

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Sumter County

Honorable Brian M. Gibbons, Circuit Court Judge

MICKEY MARKELL JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001292

APPENDIX

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BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 asking you questions. You testified that when you got into
2 the car, you saw Bless hand the gun to Ready. You
3 specifically stated that?

4 A: Yeah. He did.

5 Q: That's what you stated? Now, in the statement that
6 you gave to law enforcement the first day that everything
7 happened, Ready already had the gun. I didn't see where he
8 got it.

9 A: He already had the gun?

10 Q: Ready already had the gun. I didn't see where he got
11 it. Your statement, not mine. Do you want to see it?

12 A: No.

13 Q: Okay. So you remember telling law enforcement the
14 first time Ready already had the gun, I don't know where he
15 got it from?

16 A: I remember.

17 Q: You remember saying that now; don't you?

18 A: Yes, sir.

19 Q: So why did you tell the jury something completely
20 different when you were asked questions from the State?

21 A: Because I'm telling the truth.

22 Q: But you testified a minute ago you were telling the
23 truth when you gave this statement initially to law
24 enforcement. Which one is the truth? This statement or
25 today?

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 A: It wasn't true because you kind of confused me.

2 That's what it is.

3 Q: I confused you ---

4 A: I'm telling ---

5 Q: --- with your words?

6 A: I'm telling the truth, point blank, period:

7 Q: I confused you with your own words? These are your
8 words; correct?

9 A: I didn't write it.

10 Q: We've already gone through all of that. The officer
11 went through you with the statement, she typed everything
12 up, she asked you were these your words, you said they
13 were, yes. I asked you did the officer give you a chance
14 to change, add anything. You said, yes, she did. That was
15 all the truth. That was the truth that day. Do you
16 remember when I asked you those questions?

17 A: Yes, sir.

18 Q: And you said that was all the truth and everything in
19 this statement was the truth because that's what happened
20 that close to the event; remember?

21 A: Yes, sir.

22 Q: And then I asked you if that was as close to the event
23 as possible so that's the truth and you said, yes, it was;
24 remember that?

25 A: Yes, sir.

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 Q: So now, you're saying I'm confusing you with your
2 words?

3 A: Yep.

4 Q: How am I wrong on this? What am I missing? Ready
5 already had the gun. I didn't see where he got it. I'll
6 give you as long as you want. Tell me how I'm confusing
7 you with your words. Take all the time you need.

8 A: I'm ready.

9 Q: Go ahead. Answer it. Explain it to the jury. How am
10 I confusing you with your words? Was I there when you gave
11 this statement?

12 A: All I know, Bless give him the gun in the car as he
13 was planning the murder.

14 Q: And none of that is ---

15 A: He handed it to Ready.

16 Q: --- in your statement anywhere?

17 A: He handed it to Rasheed Brandon. That's when he --
18 that's when he telling everybody what to do.

19 Q: None of that's in your statement anywhere; is it?

20 A: I don't know. I ain't even read it.

21 Q: I'll give it to you again.

22 A: I ain't even seen it.

23 Q: Do you want to read it? Do you want to read it?

24 A: ~~If you say it's in there, I believe it's in there.~~

25 Q: But the testimony earlier was this is the truth, this

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 is what happened, this was close to the event, I didn't
2 have a lawyer, I told them everything I knew. That's what
3 you told the jury a moment ago and now you're saying, yeah,
4 I guess that's just not true. Why? Because it's not
5 convenient for your testimony today?

6 A: No. I'm telling you what I remember. That statement
7 was given three years ago. I know that's the truth right
8 there.

9 Q: This is the truth right here?

10 A: Yeah.

11 Q: This is the truth right here?

12 A: Yes, sir.

13 Q: You know it's the truth right here?

14 A: Yeah.

15 Q: So you got no clue how he got the gun -- how Ready got
16 the gun?

17 A: He got the gun from Mickey Johnson.

18 Q: But that's not in here. You said this is the truth
19 and the true statement is Ready already had the gun and I
20 didn't see when he got it?

21 A: All I know, Bless give him the gun.

22 Q: But this is the truth? So this -- is this not the
23 truth in this statement? Is this something you just made
24 up?

25 A: Well, probably something I left off.

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 Q: Probably something you -- you didn't leave anything
2 out. Actually, you put that in. Ready already had the
3 gun. I didn't know when he got it. Something else you
4 almost forgot. Ready sold the gun to my homeboy. I don't
5 know how much he sold it for. When they asked you about
6 it, you pretended you had no clue about the gun because
7 you're trying to make yourself look innocent today; aren't
8 you?

9 A: No. How can I make myself innocent? I already plead
10 guilty.

11 Q: Well, what else did you tell the jury? You told the
12 jury, gosh, I didn't want to go. I wanted nothing to do
13 with this. Isn't that what you said? You didn't want to
14 go. You wanted nothing to do with this?

15 A: I didn't want nothing to do with it.

16 Q: In your statement, did you say anything whatsoever in
17 that statement? I think the question that the prosecutor
18 asked you was about he was going to kill you or you knew
19 what that meant. Is that in the statement at all?

20 A: I can't remember.

21 Q: You can't remember? Do you want to see it? I'm going
22 to tell you right now it's not in there anywhere. Nowhere
23 until today did you mention that statement whatsoever; did
24 you? Today is the first time you have mentioned that
25 because it's convenient?

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 A: It's the first time I mentioned it in court.

2 Q: But this is the first time you've mentioned it. Just
3 came up with it?

4 A: No. I ain't came up with it.

5 Q: But this statement is the truth?

6 A: Yes, sir.

7 Q: You were testifying earlier that you were living in --
8 you're from Manning, you live in Manning, but you were
9 staying in Sumter. Why were you staying in Sumter, but
10 living in Manning?

11 A: Because Bless came and got me.

12 Q: Bless came? What do you mean Bless came and got you?
13 He made you live in Sumter?

14 A: He be telling me to come. Come and stay with him.

15 Q: Come and stay with him? It had nothing to do with the
16 warrants you had in Manning?

17 A: Something to do with it.

18 Q: Okay. Something. You were avoiding the police;
19 weren't you?

20 A: Who? Me?

21 Q: You.

22 A: Yeah.

23 Q: You were avoiding the police. So that's something ---

24 A: I'm the one that turned myself in right then.

25 Q: You didn't want to turn yourself in for the crimes

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 that you had committed in Clarendon County so you were
2 avoiding the cops. You were hiding from law enforcement in
3 Sumter, South Carolina?

4 A: Yes, sir.

5 Q: Okay. Is that something that would have been more
6 helpful than Bless came and got me? Isn't that what you
7 told the State? Bless came and got me?

8 A: He did.

9 Q: The night that all of this happened after everything
10 went down and you went back to Garney's house, there's
11 testimony that you were in the back yard telling everybody
12 how much you loved them. Do you remember that?

13 A: Do what happened?

14 Q: That you were in the back yard telling everybody how
15 much you loved them after the shooting and after the murder
16 took place. After you went back to Garney Davis' house,
17 you were telling people how much you loved them. Do you
18 remember that?

19 A: No. I don't remember.

20 Q: You don't remember saying it so that's not true?

21 A: I don't remember.

22 Q: You don't remember?

23 A: It may be true, but I just don't remember.

24 Q: Do you remember during the interview with law
25 enforcement where you tried to soften your role and say I

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 wanted nothing to do with this to the point that I was
2 scared and I was throwing up out there? Nobody saw me, but
3 I was throwing up.

4 A: Yeah. I was throwing up when we came back from the
5 murder.

6 Q: Because this was emotional for you because you wanted
7 nothing to do with this, and according to you, you were
8 forced to do it?

9 A: Yes, sir.

10 Q: You were trying to be the peacemaker I think is what
11 you were trying to testify. You were the peacemaker and
12 you wanted none of this to go down; is that correct?

13 A: I didn't want it to go down.

14 Q: You realistically could have left; right? You could
15 have drove off. You could have drove to the police
16 department. You could have drove anywhere else. You could
17 have gone a number of places; correct?

18 A: Yes, sir. He would have take it out on my family.

19 Q: He would have taken it out on your family?

20 A: Yes, sir.

21 Q: Is that your belief or is that what you're testifying
22 now because it helps out what your testimony is today?

23 A: No. That's what I know as being a gang member.

24 Q: You testified in your statement -- do you remember
25 telling law enforcement that Bless at one point in time

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 threat -- told you he wanted you to shoot your own brother?

2 A: Yes, sir.

3 Q: You said he told you to shoot your own brother is what
4 you told them in this statement?

5 A: Yes, sir. He did.

6 Q: And you said I'm not going to do it?

7 A: Yes, sir.

8 Q: Did he kill you?

9 A: No.

10 Q: Did he beat you up?

11 A: No. We talked about it and ---

12 Q: Did he kill you?

13 A: No. We talked about it and ---

14 Q: Did he beat you up?

15 MR. GOINGS: Objection, Your Honor.

16 THE COURT: Just let him answer the question.

17 MR. GOINGS: Thank you.

18 A: We discussed it. We discussed the matters over and I
19 tell him that's my brother. I'm not doing nothing no such
20 thing.

21 Q: What did you have to ---

22 A: He respected it.

23 Q: What did you have ---

24 A: He said you don't have to.

25 Q: What did you have to do?

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 A: What did I have to do?

2 Q: Mm-hmm.

3 A: What do you mean?

4 Q: What did you have to do? What was your DP?

5 A: What was my DP?

6 Q: Yeah.

7 A: I'm just saying he ain't going to violate me.

8 Q: He didn't violate you?

9 A: No.

10 Q: Because in your testimony to the State the only time

11 you've ever been DPed whatsoever according to you was ---

12 A: Was one time.

13 Q: --- five people jumped on you.

14 A: Yeah. But it didn't happen related to that.

15 Q: Because I wouldn't do it, I got violated. He made me

16 do 200 to 300 push-ups. Do you remember telling the State

17 that? You had to do some push-ups?

18 A: No. I don't remember saying that.

19 Q: You don't remember saying that? You told the State

20 when I got -- something -- I don't know if it even really

21 happened, but you're saying when this threat happened, the

22 biggest thing he made you do was some push-ups?

23 A: I don't know.

24 Q: You don't remember saying that because it's not

25 convenient for you again, but push-ups? So there's

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

- 1 actually more than one violation you've had and the two
2 violations, anything happen to your family? They're all
3 still alive? You had to do some push-ups; didn't you? How
4 long does it take you to do 200 push-ups?
- 5 A: I don't remember.
- 6 Q: Well, you were scared. You drive back to the house.
7 Everything is emotional. The next day did you call 9-1-1
8 and tell them, oh, let me tell you the awful stuff these
9 people did to me?
- 10 A: No.
- 11 Q: The day after, did you call 9-1-1 and say, oh my God,
12 let me tell you? We have to stop this evil Bless. I don't
13 want anything to do with it. He forced me. He tricked me
14 and manipulated me. Did you do it the next day?
- 15 A: No, sir.
- 16 Q: Did you do it the third day after? Did you call them
17 and say, oh my God, this awful Bless, if he gets me, he's
18 going to make me do a whole bunch of push-ups and I don't
19 want to be in great shape? Did you tell them that?
- 20 A: No, sir.
- 21 Q: The fourth day, did you do anything?
- 22 A: No, sir.
- 23 Q: The fifth day, did you do anything?
- 24 A: No, sir.
- 25 Q: The sixth day, did you do anything? Because the

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 testimony you gave the State is you turned yourself in.
2 You were the great benefactor. To help everything out, you
3 turned yourself in. It took you quite some time, didn't
4 it?
5 A: Actually, they came ---
6 Q: They came and got you?
7 A: --- to my mother's house.
8 Q: You didn't turn yourself in?
9 A: I wasn't there and I came there.
10 Q: So you really didn't turn yourself in. You were
11 already on the run. You knew how to run. You were running
12 from Clarendon County charges and now you were running from
13 Sumter County charges.
14 A: No. You asked me -- I went back to Clarendon County
15 and turned myself in.
16 Q: So let's get this straight. You had a strong-armed
17 robbery charge out of Clarendon County looking at fifteen
18 years. You had an assault and battery charge out of
19 Clarendon County. You had the burglary first charge where
20 you were looking at life. You had this murder charge.
21 Gosh, you got to do what you got to do to make sure you get
22 a good deal; don't you? You don't want to spend life ---
23 A: Tell the truth.
24 Q: --- in prison; do you?
25 A: No. I'm just telling the truth.

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 Q: Which on is the truth again? I keep forgetting. Is
2 it the testimony today or the testimony where you gave this
3 statement in which you said was the truth? Which one was
4 the truth?

5 A: What I'm saying today is the truth.

6 Q: So this one isn't the truth?

7 A: That's the truth, too, but it ---

8 Q: It's a different truth?

9 A: That's when it first happened to my best memory.

10 Q: Okay. So the one that's closest to the event possible
11 is your best memory of the truth, but today is the good
12 truth?

13 A: What I'm saying today. What I'm saying today.

14 Q: So you acknowledge now that these are lies?

15 A: No. That's not a lie. That's the truth, too.

16 Q: Oh, this is like the Truth A and this is the Truth B?

17 A: I just don't remember some of them what I said.

18 Q: You don't remember some of them?

19 A: Yeah. I don't.

20 Q: Today you don't remember? So isn't it possible today
21 you don't remember because memories are fallible? We have
22 trouble remembering things from three years ago. Man, I
23 have trouble remembering what happened this morning. Isn't
24 that possible?

25 A: Yeah.

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 Q: Isn't it possible that you're exactly right? The
2 first statement you gave closest to the event is the exact
3 truth of what happened; isn't that possible?

4 A: Yeah.

5 Q: And this is the truth and what you're testifying today
6 is fallacious memories. That's possible; isn't it?

7 A: Yeah.

8 Q: And so today the stuff that you're testifying to, the
9 stuff you're telling the jury which is completely in
10 opposite of the statement you gave could be based on
11 witness statements you've read, the discovery you went
12 through, all types of stuff. It could be that you're not
13 trying to lie up there. It might be that you just -- to
14 steal a phrase from sports, you misremembered. That's
15 possible; isn't it?

16 A: No. I'm telling the truth.

17 Q: You're telling the truth or you're telling what you
18 think is the truth based upon your memory? Because
19 remember, we got two different statements where you said
20 two different things. Well, what was said in the car when
21 y'all got in the car? When Ready hopped back in the car,
22 what was said in the car?

23 A: He said, somebody got shot.

24 Q: And what else?

25 A: He said, let's go, drive.

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

- 1 Q: Did you say anything to him?
- 2 A: I said, you shot him?
- 3 Q: You asked if he shot him? Well, how would you know if
4 he was going to shoot somebody? Did you know what was
5 going on?
- 6 A: They planned it in the car.
- 7 Q: And you asked if you shot somebody. Didn't you say
8 something about, man, get that gun away from me?
- 9 A: Yes, sir.
- 10 Q: So you told him to get that gun away from you?
- 11 A: Yes, sir.
- 12 Q: Okay. What do you think you did wrong in this whole
13 situation?
- 14 A: Drive.
- 15 Q: You were the getaway driver. There ain't no doubt
16 about that; correct?
- 17 A: Yes, sir.
- 18 Q: You were looking at life in prison as a result of the
19 charges that you were facing today; correct?
- 20 A: Yes, sir.
- 21 Q: You hired an attorney, which you have every right to
22 do. I like attorneys very much. You hired an attorney
23 after you gave a statement; correct?
- 24 A: Yes, sir.
- 25 Q: You gave a statement. You hired your attorney. Your

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 attorney says, we've got to do whatever is in your best
2 interest to get you the best deal possible; correct?
3 Because that's what we do; right? That's what your lawyer
4 tried to do, to get you the best deal; didn't he?

5 A: Yes, sir.

6 Q: And now all of a sudden after hiring an attorney,
7 after doing what you needed to do, your statement has
8 changed. It's more. It's turned into a big, old
9 butterfly. It's gone metamorphosis; hasn't it? It's
10 changed a lot. I mean you agree your story has changed?

11 A: Yes, sir.

12 Q: It's completely changed ---

13 A: I ---

14 Q: --- from the day in question?

15 A: I just don't remember saying some things in the
16 statement. That's all.

17 Q: But do you agree with me when we testified earlier
18 that the -- that first statement was the truth? Do you
19 remember giving the complete truth and telling them
20 everything that happened that first time?

21 A: Yes, sir.

22 Q: That's what you're remembering. Today you're
23 testifying completely from memory; right?

24 A: Yes, sir.

25 Q: After you -- and you have reviewed all of the

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 discovery; right?

2 A: Well, not -- not mine.

3 Q: Not yours. You haven't looked at your own statement,
4 but you reviewed everybody else's statements; right?

5 A: I scanned it. I didn't even read it or nothing
6 because I sent it home to my people.

7 Q: You testified in your statement that Ready volunteered
8 to do this whole thing. That Ready volunteered to do the
9 shooting. No one forced him, threatened him. He
10 volunteered to do the shooting. I think that's what you
11 said in your original statement. Do you remember that?

12 A: Bless asked them who wanted to shoot and Ready said
13 I'll do it.

14 Q: Because in your statement, I think the exact quote was
15 Ready shot -- Ready wouldn't have shot that guy even though
16 he volunteered. Are you and Ready friends?

17 A: No. I don't know him like that.

18 Q: When's the last time you talked to Ready? Have you
19 talked to him since he's been incarcerated?

20 A: Yeah, a couple of times, but ---

21 Q: But you guys aren't friends. What did y'all talk
22 about?

23 A: No. He asked -- he be asking me for phone calls and
24 canteens, stuff like that.

25 Q: What else do y'all talk about? Are y'all on the same

BRYANT BRADLEY - CROSS EXAMINATION BY MR. KENT

1 pod over in the jail?

2 A: No. I'm in the open dorm. He's in lock-up.

3 Q: So how are you able to get to him and talk to him?

4 A: When I was in lock-up.

5 Q: When you were in lock-up, y'all were able to talk?

6 A: No, not really. Because they had me on the back hall

7 and he be in 101.

8 Q: But didn't you just testify you talked to him a couple

9 of times since y'all been locked up?

10 A: Yes, sir. When I come off threat.

11 Q: Okay. How many times y'all talk?

12 A: Nothing but a couple of times, not that much.

13 Q: Not that much? But you were able to talk to another

14 man, one of your co-defendants, while the two of you were

15 incarcerated?

16 A: Yes, sir.

17 MR. KENT: Thank you. That's all the questions I

18 have.

19 THE COURT: Redirect?

20 MR. GOINGS: Yes, sir, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. GOINGS:

23 Q: Now, Mr. Bradley, you were asked several questions

24 about a bunch of things and we're going to cover a little

25 bit of them. Okay? First, let's talk about these warrants

BRYANT BRADLEY - REDIRECT EXAMINATION BY MR. GOINGS

- 1 you had in Clarendon you said. What were they for?
- 2 A: Assault and battery and strong-armed robbery.
- 3 Q: Strong-armed robbery and assault and battery?
- 4 A: First degree.
- 5 Q: First degree?
- 6 A: Yes, sir.
- 7 Q: Have you pled to those charges?
- 8 A: Not yet.
- 9 Q: Does the plea deal that you've entered into for the
10 fifteen years that you are receiving have anything to do
11 with those Clarendon County charges?
- 12 A: No, sir.
- 13 Q: Has the State agreed to do anything on your behalf
14 about those charges?
- 15 A: No, sir.
- 16 Q: Why not?
- 17 A: Because they wasn't -- that wasn't in the plea offer.
- 18 Q: Is it related to this particular crime?
- 19 A: No, sir.
- 20 Q: So you're still looking at all the years you could
21 possibly get under those crimes?
- 22 A: Yes, sir.
- 23 Q: Is that right?
- 24 A: Yes, sir.
- 25 Q: All right. The only thing that's covered is your --

BRYANT BRADLEY - REDIRECT EXAMINATION BY MR. GOINGS

1 with your plea agreement with the State is concerning what
2 happened on March 22nd, 2011?

3 A: Yes, sir.

4 Q: And when you pled guilty over in -- you did it in
5 Marion; right?

6 A: Yes, sir.

7 Q: Those charges wasn't there?

8 A: No, sir.

9 Q: And they're still pending?

10 A: Yes, sir.

11 Q: Now, you were asked next about -- were you also asked
12 about you want to come in here and give -- it was
13 metamorphosis into a butterfly because you wanted to get
14 the best deal possible for you. Is your deal going to
15 change?

16 A: No, sir.

17 Q: How long are going to jail?

18 A: Fifteen to life.

19 Q: Fifteen. You're going to jail for fifteen years?

20 A: Yes, sir.

21 Q: Correct?

22 A: Yes, sir.

23 Q: As long as you do what?

24 A: Tell the truth.

25 Q: And the truth is what?

BRYANT BRADLEY - REDIRECT EXAMINATION BY MR. GOINGS

- 1 A: What I'm saying today.
- 2 Q: And you were hammered -- well, I say hammered. You
3 were asked about inconsistencies in the statement you gave
4 to law enforcement right after it happened and what you
5 testified here today?
- 6 A: Yes, sir.
- 7 Q: All right. And it really wasn't that inconsistent;
8 was it?
- 9 A: No, sir.
- 10 Q: But -- so it's not like you're coming in here and
11 saying, well, I gave this and what defense counsel just
12 stated I believe was completely different from what's in
13 your statement; is that true?
- 14 A: Repeat it again?
- 15 Q: Is your statement completely different from your
16 testimony here today?
- 17 A: Yes, sir.
- 18 Q: It is or it is not?
- 19 A: It's the same, but it's some stuff I just can't
20 remember what I said.
- 21 Q: Well, let's talk about those some stuff.
- 22 A: Yes, sir.
- 23 Q: You were asked about whether or not -- the reason why
24 you didn't want to go do it; correct?
- 25 A: Yes, sir.

BRYANT BRADLEY - REDIRECT EXAMINATION BY MR. GOINGS

1 Q: You testified on direct examination when I asked you
2 that you didn't want to go do it because you didn't want to
3 be involved; is that right?

4 A: Yes, sir.

5 Q: Is that fair? Defense counsel asked you about what
6 was in your statement?

7 A: Yes, sir.

8 Q: And it said that you had warrants?

9 A: Yes, sir.

10 Q: Is that right?

11 A: Yes, sir.

12 Q: Now, I want you to review -- do you remember what else
13 you told law enforcement that day?

14 A: No, sir.

15 Q: I want you to read from right there ---

16 A: Mm-hmm.

17 Q: All right. Down to ---

18 MR. KENT: Judge, I'm going to -- about Rasheed?

19 MR. GOINGS: Yeah. Just to see if it refreshes his
20 memory.

21 (Whereupon, a bench conference is held off the
22 record.)

23 Q: Well, let me ask you. Do you remember also telling
24 law enforcement on that day you didn't want to do it or
25 what Bless had said when you didn't want to do it?

BRYANT BRADLEY - REDIRECT EXAMINATION BY MR. GOINGS

1 A: Yes, sir.

2 Q: What did he say?

3 A: Be loyal or otherwise die. You're going to do it.

4 Q: What's a DP?

5 A: Thirteen thirteen.

6 Q: A little more explanation, please?

7 A: Violation.

8 Q: Okay. Did Bless threaten you with a violation that

9 night?

10 A: Yes, sir.

11 Q: If you didn't do it?

12 A: Yes, sir.

13 Q: Did you tell law enforcement that?

14 A: I believe so.

15 Q: And you were also asked -- you testified on direct

16 examination that you didn't want to do it or you went ahead

17 and did it because you thought Bless would do what?

18 A: He would have take it out on me or my family.

19 Q: When you -- what did you say on direct? Do you

20 remember? Do you remember saying that you thought Bless

21 would kill you?

22 A: Yes, sir.

23 Q: All right. Do you ever remember telling law

24 enforcement on that particular occasion on -- right after

25 -- whenever you gave this statement that you feared that

BRYANT BRADLEY - REDIRECT EXAMINATION BY MR. GOINGS

1 Bless would kill you?

2 A: Yes, sir.

3 Q: Why did you fear Bless would kill you?

4 A: Because he would figure out we would have went to the
5 police and tell.

6 Q: What about after you gave that statement? What was
7 your thoughts then? Did you think Bless would kill you?

8 A: Yes, sir.

9 Q: Why?

10 A: Because I testified against him.

11 Q: Because you snitched?

12 A: Yes, sir. And that's in the rules and regulations.
13 Don't snitch.

14 Q: And it's also in the rules and regulations ---

15 A: In the gang.

16 Q: --- don't undermine your commander's authority?

17 A: Yes, sir.

18 MR. GOINGS: No further questions, Your Honor.

19 THE COURT: All right. Recross?

20 MR. KENT: Thank you, Judge. Briefly.

21 RECROSS EXAMINATION

22 BY MR. KENT:

23 Q: Your testimony was basically that you were scared of
24 Mickey Johnson?

25 A: Yes, sir.

BRYANT BRADLEY - RECROSS EXAMINATION BY MR. KENT

1 Q: But nine days later you were giving the statement
2 saying Mickey Johnson had everything to do with it?
3 A: He did.
4 Q: Okay. But you weren't scared nine days later?
5 A: Yeah, I was scared.
6 Q: But you gave a statement telling everything. You
7 weren't forced to give it. No one threatened you to give
8 it. You gave a statement trying to get yourself out of
9 trouble; didn't you?
10 A: No. I just tell the truth.
11 Q: The truth that day, not the truth today?
12 A: The truth today.
13 Q: Okay. The truth today, but then you weren't telling
14 the truth?
15 A: Yeah. I was telling the truth then, too.
16 Q: Just different versions of it?
17 A: Yes, sir.
18 Q: You have not been sentenced yet; correct?
19 A: Yeah. I've been already sentenced.
20 Q: Have you been sentenced or did you plead guilty? Like
21 did the judge already give you your sentence or are you
22 going to get your sentence later at a later date in time?
23 A: No. I already plead guilty and got my sentence.
24 Q: Okay. I mean that's not even close to true; you
25 realize that? You have not been sentenced yet. As a

BRYANT BRADLEY - RE-CROSS EXAMINATION BY MR. KENT

1 matter of fact, your sentence has been held off. You're
2 not going to be sentenced until after you testify today;
3 correct?

4 A: Oh, yes, sir.

5 Q: Oh, yes, sir? So you haven't been sentenced yet so
6 what you just told the jury just now is completely untrue.

7 A: I mean I may have gotten confused a little bit, you
8 know.

9 Q: I didn't get confused.

10 A: I ain't never been through nothing like this before.

11 Q: I didn't get confused. You did.

12 A: Because you're a lawyer.

13 Q: You have not been sentenced yet; have you?

14 A: I thought I got sentenced. They withhold sentence,
15 but I thought I already plead guilty to the sentence. They
16 just withhold it until I testify.

17 Q: Your sentence is withheld until you testify.
18 Depending on how you testify is what's going to happen to
19 your sentence; correct?

20 A: No. The truth. Testify to the truth of what
21 happened.

22 Q: But it's got to be different than that first
23 statement?

24 A: It's different.

25 Q: Okay. And they keep saying that you're only looking

BRYANT BRADLEY - RECROSS EXAMINATION BY MR. KENT

1 at fifteen years. You're actually looking at more than
2 that potentially; aren't you?

3 A: Yes, sir. From my Clarendon County charges that got
4 nothing to do with this though.

5 Q: But the fifteen years is just on the burglary charge.
6 You can potentially get more charges on the other charges
7 you're looking at; right?

8 A: From Clarendon County?

9 Q: No. Here. You've just got fifteen years on the
10 burglary. What else did you plead guilty to? What did you
11 plead guilty to in front of the judge?

12 A: Accessory after the fact and burglary.

13 Q: So your murder charge got completely dismissed?

14 A: Yes, sir.

15 Q: So you're no longer looking at a murder for your role
16 in a murder? Everyone knows you were the getaway driver
17 when a murder happened. You agree with that?

18 A: Yes, sir.

19 Q: You were the getaway driver when a murder happened.
20 You know someone got shot and killed. That's Ready. He
21 hops in the car and told you he killed somebody and there
22 was a lookout; right?

23 A: Yes, sir.

24 Q: And the lookout was Ratchet, John Stamps?

25 A: Yes, sir.

BRYANT BRADLEY - RECROSS EXAMINATION BY MR. KENT

1 Q: So you knew you had a role in the murder. There's no
2 doubt about that?

3 A: Yes, sir.

4 Q: And that got dismissed?

5 A: Yes, sir.

6 Q: And that whole be loyal or otherwise die statement,
7 that's nowhere in that statement you got the first time.
8 The first time you've mentioned that as we've gone through
9 this today on the stand?

10 A: Yes, sir.

11 MR. KENT: Thank you. That's all the questions I
12 have. Thank you, Judge.

13 THE COURT: All right. You may step down. Call your
14 next witness.

15 (Whereupon, the witness leaves the stand at 3:29 p.m.)

16 MR. GOINGS: The State would call Special Agent Mark
17 Berube.

18 THE CLERK: Place your left hand on the Bible and
19 raise your right hand. State your name, please.

20 THE WITNESS: Mark Berube.

21 THE CLERK: Do you solemnly swear or affirm your
22 testimony to the Court shall be the truth, the whole truth,
23 and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you, sir. Have a seat up there,

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 please. Please state your full name and spell your last
2 name for the record.

3 THE WITNESS: Mark Berube, B-E-R-U-B-E.

4 SPECIAL AGENT MARK BERUBE, being
5 first duly sworn, testifies as follows:

6 DIRECT EXAMINATION

7 BY MR. GOINGS:

8 Q: Good afternoon, Agent Berube. How are you?

9 A: I'm doing well. How are you?

10 Q: Good. Where are you currently employed?

11 A: I work as a special agent for the State Law
12 Enforcement Division out of Columbia, South Carolina.

13 Q: And how long have you been with SLED?

14 A: Since October of 2008 I've been with SLED.

15 Q: Prior to that, what's your law enforcement experience?

16 A: I worked for the Lexington County -- Lexington County
17 Sheriff's Department for about a year and a half, and prior
18 to that I worked for nine years for the Department of
19 Probation, Parole and Pardon Services.

20 Q: Did you complete the Criminal Justice Academy?

21 A: Yes, I did.

22 Q: When was that?

23 A: That was July of 2008.

24 Q: Prior to joining the Lexington County Sheriff?

25 A: Prior to Probation and Parole.

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 Q: All right. And then you went to Lexington County
2 Sheriff?

3 A: That's correct.

4 Q: What was your role with Lexington County Sheriff's
5 Department?

6 A: I was a road deputy. I started out as a road deputy
7 and made master deputy in about a year and a half, just
8 handling calls for service on the road.

9 Q: When you were hired at SLED, what was your position?

10 A: I was hired into the gang intelligence team or
11 intelligence unit in October of 2008.

12 Q: All right. And how long did you serve in that
13 capacity?

14 A: Up until about August of last year, August of 2012.

15 Q: And where were you transferred then?

16 A: Where I currently am. I'm in the fugitive unit at
17 SLED.

18 Q: All right. As being employed with the gang -- or task
19 force, did you have opportunity to receive training --
20 specialized training in gangs?

21 A: Yes, sir. I don't -- I don't know if I can give you a
22 number of training hours. I went to the South Carolina
23 Gang Investigators Conference in 2009, 2010, '11, and '12;
24 Georgia Gang Investigators Conference three years; one year
25 at North Carolina Gang Investigators Conference. In

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 addition to -- it was -- I believe it was in excess of 200
2 hours of training that I've had in gang recognition, gang
3 investigations.

4 Q: And what -- what are some of the -- when you say
5 recognition and investigation, what are we talking about?

6 A: As far as signs and symbols of gangs, history of
7 gangs, tendencies of gangs, gang mentality, how to conduct
8 a gang investigation from -- all the way from gathering the
9 intelligence to grand jury prosecution.

10 Q: Were you a member of any of these organizations that
11 you went to their training?

12 A: Yes. I was a member on the board of the South
13 Carolina Gang Investigators Association. I was also a
14 member of the North Carolina Gang Investigators
15 Association, Georgia, as well as the East Coast Gang
16 Investigators Association. And I currently have
17 membership. My membership is current in all of those.

18 Q: In all of those still?

19 A: Yes.

20 Q: Do you still attend those conferences?

21 A: Yes, sir.

22 Q: All right. So your role is -- even though you're on
23 the fugitive task force, you still are called in to help
24 with gang cases; is that fair?

25 A: That's correct.

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 Q: All right. And that's what you did when you were
2 actually on the gang enforcement team while -- until you
3 got transferred?

4 A: That's correct.

5 Q: All right. Have you ever had the opportunity to
6 actually go in and instruct other individuals on gang
7 investigations from the knowledge that you have received
8 over the years?

9 A: Yes, I have. Over the past four years, I would say in
10 excess of thirty to forty different departments in the
11 State of South Carolina have called on myself or my unit to
12 do an eight hour, three hour, or two day class on gang
13 recognition and investigations.

14 Q: Okay. And ---

15 A: I'm certified through the Criminal Justice Association
16 -- the Criminal Justice Academy as a certified instructor
17 as well.

18 Q: With your role with the Lexington County Sheriff's
19 Department, do you have opportunity to come in contact with
20 gang members?

21 A: On occasion we come across a few here and there.

22 Q: What about with your role with -- at SLED?

23 A: In my current role at SLED or ---

24 Q: Your former role at SLED.

25 A: Yes. Almost -- I wouldn't say daily, but at least

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 weekly as far as face to face.

2 Q: And this would be interviews of known gang members?

3 A: Yes, sir.

4 Q: All right. And approximately how many do you think --

5 I mean, obviously, it's not going to be exact. How many

6 gang members have you sat down and actually interviewed?

7 A: If I had to guess, somewhere between maybe 150 to 200.

8 Q: And you -- and as part of your role with SLED, y'all

9 actually have a gang database; is that correct?

10 A: That's correct.

11 Q: All right. And there are certain qualifications you

12 have to meet to get into -- actually put a person into a

13 known gang member database; is that right?

14 A: That's correct.

15 Q: All right. Were you in charge or at least part of

16 operating that system?

17 A: Yes. When the system first came out in 2009, I was

18 one of the original administrators and trainers on the

19 system.

20 Q: All right. So you would actually go train individuals

21 on how they can identify an individual as a gang member in

22 order for them to be able to put that person in that

23 database; is that correct?

24 A: That's correct.

25 Q: All right.

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 MR. GOINGS: Your Honor, at this time, I would seek to
2 introduce Mr. -- or Special Agent Berube as an expert in
3 gang investigations.

4 THE COURT: Any objections?

5 MR. KENT: Just subject to our pre-trial objections
6 again, Judge.

7 THE COURT: Okay. Your motion is granted.

8 Q: Was there a time when you became involved in this
9 investigation?

10 A: Yes. It was shortly after March 22nd of 2011. I want
11 to say it was within a week of the -- the incident at

12

13 Q: All right. A week after?

14 A: Within a week maybe. I can't remember the exact date
15 when Sumter Police Department called me. I think it was
16 three or four days after.

17 Q: And how -- how does that normally work? You know,
18 SLED is a state law enforcement agency. How do they become
19 involved in an ongoing investigation on a local level?

20 A: The way it works is we're -- we're asked by the
21 jurisdiction that has the original case. In effect, we're
22 an assisting agency is what we are. We will come in and
23 assist with an investigation based on expertise that we
24 have at SLED.

25 Q: And you came and that's what you did?

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 A: Yes, sir.

2 Q: Who requested y'all at SLED to assist?

3 A: I was contacted by Detective Billy Lyons initially on
4 this case.

5 Q: And you became involved in the case from then on?

6 A: Yes, sir.

7 Q: All right. And you participated in the interviews
8 that happened from then on and so forth; is that correct?

9 A: Yes, I did.

10 Q: Prior to becoming involved with Detective Lyons down
11 here, did you have any -- any information on 135 Piru
12 operating in Sumter, South Carolina?

13 A: I did not have information on a 135 set in Sumter, no.

14 Q: All right. Since that time, obviously you've had
15 plenty of information on 135; is that correct?

16 A: Yes, that's correct.

17 Q: All right. And you've interviewed several
18 individuals, including people who have testified in this
19 trial; correct?

20 A: That's correct.

21 Q: All right. But you've also interviewed other
22 individuals of 135?

23 A: Yes, I have.

24 Q: All right. And who would those individuals be?

25 A: That's not related to this case?

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 Q: Yes.

2 A: There are members out of Columbia. You want names or

3 ---

4 Q: Just general location.

5 A: Members out of Columbia. There are chapters in
6 Florence, Bamberg, to which I've interviewed two or three
7 out of there. Also, a couple in Newberry, South Carolina.

8 Q: What about Chester?

9 A: Yes. Chester is another large chapter of 135 Piru in
10 South Carolina, too.

11 Q: Have you able -- have you been able to determine
12 approximately how many 135 Piru members are in South
13 Carolina?

14 A: If I had to put a number on it, I would say in excess
15 of 100.

16 Q: Have you -- can you approximate for the jury how many
17 135 members are in Sumter, South Carolina?

18 A: Based on interviews and intel we've gathered, I'd say
19 thirty or so.

20 Q: And who is the leader of Sumter based on y'all's
21 investigation?

22 A: Mickey Johnson.

23 Q: At least he was the leader prior to ---

24 A: During the course of my investigation, Mickey Johnson
25 was the leader of 135 Piru in Sumter.

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 Q: Did you learn about their colors and their symbols?

2 A: I did. Do you want me to elaborate?

3 Q: Tell the jury, yes.

4 A: Generally, the flag is a burgundy-colored flag. Also,
5 occasionally they -- they carry a green flag or a red, but
6 primarily burgundy was their color. A variety of hand
7 signs were used, including upside-down P, such as this
8 [indicating] to indicate Piru. I don't know if I had that
9 backwards or not for the jury. And also a hand sign that
10 resembles this motion that you've seen in a lot of the
11 photographs where they drop the ring finger on the inside
12 [indicating].

13 Q: And what does that signify basically?

14 A: Well, you see the one here, the three, and there are
15 five fingers on the hand. Also, this particular set is --
16 they identify themselves by what's known as Machete line.
17 I don't want to get too deep in the weeds on this, but a
18 lot of -- well, a 135 set will have a different what they
19 call a blood line for each set. For example, there's a
20 line called the Tuff line that comes out of New Jersey as
21 well. This particular line out of New Jersey is called
22 Machete line and goes back to DaShaun Jiwe Morris, who is
23 OG Machete. That's what he goes by. That is theoretically
24 his Blood line.

25 Q: And how did he start that gang in the east coast?

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 A: It was approximately -- I think it was 2006 when he
2 went out to the west coast Compton area, particularly
3 Carson, California, where he met with some other OGs out
4 there where he asked permission to bring 135 to the east
5 coast.

6 Q: And was that permission granted?

7 A: It was. It was -- it was Jiwe Morris, I think his
8 name is Steve Mangum, and another individual I can't
9 remember right now went out west and got permission and
10 brought it back. And from there, it spread all the way
11 down to at least to Georgia down the east coast, possibly
12 Florida, too. Actually, it is in Florida, too, now that I
13 think about it.

14 Q: And that's 135 Piru Machete line?

15 A: Yes.

16 Q: And the amount of people that you just described, the
17 100 plus in South Carolina, the 30 plus in Sumter, that is
18 solely referring to the Machete line?

19 A: Yes, sir.

20 Q: Ran by Jiwe?

21 A: At the top of the chain, yes, Jiwe.

22 Q: And have you been able to identify members on down the
23 ranks?

24 A: Yes. As already previously mentioned, James Pikard,
25 also known as Cash, is believed to be over the state of

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 South Carolina. Within the state of South Carolina, there
2 are three to four other lieutenants, one over Sumter, over
3 Hartsville. Obviously, the defendant, Mr. Johnson, is over
4 Sumter. And also Chester and they're also in Bamberg,
5 Columbia, and numerous other small pockets of it.

6 Q: How organized was this particular gang?

7 A: Based on my experience -- now, let me give you a
8 little bit of background. Generally, the experience I have
9 had with -- with a lot of the South Carolina gangs over the
10 last couple of years has been an unorganized, what they
11 call hybrid gangs out of neighborhoods that are not
12 particularly organized as far as the chain of command or a
13 rank structure. 135 was the complete opposite of this.
14 135 was organized in that everyone had someone to report
15 to. The way that people think of gangs traditionally when
16 they think about Crips and Bloods on the west coast is a
17 hierarchy. So this gang was a lot more organized than
18 anyone I had dealt with probably in the -- in the four
19 years I was investigating gangs. This is probably the most
20 organized one I've seen.

21 Q: So this isn't your local neighborhood we grew up
22 together association?

23 A: No, sir.

24 Q: And their hierarchy starts with Jiwe and they have
25 specific ranks all the way down to what?

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 A: Down to pup.

2 Q: Pup?

3 A: Yes, sir.

4 Q: And based on your investigation, what was the
5 hierarchy of the Sumter set?

6 A: The Sumter set would start out -- start out -- and a
7 lot of this is going to be repetitive, but starting out as
8 a pup when they first come on. From there they go to
9 soldier. Then on to YG, young gangster. After that with
10 OYG, original young gangster. On up to sergeant,
11 lieutenant. There's a captain and then from there you'll
12 go to OG, triple OG. Depending on who you talk to, once it
13 gets to the top, you've got one OG and then some people say
14 there's, you know, multiple OGs, but primarily what that
15 means is once you get to South Carolina and Cash, it's
16 going to go on up to Jiwe and probably the guy known as
17 Saint Nemi and another individual.

