was it? Uh?

6 A How many yards exactly?

7 Q Yeah. Yeah.

8 A I don't know. You can see the vehicle from there.

9 Q Where?

10 A Right here.

11 Q And was it accurate in according to what you've drawn
12 in here as far as where the 10th bullet was found; bullet
13 casing was found?

14 A Yeah but how big is a piece of paper? It'd have to
15 be off the paper for me the make it compare to that.

16 Q Okay. Let's look at where the car was found, if we
17 can do that. Looking at what's been marked Defendant's
18 Exhibit No. 12 for identification purposes only, you would
19 agree that this is the car and where it was found, is that
20 correct?

21 A Yes.

22 Q And the bullet casings were found up by this, looks
23 like a yellow rod, is that correct? What is that yellow
24 rod right there?

25 A I'm not sure what that is.

1 Q You didn't mark it on your sheet here, did you?

2 A No, I don't know if that rod's removal, I don't know
3 if that's -- I don't even know what that is.

4 Q Would it help you to look at the -- let me let you
5 look at Defendant's Exhibit 13, for identification
6 purposes only. Would it help you to identify it now since
7 you see it connected to a telephone pole in that picture?

8 A Yeah.

9 Q You didn't mark that on that picture, where that
10 telephone pole was, did you?

11 A No.

12 Q You actual didn't -- the bullets casings were found
13 right next to a telephone pole, isn't that correct?
14 According to that picture.

15 A Yes, they're near the telephone pole.

16 Q Right. And that telephone pole was a good distance
17 away from that vehicle, wasn't it?

18 A Yes.

19 Q So your picture here, when you drew this picture that
20 you call a rough estimate, this is not accurate; is it?
21 As far how close the casings are to that vehicle, that's
22 not accurate; is it?

23 MS. SEAY: Your Honor, I'm going to object because
24 she has testified that this is visual aid, not to scale.

25 THE WITNESS: No, it's not.

1 THE COURT: That's all right, I overrule it.

2 BY MR. ROBINSON:

3 Q I want to make sure -- make sure I -- what you're
4 saying is that this is not accurate; isn't that correct?

5 A I'm saying it's not to scale.

6 Q Right. So when you neglected to put in the telephone
7 pole on this picture you have here, you don't know the
8 distance from the telephone pole to this vehicle, do you?

9 A We don't use telephone poles and I did the distance
10 from the front the house. A house is a fixed object.
11 It's not likely to move. Telephone poles are removed all
12 time.

13 Q Okay.

14 A Okay. That's why we don't use them as fixed objects.

15 Q What you put in here as fixed objects are these
16 little trees and so forth, didn't you?

17 A No, I didn't, I fixed it from the outdoor metal
18 structure.

19 Q Okay. Well you can't tell this jury that when you're
20 placing these casings where you have these placed, that
21 that's an accurate representation of that crime scene; can
22 you?

23 A It's further from the car. Of course, it's not going
24 to be two inches from the car. But overview and then
25 trying to get it on to a piece of paper, I would say

1 that's what the scene looked like.

2 Q But this car was not close -- the victim's car was
3 when you were at the scene, was not that close to these
4 bullet casings was; it?

5 A No, it wasn't two inches away like it is in the
6 diagram.

7 Q And actually where these bullet casings are would put
8 it how many yards away from the vehicle? The last bullet
9 casing, how far away? At least 10 yards, would that be
10 fair?

11 A More or less.

12 Q More or less 10 yards from that car where the bullet
13 casings were found, you would agree with that, correct?

14 A I can't measure it but, I mean, you can clearly see
15 the same picture where the bullet casing was in relation
16 to the car.

17 Q So how many yards away was it? The car -- the bullet
18 casings that you took a picture of? Or that Ms. Brunson
19 took a picture of?

20 MS. SEAY: Objection, he's already asked that
21 question.

22 THE COURT: She already answered --

23 Well go ahead and answer if you know the answer.

24 THE WITNESS: I can't answer it, I already told him
25 that.

1 THE COURT: Okay.

2 THE WITNESS: Somebody can look at this picture and
3 see how -- about how far it is in relation to the car.

4 BY MR. ROBINSON:

5 Q Ma'am, I'm going to let you look at what's been
6 marked State's Exhibit 14. Ma'am, this is where the last
7 bullet casing was found, isn't that correct?

8 A I can't read that number.

9 MR. ROBINSON: Can she come down here and take a
10 look?

11 THE COURT: Yeah, she may step down.

12 THE WITNESS: Yes, that's the last shell casing.

13 BY MR. ROBINSON:

14 Q And that's the telephone pole with that yellow thing
15 coming down, is that correct?

16 A Based on the other picture you showed me, yes.

17 Q And the car is actually how far away, how many yards
18 away?

19 A Didn't we just go through this before?

20 Q I'm just asking you, ma'am.

21 A Okay.

22 Q In this picture, which is State's Exhibit 14, how far
23 away is the car?

24 A You guessed about 12 or 10 yards.

25 Q Okay.

1 A Okay.

2 BY MR. ROBINSON: Thank you, ma'am.

3 Beg the Court's indulgence.

4 BY MR. ROBINSON:

5 Q In answer to a question a second ago that you asked
6 was asked of you Bryna Seay on direct examination, you
7 said that the shell casings were leading to the car, I
8 think is what you said?

9 A Leading up to the car.

10 Q But you don't know whether or not they were leading
11 away from the car, do you?

12 A No, they could be going the opposite direction.

13 Q The person that shot the shell casings, they could
14 have shot these shell cases in the air, couldn't they?

15 MS. SEAY: Objection, calls for speculation.

16 THE WITNESS: I don't think so--

17 THE COURT: She has not been qualified as an expert
18 with respect to that and I'm going to sustain the
19 objection.

20 MR. ROBINSON: I withdraw the objection -- I withdraw
21 that, Your Honor.

22 BY MR. ROBINSON:

23 Q In terms of the time when you actually got out there,
24 you and Ms. Brunson arrived at the same time?

25 A Yes.

1 Q You did. And how many minutes after the -- after the
2 call went out for you to get there did you get to the
3 scene? How many minute do you think it was?

4 A I have it written down.

5 Q Would it help you to look at your report, refresh
6 your memory?

7 A It would be her report, yes I can. 11:46 is when we
8 were on our way to the call and we arrived there at 12:12.

9 Q Okay. So about 26 minutes, 28 minutes?

10 A (The witness nods.)

11 Q Okay. And when you got there the fire department
12 there as well, is that right?

13 A I'm not sure if they were on scene when we got there
14 I don't remember.

15 MR. ROBINSON: That's all the questions I have, thank
16 you, ma'am.

17 THE COURT: Any redirect?

18 MS. SEAY: Just briefly.

19 REDIRECT EXAMINATION

20 BY MS. SEAY:

21 Q Ms. Richter, it is -- it is common procedure for you
22 to note every single item collected on your diagram that
23 you prepare?

24 A Every single item, yes. To show that we collected
25 it. Not every single item, just the ones that are

1 important. Like if we collected gum wrapper, we wouldn't
2 put that on there. We're not going to put the toy on
3 there. There were a couple of other items that we
4 collected, quite a few items. You can't fit it all on a
5 diagram.

6 Q And do you commonly use a couple of fixed objects as
7 your points of reference in preparing this diagram?

8 A Yes.

9 MS. SEAY: All right, thank you. Those are all the
10 questions I have.

11 May she be excused, Your Honor?

12 MR. ROBINSON: No objection.

13 THE COURT: All right, thank you very much, officer.

14 THE WITNESS: Thank you.

15 MS. SEAY: The State calls Sergeant Michael McNamara.

16 THE CLERK: Sergeant McNamara, place your left hand
17 on the Bible, please, and raise your right hand.

18 MICHAEL MCNAMARA, after being duly sworn,
19 testified as follows:

20 THE CLERK: Thank you, you may be seated.

21 DIRECT EXAMINATION

22 BY MS. SEAY:

23 Q Sergeant McNamara, would you, please, state your full
24 name so we can make sure everyone hears you back here?

25 A Yes, ma'am, Michael Jay McNamara.

1 Q Where are you employed?

2 A With the Greenville County Sheriff's Office.

3 Q What is your occupation there?

4 A I'm a Sergeant in the criminal investigations
5 decision.

6 Q How long have you been employed with the sheriff's
7 office.

8 A Sheriff's Office, 14 years.

9 Q Okay. And do you have prior experience?

10 A Yes, ma'am. Twelve years as a police officer in New
11 York State.

12 Q What is your training and education to perform the
13 duties of a law enforcement officer that you do.

14 A I've got an Associates Degree in Criminal Justice
15 primary training or primary education before I came to law
16 enforcement. And then once establishing myself on law
17 enforcement then to numerous schools to include 13 weeks
18 of the Police Academy back in New York and then additional
19 six week here in Greenville when I came back to South
20 Carolina. I was a homicide investigator for a period of
21 time from 1999 until 2006. And as such I under went
22 approximately six to eight weeks of training in various
23 death investigations, basic police detective
24 investigations, things of that nature.

25 Q And do you currently receive on-going training at

1 this time?

2 A Yes, ma'am, I do.

3 Q So were you an investigator back in July of 2006? A
4 homicide investigator?

5 A Yes, ma'am, I was.

6 Q Did you have occasion to go to the scene at
7 on July 29th, 2006?

8 A Yes, ma'am.

9 Q Approximately what time did you arrive?

10 A In the evening hours, I'm not sure exactly what time
11 it was, after dark. It was some time in the summertime so
12 some time after nine o'clock in the evening.

13 Q Can you describe what the general scene was like when
14 you got there? Just the lighting, the weather conditions,
15 so forth.

16 A The weather was clear that night, there was no rain
17 falling. It is a little difficult to see at the scene, it
18 was dark. It was just a house and an area of the yard
19 along side that house and a roadway in a fairly rural area
20 of Greenville County. Down in the Southern part of the
21 county. So it was a bit dark out there. There was
22 the one vehicle in the ditch area of the roadway. And
23 there were several other vehicles in the driveway of the
24 home along with a number of police personnel, marked
25 units. Investigator Fields and other units from the

1 sheriff's office, EMS, fire first responders. And then
2 folks who are at the house, at the party, witnesses at the
3 scene.

4 Q Had the law enforcement officers, prior to your
5 arrival, secured the crime scene or the perimeter?

6 A Yes, ma'am, they had.

7 Q And when they do what does that indicate? What does
8 that mean?

9 A It establishes a perimeter so that nobody can come
10 and go from that scene unless authorized by some of the
11 officers that are out there. It keeps people from getting
12 in, contaminating the scene, bringing things into the
13 scene, taking things out of the scene. It just secures
14 the area so we know what we have to work with.

15 Q And what did you do when you came on the scene,
16 Sergeant McNamara?

17 A Initially when I came on scene I got with the
18 supervisor of patrol, who called us. Investigator Fields
19 had arrived at about the same time that I did, so. We got
20 together to take a quick look at the scene to see what we
21 had. And first talked to some of the patrol officers who
22 arrived and who had initially gotten the information as to
23 what had occurred. So that we could get a good idea what
24 we're looking at and try to prioritize what needed to be
25 done next.

1 Q Were there personal witnesses there still on the
2 scene.

3 A Yes, ma'am, there were several.

4 Q And did you, without saying what they said, did you
5 speak briefly with those witnesses?

6 A I did. The few that were there at the scene, I got
7 initial statements or verbal statements from them when I
8 arrived to try to find out what had happened.

9 Q Did you make any arrangements for those witnesses to
10 give statements and so forth?

11 A Yes, ma'am. We had people standing by at the law
12 enforcement center. We knew we had probably a large
13 number of people or a fair amount of people that had to be
14 interviewed in this investigation. So we had other
15 investigators standing by at the law enforcement center
16 here in downtown Greenville. And we arranged for those
17 people to go to the law enforcement center where they
18 could give a written, detailed statements to the
19 investigators.

20 Q Did -- was forensics at the scene when you were
21 there?

22 A Yes, ma'am, they were.

23 Q Did you do anything in conjunction with forensics?

24 A After some interviews or after speaking with some of
25 the witnesses, I assisted the forensic officers or

1 technicians in trying to locate any items that might be
2 evidence or any items of value for the investigation. Out
3 in amongst the yard and the house area.

4 Q How do you go about doing that?

5 A Simple search. We put the flash lights on and got
6 whatever lights we could and went back and forth across
7 the yard. We was aware that there was a situation that
8 had taken place with a large number of people outside so
9 we had quite an area to cover. But it was simply a matter
10 of putting man power out there to look and see what items
11 were on the ground.

12 Q Did you attempt to ensure that forensics collected
13 any items of potential evidence that were out there?

14 A Yes, ma'am. Again, it was dark and it was difficult
15 to see. So we try to take as much time as we felt we
16 needed to do a thorough canvas of the entire scene. Make
17 sure that we collected anything that might have been
18 related to what happened out there that night.

19 Q Did you conduct a search of the home at
20 .?

21 A Yes, ma'am.

22 Q Did you find anything of any evidentiary value in
23 your search of the home?

24 A No, we did not.

25 Q Are you familiar with the diagram there to your left

1 that was prepared by forensics?

2 A Yes, ma'am.

3 Q The diagram depicts the location of some shell
4 casings, were you were you able to observe the location of
5 those shell casings when you were on the scene?

6 A Yes. They where in those locations that is depicted
7 there on the diagram while I was out there that fight.

8 Q I believe that forensics also photographed each shell
9 casing at its location prior to its collection, would that
10 be accurate?

11 A It is. Every item of evidence that we locate out
12 there is first photographed as it sits by the forensic
13 technician including those shell casings.

14 Q Did you ever have any occasion to come in contact
15 with an individual by the name of Josh Woods?

16 A Yes, ma'am, I did.

17 Q How did that come about?

18 A My supervisor at the time, Sergeant Mike Brown, had
19 called me the afternoon after this incident had occurred,
20 told me that Mr. Woods was at--

21 MR. ROBINSON: Your Honor, hearsay.

22 THE COURT: Yeah, don't testify to what someone else
23 said.

24 BY MS. SEAY:

25 Q What did you learn as a result of that conversation?

1 A That Mr. Woods was at the Anderson Police Department
2 and wanted to speak to an investigator about an incident
3 this that occurred in Greenville County the day before.

4 Q And did you make arrangements to take a statement
5 from him and find out what his involvement was?

6 A I did. I went to Anderson and initially talked to
7 him there. To see what he wanted to say to us and what he
8 needed from us. When he indicated that he would come back
9 to Greenville and take a statement or give a statement.
10 He followed me back here to the law enforcement center.
11 And I did, I took a written statement from Mr. Woods.

12 Q Okay. Did you personally collect any evidence out
13 there or did forensics collect the evidence and you just
14 assisted in locating it?

15 A I just assisted. I did not collect any evidence, I
16 just assisted forensics in locating all the evidence so
17 they could collect it.

18 MS. SEAY: Thank you, Sergeant McNamara, please
19 answer any questions Mr. Robinson has for you.

20 THE WITNESS: Yes, ma'am.

21 MR. ROBINSON: Thank you, sir.

22 CROSS-EXAMINATION

23 BY MR. ROBINSON:

24 Q Officer, you said a moment ago that not only were
25 other units out there but potential witnesses were also at

1 the scene when you arrived?

2 A Yes, sir.

3 Q And how many witnesses do you think were there at
4 the time you went out there?

5 A I think there were about five there at the time that
6 I first arrived.

7 Q So there were, besides all the officers and the fire
8 department and also these five other people out there on
9 the scene, is that correct?

10 A Yes, sir.

11 Q Okay. And as far as the picture that -- or the
12 diagram that Ms. Seay talked about a second ago, did you
13 get an opportunity to look where the bullet casings were
14 found versus where the vehicle was found, is that correct?

15 A Yes, sir.

16 Q In fact, the vehicle is not that close to the
17 casings, is it?

18 A If you're asking me if that diagram accurately
19 depicts the distance between the two, I'm not sure it was
20 a measured distance indicated on the diagram. If they
21 got --

22 Q If I show you a picture that was taken on the scene,
23 would it help you?

24 A Yes, sir.

25 Q Okay. Do you remember a phone pole out there like a

1 phone line or something like that out there?

2 A I beg your pardon, I didn't hear you, sir.

3 Q Did you remember a phone line out there, like a phone
4 pole in the yard?

5 A I'm certain there were phone poles out there. A
6 specific phone pole, I'm not able to recall.

7 Q Let me show you one second.

8 A Yes, sir.

9 Q Can you see that, Officer?

10 A Yes, sir.

11 Q Does that accurately reflect -- if you notice,
12 compare the diagram there, the 10th bullet casing that
13 they have up there, let me show you real quick. Looking
14 at this diagram. The 10th bullet casing is all going back
15 there. They're all going back. Here's the 10th one and
16 here's the last one's other here; is that accurate?
17 Bullet casings? You see them?

18 A Yes, sir.

19 Q Okay. Let's look at this picture again.

20 THE COURT: You can step down, Officer, if you need
21 to.

22 (WHEREUPON, the witness steps down.)

23 BY MR. ROBINSON:

24 Q Can you tell the jury where the car is? The victim's
25 car in relation to the -- to the 10th bullet casing?

1 A To the left side of the picture.

2 Q And would you agree that the 10th bullet casing that
3 the drawing has right next to the car is actually farther
4 away?

5 A Yes, sir, it would appear so.

6 Q And this actually is a picture that -- this is a
7 State's Exhibit, this is actually the scene that you saw
8 that night, is that right?

9 A Yes, sir.

10 Q When you came out. Now do you recognize this right
11 here? To the left you'll see like a yellow pole coming
12 out, do you recognize that?

13 A Probably the support for the pole, yes, sir.

14 Q And none of -- the 10th bullet doesn't appear like it
15 goes pass that pole, does it?

16 A Pass in that direction, no, sir.

17 Q Okay. So how many yards do you think would be
18 accurate between where that last bullet casing was found
19 and the vehicle, the victim's vehicle?

20 A It would be just a guess. Without seeing the vehicle
21 in the picture and from my recollection back to 2006, I
22 couldn't tell you how many yards the shell casing was from
23 the vehicle.

24 Q But you would agree that that picture there is not an
25 accurate representation of where the bullet casings were

1 found in relation to the car?

2 A I would say only in the fact that that indicates to
3 me is relatively very close to the vehicle. And it may
4 not necessarily be as close as that--

5 Q In actuality -- in actuality -- in actuality those
6 bullet casings are a distance away from that car, aren't
7 they?

8 A Probably not the distance that it would look like
9 when you looked at that.

10 Q Because the picture actually -- the diagram actually
11 has it a lot closer than what you see in reality?

12 A Somewhat closer, yes, sir.

13 Q Okay.

14 MR. ROBINSON: That's all I have, thank you, sir.

15 MS. SEAY: I have nothing further. May he be
16 excused?

17 THE COURT: Thank you, Sergeant.

18 THE WITNESS: Yes, sir.

19 MS. SEAY: I believe we have a brief matter to handle
20 at this time before we can proceed with our next witness.

21 THE COURT: All right. Ladies and gentlemen, this is
22 one of those times we apparently got a legal issue that we
23 need to talk about. So I ask y'all to step to your room
24 and we'll get back with you as quickly as we can.

25

1 (WHEREUPON, the jury left open court at
2 approximately 11:35 a.m.)

3 THE COURT: Yes, ma'am.

4 MS. SEAY: Your Honor, I believe at this time that I
5 will need to call investigator fields as a witness to
6 testify as to some statements that Mr. Clark made when he
7 made a telephone call to her.

8 THE COURT: Okay. I mean, all right, Jackson v.
9 Denno; is that what you're talking about?

10 MS. SEAY: Yes, sir.

11 THE COURT: All right. Put her in the hot seat.

12 THE CLERK: Place your left hand on the Bible.
13 Please raise your right hand.

14 MARY FIELDS, after being duly sworn, testified
15 as follows:

16 THE CLERK: You may be seated.

17 MS. SEAY: Your Honor, from purposes of this hearing
18 I will not go into Investigator Fields background and so
19 forth as I?

20 THE COURT: That's fine.

21 MS. SEAY: You're familiar with it. Okay.

22 THE COURT: I don't know all of it but I know some of
23 it.

24 MS. SEAY: You know that she's a dully certified law
25 enforcement officer?

1 THE COURT: Yeah, I do. Go ahead.

2 DIRECT EXAMINATION

3 BY MS. SEAY:

4 Q Investigator Fields, did you ever -- first of all,
5 you were assign to investigate this case, is that correct?

6 A Yes, ma'am, I was.

7 Q And did you ever have a conversation with a person by
8 the name of Brandon Clark?

9 A I had a telephone conversation with a male that said
10 his name was Brandon Clark.

11 Q On what date did that occur?

12 A It was the 31st. I'm sorry, it was the night of the
13 30th.

14 Q Can you speak up just a little bit?

15 A Yeah, the night of July 30th, 2006..

16 Q Okay. At approximately what time did you receive
17 that call.

18 A It was right after the 10:00 o'clock news had gone
19 off.

20 Q Okay. Were you aware of anything being aired on the
21 10:00 o'clock news in reference to this case?

22 A I knew that they were going to air the fact that we
23 had a suspect in the case and provide his photograph as a
24 wanted person from Greenville County.

25 Q Okay. Would you, please, describe the telephone

1 call, the contents of the telephone call that you
2 received?

3 A Yeah. A male called and said that he was Brandon
4 Clark. And said that he had got -- he had received
5 information that we wanted to talk to him.

6 I said, I did. I wanted to talk to him about the
7 incident. And what had happened at the
8 party.

9 He said he didn't know what I was talking about.

10 I told him that I wanted hear his side of the story
11 as to what happened.

12 He said, I'll get back to you on that.

13 Q Okay.

14 MS. SEAY: And, Your Honor, that would be the
15 substance of the conversation up until the point that the
16 defendant apparently mentions that he is going to contact
17 his attorney. So, of course, we would not go into that
18 matter as he is invoking his right to counsel at that
19 point.

20 BY MS. SEAY:

21 Q But Investigator Fields, did you -- did you initiate
22 this conversation?

23 A No. Telephone calls had been made earlier to Brandon
24 Clark's family members in an attempt to locate him to ask
25 him to come in to provide the statement.

1 Q But he called you on this occasion, correct?

2 A Yes, ma'am, he did.

3 Q All right. And did you make any promises to him of
4 any sort if he would come talk to you about anything or
5 anything like that?

6 A No, ma'am.

7 Q Did he appear to be speaking to you freely and
8 voluntarily?

9 A Yes, ma'am, he was.

10 MS. SEAY: Those are all the questions I have, thank
11 you.

12 MR. ROBINSON: Your Honor, I have no questions for
13 Ms. Fields. I'm not sure what the relevance of this is to
14 this case. Regarding what she just said that she received
15 a phone call and he said he would get back to her, wanted
16 to talk to his attorney. So I don't know what the
17 relevance--

18 THE COURT: She's not going to mention that. She's
19 not going to mention talking to the attorney.

20 MR. ROBINSON: Other than that, I'm not sure what the
21 relevance is of this conversation they had.

22 THE COURT: It's -- well he's objecting to it on the
23 basis of relevance. I'm going to allow it over your
24 objection.

25 Okay, anything else?

1 MS. SEAY: Nothing further before we proceed with
2 this witness.

3 THE COURT: All right, I guess you better step down.
4 You're skipping over one.

5 MS. SEAY: Are you referring to Sergeant Silvaggio?
6 He would have been testifying to some change of custody
7 regarding the evidence that you're not allowing.

8 THE COURT: Okay. All right. All right, ready?

9 MS. SEAY: Yes, sir.

10 THE COURT: Okay, she's going -- her testimony is
11 going to be more than just that; is that right?

12 MS. SEAY: Oh yes, sir.

13 THE COURT: Okay. All right, okay, let's go.
14 See if they're ready, they may not be.

15 (WHEREUPON, the jury came into open court at
16 approximately 11:45 a.m.)

17 THE COURT: All right, Ms. Seay.

18 MS. SEAY: Thank you, Your Honor. The State calls
19 Investigator Mary Fields.

20 THE COURT: All right. Ma'am, come around and be
21 sworn.

22 THE CLERK: Place your left hand on the Bible,
23 please, raise your right hand.

24 MARY FIELDS, after being duly sworn, testified
25 as follows:

1 THE CLERK: Thank you, you may be seated.

2 DIRECT EXAMINATION

3 BY MS. SEAY:

4 Q Investigator Fields, please state your full name so I
5 can make sure we hear you back here.

6 A Mary Elle Fields.

7 Q Where are you employed?

8 A Greenville County Sheriff's Office.

9 Q And what is your job title there?

10 A I'm a investigator in the violent crimes unit.

11 Q Have long have been employed with the Greenville
12 County Sheriff's Office?

13 A Since 1988.

14 Q And what have been some of your duties as a law
15 enforcement officer since 1988?

16 A I worked uniform patrol, narcotics and back into
17 uniform patrol. Then in 2001 I was assigned to work in
18 the violent crimes unit.

19 Q And have you been in violent crimes since 2001?

20 A Yes, ma'am, I have.

21 Q Do you routinely investigate homicide scenes?

22 A Yes.

23 Q What is your training and education to perform your
24 duties?

25 A I went through the South Carolina Criminal Justice

1 Academy. Then I have an Associate's Degree in Criminal
2 Justice. I'm working on an Associate's Degree in Forensic
3 Technology. I've been through several homicide related
4 and investigative classes provided through the sheriff's
5 office.

6 Q Do you continue to get on-going training?

7 A Yes, ma'am, we do.

8 Q Were you assigned to work this case at
9 on July 29th, 2006?

10 A Yes, ma'am. I received a call shortly before
11 midnight, around quarter till midnight, from Investigator
12 McNamara asking me to respond to the scene to assist on
13 the investigation.

14 Q Do you remember approximately what time you arrived
15 at the scene?

16 A I arrived at a quarter after midnight which would
17 have now been the 30th.

18 Q Okay. Would you describe the physical layout of the
19 scene, please.

20 A As we pulled up -- or we got there right at about the
21 same time. There is a vehicle that's parked on the side
22 of the road. There's like a wide shoulder area and then
23 it slopes up to a hill. There is a vehicle that's parked
24 facing the opposite way that we came in, to the left of
25 the driveway if you're facing the house. The crime scene

1 tape is up and it's up -- they did a couple of different
2 crime scene areas. One down there at the street was a
3 smaller area. And then they roped up to the house and
4 back through the yard. And then they had the witnesses
5 quandred off in one little area waiting with officers for
6 us. We met with the patrol supervisors on scene and they
7 gave us a little bit overview. Then we walked the area to
8 see what we're looking at.

9 If you walk up the -- the driveway is a concrete
10 driveway, it's a single wide going up and as you get to
11 the top it widens out. And there's a parking area then
12 the garage and the house. To the left it slopes from the
13 road up to a flat grassy area. Then that grassy area goes
14 back to the house on the left side of the driveway. And
15 on the right side of the driveway there's trees and more
16 grassy area that kind of slopes down. And throughout the
17 yard we could see there was beer cans in the yard, there
18 were sticks, baseball bats, ax handles, shell casings to
19 the left. Then once we did a walk through, I was tasked
20 with taking care of where Christopher Garland and Cameron
21 Wade, that actual proportion of the crime scene.

22 Q Okay. So tell me what you observed about the car
23 that the victims were in.

24 A As you walked up to the car -- well first it was very
25 dark. We called for additional lighting from the fire

1 department. They came down and got on the perimeter so we
2 could start to see. When you walk up to the car, the back
3 window of the car, there was two large holes in the back
4 windows, of like the back windshield. The side of the car
5 there's like a small, small real tiny window behind like
6 the back window of the passenger side, and there was no
7 glass in it. The back windows were about half to three
8 quarters of the way down. The front windows were both all
9 the way down. The front windows were both all the way
10 down.

11 Christopher Garland was sitting in the driver's seat
12 and Cameron Wade was in the passenger seat. I noted
13 bullet holes or what appeared to be bullet holes in the
14 door post between the driver's seat and back passenger
15 seat on the passenger side. I noticed that there was a
16 hole through the windshield near the driver's side. Then
17 there was something that had struck the windshield on,
18 kind of in between the passenger side and the driver side
19 windshield.

20 Q What was the condition of the victims when you saw
21 them?

22 A Both of them had already been pronounced dead on the
23 scene.

24 Q Let me show you State's Exhibit SB-9 and SB-10. This
25 is a pistol and magazine with cartridges, do you recognize

1 those items?

2 A Yes, I do.

3 Q Okay. Where were those collected?

4 A The gun was collected from under the right leg of
5 Cameron Wade. Cameron was positioned in the passenger
6 seat. Where his body was kind of twisted to the right and
7 his head was resting along the edge of the door. When you
8 look in you could see that this gun was up under his right
9 thigh.

10 Q All right. Were our able to determine who this gun
11 belonged to?

12 A Later we determined that the gun belonged to
13 Christopher Garland.

14 Q Let me show you what's been mark as State's Exhibit 2
15 for identification purposes, do you recognize this?

16 A Yes, South Carolina Concealed Weapons Permit
17 belonging to Christopher Garland.

18 Q Okay. Was this on his person that evening?

19 A Yes. When we removed Christopher from the car it was
20 in his wallet, in his back pocket.

21 Q Okay.

22 MS. SEAY: Your Honor, I would offer this into
23 evidence at this time.

24 MR. ROBINSON: No objection.

25 THE COURT: All right.

1 (WHEREUPON, State's Exhibit No. 2, having been
2 marked in previous testimony, was received into
3 evidence.)

4 BY MS. SEAY:

5 Q Did you observe the nine .40 caliber shell casings
6 that have been discussed that were collected at the scene?

7 A Yes, I did.

8 Q And did you also observe the .25 caliber shell casing
9 which I think is depicted on this diagram as the first
10 shell casing up there near the garage, did you personally
11 observe that on the scene?

12 A Yes, ma'am, I did.

13 Q Did you search the residence of for
14 any potential evidence?

15 A Yes. We searched the residence, we did notice that
16 it smelled like burnt marijuana inside. But we did not
17 collect any evidence from within the house.

18 Q Okay. Did you at some point request that forensics
19 process the victim's car?

20 A Yes. If I can go back to the car. When I arrived
21 Christopher is in the driver side. One foot is on the
22 break, one foot is on the clutch. The car ignition is on,
23 the head lights are on, the radio is on, the emergency
24 break is up like it's on. And it just look -- it's
25 already in gear, it looked like--

1 MR. ROBINSON: Objection, Your Honor. Calls for
2 speculation.

3 THE COURT: Don't speculate. But you can describe
4 what you found.

5 THE WITNESS: Yes, sir. It being a standard shift
6 car, the clutch was out but the car was in gear. Based on
7 both of their bodies being in the car and both being
8 diseased in the car and apparent evidence--

9 MR. ROBINSON: Objection, Your Honor, calls for
10 speculation.

11 THE COURT: No, go ahead.

12 THE WITNESS: I obtained a search warrant for the
13 car. The car was towed to our forensics building, they
14 have an inside garage. And then the search was conducted
15 by Sergeant Shaw.

16 Q Sergeant shaw, I believe, already testified about
17 what his observations were. Did you make arrangements for
18 the witnesses that remained on the scene to be
19 interviewed?

20 A Yes, Sergeant McNamara and I made arrangements with
21 patrol to have them either brought to the law enforcement
22 center or follow somebody to the law enforcement center so
23 that they could be interviewed.

24 Q Okay. Did you ever have an occasion to have a
25 conversation with Brandon Clark? Well let me back up and

1 ask you something. Was Brandon Clark on the scene that
2 night?

3 A No, ma'am, he was not.

4 Q Did you ever have an opportunity to have a
5 conversation with him?

6 A I spoke briefly to him on the telephone.

7 Q Okay. How did that come about?

8 A Earlier in the day calls were made to Brandon Clark's
9 family members in an attempt to locate him. And we did
10 not speak to him at that time. Once I -- once we put the
11 information on the news that he was wanted from Greenville
12 County, I received a call after the 10:00 o'clock news
13 went off on Fox by a male who said his name was Brandon
14 Clark. I told him I wanted to speak to him about the
15 shooting at Stephen Watson's house.

16 He said that he didn't know what I was talking about.

17 I asked if he would come in to sit down and talk to
18 me and tell me his side of it.

19 And he said he would get back to me on that.

20 Q And did you hear anything further from him?

21 A No, ma'am, I did not.

22 Q Did you conduct an investigation to determine if
23 Brandon Clark ever possessed a concealed weapons permit
24 issued by the South Carolina Law Enforcement Division in
25 this state?

1 A Yes, he does not.

2 Q And just in conclusion, did you charge several other
3 individuals, some of whom have testified in this case,
4 with lynching as part of their role in this incident?

5 A Yes, ma'am. Several other people were charged with
6 lynching because they gathered as a mob and armed
7 themselves with the intent to inflict injury on someone.

8 MS. SEAY: Please answer my questions Mr. Robinson
9 may have for you, thank you.

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MR. ROBINSON:

13 Q Ms. Fields, when you spoke to Brandon, Brandon said
14 he was going to get back to you, is that correct?

15 A Yes, sir, he told me he would get back to me.

16 Q He actually called you, is that correct?

17 A He called after the 10:00 o'clock news went off.

18 Q Okay. Ms. Fields, when you arrived on the scene,
19 there were several potential witnesses at the scene;
20 weren't there?

21 A Yes, there were. When we arrived patrol indicated to
22 us a small group of people that were standing here and
23 said that they had information about the incident that had
24 occurred. So we made arrangements for them to go be
25 interviewed.

1 Q So when you arrived it was a little bit after 12, I
2 think, about 12:15?

3 A Yes, sir, 12:15?

4 Q You found them standing there, correct?

5 A They're standing like -- if you look at where --
6 normal procedure for the crime scene tape is when the
7 officers arrive, they tape on an area that's probably
8 usually about one and a half to two times larger than
9 where the actual incident is. So these people were
10 standing outside of the tape with a patrol officer.

