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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Grace Gilchrist Knie, Circuit Court Judge

ERIC LAMONT OWENS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001075

APPENDIX

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

1
COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,
5 PLAINTIFF,
6 VS.
7 ERIC LAMONT OWENS,
8 DEFENDANT.

TRANSCRIPT
OF
RECORD
2014-GS-42-2236

9
10 April 20th - 22nd, 2015
11 Spartanburg, South Carolina

12
13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge; and a jury.

15
16 A P P E A R A N C E S:

17 ABEL GRAY and CHRIS BAIN
18 ASSISTANT SOLICITORS
Attorneys for the State

19 ROGER POOLE
20 ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

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23 PAMELA E. GREEN
24 Circuit Court Reporter
Seventh Judicial Circuit

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P R O C E E D I N G S

(WHEREUPON, the following takes place outside the presence of the entire jury panel.)

THE COURT: All right. We're on the record in the case of The State of South Carolina versus Eric Lamont Owens.

I've received requested voir dire from both the State and the defense and a list of proposed witnesses from the State. I do not see any additions to the witness list from the defense.

MR. POOLE: That's correct. The defense witnesses are the State witnesses.

THE COURT: Okay. So there are no additional witnesses other than those the State has listed?

MR. POOLE: That's correct.

THE COURT: All right. Have you had an opportunity to review the requested voir dire by either side, Mr. Gray?

SOLICITOR GRAY: Yes, sir.

THE COURT: Any objections to the defense's request?

SOLICITOR GRAY: No, sir.

THE COURT: And any objections to the State's request by the defense?

MR. POOLE: None.

THE COURT: All right. You want to call the case, Mr. Gray?

1 SOLICITOR GRAY: Yes, sir, Your Honor.
2 This is the case of the State versus Eric Lamont Owens,
3 two counts. True billed Indictment 2014-GS-42-2236. That's
4 the indictment for murder. Count Two is 2236-A. That's use
5 of a, a firearm/deadly weapon in the commission of a felony.
6 In this case, murder, Your Honor.
7 THE COURT: All right. Now, do you have the
8 indictments?
9 Pass those up to me, Charlena. Thank you, ma'am.
10 THE CLERK: Yes, sir.
11 THE COURT: So it's one indictments with two counts?
12 SOLICITOR GRAY: Yes, sir, Your Honor.
13 THE COURT: All right. Mr. Poole, is your client been
14 arraigned on that indictment?
15 MR. POOLE: No, sir, he's not been arraigned.
16 THE COURT: Well, let's, let's go over it with him at
17 this point in time.
18 Mr. Owens, please stand for me, and, if you would, be
19 placed under oath.
20 Madam Clerk.
21 (WHEREUPON, the Defendant was placed under oath at this
22 time.)
23 THE COURT: All right. Your name is Eric Lamont Owens,
24 is that correct?
25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Owens, I have been presented with an
2 indictment. It is Case Number 2014-GS-42-2236.

3 The indictment has two counts. One count is for the
4 offense of murder. The other count is for the possession of
5 a firearm during the commission of a violent crime. I'm
6 going to go over the indictment with you at this point in
7 time. When I've completed going over the indictment I'll be
8 asking you as to how you wish to plead, and if you plead not
9 guilty, I'll be asking how you wish to try, be tried. If,
10 at anytime during this process, you want to consult with
11 your lawyer about the case, let me know. I'll be glad to
12 stop and let you talk with Mr. Poole.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. The indictment, Count One, for
16 murder states that Eric Lamont Owens did, in Spartanburg
17 County, on or about November 12th, 2013, feloniously,
18 willfully, and with malice aforethought kill one Stanley
19 Jones by shooting the victim in the back and chest and that
20 the said victim died as a proximate result thereof all in
21 violation of Code Section 16-3-10 and 20 of the Code of Laws
22 of South Carolina, 1976 as amended.

23 Count Two is for the possession of a violent -- of a
24 firearm during the commission of a violent crime. That
25 in -- that portion of the indictment states that Eric Lamont

1 Owens did, in Spartanburg County, on or about
2 November 12th, 2013, possess a firearm during the
3 commission of a violent crime as defined by Code Section
4 16-1-60, to wit, murder, in violation of Code Section
5 16-23-490 of the Code of Laws of South Carolina, 1976 as
6 amended, against the peace and dignity of the state and
7 contrary to the statute in such case made and provided.

8 Now, Mr. Owens, did you understand the indictments and
9 the counts that I just went over with you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: As to Count One, on the charge of murder,
12 how do you plead?

13 THE DEFENDANT: Not guilty.

14 THE COURT: How do you wish to be tried?

15 THE DEFENDANT: By jury.

16 THE COURT: Okay. And as to Count Two, possession of a
17 firearm during the commission of a violent crime, how do you
18 wish to plead?

19 THE DEFENDANT: Not guilty.

20 THE COURT: And how do you wish to be tried?

21 THE DEFENDANT: By a jury.

22 THE COURT: All right. God grant you a speedy
23 delivery, Mr. Owens. You can be seated at this time.

24 (Defendant complies.)

25 THE COURT: All right. Mr. Poole, I've gone over the

1 indictment with your client. He has pled not guilty. So
2 we're going to proceed at this time into jury selection in
3 the case. Thereafter we'll consider the motions that you've
4 filed. I'm aware that there are motions to be considered.

5 MR. POOLE: Thank you.

6 THE COURT: All right. Anything further from the State
7 before we bring the jury in for jury selection?

8 SOLICITOR GRAY: We need to get the victim's family
9 down here, Your Honor.

10 THE COURT: All right. Well, we'll take a moment and
11 let's get them in, in the courtroom.

12 SOLICITOR GRAY: Thank you, Your Honor.

13 THE COURT: Court will be in recess briefly.

14 (WHEREUPON, a short recess was taken at this time.)

15 SOLICITOR GRAY: May we approach, Your Honor?

16 THE COURT: You may.

17 Mr. Poole.

18 (WHEREUPON, a bench conference was held at this time.)

19 THE COURT: All right. Mr. Gray, do we have people
20 here now that we're, we're waiting on?

21 SOLICITOR GRAY: Yes, sir, Your Honor.

22 THE COURT: All right. Ready to proceed?

23 SOLICITOR GRAY: Yes, sir.

24 THE COURT: Defense ready?

25 MR. POOLE: Yes, sir.

1 THE COURT: All right. I'll ask the bailiffs to bring
2 the jury panel around please.

3 We're ready for the jury, ma'am.

4 THE BAILIFF: All right, sir.

5 MR. POOLE: Your Honor, what is your impression of the
6 strikes, number of strikes for each side?

7 THE COURT: The strikes you're gonna have will be five
8 and ten.

9 MR. POOLE: Okay. Thank you.

10 THE COURT: Okay.

11 MR. POOLE: That's what we all say.

12 SOLICITOR GRAY: Ten and five, that's what I thought,
13 Judge.

14 THE COURT: Beg your pardon?

15 SOLICITOR GRAY: That's what I thought. I'm just
16 confirming.

17 THE COURT: Five and ten.

18 SOLICITOR GRAY: Yes, sir.

19 THE COURT: All right. How long do you anticipate the
20 length of the trial?

21 MR. POOLE: Two days, Your Honor.

22 THE COURT: All right. I'm probably gonna pick just
23 one alternate then.

24 MR. POOLE: Okay.

25 THE COURT: I don't think we'll need two.

1 (WHEREUPON, the following takes place within the
2 presence of the entire jury panel.)

3 THE COURT: All right. Good afternoon, ladies and
4 gentlemen.

5 I've not had the pleasure of meeting you thus far
6 today. My name is Roger Couch. I am a Circuit Court Judge
7 here in the Seventh Judicial Circuit. It is my pleasure to
8 be serving this week in a one week term of General Sessions
9 Court.

10 Now, General Sessions Court is the criminal division of
11 the Circuit Court. That means the cases that are coming in
12 front of me this week will involve situations where a
13 citizen has been accused of the commission of a crime.

14 First of all, I want to thank you very much for your
15 cooperation thus far with the Court. We're going to go
16 through a process of jury selection. I believe you've
17 are -- maybe have already been through that process with
18 Judge Kelly. However, his, his jury was selected on -- in
19 the Common Pleas Court, which is the civil side of the
20 Court. So we'll follow some -- a little bit different rules
21 in going about jury selection in this case as opposed to the
22 one that you've been involved in before, and I'll try to
23 explain to you those differences as we move along.

24 Now, before we begin the jury selection process, I'm
25 going to go over a few things with you. The reason I'm

1 going to do that is so that you will be in a position to
2 perhaps more fully and completely answer some questions that
3 I'm going to ask you that apply specifically to the case
4 that's before this Court.

5 Now, the first thing I'm going to go over with you is
6 the indictment. Now, the indictment, in a criminal case, is
7 the document that brings the case into the Court. It
8 informs the defendant of the charge that is been lodged
9 against the defendant. It informs this Court of the charges
10 that are to be tried during the trial.

11 Now, I will tell you that an indictment is not evidence
12 in a case and can not be used by a jury as evidence in
13 determining the questions of the guilt or the innocence of
14 someone named in the indictment. Again, it is simply the
15 formal document that brings the case into the Court. The
16 reason that I'm going over it with you again is so that
17 you'll understand what the allegations are, the people that
18 are alleged to have been involved in those allegations, and
19 the approximate time and place as to when these particular
20 events occurred.

21 Now, the indictment that I'm going over with you today
22 is in Case Number 2014-GS-42-2236. The indictment has -- is
23 divided into two counts. So there are two separate charges
24 contained within this indictment.

25 The first count of the indictment is for the offense of

1 murder. The indictment states, in part, that Eric Lamont
2 Owens did, in Spartanburg County, on or about
3 November 12th, 2013, feloniously, willfully, and with
4 malice aforethought kill one Stanley Jones by shooting the
5 victim in the back and chest, and that the said victim died
6 as a proximate result thereof in violation of section
7 16-3-10 and 20 of the Code of Laws of South Carolina, 1976
8 as amended.

9 Count Two of the indictment or the second charge
10 contained within the indictment that's before the Court is
11 for the charge of possession of a firearm during the
12 commission of a violent crime. This portion of the
13 indictment states that Eric Lamont Owens did, in Spartanburg
14 County, on or about November 12, 2013, possess a firearm
15 during the commission of a violent crime as defined in Code
16 Section 16-1-60, to wit, murder, in violation of Code
17 Section 16-23-490 of the Code of Laws of South Carolina,
18 1976 as amended, against the peace and dignity of the State
19 and contrary to the statute in such case made and provided.

20 Now, that is the indictment that's before the Court
21 and, again, I'll explain that this indictment informs this
22 Court of the charges to be tried. It informs the defendant
23 of the charges lodged against him and that indictment can
24 not be used for any other purpose and can not be used by a
25 jury in anyway in determining the guilt or the innocence of

1 a person named within that indictment.

2 Now, also I'm going to provide you with some additional
3 information. I'm going to ask that the attorneys involved
4 in this case introduce themselves to you, and in the case of
5 the defense, that the defense attorney introduce the
6 defendant to you as well.

7 So, first of all, the attorneys for the State.

8 SOLICITOR GRAY: Thank you, Your Honor.

9 My name is Able Gray. I'm a senior assistant solicitor
10 here in Spartanburg County. This is my co-counsel.

11 SOLICITOR BAIN: My name is Chris Bain. I also work at
12 the Solicitor's Office upstairs.

13 THE COURT: Thank you, gentlemen.

14 And for the defense.

15 MR. POOLE: My name is Roger Poole and I represent
16 Mr. Eric Owens.

17 THE COURT: Mr. Owens, if you'll stand and face the
18 jury panel for me.

19 (Defendant complies.)

20 THE COURT: Thank you very much. You can be seated.

21 (Defendant complies.)

22 THE COURT: Now, ladies and gentlemen, we're going to
23 go through a set of questions at this time. We'll question
24 you very similarly to you the way you were questioned
25 earlier by Judge Kelly. I'll be asking questions. If the

1 questions apply to you or if you have a response to my
2 questions, I'll be asking that you stand. I'll be calling
3 on you individually. I'll need your name and juror number
4 on the record before I discuss any response that you might
5 have to the questions that I'm about to ask.

6 It's very important that the information you provide,
7 at this time, is truthful, accurate, and complete
8 information for this information is used by the attorneys in
9 jury selection in this case. For that reason it is
10 necessary that you be sworn to tell the truth concerning
11 the, the questions that I'm about to ask.

12 Madam Clerk, please swear the potential jury panel for
13 me.

14 THE CLERK: Yes, sir.

15 (WHEREUPON, the jury panel was placed under oath at
16 this time.)

17 THE COURT: If there was any member of the potential
18 jury panel who either failed or refused to take the oath
19 that was just administered by the clerk, I'd ask that that
20 person please stand.

21 (No response.)

22 THE COURT: The record will reflect that all potential
23 jurors have now been sworn concerning the questions that I'm
24 about to ask.

25 All right. The first question that I have, has any

1 member of this panel ever been related by marriage or are
2 you related by blood to either the defendant, Eric Lamont
3 Owens, or the alleged victim, Stanley Jones, if that's true,
4 please stand.

5 (No response.)

6 THE COURT: Has any member of this jury panel ever had
7 a close personal or a social relationship with either the
8 defendant, Eric Lamont Owens, or the alleged victim, Stanley
9 Jones, if that's true, please stand.

10 (No response.)

11 THE COURT: As to the attorneys that are involved in
12 this case, has any member of this jury panel ever been
13 represented by any of the attorneys involved in this matter
14 or have they ever appeared on the other side of some legal
15 matter from you, if that's true, please stand.

16 (No response.)

17 THE COURT: Has any member of this jury panel ever been
18 related by marriage or are you related by blood or have you
19 ever had a close social or a personal relationship with any
20 of the attorneys that are involved in this trial, if that's
21 true, please stand.

22 (Juror responds.)

23 THE COURT: Yes, sir, I need a name and number.

24 THE JUROR: 61, James Compton. Attend the same church
25 as Mr. Poole.

1 THE COURT: All right. Now, would the fact that you
2 attend that church, if you were selected to serve on the
3 jury panel and you required, were required to serve, would
4 that affect your ability to be fair and impartial to both
5 the state and the defense in this matter?

6 THE JUROR: No, Your Honor.

7 THE COURT: Thank you. You can be seated.

8 Anyone else?

9 (No response.)

10 THE COURT: All right. Ladies and gentlemen, I'm going
11 to go over a list of people that have been identified to me
12 as possible witnesses in this case. The list is rather
13 lengthy. I want you to listen carefully as I go through
14 this list of names. We've got about 35 people on this list.

15 So I'm gonna call the names. Listen carefully as I
16 call the names because, when I finish, I'm going to ask you
17 some questions about these individuals as I have already of
18 other individuals.

19 First of all, I believe it's Shaina Wallace. It's

20 S-H-A-I-N-A Wallace.

21 Darien Blaine Seay.

22 Derrick White.

23 Talina Wallace.

24 Chelsea Burton.

25 Carylon Mack, C-A-R-Y-L-O-N, Mack.

1 Phillip Wallace.
2 Patricia Wallace.
3 Sharell Shantell Phillips.
4 Mary Phillips.
5 Anthony Canty.
6 Lamar Jones.
7 Bryson Laquez Stuart.
8 Daelin Zane Foster.
9 Cory Rashawn Brewton.
10 Steve Norman.
11 Melissa Evans.
12 Teri Khalil.
13 Mistee Medford.
14 Robin Rice.
15 John Cole with the EMS, Emergency Medical Services.
16 Chad Pleasant with EMS.
17 Ellen Holmes from the Spartanburg County Coroner's
18 office.
19 Joey Lathan with the Coroner's Office.
20 Dwayne Corn with the Coroner's Office.
21 J.E. Gardner with the Spartanburg City Police
22 Department.
23 R. Porter with the Spartanburg City Police Department.
24 Art Littlejohn with the Spartanburg Police Department.
25 L. Nelson with the Spartanburg City Police Department.

1 J. Watson with the Spartanburg City Police Department.
2 Paul Weatherman, Spartanburg City Police Department.
3 Dana Dillard with the Spartanburg City Police
4 Department.

5 B. Stokes, Spartanburg City Police Department.

6 J. Steadman, Spartanburg City Police Department.

7 C.W. Burgess, Spartanburg City Police Department.

8 C.D. Norket, N-O-R-K-E-T, with the Spartanburg City
9 Police Department.

10 An individual by the last name of Shaw, I do not have
11 initials or a first name, with the Spartanburg City Police
12 Department.

13 Doctor David Wren with the Spartanburg Regional Medical
14 Center, forensic pathologist.

15 Now, as to the people that I have named as possible
16 witnesses in this case, has any member of this jury panel
17 ever been related by marriage or are you related by blood or
18 have you ever had a close social or a personal relationship
19 with the people that I've identified as possible witnesses
20 in the case, if that's true, please stand.

21 (No response.)

22 THE COURT: Has any member of the jury panel previously
23 been a witness in either a civil or a criminal case tried in
24 a Court of law, if that's true, please stand.

25 (No response.)

1 THE COURT: Has any member of the jury panel or a
2 member of your immediate family, family or a close personal
3 friend of yours, has that person ever been or is currently
4 being represented by either the Seventh Circuit Public
5 Defender's Office or the seventh circuit solicitor's office,
6 if that's true, please stand.

7 (No response.)

8 THE COURT: Has any member of the jury panel or a
9 member of your immediate family or a close personal friend
10 of yours ever been charged with or convicted of any crime
11 involving, involving violence in any State Court, if that's
12 true, please stand.

13 (Jurors respond.)

14 THE COURT: Name and number, sir.

15 THE JUROR: 128, Christopher Robbs.

16 THE COURT: Your situation, sir?

17 THE JUROR: A friend, about two years ago, he robbed a
18 couple places and shot two cops.

19 THE COURT: I see.

20 And so you're, you're familiar with that person?

21 THE JUROR: Yeah.

22 THE COURT: Now, the fact that you know that person, if
23 you were selected to be on this jury, would that experience
24 affect your ability to be fair and impartial to both the
25 State and the defense?

1 THE JUROR: No, Your Honor.

2 THE COURT: Thank you. You can be seated.

3 Ma'am, name and number.

4 THE JUROR: Jessica Tucker, 152.

5 THE COURT: Yes, ma'am.

6 THE JUROR: I've been charged with criminal domestic
7 violence.

8 THE COURT: All right. That case, has it been ended at
9 this point in time?

10 THE JUROR: Yes.

11 THE COURT: All right. Now, would that fact that you
12 had that experience, would that affect your ability to be
13 fair and impartial to the people before this Court, the
14 state or the defense in this case?

15 THE JUROR: No, sir.

16 THE COURT: Thank you. You can be seated.

17 Sir, I'll need your name and number.

18 THE JUROR: Charles Richard, 125.

19 THE COURT: Yes, sir.

20 THE JUROR: My daughter was involved in a automobile
21 accident where death was involved and she's still pending
22 trial.

23 THE COURT: I see.

24 Now, would that fact or that experience affect your
25 ability to be fair and impartial in this case if you were

1 selected to be on the jury, jury?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, sir.

4 Anyone else?

5 (No response.)

6 THE COURT: Is there any member of the jury panel or a
7 member of your immediate family who is being currently
8 prosecuted or has been prosecuted by the Seventh Circuit
9 Solicitor's Office or the prosecuting attorney for any other
10 South Carolina Circuit, judicial circuit, or other state, if
11 that's true, please stand.

12 (No response.)

13 THE COURT: Has any member of the jury panel ever had
14 an experience with a police officer, a state trooper, a
15 federal agent, a state or federal law enforcement agency
16 that, in some way, might affect your ability to be both fair
17 and impartial to the State and the defense in this matter,
18 if that's true, please stand.

19 (Juror responds.)

20 THE COURT: Yes, sir, name and number.

21 THE JUROR: Name, Victor Johnston, Number 73. I have
22 two sons that's a police officer in the City of Spartanburg
23 County.

24 THE COURT: Would that affect your ability though to be
25 fair and impartial if you were selected as a member of the

1 jury?

2 THE JUROR: No, it wouldn't, sir.

3 THE COURT: All right. Thank you. You can be seated.

4 Has any member of this jury panel ever been arrested by
5 the Spartanburg City Police Department, if that's true,
6 please stand.

7 (Juror responds.)

8 THE COURT: Name and number, sir.

9 THE JUROR: 62; Steven Hammett.

10 THE COURT: All right. You apparently got arrested at
11 some point in time.

12 THE JUROR: Yeah.

13 THE COURT: Can you tell me what they, they arrested
14 you for?

15 THE JUROR: Breach of trust with intent to fraud.

16 THE COURT: I see.

17 Now, is that case still going on?

18 THE JUROR: No, it's, it's gone.

19 THE COURT: It's been ended?

20 THE JUROR: Yes, sir.

21 THE COURT: All right. Would the fact that that arrest
22 took place, would that affect your ability to be fair and
23 impartial to both the State and the defense?

24 THE JUROR: No, Your Honor.

25 THE COURT: All right. Thank you. You can be seated.

1 Anyone else?

2 (No response.)

3 THE COURT: Does any member of the jury panel have a
4 personal, a political, or a religious belief, or a
5 conviction such that it make -- would make you unable to sit
6 in judgment of another person, if that's true, please stand.

7 (No response.)

8 THE COURT: Is there any member of the jury panel or a
9 member of your immediate family or a close personal friend
10 who has ever been a victim of a violent crime, if that is
11 true, please stand.

12 (Jurors respond.)

13 THE COURT: Name and number, ma'am.

14 THE JUROR: Yvonne Roker, 130.

15 THE COURT: Can you tell me the situation, just an
16 outline, not---

17 THE JUROR: My brother-in-law was shot at the Hardee's
18 in Inman.

19 THE COURT: I

20 See. Now, would the fact---

21 THE JUROR: Ten years ago.

22 THE COURT: Ma'am?

23 THE JUROR: Ten years ago.

24 THE COURT: Ten years ago.

25 Now, would that fact that that had occurred in your

1 past, would that affect your ability to be fair and
2 impartial in this matter?

3 THE JUROR: No.

4 THE COURT: Thank you.

5 Ma'am, name and number.

6 THE JUROR: Jessica Tucker, 152.

7 THE COURT: Yes, ma'am.

8 THE JUROR: When I got my criminal domestic violence
9 charge my husband did too.

10 THE COURT: I see.

11 So would that fact affect your impartiality in this
12 matter?

13 THE JUROR: No.

14 THE COURT: Thank you, ma'am.

15 Sir, name and number.

16 THE JUROR: Steven Alexander, Juror 3. My cousin was
17 killed a few years ago.

18 THE COURT: I see.

19 Now, would that fact affect your ability to be fair and
20 impartial if you were selected on the jury?

21 THE JUROR: No, sir.

22 THE COURT: Thank you, sir.

23 Has any member of the jury panel or a member of your
24 immediately family ever been employed by any law enforcement
25 agency, jail, detention center, correctional facility, or

1 even the Department of Social Services, if that's true,
2 please stand.

3 (Jurors respond.)

4 THE COURT: You've already told me about your
5 situation, sir. So you can be seated.

6 THE JUROR: Okay.

7 THE COURT: Thank you.

8 Sir, name and number.

9 THE JUROR: Robert Barnette, Number 10.

10 THE COURT: Yes, sir.

11 THE JUROR: My brother-in-law's the coroner for several
12 years.

13 THE COURT: I see.

14 Now, would that fact affect your ability to be fair and
15 impartial in this case?

16 THE JUROR: No, sir.

17 THE COURT: Thank you, sir.

18 Sir, name and number.

19 THE JUROR: Joseph Miller, Number 97. My father was a
20 police officer.

21 THE COURT: All right. Would that affect your
22 impartiality, sir?

23 THE JUROR: No, sir.

24 THE COURT: Thank you.

25 Sir, name and number.

1 THE JUROR: Gordon Lewis, Number 83.
2 THE COURT: Yes, sir.
3 THE JUROR: I worked for the Department of Social
4 Services in Maryland.
5 THE COURT: I see.
6 Would that affect your impartiality in this case?
7 THE JUROR: No, sir.
8 THE COURT: Thank you.
9 Sir, name and number.
10 THE JUROR: James Hamilton, 61.
11 THE COURT: Yes, sir.
12 THE JUROR: My father was a judge, is a judge.
13 THE COURT: All right. Would that affect your
14 impartiality in this case?
15 THE JUROR: No, sir.
16 THE COURT: Thank you very much.
17 All right. Has any member of the jury panel or any
18 member of your immediate family ever been the victim of an
19 assault, been accused or convicted of an assault, if that's
20 true, please stand.
21 (Jurors respond.)
22 THE COURT: Yes, sir, same situation, ma'am?
23 THE JUROR: Yeah.
24 THE COURT: All right. You can be seated.
25 Same situation?

1 THE JUROR: Yvonne Roper, 130.

2 THE COURT: Yes, ma'am.

3 THE JUROR: My brother-in-law has had about 13 counts
4 of domestic violence.

5 THE COURT: All right. Would that affect your
6 impartiality in this matter?

7 THE JUROR: No.

8 THE COURT: Thank you.

9 Anyone else?

10 (No response.)

11 THE COURT: Has any member of the jury panel or a
12 member of your immediate family ever been accused of or
13 convicted of a crime involving the use of a weapon, if
14 that's true, please stand.

15 (No response.)

16 THE COURT: I may of gotten answers to this question
17 already, but I'll ask it anyway.

18 Has any member of the jury panel or a member of your
19 immediate family ever been the victim of a murder or
20 manslaughter, if that's true, please stand.

21 (Jurors respond.)

22 THE COURT: Name and number, sir.

23 THE JUROR: 18.

24 THE JUROR: Christopher Robbs, 128. My uncle was
25 killed and it's still open to this day.

1 THE COURT: All right. Would that affect your
2 impartiality in this case, sir?

3 THE JUROR: No, sir.

4 THE COURT: Thank you.

5 MR. POOLE: I'm sorry, Your Honor. I didn't hear the
6 response to the question. I'm sorry.

7 THE COURT: He said it would not affect his
8 impartiality.

9 MR. POOLE: The next to the last question. I mean
10 the -- you asked two questions.

11 THE COURT: Which question do you want me to get him to
12 answer?

13 MR. POOLE: The one right before that one.

14 THE COURT: Well, I'll -- stand up, sir.

15 MR. POOLE: I'm sorry.

16 THE COURT: Your name and number again.

17 THE JUROR: Christopher Robbs, 128.

18 THE COURT: All right. Tell me the situation.

19 THE JUROR: My uncle was killed in an alley and they
20 still haven't found---

21 THE COURT: All right.

22 THE JUROR: ---the murderer.

23 THE COURT: He said they've not solved the murder yet.

24 MR. POOLE: That's -- okay. Thank you.

25 THE COURT: That's what he's saying.

1 Does that answer your question, Mr. Poole?

2 MR. POOLE: Yes, sir.

3 THE COURT: Okay. Very good.

4 Sir, name and number.

5 THE JUROR: 125, Charles Richard.

6 THE COURT: Yes, sir.

7 THE JUROR: My wife's uncle was murdered.

8 THE COURT: All right. Would that affect your
9 impartiality in this case if you were on the jury?

10 THE JUROR: No, sir.

11 THE COURT: Thank you, sir. You can be seated.

12 Has any member of the jury panel or a member of your
13 immediate family ever been the victim of, and this is a
14 little bit of a technical thing about the charges, but I'm
15 gonna ask the question, a victim of an assault with intent
16 to kill or an assault of a high and aggravated nature?
17 Those are specific charges. So if anyone's ever been
18 the victim of an assault with intent to kill or an assault
19 of a high and aggravated nature, if that's ever occurred to
20 either you or a member of your immediate family, please
21 stand.

22 (No response.)

23 THE COURT: Now, has any member of this jury panel
24 either received or gathered any information about this case
25 such that it would have caused you to either form or express

1 an opinion about any matter or issue that might be involved
2 in this trial, if that's occurred, please stand.

3 (No response.)

4 THE COURT: Is there any member of the jury panel who
5 is aware of a bias or a prejudice that you might have either
6 for or against the State or the defense in this case, if
7 that's true, please stand.

8 (No response.)

9 THE COURT: Is there any member of this jury panel who
10 may have been a member of the Grand Jury that issued the
11 indictment in this case?

12 That indictment was issued on June the 12th of 2014.
13 If that's true, please stand.

14 (No response.)

15 THE COURT: Is there any member of the jury panel who
16 is a member of or a contributor to a group that has as its
17 primary concern the promotion of law enforcement and/or
18 victim's rights?

19 These groups would include, but not be limited to such
20 groups as Citizens Against Violent Crime, Mothers Against
21 Drunk Driving, Students Against Drunk Driving, the South
22 Carolina Troopers Association, the South Carolina Sheriff's
23 Association, or other similarly oriented organizations.

24 If you're either a member of or a contributor to such a
25 group, please stand.

1 (Juror responds.)

2 THE COURT: Does -- yes, ma'am, your name and number.

3 THE JUROR: Kelly Bryson, Number 20. I have contributed
4 to organizations for police officers.

5 THE COURT: I see.

6 Now, would the fact that you had made those
7 contributions, would that affect your ability to be fair and
8 impartial if you were selected on the jury?

9 THE JUROR: No, sir.

10 THE COURT: Thank you, ma'am.

11 Anyone else?

12 (No response.)

13 THE COURT: Does any member of the jury panel know of
14 any reason whatsoever why he or she should not serve as a
15 juror in this case with particular emphasis being placed
16 upon your ability to be both fair and impartial to both the
17 state and the defendant, if you are aware of any such
18 reason, please stand.

19 (No response.)

20 THE COURT: Any additional questions from the State at
21 this time?

22 SOLICITOR GRAY: No, sir, Your Honor..

23 THE COURT: Any additional questions from the defense?

24 MR. POOLE: None here.

25 THE COURT: All right. I'm gonna direct then that the

1 or I'll find that the jury panel is qualified to serve in
2 this case.

3 I'm going to direct that the clerk prepare a list of
4 potential jurors in this matter:

5 Now, this -- the way we select juries in Criminal Court
6 is a little different than we do it in Civil Court. In
7 Criminal Court, the, the clerk is going to prepare a list of
8 names. Those -- that list of names will be selected by a
9 program on that computer that makes random selections from
10 your group. The names will be placed in an order and
11 they'll be numbered on that, that list. Once she is
12 completed preparing that list we will begin to call the
13 names of the people in the order in which they were placed
14 on the list.

15 Now, when -- if your name is been picked and your name
16 is called, we're going to ask that you step out and walk
17 down front right in front of the Clerk's office here,
18 officer here, and face the back-door of the courtroom, and,
19 at that point in time, the parties will be in a position to
20 exercise the strikes that are allowed to them by law in the
21 selection of a jury.

22 Now, in this particular case the State is given five
23 strikes. The defense will be given ten strikes. The --
24 we'll pick one alternate with the State having one strike
25 and the defense having two strikes as to the alternate.

1 I will ask you that, when you come forward, if you have
2 any personal belongings, a jacket, a pocketbook, a book,
3 something you brought with you, bring that with you when you
4 come down. If you're selected to serve on the jury you'll
5 immediately have a seat in the jury box to my left. You
6 won't be going back to your seat in the courtroom. So
7 please bring with you any personal items that you brought
8 into the courtroom.

9 You ready?

10 THE CLERK: Yes, sir.

11 THE COURT: All right. Madam Clerk, I'll ask that you
12 begin the jury selection process.

13 THE CLERK: Yes, sir.

14 (WHEREUPON, a jury panel was selected at this time.)

15 THE COURT: We are now selecting the alternate.

16 (WHEREUPON, an alternate juror was selected at this
17 time.)

18 THE COURT: Any objection to the jury selection process
19 from the State?

20 SOLICITOR GRAY: None, Your Honor.

21 THE COURT: Any from the defense?

22 MR. POOLE: No, sir.

23 THE COURT: All right.

24 (Pause.)

25 THE COURT: All right. Ladies and gentlemen, you have

1 been selected as jurors in this case and let me go over just
2 a couple of things with you at this point in time.

3 There's some matter that I'm going to have to deal with
4 with the attorneys before we'll be ready to start with the
5 actual trial of this case, and rather than have you sit in a
6 jury room, and my jury room doesn't have any windows,
7 there's no entertainment back there, so rather than have you
8 sit there for the rest of the afternoon and perhaps not be
9 able to do anything as far as your work is concerned, I'm
10 going to release you for the rest of the afternoon and ask
11 that you be back in the morning to start the trial.

12 Let me explain some things to you as you leave the
13 courthouse today so that I'm sure we have a clear
14 understanding as to what my instructions are concerning your
15 behavior during your absence from the courthouse.

16 First of all, when you come back to this courtroom
17 tomorrow, you'll be taking an oath concerning your
18 responsibilities as jurors in this case. You'll find that
19 that oath includes a promise or an affirmation that you'll
20 decide the case based upon the law and the evidence that's
21 presented during the trial.

22 Now, the only place you're going to hear evidence about
23 this case is in this courtroom from this witness stand from
24 witnesses who've been sworn to tell the truth who will be
25 testifying during the trial, and the other evidence in the

1 case will be whatever comes into the record through the
2 testimony of those witnesses or by the agreement of the
3 attorneys. They agree to allow matters to come into the
4 record of the case. That's the only evidence that will
5 exist in this trial.

6 For that reason it would be highly improper for you to
7 try to gather any information about this case from any
8 source outside of this courtroom. It will be a violation of
9 your oath for you to try to do that. So I'm going to
10 instruct you and, you know, I've got a little age on me, but
11 I'm not so naive that I don't realize that you can pick up a
12 tablet or a computer or a smart phone and you get
13 information about just about anything in the world. I'm not
14 sure how accurate that information is sometimes, but you can
15 gather information if you chose to do that.

16 So I'm instructing you not to do that. Don't try to
17 gather any information about this case on your own at
18 anytime during the trial of this case.

19 Also, it would be improper for you to listen to, watch,
20 or read any media reports about this case. So if there's
21 something on the local news, radio, or television, or in the
22 newspaper, I'm instructing you not to listen to it, don't
23 watch it, turn it off, walk away, whatever you got to do not
24 to be exposed to that information because I can assure you
25 that media reports, quite often, includes information that

1 could never be introduced into evidence in a trial of a case
2 in a Court of law under the rules that govern the
3 introduction of evidence, and; therefore, should not be
4 considered by you at all in reaching a verdict in the case.

5 So, again, don't try to gather any information on your
6 own. Don't listen to, watch, or read any media reports
7 about this case.

8 The next thing I want to point out to you is that we've
9 gone to a good bit of trouble this afternoon to try to pick
10 a jury that doesn't have any preconceived notions or ideas
11 about this case. In other words, you've got an open mind
12 concerning the issues that are going to be presented to you
13 during the trial. I hope you realize that if you begin to
14 discuss this case with other people, family, friends,
15 acquaintances, whoever they might be, even the most innocent
16 conversation you might have with those people, when you
17 begin to discuss the nature of the charge, the people that
18 are involved, perhaps the personalities of those who are
19 involved in the case, you might begin to get information or
20 opinions that might begin to color your opinion in this case
21 and you haven't heard the first word of testimony in this
22 case yet.

23 For that reason I will instruct you, every time you
24 walk out that door and leave this courtroom, not to discuss
25 this case with anyone, family, friends, or anyone, even

1 among yourselves. Don't discuss the case until I ask you to
2 begin your deliberations in this case. I'll ask you to
3 start those deliberations once you've heard all the
4 testimony from the witnesses, you've heard all the arguments
5 from the attorneys, and you've heard my charge concerning
6 the law that you are required to apply to this case. Only
7 then would you have the information that you need to even to
8 begin a discussion about this case.

9 So, again, I'll caution you, don't discuss the case
10 with anyone. Don't allow anyone to discuss it with you.
11 When you get home today, if someone asked you if you've been
12 picked on a jury, you can answer that question yes and then
13 talk about something else, the weather, what -- something
14 else that's going on in your life, but not this case.

15 You can talk about it, if you choose to, once the case
16 is over. We'll discuss that at the close of the trial. But
17 in the mean time, don't discuss anything about this case
18 until I ask you to begin your discussions among yourselves.

19 The last thing I'm going to caution you about, it's a
20 crime in this state, it's a felony, for someone to try to
21 influence the decision of a juror in a trial of a case. So
22 if someone were to call you, contact you, come by to see you
23 and want to discuss something about this case with you, I
24 want you to report that as soon as possible to the Clerk's
25 Office here at the courthouse. I can assure you, if someone

1. tries to influence your decision in this case, I will see
2. that the appropriate investigations and actions are taken
3. for -- to take care of that particular situation.

4. So, in a nutshell, let me go over my instructions with
5. you because, when you come back in the morning, under oath
6. I'm gonna ask you if you've been able to comply with my
7. instructions thus far.

8. First of all, don't attempt to gather any information
9. about the case on your own. Don't listen to, watch, or read
10. media reports about the case. Don't discuss the case with
11. anyone. Don't allow anyone to discuss it with you; and
12. should anyone try to contact you about your service on this
13. jury, report that to the Court immediately. I can assure
14. you I'll take appropriate action should that occur.

15. So those are your instructions for the evening. I
16. guess that's your homework and I'll be checking in the
17. morning to be sure that you've been able to comply with my
18. homework when you come back to the Court.

19. Now, as you leave, the bailiffs are gonna show you the
20. jury room that you report to when you come back. You'll not
21. be going back to the assembly room in the back. You'll be
22. coming to the jury room in use for this trial. You'll check
23. in at that location.

24. I'll ask you to be at that jury room -- be in the jury
25. room by 9:30 in the morning. We should be able to start

1 immediately thereafter. Don't expect a great delay, but
2 possible they'll be a delay, but I don't think they'll be
3 one. So be there by 9:30 in the morning, and once you're
4 back in the courtroom I'll be checking to be sure you've
5 been able to follow my instructions.

6 I want to thank you for your assistance thus far, your
7 cooperation thus far. We look forward to working with you
8 on the case.

9 So, at this time the bailiffs will check you out.
10 We'll see you in the morning.

11 Thank you very much.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Any objections concerning my instruction to
15 the jury thus far from the state?

16 SOLICITOR GRAY: No, sir, Your Honor.

17 THE COURT: Any from the defense?

18 MR. POOLE: No, sir.

19 THE COURT: All right.

20 (Pause.)

21 THE COURT: We'll take a short recess in this case.

22 We'll return your client to the jail room and then we'll see
23 how we'll proceed. I do intend to do the pretrial motions
24 today, but I may need to do those pleas. Let's see where we
25 are.

1 MR. POOLE: Yes, sir.

2 THE COURT: We'll take a short recess.

3 (WHEREUPON, a short recess was taken at this time.)

4 THE COURT: All right. Mr. Poole, are we ready to go
5 forward on your pretrial motions?

6 MR. POOLE: Yes, sir.

7 THE COURT: Well, we need to get your defendant in the
8 courtroom.

9 Can you help me with the defendant?

10 I don't know who's here to get him. We need to get him
11 in the courtroom.

12 (WHEREUPON, the Defendant comes into the courtroom at
13 this time.)

14 MR. POOLE: Your Honor, I need to speak to him for just
15 one minute.

16 THE COURT: Yes, sir, let me know when you're ready.

17 (WHEREUPON, two photograph were marked as State's
18 Exhibit Nos. 1 and 2 for identification purposes only at
19 this time.)

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

21 THE COURT: Yes, sir, Mr. Poole.

22 MR. POOLE: On Friday afternoon I met with the State's
23 attorneys on this case and we went over some items that we
24 would -- be considered as exhibits --

25 THE COURT: Yes, sir.

1 MR. POOLE: -- and I was shown two pictures, State's
2 Exhibit No. 1 and State's Exhibit No. -- well, it's one --
3 No. 2 or one exhibit.

4 One and two?

5 SOLICITOR GRAY: That's one and two.

6 THE COURT: All right.

7 MR. POOLE: One purports to be what I believe is an
8 entrance wound on the side of the defendant, which shows a
9 gaping hole about the size---

10 THE COURT: You say the defendant.

11 You mean the victim?

12 MR. POOLE: The victim. The victim, Your Honor, Mr.---

13 THE COURT: All right.

14 MR. POOLE: ---Mr. Jones.

15 THE COURT: Uh-huh. (Affirmative)..

16 MR. POOLE: About the size of one's thumb, and the
17 other purports to show the exit wound on the other side or
18 the back of Mr. Jones with a stream of blood flowing down
19 from it. These photos are in color and I'm objecting to the
20 admission of these photographs in the form of a motion in
21 limine because the probative value of those photos
22 outweigh -- does not outweigh the prejudicial effect.

23 THE COURT: All right.

24 MR. POOLE: I think we always have -- we have the
25 reoccurring appearance of Doctor Wren in all these types of

1 cases, and he adequately, and more than adequately, always
2 gives a description of entrance, exit wounds, and the entire
3 autopsy. I would think that would be sufficient for the
4 jury to make a determination of all aspects of this wounding
5 and killing, and that the photographs, in that sense, are
6 cumulative.

7 THE COURT: All right. Yes, sir, Mr. Gray.

8 SOLICITOR GRAY: Yes, sir, Your Honor.

9 I don't think these photographs, photographs are
10 prejudicial in any way. As Mr. Poole said, there's gonna be
11 testimony from Doctor Wren. You've heard testimony also
12 already about the type of weapon that was used in this
13 situation. I dare say there were many -- maybe a hundred or
14 more pictures of the victim in this case that are much more
15 prejudicial, much more inflammatory in this situation.

16 THE COURT: Well, the question is though what is their
17 probative value versus their prejudicial effect.

18 MR. POOLE: Probative value---

19 THE COURT: So I'm trying to find out, first of all,
20 what do you intend to prove or show by these photos that
21 couldn't be shown in some other fashion.

22 SOLICITOR GRAY: In this situation, Your Honor, Doctor
23 Wren is gonna testify about a method of death,
24 exsanguination. Basically the young man bled out. Other
25 people will testify that a shotgun was used.

1 This shows the entry wound, entry wound and the exit
2 wound. There's no other way to actually show the entry
3 wound and the exit wound.

4 THE COURT: Is No. 1 the entry wound?

5 SOLICITOR GRAY: Yes, sir, Your Honor.

6 THE COURT: All right.

7 SOLICITOR GRAY: No. 1 is the entry wound from the
8 shotgun shell.

9 THE COURT: Let me ask you this.

10 The shotgun that was used, was this a -- you know, it's
11 different kinds of shotgun shells. There's different,
12 there's different gauges and different types of shot.

13 Was this a slug or was this a -- was this a buckshot or
14 was this a---

15 SOLICITOR GRAY: It was not buckshot, Your Honor, no,
16 sir.

17 THE COURT: Okay. Well---

18 SOLICITOR GRAY: This was a slug in this situation.
19 One of the other---

20 THE COURT: So, it was a slug is what you understand.
21 Is that right, Mr. Poole?

22 MR. POOLE: That's my understanding. In fact, I think
23 that a slug may have been---

24 THE COURT: Retained?

25 SOLICITOR GRAY: ---taken out of the side of the, the

1 house.

2 THE COURT: I see. Okay.

3 MR. POOLE: So it was a slug.

4 SOLICITOR GRAY: But regardless, in this situation,
5 that's what multiple witnesses are gonna testify to, the
6 type of shotgun, that will corroborate what you heard here
7 today. Doctor Wren's gonna testify to what, six minutes,
8 that the exsanguination took place. We're not trying to
9 show anything inflammatory here in this situation.

10 THE COURT: But it appears that the body may have been
11 cleaned up to a certain degree.

12 SOLICITOR GRAY: That's exactly right, Your Honor. We
13 have much more -- they're many more pictures that are
14 inflammatory that show a -- that the body at the scene where
15 it shows a big hole in the shirt, blood all over the shirt.
16 Basically him draining out, Your Honor, and we've chose not
17 to show any of those photos. The -- this is a photo that
18 shows only the entry wound, only the exit wound.

19 THE COURT: Well, let me ask you this.

20 The, the murder weapon, the alleged murder weapon, was
21 it recovered?

22 SOLICITOR GRAY: No, sir, Your Honor, it was not. As a
23 matter of fact, if, if I may, I would like to have this
24 marked please and I'll tell you one of the witnesses in this
25 case -- I'm sorry. I apologize.

1 (WHEREUPON, a suspect identification worksheet was
2 marked as State's Exhibit No. 3 for identification purposes
3 only at this time.)

4 SOLICITOR GRAY: Thank you.

5 One of the witnesses in this case, Ms. Shaina Wallace,
6 was presented by officers with a suspect identification
7 worksheet. Right now it's marked as State's Exhibit No. 3
8 for identification purposes.

9 May I approach?

10 THE COURT: You may, yes, sir.

11 SOLICITOR GRAY: Mr. Poole has seen this, Your Honor.

12 The weapon was not recovered in this situation, but
13 officers with the City Police Department showed Ms. Wallace.
14 She saw -- she was the girlfriend of the defendant at the
15 time. She saw the weapon that was used. It was in his
16 closet one day after the shooting. She never saw the weapon
17 again. Officers showed, showed her different types of
18 weapons as you see in that sheet. She circled the shotgun
19 that was used.

20 THE COURT: The shotgun with a pistol grip?

21 SOLICITOR GRAY: Pistol grip, yes, sir, Your Honor,
22 like the young man said like in the movies. Basically what
23 we would show is that this type of weapon caused this type
24 of injury, which would cause exsanguination, bleeding out,
25 with this type of entry wound, exit wound.

1 As soon as this gentleman saw it -- the young man saw
2 the weapon, he tried to run. He twisted. He turned. He
3 had no chance in this situation.

4 The cause of death was exsanguination because he was
5 shot once by this type of shotgun. We're not trying to
6 show, show all the blood that was on his white shirt that --
7 when he was found by his mother, his mother's boyfriend, and
8 his brother. We're not trying to show the huge pool of
9 blood, blood that was around him after the one single shot
10 when he laid in the street or whatever for, you know, ten to
11 twenty to thirty minutes. We only want to show, in this
12 situation, the entry wound and the exit wound.

13 THE COURT: Well, I -- maybe I -- it was a little
14 unclear there.

15 You did recover a slug?

16 SOLICITOR GRAY: No, sir.

17 THE COURT: You did not recover a slug?

18 SOLICITOR GRAY: No, sir.

19 THE COURT: Okay.

20 SOLICITOR GRAY: Not in this situation. It was a
21 through and through -- it was essentially -- we did not
22 recover a slug---

23 THE COURT: Okay. Well, I'm just---

24 SOLICITOR GRAY: ---in this situation.

25 THE COURT: I'm trying to find out, in my mind, if

1 there's additional evidence available that would show what
2 type of wound it -- this might of made without a picture.

3 SOLICITOR GRAY: No, sir.

4 THE COURT: You're telling me you never recovered a
5 slug. So you don't have that to show to the jury.

6 SOLICITOR GRAY: No, sir.

7 THE COURT: Okay.

8 SOLICITOR GRAY: All right. And, and I made -- this
9 may aid my argument or, or defeat it, but Doctor Wren is
10 gonna testify that a handgun couldn't cause this type of
11 injury, Your Honor. Only---

12 THE COURT: I see.

13 SOLICITOR GRAY: ---a shotgun.

14 THE COURT: Mr. Poole, anything else you want me to
15 consider?

16 MR. POOLE: No, sir, just that, again, Doctor Wren
17 really goes into the details on these issues.

18 Exsanguination, he can explain. Entrance, exit, weapons,
19 gauge, and all that.

20 THE COURT: All right.

21 MR. POOLE: That's more than adequate.

22 THE COURT: Here's what I'm gonna do.

23 At this point in time, based on what I've heard, I
24 think there is some probative value to the photographs. I
25 do note that they have been cleaned up, that they are not

1 what I would of expected otherwise from someone who had bled
2 to death from these, these injuries;

3 I think it is of some importance to indicate that the
4 type of weapon described could produce the type of wound,
5 and so it's a rather large entry wound from what I can show.
6 So it's a little more than what you'd have from a handgun or
7 something of that nature and that is also probative value in
8 this case since the weapon has been described as a pistol
9 grip shotgun.

10 I am concerned; however, about the color nature of the
11 photos.

12 SOLICITOR GRAY: Yes, sir.

13 THE COURT: I would urge you to use -- in fact, I'll
14 rule that you'll have to use black and white. I don't think
15 the color helps one way or the other. It -- I think the
16 wound would be shown either way. In fact, it may make it
17 more graphic for it to be in color. So I'll, I'll allow it
18 to come in as a black and white photo.

19 SOLICITOR GRAY: Yes, sir, Your Honor.

20 THE COURT: And I find that the probative value does
21 outweigh the prejudicial effect in this case.

22 MR. POOLE: Thank you, Your Honor. I respectfully take
23 exception.

24 THE COURT: I understand. I appreciate that.

25 SOLICITOR GRAY: Thank you, Your Honor.

1 THE COURT: All right. Mr. Poole, anything else?

2 MR. POOLE: Yes, sir, just a couple other matters.

3 THE COURT: I do note, Mr. Poole, you had indicated, in
4 chambers, that you wanted to sequester witnesses.

5 MR. POOLE: Yes, sir.

6 THE COURT: I don't know who's in the courtroom at this
7 time or if it's important at this stage of the hearing or
8 not. So I just---

9 MR. POOLE: I think---

10 THE COURT: ---remind you that indicated you wanted to
11 do that.

12 MR. POOLE: I think we are in agreement that we should
13 have the testifying witnesses sequestered since different
14 statements were given at different times---

15 THE COURT: Right.

16 MR. POOLE: ---in the investigation.

17 THE COURT: Well, I've not received any testimony as of
18 yet, but I will inform the Court that I will grant the
19 motion. I will allow at least one representative as a
20 victim, and you indicated perhaps his mother is, is gonna
21 attend the trial.

22 SOLICITOR GRAY: Yes, sir.

23 THE COURT: Is that right, Mr. Gray?

24 SOLICITOR GRAY: Yes, sir, and also the lead
25 investigator.

1 THE COURT: And the lead investigator.

2 Can you designate who that is?

3 SOLICITOR GRAY: That is Mr. Gardner, Your Honor.

4 THE COURT: Okay. All right. Those are the people
5 I'll allow the State to have in the courtroom at all times.

6 MR. POOLE: Sure.

7 THE COURT: And, of course, you have the defendant.
8 He'll be present. But you need to, overnight, inform the
9 other witnesses that they'll have to stay outside with -- if
10 they're gonna be testifying witnesses.

11 SOLICITOR GRAY: Yes, sir.

12 THE COURT: All right.

13 MR. POOLE: Also, while we're on the record, Your
14 Honor, I would like to put the question to the State for an
15 assurance that no inducements, promises, incentives, or
16 otherwise have been extended toward the other witnesses who
17 are codefendants in this case and who will be testifying.

18 THE COURT: Mr. Gray.

19 SOLICITOR GRAY: None have, Your Honor. No promises,
20 no threats, no inducements, and nothing.

21 THE COURT: And I do note that I have accepted the plea
22 of Mr. White in the case, and Mr. White, under oath,
23 indicated that there were no promises or guarantees made to
24 him in connection with his plea. So he put that on the
25 record and Mr. Gray now is indicated, for the State, that

1 there were none.

2 MR. POOLE: That's appreciated.

3 The next issue we have is Mr. Gray had informed me
4 that, in a timely manner, that he proposed to use a prior
5 conviction pursuant to Rule 609 of the South Carolina Rules
6 of Evidence to impeach specifically, specifically impeach my
7 client, Mr. Owens, with a 1998 armed robbery with a deadly
8 weapon, assault and battery of a high and aggravated nature,
9 grand larceny charge, and 2012 unlawful carrying of a
10 weapon, two charges of that.

11 THE COURT: And your objection to those are?

12 MR. POOLE: This is the objection. Mr. Owens is
13 charged with murder and possession of a firearm during the
14 commission of a violent crime.

15 Now, if mention of these charges, these convictions
16 were to be brought out in any stage, especially at the stage
17 when he's testifying, for terms of so called impeachment,
18 does not meet the requirement that the probative value of
19 the conviction of specific facts and circumstances
20 substantially outweighs its prejudicial effect.

21 There's a word that adverb -- there's a reason that
22 adverb substantially outweighs its prejudicial effect is
23 there and I believe it is this. When you have a defendant
24 facing charges like this, and he's got a record consisting
25 of weapons and robbery and being armed with weapons, that is

1 just too much. The prejudicial effect is just blatant to
2 the effect that it would cause a chilling effect upon his
3 right to testify.

4 THE COURT: I'm not aware that any of the elements of
5 the crimes that you've mentioned involve the making of a
6 false statement or dishonesty.

7 Am I correct?

8 Any of the elements of those crimes?

9 I heard armed robbery.

10 What did I hear?

11 MR. POOLE: Armed robbery, assault and battery high and
12 aggravated nature, and grand larceny, carrying a weapon two
13 charges. What I'm objecting to---

14 THE COURT: Well, I'm saying none of those involve --
15 they're certainly not crimes that involve dishonesty.

16 MR. POOLE: No, sir.

17 THE COURT: You can rob somebody with a gun honestly I
18 guess is the way I consider that. Tell them the truth that
19 you got a gun.

20 MR. POOLE: Right.

21 THE COURT: It's not like giving a false statement to a
22 police officer.

23 MR. POOLE: It's not like a fraudulent check either
24 though.

25 THE COURT: No, that's what I'm saying.

1 MR. POOLE: Yeah, I---

2 THE COURT: I'm not aware of any of the elements of
3 those crimes involving the making of a false statement of
4 some kind or untruthfulness.

5 MR. POOLE: What I'm trying to keep out is any specific
6 mention of a conviction on Mr. Owens of these charges in
7 1998 and 2012. I don't think that it can be brought out
8 that he was charged with---

9 THE COURT: Well, let, let me hear from Mr. Gray about
10 that.

11 SOLICITOR GRAY: Well, Your Honor, the purpose of 609
12 is not necessarily to bring those out in, in total just to
13 say in a, in a gotcha type of sense. It's notice to a
14 defendant that, that if he brings up any, any part of his
15 character or someone else brings up part of his character
16 saying he's not a violent person, I will never have done
17 anything violent---

18 THE COURT: Well now there's been -- he's not put any
19 evidence in---

20 SOLICITOR GRAY: No, sir.

21 THE COURT: ---at this time.

22 SOLICITOR GRAY: Yes, sir, you are absolutely correct.
23 But if he does state anything saying I, I'm not a---

24 THE COURT: So you're saying if he were to testify and
25 he put his character in issue?

1 SOLICITOR GRAY: Yes, sir.

2 THE COURT: Then that will be a whole different matter.

3 SOLICITOR GRAY: Absolutely, Your Honor.

4 THE COURT: Well then it might be, but until he does
5 that, character is not an issue.

6 SOLICITOR GRAY: Absolutely, Your Honor. I agree with
7 that totally. I can't just bring out he, he has these
8 violent crimes on my own with---

9 THE COURT: Is that what you're asking for---

10 SOLICITOR GRAY: ---out any testimony.

11 THE COURT: ---as far as---

12 MR. POOLE: Yeah, I was asking for a specific
13 limitation on, on how far to go into the record. If we're
14 able to say---

15 THE COURT: Well, I'm gonna make a ruling that, that
16 the prejudicial effect would outweigh the probative value,
17 values on the simple issue of credibility, but now if your
18 client though gets on the stand and puts his propensity for
19 violence or his character somehow in evidence, that makes
20 those now more probative.

