

VOLUME II

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS
William H. Seals, Jr., Circuit Court Judge

Circuit Court Case No. 2017-CP-26-02564
Appellate Case No.: 2020-001265

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Jan 28 2021

S.C. SUPREME COURT

Marcus Dwain Wright, 289646, ... Petitioner,

v.

State of South Carolina, ... Respondent.

APPENDIX

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experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Rule 702, SCRE: “All expert testimony must meet the requirements of Rule 702, regardless of whether it is scientific, technical, or otherwise.” Graves v. CAS Medical Systems, Inc., 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) (citing State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009)). “In determining whether to admit expert testimony, the court must make three inquiries: First, the court must determine whether ‘the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.’” Id. (citing Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010)). “Second, the expert must have ‘acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter,’ although he ‘need not be a specialist in the particular branch of the field.’” Id. “Finally, the substance of the testimony must be reliable.” Id.

“There is no exact requirement concerning how knowledge or skill must be acquired.” State v. Rose, 423 S.C. 382, 392-93, 814 S.E.2d 529, 534 (Ct. App. 2018) (quoting State v. Henry, 329 S.C. 266, 274, 495 S.E.2d 463, 467 (Ct. App. 1997)). There is no abuse of discretion in qualifying a witness as an expert “as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury.” Id.

Eichenmiller testified she worked for the South Carolina State Law Enforcement Division as a forensic firearms examiner. (Tr. 410, ll. 9-16). Eichenmiller explained she possessed a bachelor’s degree as well as a master’s degree, though she did not indicate for what fields of study, and substantial training for SLED, including “a three to five year internship, apprenticeship program, where I learned under trained firearms examiners.” (Tr. 410, ll. 17-21). Eichenmiller further explained she performed practice cases as part of the apprenticeship, then

worked alongside other experienced examiners who reviewed her performance. (Tr. 411, ll. 1-5). Eichenmiller had seven years of experience working in her position with SLED and indicated she had testified as an expert in state courts on approximately fifteen prior occasions. (Tr. 411, ll. 6-22). The trial court qualified Eichenmiller as an expert in forensic testing of firearms and ammunition without objection from Martin. (Tr. 411-12).

Eichenmiller testified that she compared six "items"—bullets and a casing—recovered from the scene and concluded they were consistent with a type of weapon "rifled with six grooves or right twists," and then produced a list of possible manufacturers who make guns with such rifling. (Tr. 415-16). Eichenmiller concluded that:

... the fired bullets could have been forty S&W caliber or a ten millimeter automatic caliber. Firearms that are made in forty S&W caliber with that rifling is Glock, Heckler & Koch, IMI, Kahr Arms, and Vector, and then Glock also makes a ten millimeter auto with that rifling.

(Tr. 416, ll. 3-7). She had no weapon to which to compare the projectiles. (Tr. 416, ll. 14-19). Analyzing other spent casings recovered from the top of the stove in the kitchen, from the living room, and from a couch, Eichenmiller concluded they were all "forty S&W caliber cartridge cases" which could have been the same caliber as the bullets. (Tr. 417, ll. 2-23). Eichenmiller compared two spent casings for a "caliber forty Model G23, Serial Number MAF699" recovered from the Kate's Bay residence to five items recovered from the crime scene and concluded that all were fired from the same weapon. (Tr. 396, ll. 16-22; Tr. 417-19).

Applicant asked no questions and offered no evidence or arguments with respect to Eichenmiller at the evidentiary hearing. On cross-examination, Martin was unable to recall Eichenmiller's testimony. (PCR Tr. 50-51). Martin asserted that he must not have had any basis to object to her expert qualification, and that if he had known of any such basis, he would have so objected. (PCR Tr. 51, ll. 5-18).