11 Q If I let you look at a picture, can you identify this
12 picture for me?

13 A Yes, sir. That's officer standing there with a group
14 of people in the area that I indicated is quarndered off
15 within the crime scene tape.

16 Q Okay. All right.

17 If I can get this marked Defendant's Exhibit for
18 identification purposes only.

19 (WHEREUPON, Defendant's Exhibit No. 15 was
20 marked for identification only.)

21 BY MR. ROBINSON:

22 Q Ms. Fields, in this picture of, looks it appears to
23 be about four individuals, is that right; about four
24 people?

25 A There is four people there.

1 Q And there's actually--

2 A And a officer.

3 Q I'm sorry. And there's actually someone in that
4 picture wearing khaki shorts; isn't that correct?

5 A Hang on a minute. I don't see khaki. I see
6 camouflage. I see a pair of blue jean shorts. They're
7 probably actually five people there. I see a pair of legs
8 that have on blue jeans, long. Another gentlemen wearing
9 blue jeans long. A female wearing blue jeans long and a
10 guy wearing camouflage shorts.

11 Q All right. And how many of them are wearing baseball
12 caps, can you tell me?

13 A Hard to tell. I see at least one ball cap.

14 Q Okay. Ms. Fields, in your investigation at this
15 crime scene, there were no .40 caliber shells found around
16 the car, were they?

17 A You talking about immediately around the car?

18 Q Yeah.

19 A No, there were not.

20 Q In fact, if number of ten on the picture right there,
21 that was how many yards away you think from the car?

22 A I'm not going to estimate, I don't have a good feel
23 for distance.

24 Q If I show you a picture could you maybe see it?

25 A I've seen the picture.

1 MS. SEAY: Objection, he's asking --

2 THE WITNESS: -- as it was played but I still
3 can't --

4 MS. SEAY: -- her to speculate.

5 THE WITNESS: -- estimate.

6 THE COURT: Wait, wait, wait. Hang on.

7 MS. SEAY: She stated that she did not want to guess.

8 THE COURT: Objection's sustained. I'm not going to
9 allow her to speculate.

10 MR. ROBINSON: Yes, sir.

11 BY MR. ROBINSON:

12 Q Ms. Fields, in your investigation -- you were the
13 lead investigator in this case, weren't you?

14 A Yes, sir, I was the lead investigator.

15 Q And there were between, according to the report in
16 your investigation, between 50 to 100 people at this
17 party; is that right?

18 A It depending on who you spoke to. Some of the
19 witnesses guestimated maybe 20 people, some of them
20 guessed 50 people, some of them guessed up to 200 people.
21 So it depending on who you asked.

22 Q And actually two that regarding the number of shots
23 fired, there were estimates between nine and 100 shots,
24 weren't there?

25 A There again, depending on who you asked. Some of the

1 witnesses were adamant that it was nine shots followed by
2 three shots. Some of them estimated that it was up to 50
3 to 60 shots.

4 Q And you would agree with me, you had an opportunity
5 to sit in this courtroom today but it was -- there was a
6 period of time between the time the police were called and
7 the time they got to the scene of about 30 minutes, you
8 agree with that, wouldn't you?

9 A Without looking at the report I don't remember
10 exactly what the time period is between when the first
11 call 911 and when the first deputy arrived on scene. But
12 I'm sure it was a matter of -- they weren't sitting right
13 there as it happened.

14 Q Right. Now that would give a killer or killers
15 opportunity to pick the shells up that they had and leave
16 the scene?

17 MS. SEAY: Objection, calls for speculation.

18 THE COURT: Yeah, I mean, you're talking about
19 argument, you're not talking about anything she can say
20 with certainty.

21 BY MR. ROBINSON:

22 Q And you took a picture -- or you have pictures of a
23 tire arm in that -- tire iron in that car, don't you?
24 Have you seen the pictures?

25 A I saw the pictures and I saw the tire iron.

1 Q Was it on top of the car or inside of the car?

2 A It was embedded in the top of the car, some where
3 back behind where the passenger seat would be. On that
4 side of the car. At a angle.

5 Q Okay.

6 MR. ROBINSON: Beg the Court's indulgence for one
7 second. That's all the questions I have, thank you.

8 THE COURT: Redirect?

9 MS. SEAY: Nothing further from this witness. We
10 would ask that she remain as the chief investigating
11 officer.

12 THE COURT: All right, you may step down. Thank you.

13 THE WITNESS: Thank you, sir.

14 MS. SEAY: May I have just a minute, Your Honor?

15 THE COURT: All right.

16 MS. SEAY: Thank you, Your Honor. The State calls
17 James Armstrong.

18 THE CLERK: Mr. Armstrong, step up here, please,
19 place your left hand on the Bible, raise your right hand.

20 JAMES ARMSTRONG, after being duly sworn,
21 testified as follows:

22 THE CLERK: Thank you, you may be seated.

23 DIRECT EXAMINATION

24 BY MS. SEAY:

25 Q Mr. Armstrong, would please state your full name so I

1 can make sure we hear you well back here.

2 A James William Armstrong.

3 Q By whom are you employed?

4 A I'm employed by the Greenville County Department of
5 Public Safety Forensic Division Crime Laboratory.

6 Q What's your position there?

7 A I have dual function as a forensic drug chemist and a
8 firearm examiner.

9 Q How long have you been employed in that capacity?

10 A Been employed with the Department of Public Safety
11 for a little over 13 and a half years.

12 Q What is your training and education to perform those
13 duties?

14 A In the area of firearm identification, I have a
15 Bachelor's Degree from Erskin College in the area of
16 chemistry. I have trained as an apprenticeship style
17 trainer for approximately four years under the direction
18 of a retired firearm examiner from Philadelphia, P.D.
19 I've attended numerous schools sponsored by the Bureau of
20 Alcohol, Tobacco and Firearm Explosives in the area of
21 identification and examining firearms. I've attended 11
22 different firearms manufacturing facilities where I
23 observed the manufacturing of firearms from raw materials
24 to the finish product. I've attended and visited
25 different ammunition manufactures facilities. Where I,

1 once again, saw the manufacturing of ammunition from raw
2 material to the finish product. I've testified in Federal
3 and State Court no fewer than 19 times as an expert in
4 firearm identification.

5 Q Do you have any particular certifications or
6 memberships in her field of expertise?

7 A Yes, ma'am. I'm a member of the Association of
8 Firearm and Tool Mark Examiners.

9 Q Is all of your work as a firearm examiner peer
10 review?

11 A Everything that we do is peer review 100 percent,
12 yes, ma'am.

13 Q Explain what that means, please.

14 A Anytime that I have a case and I actually look at the
15 item and I write my report, my reviewer is peer who is a
16 firearm examiner as well. Will come in and look at my
17 report as well as the evidence that I have and verify my
18 call. Nothing goes out of our office without someone
19 looking at it and have two eyes to make the same
20 identification or non-identification.

21 Q And I believe that you previously just testified that
22 you have been qualified as an expert in both State and
23 Federal Court of South Carolina on a number of occasions?

24 A Yes, ma'am, I have.

25 MS. SEAY: Your Honor, we would move to qualify

1 Mr. Armstrong as an expert in his field.

2 MR. ROBINSON: Without objection, Your Honor.

3 THE COURT: All right, without objection.

4 BY MS. SEAY:

5 Q Would you, please, describe for the jury what the
6 science of ballistics examination or microscopic
7 comparison of ballistics is?

8 A When a firearm is used, it is basically like a tool.
9 Every tool that is used has a unique marking or identifier
10 that's left behind that is usually microscopic. They may
11 all have the same class type, which is if you look it as
12 type with people, you would say a person is a white male
13 or a black male. Well, with firearms we actually go a
14 little deeper. We go into microscopic. Where we use a
15 class characteristics as well as identifiers. The
16 firearms, when they're made by a tool, they're
17 imperfections that are left behind during that process.
18 Those imperfections are then left there to be transferred
19 to the projectile or fire cartridge casings when they're
20 used in that firearm.

21 And in that case, it is kind of like a fingerprint of
22 that firearm. And since those are left behind, we can
23 pick those items up, look at them through a microscope and
24 compare them to items fired from that gun or other items
25 left behind to make a comparison or to rule them in or out

1 of a case.

2 Q Were you asked to perform some ballistics comparisons
3 in this case?

4 A Yes, ma'am, I was.

5 Q Okay. I'd like to begin with State's Exhibit 3,
6 which contains items SB-2, SB-3 and SB-6, SB-7. Hand you
7 those, do you recognize those?

8 A Yes, ma'am, I do.

9 Q How do you recognize them?

10 A On the property and evidence sheet has my printed
11 name, my signature and the reason why I signed the items
12 out on the dates and times. The bag which I sealed it in
13 and placed it back in property and evidence. Has my
14 initials and date. Also on the box, on the evidence tape,
15 has my initial and dates where I opened it. And on the
16 inside of the box also has my initial and date. And each
17 item inside, once again, has my initials and dates where
18 the items were opened.

19 Q Let me also show you State's Exhibit 1 which contains
20 items SB-9 and SB-10, do you recognize those?

21 A Yes, ma'am, I do.

22 Q How do you recognize those?

23 A Okay, on the property and evidence sheet has my
24 printed name and signature. On the box where I opened and
25 sealed also has my initials and the date. The evidence

1 sealed on items SB-9 also has my initials and date.

2 Q Okay.

3 A And the serial number of item SB-10 matches all the
4 notes and all that I have for this case.

5 Q Okay. I'm going to leave these here in case you need
6 to refer to them. What did you do with these items when
7 you received them?

8 A When I first received them I took them to my office
9 where I would do an inventory of what I actually have.
10 Based on a request form that the officer would feel out
11 who asked me to examine certain items in the case. When I
12 received them I went to the office, opened them up where I
13 do initial and date of every seal that I open. Then I
14 perform the analysis or I start writing my notes on that
15 case. Anything that is a fired projectile would not
16 actually clean because of potential biohazard material, we
17 would clean it. Take our notes and generate a report of
18 our findings. If there's a firearm in the case, such as
19 this one, we would look, examine it, make sure it safe to
20 fire, test fire it and then collect our test fire for
21 comparison purposes. And do our comparison and then
22 generate the report.

23 Q Do the first items that I showed you, do those
24 contain some shell casings?

25 A Yes, ma'am, they do.

1 Q What is a shell casing?

2 A Shell casing is -- in essence is the body of a
3 cartridge which contains the powder, the primer and where
4 the projectile sits inside. Once the primer has ignited
5 and the powder charge burns and forms pressure and pushes
6 the projectile out of it, the casing is what's left
7 behind.

8 Q Are you able to make any particulars observations
9 about casings when you look at them microscopically?

10 A Looking at them microscopically for comparing them to
11 another fire cartridge case, we can make an identification
12 or an elimination call based on the microscopic marks left
13 behind.

14 Q Did you do that in this case?

15 A Yes, ma'am, I did.

16 Q What were your findings?

17 A This case here I have item SB-2, SB-3 and SB-6, fire
18 cartridge casings were fired in the item SB-10 pistol.

19 Q Okay. And so if you would, please, also tell us what
20 is -- what's the difference between comparing shell
21 casings and comparing actual projectiles or bullets?

22 A Well the shell casings and comparing the bullets is
23 the same process. Just a projectile you have different
24 areas to look at under a microscope. It can be a little
25 more time consuming. You look at what is called land and

1 groove width dimension as well as striations left behind
2 on projectiles as compared to impressed and some time
3 striated marks left behind on a fired cartridge casings.
4 They can all be identifiable and they are all unique to
5 that firearm.

6 Q Did you examine items SB-7, the copper jacket from
7 behind the rear seat beside the speaker?

8 A Yes, ma'am, I did.

9 Q Did you make any conclusion about it?

10 A I did. When compared against the item SB-10 pistol,
11 the fire bullet jacket, item SB-7, was not fired from that
12 pistol.

13 Q Okay. So, it is fair to say you determined that
14 those three shell casings were fired from the pistol but
15 the copper jacket from beside the speaker was not?

16 A That is correct.

17 Q Okay. Were you able to make any other observations
18 about item SB-7 when you looked at it?

19 A Yes, ma'am. By measuring the land and groove width
20 dimension, which are the riffling from the firearm which
21 the projectile was fired from, took measurements. And I
22 was able to make a conclusion that that fired bullet
23 jacket was consistent with firearm marketed by Smith and
24 Wesson and possibly some other manufactures. So possibly
25 a Smith and Wesson firearm is in the make of the firearm

1 which could have fired that projectile.

2 Q How do you know that?

3 A Based on the land and groove width dimension. Which
4 are the riffling in the barrel which is a spiraling in
5 that -- in the barrel of a firearm. Those measurements
6 are given to ATF and The Federal Bureau of Investigation.
7 And we have those as a data base. The companies will
8 produce that information so we can have that as a tool for
9 us to look at. We take those measurements, enter into a
10 data base and do a search. And under that search it gave
11 me a short list of Smith and Wesson and a few other
12 firearms that it would have come from.

13 Q Do you know approximately how many other firearms
14 you're talking about?

15 A Not off the top of my head, no, ma'am.

16 Q Okay. All right. Let me take these. And let me
17 next ask you about State's Exhibit 4, which is item MW-1,
18 do you recognize that?

19 A Yes, ma'am, I do.

20 Q How do you recognize it?

21 A The actual projectile has the item number and my
22 initials engraved on the base. The container which is
23 inside has my initials and date where I sealed it. Also
24 have a sticker on the front which has my initials and
25 date. The bags inside have my initials and date where I

1 opened and sealed once again.

2 Q Were you asked to examine that projectile?

3 A Yes, ma'am, I was.

4 Q What did you do to examine it?

5 A To examine this projectile, once again, it was taken
6 to my office, opened it up, cleaned it and then examined
7 it through looking through the microscope and taking
8 measurements of what is known as land and groove
9 dimension. With that I also took a weight and determined
10 that that is a fired bullet specimen, caliber .40, or 10
11 millimeter, with a weight of 169.4 grams. That it has
12 five land and grooves with a right hand directional twist.

13 Q So that is a .40 caliber projectile?

14 A .40 and 10 millimeter, yes, ma'am.

15 Q What do you mean by .40 and 10 millimeter?

16 A Well .40 Smith and Wesson is one caliber. 10
17 millimeter is another caliber. However, by judging the
18 base of the projectile, is the same size projectile can be
19 fired in a .40 or 10 millimeter.

20 Q Did you make any other observations about the
21 projectile?

22 A I'll just state that with the land and groove width
23 dimension, they're consistent with firearms marketed by
24 Smith and Wesson and possibly others.

25 Q Okay. Let me take you back to SB-7, which is part of

1 State's Exhibit 3. Copper jacket from behind the rear
2 seats beside the speaker. Were you asked to compare that
3 item to this item, State's Exhibit 4, item MW-1?

4 A Yes, ma'am, I was.

5 Q Okay. What did you do to compare those items?

6 A To compare these I put them side by side on a
7 comparison microscope to look at the striations left
8 behind from the riffling. And in my conclusion on that
9 that there were similar but insufficient microscopic marks
10 to permit identification to each other.

11 Q So that basically was in conclusive, is that what
12 you're saying?

13 A In conclusive, yes, ma'am.

14 Q Okay. Let me next show you items contained in
15 Exhibit -- excuse me, contained in State's Exhibit 5,
16 items DO-2, DO-3, DO-4, DO-5, DO-6, DO-7, DO-8, DO-9 and
17 DO-10. Were you asked to examine those items?

18 A Yes, ma'am, I was.

19 Q What are those items?

20 A All these items are fired cartridge casings. That
21 are in the same caliber of .40 Smith and Wesson.

22 Q Are they all the same brand?

23 A No, ma'am, they're not.

24 Q Can you describe each items, please?

25 A Yes, ma'am. The DO-2 -- DO-2 is a fired cartridge

1 casing with head stamp of Winchester .40 Smith and Wesson.
2 DO-3 is also a fired cartridge casing with a head stamp of
3 Winchester .40 Smith and Wesson. DO-4 is a fired
4 cartridge case with head stamp of Winchester .40 Smith and
5 Wesson. DO-5 is the same. DO-6, also a fired cartridge
6 casing with the head stamp of Winchester .40 Smith and
7 Wesson. DO-7, DO-8 and DO-9 are fired cartridge casings
8 with the head stamp of Federal .40 Smith and Wesson. And
9 items DO-10 is a fire cartridge casing with a head stamp
10 of .40, Smith and Wesson by Winchester.

11 Q So Winchester and Federal, are those brands of
12 ammunition?

13 A Yes, ma'am, they are.

14 Q And is it possible to fire two different brands of
15 ammunition from the same gun?

16 A Yes, ma'am, it is.

17 Q Were you able to draw any conclusions when you
18 examined all of those shell casings?

19 A Yes, ma'am. It was determined that all nine of these
20 fired cartridge casings were fired -- excuse me, all nine
21 fired cartridge casings were fired in the same firearm.

22 Q Okay. And how did you come to that conclusion?

23 A By comparing them side by side on a comparison
24 microscope.

25 MS. SEAY: Those are all the questions I have, please

1 answer any Mr. Robinson may have.

2 MR. ROBINSON: May it please the Court.

3 THE COURT: Cross.

4 CROSS-EXAMINATION

5 BY MR. ROBINSON:

6 Q Officer Armstrong, you mentioned a moment ago that
7 there were several different types of bullets, .40 caliber
8 bullets?

9 A Yes, sir.

10 Q Beside Winchester and Federal, there's also
11 Remington?

12 A Yes, sir.

13 Q CCI?

14 A That's correct?

15 Q Hornady?

16 A Yes, sir.

17 Q Speer?

18 A Yes, sir.

19 Q Wolf?

20 A Which Speer and CCI are in the same company, yes,
21 sir?

22 Q Wolf?

23 A Wolf does manufacture, yes, sir.

24 Q Sierra.

25 A Yes, sir.

1 Q And regarding the types of .40 caliber weapons that
2 we're speaking of, Smith and Wesson one?

3 A That is correct.

4 Q Colt?

5 A They do make some, yes, sir.

6 Q Ruger?

7 A Yes, sir.

8 Q Beretta?

9 A Yes, sir.

10 Q H&K?

11 A Yes, sir.

12 Q Sig Howard?

13 A SIG-Sauer, yes, sir.

14 Q Springfield Armory?

15 A Think do make some, yes, sir.

16 Q So not only are there a lot of varieties in a .40
17 caliber bullets or bullet casings, they're also a lot of
18 .40 caliber weapons?

19 A That is correct.

20 Q And that doesn't include things besides pistols, it
21 could be guns or something like that. Other things as
22 well, right?

23 A Such as?

24 Q Besides the pistol types that we're talking about, or
25 there any other types of .40 caliber weapons.

1 A There's a Smith and Wesson manufacturer S -- or 610
2 which is a 10 millimeter which will also fire the .40
3 Smith and Wesson cartridge.

4 Q Okay. And the -- you compared the nine casings that
5 were found at the scene right? You compared those --

6 A Yes, sir.

7 Q And they were similar, is that correct?

8 A They were fired from the same firearm, yes, sir.

9 Q Let's go to the actual bullet that we're talking
10 about here. Not the casing, the bullet.

11 A Okay.

12 Q You don't know whether or not that bullet came from
13 that gun, do you?

14 A Not from that gun that fired the casings, no, sir.

15 Q So you don't know whether or not -- whether or not
16 that bullet that struck Cameron Wade came from the same
17 gun as Brandon Clark's, isn't that correct?

18 A Well I didn't compare any firearm in the case, I just
19 had fire cartridge casings and the two projectiles. And
20 in that all I can say was the fire cartridge casings were
21 fired in the same firearm and the projectiles were similar
22 to each other. Now comparing them to each other, I cannot
23 do that.

24 Q So you can't compare the casings to the bullet, can
25 you?

1 A That's correct.

2 Q So that bullet can come from at least seven other
3 types of .40 caliber guns and--

4 A Well the projectile was fairly specific to a Smith
5 and Wesson, there may be a few other companies that
6 manufacture them. But Smith and Wesson was the lead
7 firearm in the manufacturing of the riffle. Riffing.
8 There are other companies that manufacture that same type
9 of riffing. Now, whether they actually had the same
10 dimensions of the land and the grooves, I can't say.

11 Q So the projectile that struck Cameron Wade that you
12 tested, one more time you, cannot connect that with the
13 same gun that shot the nine projectiles; can you?

14 A Not without the firearm, no, sir.

15 MR. ROBINSON: Thank you.

16 THE COURT: Redirect?

17 MS. SEAY: I have nothing further, may he be excused?

18 MR. ROBINSON: No objection.

19 THE COURT: All right, thank you, sir, you're
20 released from subpoena.

21 MS. SEAY: May we approach briefly for scheduling,
22 Your Honor?

23 THE COURT: All right.

24 (WHEREUPON, a bench conference was held in the
25 presence of the jury but out of the hearing of

1 the jury.)

2 THE COURT: All right, Mr. Foreman, ladies and
3 gentlemen of the jury, we're going to break for lunch at
4 this time. Normally I give you an hour and a half. But
5 I've got some, when they come back I've got some other
6 matters I'm going to be tending to. So I'm going to ask
7 y'all to be back at 2:30, which is a two hour lunch.
8 Normally wouldn't like to do that but I do have these
9 other things that I have to handle. So y'all have a
10 pleasant lunch, please remember not to talk about this
11 case, don't listen to the news, don't read the newspaper,
12 don't do research or anything like that. Y'all have a
13 present lunch, see you back at 2:30.

14 (WHEREUPON, the jury left open court at
15 approximately 12:30 p.m.)

16 THE COURT: All right, anything before we break?

17 MR. ROBINSON: Nothing from the defense, Your Honor.

18 MS. SEAY: No, sir.

19 THE COURT: All right.

20 Mr. Clark, I don't know whether or not the State is
21 going to rest or they have another witness but right now I
22 just ask you to raise your right hand for me. Right hand.

23 BRANDON CLARK, after being duly sworn, testified
24 as follows:

25 THE COURT: Okay. I want to make sure that you

1 understand that you have an absolute right to testify in
2 this case. You also have an absolute right not to testify
3 and it cannot be held against you. And I will instruct
4 the jury that if you do not testify that they're to take
5 no inference or presumption from that. If you want me to.
6 Sometimes it's a strategy decision that you may not want
7 it mentioned to a jury that you didn't testify. But
8 either way, I'll give them a strong instruction to protect
9 that Constitutional right if you so desire.

10 I want you to spend -- and there are strategic
11 decisions that are to be made with respect to whether or
12 not you testify. So I want you to spend time over lunch
13 with your attorney discussing that possibility. Do you
14 have any questions of me about what your rights are with
15 respect to testifying?

16 MR. CLARK: No, sir.

17 THE COURT: All right, see y'all back at 2:30.

18 Ms. Seay, would you give word to your office to get
19 the pleas that they're going to have up here at 2:30 to
20 have here at 2:00?

21 MS. SEAY: Yes, sir.

22 THE COURT: So we can get them done. Okay.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: All right, I understand the State -- do
25 you have anything?

1 You got to be behind the rail on this because of the
2 trial docket. I prefer that you be over here so you're
3 not taking pictures of the jury.

4 THE PRESS: Yes, sir, I understand.

5 THE COURT: The family, just, you know, got to
6 understand.

7 MS. SEAY: The State's prepared to rest, Your Honor,
8 if that's what you're asking.

9 THE COURT: All right, we'll do it formally in front
10 of the jury. Are you going to...

11 MR. ROBINSON: We're going to -- after they rest we
12 have our directed verdict motion.

13 THE COURT: I understand that.

14 MR. ROBINSON: We have spoken to Mr. Clark, we're not
15 going -- we're going to rest as well.

16 THE COURT: Okay.

17 EXAMINATION

18 BY THE COURT:

19 Q All right, Mr. Clark, let me get you to stand up and
20 please consider yourself still under oath. Do you have
21 any questions that you'd like to ask me about your right
22 to testify?

23 A No, sir.

24 Q Do you have any question that you would like to ask
25 me about your right to remain silent?

1 A No, sir.

2 Q Do you understand -- have you spoken with your
3 attorney about that?

4 A Yes, sir.

5 Q Do you think you understand the advantages and
6 disadvantage of testimony?

7 A Yes, sir.

8 Q And is it your decision that you do not want to
9 testify?

10 A Yes, sir.

11 Q All right. Anybody force you in any way to enter
12 that decision?

13 A No, sir.

14 Q All right. You think it's in your best interest?

15 A Yes, sir.

16 Q Okay. All right.

17 THE COURT: Well then let's -- will y'all be prepared
18 to go?

19 MS. SEAY: Yes, sir. Will you briefly give us an
20 idea of what you're going to be charging?

21 THE COURT: Well murder. What else? Anything else?
22 Do y'all have request to charge?

23 MR. ROBINSON: We would have -- Ms. Seay and I talked
24 about the third party guilt charge.

25 THE COURT: The what?

1 MR. ROBINSON: Third party guilt. As far as it was
2 raised in the case itself.

3 MS. SEAY: I wasn't aware of anything, I didn't know
4 if you knew--

5 MR. ROBINSON: We weren't aware of what kind of
6 charge you give.

7 THE COURT: No. There has been no evidence of third
8 party guilt. There's been no evidence of anybody else.
9 It's just a jury is going to either believe he did it or
10 not believe, am I right? I don't think third party guilt
11 is even an issue in this case. Is it?

12 MR. ROBINSON: I thought we --

13 THE COURT: You hadn't -- he hadn't put any evidence
14 up.

15 MR. ROBINSON: No, that's true, Your Honor, that's
16 true.

17 THE COURT: So. I mean, help me out.

18 MS. SEAY: I'm not aware of a charge.

19 THE COURT: No. And there is no -- I mean, he didn't
20 put any evidence up. He's just trying to -- I mean, he's
21 probably going to get up and argue something like that but
22 you want a charge on your client's failure to testify?

23 MR. ROBINSON: Yes, sir.

24 THE COURT: Anything else that y'all want?

25 MR. ROBINSON: Nothing from the defense, Your Honor.

1 THE COURT: Okay. Anything from the State?

2 MS. SEAY: Your Honor, I'd like for you to consider
3 charging flight as evidence or consciousness of guilt.

4 MR. ROBINSON: Your Honor, in response to that, there
5 was no evidence in this case as far as flight goes. Or at
6 least offered.

7 THE COURT: Well I think there was, they left the
8 scene as quickly as they could. That's what the witness
9 said.

10 Got in the car and got out of there as quickly as
11 they could. They were scared and went to Alison's house.

12 MR. ROBINSON: Your Honor, as far as that goes, there
13 was testimony that the two guys were still alive when they
14 left. As far as no testimony from one of the witness' was
15 that they looked back towards the car, they saw the light
16 on in the car and Cameron Wade and Chris Garland was
17 alive.

18 THE COURT: All right. And that's a question of fact
19 for the jury to figure out. But there is some evidence
20 here of flight. If they believe the State, they could
21 believe in flight. And therefore, she would be entitled
22 to a charge. If they believe you then they're not going
23 to believe there was flight. So if I can find the
24 appropriate charge, I will do that.

25 MS. SEAY: I've some case law if that would assist

1 you.

2 THE COURT: Okay, that's great. What you got?

3 MS. SEAY: I have State v. Walker, 366 S.C. 643, 623
4 S.E.2d 122, Court of Appeals case from 2005. Unexplained
5 flight as admissible as indicating a consciousness of
6 guilt or design is likely that one who is blameless and
7 conscious of that fact would flee.

8 THE COURT: All right, you want to hand that up to
9 me?

10 MS. SEAY: Yes, sir, Your Honor, I will.

11 MR. ROBINSON: And I would renew my objection for
12 that charge, Your Honor. I would reserve my objection to
13 that charge.

14 THE COURT: Well now's the time to make it. You want
15 to object to it or not?

16 MR. ROBINSON: I object to the charge, Your Honor.
17 Because I think while there's evidence that he left the
18 scene with Chris Allison and Jordan Mardis, there is no
19 evidence that's been presented that he left the scene and
20 he knew committed a crime. And there's been no evidence
21 that he knew he was being charged when he left the scene
22 with anything.

23 THE COURT: All right. Well we'll -- may give you an
24 opportunity to raise that again before I do the charge.

25 MR. ROBINSON: Yes, sir.

1 THE COURT: I presume y'all want circumstantial
2 evidence?

3 MS. SEAY: Yes, sir.

4 THE COURT: How about identification? No?

5 MR. ROBINSON: I don't think it's a necessary charge.

6 THE COURT: Okay. Expert witnesses, you want that or
7 not?

8 MS. SEAY: Yes, sir.

9 THE COURT: All right. Okay. Y'all ready to go? Or
10 do you need a minute before we start?

11 MS. SEAY: I'm ready.

12 THE COURT: Actually, since we're going to be in here
13 for a while, we've been working since 2:00, I'm going to
14 give the court staff about five minutes. Okay. all right.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Y'all want to formally rest in front of
17 the jury?

18 MS. SEAY: Yes, sir.

19 MR. ROBINSON: Yes, sir.

20 THE COURT: Now, let's do this. To save time from
21 making the jury get up and leave, go ahead and make your
22 directed verdict motion.

23 MR. ROBINSON: May it please the Court?

24 THE COURT: All right.

25 MR. ROBINSON: Your Honor, I would direct the Court's

1 attention to the State vs. Buckman, which is a 2001 case
2 and also the recent case of State v. Hernandez, which was
3 a Supreme Court case where they reversed the denial motion
4 for directed verdict. In this case, Your Honor, they have
5 only -- the prosecution -- you've heard the evidence in
6 terms of the expert that they have in their case that
7 would try to tie these shell casings and the bullet that
8 struck Cameron Wade. They have no -- they have produced
9 no evidence that Brandon Clark shot either of these two
10 young men. All they produced was speculation and a mere
11 suspicion of guilt.

12 What they have -- what the jury would have at this
13 point, Mr. Armstrong has said that he cannot tie the nine
14 bullet casings with .40 caliber gun -- .40 caliber casings
15 to the bullet that struck Mr. Garland. Mr. Wade's
16 projectile in that case was not recovered. But, Your
17 Honor, what they've raised in this case is only a mere
18 suspicion of guilt and that's it. And I know the Court is
19 concerned of any evidence but if the case if the State has
20 only presented just enough to raise a mere suspicion of
21 guilt, the defendant's entitled to a directed verdict in
22 this case. We ask for a directed verdict in this case
23 based on fact that the State has not established any
24 evidence that Brandon Clark committed these crimes.

25 THE COURT: All right. Well, I'm going to deny your

1 motion. There's reasonable inferences to be drawn from
2 the facts presented from which a jury could conclude that
3 he is guilty. And specifically that would be the
4 stipulation about the firing of the nine shots, the
5 location of the shells, the testimony of Dr. Ward with
6 respect to the size of the wounds to the two deceased.
7 And so I decline to grant your motion.

8 All right, anything else before we bring the jury?

9 There was no response.

10 THE COURT: Okay.

11 (WHEREUPON, the jury came into open court at
12 approximately 3:20 p.m.)

13 THE COURT: Ladies and gentlemen, thank you, very
14 much, for your patience. I had other work to tend to, and
15 also work in this case which I think is necessary and
16 efficient use of the time. So at this point I turn it
17 over to the State.

18 MS. SEAY: At this time the State rests.

19 THE COURT: All right, Mr. Robinson.

20 MR. ROBINSON: May it please the Court. At this time
21 the defense rests, Your Honor.

22 THE COURT: Okay, thank you, very much.

23 All right, Mr. Foreman, ladies and gentlemen of the
24 jury, if you remember my opening comments to you I said
25 that I divide a trial into five parts. The first part are

1 opening statements, the second part presentation of the
2 testimony and the evidence. Well we've concluded the
3 first two parts. We move now to the third part of a trial
4 which are the closing arguments of the attorneys. And
5 this is where the attorneys explain to you or advocate to
6 you and urge you to decide the case in the interest of
7 their client.

8 So at this time I will turn it to the attorneys from
9 their closing arguments.

10 Ms. Seay.

11 CLOSING STATEMENT

12 MS. SEAY: Thank you, Your Honor, may it please the
13 Court.

14 Mr. Foreman, ladies and gentlemen of the jury, it is
15 my privilege to be before you again to give you my closing
16 thoughts on what the evidence in this case has been and
17 what I think this evidence proves to you. As you know
18 Brandon Clark is charged with two counts of murder and two
19 counts of possession of a firearm during the commission of
20 a violent crime. The State must prove to you every
21 element of the offense for you to be satisfied beyond a
22 reasonable doubt of his guilty. And that is a burden that
23 the State has accepted and we have brought the evidence
24 forward to you.

25 You have heard from several witnesses that were at

1 the gathering. You heard what the gathering was about.
2 It was not a good -- it was not a good thing.
3 Circumstances were very bad. I think obviously if this
4 whole thing had never happened, everyone would be a lot
5 better off. A lot of people made very poor choices in
6 deciding to take part in that gathering and to behave in
7 the way that they did. You heard from several of the
8 people who were there. You heard from the homeowner or
9 the person who -- the person who lived there, Steven
10 Watson. And he kind of gave you the gist.

11 This thing had been set up on Myspace by somebody
12 else who invited all these people over to his house so
13 that a score could be settled basically from two weeks
14 prior when of the victims, Cameron Wade, had been in a
15 fight and had basically gotten the best of Josh Wood. Who
16 you heard from on the witness stand and I'll get to that
17 in just a minute. So this had been set up for these two
18 guys to fight one on one. And stupidly they both showed
19 up for it. As did a lot of other people. You've heard
20 that there were a lot of people there. You're going to
21 see the pictures of the items that were collected that we
22 talked about. There were people arming themselves with
23 bats and poles and sticks and ax handles. And various
24 items that they got out of Mr. Watson's garage or that
25 they brought on their own. It was going to be ugly.