21 Do you follow me?

22 MR. POOLE: Yes, sir.

23 THE COURT: I've reserved the right to review my
24 ruling.

25 SOLICITOR GRAY: And I think I have a duty to notice

1 him.

2 THE COURT: I don't know if your client's gonna -- what
3 he's gonna testify to. I'm not asking you to tell me. But,
4 again, if he were to get on the stand and say well, I've
5 never been involved in any type of crime that involved
6 violence---

7 MR. POOLE: Well, right. Okay.

8 THE COURT: ---then there may be, there may be an issue
9 there that I'd have to revisit.

10 MR. POOLE: I understand. If he opens the door, I
11 understand.

12 THE COURT: That's, that's what I'm saying.
13 Do you understand what I'm saying?

14 MR. POOLE: I understand.

15 THE COURT: So---

16 SOLICITOR GRAY: And I think I have to---

17 THE COURT: But I'm not gonna let the State simply use
18 it---

19 SOLICITOR GRAY: No, sir.

20 THE COURT: ---to attack credibility. I'm, I'm ruling
21 in your favor on that.

22 MR. POOLE: Thank you.

23 THE COURT: Okay. But you -- I think you understand
24 where we are, Mr. Poole. Maybe you ought to talk to your
25 client about that.

1 MR. POOLE: I will.

2 THE COURT: Okay.

3 MR. POOLE: We had mentioned, at one time, a Jackson v.
4 Denno hearing. I don't think that's going to be necessary.

5 THE COURT: All right.

6 MR. POOLE: The lead investigating officer in this
7 case, Investigator Gardner, had some handwritten notes and
8 there was mention in the notes about a -- videos that
9 possibly existed. I would like to have a short hearing
10 where I could ask Mr. Gardner about those issues.

11 THE COURT: All right. Now, you're wanting to suppress
12 the video?

13 MR. POOLE: Well, I'm not---

14 THE COURT: What's your motion?

15 I want to know what---

16 MR. POOLE: My motion is this. There was a -- in his
17 handwritten notes it says supporting evidence, video of car
18 at Subway on 11/12/13 at 7:00 hours. The relevance of that
19 information is the car that was allegedly used in this case
20 belonged to Ms. Shaina or Shaina Wallace. It was a white
21 Buick, and I---

22 THE COURT: Who has some connection with the defendant
23 I believe?

24 MR. POOLE: That's right.

25 THE COURT: Is that -- that was the allegation I just

1 heard argued, but---

2 MR. POOLE: That's right.

3 THE COURT: ---during the previous plea.

4 MR. POOLE: Yeah, a white car.

5 THE COURT: Right.

6 MR. POOLE: A white car that was used.

7 THE COURT: Right.

8 MR. POOLE: And it was at Subway on that date, then --
9 and if there's a video that exists, we have the right to
10 know that.

11 THE COURT: Well, let's ask the state if it exists.

12 SOLICITOR GRAY: Well, there -- yeah, there was a, a
13 video in the -- tell the court. The Subway and the --
14 there's a Little Ceasars near it also, very close by, and,
15 in this situation, there's a Little Ceasars video in close
16 proximity to the subway that does show the white car being
17 driven away in that situation. Not necessarily by the
18 defendant. We can't prove that, that he was driving away in
19 that white car.

20 THE COURT: Are you in possession of that video?

21 SOLICITOR GRAY: I, I believe we are in possession of
22 that video, but we need time to get that from evidence
23 from---

24 THE COURT: Okay.

25 SOLICITOR GRAY: ---to see if---

1 THE COURT: Well, I'm gonna order that they should show
2 you -- let you see the video.

3 Is that what you want?

4 MR. POOLE: Yes, I want to see any videos. There's
5 also mention of two other videos, "video of car heading to
6 scene at 9:07, a video of car leaving the scene at 9:10." I
7 mean I haven't seen these videos and---

8 THE COURT: Well, I'll let the State make them
9 available to you overnight. We're not gonna start the trial
10 today. So you certainly are gonna be given the right to
11 look at it and if there's some issue that develops from
12 that, you can certainly advise me of that.

13 MR. POOLE: Okay.

14 THE COURT: So I'll give you time to look at them and
15 I'm gonna direct that they produce them for you.

16 MR. POOLE: Okay.

17 SOLICITOR GRAY: If we can find them, Judge, we'll,
18 we'll give them to him.

19 THE COURT: Well, you only have to produce what you
20 have in your possession.

21 SOLICITOR GRAY: Yes, sir.

22 THE COURT: Now, if it's in your possession you got to
23 give it him or otherwise---

24 SOLICITOR GRAY: Yes, sir, and if it's not in our
25 possession---

1 THE COURT: ---you're wasting your time here. You're
2 gonna have a problem on your hands.

3 So you understand what I'm saying?

4 SOLICITOR GRAY: Yes, sir.

5 THE COURT: Let him have it, whatever it shows.

6 SOLICITOR GRAY: Yes, sir.

7 MR. POOLE: Your Honor, do you -- could, could we
8 possibly take some short testimony on it from the
9 investigator?

10 THE COURT: Well, I'm not sure what your motion is. I
11 don't mind taking testimony. I don't know if there -- are
12 you intending to use those videos in your case?

13 SOLICITOR GRAY: The one from Little Ceasars, possibly,
14 Your Honor, but only that he's alleging,
15 I've never seen that video.

16 THE COURT: All right. So are you making a motion to
17 suppress them for some reason?

18 MR. POOLE: Produce, to, to produce if they're in the
19 possession and---

20 THE COURT: Well, I've, I've granted your motion. I
21 told them they got to produce them.

22 MR. POOLE: I guess I want -- more specifically, I was
23 wanting to know how these -- this information ended up in
24 the detective's, investigator's handwritten notes unless
25 they do exist.

1 THE COURT: Well, again, normally when I take testimony
2 there's some motion that's been made to suppress something
3 or to, you know, to throw out an identification, to suppress
4 a statement.

5 MR. POOLE: The first mention that I'm---

6 THE COURT: And I'm granting your motion to get them.
7 So --.

8 MR. POOLE: Okay.

9 THE COURT: Do you follow what I'm saying?

10 I don't mind taking testimony other than let's -- I'll
11 give Mr. Gray a moment to go check with his investigator and
12 find out what he's got. Let's find out what there is. I
13 mean I don't -- now, if there's some difference in what the
14 notes indicate, then I'm gonna let you ask some questions.

15 MR. POOLE: Okay. That would --.

16 THE COURT: Okay.

17 MR. POOLE: -- suit me.

18 THE COURT: Take, take a brief recess and see if you
19 can iron that out.

20 SOLICITOR GRAY: Yes, sir.

21 THE COURT: I'm gonna stay on the bench. Let me know
22 what you find out.

23 SOLICITOR GRAY: Yes, sir.

24 (WHEREUPON, a short recess was taken at this time.)

25 MR. POOLE: I think we're finished today. Let me just

1 quickly review.

2 THE COURT: I'm sorry, Mr. Poole.

3 What was this now?

4 MR. POOLE: They have provided -- they have brought
5 some materials relevant to my last request.

6 THE COURT: All right.

7 MR. POOLE: I think they're going to make it available
8 to us to watch, and. In that case, I think we're through --

9 THE COURT: Okay.

10 MR. POOLE: -- today.

11 THE COURT: All right.

12 MR. POOLE: We will---

13 THE COURT: But I'm gonna, I'm gonna resume then at
14 nine o'clock in the morning. I got the jury coming in at
15 9:30. If there's any issues that come up as a result of
16 your reviewing that evidence, I'll give you an opportunity
17 to bring it up at that time.

18 MR. POOLE: Okay. Thank you, sir.

19 THE COURT: All right. We're in recess until nine
20 o'clock in the morning then.

21 Thank you very much.

22

23 (WHEREUPON, Court was in recess for the day.)

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Tuesday, April 21st, 2015

SOLICITOR BAIN: Your Honor, we're gonna go ahead and set up the Elmo equipment.

THE COURT: Yeah, go ahead. That's, that's fine.

(Pause.)

THE COURT: All right. Mr. Gray, is the State ready to proceed?

SOLICITOR GRAY: Your Honor, we have some issues of statements and pictures that -- well, not pictures we agreed upon. We didn't know if you wanted us to pre-mark them or---

THE COURT: Well, if you can agree on them and, and we can go ahead and introduce them into evidence by stipulation, let's do that. So if you want to get with the court reporter and mark anything that's been agreed upon, let's put that in the record. If not, we'll do it by testimony as we move along.

MR. POOLE: I have no objection, but not by stipulation, but I have no objection for Mr. Gray or Mr. Bain to offer.

THE COURT: Uh-huh. (Affirmative).

MR. POOLE: ---the photographs in---

THE COURT: Well, let's mark them if they're gonna use them in their opening statements so we've identified them

1 and we know that you're using what you've agreed to let in.
2 I know you're not stipulating to them, but you have---

3 MR. POOLE: Yes, sir.

4 THE COURT: ---agreed for them to be made exhibits?

5 MR. POOLE: Yes, sir.

6 THE COURT: They can't use them in their argument
7 unless it's part of the record.

8 MR. POOLE: I understand.

9 THE COURT: So they've got to put them in the record.

10 SOLICITOR BAIN: I'm not using any in opening.

11 THE COURT: Well, let's just, let's just shut that down
12 then and we'll use that after we do our openings.

13 SOLICITOR GRAY: Yes, sir.

14 THE COURT: Why don't you lower everything so we don't
15 block Mr.---

16 SOLICITOR BAIN: Yes, sir, Your Honor.

17 THE COURT: ---of the jury's view of the defendant or
18 Mr. Poole. I want them to get a good look.

19 SOLICITOR GRAY: He is dapper today.

20 THE COURT: He is very dapper.

21 MR. POOLE: I know that.

22 THE COURT: All right. Now, other than that, Mr. Gray,
23 is the State ready to proceed?

24 SOLICITOR GRAY: Yes, sir, Your Honor.

25 THE COURT: Anything else for me to consider before I

1 bring the jury in?

2 SOLICITOR GRAY: Not from the State.

3 THE COURT: All right. And, Mr. Poole, last night you
4 had indicated that there were some videos that were
5 mentioned in the discovery you had received that you had not
6 had a chance to view. I directed the State to make that
7 available to you over the evening.

8 Did they, in fact, do that?

9 MR. POOLE: They, in fact, did that. We've looked at
10 the videos to the extent that we were able to, and since the
11 State is not introducing any aspect of the video or stills
12 of the video, it's become a nonissue.

13 THE COURT: I see.

14 So your understanding is the State does not intend to
15 use them in their trial?

16 MR. POOLE: That's correct.

17 THE COURT: And I assume you did not find them to be
18 usable in your trial as well, is that correct?

19 MR. POOLE: That is correct.

20 THE COURT: All right. So they won't be at issue in
21 the case apparently?

22 MR. POOLE: That's right.

23 THE COURT: Okay. All right. Very good.

24 Any other matters that the defense wants me to take up
25 before I swear the jury?

1 MR. POOLE: No, sir.

2 THE COURT: Anything else from the State?

3 SOLICITOR GRAY: No, sir, Your Honor.

4 THE COURT: All right. Let's bring the jury panel in.

5 I remind everyone that I have sequestered witnesses.

6 The state's lead investigator and the victim's family

7 members who've been designated are allowed to stay with the

8 trial.

9 (WHEREUPON, the following takes place within the

10 presence of the jury.)

11 THE COURT: Good morning.

12 The record will reflect that the jury has returned to

13 the courtroom, and I hope everyone had a good evening in

14 spite of all the weather that was about the county, and

15 during the evening I had given you some instructions

16 concerning your behavior while you were away from the court,

17 courtroom.

18 Now, if there was any member of the jury panel who had

19 any difficulty or was unable to comply with my instructions,

20 please stand.

21 (No response.)

22 THE COURT: All right. The record will reflect that

23 all jurors have complied with the court's instructions thus

24 far.

25 I told you that, when you returned to the courtroom,

1 you would be taking an oath concerning your responsibilities
2 as jurors in the trial of this case.

3 So at this time I'm going to ask that the clerk
4 administer that oath to you.

5 Madam Clerk.

6 THE CLERK: Yes, sir.

7 (WHEREUPON, the jury was placed under oath at this
8 time.)

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

10 THE COURT: Now, if any member of the jury panel either
11 failed or refused to take the oath that was just
12 administered by the clerk I'd ask that you now stand.

13 (No response.)

14 THE COURT: The record will reflect then that all
15 jurors have been sworn concerning your responsibilities in
16 this case.

17 Now, before we begin the trial of the matter there's
18 some things that I would like to go over with you, and I'm
19 doing that primarily because it's my belief that, for most
20 of you, that this is your first experience in actually
21 serving on in -- on, on a jury in the trial of a criminal
22 case, and, and since, for most of you, this is your first
23 experience, there's some rather basic things that I would
24 like to go over with you concerning the duties and
25 responsibilities that you have, that I have, and that other

1 people in the courtroom have in this case.

2 You know, if you've never been in this position before,
3 if you've never been on a jury before, I would expect that
4 most of what you might know about what juries do in trials
5 you would of learned from such sources as television shows
6 you've watched or maybe movies you've seen or books that
7 you've read or other sources of information such as that.
8 Maybe in school. But they don't teach much about the jury
9 system in the school system I don't believe anymore.

10 But at any rate, and while all of those sources of
11 information I just mentioned are very interesting, they
12 always have interesting plots and storylines and twists and
13 turns and, and -- because I hope you realize that those
14 sources of information are intended to entertain you. You
15 know, in the case of television, you can have an event occur
16 and the matter can be tried and the whole thing wrapped up
17 in the space of an hour and they still have time to stop for
18 commercials about five times, and I hope you realize that
19 that's not how the real world works.

20 Because, you see, those sources of information, that --
21 those, those stories are intended to entertain you. They're
22 intended to keep your attention so you'll watch those
23 commercials. You know, the more people that watch the
24 commercials the more money they make. So there's a purpose
25 in why, why they do that that way.

1 But I hope you realize that what you're engaged in now
2 in this trial is intended for anything but your
3 entertainment. What you're involved in is a basic part of
4 our government. I hope you realize that, in most countries
5 in this world, if you were to go around the world today and
6 look at the systems of justice that exist in those
7 countries, you would find that the vast majority of them do
8 not allow citizens to directly participate in the decision
9 making process that goes on in the Courts in those
10 countries. In most countries the decision making process is
11 controlled by government appointees or judges or
12 bureaucrats, people who are designated or hired for that
13 purpose.

14 Our system is different. Our system takes people, such
15 as yourselves, from your ordinary walks of life. We bring
16 you into the courtroom and put you in a decision making
17 position on a jury.

18 You know, our jury system was first thought of or first
19 came into being in a document known as the Magna Carta.
20 That document was signed in a place called Runnymede England
21 in the Year 1215.

22 Now, I pointed that out to you because this is the
23 800th anniversary of that document. So the trial of, of
24 citizens by a jury of one's peers has been in existence in
25 our system for 800 years this year. It's a long system.

1 It's been tried. It's tested. You know, it's a system run
2 by man. Any system run by man is not going to be perfect.
3 But what you're engaged in is an effort to do justice.
4 It's a search for the truth. I hope you realize that a
5 search for the truth is going to be sometimes slow. It's
6 sometimes going to be repetitive. But if I'd asked you what
7 a search for the truth would be like, what you would think
8 it would be like, I would think that you'd want to be
9 deliberate. I think you'd want to go slow. I think you
10 might want to go over things a couple of times to be sure
11 you get it right.

12 So that's what you're going to experience in this case.
13 This is a search for the truth. Again, an effort to see
14 that justice is done in this case because I can assure you
15 this courtroom is a place of honor. It's dedicated to the
16 preservation of citizen's rights through both the
17 Constitution of this state and of the United States. I want
18 to thank you for your participation in our system as a
19 member of the jury in this case.

20 Now, the attorneys who are involved in this case are
21 here to represent their client's interest. In this case,
22 the state of South Carolina has brought a charge against one
23 of its citizens, the defendant in this matter, and those
24 attorneys are going to be -- present their client's cases to
25 you during this trial, but I want to point out something to

1 you.

2 First and foremost, those lawyers are also officers of
3 this Court. At some point in time they appeared before a
4 Court in this state. They took an oath. Their oath is to
5 assist you in your search for the truth during this trial.

6 So you can expect that they're gonna act in a
7 reasonable, a professional, and an ethical manner in the
8 presentation of their client's cases before you during this
9 trial.

10 By the same token, I'm going to point out to you that
11 you've come before this Court this morning. You have taken
12 an oath. Your oath is to decide this case based upon the
13 law and the evidence presented during this trial. You too
14 are now expected to act in a reasonable, a professional, and
15 a ethical manner in the discharge of your duties as jurors
16 during this trial and, again, I want to thank you for your
17 willingness to come forward and serve. If it weren't for
18 good citizens who are willing to come forward and serve on
19 juries our system could not function as it was designed by
20 our forefathers to function. So thank you for your
21 willingness to do that.

22 Now, I've already gone over with you the indictment in
23 this case. I, I read it to you. I will tell -- I'm not
24 gonna read it to you again right now. I will tell you the
25 indictment contains two charges. Those two charges are

1 Count Number One, which is the charge of murder. The second
2 count is Count Number Two, which is the possession of a
3 firearm during the commission of a violent crime, and I
4 explained to you yesterday the indictment is simply the
5 charge by which this case has been brought into this Court.

6 It is not, in any sense, and can not be used by you in
7 any manner as evidence of any of the allegations contained
8 in the indictment. The defendant has pled not guilty to the
9 indictment. That places the burden of proof in this case
10 solely upon the State. It's the State's obligation to prove
11 the allegations that are contained in the indictment to you
12 by proof beyond a reasonable doubt.

13 Now, at the close of the trial, it's going to be your
14 responsibility, as jurors, to determine whether or not the
15 State has met its burden of proof in this trial, and I'm
16 going to go over all of those concepts with you in more
17 detail at the close of the trial when I charge you
18 concerning the law in this matter. But, again, I will tell
19 you it is the State's obligation to prove those allegations
20 in that indictment by proof beyond a reasonable doubt.

21 Now, it's your purpose and your duty, as jurors, during
22 this trial, to find and determine the facts in this case.
23 You will be the sole judges of the facts in this case. I'm
24 going to serve as the presiding officer in the trial. It
25 will be my responsibility to rule on questions of evidence

1 that might come up as to whether or not evidence is
2 admissible or not admissible under the rules that govern
3 those things. It will also be my responsibility to
4 determine the appropriateness of questions that are being
5 asked, again, given a set of rules that govern those things
6 in our Court system.

7 But I'm going to caution you that you are the sole and
8 exclusive judges of the facts. For that reason, you should
9 not take from anything that I say or do in the discharge of
10 my duties as the presiding officer in this trial to somehow
11 indicate to you that I have an opinion, one way or the
12 other, as to how you decide the facts in this case. As I've
13 told you, you are the sole and exclusive judges of the
14 facts. Therefore, the law does not allow me an opinion
15 concerning the facts and I have no opinion as to how you
16 should determine the facts in this case. So don't take from
17 anything that I say or do to indicate to you otherwise.

18 Now, you are to determine the facts from the testimony
19 that you're going to hear during this trial and from any
20 other evidence that comes into the record of the case
21 through the testimony of witnesses who have been sworn to
22 tell the truth who will testify from this witness stand in
23 front of you. And the evidence that comes into the record
24 will come into the record either through that testimony or
25 by agreement of the attorneys to allow matters to come into

1 the record.

2 So you're to decide this case based upon the evidence
3 that's presented from the witness stand during the trial and
4 I will tell you it's especially important that you perform
5 your duty as the finders of fact diligently and
6 conscientiously because, under our system of justice,
7 ordinarily there's no way to correct an erroneous
8 determination of facts made by a jury.

9 Now, the same law that makes you the sole judges of the
10 facts makes me the sole judge of the law in this case. Once
11 you've heard all the evidence, you've heard all the
12 arguments from the lawyers, I will charge you concerning the
13 law that you're to apply to the facts. Just as I can not
14 agree with you -- disagree with you concerning your
15 determination of the facts, that same law does not allow you
16 to disagree with me concerning the law to be applied in this
17 case. The law, as I give it to you at the close of the
18 trial, is the only law that you can use in deciding this
19 matter.

20 Now, if you have a notion as to what the law is or you
21 have an opinion as to what the law ought to be, you should
22 leave those notions and opinions outside of the jury room
23 before your deliberations because, under your oath, it's
24 your job to take the law exactly as I give it to you. Then
25 you apply that law to the facts as you determine the facts

1 to be. That should put you in a position, at the close of
2 the trial, to render a just, a fair, and a true verdict in
3 this case.

4 Now, it's your solemn responsibility, at the close of
5 this trial, to determine the guilt or the innocence of the
6 defendant and your verdict must be based solely upon the
7 evidence as presented to you during the trial and the law as
8 I instruct it to you at the close of the trial.

9 As I indicated to you earlier, it would be a violation
10 of your oath, again, for you to try to gather any
11 information during this trial from any other source. I'm
12 going to urge you and I'll instruct you not to discuss the
13 case with anyone during the trial. I want you to keep a
14 fair and an open mind during the case.

15 Don't try to decide any issue in this matter until
16 you've heard all the evidence, you've heard all the
17 arguments by the lawyers, and you've heard my instruction
18 concerning the law. Only then will you have all of the
19 information that you need to begin a discussion about the
20 case.

21 So I'll caution you, again, not to try to gather any
22 information on your own. Again, don't discuss it with
23 anyone until I ask you to begin those discussions, and
24 should anyone try to contact you about your service on this
25 jury, please report that immediately so that we can take.

1 immediate action to rectify that situation.

2 Now, in a few minutes we're going to start the trial of
3 the case. I'll allow the attorneys to address you directly
4 at that time and I'll point out to you that the attorneys
5 are only allowed to talk directly to you on two occasions
6 during the trial. That first occasion will be at the
7 beginning of the trial, an opening statement or an argument.
8 At that time they're going to explain to you perhaps what
9 the case is about, maybe what they expect to prove during
10 the case, but they'll give you an opening statement that
11 will give you some indication as to what this case is about
12 and what, what's coming up during the trial.

13 Now, once all the evidence has been presented, all the
14 testimony is been given, and everything's been put into the
15 record that's going to be put in the record, the attorneys
16 are, again, allowed to talk directly to you in a closing
17 argument or statement. At that time they'll sum up the
18 evidence and they'll urge you to draw certain inferences
19 from the evidence that you've heard. They'll urge you to,
20 to make certain decisions concerning that evidence.

21 Now, I'm going to tell you that statements made by
22 lawyers, arguments made by lawyers to you during the trial,
23 those statements, in and of themselves, do not constitute
24 evidence. They can not be used by you in directly
25 determining the guilt or the innocence of a defendant.

1 The only evidence in the case is testimony of
2 witnesses, again, who testify from the witness stand and
3 what evidence comes into the record through that testimony.
4 That's the only evidence in the case. So statements made by
5 lawyers during a trial do not constitute evidence again and
6 can't be used directly by you in reaching a verdict in this
7 case.

8 Now, the evidence in the case will be presented from
9 the witness stand, as I indicated, and it's going to be your
10 responsibility, as the finders of the facts, to determine
11 the credibility and the believability of the testimony that
12 you hear. That's what credibility means. It means
13 believability. I'm going to use -- urge you to use your
14 good common sense in making those decisions as to the
15 credibility or the believability of the witnesses.

16 You know, as the sole judges of the facts, you have the
17 absolute right to believe all of what a witness tells you,
18 part of what a witness tells you, or none of what a witness
19 tells you. You have the right to believe one witness
20 against all the others. You have the right to believe all
21 the others against one. Since you're the sole judges of the
22 facts, you're the sole judges of the credibility of the
23 testimony that you hear. You know, every single day of your
24 life you make common sense decisions as to what you choose
25 to believe and what you choose not to believe.

1 This trial is no different than any other day in your
2 life. I'm asking you to apply your good common sense to the
3 testimony that you hear during this case.

4 As the trial goes on, try, in your own mind, to make
5 decisions concerning the credibility and the believability
6 of the testimony that you hear. Be in a position to discuss
7 that with your fellow jurors when you're starting your
8 deliberations in this case.

9 You know, in using your common sense to decide
10 credibility of witnesses, you have the right to consider
11 such factors as whether or not a witness might have a stake
12 in the outcome of the trial, whether or not a particular
13 witness might exhibit some bias or prejudice either for or
14 against one side or the other, whether or not a witness
15 actually had the ability to know the facts about which the
16 witness is testifying, and, I tell people this all the time,
17 I've been coming into courtrooms now for about 40 years, and
18 every courtroom I've ever been in, and I've been in a lot of
19 them, the witness stand is always right in front of the jury
20 box and the reason for that is that allows the jurors to
21 directly view the witnesses as they testify, how they speak.

22 Again, you have the right to consider anything that's
23 in the record to determine the credibility of the testimony
24 that you're hearing. So, for that reason, try not to let
25 your thoughts wonder. Try to pay close attention to what's

1 being said from the witness stand, perhaps even the way it's
2 being said. Again, you have the right to use your common
3 sense to make decisions as to the credibility and the
4 believability of what you hear from the witness stand, and I
5 would hope that you would be in a position to discuss that
6 with your fellow jurors when you do your deliberations in
7 this case.

8 Now, I'm going to caution you about one thing that
9 jurors have a little bit of trouble with I believe, and that
10 is that, during the trial, if an objection is raised by one
11 side or the other, and they have the right to do so, if they
12 raise an objection as to the question that's been asked or
13 perhaps a piece of evidence that's about to be offered into
14 the record, and it's my belief that my discussion with the
15 lawyers may lead me into a discussion of some matter that is
16 not admissible in evidence, in other words, a matter that
17 should not be put into the record of the case, if I believe
18 the discussion might go in that direction, I'll ask you to
19 leave the courtroom while I have those discussions with the,
20 with the lawyers.

21 Don't take from the fact that I've asked you to leave
22 the courtroom, again, that I've got an opinion one way or
23 the other as to how you decide the facts in the case. I
24 hope you realize that, when I do that, I'm just doing my
25 job.

1 My job is to see that you only decide this case based
2 upon evidence that's been admitted into the record under the
3 rules that allow the admission of such evidence. So, I'll
4 ask you to step out while I have that discussion. When
5 we're finished we'll bring you back into the courtroom. At
6 that time I'll announce whatever decision I've made on the
7 issue. We'll proceed with the trial.

8 But don't take that as an effort on my part to try to
9 influence your decision concerning the facts in this matter.
10 Again, it's just me doing my job to try to keep matters that
11 are not admissible from coming before the jury and being a
12 part of your decision making process.

13 Now, ladies and gentlemen of the jury, I do something a
14 little different. I know, on television, they always
15 appoint the foreperson of the jury at the beginning of the
16 trial. I don't do that.

17 I appoint the foreperson of the jury at the close of
18 the trial when I charge you concerning the law. The reason
19 I do that is there's one main reason. I'll tell you, at the
20 close of the trial, before you can reach a verdict, all 12
21 of you who are in deliberations have to agree on that
22 verdict. It's got to be unanimous before a verdict can be
23 reached by this jury on any question that's presented to
24 you.

25 For that reason, there's no one juror more important

1 than any other juror. I have a concern that if I appoint
2 the foreperson at this point in time, somebody on the jury
3 might say well, that must be the smartest person or that
4 must be the most important one and I'll just let them listen
5 and I'll just go along with whatever they say at the close
6 of the trial.

7 I want all of you to think you might be the foreperson
8 because all of you might be. That means you would be the
9 person who's responsible to lead the discussions of the jury
10 at the close of trial. Therefore, you should be prepared to
11 do that, be prepared to talk about the case when the trial
12 is ended.

13 So, at the close of the trial, when I charge you
14 concerning the law, I will appoint one of you as the
15 foreperson of the jury, but I'll point out to you now that
16 doesn't make that person any more important than any other
17 juror. It's got to be a unanimous verdict before the
18 verdict's reached. So I want all of you to be in a position
19 to discuss it with each other and come to whatever consensus
20 you come to as far as the verdict, but I want you to be
21 prepared to be the foreperson as well should I decide to
22 point -- appoint you.

23 If you have any difficulty during the trial that you
24 think should be brought to my attention, simply let a
25 bailiff know and I'll be glad to deal with that issue or

1 that problem directly with you rather than going through a
2 foreperson.

3 So, at the close of the trial I'll make that
4 appointment and we'll proceed with deliberations after I've
5 done that. So don't think I've forgotten that, that point.
6 I have not. I just don't do it in that fashion. I do it at
7 the close of the trial.

8 Now, I want to be sure that I have not violated
9 anyone's rights in what I have discussed with you thus far.
10 Does the State have an objection to my opening
11 comments?

12 SOLICITOR GRAY: No, sir, Your Honor.

13 THE COURT: Defense have any objection?

14 MR. POOLE: No, sir.

15 THE COURT: All right. Now, ladies and gentlemen, let
16 me point out one thing to you. I've already told you that
17 the defendant has pled not guilty in this case and that puts
18 the burden of proof on the State.

19 That means that we allow the State to go first with its
20 opening argument followed by the defense. That means, since
21 the State has the burden of proof, they're required to go
22 first with their proof to present all of their witnesses.
23 Once that's completed, the defense has the right to call
24 witnesses if the defendant chooses to do so. And then, once
25 all the evidence has been presented, we'll do closing

1 arguments. Once the closing arguments have been ended, I'll
2 charge you on the law to be applied in the case, and then I
3 will turn the case over to you after I've charged you on the
4 law for your deliberations and ultimately your verdict in
5 the case.

6 So that's the process we'll go through. Opening
7 arguments, presentation of evidence, closing arguments,
8 charge on the law, and then we'll turn it over to you for
9 your deliberations.

10 So, at this point in time the State has the right to
11 make its opening statement.

12 You may proceed.

13 SOLICITOR BAIN: Thank you, Your Honor.

14 May it please the Court?

15 THE COURT: Yes, sir.

16 SOLICITOR BAIN: Opposing counsel.

17 Sucker punch and a shotgun. That's the theme of this
18 case.

19 Hello. My name is Chris Bain and I'm an assistant
20 solicitor with the Seventh Judicial Circuit. Over there is
21 my co-counsel, Abel Gray.

22 Ladies and gentlemen, you probably see a lot of shows
23 on, on the TV concerning crimes and how they're solved.
24 CSI, shows like that.

25 This isn't a case where one piece of evidence is gonna

1 show that Mr. Owens did this. This isn't a case where one
2 fingerprint breaks, breaks it or DNA or ballistics from a
3 gun.

4 Ladies and gentlemen, this is a case where you're gonna
5 hear testimony from people. That testimony you're gonna
6 hear is gonna begin at a party on November 11th, 2013, at
7 Mr. Blaine Seay's house.

8 The defendant, Eric Owens, and the victim, Stanley
9 Jones, were over there playing cards, drinking a little bit,
10 having a good time. At some point, at the end of that
11 party, they go outside and an altercation breaks out, and
12 the victim, Stanley Jones, sucker punches Eric Owens in the
13 face.

14 Now, you're gonna hear testimony, after that sucker
15 punch, Mr. Owens acted embarrassed and upset. He then got
16 in the car with his girlfriend and drove back to his house
17 and grabbed a shotgun. You're gonna hear testimony from
18 that girlfriend.

19 He went and grabbed the shotgun and went back to the
20 house they're partying at looking for Stanley Jones.
21 Stanley had already gone. So that takes us to
22 November 12th, 2013, the date of the incident.

23 You're gonna hear testimony that Mr. Owens found
24 Stanley Jones at his house on and when
25 he found him, he pulled up in a car and shot him with a

1 shotgun. You're there -- you're then gonna hear testimony
2 that he didn't survive longer than ten minutes on the
3 ground.

4 Now, ladies and gentlemen, the defendant has been
5 charged with murder and possession of a weapon during a
6 violent crime. I'm gonna take a moment to explain those two
7 crimes to you.

8 First is murder. Murder is the willful, felonious,
9 killing of a human being by another human being with malice
10 aforethought. That malice either being expressed or
11 implied.

12 Possession of a weapon during a violent crime, the
13 State has to show you that the defendant possessed the
14 weapon during a violent crime and, ladies and gentlemen,
15 murder is a violent crime.

16 Now, I imagine you're gonna hear a lot about reasonable
17 doubt in this case. So, I'm gonna take a brief moment to
18 explain that.

19 Reasonable doubt is not proof beyond any and all doubt.
20 It's very rare in life that anything can be proven to an
21 absolute certainty and the law does not require the State to
22 do that. I like to look at reasonable doubt as having
23 someone firmly convinced of the defendant's guilt, and,
24 ladies and gentlemen, at the end of this trial, after you've
25 heard all the evidence and all the testimony, the State will

1 have you firmly convinced that the defendant killed Stanley
2 Jones all because of a sucker punch.

3 I thank you for your time.

4 THE COURT: Mr. Poole, for the defense, you may
5 proceed.

6 MR. POOLE: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. POOLE: Counsel.

9 Good morning.

10 I'm Roger Poole and I'm representing Eric Owens, the
11 young man in his thirties, and he is beginning today the
12 trial of his life.

13 About the only thing I agree with that Mr. Bain in his
14 opening remarks---

15 THE COURT: Just one second, Mr. Poole. Let's let
16 these folks get settled and then we'll let you go forward.
17 Have a seat please.

18 (Pause.)

19 THE COURT: All right. Mr. Poole, you may proceed.

20 MR. POOLE: Thank you.

21 SOLICITOR GRAY: Thank you for waiting.

22 MR. POOLE: Sure.

23 As I said, Mr. Owens is on the trial of his life, and
24 the only thing I agree with what Mr. Bain just told you is
25 the law, and that's where you come in. As far as Judge

1 Couch has already told you, you are the judges of the facts.

2 Like Mr. Bain said, there is no fingerprint evidence.

3 There's no substantial scientific forensic evidence in this
4 case.

5 What you're going to hear is the testimony of people
6 that have been charged in association of -- with Mr. Owens
7 in this crime. There's no doubt that Mr. Stanley Jones was
8 shot. The question is for you to determine, at the end of
9 the day, at the end of the case, whether or not Eric Owens
10 did, in fact, kill Mr. Stanley Jones with malice
11 aforethought, and the state has to prove malice aforethought
12 beyond a reasonable doubt, and you'll hear a lot about that.
13 He's right.

14 You'll hear a lot about what is a reasonable doubt, and
15 proof beyond a reasonable doubt, which is the burden of the
16 state, is they have to prove, beyond a reasonable doubt, and
17 a reasonable doubt is a doubt which would cause a reasonable
18 person to hesitate to act.

19 The testimony that you will hear is testimony from the
20 witnesses that are named Derrick White, Shaina or Shaina
21 Wallace, and Blaine Seay. They will testify and what you
22 will hear are inconsistencies in their statements.

23 This event occurred on November 12th, 2013. The
24 investigation of this case continued up unto March of 2014,
25 a period of about four months, and these witnesses gave

1 inconsistent statements throughout the course of the
2 investigation. They gave these statements to the
3 investigators associated with the case. I anticipate
4 that -- the testimony of the investigators and the
5 witnesses.

6 Judge Couch told you about -- something about
7 credibility and this is what this case basically boils down
8 to is the credibility of witnesses, and I think that what
9 you will hear is that the final statements or testimony that
10 the witnesses give and the inconsistencies of their prior
11 statements are such that will put their credibility at real
12 issue in this case.

13 So I want to thank you for being here. I know you
14 don't have much of a choice, but you're on this jury, and so
15 be it. And all we're asking for is a fair trial and for the
16 consideration that Eric Owens deserves; and that is a
17 finding of not guilty at the end of this case.

18 Thank you.

19 THE COURT: State may call its first witness.

20 SOLICITOR GRAY: Your Honor, I think there's a matter
21 that we need to take up.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, I want to ask you to step back to the jury room before
24 we hear the first witness.

25 Every time you leave the courtroom you're gonna hear me

1 instruct you. Don't discuss anything about this case till I
2 ask you to begin your deliberations. You may retire to the
3 jury room.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Yes, sir.

7 SOLICITOR GRAY: Your Honor, I don't know if we put
8 this on the record or not, but I know we agreed to
9 sequestration of any testifying witnesses.

10 THE COURT: Yes.

11 SOLICITOR GRAY: I don't know who walked in just now.

12 THE COURT: I don't either.

13 Let me announce to the people who have walked in,
14 anyone who intends to be a witness in this case, I have
15 issued a sequestration order. That means that if you do
16 testify in this case, you can not sit through the trial and
17 listen to other witnesses. You have to remain outside of
18 the courtroom and not discuss your testimony with anyone or
19 allow anyone to discuss their testimony with you.

20 So, if there's anyone in the courtroom who intends to
21 be a witness in this case, you should leave the courtroom at
22 this time. If you do not leave the courtroom and you remain
23 during the trial, I would have the right to exclude your
24 testimony from the case.

25 So if there's anyone present who intends to be a

1 witness in this case, other than in the case of the State,
2 the victim's family, the mother, I believe, and---

3 SOLICITOR GRAY: Brother.

4 THE COURT: ---brother and the chief investigating
5 officer who's seated at the table, they have the right to
6 stay. Of course, the defendant has a right to stay.

7 SOLICITOR GRAY: Yes, sir.

8 THE COURT: so if there's anyone else who intends to be
9 a witness, now would be the time for you to leave the
10 courtroom.

11 MR. POOLE: Your Honor, may I be excused for a moment
12 please?

13 THE COURT: Yes, sir.

14 MR. POOLE: Thank you.

15 SOLICITOR BAIN: Your Honor, may I set this up?

16 THE COURT: Yeah, go ahead and set that up.

17 We'll take a short recess while I remain on the bench.

18 (WHEREUPON, a short recess was taken at this time.)

19 THE COURT: You need to approach?

20 MR. POOLE: Yes, sir.

21 THE COURT: Come on up.

22 (WHEREUPON, a bench conference was held at this time.)

23 THE COURT: sir, if you'll stand.

24 (Party complies.)

25 THE COURT: Right there's fine.

1 If you would, swear this gentleman for me.

2 THE CLERK: Yes, sir.

3 (WHEREUPON, Mr. Jones was placed under oath at this
4 time.)

5 THE COURT: State your name please.

6 THE WITNESS: Mark Douglas Jones.

7 THE COURT: And your relationship here?

8 THE WITNESS: Stanley Earl Jefferson -- Stanley Earl
9 Jones brother.

10 THE COURT: I see.

11 And now I notice you have on a T-shirt?

12 THE WITNESS: Yes, I do.

13 THE COURT: I would suspect that the picture on the
14 front of that is of the victim in this case?

15 THE WITNESS: Yes, it is.

16 THE COURT: Sir, I'm not going to allow that t-shirt to
17 be worn into the courtroom. It could be used as an effort
18 to try to influence the jury. I'm not going to allow that.
19 If you wish to remain in the courtroom you'll need to cover
20 the t-shirt with another shirt or go change shirts.

21 THE WITNESS: All right.

22 THE COURT: So how do you wish to handle that?

23 THE WITNESS: I wish to remain in the courtroom without
24 changing the shirt.

25 I'll put something over it, right?

1 THE COURT: You got to either put a shirt over it,
2 cover it up or---

3 THE WITNESS: I'll find something else.

4 THE COURT: ---go get another shirt.

5 THE WITNESS: I'll need to find me a substitution.

6 THE COURT: Okay. Sir, I'm gonna ask you to step out
7 of the courtroom and don't wear that shirt back into the
8 courtroom.

9 THE WITNESS: Right.

10 THE COURT: My -- I understand your feelings and I --
11 you have a right to have your feelings.

12 THE WITNESS: I mean it---

13 THE COURT: But let me finish talking.

14 The jury also has a right not to be influenced by any
15 outside influences whatsoever. I'm going to see that that
16 occurs in my courtroom.

17 THE WITNESS: I mean it---

18 THE COURT: So if you want to wait outside and wear
19 that shirt outside, you can do that as long as the jury
20 doesn't see it. But if you come into the courtroom, the
21 shirt will be covered or you'll wear another shirt.

22 THE WITNESS: You made that clear.

23 THE COURT: Okay, sir. Step outside. Thank you very
24 much for your cooperation.

25 (WHEREUPON, Mr. Jones leaves the courtroom at this

Paul Weatherman - Direct examination
by Solicitor Bain

1 time.)

2 THE COURT: All right. State ready to proceed?

3 SOLICITOR BAIN: Yes, Your Honor.

4 THE COURT: Is the defense now ready to proceed?

5 MR. POOLE: Yes, sir.

6 THE COURT: All right. Very good.

7 Let's bring the jury in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. The record will reflect that
11 the jury has returned to the courtroom.

12 We've taken the break to get some equipment set up. I
13 hope it's not distracting. We'll be using that during the
14 presentation of evidence.

15 All right. At this time the State may call its first
16 witness.

17 SOLICITOR BAIN: State calls Paul Weatherman.

18 THE COURT: All right. Step outside and call that
19 gentleman for us. Thank you.

20 (Pause.)

21 THE COURT: Sir, if you'll come forward please to my
22 left and be sworn by the clerk.

23 PAUL WEATHERMAN, being first duly
24 sworn, testified as follows:

25 THE COURT: Have a seat in the witness stand, sir, and

Paul Weatherman - Direct examination
by Solicitor Bain

1 once you're comfortable, state your name please.

2 THE WITNESS: My name is Benjamin Paul Weatherman.

3 THE COURT: Thank you.

4 Counselor, your witness.

5 SOLICITOR BAIN: Thank you, Your Honor.

6 May it please the Court?

7 THE COURT: Yes, Mr. Bain.

8 DIRECT EXAMINATION

9 BY SOLICITOR BAIN:

10 Q officer Weatherman, what is your profession?

11 A I'm a police officer.

12 Q What law enforcement agency are you employed by?

13 A Currently employed with the Lyman Police Department.

14 Q Do you know why you're here today?

15 A Yes, sir.

16 Q At the time of this incident were you employed by the
17 Spartanburg City Police Department?

18 A I was.

19 Q What are your duties as a police officer?

20 A Patrol officer. My current assignment, at the time of
21 this incident, I was assigned to patrol the Spartanburg
22 Police Department.

23 Q Is one of your duties to respond to calls of
24 disturbances?

25 A It is, sir.

Paul Weatherman - Direct examination
by Solicitor Bain

1 Q And on November 12th, 2013, did you respond to a
2 call?

3 A I did.

4 Q Can you please explain that call?

5 A I believe dispatch initially gave it out as a
6 disturbance with a weapon. It was upgraded to I believe
7 a -- I believe it came out as a disturbance with a weapon.
8 It was upgraded to a shooting by dispatch on.

9 and I arrived at

10 Q And is in Spartanburg County?

11 A It is.

12 Q Can you please tell us what you observed when you
13 arrived?

14 A When I arrived on
15 was to my left. I pulled up my patrol vehicle in
16 front of the property. From the roadway it's like a walkway
17 to the house that I believe there's a step or two that goes
18 down, leads up to the front porch. Lying on that walkway I
19 observed a male on the ground bleeding.

20 Q Can you describe that male?

21 A He was a black male. I believe it was a white t-shirt.
22 I advised dispatch that there was a male down and have
23 medics respond.

24 As I approach the male I could see a, a large amount of
25 blood to the side of him. I believe it was his left side.

Paul Weatherman - Direct examination
by Solicitor Bain

1 As I got closer, I looked down. I could see a large opening
2 in his, in his left side and he was unresponsive.

3 Q Was there a house at this location?

4 A There was.

5 Q If I showed you a picture of the incident location
6 would you recognize it?

7 A Yes, sir.

8 (WHEREUPON, a photograph was marked as State's Exhibit
9 No. 4 for identification purposes only at this time.)

10 Q I'm showing you what's -- may I approach the witness?

11 THE COURT: You may.

12 Q I'm showing you what's been marked as State's Exhibit 4
13 for identification purpose.

14 Will you please take a look at that?

15 A Yes, sir.

16 Q Do you recognize that picture?

17 A Yes, sir.

18 Q How are you able to recognize it?

19 A That's the location that I responded to.

20 Q Does this photograph fairly and accurately depict the
21 subject matter therein on the date and time in question?

22 A From what I observed, yes, sir.

23 Q Does this photograph appear to have any deletions or
24 alterations to it?

25 A Not that I'm aware of, no, sir.

Paul Weatherman - Direct examination
by Solicitor Bain

1 SOLICITOR BAIN: May I approach the witness?

2 THE COURT: You may.

3 SOLICITOR BAIN: Your Honor, at this time I would --
4 the People offer State's Exhibit 4 for admission into
5 evidence.

6 THE COURT: Mr. Poole, have you had an opportunity to
7 view it?

8 MR. POOLE: I have and I have no objection.

9 THE COURT: Without objections it will be admitted into
10 the record as it's been marked, Exhibit No. 4.

11 SOLICITOR BAIN: Thank you, Your Honor.

12 (WHEREUPON, State's Exhibit No. 4 was received into
13 evidence at this time.)

14 THE COURT: You may proceed and if you wish to publish
15 it to the jury you may.

16 SOLICITOR BAIN: Thank you, Your Honor.

17 THE COURT: Ma'am, if you'll bring the lights down for
18 us.

19 (Pause.)

20 THE COURT: Thank you.

21 THE CLERK: This is a new system, Your Honor, and
22 I'm---

23 THE COURT: They're slowly coming down.

24 THE OFFICER: I'll show her.

25 THE COURT: Yeah, help out, Mr. Bishop.

Paul Weatherman - Direct examination
by Solicitor Bain

1 (Pause.)

2 THE COURT: You may proceed.

3 SOLICITOR BAIN: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 CONTINUED DIRECT EXAMINATION

6 BY SOLICITOR BAIN:

7 Q Officer Weatherman, can you please describe this
8 picture?

9 A The house in the background is I
10 believe, at the bottom of the picture, that's actually gonna
11 be the roadway. The orange, I believe, was put up after,
12 after the Coroner's Office arrived on scene. The, the
13 victim is lying on the other side of that on that, on that
14 walkway area. I believe, at that time, he had already been
15 covered by the Coroner's Office.

16 Q Is in the city limits of
17 Spartanburg?

18 A It is.

19 SOLICITOR BAIN: Your Honor, may I approach the witness
20 with a laser?

21 THE COURT: You may.

22 Q Laser pointer.

23 Can you please point out where the road is?

24 A I, I believe that's gonna be the edge of the roadway
25 right there, sir.

Paul Weatherman - Direct examination
by Solicitor Bain

1 Q And that's

2 A That is.

3 Q And where was the body located when you arrived?

4 A Just, just on the other side of this orange barrier. I
5 believe you can actually see some through the crack there.
6 In that general area.

7 Q So it's right next to the roadway?

8 A Yes, sir, in close, close proximity.

9 SOLICITOR BAIN: Beg the Court's, Court's indulgence?

10 THE COURT: Yes, sir.

11 (Pause.)

12 SOLICITOR BAIN: No further questions, Your Honor.

13 Please answer any questions that opposing counsel might
14 have.

15 THE COURT: Mr. Poole, your witness.

16 MR. POOLE: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. POOLE: May I approach the witness?

19 THE COURT: You may.

20 CROSS-EXAMINATION

21 BY MR. POOLE:

22 Q Good morning, Officer Weatherman.

23 How are you?

24 A I'm well, sir.

25 THE COURT: Are you gonna need the lights up or down?

Paul Weatherman - Cross-examination
by Mr. Poole

- 1 MR. POOLE: Down is still---
- 2 THE COURT: Down---
- 3 MR. POOLE: ---is still good.
- 4 THE COURT: ---is good?
- 5 Okay. Go ahead.
- 6 Q Just a couple questions.
- 7 Could you point to -- there to what's up on the top
- 8 screen to what I'm pointing out to you as Marker Number 1?
- 9 A Right there I believe, sir.
- 10 Q Okay. Is that a yellow marker with the, the numeral
- 11 one on it?
- 12 A Yes, sir.
- 13 Q Do you know the significance of that marker?
- 14 A I -- from what I recall on scene, I believe, after
- 15 forensics arrived, I believe they advised that there was a
- 16 hole there they were interested in.
- 17 Q Okay.
- 18 A I can't remember exactly, exactly where -- I was
- 19 setting up the perimeter at the time. I briefly spoke with
- 20 other people on scene.
- 21 Q So you don't know if this led to any retrievable
- 22 evidence or not, is that correct?
- 23 A I'm not, I'm not sure, sir.
- 24 Q Okay.
- 25 A No, sir.

Paul Weatherman - Cross-examination
by Mr. Poole

1 Q Could you point -- I'm pointing to what appears to be,
2 in this window, a yellow marker with the numeral two on it
3 on the farthest window.

4 A That area in there, sir?

5 Q Yes, sir.

6 Do you know the significant of that marker?

7 A I do not, sir.

8 Q Okay. All right. Thank you very much.

9 A Thank you, sir.

10 THE COURT: Any other questions, Mr. Poole?

11 MR. POOLE: No, sir.

12 THE COURT: Wish to redirect?

13 SOLICITOR BAIN: No, sir, Your Honor.

14 THE COURT: Sir, you may step down.

15 You wish to excuse the witness?

16 SOLICITOR BAIN: Yes, Your Honor.

17 THE COURT: Any objections?

18 MR. POOLE: No, sir.

19 THE COURT: You're free, you're free to go. Thank you,
20 sir.

21 THE WITNESS: Thank you.

22 THE COURT: Bring the lights up please, ma'am.

23 State may call its next witness.

24 SOLICITOR GRAY: Thank you.

25 State calls Dwayne Corn.

Dwayne Corn - Direct examination
by Solicitor Gray

1 THE BAILIFF: Give me the name again.

2 SOLICITOR GRAY: Dwayne Corn.

3 THE COURT: Come forward, sir, to my left. The clerk
4 will swear you.

5 DWAYNE CORN, being first duly
6 sworn, testified as follows:

7 THE COURT: Once you're seated, sir, state your name
8 please.

9 THE WITNESS: Dwayne Corn.

10 THE COURT: Thank you.

11 Mr. Gray, your witness.

12 SOLICITOR GRAY: Thank you.

13 DIRECT EXAMINATION

14 BY SOLICITOR GRAY:

15 Q sir, please state your present occupation, sir.

16 A Senior investigator with the Spartanburg County
17 coroner's office.

18 Q How long have you had that occupation?

19 A I been with the Coroner's Office for nine years.

20 Q And what are your present duties and responsibilities?

21 A Fully investigate any death scene in Spartanburg County
22 that we're called to determine the manner of death based
23 upon the scene investigation and medical history or autopsy,
24 if necessary. That also includes collecting evidence,
25 securing photographs, and placing evidence into our evidence

Dwayne Corn - Direct examination
by Solicitor Gray

1 room, if necessary.

2 Q Would you do a concurrent investigation of a homicide
3 with the City or County?

4 A We do a concurrent investigation if the law enforcement
5 agency is called to a scene in, in any case within
6 Spartanburg County. So, yes, sir.

7 Q And that includes taking pictures, collecting evidence?

8 A It does, yes, sir.

9 Q Do you recall a, an incident on 11/12/13?

10 A I do, yes, sir.

11 Q Where was that, that located?

12 Was that

13 A I was, I was summoned to assist at
14 yes, sir.

15 Q All right. Was the decedent's name Stanley Jones?

16 A To the best of my knowledge, yes, sir.

17 Q Yes, sir.

18 Now, now, as part of that investigation, concurrent
19 investigation, you would take pictures, collect evidence,
20 and would you attend an autopsy also?

21 A Yes, sir.

22 Q Now, were pictures taken of the scene and the autopsy?

23 A Yes, sir, of both.

24 (WHEREUPON, two photographs were marked as State's
25 Exhibit Nos. 5 and 6 for identification purposes only at

Dwayne Corn - Direct examination
by Solicitor Gray

1 this time.)

2 Q Okay. I'm gonna show you what's been marked as State's
3 Exhibit No. 5 and No. 6.

4 May I approach?

5 THE COURT: You may.

6 Q Ask you if you recognize these.

7 A I do recognize these as photos that were taken at the
8 autopsy by our physician, Doctor Wren.

9 Q Okay. Now, is there any, any alteration in these
10 pictures?

11 A The photos are normally taken in color. Outside of
12 being black and white, these are representative,
13 representative of the actual photographs.

14 Q Okay. And is there any specific markings on there
15 that---

16 A There is.

17 Q ---that let's you know those are your pictures?

18 A These are our photographs because there's a seal that
19 is placed on the photographs that I actually place as part
20 of my responsibilities at the office. Whenever we send any
21 photographs out of our office, they're watermarked and I do
22 that myself.

23 Q And what's the watermark?

24 A It is the -- it's a copyright symbol for the
25 Spartanburg Coroner's Office evidence photos.

Dwayne Corn - Direct examination
by Solicitor Gray

1 SOLICITOR GRAY: At this time I'd like to introduce
2 State's 5 and 6 into evidence, Your Honor.

3 THE COURT: Mr. Poole, you've have an opportunity to
4 view those, is that correct?

5 MR. POOLE: Yes, sir, I have and subject to prior
6 objections.

7 THE COURT: All right. You renew your objections. I
8 would make the same ruling. They'll be admitted as they've
9 been marked, subject to my prior rulings.

10 (WHEREUPON, State's Exhibit Nos. 5 and 6 were received
11 into evidence at this time.)

12 SOLICITOR GRAY: Okay. Thank you, Your Honor.
13 May I publish this?

14 THE COURT: You may.

15 SOLICITOR GRAY: Thank you.

16 THE COURT: Bring the lights down please, ma'am.

17 (The Bailiff complies.)

18 THE COURT: Thank you.

19 SOLICITOR GRAY: Thank you.

20 Q Now, briefly, Mr. Corn, you said you are -- attend some
21 autopsies and take pictures. I just wanted to show you
22 quickly. Excuse me.