The Court finds Applicant has failed to meet his burden of showing ineffectiveness. The trial record reflects Eichenmiller was qualified to testify to the field in which she was qualified, and was qualified in a commonly accepted and reliable field of forensic science. Eichenmiller possessed years of experience and had testified as an expert numerous times before. See, e.g. State v. Brockmeyer, 406 S.C. 324, 349, 751 S.E.2d 645, 658 (2013); State v. King, 424 S.C. 188, 197, 818 S.E.2d 204, 209 (2018). Applicant offers no evidence or argument against Eichenmiller's qualifications or conclusions. The Court finds no ineffectiveness from Martin's treatment of Eichenmiller's testimony, and Applicant's request for relief by way of this allegation is **DENIED**.

6. Failure to Strike Former Prosecutor from Jury

Applicant alleges Counsels were ineffective in failing to object to the seating of juror Barbara Blain-Olds. "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) (citing State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997)). "The selection of a jury is inevitably a call upon experience and intuition. The *trial lawyer* must call upon his own insights and empathetic abilities." Id. (quoting Romero v. Lynaugh, 884 F.2d 871, 878 (5th Cir. 1989)) (emphasis original). "In PCR proceedings, a defendant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense." Id.

Trial

During voir dire at trial, the trial court asked if any members of the jury panel had been involved with the solicitor's office, to which "Juror Number 27," Barbara Blain-Olds, responded that she "was once employed by the Solicitor's Office as an Assistant Solicitor." (Tr. 30-31). Blain-Olds indicated she had last worked for the office "[c]lose to ten years" prior, and affirmed

that her prior employment did not affect her ability to be fair and impartial, and base her verdict on the law and evidence of the trial. (Tr. 31, ll. 4-16). The trial court thanked Blain-Olds for her responses and asked her to remain. (Tr. 31, ll. 17-18).

Later during the voir dire, the trial court announced the long list of possible witnesses, in response to which Blain-Olds again stood and indicated that "Martha Menendez" was her "former sister-in-law." (Tr. 36-37). The trial court asked Blain-Olds and five other responsive potential jurors to raise their hands if "the fact that they are witnesses in this trial affect your ability to be fair and impartial in the trial of this case[;]" nobody raised their hand and all of the potential jurors sat back down. (Tr. 38, ll. 2-6).

The State immediately advised the trial court that there were two additional potential witnesses: Russell Dean and Jacinda Wright. (Tr. 38, ll. 8-10). The trial court pronounced the names and Blain-Olds again stood. (Tr. 38, ll. 11-19). Blain-Olds informed the trial court that Wright was her "niece by marriage, my former marriage." (Tr. 38, ll. 19-20). Blain-Olds denied that the relationship would affect her ability to be fair and impartial. (Tr. 38, ll. 21-23).

When Blain-Olds appeared during jury selection and Applicant was prompted as to whether to exercise a peremptory strike, Counsel Brown asked for "a minute," which the Court granted. (Tr. 40-41). Brown then asked to seat Blain-Olds on the jury. (Tr. 41, line 4).

Evidentiary Hearing

On direct examination at the evidentiary hearing, Martin did not initially recall that a former solicitor was seated as a juror during Applicant's trial. (PCR Tr. 24, ll. 3-13). Applicant did not refresh Martin's recollection but rather moved on to a different series of questions. On cross-examination, Martin was directed to the trial transcript and testified he did recall Blain-Olds and that she told the court she was previously employed with the solicitor's office. (PCR

Tr. 48, ll. 17-24). Martin confirmed Blain-Olds was, at the time of the evidentiary hearing, the Mayor of Conway, South Carolina. (PCR Tr. 48-49). Martin testified that Jacinda Wright, Blain Olds' niece by marriage, was Applicant's significant other at the time, and that he would have put her on his list of potential witnesses. (PCR Tr. 49-50). Martin asserted that he would not have agreed to seat her as a juror unless Applicant wanted to do so. (PCR Tr. 50, ll. 11-13, ll. 19-21). Additionally, Martin explained that he had known Blain-Olds for years, that her time with the solicitor's office had been short, and that he believed she would have been a good juror. (PCR Tr. 50, ll. 13-19).