1 And you heard from Josh Wood and you heard that he's
2 charged with lynching. That the State has not made any
3 deals with him. That he was here to testify freely and
4 voluntarily and tell you about his part in it. And I
5 submit to you that he was candid with you. But you be the
6 judge of that. Because it is your -- it is your judgment,
7 it is your common sense that you have to apply to what you
8 heard from the witness stand. But he accepted his
9 responsibility in this. He told you how foolishly he was
10 acting. That he was drinking, that he was pumped up, that
11 he was running around without a shirt on, that he was
12 pumped up and ready to fight. That he threaten to whip
13 Cameron's rear-end. He didn't deny that. He accepted
14 that and he told you about it.

15 He told you at times that he might have had a weapon
16 in his hand. I think he said a stick, maybe a baseball
17 bat, I can't recall specifically. But there's one thing
18 that no witness ever put in Josh Wood's hand and that's a
19 gun. There is not one scintilla of evidence that Josh
20 Wood ever had a gun that night. And I tell you this
21 because I know that the defense is going to have the last
22 argument today. And I know because of what they said at
23 the opening of this case, that they're going to try to
24 convince you that Josh Wood, they mentioned, may have been
25 the person who killed these victims. Or that it may have

1 been David Murray. Or now it may have been some mystery
2 person who was out there and grabbed up all their evidence
3 and left before the police could get there.

4 Well none of those -- none of those theories are
5 rooted in good common sense when you look at what the
6 evidence tells us. You also heard that Josh Wood, after
7 behaving as foolishly as he did and throwing a tire iron
8 into the car, left the scene and contacted the police the
9 next day to tell them what had happened. And as a
10 consequence he's been charged. So I ask you to consider
11 his credibility in coming here testifying the way he did.
12 When you think about what all he had to say and his
13 motivation for saying it. I submit to you that he was
14 truthful.

15 You heard from a young lady named Tiffany Saltz, she
16 saw Brandon Clark with a gun that night. She had a
17 conversation with him. She said she didn't remember
18 saying it in her statement but yes it was in her statement
19 that she said -- that she said something to him and he
20 said, Well, if you're on their side, I don't know what to
21 tell you.

22 Chris Allison, the defendant's friend, called him in
23 to testify and he said, Yeah, they were there. His friend
24 Brandon Clark had a gun. He said it was a .40 caliber
25 Smith and Wesson. And he said he fired it off about nine

1 times. He claims into the air. And I'll come back to
2 that in a minute and tell you what I think the evidence
3 says about that.

4 In addition, the defendant has stipulated or agreed,
5 and it has been read to you by the Court earlier, that he
6 was present at the scene and that he fired his pistol nine
7 times. Nine times. And that the shell casings belonged
8 to him and they were admitted into evidence. You'll have
9 all this evidence with you back in the jury room. And
10 when Investigator Fields got a phone call from Brandon
11 Clark and she said, I want to talk to you about the
12 shooting that happened over there.

13 He said, I don't know what you're talking about.
14 That's what he said. I don't know what you're talking
15 about.

16 Ladies and gentlemen, you're the judges of the
17 credibility of all the witnesses that you heard. You
18 heard from several or as I said people who were at this
19 gathering, the lay people. You heard inconsistencies in
20 things that they said such as how many people were there.
21 Some people said it could have been 20 people, some people
22 did it could have been 200 people, it just depended on who
23 you asked. And that's what happens when you gather a
24 crowd of people. They're going to be different views and
25 perspective on things. And you also heard inconsistencies

1 in how many gunshots may have been fired.

2 And I submit to you that if you are out at a scene
3 and gunshots start ringing out, that one gunshot is too
4 much and too many and loud. And may have sounded like
5 a -- nine shots may have sounded like a war to whoever
6 said it sounded like war fair out there. But the bottom
7 line is this. Brandon Clark voluntarily and intentionally
8 went to this scene, to this gathering, with his friends.
9 He knew there was going to be a fight between his friend
10 Josh and this guy Cameron. And he was going to have
11 Josh's back. And he didn't make it any secret that he was
12 carrying the gun, several people saw it. He was a big man
13 with a gun. .40 caliber, Smith and Wesson. And he
14 intentionally, according to his stipulation to you, fired
15 that gun 1, 2, 3, 4, 5, 6, 7, 8, 9 times. He pulled the
16 trigger nine times.

17 And the defense is going to say, Well, that doesn't
18 tie him to the murder of these two young men. There's no
19 tie in. Well you heard from the forensics that this
20 projectile, the missile this bullet that was recovered
21 from Christopher's Garland's chest was a .40 caliber
22 wound. .40 caliber round, .40 caliber shell casings.
23 That makes sense. That makes -- that makes logical sense,
24 I submit to you.

25 The forensics in this case tell the real story of

1 what happened. You can talk to 10 different people and
2 you can get 10 different stories. But if you look at the
3 forensic evidence in this case, it tells you one thing.
4 And that is that Brandon Clark was up here, according to
5 the witness testimony, he was up here in this area near
6 the garage. They all started walking down towards the
7 line of cars when they pulled up. And these shell casings
8 all lead down here. He wasn't walk away firing, he was
9 walking towards the car firing. And he had pretty good
10 aim because two of those shots entered the car and killed
11 those two men.

12 And we know that from the evidence that you heard
13 about the trajectory. And you'll have the pictures of
14 those. Sergeant Dar Shaw that did the car processing,
15 showed you that he only found evidence of two projectiles
16 that entered that car. Only two. And they just so
17 happened to be the ones that killed those men. One went
18 in through that back and grazed into that speaker and went
19 right to the driver's side seat a hit Christopher Garland
20 in the right mid-back. And the forensic pathologist,
21 Dr. Ward, corroborated that. He said that is consistent
22 with the wound I found here. Consistent with the bullet
23 hitting an intermediate target through that headrest and
24 hitting him, striking him in the right mid-back, killing
25 him.

1 He also found a trajectory on the side of the car,
2 you'll have these pictures, on the passenger side, through
3 that panel that's in between the passenger and the back
4 part. That went right through Cameron Wade's head. So he
5 only found evidence of two shots through that car. And
6 those are the two. Brandon Clark, if you look at this
7 forensic evidence, had to have aimed into the car. That
8 is the only conclusion that can be reached when you look
9 at the forensic evidence in the case. That will he aimed
10 into the car." And he fired that weapon nine times. And
11 two of those shots were deadly.

12 Now, should the victims have gone to this gathering?
13 For the fight? Should they have gone armed? Probably
14 shouldn't have gone in the first place. Neither should
15 Brandon Clark. Brandon Clark could have taken his .40
16 Smith and Wesson and gone home. As opposed to shooting it
17 nine times. And killing two people. That's a choice he
18 made. The victims may have made a poor choice but they
19 didn't deserve to be killed.

20 It would appear from the gun that was found with
21 them, for which Mr. Garland had a concealed weapons
22 permit. And the three shell casings there at their car
23 that you were told were fired from that gun, that they
24 attempted to fire back. And the evidence was that it
25 appeared that they were in the process of trying to leave.

1 Mr. Garland's foot is on the clutch. You'll see the
2 pictures when you get back in the jury room. The car is
3 on and it's drive. And speaking of concealed weapons
4 permit, Mr. Clark, according to Mary Fields' testimony,
5 had no business running around with a loaded .40 caliber
6 Smith and Wesson gun. He had no permit to do so.

7 There's one other shell casing that we discussed.
8 The .25 caliber shell casing that was collected right
9 here. Up here near the driveway, garage area. And you
10 may recall that the homeowner, Steven Watson, testified
11 that he had fired a .25 caliber weapon, on his property,
12 into the field back there near his property. Wouldn't
13 surprise him if there had been a .25 caliber shell casing
14 collected there. So I submit to you that that is a
15 logical explanation for that piece of evidence. But we
16 wanted to bring you everything so that you could see what
17 took place out there, what was collected and what
18 reasonable, logical inferences can be drawn from it. That
19 the what you have to do as jurors. You have to determine
20 what is reasonable in this case.

21 I suspect that defense counsel is going to talk about
22 reasonable doubt. And how you can't convict Brandon Clark
23 because there's no so much reasonable doubt in this
24 situation. That it could have been Josh Wood. It could
25 have been David Murray. It could have been some mystery

1 person who came and did and had time to gather up their
2 shell casings and leave the scene before the police got
3 there. Is that reasonable? It is reasonable when nobody
4 saw anything anybody else at that party with a gun? Not
5 one witness saw anybody else there with a gun except
6 Brandon Clark. No, that's not reasonable. It is
7 reasonable that we can just -- we can just speculate that
8 some mystery person came and did this? That's not
9 reasonable. That's pure speculation.

10 And to say beyond a reasonable doubt, that you must
11 be convinced beyond a reasonable doubt, doesn't mean that
12 you can't have a doubt or any doubt about some aspect of
13 something. Because if that were the case, no one would be
14 convicted in any court, anywhere, ever in the United
15 States. Is your doubt reasonable? And that's all I want
16 to say to you about that.

17 The defense job in this case was to draw your
18 attention away from what the obvious evidence says. To
19 create doubt and confusion so that they can say, See this
20 is reasonable doubt. You don't -- you can't connect
21 Brandon Clark to this. Because that's what you have to do
22 when the evidence is sitting there, right there in front
23 of your face.

24 He is charged with murder. Which is the unlawful
25 killing of another person with malice aforethought. What

1 is malice aforethought? Malice, and the Judge will tell
2 you some more about malice when he gives you the charge on
3 law. But malice is simply, it's a -- it could be a
4 combination of many things. Wickedness, hatred, ill-will,
5 a depraved heart bent on doing mischief, a disregard of
6 human life, general malignant recklessness of others
7 lives, no social duty towards them. Is that what it is
8 when you fire a gun nine times into a crowd estimated to
9 be between 20 and 200 people? Aforethought simply means
10 that it has to be right before. It can be conceived right
11 before the fatal blow is struck. There's no particular
12 amount of time that this malice has to exist before the
13 fatal blow is struck. It can be like that. And the Judge
14 will give you some more particulars on the law on that
15 when he charges you on the law.

16 Ladies and gentlemen, I urge you to keep in mind the
17 comments that I've made as you listen to the defense's
18 presentation. That the State has presented proof of these
19 elements beyond a reasonable doubt, in an effort to
20 convince you of the defendant's guilt. You will have the
21 opportunity during your deliberations to look at all of
22 the evidence, all of photographs, to consider all of the
23 testimony. I submit to you that Brandon Clark, based on
24 the evidence that we have, shot his pistol nine times and
25 he aimed it into that car twice. Killing Christopher

1 Garland and Cameron Wade. And I ask you to hold him
2 responsible. Thank you.

3 THE COURT: Mr. Robinson.

4 CLOSING STATEMENT

5 MR. ROBINSON: Thank you. I want to thank you for
6 taking the time to listen to this case. It's an important
7 case. I was struck by the Solicitor's comments at the end
8 of her presentation dealing with this was going to be --
9 we we're dealing with pure speculation. Was what she
10 said. And also we're trying to confuse you in this case
11 or present some sort of smoke screen or something like
12 that to you about this case. We haven't done that.

13 Just because someone goes to a party with, looks like
14 from the evidence from the witnesses in this case, the
15 amount of people at the party was some where in the
16 neighborhood of 50 to 100 people. It's not a crime to go
17 to a party with your friends. It's not a crime to go to a
18 party to have a drink. That's not a crime. If that were
19 a crime, many other people would be in the same exact boat
20 as Brandon Clark.

21 What State is showing in this case and you had the
22 opportunity to listen in this case and what you have is
23 speculation, not on our part, but on their's. Because
24 with all this evidence that they have, did you have one
25 person ever say or ever -- no connection at all can be

1 shown between Brandon Clark's gun and the bullet that
2 killed these young men. There's no proof. Mr. Armstrong,
3 if you listened to his testimony, said there is no
4 connection between the shell casings that he tested and
5 the bullet that was retrieved from Cameron Wade. Or from
6 Christopher Garland, excuse me. No connection whatsoever.

7 And what have they shown in this case besides nine
8 bullet casings that they've shown, they have been put in
9 this area here, in this rough draft of what was out there
10 that night. You heard from Officer McNamara, you also
11 heard from the officer in this case, this is pure rough
12 draft. Because according to the officers, according to
13 Officer McNamara, and you can see it in State's Exhibit
14 No. 14, the shell casings were a long ways away. They
15 were at least five, ten yards away. You'll also notice in
16 this picture as well that there is no marking for a
17 telephone pole or anything like that that would show you
18 where these shell casings were in relation to that
19 vehicle.

20 But if you listen to the testimony and you look at
21 the pictures, you'll see how far away it was. But there's
22 gap here that the State has a really hard time getting
23 over with their physical evidence. Because they have the
24 shell casings sitting there, we all know the shell casings
25 exist. When you go back to the jury room, you're going to

1 have a 9 millimeter gun with 9 millimeter ammo that was
2 spent. You're also going to have nine bullet casings that
3 were found on the yard. But you don't have anyone ever
4 going to say, the State has not put anyone up to say, that
5 that bullet that was found in that young man, came from
6 the same gun that fired these nine shots.

7 They're making a very large leap here trying to
8 convince you that we're trying to confuse or something
9 like that. We don't deal in this case, this is serious
10 stuff. This is not conjecture, this is not speculation in
11 this case. This is not could have, would have and so
12 forth, this is serious stuff. And if they can't put up a
13 case where they can link Brandon Clark, other than the
14 fact that he was at a party, he shot his gun in the air
15 nine times, that is all they have in this case. I submit
16 to you that that is not enough to convict Brandon Clark of
17 these killings. Because they cannot match -- and I don't
18 know if you all sat here and listened to this expert,
19 James Armstrong. You listen to him. I asked him on
20 cross-examination, How many different types of .40 caliber
21 guns are there?

22 They're at least five.

23 I also talked to him about the types of pistols that
24 could be used, .40 caliber pistols. At least five.

25 Then in the end, I had to ask him twice in this case,

1 I asked him, Can you connect the bullet that you tested,
2 that was taken from the body in this case, the victim in
3 this case, can you connect it to any of the casings that
4 were shot that night by Brandon Clark? What did he say?

5 He said, No. Cannot do it.

6 And when we started this case, I told you all that
7 what I'm interested in is common sense. That's all.
8 Common sense. Brandon Clark is a citizen of this county,
9 a citizen of this state and a citizen of this country.
10 And as such, he's entitled to a trial by 12 jurors, with
11 common sense, and ask yourselves, Does it make sense what
12 the State is trying to say? Without the proof, connecting
13 any of these nine bullets -- these are casings actually,
14 nothing connects these nine casings to the deaths of these
15 young men. Nothing. They cannot, even through their own
16 expert that they brought in here today, he cannot say that
17 it's connected. Nothing.

18 It's speculation and it doesn't rise to the level of
19 the standard of beyond a reasonable doubt. So when you go
20 back there with all this evidence they have here, the
21 pistol and different guns and so forth, ask yourselves,
22 Why can't they connect this? Why can't they say this is
23 the gun that killed these guys? Why can't they? Because
24 they can't.

25 Let's talk about -- let's go back to their witnesses

1 that they had in this case. And we all know the scene
2 that was out there. What I'm going over now is yesterday.
3 We spent a day and I'm sure you may have wanted to be
4 refreshed a little bit but as you'll recall from the
5 testimony, it was pitch black. There was one light coming
6 from the garage. The witnesses all stated that the
7 different witnesses went from 50 to 100 people were out
8 there that night. And they said the shots ranged from
9 nine shots, I think you heard from Tyler Stone that he
10 heard nine shots. But then he heard three more shots. So
11 it's from nine to 100 shots were fired that night. Pitch
12 black outside.

13 Ken Watson, he said he heard 50 gunshots. He said
14 Josh made threats. Josh threw the phone across the yard,
15 Josh was wild. Everyone else was okay. He was the
16 property owner in this case.

17 Tyler Stone, Josh was beating his chest, breaking
18 cinder blocks and so forth. Just wild.

19 Remember Chris Allison? He was the last witness they
20 had yesterday. He was the witness they were going to put
21 up, now they're telling you that their witness, you
22 shouldn't believe their witness, State witness, that they
23 brought here to testify; because he may be a friend of
24 Brandon's and he may something different, something
25 different than what they want you to hear. But he was

1 their witness folks, not mine, I never called him. He was
2 their witness. What did he say? Think about the timeline
3 we have here. He and Brandon met at Kayte and Dustin
4 Allison's house. That's the relation to Chris Allison.

5 Josh Wood and David Murray arrived later in their
6 truck. They leave at the same time to go to this party at
7 Ken Watson's house. They don't get there at the same
8 time. They get there approximately 30 to 45 minutes
9 later. You also heard Chris Allison say when they were at
10 the party, someone shot from one of the cars that's
11 showing up with Cameron Wade, in a hoodie, ran and shot
12 nine shots in the air and they landed right here. And
13 they left, they took off, they were scared, they took off
14 in the car.

15 And guess what they saw? When they were leaving,
16 Chris Allison testified to you that he looked back and he
17 saw Cameron Wade and Chris Garland in their Honda Accord,
18 with a light on inside, still alive. Still alive. But
19 guess who was near the car, guess who was on top of the
20 car? Joshua was on top of the car. And you'll see a
21 picture in here of the -- y'all heard the testimony about
22 the tire iron and so forth. He was the last person, Josh
23 was the last person to see these folks. He and David were
24 the last ones to see these folks alive.

25 They left. Chris and Brandon and Jordan Mardis left,

1 they went back to Kayte and Dustin Allison's house. They
2 got back there. Then what did they say? Then what did
3 Chris say? Then about 30 minutes later, guess who showed
4 up? Josh and David. And Josh was bleeding. Bleeding
5 from his leg. Now, David remember that? No. On
6 cross-examination I ask David if he was bleeding?

7 He said, No.

8 But he did say something that was kind of in
9 agreement with what Chris Allison said. He didn't say he
10 backed his car up. He was on his phone while Josh was
11 back there doing his business. But they get back 30 to 45
12 minutes later and they're all pumped up. Chris says they
13 never go in the house. Despite what David Murray and Josh
14 would say. They never go in the house and they never
15 talked to Brandon.

16 Think about it folks, what do they have to hide? I
17 would submit to you that what happened that night was that
18 Josh and David, they followed Brandon and Chris, then they
19 veered off to go get the guns. That's why they came 30 to
20 45 minutes later. They got to the party, went back to
21 David's truck, got the guns, and in the period of time
22 between the time Brandon and Chris left and the time they
23 came back, they killed these young men.

24 Think about it. Who has motive in this case? Who
25 has the opportunity? Brandon never knew these guys.

1 Never laid eyes on them his whole life. He wouldn't know
2 them if they were walking down the street. Who had motive
3 in this case? I would suggest that Josh would have motive
4 in this case to do this. To do this. So think about
5 that.

6 The last people to see Cameron Wade and Chris Garland
7 alive were Josh Wood and David Murray. With the lights
8 on. Brandon Clark and Chris Allison was already gone when
9 that happened. Josh would have the motive to do this.
10 Brandon Clark did not. And once you go from the witnesses
11 to the physical evidence in this case, there is no
12 connection that the State can make between the shell
13 casings, the nine shell casings that you see there,
14 there's no connection according to their own expert, that
15 any of these shell casings ever injured either of these
16 two young men. Their own expert says that.

17 Let's talk about in the end what this case is about.
18 The prosecutor talked to you a second ago about reasonable
19 doubt. You ever wondered to yourselves, where this idea
20 of the jury trial system came into effect? It came back
21 in effect 100 of years ago. Use to be, in the olden days,
22 that the Lords could just -- they said someone was guilty,
23 they were guilty. There was no standard, they could just
24 through them in jail and be done with it. The jury system
25 was created to ensure the citizens in this country had a

1 fair shake.

2 And the prosecution, the State, had to prove each and
3 every element of their charges that they have against
4 someone, beyond a reasonable doubt. Now some of you may
5 have been in different kinds of trials before or heard
6 about civil trials and municipal trials and so forth.
7 There's a standard of preponderance of evidence, which is
8 in a civil case. And that is evidence is maybe a little
9 bit more than what they have here, car accidents or
10 something like that. This is a different standard. This
11 is beyond a reasonable doubt. And that is a large, high
12 standard for the State to get around. And if they don't
13 have the proof, if they don't have the evidence, they
14 can't establish their case beyond a reasonable doubt.

15 Folks, I don't like guns. I don't think many people
16 like guns. It's not a crime to have a gun. It's not a
17 crime to go to a party. You may not like that person but
18 unless the State has proven their case to you beyond a
19 reasonable doubt, that Brandon Clark was the person that
20 killed these young men, you must find him not guilty. You
21 don't have to like him for going to this party. You don't
22 have to like him for shooting his gun off nine times. But
23 they have not established any connection between the shell
24 casings and Brandon Clark. No motive, there's no
25 opportunity. He left with Chris Allison and they were

1 alive.

2 I ask you just to use your common sense. And I very
3 much enjoyed appearing in front of you the last couple of
4 days. Being on a jury is the closest thing in peace time
5 you have to -- it's just an honor to be a part of it. And
6 I know you'll take your job seriously and apply the
7 standard of beyond a reasonable doubt in this case. And
8 thank you, very much.

9 THE COURT: All right, Mr. Foreman, ladies and
10 gentlemen, during this trial you and I have certain duties
11 to perform. As the trial Judge it is my responsibility to
12 preside over the trial of the case and to rule on the
13 admissibility of the evidence that's offered during a
14 trial. It is also my duty to charge you the law that's
15 applicable to the case. And it is your duty, as jurors,
16 to accept and apply the law precisely as I now state it to
17 you. As I told you in my opening comments, if you think
18 you have any idea as to what the law is or what the law
19 should be and it disagrees with what I tell you the law is
20 now, you must set your own opinion aside and apply the law
21 exactly as I state it to you.

22 I would also remind you that in every case tried in
23 the court before a jury, you the jury, are the sole and
24 exclusive judges of the facts. And a trial judge cannot
25 comment on or make any statement about the facts in a

1 case. So do not think from anything I may have said or
2 done throughout the course of the trial, that I have an
3 opinion about the facts. I do not.

4 I also would instruct you that the fact that the
5 defendant was arrested, charged and indicted in this case
6 is not evidence of guilt. Nor does it create any
7 presumption or inference of guilt. These documents are
8 simply the formal written instruments which contain the
9 charges made against the defendant. And they serve as the
10 formal documents by which the case is process and brought
11 into court.

12 Now the indictments in this case allege several
13 different offenses against the defendant. And as I
14 announced them to you at the being of the trial they are
15 Indictment number 07-2443, it's a two count indictment.
16 Count one is for the murder. It alleges that Mr. Clark
17 did in Greenville County, on July 29, '06, unlawfully and
18 with malice aforethought, kill Cameron Jack Wade by means
19 of shooting him. Count two, possession of a weapon during
20 the commission of a violent crime. And it alleges that
21 the defendant did in Greenville County, July 29, '06,
22 possess or disapply an operable firearm during the
23 commission or attempted commission of a violent crime,
24 that is murder. That being the murder of Cameron Jack
25 Wade.

1 Then the second Indictment is 07-2442. Count one for
2 murder alleges that the defendant did in Greenville County
3 on or about July 29, '06, unlawfully and with malice
4 aforethought, kill Christopher Garland by means of
5 shooting him and that Christopher Garland died as an
6 approximate result thereof. Count two is for possession
7 of a weapon during the commission of a violent crime. And
8 it alleges that the defendant did in Greenville County
9 July 29, 2006, possess or visibly displayed an operable
10 firearm during the commission or attempted commission of a
11 violent crime, that is the murder of Christopher Garland.

12 Now, ladies and gentlemen, each indictment and each
13 count of much each indictment charges a separate and
14 distinct offense. And you must decide each count of each
15 indictment separately on the evidence and the law
16 applicable to it, uninfluenced by your decision as to any
17 other count and any other indictment. And the defendant
18 may be convicted or acquitted on any or all of the
19 offenses charged. And you will be asked to write a
20 separate verdict of guilty or not guilty for each count of
21 each indictment.

22 Now necessarily, you're job is to determine the
23 credibility or believability of the witnesses who have
24 testified in the case. And it becomes your duty, as
25 jurors to evaluate the evidence. And determine which

1 evidence convinces you that it is true. And in a
2 determining the believability of the witnesses you may
3 believe one witness over several or several over one. You
4 may believe a part of the testimony of a witness and
5 reject the remaining part. You may believe the testimony
6 of a witness in its entirety or reject that testimony in
7 its entirety. And you may consider whether the witness
8 has an interest in the result of the trial, whether the
9 witness is prejudice toward either the State or Defendant,
10 the opportunity for the witness to have viewed or seen the
11 matters and things about which that witness has testified.
12 And the way a witness acts on the witness stand or what we
13 call a witness' demeanor.

14 Now the rules of evidence ordinarily do not permit
15 witnesses to testify to opinions or conclusions. And an
16 exception to this rule exists for witnesses that we call
17 expert witnesses. A witness who by education and
18 experience has become expert in some art, science or
19 profession may give an opinion as to the subject that the
20 witness has been qualified as an expert in. And may have
21 also give the reasons for that opinion. And you should
22 consider any expert opinion given by a witness and like
23 any other evidence, give it the weight that you think it
24 deserves.

25 Now, I instruct you and emphasize that the fact that

1 the defendant did not testify is not a factor to be
2 considered by you in any way in your deliberations on the
3 question of the guilt or innocence of the defendant. It
4 must not be considered by you in any manner whatsoever.
5 Every citizen has the Constitutional right to remain
6 silent. And the assertion of this right must not be
7 considered by you in your deliberations.

8 Now, the defendant has pled not guilty to these
9 indictments. And that plea puts the burden on the State
10 to prove the defendant guilty. A person charged with
11 committing a criminal offense in South Carolina is never
12 required to prove themselves innocent. And I charge you
13 that it is a cardinal and important rule of the law that
14 the defendant in a criminal trial will always be presumed
15 to be innocent of the crime for which an indictment has
16 issued, unless guilt has been proven by evidence,
17 satisfying you of guilt beyond a reasonable doubt.

18 Now, what is a reasonable doubt? It is a doubt which
19 would cause a reasonable person to hesitate to act. And
20 reasonable doubt may arise from the evidence which is in
21 the case or from the lack of evidence or absence evidence
22 in the case. And you, the jury, must determine whether or
23 not reasonable doubt exists as to the guilt of this
24 defendant. The State has to burden of proving each and
25 every element of a crime beyond a reasonable doubt. And

1 any reasonable doubt that you have in your deliberations,
2 should be resolved in favor of the defendant.

3 Now, there are two types of evidence which are
4 generally presented during a trial. Direct evidence and
5 circumstantial evidence. Direct evidence is the testimony
6 of a person who claims to have actual knowledge of a fact.
7 Such as a eye witness. It is evidence which immediately
8 establishes the main fact to be proved. Circumstantial
9 evidence is proof of a chain of facts and circumstances
10 indicating the existence of a fact. It is evidence which
11 immediately establishes collateral facts from which the
12 main fact may be inferred. Circumstantial evidence is
13 based on inference and not on personal knowledge or
14 observation.

15 The law makes absolutely no distinction between the
16 weight or value to be given to either direct or
17 circumstantial evidence. Nor is a greater degree of
18 certainty required of circumstantial evidence than of
19 direct evidence. You should weigh all of the evidence in
20 the case. After weighing all the evidence, if you're not
21 convinced of the guilt of the defendant beyond a
22 reasonable doubt, you should find the defendant not
23 guilty.

24 Now, the defendant is charged with murder. And the
25 State must prove beyond a reasonable doubt that the

1 defendant killed another person with malice aforethought.
2 Malice is hatred, ill-will or hostility towards another
3 person. It is the intentional doing of a wrongful act
4 without just cause or excuse. And with an intent to
5 inflict an injury or under circumstances that the law will
6 infer an evil intent. Malice aforethought does not
7 require that malice exists for any particular length of
8 time before the act is committed. But malice must exist
9 in the mind of defendant just before and at the time the
10 act is committed.

11 Therefore, there must be a combination of the
12 previous evil intent and the act. Malice aforethought may
13 be expressed or inferred. These terms, expressed and
14 inferred do not mean different kinds of malice but merely
15 the manner in which malice may be shown to exist. That is
16 either by direct evidence or by inference from the facts
17 and circumstances which are proved. Expressed malice is
18 shown when a person speaks words which express hatred or
19 ill-will toward another or when the person is prepared
20 beforehand to do the act which was later accomplished.
21 Malice may be inferred from conduct showing a total
22 disregard from human life. Inferred malice may also arise
23 when the deed is done with a deadly weapon. A deadly
24 weapon is any article, instrument or substance which is
25 likely to cause death or great bodily harm. And whether

1 an instrument has been used as a deadly weapon depends on
2 the facts and circumstances of each case.

3 Ladies and gentlemen, the defendant is also charged
4 with the possession of a weapon during the commission of a
5 violent crime. And I will tell you that the State must
6 prove beyond a reasonable doubt, first, that a violent
7 crime has been committed. And that during the commission
8 of that violent crime by the defendant, that he was armed
9 with a deadly weapon.

10 Now, ladies and gentlemen, there are two possible
11 verdicts that you may reach for each of the four counts
12 with which the defendant is charged. And there's no
13 significance whatsoever in the order in which I state the
14 possible verdicts, one has to be stated before the other.
15 They are guilty or not guilty for each of the two counts
16 in each of the two indictments. And we have prepared and
17 will send back with, Mr. Foreman, a verdict form which is
18 pretty self-explanatory but if you have any trouble
19 understanding, please let me know.

20 I will tell you, ladies and gentlemen, that all 12 of
21 you must agree on a verdict. The verdict must be
22 unanimous. And your verdict cannot be based on sympathy,
23 passion, prejudice, emotion or any other consideration
24 that is not evidence in the case. Remember you have no
25 friends to reward and you have no enemies to punish.

1 Now, Mr. Foreperson, when you all agree on a verdict
2 on each of the four counts, signal to the bailiffs and
3 we'll receive you back in the courtroom to receive your
4 verdict. I'm going to excuse you to your jury room now.
5 I'm going to ask you not to begin your deliberations just
6 yet. I need to go over my charge on the law with the
7 attorneys to make sure that I have not omitted something
8 and I have not misstated anything. But when you receive
9 the verdict forms along with all the evidence in the case
10 then you all may begin your deliberations. Thank you,
11 very much.

12 Ma'am, I would ask you to stay in the courtroom.

13 (WHEREUPON, the jury left open court at
14 approximately 4:15 p.m.)

15 THE COURT: All right, any exceptions or objections
16 to the charge?

17 MR. ROBINSON: Nothing from the defense, Your Honor.

18 MS. SEAY: Nothing. I thought you were going to
19 charge flight but --

20 THE COURT: Well State v. Grant indicates that flight
21 is not appropriate to be charged to a jury, although under
22 circumstances it may be argued. So.

23 MS. SEAY: Okay.

24 THE COURT: Okay, Ms. Childers --

25 THE CLERK: She can call back after 6:00 tomorrow

1 night.

2 THE COURT: Okay. Ms. Childers, you're just as
3 qualified as each of the 12 persons and you deserve to be
4 back there deliberating but the law does not allow but 12.
5 So I'm free to excuse you and I've been told to ask you to
6 call back after six o'clock tomorrow evening. You get a
7 day of vacation tomorrow. Okay. And you're welcome to
8 say, leave, whatever you would like to do. I will tell
9 you this as well. You can talk to anybody about the case
10 or not. If anybody persists or bother you with it, just
11 let the clerks know and we will straighten that out
12 because we're not going to you have be bothered by anyone.
13 Okay.

14 THE ALTERNATE: Am I free to leave?'

15 THE COURT: Yes, ma'am, you are. Ms. Cook will take
16 care of you.

17 All right, get you all to go together, look at all
18 the evidence, make sure it's all there, then send it back
19 to them.

20 (WHEREUPON, deliberations began at
21 approximately 4:20 p.m.)

22 (WHEREUPON, court was in recess awaiting a
23 verdict.

24 THE COURT: All right, we got two questions from the
25 jury. The first one is a juror has an appointment in

1 Asheville and need to make a call, how can we do that? We
2 can handle that. The second sheet has three questions on
3 it. Or three requests. Can Brandon be found guilty of
4 count two of each indictment if he is not found guilty of
5 murder on count one? The answer is, No. Two, who was in
6 the passenger seat and who was in the driver in the Honda?
7 If you all agree we can tell them. You agree with that?
8 The third one, request testimony of Josh Wood and Chris
9 Allison to be reread.

10 So, what I would suggest is that we answer there
11 first two questions and bring them back tomorrow morning
12 to listen the testimony because I think that testimony
13 takes some time. And it is was also on equipment that
14 belongs to the other court reporter so we need to take a
15 little bit of time to make sure we get it rigged up right.
16 All right, any objection to any of that?

17 MR. ROBINSON: None from the defense, Your Honor.

18 THE COURT: All right, well who is -- it was -- why
19 don't we bring them back in. I will orally answer their
20 questions and tell them to be back in the morning at nine
21 o'clock. All right.

22 Let's bring them.

23 MS. SEAY: Christopher Garland was in the driver seat
24 and Cameron Wade was in the passenger seat.

25

1 (WHEREUPON, the jury came into open court at
2 approximately 5:40 p.m.)

3 THE COURT: All right, Mr. Foreman, ladies and
4 gentlemen of the jury, I have your two sheets of paper.
5 The first one, with respect to the juror who has an
6 appointment in Asheville and needs to make a call, we'll
7 make arrangements for that immediately. Okay.

8 The second one. I'm going to read those out to you
9 and give you the answers. Number one, Can Brandon be
10 found guilty of count two of each indictment if he's not
11 found guilty of murder on count one? The answer is, No.
12 Can only be found guilty of count two if he is found
13 guilty of committing a violent crime. And the violent
14 crime alleged in the indictment is count one. Okay.

15 Two, who was in the passenger seat and who was in the
16 driver in the Honda? Cameron/Chris. I would tell you
17 that Christopher Garland was seated in the driver's seat
18 and Cameron Wade was in the passenger seat.