23 Is that the watermark you're talking about there?

24 A Yes, sir, it is.

25 Q And that's a Coroner's Office photo?

Dwayne Corn - Direct examination
by Solicitor Gray

- 1 A That's correct.
- 2 Q And this would be your photo of the decedent, Stanley
- 3 Jones?
- 4 A Yes, sir.
- 5 Q And this would be one of the wounds to Mr. Jones?
- 6 A That is correct.
- 7 Q And this was taken at the autopsy?
- 8 A Yes, sir.
- 9 Q And, again, briefly, this would be the watermark
- 10 you're---
- 11 A Yeah.
- 12 Q ---talking about?
- 13 A Yes, sir.
- 14 Q And this would be another wound to Mr. Jones?
- 15 A That is correct.
- 16 Q And you're not talking about entry, exit, or anything
- 17 like that?
- 18 You, you don't know about that, do you?
- 19 A No, sir.
- 20 Q You're just talking about this is, is another picture
- 21 of a wound to Mr. Jones that was taken by your office,
- 22 correct?
- 23 A That's correct, yes, sir.
- 24 Q Thank you.
- 25 No further questions, Your Honor.

Mary Phillips - Direct examination
by Solicitor Gray

1 THE COURT: Mr. Poole.

2 MR. POOLE: No questions of this witness.

3 THE COURT: All right, sir. You may step down.

4 Do you wish to excuse the witness, Mr. Gray?

5 SOLICITOR GRAY: Yes, sir, Your Honor.

6 THE COURT: Any objections?

7 MR. POOLE: None.

8 THE COURT: You free to go, sir. Thank you for coming

9 today.

10 THE WITNESS: Thank you.

11 THE COURT: The State may call its next witness.

12 SOLICITOR GRAY: Thank you, Your Honor.

13 The State calls Mary Phillips.

14 THE COURT: Come forward please, ma'am, to be sworn.

15 MARY PHILLIPS, being first duly

16 sworn, testified as follows:

17 THE COURT: Have a seat please, ma'am.

18 (Witness complies.)

19 THE COURT: State your name.

20 THE WITNESS: Mary Phillips.

21 THE COURT: Thank you.

22 Mr. Gray, your witness.

23 SOLICITOR GRAY: Thank you.

24 DIRECT EXAMINATION

25 BY SOLICITOR GRAY:

Mary Phillips - Direct examination
by Solicitor Gray

1 Q Ma'am, I apologize, Ms. Phillips, for having to ask you
2 these questions.

3 I want to ask, ask you first, who is Stanley Jones in
4 relation to you?

5 A He's my son.

6 Q And November 12th of 2013, can you tell me and the
7 jury of the facts surrounding the discovery of your son that
8 day?

9 A I was in the kitchen, it was a Tuesday morning, trying
10 to fix me something to eat and I heard a boom. So my old
11 man went outdoors, Anthony Cantis.

12 Q All right. You say your old man.

13 Is that your boyfriend---

14 A Yes, he was.

15 Q ---at the time?

16 He made it outside before you did?

17 A Yes.

18 Q All right.

19 A He come back in the house running. He said Mary, it's
20 Man---

21 Q Who is---

22 A ---which is his name---

23 Q Who is Man?

24 A Stanley Earl Jones.

25 Q That's his nickname, Man?

Mary Phillips. - Direct examination
by Solicitor Gray

1 A Man is his nickname.

2 Q All right. Did, did you go outside at that time?

3 A Yes, sir, I did.

4 Q Now, you've seen the picture with the barrier---

5 A Yes, sir.

6 Q ---around it.

7 what did you actually see when you went outside?

8 A My son was unconscious. I kept calling his nickname,

9 Man.

10 Q Did he respond, ma'am?

11 A No.

12 Q Take your time.

13 when you saw him, what was his condition besides being
14 unconscious?

15 A He wasn't moving or saying nothing. I kept calling his
16 nickname, Man. I said what's wrong with my son. I said,
17 somebody get me something so I can see what's wrong with my
18 son and I cut his shirt.

19 Q You cut his shirt?

20 A Yes, sir, with some scissors, and I seen the wound
21 right here.

22 Q And -- well, just one wound?

23 A All I seen was right there and they had got me and took
24 me in the house.

25 Q And I don't want to belabor the point, but you, you did

Mary Phillips - Direct examination.
by Solicitor Gray

1 see the wound right there and your son was unconscious and
2 not moving?

3 A Yes, sir.

4 Q Nothing further, ma'am. Please answer any questions
5 Mr. Poole may have.

6 THE COURT: Mr. Poole, your witness.

7 MR. POOLE: I have no questions of Ms. Phillips.

8 THE COURT: You may step down, ma'am. Thank you very
9 much.

10 State may call its next witness.

11 SOLICITOR BAIN: Your Honor, the State calls Shaina
12 Wallace.

13 THE COURT: Are you calling Ms. Wallace?

14 SOLICITOR BAIN: Yes, sir, Your Honor.

15 THE COURT: Wallace.

16 Ma'am, if you will come forward to my left and be sworn
17 by the clerk. Please step down here please.

18 SHAINA WALLACE, being first duly
19 sworn, testified as follows:

20 THE COURT: Once you're seated, ma'am, state your name
21 please.

22 THE WITNESS: Yes, sir.

23 Shaina Mae Wallace.

24 THE COURT: I'm gonna ask you to speak up loud enough
25 so that the last person in the jury box can hear you.

Shaina Wallace - Direct examination
by Solicitor Bain

1 clearly. Thank you.

2 THE WITNESS: Shaina Mae Wallace.

3 THE COURT: Thank you. That's much better.

4 Mr. Bain, your may proceed.

5 SOLICITOR BAIN: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY SOLICITOR BAIN:

8 Q Ms. Wallace, are you currently employed?

9 A Yes, sir.

10 Q Where at?

11 A Subway.

12 Q Do you know why you're here today?

13 A Yes, sir.

14 Q Can you tell me why you're here today?

15 A It's because of a murder that was involved--

16 THE COURT: Now, ma'am, you're being light for me
17 again. You need to speak up. I notice some of the jurors
18 are having to lean forward to hear you. So speak up please.

19 THE WITNESS: Yes, sir.

20 It was because of a murder that had happened two years
21 ago. Two.

22 Q And who was murdered?

23 A Stanley Jones.

24 Q And who murdered him?

25 A Eric Owens.

Shaina Wallace - Direct examination
by Solicitor Bain

1 MR. POOLE: Objection, Your Honor. That's a
2 conclusion. We don't have a basis for that conclusion.

3 THE COURT: I'll sustain the objection.

4 Ask that you lay a foundation for that statement. I'll
5 strike the answer at this time.

6 SOLICITOR BAIN: Thank you, Your Honor.

7 Q Do you recall the date of the incident?

8 A Yes, sir, I was at work that morning and I got a phone
9 call from my sister and she told me -- she was like Shaina
10 you needs to sit down for this and I was like---

11 Q Hold.

12 What was the date of the incident?

13 A I don't remember.

14 Q Do you remember the month?

15 A I believe it was November. I'm not sure. I can't
16 remember.

17 Q And do you know Eric Owens?

18 A Yes, sir.

19 Q How do you know Mr. Owens?

20 A He was my ex-boyfriend.

21 Q Was he your boyfriend in November of---

22 A Yes, sir.

23 Q ---of 2013?

24 A Yes, sir.

25 Q Is he in the courtroom today?

Shaina Wallace - Direct examination
by Solicitor Bain

1 A Yes, sir.

2 Q Will you please point him out?

3 A (Witness points.)

4 SOLICITOR BAIN: Your Honor, please let the record
5 reflect that the witness has pointed out the defendant.

6 THE COURT: I'll ask the witness to describe what he's
7 wearing.

8 THE WITNESS: He has dreads and he has on a blue shirt.

9 THE COURT: All right. The record will reflect she's
10 indicated the defendant.

11 You may proceed.

12 SOLICITOR BAIN: Thank you, Your Honor.

13 Q Have you ever talked to anyone or given any statements
14 concerning this incident?

15 A I've gave a statement to officers then in the room at
16 the City.

17 Q If I hand you those statements would you recognize
18 them?

19 A Yes, sir.

20 (WHEREUPON, two interview forms were marked as State's
21 Exhibits Nos. 7 and 8 and two pre-interrogation wavier forms
22 with statements attached were marked as State's Exhibit Nos.
23 9 and 10. All of the above exhibits were for identification
24 purposes only at this time.)

25 SOLICITOR BAIN: Your Honor, may I approach the

Shaina Wallace - Direct examination
by Solicitor Bain

1 witness?

2 THE COURT: You may.

3 Q I'm handing you four exhibits that have been marked
4 Exhibits 7, State's Exhibit 7, State's Exhibit 8, State's
5 Exhibit 9, and State's Exhibit 10 for identification
6 purposes.

7 A Yes, sir.

8 Q Will you please look and review those statements
9 please?

10 A (Witness complies.)

11 Q Have you had a chance to review the statements?

12 A (Witness nods affirmatively.)

13 Q And what are those four statements?

14 A They're my statements.

15 Q Did you give those statements to the police?

16 A Yes, sir.

17 SOLICITOR BAIN: May I approach the witness?

18 THE COURT: You may.

19 Q I'm showing you what's been marked State's Exhibit 7
20 for identification purposes.

21 What is the date on that?

22 A This one?

23 Q Yeah.

24 A 11/13 of 2013.

25 Q And is your signature at the end of that statement?

Shaina Wallace - Direct examination
by Solicitor Bain

1 A Yes, sir.

2 Q I'm now showing you what's been marked as State's
3 Exhibit 8.

4 What is the date on that statement?

5 A 11 -- I believe it's 18/2013.

6 Q And is your signature on that statement?

7 A Yes, sir.

8 Q Now handing you State's Exhibit 9.

9 What is the date on that statement?

10 A 3/6/2014.

11 Q And now I'm handing you State's Exhibit 10.

12 What is the date on that statement?

13 A 3/13/2014.

14 Q And your signature's on all four of these statements?

15 A Yes, sir.

16 SOLICITOR BAIN: Your Honor, at this time I'd like to
17 offer Exhibits 7, 8, 9, and 10 for admission into evidence.

18 THE COURT: Any objections?

19 MR. POOLE: No, sir.

20 THE COURT: They'll be admitted as marked.

21 SOLICITOR BAIN: Thank you. Thank you, Your Honor.

22 (WHEREUPON, State's Exhibit Nos. 7 through 10 were
23 received into evidence at this time.)

24 Q Can you please tell us what you were doing the night of
25 November 11th, 2013?

Shaina Wallace - Direct examination
by Solicitor Bain

- 1 Do you---
- 2 A I don't remember---
- 3 Q You don't remember---
- 4 A ---that well.
- 5 Q ---that night?
- 6 A I don't remember.
- 7 Q Would it help if you looked at one of these statements?
- 8 A Yes, sir.
- 9 SOLICITOR BAIN: Your Honor, may I approach the
- 10 witness?
- 11 THE COURT: Yes, you may do so.
- 12 A Okay. Can I speak?
- 13 Q Yeah.
- 14 Hand me those statements back.
- 15 MR. POOLE: May I ask what exhibit was presented to the
- 16 witness?
- 17 SOLICITOR BAIN: All four.
- 18 MR. POOLE: All four.
- 19 THE COURT: Uh-huh. (Affirmative).
- 20 MR. POOLE: Thank you.
- 21 THE COURT: All right.
- 22 Q Can you please tell us what happened on November 11th,
- 23 2013?
- 24 A Yes, sir, that day we were all drinking and---
- 25 Q Who was drinking?

Shaina Wallace - Direct examination
by Solicitor Bain

1 A Me, Eric, Stanley, Blaine, I don't know his real name,
2 I just know him by Blaine, and then my sisters, Patricia and
3 Talina, was down there, but they had left early, and we all
4 was just -- and Sharell, and we all was just sitting there
5 drinking and playing cards and then that.-- it got night.

6 And so we were -- me, Blaine, and Sharell were in the
7 house and Eric and Stanley went outside, and next thing I
8 know, I hear them arguing back and forth, and so I goes
9 outside and -- to see what's going on, and then I see
10 Stanley hits E and he falls to the ground, and then he
11 can---

12 Q Now, when you say E, who is E?

13 A Sorry. Eric.

14 Q And does Stanley have any nicknames?

15 A Man.

16 Q Please continue.

17 A And so then E gets up and they're arguing, and I'm in
18 the middle of it. I'm like y'all stop, please stop. Y'all
19 are best friends. Y'all have no reason to be doing all of
20 this arguing and stuff.

21 And so they're still arguing back and forth and I say
22 Eric, get in the car, get in the car, and let's go, let's go
23 home. I say we don't -- y'all don't need to do this, and
24 so, after that, we gets in the car, and do I need to
25 continue?

Shaina Wallace - Direct examination
by Solicitor Bain

- 1 Q Well, let me ask you a few questions about the party.
2 A Yes, sir.
3 Q How did you get to the party that evening?
4 A My car -- well, his -- Eric's car.
5 Q What kind of car is that?
6 A It's a Buick Park Avenue. It's white.
7 Q Was that your car at the time as well?
8 A I just was a cosigner, the second signer.
9 Q And where was this party at?
10 A At Blaine's house.
11 Q Do you remember who all was at the party?
12 A Me. It was me, Stanley, Sharrell, Eric, Blaine, my
13 sister, and Talina, but they had left early because my
14 sister has a boyfriend -- well, had a boyfriend at the time,
15 and she went back to my brother's Phillip house.
16 Q At approximately what time did you decide to leave?
17 A I don't remember what time we left that night.
18 Q You mentioned an altercation.
19 Do you know what that altercation was over?
20 A Sharell. I believe it was over Sharell.
21 Q And why was it over Sharell?
22 A I, I have the slightest idea (sic).
23 Q Did you notice Eric and Sharell together that evening?
24 A I didn't.
25 Q Did---

Shaina Wallace - Direct examination
by Solicitor Bain

1 A I mean as far as them -- can you explain?

2 Q Well, did you see Eric and Sharell together that
3 evening?

4 A Yes, sir.

5 Q Did you see Stanley and Sharell there that evening?

6 A Yes, sir.

7 Q Did you see anything happen between Stanley and
8 Sharell?

9 A No, sir.

10 Q This altercation happened when, when y'all -- while
11 y'all -- when y'all were leaving the party, correct?

12 A Yes, sir.

13 Q And can you describe that altercation again?

14 A Well, I was -- when I came outside I seen Eric and
15 Stanley arguing and I had seen -- Stanley had hit Eric and
16 he had fell and I came between them and I told them that
17 y'all don't need to do that, y'all are best friends, and
18 Stanley -- and after that I said come on, Eric, let's go,
19 you don't need to do that.

20 Q Okay. How would you describe the punch?

21 A Sir?

22 Q How would you describe the punch?

23 A It was like a, like a hit. Like a -- just a jab, a jab
24 or something.

25 Q Where did he hit him?

Shaina Wallace - Direct examination
by Solicitor Bain

1 A In the face. In the jaw.

2 Q What was Eric's reaction after he was punched?

3 A Angry.

4 Q What happened next?

5 A After we left?

6 Q Yes.

7 A Eric -- well, after me and Eric had left, he had told
8 me, he said take me to -- he said take me to my house, take
9 me to the house -- well, take me to the house, take me to
10 the house now, and he said take me to the house to go get my
11 gun, and I said no, why. I say you shouldn't do that. I
12 said no.

13 He said I'm grown. You shut up and take me to the
14 house and get me my gun. And so, that night, I took him to
15 the house and he went and got it. I tried to describe it on
16 the papers to the best of my knowledge, and then we went
17 back to Blaine's and Stanley was gone, and then we went back
18 to the house because -- well, before all that happened, now,
19 they -- Man and Stanley -- Man and Eric did exchange words
20 before we pulled off and went to the house to go get Eric's
21 gun.

22 Q Was Eric in the car when they exchanged words?

23 A Yes, sir.

24 Q This was before y'all went back to your house?

25 A Yes, sir.

Shaina Wallace - Direct examination
by Solicitor Bain

1 Q Were you living with Eric at the time?

2 A Yes, sir.

3 Q What type of gun did Eric go and retrieve?

4 A It's a long gun. I don't know the name of the guns,
5 but it's a long gun.

6 Q Did law enforcement ever show you pictures of a gun?

7 A They showed me like descriptions and I circled one that
8 was the best of my knowledge of how one looked -- well, how
9 it looked at.

10 SOLICITOR BAIN: Your Honor, may I approach the
11 witness?

12 THE COURT: You may.

13 Q I'm showing you what's been marked State's Exhibit 9;
14 Page 4.

15 Will you please look at that?

16 A Yes, sir.

17 Q Is that the, the sheet law enforcement handed you?

18 A Yes, sir.

19 Q Is that the gun you circled?

20 A It was. I circled both of them cause I wasn't -- I'm
21 not too good with guns, but---

22 Q But you did the circles on that sheet of paper,
23 correct?

24 A I circled -- I think -- I believe I circled them.

25 Q Did law enforcement hand you that sheet of paper during

Shaina Wallace - Direct examination.
by Solicitor Bain

1 one of your interviews?

2 A Yes, sir.

3 Q Did they allow you to circle it?

4 A Yes, sir, I'm, I'm -- no, I don't want to lie. I'm not
5 sure if I circled it or that they circled it. I mean --.

6 Q Is that the gun you would of pointed to---

7 A Yes, sir.

8 Q ---when you're---

9 A I pointed at both of them.

10 Q You pointed at that gun?

11 A Yes, sir, both of these two.

12 Q Okay.

13 A Because I'm not sure which gun is it.

14 SOLICITOR BAIN: Your Honor, permission to publish
15 State's Exhibit 9, Page 4, to the jury?

16 THE COURT: Has it been introduced into evidence yet;
17 has it?

18 SOLICITOR BAIN: It was part of the statements.

19 THE COURT: Oh, it's attached to the statements?

20 SOLICITOR BAIN: Yes, sir, Your Honor. It's attached
21 to State's Exhibit---

22 THE COURT: Oh, I didn't realize that.

23 You may proceed.

24 SOLICITOR BAIN: I'm sorry, Your Honor.

25 Where was that shotgun stored in y'all's house?

Shaina Wallace - Direct examination
by Solicitor Bain

- 1 A It was on a shelf in the closet.
- 2 Q What happened next?
- 3 A After we -- that night?
- 4 Q What happened next after y'all went back to the house?
- 5 A Oh, that night when we went to the house, he said stay
- 6 right here, don't get out the car, I said okay, and he went
- 7 back -- he went in the house and he got the gun and then he
- 8 got -- came back out with it, and he said now take me back
- 9 over there. I was like no, I'm not doing this, and he said
- 10 yes, do it, and, and so I took him back over there that
- 11 night.
- 12 And so, after that, we gets back there and Blaine tells
- 13 us that Stanley had left. And so, me and Eric, we leave and
- 14 we head to the house, but we grabbed my son. We grabbed my
- 15 son first and we left and went to the house because I had
- 16 work in the morning and my son had school.
- 17 Q So you and Eric went back to Blaine's house?
- 18 A Yes, sir, that night.
- 19 Q That was where the party was at?
- 20 A Yes, sir.
- 21 Q Is that where the altercation occurred?
- 22 A Yes, sir.
- 23 Q Did y'all find Stanley at Blaine's house?
- 24 A No, sir.
- 25 Q And then you went back to your house?

Shaina Wallace - Direct examination
by Solicitor Bain

- 1 A Yes, sir.
- 2 Q What happened that next morning?
- 3 A That morning we woke up and I got dressed for work, I
4 got my little boy ready for school, and Eric asked, he says
5 can I borrow the car. I was -- and I said why. I said I
6 have to be at work and he says I need the car. I said well,
7 okay then, that's fine. I didn't want to argue. So he
8 drops me off after work and -- keep going?
- 9 Q What kind of car was that?
- 10 A A Buick Park Avenue.
- 11 Q And you and Eric shared that car?
- 12 A Yes, sir.
- 13 Q Did he typically drive you to work?
- 14 A Can you explain typically?
- 15 Q Was it normal for him to drive you to work and drop you
16 off?
- 17 A We -- he drives me sometimes and sometimes he doesn't.
- 18 Q And where did you work at the time?
- 19 A At Subway.
- 20 Q Were you at work that entire day?
- 21 A I worked morning shift. I had to open that morning.
- 22 Q Did Eric take your car that day?
- 23 A That morning, yes, sir.
- 24 Q After he dropped you off at work?
- 25 A Yes, sir.

Shaina Wallace - Direct examination
by Solicitor Bain

1 Q And what happened that afternoon?

2 A When I got off of work?

3 Q Yes.

4 A He had told me that the car was messed up. So he have
5 my sister pick me up and I said well, okay, cause we had
6 just got it out of the shop. It was some -- I forgot what
7 was messed up on it, but we had just got it out of the shop.
8 But he told me that the car was messed up again and I said
9 well okay then.

10 I said well how am I gonna get home. He said your
11 sister will pick you up. I said well okay then and so I get
12 back to my brother's house. Well, my sister picks me up and
13 we go back to my brother's house.

14 Q So your sister picked you up from work that day?

15 A Yes, sir.

16 Q Where did Eric say your car was?

17 A He said he had took it to my mom's house because it was
18 messing up.

19 Q Did you ever get your car that day?

20 Did you ever get---

21 A It was the, it was the next day I got my car.

22 Q And was there anything wrong with the car?

23 A No, sir.

24 Q But he -- but Eric told you there was something wrong
25 with the car?

Shaina Wallace - Direct examination
by Solicitor Bain

1 A Yes, sir.

2 Q Did you see Eric at all on that day after you got off
3 work?

4 A Yes, sir.

5 Q Did you see him with anybody?

6 A Yes, sir.

7 Q Who did you see him with?

8 A D-White.

9 Q Anybody else?

10 A No, sir.

11 Q Who's Derrick White?

12 A His friend, home boy.

13 Q And where did you see Eric and Derrick at?

14 A At -- I seen them at my brother's house.

15 Q When did you hear about Stanley's death?

16 A That morning I was at work. My sister, Talina, she had
17 called me and told me -- she was like you need to sit down
18 for this and I said why. She was like I heard that Stanley
19 got killed---

20 MR. POOLE: I object to any hearsay, Your Honor.

21 THE COURT: I'll sustain the objection.

22 Q You found out about his death that morning you were at
23 work, correct?

24 A Yes, sir.

25 Q Did you live with Eric after this incident?

Shaina Wallace - Direct examination
by Solicitor Bain

- 1 A Yes, sir.
- 2 Q For approximately how long?
- 3 A I don't remember.
- 4 Q A few months?
- 5 A Yes, sir.
- 6 Q Did you and Eric have -- ever have any discussions
7 about this incident?
- 8 A No, sir, I -- well, I had asked him about it and he
9 denied it, and then I asked him over again, and then he had
10 finally just told me the truth.
- 11 Q And what did he tell you when he told you the truth?
- 12 A He told me I did it. I, I killed Stanley Jones.
- 13 Q When did he tell you that?
- 14 A I, I believe it was -- we were -- I think we went to
15 church that day I believe. I don't remember what day it
16 was. I'm sorry.
- 17 Q But you had been at church?
- 18 A Yes, sir.
- 19 Q And then, after church, he told you the truth?
- 20 A Yes, sir.
- 21 Q Can you tell us anything about that conversation?
- 22 A I said why --
- 23 Q Take your time.
- 24 A -- and I asked him why, why would you, why would, why
25 would you do that, and he was like don't tell. If you tell,

Shaina Wallace - Direct examination
by Solicitor Bain

- 1 he -- if you tell, I'm gonna hurt you.
- 2 Q And you lived with Eric after this incident, correct?
- 3 A Yes, sir.
- 4 Q Prior to this incident did you ever notice any guns in
- 5 the house?
- 6 A No, sir.
- 7 Q You mentioned earlier about the closet.
- 8 Prior to the incident did you see any guns in the
- 9 house?
- 10 A Besides the one, the long one?
- 11 Can you explain that?
- 12 I'm sorry.
- 13 Like what do you mean by prior to?
- 14 Q Before, before the incident you lived with Eric Owens,
- 15 correct?
- 16 A Yes, sir.
- 17 Q Were there any guns in the house before the incident?
- 18 A The, the long gun, it was there.
- 19 Q And where was it in the house?
- 20 A In the closet on the shelf.
- 21 Q You lived with Eric after the incident, correct?
- 22 A Yes, sir.
- 23 Q Did you ever notice any guns in the house after the
- 24 incident?
- 25 A No, sir.

Shaina Wallace - Direct examination
by Solicitor Bain

1 Q Did you ever see that long gun again in the house?

2 A No, sir.

3 SOLICITOR BAIN: Beg the Court's, Court's indulgence.

4 THE COURT: Yes, sir.

5 (Pause.)

6 Q During the altercation, were there any words exchanged
7 between Eric and Stanley?

8 A Yes, sir.

9 Q Can you please tell us what those words were or what
10 Eric said?

11 A He said I'm gonna get you. He said I'm gonna get you
12 and then him -- and then Stanley said okay, okay, I'm right
13 here.

14 MR. POOLE: Objection, Your Honor. Hearsay.

15 THE COURT: I'll sustain the objection.

16 Q When y'all went back to Blaine's house that evening,
17 who was Eric looking for?

18 A Stanley.

19 Q How was he acting, Eric?

20 A He was still angry that night.

21 Q What was your reaction when Eric told you he killed
22 Stanley?

23 A I was scared and shocked.

24 Q Did you believe him?

25 A (Witness nods affirmatively.)

Shaina Wallace - Direct examination
by Solicitor Bain

1 MR. POOLE: Objection, Your Honor. Irrelevant.

2 THE COURT: Sustained.

3 SOLICITOR BAIN: No further questions, Your Honor.

4 THE COURT: All right. Before we begin
5 cross-examination we're gonna take a short break.

6 MR. POOLE: Thank you, Your Honor.

7 THE COURT: Ladies and gentlemen of the jury, we're
8 gonna allow you to step back to the jury room; stretch your
9 legs. I'm gonna instruct you, as I will every time, not to
10 discuss anything about the case till I've asked you to begin
11 your deliberations. You may retire to the jury room.

12 Thank you very much.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right. During the break, I'll caution
16 the witness, ma'am, you should not discuss your testimony
17 with anyone during the break, but you can get up and move
18 around the courtroom.

19 We'll take a short recess.

20 Thank you very much.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: All right. I'd ask the witness, ma'am, if
23 you'll come back up on the witness stand please, ma'am.

24 (Witness complies.)

25 THE COURT: Thank you.

Shaina Wallace - Direct examination
by Solicitor Bain

1 Before we bring the jury in, check outside and see if
2 any of the people in the courtroom want to come in. Now is
3 the time.

4 (Pause.)

5 THE COURT: Ask the attorneys to approach while we're
6 waiting for those folks to step in please.

7 Thank you.

8 (WHEREUPON, a bench conference was held at this time.)

9 THE COURT: All right. State ready for the jury?
10 Defense ready?

11 MR. POOLE: Yes, sir.

12 THE COURT: Bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect the
16 jury's returned to the courtroom.

17 At this time the defense has the right to cross-examine
18 the witness.

19 Mr. Poole.

20 MR. POOLE: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. POOLE:

23 Q Ms. Wallace?

24 A Yes, sir.

25 Q I would like to ask you a few questions about the

Shaina Wallace - Cross-examination.
by Mr. Poole

1 events of the day before November 12th, 2013.

2 A Yes, sir.

3 Q Did you work that day?

4 A November the 12th?

5 Q (Nods affirmatively.)

6 A Yes, sir.

7 Q Did you work on November 11th, which would of been a
8 Monday I think?

9 A I don't remember if I worked.

10 Q Do you remember anything about picking up Sharell?

11 Who is Sharell?

12 A That's the baby mama's sister, Eric baby mama's sister.

13 Q All right. You know her, right?

14 A I don't know her personally, but I, I met her.

15 Q Okay. Did, did you or he take her to a job interview
16 at Peach Blossom Restaurant?

17 A Yes, sir, that morning we, we did.

18 Q Does that refresh your memory a little?

19 A Yes, sir.

20 Q Okay. So you did not work on the day of
21 November 11th if you took, if you and Eric took her to the
22 job interview?

23 A No, sir, I didn't work that day. I worked the next day
24 though.

25 Q Okay. And then you left there.

Shaina Wallace - Cross-examination
by Mr. Poole

1 Did you go to Sam's Club?

2 A I don't remember going to Sam's Club.

3 Q And then to a liquor store?

4 A I do remember going to a liquor store.

5 Q So you're in the -- your, your Buick with Eric --

6 A And Sharell.

7 Q -- and Sharell and you're doing these what I'll call
8 errands or whatever?

9 A Yes, sir.

10 Q All right. And did Eric suggest a celebration because
11 Sharell got a job interview?

12 A I don't remember. I apologize.

13 Q Okay. Did you go over to Filco's house?

14 A Yes, sir.

15 Q Filco.

16 Now who is Filco?

17 A That's my brother.

18 Q Okay. And who all went over there?

19 A Me, Eric, and Sharell.

20 Q Okay. At some point in time did y'all pick up
21 Mr. Jones and a girl that were walking down the street?

22 A We didn't pick up a girl, but we picked up Mr. Jones,
23 Stanley.

24 Q You picked up Stanley Jones, Man?

25 A Yes, sir.

Shaina Wallace - Cross-examination
by Mr. Poole

- 1 Q He was walking down the road?
- 2 A I don't remember where we picked him up from.
- 3 Q Okay. So you picked, picked him up, got in the car
- 4 with you -- three people?
- 5 A Yes, sir.
- 6 Q And then where did you go to there -- from there?
- 7 A We went back on Diamond Lane.
- 8 Q And who's on Diamond Lane?
- 9 A It was me, Eric, Sharell, and I think Stanley was in
- 10 the car with us at that time.
- 11 Q You didn't drop him off at anywhere, did you?
- 12 A No, sir, we went by, we went by Biggerstaff too.
- 13 Q That's right.
- 14 A And---
- 15 Q And then, after Biggerstaffs, y'all went to Sharell's
- 16 house and dropped her off, didn't you?
- 17 A No, she was with us that night.
- 18 Q Okay. All right. And then -- so Mr. Jones was in the
- 19 car with you-all from about what time?
- 20 what I'm asking you is what time was he picked up?
- 21 A I don't remember what time it was. I wasn't, I wasn't
- 22 looking at the time. I really don't remember the times.
- 23 Q So everybody in the car was getting along?
- 24 A At the time, yes, sir.
- 25 Q No problems?

Shaina Wallace - Cross-examination
by Mr. Poole

1 A No, sir.

2 Q And then when -- you give an address and what address
3 was that on Diamond Lane?

4 That's Blaine's house?

5 A Yes, sir, I don't remember his address on Diamond Lane.
6 I know it's Diamond Lane.

7 Q All right. So when you get to Blaine's house, who all
8 is there including the occupants of your car?

9 A It was me, Eric, Sharell, Stanley, Blaine, my sister
10 and my -- Patricia, my sister, Talina, but they had left
11 earlier. They didn't stay long.

12 Q Okay. And what was going on at Blaine's house?

13 A We were drinking and playing cards.

14 Q Everybody?

15 A Yes, sir.

16 Q All right. And I believe you were drinking liquor and
17 beer?

18 A Yes, sir.

19 Q Okay. And during the course of that, let me, for lack
20 of a better word, call it a party, did Eric get up to go
21 outside to answer a telephone?

22 A I don't remember if he went outside to answer a phone
23 or not.

24 Q Okay. What are you charged with in relation to this
25 incident?

Shaina Wallace - Cross-examination
by Mr. Poole

1 A I'm charged with obstruction, obstruction of justice
2 and accessory after the fact.

3 Q Okay. Have you stood trial or pled guilty to these
4 charges?

5 A I, I went to the county for it.

6 Q Okay. Have you been in a courtroom like this in front
7 of a judge to answer for those charges?

8 A I, I just got bond like --.

9 Q So you haven't been in front of a judge in a courtroom
10 similar to this?

11 A No, sir.

12 Q Okay. And do you have a lawyer representing you?

13 A Yes, sir.

14 Q Okay. And did you and your lawyer come to the
15 conclusion that it would be in your best interest to testify
16 against Mr. Owens?

17 A What do you mean by that, sir?

18 I don't understand.

19 Q Well, what you're doing right now is testifying.

20 A Okay.

21 Q And you're claiming Mr. Owens was involved in this
22 homicide.

23 A Yes, sir.

24 Q Right?

25 A Right.

Shaina Wallace - Cross-examination
by Mr. Poole

- 1 Q Did you have discussions with your lawyer about whether
- 2 or not you should testify against Mr. Owens?
- 3 A I'm, I'm not understanding your question. I'm sorry.
- 4 Q Okay. Do you remember when -- the first statement that
- 5 you gave to law enforcement?
- 6 A Yes, sir.
- 7 Q How many total statements did you give to law
- 8 enforcement?
- 9 A Three.
- 10 Q Is it not four?
- 11 Are not there four statements introduced into evidence
- 12 here?
- 13 May I approach?
- 14 THE COURT: You may.
- 15 Q I show you State's Exhibit No. 7.
- 16 A Yes, sir.
- 17 Q You've already looked at that.
- 18 A Yes, sir.
- 19 Q All right. What's the date on that statement there?
- 20 A 11/13/13.
- 21 Q Okay. That's the date of this incident, right?
- 22 Oh, excuse me. The day after this, this incident.
- 23 A I believe. I don't remember the days.
- 24 Q Okay. And in this first statement, didn't you state
- 25 that you took your car to work on the day before and you got

Shaina Wallace - Cross-examination
by Mr. Poole

1 to work around 7:05?

2 A Yes, sir.

3 Q And no where in this first statement do you say
4 anything about Eric being involved in a homicide.

5 Is that true?

6 A I don't remember what I wrote in my statements.

7 Q Well, take a minute to, to review it.

8 A Yes, sir.

9 (Witness complies.)

10 Q Have you had a chance to read it?

11 A Yes, sir.

12 Q Did you say anything about a gun in that statement?

13 A No, sir.

14 Q Did you say anything about Eric being involved in the
15 killing of Stanley Jones?

16 A No, sir.

17 Q Okay. And let me show you the statement that's dated
18 November 11th -- 18th, 2103, a few days later, and I'll
19 give you a chance to read it.

20 Okay?

21 A Yes, sir.

22 Q Have you read it?

23 A (Witness nods affirmatively.)

24 Q Did you say anything in that statement about Eric being
25 involved in a homicide?

Shaina Wallace - Cross-examination
by Mr. Poole

- 1 A I didn't.
- 2 Q You did not?
- 3 A The only thing I do see is something with this.
- 4 Q My question is did you mention anything in that
- 5 statement, given a few days later to law enforcement, about
- 6 Eric Owens being involved in the homicide of Man?
- 7 A No, sir.
- 8 Q Stanley Jones?
- 9 A No, sir, I was scared.
- 10 Q You were scared?
- 11 A To protect my son.
- 12 Q Okay. Well, is the answer yes or no?
- 13 A No, sir.
- 14 Q And, in fact, read the last statement -- the last
- 15 sentence please on this statement.
- 16 A It says I have not seen Eric with a gun and he has not
- 17 said anything about shooting Man.
- 18 Q Okay. Read it again please.
- 19 A I have not seen Eric with a gun and he has not said
- 20 anything about shooting Man.
- 21 Q Okay. And then you gave two more statements after
- 22 that, is that correct, after these two to law enforcement?
- 23 A I believe I did. I thought I just did one more.
- 24 Q You gave two more statements and I want to -- State's,
- 25 State's Exhibit No. 9 is dated -- what's that date right

Shaina Wallace - Cross-examination
by Mr. Poole

1 there?

2 A 3/6/14.

3 Q And State's Exhibit No. 10?

4 A It's---

5 Q What's the date right there?

6 A 3/13/14.

7 Q Okay. And this is four months later after the incident
8 you gave these statements?

9 A Yes, sir.

10 Q And it's only in these statements that you start
11 talking about Eric being involved in any homicide, right?

12 A Yes, sir.

13 Q All right. When you were talking to law enforcement
14 you were talking to either Investigator Gardner or
15 Investigator Porter.

16 Is that true?

17 A I don't --.

18 Q You know this man right here?

19 A Yes, sir.

20 Q You gave statements to him, didn't you?

21 A Yes, sir.

22 Q And each time you were given a statement, weren't you
23 asked or sworn to tell the truth?

24 A Yes, sir.

25 Q So you did not tell the truth in these statements?

Shaina Wallace - Cross-examination
by Mr. Poole

- 1 A No, sir.
- 2 Q True?
- 3 Am I right?
- 4 A Right.
- 5 Q I am right, you did not tell the truth in the
- 6 statements?
- 7 A In my, in my first, first ones I didn't.
- 8 Q And the second one you didn't?
- 9 A And the second one I didn't.
- 10 Q Are you telling the truth today?
- 11 A Yes, sir, I -- I'm not, I'm not afraid now. He, he
- 12 can't harm me and my family now.
- 13 Q Okay. But my question simply is you're saying you're
- 14 telling the truth today?
- 15 A Yes, sir.
- 16 Q Okay. So from your testimony that you're giving today,
- 17 you state that Eric told you to take me home to the house to
- 18 get my gun, right?
- 19 A Right.
- 20 Q Is that in these statements or do you know?
- 21 A I don't, I don't, I don't remember if they're in there
- 22 or not.
- 23 Q Did you, did you say today that I took him to --
- 24 home -- to the house and he got his gun?
- 25 You testified to that a moment ago, right?

Shaina Wallace - Cross-examination.
by Mr. Poole

- 1 A Yes, sir.
- 2 Q Is that in any of those statements?
- 3 A I don't remember.
- 4 Q Okay. Why is it that you don't remember?
- 5 I mean you were talking to law enforcement and you were
- 6 suppose to be telling the truth.
- 7 Have you reviewed these statements with your lawyer?
- 8 A I mean -- but my -- yes, sir, I have.
- 9 Q You have?
- 10 A Yes, sir.
- 11 Q So you've gone over them before today?
- 12 A Yes, sir.
- 13 Q Right?
- 14 A Yes, sir.
- 15 Q And your further testimony today he went in the house
- 16 and got the gun?
- 17 A (Witness nods affirmatively.)
- 18 Q And he told you, say take me back over there to
- 19 Blaine's, is that right?
- 20 A Yes, sir.
- 21 Q And when you got there Man had left?
- 22 A Yes, sir.
- 23 Q And you testified that Eric was angry?
- 24 A Yes, sir.
- 25 Q And he was mad?

Shaina Wallace - Cross-examination
by Mr. Poole

1 A Yes, sir.

2 Q So he goes in the house and he gets this weapon, which
3 is basically a---

4 A Yes, sir.

5 Q ---piece of artillery, right?

6 A Yes, sir.

7 Q A big gun?

8 A (Witness nods affirmatively.)

9 Q He goes back into the car that you're driving and you
10 take him back over to Blaine's house where this allegedly
11 big argument occurred.

12 Is that true?

13 A Yes, sir.

14 Q And why?

15 A I'm scared of him.

16 Q You're scared of him.

17 Did you state that, that in any of these statements?

18 A (Witness nods negatively.)

19 Q Okay. Then, after that, you grabbed your son, right?

20 A (Witness nods affirmatively.)

21 Q How old is your son?

22 A My son is seven now.

23 Q He's seven.

24 So he would of been five at the time?

25 A Yes, sir.

Shaina Wallace - Cross-examination
by Mr. Poole

- 1 Q Where did you put -- where did you pick him up?
- 2 A I picked my son up at my brother's house that night.
- 3 Q Okay. And you picked him -- went and picked him up,
- 4 right?
- 5 A Yes, sir.
- 6 Q And you put him in the car with an angry man under the
- 7 influence of alcohol and who has a gun and he's got
- 8 vengeance on his mind?
- 9 That's what you want this jury to believe?
- 10 A (Witness nods affirmatively.)
- 11 Q Is that true?
- 12 A That's what happened.
- 13 Q You put your son in this car with a man that is armed,
- 14 under the influence of alcohol?
- 15 A (Witness nods affirmatively.)
- 16 Q And how long did you live with him after all this?
- 17 A Until they locked him up.
- 18 Q Okay. And that would of been in March of 2014?
- 19 A (Witness nods affirmatively.)
- 20 Q Four months later.
- 21 You lived with him in fear for four months?
- 22 A (Witness nods affirmatively.)
- 23 Q Is that right?
- 24 A Yes, sir.
- 25 Q Okay. But he never did tell you anything about his

Shaina Wallace - Cross-examination
by Mr. Poole

1 involvement in this incident until y'all have some, some
2 sort of going to church together and he made a confession of
3 some sort to you?

4 A Yes, sir, but I'd been going to church. I grew up in
5 church.

6 Q Well good.

7 But in one of these statements you stated that he told
8 you and gave you a confession in church. Said I did it, I
9 did it all, in church.

10 A Not in church. I don't believe -- it wasn't in church,
11 sir.

12 Q Okay. Well, when was it?

13 A It was after church.

14 Q Y'all had gone to church that day?

15 A Yes, sir.

16 Q And he felt compelled to confess to you?

17 A Yes, sir.

18 Q Okay. And then you said -- you mentioned that in the
19 last statement I think that -- the thing that you gave, is
20 that correct?

21 A Yes, sir.

22 Q At any point in these statements did you make the
23 remark that you stated a while ago if you tell I will hurt
24 you?

25 A No, sir.

Shaina Wallace - Cross-examination
by Mr. Poole

1 Q Well, you really weren't afraid of him, were you, if
2 you lived with him for four months afterwards?

3 A I'm scared now.

4 Q I understand. Take your time.

5 A Like I really am afraid.

6 MR. POOLE: That's all the questions I have, Your
7 Honor.

8 THE COURT: Redirect.

9 SOLICITOR BAIN: Thank you, Your Honor.

10 May I approach the witness?

11 THE COURT: You may.

12 REDIRECT EXAMINATION

13 BY SOLICITOR BAIN:

14 Q Handing you what's been marked State's Exhibit 8.

15 In your statement to the police, did -- on 11/18/2013,
16 did you say I lied to protect myself and my child to keep my
17 car?

18 A In this?

19 Q Yeah.

20 I'll direct you to the last line of the -- looks like
21 first paragraph on this first page.

22 A Yes, sir.

23 Q And then that next line, the second, the second
24 sentence, can you please read that at the bottom, at the
25 bottom of the page?

Shaina Wallace - Redirect examination
by Solicitor Bain

- 1 It's starts with I then went.
- 2 A I don't see the page.
- 3 SOLICITOR BAIN: May I approach?
- 4 THE COURT: You may approach.
- 5 Q Can you please read from there?
- 6 A I, I, I then went to the Red Roof Inn and stayed there
- 7 Thursday, Friday, and Saturday.
- 8 Q Why did you stay at the Red Roof Inn?
- 9 A I, I had to get away.
- 10 Q Get away from what?
- 11 A From Eric.
- 12 Q You lived with him at the time, correct?
- 13 A Yes, sir.
- 14 Q But you decided, right after the incident, you had to
- 15 go stay at the Red Roof Inn?
- 16 A Yes, sir.
- 17 After what?
- 18 I'm sorry.
- 19 Q When did you stay at the Red Roof Inn?
- 20 A I don't remember the date I stayed there, but I do
- 21 remember going there with my son.
- 22 Q And why did you go there?
- 23 A To -- I, I just needed to get away. I was, I was, I
- 24 was scared.
- 25 Q Scared of who?

Shaina Wallace - Redirect examination
by Solicitor Bain

1 A Eric.

2 SOLICITOR BAIN: May I approach the witness, Your
3 Honor?

4 THE COURT: You may.

5 Q I'm now showing you what's been marked State's Exhibit
6 9.

7 This statement is dated 3/16/14, correct?

8 Look at the front of the statement.

9 A Yes, sir.

10 Q If you'll look towards the bottom of that page.

11 A Yes, sir.

12 Q Can you start reading where it says I was blinded?

13 A I was blinded by love not wanting to face the fact of
14 the whole situation.

15 Continue?

16 Q Keep going.

17 A Later on, when the police asked me -- asked -- I'm
18 sorry. Later on, when the police asked to talk with me, he,
19 Eric, told me to lie to them by saying that I drove to work.
20 Looking back now I believe he was using me to cover for him.
21 I've been lying to the police and sugarcoating that because
22 I don't want nothing to happen to me and my family.

23 Q Thank you, ma'am.

24 So you were scared of Eric Owens when you gave that
25 statement?

Shaina Wallace - Redirect examination
by Solicitor Bain

- 1 A (Witness nods affirmatively.)
- 2 Yes, sir.
- 3 Q Were you scared something was gonna happen to your
- 4 family?
- 5 A Yes, sir.
- 6 Q And, in the beginning, when you gave your first two
- 7 statements, according to that statement that you just read,
- 8 you were blinded by love?
- 9 Is that correct?
- 10 A Yes, sir.
- 11 Q I'm gonna hand you one more statement that's been
- 12 marked State's Exhibit 10.
- 13 May I approach the witness, Your Honor?
- 14 THE COURT: You may.
- 15 Q I'd like to direct your attention to the last line of
- 16 that statement.
- 17 could you please read that line?
- 18 A Where do you want me to start?
- 19 Q Just the last sentence.
- 20 A Where it says I've lost everything or --?
- 21 Q No, the last sentence of the statement where it says I
- 22 have been. It's the very last sentence.
- 23 A I've been telling lies to the police to protect Eric
- 24 Owens.
- 25 Q So you've admitted that you've lied to the police about

Shaina Wallace - Redirect examination
by Solicitor Bain

1 this incident?

2 A I lied first, the first couple statements.

3 Q And you lied because you were scared of Mr. Owens,
4 correct?

5 A Yes, sir.

6 Q Today are you lying?

7 A No, sir.

8 SOLICITOR BAIN: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q Did he tell you to lie?

12 A When?

13 The first?

14 Q Did he ever tell you to lie?

15 A Yes, sir.

16 Q How many times?

17 A He told me to lie on my statements.

18 Q So he told you that before you gave the statements?

19 A (Witness nods affirmatively.)

20 Q He told me -- on my first statement, first statement I
21 lied because he told me to lie.

22 SOLICITOR BAIN: No further questions, Your Honor.

23 THE COURT: Recross.

24 RECROSS EXAMINATION

25 BY MR. POOLE:

Shaina Wallace - Recross examination
by Mr. Poole

- 1 Q Miss Wallace, when you went to the Red Roof Inn, under
2 whose name did you check in or gain access to a room?
- 3 A I used someone else's name.
- 4 Q Pardon me?
- 5 A I used someone else's name.
- 6 Q Whose name did you use?
- 7 A I used my cousin's name.
- 8 Q His name is Michael Glenn, right?
- 9 A Yes, sir.
- 10 Q And while you were there at the Red Roof Inn, Eric was
11 there with you, wasn't he?
- 12 A He came.
- 13 Q He stayed there a while, didn't he?
- 14 A He visited -- he came to visit, sir.
- 15 Q He didn't stay with you an extended period of time?
- 16 A He stayed for a while, yeah.
- 17 Q He stayed for more than 24 hours, didn't he?
- 18 A He spent the night, sir.
- 19 Q He spent more than one night, didn't he?
- 20 A I don't --.
- 21 Q In fact, he spent the whole time you were there, didn't
22 he, with you?
- 23 Is that true?
- 24 A True.
- 25 Q Okay. So you weren't afraid of him then, were you?

Shaina Wallace - Recross examination
by Mr. Poole

1 A Yes, sir.

2 Q Did you testify that you went to the Red Roof Inn to
3 get away from him a while ago?

4 A Yes, sir, I did. I, I wanted to go to get a room to
5 get away from him and he came as well.

6 Q And y'all stayed together --

7 A Yes, sir.

8 Q -- for the entire time under the name of Michael Glenn?

9 A Yes, sir, it's my cousin's name.

10 Q Okay. Thank you.

11 THE COURT: All right, ma'am. You may step down.

12 Thank you very much.

13 THE WITNESS: Can I---

14 THE COURT: You can step down.

15 Do you wish to excuse the witness?

16 SOLICITOR BAIN: Yes, sir, Your Honor.

17 THE COURT: Any objections?

18 MR. POOLE: No, sir.

19 THE COURT: You're free to go, ma'am. Thank you very
20 much.

21 You can leave the courtroom, ma'am.

22 All right. Ladies and gentlemen of the jury, we're
23 gonna break for lunch at this time. You'll be leaving the
24 courthouse. You probably already know what I'm gonna tell
25 you, but I'll tell you again anyway.

1 You should not attempt to gather any information on
2 your own. Don't listen to, watch, or read any media reports
3 about the case. Please don't discuss the case with anyone.
4 Don't allow anyone to discuss it with you. Report anyone
5 who might contact you about your participation in this case
6 upon your return.

7 I'll give you a little more than an hour in case you
8 have to run an errand. We'll start back at about 1:15. So
9 we'll see you at that time. At this time, time you're free
10 to go.

11 Thank you very much.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. I'll ask everyone to remain
15 seated while the defendant leaves the courtroom.

16 Be sure to check the hallway, Mr. Lyles, for the jurors
17 so they can go out.

18 THE OFFICER: Yes, sir.

19 (Pause.)

20 THE COURT: All right. We'll be in recess until about
21 1:15. Thank you very much.

22 SOLICITOR GRAY: Thank you, Your Honor.

23 SOLICITOR BAIN: Thank you, Your Honor.

24 (WHEREUPON, Court was in recess for the lunch hour.)

25 THE COURT: All right. State ready to proceed?

1 SOLICITOR BAIN: Yes, Your Honor.

2 THE COURT: Defense ready?

3 MR. POOLE: Yes, sir.

4 THE COURT: Bring the jury in.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. The record will reflect the
8 jury has returned to the courtroom.

9 If anyone had difficulty in complying with my
10 instructions during lunch, the lunch hour, please stand.

11 (No response.)

12 THE COURT: It appears that all jurors have been able
13 to comply with the Court's instructions thus far.

14 At this time the State may call its next, next witness.

15 SOLICITOR BAIN: Thank you, Your Honor.

16 The State calls Teri Khalil.

17 THE COURT: Teri Khalil please.

18 Come forward please, ma'am. If you'll step over here
19 to my left and be sworn in right over here.

20 TERI KHALIL, being first duly
21 sworn, testified as follows:

22 THE COURT: Ma'am, have a seat. Once seated, I'll ask
23 that you state your name please.

24 THE WITNESS: Teri M. Khalil.

25 THE COURT: Your witness, counselor.

Teri Khalil - Direct examination
by Solicitor Bain

1 SOLICITOR BAIN: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 BY SOLICITOR BAIN:

5 Q Ms. Khalil, where are you employed?

6 A I own and operate a Subway Restaurant.

7 Q How long have you been employed there?

8 A Twenty-five years.

9 Q What, what subway is it?

10 What -- the address?

11 A 11090 Asheville Highway, Inman.

12 Q Do you know why you're here today?

13 A About a videotape of one of my employees.

14 Q Well, are there any videos of the parking lot outside
15 of your Subway?

16 A No, the cameras are only inside.

17 Q Do you recall November 12th, 2013?

18 A Not really specifically, no.

19 Q Your business, on that date, would not of had video
20 cameras, correct?

21 A It does have video cameras on the inside only.

22 Q Okay. Do you remember if Shaina Wallace worked on
23 November 12th, 2013?

24 A She worked for me, yeah, and she was working then.

25 Q Did she work on that day specifically?

Teri Khalil - Direct examination
by Solicitor Bain

1 A She opened.

2 Q What kind of -- do you know what kind of car she
3 drives?

4 A No, not really.

5 Q But she worked -- when you say she worked the morning,
6 how long was she at work till?

7 A I believe 2:00 that day.

8 SOLICITOR BAIN: Beg the Court's, Court's indulgence.

9 THE COURT: Yes, sir.

10 (Pause.)

11 SOLICITOR BAIN: No further questions, Your Honor.

12 Please answer any questions opposing counsel might
13 have.

14 THE COURT: Mr. Poole.

15 MR. POOLE: Thank you.

16 CROSS-EXAMINATION

17 BY MR. POOLE:

18 Q Is your last name Khalil, ma'am?

19 A Yes, sir.

20 Q How do you spell that?

21 A K-H-A-L-I-L.

22 Q Thank you.

23 And how long did you say you have worked at this Subway
24 station?

25 A I've owned it for over -- well, for about 25 years.

Teri Khalil - Cross-examination
by Mr. Poole

- 1 Q Oh, you've owned it.
- 2 A Maybe twenty-four.
- 3 Q You're the franchise owner?
- 4 A Yes, sir.
- 5 Q And you don't specifically require -- recall the events
6 of November 12th, 2013?
- 7 A Not really. I do remember what I saw on the camera
8 cause I did watch the camera.
- 9 Q Okay. And Shaina Wallace worked that day from---
- 10 A Shaina was working, yes, sir.
- 11 Q Is that from 7:00 until 2:00?
- 12 A She was there a little bit before 7:00.
- 13 Q Okay. She's typically on time?
- 14 A No.
- 15 Q Okay. No?
- 16 A No.
- 17 Q Is she still working there?
- 18 A She quit for a while, but yes, I did hire her back.
- 19 Q Well, you're a good employee -- employer.
- 20 A I've never been on time myself. So --
- 21 Q Okay.
- 22 A If they're five minutes late I really can't say
23 anything.
- 24 Q All right. Thank you, ma'am, Ms. Khalil.
- 25 A Uh-huh. (Affirmative).

Teri Khalil - Cross-examination
by Mr. Poole

1 THE COURT: Redirect?

2 SOLICITOR BAIN: Real quick, Your Honor.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY SOLICITOR BAIN:

6 Q There were no cameras on the outside of the Subway,
7 correct?

8 A Correct.

9 Q So no cameras would of caught a car parked in the
10 parking lot, correct?

11 A Not at my store, no.

12 SOLICITOR BANE: No further questions, Your Honor.

13 THE COURT: Anything further, Mr. Poole?

14 MR. POOLE: No, sir.

15 THE COURT: Ma'am, you may step down.

16 Do you wish to excuse the witness?

17 SOLICITOR BAIN: Yes, Your Honor.

18 THE COURT: Any objections?

19 MR. POOLE: None.

20 THE COURT: Ma'am, you're free to go at this time.

21 Thank you very much.

22 State may call its next witness.

23 SOLICITOR BANE: Thank you, Your Honor.

24 The State calls Mistee Medford.

25 THE COURT: Medford?

Mistee Medford - Direct examination
by Solicitor Bain

1 SOLICITOR BANE: Yes, sir, Your Honor.

2 THE COURT: Ma'am, please come forward to my left to be
3 sworn in please. Right over here.

4 MISTEE MEDFORD, being first duly
5 sworn, testified as follows:

6 THE COURT: Once seated, state your name please.

7 THE WITNESS: Mistee Medford.

8 THE COURT: Thank you, and you have a soft voice, so
9 speak up loud enough for everybody here to hear you.

10 Okay?

11 THE WITNESS: Okay.

12 THE COURT: All right. Mr. Bain, your witness.

13 SOLICITOR BAIN: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY SOLICITOR BAIN:

16 Q Ms. Medford, where are you employed?

17 A Subway, Inman.

18 Q Do you know the address of that Subway?

19 A 11990 Lower Asheville Highway.

20 Q How long have you been employed at that Subway?

21 A Nine years.

22 Q So you were employed there on November 11th of -- on
23 November 12th of 2013?

24 A Yes.

25 Q Do you know why you're here today?

Mistee Medford - Direct examination
by Solicitor Bain

1 A Yeah.

2 Q Can you please tell us why you're here?

3 A Well, Shaina worked for me that morning. So she worked
4 and wanted to know if she was there, the car was there, and
5 all that. That's basically all I knew when I worked with
6 her.