18 Q: But for South Carolina and for Sumter specifically,
19 who was the top dog?

20 A: For Sumter, it was Mickey Johnson, the defendant,
21 Bless.

22 Q: Who was under him?

23 A: It was Garney, also known as -- Garnett Davis was the
24 sergeant under Mickey Johnson.

25 Q: The individuals who were involved on the incident on

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 March 22nd, what was their rank?

2 A: To the best of my knowledge, Bless the lieutenant,
3 Garney the sergeant, John Stamps, Rasheed Brandon, and
4 Bryant Bradley were all -- I believe they were all YGs.

5 Q: Was that what they were promoted to after this or was
6 that how they started?

7 A: That was how they started and somebody -- it's my
8 understanding I believe Mr. Bradley said he was a pup. So
9 that may be. He may have been a pup at that time. I can't
10 say for sure, but to my understanding, once this crime was
11 committed, they were promoted, so to speak, to OYG,
12 original young gangsters.

13 Q: How important is territory to a gang that is this
14 organized?

15 A: It's extremely important. It defines, you know, where
16 they operate. The gang mentality is such that this is our
17 area. Don't come into it. You need permission. You show
18 respect. You stay out of that area, we won't have a
19 problem.

20 Q: And I said a gang this organized, but even when you're
21 dealing with the local neighborhood we grew up together
22 guys who are out doing criminal activity, how important is
23 territory to them?

24 A: It's even -- probably even more so because the fact
25 that they grew up in that neighborhood, it defines their

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 gang.

2 Q: So is it fair to -- when we're talking about gangs,
3 territory is one of the biggest things?

4 A: Yes, sir.

5 Q: And representing your territory is big?

6 A: Yes. It's often known as you're repping your hood.

7 Q: And how do they rep their hood?

8 A: Are you talking about this gang specifically or gangs
9 in general?

10 Q: This gang specifically.

11 A: Well, by throwing up hand signs, flagging, possibly
12 tagging it up. I've seen -- when I say tagging it up, I
13 mean spray-painting 135 in certain areas. You didn't
14 really see so much of that in Sumter, but I've seen it
15 throughout the rest of the state.

16 Q: Based on your investigation, the 135 that is operating
17 in Sumter, South Carolina, what was their territory?

18 A: [REDACTED] Apartments was primarily where -- where I
19 was able to identify most of them. There were actually
20 some intelligence photographs that I had taken six months
21 prior to this incident occurring where some 135 members
22 showed up in [REDACTED] Apartments. At the time, I didn't
23 know who they were, but after going back and seeing, I was
24 able to identify who they were, that they were 135 Piru.

25 Q: Based on your knowledge of what happened on March 22nd,

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1. 2011, do you have an opinion as to why it happened?

2 A: I believe that the leader of this gang was
3 disrespected by two rival -- what we perceived to be rival
4 gang members in his territory and he took action to -- to
5 make sure they didn't come back in such a way that it
6 caused an altercation and it escalated from there.

7 Q: I also want to talk about proffer agreements with you
8 because there's been a lot of conversations about proffers.
9 Do you know what a proffer agreement is?

10 A: Yes. It is ---

11 Q: Okay.

12 A: A proffer agreement is an agreement you have with a
13 person who is able to come in and give you information that
14 would be helpful to law enforcement and the only -- the
15 only stipulation to it is if they are completely truthful
16 with us on this information they give us, we're not going
17 to use this information against them to prosecute them.

18 Q: Is it a plea agreement?

19 A: No, it is not.

20 Q: Why is a proffer used in the criminal justice system?

21 A: Because there are some -- there are some ways that
22 police cannot generally walk into an area and just get
23 information because a lot of people are just not going to
24 talk to them. If you can get someone who is willing to
25 talk to you, it's an agreement to where you can get

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 information you wouldn't normally be able to garner by
2 going into a community and trying to talk to a whole bunch
3 of people.

4 Q: All right. Well, let's -- let's compare it to --
5 because there's some proffer interviews that were done in
6 this case; is that correct?

7 A: Yes.

8 Q: You actually participated in those?

9 A: Yes, I did.

10 Q: There was also statements that were given by
11 individuals involved in this incident; is that correct?

12 A: Yes.

13 Q: Now, there is a difference between statements and
14 proffer interviews; is that right?

15 A: Yes.

16 Q: Can a statement be used against a person?

17 A: Yes.

18 Q: Can a proffer -- what a person tells you in a proffer,
19 can it be used against a person?

20 A: No, it cannot.

21 Q: And that's the essential part of a proffer?

22 A: Exactly. Yes, sir.

23 Q: The State says I need to know what you know, come tell
24 me, and I won't use it against you?

25 A: That's correct.

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

- 1 Q: And essentially, you proffered who in this case?
- 2 A: John Wesley Stamps and William Morgan.
- 3 Q: All right. Bryant Bradley, did he give a proffer?
- 4 A: He did not.
- 5 Q: All right. But he gave a statement?
- 6 A: Yes, he did.
- 7 Q: And that was right after the incident?
- 8 A: The statement was, yes.
- 9 Q: Okay. William Morgan you said was proffered?
- 10 A: Yes, he was.
- 11 Q: Did he give a statement right after the incident?
- 12 A: No, he did not.
- 13 Q: Did he want to cooperate right after the incident?
- 14 A: No.
- 15 Q: And is a proffer used to help get an individual to at
16 least tell the law enforcement or tell the State what
17 happened?
- 18 A: Yes.
- 19 Q: And that way the State can then determine what type of
20 plea deal they may or may not offer?
- 21 A: That's correct.
- 22 Q: But at the time the proffer is done, no agreement, no
23 plea or anything like is in place; is that right?
- 24 A: That's correct.
- 25 Q: Is that what happened in this situation?

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 A: Yes. That's correct.

2 Q: When you proffered William Morgan, was there a plea
3 deal in place that he would receive a certain sentence if
4 he came in and talked with y'all?

5 A: No, there was not.

6 Q: The purpose of that proffer was just -- was what?

7 A: To determine what he -- what he could tell us that
8 would be helpful.

9 Q: Okay. And once he did that, a plea agreement later on
10 got in place?

11 A: That's correct.

12 Q: All right. What about John Wesley Stamps? You said
13 you proffered him?

14 A: Yes, I did.

15 Q: Is that right?

16 A: Yes.

17 Q: When you proffered him -- and I believe that was in
18 2012 at some point in time, I think October 2012.

19 A: That sounds right.

20 Q: Was a plea agreement in place?

21 A: No.

22 Q: You just wanted to talk with him again and the
23 agreement was whatever you tell us during this interview,
24 we will not use it against you later on?

25 A: That's correct.

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 Q: He did it, obviously, with his attorney?

2 A: Yes.

3 Q: All right. And then later on, a plea deal was put in
4 place?

5 A: That is correct.

6 Q: And again, Bryant Bradley didn't proffer?

7 A: He did not.

8 Q: But you knew what he had to say because you already
9 had his statement; correct?

10 A: I had his statement, yes. I had gotten it.

11 MR. GOINGS: I beg the Court's indulgence.

12 Q: Where did this murder take place?

13 A: The murder in question?

14 Q: Mm-hmm.

15 A: It happened at [REDACTED] Apartments.

16 Q: Is that in Sumter?

17 A: Yes, it is.

18 MR. GOINGS: No further questions, Your Honor.

19 THE COURT: All right. Cross?

20 CROSS EXAMINATION

21 BY MR. KENT:

22 Q: Agent, how are you doing?

23 A: I'm doing well. How are you?

24 Q: I'm not going to try to butcher your name. Like I
25 said, it's Agent Berube; correct?

SPECIAL AGENT MARK BERUBE - CROSS EXAMINATION BY MR. KENT

1 A: Yes, sir.

2 Q: Not Berube, not whatever it is.

3 A: That's correct.

4 Q: Agent, I don't have too many questions for you. I
5 just want to make sure I understand a little bit of the
6 background. Correct me if I'm wrong, but out entire case
7 -- your case is based on co-defendant testimony for the
8 most part?

9 A: For the most part.

10 Q: And when I say that, I'm not trying to put words in
11 your mouth, but there really in this particular case is not
12 a lot of corroboration. It's witness testimony and witness
13 statements. It's not corroboration as in tangible facts,
14 the things that we can touch, meaning DNA evidence,
15 bullets, a video?

16 A: Okay. Yes.

17 Q: Would you agree with me on that?

18 A: Yes, sir.

19 Q: Would you explain to the jury the difference between
20 corroboration -- and you can say we corroborate with
21 statements. Just explain to the jury what we want when we
22 have corroboration in cases?

23 A: When you have corroboration, you have -- say person A
24 says something and if you talk to person B and C and they
25 validate what that first person told you.

SPECIAL AGENT MARK BERUBE - CROSS EXAMINATION BY MR. KENT

1 Q: And another way we corroborate things, if somebody
2 says he shot somebody, we go to the crime scene and look if
3 we see bullets?

4 A: In simpler terms, yes.

5 Q: Yeah. And sometimes we say if we go look and see if
6 we have fingerprints or something of that nature, but in
7 this particular case, all we have is witness statements;
8 correct? And all we have are the witnesses who have
9 testified that the jury has heard from over the last couple
10 of days?

11 A: Yes.

12 Q: Okay. We were talking about proffers and I know
13 everybody is getting tired of hearing the word about
14 proffer and things of that nature. I would say a proffer
15 is almost like a free pass. If you tell us everything you
16 know and you're very honest with us, we're not going to use
17 any of the information you gave us against you; correct?

18 A: That's correct.

19 Q: And if you don't tell us -- so long as you're not
20 telling us about murders or stuff like that, you tell us
21 the crimes you've committed, you tell us everything, you
22 come in, and we're not going to use any of that stuff
23 against you so long as you are honest with us when you
24 testify; is that correct?

25 A: That's correct, yes.

SPECIAL AGENT MARK BERUBE - CROSS EXAMINATION BY MR. KENT

1 Q: How do we know if they're being honest if all we have
2 is co-defendant testimony? Do we just trust them?

3 A: Well, there -- there is a certain amount of trust, but
4 there's also -- there may be something that comes up down
5 the line that shows the person was lying at the time they
6 gave the information.

7 Q: And in this situation, it would be inconsistent co-
8 defendant testimony because that's all we have?

9 A: I'm sorry?

10 Q: It would be inconsistent testimony, meaning person A
11 gives a statement and person B's statement is different?

12 A: That could possibly happen.

13 Q: Person A's statement doesn't fit our theory of the
14 case, we think you're not telling us the truth. That's all
15 we would have to go by to determine if someone is being
16 truthful or not. That's all we have; correct?

17 A: Rephrase that again for me?

18 Q: I don't know if I can. I don't remember what I just
19 said. Is it easy to say that it's just hard to corroborate
20 statements in these situations because all we have are co-
21 defendant statements? And these aren't the most honest
22 fellows on the planet. They're not angels; are they?

23 A: I'm not really going to say one way or the other. I
24 mean it's -- there's no one hundred percent accurate way to
25 corroborate.

SPECIAL AGENT MARK BERUBE - CROSS EXAMINATION BY MR. KENT

- 1 Q: To corroborate at all? We kind of have to trust them?
- 2 A: To an extent.
- 3 Q: To an extent we have to trust that what they're
- 4 telling us is the truth because there's no way to check it;
- 5 correct?
- 6 A: To an extent, yes.
- 7 Q: The purpose of -- and you're the gang expert. We're
- 8 trying to shut down gangs. Is that the simplest way to say
- 9 it?
- 10 A: Yes.
- 11 Q: You don't want gangs, any set, anyplace, anywhere in
- 12 South Carolina. If we can shut down -- what do they call
- 13 it? Sets or organizations or cells. What are they called?
- 14 A: Sets usually. S-E-T-S sets.
- 15 Q: That's our goal is to try to shut down a set if we can
- 16 however means possible?
- 17 A: That's correct, yes.
- 18 Q: And that's what we've heard a lot about. We've heard
- 19 a lot about the 135 Piru and we want to shut down that set
- 20 in Sumter, South Carolina?
- 21 A: Yes, sir.
- 22 Q: Okay. And a lot of people -- you have heard and I'm
- 23 sure you have been a part of it. A lot of people have been
- 24 offered deals to testify in this case; correct?
- 25 A: Yes.

SPECIAL AGENT MARK BERUBE - CROSS EXAMINATION BY MR. KENT

1 Q: And you -- you know pretty much all of the deals that
2 everyone have been offered to testify to?

3 A: Yes.

4 Q: And I'm going to give you a fair opportunity. I keep
5 bringing up like crazy these individuals have sentences
6 held over their heads and they have not been sentenced yet.
7 Why do we hold sentences over people's head before they
8 testify? Do you know?

9 A: Well, it's a part of the agreement is to testify. We
10 can't really sentence them until they testify.

11 Q: Until they testify? Well, why couldn't we? Couldn't
12 we just, since it's a trust relationship, couldn't we say,
13 sir, you are now sentenced to six years, we need you to
14 come testify for us? Why couldn't we do that if it's a
15 trust relationship?

16 A: Well, it's not that much of a trust relationship. We
17 need to make sure that they -- they do everything they've
18 agreed to do.

19 Q: We need to hold something over their heads and if we
20 don't hold something over their head, they could testify
21 inconsistently. They could testify -- and I'll use the
22 word. They could lie or they could refuse to testify?

23 A: They could do that, yes.

24 Q: Have we solved this case yet? I mean we keep talking
25 about the gang and all this other stuff. Have we solved

SPECIAL AGENT MARK BERUBE -REDIRECT EXAMINATION BY MR. GOINGS

1 the case meaning has the shooter actually gone to trial?

2 A: No.

3 MR. KENT: Thank you. That's all the questions I
4 have.

5 THE COURT: All right. Redirect?

6 REDIRECT EXAMINATION

7 BY MR. GOINGS:

8 Q: Why has the shooter not gone to trial yet?

9 A: It's my understanding that the shooter is undergoing
10 mental evaluation at this time.

11 Q: He's being evaluated whether or not he's competent to
12 test -- I mean to stand trial; is that correct?

13 A: That's correct, yes.

14 MR. GOINGS: Nothing further, Your Honor.

15 THE COURT: If not, you may step down.

16 THE WITNESS: Thank you, sir.

17 (Whereupon, the witness leaves the stand at 3:56 p.m.)

18 THE COURT: If you would, call your next witness.

19 MR. GOINGS: At this point in time, Your Honor, the
20 State rests.

21 THE COURT: Thank you very much. Members of the jury,
22 we're going to take a break for the day and come back in
23 the morning at ten o'clock. As I told you yesterday, don't
24 read the news. Don't watch the news. Do not discuss the
25 case with anybody. Hopefully, we will conclude the case

1 tomorrow.

2 (Whereupon, the jury exits the courtroom at 3:56 p.m.)

3 THE COURT: All right. Any motions from ---

4 MR. KENT: Judge, by way of scheduling, if I could
5 have a couple of minutes to talk to my client to decide if
6 he chooses to testify? That's going to make a
7 determination if we choose to put up a case. I'm going to
8 be perfectly candid. If he chooses not to testify, then
9 I'll have to put my motion on the record and we can go
10 right into closing arguments, but if he chooses to testify,
11 I'll explain to the Court what level case we'll be putting
12 up.

13 THE COURT: All right.

14 MR. KENT: If I could have five minutes ---

15 THE COURT: Take enough ---

16 MR. KENT: --- just to talk to him?

17 MR. GOINGS: And Your Honor?

18 THE COURT: Do you want to do it now or do you want to
19 do it in the morning?

20 MR. KENT: I'd like to do it now. I mean I'd like to
21 give the State an opportunity so they know.

22 (Whereupon, security and counsel confer off the record
23 regarding location for discussion with defendant.)

24 MR. GOINGS: And Mr. Kent had indicated that the State
25 had -- because we had agreed that there wouldn't be a prior

1 criminal record. Actually, there will be, Your Honor. We
2 have got PWID proximity that I will try to seek to
3 introduce, an ABHAN charge, and -- what else were we
4 looking at?

5 MR. PAULING: Purse snatching.

6 MR. GOINGS: Purse snatching.

7 THE COURT: All right. Go talk to him.

8 MR. KENT: Let me talk to him and then I'll be heard
9 in here as soon as I know.

10 (Whereupon, there is a break in the proceedings from
11 3:58 p.m. until 4:06 p.m.)

12 MR. KENT: Judge, we're back in the courtroom and I
13 have met with my client, Mr. Johnson.

14 THE COURT: Have you had time to discuss with your
15 client whether or not he intends to testify?

16 MR. KENT: Judge, not only just in the five minute
17 break that you have given, I've discussed with my client on
18 several occasions. I would say on this past Sunday we
19 spoke at least for two hours. So just today isn't the
20 first time I've talked to him about his decision to
21 testify.

22 THE COURT: Yes, sir.

23 MR. KENT: I've explained to him that the State now
24 has a usable prior criminal record, that there's a chance
25 that we could argue it, but for essential purposes he was

1 thinking none of his record would come in. That being
2 said, if you want to talk to him now or if you want me to
3 explain what he chooses, whatever the Court sees fit.

4 THE COURT: All right. Mr. Johnson, do you intend to
5 testify ---

6 THE DEFENDANT: No, sir.

7 THE COURT: --- in your trial?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Have you discussed that with
10 your lawyer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Has he answered all of your
13 questions?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have I answered all of your questions in
16 regard to your right to remain silent and your right to
17 testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions for me or your
20 lawyer?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Thank you very much. Do you
23 intend to call any witnesses, Mr. Kent?

24 MR. KENT: Based upon the fact that he's not
25 testifying, we will not be putting up a case at all.

1 THE COURT: All right, good. I'll be glad to hear any
2 motions that you might have.

3 MR. KENT: Thank you, Judge. First, I appreciate the
4 Court holding all of my gang motions in abeyance. My
5 understanding is the Court simply said that I didn't have
6 to make them contemporaneously every time gang was
7 mentioned. At this time, however, I would renew those gang
8 motions. I think it's proper to renew them.

9 Specifically, at this time I would make my directed
10 verdict motion. Taking the evidence most favorable -- in
11 the light most favorable to the non-moving party, who in
12 this situation would be the State of South Carolina, we
13 would move for a directed verdict of not guilty as to all
14 charges except for the two that we, of course, have openly
15 admitted to. Judge, I think at best what we have here is
16 evidence of realistically -- well, actually I'm going to go
17 a little bit in a different order.

18 First, Judge, I'd like to move for a directed verdict
19 as to accessory after the fact to murder. I don't think
20 there's any testimony into the record whatsoever that Mr.
21 Johnson did anything to accessorize after the fact, that he
22 helped hide the gun, that he helped do anything with the
23 gun, that he did anything to even hide the individuals or
24 help hide the individuals after the murder had occurred. I
25 think the best testimony at best that they have to offer is

1 one witness said I don't know what happened with the gun.
2 No one could testify that they knew what happened with the
3 murder weapon, where the murder weapon went, or anything of
4 that nature. So I don't think there's any testimony in the
5 record at all about accessory after the fact.

6 THE COURT: All right. Would you like to respond to
7 that?

8 MR. GOINGS: Thank you, Your Honor. May it please the
9 Court. I believe that Bryant -- or actually John Wesley
10 Stamps' testimony that as the gang leader, Mickey Johnson
11 ordered individuals not to discuss the case or not to
12 discuss any of the things that happened on March 22nd to law
13 enforcement should they be approached is enough to submit
14 the case to the jury for accessory after the fact to
15 murder.

16 THE COURT: All right. I agree. That motion is
17 denied.

18 MR. KENT: And, Judge, just generically on the rest of
19 the motions, I'd make my motion based upon the fact that,
20 of course, the Court is concerned with the existence of
21 some evidence, not the weight of the evidence whatsoever.
22 Judge, at best what this is, is the State has cloaked a
23 gang case into a murder case. I mean what they've proven
24 at best is just that Mickey Johnson is a member of the gang
25 and he's the leader of the gang. That's what they have

1 proven. They haven't proven accessory before the fact.
2 They haven't proven conspiracy. They haven't proven that
3 there was a tacit agreement between co-conspirators to do
4 anything.

5 For that reason, we would simply make our directed
6 verdict motion at this point in time and ask the Court to
7 direct a verdict of not guilty in regard to the charges
8 that Mr. Johnson is looking at.

9 THE COURT: All right. Let me hear from you, Mr.
10 Goings.

11 MR. GOINGS: Thank you, Your Honor. May it please the
12 Court. Obviously, I think there's a wealth of information
13 from the co-defendants' testimony, as well as the
14 investigators, that not only was this a gang, but that
15 there was evidence that, as far as accessory before the
16 fact of murder, that Mickey Johnson as the gang leader
17 ordered the hit, drove them to the location where the
18 murder took place.

19 Also, as far as criminal conspiracy, obviously two
20 individuals at least testified that there was an agreement
21 as to what was going to happen as a retaliatory shooting.
22 Again, the order that was made by Mickey Johnson. I think
23 the acts of all defendants and the statements that were
24 made can be used in determining whether or not individuals
25 actually came to an agreement as to a particular plan that

1 was criminal in nature, which supports the case for
2 criminal conspiracy going to the jury as well.

3 THE COURT: I agree. I'm going to deny the motion as
4 well. Anything further?

5 MR. KENT: Nothing further other than all of the
6 motions made if we can make them contemporaneous to the
7 record.

8 THE COURT: And those are denied as well. All right.
9 We'll be back in the morning and argue and charge.

10 MR. KENT: Do you want to discuss that? Because we
11 can get started. I don't think I have any special charges,
12 Judge.

13 MR. GOINGS: I'll go by your -- the bench book
14 charges.

15 THE COURT: We'll put it together and we'll go over
16 it.

17 MR. KENT: What reasonable doubt charge do you use,
18 Judge, if you don't mind me asking?

19 THE COURT: Nebraska.

20 MR. KENT: Nebraska?

21 (Whereupon, the proceedings end for the day at 4:12
22 p.m.)

23

24 --- CONTINUED IN VOLUME III - DAY 3 OF 3 ---

25

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)	CASE NO. 2012-GS-47-00002
)	2012-GS-47-00003
)	2012-GS-47-00004
)	
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	
)	
-vs-)	TRANSCRIPT OF RECORD
)	(VOLUME III: DAY 3 OF 3)
)	
MICKEY JOHNSON,)	
)	
Defendant.)	
)	

July 16-18, 2013
Sumter, South Carolina

B E F O R E:

THE HONORABLE WILLIAM SEALS, Judge; and a jury

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

CARY GOINGS, Assistant Attorney General
CURTIS PAULING, Assistant Attorney General
Attorneys for the Plaintiff

SHAUN KENT, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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1 JULY 18, 2013

2 (Whereupon, the proceedings resume at 10:02 a.m.)

3 THE COURT: If the lawyers would come on up here and
4 just take a look at the charge.

5 (Whereupon, a bench conference is held off the record
6 to review the charges and verdict form.)

7 THE COURT: All right. For the record, does the State
8 have any objections to the charge or the verdict form?

9 MR. GOINGS: None from the State, Your Honor.

10 THE COURT: All right. For the record, does the
11 defense have any objections to the charge?

12 MR. KENT: Judge, the only objection I would have is
13 just to Victor v. Nebraska language as opposed to the
14 "hesitate to act" language that would be my standard
15 objection.

16 THE COURT: All right. Any objections to the verdict
17 form?

18 MR. KENT: No objection from the defense as to the
19 verdict form.

20 THE COURT: Thank you. Go ahead and bring out the
21 jury.

22 THE CLERK: Yes, sir, Judge.

23 (Whereupon, the jury enters the courtroom at 10:07
24 a.m.)

25 THE CLERK: Your Honor, we have all the jurors present

1 in the courtroom.

2 THE COURT: Thank you very much. If the defense
3 would, call your first witness.

4 MR. KENT: The defense at this time would rest, Your
5 Honor.

6 THE COURT: Thank you very much. Members of the jury,
7 we have to take up a matter for about two minutes. If you
8 would, go back into the jury room for about two minutes and
9 we'll be back with you and at that time we'll proceed with
10 closing arguments.

11 (Whereupon, the jury exits the courtroom at 10:09
12 a.m.)

13 THE COURT: All right. Any motions from the defense?

14 MR. KENT: Judge, now that the defense has rested its
15 case, we would renew all of our directed verdict motions as
16 made at the conclusion of the State's case. Now we're
17 making the same motions at the conclusion of the defense's
18 case.

19 THE COURT: Thank you very much. Those motions are
20 denied. Anything from the State?

21 MR. GOINGS: Nothing from the State, Your Honor.

22 THE COURT: All right. Bring them back out.

23 MR. KENT: Your Honor?

24 THE COURT: What you got?

25 (Whereupon, a bench conference is held off the record

1 and the jury is not brought into the courtroom.)

2 (Whereupon, the stipulations of counsel stated on Day
3 1 of the trial are replayed in the courtroom for
4 counsel and the Court. See Page 25 herein.)

5 (Whereupon, a bench conference is held off the
6 record.)

7 (Whereupon, the stipulations of counsel stated on Day
8 1 of the trial are replayed again in the courtroom for
9 counsel and the Court. See Page 25 herein.)

10 (Whereupon, a bench conference is held off the
11 record.)

12 THE COURT: All right. Let's take about a fifteen
13 minute break.

14 (Whereupon, there is a break in the proceedings from
15 10:31 a.m. until 11:27 a.m.)

16 THE COURT: All right. Is there anything we need to
17 place on the record before we begin?

18 MR. KENT: Nothing. Nothing from the defense.

19 MR. GOINGS: Nothing.

20 THE COURT: And both of you, Attorney General and the
21 defense attorney, have reviewed the charge and the changes
22 we've made. Is everything correct?

23 MR. KENT: Based upon our argument and based upon the
24 discussion, yes, Judge.

25 THE COURT: How about you?

1 MR. GOINGS: The State is fine with the charges.

2 THE COURT: Anything you want to place on the record?

3 MR. GOINGS: No. Nothing from the State, Your Honor.

4 THE COURT: If you will, go ahead and bring out the
5 jury.

6 (Whereupon, the jury enters the courtroom at 11:28
7 a.m.)

8 THE CLERK: Your Honor, we have all the jurors back in
9 the courtroom.

10 THE COURT: All right. The State is recognized for
11 your closing statements.

12 MR. GOINGS: Thank you, Your Honor. May it please the
13 Court.

14 THE COURT: Yes, sir.

15 MR. GOINGS: Mr. Kent.

16 CLOSING ARGUMENT BY THE STATE

17 MR. GOINGS: Good morning, ladies and gentlemen.

18 THE JURY: Good morning.

19 MR. GOINGS: I know this is probably going to make you
20 sad, but this is going to be the last time you hear my
21 voice in this trial. Okay?

22 At the beginning of the trial, Mr. Pauling got up here
23 and told you that Mickey Johnson was an innocent man. The
24 judge is going to charge you in a little while he came into
25 this court presumed innocent. He's going to describe it as

1 a robe of righteousness placed upon the back of the
2 defendant and it is only until the State comes in here,
3 puts evidence on that stand, and proves beyond a reasonable
4 doubt that he is no longer innocent.

5 And, ladies and gentlemen, you've heard the evidence.
6 You've heard the testimony in this case. He no longer sits
7 there an innocent man. In that chair right there sits the
8 lieutenant of 135 Piru. In that chair sits the leader of
9 the Sumter set of 135. In that chair sits the man who
10 orchestrated and ordered the senseless killing of Adrian
11 Davis on March 22nd, 2011.

12 A guilty man. A man guilty of unlawful carrying. A
13 man guilty of pointing and presenting. A man guilty of
14 criminal conspiracy. And a man guilty of accessory before
15 the fact to a murder and a man guilty of accessory after
16 the fact to a murder.

17 And I'm going to go over it in a little bit. We'll
18 get to it in a second, but there's some things we got to
19 cover before we get there. We're going to go over the
20 facts and how it relates to the charge that the judge is
21 going to give you in a little bit.

22 And when I say charge, he's going to lead -- read to
23 you what the law in this case is. He's going to read to
24 you the elements of each of the crimes that have been
25 charged. He's going to read to you what reasonable doubt

1 is. So if anything I say in my closing today is different
2 from what he tells you, you go by what he says because he
3 is the judge of the law. It is his role to determine and
4 tell you what the law in this case is.

5 Your job is the fact finder. You're the sole judges
6 of the facts. You're going to take those facts after we're
7 done and you're going to go back to the jury room and
8 you're going to apply it to the judge -- to the law that
9 the judge gives you. That's how it works.

10 So what is this evidence that we're talking about?
11 And this is going to be important down the road. So
12 evidence in a criminal trial is nothing I say. It's
13 nothing Mr. Kent says. It's nothing Mr. Pauling said in
14 his opening. It's none of my questions. The only thing
15 you can consider when you're back there making the
16 determination as to whether or not the State has met its
17 burden of proof is by what came out of the mouths of the
18 people who took that stand and any photographs or other
19 evidence that were introduced through those witnesses. And
20 it's with that evidence that you're going to go back there,
21 look at each of the elements of the crimes that were
22 charged, and determine whether or not the State has met its
23 burden of proof beyond a reasonable doubt.

24 What is reasonable doubt in the State of South
25 Carolina? The judge is going to charge you in a little bit

1 it's a -- if you are firmly convinced of the defendant's
2 guilt on each element of the charges as he reads them to
3 you, then the defendant is guilty. There's very few things
4 in this world we can prove beyond -- I mean beyond any
5 doubt. That's not what reasonable doubt is.

6 If you're firmly convinced -- if you're firmly
7 convinced that on March 22nd, 2011, in the afternoon hours
8 he was armed with a weapon and fired shots in [REDACTED]
9 Apartments, he's pretty much guilty of the first two
10 charges. If you're firmly convinced that he then later
11 ordered lower ranking members of 135 to go over to
12 [REDACTED] Apartments again to shoot the first person who
13 came to the door, he is guilty of the rest of the charges,
14 and I'm going to show you why.

15 Let's start with the first two. You've got unlawful
16 carrying of a weapon and pointing and presenting a firearm.
17 Now, unlawful carrying of a weapon is unlawful for a person
18 to carry a weapon upon their person unless they have a
19 legal right to do so. That's pretty much what it is.
20 Pointing and presenting is exactly what it sounds like.
21 You have to prove that a person pointed and presented a
22 firearm to another in Sumter County. Simply -- I mean it's
23 logical that they're each -- each one has elements that you
24 have to prove.

25 Now, defense counsel got up in his opening statement

1 and told you, ladies and gentlemen, I'm going to surprise
2 you. I'm going to tell you Mickey Johnson is guilty of
3 those charges. That's all well and good, and you might be
4 sitting there thinking, well, you know, why are we still
5 here for those particular charges. I can't just rest on
6 what he says in his opening statement, meaning if we were
7 here just to try those two charges and I got up or Mr.
8 Pauling got up and said, you know, this is what we're going
9 to show you relating to that afternoon, he gets up and says
10 Mickey Johnson is guilty of those charges, and I say, well,
11 the State -- I mean he admitted to it.

12 That's not good enough. Why? Because like I just
13 told you, evidence comes from here, not the mouth of me,
14 not the mouth of Mr. Kent. Evidence comes from there. But
15 he wants to tell you that in his opening statement because
16 he doesn't want y'all to look past what happened on March
17 22nd, 2011.

18 So let's take it. What happened that afternoon?
19 Well, obviously, the 135 members were out at Apartment 12,
20 June James' apartment, working out and hanging out, slap
21 boxing. And how do we know that? Well, how many people
22 got up and told you that's what they were doing that night?
23 Annesia Allen told you that. She saw it from her
24 apartment. That's what they were doing, working out,
25 lifting weights. Kanadja McConico came up and told you

1 that's what she saw that day, them out there at Apartment
2 12.

3 John Wesley Stamps comes in and tells you that's what
4 we were doing that day. Mickey Johnson called us over
5 there to do that. Bryant Bradley says the exact same
6 thing. Those four statements or those four testimonies,
7 they were the same about what happened that afternoon.
8 They were over there working out.

9 Two members of a -- or supposed members of Folk Nation
10 coming from a memorial service down the street from
11 somebody that they just buried, angry. All four of them
12 say the same thing. Mickey Johnson was agitated. He went
13 over there and confronted them. Things got hot. An
14 argument ensued and they left. Mickey Johnson and them
15 went back to what they were doing.

16 Later on, two more cars come with a group of people,
17 the same people come back. Still, all four statements are
18 the same. Annesia Allen, Kanadja McConico, John Wesley
19 Stamps, and Bryant Bradley, all of them.

20 Another altercation ensues. At this point in time,
21 there's testimony from all four, yeah, one of the guys from
22 the group that came back to [REDACTED] Apartments that day
23 in the cars had a gun. All four say it. All four say that
24 William Morgan, an associate of Mr. Johnson, goes and gets
25 his own gun and racks it. All four of them. All four of

1 them say New York got the gun, New York got the gun, New
2 York got the gun, New York got the gun. But that wasn't
3 good enough for Mickey Johnson because all four of them
4 testified still that he grabbed the gun from New York,
5 William Morgan. William Morgan testified to the same thing
6 from this stand.

7 But it wasn't good enough just to rack it. He wanted
8 to make a statement that afternoon. He wanted to make a
9 statement to 135. He wanted to make a statement to
10 [REDACTED] Apartments that this is 135's territory. And
11 that's what he did. He was protecting his turf when he got
12 that weapon from New York, pointed it and presented it, and
13 fired shots at that other group to protect his turf. How
14 many statements say that? Five: Annesia Allen, Kanadja
15 McConico, Bryant Bradley, William Morgan, and John Wesley
16 Stamps.

17 It's at this point -- and that's probably why he's
18 fine with -- or defense is coming and saying, well, we'll
19 plead guilty to that. That's fine. Ladies and gentlemen,
20 the defense wants you to believe or to say that it's okay
21 to believe John Wesley Stamps and Bryant Bradley all the
22 way up until that point because obviously they're saying
23 that Mickey Johnson did that that afternoon. So it's fine
24 to believe those two individuals up to that point, but
25 everything else they have to say is a lie.

1 Mickey Johnson, when he took that gun from New York,
2 was making a statement. Mickey Johnson, the leader of 135
3 who leads with an iron fist according to Dontae Crayton,
4 according to Bryant Bradley, according to John Wesley
5 Stamps, and according to William Morgan. He is in charge
6 of who gets initiated. He is in charge of members knowing
7 their rules. He is in charge of bringing down violations.

8 He runs 135 and if you want to believe that a person
9 like that who would shoot into a crowded apartment complex
10 to protect his turf, a person who rules pretty much every
11 decision made for 135 had nothing to do with the planning
12 of the murder of Adrian Davis that night, then you go back
13 there, you bring out a guilty verdict for pointing and
14 presenting and unlawful carrying, and you say not guilty to
15 the rest. That's what you do.

16 But we know that's not what happened. We know Mickey
17 Johnson was angry that Folk Nation came to one -- I mean
18 [REDACTED] Apartments that day. That's why he shot the
19 first time. We know he was still angry when he left after
20 the shots were fired. Bryant Bradley told you he was right
21 there with him the whole time. He was agitated, angry.
22 What happens after that?

23 John Wesley Stamps said he stayed back at the
24 apartment and protected the women. He gets shot at again.
25 How do you think that affected him?

1 (Whereupon, counsel for the State points at the
2 defendant.)

3 MR. GOINGS: In his statement he made earlier that
4 day, obviously it wasn't good enough. John Wesley Stamps
5 told you Mr. Johnson was adamant to find out what apartment
6 the guy who shot at him came from. Why? Because it's
7 another statement that had to be made.

8 So John Wesley Stamps tells him Apartment 7 or 17. He
9 couldn't remember on the stand what he told Mickey Johnson
10 that night, but he knew it had a seven in it so he
11 testified to y'all it was either Apartment 7 or 17 is what
12 I told him. Then what's he tell you? Well, he told -- or
13 Mr. Johnson told him to come to Garney's house. Bryant
14 Bradley also said we met back up at Garney's house. And
15 that's where a plan was developed to make another statement
16 that [REDACTED] Apartments was 135.

17 Bryant Bradley told you that Mickey Johnson came up
18 with a plan to go to two apartments that night, Apartment
19 7, if no one answered, go to Apartment 50 and shoot the
20 first person who opens the door. Shoot the first person
21 who opens the door. John Wesley Stamps says he hears that
22 same order Mr. Johnson gave to Rasheed Brandon when they
23 get over to [REDACTED] Apartments. Remember, shoot the
24 first person.

25 Now, Bryant Bradley also tells you that not only does

1 he order the hit, come up with the plan, tell them their
2 roles, Ready agrees to do the hit, tells Bryant Bradley
3 you're going to be the driver, he doesn't stop there. Him,
4 Garnett Davis, Bryant Bradley, John Wesley Stamps, and
5 Rasheed Brandon all get in the car. What car? His
6 girlfriend's car. Who is driving? He's driving. Where do
7 they go? [REDACTED] Apartments. Why? Statements.
8 Statements that got to be made.

9 John Wesley Stamps and Bryant Bradley both sat on that
10 stand and told you when they got there, him and his second-
11 in-command, Garnett Davis, got out of the vehicle and
12 walked away. Bryant Bradley tells you the instructions
13 were give us five minutes to get off scene and go do the
14 hit, and that's what they did. They waited five minutes.
15 Bryant Bradley gets out the -- or stays in the car.
16 Rasheed Brandon gets out. John Wesley Stamps gets out.
17 John Wesley Stamps tells you that he stayed there in the
18 outside in the communal areas while Rasheed Brandon goes to
19 the door of Apartment 7 first. Obviously, nobody answered.
20 Lucky for them.

21 He comes back out. John Wesley Stamps says I thought
22 it was over then. Instead, Rasheed Brandon proceeds to
23 Apartment 50 at [REDACTED] Apartments, knocks on the door.
24 Annesia Allen is there, opens it. And unfortunately for
25 Adrian Davis, he's sitting at the computer that night.

1 Rasheed Brandon takes out his gun and fires one shot. Bye.
2 Dead. A statement from 135 Piru. Folk Nation don't belong
3 here. That's what this case is about. A statement coming
4 from him.

5 (Whereupon, counsel for the State points at the
6 defendant.)

7 MR. GOINGS: And let's look at that evidence with what
8 the judge is going to charge you in a second. The judge is
9 going to charge you that accessory before the fact and
10 accessory after the fact is -- there has to be a felony.
11 The felony in this case as the State has charged it is
12 murder. Okay?

13 The State must show evidence that a murder took place
14 on March 22nd, 2011, for you to convict him of accessory
15 before the fact and accessory after the fact to that
16 murder. The judge is going to tell you what murder is in
17 the State of South Carolina and it's simply an unlawful
18 killing of another human being with malice aforethought.
19 Malice aforethought in the State of South Carolina is pure
20 and simple: evil, ill will, hatred.

21 Ladies and gentlemen, when y'all go back there, if
22 y'all don't think a murder happened on March 22nd, 2011, if
23 you don't believe that Adrian Davis died that night from a
24 gunshot wound that he received -- which would be a
25 stipulation read to you as well that he died as a result of

1 a gunshot wound he received that night. If you don't think
2 that he was killed with hatred and ill will, you can't
3 convict him of accessory before the fact of that because
4 you don't believe there's a murder that took place.

5 And when somebody is sitting at their computer minding
6 their own business and somebody knocks on the door and
7 fires one shot into an apartment building and kills him,
8 that's evil, very evil. There's no doubt the murder took
9 place. The question y'all are going to have to answer is
10 if he ordered it because accessory before the fact in South
11 Carolina is if the defendant in any way encourages it,
12 helps it be accomplished, aids in its commission, he is
13 guilty of accessory before the fact. Ladies and gentlemen,
14 Bryant Bradley, Rasheed -- Bryant Bradley and John Wesley
15 Stamps told you he ordered it, drove us over there. He's
16 guilty.

17 Accessory after the fact of murder, you have to find
18 that the defendant is some way helped conceal the crime
19 after it was committed, knowing it had been committed.
20 That's accessory after the fact if he some way shows that
21 either evidence of a crime is disposed of or if he somehow
22 is involved and his involvement helps conceal the persons
23 who did it and their arrest or the fact the crime was
24 committed. That's pretty much accessory after the fact to
25 a felony.

1 Well, let's look at that. What happens later on when
2 they get back? Does he know that the murder took place?
3 Yeah, he knows. Bryant Bradley told you that Rasheed
4 Brandon when he got back, Mickey Johnson first thing he
5 asked was did you get it done? Yeah, I saw him fall over.
6 He knows that the murder happened.

7 What's his role? His role is the power he has as the
8 leader of 135. What's John Wesley Stamps tell you that he
9 told him? If you don't know what to say, don't say nothing
10 at all. Don't tell them. Do not snitch. He is telling
11 them -- ordering them to conceal those who did it, the fact
12 that they were involved, and what happened. And then he
13 gives them rank increases for a senseless murder.

14 And I'm almost done and I'm going to wrap it up.
15 There's a couple other issues I want to talk with you
16 about.

17 You know, there was a lot of testimony about plea
18 deals and proffer agreements, when statements were made,
19 and that kind of thing. And, ladies and gentlemen, proffer
20 agreements are done because the State has to know what an
21 individual -- what information he has before they can make
22 any decisions about whether a plea agreement is going to be
23 entered. That's the purpose of a proffer agreement. It is
24 an agreement between the State and the defendant saying
25 come in here, tell me what you know, and I will not use it

1 against you. I cannot use it against you, but I have to
2 know what you're going to say before I can make any type of
3 determination as to what plea deal to give you.