Findings

The Court finds Applicant has failed to meet his burden of proof as to either prong of Strickland. Applicant has failed to present any evidence to show Blain-Olds' presence on the jury, or service as foreperson of the jury, prejudiced his defense in any way. Additionally, Applicant has failed to present any evidence to show Counsels were deficient in seating Blain-Olds. To the contrary, Martin's testimony reflects the capable exercise of his judgment based on his experience in and knowledge of the community in determining whether Blain-Olds would be a favorable juror. The Court finds no ineffectiveness from Counsels' decision to not exercise a peremptory strike on Blain-Olds, and Applicant's request for relief by way of this allegation is **DENIED**.

7. Failure to Establish Expectation of Privacy in Kate's Bay Residence

Applicant alleges Counsels were ineffective in failing to establish that he had a reasonable expectation of privacy in the residence at 3635 Kates Bay Highway. The Court will not long belabor this issue, because the validity of search of the Kate's Bay Highway was raised

to and ruled upon by the South Carolina Court of Appeals without regard as to whether

Applicant possessed a reasonable expectation of privacy, and concluded:

... the magistrate had a substantial basis for determining that, under the totality of the circumstances, there was probable cause to search 3635 Kate's Bay Highway. The information in Detective Weaver's affidavit and supplemental oral testimony, which was relayed to him by the lead investigator, created a fair probability that evidence of the shooting would be found at 3635 Kate's Bay Highway.

State v. Wright, 416 S.C. 353, 366, 785 S.E.2d 479, 486 (Ct. App. 2016). As such, Applicant cannot show any prejudice from the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

8. Failure to Object, Require Certified Copies of Convictions for S.C. Code Ann. § 17-25-45

Applicant alleges Counsels were ineffective in failing to require the prosecution to introduce certified copies of his prior convictions relied upon for the purposes of sentencing him to life without parole pursuant to S.C. Code Ann. § 17-27-45. As with the prior allegation, the Court will not long belabor this issue, because it was raised to and disposed of by the South Carolina Court of Appeals in a footnote:

Wright asserts on appeal that the trial court erred in sentencing him to LWOP under South Carolina's recidivist statute. [...] We note the trial court did not state it was sentencing Wright to LWOP. Rather, on the sentencing sheet, the trial court wrote "life imprisonment"; noted Wright was convicted of murder in violation of sections 16-3-10 and 16-3-20 of the South Carolina Code [...]; and did not mark the box labeled "§ 17-25-45," which would have indicated it was sentencing Wright to LWOP under the recidivist statute. The trial court had authority to sentencing Wright to life imprisonment under the murder statute.

Wright, 416 S.C. at 364 n. 1, 785 S.E.2d at 485 n.1. As such, Applicant cannot show any prejudice from the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

9. Failure to Obtain Jury Instructions on Self-Defense and/or Voluntary Manslaughter

Applicant alleges Counsels were ineffective in failing to elicit or otherwise introduce evidence necessary to obtain jury instructions on self-defense and voluntary manslaughter. This allegation is resolved by much of the same summary and analysis as set forth in Section II.A.2., above, as the only additional evidence properly before this Court to further support Applicant's claims to voluntary manslaughter and self-defense instructions is his own testimony. As such, this Court here incorporates without restating the entirety of Section II.A.2.

The Court finds Applicant has failed to establish Counsels were deficient in failing to introduce enough evidence to support jury instructions on self-defense or voluntary manslaughter, or that he was prejudiced by their effort. Counsels' trial strategy was to deny Applicant's involvement at all, not argue for self-defense or that he shot the victim in the heat of passion. Applicant refused to testify until it was too late to do so. Applicant's testimony he offered in support of his self-defense and voluntary manslaughter theories was more harmful than helpful and would have foreclosed the strongest trial strategy available to him. For all of these reasons, and those more thoroughly set forth in the prior section, the Court finds Applicant has failed to show Counsels were ineffective, and his request for relief by way of this allegation is **DENIED**.