7 Q You said---

8 A They just asked me did I know if the car was there when
9 I got to work. That's all I know.

10 Q Did you give a statement to police --

11 A Yes.

12 Q -- concerning this?

13 Your Honor, may I approach the witness?

14 THE COURT: You may.

15 Q Will you please take a look at that statement and
16 review it.

17 A Uh-huh. (Affirmative).

18 Q Have you had a chance to review this statement?

19 A Yes, sir.

20 Q Did you give that statement?

21 A Yes, sir.

22 Q What date did you give that statement?

23 A The 14th.

24 Q Is this your signature at the bottom of that statement?

25 A Yes, sir.

Mistee Medford - Direct examination
by Solicitor Bain

- 1 Q Can you please read that statement?
- 2 A Uh-huh. (Affirmative)..
- 3 It says the following is a written statement by -- told
- 4 by Mistee Medford to Investigator Gardner on 11/14/2014.
- 5 On Tuesday, 11/12/13, I got to work at Subway about ten
- 6 till 11:00. I parked at the bottom of the parking lot and
- 7 walked straight inside. I didn't see Shaina's white Buick
- 8 Avenue in the parking lot.
- 9 Q Thank you.
- 10 May I approach the witness?
- 11 THE COURT: You may.
- 12 Q In that statement you said you didn't see her car, is
- 13 that correct?
- 14 A Yeah.
- 15 Q What kind of car does she drive at that time?
- 16 A It was different. Her cars were. Usually a white one.
- 17 Q It's a white car?
- 18 A Yeah...
- 19 Q But Shaina was there that day?
- 20 A Yeah, she worked for me.
- 21 Q What time did she leave that day?
- 22 A I'm not sure. I mean I think she got off at 3:00.
- 23 Usually we get off at 3:00 if we open.
- 24 Q Did she work a full shift that day?
- 25 A Yeah.

Mistee Medford - Direct examination
by Solicitor Bain

1 Q And she was there her entire shift?

2 A Yeah.

3 SOLICITOR BAIN: No further questions, Your Honor.

4 THE COURT: Mr. Poole, your witness.

5 CROSS-EXAMINATION

6 BY MR. POOLE:

7 Q Ms. Medford, what time were you suppose to be at work
8 at Subway that day?

9 A At 11:00.

10 Q And you got there at ten till 11:00?

11 A Yes, sir.

12 Q Thank you.

13 THE COURT: Redirect?

14 SOLICITOR BAIN: No redirect, Your Honor.

15 THE COURT: You may step down, ma'am.

16 You wish to excuse the witness?

17 SOLICITOR BAIN: Yes, Your Honor.

18 THE COURT: Any objections?

19 MR. POOLE: None.

20 THE COURT: You're free to go, ma'am. Thank you very
21 much.

22 THE WITNESS: Thank you.

23 THE COURT: The State may call its next witness.

24 SOLICITOR GRAY: State calls Darien Blaine Seay.

25 THE COURT: I'm sorry.

Blaine Seay - Direct examination
by Solicitor Gray

1 That last name is?

2 SOLICITOR GRAY: S-E-A-Y.

3 THE COURT: Seay.

4 sir, if you'd come forward to my left and be sworn.

5 DARIEN BLAINE SEAY, being first
6 duly sworn, testified as follows:

7 THE COURT: Once you're seated, sir, state your name
8 please.

9 THE WITNESS: My name is Darien Blaine Seay.

10 THE COURT: Thank you.

11 Mr. Gray, your witness.

12 SOLICITOR GRAY: Thank you, sir.

13 DIRECT EXAMINATION

14 BY SOLICITOR GRAY:

15 Q Mr. Seay, do you know why you're here today?

16 A Yes, sir.

17 Q Do you recognize Mr. Eric Owens?

18 A Yes, sir.

19 Q Could you point him out please?

20 A Sitting at the table over will.

21 Q Describe his clothing.

22 A He's the man with the blue shirt and tie on.

23 Q With dreadlocks?

24 A Yes, sir.

25 Q Okay. How long have you known Mr. Owens?

Blaine Seay - Direct examination
by Solicitor Gray

- 1 A A little less than a year.
- 2 Q All right. You knew -- know him on 11/11/2013 --
- 3 A Yes, sir.
- 4 Q -- 2013?
- 5 You know him then?
- 6 A Yes, sir.
- 7 Q All right. On that date, what was going on with you?
- 8 A I had worked that, that day till six o'clock. I got
- 9 off, decided to have a gathering at my house, drinking.
- 10 Q A party.
- 11 A A party, drinking, cards, music.
- 12 Q What was the reason for the celebration?
- 13 A I was recently released from county.
- 14 Q All right. Who came to this party?
- 15 A Eric, along with a woman I didn't know, Sharell, the
- 16 usual group, the neighbors, Filco, Talina, Shaina, all them,
- 17 and he, and he, Eric, decided to bring along a person named
- 18 Man is what I knew him by.
- 19 Q You didn't know him?
- 20 A No, sir, never seen him before.
- 21 Q Did you know his name after---
- 22 A No, sir.
- 23 Q ---this incident?
- 24 A No, sir.
- 25 Q No.

Blaine Seay - Direct examination
by Solicitor Gray

1 Okay. That night -- well, where was the party?

2 what's the address?

3 A I can't remember the address. It was on Diamond Lane
4 in Fairforest.

5 Q Okay.

6 A Spartanburg, South Carolina.

7 Q And you were there, all these people were there,
8 drinking---

9 A Yes, sir.

10 Q ---playing cards, having a good time?

11 A Yes, sir.

12 Q Was there a disturbance?

13 A My girlfriend at the time, Chelsea, had recently -- she
14 had just gotten home from work. She worked at Wade's and
15 that's when everybody decided to leave. There was an
16 altercation in my driveway apparently. I was -- I did not
17 witness it. I was told by, I was told my Shaina that---

18 MR. POOLE: Objection, Your Honor. Hearsay.

19 THE COURT: Sustain the objection as to what someone
20 may have told him---

21 SOLICITOR GRAY: I understand.

22 THE COURT: ---unless it's the defendant---

23 SOLICITOR GRAY: Yes, sir.

24 THE COURT: ---or there's some other exception.

25 SOLICITOR GRAY: Yes, sir, Your Honor.

Blaine Seay - Direct examination
by Solicitor Gray

1 Q At -- did you see Mr. Owens after this alleged
2 altercation?

3 A Yes, sir.

4 Q Did he say anything to you about the altercation?

5 A No, sir.

6 Q Did he say anything, thing about you about what he was
7 gonna do?

8 A He, he came back to my house 30 minutes after everybody
9 had left looking for Man. He didn't say what he was gonna
10 do. He, he did have a weapon.

11 Q What type of weapon?

12 A Pump shotgun.

13 Q Pump shotgun.

14 (WHEREUPON, two witness interview forms were marked as
15 State's Exhibit Nos. 11 and 12. Two pre-interrogation,
16 waiver forms with statements were marked as State's Exhibit
17 Nos. 13 and 14. All of the above exhibits were for
18 identification purposes only at this time.)

19 SOLICITOR GRAY: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 Q I'm gonna show you what's been marked as State's 11,
23 12, 13, and 14 for identification purposes.

24 Look over those and see if you recognize those.

25 A (Witness complies.)

Blaine Seay - Direct examination
by Solicitor Gray

1 A Yes, sir.

2 Q Okay. Are those statements you gave to the police?

3 A Yes, sir.

4 Q Did you sign each one of those statements?

5 A Yes, sir, I did.

6 Q Okay. At the bottom of those?

7 A Yes, sir.

8 Q And those are statements you gave to Spartanburg City
9 Police officers?

10 A Yes, sir.

11 SOLICITOR GRAY: All right. At this time, Your Honor,
12 I would like to, to enter into evidence items 11, 12, 13 and
13 14.

14 THE COURT: Mr. Poole.

15 MR. POOLE: No objection.

16 THE COURT: Without objection, be admitted as marked.

17 SOLICITOR GRAY: Thank you.

18 (WHEREUPON, State's Exhibit Nos: 11 through 14 were
19 received into evidence at this time.)

20 Now, you gave a number of statements to the officers.
21 Why four statements?

22 A Most of the statements were untruthful.

23 Q Okay. Well, why were they untruthful?

24 A I was scared for my life, sir. I lived in a
25 neighborhood with this gentleman.

Blaine Seay - Direct examination
by Solicitor Gray

1 Q Which gentleman?

2 A He -- Eric didn't live in my neighborhood, but he had
3 family that lived in there.

4 Q And you were afraid for your life?

5 A Yes, sir.

6 Q Now, as you see, they're a number of different
7 statements you gave.

8 I guess Item 13, can you refer to that one?

9 A Yes, sir.

10 Q Now, was that statement truthful?

11 A Yes, sir.

12 Q Please read that.

13 A At my house on Diamond Lane at approximately 11:00PM
14 Monday night, E pulled back up at my household with a black
15 pistol grip shotgun and I asked him what he planned to do.
16 In an angry tone he said I'm going to kill this nigga. I
17 then walked back into my house and talked to Chelsea of how
18 I thought E was going to look for Man and cause harm.

19 The next day I saw E at Filco's house with another man,
20 shorter, no dreads, driving a burgundy Mercury, Mercury four
21 door. When I asked E what happened about my phone, his only
22 response was he went home, went to sleep. When he came back
23 to my house that Monday night, his girlfriend, Shaina, was
24 driving and a Miss Shantell was in the back passenger side
25 seat.

Blaine Seay - Direct examination
by Solicitor Gray

1 Q Now, also, I assume that on ---well, the back page, the
2 officers asked you to draw this weapon---

3 A Yes, sir.

4 Q ---that you saw.

5 A Yes, sir.

6 Q It was in the possession of Mr. Eric Owens; correct?

7 A Yes, sir.

8 Q I -- I'm not an artist either, but could you describe
9 the weapon that you saw?

10 A It was a shorter length black pistol grip shotgun with
11 a four grip. I guess you hold it like that.

12 Q So was it like one from the movies, a pistol grip, and
13 you hold it---

14 A Yes, sir.

15 Q ---like that?

16 A Yes, sir.

17 Q And what was Mr. Owens demeanor that night?

18 A At first it was all friendly and I never seen him angry
19 before over it, and then I, I thought he was just drunk.
20 maybe or maybe even, you know, a little embarrassed he got
21 hit, but he was angry.

22 Q Now, I'm gonna direct you to your next statement. I
23 believe that would be State's 14.

24 A Okay.

25 Q Could you please read that one?

Blaine Seay - Direct examination
by Solicitor Gray

1 A The reason I withheld information from the police is
2 out of fear of what these people would do to me or my
3 girlfriend. The person driving E, Filco's house that
4 Tuesday morning/afternoon, was D-White. The reason why I
5 did not say D-White was the driver was because I did not
6 believe D-White was capable of doing this making that
7 irrelevant.

8 The Monday night after the incident between E and Man
9 when E came back, I walked outside to his car. He was
10 angry, with a weapon (shotgun). When I asked him about my
11 phone he said it was my fault and I asked what he was going
12 to do. He said I'm going to kill this man.

13 Q Is that what he said, I'm going to do what?

14 A I'm going to kill this man.

15 Q Well, what did you write down?

16 A I'm going to kill this nigga.

17 Q This nigga?

18 A Yes, sir.

19 Q That's what Mr. Owens said or -- about Mr. -- about
20 Stanley Jones?

21 A Yes, sir.

22 Q He was angry that night, that day?

23 A After---

24 Q What time---

25 A After the altercation.

Blaine Seay - Direct examination
by Solicitor Gray

1 Q After the altercation?

2 A Yes, sir.

3 Q After the alleged fight?

4 A Yes, sir.

5 Q That's when he got angry enough to say he was going to
6 kill Mr. Jones?

7 A Yes, sir.

8 SOLICITOR GRAY: One moment, Your Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q Now, there was some mention of a phone in these
12 statements.

13 A Yes, sir.

14 Q Whose phone was that?

15 A It was my telephone.

16 Q And who -- what happened to your phone?

17 A When everybody left after the altercation, Man was left
18 at my house. Once again, I did not know this man. I had
19 never seen him before, before this night. Had no idea what
20 this man was capable of, and also, keep in mind, that I was
21 just recently released from county jail for driving under
22 suspension.

23 I was on my way to the Hot Spot in Fairforest for
24 drinks, chips, just cause I was winding down for the night,
25 and Man hopped in the back seat of my car, my girlfriend's

Blaine Seay - Direct examination
by Solicitor Gray

1 car, demanding that I take him to Howard Street. I tried to
2 explain to him that I'm, that I'm not going to Howard
3 Street. I had been drinking and I had just gotten out of
4 jail for driving. I shouldn't even be driving where I am.

5 He wasn't happy about it and, during the drive, my
6 phone had fell through the seat into the back seat where Man
7 was sitting; and he said well, if you're not gonna take me
8 home, then I'll just take your phone and find a way home.

9 Q So you're not saying that Mr. Jones was some kind of
10 saint, are you?

11 A No, sir.

12 Q But, on this evening, evening, he took your phone?

13 A Yes, sir.

14 Q Did you talk to Mr. Owens about that?

15 A Yes, sir.

16 Q And what was the conversation like?

17 A I just -- I felt like it was his responsibility.

18 Q Because he brought Mr. Jones to your residence or the
19 party or whatever?

20 A Right.

21 Q And Mr.---

22 A And he just said that it was my responsibility, that
23 I'd lost the phone.

24 Q So he didn't do anything about that?

25 A No.

Blaine Seay - Direct examination
by Solicitor Gray

1 Q But what -- after the altercation, he got angry and
2 said he was going to kill --

3 A Yes, sir.

4 Q -- Mr. Jones?

5 A Yes, sir.

6 Q After the fight?

7 A After the fight.

8 Q Thank you, sir. No further questions. Please answer
9 any questions Mr. Poole may have.

10 THE COURT: Mr. Poole, your witness.

11 MR. POOLE: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. POOLE:

14 Q Mr. Seay, you said you just got released from the
15 county on a driving under suspension charge?

16 A Yes, sir.

17 Q And yet that night of the party you drove?

18 A Yes, sir.

19 Q Okay. And merely to get some, some, something to eat
20 and something to drink?

21 A Yes, sir.

22 Q What was the reason for the gathering at your house?

23 A It was a -- kind of like a coming home, welcome.

24 Q Okay. And would you say that everybody was -- there
25 were your friends?

Blaine Seay - Cross-examination.
by Mr. Poole

- 1 A Yes, sir.
- 2 Q Except for Mr. Jones?
- 3 A I -- correct. I had never seen him before.
- 4 Q But everybody there were your, were your friends?
- 5 A Yes, sir.
- 6 Q Including Mr. Owens?
- 7 A Yes, sir.
- 8 Q He was a friend of yours?
- 9 A Yes, sir.
- 10 Q And as far as you know you're still on a friendly
- 11 relationship with him, aren't you?
- 12 A As far as I know.
- 13 Q Okay. And you, and you've had him in your home before,
- 14 haven't you?
- 15 A Yes, sir.
- 16 Q So you have no real reason to fear Mr. Owens, do you?
- 17 A No real reason.
- 18 Q Okay. So you don't?
- 19 A I guess you'd say that. Sure.
- 20 Q Okay. You do not fear him?
- 21 A I---
- 22 Q I have no fear?
- 23 A That wasn't, that wasn't what you said, sir. No, I do.
- 24 I mean I don't think I have to have a reason.
- 25 Q Okay. Well, you've had him in your home?

Blaine Seay - Cross-examination
by Mr. Poole

- 1 A Yes, sir.
- 2 Q Y'all were partying that night?
- 3 A Yes, sir.
- 4 Q Up until that point in time you had no reason to think
- 5 that he was gonna bother you or anything, right?
- 6 A No, sir.
- 7 Q All right. And you stated very candidly that you lied
- 8 in most of your statements?
- 9 A Yes, sir.
- 10 Q And when you were giving these statements to law
- 11 enforcement they told you it was important to tell the
- 12 truth?
- 13 A Yes, sir.
- 14 Q Yet you did not?
- 15 A Yes, sir.
- 16 Q Is that correct?
- 17 A That's correct.
- 18 Q And the two statements in which you do bring Mr. Owens
- 19 into the picture are the ones that were given in March of
- 20 2014, is that correct?
- 21 A Yes, sir.
- 22 Q Which was five months after this incident occurred, the
- 23 homicide?
- 24 A That's correct.
- 25 Q Okay. Why didn't you come to the police department?

Blaine Seay - Cross-examination
by Mr. Poole

1 sooner than that?

2 why wait four months?

3 A I had been giving statements from the three days after
4 the, the alleged crime, homicide.

5 Q Yeah.

6 But those were untrue statements, right?

7 A Yes, sir.

8 Q Okay. So you're saying that you gave the truthful
9 statements four, four months later?

10 A Correct.

11 Q Why did you decide to come forth with the truth four
12 months later?

13 That's my question.

14 A Because both, both men involved were incarcerated.

15 Q Okay. And you did not witness the altercation outside
16 your home, did you?

17 A No, sir.

18 Q Okay. So you really don't know what happened from a
19 firsthand prospective, do you?

20 A No, sir.

21 Q Okay. Thank you.

22 THE COURT: Redirect, Mr. Gray?

23 SOLICITOR GRAY: Yes, sir, Your Honor.

24 THE COURT: Yes, sir.

25 REDIRECT EXAMINATION

Blaine Seay - Redirect examination
by Solicitor Gray

1 BY SOLICITOR GRAY:

2 Q So you did give a statement in February, correct?

3 A Yes, sir.

4 Q And that talked about the type of weapon that was
5 used---

6 A Yes, sir.

7 Q ---correct?

8 And you said you gave another statement in March of
9 2014 and, as you just said, you only felt safe after what?

10 A The, the incarcerations.

11 Q Incarceration of Mr. Owens?

12 A Yes, sir.

13 Q That's the only time you felt safe?

14 A Yes, sir, I -- cause I still resided at the, at the, at
15 the house on Diamond Lane at the time.

16 SOLICITOR GRAY: One moment, Your Honor.

17 THE COURT: Yes, sir.

18 (Pause.)

19 SOLICITOR GRAY: Nothing further, Your Honor.

20 THE COURT: Recross.

21 MR. POOLE: Nothing further, Your Honor.

22 THE COURT: Recross.

23 All right. Sir, you may step down.

24 You wish to excuse the witness, Mr. Gray?

25 SOLICITOR GRAY: Yes, sir.

1 THE COURT: Any objections?

2 MR. POOLE: None.

3 THE COURT: You're free to go, sir. Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: State may call its next witness.

6 SOLICITOR GRAY: May we approach, Your Honor?

7 THE COURT: Yes, sir.

8 (WHEREUPON, a bench conference was held at this time.)

9 THE COURT: Before we start the next witness we're
10 gonna take a short recess. I'll allow you to step back to
11 the jury room. The bailiffs will take care of you.

12 As always, when you leave the courtroom, my
13 instructions are not to discuss anything about the case
14 until I ask you to begin your deliberations.

15 You may retire to the jury room.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. The court will take a brief
19 recess.

20 (WHEREUPON, a short recess was taken at this time.)

21 SOLICITOR GRAY: May we approach, Your Honor?

22 THE COURT: Yes, please do.

23 (WHEREUPON, a bench conference was held at this time.)

24 THE COURT: All right. Mr. Gray, is the State ready to
25 proceed?

1 SOLICITOR GRAY: Yes, sir, Your Honor.

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

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. The record will reflect the
6 jury has returned to the courtroom.

7 At this time the State may call its next witness.

8 SOLICITOR BAIN: Thank you, Your Honor.

9 The State calls Talina Wallace.

10 THE COURT: Miss Wallace, please.

11 Come forward, ma'am. If you'll step to my left and be
12 sworn. Right over here.

13 (Witness complies.)

14 THE COURT: Thank you.

15 TALINA WALLACE, being first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat please, ma'am.

18 (Witness complies.)

19 THE COURT: And state your name.

20 THE WITNESS: Talina Wallace.

21 THE COURT: Thank you.

22 Counselor, your witness.

23 SOLICITOR BAIN: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY SOLICITOR BAIN:

Talina Wallace - Direct examination
by Solicitor Bain

- 1 Q Ms. wallace, do you know why you're here today?
- 2 A Yes.
- 3 Q Why?
- 4 A About a murder.
- 5 Q Who was, who was murdered?
- 6 A Man.
- 7 Q Do you know Man by any other names?
- 8 A Hu huh. (Negative).
- 9 Q Do you remember going to a party at a Blaine Seay's
- 10 house?
- 11 A Yes, sir.
- 12 Q Do you remember what date that was on?
- 13 A No, sir, I don't really remember.
- 14 Q Would you remember about what date it was on?
- 15 A No, sir.
- 16 Q Do you remember if it was in November of 2013?
- 17 A I don't remember.
- 18 Q But you remember going to a party at Mr. Seay's house?
- 19 A Yes, sir.
- 20 Q Who all was at that party?
- 21 A It was Blaine, Shaina, me, and Man; and this other
- 22 girl, but I don't know what her name is.
- 23 Q Okay. Who is Shaina?
- 24 A My sister-in-law.
- 25 Q Did you go to the party with her?

Talina Wallace - Direct examination
by Solicitor Bain

- 1 A Yes, sir.
- 2 Q About how long did that party last?
- 3 A I don't remember how long.
- 4 Q Well, what were y'all doing at the party?
- 5 A Drinking.
- 6 Q Do you remember leaving the party?
- 7 A Yes, sir.
- 8 Q Okay. What happened when you were leaving the party?
- 9 A There was a scuffle between Man and, and E.
- 10 Q Who's E?
- 11 A Eric.
- 12 Q Do you know E's last name?
- 13 A Owens, Owens, something like that.
- 14 Q Is the person you know as E in the courtroom today?
- 15 A Yes, sir.
- 16 Q Can you please point him out?
- 17 A (Witness complies.)
- 18 Q Can you please describe what he's wearing?
- 19 A He got a blue shirt on.
- 20 SOLICITOR BAIN: Your Honor, let the record reflect
- 21 that the witness did point to the defendant.
- 22 THE COURT: It will so reflect.
- 23 You may proceed.
- 24 Q So you saw an altercation between E and Man?
- 25 A Yes, sir.

Talina Wallace - Direct examination
by Solicitor Bain

- 1 Q Do you know how that altercation started?
- 2 A About over some -- over some girl.
- 3 Q Can you please describe the altercation?
- 4 A Yes, Man, Man hit E, E hit Man, then Man hit E, and E,
5 E fell down.
- 6 Q And how did E react?
- 7 A Mad.
- 8 Q Where was he hit?
- 9 A I don't remember how he got hit. Only thing I know,
10 he, he fell.
- 11 Q When he got up -- did he get up?
- 12 A My back was turned. I don't know how he got up.
- 13 Q Did he say -- did you hear him say anything?
- 14 A No, cause I was, I was on the telephone talking to my
15 child cause she called, called me.
- 16 Q How was he reacting after the, the altercation?
- 17 A Pissed off.
- 18 Q After you witnessed this altercation, what happened
19 next?
- 20 A He, he, looked like he was mad, but I, after that, I
21 went -- I got a phone call. I went home.
- 22 Q Okay. So you went home after the altercation?
- 23 A Uh-huh. (Affirmative).
- 24 Q Did you leave before the other people at the party?
- 25 A Yes, I left before that.

Talina Wallace - Direct examination
by solicitor Bain

- 1 Q Did you leave before your sister, Shaina?
- 2 A Yes.
- 3 Q Okay. So you went home that evening?
- 4 A Yes.
- 5 Q Do you remember anything about the next day?
- 6 A Yes.
- 7 Q How---
- 8 A Yes.
- 9 Q Can you please tell us what you remember?
- 10 A I woke up. I saw E, Blaine, and D-White outside of the
- 11 trailer. Then they, they was outside. I don't know what
- 12 they was talking about. But they was like shaking, shaking
- 13 like, shaking hands, stuff like that, and, after that, I
- 14 didn't think nothing else about it.
- 15 Q Who's D-White?
- 16 A E's homeboy.
- 17 Q Do you know him by any other names?
- 18 A No, sir.
- 19 Q Just D-White?
- 20 A Yes, sir.
- 21 Q And where did you see E and D-White?
- 22 A I saw them at the -- a trailer on Diamond, Diamond
- 23 Lane.
- 24 Q And that was on the day following the party?
- 25 A Yes, sir.

Talina Wallace - Direct examination
by Solicitor Bain

1 SOLICITOR BAIN: Okay. No further questions, Your
2 Honor.

3 Please answer any questions Mr. Poole might have.

4 THE COURT: Mr. Poole.

5 MR. POOLE: Thank you.

6 THE COURT: Your witness.

7 CROSS-EXAMINATION

8 BY MR. POOLE:

9 Q Hello, Ms. Wallace.

10 A Hello.

11 Q You said, on the next day after the party, you saw E,

12 D-White, and Blaine---

13 A Yes.

14 Q ---all together?

15 A Yes, sir.

16 Q And where was this location?

17 A On Diamond Lane.

18 Q Okay. Do you remember going to -- do you know this
19 investigator right here?

20 A Who?

21 Q This investigator, Investigator Gardner?

22 A Yes.

23 Q Do you remember talking to him on March 5, 2014?

24 A I don't remember.

25 Q Let me just ask if, if you can recognize your

Talina Wallace - Cross-examination
by Mr. Poole

1 signature.

2 Okay?

3 A Uh-huh. (Affirmative).

4 Q Is that your signature, ma'am?

5 A Yes, sir.

6 Q Okay. Did you state in a statement that, on the day of
7 the murder, I saw Eric Owens and D-White pull up and
8 D-White's babies mama's gold car. Blaine, white male, was
9 there also. They were all in the front yard and talked for
10 a few minutes. Then D-White and Blaine left, but I don't
11 know if they left together.

12 A Yes, sir.

13 Q Is that what you're talking about when you gave your
14 testimony today?

15 A Yes, sir, I don't know.

16 Q What I'm trying to ask is, you know, you just testified
17 that they were all together, E, D-White, and Blaine --

18 A Yes.

19 Q -- were together?

20 And then you gave this statement?

21 A Yes.

22 Q And I'm asking you if your testimony is what you're --
23 also said in this statement?

24 A Yes.

25 Q Okay. Ms. Wallace, were you convicted of multiple

Talina Wallace -- Cross-examination
by Mr. Poole

1 fraudulent check charges back in 2006 and 2009?

2 A Yes, sir.

3 Q Okay. And were you convicted of breach of trust or
4 obtaining property or signature in April of 2014?

5 A Yes, sir.

6 Q Okay. Thank you, Ms. Wallace.

7 A Uh-huh. (Affirmative).

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY SOLICITOR BAIN:

11 Q Ms. Wallace, do you have any reason to come in here and
12 lie today?

13 A No, sir.

14 Q That statement Mr. Poole read, that was the truth then?

15 A Yes, sir.

16 Q And that was your testimony today?

17 A Yes, sir.

18 Q And it's the truth now, correct?

19 A Yes, sir.

20 SOLICITOR BAIN: No further questions, Your Honor.

21 THE COURT: Mr. Poole, wish to recross?

22 MR. POOLE: Nothing.

23 THE COURT: All right, ma'am. You may step down.
24 State wish to excuse the witness?

25 SOLICITOR BAIN: Yes, Your Honor.

Derrick White - Direct examination
by Solicitor Gray

1 THE COURT: Any objections?

2 MR. POOLE: None.

3 THE COURT: You're free to go, ma'am. Thank you very
4 much.

5 THE WITNESS: Thank you, sir.

6 THE COURT: State may call its next witness.

7 SOLICITOR GRAY: State calls Derrick Lee White.

8 THE COURT: Sir, come forward to my left to be sworn.
9 sir, right over here.

10 DERRICK WHITE, being first duly
11 sworn, testified as follows:

12 THE COURT: Have a seat please, sir.

13 (Witness complies.)

14 THE COURT: State your name.

15 THE WITNESS: Derrick White.

16 THE COURT: Thank you.

17 Mr. Gray, your witness.

18 SOLICITOR GRAY: Thank you, Your Honor.

19 May I have a moment please, Your Honor?

20 THE COURT: Yes, sir.

21 (WHEREUPON, five pre-interrogation waiver forms and
22 statements were marked as State's Exhibit Nos. 15 through 19
23 for identification purposes only at this time.)

24 SOLICITOR GRAY: Thank you for the Court's indulgence,
25 Your Honor.

Derrick White - Direct examination
by Solicitor Gray

- 1 THE COURT: Yes, sir.
2 You may proceed.
3 SOLICITOR GRAY: Thank you.
4 DIRECT EXAMINATION
5 BY SOLICITOR GRAY:
6 Q Please state your full name, sir.
7 A Derrick Lee White.
8 Q Do you also go by D-White?
9 A Yes, sir.
10 Q Do you know Eric Owens?
11 A Yes, sir..
12 Q Could you point him out for me please?
13 A (Witness complies.)
14 Q I'm sorry.
15 Could you describe what he's wearing please?
16 A Dread.
17 Q Dreads?
18 A Yes, sir.
19 Q And what color shirt?
20 A Blue, blue shirt.
21 Q What color tie?
22 A I can't see it.
23 Q Okay. But that's Mr. Eric Owens?
24 A Yes, sir.
25 Q Do you know him by another name?

Derrick White - Direct examination
by Solicitor Gray

1 A E.

2 Q E.

3 Let the record reflect that Mr. White identified
4 Mr. Eric Owens, Your Honor.

5 THE COURT: The record shall so reflect, Mr. Gray.
6 You may proceed.

7 SOLICITOR GRAY: Thank you.

8 Now, Mr. White, you know why you're here today,
9 Mr. White?

10 A Yes, sir.

11 Q Now, you and Mr. Owens were together on
12 November 12th, 2013, is that correct?

13 A Yes, sir.

14 Q Were you with him the day before at a party?

15 A No, sir.

16 Q When were you with -- when did you meet up with Mr.
17 Owens?

18 A I don't know the exact date, but I know it was -- I
19 think it was the day after or the next day, one of them.

20 Q The day after the party?

21 A Yes, sir, I didn't know nothing about a party. I was
22 just getting drunk.

23 Q You were just getting drunk?

24 A Yeah, I ain't no -- it wasn't no party. I ain't know
25 it was a party.

Derrick White - Direct examination
by Solicitor Gray

- 1 Q All right. And you and Mr. White were there?
- 2 A I am Mr. White.
- 3 Q Oh, excuse me.
- 4 You and Mr. Owens were there?
- 5 A What's the -- at a party?
- 6 Q Yeah, getting drunk.
- 7 A I don't drink, sir.
- 8 Q You don't drink?
- 9 A We wasn't together. I was my with, with my child.
- 10 Q All right. Then when did Mr. Owens come by and pick
- 11 you up or scoop you up or what?
- 12 A He came by in the morning time. Let's see, one
- 13 morning.
- 14 Q Was it early morning?
- 15 A Yes, sir.
- 16 Q About what time?
- 17 A I have no idea, sir.
- 18 Q All right. And when he came by, was he alone?
- 19 A Yes, sir.
- 20 Q What kind of vehicle was he driving?
- 21 A A white car.
- 22 Q A white car?
- 23 A Yes, sir.
- 24 Q Do you know the make and model of it?
- 25 But it was a---

Derrick White - Direct examination
by Solicitor Gray

- 1 A Buick.
- 2 Q ---white vehicle?
- 3 A Buick or something.
- 4 Q Buick?
- 5 A Buick or something.
- 6 Q All right. When he picked you up, what did he talk to
- 7 you about?
- 8 A He just said Man stole him.
- 9 Q Man stole him?
- 10 A Yeah, which is usual cause we always getting into it.
- 11 Q So, Man stole him, that's slang for Man---
- 12 A Yeah.
- 13 Q ---cold cocked him?
- 14 A Yeah.
- 15 Q He sucker punched him?
- 16 A Yeah, sucker punched him.
- 17 Q All right. So Man stole him.
- 18 What was he gonna do about it?
- 19 A Get his round back. When you say get your round back,
- 20 it mean you gonna go and fight back. You gonna go and get
- 21 your even fight, you know.
- 22 Q And you were gonna get revenge?
- 23 A Yeah, but no, it's -- yeah.
- 24 Q All right. When he go, go get his round back, was he
- 25 gonna do it with his fist?

Derrick White - Direct examination
by Solicitor Gray

1 Did he have a weapon?

2 A Yeah, that's, that's what we mean when you say I'm
3 gonna get that round in.

4 Q Uh-huh. (Affirmative).

5 A Using your fist. We don't use -- we didn't use guns on
6 each other.

7 Q But was this a different occasion?

8 A Nah, not that I thought of. I thought it was just a
9 regular go on squabble, go on and fight, and everybody go
10 their separate ways for a couple weeks and then get back
11 together and back to normal.

12 Q Is that what happened?

13 A No.

14 Q What happened---

15 A No, sir. Well, we pulled up. I pulled up and I
16 thought they were gonna fight.

17 Q Now, where was Mr. Owens?

18 A In the back seat behind---

19 Q He was in the back seat?

20 A Yes, sir, behind me.

21 Q What kind of car were, were you in?

22 A A white Buick.

23 Q All right. You were driving?

24 A Yes, sir.

25 Q All right. You say you pulled up.

Derrick White - Direct examination
by Solicitor Gray

1 Did you pull up to Man's house?

2 A Yes, sir.

3 Q Let me show you what's been marked State's Exhibit No.
4 4 and ask if you recognize this.

5 A Yes, sir.

6 Q What is that, sir?

7 A That's Man's house.

8 Q That's Man's house?

9 A Yes, sir.

10 Q You pulled up at Man's house and what happened then?

11 A I pulled up. I parked the car, turned the car off, and
12 start getting my phone ready to record it cause I record
13 them -- I gonna record the fight cause I knew somebody
14 couldn't fight. So --.

15 Q You knew somebody couldn't fight?

16 A Yeah, I knew one of them couldn't fight.

17 Q Who -- which one was that?

18 A I fixing to find out.

19 Q Okay. So you were gonna record the fight?

20 A Yeah, like I always do it. I'll post it up and see how
21 many likes I get, but it didn't, it didn't work that well.

22 Q What happened?

23 A He pulled up. I heard Man come out the door, and I was
24 getting my phone ready, and Man was like you gonna shoot me
25 now. He said damn right. Excuse my French.

Derrick White - Direct examination
by Solicitor Gray

- 1 Q Could you slow down please?
2 I'm sorry. I had a hard time understanding what you
3 said.
4 Pulled up, Man came out.
5 what did Man say?
6 A Man said bro, you gonna shoot me now.
7 Q Who, who was he talking to?
8 A Eric.
9 Q And what did Eric say?
10 A Damn right.
11 Q Damn right.
12 A I mean yeah.
13 Q And what did Man do at this point?
14 A Man turned to the side and tried to dodge the bullet,
15 but he couldn't.
16 Q What did Eric do to Man?
17 A He pulled out a gun and shot the boy.
18 Q Eric Owens shot?
19 A Yeah, he pulled out the gun and shot him and Man tried
20 to move, but he couldn't move. I mean he couldn't move in
21 time cause he not like Superman. He can't dodge a bullet.
22 Q And what---
23 A When he tried to tried, he just -- he missed -- I mean,
24 he hit him. I guess his shirt flew up, and so I, I turned
25 around like stupid, with a stupid look on my face, and he

Derrick White - Direct examination
by Solicitor Gray

1 said go, nigga, go.

2 Q What did that mean?

3 A Go.

4 Q Drive off?

5 A Yeah.

6 Q Peddle to the metal, let's get the hell out of here?

7 A He got to start -- I got to start the car and pull off.

8 So I figured that's why you, you probably mad at me. So if

9 you think -- if I think you mad at me, I don't know what you

10 gonna do with that gun in the back seat.

11 Q So you had to drive off?

12 A I didn't have to drive off. I could of got out and

13 ran, but that was a risk that I have to take.

14 Q I understand.

15 And just to be clear, Man, who shot Eric, who shot

16 Stanley Jones, Man, is in this courtroom, Eric Owens?

17 That's correct?

18 A Yes, sir.

19 Q Now, after you drove away, what happened?

20 A I was, I was quiet. I was just like -- I needed a

21 blunt just to be honest. I needed to smoke cause that was

22 crazy.

23 Q When you say---

24 A I never seen nobody get shot.

25 Q You needed a marijuana cigarette?

Derrick White - Direct examination
by Solicitor Gray

1 I'm sorry.

2 A blunt, cigar?

3 A Yes, sir.

4 Q I apologize.

5 A We just -- we went to, we went to -- we got on the
6 highway and we went all the way up somewhere, and we, we got
7 out. Well, he got out and I'm still sitting in the car and
8 I'm trying to think of something to do, and he cover one car
9 up and got in another car and we rolled off.

10 Q I'm gonna show you what's been marked as State's
11 Exhibits 15, 16, 17, 18, 19.

12 Ask if you recognize these.

13 A You know I got handcuffs on me, right?

14 Q I'm sorry.

15 May I approach, Your Honor?

16 THE COURT: You may.

17 Q I'll give you some help.

18 Fifteen is a statement you gave on November 20th,
19 2014.

20 A Uh-huh. (Affirmative).

21 Q No. 16 is a pre-interrogation waiver form. Another
22 statement given.

23 No. 17 is a pre-interrogation waiver form and a
24 statement given on March 11th, 2014.

25 Another statement given on -- it doesn't appear to

Derrick White - Direct examination
by Solicitor Gray

1 have -- there it is. March 11th, 2014. I guess that goes
2 with this one.

3 Your final statement that you gave, I want to talk
4 primarily about, talk about all these statements, but
5 primarily No. 19.

6 Mr. White, did you ever tell an untruth in any of, any
7 of your statements?

8 A Yes, sir.

9 Q The first two, three, four statements, were they had --
10 totally truthful at all?

11 A No.

12 Q What was the most truthful and accurate statement you
13 gave?

14 A The last statement I wrote.

15 Q The last statement?

16 A Uh-huh. (Affirmative).

17 Q And---

18 A Yes, sir.

19 Q That will be State's No. 19?

20 A Yes, sir. Yes, sir.

21 Q All right. why is that -- why were the first
22 untruthful, first I think three or four---

23 A Cause---

24 Q ---and the last one truthful?

25 A If you, if you, if you walk -- if you go back to the

Derrick White - Direct examination
by Solicitor Gray

1 neighborhood labeled as a snitch, you, you know what you
2 get. You, you could possibly get the same thing and got --
3 get killed, get your head busted. You can get anything. So
4 that wasn't really the reason, but I just wanted to stay out
5 of it, but every day went by it got worser and worser.

6 Q Snitches get stitches?

7 A Basically. That's the neighborhood. That's where
8 we're from.

9 Q That's the code or the rule, rule---

10 A Yes, but---

11 Q ---you live by?

12 A ---I'm thinking that we homeboys. It shouldn't be no
13 code.

14 Q Why?

15 A Cause it shouldn't be no---

16 Q He was homeboys with Man too?

17 A All of us. Yeah. Well, me and Man was homeboys. I
18 don't know about they relationship first.

19 Q Okay.

20 A But I know we grew up while -- way before I even knew
21 him.

22 Q All right. On that last statement, are you able to
23 read that?

24 A Y'all officers wrote this.

25 Q Okay. Did you sign that statement?

Derrick White - Direct examination
by Solicitor Gray

- 1 A Yeah, but they don't write the same way I talk.
- 2 Q They don't write the same way you talk?
- 3 A No.
- 4 Q Okay: Well, if you could read through this and --
- 5 well, let's start right here. I drove, I drove Eric.
- 6 A Yeah, that's---
- 7 Q Was, was that what happened or---
- 8 A Yeah, I drove him to
- 9 Q Okay.
- 10 A But we didn't say nothing about -- he didn't say
- 11 nothing about I'm gonna holler at him. He didn't say
- 12 nothing like that. He said we gonna shoot that round and
- 13 that's meaning fight.
- 14 Q Okay.
- 15 A That meaning fight. That, that don't mean you gonna
- 16 literally shoot a round.
- 17 Q But once you got there---
- 18 A He shot a round.
- 19 Q He shot a round.
- 20 He shot Mr.---
- 21 A Jones.
- 22 Q ---Jones?
- 23 Did Mr. -- again, looking at your statement, did
- 24 Mr. Jones say anything to Mr. Owens first?
- 25 A He say oh, you gonna shoot me.

Derrick White - Direct examination
by Solicitor Gray

- 1 Q What did Mr. Owens say?
- 2 A Damn right.
- 3 Q And he shot him?
- 4 A Yeah, he shot him.
- 5 Q Are you positive it was Mr. Owens that shot Mr. Jones?
- 6 A I was, I was driving. So, pretty much, yes, sir.
- 7 Q And it killed him?
- 8 A Yeah.
- 9 Q What -- and can you describe the gun one more time?
- 10 A It was a, a Army kind of gun. Looks like---
- 11 Q What color was it?
- 12 A Black.
- 13 Q And was it like a movie shotgun---
- 14 A Shotgun.
- 15 Q ---regular shotgun?
- 16 It was a shotgun?
- 17 A Yes, sir.
- 18 Q How many times did he shoot him?
- 19 A Once.
- 20 Q Once.
- 21 A That's all I said one, just one boom and that was it.
- 22 Man tried to turn and he fell. I was already just looking
- 23 like, you know --.
- 24 Q Thank you, sir. I appreciate your cooperation.
- 25 Now, let me ask you one last set of questions. I see

Derrick White - Direct examination
by Solicitor Gray

1 in here you're today in a, in county orange.

2 did you have a charge associated with this case?

3 A Yes, accessory after the fact.

4 Q And you pled guilty to that charge, sir?

5 A Yes, cause I'm guilty cause I could of came to the
6 courtroom and -- I mean I could of came and told them that
7 he did it, but I, I didn't.

8 Q I understand, sir.

9 A So that's, that was, that was -- I did that.

10 Q Yes, sir.

11 No further questions, Your Honor. Please answer any
12 questions Mr. Poole may have.

13 THE COURT: Mr. Poole, your witness.

14 CROSS-EXAMINATION

15 BY MR. POOLE:

16 Q Mr. White, you stated that you were the driver of the
17 car.

18 A Yes, sir.

19 Q And how did you and Eric Owens come to get together on
20 that day?

21 A He called me first. He called me a couple times, but I
22 never answered the phone.

23 Q Okay.

24 A And then when I did answer the phone and he was out --
25 he was already almost in front of my door.

Derrick White - Cross-examination
by Mr. Poole

1 Q Okay. And so you got in the car with him?

2 A No, he got -- I got -- he got out the car and met me
3 with a, with a coat on. He had a coat on and it wasn't, it
4 wasn't too cold, but it was kind of windy.

5 Q It was November, wasn't it?

6 A I think so, but it wasn't too cold cold. It wasn't --
7 this day wasn't cold.

8 Q Okay. And it's your testimony he got in the back seat?

9 A Yeah, he said you drive for me. Of course, I'm drive.
10 You know, I don't mind.

11 Q Uh-huh. (Affirmative).

12 okay. And it is your further testimony he -- you did
13 not see or know that he had a gun on him?

14 A Didn't know it. Didn't see no gun. Didn't know he had
15 a gun.

16 Q But you drove him over there to even a score?

17 A Yes, but wasn't no gun used in the first, in the
18 incident the night before or whenever it happened.

19 Q Well, you didn't witness that, did you?

20 A No, but I'm pretty sure.

21 Q Okay.

22 A I'm pretty sure. I know them.

23 Q Okay. And you gave at least four statements to the
24 police?

25 A (Witness nods affirmatively.)

Derrick White - Cross-examination
by Mr. Poole

- 1 Yes, sir.
- 2 Q And the investigators in this case?
- 3 A Yes, sir.
- 4 Q And you lied in three---
- 5 A Three statements.
- 6 Q ---or four of them?
- 7 A I lied in three.
- 8 Q You lied in three?
- 9 A Yes, sir.
- 10 Q And it wasn't until up in -- till March of 2014 that
- 11 you say that you gave a true statement?
- 12 A Yes, sir.
- 13 Q And, in those other statements, you did not implicate
- 14 Eric Owens in this crime like you're implicating him today?
- 15 A Yes, sir.
- 16 Q Am I right?
- 17 A You're right, sir.
- 18 Q Okay. And the last statement just happens to be the
- 19 truthful one?
- 20 A Yes, sir.
- 21 Q All right. Now, were you charged in this case---
- 22 A For what?
- 23 Q ---for obstruction of justice?
- 24 A No, sir.
- 25 Q Were you charged with accessory?

Derrick White - Cross-examination
by Mr. Poole

- 1 A Yes, sir.
- 2 Q Did you plead guilty to the charge?
- 3 A Yes, sir.
- 4 Q Have you been sentenced yet?
- 5 A No, sir.
- 6 Q Okay. So you're gonna be sentenced after the giving of
- 7 your testimony today?
- 8 A No, sir.
- 9 Q Well, it's gonna, it's gonna have to be after your---
- 10 A No, I was told after he get his sentence then I'll come
- 11 a week or two later and then get my sentence.
- 12 Q And then you'll get your sentence?
- 13 A Yes, sir.
- 14 Q After your -- giving your testimony?
- 15 A Yes.
- 16 Q Okay.
- 17 A You said like right now.
- 18 Q All right. Now, did you accompany anybody in trying to
- 19 find this weapon?
- 20 A Yes, sir.
- 21 Q Who did you accompany?
- 22 A I don't know. They just asked me where it was. Some
- 23 big bald headed guy. A white guy asked me where, where the
- 24 pistol could be at. I said I don't know. He was like at --
- 25 I said it probably be on, on that trailer park where we use

Derrick White - Cross-examination
by Mr. Poole

1 to be at or it might be at behind on where my mama use to
2 stay at, but we never found no gun.

3 Q So you gave information to law enforcement where you
4 thought the gun might be?

5 A Yes, sir.

6 Q At how many different locations?

7 A It's like two, three -- two or three of them.

8 Q Did you go with law enforcement to those three or four
9 locations?

10 A Yes, sir.

11 Q Was a weapon found?

12 A No, sir.

13 Q So we have no weapon?

14 A No, sir.

15 Q Mr. White, were you convicted of burglary in the third
16 degree in 2006?

17 A Yes, sir.

18 Q And were you convicted of receiving stolen goods in
19 2007?

20 A Yes, sir.

21 Q Were you convicted of burglary in the second degree in
22 2007?

23 A I don't remember. I just was convicted of burglary is
24 all at once. Not different occasions.

25 Q Were you not convicted of three counts of burglary and

Derrick White - Cross-examination
by Mr. Poole

1 a receiving stolen goods charge in 2007?

2 A I don't remember. I know I was convicted of -- I don't
3 remember. It was being altogether at once.

4 Q Right.

5 You, you pled to those four charges at one time, right?

6 A Okay. Yes.

7 Q You did?

8 A Yes, sir.

9 Q Did you plead guilty to receiving stolen goods in 2009?

10 A Yes, sir.

11 Q In 2013, in October, which is right before this
12 incident, did you plead to a drug charge?

13 A Yes, sir.

14 Q And you're waiting to be sentenced on this case?

15 A Yes, sir.

16 MR. POOLE: That's all the questions I have.

17 THE COURT: Redirect.

18 SOLICITOR GRAY: Yes, sir, Your Honor.

19 REDIRECT EXAMINATION

20 BY SOLICITOR GRAY:

21 Q You said the weapon was never found, sir? .

22 A I don't know. Not, not when -- the places I told them
23 to go. The places they went, they ain't find it.

24 Q And Mr. Poole asked you about your criminal history,
25 and you did, did -- don't deny that criminal history?

Derrick White - Redirect examination
by Solicitor Gray

1 A No. No, sir. No, sir.

2 Q Were you ever convicted of ever -- anything violent
3 like manslaughter or murder?

4 A No, sir, I never did nothing like that. That's not --
5 I know, I know how to fight a little bit. So I don't use
6 weapons. I use my hands.

7 Q Thank you, sir.

8 Nothing further, Your Honor.

9 THE COURT: Recross.

10 MR. POOLE: No, sir.

11 THE COURT: You may step down, sir.

12 We're gonna take a short break at this point in time.

13 I'll allow you to step back to the jury room.

14 As always, my instructions are that you not discuss
15 anything about the case until I've asked you to begin your
16 deliberations.

17 You may retire to the jury room.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. Everyone should remain seated
21 while the defendant leaves the courtroom.

22 Court's in recess for about ten minutes.

23 (WHEREUPON; a short recess was taken at this time.)

24 THE COURT: All right. During my conference with
25 counsel I believe the State is informed me that you intend

1 to call one additional witness.

2 Is that correct?

3 SOLICITOR GRAY: Yes, sir, Your Honor.

4 THE COURT: And that's Doctor Wren?

5 SOLICITOR GRAY: Yes, sir.

6 THE COURT: And you indicated he will not be available
7 till in the morning.

8 Is that also correct?

9 SOLICITOR GRAY: Yes, sir.

10 THE COURT: All right. And Mr. Poole was present. So
11 I'll call the jury in. We'll adjourn until nine o'clock in
12 the morning and we'll take Doctor Wren's testimony at that
13 time.

14 Bring the jury in.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. The record will reflect that
18 the jury has returned to the courtroom.

19 Now, during our break I had a conference with the
20 attorneys. I'm informed by the State that they do intend to
21 call one additional witness in the case. That is Doctor
22 Wren. Now, Doctor Wren works as a pathologist with
23 Spartanburg Regional Medical Center.

24 He will not be available until first thing in the
25 morning. So we're going to adjourn at this point in time.

1 We'll resume at nine o'clock in the morning. I'll ask you
2 to be back in the jury room at that time. We should be able
3 to start shortly thereafter.

4 You know my instructions as you leave the courthouse.
5 That is not to gather any information on your own, not to
6 discuss the case. Don't allow anyone to discuss it with
7 you, and don't read, watch, or, or listen to any media
8 reports, and should anyone contact you about the case,
9 please report it upon your return.

10 We'll resume again at nine o'clock in the morning. If
11 you'll be back at the jury room at that time we should be in
12 a position to start shortly thereafter.

13 I hope you have a good, good evening. You're free to
14 go at this time.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. I will -- Mr. Poole, since we
18 only have one other witness for the State, I'm going to go
19 ahead and inform your client of his Fifth Amendment right
20 and give him an opportunity to think about that over the
21 night.

22 So, Madam Clerk, if you would, put, put the defendant
23 under oath for me at this time.

24 (WHEREUPON, the Defendant was placed under oath at this
25 time.)

1 THE COURT: All right, sir. You can be seated. Thank
2 you very much.

3 All right. Mr. Owens, we're about to -- we'll be --
4 once the State is rested we will be going into the phase of
5 the trial where you have the right to put up a defense in
6 this matter. As part of your defense you have the right to
7 testify if you choose to, but you also have the right not to
8 testify. So I want to go over one of your Constitutional
9 rights to be sure you understand it. If you have any
10 questions of me I'll be glad to explain this right to you
11 further.

12 I'm specifically talking about the right that's given
13 to you under the Fifth Amendment to the United States
14 Constitution. That amendment reads, in part, that no person
15 can be compelled, in a criminal case, to be a witness
16 against himself.

17 Now, what that means is that while you have the right
18 to testify, you also have the right not to testify. In
19 other words, no one can make you testify in this case.

20 Now, the decision as to whether or not to testify in a
21 case is left entirely up to you. You have the right to
22 consult with your attorney, your family, your friends, or
23 anyone else you'd like to talk to about that decision, but
24 in the final analysis, it's your decision as to whether or
25 not you testify in this case.

1 I will advise you that if you do decide to testify,
2 your testimony would be governed by the say rules that
3 govern any other testimony in the case. You would be
4 examined by your attorney and cross-examined by the State's
5 attorney.

6 Now, we've already discussed the possibility of prior
7 convictions being used against you in, in determining your
8 credibility and I have ruled that the prior convictions that
9 you have suffered could not be used in that fashion unless
10 somehow, through your own testimony, you open the door to
11 testimony.

12 Have you discussed that with your client, Mr. Poole?

13 MR. POOLE: Yes, sir, I have.

14 THE COURT: Okay. Just wanted to be sure.

15 Now, I will advise you that if you decide not to
16 testify in this case, that I will instruct the jury that,
17 that the fact that you did not testify in the case can not
18 be considered by them at all in reaching a verdict. In
19 fact, my instructions to the jury would be that they could
20 not even discuss that fact during their deliberations.

21 Now, as I told you, the decision as to whether or not
22 to testify is left entirely up to you, but you do have the
23 right to discuss it with others. So I'm going to inform you
24 of the right at this time, give you an opportunity to fully
25 discuss it with whoever you'd like to talk to, and when we

1 come to the stage of the trial, once the State has rested,
2 and if the case goes forward into your case, I'll be
3 inquiring of you concerning your decision.

4 So, Mr. Owens, do you understand the right that I've
5 explained to you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any questions about that right?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you need for me to explain it to you any
10 further?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Then I'll come back to you
13 later, Mr. Owens, and we'll discuss this further when we get
14 to that point in the trial. But I did want you to have an
15 opportunity to discuss it over the evening if you wish to do
16 that.

17 All right. Court will be in recess then until nine
18 o'clock in the morning. I'll order that everyone remain
19 seated while the defendant retires.

20 (WHEREUPON, the defendant leaves the courtroom at this
21 time.)

22 THE COURT: All right. This Court's adjourned until
23 nine o'clock in the morning.

24 Thank you very much.

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(WHEREUPON, Court was in recess for the evening.)

1 Wednesday, April 22nd, 2015

2

3 (WHEREUPON, the autopsy report was marked as State's
4 Exhibit No. 20 for identification purposes only at this
5 time.)

6 THE COURT: All right. I believe the jury is all
7 present.

8 Is the State ready to proceed?

9 SOLICITOR BAIN: Your Honor, we might need to take up a
10 brief matter concerning the admission of the autopsy report
11 into evidence.

12 THE COURT: Yes, sir.

13 SOLICITOR BAIN: The State intends to try to admit it
14 into evidence. I don't know if Mr. Poole has any objections
15 or not.

16 THE COURT: Well, Mr. Poole---

17 MR. POOLE: Your Honor, I---

18 THE COURT: ---have you had a chance to -- have you
19 seen the report?

20 MR. POOLE: Yes, I have.

21 THE COURT: All right.

22 MR. POOLE: Doctor Wren is here to testify to the
23 autopsy report and I would object to it. It's cumulative,
24 cumulative. Doctor Wren does a very good job of explaining
25 everything. What he's going to say will probably track---

1 THE COURT: Well, I have not yet seen the report. I
2 don't know.

3 Does it contain some drawings and things of that nature
4 that, that might be something that would be a visual aid in
5 addition to Doctor Wren's testimony?