4 Does that change the fact that it's not the truth?
5 No. It's the truth. No plea deals are in place at the
6 time a proffer is given. No plea deals were in place at
7 the time Bryant Bradley a few days after the murder gave
8 his first statement. No plea deals were in place when John
9 Wesley Stamps gave his plea -- or statement right after the
10 murder. No plea deals were in place when John Wesley
11 Stamps gave his other two statements to law enforcement.

12 And I know you may have some heartburn about plea
13 negotiations and what individuals got sentenced to and
14 normally I don't talk about this, but, you know, plea deals
15 are essential to justice -- to the justice system. I mean
16 that's just how we operate because there are certain rules
17 of court that I have to abide by when I actually come up
18 here and produce evidence to y'all.

19 Like John Wesley -- let's take, for example, Bryant
20 Bradley's first statement. I can't just bring that
21 statement into court with me and use it against Mickey
22 Johnson. It's not permitted. I actually have to have
23 Bryant Bradley on that stand testifying as to what he said
24 then and testifying as to how everything went down. How do
25 I do that? I have to give him a plea agreement for him to

1 come in here and tell you what happened. He's got to have
2 an incentive to come testify about what happened that night
3 because if he doesn't, then how am I going to do it?

4 It's how our system operates. Mr. Kent told you about
5 that system when he got up here in his opening and told you
6 I was a prosecutor down in Charleston. Big drug cases all
7 the time. When we make an arrest, the first thing we want
8 to do is, will he work? Can I flip him? Can I use him?
9 Can -- can I use him to go after the bigger fish? Well, to
10 do that, you have to give him an incentive to do something.

11 But Mr. Kent in his opening said sometimes there's not
12 a bigger fish. There's just not. Ladies and gentlemen, in
13 this case, there is a bigger fish. Just think about it. A
14 man in every effort to protect his turf on the afternoon of
15 March 22nd, 2011, would take a gun in a crowded apartment
16 complex and fire several shots at other individuals without
17 a care in the world. Kids, there were kids around. A man
18 who initiated, violated, made people learn knowledge, gave
19 rank for individuals committing crimes. A man who would
20 order the senseless killing that resulted in the death of
21 Adrian Davis the night of March 22nd, 2011. That's a bigger
22 fish. That man.

23 (Whereupon, counsel for the State points at the
24 defendant.)

25 MR. GOINGS: Who is that man? Not the man in the suit

1 that you see there today, but the real man based on the
2 testimony y'all heard through this trial. The man who
3 wanted to make a statement not only the afternoon of March
4 22nd, but that night as well. That guilty man. Thank you.

5 THE COURT: All right. The defense is recognized.

6 MR. KENT: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. KENT: Mr. Pauling. Mr. Goings.

10 CLOSING ARGUMENT FROM THE DEFENSE

11 MR. KENT: Last night, I went home and in an effort to
12 get ready for closing argument, before I got ready I
13 started watching television to maybe try to unwind and
14 relax a little bit and I don't know what happened, but my
15 girlfriend talked me into watching American Horror Story,
16 first season. Y'all ever watch that? It's some scary
17 stuff. Don't watch it whatever you do, especially before
18 you go to bed.

19 So I tried to watch it and it just started to freak me
20 out so I said I've got to watch something happier. So then
21 I flipped on to TLC or whatever and Here Comes Honey Boo
22 Boo comes off and that was scarier than the other one so I
23 had to turn that off. It's like this is getting ridiculous
24 so finally I went to Turner.

25 So I turned on to Turner television and Cat on a Hot

1 Tin Roof came on. Any of y'all ever see that? Great,
2 great, great southern movie. Love watching it. And for
3 those of you who haven't seen it, it's about a southern
4 family and one of the big things in it is about a character
5 known as Big Daddy. Big Daddy is the patriarch of this
6 family. Big Daddy. Big Daddy runs this family.

7 So Big Daddy, unfortunately, is dying. So Burl Ives
8 plays the character. If you've ever seen him, he's got
9 that great deep, barreling voice. And the whole family is
10 sitting inside of a room and they're sitting in the room
11 talking to each other and they're talking to each other
12 about Big Daddy. When Big Daddy dies, what are we going to
13 do with the money? When Big Daddy dies, what are we going
14 to do with all of Big Daddy's money? What are we going to
15 do with Big Daddy's money?

16 Well, as they're talking about it -- and you can
17 picture it. Big Daddy actually walks into the room while
18 they're talking about what they're going to do with Big
19 Daddy's money when he dies. So everything gets real quiet.
20 You know that awkward feeling when you've been talking
21 trash about somebody behind their back and they actually
22 walk into the room right behind you? Well, that's
23 basically what happens.

24 So all of a sudden, Big Daddy looks around and he gets
25 his deep southern voice and he says, the air is filled with

1 the stench of mendacity. A great line. I didn't know what
2 it meant. I had to look it up. The air is filled with the
3 stench of mendacity.

4 Ladies and gentlemen, mendacity is lying. That's what
5 it is. There's a stench that permeates the air and that's
6 what we've got from the stand from the witnesses that the
7 State of South Carolina has given you. The stench of
8 mendacity. They sit here with all the power, all the
9 influence, all of the money of the State of South Carolina,
10 and they sit here as pious as they possibly can with all of
11 their evidence, all of their witnesses, all of their
12 research, and they say the first things out of your mouth
13 is look for the reason to lie from these witnesses.

14 What reason could they possibly have to lie? Isn't
15 that what he told you? What were the first words out of
16 his mouth? Listen to them. Judge their credibility. What
17 possible reasons would they have to lie?

18 And then in the closing, they come and say, hey, you
19 know, sometimes you've got to give people deals. You've
20 got to work with them a little bit. The stench of
21 mendacity. All the power, all the money, all the influence
22 of the State of South Carolina. Let's go over that stench
23 that permeates this room real quick.

24 You heard from all these witnesses and with the
25 exception of two of them, all of these witnesses, all of

1 these individuals who kept testifying that we're in the
2 gang, we feel this way, every single one of them was given
3 what? An amazing deal. Every single one of them also has
4 what in common? They keep saying their statements were
5 consistent. Good gosh, my statement would be consistent
6 after I gave about five of them. Let someone give you five
7 or six statements, I'm sure after a while they'll all be
8 consistent because we need them to be consistent. All the
9 power, all the money, all the influence of the State of
10 South Carolina. They needed those statements to be
11 consistent. We go through all of the statements of
12 everybody and say, well, all of the statements match. Did
13 they? Did they match at all?

14 They give me a hard time because the first thing that
15 I told you on opening statement is I admitted to the role
16 that Mickey Johnson had out there that day. I told you
17 right to your faces, first whether or not -- I'm not trying
18 to hide anything. Mickey Johnson was out there at
19 [REDACTED] Apartments. Mickey Johnson had a gun and Mickey
20 Johnson pointed a gun and Mickey Johnson fired a gun. Find
21 him guilty.

22 He says, well, he must be doing it for a trick. Good
23 God, now the truth's a trick. Telling you what happened
24 all of a sudden becomes a trick, but if you put your own
25 lying witnesses on the stand, that's not a trick, that's

1 the truth is what he wants us to believe. All the power,
2 all the money, all the influence of the State of South
3 Carolina.

4 The statements do match up until a certain point in
5 time. He is exactly right. The statements given to you do
6 match until a certain point in time and then they're all
7 different. I wonder why that is? Because that's when
8 everyone starts lying. What's their motivation to lie?
9 Let's go through it.

10 William Morgan. What did he testify to? He said,
11 hey, man, I was looking at an accessory before the fact of
12 murder. Mr. Morgan, accessory before the fact of murder,
13 do you know what that carries? Yeah, that carries the same
14 thing Mr. Johnson is looking at. I was looking at life.
15 What happened to that charge? They threw it out. What
16 else were you looking at? Accessory after the fact. What
17 happened to that charge? They threw it out. Hmmm. But
18 I'm here telling y'all the truth today.

19 I think Mr. Pauling when he asked him questions toward
20 the end, he said isn't your testimony today the truth? And
21 what did he say? Yes, it has been. It's all been the
22 truth. And then I went back up there and I asked him some
23 questions. What was the last words out of his mouth?
24 Yeah, I lied about that. All the power, all the influence,
25 all the money of the State of South Carolina.

1 Mr. Morgan testified that when he was going over
2 everybody else's statements, that's how he decided how he
3 was going to testify. He was reviewing other people's
4 statements because that's what he knew they wanted to hear.
5 All the power, all the money, all the influence of the
6 State of South Carolina.

7 Mr. Morgan stated -- told you flat out his testimony
8 wasn't his own testimony. It wasn't what he remembered.
9 It's what he read from other people's testimony. How did
10 he get all that information? Why did he have all that
11 information? Why does he possibly have all the information
12 of everybody else?

13 What did you plead guilty to? I pled guilty to only
14 what I did. They say they told you everything the State of
15 South Carolina had. Why was he even charged with those
16 crimes? Where's that evidence? Why was Mr. Morgan charged
17 at all with accessory before the fact of murder, accessory
18 after the fact to murder, all of those questions? How did
19 Mr. Morgan make a \$200,000 bond? After he made a \$200,000
20 bond, he commits other crimes.

21 All the power, all the influence, all the money of the
22 State of South Carolina, and what do they do? We know you
23 keep committing crimes. It's okay, but we're going to look
24 out for you. Just make sure whatever you do, just testify
25 against Mr. Johnson. If you can do that for us, you'll be

1 okay. We don't care if you lie. We don't care what you
2 say. Just testify against Mickey Johnson. All the power,
3 all the money, all the influence of the State of South
4 Carolina.

5 And then we go to John Stamps' statement. What did
6 John Stamps testify to? He gave an initial statement. His
7 first statement he gave, well, what was that line in his
8 first statement? Well, let's get to that in a little bit.
9 What did he tell you? Man, that first statement was a lie.
10 It was filled with the stench of mendacity. I was trying
11 to distance myself from the shooting. I was just trying to
12 distance myself. I had nothing to do with it. I wanted to
13 distance myself.

14 So I went through that first statement with him line
15 for line. The only thing that he said was a lie was the
16 thing where he implicated himself in the murder. Oh,
17 that's a lie. Well, you implicated yourself. In this
18 statement, it sounds like you say you're the one who told
19 Ready who to shoot. Oh, that's a lie. So the only thing
20 your first statement -- where you didn't have a lawyer,
21 when you weren't told what you were looking at, when
22 nothing was going on, that statement's a lie?

23 And then later you give a second statement. Did you
24 put any of the information that you testified to about in
25 that second statement? Well, no. So you gave a first

1 statement, you don't mention any of this fantastic story.
2 You give a second statement and you don't mention any of
3 this fantastic story. And then all of a sudden, you give a
4 third statement that happens to be recorded, that happened
5 to have these individuals there, that happened to have the
6 State there, and that third statement what do they say?
7 That's the one we believe. All the money, all the power,
8 all the influence of the State of South Carolina, because
9 they need this testimony. They want this testimony. They
10 paid for this testimony because they need it.

11 What was the last witness they offered you? The
12 muscular fellow right there. What did he tell you? We've
13 got to get rid of these gangs. We've got to get rid of
14 this set. That's what we're doing. Did he say anything
15 about the murder? I asked him was the murder even solved.
16 No. Because that's not their concern. If the concern was
17 the murder, why are all these people getting all these
18 deals?

19 Their concern is very simple. They're scared of gangs
20 and that's what they're banking on with y'all. They're
21 banking on the fact that y'all might hate tattoos. You
22 might hate the color red. You might hate people who look
23 different and you're scared. They're banking on your fears
24 to do their job for them. They're banking on the fact that
25 you'll take the testimony of a bunch of liars that they

1 threw up on the stand that they paid for. They paid for
2 with their lies. They paid for with their freedom.
3 They're banking that you'll forget everything else and find
4 someone guilty.

5 Somebody did testify very honestly about what happened
6 and someone I cared about their testimony. Annesia Allen.
7 I keep calling her Amnesia, because when I had her first
8 statement, it had an M and then I thought it was Amnesia
9 forever. I know it's not. I read her first statement and
10 I heard her on the stand. It was very emotional because
11 the one thing that we should be concerned about is someone
12 died. Someone was killed.

13 What did she testify about the shooter? The shooter
14 on his own out there on the scene without anybody in his
15 ear, without anybody talking to him, without anyone saying
16 a word looked around and said, if anybody says anything, if
17 anybody snitches, I am going to kill somebody. Not we.
18 Not my gang. Not my organization. I'm going to kill
19 somebody. Who came back to your house later? That same
20 person who said that. He went back to the house. Why
21 isn't that guy on trial? Where's he at? All the power,
22 all the money, all the influence of the State of South
23 Carolina.

24 What did the solicitor say at the very end? He's not
25 on trial because he's crazy. We can't try him because he's

1 crazy. But then he stands up and says we've got to prove
2 his mental intent and we have to prove malice aforethought,
3 but he's crazy. So let me get this right. We haven't
4 tried the shooter. The lookout driver we've given a deal
5 that he may be able to get probation for. And the getaway
6 driver we've given him a sweetheart deal also. All the
7 power, all the influence, all the money of the State of
8 South Carolina.

9 Let's cut a deal. But the case? They solved the
10 case, but they got a deal. He's exactly right and he
11 forgot to tell the second part of the story about Shaun
12 Kent when I was a prosecutor because I got chastised by my
13 boss, the late Ralph Worthington, because he says you're
14 cutting these deals and you're letting these guilty people
15 go to get someone that does not exist. That was the
16 mistake I had to learn, that you can cut all of these
17 deals, you can cut these corners, you can do these things
18 for these people, and guess what ends up happening? You're
19 not solving justice.

20 When you have a case -- and he sat me down. When you
21 have a case and when you have a big case, you don't have to
22 cut deals. You do not have to give these offers. You
23 don't have to get in bed with liars. You don't have to get
24 in bed with thieves. You hold your head up high and you
25 try your case based upon what you have.

1 That's not what they did. They don't have a case
2 against Mickey Johnson. They've masked what they do have
3 with the last two statements they have, John Stamps and
4 Bryant Bradley. John Stamps gave them three or four
5 different statements. Bryant Bradley, what was his
6 testimony? I don't actually remember anything I said in my
7 first statement, but I remember what I'm saying here today
8 and I've met with the State of South Carolina and I've had
9 the discovery and I've gone through everything.

10 So what happened out there? Guess what? I don't
11 know. Guess who else doesn't know? The State of South
12 Carolina. I asked their expert gang investigators who got
13 up there and testified because they're experts. What did
14 they say? Everything we have, we have to rely on the
15 statements of these individuals. Well, how do you know if
16 it's the truth? Well, it's kind of a trust relationship.
17 You kind of got to trust them. That's who y'all want to
18 trust? All the power, all the money, all the influence of
19 the State of South Carolina.

20 Their entire case boils down to a couple of things.
21 They've charged Mr. Johnson with conspiracy, accessory
22 before the fact to murder, and accessory after the fact to
23 murder. They have to prove -- I guess technically they
24 have to prove that he aided and abetted and helped create
25 this murder to happen.

1 What did John Stamps tell you? Ready was acting on
2 his own out there. That was their own witness. Remember I
3 asked him the question. That was Ready's idea. Ready did
4 it on his own out there. I can't control him.

5 And then they talked about this no cuts policy. They
6 said if you don't follow no cuts, anything could happen.
7 You potentially could have to do some push-ups. Push-ups.
8 And no cuts policy means you do everything no matter what.
9 John Stamps, what did you do out there? I tried to stop
10 it. But I thought there was no cuts? No, I said that was
11 in the back of my mind, the no cuts, but I did try to stop
12 the murder even though I'm not allowed to stop the murder,
13 but I was going to try to stop the murder.

14 They made their decision out there on their own.
15 Ready made his decision out there on his own. And here's
16 the crazy thing. We can't ask Ready. He's not here
17 because the State hasn't done anything about him.

18 We talked about corroboration and we talked about
19 evidence. That's their responsibility. All the power, all
20 the money, all the influence of the State of South
21 Carolina. That's their responsibility to give you evidence
22 so when you go back there, let's look for the bevy of
23 evidence they've given you in this great trial that's been
24 covered, that's been everywhere, that's got people in the
25 courtroom. Let's look for this great evidence. And what

1 is it? Three pieces of paper. That's what you're going to
2 go back in the jury room with. No DNA evidence. No
3 autopsy about someone who's been killed. You might not
4 even have the statements back there to look for yourself.
5 You're going to have three pieces of paper from the great
6 State of South Carolina because there isn't evidence in
7 this case.

8 There's no evidence. They've offered you no evidence.
9 They've offered you the testimony of liars, thieves, just
10 to try and make up what happened out there, to try to get
11 somebody because they have one obligation. Not to solve
12 the murder, that's not their concern. Their concern is
13 very simple. They're trying to shut down gangs, which is
14 probably an applaudable defense. Try to shut down gangs if
15 you can.

16 That's not what you're charged with today. You're not
17 charged with going back in that room -- and if anyone says
18 it, you stop them right then and there and say, no, we're
19 not to go back here and we're not to say we hate gangs and
20 since we hate gangs, we must find him guilty. That's not
21 your responsibility.

22 Your responsibility is very simple. You took an oath.
23 You put your hand up and you said we will take an oath. We
24 will listen to the evidence. We will follow the evidence.
25 We will follow the law. We will hold them to their

1 responsibility and make them prove their case beyond a
2 reasonable doubt. And they must prove this happened and
3 Curtis gave you the reason how they must prove this
4 happened. By the witnesses and do they have a reason to
5 lie.

6 Realistically, when it all boils down to it, what they
7 proved was a gang. Go back and listen to all the
8 witnesses. They proved a gang. For the first several
9 witnesses they put in, everything was there. Was there a
10 gang? Was Mickey in the gang? Is he the leader of the
11 gang? Is he innocent? But what didn't they prove beyond a
12 reasonable doubt? That he gave an order.

13 One person testified to that. One is what it all
14 boils down to. Ask to rehear the testimony. Ask -- look
15 for the statements and see if they gave them to you. One
16 person, Bryant Bradley, the last person who they testified
17 with. That's the only person who this testimony came out
18 through. John Stamps said I think I heard this. My
19 statement was kind of muddled about this. I'm not sure
20 about that. I don't remember about this. Bryant Bradley
21 was the one person who said that and then he even said,
22 well, I know I didn't put all that in my first statement,
23 but I'm saying it right here today.

24 And I'm going to do something strange. Let's take the
25 State's argument from the evidence that they've put up. I

1 don't think this is what happened, but let's take it for
2 the truth. If what they're saying happened is that John
3 Stamps was out there, he waited, somebody else came back
4 and shot at him. After that somebody else came back and
5 shot, he picked up the phone and called. According to his
6 first statement, he called one person. On the stand, he
7 said he called somebody else. But let's say he does call
8 Mickey Johnson. He calls Mickey Johnson and he says they
9 came out of Apartment 7 or 17. You tell me where they came
10 out of, because we're so scared of Mickey, it was 7 or 17.
11 Okay.

12 Now, let's say Mickey formulated a plan. According to
13 them, he knew what apartment. It was either 7 or 17.
14 Let's say the State is right. He goes over and he says you
15 kill somebody. We'll go to 7 or 17. Then that's,
16 according to the State's evidence, if that was true, what
17 he was guilty of.

18 Who died in Apartment 7 or 17? If he ordered -- like
19 the State has told you about, he ordered -- that they keep
20 putting the evidence on is that he told somebody to go kill
21 somebody in Apartment 7 or 17. Who died in those
22 apartments? Nobody, which means Ready probably made a
23 decision on his own out there that night to go to Apartment
24 50. As awful as that maybe sounds, which I don't think is
25 the case, that ain't a crime. If I tell somebody to kill

1 somebody and they go kill somebody else, guess what? I'm
2 not in trouble for that. I can't control crazy, but the
3 State wants you to believe he can.

4 All the money, all the power, all the influence of the
5 State of South Carolina. Let's purchase testimony, put
6 liars up there. You don't believe that people would come
7 up here and lie to you? You tell somebody you're looking
8 at life in prison unless you say X, if you say X you can
9 get probation. Think about it. They say oh, no, no, no,
10 that didn't happen. Three different statements and the
11 only statement we want you to testify to is about the third
12 one? I've done this a long time. It only takes one time
13 to tell the truth. You don't need three statements to get
14 to the truth. All the money, all the power, all the
15 influence of the State of South Carolina.

16 The judge is going to talk to you during his charge
17 about reasonable doubt and I'm going to tell you very
18 honestly when I got out of law school -- I've been doing
19 this thirteen years now -- I did not understand what
20 reasonable doubt was. I really didn't. I'd hear it. I'd
21 think about it in law school, but I didn't understand what
22 reasonable doubt was.

23 The first time I actually to myself understood what
24 reasonable doubt was was after getting out of law school
25 and going back home to my parents' house. My mom and dad

1 live in Summerville, South Carolina. I lived down in
2 Summerville, South Carolina. I remember leaving law
3 school. I went to law school up in Michigan. I went down
4 and after I went down at one of those spring days down in
5 Summerville just like it is up in Sumter and there was
6 pollen. Remember, the pollen comes out. It's pollen
7 season. Your car is completely yellow. Everybody is
8 sneezing like crazy.

9 Dad loves old Motown music. So I remember. I can't
10 ever forget the day. Percy Sledge was playing in the
11 background. It was just going on. When a Man Loves a
12 Woman was playing. My mom was cooking in the kitchen,
13 collard greens with corn bread. You can recognize the
14 smell from a mile away. I go inside and I'm sitting on the
15 couch and reading through one of my torts books from law
16 school.

17 My little brother, Terry, had a bad attitude and still
18 has a bad attitude to this day. He was sitting there and
19 notoriously he would talk back to my mother. That's what
20 he did. He was a talk-backer. If she said something, he
21 would talk back to her. So when you made note, he would do
22 the infamous sucking his teeth and my mom would always say
23 don't you suck your teeth at me. That's what he would do.

24 Well, we were sitting there and all of a sudden -- I
25 don't remember exactly what the fight got into, but my mom

1 and my little brother got into a fight and he talked back
2 to her and my dad went nuts. He says you go up to your
3 room and my brother had a habit of when he went up to his
4 room, he would slam his door behind him every time. That
5 was his little show of force to show his indignity. He
6 would slam the door behind him as hard as he possibly could
7 just to show that he didn't want to listen to their rules.

8 But my dad looked directly at him and said, whatever
9 you do, you go up to that room and you sit in the room and
10 don't you dare slam that dang door. He didn't say dang.
11 He said don't you slam that door when you go up there. My
12 brother is just angry. You can see him fuming, giving my
13 mom that dirty look. He storms up the stairs and I'm just
14 sitting there and all of a sudden, like clockwork, you hear
15 it. Boom. The door slams.

16 I get a big smile on my face because I know what's
17 about to happen. Dad's angry. Mom's, oh my God, oh my
18 God, oh my God. All of a sudden, Herman starts walking up
19 the stairs. Mom's yelling at Dad going, Herman, don't kill
20 him. Herman, don't kill him. I'm thinking, Herman, kill
21 him. Herman, kill him.

22 So we're walking up the stairs together. We're
23 walking. Dad's angry. He's storming up the steps. Mom's
24 behind us. I'm watching because I want to see my brother
25 get in trouble. We go into the room. Door opens. There's

1 my brother on the floor just sitting there looking at my
2 dad. Dad's got his hand up in the air and he's about to
3 smack the poop out of him. He gets ready to raise his hand
4 and he gets ready to swat at him and all of a sudden, Percy
5 Sledge playing in the background, When a Man Loves a Woman,
6 and Mom crying and me sitting there.

7 You feel the breeze coming through the window. You
8 can see the hit I my dad's hand. You can see my dad halt.
9 At that point in time, I understood reasonable doubt. I
10 understood that halt. I understood that hesitation. I
11 understood the fact that he was not firmly convinced at
12 that point in time that my brother did something. That
13 pause, ladies and gentlemen, was that reasonable doubt.

14 When you go back to that jury room and you sit there
15 and you pause, if you question, if you question any of
16 those witnesses, that's your reasonable doubt and that's
17 when you find Mr. Johnson not guilty of the charges. Thank
18 you so much.

19 CHARGE ON THE LAW BY THE COURT

20 THE COURT: All right. Members of the jury, it is now
21 my duty as the trial judge to instruct you on the law
22 applicable to this case and in that regard, it is your duty
23 as jurors to accept and apply the law as I now state it to
24 you.

25 Furthermore, it is your exclusive duty to decide all

1 issues of fact in this case and to determine the effect,
2 value, weight, and truth of the evidence. Both the State
3 and the defendant have the right to expect that you will
4 carefully consider and evaluate the evidence and apply the
5 law of this case to it so that in the end, both will have
6 received a fair and impartial trial.

7 Furthermore, I want you to understand that when I use
8 the word defendant, I refer to Mr. Mickey Johnson. Also,
9 it is important to understand that the State of South
10 Carolina charges the defendant with the offenses known as
11 accessory before the fact to murder, accessory after the
12 fact to murder, pointing and presenting a firearm at a
13 person, unlawful carrying of a pistol, and criminal
14 conspiracy.

15 To these charges, the defendant has entered a plea of
16 not guilty. This plea of not guilty places the burden of
17 proof on the State to prove the guilt of the defendant to
18 you beyond a reasonable doubt.

19 It is vital to understand that the defendant is
20 presumed under the law to be innocent of the charges. It
21 is a fundamental rule of our law that a defendant,
22 regardless of the seriousness of the charges against him,
23 is always presumed innocent of the crimes for which he has
24 been charged unless and until his guilt can be proved by
25 evidence that satisfies you beyond a reasonable doubt.

1 The presumption of innocence is not a mere legal
2 theory or legal phrase. The presumption of innocence is
3 very important and you need to understand that this
4 presumption accompanies the defendant from the time of his
5 arrest and appearance in this court and continues with the
6 defendant even after you retire to the jury room to
7 deliberate. In other words, the defendant receives the
8 benefit of the presumption of innocence until the very end
9 of this trial when you will deliberate upon the evidence
10 and decide whether the State has proved his guilt beyond a
11 reasonable doubt.

12 Proof beyond a reasonable doubt is proof that leaves
13 you firmly convinced of the defendant's guilt. There are
14 few things in this world that we know with absolute
15 certainty so even in criminal cases, the law does not
16 require proof that overcomes every possible doubt.
17 However, if based upon your consideration of the evidence
18 you are firmly convinced that the defendant is guilty of
19 the crimes charged, you must find him guilty. If on the
20 other hand you think there is a real possibility that he is
21 not guilty, you must give him the benefit of the doubt and
22 find him not guilty.

23 Please understand that reasonable doubt may arise from
24 evidence which has been presented in the case or from the
25 lack of evidence in the case. It is your responsibility to

1 determine whether or not reasonable doubt exists as to the
2 guilt of this defendant.

3 I charge you that the defendant is entitled to every
4 reasonable doubt arising in the whole case. If upon any
5 issues of fact essential to conviction and a verdict of
6 guilty you have a reasonable doubt as to how that issue
7 should be resolved, it would be your duty to resolve that
8 reasonable doubt in favor of the defendant.

9 Thus, in summary, it is important to understand a
10 defendant is not required to prove his innocence. Instead,
11 the State is required by law to prove every essential
12 element of the offenses charged against the defendant by
13 evidence which satisfies you of his guilt beyond a
14 reasonable doubt. Only then can you convict the defendant
15 and find him guilty.

16 Furthermore, evidence may be direct or circumstantial.
17 Direct evidence is testimony by a witness about what the
18 witness personally saw or heard or did. Circumstantial
19 evidence is indirect evidence. In other words, it is proof
20 of one or more facts from which one can find another fact.
21 You may consider both direct and circumstantial evidence
22 equally.

23 During this trial, you and I have separate duties to
24 perform. As the judge, it is my responsibility to preside
25 over this trial. Furthermore, I have the duty to rule upon

1 the admissibility of the evidence offered during the trial.
2 In that regard, you are to consider only the evidence
3 before you. Thus, you are to consider only the testimony
4 which has been presented from this witness stand together
5 with any exhibits admitted into the record of this case.

6 Also, I have the additional duty to charge you on the
7 applicable law to this case and in that regard, it is your
8 duty to accept and apply the law as I now state it to you.
9 If you have any preconceived ideas as to what the law is or
10 what the law ought to be and it does not agree with what I
11 tell you the law is, then you are obligated under your oath
12 to abandon these preconceptions and accept the law as I now
13 state it to you.

14 In this trial, you are the sole and exclusive judge of
15 the facts and I am the judge of the law. Do not infer that
16 I have any opinion about the facts in this case from
17 anything I have said during the course of this trial. In
18 this regard, the law simply does not permit me to have an
19 opinion about the facts. As jurors, it is your duty alone
20 to determine the effect, the value, the weight, and truth
21 of the evidence presented during the course of this trial.

22 Furthermore, it is your job as jurors to determine the
23 credibility and believability of the witnesses who have
24 testified in this case. In determining the believability
25 of witnesses who have testified in this trial, you may

1 believe one witness over many or many over one. You may
2 believe a part of the testimony of a witness and reject the
3 remaining part. You may believe the testimony of a witness
4 in its entirety or reject it in full. You may consider
5 whether the witness has an interest in the result of the
6 trial, whether the witness is prejudiced toward either
7 party, the opportunity for the witness to have seen the
8 matters and things about which the witness may testify, and
9 the way the witness acts on the witness stand.

10 I further instruct you the fact that the defendant in
11 this trial did not testify on his own behalf is not a
12 factor to be considered by you in any way in your
13 deliberations and in your consideration on the question of
14 guilt or innocence. In this regard, a defendant has the
15 constitutional right to remain silent. Any exercise of
16 this right must not be considered by you in your
17 deliberations. The fact that the defendant did not testify
18 should not even be discussed in the jury room.

19 The burden of proof, as I have stated to you, is on
20 the State. The defendant has no obligation to prove his
21 innocence. The burden of proof remains with the State to
22 prove the defendant's guilt beyond a reasonable doubt and
23 the fact that a defendant did not testify is not a factor
24 to be considered by you in deciding the guilt or the
25 innocence of the defendant.

1 When you consider the whole case, if you have a
2 reasonable doubt as to the guilt or the innocence of the
3 defendant, then he is entitled to that reasonable doubt and
4 would be entitled to a verdict of not guilty. However, if
5 upon considering the whole case you find that the State has
6 proved by evidence which satisfies you of the guilt of the
7 defendant beyond a reasonable doubt, then in such
8 circumstance it would equally be your duty to convict the
9 defendant and find him guilty.

10 Furthermore, the rules of evidence ordinarily do not
11 permit witnesses to testify regarding opinions and
12 conclusions. An exception to this rule exists for
13 witnesses we call expert witnesses. A witness who by
14 education and experience has become an expert in some art,
15 science, or profession may give an opinion as to the
16 subject the witness claims to be an expert in and may also
17 give the reasons for the opinion.

18 You should consider an expert opinion given by a
19 witness and, like any other evidence, give it the weight
20 you think it deserves. If you decide that an expert
21 witness' opinion is not based on sufficient education and
22 experience or if you decide that the reasons given in
23 support of the opinion are not sound or that the opinion is
24 outweighed by other evidence, you may disregard the opinion
25 entirely. An expert witness' testimony is to be given no

1 greater weight than that of any other witness simply
2 because the witness is an expert and you do not have to
3 accept an expert's opinion even though it is
4 uncontradicted.

5 In exercising your mental processes and attempting to
6 decide the truth, the law simply requires that you exercise
7 your good judgment, your common sense, your sense of logic
8 and reason, and your experiences in life. You then apply
9 these attributes to the evidence, apply the law as I now
10 state it to you, and thus arrive at a verdict.

11 Also, please understand that the testimony of a police
12 officer is not entitled to more weight than that of any
13 other witness. You are the sole judges of the credibility
14 of a witness and you are not to give more weight to a
15 police officer's testimony simply because he is a police
16 officer. Rather, you should judge an officer's testimony
17 by the same standards that you apply to all other
18 witnesses.

19 The State has charged in this case that the felony
20 regarding accessory before the fact and after the fact is
21 murder. A murder is a felony under South Carolina law. A
22 murder is defined -- is defined as the killing of any
23 person with malice aforethought, either express or implied.

24 Malice is hatred, ill will, hostility toward another
25 person. It is the intentional doing of a wrongful act

1 without just cause or excuse and with an intent to inflict
2 an injury or under circumstances that the law will infer an
3 evil intent.

4 The terms express and inferred do not mean different
5 kinds of malice, but merely the manner in which malice may
6 be known to exist. That is either by direct evidence or by
7 inference from the facts and circumstances which are
8 proved. Express malice is shown when a person speaks words
9 which express hatred or ill will for another or when a
10 person prepared beforehand to do the act which was later
11 accomplished. For example, lying in wait for a person or
12 any other acts of preparation going to show that the deed
13 was within the principal's mind would be express malice.

14 Malice may be inferred from conduct showing a total
15 disregard for human life. Inferred malice may also arise
16 when the deed is done with a deadly weapon. A deadly
17 weapon is any article, instrument, or substance which is
18 likely to cause death or great bodily harm. Whether an
19 instrument has been used as a deadly weapon depends on the
20 facts and circumstances of each case.

21 Now, the defendant in this case is charged with being
22 an accessory before the fact to murder. In order to prove
23 this crime, the State must prove beyond a reasonable doubt
24 that the defendant either advised, agreed, urged,
25 counseled, hired, or in some way aided or abetted another

1 person to commit murder and that the defendant was not
2 present when the murder was committed. Aid means to help,
3 to promote the course or accomplish of, to give support to,
4 or to give assistance to. Abet means to encourage or
5 appear to favor or support.

6 The defendant is also charged with being an accessory
7 after the fact to murder. In order to prove this crime,
8 the State must prove beyond a reasonable doubt the
9 defendant knew that another person, the principal,
10 committed the murder and after the murder intentionally
11 helped the principal to escape from arrest, conviction or
12 punishment. Intentionally means willfully, intending the
13 result which actually occurs, not accidentally or
14 involuntarily. Intent may be shown by acts and conduct of
15 the defendant and other circumstances from which you may
16 naturally and reasonably infer intent.

17 Absence is not an element of the crime of accessory
18 after the fact. If you find the defendant was merely
19 present at the scene of a crime and did not participate in
20 the crime, but became involved after the commission of the
21 crime, you may find the defendant guilty of being an
22 accessory after the fact.

23 Although the actions of the defendant may have helped
24 the principal to escape detection or arrest, this is not
25 enough to be an accessory after the fact. The State must

1 also prove the defendant acted with the intention or with
2 the purpose of helping the principal to escape detection or
3 arrest. So if a person -- so if a person charged with
4 being an accessory after the fact did not intend that his
5 act should help the principal escape detection or arrest,
6 then he is not an accessory after the fact even though his
7 acts in fact may have resulted in helping the principal
8 escape detection or arrest. There must be some affirmative
9 act tending toward concealment of the commission of the
10 crime. Silence alone is not sufficient to make a person an
11 accessory after the fact to a felony.

12 In addition to the previously stated charges, the
13 defendant in this case is also charged with conspiracy.
14 The State must prove beyond a reasonable doubt the
15 defendant combined with one or more persons for the purpose
16 of committing an unlawful act or of committing a lawful act
17 by unlawful means. There must be a mutual understanding,
18 agreement, or common intention and plan. Mere passive
19 knowledge of or consent to the criminal conduct of another
20 is not enough to make a person a conspirator. There must
21 be guilty knowledge and participation.

22 Similarly, the mere fact the defendant may have
23 associated with another person or met with another person
24 and discussed common aims and interests does not
25 necessarily establish proof of the existence of a

1 conspiracy or that the defendant was involved in a
2 conspiracy.

3 On the other hand, it is not necessary that the
4 agreement be a formal one, that it be in writing, that the
5 person hold a meeting and expressly state the terms of the
6 common plan, or that the agreement be stated in words
7 between them. The agreement of a criminal conspiracy may
8 come into being through an implied mutual understanding.
9 The willful, intentional, and knowing adoption by two or
10 more persons of a common plan is sufficient. No overt acts
11 need be shown to establish a conspiracy. A conspiracy may
12 be shown by circumstantial evidence and the conduct of the
13 parties.

14 In order to convict the defendant of conspiracy, the
15 State must prove beyond a reasonable doubt not only that
16 the defendant knew of the unlawful conduct, but that the
17 defendant agreed to combine with the other persons for the
18 purpose of accomplishing the unlawful conduct.

19 Furthermore, the defendant in this case is also
20 charged with the unlawful carrying of a pistol. The State
21 must prove beyond a reasonable doubt the defendant carried
22 a pistol about his person, whether concealed or not. A
23 weapon is about the defendant's person if it is readily
24 accessible and convenient for immediate use. A pistol need
25 not be actually touching the person of the defendant.

1 Lastly, the defendant is charged with pointing and
2 presenting a firearm. The State must prove beyond a
3 reasonable doubt the defendant presented or pointed at
4 another person a loaded or unloaded firearm. Presenting a
5 firearm means to offer it to view in a threatening manner
6 or to show in a threatening manner.

7 Ladies and gentlemen, I'm now drawing near the end of
8 my charge and I want you to clearly understand that you are
9 not partisans or advocates for the State or this defendant.
10 You do not serve as jurors to reward your friends or punish
11 your enemies. In this regard, you have been selected by
12 both the State and this defendant to be fair and impartial
13 jurors.

14 It is your duty by your joint deliberations to
15 determine the truth in this case, giving to this defendant
16 the benefit of every reasonable doubt on each and every
17 issue. Then to the facts which you determine to be true,
18 you should take and apply the law which has been given to
19 you by this Court and thus arrive at a verdict which speaks
20 the truth in this case. In fact, the word verdict, which
21 has a Latin derivative, means a true saying.

22 Thus, when you have accomplished these
23 responsibilities, you will have satisfied your oath as
24 jurors and you will have discharged your duty to this
25 court. Mr. Bailiff, if you would, hand the foreman the

1 verdict form.

2 THE BAILIFF: Yes, sir, Judge.

3 THE COURT: Now, Mr. Foreman, I have handed you the
4 verdict form. The State in this case has charged the
5 defendant with five separate and distinct offenses. You
6 must evaluate each offense separately on the evidence and
7 the law applicable to it uninfluenced by your decision as
8 to any other offense. The defendant may be convicted or
9 acquitted on any or all of the offenses charged.

10 You will be asked to mark a separate verdict of guilty
11 or not guilty for each offense. When you have arrived at
12 your verdict for each offense, you will mark your verdict
13 on the verdict form. For each charge, if the State has
14 failed to prove the guilt of this defendant beyond a
15 reasonable doubt, your verdict would be two words, not
16 guilty. However, should the State have proved their case
17 against this defendant beyond a reasonable doubt, then your
18 verdict would be one word, guilty. Mr. Foreman, once a
19 decision has been made, just check whichever choice is your
20 verdict for each offense, and sign and date it.

21 The verdict that you render in this case must be the
22 verdict of each and every juror. It must be your unanimous
23 verdict. All twelve jurors must agree on the verdict which
24 you authorize the foreman to write for the jury.

25 Mr. Foreman and members of the jury, I want you to

1 further understand that the order in which the choices of
2 verdict appear on the verdict form are not suggestive of
3 any verdict on the part of this Court. The verdict in this
4 case is to be determined by you, the jury, and not the
5 Court.

6 Furthermore, ladies and gentlemen, please understand
7 that even though I have given the verdict form to the
8 foreman, it is not his verdict alone. It is the verdict of
9 all twelve of you and I emphasize again it must be
10 unanimous.

11 In a moment, you will retire to the jury room.
12 However, I would ask that you do not begin your
13 deliberations until you are told to do so. The law
14 requires that I now consult with the attorneys. After
15 doing so, the bailiff will bring in the items of evidence
16 and at that time instruct you to begin your deliberations.

17 Also, should you have any questions during your
18 deliberations, you must put them in writing and send them
19 to me by way of the bailiff. The court bailiff will be
20 placed immediately outside of the jury room door to provide
21 security and assistance for you during your deliberations.
22 Once you have reached your verdict, please knock on the
23 jury room door and advise the bailiff to advise the Court
24 that you have reached a verdict and we will return you to
25 the courtroom as promptly as possible thereafter.

1 Thank you and you may retire to the jury room, but
2 again, do not begin your deliberations until you are
3 advised to do so.

4 (Whereupon, the jury exits the courtroom at 12:37
5 p.m.)

6 THE COURT: Any objections to the charge given by the
7 State?

8 MR. GOINGS: Your Honor, unfortunately, it looks like
9 we forgot about the stipulation as given.

10 THE COURT: All right. What says the defense?

11 MR. KENT: No objection. I didn't ---

12 THE COURT: No objection to what? The charge as
13 given?

14 MR. KENT: To the charge. I have no problem with the
15 charge as read, Judge.

16 MR. GOINGS: I think we've got to bring them back out
17 and stipulate as to the -- what was agreed upon in
18 chambers.

19 THE COURT: I think we should, too. Hold on one
20 second before you bring them back out.

21 (Whereupon, there is a pause in the proceedings.)

22 THE COURT: How about if I bring them back out and I
23 simply state: furthermore, I want to charge you that the
24 parties have stipulated that a murder occurred and that a
25 murder is a felony in this state.

1 MR. GOINGS: I think the stipulation was just that the
2 State and defense have stipulated that Adrian Davis died
3 the -- died as a result of gunshot wounds he received on
4 March 22nd, 2011.