19 Three, request testimony of Josh Wood and Chris
20 Allison to be reread. Well, ladies and gentlemen, how we
21 do that is we replay the testimony. And that testimony
22 would take some time to go through. So what I'm going to
23 do is break for the evening. Okay. And we'll come
24 back -- ask y'all to be back about nine o'clock in the
25 morning and we'll try to have it organized -- let's say

1 9:15 in the morning, we'll try to have the testimony
2 organized and ready to be played for you. Okay. And you
3 all can -- we'll play the testimony completely through for
4 you so you can hear it in the morning.

5 Now having said that, ladies and gentlemen, it's --
6 the alternate has been released. The law only allows 12
7 people to deliberate. So you all can't get sick and you
8 have to be back in the morning. Okay. And it's vitally
9 important that you not discuss this case with anyone
10 outside of your jury room. Okay. Don't go home and seek
11 advice from a family member or a friend. Do not look at
12 the news. Because the news media has been in here. Do
13 not read the paper and tell someone who you like and trust
14 to remove article about this from newspaper. Y'all have
15 worked so hard to get this far, don't slip up now. Okay.
16 Didn't go on the internet and do research or anything like
17 that. Because if you did that at this point I would have
18 to declare a mistrial and we'd have to start all over and
19 do the whole thing again. So hold true to your oath.
20 It's vitally important that you do that.

21 All right, with that, ladies and gentlemen, y'all
22 have a pleasant evening, we'll see y'all back in the
23 morning at 9:15. Okay. Thank you, very much.

24 And whoever needs to make the call --

25 THE BAILIFF: Well have to have authorization because

1 that's a long distance phone call. Unless you have a cell
2 phone.

3 JUROR: If I'm leaving right now I'm good.

4 THE COURT: Okay, all right, very good. Thank you,
5 very much.

6 (WHEREUPON, the jury left open court at
7 approximately 5:45 p.m.)

8 THE COURT: Mark those.

9 (WHEREUPON, Court's Exhibit Nos. 2-3 were marked
10 for identification and received into evidence.)

11 THE COURT: All right, see you in the morning.

12 (WHEREUPON, the proceedings were concluded for
13 the day to be reconvened on November 4, 2009.)
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1 Wednesday, November 4, 2009

2 (WHEREUPON, the jury came into open court at
3 approximately 9:20 a.m.)

4 THE COURT: Okay. All right, great to see y'all back
5 and everybody's looking healthy. I think we're ready to
6 play the testimony for you, okay. And this will be the
7 first testimony of Josh Wood's.

8 (WHEREUPON, the testimony of Josh Wood was
9 played.)

10 (WHEREUPON, the testimony of Christopher
11 Allison was played.)

12 THE COURT: All right, Mr. Foreman, ladies and
13 gentlemen of the jury, is that satisfactory?

14 (WHEREUPON, all the jurors nods in the
15 affirmative.)

16 THE COURT: Okay, I'll ask y'all to return to the
17 deliberations.

18 (WHEREUPON, the jury left open court at
19 approximately 10:00 a.m.)

20 THE COURT: All right, be at ease with this case.

21 (WHEREUPON, deliberations continued.)

22 (WHEREUPON, Court was in recess awaiting a
23 verdict.)

24 THE COURT: All right, I don't know what the verdict
25 is going to be, we got a full courtroom. I don't know

1 where, emotions seem to run high in this case but when
2 this verdict is announced, whatever it is, you better not
3 have any outburst in the courtroom. Okay.

4 (WHEREUPON, the jury came into open court at
5 approximately 11:42 a.m.)

6 THE COURT: All right, Mr. Foreman, I understand
7 you've reached a verdict?

8 MR. FOREMAN: Yes, Your Honor, we have.

9 THE COURT: Would you, please, hand it to the
10 bailiff.

11 All right, would you, please, publish the verdict.

12 VERDICT

13 THE CLERK: Your Honor, this is the State vs. Brandon
14 Heath Clark, the verdict as to Indictment 2007-GS-2442,
15 count one for the murder of Christopher Garland, we the
16 jury find the defendant guilty. Count two for the
17 possession of a weapon during the commission of a violent
18 crime, as to the murder of Christopher Garland, we, the
19 jury, find the defendant guilty. I certify this decision
20 was the unanimous decision of the jury, signed, Michael
21 Leverette.

22 Indictment 2007-GS-2443, count one for the murder of
23 Cameron Jack Wade, we, the jury, find the defendant
24 guilty. Count two for the possession of a weapon during
25 the commission of a violent crime as to the murder of

1 Cameron Jack Wade, we, the jury, find the defendant
2 guilty. I certify this decision was the unanimous
3 decision of the jury. Signed, Michael Leverette.

4 Is this is your verdict so say you all.

5 (WHEREUPON, all the jurors responded in the
6 affirmative.)

7 THE CLERK: Thank you.

8 THE COURT: All right, anything further of the jury,
9 Mr. Robinson?

10 MR. ROBINSON: Not from the defendant, Your Honor.

11 THE COURT: Anything from the State?

12 MS. SEAY: Nothing further from the State.

13 THE COURT: All right, ladies and gentlemen, I want
14 to thank you all for you service in this case. When you
15 come up here and you get selected for a jury, you don't
16 know what the nature of the charge is going to be, you
17 don't know what the facts are going to be and it's a
18 difficult job. You all have shoulder that burden with
19 integrity and you have followed your oath. Never easy to
20 follow through with that. But I know what you have done,
21 you've done it fairly and impartially, you have weighed
22 the evidence and you have followed the law as I've given
23 it to you. And I want to thank for your service.

24 I do want to tell you that the good news is that we
25 have enough remaining in the panel to serve out the rest

1 of the week. So you all are finished for the week. And
2 you're free to go. You're free to stay. Whatever you'd
3 like to do. You're also free to talk about the case with
4 anyone that you would like to talk to about it. If
5 someone approaches you and talks to you and you want to
6 talk to them, please feel free to do so. If you do not
7 want to talk about it you do not have to talk about it.
8 And if someone persists in contacting you or bothering
9 you, please, let someone in the courthouse know about it.
10 Because we're not going to allow anybody to harass you or
11 bother you about your service.

12 So thank you, very much. And if you need to get any
13 sort of document from the Court with respect to show to
14 your work, we can provide that for you downstairs in the
15 jury assembly room. This was a hard decision for y'all to
16 make and I know that you gave it due consideration.
17 Please do not look back and regret anything that you've
18 done. Thank you for your service. All right.

19 (WHEREUPON, the jury left open court at
20 approximately 11:50 a.m. and excused for the
21 day.)

22 THE COURT: Mr. Leverette, we do need to ask you to
23 sign the indictments in this case. Thank you.

24 I tell you what, just stand at ease for just a
25 minute, I'll be right back. Okay.

1 Okay, ready?

2 MR. ROBINSON: Yes, sir.

3 THE COURT: Any motions you want to make?

4 MR. ROBINSON: Not at this time, Your Honor. Not at
5 this time, Your Honor.

6 THE COURT: Well, okay, no motions, all right.

7 MR. ROBINSON: Let me retrack that, Your Honor. We
8 would make a motion to set aside the jury verdict in light
9 of the evidence that was presented in trial. The forensic
10 expert that they had testified that the bullets -- he
11 could not connect the bullets between the shell casings
12 that were fired at the scene and the bullet that was in
13 Cameron -- Chris Garland. There's no connection. And we
14 believe that this verdict should be set aside since the
15 evidence does not support the verdict in this case.

16 THE COURT: Well, thank you. He did not exclude it
17 or include it. It was inconclusive. So based on that I'm
18 going to deny your motion. And I think there was
19 sufficient evidence for the jury to reach the verdict that
20 they reached. Okay.

21 Ready for sentencing?

22 SENTENCING

23 MR. ROBINSON: Defense is ready, Your Honor.

24 THE COURT: All right, y'all come on around.

25 MS. SEAY: Your Honor, on behalf of the State there

1 may be some victim's representatives who would like to
2 address the Court.

3 THE COURT: Be happy to hear from them.

4 All right, yes, ma'am.

5 Before we do that, tell me his prior criminal
6 history.

7 MS. SEAY: His prior criminal history is assault and
8 battery of high and aggravated nature. He was convicted
9 in August of this year.

10 THE COURT: Okay. All right. Be happy to hear from
11 any member of the victim.

12 MS. SEAY: This is Todd Taylor, Mr. Garland's
13 brother-in-law and Melinda Wade is Mr. Wade's mother.

14 THE COURT: All right.

15 MR. TAYLOR: Christopher Garland was a good person,
16 he had no criminal record, he had a job. He had his own
17 house and had a beautiful family. Chris had many roles in
18 his life, he was a good friend, he was a wonderful
19 brother, he was a wonderful son and he was a daddy. As a
20 daddy he was a great one. This was the role that he
21 cherished the most. Chris left behind a four year-old
22 daughter. He spent every moment he could with her and she
23 was a true daddy's girl.

24 Now her life is forever changed. Her normal daddy's
25 little girl routine has been forever alternated by Brandon

1 Clark's brutal actions. He's missed her first day of
2 school, her first tooth fairy visit, her last four
3 birthdays in this year, he'll miss her very first dance
4 recital. There's no daddy to walk her down the isle, no
5 daddy's little girl dance at her wedding. Her daddy was
6 shot in the back while trying to drive away from Brandon.
7 Now her quality time with daddy consists of visiting his
8 grave marker every Sunday after church. What was taken
9 from this little girl should hold a criminal sentence all
10 on its own.

11 As for the sentencing, we just ask that you give what
12 is fair for this senseless double murder. We hope and
13 pray that it matches the crime. Because when we leave
14 here we have to tell this littler girl what the value of
15 her father's life is.

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

17 Yes, ma'am.

18 MS. WADE: My son, Cameron Jack Wade, way was 21
19 years old for seven days when he was called to a and said
20 weapons Cameron. I wish he wouldn't have went. He was a
21 lover. Not a lover asking women but a lover of life. He
22 loved everybody. He never met a stranger. He was the
23 student advocator for two years, graduated Pickens County
24 with honors. Went on to get a phone call, graduated
25 (inaudible). Went on to (inaudible) He worked. He worked

1 constantly. He wasn't a bad kid. He was a good kid.

2 He left behind me, my mother, his two sisters and
3 nephew. Now he has a niece that he's never going to meet
4 and about to be another niece. He had dreams. Dreams
5 that can never ever, ever been fulfilled. And I know that
6 God took Cameron in his own way and Chris. These two,
7 Christopher and Cameron, they were trying to leave. They
8 were there 45 seconds in the driveway when the shooting
9 started. They never had a chance. Cameron never had a
10 chance.

11 Their intentions for two weeks were to drag my son
12 all over one punch. One punch. And Cameron maybe
13 shouldn't did that one punch. But I thank the jury and I
14 thank Ms. Seay and I thank the investigators. And I am
15 sorry for Mr. Clark's family. I am. But his charge
16 speaks for itself. I could never shoot my father. I
17 could never shoot my mother. And I could never, I don't
18 care what anybody did to me, take another persons life.
19 When he killed my son he killed a part of me. That won't
20 heal no matter what I do. And the only reason, Your
21 Honor, that I can stand here today before you is for my
22 Lord. That's the only thing that's got me this far. And
23 I hope you take into consideration what he deserves. That
24 you, please, give him what you think is just and fair for
25 the two lives that was innocent trying to leave. They

1 didn't hurt nobody. They were trying to leave, sir.

2 THE COURT: All right, thank you, ma'am, I appreciate
3 that.

4 MS. WADE: Thank you.

5 THE COURT: All right, Mr. Robinson.

6 MR. ROBINSON: May it please the Court, Your Honor.
7 This is Brandon, he's very sorry for being here today.
8 He's sorry for attending that party that night. He's
9 sorry to the families on this case for what happened in
10 this matter. He didn't know these young men but he's
11 sorry for their deaths. He's sorry this all happened.
12 And we would apologize to the family, obviously, for what
13 happened in this case. He apologizes to his own family
14 for being there at the wrong place. And he's just sorry
15 that this has happened.

16 We would ask the Court for mercy in this case. The
17 Court had the opportunity to listen to the facts in the
18 case. Brandon, a couple months beforehand, the ABHAN that
19 he pled guilty to was an incident with his father. His
20 father's in the courtroom today supporting him with his
21 mother as well. He's got a very supportive family, they
22 were here the entire time. They're outside, they were
23 sequestered (sic). But everyone is sorry for this.
24 Everyone sorry for the Wade family and the Garland family.
25 But we would ask the Court for mercy and to use the

1 Court's desecration. Because the Court's obviously--

2 THE COURT: Well how old is he?

3 MR. CLARK: Twenty-four.

4 MR. ROBINSON: Twenty-four, Your Honor.

5 THE COURT: What's the highest grade you finished in
6 school?

7 MR. CLARK: Twelfth.

8 THE COURT: You work?

9 MR. CLARK: I've been in Turbeville.

10 THE COURT: Have you ever worked?

11 MR. CLARK: Yes, sir.

12 THE COURT: What did you do?

13 MR. CLARK: Construction.

14 THE COURT: What do you want to tell me?

15 MR. CLARK: I'd like to tell you that I didn't kill
16 these two people. I don't know how they reached their
17 decision. I mean, but I'm sorry for their families, I
18 really am. Other than that I don't know what else to say.
19 I'm kind of in shock to tell you the truth.

20 THE COURT: All right, anything else?

21 MS. SEAY: Nothing further.

22 THE COURT: All right, well this is an incredible
23 tragedy. And it's a nightmare. For everybody involved.
24 Easily solved. You don't carry guns, you don't go around
25 looking for fights and you don't go looking around

1 watching for fights. I'm going to give you 40 years on
2 each murder and five years on each weapons charge. You
3 have 10 days to file a motion to appeal in this case.

4 MR. ROBINSON: Thank you, Judge.

5 THE COURT: All right.

6 MS. SEAY: Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 All right, I'd like to give the victim's family the
9 opportunity to leave the courtroom first so we don't have
10 any problems.

11 (WHEREUPON, the proceedings were concluded.)

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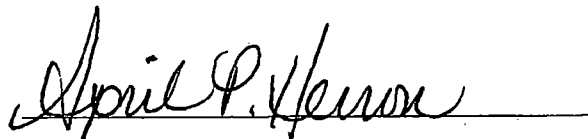
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the
~~Thirteenth~~ Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Greenville County, South Carolina, on
the 3-4 day of November, 2009.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

June 24, 2010



APRIL P. HERRON, Court Reporter

313

WITNESSES

Mary Fields / 5

Greenville County Sheriffs Office

7/31/2006

ARREST WARRANT NUMBER

1796816, 1796818

ACTION OF GRAND JURY

TRUE BILL

Betty Murphy

DEMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

1. GUILTY 2. GUILTY

Foreperson of Petit Jury

Date: 11/19/09

DOCKET NO. 2007-GS-23-
BSD

002442

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2007

11/19/09
GUILTY

THE STATE

vs.

BRANDON HEATH CLARK

Indictment for

0116/0549

MURDER

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

VIOLATION §16-03-0010 & §16-23-0490

7

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER
POSSESSION OF A WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME

At a Court of General Sessions, convened on March 28, 2007 the Grand Jurors of Greenville
County present upon their oath:

COUNT ONE-MURDER

That BRANDON HEATH CLARK did in Greenville County, on or about the 29th day of July, 2006, unlawfully and with malice aforethought kill CHRISTOPHER GARLAND by means of shooting him and that CHRISTOPHER GARLAND died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO-POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That BRANDON HEATH CLARK did in Greenville County, on or about the 29th day of July, 2006, possess or visibly display an operable firearm during the commission or attempted commission of a violent crime, to wit: Murder. . This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Supra S. Seay
SOLICITOR

WITNESSES

Mary Fields */S*

Greenville County Sheriffs Office

7/31/2006

ARREST WARRANT NUMBER

1796817, Direct Presentment

2007-GS-23-2443A

ACTION OF GRAND JURY

Betty Murphy

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*1. Guilty 2. Guilty**W. J. [Signature]*
Foreperson of Petit JuryDate: *11/4/09*

DOCKET NO. 2007-GS-23-

BSD

002443

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2007

11/4/09
GUILTY

THE STATE

VS.

BRANDON HEATH CLARK

Indictment for

0116/0549

MURDER

POSSESSION OF A WEAPON DURING THE

COMMISSION OF A VIOLENT CRIME

VIOLATION: §16-03-0010 & §16-23-0490

8

[illegible]

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on March 28, 2007 the Grand Jurors of Greenville
County present upon their oath:

COUNT ONE-MURDER

That BRANDON HEATH CLARK did in Greenville County, on or about the 29th day of July, 2006, unlawfully and with malice aforethought kill KAMRON JACK WADE by means of shooting him and that KAMRON JACK WADE died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO-POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That BRANDON HEATH CLARK did in Greenville County, on or about the 29th day of July, 2006, possess or visibly display an operable firearm during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Byron S. Gray
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Brandon Heath Clark

AKA: _____
 Race: W Sex: M Age: 24
 DOB: _____ SS#: _____
 Address: _____

DL#: _____ SID#: _____

INDICTMENT/CASE#: 2007GS2302442
 A/W#: I796816
 Date of Offense: 7/29/2006
 S.C. Code § : 16-03-0010, 0020
 CDR Code #: 0116

In disposition of the said indictment comes now the Defendant who was
 TO: Murder (Count 1)

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-10 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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: Brigida S. Seay
Seay, Bryna 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 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. 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 _____
 *Fine: \$ _____ Substance Abuse Counseling _____

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

§ 47.12 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 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 \$ 5.00

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk Paul B. Wickman
 Court Reporter: M. DiGirolamo // A. Herron 11/3-4/09
 SCCA/217 (06/2009) 11/2/09

PRESIDING JUDGE 209 W. Mc
 Judge Code: 211310
 Sentence Date: 11/4/09

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

318

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Brandon Heath Clark

AKA: _____

Race: W Sex: M Age: 24

SS#: _____

Address: _____

DL#: _____ SID#: _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death (COUNT 2)in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Christina S. Seay
Seay, Bryna

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 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. 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 \$ 100.00

§ 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 \$ 25.00

§ 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 \$ 5.00

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk _____

Paul B. WinklerCourt Reporter: M. Digrola A. Herron 11/3-4/09SCCA/217 (06/2009) 11/2/09

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS2302442A/W#: 1796818Date of Offense: 7/29/2006S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSTO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death (COUNT 2)in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: _____
Seay, Bryna 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 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. 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 \$ 100.00

§ 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 \$ 25.00

§ 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 \$ 5.00

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PRESIDING JUDGE _____

Judge Code: 2111310Sentence Date: 11/4/09☐ Appointed PD or appointed other counsel, \$47.12
requires \$500 be paid to Clerk during probation.

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Brandon Heath Clark

AKA:

Race: W Sex: M Age: 24

DOB: SS#:

Address:

DL#: SID#:

In disposition of the said indictment comes now the Defendant who was
TO: Murder (Count 1)in violation of § 16-13-10 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bryna S. Seay

Seay, Bryna

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 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 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 \$ 25.00

§ 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 \$ 5.00

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS2302443

A/W#: I796817

Date of Offense: 7/29/2006

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk Paul B. HendersonCourt Reporter: M. Digioia/awo/A. Herron 11/3-4/09SCCA/217 (06/2009) 11/2/09PRESIDING JUDGE 2016 MEJudge Code: 2 1 1 1 3 1 0Sentence Date: 11/4/09

320

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Brandon Heath Clark

AKA:

Race: W Sex: M Age: 24

DOB: SS#:

Address:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS2302443A

A/W#: 2007GS2302443A

Date of Offense: 7/29/2006

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death (COUNT 2)

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Seay, Bryna

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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 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 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$100

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

\$

Clerk of Court/ Deputy Clerk

Paul B. Wiesinger

Court Reporter: M. DiGirolamo / A. Herren 11/3-4/09

SCCA/217 (06/2009) 11/2/09

PRESIDING JUDGE

Judge Code:

Sentence Date:

21 11/3/09

11/4/09

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Greenville)

2013-CP-23-01325

Brandon Heath Clark 335381)

Full name and prison number, if any, of applicant)

v.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2013 MAR -7 AM 11:39

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 it clear to which question any such continued answer refers.

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

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

1. Place of detention Lee Correctional Institution 990 WISOLCHY HWY.
Bishopville, SC 29010
2. Name and location of Court which imposed sentence Court at JUDICIAL Sessions
305 E. North Street Greenville County Court House Greenville, SC 29601
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 07-2443 Murder, Possession of ^{Weapon} ~~Weapon~~ during commission of a violent c.
 - (b) 07-2442 Murder, Possession of a weapon during commission of a violent c., etc
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 4, 2009 40 Years, 40 Yrs, 5 Yrs, 5 Yrs, All Concurrent
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? YES _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. Appellate Court of South Carolina _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed _____
- ii. _____
- iii. _____
- (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. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) That I wasn't Adequately represented at trial, Trial counsel failed to
- (b) Put up a defense _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) ~~State~~ Trial Council should have objected to Indictment of Possession of a weapon during commission of a violent crime.

(b) ~~State~~ Trial Council should have objected to State Attorney Vouching for the truthfulness and validity of a state's witness.

(c) Trial Council should have objected to the charge of intended malice because deed was done with a deadly weapon.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

NO

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. NON APPLICABLE
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NON APPLICABLE
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) NON APPLICABLE
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. SCOTT D. ROBINSON ESQUIRE Attorney at Law 101 LAYNE AVE
- ii. GREENVILLE, SC 29601
- iii. DWINE PHILLIPS APPELLATE DEFENSE ATTORNEY P.O. Box 11589
COLUMBIA, S.C. 29211-1589

(b) the proceedings at which each such attorney represented you:

- i. 16. (A) (B) (C) AND (D)
- ii. 16. (d)
- iii. _____

18. State clearly the relief you seek in filing this application.

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

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
 COUNTY OF Greenville)

I, Brandon Heath Clask, 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.

Brandon Clask

Sworn to and subscribed before me

This 20th day of 21, 2013.

_____. L.S.

Notary Public for South Carolina

My Commission Expires _____

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

I, Brandon Heath Clask, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Brandon Clask
 Applicant

Sworn to and subscribed before me

This 20th day of 21, 2013.

_____. L.S.

Notary Public for South Carolina

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-1325
COUNTY OF GREENVILLE	)	
	)	
Brandon Heath Clark,	)	
S.C.D.C. No. 336351,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed March 7, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the March 2007 term of the Greenville County Grand Jury for two counts each of murder (2007-GS-23-2442, count 1 and -2443, count 1) and possession of a weapon during the commission of a violent crime (2007-GS-23-2442, count 2 and -2443, count 2). Scott D. Robinson, Esquire represented the Applicant.

After the State took the case to trial, the Applicant was found guilty. On November 4, 2009, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of forty years for each count of murder and five years on each count of possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court

of Appeals affirmed the Applicant's convictions and sentences. State v. Clark, Op. No. 2012-UP-549 (S.C. Ct. App. filed Oct. 10, 2012). The remittitur was sent on October 26, 2012.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. "Trial [counsel] should have objected to Indictment of Possession of a weapon during commission of a violent crime."
 - b. "Trial [counsel] should have objected to State Attorney vouching for the truthfulness and validity of a states witness."
 - c. "Trial [counsel] should have objected to the charge of inferred malice because deed was done with a deadly weapon."

The Respondent asserts the Applicant's allegations that his attorney was ineffective are without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

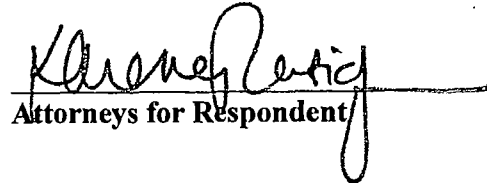
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

Oct. 23, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23-1325

BRANDON HEATH CLARK, 336351)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

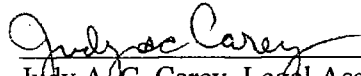
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Brandon Heath Clark 336351
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

DATED this 23rd day of October, 2013.


 Judy A.C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Brandon Heath Clark,

Applicant

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-23-1325

AMENDED PETITION FOR
POST CONVICTION RELIEFFILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/IAER
2013 DEC 16 AM 9 45

The Defendant, by and through his counsel, Caroline M. Horlbeck, respectfully amends his Petition for Post Conviction Relief to add the following allegations:

1. That evidence of material facts exist which have not been previously presented and heard by the Court. This material evidence requires vacation of the conviction and sentence.

Respectfully submitted,

Caroline M. Horlbeck
Caroline Horlbeck
Attorney for the Defendant
101 Whitsett Street
Greenville, S.C. 29601

Greenville, South Carolina

16th day of December, 2014

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Brandon H. Clark	)	
	)	
Applicant	)	
v.	)	Case No. 13-CP-23-1325
	)	
State of South Carolina,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on June 18th, 2015, before The Honorable Perry H. Gravely in Courtroom No. 6 of the Greenville County Courthouse, East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

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(APPLICANT PRESENT)

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THE COURT: All right. Are we
ready to proceed on the next case?

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MS. RATIGAN: Yes, Your Honor. May
it please the Court. This is the case
Brandon Heath Clark versus the State of South
Carolina. The docket number is 2013-CP-23-
1325.

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12

Mr. Clark was indicted for two counts
each of murder and possession of a weapon
during the commission of a violent crime.

13

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He was represented on these charges by
Mr. Scott Robinson.

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The case was brought to trial and Mr.
Clark was found guilty.

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On November 4th of 2009 Judge Miller
sentenced him to concurrent terms of forty
years for each count of murder and five years
on each of the weapons charges.

21

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23

Mr. Clark did file a notice of appeal.
The Court of Appeals affirmed his conviction
for sentences in October of 2012.

24

25

This application was timely filed and the
State's ready to proceed.

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1 THE COURT: All right.

2 MS. HORLBECK: Judge, we're ready
3 to proceed. We're going to call Mr. Robinson
4 to the stand.

5 THE COURT: Okay. Mr. Robinson,
6 if you would come forward.

7 (WITNESS TAKES STAND)

8 SCOTT ROBINSON, having been duly
9 sworn to tell the truth, and nothing but the
10 truth, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. HORLBECK:

13 Q. Mr. Robinson, do you recall
14 representing Brandon Clark in this case?

15 A. I do.

16 Q. Okay. How long did you represent
17 him?

18 A. It was, it was a good bit of time.
19 It was, I can't tell you the number of months
20 or anything like that, but it was a good bit
21 of time.

22 Q. Okay.

23 A. Yeah.

24 Q. Were you retained or appointed?

25 A. Retained.

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1 Q. Okay. Was Mr. Clark incarcerated
2 while you represented him or had he made
3 bond?

4 A. I'm not sure. I'm not really sure.
5 I think -- I really don't recall that.

6 Q. All right. Do you recall meeting
7 with Mr. Clark?

8 A. Yes.

9 Q. Did you meet with Mr. Clark in your
10 office or in the jail or ---

11 A. That's what I'm not sure of. I
12 thought it was outside at the office. But, I
13 haven't -- you know, honestly, Ms. Horlbeck,
14 is my memory may be jumbled. This was six
15 years ago.

16 Q. Okay.

17 A. I'm not really sure.

18 Q. All right. Do you have any notes
19 which would reflect how many times you met
20 with Mr. Clark?

21 A. I don't have notes, but I know it
22 was a good bit of time. I mean, it was a lot
23 in the case.

24 Q. Okay. All right. So you said a
25 lot. What does a lot mean?

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1 A. At least six -- six to ten to times
2 at least. A good bit of time.

3 Q. Okay. Did you file discovery
4 motions in this case?

5 A. Yes, we did.

6 Q. And did you receive discovery?

7 A. Yes.

8 Q. Did you review your discovery
9 yourself?

10 A. Yes.

11 Q. And with Mr. Clark?

12 A. Yes.

13 Q. Okay. All right. And just by way
14 of background information ---

15 A. Uh-huh.

16 Q. --- this case involved a party; is
17 that correct?

18 A. It was a big, big party out at his
19 house, yes.

20 Q. And there were a significant number
21 of people at this party; correct?

22 A. There were. A lot of people, yes.

23 Q. Okay. And there was a fight that
24 broke out during the party?

25 A. I believe there was some ruckus at

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7

1 some point.

2 Q. Okay. And ultimately shots were
3 fired ---

4 A. Yes.

5 Q. --- and two young men died?

6 A. Yes.

7 Q. All right. Mr. Clark was charged
8 with murder; correct?

9 A. Yes.

10 Q. As a result of this incident?

11 A. Yes.

12 Q. Two counts of murder and two counts
13 of possession of a weapon; correct?

14 A. Yes. Uh-huh.

15 Q. All right. And there were also some
16 -- a codefendant, which was also charged. Do
17 you recall that?

18 A. A codefendant?

19 Q. Yes. I don't whether he was charged
20 with murder, but there were some other people
21 charged and arrested. One of them was Josh
22 Wood; do you recall?

23 A. I don't recall, honestly.

24 Q. You don't recall the names of the
25 codefendants?

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1 A. The only person I represented was
2 Brandon. There was really nobody -- I don't
3 -- which codefendant are you talking about?

4 Q. Well, you have a copy of your
5 transcript; right?

6 A. I got. I don't have a -- yeah but I
7 don't have that up here.

8 MS. RATIGAN: You can have my copy.

9 WITNESS: Yeah, let me see it.

10 MS. RATIGAN: (Tenders).

11 WITNESS: Okay.

12 DIRECT EXAMINATION CONTINUE

13 BY MS. HORLBECK:

14 Q. Do you recall a Josh Wood testifying
15 in Mr. Clark's trial?

16 A. If I may have a moment to look at
17 the transcript?

18 Q. Certainly.

19 A. (Upon review), yes. In the
20 transcript, in the index I'm looking here, it
21 does show that Josh Wood testified for the
22 State.

23 Q. All right. And Josh Wood was
24 actually charged with two counts of lynching;
25 is that correct?

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1 A. Can I look at the transcript real
2 quick?

3 Q. Sure. Uh-huh.

4 A. (Upon review), Ms. Horlbeck, I'll
5 have to take your word for it as far as him
6 being charged with lynching. I'm not seeing
7 a mention of lynching, but I'll take your
8 word for it.

9 Q. Okay. All right. Well, tell me
10 what the defense was in Mr. Clark's case?

11 A. Mr. Clark never committed this
12 murder. That was the defense in this case.

13 We actually -- I had met with -- we went
14 out to the scene. We actually went out to
15 the house with my investigators and we just
16 combed around, trying to find bullet shells
17 and things of that nature.

18 I met with Mr. Armstrong, who is the
19 expert, the State's expert. And he goes
20 through bullet shells and casings and so
21 forth. Brandon's bullets weren't the bullets
22 that killed these guys. That was the whole
23 case. His bullets.

24 I think in the last part of the
25 transcript, at some point, Mr. Armstrong

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1 stated that the shell casings did not match
2 -- that shot these two folks, whatever, did
3 not match Brandon's gun.

4 Q. Okay.

5 A. So, the defense in this case, he
6 didn't do it. You know, it was a party.
7 He may have had a gun at that party, but he
8 didn't shoot these guys. He didn't shoot
9 these guys.

10 Q. Okay. And was part of your defense
11 that the State was unable to determine what
12 caliber bullet actually killed these two
13 guys?

14 A. It may have been part of the
15 defense. I recall my defense was that -- he
16 was at the party. There's no question about
17 that, with these other folks and so forth.
18 But other than these -- because I think Josh
19 Wood might have been one of the guys to
20 testify against him for the State. But we
21 had a bullet that the casing didn't match,
22 the caliber and so forth.

23 Q. Okay. Say that last part again?

24 A. I know it's a little confusing.
25 I think that Josh Wood -- I haven't read it,

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1 I haven't read this transcript but I believe
2 Josh Wood testified against him in this case
3 possibly. But the defense, as I said before,
4 was that the bullets didn't match Brandon's
5 gun. The bullets that killed these guys
6 didn't come from Brandon's gun.

7 Q. Okay. So what you're saying is that
8 the bullets that actually killed the two
9 guys, there was no way that the State was
10 able to match those to Mr. Clark?

11 A. Exactly. Exactly.

12 Q. Okay. All right. Did you also try
13 to argue to the court that the State was
14 unable to determine what caliber bullet
15 actually did kill these two guys?

16 A. If I did that in the transcript, I
17 may have done that.

18 Q. Do you know?

19 A. I don't have an independent
20 recollection. I was really -- that was the
21 crux of this whole case because -- who shot
22 these guys? And if they could pinpoint -- if
23 Brandon had shot those guys, we would have
24 had nothing -- this case wouldn't have gone
25 to trial, but the bullets did not match.

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1 Q. Right. To your recollection,
2 though, did the State know what caliber
3 bullet killed these two victims?

4 A. I don't know if they did or not.
5 I don't think they did, but I'm not ---

6 Q. Did you have an opportunity to
7 review the trial transcript?

8 A. I read it before. We've come here a
9 couple times ---

10 Q. Right. I mean, when was the last
11 time you reviewed this transcript?

12 A. I didn't review it today or
13 yesterday.

14 Q. Well, when was the last time you did
15 review it?

16 A. I'm not sure exactly when the last
17 time it was that I saw it.

18 Q. Do you recall Judge Barber ordering
19 you to review this transcript ---

20 A. Yeah, of course.

21 Q. --- and your case file to be ready
22 to testify?

23 A. And that was the last time. And it
24 was read the last time. Correct.

25 Q. Okay. And I think a written Order

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1 was issued as well?

2 A. Yes.

3 Q. Okay. Are you fully prepared to
4 testify or do we need to take a break and let
5 you review the transcript because I'm just a
6 little concerned about some of the answers.
7 You don't recall, that kind of thing.

8 A. Why don't we take a break and I'll
9 do that, but the last time I was here for
10 that and I was ready.

11 Q. I'll let the Judge, I guess, make
12 that decision. Do you need additional time
13 to review your transcript?

14 A. I can answer questions about the
15 case, of course.

16 Q. Okay. Well, I'm asking you if you
17 recall whether or not the State was able to
18 prove what caliber bullet ---

19 A. They weren't.

20 Q. --- that killed the victims?

21 A. They were not.

22 Q. Okay. All right. Do you recall
23 seeing, and what I'm referring to is do you
24 -- take a look at Page 11 of your transcript.
25 Start at Line 25. If you'd review that for

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1 me?