6 SOLICITOR BAIN: No, sir, Your Honor. It's just all
7 writing. No visual aids.

8 THE COURT: Well, if it's a, if it's a prior consistent
9 statement then to his statement made at trial, then it
10 wouldn't be necessary for it to be introduced. If it's --
11 if there's something different that -- about it, then maybe
12 it would be. We'll have to wait and see.

13 So I'll have to wait till after he testifies and you
14 offer it as to whether or not it would come in or not.

15 SOLICITOR BAIN: Thank you.

16 THE COURT: But if he testifies consistently with that
17 statement, that, that report, then the report does not
18 necessarily come in.

19 SOLICITOR BAIN: Thank you, Your Honor.

20 THE COURT: All right. Now, anything else before we
21 bring the jury in from the State's prospective?

22 SOLICITOR BAIN: No, sir, Your Honor.

23 THE COURT: And from the defense position?

24 MR. POOLE: No, sir.

25 THE COURT: All right. Let's bring the jury in,

1 Mr. Bailiff.

2 (WHEREUPON, the following takes place within the
3 presence of the jury.)

4 THE COURT: Good morning. I hope everyone had a good
5 evening, and I always check when you come back to the
6 courthouse if any of you have had any difficulty in
7 complying with my instructions concerning your behavior when
8 you're away from the courthouse, please stand.

9 (No response.)

10 THE COURT: All right. The record will reflect that
11 all jurors have been able to comply with my instructions
12 thus far.

13 When we broke yesterday afternoon I'd indicated to you
14 that the State would continue with the calling of witnesses
15 this morning, and, at this time, the State may do so.

16 SOLICITOR BAIN: Thank you, Your Honor.

17 The State calls Doctor David Wren.

18 THE COURT: Doctor Wren, if you'll come forward to my
19 left and be sworn please, sir.

20 DAVID WREN, being first duly sworn,
21 testified as follows:

22 THE COURT: Once seated, sir, please state your name.

23 THE WITNESS: My name is John David Wren.

24 THE COURT: Thank you.

25 Counselor, your witness.

David Wren - Direct examination
by Solicitor Bain

1 SOLICITOR BAIN: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 BY SOLICITOR BAIN:

5 Q Doctor Wren where are you currently employed?

6 A I currently work for Carolinas Pathology Group. I'm
7 the laboratory medical director at Spartanburg Regional
8 Medical Center and at Spartanburg Hospital Restorative Care.
9 I do anatomic and clinical pathology there. I'm also
10 medical director of several other entities in the hospital
11 system, but I work at Regional mainly.

12 Q Okay. Are you licensed to practice medicine in the
13 State of South Carolina?

14 A Yes, since February of 1979.

15 Q Will you tell the jury about your educational
16 background and any certifications that you may have?

17 MR. POOLE: Your Honor, I will stipulate to his
18 qualifications.

19 THE COURT: Does the State accept the stipulation or do
20 you wish to introduce his curriculum vitae?

21 SOLICITOR BAIN: Would like to hear a little bit about
22 his---

23 THE COURT: Okay. I'll allow you to go forward.
24 You're not required to accept a stipulation.

25 You may proceed.

David Wren - Direct examination
by Solicitor Bain

1 SOLICITOR BAIN: Thank you, Your Honor.

2 Q Could you please tell us a little bit about your
3 background and any certifications that you have?

4 A I have a Bachelor's Degree, a Master's Degree, and a
5 Doctor of Philosophy Degree in Chemical Engineering from
6 Clemson University.

7 I went to Medical School at the Medical University of
8 South Carolina. I started there in September of 1975. I
9 finished early with my class by compressing some of my
10 rotations. So I started my residency on February the
11 1st, 1979, and graduated my class in June of that year.

12 As a resident at the Medical University I did a
13 combined anatomic and clinical pathology residency. I
14 finished my five year required residency in three years and
15 ten months because I had done research while I was in
16 Medical School, and I had prior research in bio, biological
17 engineering in my Ph.D.

18 While I was there I was assistant medical examiner in
19 Spartanburg -- in Charleston County from July of 1980 until
20 the end of January 1982, and, as such, I also did forensic
21 pathology autopsies there one weekend a month because they
22 were short on forensic pathologists. One of them had left.
23 I did it under the supervision of the two remaining forensic
24 pathologists that was there, and I did about -- well,
25 anywhere from four to ten autopsies every weekend. I filled

David Wren - Direct examination
by Solicitor Bain

1 in when they were gone as part of my rotations.

2 So I qualified to take boards in forensic pathology by
3 experience, not by residency. In my residency I did the
4 anatomic and clinical pathology. I took my first boards in
5 November of 1984. I did the anatomic pathology boards
6 first, passed on the first try. I did the clinical
7 pathology boards in November of 1987. Passed those on the
8 first try.

9 I came to work in Spartanburg in -- on October the
10 18th 1982. I didn't move -- and I did make a mistake. I
11 did my residency and the autopsies and the medical examiner
12 till January of 1983 instead of '82. We still lived in
13 Charleston, but I lived in the nurses dorms at, at Regional
14 at that time for several months while we were waiting for
15 our daughter to finish her rotation, her mid year school.

16 I came to work here in October 18th, 1982, and I've
17 been here since then, and I've done forensic autopsies for
18 the coroners since that time accelerating since 1989 I
19 believe it was doing about -- anywhere from 150 to 300
20 autopsies, forensic autopsies a year in addition to hospital
21 autopsies.

22 The only other thing I can add is that, like I said, I
23 did not ever take my boards, but I've been qualified as a
24 expert in forensic pathology in probably about half the
25 counties in South Carolina. I probably can't name them all.

David Wren - Direct examination
by Solicitor Bain

1 But a few are Charleston, Dorchester, Georgetown,
2 Georgetown, Berkeley, Orangeburg, Newberry, Laurens,
3 Fairfield. I don't think I've done any in Greenwood.
4 Anderson, Greenville, Spartanburg, York, Union, and
5 Fairfield, and Lexington.

6 Q Thank you, Doctor Wren.

7 Can you please describe what pathology is?

8 A Pathology is basically a study of the disease processes
9 of the body. As such, it's divided into two general areas.
10 One is anatomic pathology, which is dealing with tissue
11 pathology, whether it either be any type of tissues that are
12 removed for the body, even cells that are removed in Pap
13 smears and aspirates of various lesions.

14 Anatomic is divided into several subspecialties being
15 surgical pathology, which is examination of tissues for
16 disease processes or malignancies or any other abnormalities
17 on tissues removed from the body then in the operating room
18 or in physician's offices.

19 There's also an -- there's also autopsy pathology,
20 which is just straight autopsies. A sub, a subset of
21 anatomic -- autopsy pathology is forensic pathology, and
22 then there's cytology, which is part of it, and those type
23 of things that deal with tissues and the other part is
24 clinical pathology, which is that commonly associated with
25 laboratory tests, whether it either be blood tests for

David Wren - Direct examination
by Solicitor Bain

1 infectious processes or chemical tests on the blood for
2 various abnormalities in the blood. Also microbiology and
3 blood banking transfusion pathology and special chemistry,
4 those esoteric tests that are not done in every hospital or
5 they're in every location. They're special tests.

6 Q Thank you, Doctor Wren.

7 And in your duties as a pathologist, you perform
8 autopsies?

9 A Yes, as I stated before, I've done, about, about a year
10 and a half ago, we, one day, checked to see about how many I
11 had done cause we had a record of those at the Regional.
12 I've done about 5,000 by now.

13 Q Have you ever been qualified by this Court as an expert
14 in the field of pathology or any other Courts?

15 A Yes, I stated that previously.

16 SOLICITOR BAIN: Your Honor, as this time I would offer
17 Doctor David Wren as an expert in the field of pathology.

18 THE COURT: Any objection?

19 MR. POOLE: None..

20 THE COURT: Ladies and gentlemen of the jury, let me
21 explain to you what we're doing right now so that you'll
22 have a little understanding of what's going on.

23 Generally, under the rules of evidence, witnesses, that
24 is lay witnesses, are not allowed to express their opinions
25 about matters. They're required to testify about facts

David Wren - Direct examination
by Solicitor Bain

1 which are within their knowledge and there's, there's an
2 exception to that general rule for witnesses who are
3 qualified as experts within some field or profession.

4 For those witnesses who the Court qualifies as an
5 expert, the rules of evidence are different. They are
6 allowed to express their opinions within their area of
7 expertise, and they are also allowed to express the reasons
8 why they hold the opinions that they have.

9 Later on, when I charge you concerning the law, I'll
10 give you some additional information as to how you might
11 consider the testimony given by expert witnesses as opposed
12 to any other witness in the case. But, at this time,
13 suffice it to say that I'm going to qualify this witness as
14 an expert within the field of forensic pathology. That will
15 allow him to state his opinions within that field. That
16 will allow him to state the reasons why he has those
17 opinions.

18 You may proceed at this time, counsel.

19 SOLICITOR BAIN: Thank you, Your Honor.

20 CONTINUED DIRECT EXAMINATION

21 BY SOLICITOR BAIN:

22 Q Doctor Wren, on November 12th, 2013, did you perform
23 an autopsy on a 30-year old male by the name of Stanley Earl
24 Jones?

25 A Yes, I, I did that autopsy in Spartanburg Regional

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1 Medical Center Autopsy Room.

2 Q After the autopsy did you produce a report detailing
3 the procedures and results?

4 A Yes.

5 SOLICITOR BAIN: Your Honor, may I approach the
6 witness?

7 THE COURT: You may.

8 Q Your Honor -- at this time I'm handing you what's been
9 marked State's Exhibit 20 for identification purposes only.
10 Will you take a minute to review that document?

11 A Yes, this is a cause of death sheet we fill out for the
12 coroner. Most times I, when I do an autopsy, unless it's
13 relatively straightforward, I put pending on there because
14 it takes toxicology before we can say, before we, before we
15 actually sign out a autopsy even though I may have a defined
16 opinion as to why I think the person died. I'll give them
17 my preliminary findings.

18 There is a, a sheet here that I signed out that is the
19 cause of death is exsanguination secondary to gunshot wound
20 to the chest. I signed it on November the 12th, 2013.
21 Then there are---

22 Q Doctor Wren, let me---

23 A ---five pages of an autopsy report.

24 Q First, let me ask you, is this report I've handed you a
25 fair and accurate representation of the report you produced

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1 after the autopsy?

2 A It is.

3 Q Have there been any deletions or alterations to that
4 to your knowledge?

5 A I don't, I don't see any. I have a -- I've brought --
6 I looked at the original -- well, not the original, but my
7 copy of the original, and they're no changes. I signed this
8 autopsy on November the 18th.

9 Q All right. Thank you, Doctor Wren.

10 Could you describe the wounds to Mr. Jones body?

11 A Yes, he had, he had two gunshot wounds, an in and out
12 gunshot wound. He also had an abrasion to his right upper
13 shoulder that was 5 by 3 centimeters meaning that it's about
14 a little over an inch and almost 2-inches in the two
15 dimensions, which I considered when he collapsed against
16 the -- whatever he fell against.

17 The gunshot wounds were in the lateral left chest,
18 which was an entrance, the lateral right back, which was a
19 exit. The one in the, in the front the entrance wound
20 appeared -- by the way, he was 70.5 inches in length, which
21 varies a little bit from the actual standing height can vary
22 plus or minus an inch for the actual height. He had a
23 weight of -- we weighed him at 262 pounds.

24 The entrance wound, we always measure front first, back
25 second, the entrance wound was 17 and one-quarter inches

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1 from the top of the head. It was seven and three quarter
2 inches to the right -- left of midline in the anterior
3 axillary line, which is an imaginary line drawn from the
4 front of the armpit vertically down.

5 That wound was oval in shape as he lay there. It
6 measured approximately 1.3 by 1.01 inches in maximum
7 dimensions. You could move it a little bit, because the
8 skin was a little stretched, you could move it to
9 approximately 1-inch in diameter, which is a rather large
10 caliber wound. There's no -- there was no powder stippling
11 or no tattooing indicating that it was probably not within
12 range where that could be deposited on the skin, although
13 there was a shirt in -- on the body. It was blood soaked.
14 It was a white shirt, but it was so much blood on it you
15 could not see whether it had any tattooing on there. So one
16 can't tell for sure without micro, microscopic examination
17 by law enforcement of the, the, the fibers to see if there
18 were any powder or soot or anything there.

19 The exit was in his back, which was a little bit lower.
20 It was 19 and a quarter inches from the top of the head in
21 the right lateral back, eight inches to the right of
22 midline. So the bullet was passing from his left to his
23 right through the body. As it went through the body it went
24 through the diaphragm in two places, which separates the
25 upper -- the thoracic cavity from the abdominal cavity. It

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1 passed through the cardia of the stomach, which is the -- if
2 you've ever seen a diagram of a stomach it looks sort of
3 like a old -- like a common that's expanded. The top part
4 is called the cardia. Passed through and through that and
5 then it grazed the heart, the left ventricle of the heart,
6 passed -- didn't pass into the chambers itself, but it, it
7 passed along the border of the heart. It went through the
8 aorta almost completely transecting the aorta, went through
9 both lower, lower lobes of the right lung as well as the
10 left lung in its path. It passed -- it hit the bottom of
11 the sixth rib on the left, and the bottom of the seventh rib
12 on the right, and as -- in its path, it caused bilateral
13 hemothorax, which is blood accumulations from bleeding in
14 the chest cavities.

15 There was 500 cc's of blood on the left, which is
16 about -- well, it's about one and a quarter units of whole
17 blood as we collect blood. A unit of blood is about
18 400 milliliters before it's separated into the components
19 that one separates for transfusion. The left side had 700
20 cc's. So he lost about four units of blood into his chest
21 in addition to that bleeding out.

22 The, the wound in the back was definitely an exit
23 because it could be approximated closed and I'll explain why
24 in just a second. But there was tissue protruding through
25 it also. The reason that you can tell how they are is an

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1 entrance wound, the bullet's spinning very fast, and it
2 actually bores a hole as it passes into the tissues.

3 As it exits the skin, it's going slower and it's slowed
4 down in its rotation. So it actually punches out through
5 the tissues. So it tears itself out. It doesn't bore
6 itself out. It just tears itself out.

7 So if, if something hasn't happened to remove some of
8 that tissue you can actually sew it back together and it
9 comes back together easily, and that wound was irregular in
10 shape and it measured almost an inch in diameter and
11 three-quarters of an inch in, in width, and it, like I said,
12 it could be approximated closed.

13 Those were all, those were all his injuries and the
14 wound actually -- I need to explain a little bit more
15 because the chest, the chest, the ribs are higher in the
16 back than they are in the front because, if you've ever seen
17 a skeleton, it looks like the, the ribs go down and then --
18 anteriorly. So if you're standing erect, if you puncture
19 the sixth rib on one side, the, the rib in the back on the
20 same side's gonna be a lower -- a high number rib or the
21 rib's gonna be lower. So it's very easy to pass through the
22 bottom of the sixth rib and the -- and exit on the bottom of
23 the seventh if he was standing erect.

24 So the path of this bullet was left to right meaning
25 that -- and we always talk about the body itself. From the

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1 body's left to the body's right was going front to back, and
2 it was going at an angle of about 15-degrees downward.

3 That's the way they're, they're -- the paths are measured.

4 There was no bullet fragment on x-ray and this is a
5 large caliber. The biggest caliber bullets now -- well, I
6 don't know for sure, but handguns are -- you can hardly ever
7 find one over 50-caliber. I'm not even sure they have any
8 over 50-caliber in handguns, but this was 1-inch in diameter
9 meaning it was at least twice, over twice as big a diameter
10 as a .44, which is 44 one-hundredths. This was 100
11 one-hundredths of an inch in diameter. So it was more
12 consistent with a slug that can be used.

13 Q Doctor Wren, you described the path of the bullet.

14 In your opinion, is that consistent with somebody
15 turning?

16 A Yes, he -- the, the bullet came, instead of the, the
17 decedent facing the wound -- the, the gun, you can project
18 pretty much a straight-line. So if you were the assailant
19 and you shot me, I would of had to have been turned about
20 like this to you to where my left side would be exposed and,
21 and in a---

22 Q So turning---

23 A ---parallel arrangement. The back right would be
24 behind there.

25 Q So turning back to your right?

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1 A Yes.

2 Q Okay. And how many gunshots -- I mean how many
3 gunshots were fired?

4 A One. Well, there was only one in him. It was a
5 through and through.

6 Q And can you explain to the jury what through and
7 through means?

8 A It just goes in and comes out without lodging in the
9 body.

10 Q Did the bullet hit the heart?

11 A It grazed along the left ventricle of the heart, which
12 is the main pumping chamber that pumps body -- blood to the
13 body.

14 There's two chambers that pump fluid. The right, the
15 right ventricle pumps blood to the -- through the lungs and
16 goes back into the left atrium of the heart. Then its
17 passed down into the left ventricle and then that goes out
18 the aorta and perfuses all the tissues before it's returned
19 to the heart through the aorta initially and then it goes
20 through the great vessels to the neck and, and upper
21 extremities, and then it -- as it -- if it doesn't exit
22 there, just because the blood's being mixed, it goes on down
23 the aorta and goes out to the stomach and liver first, and
24 then goes onto the kidneys and then out through the legs and
25 then comes back through the inferior vena cava into the

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1 right atrium of the heart..

2 Q So after Mr. Jones was shot, his heart was still
3 pumping?

4 A Yes, it, it grazed it enough to where it gouged a hole
5 through the edge of the, of the muscle of the heart. The
6 heart, if it's not enlarged, measures about one and a half
7 centimeters in maximum thickness, the left ventricle does.
8 The right ventricle measures about -- up to a half a
9 centimeter.

10 Now, a centimeter -- one and a half centimeters is
11 about three-quarters of an inch -- I mean 60 one-hundredths
12 or three-fifths of an inch in thickness. It, it grazed it
13 enough to where it destroyed muscle along a path, but it did
14 not completely lacerate the entire thickness of the wall.
15 So blood was not leaking out of the heart chamber into the
16 tissues surrounding it.

17 Q Now, Doctor Wren, were there any photographs taken
18 during this autopsy?

19 A They're taken by the coroner's investigator, whoever it
20 happened to be, and also the investigating police entity
21 sends a, a -- the evidence photographer.

22 SOLICITOR BAIN: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

25 Q I'm handing you what has been marked State's Exhibit 5

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1 and State's Exhibit 6 for identification purposes.

2 Will you please take a look at those two photos?

3 A (Witness complies.)

4 Q Do you recognize them?

5 A Yes.

6 Q Are they a true and accurate reflection of the---

7 A What I said---

8 Q ---body the day---

9 A What I said, yes.

10 Q ---you did the autopsy?

11 A Yes.

12 Q Okay.

13 A Yes.

14 SOLICITOR BAIN: Your Honor, permission to publish to
15 the jury?

16 THE COURT: I believe those are already in evidence.
17 You may do so.

18 MR. POOLE: Your Honor, subject to prior objections.

19 THE COURT: Yes, sir, your objections are noted.

20 A Put No. 6 up first.

21 Q Doctor Wren, you mentioned an entry and an exit wound.

22 Can you please tell us which ones this would be?

23 A This is the entrance because it's oval in shape. As I
24 stated, as I was telling about it, it depends on if -- you,
25 you can imagine taking his arm here and pulling it up, it

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1 would stretch the tissues to where they would not be oval
2 anymore. So the position he was in, when I examined it, it
3 measured 1.3 inches in the maximum dimension and it measured
4 a little over 1-inch in the, the narrowest dimension, but
5 this one looks a little bit different. There's not an --
6 and it had slightly irregular edges, which you can see if
7 you go to a real high power, but that's an entrance wound
8 and this is the axilla here, anterior axillary line would be
9 there.

10 Q And, Doctor Wren, how many gunshot wounds have you seen
11 in your career approximately?

12 A Oh, probably between 500 and a thousand I imagine.

13 Q And, in your opinion, what kind of bullet would of
14 caused this type of wound?

15 A This -- like I said, they're -- I don't know of any
16 bullets that are made that size. This would of had to have
17 been probably a slug that, that you can use in some guns.

18 Q Could a handgun have caused this wound?

19 A I'm, I'm not an expert on guns. I think you can, I
20 think you can fire them from, from handguns if you have the
21 appropriate gun. I'm not sure though.

22 Q But you believe it was a slug---

23 A Yes.

24 Q ---that caused this injury?

25 A Yes, it's a solid, a solid piece of metal and it

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1 doesn't break up usually unless it hits a concrete wall or
2 something like that. It's, it's so big that it will -- that
3 nothing in a body will break it up that I know of.

4 Q Is that wound more consistent with a shotgun wound?

5 A Well, you -- people use slugs in shotguns, yes. I,
6 like I said, it's a, a real large caliber consistent with
7 what people call slugs. I don't even shoot guns. So I
8 don't, I don't -- I'm not an expert in guns.

9 Q But it had, it had to of been a big bullet that
10 cause---

11 A Yeah.

12 Q ---or a big slug that caused---

13 A Yes.

14 Q ---this wound?

15 A Yes, it's a slug rather than a bullet.

16 Q Doctor Wren, will you please describe this picture to
17 the jury and what it shows?

18 A Oh, this is the exit. This is his arm here. This is
19 his back and this is the wound with some blood draining
20 down, and, like I said, it measured an inch -- when I, when
21 I looked at it, and you can see the skin is folded down
22 below there, but the, the skin measured .98 inches in length
23 and it measured .60 inches in width at the area and you can
24 see right there on the medial border there's a little bit of
25 white tissue there. But you can take -- that's protruding

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1 out of the wound, but you can take this skin and you can
2 pull it back and loosen the skin a little bit and it will
3 close, close over nicely.

4 Now, I need to add one more thing about gunshot wounds
5 and stab wounds or any wounds like -- that are -- penetrated
6 the body. When you measure -- when one measures a wound, it
7 can actually be plus or minus 25 percent of the size of the
8 wound, and just as an example, if you measure a wound as
9 being 1-inch in diameter, that doesn't mean that it's
10 absolutely 1-inch. It just means it's 1-inch as you, as you
11 look at it.

12 It doesn't mean how the skin was when you actually
13 caused that wound because if the wound is -- if the skin is
14 stretched when the, when the, when the wound is, is
15 inflicted, if it's stretched and then the skin loosens up,
16 for instance, if I had turned my back to you and you shot me
17 and I had my arms back like this, my skin would be
18 stretched. Then if I loosened my shoulder, it would
19 naturally collapse just like everybody's skin does. So it
20 can collapse about 25 percent.

21 So the wound can be, if you measure 1-inch, it could of
22 been, if it were loose when it happened, it could be, and it
23 stretched out a little bit as you measured it, it could be
24 actually one and a quarter inch object that caused that
25 wound. On the other hand, if it was stretched and then,

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1 then relaxed, it could of been only 75 hundredths of an inch
2 or three-quarters of an inch; it actually inflicted it. But
3 the skin was stretched so it made a bigger wound.

4 So that's, that's a limitation to measuring these, but,
5 nevertheless, this was a large caliber and, and we talk
6 about small calibers are .22s, .25s. Medium calibers are
7 .32s up to .38s and then large calibers are .40 and above,
8 .38 to .40 and above.

9 Q Did you retrieve any bullets from within the body?

10 A No, there were none. No, no fragments and no, no
11 fragments on x-ray and no bullet, no projectile identified.

12 Q Thank you, Doctor Wren.

13 Now, Doctor Wren, based on the autopsy, with a
14 reasonable degree of medical certainty, were you able to
15 form an opinion to the cause of Mr. Jones death?

16 A Yes, I attributed the cause of death as exsanguination,
17 which is bleeding to death, secondary to gunshot wound to
18 the chest.

19 Q And one last question, Doctor Wren.

20 After Mr. Jones suffered this gunshot wound,
21 approximately how long would it have taken him to pass away?

22 A It would of probably taken less -- because he was
23 bleeding so severely from the laceration to the aorta, blood
24 naturally, as it's been pumped, it goes out the path of
25 least resistance. There's a large open area there. So it's

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1 gonna bleed quickly out of there, and it would of taken
2 probably less than certainly less -- certainly less than
3 15-minutes. More likely less than ten.

4 SOLICITOR BAIN: No further questions, Your Honor.
5 Please answer any questions Mr. Poole might have.

6 THE COURT: Mr. Poole, your witness.

7 MR. POOLE: I have no questions of this witness.

8 THE COURT: All right. You may step down, sir.

9 Wish to excuse the witness?

10 SOLICITOR BAIN: Yes, Your Honor.

11 THE COURT: Any objections?

12 MR. POOLE: None.

13 THE COURT: You're free to go, sir. Thank you for
14 coming today.

15 The State may call its next witness.

16 SOLICITOR GRAY: At this time, Your Honor, the State
17 rests.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, that completes the presentation of evidence by the
20 state. There's some matters that I have to take up with the
21 attorneys at this stage of the trial that do not involve
22 you.

23 So I'm gonna ask you to step back to the jury room
24 briefly, and, as always, I'll ask you not to talk about the
25 case in anyway even among yourselves until I've asked you to

1 begin your deliberations.

2 You may retire to the jury room.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right. Any motions at this time?

6 MR. POOLE: Yes, sir.

7 May it please the Court?

8 THE COURT: Yes, sir.

9 MR. POOLE: Your Honor, I would make a motion for a
10 directed verdict of not guilty in this case. That's based
11 upon the Court's rulings on my pretrial motions, which were
12 generous toward the defendant, except for the only one I
13 believe that you did deny was the total exclusion of the
14 photographs that have just been shown to the jury. That's
15 based on that. I appreciate Your Honor's, Your Honor's
16 instruction to have them in black and white, but,
17 nevertheless, I still have to make that objection.

18 THE COURT: Oh, I understand the objection and your
19 motion. My ruling would be the same. I think it was
20 apparent, through Doctor Wren's testimony, that those
21 photographs had probative value in that the size of the
22 wound, as, as compared to a normal bullet wound, were such
23 that the photographs did have probative value that
24 outweighed their prejudicial effect in the Court's opinion.
25 So I'd make the same ruling.

1 MR. POOLE: Yes, sir.

2 Additionally, the evidence that has been presented by
3 the State consists of the, the statements that have been
4 introduced into evidence and the testimony offered from
5 witnesses on the witness stand. These statements have been
6 so inconsistent within themselves and in taking into context
7 of the testimony of the witnesses testifying, they are
8 inconsistent and incoherent.

9 My position is that that basically nullifies the
10 validity and truthfulness of the statements and I know that
11 that's a different argument about the existence of any
12 evidence, but since they are so inconsistent they're
13 basically null and I would ask the Court to direct a verdict
14 of not guilty based upon that.

15 THE COURT: State's position.

16 SOLICITOR GRAY: Your Honor, Mr. Poole had the
17 opportunity to cross-examine all witnesses in this case,
18 case. That's a question of fact for the jury were they
19 now -- they believe them.

20 To say that their statements or their testimony is null
21 and void is a conclusion that I don't think we can make at
22 this point, Your Honor, in that the jury decides this
23 matter. I think there's enough evidence, taken in a light
24 most favorable to the State, all the elements are present
25 here and I believe directed verdict, at this time, is

1 premature, Your Honor.

2 MR. POOLE: Have one more point, Your Honor.

3 THE COURT: Yes, sir.

4 MR. POOLE: There is no gun that has been introduced
5 into evidence.

6 THE COURT: All right. Anything about that from the
7 state?

8 SOLICITOR GRAY: Your Honor, there is a drawing and a
9 diagram of the gun that was used. Testimony from countless
10 witnesses saying they saw him with this weapon. What
11 happened to the weapon after the shooting we do not know.
12 We have eye witness testimony that he had the weapon at the
13 shooting and that is consistent with the drawing and the
14 diagrams circled by two witnesses, Your Honor.

15 THE COURT: All right. Mr. Poole, I understand the --
16 your position in regards to the statements.

17 First of all, there were inconsistent statements given
18 by I think all of the witnesses in this matter. I do intend
19 to charge the jury concerning inconsistent statements and
20 their duty to consider whether or not the statements given
21 at trial are truthful or not. So I'll leave the question as
22 to the truthfulness of the statements up to the jury.

23 The witnesses did testify that, because of fear of
24 reprisal, that they had given false statements. They were
25 reasons given by them for the false statements having been,

1 been given. I'll allow the jury to weigh that and make a
2 decision as to which statements they choose to believe and
3 which they choose not to believe.

4 My job, at this point in time, is to weigh the
5 existence of any evidence that would support the State's
6 case. I find that there was sufficient evidence presented
7 and I'll allow it to go to the jury and let them make that
8 decision concerning those statements.

9 MR. POOLE: Yes, sir.

10 THE COURT: Now, as to the existence of the gun, I note
11 the, the arrest took, took place some four months after the
12 event I think.

13 Is that correct?

14 SOLICITOR GRAY: Yes, sir.

15 THE COURT: And I recall, from the testimony, I
16 understand a gun was not recovered. However, a particular
17 gun was described by more than one witness as having been in
18 the possession of the defendant both prior to and at the
19 time of the event; and I'll allow that to go to the jury as
20 well.

21 MR. POOLE: Yes, sir.

22 THE COURT: Any other matters that I need to take up by
23 way of motion at this time---

24 SOLICITOR GRAY: None from the State.

25 THE COURT: ---State?

1 Defense?

2 MR. POOLE: No, sir.

3 THE COURT: All right. Now, Mr. Owens; yesterday I
4 placed you under oath --

5 THE DEFENDANT: Yes, sir.

6 THE COURT: -- concerning some matters that I discussed
7 with you.

8 Do you recall my doing so?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you -- do you acknowledge that you are
11 still under oath concerning your discussions with the Court
12 at this time?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, Mr. Owens, have you had an
15 opportunity to discuss the matters that I discussed with you
16 yesterday with your attorney or with anyone else you wanted
17 to discuss it with?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And that is the question of whether or not
20 you will testify in this case.

21 So do you need to discuss that any further with anyone
22 at this time?

23 THE DEFENDANT: I mean I can discuss it with my, with
24 my attorney.

25 THE COURT: All right. Well, I'll take a short recess.

1 I'll stay on the bench. I'll give you a chance to talk to
2 your lawyer right now if you'd like.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Let me know when you're ready.

5 THE DEFENDANT: Okay.

6 THE COURT: We'll take a short recess. You may step
7 out.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: All right. Let's come to order please.

10 Mr. Owens, have you now had an opportunity to discuss
11 this decision with your attorney?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you need to talk with him any further at
14 this time?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you made a decision as to whether or
17 not you wish to testify in this case?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you intend to testify?

20 THE DEFENDANT: No, sir.

21 THE COURT: Thank you. You can be seated.

22 Does the defense wish to call any other witnesses?

23 MR. POOLE: No, sir.

24 THE COURT: Okay. So there will be no witnesses for
25 the defense?

1 MR. POOLE: There will be none.

2 THE COURT: All right. Very good.

3 I will, when we bring the jury back in, then I will
4 call on you and give you an opportunity to rest on the
5 record before we proceed.

6 MR. POOLE: Okay. Your Honor, could we take up a
7 couple other matters?

8 THE COURT: Yes, sir.

9 MR. POOLE: May we approach the bench first?

10 THE COURT: Please do.

11 (WHEREUPON, a bench conference was held at this time.)

12 THE COURT: All right. Court's gonna take about a 10
13 to 15 minute recess and step back to chambers.

14 Thank you.

15 I'm gonna ask everyone remain seated while the
16 defendant leaves the courtroom.

17 (WHEREUPON, a short recess was taken at this time.)

18 THE COURT: All right. We're back on the record in the
19 case of State of South Carolina versus Eric Lamont Owens.

20 Mr. Poole, at our bench conference, had requested the
21 court to consider the charging of the lesser included
22 offense of voluntary manslaughter.

23 Is that a correct statement, Mr. Poole?

24 MR. POOLE: Yes, sir, it is.

25 THE COURT: All right. Mr. Poole, in considering that,

1 I have looked into it and I would ask you if there is --
2 what, what evidence in the record would point to the fact
3 that, on the date in question, this is the, the day that the
4 event occurred, that your client was under the influence of
5 the sudden heat of passion?

6 In my review of the evidence, I did not hear anyone
7 testify as to those factors and I didn't hear any and I
8 don't believe that's anything in the record that would
9 indicate that there was some type of altercation or some
10 type of fight or some type of provocation that took place on
11 the date in question when the murder occurred.

12 So I'd hear from you on that point.

13 MR. POOLE: I don't think I can point to anything that
14 would say that the defendant was acting in the heat of
15 passion. I can concede that.

16 I guess my argument is based upon the definition of
17 manslaughter of which is the unlawful killing of another
18 without malice, express or implied, is the current
19 definition of manslaughter, and I do understand that the --
20 there use to be -- a lot of definition, definition of
21 manslaughter, at one time, was the killing of another with
22 legal provocation in the heat of passion, and since that
23 language is no longer in the statute---

24 THE COURT: Can you get to -- can you point to a case
25 that we're -- that you want me to use the definition of

1 manslaughter from?

2 MR. POOLE: No, I can not.

3 THE COURT: I've, I've been looking for those and I'd
4 like for you to point me to the case that you're talking
5 about.

6 MR. POOLE: I can not.

7 THE COURT: I will tell you that I do not intend to
8 charge that malice can be inferred from the use of a deadly
9 weapon in this case. The Belcher case, the recent Belcher
10 case that came out indicates that where there is some
11 evidence of some type of mitigating circumstances that,
12 where the use of a deadly weapon is used, that it should not
13 be charged, and, in this case, I am not going to do that
14 just in an abundance of caution so far as your client's
15 concerned.

16 So I don't intend to charge that question when we talk
17 about inferred malice. So I will not be charging that.

18 MR. POOLE: Yes, sir.

19 THE COURT: So make you aware of that before we, we do
20 the charge, but I'm trying to -- if you can point me to a
21 case that you want me to consider I'll be glad to do that.

22 MR. POOLE: I can not do that. I'm just basically
23 arguing from the definition that -- and the, the basic
24 position that a jury could possibly find that there was no
25 actual malice in this case. Whereupon, the proper verdict

1 would be guilty of manslaughter.

2 THE COURT: And I'm, I'm asking for anything in the
3 record that would indicate that there was not some malice
4 either inferred or implied. The testimony that I've heard
5 as to what occurred that day would indicate that your client
6 was in the back seat of an automobile, that there was a
7 shotgun with him at that time, that he went to the victim's
8 home, that that's where the event occurred. I'm trying to
9 find something that would indicate that there was a lack of
10 malice or something that would -- the way I understand
11 that -- the difference between murder and manslaughter is
12 the absence of malice.

13 MR. POOLE: Right.

14 THE COURT: And, and the law is pretty clear though
15 that when acts are done in preparation for the event or
16 where there's express words of malice, and there is some
17 evidence in this case that there was actually expressed
18 words of malice used, that the jury certainly can find that
19 malice existed.

20 MR. POOLE: The---

21 THE COURT: There has to be something that would
22 indicate a absence of malice.

23 MR. POOLE: If the jury---

24 THE COURT: A provocation, a threat, something that
25 would have taken him out of the realm of a malicious act --

1 MR. POOLE: The---

2 THE COURT: -- and I'm trying to, trying to -- I'm
3 asking to point to specific acts that occurred on the date
4 of the event. Now I understand there was a fight the night
5 before of some type, an altercation. That's been testified
6 to and your client left that scene and then came back. The
7 victim had gone.

8 So then we had a period of time, the Court would view,
9 as a cooling off period overnight and into the next day
10 before this event occurred, and I heard no testimony from
11 anyone that anything else transpired between these two
12 parties during that period of time.

13 MR. POOLE: All the, all of the witnesses that
14 testified that are charged with, in connection with this
15 case---

16 THE COURT: Uh-huh.. (Affirmative)..

17 MR. POOLE: -- gave inconsistent statements at the
18 beginning, the beginning -- the first two statements, at
19 least practically from every witness, did not implicate the
20 defendant in the killing of Mr. Jones. If the jury were to
21 decide to believe the content of those statements, then
22 there would be, of course, an absence of malice.

23 THE COURT: Well, those statements indicated he didn't
24 do it.

25 MR. POOLE: Right.

1 THE COURT: There wouldn't even be a crime that he
2 would be guilty of in those statements.

3 MR. POOLE: Yes, sir, and thus an absence of malice.

4 THE COURT: Well, there wouldn't have been anything
5 that -- he didn't do it.

6 Do you follow me?

7 I mean I'm trying to -- I'm asking you for specific
8 evidence, anything in the record that would indicate
9 something that occurred between those events that would have
10 lessened the malice or eliminated the malice in the case.

11 MR. POOLE: Well, I can't point to anything like that I
12 don't think in honesty.

13 THE COURT: We just got this cooling off period and it
14 was an extended cooling off period where the parties weren't
15 in contact with each other at all---

16 MR. POOLE: Understood and I'm just simply---

17 THE COURT: ---and that's the only evidence in the case
18 that I have. I don't have any other evidence other than
19 that.

20 MR. POOLE: I'm just simply saying that a jury could
21 find an absence of malice for whatever reason, but I can't
22 point---

23 THE COURT: But there's got to be some evidence in the
24 record. I can't -- let me go to something that I've read
25 here that -- talking about the -- that it's, that it's a

1 well established rule in the jurisdiction of -- this
2 jurisdiction that a trial for murder growing out of the use
3 of a deadly weapon is unnecessary to charge the law relating
4 to manslaughter where the testimony fails to suggest any
5 theory upon which a verdict for manslaughter could rest, and
6 I'm trying to find any theory upon which it could rest.

7 Now, just saying that they could find it, that's fine,
8 but there's got to be some evidence in the record upon which
9 the jury could find it, some evidence, and I'm asking you
10 for anything else in that time period between the fight and
11 the occurrence where these parties had any interaction that
12 somehow would of lessened your client's implied or expressed
13 malice.

14 MR. POOLE: Well, as I've said before, I can't.

15 THE COURT: And now I didn't see -- I don't see any
16 contact between the two, and the, and the only evidence --
17 testimony I've got is that they drove up to the home and
18 then the event occurred almost immediately. He came walking
19 out of the house and a shot was heard.

20 MR. POOLE: Well, as I've said, I can't point to
21 anything in the record nor can I give you case law on the,
22 on the point.

23 THE COURT: Well, I need it if you've got it. That's
24 it.

25 MR. POOLE: I do not have it.

1 THE COURT: All right. Okay.

2 Anything the State would like to add to put on the
3 record on that?

4 SOLICITOR GRAY: No, sir, Your Honor.

5 THE COURT: All right. Well, based on what I've seen
6 thus far in the case, like I said, this, this absence of any
7 contact whatsoever between these parties, between the party
8 the night before and the shooting that took place that day,
9 and, and the fact that there was no interaction between
10 them, I don't find that there's any evidence upon which a
11 jury could find that manslaughter existed, that there was
12 some, something that mitigated or took away from the act if
13 it occurred.

14 Now, you, you have the defense that it didn't occur at
15 all, your client didn't do it, and I intend -- you can argue
16 that to the jury certainly, that he was not the party who
17 committed the crime because they're statements to that
18 effect. There's some evidence to base that on.

19 All right. I'm gonna deny the motion to charge it as a
20 lesser included.

21 MR. POOLE: I respectfully take exception to that.

22 THE COURT: I understand that. That's fine. And it's,
23 it's an interesting question.

24 All right. Any other matters that we need to take up
25 before I call the jury back?

1 SOLICITOR GRAY: No, sir, Your Honor.

2 THE COURT: Anything else from the defense?

3 MR. POOLE: Nothing, Your Honor.

4 THE COURT: Okay. All right. Let's bring the jury in.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. The record will reflect that
8 the jury has returned to the courtroom.

9 At this time the defense has the right to call
10 witnesses if they choose.

11 The defense may call any witnesses.

12 MR. POOLE: The defense has no witnesses.

13 THE COURT: All right. Ladies and gentlemen, that
14 concludes the presentation of evidence in the case, and I
15 told you, at this point in time, we would allow the
16 attorneys to make their closing or final arguments to you in
17 this matter, and, in this case, the State will be proceeding
18 first.

19 You may proceed.

20 SOLICITOR GRAY: Thank you, Your Honor.

21 SOLICITOR BAIN: Your Honor, we're going to set up the
22 projector.

23 THE COURT: All right. Mr. Bain, you may do so.

24 (Pause.)

25 SOLICITOR GRAY: May it please the Court, Your Honor?

1 THE COURT: Yes, sir, you may proceed.

2 SOLICITOR GRAY: Thank you.

3 Good morning, ladies and gentlemen.

4 My name is Abel Gray. This is my first and last
5 opportunity to speak to you directly about this case.

6 At the beginning of this case Mr. Bain told you about a
7 sucker punch to a shotgun. In reality, what this case is
8 really about, the only person who wasn't alive today who was
9 not afraid of that gentleman, the only people, the only ones
10 who weren't afraid, the one who was not afraid of him, Man,
11 Stanley Jones, is dead. Everybody else told you I was
12 afraid, I was scared, I was afraid, I was scared, and you
13 know why.

14 If that gentleman, the defendant, would shoot his
15 friend, what would he do to them?

16 After he was arrested, they told the truth. They felt
17 safe.

18 Ladies and gentlemen of the jury, he's charged with two
19 crimes, murder, and the possession of a weapon during a
20 violent crime. Point blank, murder is a violent crime,
21 plain and simple. The weapon in this case will be the
22 shotgun that you've heard described and we have to prove
23 that beyond a reasonable doubt. Not beyond all doubt. Just
24 beyond a reasonable doubt and we've done that through
25 testimony and some exhibits.

1 You heard from Officer Weatherman who was there.

2 Get the lights for me please and I apologize for, for
3 dimming the lights while I keep talking.

4 Officer Weatherman, on November 12th, 2013, arrived
5 at He saw the decedent, Mr. Stanley
6 Jones, in this area. A barrier was put around that to
7 preserve evidence unfortunately and to shield Mr. Jones'
8 body.

9 You heard from his mother, Mr. Jones' mother, when she
10 came outside. She heard a loud boom, came outside, saw her
11 son lying on the ground, a hole in his shirt. Okay.
12 Actually she said it was a big hole in his shirt. She cut
13 the shirt open, saw a big wound. He wasn't moving. He was
14 deceased at that point.

15 You heard testimony about where he was shot and how
16 far.

17 Right here, ladies and gentlemen, this is the street.
18 This is where he was shot, a couple of feet away.

19 You heard testimony from Mr. Derrick white in this
20 situation about what happened. He pulled up. The defendant
21 was in the back seat and he said he heard the victim in this
22 case say, Mr. white (sic) say, what are you gonna do now,
23 you gonna shoot me. Defiantly. Without fear.

24 What are you gonna do, shoot me?

25 You know what the defendant said?

1. . . . Damn right. Bam. Excuse me. Boom. Go, nigga, go.
2 Hit the gas, let's get out of here, and that's what
3 happened.

4 . . . Mr. Jones had no fear of this man and he's dead. . . We
5 can go back to the night before where there was a party,
6 there was drinking, there's a sucker punch. At that point
7 is when the defendant gets angry. His girlfriend, Shaina,
8 white, excuse me, Shaina Wallace, at the time, says he's
9 angry. He goes to get the gun, the gun that she's seen in
10 the closet for months and months.

11 . . . He gets the gun, goes looking for Mr. Jones, can't find
12 him. She gives inconsistent statements initially. She
13 does. We submit that. But, in March, after he's arrested,
14 she started giving different statements to the police. She
15 says, under oath, truthful statements and the police also
16 says look, we have some pictures here, some drawings, we
17 don't know what type of gun he used, could you show us.

18 . . . She has many many choices. Handguns, different types
19 of handguns, different types of shotguns. She picks this
20 one.

21 . . . You heard testimony also from Mr. Seay what type of gun
22 did he use. It was like one of those movie shotguns, maybe
23 pistol grip type of gun, shotgun with the four handle,
24 that's what he used.

25 . . . Mr. Seay gave some inconsistent statements also. But,

1 again, after March 2014, after the defendant was arrested,
2 here we go, truthful statements. The Monday night after the
3 incident between E and Man, when E came back, I walked
4 outside to his car. He was angry with a weapon, a shotgun.
5 When asked about my phone, he said it was my fault, and I
6 asked what he was going to do. He said I'm going to kill
7 this nigga, Stanley Jones.

8 Malice, ladies and gentlemen, malice. The judge will
9 define malice for you, but it can be expressed or implied.
10 Express, I'm gonna kill him point blank. I am going to kill
11 him. He pulls up the day after with D-White, Mr. Jones
12 asked him, what are you gonna do, shoot me, damn right.
13 Bam.

14 There's the plan the night before. Here's; here's the
15 continuation of it and there's the follow through.
16 11/12/13. Even asked Mr. Seay, like I told you, what type
17 of weapon. I don't know. It's like a shotgun. I'm not a
18 very good artist.

19 Can you draw it for us?

20 Pistol grip, full grip, shotgun. Shotgun as drawn by
21 Mr. Blaine Seay.

22 Ladies and gentlemen, I want to get to Mr. Derrick
23 white, and I'm gonna use a unusual way to get there, to talk
24 about the testimony of Mr. white.

25 Let's talk about Doctor Wren. Doctor Wren, the

1 pathologist; expert in his field, told you what happened.
2 Large bore slug. Not a bullet.. Not shot pellets, things of
3 that nature. A large bore slug like from a shotgun. But he
4 admitted to you it could of been from, from some large
5 handgun, handgun he doesn't know exists, but it's a large
6 bore slug. It bores into the skin when fired. That's what
7 happened here.

8 He tells you about the midline from the armpit here,
9 and how far it's down, how wide this is. It -- it's more
10 than twice the size of a .44 Magnum, caliber Magnum bullet.
11 Here's the important thing he tells you.

12 Is it consistent with, with an entry wound where the
13 victim was turning?

14 Yes.

15 Do you think Mr. D-White and Doctor Wren have ever met?

16 D-White tells you the exact same thing. Derrick White.
17 Shotgun comes out.

18 What you gonna go, shoot me?

19 Damn right.

20 He tries to dodge the bullet. That's what Derrick
21 White tells you. He was unsuccessful -- excuse me. He
22 tries to dodge the slug. He was unsuccessful.

23 Doctor Wren totally corroborates his testimony. It was
24 a shotgun in the back seat, he pulls it, what you gonna do,
25 shoot me, damn right, shoots him, tries to avoid it, and

1 less than ten minutes he's dead. He bleeds out, through and
2 through entry -- and entry and exit.

3 Everything Derrick white told you is the truth backed
4 up by medical science. Not because he lied on the stand.
5 He took an oath. Not because there was some conspiracy by
6 Doctor Wren and Derrick white and Shaina Wallace and Darien
7 Seay. Because Doctor Wren told you when that, before the
8 slug was fired, he turned. He saw the picture of the
9 incident site.

10 The car's on the roadway. There is the victim maybe
11 10-feet. Again, corroborated Mr. White's testimony. Doctor
12 Wren saying there's no stippling. That -- they weren't,
13 weren't close together. The barrel wasn't pressed against
14 the defendant -- the victim in this case. There's no powder
15 burns. He's far, far enough away.

16 He's also far enough away that, in the victim's mind, I
17 have a chance to run, but he couldn't dodge that slug.

18 The only person not afraid of this gentleman is dead.
19 why?

20 Because he wasn't afraid of him.

21 What are you gonna do, shoot me?

22 Damn right.

23 Everybody else knew -- it was afraid of him, I grant to
24 you, gave inconsistent statements. They were fearful for
25 their lives. His girlfriend went to a motel and I'm sure

1 it's gonna -- it seemed like she said okay, I'm at the hotel
2 with our son and come over here with us. That's not what
3 she said.

4 He found us. He found us. She went and got their
5 child and tried to get to a safe place because of fear in
6 this situation.

7 Ladies and gentlemen, I give -- thank you for your
8 indulgence. I give it to you in this situation, as Mr. Bain
9 said, we don't have any ballistics in this case. We don't
10 have any fingerprints. We don't have any DNA, but what we
11 do have is witness testimony, and as far as the weapon in
12 this situation, we know who had possession of the weapon
13 before, during, and after this shooting.

14 He doesn't get points for the weapon not being found.
15 He doesn't get credit for that. Well, don't lay this at the
16 police officers' feet, the City Police Department. They did
17 their job. They interviewed witnesses. They got
18 statements. They got evidence. Even the Coroner's Office,
19 a concurrent investigation, got pictures. Doctor Wren, in
20 this situation.

21 We don't have the weapon in this case. I don't know
22 where it is. All I know is he doesn't get credit for it
23 because he had it before, during, and after.

24 Ladies and gentlemen, this gentleman is guilty of
25 murder, plain and simple, the killing of another individual

1 with malice aforethought. It can happen the day before. It
2 can happen the second before. This isn't a television show.

3 He doesn't have to come up with some crafty complicated
4 plan because he didn't. People sitting around drinking,
5 there was an argument, he got knocked out, and he didn't
6 like it. Scuffle, scuffle, scuffle. I'm going to get my
7 gun. I'm gonna go kill this man. He couldn't find him that
8 night.

9 The next day, he and Mr. Derrick White go to his house.
10 Derrick White tells you hey, I thought I was just gonna film
11 this, make it a viral video, get some hits.

12 I don't understand it. I'm not a young kid. I don't
13 know why that would be popular on the Internet, but it is.

14 That's what he thought was gonna happen and he tells
15 you exactly what did happen. A man who wasn't afraid,
16 walked up to the car, what you gonna do, shoot do. Well, we
17 see how that turned out.

18 Doctor Wren corroborated his story exactly. He turned
19 to run, and shot under his arm, fell to the ground, has
20 contusion, contusion from falling into whatever, against
21 whatever, the ground in this case, bleeds out, dies. Fancy
22 word, exsanguination, in less than ten minutes, in less than
23 ten minutes.

24 What did he say?

25 Go.

1 Let's go.

2 Deadly weapon, shotgun in this case. If you find him
3 guilty of murder, he is guilty of using a weapon during the
4 commission of a violent crime. If he's guilty of murder,
5 he's guilty of the second charge also.

6 From a sucker punch to a shotgun, okay, fine. It
7 didn't have to go this far. It also went to the only person
8 who stood up to him and who wasn't afraid of him is dead.
9 Don't give him credit for that either.

10 Thank you.

11 THE COURT: Mr. Poole, for the defense.

12 MR. POOLE: Thank you.

13 THE COURT: Yes, sir.

14 MR. POOLE: May it please the Court---

15 THE COURT: Yes, sir.

16 MR. POOLE: ---and counsel.

17 (Pause.)

18 MR. POOLE: I don't mean to turn my back on you. I
19 know you're there.

20 The State has a very succinct way of putting a theme of
21 a case in from sucker punch to shotgun. It's not that
22 simple.

23 All of us, in one way or another, are associated with
24 promoting, selling, or providing goods and services to
25 others if you're working, and teachers promote knowledge,

1 conceptual understanding, and knowledge development. Some
2 people sell their services related to construction,
3 healthcare, other fields.

4 The State's case, lawyers in this environment, are also
5 promoters of a particular item and that is their client's
6 position. But exceptionally, in this context, the state has
7 the burden of proof, in each and every case, of proving the
8 defendant's guilt beyond a reasonable doubt. The defendant,
9 in this case, is Eric Owens.

10 Has the State carried its burden?

11 No.

12 And a phrase such as sucker punch to shotgun, that's
13 the theme they're trying to sell.

14 By what means do they sell it?

15 It's unsalable. It lacks content.

16 Mr. Gray stated to you, and I'll take it sort of in the
17 reverse order, that his girlfriend, that is Shaina Wallace,
18 sought refuge at the hotel, which I believe was the Red Roof
19 Inn.

20 You saw her testimony yesterday and I asked her, and I
21 asked her, and did you see how it changed over the time that
22 she was on the witness stand?

23 She stated that she went there and, first of all, the
24 record would reflect this, she stated that Mr. Owens came to
25 visit her, and then I asked her again and I said did he

1 spend the night with you, a night with you, and she said
2 yes.

3 I said did she -- did he spend two nights with you.
4 she said yes.

5 Did he spend three nights with you?

6 She said yes.

7 So while she was there at Red Roof Inn, Eric Owens was
8 there.

9 Now, how does that square with the state's position
10 that everybody is afraid of Eric Owens?

11 Going back to her further testimony, she stated that,
12 on the night of the alleged fight, and you've heard
13 different versions about this, you've heard everything to
14 where they don't know whether there was a fight or if there
15 was an actual physical fight or if there was a -- merely an
16 exchange of words, that they went to Eric Owens house, got a
17 gun, he got in the car. Now, bear in mind everybody has
18 been drinking liquor and beer. They go back over to
19 Blaine's house and he's looking for Man. Man not being
20 there, Ms. Wallace testified that they stopped somewhere and
21 picked up her son.

22 Now, that's not true. A mother who has in a car with
23 an enraged man with a shotgun would not pick up her daughter
24 and put her in danger; put her in the same car with that
25 enraged, drunken, armed person. It's not true.

1 Then the solicitor, Mr. Gray, said that everything
2 Derrick White tells you is the truth. Oh, no, that's not
3 the case either.

4 Derrick Lee White gave, through the testimony, this
5 won't be in evidence, but through his testimony, gave one,
6 two, three, four, five statements, all of them different,
7 for a period of four months. And he stated that -- I asked
8 him, I says, anything untrue in any statement. He said
9 yeah, the first four are untrue.

10 So, you know, what you got, you got your cherry picking
11 going on here. We're gonna pick out this statement and say
12 this is the prevailing one. We're gonna take this witness'
13 statement and say this is the prevailing one, and then
14 they're gonna take another defendant's statement and says
15 this is the prevailing one. This is the one you should
16 believe.

17 Well why?

18 Why should you?

19 Why should you believe someone whose given so many
20 inconsistent statements and pick out one over another
21 especially after four months of an ongoing investigation and
22 they want you to take the last one and believe that?

23 Four months is enough time to transpire for people to
24 get together, get a story, collude, and say all right, this
25 is what we're gonna go with, and this is why we're gonna

1 bring Eric Owens into Court and prosecute him for murder and
2 the weapons charge.

3 Derrick Lee White has pled guilty and he is going to be
4 sentenced later.

5 Don't you think that, for his testimony for the State,
6 he expects to be rewarded?

7 That remains to be seen. Derrick White, who the State
8 again says everything he told you is true, was convicted in
9 2006, burglary third. Derrick White, in 2007, was convicted
10 of receiving stolen goods. Derrick White, in the same year,
11 on one occasion, pled guilty to three burglaries and
12 receiving stolen goods, a convicted felon with five
13 inconsistent statements who the case -- the State says
14 everything you can believe he says is true. No, that's not
15 realistic at all.