5 MR. KENT: Correct.

6 THE COURT: Okay. All right. The parties have
7 stipulated that Adrian Davis died as a result of gunshot
8 wounds?

9 MR. GOINGS: Wound he received March 22nd, 2011. And
10 the State would have no objection to that.

11 THE COURT: March 22nd, 2011?

12 MR. GOINGS: Yes, sir.

13 THE COURT: All right. Go ahead and bring the jury
14 back out.

15 THE BAILIFF: Judge, we have two in the rest room and
16 one waiting to get in.

17 THE COURT: Bring them when they're ready.

18 THE BAILIFF: All right, sir.

19 (Whereupon, there is a pause in the proceedings until
20 the jury enters the courtroom at 12:47 p.m.)

21 THE CLERK: Your Honor, we have all the jurors present
22 in the courtroom.

23 THE COURT: Thank you very much. Furthermore, jurors,
24 I charge you that the parties have stipulated that Adrian
25 Davis died as a result of gunshot wounds he received on

1 March 22nd, 2011. Now, you may retire to the jury room, but
2 again, do not begin your deliberations until told to do so.

3 (Whereupon, the jury exits the courtroom at 12:47
4 p.m.)

5 THE COURT: All right. Any objections to the charge
6 given from the State?

7 MR. GOINGS: None from the State, Your Honor.

8 THE COURT: How about from the defense?

9 MR. KENT: None from the defense, Judge.

10 THE COURT: All right. Do you want to come take a
11 look at -- I believe it's State's 1 through 5.

12 (Whereupon, the exhibits are checked by counsel.)

13 THE COURT: Is the evidence in order from the State?

14 MR. GOINGS: Yes, sir.

15 THE COURT: Is the evidence in order from the defense?

16 MR. KENT: Yes, sir.

17 THE COURT: All right. If you'll go ahead and send it
18 in and tell them to begin. Bring out the alternates.

19 (Whereupon, jury deliberations begin at 12:49 p.m.)

20 (Whereupon, the alternate jurors enter the courtroom
21 at 12:50 p.m.)

22 THE COURT: All right. Mrs. Holliday and Mr.
23 McFadden, is that right?

24 JUROR HOLLIDAY: Yes, sir.

25 JUROR MCFADDEN: Correct.

1 THE COURT: I want to let you know that you have
2 fulfilled your duties to this Court as alternates. We
3 needed you as a backup. For example, if a juror had gotten
4 sick or somebody died in their family and they couldn't
5 make it here, it's very important that we have twelve
6 people and we would have been short. So we needed the two
7 of you as backups and you had -- you needed to have heard
8 everything just in case you were needed to fill in as a
9 juror.

10 You have done that. You're not needed as jurors and I
11 hereby dismiss you. You'll be paid a little bit for your
12 jury service here. If you don't like what you're being
13 paid, blame it on the court reporter right here. I didn't
14 write the check and I did not authorize the check. We are
15 having pizza. If you would like to stick around and have
16 free pizza on behalf of Sumter County, you're welcome, but
17 you cannot sit in there with the jury. Do you want to
18 stick around or do you want to go? You're going? All
19 right. I'm going to have one of these deputies over here
20 walk you out. So if you would just follow one of them, I'd
21 appreciate it.

22 All right. We'll be at ease until something occurs.
23 (Whereupon, there is a break in the proceedings from
24 12:51 p.m. until 2:25 p.m.)

25 THE COURT: All right. We have a question. It says:

1 what is exact meaning of accessory after the fact? So do
2 y'all want to just read them accessory after the fact
3 again?

4 MR. GOINGS: That's fine with me.

5 THE COURT: What says the defense?

6 MR. KENT: I don't think there's anything else we can
7 do.

8 THE COURT: All right. I've got the law clerk getting
9 it for me and we'll do that.

10 MR. GOINGS: Judge, I don't have an objection if you
11 want to send the charge back to them.

12 MR. KENT: I have no objection with that, Your Honor.

13 THE COURT: All right. How about just the accessory
14 after the fact part?

15 MR. KENT: Accessory after the fact.

16 THE COURT: That might be the easiest thing to do.

17 All right. Well, let me get it real quick and make sure I
18 haven't marked on it and we'll do that. All right. Do the
19 two of you want to come up here and just take a look at
20 what I'm going to send back to make sure it's suitable?
21 Make sure I haven't left anything out.

22 (Whereupon, the charge is checked by counsel.)

23 THE COURT: All right.

24 MR. GOINGS: Are you going to bring them out to
25 instruct them or are you just going to send it?

1 THE COURT: I'm just going to send it back.

2 MR. GOINGS: That's fine with me.

3 THE COURT: If the State has no objection to it?

4 MR. GOINGS: None from the State.

5 THE COURT: And the defense has no objection to it?

6 MR. KENT: No objection, Judge.

7 THE COURT: All right. Krystal, do you want to mark
8 this as a Court exhibit and I'll send that back.

9 (Whereupon, the jury note is marked as Court's Exhibit
10 Number 1 and a copy of the charge is marked as Court's
11 Exhibit Number 2.)

12 THE COURT: Tell them do not throw anything away
13 either.

14 THE BAILIFF: That's part of the record?

15 THE COURT: Yes. All right. We'll be at ease until
16 something else transpires.

17 (Whereupon, the charge is sent back to the jury room
18 and there is a break in the proceedings from 2:28 p.m.
19 until 2:49 p.m.)

20 THE COURT: It's my understanding that we have a
21 verdict. Is that correct, Mr. Bailiff?

22 THE BAILIFF: Yes, sir, Your Honor.

23 THE COURT: All right. Before we bring in the jury, I
24 want to tell everybody in the audience -- I know we might
25 have some family members over here and we've got some

1 people over here -- that when the verdict is read, I don't
2 want to hear a thing. I don't want to hear anybody clap.
3 I don't want to hear anybody cry. I don't want to hear
4 anybody yell. I don't want anybody to say a word. I want
5 peace and quiet.

6 That jury has a job to do. They have a hard job to do
7 and I don't want any pressure on them from anybody in that
8 audience. Am I clear? If I hear anything out there, I'm
9 going to have you cuffed and I'm going to put you in jail
10 for ten days. So if you cannot abide by this ruling, right
11 now you need to leave. If you do not understand the
12 ruling, raise your hand.

13 (Whereupon, no hands are raised.)

14 THE COURT: All right. We're going to lock those
15 doors. Go ahead and bring out the jury.

16 (Whereupon, the jury enters the courtroom at 2:50
17 p.m.)

18 THE CLERK: Your Honor, we have all the jurors present
19 in the courtroom.

20 THE COURT: Mr. Foreman, has the jury reached a
21 verdict?

22 THE FOREMAN: We have.

23 THE COURT: All right. If you would be so kind as to
24 hand it to the bailiff?

25 (Whereupon, the jury foreman complies and the bailiff

1 delivers the verdict to the Court.)

2 THE COURT: I find the verdict form in order. If you
3 would, publish the verdict.

4 THE CLERK: Yes, Your Honor.

5 VERDICT OF THE JURY

6 THE CLERK: For the State of South Carolina, County of
7 Sumter, in the Court of General Sessions, Case Number 2012-
8 GS-47-03, State of South Carolina versus Mickey Johnson,
9 defendant. Verdict.

10 Number One. As to the charge of accessory before the
11 fact, murder, we, the jury, unanimously find the defendant,
12 Mickey Johnson, guilty.

13 Number Two. As to the charge of accessory after the
14 fact, murder, we, the jury, unanimously find the defendant,
15 Mickey Johnson, not guilty.

16 Number Three. As to the charge of pointing and
17 presenting a firearm at a person, we, the jury, unanimously
18 find the defendant, Mickey Johnson, guilty.

19 As to the charge of unlawful carrying of a pistol, we,
20 the jury, unanimously find the defendant, Mickey Johnson,
21 guilty.

22 Number Five. As to the charge of criminal conspiracy,
23 we, the jury, unanimously find the defendant, Mickey
24 Johnson, guilty.

25 Signed James L. Brock, foreperson, dated July the 18th,

1 2013. Ladies and gentlemen of the jury, is this your
2 verdict? So say y'all by raising your right hand, please.

3 (Whereupon, all members of the jury raise right
4 hands.)

5 THE CLERK: Thank you.

6 THE COURT: All right. Thank you. Is there any need
7 for further polling from the defense?

8 MR. KENT: We request a polling, Judge.

9 THE COURT: Excuse me?

10 MR. KENT: We request a polling, Judge.

11 THE COURT: All right. We'll do a polling.

12 THE CLERK: Ladies and gentlemen, when I call your
13 name, please stand and answer my two questions, please.
14 Christopher Rogers.

15 THE JUROR: Riles.

16 THE CLERK: Riles, I'm sorry. Is this your verdict
17 and still your verdict?

18 THE JUROR: Yes, sir.

19 THE CLERK: Thank you. You may be seated. Robert
20 Moore. Is this your verdict and still your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Thank you. Michelle Wilson. Is this your
23 verdict and still your verdict?

24 THE JUROR: Yes, sir.

25 THE CLERK: Thank you. James Brock. Is this your

1 verdict and still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Thank you. Ashley Osteen. Is this your
4 verdict and still your verdict?

5 THE JUROR: Yes, sir.

6 THE CLERK: Thank you. Cindy Gibbs. Is this your
7 verdict and still your verdict?

8 THE JUROR: Yes, sir.

9 THE CLERK: Thank you. Rebecca Mauldin. Is this your
10 verdict and still your verdict?

11 THE JUROR: Yes, sir.

12 THE CLERK: Thank you. Jeffrey Preast. Is this your
13 verdict and still your verdict?

14 THE JUROR: Yes, sir.

15 THE CLERK: Thank you. Kelly McJunkin. Is this your
16 verdict and still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Thank you. Shakali Rogers. Is this your
19 verdict and still your verdict?

20 THE JUROR: Yes, sir.

21 THE CLERK: Thank you. Ashleigh Hamm. Is this your
22 verdict and still your verdict?

23 THE JUROR: Yes, sir.

24 THE CLERK: Thank you. Your Honor, the jury has been
25 polled and the verdict stands.

1 THE COURT: All right. Thank you very much. Members
2 of the jury, I want to thank you for your service this
3 week. You have been there every day and you've been on
4 time. You've been attentive and you have worked hard. You
5 will receive a check for your service this week. It will
6 in no way compensate you for what you have done, but it
7 will be a token of the county's appreciation for your
8 service. If the check is not big enough for your
9 satisfaction, please blame it on the bailiff right here. I
10 have nothing to do with it, but thank you for being here
11 and you are excused.

12 THE CLERK: If you need a work excuse, we'll have them
13 for you outside.

14 (Whereupon, the jury is excused at 2:55 p.m.)

15 THE COURT: All right. Any motions from the defense?

16 MR. KENT: Judge, at this time, I'd unfortunately
17 renew all the motions made during the course of the trial,
18 specifically adding a new motion to that information for a
19 new trial at this point in time. I think even with the
20 best evidence looking in the light most favorable to the
21 non-moving party, who is the State of South Carolina, I
22 think what we have here at most is a jury verdict that
23 speaks to the evidence that I completely was trying to keep
24 out and I still think it's impermissible. I think what
25 happened was the jury convicted Mr. Johnson for being a

1 member of a gang, not for being a member -- not for
2 ordering a murder. I think that evidence at best should be
3 seen as impermissible. I make a motion for a new trial at
4 this point in time.

5 THE COURT: All right. How about the State? Would
6 you like to respond to that?

7 MR. GOINGS: I think there was sufficient evidence to
8 support all the rules -- or the verdicts of the jury, Your
9 Honor, and also I believe the rulings would stand on our
10 prior previous arguments that the gang evidence was
11 admissible. It clearly goes to prove motive and also for
12 the jury to have a full understanding of what happened. I
13 believe they actually did get that in this trial and the
14 verdict should stand.

15 THE COURT: Okay. I'm going to deny those motions.
16 All right. Let me know when you're ready.

17 (Whereupon, there is a pause in the proceedings.)

18 MR. KENT: Do you want us at the table, Judge, or do
19 you want us to ---

20 THE COURT: You can bring the defendant forward. Is
21 there anything the State would like to say or present
22 before?

23 MR. GOINGS: Yes, sir, Your Honor. And the victim's
24 girlfriend wants to address the Court, as well as one of
25 the main detectives in the -- in law enforcement, Detective

1 Billy Lyons. I'll give my spiel first, Your Honor.

2 Obviously, this was a heinous crime that was
3 committed. The jury believed that Mr. Johnson had a role
4 in the death of Adrian Davis, a senseless murder that
5 occurred on March 22nd, 2011. We would ask for the max
6 sentence on every charge, including a life sentence to the
7 accessory before the fact to murder.

8 THE COURT: All right. If you would, state your name
9 for the record.

10 MS. ALLEN: Annesia Allen.

11 THE COURT: All right.

12 MS. ALLEN: Your Honor, Adrian and I were in love. We
13 worked. We lived our lives inseparable. This has been a
14 real journey for me. I'm struggling every day to deal with
15 his loss. The suspect in this case doesn't realize the
16 impact that this has had on my life and the lives of the
17 rest of his family. Every day seems like a struggle for
18 me.

19 I've tried to make sense of the situation and question
20 why would someone commit such a horrible act. The answer I
21 came up with is selfishness, rank, power, and just no
22 regards for human life. Dre was an innocent victim of a
23 senseless crime. He was a hard-working man, a kind man,
24 and a loving and giving man. My life has drastically
25 changed from this incident. I'm no longer the bubbly,

1 happy Neecy I once were. Now, I'm paranoid, scared to stay
2 in my own home. I'm seeing a counselor to help me deal
3 with the situation and most of all, I miss Dre.

4 I wish the suspects would have thought about the fact
5 that they have a family before committing this act of
6 violence. They can't possibly imagine what I'm going
7 through. Although punishment is not going to bring my
8 beloved Adrian back, I would like the satisfaction and
9 justice done and carried out on his behalf. Thank you,
10 Your Honor.

11 THE COURT: Thank you. Yes, sir?

12 MR. GOINGS: Detective Lyons.

13 DETECTIVE LYONS: Senior Detective William Lyons with
14 the Sumter Police Department, Your Honor. There's
15 certainly no doubt, Your Honor, that the offense that
16 occurred on March the 22nd, 2011, changed the course of many
17 people's lives, to include Ms. Allen's as well as Mr.
18 Davis' family and, unfortunately, it's obviously going to
19 change Mickey Johnson's life.

20 You know, when this crime first occurred, law
21 enforcement really didn't know what we were getting
22 ourselves into with this investigation. As this
23 investigation grew from its onset, it's very disturbing to
24 us that this type of criminal organization was operating
25 within our jurisdiction right underneath our nose, so to

1 speak, and at the hands of the defendant, Mickey Johnson.
2 It's incomprehensible to understand how so many of these
3 individuals can be so easily influenced by this gentleman
4 to obviously change the course of their lives as well.

5 This was a heinous crime, as Mr. Goings said. Mr.
6 Davis to simply put it was an innocent man, Your Honor, at
7 the right place at the wrong time. Oftentimes, we say in
8 the wrong place at the right time. He was at the right
9 place at the wrong time. He was at his home. He was at
10 the place that he was supposed to be and these individuals
11 without regard for safety or anyone took that from Ms.
12 Allen and took that from Mr. Davis' family.

13 Law enforcement would concur with Mr. Goings. We
14 would ask that the maximum sentence of life be imposed on
15 Mr. Johnson for the crimes he's committed.

16 THE COURT: All right. Thank you. Anything further?

17 MR. GOINGS: Nothing further from the State, Your
18 Honor.

19 THE COURT: All right. I'll be glad to hear from you
20 at this time.

21 MR. KENT: Thank you, Judge. First before I go into
22 my diatribe, I think his family would like to talk and say
23 a few words to you. His father and mother are coming up so
24 they can address you, Judge.

25 THE COURT: All right.

1 MR. KENT: This is his father, Willie Johnson.

2 THE COURT: All right. Thank you. If you would,
3 state your name first of all.

4 MR. JOHNSON: Willie James Johnson.

5 THE COURT: Yes, sir.

6 MR. JOHNSON: I know that a crime was committed, but I
7 don't think that my son played a part in that -- in that
8 role of committing a crime. Maybe he does some things that
9 shouldn't have been done, but I don't think he told anyone
10 to murder anybody, set up any -- any kind of hit on
11 anybody. I really don't and I'm thinking that the evidence
12 that was shown here should have proven that, but I guess,
13 you know, some people just don't see things that quite
14 clearly. But I'm -- you know, I mean that's all I can say
15 about it.

16 THE COURT: All right. Thank you. If you would,
17 state your name for the record.

18 MRS. JOHNSON: I'm Delora Johnson, Mickey Johnson's
19 mother.

20 THE COURT: Yes, ma'am.

21 MRS. JOHNSON: And I'm a praying mother and I brought
22 my son up in church and so now you be accusing of things
23 you're going to do. You know -- you know, man might say
24 that, but God say the other way -- the other way. And, you
25 know, like he said, he wasn't -- he's not -- no, he's not

1 an innocent person, but to the killing, he had nothing to
2 do with that, you know. I feel it in my heart he don't,
3 you know, and God showed me he had nothing to do with that
4 stuff that happened that night.

5 THE COURT: All right. Thank you. Anything further?

6 MRS. JOHNSON: And then God said to give him a hug,
7 too. Okay? Can I give him a hug?

8 THE DEFENDANT: I love you, Mom.

9 MRS. JOHNSON: I love you.

10 (Whereupon, the defendant and his mother speak to each
11 other in low tones off the record.)

12 MR. KENT: Generally, I do not allow my clients after
13 a conviction to address the Court, without disrespecting
14 the Court whatsoever based upon the fact that he still has
15 his appellate rights. Mr. Johnson has made it clear that
16 he would like to address the Court and address his remorse.
17 At this time, I'd like Mr. Johnson to address the Court.

18 THE DEFENDANT: Yes. These last twenty-eight months,
19 you know, being incarcerated, I think about everything that
20 happened. It's just sad that -- I'm not going to sit here
21 and act like I'm perfect, you know. I done some things
22 wrong in my life, but it just seem like some of the bad
23 choices I made -- some of the bad choices I made, they gave
24 me a character, gave me an image, is now the same thing
25 that's nailing me, the same thing that's got me standing

1 here with my life on the line.

2 I didn't order no one to kill anybody. I didn't told
3 anyone to kill anybody. I didn't even find out about the
4 murder. It's just crazy, you know. I have think about the
5 victim's family. I'm praying for the victim's family for
6 their -- for their peace, for them to have strength. I'm
7 sorry that the girl lost her boyfriend, which she don't
8 know whether I did -- whether I told somebody to do that or
9 not. She don't know that. She's just going off of what
10 the -- what the detective say. She don't know that and for
11 her to -- you know, I mean I just feel bad, you know, for
12 -- for every -- you know. It just -- it just -- I'm really
13 sorry that it happened.

14 God and the truth I'm sorry that it happened to that
15 -- to that dude. I read through the paperwork. He had a
16 job. He come home, on the computer minding his own
17 business and somebody comes to the door and shoot him for
18 whatever reason. No matter -- no matter how it go, it's
19 not right and I just feel like, you know, it's about
20 somebody's careers or promotion. I don't know, man. I
21 don't -- I really don't know, Your Honor. I really don't
22 know. I'm just sorry that anything happened.

23 THE COURT: All right.

24 MR. KENT: And, Your Honor, just very briefly, Judge.
25 And you've heard the majority of the facts and, of course,

1 I put my faith and trust always in the jury system. Myself
2 and Mr. Johnson have sat and we spoke several times about
3 this case and I've told him that this was a very real
4 possibility. We talked about a real possibility and I made
5 it very clear to him the thing that was going to hurt him
6 the most was his affiliation with a gang and that's why we
7 spent so much time during pre-trial motions trying to
8 eliminate the gang evidence.

9 Judge, I have known this family and this wasn't
10 something I simply said in my opening statement. I've
11 known this family in excess of ten years. I've known them
12 since I came to Clarendon County. They've been a good
13 family. Mr. Johnson has come to see me. He's very
14 supportive. He's a good, good person is the easiest way to
15 say it.

16 When he originally hired me and asked me to represent
17 him on the case, we sat down several times and we talked
18 about the facts. We talked about the background.
19 Generally, of course, you hear from defense attorneys we
20 don't ask individuals whether they have done it or not. I
21 didn't have to get there with him. Mr. Johnson looked me
22 straight in the face and said, Shaun, I did not do it. He
23 didn't ask me and specifically forbade me from looking for
24 a plea offer because he was very clear this was something
25 he had not done.

1 Judge, to listen to the testimony that was entered
2 into evidence, there is a chance that the testimony and the
3 evidence are built upon individuals who are looking for the
4 best plea deal that they could possibly get. I know that
5 for a judge -- with that robe, one of the most difficult
6 thing a judge has to do is find himself sentencing
7 individuals. It's one of the most difficult things to do,
8 especially when you simply hear the facts without knowing
9 the character or crest of an individual.

10 And I know what the State has asked for and I
11 completely understand with these background facts why they
12 would ask for a life sentence. I'm seeing a number of
13 young black individuals sentenced to life sentences, Judge.
14 It does not give them hope when they go to the Department
15 of Corrections and it's not as if thirty years would be a
16 minimum sentence in this situation, specifically in light
17 of the fact that when you look at the shooter, the getaway
18 driver, as well as the lookout when they are looking at
19 substantially lesser time.

20 What I would ask is in the Court's wisdom if possible
21 you would see fit with a thirty year sentence. I know
22 that's the range of what you can sentence from thirty years
23 to life, but at least give him some reasonable hope while
24 he's in the Department of Corrections because if he is to
25 live out his thirty year sentence, he will live to be a

1 very old man when and if he is possibly released. With a
2 life sentence, there is no hope and no possibility. I
3 always believed that if our criminal justice system is to
4 believe in anything, I believe there is a chance of
5 rehabilitation, and to rehabilitate individuals, I believe
6 that there must be some chance.

7 I agree with the jury verdict that he must be punished
8 in some way and that's what the Court is going to do at
9 this time. I would simply ask in the Court's wisdom if you
10 would see fit to seek a lesser than a life sentence. Thank
11 you so much for your time.

12 THE COURT: Does he have a criminal record?

13 MR. GOINGS: Yes, sir, Your Honor. He has an ABHAN
14 charge and also a proximity distribution charge and a purse
15 snatching.

16 SENTENCE OF THE COURT

17 THE COURT: All right. In reference to the unlawful
18 carrying of a pistol, the sentence of the Court is one
19 year.

20 In reference to the criminal conspiracy, the sentence
21 of the Court is five years.

22 In reference to the pointing and presenting a firearm
23 at a person, the sentence of the Court is five years.

24 In reference to the accessory before the fact to
25 murder, the sentence of the Court is life, and I'm going to

1 run them all concurrent. Thank you.

2 MR. KENT: Thank you, Judge.

3 MR. GOINGS: Thank you, Your Honor.

4 THE COURT: That concludes this matter.

5 (Whereupon, the proceedings end at 3:13 p.m.)

6

7 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4
5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all
9 the proceedings had and evidence introduced in the hearing
10 of the above captioned case, relative to appeal, in the
11 Court of General Sessions for Sumter County, South
12 Carolina, on the 16th through 18th days of July, 2013.
13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15
16 s/ Krystal J. Smith
17 Court Reporter
18
19 Florence, South Carolina
20 February 13, 2014
21
22
23
24
25

FORM 5
RECORDED

STATE OF SOUTH CAROLINA

2014 JUL 22 IN THE COURT OF COMMON PLEAS

County of SUMTER

JAMES C. CAMPBELL
CLERK OF COURT

Mickey Markell Johnson - 298814 SUMTER COUNTY, S.C.

2014-CP-43 1491

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

IDENTIFIED TRUE COPY
Barbara Stage
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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 Lieber Correctional Institute
2. Name and location of Court which imposed sentence Sumter County General Sessions
Sumter, SC
3. Name(s) of co-defendant(s) (if any) William Morgan, Bryant Bradley, John Wesley
Stamps, Jr. and Rasheed Brandon
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Accessory before the fact, murder - 2012-GS-47-03
 - (b) Pointing and Presenting a firearm at a person - 2012-GS-47-03

RECEIVED

JUL 24 2014

Referred to

PCR / dm

(c) Unlawful carrying of a pistol - 2012-GS-47-03; Criminal Conspiracy - 2012-47-03

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 7/18/2014 - Accessory before the fact, murder (Life)
- (b) 7/18/2014 - Pointing & Presenting a firearm at a person (5 years)
- (c) 7/18/2014 - Unlawful carrying of pistol (1 year); Criminal Conspiracy (5 years)

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?

No, my attorney did not file an appeal on my behalf.

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) My attorney, Shaun Kent, did not file an appeal on my behalf.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) Failure to Investigate
- (c) Failure to file a timely appeal
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) My attorney failed to object to hearsay statements, prejudicial testimony & pictures.
- (b) My attorney failed to speak to witnesses. I told him about and failed to have them testify.
- (c) My attorney failed to file an appeal in my case.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

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) My attorney did not file an appeal on my behalf.
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. Shaun Kent, Esq., P.O. Box 117, Manning, SC 29102
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Status conferences
 - My trial, which took place July 16-18, 2013
 - ii. _____
 - iii. _____

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

New trial

Ability to have my case heard on appeal, since my attorney failed to file an appeal.

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

NO

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Mickey Markell Johnson, 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.

Mickey Johnson 7-17-14

SWORN to and subscribed before me this 17th day of July 2014


Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020


APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Mickey Markell Johnson, 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.

 7-17-14
Applicant

SWORN or affirmed to and subscribed before me this
17th day of July, 2014


Notary Public

My Commission Expires: May 26, 2020

RECORDED

STATE OF SOUTH CAROLINA 2014 OCT 23 PM 12:55
 COUNTY OF SUMTER) THE COURT OF COMMON PLEAS
) FOR THE 3rd JUDICIAL CIRCUIT
) JAMES C. BROWN, JR.
) CLERK OF COURT
) 2014-CP-43-01491
) SUMTER COUNTY, S.C.

Mickey Markell Johnson, #298814,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

**RETURN
 WITH CONSENT TO REVIEW
 OF DIRECT APPEAL ISSUES
 PURSUANT TO WHITE v. STATE**

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 22, 2014, and supplemented by a "Petition in Support" filed on or about August 15, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. The Applicant was indicted at the March 9, 2012 term of the State Grand Jury for Count One - Criminal Conspiracy; Count Three - Accessory Before the Fact to a Felony (Murder); Count Four - Accessory After the Fact (Murder); Count Six - Pointing and Presenting a Firearm at a Person; and Count Seven - Unlawful Carrying of a Pistol (2012-GS-47-03). A superseding indictment followed on June 13, 2012 which added Count Eight - Accessory Before the Fact to Burglary, 1st Degree. Shaun C. Kent, Esquire represented the Applicant.

On July 16-18, 2013, the Applicant proceeded to trial and was convicted of

Criminal Conspiracy, Accessory Before the Fact to a Felony (Murder), Pointing and Presenting a Firearm at a Person, and Unlawful Carrying of a Pistol. The Honorable William H. Seals, Jr. concurrently sentenced him to confinement for a period of 5 years for Criminal Conspiracy, life for Accessory Before the Fact to a Felony (Murder), 5 years for Pointing and Presenting a Firearm at a Person, and 1 year for Unlawful Carrying of a Pistol.

Shaun C. Kent, Esquire filed a timely Notice of Appeal on July 26, 2013. However, James L. Goldsmith, Esquire filed a second Notice of Appeal and Notice of Appearance dated August 16, 2013. On September 16, 2013 the Court of Appeals requested copies of the orders (sentencing sheets) challenged on appeal, the lower court case number, and a proof of service. On November 14, 2013 the Court of Appeals again requested the same information. On November 25, 2013 the appeal was dismissed. The Remittitur was sent on December 11, 2013.

Attached herewith and incorporated herein are the records of the State Grand Jury Clerk of Court regarding the subject conviction(s), the trial transcript, the appellate court records, and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Failure to Investigate

b. Failure to perfect an appeal

2. Brady violation.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, 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, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either 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, the 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.

The Applicant alleges counsel was ineffective for failing to investigate the case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

However, "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d

415 (1998). Never the less, this allegation is not one that is directly refuted by the record and the Respondent requests that a hearing be held.

V.

Applicant further alleges the State withheld evidence in violation of Rule 5 and Brady v. Maryland, 373 U.S. 83 (1963). Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Thus the term "Brady violation" is sometimes used to refer to any breach of the broad obligation to disclose exculpatory evidence - that is, to any suppression of so-called "Brady material" - although, strictly speaking, there is never a real "Brady violation" unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict. Strickler v. Greene, 527 U.S. 263, 281, 119 S. Ct. 1936, 1948, 144 L. Ed. 2d 286 (1999). Never the less, this allegation is not one that is directly refuted by the

record and the Respondent requests that a hearing be held.

VI.

The Respondent agrees that the allegation that the Applicant was denied a review of his direct appeal issues is meritorious. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). See White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). When an Applicant does not freely and voluntarily waive his appellate rights (and it is so granted by the PCR court), the Applicant may petition the South Carolina Supreme Court for review of appeal issues pursuant to White. See Rule 243(i), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)¹.

The Respondent consents to Applicant's request for a review of direct appeal issues pursuant to White and concedes that the Applicant did not knowingly and voluntarily waive his right to a review of his direct appeal issues. Therefore, the Applicant is entitled to a review of his direct appeal issues. A petition for review of these appellate issues pursuant to White v. State will remedy the Applicant's lack of a direct appeal.

VII.

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

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

VIII.

WHEREFORE, having made its Return, the State consents to a review of direct appeal issues pursuant to White v. State and requests that an evidentiary hearing be held as to the remaining allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3693

OCT. 22nd, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)

RECORDED
 2014 OCT 23 PM 2:55
 JAMES C. GUNN
 CLERK OF COURT
 SUMTER COUNTY, S.C.

THE COURT OF COMMON PLEAS
 FOR THE 3rd JUDICIAL CIRCUIT
 Case No: 2014-CP-43-1491


Mickey Markell Johnson, #298814,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

AFFIDAVIT OF SERVICE BY MAIL

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

Wendy Raina Johnson Keefer, Esquire
 Keefer & Keefer, LLC
 1643B Savannah Hwy, Suite 226
 Charleston, SC 29407

DATED this 22nd day of October, 2014.


 ASHLEY A. McMAHAN
 Assistant Attorney General

State of South Carolina)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2014-CP-43-01491

Mickey Markell Johnson,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

Transcript of Record

November 9, 2016
Sumter, South Carolina

B E F O R E:

The Honorable Brian M. Gibbons, Judge

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

Lance S. Boozer, Esquire
Attorney for the Applicant

LaRone K. Washington, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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1 THE COURT: All right, Mr. Washington, you ready?

2 MR. WASHINGTON: Yes, sir.

3 THE COURT: All right. You can go ahead and call the
4 case.

5 MR. WASHINGTON: Okay. Judge, this is *Mickey Markell*
6 *Johnson vs. The State of South Carolina*, 2014-CP-43-01491.
7 He was convicted of criminal conspiracy as well as
8 accessory after the -- or, excuse me, accessory before the
9 fact of murder, pointing and presenting a firearm, unlawful
10 carrying of a pistol. He got sentenced to five years on
11 the pointing and presenting, one year on the unlawful
12 carrying, and life in prison for the accessory before the
13 fact of murder, as well as another five years for the
14 criminal conspiracy. That was in front of Judge Seals back
15 on July 18th of 2013. His trial counsel was Mr. Shaun
16 Kent.

17 We've got somewhat of an issue as to whether or not
18 the appeal was timely filed, but the state is consenting to
19 a review of the appeal issues regardless. So, I don't
20 think it's something we have to worry about, and of course
21 the PCR was filed July 22nd of 2014. He is represented by
22 Mr. Lance Boozer.

23 THE COURT: All right, and is the state ready to
24 proceed?

25 MR. WASHINGTON: The state's ready.

1 THE COURT: All right, Mr. Boozer, anything I need to
2 know before you start presenting evidence?

3 MR. BOOZER: Yes, Your Honor. If it pleases the
4 court? The attorney general's office is correct. They did
5 file a return to this and in that return, I believe they
6 did consent to the issue of whether he's entitled to a
7 belated appeal. So, we certainly ask that Your Honor go
8 along with that and, and order that he is entitled to a
9 belated review of his appellate issues. That is one of the
10 main things in this case, so we'll certainly ask for that.

11 Your Honor, there is one preliminary matter that I did
12 want to make the court aware of. Part of his issues are
13 that there were two statements or interview forms of a key
14 witness in this case by a fellow named Bryant Bradley.
15 There are two interview forms from Sumter County which
16 we'll later mark as exhibits. One of them is dated March
17 29, 2011; the second is dated March 30, 2011. Mr.
18 Johnson's understanding is that when they were going
19 through discovery and then he was at trial, only one
20 statement was turned over with regard to Mr. Bradley.

21 His contention and belief was -- is that the only
22 statement that was turned over was the one that was taken
23 on March 30th. That there was an interview form where he
24 understands his rights and signs it on March 29th.

25 We had a motion hearing before Judge Cothran here very

1 recently to try and get whatever statement there may have
2 been that was made on March 29th. Judge Cothran ordered
3 that the state turn that over to us if there was a
4 statement. And in the event that the state contended that
5 nothing was taken that day or nothing was said, then there
6 would need to be a letter from the interviewing
7 investigator that that was the case: that nothing was made,
8 no statements were made.

9 We did receive a letter through the attorney general's
10 office by Mr. Johnson who would have been -- not this Mr.
11 Johnson but an officer. He indicated on October 24th that
12 to the best of his recollection, he didn't take a statement
13 from Mr. Bradley. That he only advised him of his rights
14 and transported him over to Sumter. I would like to make
15 that a part of this record just for further on down the
16 road with whatever may happen with this case. I would like
17 to make that letter a part of this record.

18 THE COURT: Any objection to that, Mr. Washington?

19 MR. WASHINGTON: No objection, Judge.

20 THE COURT: All right, no objection. That will be
21 Applicant's 1 then for the purpose of the record.

22 (LETTER MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
23 NUMBER 1.)

24 THE COURT: All right, and as to the belated appeals
25 issue, what's the state's position on that?

1 MR. WASHINGTON: Judge, we're consenting to that.
2 It's my understanding that there a *White vs. State* -- that
3 this can happen, and it's an issue where the appeal does
4 not necessarily have to come first. You sort of do them at
5 the same time. So, today we do the PCR, and then you could
6 do the appeal shortly thereafter. Not necessarily today
7 but at some other point, and it would ---

8 THE COURT: Well, I'm not doing the appeal.

9 MR. WASHINGTON: Right.

10 THE COURT: You're talking about an appeal to the
11 Court of Appeals?

12 MR. WASHINGTON: Right.

13 THE COURT: Okay. I mean, don't they determine
14 whether or not something's late or not? That's what I'm
15 asking.

16 MR. BOOZER: Well, I believe, Judge, that it can be
17 consented to. I think it's based on testimony -- we'll
18 certainly present this testimony later that there, my
19 understanding was that there was a mistake in handling of
20 the filing of the appeal.

21 THE COURT: Okay.

22 MR. BOOZER: So that it was dismissed, but just for, I
23 guess, procedurally, it's a little bit of a non-issue
24 because what happens is I will have to raise the appellate
25 issues on appeal, but then there -- we also have to have a

1 PCR hearing before. We used to just do it, do a belated
2 appeal. They would have the appeal. Then you'd come back
3 and handle the PCR, and the Supreme Court has said that's
4 not the way to do it. Go ahead and do the belated --
5 consent to the belated appeal where you have the belated
6 appeal, and also if this case were denied, then the
7 appellate -- the PCR appeal would also go up with it as
8 well is my understanding.

9 THE COURT: Okay. I got it. I understand. All
10 right, anything else I need to know before we start?

11 MR. BOOZER: Yes, Your Honor. Along the same lines of
12 the statement which I handed up to Your Honor from
13 investigators, there was a second issue that was alleged in
14 Mr. Johnson's original PCR application. In his PCR
15 application, he alleged that there's another witness by the
16 name of William Morgan. Mr. Morgan was also a key witness
17 that was presented by the state. Mr. Johnson has indicated
18 on both his PCR application and to me that after the trial
19 or at some point he learned there was an audio recording of
20 a statement that Mr. Morgan gave. In that recording, Mr.
21 Morgan references in his statement that I have been
22 provided with a handwritten note from the state's other key
23 witness, Mr. Bryant Bradley. And during the audio
24 recording, the investigator took the note. They read the
25 note into the recording, the investigator did. My client's

1 allegation is that that note was never produced to counsel
2 at the trial setting. So that's one of his claims, that he
3 should have had access to that.

4 Again before Judge Cothran, that was one of the issues
5 here very recently was allowing us to get the note. Again
6 Judge Cothran said he's entitled to it. If for whatever
7 reason the state contends that they don't have it, and I
8 think Mr. Washington did do some leg work on the front end
9 to see if they had it to get it for us, and I think his
10 investigation revealed -- they said they didn't have it.
11 So again Judge Cothran said you don't have it, you need to
12 make a statement and turn -- and send that statement if you
13 don't have it.

14 And again we received a letter dated October 27th that
15 acknowledges the letter being produced and received and the
16 note being read into the record, but they say they do not
17 have an actual hard copy of it. If the hard copy was ever
18 given, they don't recall receiving a copy and can't locate
19 it. So, we'd also ask that this be marked as a part of
20 this record.

21 THE COURT: Any objection, Mr. Washington?

22 MR. WASHINGTON: No objection.

23 THE COURT: All right, Applicant's 2.

24 (LETTER MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
25 NUMBER 2.)

M. JOHNSON - DIRECT EXAMINATION BY MR. BOOZER

10

1 THE COURT: Anything else?

2 MR. BOOZER: We may have one last issue, Judge, and,
3 Your Honor, we can certainly address this when it comes up
4 or we can do that now. I do intend to present a witness
5 here shortly that claims to have been incarcerated with one
6 of the state's key witnesses, and that witness is here.
7 He's actually in SCDC. I've got through a FOIA request,
8 copies of booking and release reports for both the
9 individual who will be here testifying as a witness, as
10 well as for the individual that was the state's key -- one
11 of the state's key witnesses at trial. Those reports would
12 obviously -- would show that those two folks were together
13 in that facility at that time. I do want to make that just
14 a part of the record. I will understand that Your Honor
15 could judge the credibility of the witness, but I do have
16 those produced by FOIA.

17 THE COURT: All right. Is there any issue as to
18 whether or not these inmates were together from the state's
19 prospective?

20 MR. WASHINGTON: I, I don't know. I haven't...

21 THE COURT: All right. Well, you just introduce it
22 when it comes up. He's not in a position to agree with
23 that.

24 MR. BOOZER: Certainly.

25 THE COURT: I was going to see if he could stipulate

M. JOHNSON - DIRECT EXAMINATION BY MR. BOOZER

11

1 to that. Without a stipulation, you need to prove it. So,
2 we'll go from there.

3 MR. BOOZER: Thank you, Your Honor.

4 THE COURT: All right, you can call your witness.

5 MR. BOOZER: I'll call Mr. Johnson to the stand.

6 MICKEY M. JOHNSON, BEING DULY
7 SWORN, TESTIFIES AS FOLLOWS:

8 BAILIFF: Please state your full name. Spell your
9 last name for the record.

10 WITNESS: Mickey Markell Johnson. J-o-h-n-s-o-n.

11 DIRECT EXAMINATION BY MR. BOOZER:

12 Q. Mr. Johnson, how are you doing today?

13 A. I'm all right.

14 Q. Okay. Mr. Johnson, do you understand why it is that
15 you're here today?

16 A. Yes, sir.

17 Q. And why is that? What have you filed to get you in to
18 this court?

19 A. A post-conviction relief application.

20 Q. All right. Who represented you? Did you have a
21 trial?

22 A. Yes, sir.

23 Q. Who represented you at trial?

24 A. Mr. Shaun Kent.

25 Q. Was he someone that you retained?

M. JOHNSON - DIRECT EXAMINATION BY MR. BOOZER

12

1 A. Yes, sir.

2 Q. All right. Now, you don't particularly -- with your
3 allegations, you don't really have any allegations against
4 Mr. Kent about how many times he was meeting with you or
5 anything like that, do you?

6 A. I don't believe so.

7 Q. Okay. Your, your allegations tend to be some, some
8 things that he may have done at trial or didn't do. Is
9 that more along the lines of what your allegations are?

10 A. Yes.

11 Q. All right, and things maybe that the court did that he
12 didn't object to?

13 A. Right.

14 Q. All right. Now, obviously you filed this PCR and you
15 filed an original PCR application. Then you filed an
16 amended application.

17 A. Yes.

18 Q. All right. Let's, let's do this. Your first
19 allegation or one of your allegations is that your lawyer
20 failed to properly file an appeal. Is that one of your
21 allegations?

22 A. It, it was one. It got kind of confusing because the,
23 the new, the new counsel that we hired -- well, the
24 appellate counsel we hired for them to do the appeal, they,
25 they filed appeal but what they did was they actually filed

1 the same thing that I believe the trial counsel asked
2 about, which was an intent to appeal. So, they filed the
3 same thing. So, when the court got the intent to appeal
4 for the second time, that kind of confused everything and
5 they, they denied it. That's what got -- we went through
6 the whole stage of being here to the PCR right now.

7 Q. All right. So, you attempted to file an appeal
8 through your original trial counsel where he filed the
9 notice of appeal?