2 A. (Upon review), okay.

3 Q. And continue on to Page 12 through
4 Line 2.

5 A. Uh-huh. Yes.

6 Q. All right. So the State's expert
7 was able to testify that the caliber of
8 bullet that killed the victims was .40
9 caliber; correct?

10 A. That's what it says in here.

11 Q. All right. But you were arguing --
12 do you recall arguing to the judge that the
13 State had absolutely no proof of what
14 caliber?

15 A. I think, I really, I couldn't really
16 -- because there were so many types of
17 bullets, types .40 caliber bullets that they
18 couldn't prove that that was the same bullet
19 that came from his gun.

20 Q. Take a look at Page 11, Lines 22
21 through 25, of the transcript on day one of
22 the trial.

23 A. All right.

24 Q. I'm sorry. Go to Page 10. Sorry
25 about that. Page 10, Lines 2 through 10.

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1 A. Okay.

2 Q. And did you argue to the Court that
3 the State couldn't determine what caliber of
4 bullet or what type of bullet killed these
5 two guys?

6 A. I think that what I argued was that
7 they couldn't say that it's the same bullet
8 that killed these two guys. The same type of
9 bullet but not the same bullet.

10 Q. Okay. But your exact phrasing was
11 "same type" of bullet; correct?

12 A. Type of bullet, right. Not the same
13 bullet.

14 Q. All right, then. Okay. And then
15 when you found out that the State did know
16 what type or caliber of bullet, that argument
17 was ultimately abandoned; is that correct?

18 A. I there are many -- there are tons
19 of .40 caliber types of bullets. It could be
20 any type of bullet. I think they determine
21 that like the grooving and the things of that
22 nature as far as -- they did determine -- I
23 don't think they could ever determine that
24 that was the same bullet that killed these
25 guys.

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1 Q. They couldn't link it to Brandon?

2 A. " Could not link it, correct.

3 Q. All right. I understand. All
4 right. So then was part of your defense a
5 third-party guilt defense?

6 A. Yeah. I think that the -- we
7 thought there were other people involved,
8 that two other guys did this.

9 Q. What other two guys were you
10 pointing out in this trial?

11 A. There were two other fellows in this
12 case that we were thinking about. I think
13 one -- and one of the guys works at, I
14 believe, Circuit -- at one of these stores
15 over in Anderson that they work at.

16 Q. Do you recall the names?

17 A. I think it was Mr. Murray, possibly,
18 and Mr. Wood.

19 Q. Okay. So when you say Wood, Josh
20 Wood?

21 A. Josh Wood, yeah.

22 Q. Is that one of the persons you felt
23 was involved with this instead of Brandon
24 Clark?

25 A. Yes.

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1 Q. And the other person you thought was
2 involved?

3 A. I think the guy's name was David
4 Murray or something like that.

5 Q. All right. Okay.

6 A. There were two other guys that had
7 motives and things like that against this
8 guy.

9 Q. All right. And do you recall making
10 an argument before the Court on Page 15 of
11 your transcript, the first day of the trial?

12 A. Uh-huh.

13 Q. Which would have been November the
14 2nd?

15 A. This would have been David Murray.
16 We made that argument, correct. That -- Ms.
17 Horlbeck, that would have been Line 15.

18 Q. Okay.

19 A. And that would have been through
20 line ---

21 Q. Page 16?

22 A. Page 16 down to Line 9.

23 Q. And is that argument regarding Josh
24 Wood and all the evidence that you felt point
25 to Josh Wood as being the responsible party?

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1 A. I think if you read the transcript
2 in this case, yes.

3 Q. Okay. All right. And did you --
4 the evidence that you felt like pointed
5 towards Josh Wood, would have been threats to
6 kill one of the victims, Cameron Wade; is
7 that true?

8 A. Yes.

9 Q. Okay. All right. And also the fact
10 that Josh Wood confirmed he threw a tire iron
11 in the victim's -- in the window of the
12 victim's automobile?

13 A. Right.

14 Q. Okay. And also, was there also --
15 did you also argue that you had evidence that
16 Josh Wood was seen after the incident covered
17 in blood. Do you recall making that ---

18 A. I believe so. We can look at the
19 transcript.

20 Q. Okay. All right. Do you recall
21 what witnesses that you had under subpoena
22 that would have established that Mr. Wood was
23 covered in blood after the shooting?

24 A. I don't recall the witnesses that I
25 had in this case. And Brandon, I believe,

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1 had seen the guys but I think -- we didn't
2 have anyone that could say that Josh Wood or
3 whoever it was that was -- they did see these
4 guys shoot. Nobody saw those guys shoot.

5 Q. Uh-huh?

6 A. Because I think because the crowd,
7 there was such a big crowd there. And I
8 think there was just a lot of confusion and
9 so forth in this matter.

10 Q. Did you have any witnesses that had
11 seen Mr. Wood covered in blood or bloodied
12 after the shooting. Do you recall that?

13 A. I had a witness that had that -- let
14 me look at the subpoenas in the case. One
15 second, let me get that out.

16 Q. Sure.

17 A. We had a Zach Taylor, a Stephen
18 Jordan. Both were subpoenaed to be at the
19 trial. We had Dennis Sexton subpoenaed for
20 the trial. Shawn Roberts and Chris Allison
21 were going to testify about Josh and David.
22 And I'm assuming -- and I'm assuming that
23 they were going to -- I don't know if they
24 saw them shoot the -- they had blood on them,
25 but one of them talked about the fact that

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1 that Josh and David dropped out of sight at
2 the scene. They left. One of them may have
3 seen -- because we had several witnesses
4 subpoenaed. And the notes that I have in
5 this case are that they don't talk about the
6 blood and so forth on this guy. But they do
7 talk about them leaving the scene
8 immediately, taking off immediately. And,
9 also, that they found -- Yeah. Josh Wood
10 said he was bleeding from kicking in Cameron
11 Wade's window. That's what he said.

12 Q. Okay.

13 A. And then David Murray said, he said
14 he never saw any blood on Joshua; so the two
15 were totally different statements. And those
16 were the guys that we thought, we've always
17 felt or we thought were the guys that did
18 this.

19 Q. Right. You had Zach Taylor under
20 subpoena. What do your notes reflect Mr.
21 Taylor's testimony would have been?

22 A. I think what he may have testified
23 to -- I think I've got it written down as far
24 as the scene goes, as far as the number of
25 people at the scene. Because we went out

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21.

1 there with our investigators. We actually
2 went around trying to find bullets and
3 casings and so forth. Whose house it was,
4 some of the cars were there. And the dispute
5 between Josh Wood and the victim, the victims
6 in this case.

7 Q. Okay. And Mr. Jordan? What do your
8 notes reflect his information would have
9 been?

10 A. I think we was -- he may have been
11 -- well, this is what I recall. I recall he
12 may have testified about the acrimonious
13 relationship between Josh Wood and so forth
14 and these two guys that were killed.

15 Q. All right. And Mr. Sexton?

16 A. A lot of what I was trying to point
17 out was we -- also Constance Premier that was
18 under subpoena. Andrew Martis. These are
19 all the ones that were probably going to talk
20 about the relationship between Josh Wood and
21 these two individuals, the situation as far
22 as that goes.

23 Q. The acrimonious relationship?

24 A. I think there was some sort of -- I
25 don't know what it was. It was either over

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1 girls, whatever they did. I don't know what
2 they were so mad about.

3 Q. Okay. So you had Zach Taylor and
4 Stephen Jordan, Dennis [sic] Sexton and Mr.
5 Roberts under subpoena; correct?

6 A. And Constance Premier and also
7 another person I just mentioned a second ago.
8 Did you get Demos Sexton?

9 Q. It was Demos you said?

10 A. Yes.

11 Q. Okay. All right. So at least five
12 of those witnesses were under subpoena to
13 talk about the acrimonious relationship
14 between Josh Wood and these two guys, to
15 these two victims?

16 A. Right.

17 Q. Okay. And did any of those five
18 witnesses that you just named, did any of
19 them testify, to your recollect?

20 A. I don't think they did. We did not,
21 we did not put up a case. We didn't put up a
22 defense case in the trial.

23 Q. All right. Do you think -- just
24 with looking back, do you think that further
25 evidence of that acrimonious relationship

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1 would have changed the outcome of the trial?

2 A. I don't think it would have, because
3 I think the two main witnesses they had were
4 Josh Wood and this David Murray guy. Both of
5 them, they both gave the wrong -- they both
6 gave different testimony. One said he didn't
7 have any blood, the other one said he did
8 have blood on him.

9 Q. Okay.

10 A. And I think there was testimony
11 throughout the trial -- and I'm not sure, but
12 I didn't -- I didn't -- I think we made a
13 decision after the case was rested not to put
14 up a defense.

15 Q. All right. Do you recall inter-
16 viewing and also issuing a subpoena to a
17 Kayte Allison?

18 A. One second, please?

19 Q. Sure?

20 A. There are several subpoenas that
21 were issued in this case. I don't have her
22 subpoena in here. So I have no recollection
23 of that.

24 Q. Okay. And do you have any notes
25 about an interview with Kayte Allison or a

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1 Dustin Allison?

2 A. I don't.

3 Q. Okay. And you also said that Mr.
4 Dustin Allison was not under subpoena as
5 well?

6 A. Yes.

7 Q. Okay. All right. Do you have any
8 recollection of speaking to any of the
9 witnesses regarding a time line or about
10 anything that Josh Wood said about Mr. Clark
11 leaving the scene, and when Mr. Clark left
12 the scene the two victims were still alive?
13 Do you recall discussing that with any ---

14 A. I have no independent recollection
15 of that.

16 Q. Okay. All right, then. And did you
17 speak to any of the witnesses about or have
18 information about Mr. Wood blocking the
19 victims in so they could not leave the party?

20 A. I don't think I have -- I have no
21 independent recollection of that, no.

22 Q. Okay.

23 A. I just don't remember.

24 Q. Okay, then. Did you request a jury
25 instruction for third-party guilt?

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1 A. May I look at the transcript?

2 Q. Sure.

3 A. What I'm looking for specifically
4 here is the, uh, the meeting with the -- the
5 part where we're talking about the charges
6 and so forth.

7 Q. I think you ultimately put up a
8 third-party guilt defense. But I don't think
9 you have a -- I don't think the judge gave an
10 instruction on third-party guilt. Does that
11 sound correct?

12 A. I'm just reading through the
13 transcript. I'm just trying to make sure I'm
14 accurate on the record. And I have reviewed
15 this file but I just want to make sure that I
16 ---

17 Q. Sure.

18 A. I don't think the judge charged it
19 in this case though.

20 Q. Okay. Did you object to that? Do
21 you remember or recall from the transcript?

22 A. I might have objected. I'm not
23 sure. If I didn't, that would have been
24 taken up by the Court of Appeals.

25 Q. All right. Do you recall the judge

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1 charging an inference of malice? And I'm
2 looking at Page 138 on -- 138 of the November
3 3rd and 4th transcript. Page 138, Line 22?

4 A. Yes, I see it.

5 Q. All right. And did you object to
6 that charge?

7 A. I don't believe I did.

8 Q. Were you aware of State versus
9 Belcher? And what that case is about the
10 inference of malice being confusing and
11 prejudicial where evidence was presented that
12 would reduce, excuse, mitigate, justify or
13 justify homicide. Were you aware of that
14 case at that time?

15 A. I don't believe so.

16 Q. All right. Do you think that your
17 case might have fit in? Do you think you had
18 an argument at that time, that your case
19 might have fit into that *State v Belcher*
20 scenario?

21 A. I don't -- first of all, I don't
22 recall the case. But I don't. I don't know
23 if I would have made that argument. I'm not
24 sure. I don't know.

25 Q. All right. And do you know that

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1 *State v Belcher* -- you may not know.

2 A. Tell me what it is and when did it
3 come down?

4 Q. It was decided October the 12th,
5 2009. And this case was in November,
6 correct?

7 A. Okay. Okay.

8 Q. Right? I mean, the trial was held
9 in November?

10 A. Yeah.

11 Q. Okay. All right. And so is there
12 anything in that record that shows you
13 objecting ---

14 A. I didn't object to it, no.

15 Q. Okay. All right. And do you recall
16 any -- now, Chris Allison was someone that
17 you had under subpoena; correct? I think he
18 was in your list of names that you ---

19 A. We put him under subpoena yes.

20 Q. All right. One of the names was
21 Chris Allison?

22 A. All right.

23 Q. And do you recall that Mr. Allison
24 testified in the State's case? And I'm
25 looking at ---

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1 A. Page 138.

2 Q. Right. But I'm looking at page -- I
3 think it's Page 51 on November the 2nd?

4 A. All right. Okay.

5 Q. All right. And did you have any
6 witnesses that would have corroborated Mr.
7 Allison's testimony?

8 A. I don't believe so.

9 Q. Okay. All right. And do you think
10 it would have been helpful to present
11 evidence that would have corroborated Mr.
12 Allison's testimony?

13 A. At that time it, I -- it's been six
14 years ago. I guess I didn't.

15 Q. Okay. All right. And did you also
16 represent Mr. Clark on an assault and
17 battery, high and aggravated nature charge?

18 A. You're talking about a charge before
19 that?

20 Q. Yes, it was ---

21 A. A while ago where there was a gun
22 involved; yes.

23 Q. Yes. Did you also represent Mr.
24 Clark on that charge as well? Do you
25 remember?

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1 A. I believe I did. I can't be sure.

2 Q. Okay. All right. And what happened
3 with that charge?

4 A. I am not sure of the answer to that.
5 I don't know whether we did a plea or ---

6 Q. Okay.

7 A. I would image we did plead.

8 Q. All right.

9 A. I think that I did. I'm not sure.

10 Q. Okay. And was that kind of integral
11 to this case, keeping that information out?

12 A. I didn't want it to come in because
13 it was the same type of gun.

14 Q. Okay. All right. Was the guilty
15 plea to that ABHAN, was that a couple of
16 months before this trial?

17 A. Now, I don't have that. I don't
18 recall that being related to this case at
19 all.

20 Q. All right. Was that the only --
21 that ABHAN conviction, was that the only
22 conviction Mr. Clark had on his record; do
23 you recall?

24 A. I don't think he had a record. I
25 think he just had a gun -- I think this thing

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1 with the ABHAN is about it.

2 Q. Okay. So the ABHAN that he pled to
3 a couple of months before this trial that was
4 on his record; correct?

5 A. That may have been.

6 Q. All right. Was there a -- Mr. Clark
7 did not testify; correct?

8 A. Did not testify.

9 Q. Was there -- do you recall the
10 reason why Mr. Clark didn't testify?

11 A. I think we talked about it. The
12 family talked about it. We all talked about.

13 Q. Uh-huh.

14 A. It was a decision -- I didn't
15 believe the State put up enough evidence in
16 this matter for the jury to convict him of
17 this crime.

18 Q. Uh-huh.

19 A. But I don't -- I thought their main
20 witnesses were conflicting and so forth. A
21 large group of people, they couldn't say --
22 they could say it may be the caliber, but
23 they couldn't really say it was the exact
24 bullets that did it.

25 Q. Okay. Did you discuss with Mr.

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1 Clark whether or not he should testify in
2 this trial?

3 A. I did, yeah.

4 Q. Okay. Did you and Mr. Clark review
5 what, if any, prior record would come in if
6 he testified?

7 A. I think -- see, I don't exactly what
8 we -- I didn't write down exactly what we
9 talked about.

10 Q. Uh-huh.

11 A. I discussed what they could bring in
12 and what they couldn't bring in and so forth.

13 Q. Right. Okay. Do you recall
14 discussing what prior record may or may not
15 come in against Mr. Clark if he testified?

16 A. I would have, probably.

17 Q. All right. Did you ask the State in
18 front of Judge Miller to outline what
19 impeachable offenses they had in the event
20 Mr. Clark testified?

21 A. I'd have to look at the transcript.

22 Q. Sure.

23 A. I can't, I can't remember.

24 Q. Okay. Sure.

25 A. (Upon review), Judge Miller would

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1 have gone over everything in terms of what he
2 could do and what he couldn't do and so
3 forth. I'm trying to find the spot where he
4 actually is talking to Mr. Clark about
5 testifying or not testifying. That's what
6 I'm looking for.

7 THE COURT: Page 104 of the
8 transcript of the second day.

9 WITNESS: If I'm looking at the
10 right place, this is line -- this is Page
11 104, Judge Miller. He talks about -- to 105.
12 I don't believe that he talks about the prior
13 record or anything.

14 DIRECT EXAMINATION CONTINUED

15 BY MS. HORLBECK:

16 Q. Okay. Did you ask about possible
17 impeachable offenses in the event your client
18 testified?

19 A. It looks like in the transcript I
20 didn't.

21 Q. Okay. All right. Would that have
22 influenced -- would that have been
23 prejudicial if that had come in against your
24 client, if he testified?

25 A. It could have been. I mean, it

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1 could have been, but I don't know if the
2 judge would even let it in or out in this
3 matter because of the prejudicial.

4 Q. All right. Okay. Please answer any
5 questions Ms. Ratigan may have for you.

6 CROSS-EXAMINATION

7 BY MS. RATIGAN:

8 Q. So would it be fair to say that the
9 best strategy was that Mr. Clark didn't do it
10 and that you were also trying to argue third-
11 party guilt?

12 A. Yes.

13 Q. Did Mr. Clark tell you his version
14 of what happened out at the house that night?

15 A. Uh-huh. Yes, he did. That he
16 didn't shoot these guys.

17 Q. But he did admit to you that he had
18 a gun there that night?

19 A. He had a gun.

20 Q. And he admitted he'd fired it in the
21 air multiple times?

22 A. In the air. That's right.

23 Q. And that he had disposed of the gun
24 afterwards?

25 A. Uh-huh, -- yes.

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1 Q. And I believe you testified you went
2 out and visited the scene?

3 A. Yes, we did.

4 Q. In addition to visiting the scene,
5 what else did you do to investigate the case?

6 A. Anyone that he wanted us to talk to
7 or whatever, we would talk to. I had an
8 investigator that was working at that time.
9 There's such a -- it was just a mad scene out
10 there that night.

11 Q. So it's fair to say that when the
12 actual shooting took place it was at night.
13 It was dark?

14 A. I believe so.

15 Q. And I believe the testimony revealed
16 there were a lot of people out there?

17 A. A lot of people, lot of cars.

18 Q. Would it also be fair to say that
19 the people that were there, the witnesses,
20 gave conflicting statements?

21 A. I think the two at least did, Josh
22 Wood and, uh, -- both gave conflicting
23 statements.

24 Q. Is there anything else you believe
25 you could have argued to the Court to meet

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1 that kind of heightened third-party guilt
2 standard?

3 A. At the time, I didn't think so.
4 At the time. At the time, I thought I -- I
5 tried to do everything I could on the third-
6 party guilt but the judge, he didn't -- he
7 just didn't go along with -- didn't want to
8 hear that.

9 Q. Did you make a recommendation to Mr.
10 Clark one way or the other about whether or
11 not she should testify?

12 A. I think -- I would have gone -- he
13 gave us a fair amount of time to talk about
14 it, I think. I think if he would have. But
15 I don't know exactly everything I said to him
16 about testifying or not testifying. I think
17 he may have been concerned about testifying
18 in front of a jury. I don't know. I don't
19 remember exactly what we talked about.

20 Q. If Mr. Clark had wanted to testify,
21 would you have put him up on the stand?

22 A. If he wanted to.

23 MS. RATIGAN: I beg the Court's
24 indulgence.

25 CROSS-EXAMINATION CONTINUED

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1 BY MS. RATIGAN:

2 Q. Can you recall now why, though you
3 had several under subpoena, you decided
4 against putting up a defense case and calling
5 those witnesses?

6 A. I think that -- I believed that the
7 State had not proved their case beyond a
8 reasonable doubt to the jury. I believed
9 that based on Mr. Armstrong's testimony, the
10 conflicting testimony that came out.

11 The fact that, while the caliber may have
12 been the same, they couldn't really -- you
13 know the State goes to incredible lengths to
14 look at the grooves of bullets.

15 I actually went down to LEC to talk to
16 Mr. Armstrong at that time, to kind of see
17 how he went about figuring out bullets that
18 kill people, things of that nature. And they
19 couldn't really put -- they didn't have
20 nothing that would indicate that the grooves
21 or the exact bullets were the same bullets,
22 even the same caliber or the gun that was
23 fired.

24 Q. And the murder weapon was never
25 recovered; is that correct?

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1

2

A. I don't believe so.

3

MS. RATIGAN: That's all I have.

4

THE COURT: Any redirect?

5

MS. HORLBECK: No, Your Honor.

6

THE COURT: All right. Mr.

7

Robinson, you may step down.

8

WITNESS: Thank you, Judge.

9

(WITNESS STEPS DOWN)

10

MS. RATIGAN: We'd ask that Mr.

11

Robinson be relieved.

12

THE COURT: All right.

13

MS. HORLBECK: That's fine. No

14

objection.

15

THE COURT: You may be released

16

and drive carefully.

17

WITNESS: Thank you, Judge.

18

MS. HORLBECK: Judge, we would

19

call Howard Stewart. He's out in the hall.

20

If I can just grab him.

21

THE COURT: Sure.

22

MS. HORLBECK: (Exits/returns to

23

courtroom)

24

(WITNESS TAKES STAND)

25

HOWARD STEWART, having been duly sworn

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1 to tell the truth, and nothing but the truth,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. HORLBECK:

5 Q. All right. Mr. Stewart, I under-
6 stand that you were not present -- let me
7 introduce myself. And I don't think I've
8 ever met you formally, except a couple times.
9 I'm Caroline Horlbeck and I'm representing
10 Mr. Brandon Culbreath (sic) in this matter.
11 Okay? I'm sorry. Clark. I've got like a
12 hundred names running through my head.

13 And I've just got a few questions to ask
14 you about this case, all right?

15 A. (Affirmative nod).

16 Q. And you've got answer out loud?

17 A. Yes, ma'am.

18 Q. Okay. All right. Now, I understand
19 that you were not present when this shooting
20 actually happened?

21 A. No, ma'am.

22 Q. And you weren't at the party at all
23 that night?

24 A. No, ma'am.

25 Q. Okay. All right, now. But do you

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1 know David Murray?

2 A. Yes, ma'am.

3 Q. All right. How do you know Mr.
4 Murray?

5 A. He's my girlfriend's brother.

6 Q. All right. How long have you known
7 Mr. Murray?

8 A. About twelve years.

9 Q. Okay. And are you close with Mr.
10 Murray?

11 A. No, ma'am.

12 Q. Do you speak with him at all?

13 A. No, ma'am.

14 Q. Is it fair to say that you're
15 estranged from David Murray?

16 A. Yes, ma'am.

17 Q. All right. And is that because he's
18 threatened you in the past; is that correct?

19 A. Yeah. We just don't get along
20 because he don't think I'm good enough for
21 his sister.

22 Q. Okay. All right. Do you recall an
23 occasion where you spoke to Mr. David Murray
24 about this -- about this party and the
25 shooting that happened in 2006?

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1 A. No, ma'am.

2 Q. Okay. All right. Do you recall
3 having a Facebook conversation with Kayte
4 Allison and also Christy Clark about this
5 matter?

6 A. Yes, ma'am.

7 Q. Okay. And --

8 MS. HORLBECK: I beg the Court's
9 indulgence.

10 THE COURT: Take your time.

11 MS. HORLBECK: I just ask these
12 be marked.

13 COURT REPORTER: Collectedly as
14 Applicant's Exhibit 1 for identification.

15 MS. HORLBECK: That's fine, thank
16 you.

17 COURT REPORTER: Thank you.

18 (SO MARKED AS APPLICANT'S EXHIBIT 1)

19 DIRECT EXAMINATION CONTINUED

20 BY MS. HORLBECK:

21 Q. All right. Mr. Stewart, so you
22 recall a Facebook conversation that you had
23 with Ms. Kayte Allison and, also, Miss
24 Christy Clark?

25 A. Yeah, I don't remember the exact

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1 conversation. I do remember talking to them.

2 Q. All right. Would it refresh your
3 memory if you had a chance to look at
4 Petitioner's Exhibit 1?

5 A. Yeah.

6 Q. All right. Okay. Take your time
7 and look at that, (tenders).

8 A. (Reviewing).

9 Q. Let me know when you're ready.

10 A. (Upon review), okay.

11 Q. Does that refresh your recollection?

12 A. Not really. Like I said, I was
13 drunk, running my mouth -- so -- about stuff
14 I'd heard before.

15 Q. Is that your Facebook page?

16 A. Yes, ma'am.

17 Q. Okay. All right. Do you know Kayte
18 Allison?

19 A. No, ma'am.

20 Q. All right. Is she a Facebook friend
21 of yours?

22 A. Yes.

23 Q. Oh, okay. So you know her through
24 Facebook?

25 A. Yes, ma'am.

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1 Q. And you know her well enough to
2 accept or send a friend request Ms. Allison.

3 A. Well, actually I knew her ex-
4 husband. I think that's how she and I ---

5 Q. Okay. What's the name of her ex-
6 husband?

7 A. Dustin Allison.

8 Q. All right. Okay. All right. So
9 you did know Ms. Allison?

10 A. (Affirmative nod).

11 Q. I'm not saying y'all are best
12 friends but you knew her?

13 A. Yeah.

14 Q. Okay. All right. And do you recall
15 what got this Facebook conversation started?

16 A. I think I had posted a status on
17 Facebook that made David mad because me and
18 him was arguing at the time.

19 Q. To make David -- David who?

20 A. Murray. David Murray mad at the
21 time. And she commented on it and asked what
22 I was talking about.

23 Q. All right. Do you recall what you
24 posted to make Mr. Murray mad?

25 A. I think it was something about, I

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1 guess people are going to jail for something
2 they didn't do.

3 Q. Okay. All right.

4 A. Because I have another guy on
5 Facebook. He was talking about it and that's
6 what brought it up.

7 Q. Talking about what?

8 A. Brandon Clark being innocent, that
9 David Murry and them did it. That's who I
10 heard all that stuff from.

11 Q. Okay. Who did you hear this from?

12 A. Austin Shaw.

13 Q. Okay. Austin Shaw. All right. Let
14 me write that name down. I'll get back to
15 you in just a second. All right.

16 So as a result of what you posted on
17 Facebook was about I guess that people
18 getting convicted; is that fair say?

19 A. Yeah.

20 Q. Okay. Then did Ms. Allison contact
21 you via Facebook?

22 A. Yes, ma'am. She sent me a message.

23 Q. Okay. And what was your response to
24 the message; do you recall?

25 A. I don't really remember.

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1 Q. All right. Do you recall telling
2 her "Was David even there? That's who I
3 heard it from?" On March the 9th at 4:07
4 a.m.?

5 A. (Reviewing).

6 Q. Well, you can look back on here if
7 you want. Flip all through that Petitioner's
8 1.

9 A. (Reviewing).

10 Q. I'm looking at March the 9th, 4:07
11 a.m. You said, "Was David even there?
12 That's who I heard it from."

13 A. (Upon review), yes. I don't really
14 remember saying it, but I was mad at the time
15 and drunk -- I mean, I'm pretty sure I did.

16 Q. Okay. What I'm looking at, March
17 the 9th, 4:09 a.m. I'm sorry. 4:00 a.m.
18 Just review that entry and then I'm going to
19 ask you a question about it.

20 A. (Upon review), okay.

21 Q. All right. It actually starts at
22 the top of the page, okay, on March the 9th,
23 3:52 a.m. where Ms. Allison -- look at that
24 for me. Is Ms. Allison asking you when you
25 heard someone say something?

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1 A. Yes, ma'am.

2 Q. Said, "When did you hear him say
3 that?"

4 A. Yes, ma'am.

5 Q. And then on March the 9th at 3:53
6 a.m., your response was, "It was a while back
7 but someone innocent shouldn't be in jail."
8 Do you recall if that was your response to
9 her question?

10 A. Yes, ma'am.

11 Q. Okay. All right. And then if you
12 go on down that same page, March the 9th at
13 4:00 a.m. Did you write, "I don't know. To
14 tell you the truth it's just been eating at
15 me. David is my brother-in-law."?

16 A. Yes, ma'am.

17 Q. Okay. All right. And flip. All
18 right. March the 9th, 4:07 a.m. Do you say
19 "Was David even there? That's who I heard it
20 from?"

21 A. Yes, ma'am.

22 Q. Okay. All right. Same day, March
23 the 9th, 4:19 a.m. Did you respond to Kayte
24 Allison, "I'm really sorry but your cuz is
25 innocent?"

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1 A. Yes, ma'am.

2 Q. Okay. All right. Now, you've also
3 said that you were drunk, yes?

4 A. Yes, ma'am.

5 Q. Okay. All right. Now, take a look
6 at these things that you wrote. Do you see
7 anywhere on there -- just, look through it.

8 A. (Reviewing).

9 Q. Okay. On that March the 9th entry at
10 3:53 a.m. during your Facebook conversation
11 with Ms. Allison, do you see any misspellings
12 in that entry where you said "it was a while
13 back but someone innocent shouldn't be in
14 jail?"

15 A. No.

16 Q. All right. Later on, down the page,
17 your 4:00 a.m. entry where you said, "I don't
18 know. Tell you the truth, it's just been
19 eating at me. David is my bro-in-law." Do
20 you see any misspellings in that sentence?

21 A. No.

22 Q. Okay. And let me direct your
23 attention to the response you've made on
24 March the 9th at 4:03 a.m. Do you see any
25 misspellings in that entry where you said,

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1 "Brandon should have fought it. I don't know
2 him, but he should have."

3 A. No, ma'am.

4 Q. All right. And then scaling down
5 the page, same day, March the 9th, 4:07 a.m.,
6 where you said, "Was David even there?
7 That's who I heard it from." Are there any
8 misspellings in that entry?

9 A. No, ma'am.

10 Q. Okay. Are there any misspellings?

11 A. No.

12 Q. Okay. And you claim you were drunk?

13 A. Yeah.

14 Q. Okay. That same day, I believe, you
15 had a -- do you recall having a conversation
16 again on Facebook with a Christy McJunkin
17 Clark? And this is again in Petitioner's 1.
18 And look through that if you'd like to..

19 A. (Upon review), okay.

20 Q. You okay to answer some questions?

21 A. Yes, ma'am.

22 Q. Okay. All right. I'm looking at
23 the entry in your conversation with Christy
24 McJunkin Clark. I'm looking at your entry at
25 11:33 p.m. Take a look at that for me.

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1 A. (Reviewing)

2 Q. Did you say, "A few years back David
3 said him and Josh is the ones who shot that
4 person and that they had to testify to save
5 theirselves"?

6 A. Uh-huh.

7 Q. That they all had a gun?

8 A. Yes, ma'am.

9 Q. Okay. And then on down that same
10 page 11:37 p.m., you respond. "Yes, David
11 Murray is my brother-in-law that's why no one
12 can know I talked to y'all."

13 A. Yes, ma'am.

14 Q. Okay. All right. Did you see any
15 misspellings or anything ---

16 A. No, ma'am.

17 Q. --- wrong with what you wrote?

18 A. No, ma'am.

19 Q. All right. Now, I think if turn the
20 page over, at 11:46 your response was, "Yes,
21 David said a few years back that they had to
22 testify to save theirselves so they wouldn't
23 go to jail."

24 A. Yes, ma'am.

25 Q. And then 11:51 p.m. "You welcome."

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1 Like I said -- did you also write "you
2 welcome. Like I said I don't know if he was
3 just acting like a badass, excuse my
4 language, or if it's true. But I figured I
5 would let y'all know. If he is innocent, he
6 needs to be freed."

7 A. Yes, ma'am.

8 Q. And then I think that's when y'all's
9 conversation ends.

10 MS. HORLBECK: At this point, I'd
11 move that into evidence, Judge. And I've got
12 the other witness if I need to tie that up.

13 MS. RATIGAN: Okay. No objections,
14 Your Honor.

15 THE COURT: It's in without
16 objection. Exhibit 1, I believe it is.
17 It's in without objection.

18 (SO ENTERED AS APPLICANT'S EXHIBIT 1)

19 MS. HORLBECK: Thank you, Judge.

20 DIRECT EXAMINATION CONTINUED

21 BY MS. HORLBECK:

22 Q. Is there anything you'd like to say?
23 I don't have any further questions for you.

24 A. No, ma'am.

25 Q. All right, let me just check with my

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1 client (sidebar with Applicant). Thank you,
2 Mr. Stewart. Please answer questions Ms.
3 Ratigan may have for you.

4 CROSS-EXAMINATION

5 BY MS. RATIGAN:

6 Q. So would it be fair to say this
7 Facebook conversation happened after Mr.
8 Clark's trial?

9 A. Yes, ma'am.

10 Q. And did you know Mr. Clark?

11 A. No, ma'am.

12 Q. You've never met him?

13 A. I think I have one time, years ago.

14 Q. Okay. So y'all aren't friends or
15 anything like that?

16 A. No.

17 Q. Were you aware of this shooting at
18 the time it happened, back in 2006?

19 A. No, ma'am.

20 Q. So you never knew that Mr. Clark had
21 been charged for killing two people at the
22 time?

23 A. Well, after a while I heard my
24 friends over the years talk about him.

25 Q. Okay. But at the time you didn't

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1 know?

2 A. No.

3 Q. Okay. And you weren't there that
4 night. You're just basing this off of
5 something that you say Mr. Murray told you?

6 A. Yes, ma'am.

7 Q. When did Mr. Murray allegedly tell
8 you what happened?

9 A. He didn't tell me.

10 Q. Okay. So how did you find out?

11 A. A guy named Austin Shaw on Facebook.

12 Q. So Austin Shaw on Facebook made some
13 comment that Murray is the one who shot these
14 two people?

15 A. Yeah. Him and Josh Wood.

16 Q. And you never talked to Mr. Murray
17 about it?

18 A. No, ma'am.

19 Q. So you just assumed that what Mr.
20 Shaw said was correct?

21 A. Yeah.

22 Q. Have you ever talked to Mr. Murray
23 about it?

24 A. No, ma'am.

25 Q. And you were mad at Murray that

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1 night and that's why you changed your status?