16 So you've got these statements that you will have, the
17 statement of Ms. Wallace, statements of Ms. Wallace, stack
18 and pack of lies number one, and then the statements of
19 Darien Seay, stack and pack of lies number two. You'll have
20 them. I urge you to read them.

21 What you'll see is a development of a convergence of
22 focus. Everything from what they don't know anything about
23 and Eric Owens wasn't involved in anything to really
24 specific information. Yeah, he was there. He was the one
25 that shot Mr. Jones after four months and these lies, and

1 the State is trying to sell you from shot -- from what did
2 he say?

3 From sucker punch to shotgun theory?

4 No, that's not good enough, ladies and gentlemen.
5 That's simply not good enough.

6 At the beginning of this case there was mention, I
7 think the judge mentioned it or I think I mentioned it, that
8 what this is going to be -- boil down to is the credibility
9 of witnesses. These witnesses are simply incredible to
10 carry the State's burden.

11 Now, it's a high standard. We know beyond a reasonable
12 doubt does not mean beyond every doubt. But the definition
13 of it means a doubt that would hesitate -- that would cause
14 a reasonable person to hesitate to act, and I submit to you
15 that there should be some hesitation of action on your part
16 before you, before you convict this man of murder and this
17 weapons charge. I think there should be hesitation and that
18 is not -- does not rise to the level of proof beyond a
19 reasonable doubt.

20 I'm not going to go over the inconsistencies in this
21 statement other than they have -- are admitted by the State
22 that they are inconsistent, the statements of Derrick White,
23 the statements of Darien Seay, who, by the way, he didn't
24 see the altercation and who also said most statements are
25 untrue. He gave four. Those are his exact words. Most.

1 statements are untrue. Cherry picking. Pick out the one
2 that I want you to pick out.

3 Then there is a curious statement that has not -- is a
4 young lady by the name of, I keep leaving my stuff
5 everywhere, Talina Wallace. I read her statement to her and
6 her statement is not going to be in evidence, but what she
7 said, and she agreed that this was her statement, says on
8 the day of the murder, I saw Eric Owens and D-White pull up
9 in D-white's baby mama's gold car. Blaine, white male, was
10 there also. Then they were all in the front yard and talked
11 for a few minutes. Then D-White and Blaine left, but I
12 don't know if they left together.

13 That statement is uncontroverted. It's not an --
14 consistent with any other statement, and her version is
15 just, in fact, more so credible than anything that has been
16 offered so far in this case.

17 That shows that nobody was afraid of anybody. This
18 fear and trembling thing against Eric Owens is not real. It
19 simply didn't last for the course of four months, and it
20 simply did not exist at all. It's a good way to help
21 persuade you to cherry-pick through these statements.

22 Now, the word verdict comes from old Latin from
23 veritas, which means truth, and dicta, which means to speak,
24 and I am asking you to return a verdict that speaks the
25 truth. After you go over everything, I, I submit to you,

1 ladies and gentlemen, if you consider what I've said and
2 consider the evidence that the only verdict that's gonna
3 speak the truth in this case is a verdict of not guilty
4 against Eric Owens. The case has not -- the State has not
5 met its burden of proof. It falls far short.

6 You can have one, two, three, four leaky buckets, but
7 it doesn't hold water like one unleaky bucket.

8 Find him not guilty.

9 THE COURT: All right. Ladies and gentlemen, that
10 completes the closing arguments by counsel in the matter and
11 I told you that when we reached this stage of the
12 proceedings it would be my responsibility to charge you
13 concerning the law to be applied in this case.

14 When we began this case we went over with you the
15 indictment in this matter. I'm going to go over it with you
16 again at this time, and the indictment will be given to you
17 to take back into the jury room for you to consider during
18 your deliberations. I explained, at that time, that the
19 indictment is the document that brings the case into the
20 Court, and it informs us of the charges to be tried, and it
21 informs the defendant of the charges that have been lodged
22 against the defendant.

23 The indictment is in Case Number 2014-GS-42-2236.
24 There are two counts in this indictment or two charges in
25 the indictment. Count One is for the offense of murder.

1 The indictment states that Eric Lamont Owens, did, in
2 Spartanburg County, on or about November 12 of 2013,
3 feloniously, willfully, and with malice aforethought kill
4 one Stanley Jones by shooting the victim in the back and
5 chest and that the said victim died as a proximate result
6 thereof in violation of Section 16-3-10 and 20 of the Code
7 of Laws of South Carolina, 1976 as amended.

8 Count Two is for the possession of a firearm during the
9 commission of a violent crime. That indictment or that
10 count of the indictment states that Eric Lamont Owens did,
11 in Spartanburg County, on or about November 12th, 2013,
12 possess a firearm during the commission of a violent crime
13 as defined in Code Section 16-1-60, to wit, murder, in
14 violation of Code Section 16-23-490 of the Code of Laws of
15 South Carolina, 1976 as amended, against the peace and
16 dignity of the State and contrary to the statute in such
17 case made and provided.

18 That is the document -- the indictment that's before
19 the Court and I'll remind you now the fact that a defendant
20 has been arrested, charged, and indicted in a case, those
21 facts are not evidence in the case. The indictment is not
22 evidence in this case and can not be considered by you, the
23 jury, as evidence of guilt in the case nor does the fact
24 that an indictment has been issued create any presumption or
25 inference of guilt.

1 Again, that's simply the document that brings the case
2 into Court. It's the formal document by which this Court
3 has tried this case.

4 Now, those are, those are two charges in the
5 indictment, and I'll go over those charges with you
6 separately later on and explain to you what is meant by
7 those code sections and what is meant by those charges.

8 Now, the defendant has pled not guilty to that
9 indictment, and that plea places the burden of proof upon
10 the State to prove the defendant guilty. You know, a person
11 who's charged in an indictment with the commission of a
12 criminal offense is never required to prove himself
13 innocent. I charge you that it's an important rule of law
14 that a defendant, in a criminal trial, no matter how serious
15 the crimes that are alleged might be, will always be
16 presumed to be innocent of the crime for which the
17 indictment has been issued until and unless guilt has been
18 proven to you, the jury, by evidence that satisfies you of
19 that guilt beyond a reasonable doubt.

20 Now, the presumption of innocence doesn't end when you
21 begin your deliberations. It accompanies the defendant
22 throughout the trial and into your deliberations. Some
23 people have described that presumption of innocence somewhat
24 like the robe that a judge wears into the courtroom.

25 It -- that presumption of innocence or that robe is

1 about the defendant's shoulders at the beginning of the
2 trial. It remains about his shoulders throughout the trial.
3 It accompanies the defendant into your deliberations and is
4 still about his shoulders as you deliberate on the case, and
5 it remains about his shoulders until and unless it is
6 stripped from him by evidence that satisfies you of the
7 defendant's guilt beyond a reasonable doubt.

8 The presumption of innocence, therefore, is not just a
9 legal phrase. It's not just a legal theory. It's a
10 substantial right that every defendant is entitled to unless
11 you, the jury, are satisfied, from the evidence in the case,
12 of the defendant's guilt beyond a reasonable doubt.

13 Now, you may ask yourself well, what do you mean by a
14 reasonable doubt or just what is a reasonable doubt, and I
15 will tell you that the law has defined a reasonable doubt as
16 that kind of doubt that would cause a reasonable person to
17 hesitate to act and the State has the burden of proving the
18 defendant guilty beyond a reasonable doubt.

19 Now, I want to explain one distinction to you because I
20 don't want there to be any confusion on this point. As I
21 explained to you, and as you're aware, there are different
22 types of cases that come before our Courts. One type of
23 case is referred to as a civil case or civil cases, and the
24 other type of case generally is what we refer to as criminal
25 cases where someone's been charged with the commission of a

1 crime. The burden of proof or the standard of proof in
2 those two types of cases is different.

3 So if you've ever been involved in a civil case, and a
4 civil case is where someone is seeking monetary damages, and
5 that can be for various reasons. It can be because of a
6 breach of contract or a failure to pay a debt or someone is
7 injured somebody and is responsible for the damages that
8 they've caused. So that's a civil case where someone's
9 seeking monetary damages.

10 In those cases the standard of proof for someone to get
11 a verdict is by the greater weight of the evidence, the
12 scales of justice tilting ever so slightly in favor of
13 either the claimant, the plaintiff, or the defendant. So
14 the standard proof in a civil case is not as powerful or as
15 strong as the standard of proof in a criminal case. In a
16 criminal case, the standard proof is proof beyond a
17 reasonable doubt.

18 Now, proof beyond a reasonable doubt is that kind of
19 proof that would leave you firmly convinced of the
20 defendant's guilt. I will tell you that they're very few
21 things that go on in human life that can be proven beyond
22 any doubt whatsoever and the state does not have that
23 burden. They do not have the burden of proving their case
24 beyond any possible doubt.

25 But what I will tell you that if, after your

1 consideration of all of the evidence in this case, if you
2 are firmly convinced of the defendant's guilt beyond a
3 reasonable doubt, you must find the defendant guilty.
4 However, on the other hand, if you think there's a real
5 possibility that the defendant is not guilty, then you must
6 give him the benefit of that doubt and find the defendant
7 not guilty.

8 Now, during the trial, you and I have had different
9 duties to perform and it's been my responsibility to preside
10 over the case and to, to rule on certain questions, and if
11 there was anything, and I can't recall anything specific,
12 but if there was anything that I ruled out of order or did
13 not allow to go in the record, you shouldn't consider those
14 matters at all in reaching a verdict in this case. You're
15 only to consider the evidence that was placed into the
16 record of the case during the trial in reaching your verdict
17 in this case.

18 I have the additional duty of charging you on the law
19 in the case, and, as the presiding judge, I told you, at the
20 beginning of the trial, I am the sole and exclusive judge of
21 the law in this matter. So if you came into the courtroom
22 with a indication or an idea or a notion as to what the law
23 is or what it ought to be, leave those notions outside of
24 the jury room before you begin your deliberations. Take the
25 law exactly as I give it to you, apply that law to the facts

1 as you determine the facts to be, and that should put you in
2 a position to render a fair and a true verdict in this case.

3 And in this case -- in this Court, I will tell you
4 anytime there's a jury present, the jury is the sole and
5 exclusive judge of the facts in this case. You should not
6 take from anything that I say or do during and in the
7 exercise of my duties as the trial judge to sound -- somehow
8 indicate to you that I have an opinion as to how you should
9 determine the facts in this case. I've told you already the
10 law doesn't allow me an opinion as to the facts. I do not
11 have an opinion as to how you should determine the facts in
12 this case.

13 So, again, don't take from anything that I say or do,
14 even during this charge on the law, to somehow indicate to
15 you that I have an opinion one way or the other as to how
16 you determine the facts in this matter. The question of the
17 facts is a matter solely for you, the jury, to determine.
18 As jurors, it's your duty to determine the value, the
19 effect, the weight, and the truth of the evidence that's
20 been presented to you during the trial.

21 Now, in deciding any case, you have the right to
22 consider generally two types of evidence and let me explain
23 to you what I mean by two types of evidence. The first type
24 of evidence I'll discuss with you is what the law refers to
25 as direct evidence.

1 Now, direct evidence is testimony from a witness who
2 claims to have direct knowledge of the facts about which
3 that witness testified, a participant in the event, an eye
4 witness, someone who actually experienced the facts about
5 which that person is testifying. It's been described as
6 testimony as to a fact directly on a fact which is sought to
7 be proven. So that's what we mean by direct evidence.

8 The other type of evidence that I want to discuss with
9 you is circumstantial evidence. Circumstantial evidence is
10 proof of a chain of facts or circumstances that indicate the
11 existence of another fact. It's been described as proof of
12 collateral facts from which a main fact might be reasonably
13 inferred.

14 Now, I like to use a very simple example as to what we
15 mean by proof of a fact by circumstantial evidence and
16 some -- my simple example is this.

17 Let's say, last night, before you went to bed, you
18 looked outside the window in your bedroom and you looked
19 outside. The stars were shining. It was a beautiful night.
20 You went to bed. You slept well all night. You didn't wake
21 up at all.

22 So the next morning you got up and you happened to walk
23 over to the same window. You looked out the night before,
24 and when you looked out, the sun's shining, but then when
25 you looked a little closer, you notice there's water

1 dripping out of all the trees. There's water on the grass
2 in front of your house. There's puddles in the driveway or
3 the road in front of the -- your house that weren't there
4 the night before.

5 Now you slept all night. You didn't see it rain. You
6 didn't hear it rain. So you didn't directly experience that
7 fact, but from the collateral facts that you know to be
8 true, there's water dripping out of the trees, the grass is
9 wet, there's puddles in the driveway that weren't there the
10 night before, from those facts that you know to be true, you
11 can reasonably infer that, at sometime during the night, it
12 rained.

13 Now -- so that's what we mean by proof of collateral
14 facts from which a main fact can be reasonably inferred. I
15 consider that a lot of legal talk and I think that's a more
16 simple example to explain to you what we mean by proof of,
17 of facts by inference.

18 Now, the law doesn't make a distinction between the
19 weight or the value that you can give to either direct or
20 circumstantial evidence nor is there a greater degree of
21 certainty required of circumstantial evidence than of
22 direct. I will tell you, as jurors, you should weigh all of
23 the evidence in the case, and I will explain to you, after
24 weighing all of the evidence, if you're not convinced of the
25 guilt of the defendant beyond a reasonable doubt, you must

1 find the defendant not guilty. However, on the other hand,
2 if you're firmly convinced of the defendant's guilt beyond a
3 reasonable doubt, you must find the defendant guilty.

4 Now, in doing your job as the finders of fact, it's
5 necessary that you determine the credibility or the
6 believability of the testimony that you've heard.
7 Credibility simply means that. It means believability.
8 It's your duty, as jurors, to analyze and evaluate the
9 evidence. You determine which evidence convinces you of its
10 truth.

11 In determining the believability of witnesses who've
12 testified in any case, you have the right, as the sole
13 judges of the facts, to believe one witness against all the
14 others. You have the right to believe all the others;
15 against one. You have the right to believe all of, part of,
16 or none of what a witness may have told you in the case.
17 You can consider whether or not a witness exhibited either
18 an interest in the case, a bias, or a prejudice one way or
19 the other, some motive in testifying. You can consider the
20 appearance, the manner of a, of a witness as they testify
21 while they were on the witness stand as I urged you at the
22 beginning of the trial. Use your own good common sense to
23 make determinations as to the credibility and the
24 believability of the testimony that you've heard in this
25 case.

1 Now, during the trial, we had one witness who was
2 qualified as an expert witness, and I told you, at that
3 time, I'd talk to you a little bit more about that during my
4 charge on the law, and I explained, when that happened, when
5 that witness testified, that the rules of evidence don't
6 ordinarily, ordinarily allow witnesses to testify as to
7 their opinions or their conclusions. The exception of that
8 rule is for witnesses that we call as expert witnesses, and,
9 again, that's a witness, because of their education or
10 experience, is become an expert in a science, a field, or a
11 profession.

12 And as to those witnesses that are so qualified, we
13 allow them to state opinions within -- as to relevant
14 material matters within the field which they claim to be an
15 expert in. They also have the right to state the reasons
16 for those opinions.

17 Now, you, the jury, have the right to consider the
18 testimony of an expert or an expert opinion received in
19 evidence just like any other evidence. You have the right
20 to give it the weight you think it deserves. If you think
21 or you find that the opinion of an expert is not based on
22 sufficient education or experience or should you conclude
23 that the reasons given in support of an opinion are not
24 sound or if you decide that the opinion's outweighed by
25 other evidence, you have the right to disregard those

1 opinions, if you choose to, even in their entirety. An
2 expert's testimony is not to be given any greater weight
3 simply because that persons been declared to be an expert by
4 the Court, and you're not required to accept an expert's
5 opinion even though it might not be -- even though it's not
6 contradicted. So, again, you should weigh all of the
7 evidence in the case, even the testimony given by an expert
8 witness.

9 Now, there has been evidence presented in this case
10 that witnesses may have made prior statements which are not
11 consistent with the witnesses present testimony. You may
12 use this evidence to decide whether or not to believe the
13 witness. You may also use this evidence of earlier
14 contradictory statements to determine the truth of those
15 statements. It's up to you, the jury, to decide whether to
16 believe the earlier statements or the statement given during
17 the trial.

18 If a witness is shown to have knowingly testified
19 untruthfully concerning any material matter, you may
20 consider this in determining whether to trust the witnesses
21 testimony as to other matters. You, the jury, as the sole
22 finders of the fact, have the right, again, to believe all
23 of, part of, or none of what a witness may have told you.
24 You have the right to reject the testimony of a witness or
25 give it the weight you think it deserves.

1 Again, you're the sole judges of the facts. You're the
2 sole judges of the credibility of the witnesses that, that
3 have testified, and I will tell you also that there have
4 been people who testified in this case who had past or prior
5 criminal records.

6 I will tell you that a person who has a past criminal
7 record is competent or is allowed to testify in a court of
8 law or in a trial. A past, past record does not affect the
9 ability of the witness to testify. The past record may be
10 considered by you, if at all, in determining, again,
11 credibility or believability.

12 Remember, you're the sole judges of the facts in this
13 case, and you're the sole judges as to the believability of
14 any and all witnesses who have testified during the trial.

15 Now, I told you I would go over with you the specific
16 charges that are in the indictment. The first charge I'll
17 discuss with you now is the charge of murder.

18 The defendant is charged in the indictment with that
19 offense and the State must prove, beyond a reasonable doubt,
20 that the defendant killed another person with malice
21 aforethought.

22 Now, malices is hatred, ill will, or hostility toward
23 another person. It's the intentional doing of a wrongful
24 act without just cause or excuse and with an intent to
25 inflict an injury or under circumstances that the law would

1 infer such an evil intent.

2 Now, malice aforethought does not require that the
3 malice exist for any particular length of time before the
4 act is committed, but malice must exist in the mind of a
5 defendant just before and at the time the act is committed.
6 Therefore, there has to be a combination between the
7 previous evil intent or malice and the act.

8 Malice aforethought can be either expressed or
9 inferred. These terms express or inferred do not mean
10 different kinds of malice, but these words merely describe
11 the different manners or ways in which malice can be shown
12 to exist. These types of malice may be shown either by
13 direct evidence or by inference from the facts and
14 circumstances which have been proven during the trial.

15 Express malice can be shown when a person, when a
16 person speaks words which express hatred or ill will for
17 another or when the person prepared beforehand to do the act
18 which was later accomplished. This can include the doing of
19 any other acts of preparation to accomplish the act or that
20 go to show that the deed was within the defendant's mind
21 prior to its accomplishment. These factors can be taken by
22 you as an act of expressed malice. Malice can be inferred
23 from any conduct showing a total disregard for human life.

24 Now, the second charge or Count Two in this is the
25 possession of a weapon during the commission of a violent

1 crime, and the defendant is charged with that offense as
2 well. The State, in this case, must prove, beyond a
3 reasonable doubt, that the defendant was in possession of a
4 firearm during the commission of a violent crime.

5 Now, a firearm means such things as a machine gun, an
6 automatic rifle, a revolver, a pistol, or any weapon which
7 will and is designed or may be regarded or converted to
8 expel a projectile. In order to find the defendant guilty
9 of the possession of a weapon during the commission of a
10 violent crime, you must find the defendant first guilty of
11 committing the violent crime or attempting to commit the
12 violent crime, and I will tell you that, under the law of
13 this state, murder is classified as a violent crime. The
14 State must prove, beyond a reasonable doubt, that the weapon
15 furthered, advanced, or helped in the commission of the
16 crime.

17 Now, ladies and gentlemen of the jury, first of all,
18 Mr. Hamilton, you're the gentleman seated right in the front
19 in the yellow shirt. You're going to be the foreperson of
20 the jury. I don't know why you sat in that seat, but it
21 turns out to be the appropriate seat.

22 That means that you're going to be the person who is
23 going to be conducting the, the discussions of the jury.
24 If, during deliberations, the jury has a question that the
25 jury would like to ask of me, then I would get you to get

1 the jury to agree on the form of the question, knock on the
2 door, inform the bailiff. You'll put the question in
3 writing on a piece of paper, hand it to the bailiff, the
4 bailiff will submit the question to me. I'll consider it --
5 the question.

6 I will tell you now that I'm not allowed to answer each
7 and every question you might have during deliberations.
8 I've already explained to you I can't get involved in your
9 decisions on the facts. You're the sole judges of the
10 facts. I can answer questions concerning my charge on the
11 law. I can answer certain questions about the procedure we
12 followed, and I can assist you in either retrieving or
13 interpreting evidence that you might have heard during the
14 trial, but I can't get directly involved in your decision on
15 the facts.

16 But, Mr. Foreman, I don't want you to edit any question
17 the jury has. Whatever the question the jury wants to ask
18 me, submit it to me. I'll decide what's the appropriate
19 answer or, or answer -- whether I can answer it at all at
20 that time.

21 Also, I'm going to give you a verdict form in a little
22 bit and I'm going to go over it with you, and, and I will
23 explain to you how we'll use the verdict form. It will have
24 two questions for the two counts that are on the indictment,
25 and it will provide choices as to those two counts.

1 Now, before the jury can reach a verdict on any matter
2 that's put before you, that verdict must be unanimous. All
3 12 of you must agree upon the verdict before it becomes the
4 verdict of the jury.

5 So there is no verdict until the jury has reached
6 unanimous agreement on any question that's been presented to
7 the jury. Now, once unanimous agreement has been reached,
8 then you'll record that on the verdict form that you've been
9 provided. Once the form is completed, you'll knock on the
10 door, inform the bailiff that a verdict's been reached.
11 You'll be brought back into the courtroom for the Court to
12 receive the verdict.

13 Now, I do note that it's about 15, 20 minutes to twelve
14 o'clock. We're going to be sending you back for
15 deliberations shortly. If it becomes apparent that the
16 deliberations may go through the lunch hour, we can provide
17 lunch to you in the jury room. It takes about an hour for
18 us to order lunch and get it delivered here. So, if you
19 decide you want to do that, let us know in time for us to
20 take care of that.

21 But at any rate, if you do want us to do that, we'll be
22 glad to provide it to you. If it becomes necessary for
23 someone to come into the jury room to assist you with lunch,
24 either by taking an order or by delivering it to you, while
25 that person is in the jury room, you should stop or suspend

1 your deliberations. Don't discuss the case and just a --
2 when there's anyone in the jury room other than a member of
3 the jury panel.

4 So you only discuss it among yourselves. Not with
5 someone else when present. Once that person leaves you can
6 resume your deliberations, but don't discuss the case while
7 that person might be in the jury room.

8 I've gone over a good bit with you and we're going to
9 allow you to have the exhibits to go back into the jury room
10 with you for your consideration. We got to be sure we don't
11 send anything back that shouldn't go back.

12 So I'm going to go over some matters with the
13 attorneys. Just a few housekeeping matters I have to take
14 care of right now before I tell you to begin your
15 deliberations.

16 So I'm gonna ask you one more time, and this should be
17 the last time that you -- I ask you to go back to the jury
18 room. Don't begin any discussions until I bring you back
19 for final instructions.

20 You may retire to the jury room at this time.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Exceptions to the charge from the State?

24 SOLICITOR GRAY: No, sir, Your Honor.

25 THE COURT: Any from the defense?

1 MR. POOLE: No, Your Honor. Just that I would renew my
2 request that the Court instruct manslaughter.
3 THE COURT: I'm -- I'll accept that request and I will
4 give the same response. I'm not going to charge that to the
5 jury.
6 I'll ask you---
7 MR. POOLE: May we approach?
8 THE COURT: I'll ask you to come forward and go over
9 the exhibits?
10 MR. POOLE: Could we approach first, Your Honor?
11 THE COURT: Yes, sir, uh-huh. (Affirmative).
12 I've got the verdict form here. I want you to review
13 it while you're at the bench.
14 (WHEREUPON, a bench conference was held at this time.)
15 THE COURT: All right. Have we agreed upon the
16 verdict, the exhibits to go back?
17 MR. POOLE: Yes, sir.
18 SOLICITOR GRAY: Yes, sir.
19 THE COURT: All right. They've been segregated.
20 Any objection to the verdict form from the State?
21 SOLICITOR GRAY: No, sir.
22 THE COURT: Any from the defense?
23 MR. POOLE: No, sir.
24 THE COURT: All right. Let's bring the jury back
25 please.

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: All right. The record will reflect the
4 jury's returned to the courtroom.

5 Mr. Hamilton, I've had the bailiff hand you the verdict
6 form that we're gonna use in this case. Let me go over it
7 with you.

8 At the top it will have the state and county and the
9 court that we're located in. Below that are the names of
10 the parties, the State of South Carolina against Mr. Owens,
11 and then below that are the questions that are being posed
12 to the jury.

13 The first question is, as to Count One, in the
14 indictment, that is the offense of the murder -- of murder.
15 The jury unanimously finds either guilty or not guilty.
16 Those two choices are below that.

17 Now please don't take from the fact that I've placed
18 those choices in any particular order on that form to
19 somehow indicate to you that I've got a preference. I can
20 assure you they are in that order on every verdict form I've
21 ever done in, in Court. So I never change that. So that's
22 no preference on my part. That's just the order they are on
23 my computer and they come out the same way when we do the
24 verdict form. So that -- don't take that as a preference.

25 Now, below that there's an instruction. Should you

1 find the defendant guilty of the offense of murder, then you
2 would need to ask -- answer question number two, which is
3 whether or not he would be guilty of the possession of a
4 firearm in the commission of a violent crime, and, again,
5 the choices there are either guilty or not guilty.

6 Now, should you find the defendant not guilty of the
7 crime of murder, you would not need to answer question
8 number two because he would not have been guilty of the
9 violent offense.

10 You understand how that would work?

11 THE FOREMAN: Yes, sir.

12 THE COURT: All right. Then once the form is been
13 completed, there's a place for you to sign it. Once you've
14 signed it and it's been completed, inform the bailiff that a
15 verdict's been reached and then you'll be returned to the
16 courtroom.

17 We have segregated the exhibits. The bailiffs will
18 bring those back to you for your review, and I will send
19 back the indictments so that you can review the indictment
20 should you need that in your verdict.

21 Again, should you decide that you need for us to order
22 some lunch for you, just let us know by letting the bailiff
23 know. We'll take care of that at that time.

24 So, at this time I'm going to ask the jury to retire to
25 begin your deliberations toward -- in -- toward reaching a

1 verdict.

2 You're the alternate, sir. I'm gonna ask you to remain
3 seated while the jury retires at this time.

4 So you may retire to the jury room.

5 Thank you very much.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 (WHEREUPON, the alternate juror was dismissed at this
9 time.)

10 THE COURT: All right. Any objections to my final
11 instructions from the State?

12 SOLICITOR GRAY: No, sir.

13 THE COURT: Any from the defense?

14 MR. POOLE: No, sir.

15 All right. We'll be in recess in this case until a
16 verdict is reached. Thank you.

17 Everyone remain seated while the defendant leaves the
18 courtroom please.

19 (Pause.)

20 THE COURT: All right. We're in recess.

21 Thank you very much.

22 (WHEREUPON, the jury began deliberations at 11:50PM and
23 returned with a question at 1:21PM.)

24 THE COURT: All right. I have, I have received
25 inquiries from the jury.

1 At this time is the State ready to have the jury come
2 back in?

3 SOLICITOR GRAY: Yes, sir.

4 THE COURT: Defense ready?

5 MR. POOLE: Yes, sir.

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

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: All right. The record will reflect the
10 jury has returned to the courtroom.

11 I've received three questions from the jury and I'll go
12 over these -- the first two together and then the last one
13 separately.

14 The first one is what day was Eric Owens arrested. The
15 second one is when was D-White arrested on this charge.

16 To the extent that that information is not already in
17 the record I can not provide that information to you at this
18 point in time. In other words, the date of arrest, if it
19 was testified to, would, would be in the record. I don't
20 know whether it was or wasn't, but, at any rate, I can't add
21 that information into the record at this time.

22 Then the final question is Eric Owens out on bond or
23 currently in jail. I will tell you that that is not a
24 factor that should be considered by you in this case.

25 The question before you is the guilt or the innocence

1 of the defendant of the charges presented. So that is not
2 something that should be considered by you at all in
3 reaching a verdict in this case and I can not answer that
4 question for you at this time.

5 I do want to supplement my earlier instructions to you
6 in one respect. When I went over my instructions with you,
7 I pointed out to you that the defendant is presumed to be
8 innocent and the State has the only burden of proof in this
9 case and that a defendant is never required to prove himself
10 innocent of a charge.

11 I did not go so far as to, to explain one other thing
12 to you that I feel that I should explain to you at this
13 time. I'm going to instruct to you and emphasize to you the
14 fact that the defendant did not testify in this case is not
15 a factor to be considered by you at all in reaching a
16 verdict in this matter. It must not be considered by you in
17 any manner whatsoever.

18 A defendant has a constitutional right to remain
19 silent, and the assertion of this right must not be
20 considered by you in your deliberations at all. I repeat,
21 under your oath as jurors, you are to draw no conclusions
22 from -- whatsoever from the fact that the defendant did not
23 testify in the case. The fact that the defendant did not
24 testify should not even be discussed by you in the jury
25 room.

1 Again, the burden of proof is upon the State to prove
2 the defendant guilty of the offenses alleged in the
3 indictment. The defendant is not required to prove his
4 innocence. The burden of proof remains upon the State to
5 prove the defendant guilty beyond a reasonable doubt
6 throughout the trial and into your deliberations.

7 All right. I have responded as I feel that I can to
8 your inquiries and I'll ask you to return to the jury room
9 to continue deliberations.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Any objections to my responses to the jury
13 from the State?

14 SOLICITOR GRAY: No, sir, Your Honor.

15 THE COURT: Any from the defense?

16 MR. POOLE: No, sir.

17 THE COURT: All right. I'll have the question marked
18 as a Court's Exhibit and made a part of the record.

19 (WHEREUPON, the note from the jury was marked as
20 Court's Exhibit No. 1 for identification purposes only at
21 this time.)

22 THE COURT: We'll remain in recess until a verdict is
23 reached.

24 (WHEREUPON, the jury began deliberations again at
25 1:21PM and returned with a verdict at 1:25PM.)

1 THE COURT: All right. I have been informed that the
2 jury has reached a verdict in the Owens case.

3 Before I bring the jury in, I want you to understand
4 that the Court realizes that these situations can sometimes
5 be very emotional. They can involve some feelings that are
6 difficult to control. If you have any difficulty in
7 controlling yourself in a situation such as this, I would
8 urge you to step outside the courtroom at this time.

9 Any disruption of the courtroom or any breach of
10 decorum will be considered by this Court to be contempt of
11 Court. I really don't want to handle any matters against
12 someone for contempt of Court today. So, again, I'm going
13 to urge you, if you have any difficulty in controlling your
14 emotions at a time like this, please step out of the
15 courtroom at this time.

16 All right. State ready for the jury?

17 SOLICITOR GRAY: Yes, Your Honor.

18 THE COURT: Defense ready for the jury?

19 MR. POOLE: Yes, sir.

20 THE COURT: Let's bring the jury in.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: All right. The record will reflect the
24 jury has returned to the courtroom.

25 Mr. Foreman, I've been told a verdict has been reached.

1 Is that true?

2 THE FOREMAN: Yes, Your Honor.

3 THE COURT: If you'll pass that to the bailiff for me.

4 (Foreman complies.)

5 THE COURT: Thank you, sir.

6 Madam Clerk, you may publish the verdict...

7 THE CLERK: Yes, sir.

8 In the General Sessions Court, Case Number

9 2014-GS-42-2236, the State of South Carolina versus Eric
10 Lamont Owens, we, the jury, unanimously find the defendant,
11 Eric Lamont Owens, concerning the offense of murder, guilty.

12 We, the jury, unanimously find the defendant, Eric
13 Lamont Owens, concerning the offense of possession of a
14 firearm during the commission of a violent crime, guilty.

15 This is signed by the foreperson and dated today's
16 date.

17 Ladies and gentlemen of the jury, if this is your
18 verdict and still your verdict, please raise your
19 right-hands.

20 (WHEREUPON, all jurors raise their right-hands at this
21 time.)

22 THE CLERK: So say you-all.

23 THE COURT: Anything further from the State before I
24 release the jury?

25 SOLICITOR GRAY: No, sir, Your Honor.

1 THE COURT: Anything further from the defense before I
2 release the jury?

3 MR. POOLE: No, sir.

4 THE COURT: All right.

5 (WHEREUPON, the jury panel was released at this time.)

6 THE COURT: Thank you, sir.

7 All right. You may approach the bar for sentencing,
8 Mr. Poole, Mr. Owens.

9 (Parties comply.)

10 MR. POOLE: Your Honor, at this time I would like to
11 renew my motions made at the end of the State's case and
12 after the State rested. That motion is -- would be exactly
13 what's contained in the record on my motion for directed
14 verdict.

15 THE COURT: Uh-huh. (Affirmative).

16 MR. POOLE: I'd also take -- my motion for a new trial.
17 I would include my exception to the Court's ruling on the
18 refusal to instruct manslaughter.

19 THE COURT: All right. Those motions are noted and the
20 motions are denied at this time.

21 All right. Mr. Eric Lamont Owens, having been found
22 guilty by a jury of your peers, at this time the Court will
23 consider sentencing in your case. I'll be happy to hear
24 from your attorneys. Then I'll give you an opportunity to
25 speak. I will be hearing from victim -- representatives of

1 the victim as well as the State as well.

2 Mr. Poole.

3 MR. POOLE: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. POOLE: Your Honor, Mr. Owens is in his mid
6 thirties. He has a grown daughter or a grown child and he
7 has a daughter that's very young that he loves very much.
8 He had a tough time coming up. He was raised by his
9 grandmother and he just had a real tough time when he was
10 being brought up.

11 The Court is aware of his prior record to a certain
12 extent, and I would ask the court to consider, in
13 sentencing, to sentence him concurrently on these charges
14 and I'd ask the Court to sentence him to the minimum of --
15 on, on the murder charge. That being the minimum of 30
16 years and not anymore.

17 THE COURT: All right. Mr. Owens, this is your
18 opportunity to speak to the Court. I'll be happy to hear
19 from you.

20 THE DEFENDANT: The only thing I can say is I'm
21 innocent. I ain't do it. I mean I want to apologize to his
22 mama, to his family---

23 THE COURT: Sir, you need to address me.

24 THE DEFENDANT: Oh, I'm sorry.

25 THE COURT: You can say anything you'd like. I'm sure

1 they can hear you. But your, your remarks should be
2 addressed to me.

3 THE DEFENDANT: I'm sorry. I want to apologize to his
4 mama for the loss. Like I say, he was my friend. He was
5 cool. We grew up together, but I ain't the one killed him.
6 I ain't the one kill him. That's my homeboy. I done shed
7 many tears behind it day and night. I'm sorry for what
8 happened, but I'm innocent.

9 THE COURT: All right. Can I hear the prior record of
10 the defendant please?

11 SOLICITOR GRAY: Yes, sir, Your Honor.

12 1998, armed robbery. Also there was assault and
13 battery high and aggravated nature. He had a -- looks like
14 probation revocation for grand larceny also in 1998, and
15 then unlawful carrying of a weapon in 2012, unlawful
16 carrying of a weapon also again in 2012. That was a 30-day
17 charge, and these charges following in 2014.

18 THE COURT: Do the victim -- representative of the
19 family wish to speak?

20 SOLICITOR GRAY: Yes, Your Honor.

21 THE COURT: All right.

22 SOLICITOR GRAY: It's the mother of the victim.

23 THE COURT: Your name please, ma'am?

24 MRS. PHILLIPS: Mary Phillips.

25 THE COURT: Thank you. I'll be happy to hear from you,

1 ma'am.

2 MRS. PHILLIPS: I'm Stanley Earl Jones, nickname is
3 Man; he have three daughters, one son. I'm disabled. I had
4 to go to work to try to help these kids because he's not
5 here.

6 THE COURT: That's it?

7 MRS. PHILLIPS: Yes, sir.

8 SOLICITOR GRAY: Yes, sir.

9 THE COURT: Okay. Thank you, ma'am. You can be
10 seated.

11 Any other members of the victim's family wish to be
12 heard?

13 SOLICITOR GRAY: No, sir.

14 THE COURT: All right. Mr. Owens, just a couple of
15 questions that the court would like to ask of you.

16 My information is that you are 35 years of age?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: How far did you go with your education,
21 sir?

22 THE DEFENDANT: To the tenth grade.

23 THE COURT: Are you married or have you been married?

24 THE DEFENDANT: No, sir.

25 THE COURT: Children?

1 Your lawyer indicated children.

2 Is that a correct statement of your children?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: When was the last time you held a job?

5 THE DEFENDANT: I had a job like a month before I came
6 in here.

7 THE COURT: All right. And what were you doing at that
8 time?

9 THE DEFENDANT: Pressure washing 18-wheelers.

10 THE COURT: Okay.

11 MR. POOLE: He has been incarcerated since March 5,
12 2014.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. POOLE: That's one year and 47 days.

15 THE COURT: Thank you.

16 (Pause.)

17 THE COURT: All right. Mr. Owens, it is the Sentence
18 of this Court, for the possession of a weapon during the
19 commission of a violent crime, that you be confined in the
20 State Department of Corrections for a period of five years.
21 I've run that concurrent with other sentences in this case
22 and I've given you credit for the one year and 47 days that
23 you have currently served.

24 As to the offense of murder, it is the sentence of this
25 Court that you be confined in the State Department of

1 Corrections for a period of 35 years, run concurrent with
2 the other sentence, given credit for the same number of
3 days.

4 Good luck to you, sir.

5 SOLICITOR GRAY: Thank you, Your Honor.

6

7

8 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

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I, Pamela E. Green, Official Court Reporter for the Seventh 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 Spartanburg County, South Carolina, on the 20th, 21st, and 22nd day of April, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 2nd, 2015



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC LAMONT OWENS,

APPELLANT

APPELLATE CASE NO. 2015-000927

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to charge voluntary manslaughter when the shooting was the result of a sucker punch by the alleged victim and the record was devoid of proof of malice?

STATEMENT OF THE CASE

On June 12, 2014, a Spartanburg County grand jury indicted appellant for murder and possession of a firearm during the commission of a violent crime. R. 305. On April 20, 2015, appellant was tried before the Honorable Roger L. Couch and a jury. R. 1. Abel Gray and Chris Bain represented the State. R. 1. Roger Poole represented appellant. R. 1. The jury convicted appellant on both counts. R. 296, ll. 5 – 22. Judge Couch sentenced appellant to concurrent terms of five years' imprisonment on the weapons charge and thirty-five years' imprisonment for murder. R. 301, l. 17 – 302, l. 3. This appeal follows.

ARGUMENT

The trial court erred in refusing to charge voluntary manslaughter when the shooting was the result of a sucker punch by the alleged victim and the record was devoid of proof of malice.

It was undisputed that the decedent, Stanley Jones¹ ("Jones") sucker punched appellant during a party. R. 120, ll. 1 – 11. The solicitor admitted as much in the first words of his opening statement: "Sucker punch and a shotgun." R. 86, l. 17. Shaina Wallace ("Shaina") testified that she was at a party with appellant, Jones and several other people drinking and playing cards. R. 120, ll. 1 – 10. Appellant and Jones went outside and started arguing. R. 120, ll. 1 – 10. Jones hit appellant and he fell to the ground. R. 120, ll. 1 – 10. Talina Wallace also witnessed the fight and described Jones hitting appellant first. R. 185, ll. 3 – 10. Jones hit appellant in the jaw. R. 122, l. 25 – 123, l. 1.

Appellant was angry. R. 185, ll. 6 – 7. R. 123, ll. 2 – 3. He left the party with Shaina. R. 123, ll. 5 – 12. Shaina, who admitted that she lied in her statements to the police and was charged with accessory after the fact and obstruction of justice, claimed appellant had her drive him back to their house so he could get his gun. R. 123, ll. 7 – 12. R. 140, l. 7 – 144, l. 12. R. 139, l. 24 – 139, l. 2. Shaina claimed appellant got "a long gun" from their house and made her drive him back to the party. R. 124, l. 3 – 126, l. 11. Jones had already left the party. R. 126, ll. 12 – 24. They eventually went back home. R. 126, l. 25 – 127, l. 1.

Derrick White ("White") testified for the State. White pled guilty to accessory after the fact. R. 204, ll. 2 – 7. He had not been sentenced at the time of his testimony. R. 207,

¹ Jones is frequently referred to in the transcript by his nickname, "Man." R. 111, l. 23 – 112, l. 1. Appellant is frequently referred to by his nickname, "E." R. 120, ll. 12 – 13.

ll. 4 – 5. White was told he would be sentenced after appellant “[got] his sentence.” R. 207, ll. 9 – 13. White also had a long criminal record that included several counts of burglary, receiving stolen goods, and a drug charge. R. 208, l. 15 – 209, l. 15. White admitted lying in three of the four statements he gave to the police. R. 206, ll. 2 – 9.

At trial, White claimed appellant came to his house one morning and told him to drive him to Jones’s house because of the sucker punch the night before. R. 193, l. 10 – 194, l. 16. White believed there was going to be a fistfight. R. 194, l. 17 – 195, l. 16. According to White, appellant got out of the car at Jones’s house and White heard Jones say, “you gonna shoot me now?” R. 196, ll. 22 – 25. Appellant supposedly replied, “Damn right” and shot Jones in the side with a shotgun. R. 196, l. 22 – 21.

Jones bled to death from a gunshot wound. R. 226, ll. 18 – 20. Pretrial, the State admitted that no gun was ever found. R. 48, ll. 20 – 22. The State also admitted that no projectile was ever found. R. 50, ll. 15 – 24.

At the close of the evidence, appellant requested a charge on voluntary manslaughter. R. 246, ll. 20 – 24. The trial judge heard extensive argument on the issue of whether the evidence supported a voluntary manslaughter charge. R. 246, l. 18 – 253, l. 23. The trial judge ruled that the time which elapsed between the sucker punch and the shooting was a “cooling off period overnight.” R. 250, ll. 8 – 12. The trial judge also rejected appellant’s argument that, based on the manslaughter statute, appellant was entitled to the charge if the State failed to prove malice. R. 246, l. 18 – 253, l. 23. When making his ruling, Judge Couch noted that appellant’s argument related to malice raised “an interesting question.” R. 253, ll. 22 – 23.

The trial judge erred in not charging voluntary manslaughter for two reasons. First, the jury could have disbelieved the State's witnesses concerning malice. Second, the trial judge erred in ruling as a matter of law that a sufficient amount of time had passed to amount to a "cooling off" period. As argued by appellant, the statutory definition of manslaughter is simply a killing without malice: "A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years." S.C. Code Ann. § 16-3-50. As pointed out by trial counsel during his argument to the court, the witnesses completely lacked credibility because of their admissions that they lied in their contradictory statements. R. 250, l. 13 – 251, l. 12. These problems with the witnesses meant that the jury could find an absence of malice if they disbelieved these witnesses. The trial judge continually asked for appellant to provide some specific fact that "eliminated the malice." R. 246, l. 25 – 253, l. 20. Trial counsel admitted that he could point to no specific fact, but repeatedly argued that the witnesses might not be believed. R. 246, l. 25 – 253, l. 20. The trial judge erred in rejecting this argument and requiring appellant to provide some other fact in support of his argument.

The trial judge also erred in finding that a "cooling off" period deprived appellant of a voluntary manslaughter charge. "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). "Both heat of passion and sufficient legal provocation must be present at the time of the killing." Id. A sudden heat of passion has also been described as "an uncontrollable impulse to do violence." Id. at 101-02, 525 S.E.2d at 513 (internal quotations omitted). Viewing the evidence in the light most favorable to

appellant, Jones's sucker punch made appellant angry and would qualify as sufficient legal provocation.

The trial judge erred by not viewing the evidence in the light most favorable to appellant on the issue of the cooling off period. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) ("In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in a light most favorable to the defendant."). "Even when a person's passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter." Id. at 303, 555 S.E.2d at 395.

In Knoten, the evidence showed that the defendant and the decedent got into an argument, the defendant left the place of the argument, retrieved a weapon, and returned. Id. at 305, 555 S.E.2d at 396. The decedent struck appellant first. Id. The Court rejected the State's argument that a cooling off period had passed as a matter of law and determined that the trial judge erred in refusing to charge voluntary manslaughter. Id.

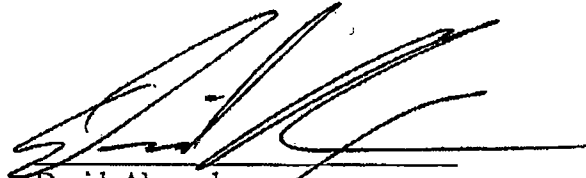
Just as in Knoten, it was undisputed that appellant was struck first by Jones. The solicitor called it a sucker punch. R. 86, l. 17. White's testimony established that appellant was still angry about the sucker punch the next day and was seeking revenge. R. 194, l. 6 – 195, l. 6. Viewing these facts in the light most favorable to appellant, a jury could have found that appellant had not "cooled off" and was still operating under an uncontrollable impulse to do violence. The trial judge erred in depriving appellant of his

right to have the jury make this factual determination. This Court should reverse and grant appellant a new trial.

CONCLUSION

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

Respectfully submitted,

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

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of November, 2015.

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

V.

ERIC LAMONT OWENS, APPELLANT

APPELLATE CASE NO. 2015-000927

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eric Lamont Owens states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on April 22, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Eric Lamont Owens.

~~Respectfully submitted,~~

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of November, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC LAMONT OWENS,

APPELLANT

APPELLATE CASE NO. 2015-000927

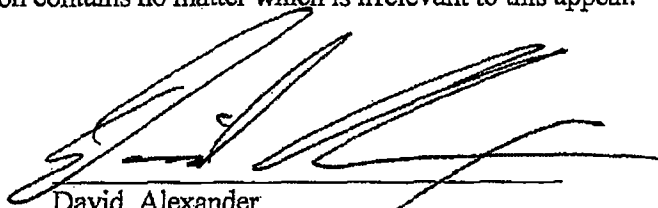
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Transcript.

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

November 25, 2015.



David Alexander
Appellate Defender

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

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

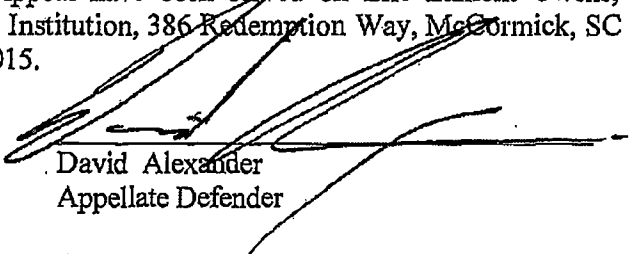
ERIC LAMONT OWENS,

APPELLANT

APPELLATE CASE NO. 2015-000927

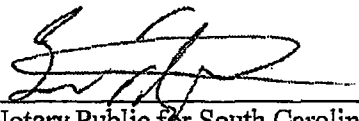
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Eric Lamont Owens, #252967 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 25th day of November, 2015.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of November, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

**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.

Eric Lamont Owens, Appellant.

Appellate Case No. 2015-000927

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Unpublished Opinion No. 2017-UP-055
Submitted December 1, 2016 – Filed January 25, 2017

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia; and Barry Joe Barnette, of
Spartanburg, all for Respondent.

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

APPEAL DISMISSED.

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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February 10, 2017

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Eric Lamont Owens
Lower Court Case No. 2014GS4202236
Appellate Case No. 2015-000927

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,

Jay A. Kitchings
CLERK

RECEIVED

FEB 10 2017

APPELLATE DEFENSE

Enclosure

cc: Eric Lamont Owens, 252967
Alan McCrory Wilson, Esquire
David Alexander, Esquire
Donald J. Zelenka, Esquire
Barry Joe Barnette, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of SPARTANBURG)ERIC LAMONT OWENS *)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

RESPONDENT)

IN THE COURT OF COMMON PLEAS

2017-CP-42-1496

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MCCORMICK CORR. INST.
2. Name and location of Court which imposed sentence SPARTANBURG GENERAL SESSIONS COURT
3. Name(s) of co-defendant(s) (if any) SHATANA WANCE D. WHITE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 4/4 2014-GS-42-2236
 - (b) _____

2017 APR 28
FILED

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 30 - 22nd 2015
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. 2d Cir. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DISMISSED PURSUANT TO AGREEMENT
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 2/1/15
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NONE
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: 1) Failure to object to trial courts not giving info already in the record
- (a) INEFFECTIVE ASSISTANCE, INSUFFICIENT INDICTMENTS
- (b) Failing to quash indictment failing to perjury
- (c) "AN AMENDMENT ATTACHED"
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) INEFFECTIVE ASSISTANCE, INSUFFICIENT
- (b) INDICTMENTS Failing to quash indictment,
- (c) Failing to perjury "AN AMENDMENT ATTACHED"
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? ✓
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. AN APPEAL
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. COURT OF APPEALS
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. DISMISSED
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 2/15
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NONE
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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

(a) FIRST POST-CONVICTION
 (b) _____
 (c) _____

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

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

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

(a) the name and address of each attorney who represented you:

i. ROGER L. COUCH
 ii. _____
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. ROGER L. COUCH TRIAL
" " " SENTENCING
 ii. _____
 iii. _____

2017 APR 28 PM 1:51
 CLERK OF COURT

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

THAT CONVICTION BE REVERSED AND REMANDED
FOR NEW TRIAL

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of SPARTANBURG)

I, ERIC LAMONT OWENS, 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.

Eric Owens

SWORN to and subscribed before me this 24th
day of April, 2017.

Michael Carmore
(L.S.)
Notary Public

My Commission Expires: July 09, 2026

2017 APR 28 PM 1:51
CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, ERIC LAMONT OWENS **, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Fric Owens

Applicant

SWORN or affirmed to and subscribed before me this

29th day of April, 2017

Michael Carmine

Notary Public

My Commission Expires:

July 09, 2026

[illegible]

2017 APR 26 PM 1:51

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Eric Lamont Owens, #252967,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-42-1496

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on April 28, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In June 2014, the Spartanburg County Grand Jury indicted Applicant for murder and possession of a firearm during the commission of a violent crime (2014-GS-42-2236). Roger Poole, Esquire represented Applicant. Assistant Solicitors Abel Gray and Chris Bain represented the State. On April 20-22, 2015, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted on both charges. Judge Couch sentenced Applicant to imprisonment for concurrent terms of thirty-five years for murder and five years for possession of a firearm during the commission of a violent crime.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on January 25, 2017. State v. Owens, Op. No. 2017-UP-055 (S.C. Ct. App. filed January 25,

2017). The remittitur was returned to the circuit court on February 10, 2017.

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that:
 - a. Failure to object to trial court not giving information already in the record
 - b. Failure to quash insufficient indictment
 - c. Failure to poll jury

On his application, Applicant also writes "an amendment attached," but no amendment is attached.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant 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 v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant 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, 286 S.C. at 442, 334 S.E.2d at 814. "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). The Applicant 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 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRPC. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by

an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

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

V.

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

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VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

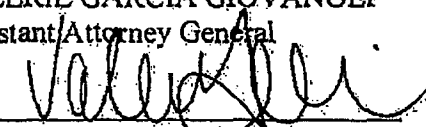
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 6, 2017

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

2017-CP-42-1496

ERIC LAMONT OWENS, #252967,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

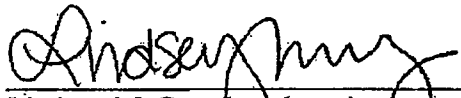
STATE OF SOUTH CAROLINA,

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:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 6th day of December, 2017.


Lindsey McCoy, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } COURT OF COMMON PLEAS NONJURY

3
4 ERIC LAMONT OWENS,)
5 APPLICANT,)
6 vs.)
7 STATE OF SOUTH CAROLINA,)
8 RESPONDENT.)

TRANSCRIPT
OF
RECORD
2017-CP-42-1496

9
10 January 31st, 2018
11 Spartanburg, South Carolina

12
13 B E F O R E:

14 THE HONORABLE GRACE GILCHRIST KNIE, Judge.

15
16 A P P E A R A N C E S:

17 SUSANNAH C. ROSS
18 ESQ.
Attorney for the Applicant

19 VALERIE GIOVANOLI
20 ASSISTANT ATTORNEY GENERAL
Attorney for the State

21
22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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P R O C E E D I N G S

MS. GIOVANOLI: May it please the Court?

THE COURT: Okay. If y'all are ready to proceed.

MS. GIOVANOLI: Yes, ma'am.

THE COURT: Okay.

MS. GIOVANOLI: This is Eric Lamont Owens versus The State of South Carolina. Docket Number 2017-CP-42-1496.

We're before the Court on an Application for Post-Conviction Relief filed April 28th, 2017. In June, 2014, Applicant was indicted for murder, possession of a firearm during the commission of a violent crime. J. Roger Poole represented him at trial.

On April 20th through the 22nd of 2015, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted on both charges, and Judge Couch sentenced him to concurrent terms of 35 years for murder, and five years for possession of a firearm during the commission of a violent crime.

Applicant then filed a timely Notice of Appeal, and David Alexander of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on January 25th, 2017, and the remittitur was handed down February 10th, 2017.

Applicant has since filed a Application for

1 Post-Conviction Relief alleging specifically that counsel
2 failed to object to Trial Court not giving information
3 already in the record, that counsel failed to quash -- and
4 so I'm not gonna go through all the allegations cause
5 there's actually a number of them.

6 The State is present and ready to proceed. Applicant
7 is also present and he's represented by Ms. Susannah Ross to
8 whom I will hand it over.

9 THE COURT: Yes, ma'am.

10 MS. ROSS: Thank you, Your Honor.

11 May it please the Court.

12 I just -- I have one case, Gibson v. State, and then a
13 brief outline of the Applicant's arguments. I do this to
14 organize my own thoughts, and it helps with reviewing the
15 orders.

16 So, I would approach with a copy of that just --.

17 THE COURT: Yes, ma'am.

18 MS. ROSS: -- for what it's worth.

19 And it, it briefly outlines Mr. Owens issues with --
20 that are essentially ineffective assistance of counsel. I
21 have a second one of due process violation down there, a due
22 process violation. I, I didn't see any. So, I'm not
23 alleging that, that the -- he may be in his testimony as far
24 as ineffective assistance of counsel.

25 There was just slight date stamp irregularities on the

1 indictment, and there was no contemporaneous Motion to Quash
2 or -- the indictment or address those issues. And then some
3 failures to make objections during cross-examination and
4 of -- oh, excuse me, direct examination of some witnesses
5 and during closing, and he states he never received a plea
6 offer or was -- reviewed the case prior to trial in depth.