10 A. Uh-huh.

11 Q. And then did you guys then hire and retain a private
12 lawyer to represent you only on the actual appeal?

13 A. Right.

14 Q. And, and it's your understanding that he didn't
15 properly file something with the court to progress your
16 appeal?

17 A. I think it's -- I think he's supposed to have filed a
18 brief, but I think he actually filed the same thing that
19 the trial counsel filed, which was an intent to appeal.

20 Q. And that's why it was dismissed?

21 A. Right.

22 Q. Okay, and you understand that the state is consenting
23 to you receiving a belated review of your appellate issues?

24 A. Right.

25 Q. And you're, you're fine with that, right?

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1 A. Yes, sir.

2 Q. All right. Tell the court a little bit just
3 background wise what it was alleged to have happened, what
4 the state alleged you had, you had done.

5 A. The state alleged that, that I, I force and ordered
6 some guys to commit a crime, but it actually was only one
7 -- the state only had one, one of they witnesses actually
8 saying this. No other, no other one of they witness said
9 that, nothing but this one, one witness and that's
10 basically what got me the time that I got, got me
11 convicted.

12 Q. Okay, and did you testify at trial?

13 A. No, sir.

14 Q. All right. What was y'all's -- what was part of
15 y'all's trial strategy as you understood it? Was it to
16 attack the credibility of those witnesses?

17 A. Yeah.

18 Q. All right. Did, prior to your trial, did you review
19 what's called discovery or anything that was turned over by
20 the state to your lawyer? Did you review that with Mr.
21 Kent?

22 A. I did.

23 Q. Okay. Part of your allegation that you've alleged in
24 this, you indicate that you were only provided partial
25 discovery by the state. Is that one of your allegations?

1 A. Yes.

2 Q. Okay, and you heard me discussing with the court
3 earlier that it was your understanding that there was a
4 statement from a Bryant Bradley. Do you recall that?

5 A. Yes, sir.

6 Q. All right. To, to your knowledge, how many statements
7 did you review with your attorney that were with regard to
8 Mr. Bradley?

9 A. I saw one statement pertaining to Mr. Bradley, but in
10 the discovery they had, they had the interview form. They
11 had two interview forms with him that he signed his, his
12 name and the detectives signed their name. He waived his
13 Miranda rights to speak with the, with the detectives, and
14 then they actually went in to interview him, but I didn't
15 -- we didn't get any copy of that interview from the 29th
16 of March 2011.

17 MR. BOOZER: Your Honor, may I approach the witness?

18 BY MR. BOOZER:

19 Q. Mr. Bradley [sic], I'm going to hand you a document
20 and if you would, just take a moment and look at it, and
21 this is -- is this a document that you provided to me?

22 A. Yes, sir.

23 Q. And this document does have some handwritten notes
24 from you on it, does it not?

25 A. Yes, sir.

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16

1 Q. Okay, but otherwise is this -- did you ever review
2 this with your former lawyer, Mr. Kent?

3 A. Yes, I did.

4 Q. Okay, and this -- what does it say at the top of this?

5 A. It says Sumter Police Department Interview Form.

6 Q. And who is it stating they interviewed?

7 A. They interviewed the state's star witness, Bryant
8 Bradley.

9 Q. And what date is that?

10 A. March 29, 2011.

11 Q. And do you know whether y'all were provided the
12 statement from this interview?

13 A. No, we wasn't.

14 Q. Okay.

15 MR. BOOZER: Your Honor, at this time I would move to
16 make this Applicant's Exhibit 3.

17 MR. WASHINGTON: No objection.

18 THE COURT: Without objection, introduced.

19 (INTERVIEW FORM MARKED INTO EVIDENCE AS APPLICANT'S
20 EXHIBIT NUMBER 3.)

21 BY MR. BOOZER:

22 Q. Is that something you wanted your lawyer to
23 investigate?

24 A. Yes.

25 Q. All right, and you indicated -- what was your

1 understanding of -- there was a -- was there another
2 statement that Mr. Bradley made?

3 A. Um.

4 Q. Strike that. Let me ask you this again. Let me ask
5 this question of you. What -- did you have an
6 understanding that he was interviewed a second time?

7 A. Yes.

8 Q. And do you know when that would have been?

9 A. I think that was on March 30th.

10 Q. All right.

11 MR. BOOZER: Your Honor, may I approach the witness?

12 THE COURT: Yes.

13 BY MR. BOOZER:

14 Q. Mr. Johnson, I'm going to hand you another document
15 and if you would, just take a moment and look at that
16 briefly. Have you seen that document before?

17 A. Yes, sir.

18 Q. And, and what does that appear to you to be?

19 A. A, a second interview from the same, the same witness,
20 Bryant Bradley.

21 Q. And when is that dated?

22 A. The following day, March 30, 2011.

23 Q. Okay. Did you review that document with your lawyer?

24 A. Yes, sir.

25 MR. BOOZER: Your Honor, at this time I would move to

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1 make this Applicant's Exhibit Number 4.

2 MR. WASHINGTON: Without objection.

3 THE COURT: Without objection, introduced as
4 Applicant's Number 4.

5 (INTERVIEW FORM MARKED INTO EVIDENCE AS APPLICANT'S
6 EXHIBIT NUMBER 4.)

7 BY MR. BOOZER:

8 Q. Mr. Johnson, why do you think it was important for you
9 guys to have any statements from the first person?

10 A. Because, I feel because that was the state's -- that
11 was they, that was they only star witness. That was --
12 they, they whole case was based on that individual. So, I,
13 I believe that it was probably important to have his first
14 statement to see what he actually said in the beginning
15 when he got first incarcerated, I guess.

16 Q. All right. You also -- you've also alleged newly
17 discovered evidence in your PCR application.

18 A. Right.

19 Q. Do you recall that?

20 A. Yes, sir.

21 Q. Okay, and what is your allegation regarding newly
22 discovered evidence?

23 A. As far as the witness?

24 Q. Correct. Did you -- what have you learned since your
25 trial?

1 A. Oh. I learned it was a individual that -- when I was
2 incarcerated at one institution -- I'm actually at another
3 institution now, but when I was incarcerated at one
4 institution, there was a guy who, I guess he knew my name
5 and I guess he knew about the case, and he approached me in
6 the cafeteria and said that he was a roommate with the
7 state's star witness. They was roommates for a period of,
8 he said, about six months. And he was saying that, you
9 know, I know you innocent because I was the roommate with
10 the guy ---

11 MR. WASHINGTON: Object.

12 A. --- that got you locked up.

13 MR. WASHINGTON: And, Judge, I object to this as
14 hearsay. It's my understanding they have the witness back
15 there.

16 THE COURT: All right, sustained at this point in
17 time.

18 BY MR. BOOZER:

19 Q. And, Mr. Johnson, let -- don't say anything that
20 someone else has said, but is it your understanding that
21 there's an individual who may have information that could
22 assist in your case?

23 A. Yes, sir.

24 Q. And is it your understanding that that person would,
25 would not have had that information at the time of the

1 trial?

2 A. Yes, sir.

3 Q. Okay, and that's one of your allegations?

4 A. Yes, sir.

5 Q. All right. You also have in your application that
6 your lawyer failed to call certain witnesses at your trial.

7 Which witness would that be?

8 A. It was, it was, it was several witnesses that was,
9 that was present, but one of the ones that's in the
10 courtroom now, that's my father, Mr. Willie Johnson.

11 Q. Okay, and you just said it, but who is Willie Johnson
12 and is he related to you?

13 A. Yes.

14 Q. All right, who is he?

15 A. He's my father.

16 Q. All right. Was Mr. Willie Johnson -- we'll call him
17 Mr. Johnson for right now. I'll clarify it when I talk
18 about you. Was Mr. Johnson present at your trial?

19 A. He was.

20 Q. Was it your understanding that Mr. Johnson was going
21 to be called as a witness in your case?

22 A. Yes, sir.

23 Q. All right. Did you talk to Mr. Kent about calling
24 certain witnesses at your trial?

25 A. Yes, sir.

- 1 Q. And was he one of those witnesses that y'all were
2 going to call?
- 3 A. Yes, sir.
- 4 Q. All right. Now, do you, do you recall at your trial
5 whether you guys actually presented any, any witnesses?
- 6 A. No, we didn't present any witness. I mean -- in, in
7 -- I think it was -- we call it pretrial, it was said that
8 we was going to present, present these witnesses front of
9 the jury, but the witness never were presented.
- 10 Q. Okay, you're, you're talking about that during the
11 qualifying the jury that Mr. Willie Johnson, they said that
12 y'all would be presenting him later?
- 13 A. Right.
- 14 Q. Okay. Do you know why y'all didn't call any witnesses
15 at trial?
- 16 A. I have, I have no clue.
- 17 Q. Did you think that your father was going to testify at
18 trial?
- 19 A. I thought all my witnesses was going to testify.
- 20 Q. All right, but specifically did you think Mr. Johnson,
21 your father, was going to testify?
- 22 A. Yes, sir.
- 23 Q. All right. Did you have any conversation with Mr.
24 Kent about him testifying?
- 25 A. Yes, sir.

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1 Q. All right, and what was Mr. Kent's response to you?

2 A. I asked him about my witnesses testifying. He, well,
3 he was telling me that, you know, if everything is looking
4 good, you know, we don't have to, probably have to put on a
5 defense. But, you know, if it start looking bad, then,
6 you know, we might have to put on defense or put me on or
7 whatever on the stand. So, I was asking him because he was
8 saying that, you know, they might try to, you know, bring
9 your record in to try to make you, make you -- you know,
10 damage your character in front of the jury, whatever.

11 So, I was, like, well, can I -- my witness still be
12 put up without me going on stand? He told me that, you
13 know, if I can't take it, if I don't take the stand, my
14 witnesses, you know, they can't take, they can't take the
15 stand as well.

16 Q. Okay. So, your lawyer told you that because you
17 weren't going to testify, that y'all then would not present
18 any witnesses?

19 A. Yes, sir.

20 Q. Did he tell you you couldn't present any witnesses or
21 that you just weren't going to present any witnesses?

22 A. Let me think exactly how he said it. I think he said
23 -- I believe he said if you're not, you're not going to
24 testify, I believe he said you can't have any -- well, you
25 know, if you're not testifying, we -- he said if you're not

1 testifying, I can't put your witnesses on stand because the
2 jury is going, the jury is going to look and wonder why the
3 witness is on the stand and, and he's not testifying for
4 himself. I think that's, I believe that's what he said.

5 Q. Do you understand that now as we sit here today that
6 even though you don't testify at trial, you can put
7 witnesses forward? You understand that?

8 A. Now I do, yes, sir.

9 Q. Did you understand that at the time of your trial?

10 A. No, sir.

11 Q. Okay. Had, had you known that you could introduce
12 witnesses even though you didn't testify back at that
13 trial, would you have still wanted to have your father
14 testify?

15 A. I want -- I probably would have wanted all my
16 witnesses to testify.

17 Q. All right, you've also got in your PCR application
18 that you felt your lawyer was ineffective for conceding
19 your guilt in his opening and closing to the jury. Is that
20 one of your allegations?

21 A. Yes, sir.

22 MR. BOOZER: And, Your Honor, I'm looking specifically
23 at page 77 of the transcript. Does Your Honor have one?

24 THE COURT: I do not.

25 MR. BOOZER: Okay. If it pleases the court, may I

1 just read?

2 THE COURT: Sure.

3 MR. BOOZER: From the transcript?

4 THE COURT: I've got it written down. Page 77?

5 MR. BOOZER: Yes, sir.

6 BY MR. BOOZER:

7 Q. Mickey, is this what you're talking about where in the
8 opening, your lawyer says:

9 I'm going to shock you a little bit and tell you
10 something right off the bat. He is guilty of two
11 of the charges that they talked about.

12 Then we skip down to line 19 where your lawyer says:

13 I'm telling you right now to your face. He is
14 absolutely guilty of two of the things the
15 attorney general's office has accused him of.
16 He's guilty of possessing a firearm, and he's
17 guilty of pointing it at somebody, absolutely
18 guilty.

19 Do you recall that?

20 A. Yes, sir.

21 Q. Okay. What -- did you have any conversation with your
22 lawyer prior to trial about maybe conceding portions of the
23 case?

24 A. Not that I can recall.

25 Q. Okay. Was that -- those specific statements about

1 conceding you're guilty of two charges, do you recall any
2 conversation with your lawyer that, hey, that's okay, let's
3 do that?

4 A. Not that I can recall.

5 Q. Is that something you wanted your lawyer to do?

6 A. Talking about that right there?

7 Q. Yes, sir.

8 A. What you just read? No, sir.

9 Q. All right. Do you think that that prejudiced your
10 case?

11 A. I think it -- yes, sir. I -- yes, sir.

12 Q. All right. Now, along those same lines, Mr. Johnson,
13 you allege that your lawyer conceded your guilt in the
14 closing to the jury.

15 MR. BOOZER: And, Your Honor, I'm looking at page 584
16 of the transcript.

17 THE COURT: Okay.

18 BY MR. BOOZER:

19 Q. And again, Mr. Johnson, I'm going to read from the
20 transcript where your lawyer indicates in the closing to
21 the jury:

22 They gave me a hard time because the first thing
23 I told you on the opening statement is I admitted
24 the role that Mickey Johnson had out there that
25 day. I've told you to your faces first whether

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1 or not -- I'm not trying to hide anything.

2 Mickey Johnson was out there at [REDACTED]

3 Apartments. Mickey Johnson had a gun, and Mickey

4 Johnson pointed a gun, and Mickey Johnson fired a

5 gun. Find him guilty.

6 Then your lawyer goes on through the rest of his

7 closing. Do you recall that?

8 A. Yes, sir.

9 Q. Is that what you are referring to by your allegation?

10 A. Yes, sir.

11 Q. Okay. Did you have any discussion with Mr. Kent about
12 making those statements in closing?

13 A. No, sir.

14 Q. Okay. Is that something you wanted him to do?

15 A. No, sir.

16 Q. Is that something you didn't want him to do?

17 A. It is something that I -- I mean, it's something I
18 didn't know was going to happen.

19 Q. You didn't know that that was going to happen?

20 A. No, sir.

21 Q. Did you have any conversation during the trial to Mr.
22 Kent about those statement?

23 A. No, sir.

24 Q. All right. You've also alleged in your application
25 that your lawyer failed to object to solicitor's improper

1 closing, vouching for witness credibility. This is
2 something -- and this is something we'll discuss more with
3 your lawyer, but just for purposes of your allegation, do
4 you recall in this -- I'm looking at page 578 of your trial
5 transcript, and this is the solicitor's closing or the
6 attorney general's closing:

7 You know, there was a lot of testimony about plea
8 deals and proffer agreements, when statements
9 were made and that kind of thing and, ladies and
10 gentlemen, proffer agreements are done because
11 the state has to know what an individual -- what
12 information he has before they can make any
13 decisions about whether a plea agreement is going
14 to be entered. That's the purpose of a proffer
15 agreement. It is an agreement between the state
16 and the defendant saying come in here, tell me
17 what you know, and I will not use it against you.
18 I cannot use it against you, but I have to know
19 what you're going to say before I can make any
20 type of determination as to what plea deal to
21 give you.

22 And this is on page 579 now:

23 Does that change the fact that it's not the
24 truth? No, it's the truth.

25 Who is the attorney general's office talking about in

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1 those -- in that statement?

2 A. When he said it is the truth, I believe he, I believe
3 he's talking about maybe state's star witness.

4 Q. Okay, and so they were -- were they codefendants at
5 some point?

6 A. Yes, sir.

7 Q. All right, and they all entered into some sort of plea
8 deal?

9 A. Yes, sir.

10 Q. Did your lawyer make any objection during that time,
11 to the state vouching for the credibility of the witnesses?

12 A. Not that I can recall, no, sir.

13 Q. If it's not in the transcript, you would agree it
14 didn't happen?

15 A. Yes, sir.

16 Q. Okay, and do you think that he should have done that
17 at that time?

18 A. Yes, sir.

19 Q. All right. Now, you've also got that your lawyer
20 failed to object to the jury instruction that malice could
21 be inferred from the use of the deadly weapon.

22 MR. BOOZER: And for the court's information, we're
23 looking at jury instructions, and I think it's 606 to page
24 607.

25 BY MR. BOOZER:

1 Q. Mr. Johnson, is that one of your allegations, that
2 your lawyer should have objected to what you feel was an
3 improper charge?

4 A. Yes, sir.

5 Q. How about you've also alleged that your lawyer failed
6 to object to jury instructions where a hypothetical example
7 was used? Explain that a little bit.

8 A. I'm, I'm, I'm not, I'm not sure exactly how it worked,
9 but I believe the judge at the trial, judge at that time, I
10 think he had said something -- I can't remember the word
11 for word. It's in the, it's in the paperwork, but I think
12 he used an example of something pertaining to the law
13 instead of, instead of -- I guess not going by the law. He
14 used some type of example.

15 Q. And you feel that your lawyer should have objected to
16 that?

17 A. Yes, sir.

18 Q. And if there's no objection in the trial transcript,
19 would you agree that he didn't make that objection?

20 A. No -- yes, sir.

21 Q. Okay. You've also alleged in an amendments that you
22 feel like your lawyer -- pardon me, that your lawyer failed
23 to object or limit or try and exclude some testimony from a
24 witness by the name of Dontae Crayton.

25 A. Yes, sir.

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1 Q. Is that one of your allegations?

2 A. Yes, sir.

3 Q. Why do you believe that he should've made some sort of
4 motion or attempt to exclude Mr. Crayton's testimony?

5 A. Well, I, I mean, I believe this guy, this guy, Dontae
6 Crayton, he actually was in the county jail when this crime
7 happened. He had, he had no knowledge of this crime at
8 all. He actually was in the county jail for some, some
9 other pending charges, serious charges. And I think what
10 he did is he, he contact detectives. Said, you know, I
11 know about this guy. And his whole testimony basically was
12 just based on he's this type of guy, he's that type of guy.
13 That it -- you know, and that they kind of, like, used him
14 just as a character witness just to say -- I guess just to
15 make me look bad in front of the jury, and I felt like he
16 shouldn't even been on the stand. I felt like he shouldn't
17 even, you know, he shouldn't even took the stand at all.

18 Q. Do you know whether that particular witness had any --
19 was he an eyewitness to anything?

20 A. No, sir. He was, he was actually incarcerated before
21 and after, you know, after this stuff happened.

22 Q. Okay, Mr. Johnson, have we covered all of your
23 allegations that you've alleged in your application, and
24 please understand, as we've discussed, that we'll be
25 covering a lot of this with your lawyer and through other

1 witnesses. But as far as you, have we covered everything
2 that you are alleging against Mr. Kent, or, or not
3 specifically against Mr. Kent but about your trial in
4 general?

5 A. Can I check my notes?

6 Q. You may.

7 MR. BOOZER: Your Honor, may I approach the witness?

8 THE COURT: Yeah.

9 (A PAUSE.)

10 BY MR. BOOZER:

11 A. I don't, I don't, I don't, I don't know how heavy or,
12 or, or strong this may be, but I have two other, two other
13 issues I just want to, I just want to make it for the
14 record.

15 Q. Are these issues that you've alleged in your
16 application, or is this something new?

17 A. This something new.

18 MR. WASHINGTON: Judge, we'd ask -- well, one second.

19 MR. BOOZER: Court's indulgence?

20 THE COURT: All right.

21 (COUNSELORS CONFER.)

22 MR. BOOZER: Your Honor, may I -- I'm not sure what it
23 is that he's going to say. May I just take a look at his
24 notes so I can confer?

25 THE COURT: Yes.

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1 MR. BOOZER: And get the attorney general's position
2 on ---

3 THE COURT: Yes, that's fine.

4 (A PAUSE.)

5 MR. WASHINGTON: And, Judge, it's my understanding
6 that the issues are not really new or something that we at
7 least haven't heard about. So, I'm fine with him ---

8 THE COURT: That's fine.

9 BY MR. BOOZER:

10 Q. Mr. Johnson, if you'd go ahead and tell the court what
11 your other two allegations are.

12 (A PAUSE.)

13 A. Can I read, can I read this from my transcript?

14 Q. Well, just kind of explain to the court kind of, sort
15 of what you were explaining to me what your two allegations
16 are as they relate to -- I think you had one with regard to
17 you had some problems with the state's closing. Is that
18 one of your allegations?

19 A. It's with the counsel closing.

20 Q. Okay. Right. Tell the judge what you mean by that.

21 A. Basically at, at the closing argument, trial counsel,
22 he, he kind of, he kind of gave the jury the example of a
23 story, I guess try to give them example so they can have a
24 general idea of what the case is about. And he had -- the
25 story he told, it was, like, you know, I have, you know, I

1 have a brother and my mother and father, and my brother, he
2 always disrespect my mother. And I guess he was trying to
3 make example of what reasonable doubt is to the jury. And
4 he was saying, you know, my brother, you know, he always
5 talk back to my mother and stuff like that, and every time
6 he get mad, he always would run upstairs in the room and
7 slam the door. He was, like, you know, and this particular
8 day, my brother disrespect my mother. My father told him
9 to go to his room, so he ran upstairs and then just like
10 clockwork, he slammed the door, you know. And so he said
11 my father rushes upstairs, opened the door and -- my father
12 rushes upstairs, opened the door, and he had his hand in
13 his hair -- he had his hand in the air, I guess about to
14 discipline him for slamming the door, but then he said my
15 father stopped. You know what I'm saying? Then he was
16 telling the jury that right then and there is when I
17 learned what reasonable doubt was.

18 I was -- I mean, I thought that was a bad -- I thought
19 that was actually a bad story because the story that was
20 given to the jury, it would seem as if I was his brother
21 and then his, I guess his father would be the state and,
22 and, and being as his father didn't see his brother slam
23 the door, I guess that's why his father restrained from,
24 from hitting him because he actually didn't see him slam
25 the door. So, that's what reasonable doubt was, but at the

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1 same time, if he was referring me to be his brother in the
2 story, I felt that he basically said his brother slammed
3 the door, you know? So, basically I felt like he was
4 basically telling the jury that, you know, he's guilty but
5 they just don't have enough evidence to prove him, prove
6 him guilty. I mean, whether he was trying to do that
7 intentionally -- but I think it came out that way to the
8 jury, and I think that's how the jury took it when he, when
9 he gave that story.

10 Q. Okay. I think we got that, and then your, your other
11 allegation that you were going to raise, what did that have
12 to do with?

13 A. Yes, and the state claimed that these guys, these guys
14 in this case, that they use, they use a female I was
15 talking to at the time. They use her car to go commit the
16 crime, to go commit the crime in. Well, actually the state
17 confiscated the car. They got the car. They took the car,
18 ran tests on the car -- latent print, fingerprints -- to
19 try to prove that these guys was in the car. Those test
20 results came back negative, you know, and I just felt that
21 if the, if the test result had proved they was in the car,
22 they would have used it against me at trial. But being
23 that the test results came back negative, from what I
24 learned, they don't give me this information in, in
25 discovery. So, maybe my counsel, trial counsel could have

1 used and told the jury that, look, they said these guys
2 been in this car, but have got -- you know, we got some
3 type of evidence right here that, that discredit that, you
4 know? So, I mean, they didn't gave us anything to that. I
5 mean, that's, that's all I have, though.

6 Q. And, and, Mr. Johnson, we may have overlooked one
7 other item as I was reviewing your original PCR
8 application. Did you have any allegations about y'all not
9 knowing about a photo with Ms. Allen?

10 A. Right.

11 Q. Okay. What, what is that? That's alleged in your
12 original application. What is that?

13 A. I think -- I'm going to try my best, best to explain
14 it without having the paper.

15 MR. BOOZER: Your Honor, may I approach the witness
16 and hand him his PCR application?

17 THE COURT: Absolutely.

18 BY MR. BOOZER:

19 Q. Take a moment, Mr. Johnson. Just look over your PCR
20 application so that we make sure you've got everything in
21 that you need.

22 (A PAUSE.)

23 A. I think this is -- it's talking about the, the girl,
24 Anisha Allen, she being -- I think wasn't shown a photo --
25 what is it? I think -- I don't think she was shown a

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1 photo, a photo lineup. She was kind of, like, shown a
2 photo show up. Instead of her pointing somebody out of
3 that lineup, I think what they did was basically show, show
4 her on the computer, like, okay these are the individuals
5 and, you know, is these one of the individuals that was
6 there. And then basically, like, I guess not put a lineup
7 but basically putting -- I'm trying to explain it.

8 I guess I believe it was improper far as them doing it
9 that way because if you put -- show a computer screen,
10 it's, like, she don't have nobody else to pick from. It's,
11 like, it's kind of like you, you know, kind of, like,
12 saying this is him, you know?

13 Q. Did your lawyer raise any objection to that? Do you
14 recall?

15 A. Yes.

16 Q. He did raise an issue. So, that's -- is that an issue
17 you would have on appeal?

18 A. Yes.

19 Q. Okay. Is there anything else, Mr. Johnson, that we
20 have not covered as far as your allegations?

21 A. I don't, I don't, I don't think it's -- I mean, I can,
22 I can -- can I say or can we mention what would have been
23 raised at the direct appeal?

24 Q. Well, you, obviously you're getting a belated appeal.

25 A. Right.

1 Q. And, and that's going to be a separate issue that you
2 understand we're going to be briefing those issues. Well,
3 go, go ahead and indicate to the court what you think your
4 appellate issue will be.

5 A. I think it was -- I think this was one of the most
6 damaging things. Yeah, I think it's one of the most
7 damaging things they could have did to me. They actually
8 allowed these witnesses to say, you know, he's a part of
9 this, he's a part of this gang and they just went on and on
10 and on and on. Showed the jury pictures of me with other
11 guys and, and stuff like that.

12 I mean, the whole case was really just based on that.
13 It wasn't based on no evidence of no one saying -- he only
14 had one guy saying he forced me and these other guys to do
15 this crime, but the other guys, they're not saying that.
16 They're not saying that at all. He's the only witness that
17 testified and said that. And, and for the state to try to
18 help cement they verdict, they add all this prejudiced gang
19 evidence, which I felt that the jury just got sidetracked
20 on what they even was at the trial for. I think they got
21 sidetracked by the pictures and all these testimony, this
22 overwhelming testimony about, you know, all this gang
23 information that I felt like that I ain't had a fair trial
24 from the -- from, from, from the start.

25 Q. And, Mr. Johnson, in your PCR application that's

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1 filed, both in your amendment and your original
2 application, you have a number of issues that you believe
3 should be raised on -- in a direct appeal setting. Is that
4 right?

5 A. Yes, sir.

6 Q. Okay.

7 MR. BOOZER: And, Your Honor, we would just ask the
8 court to take notice that those are included in both
9 applications and that those are a part of the record
10 without having to have his independent testimony for your
11 consideration.

12 THE COURT: Okay.

13 BY MR. BOOZER:

14 Q. Okay, Mr. Johnson, anything else as far as your
15 allegations?

16 A. Not, I mean, not, not that I can think of, not at the
17 moment. Not that I can think of.

18 Q. Okay.

19 MR. BOOZER: Mr. Johnson, that's all the questions I
20 have. Please answer any that the state may have.

21 THE COURT: All right.

22 MR. WASHINGTON: Please the court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION BY MR. WASHINGTON:

25 Q. Mr. Johnson, you doing all right?

1 A. Yes, sir.

2 Q. And I know y'all didn't -- y'all said it wasn't
3 necessarily an issue, but you remember meeting with Mr.
4 Kent a certain number of times, right?

5 A. Yes, sir.

6 Q. It was probably ten, twenty-plus times? Do you
7 remember that?

8 A. I don't know about twenty, but it was, it was
9 probably, it was probably about ten, a little over ten,
10 yeah.

11 Q. Right, and all these times that y'all met, you were at
12 the jail the whole time?

13 A. Yes, sir.

14 Q. So, either you didn't get bond or your bond was
15 denied?

16 A. Yes, sir.

17 Q. And so as far as you know, there wasn't an offer on
18 the table that Mr. Kent was ever bringing to you in all
19 these meetings, right?

20 A. I believe, I believe he said something, said something
21 about a offer, but he never told me at the time. He
22 actually told me at the courthouse. It, it, it was a
23 offer, but he said I know we not, we not going that route
24 because he basically knew I was, I was going to the trial,
25 going, going to trial to begin with, but I don't care what

1 offer they had came up with.

2 Q. Okay, and let, let me clear -- make sure I'm clear on
3 that. The offer -- so, while you were in jail before
4 trial, he never came to you and said, hey, the state gave
5 me a number or anything like that, right? They never said,
6 hey, twenty-five years, fifteen years, thirty years? You
7 don't remember anything like that, do you?

8 A. Yeah. I mean, he came to the courthouse when I, I
9 went to a bond hearing. He told me in the, in the back
10 room that they had a number, and he just said, you know, I
11 know we're not going with that.

12 Q. Right.

13 A. Yeah.

14 Q. Okay, but it ultimately was your decision whether or
15 not you would take that number, right?

16 A. Yeah.

17 Q. Okay, and you decided clearly not to take that?

18 A. Trial.

19 Q. You wanted a trial, and you were -- it sounds like you
20 wanted a trial the whole time.

21 A. I don't care if they came with five, two years. I
22 would have gone to trial.

23 Q. Okay. All right. So, this case was always treated as
24 a trial as far as you were concerned?

25 A. Yeah.

1 Q. All right. Now, let's get back to the meetings you
2 would have with Mr. Kent. Each time I guess you had -- how
3 many charges did they have against you? Five? It was,
4 like ---

5 A. Four.

6 Q. Four. So, pointing and presenting, unlawful carrying
7 of a pistol, accessory before murder, and actually they had
8 you for accessory after ---

9 A. Okay, I think it was five.

10 Q. Five that they had charged you with.

11 A. Well, they found one not guilty.

12 Q. And then criminal conspiracy?

13 A. Right.

14 Q. Okay. So, you got convicted of all of those except
15 accessory after murder?

16 A. Right.

17 Q. Okay. So, whenever you would meet with, meet with Mr.
18 Kent he would always go over the charges with you. Is that
19 right?

20 A. Right.

21 Q. So, he would tell you what each of the elements of
22 each offense was?

23 A. Right.

24 Q. And what kind of evidence they could use against you
25 to prove those? Is that right?

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1 A. Said what kind of evidence they had.

2 Q. Right. So, he would say, hey, pointing and presenting
3 is when you take a gun and point it at somebody, and then
4 he might say something like, you know, if you were -- if
5 you take a gun out of somebody's hand and point it at
6 somebody you don't like, then that's pointing and
7 presenting.

8 A. I don't, I don't ---

9 Q. Does that sound about right?

10 A. I don't remember him breaking it down to me, but I
11 think the reason he didn't, because I already had a clear
12 understanding of what those charges was.

13 Q. Okay, but you were, you were clear on what each charge
14 was and what it took to prove each charge?

15 A. Right.

16 Q. Okay. You talked with your lawyer about it?

17 A. Right.

18 Q. All right. So, y'all talked about the charges and the
19 elements of each offense, and then he clearly went over
20 with you what each offense carried, right, how much
21 punishment you could get for it?

22 A. Right.

23 Q. So, he was telling you you'd get life on the
24 accessories and five years on the pointing and presenting,
25 et cetera?

1 A. Right.

2 Q. Okay, and he would also talk to you about all the
3 rights that you had. Does that make sense? So, he told
4 you, you know, you got the right to remain silent?

5 A. I mean, I, I -- you could say that, yeah.

6 Q. He told you you had the right to testify if you want
7 to, not -- I'm not talking about whether or not you did,
8 but he told you if you want to testify, you have the right
9 to do it?

10 A. He said that.

11 Q. Okay, and y'all would go over -- so, you'd look
12 through all of the discovery that the state sent over, and
13 then he would say, hey, here's the defense we got to that?

14 A. We looked over -- actually, one of these marks on here
15 is his mark. We looked over discovery, and one of his
16 issues that my counselor was just talking about, the issue
17 with the state not turning over this audio and this
18 handwritten note. They didn't turn this over because the
19 state, the state star witness was in the county jail with
20 other witness passing him notes trying to get him to say
21 certain things at trial. And this, this, this, this, this
22 same witness, once he agreed to testify against, against
23 me, basically character damage testimony, when he agreed to
24 testify, he pulled the note out his pocket and said, hey, I
25 got this from your star witness, and this is what it said.

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1 And they read it on the audio. I never got the note. I
2 never got the audio, and Mr. Kent was pointing at
3 something. He actually underlined it and he said we need
4 to get this right here. We never got that.

5 Q. Okay, and I understand that. I don't know if that was
6 the answer to my question, but -- so, whenever y'all would
7 go over the stuff that he got in -- not the stuff he
8 didn't, that you say he didn't get in -- the stuff that he
9 got, he brought to you and showed it to you, and he would
10 say here's how we can defend against this piece of evidence
11 and all this stuff. Is that right?

12 A. Right.

13 Q. Okay. Now, let's see. You have -- let's talk about
14 -- so, this is going to be -- I'm going to show you State's
15 Exhibit -- or, excuse me, Applicant's Exhibit 3 and Exhibit
16 4, and we've already been over this. You've already talked
17 about it with your lawyer, but he's had you identify it and
18 all that kind of stuff. So, these are interview forms that
19 was done by, I believe, Bryant Bradley allegedly? Is that
20 right?

21 A. Yes, sir.

22 Q. Okay. So, one of them is from March...

23 A. 29th.

24 Q. 29th and you can't see it too, too well on here, but
25 the next one is from the 30th.

1 A. Right.

2 Q. So, you know that they have situations where they
3 bring you in and they try to get you to talk. So, to start
4 with they'll have -- you know, they'll pull out this piece
5 of paper and have you initial each line saying you
6 understand these rights. Does that make sense?

7 A. Yes, sir.

8 Q. And you know that they do that, and at the end of it,
9 some people just say I'm not talking about anything. I
10 just got caught. Y'all better leave me alone. Is that
11 right?

12 A. I mean ---

13 MR. BOOZER: Objection, Your Honor. I don't know that
14 this is something that he knows. I think he's asking if
15 this is generally what happens. I think he needs to ask if
16 he know whether Mr. Bradley did this or not.

17 THE COURT: Well, I'm going to overrule the objection.
18 I understand what you're saying. I'll note that, but
19 objection is overruled.

20 BY MR. WASHINGTON:

21 Q. Okay, and let, let me properly try to clarify a couple
22 of things. So, they can go through these rights with
23 people, and then some people say, even after they sign it
24 and everything, they say I'm not talking at the end of it.
25 Is that right?

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1 A. I don't, I don't, I don't, I don't know how that work
2 because I actually had one of these actual same forms when
3 they, when they first talked to me. And before they even
4 spoke to me, they asked me -- they actually let me know
5 that they wanted to interview me and I said okay, and then
6 they gave me this paper right here. They said, well, you
7 have to waive your rights if you want to speak to us. Then
8 I initial my, my, my initials next to these things waiving
9 my rights, and then they signed it, and then we went on to
10 the interview. So, if it went -- I just feel like if it
11 happened that way for me, I'm, I'm pretty sure it happened
12 the same way with them.

13 Not only that, but it was recorded. It was audio
14 recorded. It was, it was video recorded. We -- you know,
15 mines was and it happened the same way, and I'm
16 understanding -- I'm not understanding that how could his
17 interview happen any, any way different than mines
18 happened.

19 Q. Okay, but you just said you were pretty sure that it
20 happened. You don't know for sure what happened. He could
21 have said at the end of this that I'm not talking, right?
22 He has the right to end the interview at any time, and he
23 has the right to remain silent. Those are the rights
24 listed there. Is that right?

25 A. I mean, we don't know what he could have said. That,

1 that was the whole purpose of getting some audio and video
2 and statements: so we can prove that he didn't said, said
3 anything.

4 Q. But you don't have ---

5 A. We don't, we don't know.

6 Q. You don't have any proof that he did talk after this.

7 A. We don't know.

8 Q. Okay, but you don't have any proof that he did, that
9 he did talk.

10 A. We know -- I know that a interview took place.
11 According to that paperwork, a interview took place. He
12 signed -- he waived his rights to speak. It says:

13 I have, I have read or have read this to -- this
14 statement to me of my rights. I understand what
15 my rights are. I am willing to answer questions
16 at this time without my lawyer present.

17 So, he actually -- he, he, he answered questions.

18 What those questions was, I don't know.

19 Q. Okay. Well, let me point -- Applicant's Exhibit 4,
20 and you can't see it. I think I may have a better copy
21 that we could use. But at the bottom here -- so, this is
22 the March 30th interview.

23 A. Uh-huh.

24 Q. And right below here, can you see that that says: I
25 asked to talk?

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1 A. Uh-huh.

2 Q. So, that seems to indicate that he didn't talk on the,
3 on the day before, but now he's coming to law enforcement
4 and saying okay, okay, now I will talk.

5 MR. BOOZER: Objection, Your Honor. Same objection
6 before. He's asking him to speculate about what Mr. Bryant
7 -- or Mr. Bradley did or didn't do.

8 THE COURT: I'll sustain that objection.

9 MR. WASHINGTON: Okay.

10 BY MR. WASHINGTON:

11 Q. But it does say -- I know it may be hard to see. I
12 may have to get another copy. It does say at the bottom: I
13 ask to talk. Can you see that?

14 A. Yeah, I see it.

15 Q. Okay. All right.

16 A. Now, I don't know if that -- when he said I ask to
17 talk, I don't know if that actually necessarily mean that
18 this mean he want to talk today. I think what that
19 happened was this was the next day. So, he's actually in
20 the county jail. So, he had to probably contact the
21 officer and left a note. Look, I want to talk to the
22 detective after he probably had talked, to sit there and
23 think, like, how can I get out of this. That's what I took
24 that to be and not just, you know, I asked to talk. Like,
25 now I'm ready to talk. I think this is him saying I want

1 to talk because I'm the one that reached out to y'all. So,
2 I can talk to y'all because the first time they actually
3 went and got him, you know, to talk to him. So, that's
4 what I took that to be.

5 Q. But that's what you think it is. That's what you took
6 it to be. You don't ---

7 A. We both ---

8 Q. --- know that.

9 A. --- don't know.

10 Q. Okay, and then Applicant's 1. So, this is the
11 affidavit from the officer who took the interview form the
12 first day. So, that's going to be March 29th. That's
13 right?

14 A. Yes, sir.

15 Q. And he says:

16 To the best of my recollection, I did not take a
17 statement from Bryant Bradley on March 29, 2011,
18 at the Clarendon County Sheriff's Office. I
19 advised ---

20 Is, is that first part right? Can you see that? I
21 was holding it to myself.

22 A. Uh-huh. Yes. I mean, what you read, that's what
23 this, that's what this paper says.

24 Q. Okay, and then it goes on to say:

25 I advised Mr. Bradley of his rights and

1 transported Mr. Bradley to the Sumter-Lee
2 Regional Detention Center. Mr. Bradley was
3 booked into Sumter-Lee Regional at approximately
4 5:43 p.m. on March 29, 2011.

5 Is that right?

6 A. Yes. That's what this paper say.

7 Q. Okay. So, the officer whose name is on this first
8 statement said that I didn't take a statement, I advised
9 him of his rights, and took him to the jail.

10 A. That's, I mean, that's what he said on the paper.

11 Q. Okay. All right. So, let me run back to your
12 meetings with Mr. Kent. If, if you wanted to, you could
13 ask Mr. Kent any questions whenever you had your meetings
14 with him. Is that right?

15 A. Mm-hmm.

16 Q. He wouldn't say okay, well, I told you what I need to
17 say. Now I'm out of here. You could always say, hey, Mr.
18 Kent, I don't understand one thing, or I got a question
19 about something, or I got a concern, and he would listen to
20 you, right?

21 A. Right.

22 Q. Y'all would go over, while you were there, go over
23 strategy about, you know, here's how you're going to attack
24 this one witness or, you know, here's what you're going to
25 present in response to this one piece of evidence. Is that

1 right?

2 A. Yes, sir.

3 Q. Okay. Now, he told you that you had the right to
4 testify and tell your side as one of the pieces of
5 strategy. Do you remember that?

6 A. He told me that if it, if it looks, if it looks bad,
7 then, you know, we will put you on, you know. We will put
8 you on the stand. If it looking good, then I won't put up
9 a defense. I won't call you.

10 Q. So, it was -- but it was your decision, though, right,
11 whether or not you cross -- whether or not you testified?

12 A. Yeah.

13 Q. Okay, and actually even during y'all's meeting, y'all
14 had practice cross-examinations?

15 A. Right.

16 Q. Y'all were actually preparing for you to take the
17 stand if that was -- if things were looking right, you
18 wanted to do it?

19 A. Right.

20 Q. Okay. So, he -- and then -- let's see. Another part
21 of the strategy, you had told him who all could testify on
22 your behalf?

23 A. Uh-huh.

24 Q. And so that was a number of people. We'll go through
25 those in a second, but of course after that, Mr. ---

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1 A. You said strategy?

2 Q. Yeah. Yeah. So, I want such and such to come in and
3 say I wasn't there that day. This is all made up. Does
4 that, does that make sense?

5 A. I'm, I'm trying to understand. I'm trying to
6 understand what you're saying, strategy.

7 Q. Right. So, you -- so, as a part of y'all's strategy
8 for going to trial, you talked to Mr. Kent, and y'all would
9 say, hey, I want you to call my girlfriend. She'll let you
10 know that I didn't say -- I didn't order a hit or something
11 like that.