2 A. Yes, ma'am.

3 Q. Okay. Why were you mad at him? Is
4 there any specific reason or just kind of ---

5 A. Yeah. He was going around saying I
6 beat on my girlfriend. Got her mama and them
7 mad at me.

8 MS. RATIGAN: May I approach, Your
9 Honor?

10 THE COURT: Yes.

11 CROSS-EXAMINATION CONTINUED

12 BY MS. RATIGAN:

13 Q. Now, the dates on Plaintiff's
14 Exhibit 1, it just says March 9th. Do you
15 remember what year this would have been?

16 A. I think 2013.

17 Q. Okay. What made you decide you
18 would tell Ms. Allison and Ms. Clark this
19 information that you heard through Austin
20 Shaw?

21 A. Well, see, I just put a status on
22 there, you know, I was sort of hoping David
23 would see it. And then she started
24 questioning me on Facebook, so I started
25 running my mouth.

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1 Q. Have you ever contacted the police
2 to tell them about any of this?

3 A. No, ma'am.

4 Q. Why is that?

5 A. Because I didn't know if it was true
6 or not.

7 Q. So even though you didn't know it
8 was true you decided to tell these women that
9 it was true?

10 A. Yes, ma'am.

11 Q. So in the last two years you've
12 never contacted the police, anyone
13 officially?

14 A. No, ma'am.

15 Q. You just told these ladies?

16 A. (No verbal response).

17 MS. RATIGAN: That's all I have,
18 Your Honor.

19 THE COURT: Any redirect?

20 REDIRECT EXAMINATION

21 BY MS. HORLBECK:

22 Q. And you're not on good terms with
23 Mr. Murray; correct?

24 A. No, ma'am.

25 Q. And he's threatened you in the past?

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1 A. Yes, ma'am.

2 Q. And do you recall telling Ms. Clark
3 that you didn't want anybody to know that you
4 were talking to her about this?

5 A. Yes, ma'am.

6 Q. All right. Is that in part because
7 of the threats Mr. Murray had made against
8 you in the past?

9 A. Well, I just didn't want it to get
10 back to him, that I'd started that much
11 trouble because then he would be mad.

12 Q. If you didn't want it getting back
13 to anybody, yet you posted it on Facebook?

14 A. At the time because I was -- like I
15 said, I was mad when I posted it.

16 Q. On social media?

17 A. Yes, ma'am.

18 Q. All right. All right. I've got
19 nothing further. Thank you.

20 THE COURT: All right. Anything
21 else for this witness?

22 MS. RATIGAN: No, Your Honor.

23 MS. HORLBECK: No, thank you
24 Judge.

25 THE COURT: All right. You may

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1 step down.

2 (WITNESS STEPS DOWN)

3 THE COURT: Would y'all approach?

4 (OFF RECORD BENCH CONFERENCE)

5 THE COURT: All right. We'll be
6 on break until 1:45. So everybody be back in
7 the courtroom ready to roll at 1:45.

8 (LUNCH RECESS)

9 THE COURT: Is Mr. Clark ready?

10 MR. ARIAL: Yes, Your Honor.

11 THE COURT: Anything from the
12 State, is the State ready to proceed?

13 MS. RATIGAN: Yes, Your Honor.

14 THE COURT: All right. Y'all may
15 proceed.

16 MS. HORLBECK: Your Honor, we
17 would call Kayte Allison. And she's out in
18 the hall.

19 THE COURT: Okay. Let the record
20 reflect we're starting four minutes early.
21 There's a first for everything.

22 MS. HORLBECK: (Exits/returns to
23 courtroom).

24 (WITNESS TAKES STAND)

25 KAYTE ALLISON, having been duly sworn to

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1 tell the truth, and nothing but the truth,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. HORLBECK:

5 Q. Ms. Allison, do you know Brandon
6 Clark?

7 A. Yes, I do.

8 Q. And how long have you known Mr.
9 Clark?

10 A. My whole life.

11 Q. And do you know David Murray?

12 A. Yes, I do.

13 Q. How long have you known Mr. Murray?

14 A. Since fifth grade.

15 Q. And do you know Josh Wood?

16 A. Yes.

17 Q. How long have you know Mr. Wood?

18 A. Since, I think, ninth grade.

19 Q. And do you know a Howard Stewart?

20 A. I know of him.

21 Q. How do you know him?

22 A. He's married to David's sister.

23 Q. David who?

24 A. David Murray.

25 Q. So when you said Howard Stewart is

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1 married to David's sister, you're talking
2 about David Murray's sister?

3 A. Yes, ma'am.

4 Q. Okay. All right. Do you know
5 Howard Stewart well enough to talk with him
6 on Facebook?

7 A. He messaged me on Facebook. I'm
8 friends with him on Facebook, but I have
9 never talked to him. And he messaged me out
10 of the blue.

11 Q. All right. Okay. Do you recall
12 when he messaged you?

13 A. It's been over a year ago.

14 Q. Okay. I'm going to hand you
15 Petitioner's Exhibit 1. And I'm just going
16 to -- just look through it. These two --
17 just briefly look through and just tell --
18 and I'll ask you one question and then we'll
19 move on.

20 A. (Upon review). Yeah. Uh-huh.

21 Q. All right. Is the information
22 that's contained in Petitioner's Exhibit 1,
23 does that comply with your recollection of
24 the Facebook conversation you had with Mr.
25 Stewart?

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1 A. Yes, it does.

2 Q. Okay. All right. And you said
3 when, approximately, do you think that
4 conversation took place?

5 A. It was about a year ago.

6 Q. Okay. All right, then. All right.
7 Now, let me ask you some questions about the
8 night of this shooting. Were you present at
9 that party?

10 A. No, I was not.

11 Q. All right. Where were you?

12 A. I was at my home.

13 Q. Okay. The entire night?

14 A. (No verbal response).

15 Q. So did you actually see what
16 happened or see who did what?

17 A. No.

18 Q. Okay. All right. So were you at
19 your home the entire night?

20 A. Yes, I was.

21 Q. Where were you living at that point?

22 A. in Pelzer.

23 Q. All right. And did anybody -- were
24 you married or single at that point?

25 A. I was married to Dustin Allison.

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1 Q. All right. And was Dustin present
2 with you ---

3 A. Yeah.

4 Q. --- at your home?

5 A. Yeah. It was me and him and my son.

6 Q. All right. Okay. Now, did anybody
7 -- was it just the three of you at your
8 residence or did anybody join you?

9 A. Earlier that day it was me, Dustin,
10 and the baby at the time. And Dustin's
11 brother, Chris Allison and my cousin Brandon.
12 And ---

13 Q. So Brandon Clark is your cousin?

14 A. Yes, ma'am.

15 Q. Okay. All right. Now, that night,
16 did anybody come over to your home?

17 A. Joshua come over there around 5:30,
18 I would say. And had told him about a party
19 that was going to take place?

20 Q. Told who about a party?

21 A. Chris and Jordan and Brandon, and
22 asked them if they would go.

23 Q. Okay. All right. And did everybody
24 go or did they stay at your house? What
25 happened next?

1 A. No, they all went to the party and
2 they rode in Chris Allison's car. Chris
3 drove.

4 Q. All right. Who all went to the
5 party?

6 A. Brandon and Jordan Martis, and Chris
7 Allison.

8 Q. Okay. And did they return?

9 A. They all returned at the same time.

10 Q. Okay. Did anybody return to your
11 home first or ---

12 A. No. It was Brandon and Chris and
13 Jordan all returned at the same time.

14 Q. Okay.

15 A. And it was about forty-five minutes
16 after that is whenever Josh -- well, Josh
17 Wood showed up.

18 Q. Okay.

19 A. Nobody got out except for Josh.

20 Q. Okay. Hang on. You're getting a
21 little ahead of me. All right. So Brandon
22 who else returned from the party first?

23 A. Chris Allison and Jordan Martis.

24 Q. All right. When you say Brandon,
25 you're talking about your cousin Brandon

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1 Clark; is that correct?

2 A. Yes, ma'am.

3 Q. Okay. So they returned to your
4 house first. Forty-five minutes after
5 Brandon Clark and the other two fellows
6 returned to your home, who arrived?

7 A. Josh Wood.

8 Q. All right. And was anybody with
9 Josh?

10 A. I know there was two people in the
11 truck. It was sitting in the road. They did
12 not even pull in or put it in park. Josh
13 come up the door and knocked on the door and
14 I wouldn't let him in.

15 Q. How do you know who else was in the
16 car?

17 A. Because it was David Murray's truck.

18 Q. Okay. Did you see David Murray?

19 A. I could see him in the driver's
20 seat. Because when Josh got out he left the
21 door open and the dome light was on inside
22 the truck.

23 Q. All right. When Josh Wood got out
24 of the car, what did he do next?

25 A. He come up and knocked on the door

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1 and wanted to come inside, but he -- I
2 wouldn't let him inside.

3 Q. All right. Why wouldn't you let
4 Josh Wood come inside your home?

5 A. Because he had blood running all
6 down his legs.

7 Q. All right. And why didn't you want
8 Josh Wood inside your home?

9 A. Because my kid was less than a year
10 old and he plays on the floor, and I didn't
11 want that on my floor.

12 Q. Okay. All right. And did Josh Wood
13 ever, at any point, after the party come into
14 your residence?

15 A. No, he did not.

16 Q. Did David Murray come into your
17 residence?

18 A. No.

19 Q. All right. To your knowledge, did
20 your cousin, Brandon Clark, ever go outside
21 to speak with either Josh Wood or Dave
22 Murray?

23 A. No, ma'am.

24 Q. Okay. All right. After you had not
25 let Mr. Wood into your residence, do you know

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1 what Mr. Wood did, if anything?

2 A. He got in the truck that he come in
3 and left.

4 Q. All right. And what did Mr. David
5 Murray do if anything?

6 A. He was driving the truck. He just
7 drove away. I don't know where they went.

8 Q. Did you see them again that evening?

9 A. No.

10 Q. Okay. All right. Did Brandon stay
11 at your house the entire evening?

12 A. Yes, ma'am.

13 Q. Okay. All right. All right, then.
14 You said Brandon Clark came to your home
15 after the party. Did Brandon have anything
16 in terms of a weapon with him?

17 A. No, ma'am.

18 Q. All right. Did he have -- did you
19 see a gun or a weapon or a knife, anything?

20 A. No, ma'am.

21 Q. Okay. All right. And did you speak
22 with Mr. -- were you aware of what attorney
23 was representing your cousin, Brandon Clark?
24 Did you know who -- that's a question. Do
25 you know what attorney, do you know who was

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1 representing your cousin?

2 A. Yes. Scott Robinson.

3 Q. Okay. Did you have a chance to
4 speak with Mr. Robinson about this case?

5 A. Every time that Brandon and his
6 parents went to his actual office to speak
7 with him, I was with them.

8 Q. Okay.

9 A. And, yes, I spoke to him every time.

10 Q. All right. Did you have a chance to
11 tell Mr. Robinson what you'd seen?

12 A. Yes, ma'am.

13 Q. All right. Did you have a chance to
14 tell Mr. Robinson about Mr. Wood's
15 appearance?

16 A. Yes, I did

17 Q. Were you able to speak with Mr.
18 Robinson about whether or not Mr. Wood came
19 into your home that evening?

20 A. Uh-huh.

21 Q. Okay. All right. And did anyone
22 subpoena you to come to the trial of this
23 case and testify?

24 A. Scott Robinson did. I was served a
25 subpoena by Al Cashion, a bounty hunter.

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1 Q. All right. Okay. Did you have a
2 chance to testify in this case?

3 A. No. He never called me upon the
4 stand.

5 Q. All right. Okay. Is there anything
6 I've left out that you'd like to add?

7 A. No, ma'am.

8 Q. All right. Please answer any
9 questions Ms. Ratigan may have for you.

10 A. Okay.

11 MS. RATIGAN: Very briefly.

12 CROSS-EXAMINATION

13 BY MS. RATIGAN:

14 Q. Did you attend Mr. Clark's trial?

15 A. Yes, ma'am. I never got to come
16 inside because they never called on me, but I
17 was served a subpoena.

18 Q. Okay. And Chris Allison, is that
19 your husband's brother?

20 A. Yes, it is.

21 Q. Okay. And do you know if he
22 testified at trial?

23 A. Yes, he did.

24 Q. Okay. Did he ever tell you
25 afterwards about his testimony?

1 A. No. We never talked about it.

2 Q. Okay. So you don't know what he
3 testified to?

4 A. No.

5 Q. Would he have seen Josh Wood's
6 bloody leg when he came back by the house
7 that night and he was there? Would he have
8 seen that?

9 A. Yeah -- no, because he was sitting
10 in the den when I opened the front door.

11 MS. RATIGAN: That's all I have.

12 THE COURT: All right.

13 REDIRECT EXAMINATION

14 BY MS. HORLBECK:

15 Q. When you have this Facebook
16 conversation with Mr. Howard Stewart, was
17 there anything -- and you can look again,
18 look if you want, did Mr. Stewart mention
19 anything about trying to make Mr. Murray mad
20 or anything like that?

21 MS. RATIGAN: Objection, Your Honor.
22 This is outside the scope of Redirect.

23 THE COURT: I'm going to overrule.
24 I'm going to let her go into that.

25 MS. HORLBECK: I'm not going to

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1 ask him -- this is my only question.

2 REDIRECT EXAMINATION CONTINUED

3 BY MS. HORLBECK:

4 Q. When you have this Facebook
5 conversation with Mr. Howard Stewart, was
6 there anything -- and you can look again,
7 look if you want, did Mr. Stewart mention
8 anything about trying to make Mr. Murray mad
9 or anything like that?

10 A. No, he wasn't trying to make David
11 mad.

12 Q. All right. Thank you. That's all I
13 have. Thank you.

14 THE COURT: All right. You may
15 step down.

16 (WITNESS STEPS DOWN)

17 MS. RATIGAN: And may she be excused
18 from her subpoena?

19 THE COURT: Yes, she can be. No
20 objection?

21 MS. RATIGAN: No.

22 MS. HORLBECK: Your Honor, we'll
23 call Dustin Allison.

24 THE COURT: All right.

25 MS. HORLBECK: He's out in the

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1 hall (exits/returns to courtroom)

2 (WITNESS TAKES STAND)

3 DUSTIN ALLISON, having been duly sworn to
4 tell the truth, and nothing but the truth,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. HORLBECK:

8 Q. Mr. Allison, do you know Brandon
9 Clark?

10 A. Yes, ma'am.

11 Q. How long have you known Mr. Clark?

12 A. Pretty much all my life, ever since
13 I moved to South Carolina.

14 Q. When did you move to South Carolina?

15 A. When I was in fourth grade.

16 Q. Okay. Do you know David Murray?

17 A. Yes, ma'am.

18 Q. How long have you known Mr. David
19 Murray?

20 A. Since middle school.

21 Q. And do you know Josh Wood?

22 A. Yes, ma'am.

23 Q. Okay. How long have you known Mr.
24 Wood?

25 A. About the same.

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1 Q. All right. When you say about the
2 same, what do you mean?

3 A. Middle school. We all grew up in
4 the same school. We all hung out together.

5 Q. All right. And how old are you now?

6 A. Thirty-one.

7 Q. All right. Okay. Now, were you
8 present at the scene of the shooting?

9 A. No, ma'am.

10 Q. Did you go to that party at all?

11 A. No, ma'am.

12 Q. And did you see anything that
13 happened at that party?

14 A. No, ma'am.

15 Q. Okay. All right. Now, at the time
16 of this shooting were you married, single,
17 what was going on?

18 A. I was married to Kayte.

19 Q. All right. And where were you guys
20 living?

21 A. On in Pelzer.

22 Q. All right. Now, where were you that
23 night of the shooting?

24 A. At home with my family.

25 Q. When you say your family, who was

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1 with you?

2 A. Kayte and my son.

3 Q. Okay. All right. And did anyone
4 come over to your house that evening?

5 A. Afterward, yeah.

6 Q. All right. When you say afterwards,
7 after what?

8 A. After the party.

9 Q. All right. Who came to your house
10 after the party?

11 A. Brandon and Chris showed up first.
12 And about thirty or forty-five minutes later,
13 Josh Wood and Murray showed up.

14 Q. Okay. When you say Brandon and
15 Chris showed up, how about using last names.

16 A. Chris Allison my brother and Brandon
17 Clark.

18 Q. Okay. They showed up first; right?

19 A. Uh-huh.

20 Q. All right. When you saw Mr. Clark,
21 did he have anything on him in terms of a
22 weapon?

23 A. No, ma'am.

24 Q. Okay. Did you see a gun, a knife,
25 anything like that?

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1 A. No, ma'am.

2 Q. Okay. All right. And what about
3 Mr. Chris Allison, did he -- was he armed at
4 all?

5 A. No, ma'am.

6 Q. Okay. All right. Now, when forty-
7 five minutes later who arrived at your
8 residence?

9 A. Josh Wood and David Murray.

10 Q. All right. And did you -- what, if
11 anything happened when those two -- when Josh
12 Wood and David Murray showed up?

13 A. Well, Josh Wood tried to come in the
14 house and we wouldn't let him in because he
15 was all bloody.

16 Q. Okay.

17 A. He had cut his leg. And he had told
18 me that he cut his leg kicking in the front
19 windshield of the car. And we wouldn't let
20 him in the house because he was bleeding
21 everywhere. And Murray sat on the front
22 porch and never came in the house.

23 Q. All right. Did you see -- to your
24 knowledge, did Mr. Brandon Clark ever go
25 outside and speak to either ---

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1 A. No. Brandon was upstairs with my
2 son. He loved my son to death and he -- when
3 they came in, they was kind of ---

4 Q. Who was they?

5 A. Him and my brother.

6 Q. When you say him, who are you ---

7 A. Brandon Clark and Chris Allison,
8 when they came in the house, they was kind of
9 rowdy. They woke up Cain Allison, my son.
10 And Brandon went up there and put him back to
11 sleep.

12 Q. Okay. All right.

13 A. And that's where he was when David
14 Murray and Josh Wood showed up.

15 Q. Okay. And did you -- while Josh
16 Wood and David Murray were present -- when
17 they arrived, did you ever see Mr. Clark
18 speak to either David Murray or Mr. Wood?

19 A. Not that I know of. I didn't see
20 him, no, ma'am.

21 Q. Okay. And did -- you said Josh
22 Wood, was he allowed inside the house?

23 A. No. He was bleeding too badly.

24 Q. Okay. And did Mr. David Murray come
25 inside your home?

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1 A. Uh-uh.

2 COURT REPORTER: Is that a no?

3 WITNESS: (Affirmative nod),
4 "no" -- yes, ma'am.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. HORLBECK:

7 Q. What, if anything did Josh Wood and
8 David Murray do next?

9 A. I'm not sure where they went. We
10 gave Josh Wood a roll of paper towels to
11 bandage up his leg. And then they was -- I
12 guess they left. I'm not sure.

13 Q. Okay. But did they stay at your
14 residence?

15 A. For a short period of time. I was
16 inside.

17 Q. All right. Where were they when
18 they were at your residence?

19 A. On the front porch.

20 Q. Okay. How long -- just do you know
21 how long they were there? If you don't
22 that's okay? I just ---

23 A. No, I don't know.

24 Q. All right. Did they -- after you
25 gave them some paper towels, did they

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1 eventually leave?

2 A. Yes, ma'am.

3 Q. Okay. All right. Did you have an
4 opportunity to talk to Josh Wood that night?

5 A. Well, not really talk to him but he
6 mentioned some things that ---

7 Q. That night?

8 A. Yes, ma'am.

9 Q. What did Mr. Wood mention to you?

10 A. Well, he had mentioned what was
11 going on and how it all happened and all
12 this. And he mentioned ---

13 Q. Do you mean the shooting?

14 A. Yeah.

15 Q. Okay.

16 A. And then he had mentioned to me that
17 ---

18 Q. Who mentioned?

19 A. Josh Wood mentioned to me that when
20 he was kicking in the windshield, Brandon and
21 Chris had already been gone, from what I
22 understand. He didn't come out and say it
23 exactly like that. But from what, you know,
24 from what I understood what he was trying to
25 say, that's what I took from it. It could

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1 have been something different. But from what
2 I gathered, what he was telling me that he
3 noticed Chris and them was gone because -- I
4 guess they parked close to each other and I'm
5 not sure. I don't know.

6 Q. Okay. All right. So who noticed
7 that Chris and ---

8 A. Josh.

9 Q. Josh Wood?

10 A. Uh-huh.

11 Q. All right. From your understanding
12 of what Josh Wood said to you, what was Josh
13 Wood doing when he noticed that Chris -- that
14 Brandon Clark had already left?

15 A. Well, from my understanding, he was
16 looking for a tire iron, because he was ---

17 Q. Who was?

18 A. Joshua was.

19 Q. Okay.

20 A. Because I know he -- he mentioned
21 that he broke the back glass with a tire iron
22 or one of the side glasses with a tire iron
23 and kicked in the front windshield. That's
24 what cut his leg. That's what he told me
25 when he first showed up with a bloody leg.

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1 Q. Okay. And whose window was Joshua
2 saying he kicked in?

3 A. Kamron Wade and the young fellow.

4 Q. Are those the shooting victims?

5 A. Yes, ma'am.

6 Q. Okay. All right. And did Josh Wade
7 tell you anything about where Brandon Clark
8 was when he was kicking in the windshield?

9 A. He just mentioned that he didn't see
10 him.

11 Q. Okay. Was he present then? Did Mr.
12 Wood know where Brandon Clark was?

13 A. Not that I know of. I don't reckon
14 he knew.

15 Q. Did Mr. Wood say anything about the
16 condition of these two victims when he was
17 kicking in glass?

18 A. They was still alive.

19 Q. Okay. All right. Did you have an
20 opportunity to speak with Mr. Clark's
21 attorney about what you saw and heard?

22 A. Many a times.

23 Q. How many times do you think you ---

24 A. I would say four or five times.

25 Q. All right. And was Kayte Allison

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1 also present when you spoke with Mr. Allison
2 [sic]?

3 A. Yes, ma'am. Yes, ma'am.

4 Q. Okay. All right. And were you
5 issued a subpoena to appear and testify at
6 the trial?

7 A. Yes, ma'am.

8 Q. All right. And did you testify?

9 A. No, ma'am.

10 Q. Who issued the subpoena?

11 A. I guess ---

12 Q. If you know?

13 A. Scott. Or Harvey -- one of them.
14 When Scott couldn't make it, he sent Harvey.
15 Harvey Black or -- I can't remember. It's
16 Harvey something.

17 Q. Right?

18 A. He questioned us the whole time.
19 Scott questioned us three or four times.

20 Q. Was this prior to trial?

21 A. Oh, yeah.

22 Q. Okay. So who subpoenaed you to come
23 to court to testify?

24 A. Scott.

25 Q. Scott who?

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1 A. Robinson. Okay. All right, then.
2 All right. And your understanding -- tell me
3 again. You were a little hazy. I was a
4 little confused about what Josh Wood said and
5 what your understanding of where Brandon
6 Clark was? .

7 A. All right. When they first showed
8 Brandon -- Josh and David Murray, when they
9 first showed up, he was bleeding. He was
10 trying to stop the blood with his tee shirt.
11 We wouldn't let him in the house. When he
12 was at the door trying to come in the house,
13 Brandon was upstairs.

14 Q. Okay. I got that part of it.

15 A. Okay.

16 Q. But I'm confused about Joshua's
17 understanding of where Brandon Clark was?

18 A. Oh. Like I said he just said he
19 didn't see the car.

20 Q. Who said this?

21 A. Josh.

22 Q. And Josh Wood didn't see whose car?

23 A. My brother's. It was a Dodge
24 Avenger.

25 Q. And your brother is?

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1 A. Chris Allison.

2 Q. So was Chris Allison alone?

3 A. He was with him -- he gave Brandon a
4 ride to the party.

5 Q. All right. By Brandon, you mean
6 Brandon Clark?

7 A. Clark, yes, ma'am.

8 Q. Okay. All right. And I don't mean
9 to be such a stickler about the names. It
10 get confusing sometimes.

11 A. No, you're fine. I'm sorry.

12 Q. All right, then. And you did not
13 testify at the trial of this case. Correct?

14 A. (Affirmative nod), no, ma'am. All
15 right. Please answer any questions Ms.
16 Ratigan may have for you.

17 MS. RATIGAN: Very briefly.

18 CROSS-EXAMINATION

19 BY MS. RATIGAN:

20 Q. So Chris Allison is your brother?

21 A. Yes, ma'am.

22 Q. And Chris was there when Mr. Wood
23 came by after the party?

24 A. Yes, ma'am.

25 Q. And your testimony was that Josh

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1 Wood got out of the car and came up to y'all's
2 door and knocked?

3 A. Uh-huh.

4 Q. And that Mr. Murray had gotten out
5 and was on the porch?

6 A. He was sitting on the front steps.

7 Q. Now, when Mr. Wood came to the door,
8 would your brother, Chris, have been in a
9 position to see if his leg was bloody or not?
10 Do you know?

11 A. No. Yes, ma'am.

12 Q. And do you know if your brother
13 Chris testified at trial?

14 A. I believe he did, yes, ma'am.

15 Q. Did y'all ever talk about what he
16 had testified about?

17 A. No, ma'am.

18 Q. So you don't know what he testified
19 about when he was ---

20 A. I wasn't in the hallway.

21 Q. Okay. Now, when Mr. Wood talked to
22 you about what happened at the party, he just
23 said he didn't see Brandon; right?

24 A. Yeah.

25 Q. Okay. He didn't necessarily say he

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1 was gone.

2 A. He didn't see him, yes, ma'am.

3 Q. Okay.

4 MS. RATIGAN: That's all I have,
5 Your Honor.

6 MS. HORLBECK: Nothing further.
7 May this witness be excused.

8 THE COURT: Yes.

9 (WITNESS STEPS DOWN)

10 THE COURT: Are you going to call
11 your client at this point?

12 MS. HORLBECK: Just real briefly.

13 THE COURT: All right.

14 MS. HORLBECK: I'll call my
15 client.

16 THE COURT: I was going to let the
17 other case so they'd know what's going on.

18 (COURT AT-EASE)

19 THE COURT: Ms. Horlbeck, you can
20 proceed. You can proceed. Sorry to
21 interrupt you there.

22 MS. HORLBECK: That's all right,
23 Judge. Mr. Clark. We call Mr. Brandon Clark
24 to the stand.

25 THE COURT: Mr. Clark, if you'll

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1 come around.

2 (WITNESS TAKES STAND)

3 BRANDON CLARK, having been duly sworn to
4 tell the truth, and nothing but the truth,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. HORLBECK:

8 Q. Mr. Clark, who represented you in
9 this case?

10 A. Scott D. Robinson.

11 Q. Was he retained or appointed?

12 A. Retained.

13 Q. How long did Mr. Robinson represent
14 you?

15 A. Approximately three years.

16 Q. And were you incarcerated the entire
17 three years or did you make bond?

18 A. I made bond and was on house arrest.

19 Q. All right. Now, during the time
20 period that Mr. Robinson represented you, did
21 you have the opportunity to meet with Mr.
22 Robinson?

23 A. Yes, ma'am.

24 Q. During your meetings with Mr.
25 Robinson, did you and your attorney discuss

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1 your case?

2 A. Yes, ma'am.

3 Q. Did you and your attorney review
4 discovery?

5 A. Yes, ma'am.

6 Q. All right. Did you request a copy
7 of your discovery?

8 A. I was given the discovery but I
9 didn't actually request a copy of it. I did
10 look over it and turn it in.

11 Q. All right. Okay. But you did have
12 the opportunity to review it by yourself?

13 A. Yes, ma'am.

14 Q. And were there any offers in this
15 case that Mr. Robinson reviewed with you?

16 A. Are you talking about plea offers?

17 Q. Ys. Yes, sir.

18 A. Yes, ma'am. There were two pleas.

19 Q. Okay. What were the plea offers to
20 your recollection?

21 A. The first plea was twelve years run
22 concurrent. And the second plea was fifteen
23 and fifteen, judge's discretion as far as cap
24 at thirty, judge's discretion.

25 Q. Okay. Are these the only charges

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1 that Mr. Robinson represented you on?

2 A. No, ma'am. He represented me on an
3 ABHAN.

4 Q. Okay. All right. And did you plead
5 guilty to that ABHAN charge?

6 A. Yes, ma'am.

7 Q. All right. When was that plea to
8 your recollection? How far -- was it before
9 your trial or after?

10 A. It was August 13th, 2009 before my
11 trial. And my trial started November 2nd.

12 Q. Okay. All right. Other than that
13 ABHAN, did you have anything else on your
14 record?

15 A. No, ma'am.

16 Q. All right. That would have been a
17 first conviction for you then?

18 A. Yes, ma'am.

19 Q. Okay. All right. Now, during your
20 discussions with Mr. Robinson, did you and he
21 talk about whether or not you would testify?

22 A. Somewhat. Mr. Robinson didn't want
23 to put me on the stand because he felt like
24 -- I don't know. I don't know exactly what
25 he felt, but he didn't want to put me on the

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1 stand as far as -- I'm not exactly sure. I
2 mean ---

3 Q. All right. Was this case always a
4 trial?

5 A. No, ma'am. I actually accepted the
6 twelve-year plea and the judge wanted to give
7 me more time, so I decided to go to trial.

8 Q. Oh, okay. All right. Was this the
9 attempted plea in front of Judge Griffith?

10 A. Yes, ma'am.

11 Q. Okay. All right. I'd forgotten
12 about that. All right. Okay. So you went
13 to trial. And that plea in front of Judge
14 Griffith was that after you'd already pled to
15 the ABHAN case?

16 A. Yes, ma'am. No, no. No, ma'am. It
17 couldn't have been. Because the first time I
18 wasn't already -- I hadn't already been
19 convicted yet of anything.

20 Q. Okay. All right. Now, what was
21 your defense in this case?

22 A. I don't understand the question.

23 Q. To your understanding did you and
24 Mr. Robinson talk about potential defenses in
25 this case?

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1 A. Somewhat. He told me some of the
2 pros and cons of presenting a defense and not
3 presenting, so ---

4 Q. Okay. Did you tell him your side of
5 the story?

6 A. Yes, ma'am.

7 Q. All right. And what was your side
8 of the story?

9 A. That I didn't kill anyone; that I
10 left, shot in the air and left immediately.

11 Q. Okay. All right. And did you have
12 a -- was part of your defense that somebody
13 else did this or not?

14 A. He presented a third-party guilt
15 Motion that the judge, I don't believe, ever
16 ruled on.

17 Q. Okay. Okay. Did Mr. Robinson argue
18 that defense at closing argument? Did he
19 argue that Mr. Wood was responsible for these
20 killings?

21 A. I think he alluded to it, but I
22 mean, he pretty much argued that Mr. Wood was
23 the one that done it rather than me. But I
24 don't think he could actually point the
25 figure at him.

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1 Q. Okay. And did you and Mr. Robinson
2 discuss witnesses that you wanted him to
3 contact and interview?

4 A. Yes, ma'am.

5 Q. All right. Do you recall what names
6 you gave Mr. Robinson?

7 A. Shawn Roberts, Chris Allison, Kayte
8 Allison, Dustin Allison, and I don't recall
9 the others, maybe Jordan Martis.

10 Q. Maybe Joey (sic) ---

11 A. Jordan Martis.

12 Q. Jordan. All right. To your
13 knowledge, did Mr. Robinson interview these
14 witnesses?

15 A. To my knowledge, he did.

16 Q. Were any of these witnesses with you
17 when you met with Mr. Robinson?

18 A. Yes, ma'am. Kayte Allison and
19 Dustin Allison were with me a few times when
20 I was at Mr. Robinson's.

21 Q. All right. To your knowledge did
22 they have a chance to -- the Allisons, did
23 they have a chance to speak with Mr. Robinson
24 about what they saw and heard?

25 A. Yes, ma'am.

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1 Q. Okay. All right. And do you know
2 if the Allisons -- when I say Allisons, I
3 mean Kayte and Dustin. Were they subpoenaed
4 to testify at your trial?

5 A. Yes, ma'am. I think so.

6 Q. Okay. All right. How about your
7 other witnesses? Were they subpoenaed to
8 testify at trial?

9 A. I think so. I'm not sure. I never
10 seen them during trial. They weren't called
11 to put on the stand.

12 Q. I'm sorry. Say that again. You
13 never saw them what?

14 A. I never saw them because they were
15 never called to be put on the stand.

16 Q. Okay. And were they allowed -- to
17 your knowledge, were these witnesses allowed
18 to be in the courtroom with you during the
19 trial?

20 A. No, ma'am.

21 Q. Do you know why?

22 A. No, ma'am.

23 Q. Okay. All right. Okay. And did
24 Mr. Robinson put up a defense? Did he put up
25 any of these witnesses he had subpoenaed?

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1 A. No, ma'am. All he did was cross-
2 examine the State's witnesses?

3 Q. Okay. Did you and Mr. Robinson
4 discuss his decision not to put any of the
5 witnesses on the stand?

6 A. Briefly, but I don't remember what
7 was said.

8 Q. Okay. All right. So you talked
9 about it briefly. What does that mean? And
10 where did you and Mr. Robinson talk about ---

11 A. Right there at that table.

12 Q. Right here?

13 A. Yes, ma'am.

14 Q. Okay. You and he talked about
15 whether to put on a defense at all?

16 A. Yes, ma'am.

17 Q. Do you recall what your discussion
18 was?

19 A. I recall that he did not want to
20 call witnesses.

21 Q. Okay. Did he provide you a reason?

22 A. He may have, but I don't remember
23 what?

24 Q. When I say he, I mean your attorney?

25 A. Yes, ma'am. I don't remember what

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1 it was.