7 So, I would just go ahead and call Mr. Eric Owens to
8 the stand, and he can flesh out these allegations.

9 MS. GIOVANOLI: And, Your Honor, I need to put
10 something on the record with regard to her allegations.

11 I will state that the Application was very detailed and
12 specific with regard to the allegations. And his, his
13 allegation that counsel failed to quash an insufficient
14 indictment did not include anything about dates.

15 So, this is the first I've heard of it. It seems as
16 though they're pursuing it now, a new allegation, that
17 wasn't pled before this hearing as well as that he never
18 received a plea offer. That was also never alleged in his
19 Application or in any amendment he -- and, and it hasn't
20 been alleged until today. So, I would just object to those
21 allegations coming in at this hearing today as they were
22 extremely late, and were required to be presented by way of
23 pleading and amendment to the Application.

24 THE COURT: Counsel.

25 MS. ROSS: And we would argue that he did allege

1 indictment issues, and I looked at that, and these were the
2 issues that, that I saw. We would state that all these
3 allegations fall under the rubric of ineffective assistance
4 of counsel, and aren't obscure or unexpected. So, we would
5 just ask to go forward with them at this time.

6 MS. GIOVANOLI: And I only make note of that because
7 ineffective assistance of counsel is equivalent of claiming
8 negligence in a civil case. You have to plead with specific
9 facts so that the Defendant can be able to respond, and
10 that's why I bring that to the Court's attention.

11 It's just simply unfair that we show up at the day of
12 the hearing, and I have no notice that they're alleging
13 specific allegations of dates on indictments are incorrect,
14 and that he never received a plea offer. That was not
15 alleged in his Application, and, like I said, it was never
16 alleged in an amendment to the Application to put the
17 Defendant, me, on notice of those allegations.

18 THE COURT: Okay. Let me look at the Application, and
19 the amendment to it. If y'all give me just a moment.

20 (Pause.)

21 THE COURT: Okay. Upon, upon review of the -- Mr.
22 Owens Application, Application for Post-Conviction Relief
23 filed on April the 28th of 2017, and the amendment to
24 that, which is attached and dated 3/24/17, it's several
25 pages long, five pages long, single spaced in typing,

1 apparently there is, there is -- the paragraphs are not
2 numbered, but there is a paragraph on Page 4 that says
3 counsel was further ineffective for failing to object to the
4 Court's refusal to provide the jury with the relevant dates
5 of the arrest of Applicant, and the State witnesses as that
6 information was already in the record.

7 And I believe that was one thing, Ms. Giovanoli, that
8 you were objecting to?

9 MS. GIOVANOLI: That's a different issue. That was
10 with regard to when he was -- the jury had a question during
11 deliberations as to when---

12 THE COURT: Okay.

13 MS. GIOVANOLI: ---he was actually arrested, and when
14 one of the State's witnesses was also arrested. That's
15 different than the dates of the incidents that occur on the
16 indictments. Those are two separate issues I believe.

17 THE COURT: Okay. Well, I, I know that issue --
18 apparently there were also issues raised with regard to the
19 indictment, and the, the -- what the place of the murder?

20 Was that -- okay.

21 MS. GIOVANOLI: Right. It was specifically the place
22 of the murder that wasn't alleged in the indictment as well
23 as the -- he's claiming that the indictment contained two
24 distinct offenses, which were prejudicial, which was the
25 murder, and then the possession of a weapon during a violent

1 crime, which is standard practice, but those were the two
2 specific allegations with regard to the indictment.

3 THE COURT: Okay. What I would do, out of fairness to
4 both of you, I, I will allow Ms. Ross to go into this. I
5 will allow you an opportunity, if you need it, to discuss it
6 with Mr. Poole. And if you need time to do that, I mean we
7 can, we can come back or we could take this up after lunch.
8 It's, it's whatever, whatever you -- I'm trying to be fair.

9 I know that each and every specific minute issue that
10 could of been raised to protect the Defendant at the time of
11 trial, sometimes it's very difficult to, to reduce all that
12 to writing, and leeway is needed. And this is extremely
13 specific compared to other applications that I have
14 reviewed, but I, I will give you an opportunity, any time
15 that you need, to, to discuss this with your witness.

16 MS. GIOVANOLI: I believe Mr. Poole can testify. He's
17 brought his file. I have a file as well. He can testify to
18 those issues, but my concern is, whenever we go to argue the
19 issue, I have not researched the case law. I have no
20 rebuttal to Gibson. It's just been provided to me.

21 So, I would just request, if be necessary, I can submit
22 a memorandum of law afterwards. Obviously, it would depend
23 on how the testimony develops and how the issues develop.

24 THE COURT: Yes, ma'am, and I'm -- I am happy to allow
25 you time to respond on the law.

1 Ms. Ross, do you have any objection to that?

2 MS. ROSS: I've got no objection to that, Your Honor.

3 THE COURT: Okay. All right. Then are, are we
4 prepared to move forward at this time or would you like an
5 opportunity to talk to Mr. Poole before we proceed?

6 MS. GIOVANOLI: I believe Mr. Poole will be able to
7 testify when the time comes.

8 THE COURT: Okay.

9 All right. Counsel.

10 MS. ROSS: Okay. We would call Eric Lamont Owens to
11 the stand.

12 THE COURT: Mr. Owens, sir?

13 THE APPLICANT: Yes, ma'am.

14 THE COURT: Good morning.

15 THE APPLICANT: Good morning to you.

16 THE COURT: I -- I'm gonna need to swear you in.

17 All right?

18 THE APPLICANT: All right.

19 THE COURT: If you'll raise your right-hand for me.

20 ERIC OWENS, being first duly
21 sworn, testified as follows:

22 THE COURT: Okay. Thank you, sir. Watch your step.

23 Have a seat and pull yourself up to that microphone.

24 okay?

25 THE WITNESS: Okay.

Eric Owens - Direct examination
by MS. ROSS

1 THE COURT: Counsel.

2 MS. ROSS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. ROSS:

5 Q Okay. Mr. Owens, you realize why you're here, for
6 Post-Conviction Relief?

7 A Yes, ma'am.

8 Q And do you understand, if you prevail, you're back in
9 the position you were in before the plea, and you can get up
10 to life on a murder charge?

11 A Yes, ma'am.

12 Q And is it your wish still to go forward?

13 A Yes, ma'am.

14 Q Okay. Can you tell, just briefly, why you've alleged
15 ineffective assistance of counsel in this case against Mr.
16 Poole?

17 A Because, for one, you know what I'm saying, my counsel,
18 he, he, he never really came to talk to me. He came to
19 me -- the first time I seen him, he came to me. He brung me
20 my motion discovery, and told me he was gonna be my
21 attorney. And the next time I seen him was like a year
22 later. He told me -- he came back to me.

23 He was like we going to trial. I want to say it was
24 either a week or in two weeks, and I was like all right, and
25 he was like well, I'll be coming to prep you, to get you

Eric Owens - Direct examination
by Ms. Ross

1 ready for trial. And that was the next time -- that was,
2 you know what I'm saying, the next time I seen him from the
3 time he was announcing for me to be my attorney.

4 Q Were you in jail during this period?

5 A Yes, ma'am.

6 Q Okay. And what did he do to prep the case with you?

7 A Oh, he really only -- he really didn't do nothing. He
8 told me to go back and look at my motion that he gave me,
9 and find out what I needed to know out of my case, and
10 get -- give, give it to him so he could have that.

11 Q Did he ask you about witnesses?

12 A Yeah, he -- yeah, he -- yeah, he did ask me about
13 witnesses, you know what I'm saying. He asked me did I have
14 any witnesses, but, like I said, I ain't, you know what I'm
15 saying, I wasn't -- I mean I ain't, I ain't -- I don't know
16 nothing. I didn't know nothing. So, you know what I'm
17 saying.

18 Q All right. Did you feel that he, that he investigated
19 everything you asked him to?

20 A Investigate, he ain't, he ain't, he ain't investigate
21 nothing not to my understanding. Like I say, I only seen
22 him twice. The first time I seen him he came and told me he
23 was my attorney, and the next time I seen him he was saying
24 that we was going to trial.

25 I don't know. You know what I'm saying. It wasn't no

Eric Owens - Direct examination
by Ms. Ross

1 investigation. A week or two later he just kept coming to
2 me, I guess, trying to get me right for trial, but he sized
3 me up for the clothes I need to wear for trial. He never
4 investigated nothing.

5 Q Okay. Well, let's talk about that, sizing you up for
6 clothing.

7 what do you mean by that?

8 A Yeah, he, he came and asked me my size, what size I
9 wear in clothes.

10 Q For clothing?

11 A Clothing.

12 Q Okay.

13 A So, yeah, so I could wear to trial.

14 Q Okay. What I want to ask you about is did you testify
15 at trial?

16 A No, ma'am.

17 Q Did your attorney discuss testifying with you?

18 A No, ma'am, I asked him what did he think I should do,
19 and he told me I can't tell you that. I don't know what
20 you -- you know what I'm saying?

21 I can't tell you what to do. I didn't know nothing.

22 So, I ain't, I ain't testify.

23 Q Did you understand that your, your record, you
24 wouldn't -- you would not be impeached by your prior record
25 if you testified?

Eric Owens - Direct examination
by Ms. Ross

1 A To my understanding, what I, what the---

2 Q Let me ask an open ended question to that.

3 what did you understand about what the jury would hear
4 about your prior record if you testified?

5 A That if you get up there, the only way, the only way
6 that they can -- they able to bring up your background
7 record if you get up there and try to paint a picture of
8 yourself being better than, you know what I'm saying,
9 being -- trying to paint a picture of myself being like a
10 perfect individual, and then they can bring up my
11 background. But, other than that, they ain't obligated to
12 bring up our background.

13 Q And that was from talking to -- your attorney reviewed
14 that with you and just had that discussion?

15 A Yeah, I knew that because talking to him and the judge
16 was saying in the process, you know what I'm saying. Just
17 sitting right there. The Judge was saying all of the
18 process.

19 Q Okay. I want to -- plea offers, were you ever given a
20 plea offer?

21 A No, ma'am, I ain't, I -- ain't nobody never offered me
22 nothing, but I---

23 Q what did your lawyer tell you about a plea offer?

24 A He never said nothing to me about a plea. He never
25 even mentioned me nothing about a plea. And when I -- when

Eric Owens - Direct examination
by Ms. Ross

- 1 we -- like when he was prepping me for trial, like when we,
2 when we came to like the first or the second day of trial, I
3 told him -- I was like, you know what I'm saying, I think it
4 was right -- it might of been the second day, and I was
5 like, you know what I'm saying, I don't want to go through a
6 trial. I want to pull out because I feel like I'm gonna
7 lose, and he was like, he was like no. We can't pull out.
8 I was like I want to go ahead and pull out, man. Get me a
9 plea. He was like no, cause I feel like I can beat this.
- 10 Q Okay. So, that was the first -- that was the only
11 thing you heard about a plea?
- 12 A Yeah, that was the closest thing to a plea, and I was
13 trying to get him to get me a plea help.
- 14 Q Okay. Now, you made an allegation about the
15 indictment, that was it improper.
- 16 A Yes, ma'am.
- 17 Q I'm gonna show you a copy.
18 Is this the indictment you were talking about?
- 19 A I never, I never even had a copy of that.
- 20 Q Okay.
- 21 A I never, I never even seen my indictment. I seen it in
22 the back of my motion, and, yes, ma'am, this was it. This
23 the indictment right here that -- like on my -- in my
24 transcript, that's, that's the only -- that's the only time
25 that I seen when I got -- like when I got my transcript.

Eric Owens - Direct examination
by Ms. Ross

1 Q All right.

2 A That's when I seen it. Other than that, I never seen
3 no indictment until---

4 Q And can you confirm what the number of that indictment
5 is on there?

6 A On the -- talking about 14, 14-GS-42 -- I need to read
7 that too?

8 Q Yeah.

9 A 20236.

10 Q Yes.

11 A Okay.

12 Q Okay. You've made an allegation that that indictment
13 was improper.

14 why?

15 A See I was looking at it like, you know what I'm saying,
16 because it didn't, it didn't actually have the actual
17 address on there that, that it happened. Like it happened
18 on Baltimore Street or whatever, but it didn't have --
19 actually have the actual address or whatever on, in
20 Baltimore Street, and then it didn't say -- see, at first, I
21 thought it didn't say Spartanburg, South Carolina, and I
22 still don't see that. That's what made me say that.

23 Okay. Yeah, I see it now.

24 Okay. Yeah, but that's what I was, you know what I'm
25 saying, that was why---

Eric Owens - Direct examination
by Ms. Ross

1 Q And what is the date---

2 A ---I had that in there.

3 Q ---stamped on that indictment?

4 A June 12th, 2014.

5 Q And, on the other side, what is the date stamped on the
6 indictment?

7 A June 17th. June 17th, 2014.

8 Q Okay. Now, that's by the Clerk of Court.

9 what's the date stamped underneath the Court of General
10 Sessions?

11 A Oh, June---

12 Q Right there.

13 A June 16th, 2014.

14 Q Okay. And did your lawyer move to, to clarify those
15 different dates or anything?

16 A No, ma'am.

17 Q Is there anything else about the allegations -- the --
18 any allegations about the indictment that you have?

19 A No, ma'am.

20 Q And I believe it's part of the, the Court's record
21 already, a copy of this indictment.

22 Now, I'm gonna just talk about some specific things in,
23 in the record. You alleged that your lawyer should of
24 objected to the decedent's brother wearing a t-shirt with
25 his picture on it.

Eric Owens - Direct examination
by Ms. Ross

1 Is that correct?

2 A Yes, ma'am.

3 Q And, and what happened with that?

4 A Okay. The deceased brother was sitting -- we was -- he
5 was sitting right, right up here with the solicitor before
6 they did the, before they did the jury, before they called
7 the jury up here to be selected.

8 Okay. He had on a t-shirt bearing, I guess, a face of
9 his brother being deceased. And so they did the pulling of
10 the -- I guess they went on ahead and did the jury, you know
11 what I'm saying, selected the jury or whatever. So, the
12 jury up there. But he sat there throughout the whole
13 process of the jury being selected with this t-shirt of his
14 brother.

15 All right. I feel like that was showing prejudice
16 towards me.

17 Q And---

18 A Because of---

19 Q ---where -- was he sitting closer to the jury or
20 farther away in the courtroom for them---

21 A He was sitting closer to, to the jury. If I'm not
22 mistaken, I want to say we in the same courtroom, and the
23 chair that he was sitting in is right there. Like the third
24 chair behind her. The third chair coming from the left.

25 Q Okay. Now, moving on -- and, and you feel that was

Eric Owens - Direct examination
by Ms. Ross

1 prejudicial to you?

2 A Yes, ma'am.

3 Q Moving on, your, your girlfriend, Shana Wallace, is
4 that correct?

5 A Yes, ma'am.

6 Q She was allowed to testify, and you had some problems
7 with that, and I'd just refer you to Page 114 at the bottom
8 of that page.

9 A Yes, ma'am.

10 Q And what is she saying?

11 A With, with -- where are you?

12 Q At the bottom of that page.

13 A Right here?

14 Q Uh-huh. (Affirmative).

15 A And who, who was murdered?

16 Stanley Jones.

17 And who murdered him?

18 Eric Owens.

19 Q And, and then, after that, there was an objection after
20 all that came out.

21 Do you think -- what do you think your lawyer should of
22 done with that testimony?

23 A He, he suppose, he suppose, he suppose, he suppose to
24 let them know. He suppose to let, he suppose to let them
25 know that she, she, she was not a qualified witness to, to,

Eric Owens - Direct examination
by Ms. Ross

1 to predict -- to say that I was a killer, that I, that I was
2 the one that killed him if she wasn't the one -- if she
3 didn't see me kill him.

4 Q All right. Did he have any -- did the, did the -- did
5 your lawyer request any instructions to the jury from the
6 Judge about that testimony?

7 A No, ma'am.

8 Q Did -- so, he didn't move to strike or anything?

9 A No, ma'am.

10 Q There were also some issues in the State's closing
11 where your lawyer didn't object.

12 Is that correct?

13 A Yes, ma'am.

14 Q What did those have to do with?

15 A With, with -- the question of Doctor Wren?

16 Q Yes.

17 A When -- okay. The solicitor was, was asking, asking
18 Doctor Wren about the gunshot wound, and was he, you know
19 what I'm saying, did he know anything about the gunshot
20 wound, but Doctor Wren told him that he wasn't a gun expert,
21 and my lawyer failed to object. I told my lawyer to object
22 to it too.

23 Q Okay.

24 A And he told me he, he not gonna object to it.

25 Q So, there was no objection when Doctor Wren

Eric Owens - Direct examination
by Ms. Ross

1 testified---

2 A That he was not a gun expert, and the solicitor kept
3 trying to get him to say what type of gun the man was killed
4 with. He kept trying to get the man to say what -- wasn't
5 he killed with this type of gun, and Doctor Wren was like I
6 really don't -- I'm not a gun expert. I can't answer, you
7 know what I'm saying. He basically saying he couldn't
8 answer that because he not a gun expert.

9 Q All right.

10 A So, I told my lawyer to object to it, but he wouldn't
11 do it.

12 Q And was Doctor Wren's testimony around Page 235 of the
13 transcript?

14 A Yes, ma'am.

15 Q And, in closing, was reference made to Doctor Wren's
16 testimony again by the State?

17 A Say that one more time.

18 Q In the State's closing, did they refer back to Doctor,
19 Wren's testimony?

20 A Yes, ma'am.

21 Q And I'd refer you to Page 258, Line -- well, Line 16.
22 It's -- I believe it's around Line 16 or 17.

23 A Okay.

24 Q Did he testify about the -- what kind of gun was used?

25 A Yeah, he testified, he testified about it, but he

Eric Owens - Direct examination
by Ms. Ross

1 really -- he -- okay. Right here, 16, 17, 11, 12, 13, even
2 as doctor say, like I told you, what type of weapon, I don't
3 know. It's like a shotgun. I'm not a gun -- I'm not a very
4 good artist.

5 Can you draw it for us?

6 Pistol grip, full grip shotgun, shotgun, as drawn by
7 Doctor Blansay (phonetic).

8 Q All right. And, and I asked you about testimony.

9 That was argument by the State.

10 A Oh, okay. Okay.

11 Q Okay.

12 A Okay.

13 Q That was my error.

14 A Okay.

15 Q Now, as far as -- did the jury have a -- well, I want
16 to first talk about jury instructions.

17 Did, did -- do you know if your lawyer asked for any
18 specific jury instruction?

19 A Jury instructions?

20 Nah, he didn't. He didn't.

21 Q Okay. And then you -- the jury had a question after
22 the trial.

23 A Yeah.

24 Q Okay.

25 A I think they had like three questions.

Eric Owens - Direct examination
by Ms. Ross

1 Q And that was on Page 294.

2 what did the Judge do with those questions?

3 Do you recall?

4 A The Judge, the Judge told, told the jury that I
5 couldn't answer the questions. The Judge told the jury that
6 I couldn't answer the questions, but, you know what I'm
7 saying, he, he also failed to instruct the jury that I had
8 the right to remain silent, but he came back at the end and
9 instructed them, instructed them that I had the right to
10 remain silent, and that the questions that you got to be
11 asked, I can't allow him to ask.

12 I feel like he should of instructed the jury before
13 they went back to deliberate before a couple of hours, you
14 know what I'm saying, because they deliberated like from
15 11:00 something to like 1:00 something. I got it.

16 Q So, it's about 90 minutes?

17 A Yes, ma'am.

18 Q And then he, he gave the instruction, instruction
19 later---

20 A He gave the instruction---

21 Q ---I believe on Page 293?

22 A Yes, ma'am. Yes. Yes, ma'am, somewhere around up in
23 there. 293, 292, when he, when he came back and gave
24 them -- he -- after they came back for the questions that
25 they had for him, and then he came back and was like well, I

Eric Owens - Direct examination
by Ms. Ross

1 can't -- I got to go ahead and instruct all -- charge that
2 he had the right to remain silent.

3 Q Okay.

4 A You know what I'm saying. He just came back and
5 cleared it up at the end. Like I feel like they should of
6 been, they should of knew before they went back there to
7 deliberate because that show prejudice too.

8 Q Okay. And then -- and, and when -- were the answers
9 to -- when the jury had questions about your arrest date,
10 were those answers brought out during the trial?

11 A I really -- I don't know if it's on the record or not,
12 but I know -- I don't know if it's on the record or not.

13 Q You might of addressed it on Page 147.

14 A 147. Let me see. 147. 147. 147.

15 You said 147?

16 Q Yes.

17 A Okay.

18 Q And I believe you put this in your Amended Application
19 as well.

20 A Okay. witness nods. Informed four months later, and
21 the -- oh, yeah, yeah, yeah. Yes, ma'am. Yes, ma'am. Yes,
22 ma'am.

23 Q So, arrest dates were in the transcript---

24 A Yes, ma'am.

25 Q ---in the record?

Eric Owens - Direct examination
by MS. ROSS

- 1 A Yes, ma'am. Yes, ma'am.
- 2 Q And also on Page 179?
- 3 A On one -- yes, ma'am. Yes, ma'am. Yes, ma'am. 179.
- 4 Q Once again, the arrest dates were discussed.
- 5 A Yes, ma'am. There is, there is in the --.
- 6 Q Where?
- 7 A Right here.
- 8 Q What line is that?
- 9 A That's Line 8 and 9.
- 10 Q All right.
- 11 A Okay. So, you're saying that you gave a true statement
- 12 four, four months later.
- 13 Q All right.
- 14 A Yes, ma'am.
- 15 Q You also, in your Amended Application, had some -- a
- 16 number of allegations.
- 17 Are there any that, that you haven't covered in your
- 18 testimony today so far?
- 19 A I mean I feel like I -- it's, it's a lot of allegations
- 20 in there, but I feel like I covered the main, the main, main
- 21 statements -- the main ones because I feel like, if those
- 22 issues right there would of been brought about the proper
- 23 way, I could of got a fair trial. I ain't get a fair trial.
- 24 I feel like I ain't get a fair trial.
- 25 Q And you're saying, because the number of issues, they

Eric Owens - Direct examination
by MS. ROSS

1 add up and what it amounted to --

2 A Yes, ma'am.

3 Q -- was what?

4 A Ma'am?

5 Q What it amounted to with the number of errors was that
6 you, that---

7 A It's -- yes, ma'am, it's a whole lot of errors in my
8 case, yes, ma'am.

9 Q All right. I've got no further questions for you at
10 this time.

11 THE COURT: Okay. Yes, ma'am.

12 MS. GIOVANOLI: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. GIOVANOLI:

15 Q Good morning.

16 A Good morning.

17 Q So, you testified -- I'm gonna roll you back to your
18 direct testimony that your lawyer discussed with you whether
19 or not you should testify, correct?

20 A No, he really didn't.

21 Q Your testimony---

22 A He, he---

23 Q ---was that he told you he couldn't tell you whether---

24 A He couldn't tell me---

25 Q ---you should---

Eric Owens - Cross-examination
by Ms. Giovanoli

1 A ---whether -- he couldn't tell me whether to get
2 away -- I can't tell you to get on the stand or not.

3 Q Okay. And do you---

4 A You know what I'm saying?

5 He---

6 Q ---understand that that's only your decision?

7 He can't make that decision?

8 A Yeah, he can't make that decision, but he suppose to --
9 he, he could of gave me some type of leverage to know
10 whether if I could get up there, you know what I'm saying,
11 what type of effect would it have if I do get up there. He
12 ain't got to tell me to testify. It's up to me. Right.

13 Q You're right.

14 But he discussed with you the consequence of
15 testifying. In your, your direct testimony, you said he
16 discussed that your prior criminal history would not come in
17 unless you opened the door on that.

18 A Yeah.

19 Q Is that not your testimony?

20 A I mean to a certain degree.

21 Q Okay. And actually, on Page 55, of the transcript --

22 A Uh-huh. (Affirmative).

23 Q -- he made a motion to exclude any prior crimes coming
24 in should you take the stand?

25 A Yes, ma'am.

Eric Owens - Cross-examination
by Ms. Giovanoli

1 Q So, he did that in anticipation of, of -- in
2 anticipation of you deciding to take the stand, did he not?

3 A Yeah, I assume so.

4 Q Okay. And the Court informed you, and actually the
5 solicitor agreed, that they wouldn't ask you about your
6 prior armed robbery, your prior assault and battery of a
7 high and aggravated nature, your prior grand larceny, or
8 your prior weapons charge unless you opened the door---

9 A Unless---

10 Q ---on that?

11 A Unless I get up there and try to paint a perfect
12 picture of myself, yes, ma'am.

13 Q Okay. So, you were aware of the consequences of you---

14 A I -- yeah, I was aware of those consequences.

15 Q And you made the decision not to testify?

16 A Yeah, I made the decision -- no. Yeah, I made the
17 decision not to get up there. You're right. Yes, ma'am.

18 Q Okay. Going forward, you also testified that -- well,
19 I'm gonna clarify. Your testimony is that you wanted to
20 plead guilty to this charge, and your lawyer didn't let you.

21 A No, that ain't what I said. I ain't say I wanted to
22 plead guilty. No, I didn't want to plead. He never came to
23 me with a plea offer. He never, he never asked me, but yes,
24 I did say that I want to plead guilty like -- after like in
25 the middle of trial.

Eric Owens - Cross-examination
by Ms. Giovanoli

1 And so I was like I don't want to go through with this,
2 you know what I'm saying. And he was like -- he told me we
3 gonna go through with it. He told me he not pulling out,
4 but it's, it's -- you know what I'm saying?

5 Q Your testimony is that your lawyer wouldn't let you
6 plead guilty?

7 A He wouldn't -- he wouldn't let me plead guilty?

8 Yeah, he wouldn't let me plead guilty, and no plea
9 never even got offered.

10 Q Okay. Well, earlier you say you didn't know anything
11 about the incident. When counsel brought you all the
12 discovery, and said review it, and you said you didn't know
13 anything about it.

14 A I didn't know anything about what?

15 Q The incident. The shooting. The murder.

16 A When he, when he brought me -- when he brought me the
17 motion, he told me to go back and study my motion.

18 Q Sure.

19 A To bring him something back to represent me with in
20 court. I don't know nothing about the law. That's what I'm
21 saying.

22 Q Okay.

23 A I don't know nothing about that.

24 Q Okay. So, when you said in your motion he's actually
25 bringing you what's called the discovery and that's all

Eric Owens - Cross-examination
by Ms. Giovanoli

1 the---

2 A Yeah, he brought---

3 Q ---the evidence in the case?

4 A Yeah, that's all the evidence in the case.

5 Q Okay.

6 A He brought me a motion discovery with whatever, you
7 know what I'm saying, with a bunch of statements.

8 Q Okay. Are you, are you asserting that you did not
9 shoot the victim?

10 A Yes, ma'am.

11 Q Okay. So, why, if you were not -- if you're alleging
12 you did not shoot the victim, would you want to plead guilty
13 or get a plea offer?

14 A It ain't even about -- really if I wanted to plead
15 guilty or get a plea offer or not. I just didn't want to go
16 through a trial. You know what I'm saying?

17 I didn't want to go through a trial. You know what I'm
18 saying?

19 If I feel like I'm gonna get found guilty to get a life
20 sentence, why would I, why would I, why would I not try to
21 get a plea, you know what I'm saying, if I feel like I'm
22 gonna get found guilty whether I did it or didn't.

23 I didn't do it. I pled not guilty.

24 Q Right.

25 But you're -- now you're testifying that you would of

Eric Owens - Cross-examination
by Ms. Giovanolì

1 pled guilty had you gotten a plea offer or had your lawyer
2 allowed you to?

3 A I don't know. He never gave me the option to plead
4 guilty or not. That's what I'm saying.

5 Q Okay.

6 A He never gave me an option.

7 Q You, you were -- you're all---

8 A I ain't---

9 Q You wanted that option?

10 A I ain't said I would -- I never had that option.
11 That's what I'm saying. I'm not saying I would or I
12 wouldn't. I just never had the option.

13 Q Your testimony is that you never had a plea offer?

14 A I never had a plea offer---

15 Q Okay.

16 A ---or nothing. I ain't never had an option to plead
17 guilty.

18 Q Okay. I, I, I think I understand.

19 So, you also testified, on direct, that Trial Court or
20 actually trial counsel failed to object to I think it was
21 victim's brother was sitting at -- in the courtroom during
22 jury selection with a t-shirt that displayed the victim's
23 face on it, correct?

24 A Yes, ma'am.

25 Q Okay. And do, and do you recall, and the record

Eric Owens - Cross-examination
by Ms. Giovanoli

- 1 reflects this, that your lawyer had a bench conference with
2 the Judge, and then, shortly after that bench conference---
- 3 A That's---
- 4 Q ---the Judge addressed it and made the, the brother---
- 5 A That's it.
- 6 Q ---take off the shirt?
- 7 A I understand that. He made him flip it over, turn it
8 over backwards, or do whatever, but I said it showed
9 prejudice towards the jury that he did that -- that, that he
10 sat there through the whole jury selection that -- with that
11 shirt on. That's what I said.
- 12 Q And, at the time of the jury selection, the jury did
13 not know anything about the case?
- 14 They didn't know who he was?
- 15 A I mean he---
- 16 Q They didn't know who the person on his---
- 17 A He---
- 18 Q ---on his picture was.
- 19 A But he still---
- 20 Q Is that correct?
- 21 A He still -- I don't know that. I don't know if they
22 seen the shirt or not. He was sitting where they can see
23 him.
- 24 Q Even had they seen it, how would they know who was on
25 the shirt?

Eric Owens - Cross-examination
by Ms. Giovanoli

1 MS. ROSS: That calls for speculation, Your Honor.

2 A I can't answer that.

3 MS. GIOVANOLI: Okay. I'll withdraw that question.

4 THE COURT: Thank you.

5 Q And also you testified, during Doctor Wren's testimony,
6 I believe it was somewhere on -- oh, no, I'm sorry.

7 On Page 114 and 115, this is exactly what you testified
8 on direct about. That was whenever -- I want to say her
9 name right, Shana?

10 A Shana.

11 Q Shana Williams testified that you murdered Stanley
12 Jones, and your counsel immediately objected to that.

13 A Uh-huh. (Affirmative).

14 Q And you testified that he didn't move to strike the
15 statement.

16 A Yeah, he suppose to---

17 Q Is that right?

18 A Yeah. Yes, ma'am.

19 Q Okay. But I'm gonna -- may I approach this witness?

20 THE COURT: Yes, ma'am.

21 Q And can you just read Page 15, Line 3 when the Court
22 responds to counsel's objection.

23 A I sustain the objection.

24 Q And then continue.

25 A Oh. Ask that you lay a foundation for that statement.

Eric Owens - Cross-examination
by Ms. Giovanolì

1 I'll strike the answer at this time.

2 Q Okay. So, the answer was actually stricken from the
3 record.

4 Is that correct?

5 A I mean that's what it say on that paper, ma'am.

6 Q Okay. And then moving along to Doctor Wren's
7 testimony. His testimony was, in fact, that he was not an
8 expert in guns.

9 A A gun expert, you're right.

10 Q So, he couldn't answer any questions with regard to
11 specific guns.

12 Is that correct?

13 A Yes, ma'am.

14 Q Okay. But his testimony is actually on Page -- I want
15 to get the right page. 231. And I'm just gonna read this
16 one instead of having you read it, but on 231, Line 4, he
17 testifies there was no bullet fragment on x-ray because it
18 was a through and through shot. And this is a large
19 caliber. The biggest caliber bullets now -- well, I don't
20 know for sure, but handguns are -- you can hardly ever find
21 one over 50 caliber. I'm not even sure they have any over
22 50 caliber in handguns, but this was one inch in diameter
23 meaning it was at least twice, over twice as big in diameter
24 as a .44, which is 44 one-hundredths. This was one
25 hundred -- one hundred -- one hundredths of an inch in

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by Ms. Giovanoli

1 diameter. So, it was more consistent with a slug that can
2 be used.

3 So, his testimony wasn't even with regard to what gun
4 was used?

5 It was rather the wound being consistent with a large
6 caliber gun -- bullet.

7 Is that correct?

8 A I don't know. I don't know nothing about how he -- the
9 thing about it. I don't know nothing about what he was kilt
10 (sic) with or nothing. I don't know nothing about no
11 bullets or no guns or nothing either.

12 Q Okay. But Doctor Wren's testimony, my question was, is
13 his testimony was just with regard to how big the wounds
14 were---

15 A Okay.

16 Q ---and what type of bullet would cause these wounds.

17 A Uh-huh. (Affirmative).

18 Q Is that correct?

19 A Yes, ma'am.

20 Q So, he didn't testify with regard to what gun was used
21 cause he was, self-admittedly, not an expert in guns.

22 Is that correct?

23 A Yeah, he specifically said it.

24 Q Okay. And that response that he gave on Page 231 was
25 actually in response to a question of simply on page -- the

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by Ms. Giovanoli

1 question from the State was -- I'm sorry. Could you
2 describe the wounds.

3 So, they weren't asking him about guns, were they?

4 A Yes, ma'am, the solicitor, he asked him about the gun.
5 It's in there somewhere. Well, he, he asked him. He say so
6 you saying that this man was killed with a 12 gauge pump
7 shotgun, and Doctor Wren specifically said I can't -- I
8 don't know. I'm not a gun expert.

9 Q Okay.

10 A He said that on more than one occasion.

11 Q Okay. So---

12 A Okay.

13 Q ---he didn't give an answer to that question?

14 A No, he didn't.

15 Q Okay.

16 A But my lawyer also didn't object to it like he
17 should -- like he suppose to either.

18 Q What would he object to if the witness didn't answer
19 the question?

20 A I mean he still suppose to objected to it because the
21 solicitor was trying to drag the man to say what kind of gun
22 he was killed with or what kind of gun they, they assumed he
23 was killed with.

24 Q Okay. On the jury question that arose on Page 294 was
25 specifically what date were you arrested, and what date was

Eric Owens - Cross-examination
by Ms. Giovanoli

1 one of the State's witnesses arrested.

2 A Yes, ma'am. Yes, ma'am.

3 Q Is that correct?

4 And the record -- there is -- there was never evidence
5 presented of what date that you were arrested. Simply
6 March, the month, but not the date.

7 Is that correct?

8 A I mean I know -- I was locked up March the 5th. I
9 think that was the exact date, March the 5th, you know what
10 I'm saying. But it never came out in Court to my
11 understanding.

12 Q Okay.

13 A You know what I'm saying?

14 Q All right. And the Judge, at that time, also
15 instructed the jury about not holding against you your
16 assertion of a Fifth Amendment not to testify, that they
17 couldn't hold that against you in deliberations.

18 Is that correct?

19 A Yes, ma'am.

20 Q And, in your trial, Shana Wallace, was your, your
21 girlfriend?

22 A Yes, ma'am, at the, at the time.

23 Q And she testified that, that the Defendant and you had
24 gotten into an altercation?

25 A The night before.

Eric Owens - Cross-examination
by Ms. Giovanoli

1 Q Right.

2 A But it would -- the altercation that me and the
3 Defendant got into, it was not that serious, you know what
4 I'm saying. That's why -- we grew up together.

5 Q And that altercation took place at a party?

6 A At a---

7 Q A social gathering.

8 A Yeah, just a -- yeah, you could say that.

9 Q Okay. And you were pretty upset after the Defendant
10 punched you.

11 Is that correct?

12 A See, that's -- man, that's the thing. You know what
13 I'm saying?

14 MS. ROSS: Judge, I'd object to this line of
15 questioning at this time. I think it's, it's going into
16 maybe what he would of testified to if he had testified at
17 trial, which I don't think is relevant---

18 THE COURT: Counsel.

19 MS. ROSS: ---relevant to---

20 MS. GIOVANOLI: I'm just laying some background for
21 this trial, what happened at the trial, because it speaks
22 directly to the prejudice prong of ineffective assistance of
23 counsel. I'm not asking him what he would of testified to
24 although he has made allegations that his lawyer should of
25 told him to testify. So, I think it would be relevant with

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1 regard to that allegation, but that's not what I'm asking.

2 THE COURT: Why don't you rephrase the question,
3 counsel?

4 MS. GIOVANOLI: Okay.

5 Is it true that Shana Wallace testified that, after the
6 defendant punched, you were angry?

7 A Yes, ma'am. Yes, ma'am, that's true.

8 Q Okay. And is it true that the -- Shana Wallace
9 testified that, after that, you told her to take me back
10 home so I can get my gun?

11 That's her testimony.

12 A Yeah, that's her testimony.

13 Q Okay. And then your -- she told you -- her testimony
14 was that she told you not to do this, just to calm down,
15 chill out.

16 Is that correct?

17 A That's her testimony.

18 Q Okay. And her---

19 A Okay.

20 Q Her testimony---

21 A This is her -- hold on.

22 Q This is your girlfriend?

23 A Hold on. Well, her testimony also say she was lying.
24 She also said she was lying too. That's her testimony.

25 Q And what was her testimony with regard to why she was

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by Ms. Giovanoli

1 lying?

2 A I don't know. That's her testimony.

3 Q Her testimony was that she was lying because you
4 weren't arrested yet and she was scared of you?

5 A That's a lie too.

6 Q Okay. So, then her testimony was also that, after you
7 got your gun out of the house, you directed her to drive you
8 back to the social gathering.

9 Is that correct?

10 A That's her testimony.

11 Q Okay. And then once you got back to the social
12 gathering, she testified that the victim, at that point, had
13 left the party?

14 A That's her testimony.

15 Q Okay. And then the victim -- she also testified that
16 the next day you took her car?

17 A I took her car?

18 Q Yeah, the white Buick.

19 A Did you do the -- did you do the research and see who
20 car the name was in?

21 That's my car.

22 Q Okay. But she usually drove that car to work.

23 Is that correct?

24 A Yeah, she drove -- and she drove to work -- she drove
25 that car to work that night too.

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by Ms. Giovanoli

1 Q But there was testimony from two people at her job that
2 said that she didn't drive.

3 Is that correct?

4 A I don't know that. I don't know. I don't know what
5 they, what they really got up there and said. They didn't
6 say nothing about the -- no miss -- matter of fact, let me
7 rephrase that.

8 Ms. Terry did not get up there and testify that, that
9 Shana not drive to work cause I don't think she knew or
10 whatever the case may be.

11 Q But she testified that she was at work that morning?

12 A She was at work.

13 Q Right.

14 A And she drove to work that morning.

15 Q And Misty Medford testified that she, that---

16 A When she got to work, she, she say she didn't see no
17 car. She didn't never -- she just didn't say -- she
18 didn't -- if she ain't -- it ain't say she ain't say that
19 she didn't drive to work or whatever.

20 Q Okay.

21 A She just say she didn't see the car.

22 Q She said that she didn't see her car in the parking
23 lot---

24 A Okay then. That's, that's---

25 Q ---at work?

Eric Owens - Cross-examination
by Ms. Giovanoli

1 Is that correct?

2 A Yeah, that don't mean that she didn't drive the car to
3 work.

4 Q Okay. So, going back to Shana Wallace's testimony, she
5 testified that you took her to work that morning so you
6 could use the car.

7 Is that correct?

8 A Say that again.

9 Q Shana Wallace testified at trial---

10 A She testified that, but that's a lie.

11 Q Okay.

12 A She also said she lied too. I ain't on trial right
13 now. I mean I'm trying to figure out what you, why you---

14 THE COURT: Mr. Owens, sir?

15 THE WITNESS: Ma'am?

16 THE COURT: I understand that this is very emotional
17 for you.

18 Okay. But what I want you to do is I want you to give
19 the legal counsel an opportunity to state her question, and
20 then she'll give you an opportunity to fully answer.

21 Okay. So that our court reporter can take this down.

22 All right. Just take a deep breath.

23 THE WITNESS: Oh, yes, ma'am.

24 THE COURT: Take a deep breath.

25 And why don't we restate that question, counsel?

Eric Owens - Cross-examination
by Ms. Giovanoli

1 MS. GIOVANOLI: Okay.

2 I'm just gonna continue along with Shana Wallace's
3 testimony.

4 So, Shana Wallace testified that you took her to work
5 that morning and were suppose to pick her up when her shift
6 was done.

7 Is that correct?

8 A Yes, ma'am.

9 Q Okay. And Shana Wallace also testified that you called
10 her or texted her while you were at work and said her car --
11 there was something wrong with her car, and it needed to go
12 to the shop.

13 Is that correct?

14 A I ain't even see that testimony. She maybe did. I
15 mean I ain't only -- I don't remember that, but---

16 Q Okay.

17 A ---she probably did.

18 Q Okay. And then did she also testify that, the next
19 day, she got her car back and there was nothing wrong with
20 it?

21 A The next day?

22 Q Yes, she said the next day that she got her car back.

23 A Well, I don't, I don't even remember that part of it.

24 MS. ROSS: Judge, I'd object to the relevance of this.
25 You've got the transcript before them. You can---

Eric Owens - Cross-examination
by Ms. Giovanoli

1 THE WITNESS: Word.

2 MS. ROSS: ---see exactly what his testimony---

3 THE WITNESS: Everything she reading is about what she
4 testified upon.

5 THE COURT: Okay.

6 THE WITNESS: But she also---

7 THE COURT: Okay. Mr. Owens. Mr. Owens.

8 THE WITNESS: What?

9 THE COURT: When one of the lawyers objects, that means
10 that you need to be quiet so that I can hear their
11 objection, and the court reporter can take it down.

12 Okay?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: All right. I know, I know you, you want to
15 get what you want to be said out there, and I'm gonna let
16 you do that.

17 All right?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Let's just make sure we get a clean record.

20 All right. Yes, ma'am, Ms. Ross.

21 MS. ROSS: While he was present at the hearing, which
22 was really two and a half years ago, I'm not sure about his
23 recollection of every bit of the testimony that was given.
24 The Court has a transcript before it. I think that would be
25 the best basis to rehash what the testimony of a witness

Eric Owens - Cross-examination
by Ms. Giovanoli

1 that's taken down by the court reporter would be.

2 THE COURT: Yes, ma'am, I understand and, and counsel
3 has a right to question him on, on his recollection of that
4 and may approach him to help him refresh---

5 MS. GIOVANOLI: Okay.

6 THE COURT: ---if, if he does not have a recollection
7 of it as well.

8 MS. GIOVANOLI: Thank you, Your Honor.

9 I'm gonna continue with regard to the testimony that
10 was offered at trial, and, ultimately, my purpose is to ask
11 a question with regard to all this testimony.

12 THE COURT: Yes, ma'am.

13 Q So -- okay. Also Shana, would you agree or disagree,
14 that Shana Wallace testified that, that you first denied
15 killing the victim, but later you admitted it to her?

16 A Did she testify to that?

17 Like I said, I can't remember if she testified saying
18 that or not.

19 Q Okay. Well, we'll let the record speak on that.

20 She also testified that, if you told anyone, you'd hurt
21 her.

22 Is that correct?

23 Do you remember that testimony?

24 A Yes, ma'am, I remember that.

25 Q Okay. And then we go to -- and I'm -- apologize if I

Eric Owens - Cross-examination
by Ms. Giovanoli

1 butcher this name. Darian Blane Seay.

2 Do you recall him testifying at trial?

3 A Yes, ma'am.

4 Q And he testified that he was your friend, correct?

5 A Yes, ma'am.

6 Q Okay. And he testified, essentially, the same thing.

7 There was an altercation between you and the victim at, at
8 his house.

9 Is that correct?

10 A Yes, ma'am.

11 Q Okay. And everyone left, but you came back and you had
12 a gun, and you were looking for the victim.

13 Do you remember him testifying to that?

14 A Yes, ma'am.

15 Q Okay. He also testified that you were drunk and angry
16 after you got hit by the victim.

17 Is that correct?

18 A That's what he testified?

19 Q He also testified similar to your girlfriend that he
20 didn't tell the truth to law enforcement officers to --
21 originally because he was scared of you.

22 Is that correct?

23 A That -- yes, ma'am, if that's what they say.

24 But can I say something?

25 Q Sure. You --.

Eric Owens - Cross-examination
by Ms. Giovanoli

- 1 A Okay. For somebody to make those type of accusations
2 four months after I'm incarcerated, why you just didn't
3 go -- why you had to get locked up to make them accusations?
4 Q Isn't that the exact argument---
5 A Why did my---
6 Q ---that your lawyer made to the jury?
7 A I don't know, but I'm like, I'm, I'm like, I'm like --
8 I'm asking it now. You know what I'm saying?
9 why, why would you have to get -- wait four months
10 later to ask them accusations for me to be one that telling
11 a lie?
12 You know what I'm saying?
13 If, if, if I'm the one lying, why you ain't go down
14 there right then and there after I got locked up and then
15 make them same accusations?
16 Q Okay. And then Derrick White---
17 A You feel what I'm saying?
18 Q Derrick White also testified at your trial, right?
19 A Okay. He got locked up, incarcerated too.
20 Q Right.
21 A I mean he got locked up.
22 Q Cause he was the driver while you were in the car when
23 you shot the victim, right?
24 A But he the driver, but he on the streets and I'm in
25 prison.

Eric Owens - Cross-examination
by Ms. Giovanoli

- 1 Q Okay. And then he was your friend, correct?
- 2 A Yeah, he my, he my man, right.
- 3 Q He also testified against you at trial.
- 4 Is that correct?
- 5 A Yes. Yes, ma'am.
- 6 Q And he testified that you told him to drive you over to
- 7 the victim's house?
- 8 A Yes, ma'am, he testified that.
- 9 Q And he also testified that you drove the white Buick,
- 10 which was you and girlfriend's car, correct?
- 11 A Yes, ma'am.
- 12 Q And he also testified that he heard the victim say you
- 13 gonna shoot me now to which you responded damn right.
- 14 Is that correct?
- 15 A That's what he said.
- 16 Q And, lastly, he testified that he didn't, he didn't
- 17 come forward with the truth earlier because he was scared of
- 18 you.
- 19 Is that correct?
- 20 A Yes, ma'am.
- 21 Q Okay.
- 22 A But---
- 23 Q So---
- 24 A Can I ask you a question?
- 25 Q Yes, you can.

Eric Owens - Cross-examination
by Ms. Giovanoli

- 1 A Then go back to the same thing.
2 why, four months later, why is all three of them
3 statements four months later and all three of their
4 statements four months later and all them consistent with
5 each other?
6 why ain't nobody volunteer to go down there and write
7 these statements?
8 I done been locked up in the County four months.
9 Four months later, now you-all three of y'all gonna go
10 down there?
11 Q And so that's the exact argument---
12 A No, all---
13 Q ---that your lawyer made to the jury---
14 A But what I'm---
15 Q ---with regard to their credibility?
16 A But what I'm saying is, I'm saying, four months later,
17 you know what I'm saying, y'all get arrested and make these
18 statements.
19 Q Okay. Is it true that, four months later, you were
20 arrested for this offense?
21 A Four months later what?
22 After the incident---
23 Q Right.
24 A ---occurred?
25 Q After the incident.

Eric Owens - Cross-examination
by Ms. Giovanoli

1 A I don't know how many months later I was arrested for
2 it, but I know I was arrested for it.

3 Q Well, I want to---

4 A I went to jail for CDV, and then I got charged with
5 that. I didn't go to jail, I didn't go to jail for murder.

6 Q Would you agree that the incident occurred on
7 November -- on or about November 12th, 2013?

8 A I'm assuming, I'm assuming that that's when it
9 happened. I don't know when it happened.

10 Q Okay. And---

11 A But, like I said, I went to jail for CDV. I didn't go
12 to jail for murder.

13 Q Okay. And then your testimony was that you went to
14 jail in March of 2014.

15 Is that correct?

16 A Yeah---

17 Q And that's---

18 A ---March the 5th, 2014.

19 Q And that's whenever the victims that they testified
20 that they felt safe to come forward with the truth?

21 A They ain't when they testified. They testified four
22 months after that. They came to -- they came four months
23 after that after I got incarcerated. That ain't when they
24 came.

25 Q Okay. I have -- the statements are in the record. So,

Eric Owens - Cross-examination
by Ms. Giovanoli

1 we'll---

2 A You're right.

3 Q ---let them speak for themselves, and I have no further
4 questions.

5 Thank you.

6 THE COURT: Okay. Mr. Owens, any -- you stay seated,
7 sir.

8 Ms. Ross, any further questions?

9 MS. ROSS: Just briefly redirect on some issues that
10 were brought up in her line of questioning.

11 REDIRECT EXAMINATION

12 BY MS. ROSS:

13 Q What -- all the witnesses against you were charged with
14 obstruction of justice.

15 Is that correct?

16 A Yes, ma'am.

17 Q And they were -- when did their testimony change?

18 A After I got incarcerated. That's when their
19 testimonies -- that's when they -- all their testimonies
20 changed. Everybody had the---

21 Q Was it before or after they were charged themselves
22 with obstruction?

23 A After, after, after they got charged with obstruction
24 of justice.

25 Q And, and this was brought out in cross as well, but all

Eric Owens - Redirect examination
by Ms. Ross

1 those witnesses spent time with you --

2 A All---

3 Q -- after this allegedly occurred and before you were
4 arrested---

5 A Yes.

6 Q ---again?

7 A Yes, ma'am.

8 Q And none of them called the police or nothing?

9 A None of them. None of them called the police, and you
10 scared to be with me four months later, why would you go to
11 work and not call the police?

12 Q Okay. Now, going back to just Shana Wallace's
13 testimony on Page 114. She testifies, in response to can
14 you tell me why we're here today, she says it's because of a
15 murder that was involved, and then the Court tells her to
16 speak up because some of the jurors are leaning forward.
17 And she says yes, sir, and she says it's because of a murder
18 that is happened two years ago.

19 And then the question is who was murdered?

20 Stanley Jones.

21 And who murdered him?

22 Eric Owens.

23 And all that comes out before the objection is made.

24 A Yes.

25 Q Is that why the number of times it was stated was---

Eric Owens - Redirect examination
by MS. ROSS

1 A Yes. Yes.

2 Q ---your problem when this arose?

3 A Yes, ma'am.

4 Q All right.

5 A Yes, ma'am.

6 Q No further questions.

7 THE COURT: Okay.

8 MS. GIOVANOLI: I just have one recross examination
9 question, and I'm---

10 THE COURT: I'll allow it.

11 MS. GIOVANOLI: Thanks.

12 RECROSS EXAMINATION

13 BY MS. GIOVANOLI:

14 Q You were saying that all the witnesses were charged
15 with obstruction of justice, and then they changed their
16 statements.

17 Is that correct?

18 A Yes, ma'am.

19 Q And is it not true that that was brought out at trial
20 by your trial attorney?

21 A I don't know. I know he said -- I think he said he
22 mentioned it, but I don't really know. I can't -- like I
23 said, it happened two, three years ago. The trial was two,
24 three years ago. I'm kind of blurry with it a little bit,
25 but, like I said, I think he mentioned something about it,

Eric Owens - Recross examination
by Ms. Giovanoli

1 but he didn't get in depth about it.

2 I ain't, I ain't really for sure. I ain't really for
3 sure.

4 Q You remember, in closing argument, to the jury?

5 A What was it?

6 I'm listening.

7 Q No, I'm just asking you if you remember his closing
8 argument to the jury?

9 A I remember bits and pieces. I don't remember much.

10 Q Okay. Thank you.

11 No further questions.

12 THE COURT: Okay.

13 All right. Mr. Owens, sir, you can step down.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Watch your step.

16 All right?

17 THE WITNESS: Yes, ma'am.

18 MS. ROSS: And we have no further witnesses.

19 THE COURT: Thank you.

20 MS. GIOVANOLI: State will call Roger Poole.

21 THE COURT: Yes, ma'am.

22 Okay. Mr. Poole, if you'll come forward.

23 ROGER POOLE, being first duly sworn,
24 testified as follows:

25 THE COURT: Thank you, sir. Please be seated. Make

Roger Poole - Direct examination
by Ms. Giovanoli

1 yourself comfortable.

2 THE WITNESS: Thank you.

3 THE COURT: Counsel.

4 DIRECT EXAMINATION

5 BY MS. GIOVANOLI:

6 Q Good afternoon, Mr. Poole. Thank you for being here.

7 A Good afternoon.

8 Q By way of background, how long have you been practicing
9 criminal law?

10 A Thirty-eight years.

11 Q Okay. And what is your position currently?

12 A I'm a lawyer in the Seventh Judicial Circuit Public
13 Defender's Office.

14 Q Okay. And how long have you been there?

15 A About nine years.

16 Q So, you were an assistant public defender at the time
17 of this trial.

18 Is that correct?

19 A That is correct.

20 Q Okay. Were you appointed in this case?

21 A That's correct.

22 Q Okay. Do you -- did you make a motion for discovery?

23 A Yes.

24 Q And did you receive that discovery?

25 A Yes, I did.

Roger Poole - Direct examination
by Ms. Giovanoli

1 Q Okay. And any point in time did you meet with the
2 Applicant and review that discovery?

3 A Yes, I gave him discovery as I received it. I would
4 receive a certain amount of it from the State, and then I
5 would take it to him.

6 Q Okay. And you would allow him to review it before you
7 came back to discuss it with him?

8 A That's typically the way I work.

9 Q Okay. Did you ever go back to discuss the discovery
10 with him?

11 A Yes, I did.

12 Q Okay. And, in that discussion, did you discuss his
13 version of events?

14 A I'm sorry?

15 Q Did you discuss the Applicant's version of events?
16 His story?

17 A Yes. Basically he said he didn't, he didn't have
18 anything to do with it.

19 Q Okay. And did he give you any witnesses that you -- he
20 wanted you to investigate?

21 A He had no witnesses.

22 Q Okay. Did you interview any of the witnesses that were
23 included in the State's list of witnesses?

24 A No, I did not, but I had plenty of statements from
25 them.

Roger Poole - Direct examination
by Ms. Giovanoli

1 Q Okay. And how many -- there were multiple statements?
2 Is that fair to say?

3 There were multiple statements from each witness?

4 A There were multiple statements from each witness.

5 Q Okay. Can you little -- give us a little bit of a
6 brief background with regard to that and the way you viewed
7 this case?

8 A Basically there were like three other witnesses, three
9 State's witnesses, that I believe they were charged with
10 accessory either before or after the fact, and they had
11 given statements that were inconsistent with one another.
12 One statement would be -- Statement A would be different
13 from Statement B, which would be different from Statement
14 D -- C, different from Statement D, and all of them given by
15 one witness.

16 One witness may have given as many as four different
17 statements, statements. And we talked about -- I talked
18 about this with Mr. Owens, and that was going to be
19 essentially his defense, the credibility of the State's
20 witnesses.

21 Q So, it's safe to call -- this was a, a credibility
22 case?

23 A That's right.

24 Q Okay. And you discussed that with the Applicant?

25 A Yes.

Roger Poole - Direct examination
by Ms. Giovanoli

1 Q Did you also discuss with the Applicant his rights to
2 testify?

3 A Yes.

4 Q Or not to testify rather?

5 A Yes, we had a -- during the course of the trial, we had
6 a clarification as to what -- a hearing on the clarification
7 of what type of crimes he may or may not be impeached with
8 should he take the witness stand and put his character into
9 evidence.