12 A. No. I just had witnesses. It wasn't, it wasn't like
13 -- I'm, I'm trying to figure out how you're saying because
14 it wasn't, like, strategy. Like, hey, let's do this here
15 because this -- these actually were people that was
16 actually witnesses.

17 Q. Right.

18 A. Besides my girlfriend, you know. Some people that was
19 actually -- wasn't no relatives or anything kin to me at
20 all. So, it wasn't really strategy actually. They was
21 actually my witnesses.

22 Q. Right. Right. So, they were presenting -- they were
23 helping you, helping you present defenses against your
24 charges?

25 A. Right.

1 Q. Okay. So, Mr. Kent went out and talked to all these
2 people and, you know, some of them were gang members and
3 some of them were not. Is that right?

4 A. I don't -- I know he had, he had a private -- he hired
5 a private investigator. The private investigator went to
6 talk to one guy. He came back, told Mr. Kent that, you
7 know, hey, this guy testimony is, is, is, is important.
8 You know, we need to have him at trial. I believe they
9 tried to get in contact with him again; I don't know what
10 happened with him, but the private investigator did try to
11 get in contact with the individual. I think the individual
12 ended up moving, something like that happened. He was
13 staying with his girlfriend at the time, so I think he end
14 up moving and probably just lost track of what the court
15 date was. I don't know.

16 Q. Okay. So, so, all these people were talked to by Mr.
17 Kent and by a private investigator that he hired on behalf
18 of you. Is that right?

19 A. Three people were talked to.

20 Q. Three people were talked to.

21 A. One was my ex-wife.

22 Q. What's her name?

23 A. Kenteshia Gilliard.

24 Q. Okay.

25 A. The second one was my, my father, and the third one

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1 was the guy, David Marcum.

2 Q. Okay.

3 A. Those are the only three people that his private
4 investigator spoke with concerning the case.

5 Q. And those people were all on your potential witness
6 list who might have testified for you at the trial?

7 A. Yes, sir.

8 Q. Okay. All right, let's talk about real quick.

9 MR. WASHINGTON: Now, Judge, I'm going to go to page
10 482, line 11, for the record.

11 THE COURT: All right.

12 MR. WASHINGTON: See if we can't read along with this.

13 BY MR. WASHINGTON:

14 Q. So, during the trial the judge told you about whether
15 or not you could testify. You remember that?

16 A. Yes.

17 Q. Outside the presence of the jury. You had to stand
18 up. He swore you in, and then he told you about your right
19 to testify?

20 A. Right.

21 Q. Okay. So, let's start at line 11. It says the court.
22 Will you read from line 11 down to 24 for me?

23 A. The Court: All right, Mr. Clerk, if you would,
24 go ahead and swear the defendant.

25 The Clerk: Yes, sir. Please place your left

1 hand on the Bible and raise your right hand.

2 Left hand, please, sir, left hand. State your
3 name, please.

4 The Defendant: Mickey Johnson.

5 The Clerk: Do you solemnly swear or affirm your
6 testimony to the court shall be the truth, the
7 whole truth, and nothing but the truth so help
8 you God?

9 The Defendant: Yes, sir.

10 The Clerk: Thank you.

11 The Judge -- The Court: All right, Mr. Johnson,
12 do you understand that in this trial that you
13 have the right to testify if you would like?

14 The Defendant: Yes, sir.

15 Q. Okay. Thank you, and so the judge does go with -- go
16 through with you your right to testify at trial, whether or
17 not you want to or not?

18 A. Mm-hmm.

19 Q. Okay. So, it's, it's, it's your decision. First Mr.
20 Kent tells you, and then the judge tells you that later,
21 too?

22 A. Uh-huh. Yeah.

23 Q. Okay, and I'm going to slide over to page 555 and line
24 16, and then so this says Mr. Kent, and then says:

25 Judge, not only just on the five-minute break

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1 that you have given me, but I have discussed with
2 my client on several occasions. I would say on
3 this past Sunday we spoke at least two hours.
4 So, just today isn't the first time I've talked
5 to him about his decision to testify.

6 Is, is that what was just on this transcript?

7 A. Yeah.

8 Q. So, Mr. Kent talked to you about it multiple occasions
9 before, and then he said at trial that I talked to you --
10 that I talk to him. I guess that would have been the day
11 before for a long time and told him that he can testify if
12 he wants to.

13 A. Right.

14 Q. Okay, and let me back up a little bit. So, one of the
15 witnesses you mentioned was -- testifying on your behalf
16 was Ms. -- you said her name was Kenteshia Gilliard?

17 A. Yes.

18 Q. And that's -- that was your girl -- that was your
19 ex-wife you said?

20 A. Right.

21 Q. Okay. Now, when, when everybody said that you put out
22 the hit on this guy, she wasn't in the room with you when
23 you supposedly told them to put the hit out, right?

24 A. No.

25 MR. BOOZER: Objection, Your Honor.

1 A. That's wasn't my testimony.

2 THE COURT: Hang on just a second.

3 Sir?

4 MR. BOOZER: Objection, Your Honor. I'm not sure what
5 the question exactly is.

6 THE COURT: All right, repeat your question.

7 MR. WASHINGTON: Judge, I was asking him -- he, he had
8 mentioned that a Kenteshia, Kenteshia Gilliard was his
9 ex-wife, potential witness list and, you know, he wasn't
10 allowed to put her up on the stand and testify. And I
11 asked him she wasn't in the room with you when they say
12 that you put out the hit on this guy. Obviously that would
13 go to whether or not Mr. Kent thought that, you know, it
14 was necessary for ---

15 THE COURT: So, the question is whether or not she was
16 in the room ---

17 MR. WASHINGTON: That's right.

18 THE COURT: --- or not?

19 MR. WASHINGTON: Right.

20 THE COURT: All right. Objection overruled.

21 MR. BOOZER: Thank you.

22 MR. WASHINGTON: Okay.

23 BY MR. WASHINGTON:

24 Q. So, when, when, when these guys say that you put out a
25 hit on this other person, on the victim ---

1 A. One person say that.

2 Q. Right. So, when they say that you said to go and
3 shoot the first thing that you see at the door or whatever
4 the testimony was, Ms. Kenteshia, she wasn't in the room
5 with those guys at that time?

6 A. Her, her testimony, her testimony was basically that
7 the house that we was at, her testimony -- because,
8 because, see, this, this -- the guy in this case, he's
9 actually saying that I was with, with them before this
10 crime happened. I actually went with them and asked to use
11 her car, and I actually went with them, but, but then I got
12 out of the car and went on about my business, and then the
13 crime happened. So, her testimony basically proved that I
14 never left that house; I never left and went anywhere.

15 Nobody never had her car. She had her own car keys.
16 The, the state actually took her car, ran fingerprints and
17 all these things. None of they prints came in the car, so
18 that -- her testimony basically was based on that, not no
19 -- excuse me, not necessary to the fact that whether she
20 heard something or not. That wasn't her testimony.

21 Q. Okay, all right, and then I think the...

22 MR. WASHINGTON: I think that's all I've got, Judge.

23 THE COURT: Okay, any redirect?

24 MR. BOOZER: No redirect, Your Honor.

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

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Let's take about a five-minute comfort
3 recess.

4 MR. BOOZER: Yes, sir.

5 THE COURT: Before the next witness.

6 (OFF THE RECORD.)

7 THE COURT: Mr. Boozer, you may call your next
8 witness.

9 MR. BOOZER: Thank you, Your Honor. We'll actually
10 call Shaun Kent to the stand.

11 THE COURT: All right, Mr. Kent.

12 SHAUN KENT, BEING DULY SWORN,
13 TESTIFIES AS FOLLOWS:

14 BAILIFF: Please state your name for the record.

15 WITNESS: Shaun, S-h-a-u-n, Kent, K-e-n-t.

16 DIRECT EXAMINATION BY MR. BOOZER:

17 Q. Mr. Kent, how are you doing today?

18 A. Lance, how are you doing, sir?

19 Q. I'm doing fine. Did you represent Mickey Johnson?

20 A. Yes, I did back in 2013.

21 Q. How -- do you know about how long you represented him?

22 A. I want to say it was about a year and a half before
23 trial; it was quite some time. I think he was incarcerated
24 a while before his trial, so about a year, year and a half
25 and then during the trial.

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1 Q. All right. Have you been in the courtroom today for
2 Mr. Johnson's testimony?

3 A. Yes. Not for the entirety of it, but I went out of
4 the courtroom for a little bit, but for the most of it,
5 yes, sir.

6 Q. All right. If you could, could you just give sort of
7 your brief recollection of the state's version of the facts
8 and what this case was about?

9 A. Yeah. Most of it is pretty accurate from what, what
10 Mickey had described. This was -- the way the state
11 presented, it was basically a classic murder case. They
12 presented a case as if it was a classic gang murder case in
13 which it basically was an initiation-type ritual. They
14 presented it as if there was a member of the gang, and he
15 was required to go to a random house inside of an apartment
16 complex, and they presented it as if somebody was required
17 to shoot the first individual who came to the door.

18 The presentation by the state was that Mickey Johnson
19 was the leader of the 135 Piru, leader of a gang here with
20 a sect in Sumter, South Carolina, but also had ties to
21 California and that he was the leader of the gang. The
22 state spent about seventy-five percent of the trial
23 detailing gang activity, gang life, what happened with the
24 gang, the hierarchy of gangs, and then spent a smaller
25 amount of time talking about the fact Mickey was the leader

1 of the gang and that he had ordered basically a hit on
2 somebody.

3 They had also talked about the reason that Mickey had
4 ordered this hit is because there was a funeral that had
5 happened earlier either in the day or a couple of days
6 prior to that. That some individuals from a rival gang had
7 disrespected Mickey and his friends. Because of the level
8 of disrespect, that might have also been a secondary reason
9 why they went back to that area and ordered the hit.

10 Q. Okay, and what was sort of -- I mean, it was
11 undisputed that Mr. Johnson did not pull the trigger,
12 didn't have anything to do with killing anybody. Is that
13 right?

14 A. That is correct. There was no question; there was no
15 allegations about that at all.

16 Q. Well, what was really the state's case?

17 A. To be very candid, the state's case, to mimic the
18 words of Mickey, the state's case was basically to scare
19 the jury and to say that gangs in Sumter County were so
20 scary and because Mickey Johnson was the leader of a gang,
21 that he must have been responsible for making such a hit
22 because why would somebody else have done something of that
23 nature. It was a fair case.

24 Q. And in particular, did the state have some witnesses
25 that obviously they were presenting?

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1 A. What they did is -- and you heard. You guys were
2 talking about the proffers. What they did is they went to
3 all of the codefendants to Mickey Johnson. If I'm not
4 mistaken, there was four of them or so. They went to each
5 of the codefendants. They gave them deals and they got
6 them each to testify against Mr. Johnson. They got them to
7 testify based upon prior relationships, past history,
8 things that they have had with Mickey Johnson, that he --
9 and, and because, very candidly, was correct the way he
10 testified that three of the four didn't testify as to a
11 hit, but they testified to who Mickey was and prior
12 relationships. And one individual testified that Mickey
13 specifically ordered the shooting.

14 Q. Did you attempt to, prior to trial, limit or exclude
15 any references to gang affiliations or activity in the
16 case?

17 A. Yes, I did. That was my biggest fear, and Mickey and
18 I talked about that the entire time that I was very fearful
19 that at the mention of gang -- and always thought there a
20 chance it could come in. But if the state was allowed to
21 try a gang case inside of a murder case, that if you could
22 fear the jury just enough and say, hey, this is happening
23 in our community, I thought that would be trouble. So, we
24 spent quite some time, a lot of pretrial motions trying to
25 keep any mention of gang, expert testimony about gang,

1 anything about gang out whatsoever.

2 Q. And so you'd agree with me that you did make
3 objections to certain folks being allowed to testify on
4 behalf of the state and sort of gang experts?

5 A. If, if I remember, Lance, there was one individual. I
6 think it was Billy Lyons who they tried to qualify as an
7 expert. There was a couple of other individuals who they
8 qualified as experts that I objected, I objected before
9 they testified. I think I objected contemporaneously to
10 their testimony about anybody being qualified. Anything
11 mentioning the word gang whatsoever, I didn't want in the
12 trial.

13 Q. And is that a strategy that you discussed with Mickey
14 before the trial?

15 A. Yes. Mickey's very knowledgeable, one of the smartest
16 clients I've ever represented. Before I even brought it up
17 to his attention, he knew completely that anything
18 mentioning the gang and that just even the word gang --
19 because he didn't do those even as -- a gang was basically
20 an organization, a fellowship of individuals.

21 Q. Now, did you actually file the notice of appeal in
22 this case? Do you recall?

23 A. I did file. After the conviction, I filed the notice
24 of intent to appeal.

25 Q. Did you have any communication -- well, let me ask you

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1 this. Were you, were you then off of the case, and do you
2 have any knowledge as to whether Mickey hired another
3 appellate lawyer to handle the case?

4 A. My understanding is my office after the conviction, we
5 filed a notice of intent to appeal. We got contact from --
6 and I can't remember it was -- who it was. It was either
7 Mickey, his father, or another attorney down in Florida
8 requesting a full copy of our file, which we made copies
9 of. They told us they'd be representing Mr. Johnson and
10 that they would be doing the rest of the appellate work.
11 So, it never made it to appellate defense.

12 Q. Okay, and you agree that Mickey needs an appeal in
13 this case?

14 A. There is no doubt in my mind based upon the issues
15 that came up during the course of the trial. It's one of
16 the few times during the course of a trial I was discussing
17 the appellate issues with Mickey as they were happening.
18 So, there -- an appeal in this situation I feel is very
19 necessary.

20 Q. Okay. Now, did you file Rule 5 requests in this case?

21 A. Yes, I did.

22 Q. Tell us about -- did you receive a lot of stuff from
23 the state?

24 A. It, it was a lot, yes, let's put it that way. There
25 was a lot of stuff from the AG's office that was sent to

1 us.

2 Q. All right. Let me ask you this. Did you -- do you
3 recall who Bryant Bradley and William Morgan were?

4 A. Yes.

5 Q. All right. Who, who were they?

6 A. Those are codefendants with Mr. Johnson who were going
7 to testify against him. If I'm not mistaken, and Mickey
8 can correct me if I'm wrong, I'm fairly positive that
9 Bryant Bradley was actually related to Mickey by some way,
10 or one of the individuals related to him. But, yeah, these
11 were codefendants of him who has known him his entire life.

12 Q. All right. Were they -- was it your understanding
13 that they had made certain statements?

14 A. Yes. Yes, it was.

15 Q. Were they the state's main -- two of the state's main
16 witnesses?

17 A. I heard Mickey say that and, and, and I'm going to
18 answer it this way. They were -- they should have been the
19 state's main witnesses against with Mickey, but what ended
20 up happening is the main witnesses against Mickey were the
21 witnesses testifying about gangs and gang activity. But as
22 far as the specific facts that it should have been against
23 Mickey, those were the main ones. Does that make sense?

24 Q. It does. As far as your strategy with regard to those
25 witnesses, what was sort of your strategy in

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1 cross-examining those folks?

2 A. And we discussed this with Mickey, the strategy, and
3 we discussed in painstaking detail. The strategy was with
4 those witnesses, each one of them had a reason or a
5 motivation to make up a story against Mickey. Each one of
6 them was given a -- and I can't remember them right now.
7 They were given a pretty good proffer. They were given
8 very good deals by the state. Mickey had given me a lot
9 personal information on these guys, and so what it was was
10 to discredit their credibility, go after the fact that
11 realistically that they all had motivations to lie because
12 they were all getting such sweetheart deals from Mickey,
13 and this turned into basically the state saying we'll give
14 you something if you agree to testify against Mickey.

15 Q. And you've tried a lot of cases?

16 A. I've tried a lot of cases, yes, sir.

17 Q. In your opinion, how important and crucial to this
18 case were the credibility of the state's witnesses, and in
19 particular with Mr. Morgan and Mr. Bradley?

20 A. And again, I'm going to answer that in two parts. Had
21 the gang testimony not been allowed in, it was entirely a
22 credibility case. But, yes, the credibility of the
23 witnesses were incredibly important. It would have been
24 even more so important if there was no mention of gang
25 testimony at all.

1 Q. All right. Going back to those two particular
2 witnesses, Mr. Bradley, Mr. Morgan, do you recall what you
3 were provided with as in regard to their statements that
4 they made to law enforcement in discovery?

5 A. Lance, candidly I can't remember specifically what I
6 was provided with. Mickey is, like I said, one of the
7 smarter clients I have. Whatever he -- we were pretty good
8 about whatever we would get as discovery, I would go to the
9 jail immediately with him and go over it. So, I'm going to
10 trust his memory as to that.

11 Q. Okay.

12 MR. BOOZER: If I may approach the witness, Your
13 Honor?

14 THE COURT: Yes, sir.

15 MR. BOOZER: Thank you.

16 BY MR. BOOZER:

17 Q. Mr. Kent, I am going to hand you what has been marked
18 as Applicant's 3 and Applicant's 4. If you would just take
19 a brief moment and take a look at those documents?

20 (A PAUSE.)

21 A. Okay.

22 Q. All right, looking at them, so you know what, what
23 those are just by taking a look?

24 A. Just by looking at them. I've seen a number of them.
25 They're the Sumter Police Department Initial Interview form

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1 which they use when they interview any witness whatsoever.

2 Q. Okay. What's your understanding of how many
3 statements Mr. Bradley gave?

4 A. Independently I don't know. I know one of these --
5 one of the things, going over after each one of these
6 individuals, is they all gave multiple statements, but I
7 can't tell you specifically how many, but each one of them
8 gave multiple statements.

9 Q. Those two interview forms, are those items that were
10 provided to you in discovery?

11 A. I think they were, Lance.

12 Q. Okay. Do you remember discussing those two interview
13 forms with Mr. Johnson?

14 A. Yes. We discussed the interview forms and we
15 discussed the interviews in detail, yes, sir.

16 Q. In looking at it, if you would, I believe it's
17 Applicant's Exhibit 3. It's dated March 29th and the
18 second one dated -- or marked Applicant's Exhibit 4 is
19 dated, dated March 30th. Do you know whether you were
20 provided it -- with anything from the March 29th interview?

21 A. It -- I have no independent recollection. I
22 apologize.

23 Q. Is there anything on there that looks like your
24 handwriting or any sort of notes that you may have made?

25 A. Mickey had mention that. There's not my handwriting

1 on any of these documents. It looks like it could be
2 Mickey's handwriting. When we meet, Mickey was very good
3 about when I would give him evidence, he would go over it,
4 write it, and send notes back to me so we could go over it.

5 Q. Do you recall what form any statements that were made
6 by Mr. Bradley were given to you in?

7 A. We were given DVDs, CDs and DVDs with them recorded on
8 them, and so we were able to play them or view them that
9 way.

10 Q. If, if there was a statement made March 29th, do you
11 think that that's something that would've been important
12 for you to have had?

13 A. There is no doubt in my mind, yes, sir.

14 Q. Why is that? What would that have allowed you to do?

15 A. Well, like you mentioned when you asked the question
16 earlier, our entire case was a cross-examination case for
17 credibility. When you're going after several -- when
18 you're going after witnesses' inconsistent statements,
19 especially in this type of case -- the cross-examine of
20 these witnesses were very rigorous. They were trying to
21 wiggle out of things. They were trying to backdoor their
22 ways out, and so anything that I could tangibly have in
23 writing that I could attack these people with could
24 potentially have made a difference with the jury.

25 Q. All right. Going back to Mr. Morgan, do you recall

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1 receiving any statements from Mr. Morgan?

2 A. I think I do, Lance, in the course of discovery, yes,
3 sir.

4 Q. Do you recall what form those may have been in?

5 A. Fairly positive those also were in recorded form.

6 Q. All right. Do you recall ever listening or receiving
7 an audio of Mr. Morgan in which he makes reference to -- or
8 a statement to an investigator that, hey, I've got a note
9 that Mr. Bradley gave to me, here it is, and the
10 investigator reads that note. Do you recall ---

11 A. Yes, sir.

12 Q. --- anything like that?

13 A. Yes.

14 Q. Was that provided to you?

15 A. No, sir. I have never seen the note; I've never
16 looked at the note. To this day I've never seen that note.

17 Q. Do you know if that's something that you had knowledge
18 of at the time?

19 A. I can't remember, Lance.

20 Q. And let me ask you this.

21 A. Yes.

22 Q. If there was...

23 MR. BOOZER: Your Honor, I have a CD that's been
24 produced by the state in this case, and it is a copy of the
25 audio recording. I'd like to play just a portion of it

1 that is purported to be Mr. Morgan interviewing with
2 authorities reading a note that Mr. Bradley allegedly gave
3 to Mr. Morgan. I'd like to play that at this time.

4 MR. WASHINGTON: No objection.

5 THE COURT: Okay.

6 (WHEREUPON, DVD IS PLAYED FOR THE COURT AND LATER
7 MARKED AS COURT'S EXHIBIT 1. AUDIO IS NOT TRANSCRIBED.)

8 BY MR. BOOZER:

9 Q. Mr. Kent.

10 A. Yes, sir.

11 Q. That disc that I just played which was provided to me
12 by the state, that's purporting to be Mr. Morgan speaking
13 with investigators. Do you understand that?

14 A. Yes, sir.

15 Q. All right. Have you ever heard that before?

16 A. That's the first time I've ever heard it just now.

17 Q. Okay. You never, you never heard a letter being read
18 into an audio recording that was purportedly given by
19 Bryant Bradley to William Morgan?

20 A. No, sir.

21 Q. All right, and would you agree with me that if the
22 transcript reflects that there is no mention of you in
23 either your cross-examination of Mr. Bradley or Mr. Morgan
24 about this note, would you agree with me that that doesn't
25 exist in the transcript?

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1 A. I'd agree with you, yes, sir.

2 Q. Okay. Had you been provided with that recording or a
3 copy of this note that was supposedly given by Mr. Bradley
4 to Mr. Morgan, is that something you would have
5 cross-examined either or both of those witnesses on?

6 A. Lance, like I mentioned, we had this case about a year
7 and a half before the trial came up. I disagree with
8 Mickey a little bit because I checked my records. We
9 probably met close to twenty, twenty-five times. We went
10 over discovery every day. We went over DVDs every day. I
11 painstakingly prepare cross-examination. Not only would I
12 have gone over it, probably would have changed -- I mean,
13 even listening here right now, probably would have changed
14 the tenor on how I would have gone over -- through my
15 cross-examination. That's some important information.

16 Q. Well, let me ask you this. This case, this, this case
17 was a lot about credibility.

18 A. Correct.

19 Q. And you've got a bunch of fellows getting together,
20 getting together and saying that Mickey Johnson made us do
21 all this. Was that sort of the theory by the state?

22 A. Well, I, I can take it a little bit further than
23 there. Mickey kept suggesting that also that these
24 individuals had gotten together and gotten their stories
25 together, and I remember Mickey and I -- and we never had

1 bad conversations, but I kept making the comment, so it's
2 interesting that I'm hearing this now. Mickey kept saying
3 that these guys are getting together; I know they're
4 getting their testimony together. So, had I had that
5 information, it would have given more credence to what
6 Mickey was saying for his defense.

7 Q. Do you think if you had that in your possession at the
8 time of the trial that you would've been able to examine
9 either Mr. Bradley or Mr. Morgan and sort of paint the
10 picture, well, you got this letter two years ago where he's
11 laying out step-by-step basically what he wants you to say,
12 so go on and say it. It -- would that be fair to say?

13 A. It would have gone along with the cross-examination.
14 I mean, it was a rigorous cross-examination. Don't get me
15 wrong, but it would have helped a little bit more, yes,
16 sir.

17 Q. And do you think that could have helped paint in the
18 jury's eyes that these are not credible guys and they've
19 all kind of -- they're in cahoots and collusion to come up
20 with a story. Let's keep this story straight. Here's the
21 note, Mr. Morgan. Read this note and this is what you need
22 to say.

23 A. Yes.

24 Q. Okay. Now, going back to some of the folks that
25 either you or your private -- did you have a private

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1 investigator?

2 A. Yes. We employed -- I have one full time now, but at
3 the time we employed one just on this case.

4 Q. All right. Do you recall either you or your
5 investigator speaking with Willie Johnson?

6 A. Well, Willie's Mickey's father, so we spoke quite
7 often on the case. Willie was a very concerned father, so
8 I would say the two of them -- we spoke more than Mickey
9 did, and I know my investigator had met with him on a
10 separate occasion to talk about utilizing him.

11 Q. Do you recall having any sort of discussion with
12 Mickey about calling his father as a witness at trial?

13 A. Lance, I can't sit here and tell you that.

14 Q. Okay.

15 A. Independently. Yes, I mean, we talked about calling a
16 bunch of witnesses. I can't say that I personally remember
17 him saying please call my dad as a witness, no, sir.

18 Q. And if, if it's ---

19 MR. BOOZER: And, and, Your Honor, just for Your
20 Honor's notes, I'm looking at page 35 of the transcript.

21 BY MR. BOOZER:

22 Q. Mr. Kent, would you agree with me that if the court
23 states on page 35 -- this is where you're qualifying the
24 jury:

25 Anybody else? All right, witnesses for the

1 defense will be a Kenteshia Gilliard, Willie
2 Johnson, Michael Rogers, David Martin, June
3 James, Garnett Davis, and Calvin Hastie.

4 Would you agree Willie Johnson is identified as ---

5 A. Oh, there's no doubt ---

6 Q. --- a witness?

7 A. --- he was on my witness list. No doubt about that,
8 Lance.

9 Q. And, and today looking back, do you know what it was
10 that Mr. Johnson would've testified to?

11 A. I can't tell you specifically, no, sir.

12 Q. And y'all ended up actually not calling any witnesses
13 at trial. Is that ---

14 A. We didn't call a single witness, no, sir.

15 Q. All right. Do you recall ever telling Mickey that,
16 look, you're not testifying and because you're not
17 testifying, we can't call any witnesses?

18 A. I'm, I'm going to have to disagree with that
19 assessment, Lance, candidly. I, I don't do that. What I
20 do is -- and Mickey -- and I remember, I remember us
21 meeting on more than one occasion to get ready for his
22 potential testimony because I have every client prepared to
23 testify.

24 Now, the conversation that I would have with him, that
25 I have had with most clients is unless it's imperative and

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1 I think it's going to shake the trial if my client does not
2 testify, I generally enjoy not putting on any evidence. I
3 didn't say you can't. That's just usually my policy is
4 that if my client is not going to testify, I enjoy not
5 putting on evidence. And he is right, so we -- I mean, he
6 remembers the conversation that I'd say that sometimes I
7 found in my practice that jury -- and when I've interviewed
8 juries in post-trial interviews, they'd made the comments.
9 Even though the judge has instructed them -- and I told
10 this to Mickey -- that sometimes they see you putting on
11 the case, and they wonder why your client's not testifying.

12 Q. And in, in looking at the transcript, and I'm
13 referring specifically to page 556 at the bottom of this,
14 and this is when the court says:

15 All right. Thank you very much. Do you intend
16 to call any witnesses, Mr. Kent?

17 And you indicate:

18 Based upon the fact that he's not testifying, we
19 will not be putting up a case at all.

20 If that's in the transcript, you certainly wouldn't
21 dispute ---

22 A. I'm not going to disagree with that at all.

23 Q. If, if Mr. Johnson at the time of the trial, if Mr.
24 Johnson would have been able to testify that William
25 Morgan, one of the state's witnesses, had had a

1 conversation with them, okay, and told him that state's
2 other witness, Mr. Bryant Bradley, and the other fellow,
3 Mr. Rasheed Brandon, they were all going to just put the
4 blame for all this on Mickey Johnson and that Mr. Bradley
5 had communicated to Mr. Morgan you need to do this, too, if
6 Mr. Johnson could have testified to that, do you think that
7 that would have been important information to present at
8 trial?

9 A. Important information, yes, and that's always --
10 Lance, when you talk about important information, I think
11 it's important to know how the information comes across.
12 So, when Mickey and I talked about him testifying -- I'm
13 very candid when I meet with clients, and I told him his
14 demeanor -- Mickey had trouble getting very angry when we
15 would meet. He'd get very emotional, and based upon my
16 experience as a trial lawyer, I told him that if he
17 couldn't control his emotions when he testified, that the
18 message, that it was a possibility that it could be
19 misconstrued. But there is no doubt in my mind Mickey
20 wanted to testify. There's no doubt in my mind he wanted
21 to take the stand, and there is no doubt in my mind that I
22 told him I thought it was a bad idea.

23 Q. And he was pretty emotional about the case because he
24 was pretty adamant that he had nothing to do with it.

25 A. He was very emotional. From day one he was the most

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1 -- one of the most emotional, clear clients have ever
2 testified that he had nothing to do with this.

3 Q. Just going back and touching on Mr. Johnson, do you
4 think that that could have assisted in the jury weighing in
5 on the credibility of those witnesses, that if Mr. Johnson
6 -- and when I say Mr. Johnson, Mr. Willie Johnson -- had he
7 testified to that, that's what he would have said?

8 A. Yes. If that's what Willie would have said, and I
9 have no reason to doubt otherwise. He's always been a very
10 honest individual. If that's what he would have said,
11 testified to, yes, it could have assisted.

12 Q. Okay, and you think that that's -- if that's what he
13 would have said, you think that's something you should have
14 presented that day at trial?

15 A. Looking back at something, especially now that there's
16 been a conviction, looking back that was definitely
17 something we could have presented during trial.

18 Q. All right, and I'm not sure if you heard this
19 testimony or not or the allegation. Mickey alleges that
20 you, you conceded his guilt in both the opening and the
21 closing to the jury, and, and specifically ---

22 A. I heard both. I heard both of those, yes, sir.

23 Q. You heard that? Okay, and specifically we're looking
24 at page 77 of the transcript. Did you have any discussion
25 with Mickey prior to the trial about, hey, we're going to

1 proceed X, Y, and Z and try to get -- you know, make this
2 other stuff go away? Did y'all have that conversation?

3 A. Yes, we did.

4 Q. Did, did he indicate to you anything about that, that
5 he disagreed with or he was going along with it, or give
6 you grief over it?

7 A. Mickey's not the type of person who gives you grief
8 over anything. I think he was very scared. He understood
9 that the strategy decisions were going to be my decisions.
10 I explained those to him. I explained to him what the
11 strategy decisions were. In that situation, it was a
12 strategy that we made. I told him that I thought it would
13 be in his best interest. At no point in time did he ever
14 say dear god, don't that. What are you thinking? But this
15 is also you're asking somebody to understand the strategy
16 of a seasoned attorney. I can't say that he understood
17 completely, but he was told, yes, sir.

18 Q. What would be a strategy in dealing with that?

19 A. Looking at what the charges were, looking at the
20 facts, looking at what people were going to testify to,
21 with the amount of charges that he had, Lance, and my
22 thought process, sometimes with juries it's easier not to
23 sit up there and pretend that you're a saint, that you're
24 the most innocent person in the world, especially when you
25 had all of the other witnesses who are going to come up and

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1 talk about their criminal records and all of these other
2 situations.

3 Mickey had already spent enough time in jail that if
4 the jury did convict him of those two charges, it would
5 have been a time-served sentence. I thought the evidence
6 was going to come out, pretty candidly, that he did have a
7 gun that evening. And Mickey is notoriously honest, and he
8 was adamant: yes, I did, I did have a gun. That was stuff
9 I did have, like, before we talked about it. And so based
10 upon the fact that I wanted to build some credibility with
11 the jury, in light of the fact of the charges that they had
12 and what was going to come out during trial, I thought it
13 was a good idea.

14 Q. Do you think -- and I, I appreciate that. Do you
15 think looking back, though, that you've got -- you've
16 indicated a trial strategy with regard to the state's
17 witnesses was credibility, credibility, keep out the gang
18 stuff, but when you have state's witnesses -- because they
19 were going to say that Mickey did that. That he came out
20 with the gun and fired it at this other group of guys.
21 They said that, right?

22 A. Uh-huh.

23 Q. Do you think that by you confirming, yeah, he did do
24 that, that that gives a little bit of credibility to maybe
25 Mr. Bradley or Mr. Morgan, their stories, they're not such

1 bad -- they're not lying?

2 A. Well, and when I -- when you asked me initially about
3 the background of the case, what it was was when Mickey
4 allegedly had the gun out there. Had nothing to do with
5 the shooting or anything of that nature.

6 There was two parts to the case. The first part was,
7 as I told you, that there was an altercation that happened
8 with the two rival gangs. Mickey was trying to bring some
9 stuff up, fired the gun in the air, had the gun, told this
10 other gang to go away.

11 Now, after the judge had already said that the gang
12 information was going to come in, I didn't want to get into
13 a point as a trial lawyer where I'm trying six different
14 trials at the same time. Also, because I thought sometimes
15 you can sit around and say everybody's lying so many times,
16 the jury stops believing you. But to go back to what
17 you're saying, yeah, Monday morning quarterback, I can
18 completely look back and say maybe that was a bad decision.

19 Q. Doesn't that kind of go to almost roots of prior bad
20 act and jury can sit there and say, well, if he was doing
21 that, surely he may have ordered this act?

22 A. I can completely see that. Yes, sir, Lance.

23 Q. Okay. You've also -- did you hear Mickey's testimony
24 with regard to his allegation that you failed to object to
25 the state's improper closing, their vouching, what he

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1 considered vouching for witness credibility?

2 A. Yes, and I think he's correct on that.

3 MR. BOOZER: Okay, and, and just briefly just for the
4 record, Your Honor, I'm looking back at page 578.

5 THE COURT: Okay.

6 BY MR. BOOZER:

7 Q. And, Mr. Kent, do you recall that the state did, in
8 fact, say in part on 579:

9 Does that change the fact that it's not the
10 truth? No, it's the truth.

11 In talking about these fellows' proffers and their
12 statements?

13 A. Yeah.

14 Q. Do you think that's objectionable?

15 A. Yes, and ---

16 Q. Do you think that that is vouching for witness
17 credibility?

18 A. I can completely see how that could be vouching for
19 witness credibility, yes, sir.

20 Q. Did you have any reason why you may not have objected
21 during that time?

22 A. Lance, I hate objecting during closing agreements. I
23 really do. Number two, I hate bringing attention back to
24 something of that nature if it's not necessary. Looking
25 back, could it have been an objection, especially now that

1 you see a conviction? Definitely you could, but that's
2 just the way I am when I try cases.

3 Q. Do you think at that point that may be something that
4 kind of rises to the level of maybe mistrial area where
5 really this is all about the credibility of witnesses?

6 A. You'd have to ask the guy in the black robe.

7 Q. Okay. Fair enough. Now, you've also heard how --
8 well, did you hear Mickey's testimony that he felt like you
9 should have objected to the malice charge with regarding
10 malice may be inferred from the use of a deadly weapon?

11 A. I think that law has recently changed, if I'm not
12 mistaken. So, it's kind of weird to say that I should have
13 objected knowing that a law changed recently when it wasn't
14 the law at that point in time.

15 Q. And, and since you say that, are you, are you familiar
16 with -- there is a case, there is a case that is now out
17 and, and it's actually a 2009 case. So, it would've been a
18 predecessor to, to Mickey's trial. It's *Belcher vs. State*.
19 Are you familiar a little bit with that case?

20 A. I am now. Yes, sir.

21 Q. And, and just kind of -- you can agree with me or not
22 agree with me. Do you agree with me that in that case
23 where the jury was charged that malice may be inferred from
24 the use of a deadly weapon, that in that case, in the
25 *Belcher* case, the court instructed instructions to not have

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1 that any longer where there is, I guess, an excuse or
2 mitigation or defense to the homicide?

3 A. Correct.

4 Q. Okay, and do you believe that's probably something
5 that you should have objected to at the time?

6 A. Potentially. Yes, sir.

7 Q. Now, also do you recall Mr. Johnson's testimony and
8 his allegation that you failed to object to a hypothetical
9 example that was given during the jury charge?

10 A. I, I, I heard his testimony, yes, sir. I didn't quite
11 understand it, but I heard what he said from the stand,
12 yes, sir.

13 MR. BOOZER: Beg the court's indulgence, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. BOOZER:

16 Q. Okay, I'm looking specifically page 607 of the
17 transcript where the court says:

18 Expressed malice is shown when a person speaks
19 words which express hatred or ill will for
20 another, or when a person prepared beforehand to
21 do the act which was later accomplished. For
22 example, lying in wait for a person or any other
23 acts of preparation going to show that the deed
24 was within a principal's mind would be expressed
25 malice.

1 Would you agree with me that you made no objection to
2 that?

3 A. No, I did not.

4 Q. Okay. Do you recall a witness by the name of Dontae
5 Crayton?

6 A. Yes, I do.

7 Q. Based on your independent recollection, do you recall
8 sort of what the purpose of Mr. Crayton was or what the
9 state was trying to get out of Mr. Crayton?

10 A. He went along with that gang-type testimony. Also
11 just basically to talk about gangs and their hierarchy and
12 their relationships.

13 Q. Was, was it really -- he wasn't an eyewitness or a
14 fact witness?

15 A. He had nothing to do personally with the Mickey
16 Johnson case, no, sir.

17 Q. Did you make any specific objection or motion to
18 exclude his testimony? Do you recall?

19 A. When we made our pretrial gang objection and making
20 them throughout the course of the trial, Judge Seals
21 basically told me that all my objections dealing with gang
22 witnesses would be protected throughout the course of
23 trial, and there was no need to continue to make them
24 contemporaneously. So, it was my impression that that
25 would be covered by that pretrial objection.

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1 Q. Okay. So, your, your feeling is that based on what
2 you made pretrial, that that was sort of throughout the
3 whole case and would have corresponded with Mr. Crayton?

4 A. Yes, sir.

5 Q. Okay, but you do agree that if, if that's not how it
6 was considered, that you should have made a separate
7 objection to Mr. Crayton's testimony?

8 A. Completely. Yes, sir.

9 Q. Do you recall any issues or discussions with Mickey or
10 the issue coming up at trial about a photograph lineup or
11 what he called, I guess, show up with Ms. Allen?

12 A. Yes, and I think we did make pretrial motions as to
13 that, if I'm not mistaken.

14 Q. Okay, and that's something you objected to at trial?

15 A. That was, that was objected to during the course of
16 trial, yes, sir.

17 Q. All right, did you hear Mr. Johnson's -- basically an
18 oral amendment today about some issues he had with your
19 closing, the ---

20 A. From my closing argument?

21 Q. --- story from your childhood?

22 A. Yes, sir.

23 Q. Okay. Do you understand what Mickey's position is
24 with that?

25 A. Do I understand the position, the point he was making?

1 Yes, sir.

2 Q. Correct.

3 A. Yes, sir, I do.

4 Q. Do you see -- do you think that maybe you should have
5 -- do you think -- did you have any discussion with Mickey
6 about sort of that story and what it was supposed to convey
7 to a jury?

8 A. No, I did not.

9 Q. Okay.

10 A. Lance, the day I sit down with a client and tell them
11 every word that I'm going to say in my closing argument
12 before I give a closing argument will be the first. I've
13 been trying cases a long time. It's a closing argument
14 story that I've given for a long time.

15 Q. I've read it before.

16 A. Yes. It's been in state papers. It's been published.
17 I've given it quite often, and I thought it was effective
18 in this case. Well, not as effective as it should have
19 been unfortunately.

20 Q. Also, did you hear his allegation that he orally
21 amended today about some issues with, I guess, either DNA
22 or fingerprint evidence that may have been on his ex-wife
23 or girlfriend's vehicle? Do you recall any of that issue?

24 A. Yes. I do, I, I remember what he asked -- or what he
25 was talking about when you were questioning him, yes.

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1 Q. And what do you recall about that?

2 A. Candidly that it was a non-issue. It, it wasn't --
3 there wasn't a question of whether or not to me, as trial
4 strategy, whether or not he was in the vehicle or not at
5 some point in time. It was his girlfriend's car; he had
6 been in the car at a point in time. I don't think it was
7 necessary to try to, you know, he was never in that
8 vehicle. I don't think there was ever a question. So, it
9 was one of those that -- I'm not a big fan of when I try
10 cases to attack a bunch of little things. I like to have a
11 central theory to a case and drive a truck through it.

12 Q. Okay.

13 A. And that was our theory during the case.

14 MR. BOOZER: Beg the court's indulgence.

15 THE COURT: Yes, sir.

16 (A PAUSE.)

17 BY MR. BOOZER:

18 Q. And you -- excuse me, Mr. Kent.

19 A. Yes, sir.

20 Q. You don't have any knowledge of a fellow named
21 Trevaughn Jackson or any statements that he may make?

22 A. No, sir.

23 Q. Okay, and, and that was never anything that you knew
24 to be in existence at the time of the trial?

25 A. No, sir.

1 MR. BOOZER: Thank you, Mr. Kent. That's all the
2 questions I have right now.

3 THE COURT: Cross?

4 MR. WASHINGTON: Thank you, Judge.

5 CROSS-EXAMINATION BY MR. WASHINGTON:

6 Q. I'm going to call you Shaun if you don't mind.

7 A. That's no problem, no problem. I understand.

8 Q. Can you explain to us? When you get a case and you
9 figure out who the client is, can you explain the process
10 with meeting with them when they first, you know, have --
11 are charged with a crime and, you know, up to the point
12 where you realize they're going to have a trial and all
13 that?