2 Q. Did you agree with that reasoning or
3 no?

4 A. I mean, I went with it because he
5 was my attorney and I don't know anything
6 about the law.

7 Q. All right. And did you rely on his
8 advice and expertise?

9 A. Yes, ma'am.

10 Q. Okay. All right. Okay. Did you and
11 your attorney discuss jury instructions?

12 A. I don't recall.

13 Q. Okay. All right. Do you recall
14 whether or not there was a jury instruction
15 about an inference of malice -- or jury
16 charge?

17 A. I think there was. Yes, there was a
18 jury charge on inference of malice.

19 Q. To your recollection, do you know if
20 Mr. Robinson objected?

21 A. He did not object.

22 Q. Okay. All right. Now, do you think
23 that the fact that Mr. Robinson did not call
24 any witnesses to testify on your behalf --
25 let me back up.

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1 Did you also name any witnesses that
2 you wanted -- let me back up.

3 Did you also provide names of
4 witnesses who would have corroborated the
5 contentious relationship between Mr. Josh
6 Wood and one of the victims?

7 A. Yes, ma'am. But I believe that
8 would have been Shawn Roberts.

9 Q. Okay. Do you know if Mr. Robinson
10 interviewed these witnesses to talk about
11 their contentious relationship between the
12 victim and Mr. Wood?

13 A. I believe he did.

14 Q. Okay. And were any of those
15 witnesses put on the stand?

16 A. No, ma'am.

17 Q. All right. And do you think the
18 outcome of your trial would have been
19 different if these witnesses had been placed
20 on the stand?

21 A. Yes, ma'am.

22 Q. Okay. And do you think if they had
23 been able to testify and share the things
24 that they heard and saw and their knowledge
25 of the relationship between one of the

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1 victims and Mr. Wood, do you think the
2 outcome of your trial would have been
3 different?

4 A. Yes, ma'am.

5 Q. And you might not be sitting here
6 today?

7 A. Yes, ma'am.

8 Q. Okay. All right. Do you have any
9 further issues you want to present that I've
10 missed?

11 A. The one that I can think of in my
12 transcript was -- let me find the page. I
13 think it's 115.

14 Q. Do you know what day of the trial?

15 A. November 3rd through the 4th.

16 Q. Okay.

17 A. And it was the closing arguments and
18 Ms. Shays actually said that -- she was
19 talking about Josh Wood. And she submitted
20 to the jury that he was being honest and
21 truthful. I felt like that was -- well, how
22 is the best to say it -- giving her opinion
23 to the jury and trying to lead them in the
24 result that she wanted them to give.

25 Q. Right. Did Mr. Robinson object to

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1 that?

2 A. No, ma'am.

3 Q. All right. And do you think the
4 outcome of your trial would have been
5 different had that objection been made?

6 A. Yes, ma'am.

7 Q. Okay. All right. Now, you also in
8 your petition you listed that trial counsel
9 should have objected to the indictment for
10 the possession of a weapon during the
11 commission of a violent crime. Did you want
12 to explain that to the Court?

13 A. I think that had to do with the
14 inference of malice, I think, because the
15 malice had to do with having a weapon.

16 Q. Okay. All right. Are there any
17 other allegations that you wanted to talk
18 about?

19 A. (No verbal response).

20 Q. Allegations of ineffective
21 assistance of counsel that you want to
22 discuss today?

23 A. That the jury wanted to hear
24 testimony from Chris Allison and Josh Wood
25 again, a second time in the trial.

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1 Q. Yes, sir. Yes.

2 A. I believe that Kayte Allison and
3 Dustin Allison's testimony could have
4 disputed what Josh said the second time and
5 could have helped me out.

6 Q. All right. Did you believe your
7 testimony corroborated Mr. Chris Allison's
8 testimony?

9 A. Yes, ma'am.

10 Q. All right. Please answer any
11 questions that Ms. Ratigan may have.

12 Q. Yes, ma'am.

13 THE COURT: Cross-examine.

14 MS. RATIGAN: Thank you, Your Honor.
15 Very, very briefly.

16 CROSS-EXAMINATION

17 BY MS. RATIGAN:

18 Q. So Kayte is your cousin?

19 A. Yes, ma'am.

20 Q. And Dustin is her husband?

21 A. Was her husband.

22 Q. Was her husband. And Chris is
23 Dustin's brother?

24 A. Yes, ma'am.

25 Q. So that's how you know all these

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1 folks?

2 A. Yes, ma'am. We went to school
3 together.

4 Q. And you dispute you had a gun at the
5 party?

6 A. Not at all.

7 Q. And you don't dispute that you fired
8 several shots up into the air?

9 A. No, ma'am, I don't.

10 Q. Okay. And this prior ABHAN, didn't
11 the State have evidence that gun that was to
12 shoot your father because ABHAN charge would
13 have matched the shells found at the scene?

14 A. I don't know.

15 Q. You don't recall that?

16 A. I don't.

17 Q. Do you recall Mr. Wood testifying at
18 your trial and admitting that his leg was
19 bloody after the party?

20 A. Yes, ma'am. I think so.

21 Q. And do you recall Mr. Chris Allison
22 testifying at your trial and saying that Josh
23 Wood's leg was bloody after the party?

24 A. Yes, ma'am.

25 Q. And so him being bloody and injured

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1 was brought forth at your trial?

2 A. Yes, ma'am. But that wasn't what I
3 was talking about.

4 Q. Uh-huh.

5 A. He actually stated that I told him
6 at my cousin's house that, "I think I killed
7 those two men" ---

8 Q. Uh-huh.

9 A. --- when I never said that to him.
10 There was no way for me to say that to him.

11 Q. And there's testimony in your trial
12 about Mr. Wood kicking in the window of the
13 car; right?

14 A. Uh-huh.

15 Q. So your testimony today is that if
16 all these witnesses had testified for you,
17 the outcome of your trial would have been
18 different.

19 A. I believe so.

20 Q. And why is that?

21 A. Because they could have disputed
22 what -- I believe a main witness -- a main
23 witness said.

24 Q. But didn't your attorney, through
25 cross-examination get a lot of the State's

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1 witnesses to admit inconsistencies?

2 A. He may have but at the same time I
3 believe that actually hearing it from the
4 horse's mouth is a little better.

5 Q. And you don't recall now why Mr.
6 Robinson decided not to put up a defense
7 case?

8 A. No, ma'am. I don't. I'm unsure.
9 All I know is he said it'd be a good idea.

10 Q. Did you want to testify at your
11 trial?

12 A. I didn't really -- it didn't really
13 matter to me either way.

14 Q. So you didn't really care one way or
15 the other?

16 A. I didn't mind either way, whether I
17 did or not.

18 Q. So you didn't want the opportunity
19 to tell the jury your side of the story?

20 A. I did. But at the same time I went
21 with what my lawyer told me. That's what I
22 did. I went with his advice.

23 Q. But you can't remember what that
24 advice was?

25 A. I remember he said he didn't want to

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1 present a defense.

2 Q. And you can't remember why?

3 A. No, ma'am.

4 Q. Okay.

5 MS. RATIGAN: That's all I have,

6 Your Honor.

7 THE COURT: Any redirect?

8 MS. HORLBECK: Nothing further,

9 Judge. And we just have one more real quick

10 witness. You can come down, Mr. Clark.

11 (WITNESS STEPS DOWN)

12 MS. RATIGAN: We would Christy Clark

13 to the stand.

14 THE COURT: All right. Ms. Clark,

15 come around.

16 (WITNESS TAKES STAND)

17 CHRISTY CLARK, having been duly sworn to

18 tell the truth, and nothing but the truth,

19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. HORLBECK:

22 Q. Ms. Clark, how do you know Brandon
23 Clark?

24 A. He's my son.

25 Q. Okay. And do you recall a Facebook

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Case No. 13-CP-23-1325

Hearing of June 18, 2015 - Testimony of Christy Clark
Before The Honorable Perry H. Gravely

1 conversation you had with a Howard Stewart?

2 A. Yes, ma'am.

3 Q. Okay. All right. What I want to do
4 is have you take a look at Petitioner's
5 Exhibit 1, your portion of it. All I need
6 you just to look over it briefly for a
7 second.

8 A. (Upon review), okay.

9 Q. Okay. Now, the posts that are
10 contained within Petitioner's Exhibit 1 that
11 I just had you review, does that -- is that
12 the substance of the Facebook conversation
13 you had with Mr. Stewart?

14 A. Uh-huh, (affirmative nod).

15 Q. Okay. And in that Facebook
16 conversation, did Mr. Stewart say anything
17 about him wanting to make Mr. David Murray
18 mad?

19 A. No, ma'am. No, ma'am.

20 Q. All right. Now, you were not
21 present for the night of the shooting, were
22 you?

23 A. No, ma'am.

24 Q. And did you see anything at all
25 about what happened?

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1 A. No.

2 Q. All right. Did you have any
3 independent knowledge about who did what or
4 anything, other than this Facebook
5 conversation?

6 A. No.

7 Q. All right. That's all I have.
8 Please answer any questions that Ms. Ratigan
9 may have.

10 CROSS-EXAMINATION

11 BY MS. RATIGAN:

12 Q. Did Mr. Wood or Mr. Murray ever tell
13 you that they had shot the victims in this
14 case?

15 A. Mr. Wood and Mr. Murray would not
16 come near us. They avoided us like the
17 plague.

18 Q. Okay. So, no, they never talked to
19 you?

20 A. No.

21 Q. Did Mr. Stewart ever tell you that
22 he heard any information about this directly
23 from Mr. Murray?

24 A. Yes, ma'am.

25 Q. He did, in the Facebook?

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1 A. Yes, ma'am.

2 Q. He said he heard it directly from
3 Mr. Murray?

4 A. Yes, ma'am.

5 Q. He didn't say he heard it from some
6 other person?

7 A. No, ma'am.

8 Q. After you had this conversation with
9 Mr. Stewart a couple of years ago, did you
10 tell anybody about it?

11 A. My husband and my daughter.

12 Q. Why did you not call the police?

13 A. We turned it over to the lawyer
14 handling Brandon's case now.

15 Q. But if you had this Facebook
16 conversation that in your mind would be
17 helpful to your son, why didn't you go to the
18 police?

19 A. Well, honestly, after what we've
20 already been through with everything, I
21 trusted her more than I do them.

22 Q. Did you ever call anyone in the
23 solicitor's office about this Facebook
24 conversation?

25 A. No. I didn't know what to do,

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1 really. But then we turned it over to her.

2 Q. And you believe everything in that
3 Facebook conversation is true?

4 A. I do.

5 Q. Okay.

6 MS. RATIGAN: That's all I have,
7 Your Honor.

8 MS. HORLBECK: Just one, briefly.

9 REDIRECT EXAMINATION

10 BY MS. HORLBECK:

11 Q. Do you recall when this Facebook
12 conversation took place?

13 A. Around March of last year.

14 Q. Okay. 2014?

15 A. '14.

16 Q. Okay. That's all I have. Thank
17 you.

18 THE COURT: All right. You can
19 step down.

20 (WITNESS STEPS DOWN)

21 MS. HORLBECK: And we would rest.

22 THE COURT: Anything from the
23 State?

24 MS. RATIGAN: No, Your Honor.

25 MS. HORLBECK: Just a brief

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1 argument, Judge.

2 THE COURT: Yes.

3 MS. HORLBECK: Judge, this is a
4 case that's no direct evidence that connected
5 the killing to Mr. Brandon. There are also
6 no witnesses that saw Mr. Clark pointing a
7 gun at the victims and shoot into them.

8 There's certainly evidence that Mr. Clark
9 shot into the air, and I think that's from
10 his own admission. But this was certainly
11 not a slam dunk for the State, Judge.

12 And it seems like this case was right
13 down the middle and probably needed every
14 ounce of testimony and evidence to push it
15 over to the not guilty realm that -- it
16 needed as much evidence as it could get to
17 help it get over there, Judge, which is why I
18 believe that the Allison's testimony was so
19 important.

20 It seems that the main thrust of the
21 evidence was from Mr. Josh Wood and also
22 David Murray.

23 Just to briefly summarize some of the
24 incriminating things that Josh -- both those
25 witnesses had incriminating information about

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1 Mr. Clark.

2 Mr. Murray testified that he talked with
3 Mr. Clark at Kayte Allison's home and that
4 Mr. Clark mentioned that Chris Allison was
5 supposed to have thrown the gun in the river.
6 So that would have been an incriminating
7 statement.

8 Mr. Woods said that Mr. Clark told him at
9 Kayte Allison's house that he was afraid he'd
10 shot these victims, that he was worried.

11 If Mr. Robinson had called the Allison's
12 to the stand, there would have been abundant
13 evidence that those conversations between my
14 client and Mr. Murray and Mr. Wood never
15 could have taken place because those two
16 never came into the house.

17 I believe that would have been very
18 important, Judge, especially given the
19 general questionable preparedness that
20 counsel may have had in this trial. And I
21 say that because within the first ten pages,
22 one of counsel's arguments to the judge was
23 that the State was not able to determine the
24 caliber of the bullet. And within five
25 lines, the State popped up and said "yes, we

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1 are."

2 Then, as we go further into this hearing,
3 Judge, there's a general lack of preparedness
4 as far as recollection about what witnesses
5 were interviewed, what witnesses were
6 subpoenaed. It seems from the Allison's
7 testimony that both of them met with Mr.
8 Robinson on a number of occasions at his
9 office. And both were subpoenaed to come and
10 testify in court. And they both showed up.
11 I find it very hard to believe that they
12 would not have come to court without a
13 subpoena. No one really wants to sit here
14 for several days if they don't have to.
15 So I think it's abundantly clear that they
16 were subpoenaed and they just were never put
17 on the stand.

18 Additionally, Mr. Robinson himself
19 testified that there were a number of
20 witnesses that could have been called to talk
21 about the contentious relationship between
22 Mr. Josh Wood and one of the victims.

23 I think all of these witnesses, if they'd
24 been placed on the stand, would have given
25 this case the push it needed over to the Not

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1 Guilty realm. It certainly could have
2 changed the outcome of this case.

3 I think that what -- the testimony about
4 Mr. Stewart's Facebook conversation, that is
5 kind of on the fence, maybe. It's an after
6 discovery evidence issue. However, given
7 counsel's confusion about witnesses and what
8 witnesses he interviewed and what witnesses
9 he subpoenaed, there's certainly abundant
10 evidence that perhaps Mr. Stewart, with
11 proper investigation, could have been
12 uncovered and also participated in the trial
13 of this case.

14 Judge, for those reasons, I'd ask that
15 the petition be granted.

16 THE COURT: Yeah, and just a
17 couple -- may I ask questions of. One, Ms.
18 Horlbeck, is it unusual for attorneys to
19 subpoena witnesses and for strategy reasons
20 decide they're not going to use those
21 witnesses? I mean, that happens regularly;
22 doesn't it?

23 MS. HORLBECK: I don't think that
24 my experience is really at issue here. And I
25 say that with all due respect.

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1 THE COURT: No, I mean, generally
2 though. That's not unusual, though?

3 MS. HORLBECK: It's not. I don't
4 know that Mr. Robinson outlined that kind of
5 strategy. Maybe I missed.

6 THE COURT: All right. And,
7 again, and I realize there may have been some
8 confusion today but, I mean, the testimony
9 clearly showed from all of the witnesses,
10 other than Mr. Robinson, that everybody was
11 -- seems like everybody was interviewed whose
12 name was brought up. Now, whether they were
13 used or not, I think that may be an issue.
14 But, you know, sounds like the investigators
15 were out there and all the witnesses said
16 they had talked to Mr. Robinson.

17 I mean, I'm just trying to filter through
18 the case. Let me just ask you. Okay, it's
19 my understanding the three issues here are --
20 I was a little unclear on the first issue
21 about possession -- you know, whether he
22 objected to the indictment, possession of a
23 weapon. And it sounds like that really kind
24 of, from what Mr. Clark was saying, that kind
25 of was wrapped into the actual charge of the

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1 inference of intent, that improper charge?

2 MS. HORLBECK: Yes, sir. I
3 believe that's the case.

4 THE COURT: Okay. I didn't really
5 see anything distinct or did not see any
6 basis that there was a valid objection to the
7 actual indictment. Are we ---

8 MS. HORLBECK: No, I believe his
9 issue is the inference of malice charge with
10 respect to ---

11 THE COURT: Right.

12 MS. HORLBECK: Does that make
13 sense?

14 THE COURT: Yeah. And then the
15 other, I mean, we've got three issues:

16 The vouching, I think that was the
17 term you were looking for because that's what
18 you said in your application. The
19 prosecution vouched for the truthfulness of
20 the witness.

21 I mean, those are three. One I can --
22 so, based on the application, I mean, I know
23 you have a lot of testimony here. But is the
24 third one whether intent could be inferred
25 from the use of a deadly weapon?

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1 I mean, it sounds like though, from all
2 the testimony that there's a fourth one that
3 really has not been properly laid out or
4 something.

5 MS. HORLBECK: Well, I think that
6 would fall under the general ineffective
7 assistance of counsel. And if we need to
8 amend the application, I would verbally amend
9 it at this point to add that.

10 THE COURT: Okay. I think that
11 is, based on the testimony, that that would,
12 conform to the evidence. All right.

13 MS. HORLBECK: And just --
14 respectfully, my experiences -- I just hope
15 the Court knows my experience is not into
16 evidence into this case.

17 THE COURT: And that probably
18 wasn't a proper question from me, so ---

19 MS. HORLBECK: I just wanted that
20 on the record.

21 THE COURT: So, no, that's fine.
22 Improper question. So you responded
23 appropriately.

24 MS. HORLBECK: No, I'm not saying
25 the questions are improper.

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1 THE COURT: So all right, Ms.

2 Ratigan.

3 MS. RATIGAN: Just very briefly
4 because we've been here forever it seems.
5 I'm just going to hit some highpoints. We
6 would argue overall that Mr. Clark hasn't met
7 his two-pronged burden of proof under the
8 *Strickland* test. The trial was six years
9 ago. The shooting was three years before
10 that. So obviously, you know memories can't
11 be expected to be perfect when the shooting
12 happened in 2006, Your Honor.

13 The State's opinion is today that the
14 Allison's testimony really has not added
15 anything to this case. You know, them
16 testifying that Mr. Clark came back from the
17 party without a weapon is irrelevant because
18 he has admitted and they stipulated at trial
19 that he had a weapon out at the party and
20 fired it into the air.

21 The testimony about Mr. Wood being
22 bloody, that actually came in at trial, both
23 through Mr. Wood and through Mr. Chris
24 Allison.

25 And, furthermore, the testimony today

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1 from Kayte and Dustin have some differences.
2 For example, she stated that Mr. Wood got out
3 of the car and no one else did. Whereas, her
4 ex-husband said that Mr. Murray also got out
5 of the car. So there's some difference
6 there. We'd say that that testimony would
7 not have added anything to the case.

8 The statements -- I mean, obviously this
9 is a circumstantial evidence case. There's
10 no one who testified they actually saw the
11 shooting. Law enforcement testified that
12 when they talked to people, anywhere between
13 and a hundred people were supposed to be
14 there. And it was dark. And, you know, one
15 person said two shots were fired. One person
16 said fifty shots were fired. So it was kind
17 of melee at this point. So there's always
18 going to be circumstantial evidence.

19 It's speculative that the witnesses we
20 heard today would have changed the outcome.
21 Speaking of speculative, that Facebook
22 conversation is not founded in any actual
23 evidence. Mr. Stewart testified today he was
24 drunk and mad, upset at his brother-in-law,
25 Mr. Murray. He actually admitted he never

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1 heard any of this from Mr. Murray. He heard
2 it from some other person. So now we're
3 talking about double hearsay. And I don't
4 think it really qualifies as after-discovered
5 evidence. It sounds more like it was drunk
6 and late-night ranting about a family member,
7 which is a totally different topic.

8 And as far as the *Belcher*, the inference
9 of malice issue, when you read *Belcher*, the
10 issue with that charge, about the inference
11 of malice arising with the use of a deadly
12 weapon, it's only if the only evidence of
13 malice is, in fact, a gun was used.

14 In this case we argue there's clearly
15 other evidence of malice. He brought a gun
16 to a party where there were going to be
17 multiple people. He fired at least nine
18 times into the air, based on his own
19 stipulation at trial. And then later
20 disposed of the weapon, after the party but
21 before he went to his cousin's house.

22 So, because there's other evidence of
23 malice, we would argue that the failure to
24 object to the inference of malice charge
25 would not have been an error, Your Honor.

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1 THE COURT: Okay.

2 MS. HORLBECK: Judge, what I
3 would add. I would certainly agree that some
4 confusion on a case of this age is to be
5 expected. Except in this matter, and I think
6 it's probably in the Court's file, there was
7 an order prepared by Judge Barber requiring
8 Mr. Robinson to be prepared and read through
9 the transcript and read through his file and
10 just be prepared and organized today. That,
11 I would just point out for the Court.

12 THE COURT: And I don't have that.

13 MS. HORLBECK: I've got a copy.

14 THE COURT: Yeah. Let me just
15 kind of tell you because I'm thinking I'm
16 going to have to review some of the
17 transcript. So I definitely want to -- let
18 me just kind of let y'all know what I have.

19 I have the -- both (sic) days of the
20 transcript: November the 2nd, and November 3rd
21 and 4th. I have those two transcripts.

22 I have the brief that were presented to
23 the Court of Appeals.

24 I have the indictments and sentencing
25 sheets on both.

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1 The application for post-conviction
2 relief filed by Mr. Clark, and I have the
3 return filed by the State and the actual
4 opinion from the Court of Appeals.

5 That's what I have before me. Does
6 anybody have any additional information?
7 You may provide it to me.

8 MS. HORLBECK: The Order of
9 continuance that was drafted by Judge Barber
10 or maybe the AG's office. It's probably part
11 of the clerk's office ---

12 MS. RATIGAN: It's in the clerk's
13 file.

14 THE COURT: I mean, it's in the
15 clerk's file. I mean, I'm aware of that.

16 MS. RATIGAN: That's all that I
17 have.

18 THE COURT: Thank you. One, I
19 appreciate everybody's patience in having to
20 juggle this around a little bit. But I think
21 I need to review some of these matters before
22 making a decision and I will let both of you
23 know.

24 MS. HORLBECK: Thank you.

25 MS. RATIGAN: Thank you, Your honor.

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THE COURT: Thank you very much.

(HEARING CONCLUDED)

1

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on June 18, 2015, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Michael Garrison

Deborah Garrison

Charleston, South Carolina
October 22, 2015

Exhibit Receipt

Case # 13-CP-23-1325

Brandon Clark v. State

Applicant's Exhibit

1. Facebook records 8 pages

Received above referenced exhibits
from Deborah Garrison, Court Reporter,
this 18th day of June, 2015

Jan A White
Court Clerk 6-18-15

Other (4)

More ▾

Howard Stewart

+ New Message * Actions ▾ Q

Howard Stewart

11:59pm

Yea why did he shoot the...

Sherry Mattox

9:37pm

Hey tell Kelly I love her an...

Kayte Allison

4:43pm

he must have said it on the p...

Katie Slice Goodnough

2:51pm

I know who he is sort of but...

Kristin Lynn Clark

Feb 23

Lot Landen looks like him...

Dustin Allison

Feb 4

Thanks

Lisa Hooper Moseley

12/30/13

I love you to and im lucky to...

Amber, Arian, Crystal...

11/11/13

Amber: I would love to be th...

Sarah Johnson

10/28/13

yes. did u just call

1 new

Alisha Hatley

10/28/13

Welcome

Debra Yundt

10/27/13

will you call me 436-2323

Chris, Jackie Clark, B...

10/17/13

Chris: k, ill see what i can do.

Fallen Jackson

10/12/13

Christy, would u come get m...

This is between us, but would you be willing to testify to that if it comes down to it? This will be 5 years trying to prove his innocence



Howard Stewart

I don't know if its true or not but I have heard from several people that they are the ones I don't even know the story behind the whole ordeal just what I have heard

I could if there is away for nobody to know my name



Christy McJunkin Clark

11:44pm

Okay. Did David tell you this too? We already know they lied on the stand. They'

re stories didn't even match.



Howard Stewart

11:46pm

Yes David said a few years back that they had to testify to save there selves so they wouldn't go to jail



Christy McJunkin Clark

11:47pm

Thank you for coming forward you have no idea what this means to me. If you have anymore information please don't hesitate



Howard Stewart

11:51pm

U welcome like I said I don't know if he was just acting like a badass excuse my language or if its true but I figured I would let yall know if he is innocent he needs to be free



Christy McJunkin Clark

11:56pm

I just want to ask one more thing.. Did David give a reason why he did it when he was talking about it?



Howard Stewart

11:58pm

Why they shoot



Christy McJunkin Clark

11:59pm

Yea why did he shoot them?

Write a reply...



Add Files



Add Photos

Press Enter to send

Reply

ok

Search for people, places and things



Other (4)

More

Howard Stewart

+ New Message

* Actions



Howard Stewart 11:59pm
Yea why did he shoot the...

Sherry Mattox 9:37pm
Hey tell Kelly I love her an...

Kayte Allison 4:43pm
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Kristin Lynn Clark Feb 23
Loi Landen looks like him...

Dustin Allison Feb 4
Thanks

Lisa Hooper Moseley 12/30/13
I love you to and im lucky to...

Amber, Arian, Crystal... 11/11/13
Amber: I would love to be th...

Sarah Johnson 10/28/13
yes. did u just call

Alisha Hatley 10/28/13
Welcome

Debra Yundt 10/27/13
will you call me 436-2323

Chris, Jackie Clark, B... 10/17/13
Chris: k, ill see what i can do.



Christy McJunkin Clark

Hi, this Brandon's mom. Can you tell me exactly what you told Kayte?



Howard Stewart

A few years back David said him and josh is the ones who shot that person and that they had to testify to save there selves

That they all had gun



Christy McJunkin Clark

Oh my God. What made you decide to come forward? You have no idea how thankful I am. My son is sitting in prison for something he did not do

Josh Wood and David Murray?



Howard Stewart

Yes David Murray is my bro in law that's why no one can know I talked to yall



Christy McJunkin Clark

I completely understand

This is between us, but would you be willing to testify to that if it comes down to it? This will be 5 years trying to prove his innocence



Howard Stewart

I don't know if its true or not but I have heard from several people that they are the ones I don't even know the story behind the whole ordeal just what I have heard

I could if there is away for nobody to know my name



Christy McJunkin Clark

Okay. Did David tell you this too? We already know they lied on the stand. They'

Write a reply...



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Add Photos

Press Enter to send

Reply

Inbox (5)

Other

More

Howard Stewart

+ New Message

⚙ Actions

Q

Search

Q

- 

Christy McJunkin Cla... 12:53pm
436-2323 5 new
- 

Kristin Lynn Clark 11:48am
That guy won't answer mam... 1 new
- 

Stephen Sweet 10:46am
baby my hs phone is messe... 2 new
- 

Mitchell Carroll 12:23am
I would come all the way up... 1 new
- 

Glenn Luker 11:42pm
Kayte bug 1 new
- 

Howard Stewart 9:04pm
✓ please dont let us down
- 

Krisha Burgess Sun
nevermind dad already le...
- 

Nikki Barwick Sat
what you doing
- 

John Bagwell Fri
k
- 

Joe Wood Fri
lol
- 

Lisa Hooper Moseley Fri
love you to
- 

Leah Monroe Fri
i luv you and hope event...

- 

Kayte Allison 12:53pm
have no worries that was my plan anyways no matter who it is just me you his mom and lawyer of course but as far as the palmetto ppl man i've done good on making it a point to avoid pretty much all ppl i was in school with lol

what year did you graduate cuz i've been trying to remember if i even knew you in school it seems like school was soo long ago lol i was supposed to graduate in 2004 but i left for home school in 2003 but my son's dad/ex-husband graduated in 2003

his name is Dustin Allison I was Kayte Crawford until we got married
- 

Howard Stewart 3:01pm
I graduated with dustin we use to be best friends I bought that blue Acura he had years ago
- 

Kayte Allison 2:59pm
omg really im so sorry you bought that car lol
- 

Kayte Allison 3:01pm
i was with dustin we he bought it and told him not to buy it but he dont listen lol next morning he called and woke me up begging for help cuz he was going to be late for school cuz he couldnt figure out how to get out of his driveway he kept getting hung cuz it sat soo low lol that was so funny lol
- 

Kayte Allison 3:09pm
then the rim was cracked and blow tire completely off while we was at BP getting gas and his brother fell in the parking lot screaming thinking he had just been shot at lol they are so stupid sometimes lol but it does give good laugh and great memories that's for sure lol

Write a reply...

 Add Files

 Add Photos

Press Enter to send

Reply

Inbox (5) Other

More

Howard Stewart

+ New Message * Actions Q

Search

Q



Christy McJunkin-Clark 12:51pm
436-2323 5 new



Kristin Lynn Clark 11:48am
That guy won't answer mam... 1 new



Stephen Sweet 10:46am
baby my his phone is messe... 2 new



Mitchell Carroll 12:23am
I would come all the way up... 1 new



Glenn Luker 11:42pm
Kayte bug 1 new



Howard Stewart 9:04pm
✓ please dont let us down f...



Krista Burgess Sun
nevermind dad already le...



Nikki Barwick Sat
what you doing



John Bagwell Fri
k



Joe Wood Fri
lol



Lisa Hooper Moseley Fri
love you to



Leah Monroe Fri
i luv you and hope eventu...



Kayte Allison 3/9, 4:12pm
brandon left my house to go to the party and came back there and about 45min after brandon got back josh and david pulled up josh came to my door but i told him he couldnt come in and they needed to leave cuz he was covered in blood and it was late he was being loud and my son who was not even 2 was upstairs asleep



Howard Stewart 3/9, 4:02pm
Yeah that dokota



Kayte Allison 3/9, 4:02pm
yep that's it
i believe at the time he had just bought it cuz it looked practically new
i can remember even min of that whole day like it just happened its so detailed picturing it like a movie reel everytime i close my eyes and think about it



Howard Stewart 3/9, 4:02pm
I'm sorry for bringin it up



Kayte Allison 3/9, 4:02pm
that might sound crazy but so true cuz i've never thought that i would have any of that to happen in my life cuz it was like something you see in a movie that you think damn that would never happen in real life but that day it did for me and no matter how bad i want to forget it i cant



Howard Stewart 3/9, 4:14pm
I'm really sorry but ur cuz is innocent



Kayte Allison 3/9, 4:19am
its ok everything happens for a reason cuz if u wouldnt have brought it up i would have never had proof that

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Howard Stewart

+ New Message * Actions ▾ Q

Search:



Christy McJunkin Cla. 12:51pm
436-2323 5 new



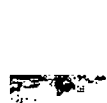
Kristin Lynn Clark 11:48am
That guy won't answer mam... 1 new



Stephen Sweet 10:46am
baby my his phone is messe... 2 new



Mitchell Carroll 12:23am
I would come all the way up... 1 new



Glenn Luker 11:42pm
Kayte bug 1 new



Howard Stewart 9:04pm
please dont let us down f... x



Krista Burgess Sun
← nevermind dad already le...



Nikki Barwick Sat
← what you doing



John Bagwell Fri
← k



Joe Wood Fri
lol



Lisa Hooper Moseley Fri
love you to



Leah Monroe Fri
← i luv you and hope eventu...



Kayte Allison 4:00am
but his shell casings where 75yards or more to the rear of the care and they plainly even said in trial that both boys was shot from front at almost point blank range and not to mention they were shot by totally different caliber bullet than what brandon shot



Howard Stewart 10:03am
Brandon should have fought it idk him but he should have



Kayte Allison 4:04am
josh sat on stand and lied 5 times in a row and they even done a playback of his questioning on stand to the jury before the came back with decision its all fucked up and it's honestly hard to talk about any of it without just crying cuz this has stole his life and any chance of having any future or family for the rest of his life and he's done nothing to deserve this life long punishment even he gets released his life and future are still ruined and theres nothing anyone to do to get it back for him



Kayte Allison 4:04am
we did fight it and done everything we could and still to this day havent stopped fighting like i said he's appeal and re-trial is coming up very soon.



Howard Stewart 4:07am
Was David even there that's who I heard it from



Kayte Allison 3/9, 4:08am
first trial just for the lawyer to take his case not counting court fees and etc. was \$20,000 so just imagine how much its costing us this time

hell yeah he was there josh david and timmy brooks was riding in davids white dodge truck

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Howard Stewart

+ New Message * Actions Q

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Christy McJunkin Clark 12:51pm
436-2323 5 new



Kristin Lynn Clark 11:48am
That guy won't answer mom... 1 new



Stephen Sweet 10:46am
baby my hs phone is messe... 2 new



Mitchell Carroll 12:23am
I would come all the way up ... 1 new



Glenn Luker 11:42pm
Kayte bug 1 new



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Krista Burgess Sun
nevermind dad already le...



Nikki Barwick Sat
what you doing



John Bagwell Fri
k



Joe Wood Fri
lol



Lisa Hooper Moseley Fri
love you to



Leah Monroe Fri
i luv you and hope eventu...



Kayte Allison 3/9, 2:14pm
hey when did u hear him say that was it recent

look if you really knew exactly how messed up this whole
crap has been since the start



Howard Stewart 3/9, 2:51pm
It was awhile back but someone innocent shouldn't be in
jail



Kayte Allison 3/9, 2:55pm
josh and brandon was supposed to be best friends man
and had been for years pretty much all of high school josh
even lived with brandon at his mom and dads and then
literally its still to this day a shock cuz josh totally set him
up to go down for this and we all cant figure out why and
especially out of all ppl to put shit off on why to your best
friend almost like brother



Kayte Allison 3/9, 2:59am
no shit man he's be nothing but honest since day one and
yeah he was guilty of being there and admitting that he had
a gun and yeah he fired it but only in the air as he was
running to car in order to get out of there



Howard Stewart 3/9, 3:09am
I don't know tell you the truth its just been eating at me
David is my bro in law



Kayte Allison 3/9, 3:13am
but his shell casings where 75yards or more to the rear of
the care and they plainly even said in trial that both boys
was shot from front at almost point blank range and not to
mention they were shot by totally different caliber bullet

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Reply

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-1325
COUNTY OF GREENVILLE	)	
	)	
Brandon Heath Clark,	)	
S.C.D.C. No. 336351,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 AUG 6 PM 1 32

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 7, 2013. The Respondent made its return on October 23, 2013. An evidentiary hearing was held on June 18, 2015 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Howard Stewart, Katye Allison, Dustin Allison, Christy Clark, and the Applicant's trial counsel, Scott D. Robinson, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the March 2007 term of the Greenville County Grand Jury for two counts each of murder (2007-GS-23-2442, count 1 and -2443, count 1) and possession of a weapon during the

commission of a violent crime (2007-GS-23-2442, count 2 and -2443, count 2. He was represented by Scott D. Robinson, Esquire.