10 Q And did you advise him one way or the other?

11 A No.

12 Q Well, what was your, I guess, discussion regarding?

13 A My discussion with him was basically you heard what the
14 Judge had said earlier as far as the charges were concerned,
15 and you have a right to testify. You have a right not to
16 testify. That the Judge will instruct you that you have an
17 absolute right not to testify.

18 Unfortunately, that charge was not made in the body of
19 the charges that was made at the end of the case, but he did
20 get around to charging that eventually.

21 Q In your direct -- you're to the jury instruction?

22 A That's right.

23 Q So, the first round of jury instructions, he left out
24 the Defendant's right to remain silent?

25 A That's right.

Roger Poole - Direct examination
by MS. Giovanoli

1 Q And then, after the jury came back into the courtroom,
2 he then instructed them that he has a right to remain
3 silent, and they can't hold that against him.

4 Is that correct?

5 A That's right.

6 Q Okay. All right. So, you did discuss -- you did, you
7 did discuss Applicant's right to testify, but, at the same
8 time, you told him that it was his decision?

9 A As that always is.

10 Q Okay. And did that -- did Mr. Owens ever request you
11 negotiate with the State for a plea offer?

12 A Well, I don't recall any specific discussions. I
13 always ask the State if there's going to be any offer.
14 There was no offer ever made of manslaughter. So,
15 therefore, there was no plea offer to be conveyed. There --
16 that -- one did not exist in this case.

17 Q Okay. So, there's no plea offer.

18 Did you advise the Applicant that he could plead guilty
19 straight up to murder?

20 A Well, I'm sure he understood that. I don't know -- I
21 don't recall any absolute conversation about that, but we
22 were ready for trial because, you know, the witnesses had
23 wavered so much in their statements that there was a shot at
24 it.

25 Q Well, he's testified that either before or during trial

Roger Poole - Direct examination
by Ms. Giovanoli

1 that he wanted to plead, and that you wouldn't allow him to
2 do.

3 Is that your recollection of what happened?

4 A No, I don't recall it being like that. He didn't want
5 to plead to murder.

6 Q And you -- your testimony is you didn't get a plea
7 offer---

8 A That's true.

9 Q ---for anything else?

10 A Yes, ma'am.

11 Q Okay. Did you stop him from pleading guilty?

12 A No.

13 Q And based on your recollection, when there was an issue
14 prior to the trial starting regarding the decedent's brother
15 wearing a shirt depicting the victim, did you bring that to
16 the Court's attention?

17 There was a bench conference on the record, and then
18 the Judge instructed him to take the shirt off.

19 Is -- did you address that with the Court?

20 A I think it's in the, the record, the transcript, that I
21 asked to approach the bench. Whereupon, the conversation
22 was held, and then the ensuing conversation or colloquy
23 between the individual that was wearing that shirt and the
24 jury -- the Judge ensued. And the -- that person, his
25 brother I think --

Roger Poole - Direct examination
by Ms. Giovanoli

1 Q Uh-huh. (Affirmative).

2 A -- was told to change his shirt or cover it up.

3 Q And, at that point, had any evidence been presented to
4 the jury?

5 A No evidence had been presented.

6 Q Did the jury know who that person was or who was on --
7 never mind. I withdraw. That's speculative.

8 I am just gonna move you on to the indictment. The
9 Applicant's made a number of allegations for you failing to
10 quash the indictment.

11 Did you review the indictment prior to trial?

12 A Yes.

13 Q And did you see any discrepancies with regard to the
14 indictment---

15 A No, I did not.

16 Q ---at that time?

17 Okay. And because the indictment is part of the
18 record, at this point, on the face of the indictment, it
19 says June 16th, 2014, term, but then, in the body of the
20 indictment, it says at the Court of General Sessions
21 convened on June 12th, 2014.

22 Did you, did you notice that discrepancy?

23 A I don't recall noticing those dates.

24 Q And had you---

25 A I may or may not have.

Roger Poole - Direct examination
by Ms. Giovanoli

1 Q And had you seen those dates---

2 A What's I typically look at or what any attorney looks
3 at is to look at the allegations in the indictment to see if
4 they are sufficient to serve as a notice document. And if,
5 if they are that, then that basically meets the threshold
6 question.

7 Q Okay. So, had you seen those date discrepancies, would
8 you have done anything differently?

9 A I don't see how that would be necessarily important.

10 Q Yeah.

11 In your practice, those types of kind of scrivener's
12 errors of these clerk's stamps of the dates, is that kind of
13 common in your practice?

14 A Well, there's often mistakes such as that.

15 Q And is -- in your practice, had you raised that issue
16 during trial, would the -- could the solicitor -- would they
17 be able to remedy that, that error?

18 A More likely than not. The Court would probably say
19 it's a scrivener's error or whatever or the solicitor could
20 give an explanation.

21 Q Okay. Let's see. The next allegation was with regard
22 to Doctor Wren's testimony.

23 Do you recall Doctor Wren, the expert, that testified
24 in the case?

25 A Yes, he's testified, he's testified in just about every

Roger Poole - Direct examination
by Ms. Giovanoli

1 homicide case in this county.

2 Q And you actually did not ask any questions on
3 cross-examination, correct?

4 A That's right.

5 Q And why is that?

6 A Well, he's been qualified as an forensic pathologist in
7 more than half the counties in the, in the State of South
8 Carolina. He was doing that when I came to the bar I think,
9 and he testifies in just about every homicide case in these
10 courtrooms.

11 He's done over 5,000 autopsies, and I often tell my
12 clients, even before he takes the witness stand, after I've
13 read the reports and all that, that, you know, I probably
14 will not ask him any questions because, if you look at his
15 testimony, and I've, I've tried this before, I tried this
16 early on, to, to cross-examine him. And if you start doing
17 that with him, then he can make his testimony almost twice
18 as lengthy as it would be under direct testimony because he
19 can go on and on and on. And, what he says, you don't want
20 to hear.

21 Q So, is it safe to say that that was a strategic
22 decision not to cross-examine Doctor Wren?

23 A Yes.

24 Q At the time of trial, were there any questions that you
25 could of asked him that would of been beneficial to the

Roger Poole - Direct examination
by Ms. Giovanoli

1 defense?

2 A Not that I know of.

3 MS. GIOVANOLI: Beg the Court's indulgence. I'm just
4 reviewing something.

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 Q Okay. And there's also been an allegation that you
8 didn't object to the Judge when he responded to the jury's
9 question. The jury had asked the arrest dates.

10 why did you not object there?

11 A Because I thought his instruction was proper.

12 Q Okay. I believe that will conclude my questions.

13 Thank you very much. Answer any---

14 A Thank you.

15 Q Answer any questions counsel may have.

16 THE COURT: Yes, ma'am.

17 MS. ROSS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. ROSS:

20 Q Hi, Mr. Poole.

21 A Hello.

22 Q I am just gonna start back in here with Doctor Wren's
23 testimony.

24 On Page 235, Doctor Wren started testifying about how
25 probably a slug was used. He's then asked could a handgun

Roger Poole - Cross-examination
by MS. ROSS

1 have caused this wound on Page 235, Line 18. He says I'm
2 not an expert on guns and he goes on.

3 Did you object to that line of questioning?

4 A No, ma'am.

5 Q And, in the closing argument, Mr. Gray closed on Page
6 259 talking about that testimony saying large bore slug on
7 Line 2. Not a bullet. Not shot pellets. A large bore slug
8 like from a shotgun. He admitted it could of been from a
9 large handgun.

10 Did you testify -- I mean did you object to that
11 testimony at all?

12 A No, I didn't. I think Doctor Wren testified that it
13 could of been a slug, but he just didn't really know.

14 Q Well, wouldn't you, would you of---

15 A Slugs are often shot from shotguns.

16 Q And that's a, a conclusion made from Doctor Wren sort
17 of loose testimony when he said he wasn't an expert.

18 Isn't that correct?

19 A Well, I mean if, if you know anything about guns, a --
20 there's -- it's called shotgun slug. You know, it's either
21 filled with shot or it's a slug that you can use in a
22 shotgun. One of which is scattered and one of which is a
23 solid object, projectile.

24 Q All right. And just going on, as far as scrivener's
25 errors on the indictment, if, if they were that, the two,

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by MS. ROSS

1 the two dates are two different weeks.

2 Does that make any difference as far as terms of Court?

3 A It could. I don't, I don't know. The only thing I can
4 say what's in the record is in the record. If I didn't
5 raise it, I didn't raise it.

6 Q Okay.

7 A And, for whatever reason -- let's see.

8 What dates are you looking at?

9 Q The June 16th. It says the term of Court and
10 June 12th is when it was indicted, which is the prior week
11 from June 16th, 2014.

12 A Well, that's true and that's there, but I -- then I did
13 not raise it. That is correct.

14 Q All right. And just going -- so, you didn't
15 interview -- I'm gonna -- Shana Wallace, the, the girlfriend
16 witness --

17 A No, ma'am.

18 Q -- prior to trial?

19 Though you did cross on her number of different
20 statements?

21 A Yes, ma'am.

22 Q Is that correct?

23 Now, as far as the jury instructions, you -- on Page
24 288, you, you took no exception to the instruction as given
25 by the Judge?

Roger Poole - Cross-examination
by Ms. Ross

1 A That's true.

2 Q And even though he had left out that instruction about
3 the client's right to remain silent?

4 A That's true. That's in the record.

5 Q And, and the record, when, when the jury had questions
6 about 90 minutes later, and that instruction was then given,
7 you didn't make any motions for a mistrial or any additions
8 at that time?

9 A You talking about when they came back with the
10 questions?

11 Q Right. And, at that point, I assume someone noticed
12 that the --.

13 A The way---

14 Q -- the instruction hadn't been given on right to remain
15 silent.

16 A When the jury comes back with questions, the lawyers
17 are called back to chambers typically, and a discussion is
18 taken on what the questions are, and what the Judge proposes
19 that his responses will be.

20 Q Uh-huh. (Affirmative).

21 A And during that conference, it came up, and I don't
22 know how it came up, it was mentioned that it was omitted in
23 his initial instructions about the Defendant's right not to
24 testify, and it was mentioned also that he was going to
25 include that.

Roger Poole - Cross-examination
by Ms. Ross

1 Q Okay. But the record doesn't reflect it -- you
2 requesting a mistrial based on his failure to give that
3 instruction?

4 A I did not request a mistrial.

5 Q And as far as the -- I just want to briefly ask about
6 the malice charge that was given. I believe it's on Page
7 283, Line 23 of the transcript. I'll just make it easy.

8 Did you object to the -- did you have exceptions with
9 that malice charge or raise any objections?

10 A If it's not in the record, I did not.

11 Q All right. And just briefly, as far as the plea offer,
12 you felt like there was no offer to give except---

13 A There was no offer to give.

14 Q ---for murder?

15 A That's correct.

16 Q And you'd asked -- had you asked the---

17 A Oh.

18 Q Had you begged for some voluntary manslaughter?

19 A Yeah, all the time. We do it all the time.

20 Q Okay.

21 A As early as we can.

22 Q All right. No further questions.

23 THE COURT: Okay. Counsel.

24 MS. GIOVANOLI: Just briefly a couple of questions in
25 follow-up.

Roger Poole - Redirect examination
by Ms. Giovanoli

1 REDIRECT EXAMINATION

2 BY MS. GIOVANOLI:

3 Q I just want to clarify that Doctor Wren's testimony
4 regarding the type of caliber of bullet that was used, that
5 testimony was based on his examination of the wounds.

6 Is that correct?

7 A My recollection is that he testified as the nature of
8 the wound, wound, its size, entry and exit, and all that
9 type of testimony, which is in the realm of forensic
10 pathology.

11 Q And after the instruction regarding the Defendant's
12 Fifth Amendment right to remain silent, was there, at that
13 point in the trial, did you see a basis for moving for a
14 mistrial?

15 A No.

16 Q And is it possible that, during that conference in
17 chambers, that you brought that up, that the Fifth Amendment
18 instruction was omitted?

19 A It may of been, but I can't sit here and say for sure I
20 did, but it was mentioned.

21 Q Okay. I have no further questions. Thank you very
22 much.

23 A Sure.

24 THE COURT: Okay. Anything else of this witness?

25 MS. ROSS: No, Your Honor.

1 THE COURT: Okay. Any objection to Mr. Poole being
2 excused?

3 MS. GIOVANOLI: None from the State.

4 THE COURT: Okay. Thank you, Mr. Poole. You may be
5 excused, sir.

6 THE WITNESS: Thank you, Judge Knie.

7 MS. GIOVANOLI: The State has no further witnesses.

8 THE COURT: Okay. Counsel.

9 MS. ROSS: Judge, I think that the record speaks for
10 itself.

11 In the opening, I refer to Gibson v. State. It does
12 talk about allowing few divergence from, from that
13 instruction for the malice charge. We would argue that
14 there was a diversion from that because there was no
15 articulation of the permissive inference aspect of implied
16 malice.

17 The, the other arguments, I believe, have been made
18 clearly in the record by the Applicant, and the testimony
19 that you heard, we would argue, that prejudice did occur
20 from that.

21 THE COURT: Thank you.

22 Yes, ma'am.

23 MS. GIOVANOLI: Just to respond to some of the
24 allegations for the record, with regard to the indictment, I
25 know that that allegation was just made today in Court. So,

1 I'm not prepared to cite case law, but I am aware of case
2 law, and I can submit it to the Court at a later date.
3 That, that -- the indictment serves as a notice document,
4 and, often times, in my practice, I've seen scrivener's
5 errors with regard to the date stamps, and there's case law
6 that says that, absent some showing that there -- that the
7 Grand Jury proceedings were defective, that these attacks
8 and scrivener's errors are not fatal.

9 And counsel testified that he reviewed the indictment.
10 He -- his, his client was certainly on notice of the
11 accusations and the time at which those accusations were
12 made. So, I just wanted to put that on the record.

13 Then to address the malice charge, I apologize. I
14 can't respond to that either as that wasn't pled in the
15 initial application. So, I would like to also research that
16 issue a little more in depth, and provide case law to Your
17 Honor at a later date.

18 And then I'll -- I will run through the allegations,
19 the failure to object to the Trial Court not giving that
20 information about the arrest dates. Judge -- the Judge's
21 response was proper. There was no basis for an objection,
22 and counsel testified to that as well. There was no arrest
23 date of one of the State's witnesses offered at all, and
24 then there was no specific arrest date with regard to the
25 Defendant either.

1 And then, with regard to his other pro se allegation
2 that the indictment didn't allege an address of the death,
3 that's not required. That's not an essential element of
4 murder.

5 Then he didn't offer any evidence with regard to
6 failure to poll the jury, but I would argue that that was
7 not ineffective assistance of counsel, and he's failed to
8 meet his burden on that charge, on that allegation.

9 The failure to move for mistrial due to the improper
10 influence of the brother wearing the decedent's shirt, this
11 was thoroughly addressed on the record, but there was
12 testimony that there was a bench conference held, and
13 presumably counsel brought that to the attention of the
14 Court because immediately thereafter the Court addressed the
15 brother and told him to take off this shirt because he
16 didn't want any undue influence or prejudice against the
17 defendant in the trial.

18 As far as the allegation of failing to object to the
19 solicitor's comments, there was no testimony offered on that
20 matter. I don't believe the Applicant's met his burden on
21 that, but the testimony specifically references the
22 solicitor's quoting testimony given by the State's witnesses
23 was -- which was very proper.

24 There was some, you know, I want to say there was a
25 foul word used in that. That was directly the testimony.

1 The failure to object to the Trial Court's jury charge
2 where the Court failed to instruct the jury of the
3 Applicant's Constitutional right to remain silent, it's
4 evident in the record that the judge did not instruct the
5 jury the first time around. There -- there's testimony that
6 there was a conference in chambers. Mr. Poole may or may
7 not have brought that to the attention, but the important
8 thing was that the Trial Court realized that it had not
9 instructed the jury on the Fifth Amendment right to remain
10 silent, and it did so at the time when the jury returned to
11 the courtroom.

12 So, the Applicant can't show prejudice in that regard
13 because they were informed that they could not consider him
14 not testifying, and they could not hold that against him
15 you. So, there can't be any prejudice there.

16 And then, lastly, the failure to cross-examine Doctor
17 Wren. I believe that that was a strategic decision, and it
18 was a reasonable one. Doctor Wren basically testified to
19 his observations, his exam, the wound was one inch in
20 diameter, which is consistent with a large caliber bullet,
21 and, once again, counsel testified there was no basis for an
22 objection there, and he made the strategic decision not to
23 pursue a cross-examination of Doctor Wren whose been doing
24 this for a very, very long time.

25 So, I would just ask that this Application for PCR be

1 denied and dismissed because Applicant has failed to meet
2 his burden or proof, and I would also hope that Your Honor
3 would accept case law from me at a later date with regards
4 to the two new allegations.

5 THE COURT: Okay. Thank you.

6 Anything else, Ms. Ross?

7 MS. ROSS: No, Your Honor.

8 THE COURT: Okay. First, I will allow, as stated
9 earlier, I will allow the Attorney General's Office to
10 submit either case law or a brief addressing the matters
11 that, that the AG contends were not noticed in the
12 Application, and in the amendment to the Application for
13 Post-Conviction Relief.

14 And, of course, Ms. Ross, if you feel like you need to
15 further address those two issues, I'm happy for you to
16 submit something as well.

17 Counsel, do you think that 15 days is enough time?

18 MS. GIOVANOLI: For a brief?

19 THE COURT: Yes.

20 MS. GIOVANOLI: I---

21 THE COURT: Or would you -- I mean you just tell me. I
22 know that you-all have trials scheduled. You're very busy.
23 I know that.

24 MS. GIOVANOLI: Fifteen days after this week would be
25 good cause I can't really count this week that I'm in Court.

1 All---

2 THE COURT: Sure.

3 MS. GIOVANOLI: So, I would appreciate two weeks after
4 this week of hearings.

5 THE COURT: Okay. Well -- and, and I'm fine, fine to
6 just say until February the 28th.

7 MS. GIOVANOLI: Okay.

8 THE COURT: Ms. Ross, does that suit you?

9 MS. ROSS: Yes, Your Honor.

10 THE COURT: Okay. All right. Mr. Owens, and counsel,
11 I just need for you-all to understand.

12 Mr. Owens, I have your file here.

13 THE APPLICANT: Yes, ma'am.

14 THE COURT: I have the transcript. I have your
15 Application. I have a---

16 THE APPLICANT: Yes, ma'am.

17 THE COURT: ---remittitur. I have a copy of the arrest
18 warrant, the indictment, and the sentencing sheet. I have a
19 return, and I have some other documents. And, as stated,
20 counsel is going to be given roughly 30 days to supply to me
21 additional information that -- out of fairness to everyone,
22 if something was brought up today that, that, that was not
23 noticed before today, and I know it's impossible almost for
24 every, every detail to be brought up, out of fairness to
25 everyone, I'm going to give counsel an opportunity to send

1 me law, and, and their arguments on anything new that came
2 up today.

3 THE APPLICANT: Yes, ma'am.

4 THE COURT: And I -- so, I want you to understand that
5 I'm not issuing a decision today with regard to your
6 application. I take this very seriously. I know you take
7 this very seriously. I know this is a very important
8 hearing for you, and, so, sir, you may not get a decision
9 from me for maybe 30 days after I give them the deadline for
10 the law. So, it could be in March.

11 Okay?

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: But I wish you the best of luck, sir, and I
14 want you to understand what's going on.

15 Do you have any questions for your lawyer?

16 THE APPLICANT: No, ma'am, I appreciate what she did.

17 THE COURT: Okay. All right. Thank you, sir.

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: Anything else, counsel?

20 MS. GIOVANOLI: No, thank you.

21 MS. ROSS: No, Your Honor.

22 THE COURT: All right.

23

24 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

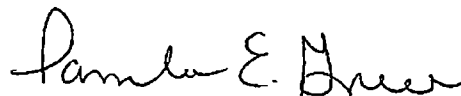
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 Common Pleas Nonjury for Spartanburg County, South Carolina, on the 31st day of January, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 22nd, 2018

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Eric Lamont Owens, #252967,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-1496

MEMORANDUM OF LAW

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Eric Lamont Owens (Applicant) on April 28, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on January 31, 2018 at the Spartanburg County Courthouse. Applicant was present and represented by Susannah C. Ross, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. J. Roger Poole, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the direct appeal records, the PCR application and amendment, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In June 2014, the Spartanburg County Grand Jury indicted Applicant for murder and possession of a firearm during the commission of a violent crime (2014-GS-42-2236). Roger Poole, Esquire represented Applicant. Assistant Solicitors Abel Gray and Chris Bain represented the State. On April 20-22,

2015, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted on both charges. Judge Couch sentenced Applicant to imprisonment for concurrent terms of thirty-five years for murder and five years for possession of a firearm during the commission of a violent crime.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on January 25, 2017. State v. Owens, Op. No. 2017-UP-055 (S.C. Ct. App. filed January 25, 2017). The remittitur was returned to the circuit court on February 10, 2017.

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

1. "Ineffective Assistance of Counsel"
 - a. "Failure to object to trial court not giving information already in the record"
 - i. "failing to object to the courts refusal to provide the jury with the relevant dates of the arrest of applicant and the state witnesses as that information was already in the record."
 - b. Failure to quash insufficient indictment
 - i. "indictment is insufficient because it fails to allege,... A place of death, which is an essential element of the crime of murder."
 - ii. "indictment was fatally defective where it contained two distinct offenses in one indictment and this was highly prejudicial."
 - c. Failure to poll jury
 - d. Failure to move for mistrial due to improper influence
 - i. "allowing the decedant brother [Mark Douglas Jones] to sit at the prosecution table throughout jury selection displaying a white tee shirt bearing a duplicate of the decedant throughout the entire jury selection process. Tr. pg. 92 L-25; pg. 93 L-1-6; pg. 94 L-1-25; pg. 95 L-1-25; pg. 96 L 1"
 - e. Failure to object to Solicitor's comments
 - i. Tr. Tr. pg. 257 L-1-3, "go nigga, go hit the gas"
 - ii. Tr. Tr. pg. 258 L-6-7, "He said I'm going to kill this nigga, Stanley Jones"

- f. Failure to object to trial court's jury charge where court failed to instruct the jury of Applicant's constitutional right to remain silent.
 - i. "the jury sent a note making inquiries before the trial court recognized the unconstitutional omission before the court attempted to make the charge and no one can invade upon the jury deliberations."
 - ii. "Tr. Tr. pg. 291 L-22-23; Tr. Tr. pg. 293 L-11-25 – pg. 294 L-1-6"
- g. Failure to "aggressively" cross-examine the State's expert witness
 - a. "failed to question state's expert witness regarding his degree of certainty as to whether it was a 12 gauge shotgun slug that killed Stanley Jones."

At the start of the hearing, Applicant outlined the allegations it would be pursuing in the hearing. Respondent objected to the late addition of new allegations at the hearing without any pleading beforehand, arguing it prejudiced the State in not allowing time to prepare to defend the allegations. Respondent requested dismissal of the late amendments or in the alternative to be allowed to supplement the record with additional argument or case law if the need arose. This Court allowed Applicant to proceed on his late allegations and allowed Respondent until February 28, 2018 to submit any further case law or briefs to this Court. This brief follows.

LATE ALLEGATIONS

I. Failure of trial counsel to quash indictment based on date discrepancies in indictments

Applicant's first late allegation is that counsel was ineffective in failing to move to quash Applicant's indictment (2014-GS-42-2236), based on the face of the indictment showing a date stamp of June 16, 2014, and the body of the indictment showing a date stamp of June 12, 2014.¹ Because the date discrepancy is most likely a minor scrivener's error, does not affect the substance of the indictment, the indictment provided sufficient notice to Applicant of the charges

¹ The date stamp beside the grand jury foreperson's signature is also June 12, 2014.

for which he was accused, and the State would have moved to amend any alleged error in the indictment had Counsel moved to quash it, Applicant has failed to meet his burden to prove either deficiency or prejudice.

Applicable law

Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, supra; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

“An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution.” State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996); See also State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952) (an indictment is valid on its face if it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet). Furthermore, “[t]he regularity of grand jury proceedings is presumed absent clear evidence to the contrary; the burden is on the defendant to prove facts upon which a challenge to the legality of the grand jury proceedings is predicated.” State v. Batchelor, 377 S.C. 341, 344, 661 S.E.2d 58, 59 (2008) (citing Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005); State v. Griffin, 277 S.C. 193, 285 S.E.2d 631 (1981)).

Discussion

Here, the fact that the date stamps on the face and body of the indictment are four days apart does not render the indictment fatally flawed nor does it provide “clear evidence” that the grand jury proceedings were irregular or tainted. This scrivener’s error, standing alone, is not sufficient to overcome the presumption of regularity and legality in the Grand Jury proceedings. The indictment served its fundamental purpose – to give Applicant sufficient notice of the charges for which he was accused. Counsel testified although he reviewed Applicant’s indictment, he did not notice the date discrepancy. However, Counsel correctly believed the indictment was sufficient to put Applicant on notice of the charges. Therefore, Applicant failed to prove by a preponderance of the evidence that Counsel was deficient.

In addition to no evidence presented of any irregularity in the Grand Jury proceedings, the scrivener’s error does not implicate subject matter jurisdiction. As such, had Counsel moved to quash the indictment based on the date discrepancies, the State would have simply moved to amend the indictment to reflect the correct date. See State v. Means, 367 S.C. 374, 387, 626 S.E.2d 348, 356 (2006) (“[A] motion to amend an indictment **should** be granted when the proposed amendment does not change the nature of the offense or affect the sufficiency of the indictment.”), abrogated on other grounds by Talley v. State, 371 S.C. 535, 640 S.E.2d 878 (2007); Morris v. State, 371 S.C. 278, 283, 639 S.E.2d 53, 56 (2006). (emphasis added). Therefore, Applicant cannot prove he was prejudiced by Counsel not moving to quash the indictment, as the motion would have been denied.

Because the Applicant has failed to meet his burden to prove ineffective assistance of counsel, this allegation should be denied.

II. *Failure of trial counsel to object to jury instruction on inferred malice, pursuant to Gibson*

Applicant's second late allegation is that Counsel was ineffective for failing to object to the trial court's jury instruction on inferred malice, based on Gibson v. State, 416 S.C. 260, 786 S.E.2d 121 (2016). As a threshold matter, Gibson was not decided until May 11, 2016. Applicant was tried April 20-22, 2015. Therefore, Gibson was not even applicable law at the time of Applicant's trial. Notwithstanding Gibson was decided after Applicant's trial, Gibson is wholly inapplicable to the jury instruction in Applicant's trial because the trial court did not instruct the jury that malice can be inferred from the use of a deadly weapon.

Applicable law

In Gibson v. State, Gibson's brother was involved in fight between two groups at a bar. Gibson's brother called Gibson for a ride home. When Gibson arrived, the fight had spilled out into the parking lot between numerous members of each group. During the fight, several gunshots were heard and the victim was killed by a shot to the back of his shoulder. Gibson testified that although he was "doing some shooting," he did not aim or intend to shoot the victim. The trial court instructed the jury that "inferred malice may also arise when the deed is done with a deadly weapon." Gibson's trial counsel did not object to the charge based on the trial court's failure to use the "permissive inference language"² in addition to the "standard implied malice charge."³

Similarly, in State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), Belcher shot and killed the victim. Belcher testified he shot the victim after the victim confronted him,

² In State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), the Court referred to the charge that "if facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive" as the "permissive inference instruction."

³ The Belcher Court referred to the charge that malice can be implied from the use of a deadly weapon charge as "the standard implied malice charge."

unprovoked, with a gun. Belcher also testified he fled to a vehicle and retrieved a gun and fired it at the victim while the victim was approaching him, gun in hand. The Court held that a jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide. However, the Court also stated in a footnote that “[t]he standard implied malice charge remains valid, as does the general permissive inference instruction.”

Discussion

Applicant argues Counsel was ineffective for failing to object, based on Gibson, to the trial court’s charge that, “malice can be inferred from any conduct showing a total disregard for human life.” Trial Tr. p. 283, ll. 22-23. First, as an initial matter, Gibson was decided approximately one year after Applicant’s trial. No South Carolina court has ever required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial. Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993). The relevant time frame for analysis is when the alleged ineffectiveness occurred. Id. at 310. While the rules of preservation require that objections to the admissibility of evidence be specific, they most certainly do not require clairvoyance. State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012). Therefore, Counsel cannot reasonably be held ineffective for failing to object based on case law that had not even been decided at the time of trial.

Second, the prohibited and scrutinized “standard implied malice charge” in Gibson and Belcher was not even read at Petitioner’s trial. Applicant errantly argues that an objection pursuant to Gibson should have been lodged against the jury charge that malice can be inferred from conduct showing total disregard for human life. Not only do the decisions in Gibson and Belcher not apply to the challenged jury instruction, they do not even mention the charge. To the

extent Applicant argues for an extension of Gibson and Belcher to the challenged jury instruction, Applicant overlooks the crux of those decisions and the analysis the Court detailed in arriving at their conclusion regarding the “standard implied malice charge.”

Thirdly, unlike Gibson and Belcher, in Applicant’s case there was no “evidence presented that would reduce, mitigate, excuse or justify the homicide.” Both Gibson and Belcher involved “gun fights” that resulted in alleged unintentional killings or self-defense. Applicant was convicted for shooting the victim, who was unarmed, with a large caliber slug using a pistol grip shotgun without provocation. There was no evidence or testimony presented that Applicant acted in self-defense, was provoked by the victim at the time of the shooting, or that Applicant did not aim at or intend to shoot the victim. Therefore, Gibson and Belcher are inapplicable to Applicant’s case and had the “standard implied malice charge” been given to the jury, it would have been proper. See Belcher, 385 S.C. at 612 n.9 (“The standard implied malice charge remains valid, as does the general permissive inference instruction [...] In addition, we neither restrict the State from arguing to the jury for a finding of malice from the use of a deadly weapon...”).

[Conclusion and signature to follow.]

CONCLUSION

WHEREFORE, the Respondent respectfully requests the court deny this application for post-conviction relief.

Respectfully submitted,

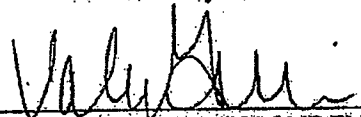
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February 7, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Eric Lamont Owens, #252967,

Applicant,

v.

State of South Carolina,

Respondent.

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SEVENTH JUDICIAL CIRCUIT

2017-CP-42-1496

**ORDER OF DISMISSAL
WITH PREJUDICE**

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1. "Ineffective Assistance of Counsel"
 - a. "Failure to object to trial court not giving information already in the record"
 - i. "failing to object to the courts refusal to provide the jury with the relevant dates of the arrest of applicant and the state witnesses as that information was already in the record."
 - b. Failure to quash insufficient indictment
 - i. "indictment is insufficient because it fails to allege,... A place of death, which is an essential element of the crime of murder."
 - ii. "indictment was fatally defective where it contained two distinct offenses in one indictment and this was highly prejudicial."
 - c. Failure to poll jury
 - d. Failure to move for mistrial due to improper influence
 - i. "allowing the decedant brother [Mark Douglas Jones] to sit at the prosecution table throughout jury selection displaying a white tee shirt bearing a duplicate of the decedant throughout the entire jury selection process. Tr. pg. 92 L-25; pg. 93 L-1-6; pg. 94 L-1-25; pg. 95 L-1-25; pg. 96 L 1"
 - e. Failure to object to Solicitor's comments
 - i. Tr. Tr. pg. 257 L-1-3, "go nigga, go hit the gas"
 - ii. Tr. Tr. pg. 258 L-6-7, "He said I'm going to kill this nigga, Stanley Jones"

- f. Failure to object to trial court's jury charge where court failed to instruct the jury of Applicant's constitutional right to remain silent.
 - i. "the jury sent a note making inquiries before the trial court recognized the unconstitutional omission before the court attempted to make the charge and no one can invade upon the jury deliberations."
 - ii. "Tr. Tr. pg. 291 L-22-23; Tr. Tr. pg. 293 L-11-25 – pg. 294 L-1-6"
- g. Failure to "aggressively" cross-examine the State's expert witness
 - i. "failed to question state's expert witness regarding his degree of certainty as to whether it was a 12 gauge shotgun slug that killed Stanley Jones."

At the start of the hearing, Applicant outlined the allegations it would be pursuing. Respondent objected to the late addition of new allegations at the hearing without any pleading beforehand, arguing it prejudiced the State in not allowing time to prepare to defend the allegations. The new allegations included ineffective assistance of counsel, in that:

1. Counsel failed to quash indictment based on date discrepancies in indictments;
2. Counsel failed to move to strike witness's testimony on ultimate issue, tr. p. 114-115 and p. 132-133;
3. Counsel failed to take exception to jury charge where trial judge did not instruct jury on Applicant's right to remain silent, tr. p. 288;
4. Counsel failed to object to jury instruction on inferred malice, pursuant to Gibson; and
5. Counsel failed to give Applicant a plea offer, review case with Applicant, prepare for trial, or discuss with Applicant whether he should testify.

Respondent requested dismissal of the late amendments or, in the alternative, to be allowed to supplement the record with additional argument or case law if the need arose. This Court allowed Applicant to proceed on his late allegations and allowed Respondent until February 28, 2018 to submit any further case law or briefs to this Court.

SUMMARY OF TESTIMONY AT PCR**I. Applicant testified to the following:**

Applicant testified he never really talked to his attorney. Counsel brought the discovery to him in jail, told him to review it to see if Counsel needed any additional information or witnesses, and then told Applicant he would come back to discuss. However, Counsel did not return until one or two weeks before trial. At that time, Counsel told him he would come again to prepare Applicant for trial. Counsel did come to size him up for a trial suit, but did not do any prep work for the trial. Applicant testified Counsel never discussed his right to testify or not. However, Counsel informed him he could not tell Applicant to testify or not because it was Applicant's decision. Counsel only told Applicant that his prior criminal record would be revealed if he were to place his character into evidence while testifying.

Applicant testified Counsel never gave him the opportunity to plead guilty. Counsel never mentioned a plea to him. At one point, Applicant told Counsel he did not want to proceed with trial and wanted to plead guilty, to which Counsel responded no and did not allow him to plead guilty. Applicant claimed Counsel would not let him plead guilty because Counsel thought he could win at trial.

Applicant claimed he never saw his indictment prior to trial. He further claimed there are defects in his indictment because the State did not allege therein the address at which the murder took place. Applicant also took issue with the date discrepancy between the date on the face of the indictment and within the body of the indictment. Applicant also testified he felt that although the trial court addressed an issue involving the victim's brother wearing a shirt bearing the victim's image at trial, that he was still prejudiced because it was not called to the trial court's attention sooner.

Applicant also complained Counsel did not move to strike testimony from Shaina Williams after Counsel's objection to it was sustained. With regard to Dr. Wren's testimony, Applicant claimed Counsel should have objected to the State's questioning about what kind of gun was used because Dr. Wren himself said he was not a gun expert. Applicant further believed he was prejudiced because the judge did not let him answer the jury's question. Applicant believed the testimony the jury wanted was in the record.

On cross examination, Applicant argued that all of the State's witnesses lied. Applicant claimed they all had ample time after the shooting to come up with a story to pin the murder on him. He could not recall if Counsel pursued that same theory and argument at trial. Applicant also testified the State's witnesses were charged with obstruction of justice and it was not until then that they began to change their stories.

II. Counsel testified to the following:

Counsel has been practicing criminal law for 38 years. He is, and was at the time of Applicant's trial, an Assistant Public Defender for Spartanburg County. Counsel testified he received discovery from the State and immediately took it to Applicant. He told Applicant to review it and they would discuss it when he returned. Counsel testified he returned and reviewed all the discovery with Applicant. Counsel testified he did not interview the witnesses because he had numerous contradictory statements from each. Counsel testified the case boiled down to credibility and he discussed that with Applicant prior to trial.

Counsel testified he did not notice any fatal defects in the indictment. He testified he reviewed the body of the indictment and believed it served the purpose of an indictment – to put a defendant on notice of the charges against him. Had he noticed the date discrepancy, he may

have raised it to the court's attention but believes it would be an error that could easily be remedied by the State.

Counsel advised Applicant he could testify or not and that he had a right to remain silent. Counsel told Applicant it was Applicant's decision that Counsel could not make for him, but informed Applicant of the potential consequences of testifying. Counsel also made a pre-trial motion to ensure Applicant's prior criminal history would not come out, in the event Applicant chose to testify. Counsel testified he did not relay any plea offers to Applicant because the State did not make any offers. Although Counsel requested an offer, there was never an offer. Counsel informed Applicant he could plead guilty to murder, but never stopped Applicant from doing so. Counsel recalled Applicant wanted to go to trial.

Counsel made a strategic decision not to question the State's expert witness Dr. Wren. This was based on both Dr. Wren's extensive background in forensic pathology and history of testifying for the State as an expert. Additionally, Counsel had a previous experience in which he tried to aggressively cross-examine Dr. Wren and it backfired by Dr. Wren testifying even more favorably for the State in response to Counsel's questions. Counsel also did not have any questions to ask Dr. Wren that could be beneficial to the defense.

Counsel also testified he did not object to the trial court's response to the jury's question because he believed it was the appropriate answer. Counsel explained there was a conference in chambers when the jury submitted their question. Counsel could not remember exactly who brought the issue up, but there was a discussion at that time about the judge's failure to instruct the jury regarding the defendant's right to remain silent. After the conference, the judge did in fact instruct the jury regarding the defendant's right to remain silent.

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 at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of 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) (citing Rule 71.1(e), SCRCP). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive

relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). 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.

Failure to object to trial judge's answer to jury's question

Applicant alleged the trial judge improperly responded to the jury's question by failing to provide the jury with the arrest dates of Applicant and a State's witness. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue.

On page 292 of the transcript, Judge Couch read the jury's question. His response was,

To the extent that that information is not already in the record I cannot provide that information to you at this point in time. In other words, the date of arrest, if it was testified to, would, would be in the record. I don't know whether it was or wasn't, but, at any rate, I can't add that information into the record at this time.

This Court not only finds the response appropriate, but also notes there was never any evidence of the State's witness's arrest date. The only evidence admitted regarding arrest dates appeared on page 147, which was "March of 2014." Judge Couch correctly told the jury that if testimony regarding the arrest dates was given, it was in the record. It would have been inappropriate to reiterate that testimony for them as this would have constituted a comment on the facts. See S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."). Therefore, this Court finds Counsel was not deficient for failing to object to the trial judge's response.

Additionally, Applicant has failed to prove he was prejudiced by this alleged deficiency. Had Counsel objected, and the March 2014 date been given to the jury, there is no reasonable probability the outcome of the trial would have been different. The State presented numerous witnesses who implicated Applicant in the murder of the victim. Counsel was diligent in impeaching each witness with their prior inconsistent statements. But, the evidence was clear that the witnesses did not implicate Applicant until Applicant was arrested and in custody, at which time they no longer feared reprisal.

Failure to quash indictment

Applicant alleged Counsel failed to quash indictment based on two separate issues: because the indictment failed to allege a place of death and because the face of the indictment shows a date stamp of June 16, 2014 while the body of the indictment shows a date stamp of June 12, 2014. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue.

"An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution." State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996); See also State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952) (an indictment is valid on its face if it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet). Furthermore, "[t]he regularity of grand jury proceedings is presumed absent clear evidence to the contrary; the burden is on the defendant to prove facts upon which a challenge to the legality of the grand jury proceedings is predicated." State v. Batchelor, 377 S.C. 341, 344, 661 S.E.2d 58, 59 (2008)

(citing Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005); State v. Griffin, 277 S.C. 193, 285 S.E.2d 631 (1981)).

Here, the fact that the date stamps on the face and body of the indictment are four days apart does not render the indictment fatally flawed nor does it provide "clear evidence" that the grand jury proceedings were irregular or tainted. This Court notes the date stamp beside the grand jury foreperson's signature is also June 12, 2014. The obvious scrivener's error, standing alone, is not sufficient to overcome the presumption of regularity and legality in the Grand Jury proceedings. The indictment served its fundamental purpose – to give Applicant sufficient notice of the charges for which he was accused. Counsel testified although he reviewed Applicant's indictment, he did not notice the date discrepancy. However, Counsel correctly believed the indictment was sufficient to put Applicant on notice of the charges. Therefore, Applicant failed to prove by a preponderance of the evidence that Counsel was deficient.

In addition to no evidence presented of any irregularity in the Grand Jury proceedings, the scrivener's error does not implicate subject matter jurisdiction. As such, had Counsel moved to quash the indictment based on the date discrepancies, the State would have simply moved to amend the indictment to reflect the correct date. See State v. Means, 367 S.C. 374, 387, 626 S.E.2d 348, 356 (2006) ("[A] motion to amend an indictment should be granted when the proposed amendment does not change the nature of the offense or affect the sufficiency of the indictment."), abrogated on other grounds by Talley v. State, 371 S.C. 535, 640 S.E.2d 878 (2007); Morris v. State, 371 S.C. 278, 283, 639 S.E.2d 53, 56 (2006). (emphasis added). Therefore, Applicant cannot prove he was prejudiced by Counsel not moving to quash the indictment, as the motion would have been denied.

Failure to poll jury

Applicant alleged Counsel was ineffective for failing to request a polling of the jury. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue. Applicant failed to produce any evidence of either deficiency or prejudice. Additionally, the record shows after the Clerk read the jury's verdict, the jury members were asked to raise their right hands if the verdict was theirs. All of the jurors raised their right hands. Tr. p. 296.

Failure to move for mistrial

Applicant alleged Counsel was ineffective for failing to move for a mistrial because the victim's brother was present in the courtroom wearing a shirt with the victim's face on it. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue.

After jury selection, there was short recess and a bench conference was held, after which the trial judge confronted the victim's brother, Mark Jones ("Jones"), about the shirt he was wearing in the courtroom. Tr. pp. 93-96. The trial judge ordered Jones to cover up his shirt or change his shirt if he wanted to stay in the courtroom during the trial. Jones then left the courtroom. This Court notes that this occurred in the very beginning of the trial, when the jury had not even heard any evidence and knew very little about the evidence, and even less about who Jones was or what the victim looked like. Not only has Applicant failed to present any evidence of deficiency, the record supports Counsel was not deficient. The matter was in fact addressed by the trial judge prior to the start of the trial. Applicant has also failed to prove he was prejudiced by this incident. Jones was required to leave the courtroom and was not permitted to be in the courtroom wearing a shirt bearing the image of the victim.

Failure to object to Solicitor's comments

Applicant alleged Counsel was ineffective for failing to object to various parts of the Solicitor's closing comments. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue.

The first comment Applicant believes is objectionable is on page 257 of the transcript, "[g]o, nigga, go." This Court fails to see what objection the comment warranted. The State is entitled to refer to the evidence presented in the trial during their closing arguments. On page 197-198 of the transcript, the State's witness, Derrick White, testified to those exact words. White explained Applicant told him, "go, nigga, go" after Applicant shot the victim from the vehicle White was driving. Because there is no reason to have objected to the State's reference to the evidence admitted at trial, Counsel was not deficient.

Similarly, Applicant alleged the Solicitor's comment, "[h]e said I'm going to kill this nigga, Stanley Jones[.]" was improper and Counsel should have objected. Tr. p. 258, ll. 6-7. Again, there is nothing objectionable about the Solicitor's statement. The State's witness, Blaine Seay, also testified to these exact words. On page 171, line 16 and on page 173, line 16, Seay testified Applicant said he was going to "kill this nigga[.]" referring to the victim. Because there is no reason to have objected to the State's reference to the evidence admitted at trial, Counsel was not deficient.

Applicant also alleged Counsel should have objected to the Solicitor's comments regarding the kind of projectile with which the victim was shot, which Dr. Wren testified was a large caliber slug. Tr. p. 259. This Court finds nothing objectionable about this comment. Dr. Wren was a qualified expert in forensic pathology. He performed the autopsy of the victim. It was his opinion, based on his knowledge, experience, and the diameter of the bullet entry wound,

that victim's gunshot wound was caused by a large caliber slug, not a bullet or pellets. Tr. p. 235, l. 13 - p. 236, l. 15). Dr. Wren testified he did not know if such a large slug could be shot from a handgun, because he was not a gun expert. The Solicitor's closing comments reflected this testimony accurately. Because there is no reason to have objected to the State's reference to the evidence admitted at trial, Counsel was not deficient.

Failure to object to jury charge

Applicant alleged Counsel was ineffective for failing to object to two portions of the trial judge's jury charge. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue.

The first contested jury instruction issue occurred when the trial judge completed his jury instructions and asked both sides if either took any exception, to which both Counsel and the State indicated they did not. Tr. pp. 287-288. Applicant contends that Counsel should have brought it to the trial judge's attention that he did not read any instruction regarding Applicant's right to remain silent, which was important because Applicant did not testify. However, on pages 291-294, the jury returned from deliberations and the trial judge ultimately gave a very thorough instruction on Applicant's right to remain silent and again reinforced the State's burden of proof. Counsel testified there was a conference in-chambers, and the issue of the judge's failure to charge on Applicant's fifth amendment right came up. Although Counsel did not recall if he specifically brought it to the judge's attention, this Court finds it most important that it was addressed and ultimately charged to the jury. Because the jury was ultimately thoroughly instructed of Applicant's fifth amendment right, Applicant cannot prove he was prejudiced by any alleged deficiency.

The other contested jury charge appears at page 283, that "[m]alice can be inferred from any conduct showing a total disregard for human life." Applicant cites to Gibson v. State, 416 S.C. 260, 786 S.E.2d 121 (2016), to support his argument that Counsel should have objected to this jury instruction. As a threshold matter, Gibson was not decided until May 11, 2016. Applicant was tried April 20-22, 2015. Therefore, Gibson was not even applicable law at the time of Applicant's trial. Notwithstanding Gibson was decided after Applicant's trial, Gibson is wholly inapplicable to the jury instruction in Applicant's trial because the trial court did not instruct the jury that malice can be inferred from the use of a deadly weapon.

In Gibson v. State, Gibson's brother was involved in a fight between two groups at a bar. Gibson's brother called Gibson for a ride home. When Gibson arrived, the fight had spilled out into the parking lot between numerous members of each group. During the fight, several gunshots were heard and the victim was killed by a shot to the back of his shoulder. Gibson testified that although he was "doing some shooting," he did not aim or intend to shoot the victim. The trial court instructed the jury that "inferred malice may also arise when the deed is done with a deadly weapon." Gibson's trial counsel did not object to the charge based on the trial court's failure to use the "permissive inference language"¹ in addition to the "standard implied malice charge."²

Similarly, in State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), Belcher shot and killed the victim. Belcher testified he shot the victim after the victim confronted him, unprovoked, with a gun. Belcher also testified he fled to a vehicle and retrieved a gun and fired

¹ In State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), the Court referred to the charge that "if facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive" as the "permissive inference instruction."

² The Belcher Court referred to the charge that malice can be implied from the use of a deadly weapon charge as "the standard implied malice charge."

it at the victim while the victim was approaching him, gun in hand. The Court held that a jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide. However, the Court also stated in a footnote that "[t]he standard implied malice charge remains valid, as does the general permissive inference instruction.

Applicant argued Counsel was ineffective for failing to object, based on Gibson, to the trial court's charge that, "malice can be inferred from any conduct showing a total disregard for human life." Trial Tr. p. 283, ll. 22-23. First, as an initial matter, Gibson was decided approximately one year after Applicant's trial. No South Carolina court has ever required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial. Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993). The relevant time frame for analysis is when the alleged ineffectiveness occurred. Id. at 310. While the rules of preservation require that objections to the admissibility of evidence be specific, they most certainly do not require clairvoyance. State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012). Therefore, Counsel cannot reasonably be held ineffective for failing to object based on case law that had not even been decided at the time of trial.

Second, the prohibited and scrutinized "standard implied malice charge" in Gibson and Belcher was not even read at Petitioner's trial. Applicant errantly argues that an objection pursuant to Gibson should have been lodged against the jury charge that malice can be inferred from conduct showing total disregard for human life. Not only do the decisions in Gibson and Belcher not apply to the challenged jury instruction, they do not even mention the charge. To the extent Applicant argues for an extension of Gibson and Belcher to the challenged jury

instruction, Applicant overlooks the crux of those decisions and the analysis the Court detailed in arriving at their conclusion regarding the "standard implied malice charge."

Thirdly, unlike Gibson and Belcher, in Applicant's case there was no "evidence presented that would reduce, mitigate, excuse or justify the homicide." Both Gibson and Belcher involved "gun fights" that resulted in alleged unintentional killings or self-defense. Applicant was convicted for shooting the victim, who was unarmed, with a large caliber slug using a pistol grip shotgun, without provocation. There was no evidence or testimony presented that Applicant acted in self-defense, was provoked by the victim at the time of the shooting, or that Applicant did not aim at or intend to shoot the victim. Therefore, Gibson and Belcher are inapplicable to Applicant's case and had the "standard implied malice charge" been given to the jury, it would have been proper. See Belcher, 385 S.C. at 612 n.9 ("The standard implied malice charge remains valid, as does the general permissive inference instruction [...] In addition, we neither restrict the State from arguing to the jury for a finding of malice from the use of a deadly weapon...").

Failure to "aggressively" cross-examine the State's expert witness

Applicant alleged Counsel was ineffective for failing to question Dr. Wren, the State's expert forensic pathologist, regarding his degree of certainty as to what gun killed the victim. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue.

Not only does the record prove this allegation meritless, Counsel testified that he made a strategic decision not to cross-examine Dr. Wren based on his experience with Dr. Wren at trial. This decision was reasonable. Additionally, Applicant has failed to prove how further cross-examination of Dr. Wren would have helped Applicant or affected the outcome of his trial. Dr. Wren himself testified he did not know what kind of gun was used to shoot the victim and

admitted he was not an expert in guns. However, he could tell, based on his experience, knowledge, and autopsy on the victim, that the victim was shot with a large caliber slug.

Failure to give plea offer

Applicant alleged Counsel failed to give him a plea offer. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue.

Counsel credibly testified the State did not make any offers, but he begged for one. This Court notes the Solicitor, and only the Solicitor, has the discretion to offer a plea deal. Counsel cannot force them to make an offer. Applicant always had a right to plead straight up, and Counsel advised him of such. However, Counsel's testimony that Applicant wanted to go to trial is credible.

Failure to review case and prepare for trial

Applicant alleged Counsel failed to review his case with him. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue.

This Court finds Applicant's testimony on this issue absolutely not credible. It strains credulity to believe, as Applicant testified, that Counsel only came to drop off his discovery and then returned shortly prior to trial only to size him for a trial suit, but not to discuss his case. Counsel, on the other hand, gave credible testimony that he provided Applicant with discovery and also reviewed all of it with him. Counsel also came up with his strategy in preparation for trial, to challenge the credibility of the State's witnesses (who had each given multiple different statements). This strategy was reasonable and appears to be the only viable strategy given the evidence against Applicant. This Court finds the record further supports Counsel adequately discussed Applicant's case with him and prepared for trial.

Improper advice regarding testifying

Applicant alleged Counsel was ineffective for failing to tell him whether or not he should testify and, rather, leaving the decision up to Applicant. This Court finds Counsel was neither deficient nor Applicant prejudiced on this issue.

This Court notes it is only a defense attorney's obligation to advise his client of his right to testify and help him weigh the pros and cons of doing so, but it is not to make that decision for his client. Counsel credibly testified that he did just that. Counsel advised his client of his right to testify or remain silent and discussed with him the consequences of testifying. This advice was reasonable. The colloquy between the trial judge and Applicant regarding Applicant's decision not to testify demonstrates Applicant's decision was made knowingly and voluntarily.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Upon review of the transcript of the jury trial for the criminal offense, the Application, the Return, and all other pertinent documents, the Court concludes that the Applicant does not meet the required standard articulated in *Strickland*, in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof. The application for post-conviction relief is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453

(1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1st day of June, 2018.



GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina



WITNESSES

Spartanburg Public Safety Department

[Signature]

ARREST WARRANT NUMBER

COUNT ONE: 2014A4210100956

COUNT TWO: 2014A4210100957

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: JUN 12 2014

VERDICT

MURDER Guilty

4/22/2015

Count 2 Guilty

[Signature]
Foreperson of Petit Jury
Date: 4-22-2015

DOCKET NO

14-GS-42-2236

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 16 2014

TERM

THE STATE

vs.

Eric Lamont Owens

Indictment for
**MURDER AND POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME**

SC Code 16-03-0010, 0020; 16-23-490

CDR CODE: 0116: 0549

CLASS: FEL-EXM: FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JUN 17 AM 9:52
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

INDICTMENT

JUN 12 2014

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

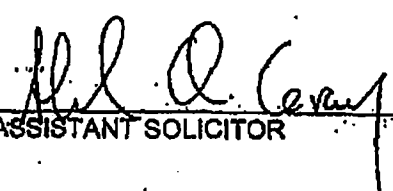
COUNT ONE—MURDER

That Eric Lamont Owens, did in Spartanburg County on or about November 12, 2013, feloniously, willfully and with malice aforethought, kill one Stanley Jones, by shooting the victim in the back and chest, and that the said victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**COUNT TWO—POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

That Eric Lamont Owens, did in Spartanburg County on or about November 12, 2013, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: MURDER, in violation of Code §16-23-490. *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

COUNTY OF
STATE

SPARTANBURG

VS.

Eric Lamont Owens.

AKA:

Race: BLACK Sex: M Age: 35

DOB: SS#:

Address:

City, State, Zip: Moore, SC 29369

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC 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: Gray, Abel 12164 SC Bar# Defendant Bayne Poole 4499 SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 35 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: 1/22/15
☒ 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. 1 yr. + 47 days

☐ 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
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$390
TOTAL	\$15390

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

489

INDICTMENT/CASE#: 2014GS4202236

A/W#: 2014A4210100956

Date of Offense: 11/12/2013

S.C. Code § : 16-03-0010; 16-03-0020

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.

Presiding Judge

Judge Code: 2135

Sentence Date: 4/22/15

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Eric Lamont Owens

AKA:

Race: BLACK Sex: M Age: 35

DOB: 79 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Moore, SC 29369

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

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: GRAY, ABEL SC Bar# [REDACTED] Defendant [REDACTED] Attorney for Defendant [REDACTED] SC Bar# 4499

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: 4/22/15
☒ 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. 1 yr. + 49 days
☐ 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) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

1% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4202236A

A/W#: 2014A4210100957

Date of Offense: 11/12/2013

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code: 2135

Sentence Date: 4/22/15

Clerk of Court/ Deputy Clerk

Court Reporter: [REDACTED]

SCCA/217 (03/2011)