14 A. My personal -- when, when I meet with a client, when I
15 initially get a phone call from their family, LaRone, or
16 somebody says they want me be to retained, one of the first
17 things that I'll do is schedule a meeting. Whether the
18 meeting happens at the jail if they're incarcerated or in
19 my office, we'll meet with them. I like to meet with them
20 one on one. The first thing I do is I introduce myself,
21 tell them who I am, tell them my credentials, tell them how
22 long I've been practicing law. After that, then I talk to
23 the client about themselves, who they are, a little bit of
24 background, who they are. Then I ask them to tell me their
25 charges, what they're charged with. Usually they tell me

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1 what they're charged with before they get there. My
2 secretary will pull the law, so we'll go through the law.
3 We'll explain to them what the law is. We'll explain to
4 them what their charges are, explain to them how much time
5 they're potentially looking at. I have the client tell me
6 their version of the story. After that point in time,
7 we've got a fee agreement. If they choose to retain me, we
8 set a legal fee and then we start getting ready.

9 Q. How many of these meetings do you remember having with
10 Mr. Johnson?

11 A. We only had that one initial meeting.

12 Q. Right.

13 A. With him and his family and I -- before these charges,
14 I had known Mickey and his family for in excess of a
15 decade. That -- I had met with them prior to that occasion
16 several times, but as far as these charges, we met them on
17 a separate time, just only one time for the initial
18 meeting, as you just mentioned.

19 Q. Right. Okay. So, the other meetings were at the
20 jail?

21 A. Yes. Every time that we would meet with Mickey on
22 these cases, this case, would be at the jail.

23 Q. Okay. So, how many times, including the initial
24 meeting and when he was the jail, how many, how many times
25 would you say you met with him?

1 A. Well, what happened is when Mickey eventually hired --
2 he hired my original law firm. I had separated law firms.
3 He had hired my law firm, which was Coffey, Chandler, and
4 Kent. I had left and gone out on my own, and we had sent
5 out basically a letter to all of the clients inquiring if
6 they wanted us to continue. So, when I, when I was still
7 with my old law firm, probably about two or three times.
8 It wasn't a lot of times that I had met with Mickey. And
9 then I went out on my own and his family, Mr. Johnson,
10 Willie, decided to keep their trust and they wanted me to
11 continue to represent him. And I know I met with just
12 alone on the week during trial, I came up on the weekend
13 because I live down in Charleston. He was incarcerated in
14 Clarendon County. The week during trial, I met with him
15 probably seven to eight times. Before that, probably ten
16 times. That's why I say in excess of twenty to twenty-five
17 times from the time that he was -- of the initial meeting
18 until the time that there was the verdict, probably twenty
19 to twenty-five times.

20 Q. And obviously during those meetings, you would discuss
21 all the rights he had as a criminal defendant with him?

22 A. Well, yes, and one of the things that was interesting
23 about Mickey is Mickey was very adamant from the beginning
24 that this was going to be a trial. So, he's a little
25 different than most.

1 A lot of times, LaRone, if you're just meeting with
2 someone and don't know where the case is going, the
3 meetings are a little bit different. That you're talking
4 about plea agreements, you're going through discovery just
5 to get ready for a plea to try to get them the best deal
6 humanly possible.

7 Mickey was different in that he wanted a trial from
8 day one. So, from day one we were in trial prep mode, and
9 so every time we were going, we were going through
10 discovery, if new discovery came in, what did he need, what
11 did he want. Mickey was very, very -- I mean, incredibly
12 smart when it comes to evidence. So, he would look through
13 all the file. He would know things. He would have notes
14 on pieces of paper. Very smart client. So, there were
15 different meetings than normal.

16 Q. Okay. So, from the very beginning, y'all are almost
17 looking at this as if it's a trial. So, obviously that
18 includes the right to testify, right to call witnesses?

19 A. Yes, sir.

20 Q. And what do you remember telling him about -- and you
21 can start with whether or not he's going to testify and
22 then go to whether or not he's going to put on a case by
23 calling other people.

24 A. Well, we never talked about the testifying early. We
25 didn't talk about his right to testify until about a week,

1 week and a half before trial because that's when we started
2 doing our actual trial prep with Mickey, meaning that when
3 we would sit down, we would practice cross-examination with
4 Mickey. I would go over sample questions with him to make
5 sure he understood because I always prepare myself as if
6 the witness is going to testify -- I'm sorry, the client is
7 going to testify just in case. And so we did trial prep
8 with Mickey over a full weekend. We did it during a bevy
9 of a week, going back and forth with him to see if he was
10 ready and if he could actually handle the rigors of
11 cross-examination.

12 Before that would be more time just going over the
13 discovery. He would call and have questions. Like I said,
14 he was very involved, and so it was always really going
15 through the evidence, what individuals would say, who
16 Mickey thought I needed to talk to, what did I think we
17 needed to do.

18 Q. Did he ever give you a list of people who he thought
19 he might be able to call ---

20 A. Yes.

21 Q. --- at trial?

22 A. Yes, he definitely did.

23 Q. And what did you tell him about those people?

24 A. Well, we didn't decide we weren't going to call a case
25 until the trial, until during the trial. But those were

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1 individuals, he would give me names and we would interview
2 them. I'd have my investigator meet with them, and we'd
3 decide if we wanted to utilize them or not.

4 We -- I mean, realistically what would happen is we
5 would interview them and keep them in our interview sheets
6 so we could go back and look at what they would testify and
7 if it would be helpful to his case: would they add, would
8 they subtract, would they do something to help his case
9 out.

10 Q. Okay, and tell us as many of those individuals as you
11 remember and what you thought about what their testimony
12 would have been.

13 A. It's hard to remember everybody individually because
14 we met with so many. I do remember meeting with his
15 father. His father had some witnesses he wanted us to
16 meet. There were just a bunch of individuals he wanted to
17 meet.

18 There was nobody, LaRone, who jumped out at me who
19 needed to testify. I guess the best way to say it, there
20 were a lot of tangential witnesses who could have been
21 somewhat helpful, but none of them would have been more
22 helpful than Mickey had Mickey testified and had I thought
23 he would have been able to.

24 Q. Do you remember what his father said? Was there an
25 issue where he said, hey, I've been in jail with one of

1 the, the state's main witnesses and he told me this?

2 A. I, I can't remember, LaRone.

3 Q. Okay.

4 A. I don't, I don't have independent knowledge of that,
5 no, sir.

6 Q. Okay, and let's talk about getting all the evidence
7 in. I think you mentioned it earlier, but what's, what's
8 your standard practice for making sure you've got all the
9 evidence from the state? Do you file a motion of discovery
10 first?

11 A. We file a discovery motion and the easiest way,
12 believe it or not, is we file our discovery motion. What
13 we do with the client is go over the evidence and make sure
14 there's no holes in it because, you know, it should read
15 like a story. And so when we go through the discovery with
16 the client and make sure everything reads like a story --
17 you also unfortunately have to trust your relationship that
18 you have with certain prosecutors and certain solicitors.

19 You are a prosecutor in a town that I worked with, and
20 you had an open-file policy, and you were willing to just
21 let me go through everything. The prosecutors in this case
22 -- Curtis Pauling that I had a prior relationship with, he
23 generally had always proved himself to be someone who would
24 provide all discovery to me. And since there were no holes
25 inside of the case that -- anything that I thought was

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1 missing, it appeared as though I had everything I needed.

2 Q. Right. Okay. So, you did file a motion. You did go
3 and confirm or you thought you confirmed with Curtis
4 whether or not you had everything?

5 A. Yes, sir, and Curtis was just one of the prosecutors
6 on the case, yes, sir.

7 Q. And I think -- let, let's talk about this affidavit
8 real quick because I know it kind of addresses the missing
9 note and interviews and all of that. So, this will be
10 Applicant's 3 and 4. Is it -- so, you remember having
11 those?

12 A. Yeah. Yes, sir.

13 Q. Okay, and you would agree with me that just because
14 somebody fills out one doesn't mean that they have to talk
15 at the end?

16 A. That's correct. Yes. You can just fill out those
17 things and no statement can be made. That is correct, yes.

18 Q. Right. So at the end of it, they say I'm not, I'm not
19 going to speak, that, that's something that happens?

20 A. That is something that happens, yes.

21 Q. All right. Let me -- I'm going to show you page 19 in
22 this transcript here.

23 A. Yes, sir.

24 Q. I know you had made a number of motions beforehand,
25 and there were a number of pretrial things that were

1 discussed. And it looks like here on page 19 you go in to
2 say:

3 I think, just for the record, the state has
4 turned over all the witness statements that they
5 have in their possession. I'm pretty sure I have
6 them all, but just to cover myself on the record,
7 they have turned over all the statements from
8 anyone who will be testifying for them for this
9 trial they have in their possession. I'm sure
10 they have, but still to cover myself on the
11 record.

12 A. And, LaRone -- I'm sorry.

13 Q. Go ahead. No, no, go ahead.

14 A. That's actually something I do just before every
15 trial, that I put down that everything that they are
16 supposed to have given me, they have given me. That way if
17 later they come across and say there's, like we just heard,
18 a CD that wasn't given, that I can say look. At this point
19 in time they've given me everything that they've said
20 they've given me, and if there's something missing, there's
21 some reason they didn't give it to me. But I do that with
22 every trial just to cover myself to say I think I have
23 everything I'm supposed to have, but if there's something
24 they haven't given me, they should give it to me now.

25 Q. Right. Right. Right. Okay, but, but the note, the

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1 recording, the note, you didn't get either of those. And
2 it sounds like, you know, everybody is in agreement on the
3 note, but the recording you're saying you didn't get?

4 A. I didn't hear that and, and, and like I said, my
5 memory is not as good as anybody's, but I can promise you
6 who will know if he ever heard it is Mickey Johnson because
7 every single time I got a bit of evidence, I would go to
8 the jail and go over it with him with our recording. So,
9 he, he know every -- he knows this case better than I could
10 ever wish to know this case.

11 Q. Right. So, this was -- if -- and correct me if I'm
12 wrong. This was a note that Bryant Bradley had given to
13 William Morgan in the jail?

14 A. I think so.

15 Q. Okay.

16 A. Yes, sir.

17 Q. So ---

18 A. Is the way it was just explained to me, yes, sir.

19 Q. All right, and Bryant Bradley testified at the trial?

20 A. Yes, he did. Yes, sir.

21 Q. And this was a situation where you cross-examined
22 Bryant Bradley?

23 A. Very effectively, yes, sir.

24 Q. You did an effective job. You cross-examined him very
25 well, and the main thing via his credibility?

1 A. We still were able to cross-examine him as to his
2 credibility, yes, sir.

3 Q. Right. Right. So, your, your whole thing was, hey,
4 you're charged with something. You're here just to get a
5 deal, and you're trying to blame it on my client, bring the
6 state somebody else so that you can make it better for
7 yourself?

8 A. That is correct. Yes, sir.

9 Q. It wasn't like you were saying, oh, well, you know,
10 Mr. Bradley's a good guy, so I'll let that go. That, that
11 was almost the majority of the defense.

12 A. Yes, sir, it was.

13 Q. Okay. So, Bryant Bradley, the guy who had come in and
14 said I know of the hit, you focused a lot of your case,
15 your cross-examination on whether or not he was a credible
16 witness?

17 A. That's correct. It was I want to say an hour,
18 two-hour cross-exam. It was a longer cross-examine than I
19 usually do, yes, sir.

20 Q. Right. Right. Okay, and I'm kind of skipping around
21 a little bit, but I know we had talked about -- or I guess
22 you talked about it on direct, the pretrial motions and
23 objections. So, you made the gang one and what were your
24 other ones?

25 A. I, I can't tell you everything that we made. I know

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1 the biggest one that we made, of course, was the -- our
2 gang.

3 Q. Right.

4 A. To try it, and then we put all of our -- a lot into
5 keeping the gang information out. And then I'm sure the
6 standard motions if there were statements, if there were
7 lineups, if there were any of that information.

8 Q. Okay. So as far as the gang motion, you made it
9 pretrial and what was your understanding of whether or not
10 you had to make that objection throughout the trial?

11 A. Well, I made it pretrial. The judge ruled against us
12 and made it again at least once or twice, and then at some
13 point in time Judge Seals called us up, and I asked is this
14 going to be necessary? Do I need to continue to make this?
15 And I said I have no problem making this contemporary --
16 contemporaneously every time, and Judge Seals made it clear
17 that you're protected for the record. You don't have to
18 continuously make that objection so that it wasn't annoying
19 the jury every time to see me keep popping up and objecting
20 over time. I didn't want to look like I was hiding
21 something.

22 Q. Right. Now, that, that, that conference at the bench,
23 that wouldn't be necessarily in the record.

24 A. It may be. Usually it's -- I don't know. I mean, I
25 haven't read it in full detail, but sometimes they're

1 recorded.

2 Q. Okay.

3 A. But...

4 Q. Okay, but that is what he said to you?

5 A. Yes, sir.

6 Q. All right, and I think you have mentioned that there
7 was another pretrial objection to -- it was strange. It
8 was either a photo or a photo lineup. What do you remember
9 about that?

10 A. Independent recoll -- I just remember there was a
11 question about a show-up lineup and whether or not that
12 would be objectionable or introduceable.

13 Q. Right.

14 A. Introduceable? If it was able to be introduced.
15 Sorry.

16 Q. But you did object to it?

17 A. Yes.

18 Q. Saying, hey, this is a show up. This isn't a lineup.

19 A. That is correct.

20 Q. Okay. So, do you remember that the testimony was --
21 you know, the individual was simply asked, you know, that
22 -- I guess it was a photo of a number of individuals in a
23 gang Facebook picture. Is that right?

24 A. Yeah, and that -- and it was a couple of things that
25 we wanted it out for. It wasn't just that it was a show-up

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1 identification. It was a suggestion by the State of South
2 Carolina that these people were in a gang. It was one
3 presentation of a picture of seven -- a bunch of people.
4 My problem was I didn't think the state was using it to
5 identify anybody. They were using it to show the jury,
6 look, all of these people are in a gang and Mickey Johnson
7 happened to be in the picture, and one of these people is
8 the leader from the gang. And so my problem wasn't that it
9 was just a show up, but it was an objection that this
10 picture isn't just being used as a show up. You're just
11 trying to again infuse gang activity into this trial.

12 Q. Now, y'all, y'all moved into, once you actually got
13 into the trial -- so, the first thing obviously is the
14 opening statements. One of the first things you do is you
15 say, hey, my client's guilty of pointing and presenting a
16 firearm and unlawful carrying of a pistol. Is that right?

17 A. Yes, sir, I did.

18 Q. And I think you told Mr. Boozer that I think in
19 hindsight that probably was a bad idea but, I mean,
20 essentially you only say that because he got convicted?

21 A. Yeah. I'm not -- I, I, I'm not saying it was a bad
22 idea, but I can understand Mr. Boozer's question was could
23 I could see how it could be a bad idea, and I could see
24 that. Do I think it was a bad idea sitting up here still?
25 No. It was a strategy that we went with.

1 Q. Right. So, it was strategy to give your client some
2 credibility. Hey, my guy's up here admitting to something.
3 If he did this other thing, he would admit that, too.

4 A. Yeah.

5 Q. Okay.

6 A. It was more -- and, I mean, and Mickey would -- told
7 me, he would say, Shaun, I did that and it was -- that was
8 completely unrelated to the murder, unrelated to that at
9 all. And I just didn't want to be in a position where I
10 was trying two trials and look like I'm trying to say
11 Mickey has never done anything wrong.

12 Q. Right. Right. Okay. So, of course y'all start
13 giving testimony, and I think you had said on direct that
14 there -- and Mr. Johnson, I believe, said the same thing,
15 too, that there was only one person, and that was Bryant
16 Bradley, who came in and said that Mr. Johnson ordered the
17 hit to kill this person, although it turned out to be not
18 the person ---

19 A. Fairly positive, yes, sir.

20 Q. Okay. I'd like to show you very quickly -- hold on
21 one second.

22 MR. WASHINGTON: Beg the court's indulgence.

23 (A PAUSE.)

24 BY MR. WASHINGTON:

25 Q. This is going to be page 341, and I think it is the

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1 testimony of John Wesley Stance. Before I get into that --
2 so, you guys, everybody agrees that Bryant Bradley came in
3 and he said that Mickey Johnson ordered a hit for someone
4 to be murdered?

5 A. Fairly positive. Yes, sir.

6 Q. Okay. So, I'm going to point you to which I guess is
7 line 5 of page 341, and you probably just can go through
8 line 10. Read that for me and tell me what you think.

9 A. Okay, I'm reading from page 341, the direct
10 examination of Mr. Goings. You want me to start at line 5.
11 Is that correct?

12 Q. Yeah, 5, going to ---

13 A. And going to line 10?

14 Q. That's correct.

15 A. Answer:

16 When we got there, when we got there, I stayed in
17 the backseat of the car, you know. Bunny hops
18 out, you know. Garney hops out. Ready, Ready
19 hops out. Bless hops out and I hear, you know,
20 the car doors are open. I hear Bless tell Ready
21 whoever come to the door, shoot whoever come to
22 the door.

23 And that's where you have the bracket. That's what I
24 heard.

25 Q. Right. Okay. So, just so we're clear, Bless is

1 Mickey Johnson?

2 A. That is correct. That was ---

3 Q. That was ---

4 A. --- Mickey Johnson.

5 Q. --- his nickname. I don't know where he got it from,
6 whether it was on the street or the gang or whatever, but
7 that, that is referring to Mickey Johnson?

8 A. Yes.

9 Q. Okay.

10 A. Correct.

11 Q. So, everybody's in agreement that Bryant Bradley comes
12 in and testifies as to Mickey Johnson ordering the hit?

13 A. Correct.

14 Q. And that seems to say that Mr. Stance also came and
15 said the same thing, that Mickey Johnson ordered a hit to
16 have this man murdered?

17 A. That he had overheard that, yes, sir.

18 Q. Okay. All right.

19 A. I'm sorry about that. You're correct.

20 Q. Just making sure. So, the trial continues to go on,
21 and at this point you guys have stipulated that a murder
22 has occurred, just so we're clear.

23 A. Correct.

24 Q. That's right?

25 A. Yes, sir.

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1 Q. So, Mr. Johnson's part was he's the one who ordered
2 the hit, so that makes him -- that's where he gets the
3 accessory before to murder?

4 A. That is correct.

5 Q. So, you're not fighting, nobody's fighting that a
6 murdered happened. Somebody went in with a gun and shot
7 somebody in the head or lung or whatever it was, and he
8 died a result of that gunshot wound?

9 A. That is correct. That was not a fight.

10 Q. All right. I know you touched on this. What was your
11 main thing with cross-examining the codefendants, the other
12 guys who were charged with, with this incident?

13 A. It was all credibility. Cross-examining all the
14 codefendants was about credibility: motivation for lying,
15 what type of deals they were getting from the State of
16 South Carolina, why were they testifying. And if I
17 remember, there was some stuff talking about, you know, if
18 they truly were in these gangs and they were doing all of
19 these things, shouldn't they have been more scared of
20 Mickey Johnson.

21 Q. Right.

22 A. If they were testifying. It was, it was that type of
23 situation, just to show that their testimony was
24 fundamentally inconsistent with the testimony that they had
25 given that they were so afraid of Mickey Johnson, but they

1 would testify against Mickey Johnson.

2 Q. Right. Right. Okay, so state finishes their case.

3 They close. They were getting to the point where y'all are
4 deciding whether or not he's going to testify or he's going
5 to put on a case. That's right?

6 A. Yes.

7 Q. Okay. So, it's true that if Mickey Johnson had come
8 to you and said hey, man, I'm adamant about testifying, I
9 absolutely want to tell my side, I want to tell them that I
10 didn't do it, I'm innocent, you would have allowed him to
11 testify?

12 A. If a client is adamant and tells you they want to
13 testify, I give them every right and opportunity to
14 testify, yes, sir.

15 Q. And that goes for any other witnesses that he would
16 have wanted to call as well?

17 A. If he is adamant and says this must be done, the
18 client is in charge. I do cover all trial strategy
19 decisions, but if he was adamant and said this has to be
20 done ---

21 Q. Right.

22 A. --- then I would have listened to him.

23 Q. Okay, and so along those lines, apparently it sounded
24 like Mr. Johnson wanted you to call, maybe call someone
25 from SLED or at least discuss the information about

S. KENT - CROSS-EXAMINATION BY MR. WASHINGTON

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1 fingerprints being on the car. And I think you said that
2 that was just strategy, why you didn't call: because you
3 just felt like he wasn't in the car.

4 A. Yeah.

5 Q. He wasn't charged with being in the car, the driver,
6 the getaway, anything like that. So, you just said it's
7 not worth it as a strategic ---

8 A. No. Sometimes more is just more is the way that I
9 looked at it. There's no reason to call somebody who is
10 not going to add to Mickey's defense.

11 Q. Okay. So, then we move on to the closing argument,
12 and it looks like the attorney general was saying something
13 about what the codefendants were testifying to was true.
14 This -- so, we're in closing argument.

15 A. Yes, sir.

16 Q. And you would agree with me that you're going to get a
17 little more leeway in closing as far as saying believe my
18 witness? That's the whole point of the state's case,
19 right?

20 A. That's correct.

21 Q. And then, you know, if you had had any witnesses,
22 yours would have been the same way. You would have stood
23 up there and said believe them. Here's why.

24 A. That is correct.

25 Q. So, it's not necessarily -- when we talk about

1 improper bolstering, that's a situation where one witness
2 gets on the stand and says, hey, believe, you know, the
3 other person who just came in here and testified.

4 A. I can see your point. It's not witness bolstering,
5 but I see where Lance is coming from also as he is just
6 saying that Cary, during his closing argument, was
7 bolstering for the truthfulness of the people who had just
8 testified. So, I see both sides.

9 Q. Right, and, and you'd also said that it was, you know,
10 a strategy not to bring attention to what these people were
11 saying more, make it look like you're trying to hide that
12 they are actually telling the truth or something like that?

13 A. And, and at the time -- I mean, I know it sounds odd
14 now. Mickey and I both thought the trial was going well.
15 You know, I thought the trial was going well at that point
16 in time. You know, you look at a couple of situations. I
17 really don't like to object during another individual's
18 closing arguments, and I knew that I had the ability to go
19 after Cary, which is always a big thing about getting last
20 closing. So, I knew I had the ability to fix all of the
21 stuff that he had just said, and I didn't really think it
22 hurt at that point in time. Looking back, of course I was
23 wrong.

24 Q. Let me pause for a second. You had said you knew you
25 had last close. Did that, did that factor into, you know,

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1 your strategy as to why you didn't want to call any
2 witnesses or why you really didn't want to have Mr. Johnson
3 testify?

4 A. Yes and no. Last close is a very important trial
5 strategy, a trial tool. That being said, my preparation
6 for Mickey Johnson, if I thought it would have gone better,
7 I would have put him on the stand. I don't want to say
8 that just because I wanted last close was I going to keep
9 him off of the stand no matter what.

10 Q. Right.

11 A. Had I thought that the trial prep had gone better, and
12 had I thought that he would testify better, then yeah, he
13 would have been on the stand no matter what.

14 Q. And you remember the question that Mr. Boozer asked
15 you about the attorney general talking about, you know,
16 plea deals in their closing and along those lines. What --
17 why didn't you object to that?

18 A. I think I just completely missed what -- I, I don't
19 remember. I really don't remember him asking me ---

20 Q. I believe ---

21 A. --- something about plea deals and the closing
22 arguments.

23 Q. It was, it was something along the lines of, you know,
24 plea deals, it's just what we do around here. That's how
25 they get things done. That's how they get testimony out

1 there. Does that sound like something objectionable to
2 you?

3 A. I wasn't asked that question.

4 Q. Is that -- am I mis-asking?

5 MR. BOOZER: Your Honor, I was -- I think he's mixing
6 two of them together. I was just simply talking about the,
7 the vouching done by the solicitor. I don't think I maybe
8 was talking specifically about proffers or plea deals.

9 THE COURT: Sure.

10 MR. BOOZER: I was just talking about the truth ---

11 THE COURT: I'll read the transcript.

12 MR. BOOZER: Okay.

13 BY MR. WASHINGTON:

14 A. I mean, I can answer but I wasn't asked that question.

15 Q. Right, and then we move over to the, the, the malice
16 charge. Apparently the judge came up with a hypothetical
17 that, you know, if you lie in wait for somebody, then that
18 can be used as malice. Why didn't you object to that? Did
19 you think that that was proper?

20 A. I, I didn't have a problem with that at the time. I
21 mean, I've heard judges give hypotheticals numerous times.
22 If I'm incorrect, I'm incorrect. I've heard numerous
23 hypotheticals. I've tried -- probably would have been my
24 fifth case trying with Judge Seals.

25 Q. Right.

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1 A. At that point in time, I didn't find it objectionable,
2 and don't object to things -- I don't think at that point
3 in time it had any relevance to Mickey Johnson.

4 Q. Right, and, and that would be because you weren't
5 fighting over malice.

6 A. We weren't fighting over malice.

7 Q. Right. You were fighting over the accessory.

8 A. Correct.

9 Q. And that would make sense because, you know, he wasn't
10 the one who was the shooter. He was allegedly the one to
11 put out the hit.

12 A. Correct.

13 Q. Okay, and obviously if the jury had believed -- which
14 clearly they did. If they believe the people who came on
15 the stand for the state and said that Mr. Johnson ordered
16 the hit, then that's, you know, overwhelming evidence of
17 malice.

18 A. If they believed that, yes, sir.

19 Q. Okay, and just quickly, you did everything you were
20 supposed to do with the appeal. What do you remember about
21 that?

22 A. It, it's the same thing we always do, LaRone. What
23 ended up happening -- and it goes different ways. If there
24 is a conviction, generally what happens is my office
25 immediately files a notice of intent to appeal. We will

1 send a copy of that to the solicitor's office. We send a
2 copy of that to the presiding judge. This situation was
3 different because it was the attorney general's office, so
4 we sent one to Mr. Parks, who is the clerk of court for the
5 attorney general, the statewide grand jury because there
6 was a different process in dealing with one with the
7 statewide grand jury. And after we had perfected and sent
8 everything to all of those folks that we were supposed to,
9 one of two things usually happens. Appellate defense
10 contacts us and says is he indigent? Are you going to be
11 representing him? Are you going to order a transcript?

12 But before any of that happened, we got a phone call
13 from another -- I want to say some type of agency or some
14 type of group out of Florida telling us that they would be
15 representing Mr. Johnson, and they would be handling the
16 bulk of the appeal.

17 At that point in time, after I had done point of the
18 appeal and I'm not hired on the appeal, which is not
19 covered inside of my fee agreement, that's all I do.

20 Q. And actually I want to ask you one other thing that
21 you just sort of made me remember about. This was a state
22 grand jury case, correct?

23 A. That's -- this is correct.

24 Q. And ---

25 A. Statewide grand jury.

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1 Q. Okay, and it got there because they have jurisdiction
2 over gang cases, gang issues?

3 A. Yes.

4 Q. Is that -- and, and, you know, similar to -- they can
5 do sort of cross-county and that kind of thing. If it's a
6 big gang type of conspiracy situation, that's what gives
7 them jurisdiction?

8 A. That's what gives them jurisdiction over this case,
9 yes, sir.

10 Q. Okay. All right.

11 MR. WASHINGTON: Nothing further, Judge.

12 THE COURT: Any redirect?

13 MR. BOOZER: Just briefly, Your Honor. Judge,
14 housekeeping. As, as I was questioning Mr. Kent, I did the
15 CD. I would like to introduce that and mark it as a, as a
16 court exhibit.

17 THE COURT: Okay. Any objection?

18 MR. WASHINGTON: No objection.

19 THE COURT: Court Exhibit 1.

20 (DVD MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER
21 1.)

22 REDIRECT EXAMINATION BY MR. BOOZER:

23 Q. And, Mr. Kent, just briefly. You indicated you don't
24 recall receiving that audio in your discovery?

25 A. Right. Now I don't recall, Lance. It's four years

1 ago.

2 Q. And, and it's one of those things that if you don't
3 know it hasn't been turned over, you don't know if they've
4 turned over everything, right?

5 A. I, I can only trust what the state gives me.

6 Q. And, and to that end, if you would have gotten it --
7 obviously you didn't question any of the witnesses about
8 this CD, did you?

9 A. No, sir.

10 Q. If you would have had it, do you think looking back
11 this is something that would've been important in attacking
12 their credibility?

13 A. Oh, yeah, most definitely.

14 Q. Okay.

15 MR. BOOZER: That's all the questions I have. Thank
16 you, Mr. Kent.

17 THE COURT: All right, thank you, sir. You can step
18 down.

19 WITNESS: Your Honor, I'm sorry. May I go back to my
20 office?

21 THE COURT: Any objection?

22 MR. BOOZER: No objection.

23 WITNESS: Subpoena said 9:30.

24 MR. WASHINGTON: No objection.

25 THE COURT: All right, you're free to leave.

W. JOHNSON - DIRECT EXAMINATION BY MR. BOOZER

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1 WITNESS: Thank you so much.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: Call your next witness, Mr. Boozer.

4 MR. BOOZER: Your Honor, we call Mr. Willie Johnson to
5 the stand.

6 WILLIE J. JOHNSON, BEING DULY

7 SWORN, TESTIFIES AS FOLLOWS:

8 THE COURT: How many more witnesses do you have?

9 MR. BOOZER: One more. Both of these should be fairly
10 short, Judge.

11 THE COURT: All right. You told me an hour and a
12 half. I'm just reminding you.

13 MR. BOOZER: Yes, sir.

14 THE COURT: Go ahead.

15 BAILIFF: Please state your full name for the record.

16 WITNESS: Willie James Johnson.

17 DIRECT EXAMINATION BY MR. BOOZER:

18 Q. Mr. Johnson, how are you doing today?

19 A. I'm okay.

20 Q. Okay. Mr. Johnson, do you know the fellow that's here
21 sitting to my left?

22 A. Yeah. I know him very well.

23 Q. And who is he?

24 A. That's my son, Mickey Johnson.

25 Q. All right. So, you're his dad?

- 1 A. Uh-huh.
- 2 Q. Do you recall that your son went through a trial and
3 faced some charges and got found guilty of some things?
- 4 A. Yes, sir.
- 5 Q. All right. Were you involved at all in speaking --
6 well, let me ask you this. Do you know who his, his
7 attorney was at that time?
- 8 A. Yeah. Shaun Kent.
- 9 Q. All right. Did you have any hand in hiring Mr. Kent?
- 10 A. Yes, I did.
- 11 Q. Did you have conversations with Mr. Kent?
- 12 A. Uh-huh. Yeah.
- 13 Q. Okay. Did you ever discuss with Mr. Kent possibly
14 being a witness at trial?
- 15 A. I didn't -- yeah. Well, he talk about me being a
16 witness at trial, but we never went into details about what
17 he going to, you know, ask me or anything. We never had
18 any, any, you know, conversation about what he going to ask
19 me.
- 20 Q. Okay. Did, at the time of the trial, did you have any
21 information about -- well, let me ask you this. Do you
22 know who Bryant Bradley and William Morgan are?
- 23 A. Yeah. Bryant Bradley is my nephew. William Morgan,
24 that's one of his friends, one of my son's friends.
- 25 Q. At that time, did you have any information about those

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1 two gentlemen?

2 A. Yes, I did. I spoke with William Morgan. I had a
3 conversation with him, and he told me that he had a
4 conversation with Bryant Bradley and he was telling them
5 that he was going to put the blame -- that they were going
6 to put the blame on Bless, on, on my son, you know. And,
7 and he also said that he, he wanted -- he was telling him
8 he should do the same thing, but Morgan said he told him
9 that he didn't have anything to do with that, you know.

10 Q. All right. Did you, did you tell Mickey about this?

11 A. Yes. Yeah.

12 Q. Did you tell Mr. Kent about that?

13 A. Yes, I did.

14 Q. Okay. Do you recall specifically when the
15 conversation with Mr. Morgan may have been?

16 A. Maybe about two weeks -- it was 3/22. I would say
17 round, right around March, right after he got out of, out
18 of jail, maybe about two weeks after he got out of jail.

19 Q. After Mr. Morgan got out of jail?

20 A. Yeah. Yeah.

21 Q. Okay, and do you understand that Mr. Johnson's --
22 Mickey's trial was in July 2011?

23 A. Yeah.

24 Q. So, it would have been sometime before that?

25 A. Yeah. Yeah.

1 Q. And what you've stated today in court, is that what
2 you would have stated had you been called to testify at
3 trial?

4 A. Yeah. Yeah.

5 Q. All right, and has anyone forced you or made you make
6 that statement?

7 A. No. No.

8 Q. Has anyone promised you anything?

9 A. No.

10 Q. Okay. You wouldn't -- would you come in here and lie
11 for your son?

12 A. No, not -- no, I wouldn't come in here and lie.

13 Q. Okay.

14 A. I mean, if I would lie, then I would make one better
15 than that up, you know.

16 Q. And, and you're not sure if you were going to actually
17 testify at trial?

18 A. Am I -- was I sure at that time ---

19 Q. Yes, sir.

20 A. --- that I was going to testify?

21 Q. That's right.

22 A. Well, I, I, I wasn't really sure about it, but he said
23 that he was going to call, you know, but I wasn't really
24 sure as to what I was going to testify about because I
25 didn't, I didn't have any knowledge about what happened,

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1 you know, what happened at the, you know, the shooting and
2 stuff. I didn't have any knowledge about that. But the
3 only knowledge I had is what I tell you about William
4 Morgan.

5 Q. And you've actually -- you submitted an affidavit to
6 that effect?

7 A. Right.

8 MR. BOOZER: And, Your Honor, just for the court's
9 information, that's attached to Mr. Johnson's amended
10 application.

11 THE COURT: Okay.

12 MR. BOOZER: Court's indulgence?

13 THE COURT: Yes, sir.

14 MR. BOOZER: Thank you, Mr. Johnson. That's all the
15 questions I have.

16 WITNESS: Okay.

17 THE COURT: All right.

18 CROSS-EXAMINATION BY MR. WASHINGTON:

19 Q. Okay, Mr. Johnson. So, Mickey Johnson you said was
20 your son?

21 A. Right.

22 Q. That's your son over here. You're ready for him to
23 get out?

24 A. Is that -- ask that question again.

25 Q. You ready for your son to get out of jail?

1 A. Sure.

2 Q. Let, let me, let me make sure I'm clear. How did you
3 hear from William Morgan? Were you in jail with him?

4 A. No. No. I wasn't in jail.

5 Q. You weren't in jail?

6 A. No. No.

7 Q. Okay.

8 A. His wife, she was -- she talked to William Morgan, and
9 he was telling her some, he was telling her some things
10 that, that they were saying that, you know, that Bryant
11 Bradley was saying in jail, you know, when they were in, in
12 jail together. And, and my son asked me to go over and
13 have a talk to him to see if he could write a statement to
14 that effect, you know. And that's, that's, that's when I
15 went over and had a talk, conversation with him.

16 Q. Okay. So, somebody told you that William Morgan was
17 told by Bryant Bradley that they were going to make this
18 stuff up against your, your son? Is that right?

19 A. No. His wife told me she had a conversation with
20 William, William Morgan.

21 Q. William Morgan's wife?

22 A. Right.

23 Q. Okay.

24 A. No. William Morgan -- my son's wife.

25 Q. Your son's wife?

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1 A. Yeah.

2 Q. Ms. Kenteshia?

3 A. Right.

4 Q. Okay.

5 A. Told me that she had a conversation with William
6 Morgan.

7 Q. William Morgan.

8 A. And he was saying that, you know, that they were
9 plotting against Bless in jail.

10 Q. Uh-huh.

11 A. And my son, I guess she told him that, too. So, he
12 asked me to go over there and ask him would he write a
13 statement to that effect.

14 Q. Okay.

15 A. Yeah.

16 Q. So, essentially we, we're about thirdhand. We go from
17 the ---

18 A. Well, yeah.

19 Q. --- wife to Morgan to you.

20 A. Right.

21 Q. Okay. All right. Now, this was specifically to
22 Bryant Bradley who was the one -- one of the codefendants
23 who came in and said that your son had put a hit on this
24 guy?

25 A. What was specifically to him?

- 1 Q. So, we're talking about -- he said that about Bryant
2 Bradley was the one who was supposed to make this whole
3 thing up.
- 4 A. Right. Right.
- 5 Q. Okay. None of the other codefendants? Just the one
6 who happened to say ---
- 7 A. Well, he said, he said they. He said they.
- 8 Q. Right.
- 9 A. Yeah.
- 10 Q. Okay.
- 11 A. Yeah.
- 12 Q. So, you, you, you met with Shaun Kent about this?
- 13 A. Yeah. I talked to him about it. I spoke ---
- 14 Q. You told ---
- 15 A. --- with him about it.
- 16 Q. --- him about it?
- 17 A. I spoke with him about it, yeah.
- 18 Q. Okay. You heard what he said, that he had talked to
19 you before this trial?
- 20 A. That he had talked to me before the trial?
- 21 Q. Right.
- 22 A. Well, I talked to him many times, you know.
- 23 Q. Uh-huh. Okay, and y'all talked about the case?
- 24 A. Yeah, we talked about the case, but there was
25 different things that we talked about, you know.

W. JOHNSON - CROSS-EXAMINATION BY MR. WASHINGTON

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1 Q. Right.

2 A. Like I was taking, I was taking, you know, different
3 witnesses to him and stuff like that.

4 Q. And you heard him say that if he had known about this,
5 this kind of note or this kind of information like that,
6 that he would have presented that stuff in front of the
7 jury?

8 A. No, I didn't really hear him say that.

9 Q. Okay, but he never -- he decided even though he --
10 you had told him this information, he still made the
11 decision ---

12 MR. BOOZER: Objection, Your Honor. He's asking about
13 decisions that Mr. Kent would have made and how ---

14 THE COURT: Sustained.

15 MR. BOOZER: Thank you.

16 BY MR. WASHINGTON:

17 Q. Okay, but you, you were not called to testify?

18 A. No.

19 Q. In the trial?

20 A. No.

21 Q. Okay, and obviously this was, this was something that
22 you knew before your son went to trial?

23 A. Right.

24 Q. Okay. All right.

25 MR. WASHINGTON: Nothing further, Judge.

1 THE COURT: All right, thank you, sir. You can step
2 down.

3 (THE WITNESS EXITS THE STAND.)

4 THE COURT: Call your next witness.

5 MR. BOOZER: Thank you, Your Honor. We call Trevaughn
6 Jackson to the stand.

7 THE COURT: He's in, he's in custody.

8 (A PAUSE.)

9 MR. BOOZER: Your Honor.

10 THE COURT: Yes, sir.

11 MR. BOOZER: They are escorting up a witness, and they
12 say it may take a few minutes. I may intend to make a
13 brief closing, but I do have two cases I wanted to hand up,
14 and I figure maybe we could do that now.

15 THE COURT: Sure.

16 MR. BOOZER: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 MR. BOOZER: Your Honor, the first case that I'm going
19 to hand up is *David Matthews vs. The State of South*
20 *Carolina*, and the second case which I'm going to hand up is
21 the ones I've already referred, to which is *The State vs.*
22 *Belcher*. And, Judge, basically, as Your Honor is aware,
23 these cases -- basically just to tie in on the *Matthews vs.*
24 *State*, this has to do with the solicitor vouching for
25 credibility of a witness.

T. JACKSON - DIRECT EXAMINATION BY MR. BOOZER

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1 And I would just point out to Your Honor basically in
2 this case, it was a PCR. It was granted, and basically
3 what it said is they've got the solicitor who makes the
4 statement:

5 Now, you may have not liked Bembo Hudson. I
6 don't like Bembo Hudson. I don't have to like
7 him. All I have to do is determine whether or
8 not he is a credible witness. I don't trust any
9 of these people until I corroborate their
10 testimony, and once I corroborate their
11 testimony, yes, I put them on the witness stand
12 because they're the ones that were there.
13 They're the ones that can tell it.

14 And the court -- that counsel did not object. The
15 court said that solicitor's statement, number one, is
16 improper. That you may argue the credibility but you can't
17 vouch for the credibility of a witness based on personal
18 knowledge or other information, and the failure to object
19 did prejudice the applicant in that case by allowing the
20 solicitor to vouch.

21 And, Judge, we would basically say that this is
22 absolutely the same as in what occurred in Mr. Johnson's
23 case. That he had a solicitor get up and say, yeah, it is
24 the truth, and telling the jury that what they said is the
25 truth, and that he's basically personally telling them

1 they're, they're truthful and I know it. So, we would
2 submit that this case is right on point with that issue.
3 That's why we wanted to hand that one up, Judge, and
4 obviously *Belcher*, I've already made the argument.

5 THE COURT: Sure. What I'm going to do, gentlemen,
6 I'm going to take this matter under advisement since I
7 don't actually have a judge packet today. I'm going to
8 give both of y'all the opportunity to further brief this if
9 you wish to do that.

10 MR. BOOZER: Okay, Your Honor, at this time we would
11 call Trevaughn Jackson to the stand.

12 THE COURT: All right, Mr. Jackson, come on around
13 here.

14 TREVAUGHN JACKSON, BEING DULY
15 SWORN, TESTIFIES AS FOLLOWS:

16 BAILIFF: Please state your full name. Spell your
17 last name for the record.

18 WITNESS: Trevaughn Jackson, J-a-c-k-s-o-n.

19 THE COURT: Mr. Jackson, spell your first name for my
20 court reporter, please.

21 WITNESS: T-r-e-v-a-u-g-h-n.

22 THE COURT: All right.

23 DIRECT EXAMINATION BY MR. BOOZER:

24 Q. Mr. Jackson, how are you doing today?

25 A. All right.

T. JACKSON - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. Now, Mr. Jackson, you understand that I represent
2 Mickey Johnson in a PCR case that he's filed?