After the State took the case to trial, the Applicant was found guilty. On November 4, 2009, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 40 years for each count of murder and 5 years on each count of possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Clark, Op. No. 2012-UP-549 (S.C. Ct. App. filed Oct. 10, 2012). The remittitur was sent on October 26, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:¹

1. Ineffective assistance of counsel.
 - a. "Trial [counsel] should have objected to Indictment of Possession of a weapon during commission of a violent crime."
 - b. "Trial [counsel] should have objected to State Attorney vouching for the truthfulness and validity of a states witness."
 - c. "Trial [counsel] should have objected to the charge of inferred malice because deed was done with a deadly weapon."

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 and arguments presented at the PCR hearing. This Court has further had the

¹ In an "Amended Petition for Post Conviction Relief" filed December 16, 2014, the Applicant added the following allegation: "That evidence of material facts exist which have not been previously presented and heard by the Court. This material evidence requires vacation of the conviction and sentence."

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Trial Counsel

The Applicant alleges he received ineffective assistance of trial counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel was retained on these charges, as well as an unrelated charge of assault and battery of a high and aggravated nature (ABHAN).² The Applicant stated he and trial counsel discussed the case and reviewed the discovery materials. The Applicant stated they discussed possible defenses and his version of events. The Applicant stated he gave several witness names to trial counsel, who interviewed them and subpoenaed them for trial.

² The Applicant stated he pled guilty to this charge in August 2009.

The Applicant stated trial counsel did not want to call these witnesses at trial. The Applicant stated the outcome of his trial would have been different if these witnesses had testified. The Applicant stated trial counsel should have objected when – during closing argument – the State said Wood was being honest. The Applicant stated trial counsel should have objected when the trial judge charged the jury about the inference of malice.

Katy Allison, the Applicant's cousin, stated she had known the Applicant, Wood, and Murray for years. Allison stated she was not at the party on the night in question. Allison stated Wood told them about the party and that the Applicant and Chris Allison (her brother-in-law) went. Allison stated Wood and Murray came by her house 45 minutes after the Applicant and Chris Allison returned from the party. Allison stated Murray stayed in the vehicle but Wood got out and had blood on his leg. Allison also stated Chris Allison would have been able to see Wood's leg. Allison stated she told trial counsel about Wood's appearance.

Dustin Allison, Katy Allison's husband, stated he had known the Applicant, Wood, and Murray for years. Allison stated he was not at the party on the night in question. Allison stated the Applicant and Chris Allison (his brother) came by after the party. Allison stated Wood and Murray both exited the vehicle. Allison stated Wood had blood on his leg. Allison stated Chris Allison would have been able to see Wood's leg. Allison stated Wood said he did not see the Applicant when Wood kicked in the victims' windshield. Allison stated Chris Allison would have been able to see Wood's leg. Allison stated he spoke to trial counsel.

Trial counsel confirmed he was retained in this case and also represented the Applicant on an unrelated ABHAN charge. Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified he had 6-10 meetings with the Applicant, discussed his version of events, and developed a defense strategy.

Trial counsel testified he also visited the crime scene. Trial counsel testified the strategy was to argue the Applicant was innocent and that David Murray and Josh Wood were guilty (third party guilt). Trial counsel testified he spoke to all witnesses the Applicant requested he interview and had subpoenaed several of them for trial. Trial counsel testified Murray and Wood gave conflicting testimony. Trial counsel testified they did not call subpoenaed witnesses or put up a defense case because he did not believe the State had made its case. Trial counsel confirmed he did not object to the "inference of malice" jury charge.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have called witnesses to testify at trial. This Court finds the testimony of Katye and Dustin Allison would not have changed the outcome of the Applicant's trial.³ While these witnesses testified the Applicant did not have a gun when he arrived at their house after the party, this is irrelevant because the Applicant stipulated at trial that he had a gun at the party and fired nine times into the air. (Trial transcript, p.11). While the Allisons could have testified about seeing Wood's bloody leg after the party, Wood and Chris Allison testified at trial about Wood's bloody leg. (Trial transcript, p.99; p.151). Further, Katye Allison testified only Wood exited the vehicle when it came to her house after the party, while Dustin Allison testified both Wood and Murray got out. This Court finds there is no reasonable probability that Katye and Dustin Allison's testimony would have changed the outcome of the trial. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

³ While the Applicant named several other potential witnesses during his testimony, as these individuals did not testify at the PCR hearing, this Court cannot speculate as to what impact their testimony would have had upon the trial. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the State's closing argument. The Applicant argued trial counsel should have objected to the State vouching for Wood during closing argument. This Court notes the State made the following comments:

And you heard from Josh Wood and you heard that he's charged with lynching. That the State has not made any deals with him. That he was here to testify freely and voluntarily and tell you about his part in it. And I submit to you that he was candid with you. But you be the judge of that. Because it is your -- it is your judgment, it is your common sense that you have to apply to what you heard from the witness stand. But he accepted his responsibility in this. He told you how foolishly he was acting. That he was drinking, that he was pumped up, that he was running around without a shirt on, that he was pumped up and ready to fight. That he threaten to whip Cameron's rear-end. He didn't deny that. He accepted that and he told you about it. (Trial transcript, p.114).

So I ask you to consider his credibility in coming here testifying the way he did. When you think about what all he had to say and his motivation for saying it. I submit to you that he was truthful. (Trial transcript, p.115).

This Court, however, finds the State was not vouching for Wood or commenting on his credibility. See Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) ("A prosecutor improperly vouches for a witness' credibility and places the government's prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony."). This Court finds the solicitor was merely arguing that, based on the facts before them, the witness's testimony was true. This Court finds this does not rise to the level of vouching and, therefore, there was no valid reason for trial counsel to have objected.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the jury charge regarding an inference of malice. The Applicant argued trial counsel should have objected – under State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) – to the following portion of the jury charge: "Inferred malice may also arise when the deed is done

with a deadly weapon.” (Trial transcript, p.138). In Belcher, the South Carolina Supreme Court held “the ‘use of a deadly weapon’ implied malice instruction had no place in a murder . . . prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing.” Id. at 610, 685 S.E.2d at 809. The Supreme Court held further “the permissive inference charge concerning the use of a deadly weapon remains a correct statement under the law where the only issue presented to the jury is whether the defendant has committed murder.” Id. at 612, 685 S.E.2d at 810. This Court finds Belcher is inapplicable in this case as there was no evidence presented at trial that would mitigate, reduce, excuse, or justify the murder for which a jury found the Applicant guilty. As such, trial counsel was not deficient in failing to object to this portion of the jury charge.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Facebook Conversation

Howard Stewart stated his girlfriend is Murray’s sister but that he and Murray are not close. Stewart stated he was not at the party on the night in question. Stewart stated Austin Shaw made a comment on Facebook that Murray was the shooter in this case. Stewart stated he was drunk and posted a status update on Facebook (sometime after the trial in this case) in order

to make Murray angry. Stewart stated this turned into a Facebook conversation with Katye Allison and Christy Clark.⁴ Stewart stated he based all of his comments in that Facebook conversation upon what Shaw said. Stewart admitted he never contacted law enforcement to relay this information.

Katye Allison stated she is "Facebook friends" with Stewart but has never talked to him. Allison stated Stewart sent her a Facebook message "about a year ago."

Christy Clark, the Applicant's mother, stated she was involved in the Facebook conversation with Stewart and that he never said he wanted to make Murray mad. Clark admitted Stewart told her that he never heard this information from Murray. Clark admitted Wood never said he shot the victims. Clark admitted she never contacted law enforcement to relay this information.

This Court finds the Applicant has failed to raise a cognizable post-conviction relief issue related to the Facebook conversation. See S.C. Code Ann. §§ 17-27-10 et seq. (Supp. 2003). This Court finds this issue does not involve a failure to investigate. This Court finds this issue does not involve after-discovered evidence. As such, this issue must be dismissed. See Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.").

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

⁴ Applicant's Exhibit 1.

CONCLUSION

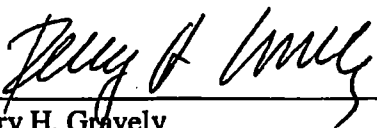
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30th day of July, 2015.



Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

BRANDON HEATH CLARK

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-001898

SUPPLEMENTAL APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON HEATH CLARK,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the trial court judge err by not granting appellant's motion for directed verdict when the State failed to show that the bullets from appellant's gun killed the victims?

STATEMENT OF THE CASE

Brandon Clark was indicted for two counts of murder and two counts of possession of a weapon during the commission of a violent crime by the Greenville County grand jury. He was tried between November 2- 4th, 2009 before the Hon. Edward W. Miller. He was represented by Scott Robinson, Esquire. He was convicted, and sentenced to 40 years on each murder and 5 years on each weapons charge.

This appeal timely follows.

ARGUMENT

The trial court judge erred by not granting appellant's motion for directed verdict when the State failed to show that the bullets from appellant's gun killed the victims.

Appellant was convicted of events that occurred on July 29, 2006. The incident location was ■■■ Garrison Rd. in Greenville County, the home of a young man, Stephen Watson. On that date, a number of people gathered at the incident location to watch a fight. Two weeks prior to this date, one of the victims, Cameron Wade, and a boy named Josh got into a fight. R. 9. In order to settle the score, a notice was put out on a MySpace.com page, and a number of people showed up to observe the anticipated physical fight between Wade and Josh. The number of people who attended the expected brawl ranged from 20 to 200. R. 188. According to testimony at trial, Josh was running around without his shirt on, swinging a baseball bat, and drug use was present at this home. R. 11. The resident of the home, Watson, testified he called Wade and told him not to come to the house. R. 12. While on the phone, Josh took the phone out of Watson's hand and threw it across the yard. R. 12. Ultimately Wade, and Chris Garland were shot and killed while sitting in the Honda Accord that Garland drove to the location. R. 13. On cross examination, Watson testified that Josh made statements that he was going to "get even" with Wade. R. 16.

There was much activity at ■■■ Garrison Road that night. Watson testified he previously shot a gun at that location, a .25 caliber automatic. R. 13 -- 14. Watson also testified that he heard over 50 gunshots that night. R. 17. An investigator later testified that witnesses recalled between 9 and 60 gunshots fired at the incident location that evening. R. 189.

Another state's witness, Tyler Stone, also testified that he observed the Josh with the baseball bat, and running around with his shirt off and beating on his chest trying to determine where Wade was. R. 23 – 24. Stone testified that he heard 9 shots, and then heard 3 more after that. R. 29. Stone also testified that Josh said he was going to kill Cameron Wade. R. 30. Another witness testified that she heard at least 20 gunshots. R. 66. Yet another witness testified that he also heard Josh threaten Wade. R. 104.

Josh testified at trial and admitted that he was drinking, and acting out of control. R. 35. He testified that he assaulted a total stranger with a stick that night. R. 37. He also admitted that he threw a tire iron at the car the victims drove to the location. R. 39, 49. Josh denied that he ever threatened to kill Cameron Wade. R. 47. Josh also put his leg through the back window of the victim's car which resulted in his getting a permanent scar on his leg. R. 52 – 56. Josh also testified that he used to own a .357 magnum, but claimed that he got rid of it two years before these events. R. 56.

A state's witness, Christopher Allison testified as follows:

Q: Okay. What happened next?

A: Like I said, we got down -- we started heading down there and we heard the boy in the white hoodie say it was going to be a fair fight between Cameron and Josh.

Q: Right.

A: And then we saw the fire -- or gun -- muzzle fire, come above the hood of the car, the last car, the dark-colored Honda.

Q: One of the cars that was parked down there, one of the cars that came with Cameron Wade?

A: Yes.

Q: Okay.

A: We seen the muzzle fire and that's when Brandon shot his gun and we got in my car.

Q: What did -- did you see Brandon fire his gun?

A: Yeah, I see him fire it upwards.

Q: How many times did he shoot upwards?

A: About nine times.

Q: So it's your testimony he fired the gun in the air?

A: Yes, sir.

R. 105.

This witness also testified that he saw David Murray, another person at the party, with a small black revolver. R. 109.

Appellant and the State entered into a stipulation and agreed that appellant fired his pistol at the incident location nine times. At the scene nine .40 caliber shell casings were found. R. 115.

The pathologist testified that he extracted a moderately deformed, medium caliber, fully jacketed missile from Chris Garland. R. 119. The pathologist was unable to recover a bullet from Cameron Wade. R. 122. A forensic technician testified that a number of 9 mm shell casings were found underneath the car seat where one of the victims was found. R. 129; 133. A gun was collected from under the right leg of Cameron Wade. R. 181. .40 caliber bullets were found at least 10 yards away from where the victims were shot. R. 156-157. No .40 caliber bullets were found immediately around the car. R. 187.

The state's firearm examiner testified that he could not connect the bullet that killed Cameron Wade (sic) with the gun that fired the 9 .40 caliber shots. R. 205.

At the close of the State's case, trial counsel made a motion to the court for a directed verdict on the basis that the State produced no evidence that appellant shot either of the two victims. R. 213- 215. The judge denied the motion. R. 215. At the conclusion of trial, counsel made a motion to set aside the jury verdict because the forensic expert did not connect the fatal bullet with the bullets that appellant stipulated he had fired that evening. R. 254. The judge denied the motion. R. 254.

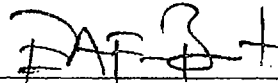
The trial court judge erred by not granting appellant's motion for a directed verdict because the evidence presented did not raise more than a mere suspicion that appellant was guilty of these two murders.

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006); State v. McKnight, 352 S.C. 635, 642, 576 S.E.2d 168, 171, *cert. denied*, 540 U.S. 819, 124 S.Ct. 101, 157 L.Ed.2d 36 (2003); State v. Rothschild, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002). The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. State v. Mitchell, 341 S.C. 404, 409, 535 S.E.2d 126, 127. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). *See also* State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). In this case, the evidence presented by the State did not rise above the level of mere suspicion that appellant is guilty because the state did not offer any evidence to show that appellant's firing of his pistol resulted in the death of either victim. Indeed, the evidence presented tends to suggest that he is not guilty of murder since the bullets which appellant admitted firing were at least 10 to 12 feet away from the

bodies of the victims. The state failed to prove that appellant was guilty beyond a reasonable doubt. Respectfully, appellant asks this Court to reverse his convictions and direct a verdict of acquittal.

CONCLUSION

For the preceding reason, appellant respectfully asks this Court to reverse his convictions and direct a verdict of acquittal.

A handwritten signature in black ink, appearing to read 'EAF-Best', written over a horizontal line.

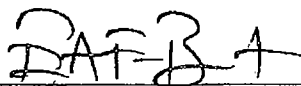
Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 20th day of September, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



ELIZABETH A. FRANKLIN-BEST
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON HEATH CLARK,

APPELLANT

CERTIFICATE OF SERVICE

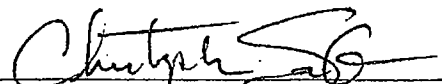
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Alphonso Simon, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of September, 2011.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 20th day of September, 2011.



(L.S.)

Notary Public for South Carolina

My Commission Expires: May 16, 2021.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

The Honorable Edward W. Miller, Circuit Court Judge

THE STATE

RESPONDENT,

V.

BRANDON HEATH CLARK,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial court judge err by not granting appellant's motion for directed verdict when the State failed to show that the bullets from appellant's gun killed the victims?

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred in denying Appellant's motion for a directed verdict when there was both direct evidence and substantial circumstantial evidence presented at trial that indicated Appellant fired the shots that killed both victims?

STATEMENT OF THE CASE

On November 2-4, 2009, Appellant Brandon Heath Clark ("Appellant") was tried by a jury for the murders of Christopher Garland and Cameron Jack Wade. Appellant was tried in the Greenville County Court of General Sessions before the Honorable Edward W. Miller, Circuit Court Judge. Scott Robinson, Esquire represented Appellant. The State was represented by Bryna Seay, Assistant Solicitor for the Thirteenth Judicial Circuit. On November 4, 2009, Appellant was convicted of both murders and two counts of possession of a weapon during the commission of a violent crime. (R. pp. 251-52). Appellant was sentenced to a period of confinement of forty years for each murder conviction, and five years for each of the possession of a weapon during the commission of a violent crime convictions. (R. p. 260).

Before this Court is Appellant's direct appeal of his murder convictions. He requests this Court reverse his convictions and order a new trial. The State respectfully requests this Court deny Appellant's appeal and affirm his convictions for the murders of Christopher Garland and Cameron Jack Wade, and his convictions for possession of a weapon during a commission of a violent crime.

STATEMENT OF FACTS

On July 29, 2006, Appellant shot Christopher Garland and Cameron Jack Wade while they were inside a car outside of Steve Watson's house in Greenville County. Garland suffered a single gunshot wound. The bullet travelled through his back into his right chest, then his right lung, then his heart, and through his sternum.¹ (R. p. 119). The bullet lodged in the tissue just beneath the skin of his chest. (R. p. 119). Wade suffered a through and through gunshot wound to the head. (R. p. 121-22). The bullet entered in the area around his right temple, and exited through the back of his head.² Id.

The Party

On July 29, 2006, a gathering was held at Steve Watson's home in celebration of Cameron Wade's ("Wade") birthday.³ (R. p. 9). Several witnesses testified that a physical altercation between Wade and Joshua Wood ("Wood") was also planned for that evening. (R. pp. 10, 34, 61, 68). Wood and Wade had been involved in a physical confrontation within the two weeks prior to the July 29 gathering. (R. pp. 15-16, 22-23, 33-34, 44-45, 68). While a third individual was involved in the first altercation, Wade and Wood were the only ones set to be involved in the second fight. (R. pp. 9-10, 33-35, 61, 68-69).

¹ The pathologist noted the wound indicated the bullet passed through something prior to hitting Garland, and the wound was consistent with a trajectory of being shot through the headrest. (R. pp. 120-21).

² The pathologist testified that it appeared Wade was sitting with his head turned distinctly to his right as if he was looking back over his right shoulder. (R. p. 122).

³ Watson testified that he was initially unaware a gathering was going to be at his house, but he learned of it on MySpace. (R. p. 10).

Witnesses gave different accounts regarding how many were at the gathering. Prior to the victims' arrival, Watson indicated no more than fifty people showed up for the party. (R. p. 11). Tyler Stone indicated there were at least fifty people present, (R. p. 23), and Saltz stated there were around 100 people at scene. (R. p. 65). Altogether, law enforcement was told there were between twenty and 200 people at the gathering. (R. p. 188).

Wood arrived at the party with his friend David Murray. Most of the witnesses indicated Wood was acting crazy that evening. (R. pp. 23, 35, 69; see R. p. 11). In fact, Wood even admitted that he was "acting ignorant," and that he was drinking, and acting wild and out of control. (R. p. 35). However, none of those witnesses testified they saw Wood with a gun. (R. pp. 36, 69).

Tiffany Saltz, another party attendee, testified she saw Appellant with a gun that evening. (R. pp. 61-2). She noted it was in his pants, and he had his shirt fashioned in a manner that allowed the gun to be visible. (R. p. 62). Saltz also testified that it appeared Appellant was aggravated, and that he was in an ill mood. (R. pp. 62, 64). She admitted that in prior statements, she informed law enforcement that she told Appellant not to shoot her. (R. p. 64). Saltz did not see anyone else with a gun. (R. p. 64). She also did not see the shooting. (R. p. 64). She also acknowledged she did not check everyone for guns. (R. p. 65).

David Murray testified he went to the gathering with Wood. (R. p. 68). It was his understanding that there would be a rematch of the prior fight between Wade and Wood. (R. p. 68). Murray was not present for the first fight. (R. p. 68). Murray noted that when the other group arrived, "a bunch of people started

running down there and they started running up there and it just got pretty crazy.” (R. pp. 69, 1 20-22). Murray watched Wood hit one guy, and then the two heard gunshots. (R. p. 70). Murray could not recall where they were when he heard the shots. (R. p. 70).

Woods testified that he recalled when Wade and Garland arrived. (R. p. 36). Multiple cars pulled up alongside the road. He recalled there were five to six cars there. (R. p. 36). Woods saw one guy that he did not recognize get out of one of the cars. (R. pp. 36-37). When Wood determined he did not know the guy, Wood hit the guy in the face with a stick. (R. p. 37). Shortly thereafter, Wood started hearing gunshots. (R. p. 37).

The Shooting

Christopher Allison, one of Appellant’s friends, went to the gathering with Appellant and Jordan Mardis. Christopher was standing by Appellant when they saw Wade and Garland arrive. (R. pp. 96, 98). Christopher indicated that Wade and Garland were part of a four car entourage. (R. pp. 96-98, 104-05). Christopher heard a gunshot and saw a shot being fired over the roof of the last car of the entourage, a dark colored Honda. (R. pp. 98, 105). In response, Appellant fired his .40 caliber Smith and Wesson handgun approximately nine times in the air. (R. pp. 98, 105). After Appellant fired the shots, the two ran to Christopher’s car. They drove away soon after with Mardis. (R. pp. 98-99). Appellant drove the group to Christopher’s brother’s house. (R. p. 99).

Murray did not see who was firing the shots. (R. p. 70). Murray and Wood then started to leave. They got into Murray’s truck and pulled out of the

driveway. (R. pp. 70, 73). However, they turned around to see if some of their friends were still at Watson's house. (R. pp. 70, 73). Wood then got out of the truck, picked up a tire iron from the bed of the truck, and threw the tire iron at the victims' vehicle. (R. pp. 70-71, 73, 74, 76, 77). After they left, the three headed to Dustin Allison's house. (R. p. 71). At Dustin Allison's home, Murray, Wood, and Mardis met up with Christopher and Dustin Allison, Katie Crawford, and Appellant. (R. p. 71). Murray recalled Appellant said Chris was supposed to throw his gun in the river. (R. p. 72). Murray did not see Appellant with a gun, and Murray thought Appellant had only fired shots into the air.⁴ (R. p. 72).

Wood testified that he saw Appellant at the time of the shooting. (R. p. 38). Appellant was behind Wood. (R. p. 38). Wood saw Appellant fire his gun twice into the air, but he did not see what happened after that. As soon as Wood saw the gunshot, he ran. (R. pp. 38-39).

Wood testified that he spoke with Appellant at the house. Wood stated, "[w]ell, when we got back he [Appellant] looked really scared and he had the gun in his hand and said, I think I shot them, I think I shot them. And I said, no, you didn't, you didn't shoot them, you shot into the air." (R. p. 41, ll 12-16). Wood noted that the gun Appellant had that evening was one Appellant carried in his pockets. (R. p. 41). Wood also testified that Appellant indicated he was going to throw the gun in the Saluda River. (R. p. 42).

The Police Investigation

Dar Shaw of the Greenville County Forensics Division processed the victims' vehicle. He testified he saw a couple of possible projectile holes in the

⁴ Murray had surmised that the shots he heard were fired in the air. (R. p. 70).

windshield. (R. p. 82). Shaw also noted a side vent wing window was broken, and there was a hole in the top of the roof from where photographs indicated a tire iron was removed. (R. p. 82). Investigator Fields also testified that there were two large holes in the back windshield, and a small window behind the back window of the passenger side without glass in it. (R. p. 180). She also noted there appeared to be bullet holes in the door post between the driver's seat and the back passenger seat on the passenger side of the car. (R. p. 180).

A nine millimeter handgun and a magazine that belonged to Garland were found beneath Wade in the passenger seat. (R. pp. 129, 181). Three casings that were fired from the handgun were also collected at the scene. (R. pp. 128, 194-96).

Law enforcement was able to determine that a copper jacket from a projectile found behind the rear seat inside the victims' car was fired by a gun consistent with a firearm marketed by Smith and Wesson handgun. (R. pp. 128, 194, 197-98). The jacket was inconsistent with being fired from Garland's handgun. (R. p. 197). The projectile that was recovered from Garland's body was determined to be a .40 caliber projectile that was consistent with being fired by a firearm marketed by Smith and Wesson. (R. pp. 199-200). The two projectiles were consistent with one another, but analysis as to whether they were fired by the same firearm was inconclusive. (R. pp. 200, 204). Nine .40 caliber shell casings were found at the scene. (R. pp. 138-39, 146, 150, 151). They were found ten to twelve yards from the victims' vehicle. (R. pp. 156, 157). Those were all fired by the same caliber of .40 caliber Smith and Wesson. (R.

pp. 200, 201, 204). The firearms and toolmarks analyst testified he could not make any conclusions as to whether the casings that were retrieved from the scene were fired by the same firearm as the projectiles because he did not have the firearm for comparison. (R. p. 205).

The parties stipulated that Appellant was present at the gathering on July 29, 2006, he fired his pistol nine times, and the nine .40 caliber shell casings recovered from the scene were the result of him firing his pistol nine times. (R. p. 115).

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT; THERE WAS BOTH DIRECT EVIDENCE AND SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE PRESENTED AT TRIAL THAT INDICATED APPELLANT FIRED THE SHOTS THAT KILLED BOTH VICTIMS:

Standard of Review

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct.App.2003) (citing State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002)). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-478 (2004). An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct.App.2008).

Discussion at Trial

After the State rested, and after discussions regarding the jury charge to be given, Appellant moved for a directed verdict. (R. pp. 213-14). In support of

his argument, he directed the trial court to State v. Buckmon,⁵ a 2001 case, and State v. Hernandez.⁶ Appellant argued the state produced no evidence that he shot either of the two victims. He noted that the firearms and toolmark examiner could not tie the nine shell casings to the bullet that struck Garland, and that the projectile that killed Wade was never recovered. Appellant argued that in light of these facts, the State had only raised a mere suspicion of guilt, and that Appellant was entitled to a directed verdict. (R. p. 214). The trial judge denied the motion. (R. pp. 214-15).

There's reasonable inferences to be drawn from the facts presented from which a jury could conclude that he is guilty. And specifically that would be the stipulation about the firing of the nine shots, the location of the shells, the testimony of Dr. Ward with respect to the size of the wounds to the two deceased. And so I decline to grant your motion.

(R. p. 215, ll 1-7).

Discussion

The trial court correctly denied Appellant's motion for a directed verdict. There was more than sufficient evidence of Appellant's guilt presented at trial. First, Appellant admitted he fired his handgun at the scene nine times, and the nine .40 caliber shell casings found at the scene were from him firing his gun. (R. p. 115). The projectile retrieved from Garland's body was consistent with being fired from a .40 caliber Smith and Wesson handgun. (R. pp. 199-200). The second projectile found in victims' vehicle was also consistent with being fired from a .40 caliber Smith and Wesson handgun. (R. pp. 128, 194, 197-98, 200, 204). Christopher Allison, Appellant's friend, testified that Appellant's pistol

⁵ State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001).

⁶ State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009).

was a .40 caliber Smith and Wesson handgun. (R. p. 98). Christopher also testified that he saw Appellant fire his pistol approximately nine times in response to possibly seeing a muzzle flash from a vehicle in the victims' entourage. (R. p. 98). Thus, the jury would have a basis for inferring that when Appellant fired his gun "into the air," he fired it in the direction towards the victims' vehicle.

Further, Wood testified that Appellant told him he thought he shot the two victims when their group got together after the shooting. (R. p. 41). Murray testified that Appellant had Christopher get rid of the gun. (R. p. 72). Both Murray and Wood indicated that the gun was going to be thrown into a river. (R. pp. 42, 72). There was no evidence that the projectiles fired at the scene were from another firearm. One firearm was retrieved from the victims' vehicle, a 9mm handgun. (R. pp. 129, 181). The firearms and toolmarks analyst determined that the three shell casings found near the victims' vehicle were fired from Garland's nine millimeter handgun found underneath Wade, who was sitting in the passenger's seat. (R. pp. 128-29, 194-97). The analyst also determined the copper jacket from a projectile that was recovered from inside the vehicle was not fired by the nine millimeter handgun. (R. p. 197). Witnesses consistently testified they saw no one else with a gun on the night of the shooting.⁷ Two witnesses were asked if they owned handguns. (R. pp. 56-58; Supp. R. pp. 1). Neither owned a handgun on the night of the shooting, and there was no

⁷ Appellant misapprehends the record when he states a witness testified he saw Murray with a small black revolver on the night of the shooting. (See IBOA, at p. 7). Christopher testified during cross examination that he had seen Murray with a small black revolver that may have been a .25 caliber pistol at some time, and that he had seen Murray possibly with a .38 at some other time. (R. p. 109). At no point does Christopher state he saw Murray with a pistol on the evening of the shooting.

testimony indicating the firearms those witnesses had once owned were consistent with a .40 caliber Smith and Wesson handgun. (R. pp. 14, 56-58, Supp. R. p. 1; see R. p. 109).

Contrary to Appellant's assertions, the evidence presented at his trial did more than merely raise suspicion of guilt. The evidence established Appellant was in possession of a weapon consistent with the weapon that fired the bullet recovered from one victim and another bullet recovered from the victims' vehicle, he fired his gun in the direction of the victims' vehicle nine times, and Appellant got rid of his firearm shortly after the shooting. The fact that none of the shell casings were immediately next to the victims' vehicle is of no consequence to whether there was sufficient evidence that Appellant was guilty of the two murders. There was no testimony or evidence presented at trial indicating the victims were shot at close range. Furthermore, Appellant's reliance upon the argument that the evidence was insufficient because the shell casings were not directly matched to the projectiles found is misplaced. The firearms and toolmarks analyst indicated in his testimony that he could not make a determination of whether the shell casings were fired from the same gun as the projectiles because he did not have the weapon to make the comparison. (R. pp. 204-05). The testimony at trial indicated such a comparison would not have been possible because Appellant disposed of his handgun. (See R. pp. 42, 72).

Based on the evidence presented at trial, the jury had sufficient evidence that would support a finding that shots Appellant fired on July 29, 2006 just before the victims were found in their car were the shots that killed them. As a

result, the trial court did not err in denying Appellant's motion for a directed verdict. Thus, this argument for relief should be denied and Appellant's convictions should be affirmed.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court deny Appellant's appeal and affirm his murder convictions and his convictions for possession of a weapon during the commission of a violent crime.

Respectfully submitted,

ALAN WILSON
Attorney General

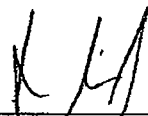
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By: 

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September 20, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

The Honorable Edward W. Miller, Circuit Court Judge

THE STATE

RESPONDENT,

V.

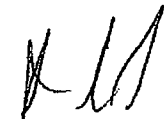
BRANDON HEATH CLARK,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 20th day of September, 2011.



ALPHONSO SIMON, JR.
Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

The Honorable Edward W. Miller, Circuit Court Judge

THE STATE

RESPONDENT,

V.

BRANDON HEATH CLARK,

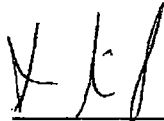
APPELLANT

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Elizabeth A. Franklin-Best, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 20th day of September, 2011.



ALPHONSO SIMON, JR.
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ATTORNEY FOR RESPONDENT

**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.

Brandon Heath Clark, Appellant.

Appellate Case No. 2009-145547

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2012-UP-549
Heard September 10, 2012 – Filed October 10, 2012

AFFIRMED

Appellate Defender Elizabeth Franklin-Best and
Appellate Defender Dayne C. Phillips, both of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Assistant
Attorney General Alphonso Simon, Jr., all of Columbia;
Solicitor William Walter Wilkins, III, of Greenville, for
Respondent.

PER CURIAM: Brandon Heath Clark appeals his convictions for two counts of murder and two counts of possession of a weapon during the commission of a violent crime. He contends the trial court erred in denying his motion for a directed verdict on his murder charges because the State failed to present any evidence he fired the gun that killed either victim. Because the record includes sufficient evidence which reasonably tends to prove Clark's guilt, we affirm. When reviewing a trial court's denial of a defendant's directed verdict motion, an appellate court must view the evidence in a light most favorable to the State. *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). Additionally, an appellate court must find a case was properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

In *State v. Ward*, 374 S.C. 606, 615, 649 S.E.2d 145, 150 (Ct. App. 2007), this court affirmed the denial of a directed verdict when the State presented evidence to show the defendant and a codefendant were involved in a fight with the victim; as the victim fled, the codefendant threatened to kill someone that night; and moments after that threat, the defendant and the codefendant got into a truck from which gunfire erupted towards the vehicle in which the victim rode. Furthermore, the driver of the truck and the codefendant stated the defendant was shooting out of the passenger side window of the truck. *Id.* Here, Clark stipulated not only his presence, but also that he fired his gun nine times at the murder scene. Additionally, the State's firearm forensic analysis revealed the bullet extracted from one of the victims was a .40 caliber bullet, the same caliber as Clark's gun. Further, the State's forensic analyst testified the shells, which Clark admitted discharged when he fired his gun, had similar microscopic marks to the bullet police extracted from one of the victims. Moreover, the State presented testimony indicating Clark, immediately after the shooting, stated he believed he shot the victims. Accordingly, the State presented sufficient evidence upon which the trial court could rely in denying Clark's directed verdict motion.

AFFIRMED.

SHORT, KONDUROS, and LOCKEMY, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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October 26, 2012

The Honorable Paul B. Wickensimer
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305 E. North St.
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REMITTITUR

Re: The State v. Clark, Brandon Heath.
Lower Court Case No. 2007GS2300443, 2007GS230443A,
2007GS2302442
Appellate Case No. 2009-145547

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alphonso Simon, Jr.
Dayne C. Phillips