3 A. Yes, sir.

4 Q. Okay, and I've, I've talked to you before. Is that
5 right?

6 A. Yes, sir.

7 Q. And I've interviewed you. Is that right?

8 A. Yes, sir.

9 Q. Okay, and I was asked to speak with you. Is that
10 correct?

11 A. Yes, sir.

12 Q. That you have previously -- did you submit an
13 affidavit to Mr. Johnson?

14 A. Yes, sir.

15 Q. All right. Obviously -- are you incarcerated at this
16 time?

17 A. Yes, sir.

18 Q. All right. How -- what kind of sentence do you have
19 right now?

20 A. Sixty years.

21 Q. Do you know Mickey Johnson?

22 A. Not until he came to Perry with me.

23 Q. All right. Well, when would that have been?

24 A. I can't remember.

25 Q. Okay. Well, do you know about how long ago it may

1 have been?

2 A. Probably, like, about nine or ten months ago.

3 Q. When you say Perry, you mean the correctional
4 institution?

5 A. Yeah. Yes, sir.

6 Q. All right. Tell us what you spoke to Mr. Johnson
7 about and if you have any knowledge as to Mr. Johnson's
8 case.

9 A. He had told me who his ---

10 Q. Now, let me, let me tell you this. You understand
11 that you're under oath today?

12 A. Yes, sir.

13 Q. Okay, and you understand that you have to tell the
14 truth. Is that -- that's right?

15 A. Yes, sir.

16 Q. All right. So, go ahead and tell us what it is that
17 you know about Mr. Johnson's case.

18 A. All right. He had told me who his codefendant was.
19 I'm, like, yeah, one of your codefendant my roommate and,
20 like, oh. I say oh, you the dude he was talking about,
21 like, his cousin, like, he would -- he got to testify on
22 him but he don't want to testify on him, lying on him,
23 stuff like that.

24 Q. Slow, slow down for me, okay? Go ahead.

25 A. Yeah. He was, like, yeah. He said yeah, yeah, you

T. JACKSON - DIRECT EXAMINATION BY MR. BOOZER

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1 willing to write, write and testify that? I said yeah,
2 I'll testify to it in court for you.

3 Q. You're going to have to make sure you slow down.
4 She's got to get down everything you're saying. Just let's
5 slow down a little bit, okay?

6 A. Uh-huh.

7 Q. All right, who was the witness?

8 A. Who was the witness?

9 Q. Correct. Who were you talking about?

10 A. Oh, me and Mickey Johnson having a conversation when,
11 when I told him about his cousin.

12 Q. All right, who -- do you know who his cousin is?

13 A. Bryant Bradley.

14 Q. How do you know Bryant Bradley?

15 A. We been roommates.

16 Q. Where?

17 A. At, at -- in the county jail, Sumter County jail.

18 Q. Okay. So, you were incarcerated in the Sumter County
19 jail?

20 A. Yes, sir.

21 Q. And Mr. Bradley was also with you?

22 A. Yes, sir.

23 Q. All right, and y'all were -- do you know when you were
24 there?

25 A. I think it was, like -- we, we was roommates in, like,

- 1 May of 2013 until, until I went home.
- 2 Q. Okay. When were you -- when did you go into Sumter
3 County?
- 4 A. August 2012.
- 5 Q. When did you come out of Sumter?
- 6 A. August 2013.
- 7 Q. All right. Are you sure about those dates?
- 8 A. When me and Bryant, when me and Bryant Bradley
9 roommates? Yes, sir.
- 10 Q. No. Are you sure about those dates that you were in
11 Sumter County?
- 12 A. Yes, sir.
- 13 Q. Okay. Could you have been admitted into Sumter in
14 maybe August of 2013?
- 15 A. I had ---
- 16 MR. WASHINGTON: Objection. Leading.
- 17 A. --- got locked back up August ---
- 18 MR. WASHINGTON: Objection. Leading.
- 19 THE COURT: Overruled.
- 20 BY MR. BOOZER:
- 21 A. I got locked backed up in 2013 in August.
- 22 Q. Okay, but you are certain that you were with Mr.
23 Bradley in Sumter County?
- 24 A. Yes, sir.
- 25 Q. All right, and what exactly did Mr. Bradley tell you?

T. JACKSON - DIRECT EXAMINATION BY MR. BOOZER

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1 A. He was, like, he ain't want to testify on his cousin,
2 but he had to do it to save him. He know his cousin had do
3 nothing with it. He had felt wrong about doing it.

4 Q. Okay. Is there anything else that he told you?

5 A. No. He just had me pass little notes to his other
6 codefendant Reggie. Call his Rasheed Brandon, pass notes
7 to him and give him canteen and stuff, just write the
8 solicitor a letter.

9 Q. Okay. So you were -- you said you were passing notes
10 for him?

11 A. Yes, sir.

12 Q. All right.

13 MR. BOOZER: Your Honor, at this time, this is a FOIA.
14 I would ask -- I had a FOIA request made to Sumter County.
15 I do have documents in receipt from the FOIA request, the
16 booking reports and release reports for both Mr. Jackson --
17 or, yes, Mr. Jackson and Mr. Bradley, I believe, to make
18 those an exhibit at this time.

19 MR. WASHINGTON: And the same objection on the grounds
20 of hearsay. There's no one to authenticate it, Judge.

21 THE COURT: Objection overruled. I'm going to allow
22 them into evidence as applicant's next in order.

23 (BOOKING REPORT MARKED INTO EVIDENCE AS APPLICANT'S
24 EXHIBIT NUMBER 5.)

25 (BOOKING REPORT MARKED INTO EVIDENCE AS APPLICANT'S

1 EXHIBIT NUMBER 6.)

2 BY MR. BOOZER:

3 Q. Mr. Jackson, has anyone promised or threatened you in
4 any way to make -- to have your testimony today?

5 A. No, sir.

6 Q. All right, and you submitted an affidavit, you
7 indicated?

8 A. Yes, sir.

9 Q. Anyone threaten or force you or promise you anything
10 to make that affidavit?

11 A. No, sir.

12 Q. Okay.

13 MR. BOOZER: Thank you, Mr. Jackson. That's all the
14 questions I have for you.

15 CROSS-EXAMINATION BY MR. WASHINGTON:

16 Q. So, tell me real quick how you know Mickey Johnson.

17 A. We was at Perry together.

18 Q. Y'all were at Perry together?

19 A. Yes, sir.

20 Q. Since you've been convicted?

21 A. Yes, sir.

22 Q. Okay. So, you were in jail with -- Bryant Bradley was
23 your roommate ---

24 A. Yes.

25 Q. --- here at Sumter Regional?

T. JACKSON - CROSS-EXAMINATION BY MR. WASHINGTON

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1 A. Yes, sir.

2 Q. And this would've been before Mr. Johnson's trial?

3 A. Yes, sir.

4 Q. Okay. You, you were in there for those attempted
5 murder charges?

6 A. No. I was in -- we -- me and Bryant roommates. I was
7 there some more charges.

8 Q. Okay, discharging a firearm into a dwelling?

9 A. That was more charges.

10 Q. What were you in there for?

11 A. I had two armed robberies, attempted murder, and
12 first-degree burglary.

13 Q. You've been convicted?

14 A. No. I had went home after that.

15 Q. Okay.

16 COURT REPORTER: Repeat that, please.

17 A. Two armed robbery, attempted murder, first-degree
18 burglary.

19 Q. So, what are you in SCDC for?

20 A. Two attempted murders.

21 Q. And that was for shooting up into that house?

22 A. Yes, sir.

23 Q. Okay. So, your testimony is that while you were in
24 Sumter-Lee Regional, Bryant Bradley told you something,
25 okay, so that's ---

1 A. Yes, sir.

2 Q. --- that's secondhand information that you got, and he
3 was asking you to pass notes about setting this whole thing
4 up?

5 A. Yes, sir.

6 Q. And you didn't -- you don't have any of those notes.
7 You didn't intercept them or keep any ---

8 A. No, no.

9 Q. --- keep back?

10 A. I didn't keep none.

11 Q. Okay. So, we don't know whether or not those notes
12 exist because nobody has them?

13 A. I guess. I don't know.

14 Q. Okay, and this is something you would have brought to
15 the attention of somebody in the court system before Mr.
16 Johnson went to trial?

17 A. I ain't know, I ain't know Mr. Johnson then.

18 Q. Okay, but you did know about these notes being passed
19 and this whole made-up story supposedly before Mr. Johnson
20 went to trial?

21 A. Yes, sir.

22 Q. Okay.

23 MR. WASHINGTON: Thank you, Judge.

24 MR. BOOZER: Nothing further, Your Honor.

25 THE COURT: Thank you, sir. You can step down.

1 (THE WITNESS EXITS THE STAND.)

2 MR. BOOZER: Your Honor, that would be the applicant's
3 case.

4 THE COURT: Applicant rests.

5 MR. WASHINGTON: Nothing from the state, Judge.

6 THE COURT: State rests.

7 All right, gentlemen, what's going to happen, as I
8 indicated before, I'm going to take the matter under
9 advisement so I can read through everything.

10 I need you to give me a judge's packet as soon as you
11 can.

12 Gentlemen, after I get the judge's packet, I'm going
13 to give y'all some additional time to brief the issues
14 again if you would like to -- you don't have to -- but
15 based upon the case law that you handed up to me, Mr.
16 Boozer.

17 So, why don't you copy Mr. Boozer when you send me the
18 judge's packet?

19 MR. WASHINGTON: Okay.

20 THE COURT: And after I get the judge's packet, that
21 will be your trigger and you'll have thirty days after that
22 to send me whatever other memo, if you wish to, while I
23 study over everything, okay?

24 So, you hear that? It's going to be a while before I
25 make a decision because they've got to get me all the

1 paperwork, okay? As soon as I get the paperwork, sir --
2 I've made about four pages of notes of your testimony today
3 and everybody's testimony. After I read everything, I will
4 then come up with a decision, and I will let your lawyer
5 know, and he will let you in turn know, okay?

6 APPELLANT: Yes, sir.

7 THE COURT: Good luck to you, sir.

8 MR. BOOZER: Thank you, Judge.

9 THE COURT: All right, that concludes this hearing.

10 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF NOVEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 4TH, 2017

EW Applicants
1
11 - 9 - 16

October 24, 2016

Mr. LaRone Washington
Assistant Attorney General
State of South Carolina

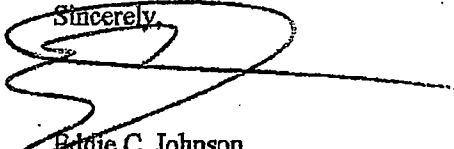
Reference: Bryant Bradley Interview Documents

Dear Mr. Washington:

To the best of my recollection, I did not take a statement from Mr. Bryant Bradley on March 29, 2011 at the Clarendon County Sheriff's Office. I advised Mr. Bradley of his Rights and transported Mr. Bradley to the Sumter/Lee Regional Detention Center. Mr. Bradley was booked into the Sumter/Lee Regional Detention Center at approximately 5:43 PM on March 29, 2011.

If you have additional questions of me regarding this case, please don't hesitate to contact me. My contact information is: cell number (803-521-4255), email address (eddiejohnson@scdps.gov).

Sincerely,



Eddie C. Johnson
Commander, Immigration Enforcement Unit
South Carolina Department of Public Safety



City of Sumter
Police Department

Russell F. Roark, III
Chief of Police

107 East Hampton Avenue
Sumter, SC 29150

Phone (803) 436-2700
FAX (803) 436-2084

troark@sumter-sc.com

Commitment to
Service



A NATIONALLY ACCREDITED
LAW ENFORCEMENT AGENCY

of
Applicant's
2
11-9-16

October 27, 2016

Re: Note from William Morgan

To whom it may concern:

During the course of our investigation into the homicide that occurred in [REDACTED] Apartments, Agent Mark Berubie with SLED and myself conducted an interview with William Morgan (a co-defendant). During the interview, Morgan produced a letter that he had received from another co-defendant by the name of Bryant Bradley. The note was read aloud and recorded along with the rest of the interview. It is to the best of my recollection, that neither Agent Berubie nor I received an actual hard copy of the note. If a hard copy was ever given, and again I do not recall receiving a copy, then we are unable to locate said note at this time.

Respectfully,

Lieutenant William Lyons
Investigations Division

Applicant's
3
11-9-16 *EH*



SUMTER POLICE DEPARTMENT
INTERVIEW FORM

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- YOU HAVE THE RIGHT TO REMAIN SILENT.
- ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
- YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS, AND TO HAVE THEM WITH YOU DURING THE QUESTIONING.
- IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.
- IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK WITH A LAWYER.

WAIVER OF RIGHTS

BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENT OF MY RIGHTS AT 11:31 A.M. PERSON 3-29-11 AT Charlotte St BY OFFICER E. E. [unclear] OF THE SUMTER POLICE DEPARTMENT.

I HAVE READ OR HAD READ TO ME THIS STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE HAS BEEN USED AGAINST ME.

WITNESSES:

SIGNED: _____
DATE: 3-29-11 TIME: _____

Bryant Bradley
3-29-11

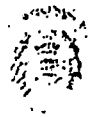
Transcript page 440, lines 11-26 +

*By Robinson
subject 603*

*Charlotte-Mecklenburg Sheriff's Department
This interview existed but was never given
in discovery. The State want to act like this interview don't
exist. I need audio and video. E... H... C...*

Flip Page Over →

Applicant's
4
11-9-16



SUMTER POLICE DEPARTMENT
INTERVIEW FORM

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- YOU HAVE THE RIGHT TO REMAIN SILENT.
- ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
- YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS, AND TO HAVE HIM/HER WITH YOU DURING THE QUESTIONING.
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- IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK WITH A LAWYER.

WAIVER OF RIGHTS

BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENT OF MY RIGHTS AT 4:00 A.M. P.M. ON 3-30 2011 AT Sumter PD BY OFFICER Det. C. Clark OF THE SUMTER POLICE DEPARTMENT.

I HAVE READ OR HAD READ TO ME THIS STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE HAS BEEN USED AGAINST ME.

SIGNED: [Signature]
DATE: 3-30-11 TIME: 4:01 AM
[Signature]

WITNESSES:
[Signature]

Det. Irene Culick
badge # 1468

Det. Irene Culick

Sumter Police Department

3-30-11

Flip Page

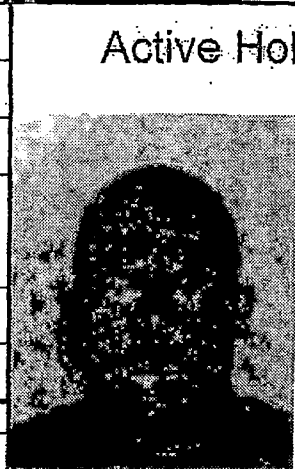
User: MNELSON,

SUMTER-LEE DETENTION CENTER
BOOKING REPORT

03/28/2012 22:14

Applicant's
5
11-9-16

Booking #	13294	Status		Active
Date/Time	03/29/2011 17:43	Cell Location		MAIN, B, B, 110T
Booking Officer	HAMMETT, R. S. (242C)	Name ID		6801
Fingerprint Officer	HAMMETT, R. S. (242C)	Prior Bookings		None, 9037
Search Officer	HAMMETT, R. S. (242C)	Security		MAX
Fingerprint				
Property Bins MAIN, CLST, ABC, BAG, MAIN, PROP, BAG, 0441				
INMATE INFORMATION				
Name		Local ID		
BRADLEY, BRYANT DEANTE				
Address		Race	Sex	
HEROD DRIVE		B	M	
MANNING, SC 29102		Hair	Eye	
		BLK	BRO	
DOB	/1990	Age	21	Height
				6'01
		Weight	245	
SSN		Marital Status	Single, 0 Dependents	
		Time Lived in Area	0 Yr	
Local ID	SID	FBI #		
Juvenile	Adult	Country of Birth	United States	
		Citizenship	United States	
Employer	Unemployed	Religion	10:41	
Employer Address		Employer Phone #	n/a	
Attorney	Operator # 10	Attorney Phone #	n/a	
AKA				
Alerts				



RELEASE TO SCDG
SSGT RICKS
2-21-14

CHARGES

Docket #	Date Arrested	Officer	Agency	Charge	Charge: UCR Type Status	Bond: Amount Status Type
86809FG	02/28/2012	B/h	CRT	BREACH / BREACH OF PEACE, NONAGGRAVATED IN NATURE	99X M PRET	\$500.00 ACTI SB
441868	05/25/2011	G/s Court	CRT	BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - THIRD DEGREE - 1	99XX F PRET	\$25,000.00 ACTI SB
	03/29/2011	W Lyons	SPD	MURDER / MURDER	99XX F PRET	ACTI DENI
	03/29/2011	W Lyons	SPD	CONSPIRACY / CRIMINAL CONSPIRACY, COMMON LAW CONSPIRACY DEF	99XX F PRET	INAC NR
	'9/2011	W Lyons	SPD	CONSPIRACY / CRIMINAL	99XX F PRET	ACTI DENI

User: ALEWIS

SUMTER-LEE DETENTION CENTER

02/21/2014 13:53:09

INMATE PROPERTY RELEASE FORM

Booking #: 13294 Inmate name: Bradley, Bryant Deante

Item	Receipt #	Bin	Qty	Value	Date Returned	Return By
Clothing, PANT LONG		MAIN, PROP, BAG,	1		02/21/2014	EVANS, A. Y. (254C)
Clothing, SHIRT		MAIN, PROP, BAG,	1		02/21/2014	EVANS, A. Y. (254C)
Clothing, SHOES - BOOTS		MAIN, PROP, BAG,	1		02/21/2014	EVANS, A. Y. (254C)

I, EVANS, A. Y. (254C) hereby release the items of personal property listed

above to: BRADLEY, BRYANT DEANTE Date: 02/21/2014 13:52

All of the items of personal property listed above have been received by BRADLEY, BRYANT DEANTE Date: 02/21/2014

C. A. Evans
Office Signature

Inmate Signature

Mickey Markell Johnson, #208610
RECORDED) THE COURT OF COMMON PLEAS
) FOR THE 3RD JUDICIAL CIRCUIT
2017 JUN -1 PM 2:42 2014-CP-43-01491

APPLICANT
v. JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
ORDER DENYING
POST-CONVICTION RELIEF
State of South Carolina,)
))
Respondent.)

On July 22, 2014 Applicant filed for post-conviction relief (PCR), and supplemented by a "Petition in Support" filed on or about August 15, 2014. An evidentiary hearing was convened November 9, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General LaRone K. Washington. After careful consideration, review of the motions and supporting documents, and hearing arguments on behalf of each party, for the reasons stated below, this Court denies Applicant's motion. The Respondent consents to Applicant's request for a review of direct appeal issues pursuant to White and concedes that the Applicant did not knowingly and voluntarily waive his right to a review of his direct appeal issues. This Court will allow Applicant's direct appeal.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. The Applicant was indicted at the March 9, 2012 term of the State Grand Jury for Count One - Criminal Conspiracy; Count Three - Accessory Before the Fact to a Felony (Murder); Count Four - Accessory After the Fact (Murder); Count Six - Pointing and Presenting a Firearm at a Person; and Count Seven - Unlawful Carrying of a Pistol



(2012-GS-47-03). A superseding indictment followed on June 13, 2012 which added Count Eight – Accessory Before the Fact to Burglary, 1st Degree. Shaun C. Kent, Esquire represented the Applicant.

On July 16-18, 2013, the Applicant proceeded to trial and was convicted of Criminal Conspiracy, Accessory Before the Fact to a Felony (Murder), Pointing and Presenting a Firearm at a Person, and Unlawful Carrying of a Pistol. The Honorable William H. Seals, Jr. concurrently sentenced him to confinement for a period of 5 years for Criminal Conspiracy, life for Accessory Before the Fact to a Felony (Murder), 5 years for Pointing and Presenting a Firearm at a Person; and 1 year for Unlawful Carrying of a Pistol.

INITIAL APPLICATION

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

1. Ineffective assistance of counsel.
 - a. Failure to Investigate
 - b. Failure to perfect an appeal
2. Brady violation.

DISCUSSION

1. This Court finds Applicant is entitled to a direct appeal.

Applicant alleges a failure to perfect an appeal. The Respondent agrees that the allegation that the Applicant was denied a review of his direct appeal issues is meritorious. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). See White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). When an Applicant does not freely and voluntarily waive his appellate

rights (and it is so granted by the PCR court), the Applicant may petition the South Carolina Supreme Court for review of appeal issues pursuant to White. See Rule 243(i), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)¹.

The Respondent consents to Applicant's request for a review of direct appeal issues pursuant to White and concedes that the Applicant did not knowingly and voluntarily waive his right to a review of his direct appeal issues. Therefore, the Court finds Applicant is entitled to a review of his direct appeal issues. A petition for review of these appellate issues pursuant to White v. State will remedy the Applicant's lack of a direct appeal.

2. The State did not deny Petitioner any constitutional rights, as *Brady* was complied with.

Petitioner asserts that he was denied his constitutional right to due process where the State of South Carolina failed to provide exculpatory evidence favorable to the defense to trial counsel in violation of *Brady v. Maryland*. First, Bryant Bradley, an indicted co-defendant, provided two statements to police, but only the second statement was turned over to the defense in discovery. This assertion was made based off two advise of rights forms.

Second, indicted co-defendant William Morgan, while in jail, received a letter from Bryant Bradley concerning the case and told detectives about the letter months later after Mr. Morgan agreed to cooperate with detectives against Mr. Johnson. Mr. Morgan gave investigators the note. In Mr. Morgan's statement, police said the contents were

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

JB
3

read into the recording, but neither the recording nor the note was ever provided to trial counsel in discovery. The note read:

“What happened that night was we was at Garney house, and Bless was talkin’ about the murder. But at that time I didn’t know what he was talking about. I thought he was talking about the shootout that happened that day. And then he said let’s go get some beer. I guess that been a code that he was speaking, but I thought that he was going to get some beer. So he told me, Garney, Ratchet, and Ready to ride with him. And as we got close to the store, he passed it and say, ‘We bout to go do a murder!’ And I said, ‘Not me!’ And he said, ‘No, you going to drive.’ And I said, ‘No!’ And he said, ‘Yes, you are going to, or I will violate you!’ And then he parked the car by [REDACTED] He say, ‘Ratchet, watch Bundy and make sure he doesn’t leave.’ And look out for police and told Ready to kill any dude that’s in Apartment 50. And that’s what he did. And I was shocked that my first cousin Bless forced me to stay and Ready shot the person and ran to the car and I drove off. And I was pissed off because Bless forced me to do that unnecessary stuff. And New York AKA William Morgan didn’t know about the murder. The people who really knew what was going down was Ratchet, Mike, David, Bless-the main one, Garney, Ready, and that’s it. Bless didn’t want everybody to know what was going down I guess. And I guess that’s why he probably say, ‘Let’s go get some beer.’ because he probably didn’t want his old lady to know what he was going to do. –Bryant Bradley”

Trial counsel testified he never knew of the note nor recording.

Bryant

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady² claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

With regards to the recorded statement, the evidence shows no second statement was ever taken from the witness. Respondent maintains only one statement was taken from Mr. Bryant Bradley. An affidavit from the officer who signed the second advise of rights form states, "To the best of my recollection, I did not take a statement from Mr. Bryant Bradley on [the date of the form]. I advised Mr. Bradley of his Rights and transported Mr. Bradley to the Sumter/Lee Regional Detention Center."

As to the handwritten note, the record is clear that this particular witness was overwhelmingly impeached by the cross-examination of trial counsel on other grounds.

No Brady violation occurred.

- 3. Applicant failed to show trial counsel was ineffective in dealing with Applicant's right to testify and investigation of alibi witnesses.**

² Brady v. Maryland, 373 U.S. 83 (1963).

Applicant also alleges Mr. Johnson received constitutionally defective assistance of counsel where trial counsel did not allow Applicant to testify and trial counsel failed to investigate available alibi witnesses that if presented would have provided exculpatory information tending to cast reasonable doubt on Mr. Johnson's guilt. Mr. Johnson identified several alibi witnesses to trial counsel and informed trial counsel of their expected testimony. Trial counsel told Mr. Johnson that because he could not to take the stand himself, trial counsel could not call any of these witnesses.

The right of a criminally accused to testify or not to testify is fundamental. *Rock v. Arkansas*, 483 U.S. 44, 52, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) ("[F]undamental to a personal defense ... is an accused's right to present his own version of the events *in his own words.*" (emphasis added)). "Every criminal defendant is privileged to testify in his own defense, or to refuse to do so." *Id.* at 53, 107 S.Ct. 2704 (quoting *Harris v. New York*, 401 U.S. 222, 230, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971)). "The right to testify on one's own behalf at a criminal trial has sources in several provisions of the Constitution." *Id.* at 51, 107 S.Ct. 2704. "It is one of the rights that 'are essential to due process of law in a fair adversary process.'" *Id.* (quoting *Faretta v. California*, 422 U.S. 806, 819 n. 15, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)).

Also, to qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. *Walker v. State*, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony

in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

It was the testimony of counsel that if Applicant had been adamant about testifying or calling witnesses, counsel would have let him. He only discouraged Applicant from testifying because Applicant appeared aggressive to others during Applicant's sample cross-examination during trial preparation.

Additionally, the trial Court questioned Applicant on these issues:

“THE COURT: “Mr. Johnson, do you intend to testify...in your trial?”

THE DEFENDANT: No, sir.

THE COURT: ...Have you discussed that with your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: ...Has he answered all of your questions?

THE DEFENDANT: Yes, sir.

THE COURT: Have I answered all of your questions in regard to your right to remain silent and your right to testify?

THE DEFENDANT: Yes, sir.” (Transcript at 556)

Applicant never brought up any issue about trial counsel telling him he could not testify.

Trial counsel also testified he and his investigator went and spoke with as many of Mr. Johnson's alibi witnesses as he could. The witnesses were placed on a potential witness list. However, from their investigation, none of them needed to testify to help the case. Counsel assessed that they all had credibility issues. Furthermore, none of the

witnesses who testified at the PCR hearing accounted for where Applicant was at the time of the hit.

Applicant has failed to show where trial counsel presented Applicant with ineffective assistance with regards to the alibi witnesses.

4. No newly discovered evidence exists in this case.

Applicant further alleges newly discovered evidence exists that warrants vacation of the sentences and convictions and remand of a new trial. Applicant submits that during incarceration he met a "Tre'Vaughn Jackson" who was cell-mates with State's witness Bryant Bradley while Bradley was being housed in the Detention Center. In essence Jackson's knowledge contains direct information that State's witness Bradley had confided in Jackson on several occasion that he (Bradley) had in fact lied on Applicant in order to obtain a pleasing deal from the Prosecution for his testimony.

Traditionally, in South Carolina, "[t]o obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." *McCoy v. State*, 401 S.C. 363, 368 n.1, 737 S.E.2d 623, 625 n.1 (2013) (quoting *Clark v. State*, 315 S.C. 385, 387-88, 434 S.E.2d 266, 267 (1993)). The last requirement, to wit, that the after-discovered evidence must not be merely cumulative or impeaching is recognized and followed in many cases. And in the case of *State v. Pittman*, 137 S.C. 75, 134 S.E. 514, 518, it is stated that the well-established general rule is that newly discovered evidence which "merely impeaches or contradicts



the testimony of a witness at the trial" affords no sufficient grounds for a new trial. State v. Strickland, 201 S.C. 170, 22 S.E.2d 417, 418 (1942).

Jackson's testimony is merely impeachment and cumulative evidence, and that does not qualify as newly discovered evidence. The record is clear that Bryant Bradley was overwhelmingly impeached by the cross-examination of trial counsel on other grounds. His testimony would have failed the first prong as well. The testimony would not have changed the result of the trial because trial counsel spent the whole trial saying the indicted co-defendants were not credible. Furthermore, the witness' testimony would have been inadmissible double hearsay.

Therefore, newly discovered evidence does not exist in this case.

5. Trial counsel was effective when not calling Willie Johnson as a witness.

Applicant submits counsel was ineffective for failing to call Willie Johnson as a witness for the defense. Johnson's testimony would have contradicted that of the state witness Bryant Bradley and the failure to present Mr. Johnson as a witness denied Applicant his right to call witnesses for his defense and his right to present a complete defense.

The Sixth Amendment's Compulsory Clause, applicable to state criminal proceedings through the Due Process Clause of the Fourteenth Amendment, See Washington v. Texas, 388 U.S. 14, 17-19 (1967), provides that "the accused shall enjoy the right ... to have compulsory process for obtaining witnesses in his favor."

Trial counsel testified he and his investigator went and spoke with as many of Mr. Johnson's potential witnesses as they could, and the witnesses were placed on a witness list. Willie Johnson was one of the potential witnesses, and he met with trial counsel

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numerous times. However, from counsel's investigation and preparation, Willie Johnson did not need to testify to counter the testimony of Bryant Bradley. But trial counsel testified he would have let Willie Johnson testify if his client had insisted. The testimony was unnecessary because Bradley was overwhelmingly impeached by the cross-examination of trial counsel and Johnson's testimony would have been inadmissible double hearsay.

Trial counsel was effective with regards to handling Willie Johnson's testimony.

6. Trial counsel's opening statement and closing argument were effective assistance of counsel.

The application also alleges counsel was ineffective for conceding applicant's guilt in opening and closing summation to the jury, thus the State's burden of proof was substantially lightened. Applicant also claimed his counsel's story (Transcript at 596-599) at during closing argument was improper.

"Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). "A strategic or tactical decision does not have to be articulated by counsel on the record; counsel doesn't to have to personally identify his or her thinking. It is enough that the record show a basis for strategy, not that counsel announce that strategy on the record." Wood v. Allen, 558 U.S. 290, ___, 130 S.Ct. 841, 175 L.Ed.2d 738 (2010). Strickland itself recites that there are countless ways to provide effective assistance and even the best lawyers would not defend a particular client in the same way. 466 U.S. at 689. When counsel focuses on some issues to the exclusion of

W. J. 10

others, there is a strong presumption of doing so for tactical reasons rather than sheer neglect, Yarborough v. Gentry, 540 U.S. 1, 8, 124 S.Ct. 1,5, 157 L.Ed.2d 1 (2003).

Also, "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002).

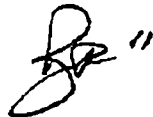
Conceding guilt to the jury is strategic. Trial counsel was trying to gain credibility with the jury. This would allow him to be more convincing to them in regards to the remaining charges. With regards to the story, trial counsel has no duty to tell his client about his closing argument. Furthermore, nothing in the story would lead the jury to believe Applicant was the brother in the story.

Trial counsel's opening and closing summations were effective assistance.

7. Failure to object to Attorney General's comments was not ineffective assistance of counsel.

Applicant asserts counsel was ineffective for failing to object to the Attorney General's closing argument which bolstered the State's witness' credibility by vouching for the truthfulness of the testimony and injecting a misleading ambiguity into the minds of the jurors by assuring the jury the unexplained "rules" conveyed justice concerning the plea deals the State's witnesses received for their testimony against Applicant.

"Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the



weaknesses of their adversaries' positions." State v. Mouzon, 321 S.C. 27, 31-32, 467 S.E.2d 122, 124-25 (Ct. App. 1995), aff'd, 326 S.C. 199, 485 S.E.2d 918 (1997) (citing Herring v. New York, 422 U.S. 853 (1975)).

The comments made by the attorney general merely explained the proffer process to the jury. They furthered his argument on the facts of the case and the inferences from those facts. No comment was made from personal knowledge. Also, trial counsel testified it was his strategy not to bring their jurors' attention back to the testimony of the co-defendants.

Failing to object to these comments during the Attorney General's closing was not ineffective assistance.

8. There was no prejudice against Applicant where trial counsel failed to object to Court's malice instructions.

The next question is whether counsel was ineffective for failing to object to the trial court's malice instructions that resulted in a mandatory presumption when the trial court failed to instruct the jury that they could "accept or reject" the inference of malice from the use of a deadly weapon.

Jury instructions on malice must include a permissive inference, rather than a mandatory inference, and the following charge comports with the Due Process Clause:

"The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. 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.”

State v. Belcher. 685 S.E.2d 802 (S.C. 2009).

The issue of malice instructions need not be addressed. Trial counsel stated murder, and therefore malice, was not at issue for him or the attorney general. The issue in this case was whether Applicant ordered the murder and, therefore, was guilty of the accessory charge.

No prejudice to Applicant from jury charge exists.

9. Trial counsel was not required to object to the Court’s hypotheticals.

The next issue is whether counsel was ineffective for failing to object to the trial court’s jury instructions using hypothetical examples. During the instruction the Court stated, “For example, lying in wait for a person or any other acts of preparation going to show that the deed was within the principal’s mind would be express malice.”


“Impermissible comments on the facts is prohibited in South Carolina.” State v. Hartley. 414 S.E.2d 182 (S.C. App. 1992).

Here, the judge spoke hypothetically. His example coincided with this principal’s behavior. Moreover, murder was not at issue.

Trial counsel did not need to object to the hypothetical examples.

10. Trial counsel was effective in his assistance of Applicant when he decided not to bring the car into issue.

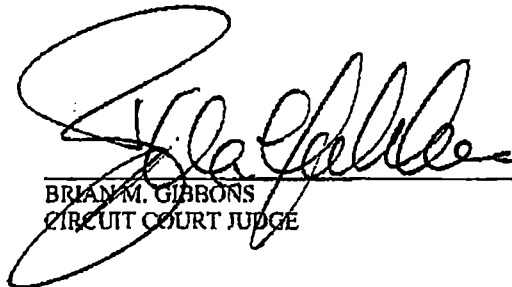
Applicant questions why counsel didn’t call SLED about fingerprints on car.

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CONCLUSION

THEREFORE, for the reasons stated above, this Court orders that Applicant's application for post-conviction relief should be, and hereby is DENIED and DISMISSED WITH PREJUDICE. Applicant is entitled to a belated appeal.

IT IS SO ORDERED.



BRIAN M. GIBBONS
CIRCUIT COURT JUDGE

RECORDED
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JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Chester, South Carolina
5/11, 2017

JUN 13 2012

STATE GRAND JURY OF SOUTH CAROLINA, JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

CASE NO.: 2012-GS-47-**2012GS 47 09**

V,

**SUPERSEDING INDICTMENT
FOR CRIMINAL GANGS**

Bryant Bradley
Garnett Davis
William Morgan
Mickey Johnson
John Wesley Stamps
Rasheed Brandon

Defendants.

Murder
S.C. Code Ann. § 16-3-10
(1 Count)

Accessory before the Fact - Murder
S.C. Code Ann. § 16-1-40
(1 Count)

Accessory after the Fact - Murder
S.C. Code Ann. § 16-1-55
(1 Count)

Possession of a weapon during the
commission of a violent crime
S.C. Code Ann. §16-23-490
(2 Counts)

Pointing and Presenting a Firearm at Person
S.C. Code Ann § 16-23-410
(1 Count)

Unlawful Carrying of a Pistol
S.C. Code Ann § 16-23-20
(1 Count)

Criminal Conspiracy
S.C. Code Ann § 16-17-410
(1 Count)

Accessory Before the Fact to Burglary
S.C. Code Ann. 16-1-40
(1 Count)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina on March 8, 2012, the State Grand Jurors present upon their oath:

**COUNT ONE
CRIMINAL CONSPIRACY
S.C. Code Ann. § 16-17-410**

That BRYANT BRADLEY, GARNETT DAVIS, WILLIAM MORGAN, MICKEY JOHNSON, JOHN WESLEY STAMPS, AND RASHEED BRANDON, and other persons whose names are both known and unknown to the State Grand Jury as members of a criminal gang as defined by §16-8-230(2), did in Sumter County, South Carolina, on or about January 2009 until the present, willfully and knowingly combine with one or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means. To wit: As members of "135 PIRU", BRYANT BRADLEY, GARNETT DAVIS, WILLIAM MORGAN, MICKEY JOHNSON, JOHN WESLEY STAMPS, AND RASHEED BRANDON combined with one or more persons for the purpose of accomplishing unlawful objects, including, but not limited to MURDER, ACCESSORY BEFORE THE FACT, ACCESSORY AFTER THE FACT, POINTING AND PRESENTING FIREARM AT A PERSON, and UNLAWFUL CARRYING OF A PISTOL in violation of § 16-17-410 of the South Carolina Code of Laws (1976) as amended, such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of § 14-7-1630(A)(2) of the South Carolina Code of Laws as amended.

**COUNT TWO
MURDER
S.C. Code Ann. § 16-3-10**

That BRYANT BRADLEY, RASHEED BRANDON, and JOHN WESLEY STAMPS, did in Sumter County, South Carolina, on or about March 22, 2011, willfully with malice aforethought, cause the death of Adrian Davis, a human being. To wit: BRYANT BRADLEY, RASHEED BRANDON, and JOHN WESLEY STAMPS did shoot and kill Adrian Davis in violation of § 16-3-10 of the South Carolina Code of Laws (1976) as amended, such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of § 14-7-1630(A)(2) of the South Carolina Code of Laws as amended.

**COUNT THREE
ACCESSORY BEFORE THE FACT TO A FELONY (MURDER)
S.C. Code Ann §16-1-40**

That MICKEY JOHNSON, GARNET DAVIS, and WILLIAM MORGAN did in Sumter County, South Carolina, on or about March 22, 2011, abet, counsel, hire or otherwise procure the commission of the felony of murder, by the principal felon(s); To wit: MICKEY JOHNSON, GARNET DAVIS, and WILLIAM MORGAN did abet, counsel, hire or otherwise procure the commission of the felony of the murder(s) of Adrian Davis by the principal felon(s) Bryant Bradley, Rasheed Brandon, and John Wesley Stamps in violation of §16-1-40 of the South Carolina Code of Laws (1976) as amended, such conduct arising out of, or involving, a criminal gang or a pattern of

criminal gang activity pursuant to the provisions of § 14-7-1630(A)(2) of the South Carolina Code of Laws as amended.

COUNT FOUR
ACCESSORY AFTER THE FACT (MURDER)
S.C. Code Ann. § 16-1-55

That MICKEY JOHNSON and GARNETT DAVIS in Sumter County on or about March 22, 2011, knowing the commission and completion of the felony of murder by the principal felon(s), did aid, harbor, and assist such felon(s) to escape detection or arrest or otherwise avoid the consequences of the crime; to wit: MICKEY JOHNSON and GARNETT DAVIS knowing the commission and completion of the felony of the murder of Adrian Davis by the principal felons ^{+ RICE} Bryan Bradley, Rasheed Brandon, and John Wesley Stamps, did aid, harbor, and assist such felon to escape detection or arrest or otherwise avoid the consequences of the crime by helping the principal felons dispose of evidence of the felony, in violation of §16-1-55, Code of Laws of South Carolina (1976), as amended, such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of § 14-7-1630(A)(2) of the South Carolina Code of Laws as amended.

COUNT FIVE
POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
CRIME
S.C. Code Ann. §16-23-490

That BRYANT BRADLEY, RASHEED BRANDON, and JOHN WESLEY STAMPS, did in Sumter County on or about March 22, 2011, possess or visibly display a firearm during the commission or attempted commission of a violent crime; to wit: BRYANT BRADLEY, RASHEED BRANDON, and JOHN WESLEY STAMPS did possess a firearm(s) during the commission of murder, a violent crime as defined by §16-1-60, in violation of §16-23-490, of the South Carolina Code of Laws, (1976), as amended, such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of § 14-7-1630(A)(2) of the South Carolina Code of Laws as amended.

COUNT SIX
POINTING AND PRESENTING A FIREARM AT A PERSON
S.C. Code Ann. §16-23-410

That MICKEY JOHNSON, did in Sumter County on or about March 22, 2011, point and present a firearm at a person; to wit: Mickey Johnson did possess a firearm and did point said firearm, a pistol, at another person, in violation of §16-23-410, of the South Carolina Code of Laws, (1976), as amended, such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of § 14-7-1630(A)(2) of the South Carolina Code of Laws as amended.

**COUNT SEVEN
UNLAWFUL CARRYING OF A PISTOL
S.C. Code Ann. §16-23-20**

That MICKEY JOHNSON, did in Sumter County on or about March 22, 2011, unlawfully carry a pistol; to wit: Mickey Johnson did carry a pistol, in violation of §16-23-20, of the South Carolina Code of Laws, (1976), as amended, such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of § 14-7-1630(A)(2) of the South Carolina Code of Laws as amended.

**COUNT EIGHT
ACCESSORY BEFORE THE FACT O BURGLARY – 1st Degree
S.C. Code Ann. §16-1-40**

That MICKEY JOHNSON, did in Sumter County on or about July 19, 2010, abet, counsel, hire or otherwise procure the commission of the felony of Burglary, First Degree, by the principal felon(s); to wit: Mickey Johnson did provide transportation and a weapon to ~~Dontae Crayton~~ ^{MSE} for the purpose of committing a Burglary, in violation of § 16-1-40 of the South Carolina Code of Laws, (1976), as amended, such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of § 14-7-1630(A)(2) of the South Carolina Code of Laws as amended.

A True Bill

Michael E. Earnheart
FOREMAN

Alan Wilson
ALAN WILSON (cng)
ATTORNEY GENERAL

5. As to the charge of **Criminal Conspiracy**, we the Jury unanimously find the Defendant, Mickey Johnson:

Not Guilty

Guilty

Dated: July 18, 2013

James D. Brock
FOREPERSON

Please let the Bailiff know when you have completed this form.