10. Failure to Subpoena, Call Witness Kelly Pinnix

Applicant alleges Counsels were ineffective in failing to subpoena and call as a witness in his defense one Kelly Pinnix.¹ In order to establish prejudice from an attorney's failure to call a witness, the applicant must call that witness at the post-conviction relief evidentiary hearing or otherwise offer the witness' testimony within the rules of evidence. Dempsey v. State, 363 S.C.

¹ Presented in the pleadings as "Phoenix," and pronounced as such throughout the evidentiary hearing.

365; 369, 610 S.E.2d 812, 814, (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Pinnix, was indicated by other witnesses at trial as a white female² who was present, albeit drunk and/or high on crack cocaine, at the time Applicant shot and killed Green. (Tr. 177; ll. 5-14; Tr. 216-18; Tr. 224-27; Tr. 230, ll. 11-20; Tr. 232, ll. 5-8; Tr. 245-46; Tr. 247, ll. 2-9; Tr. 270-71; Tr. 299-300). Powell testified that Pinnix collected "a whole bunch of shells" after the shooting and attempted to give them to him. (Tr. 270-71). Pinnix did not testify at trial. In closing arguments, Martin focused on the credibility of the State's witnesses, and the fact that only one witness—Roy Sinclair—actually identified Marcus Wright as the shooter. (Tr. 489-95).

Nor did Pinnix testify at the evidentiary hearing. As previously noted, both Counsels testified that their theory of the case was *not* self-defense, but rather to attack the strength of the State's case as built on a foundation of witnesses who were all heavily inebriated at the time of the shooting. (PCR Tr. 13-15; PCR Tr. 17, ll. 24-25; PCR Tr. 18, ll. 23-24; PCR Tr. 21, ll. 19-20; PCR Tr. 36; ll. 5-6; PCR Tr. 57, ll. 3-13; PCR Tr. 58, ll. 3-10; PCR Tr. 62, ll. 14-24; PCR Tr. 68, ll. 13-15). Martin testified that Pinnix identified Applicant as the shooter and otherwise gave statements "that made her testimony inconsistent with any thoughts of self-defense in addition to the fact that she identified him as the killer." (PCR Tr. 21-23; Applicant's Exhibit #1). On cross-examination, Martin read a portion of Pinnix' statement which provided that an indeterminate "they" said that the Victim "pulled a gun out and he never did." (PCR Tr. 38-39; Applicant's Exhibit #1). After reviewing various excerpts from Pinnix' statement, Martin agreed her statement was "highly damaging," and that he was not about to call her as a witness. (PCR Tr. 38-41; Applicant's Exhibit #1).

² Multiple witnesses only identify her as "the white girl."

Applicant testified that although Pinnix told law enforcement that she did not see a gun, she also told law enforcement that the shooter screamed gun, so as to establish the shooter's state of mind, and that they were locked in the home. (PCR Tr. 99, ll. 9-20; Applicant's Exhibit #1).

The Court finds Applicant has failed to meet his burden of showing any deficiency on the part of Counsels, or that the deficiency alleged prejudiced him. Applicant narrowly insists upon two portions of Pinnix' statement: Applicant's own declaration that the Victim was armed, and that she saw Powell run into the house without a gun, then run out with a gun. However, Counsels both testified that self-defense was not the trial strategy they settled upon, and the record reflects a defense theory which denied that Applicant was present at all. Introducing a witness who would have established Applicant as the shooter would have run entirely to the contrary of Counsels' theory of the case. The statement as a whole is highly damaging and inculpatory—Pinnix affirmatively rejects the claims that Green ever had a gun, and further asserts he had a broken finger. Pinnix identifies Applicant as "Big Money," and compellingly tells law enforcement about Applicant's eerie calm as he unloaded his gun into Green. Martin's determination that he could not call Pinnix is (1) entitled to deference and (2) amply supported by the record. Moreover, calling Pinnix would have been so damaging to Applicant's case, doing so could have itself constituted a colorable claim of ineffective assistance of counsel.

Finally, the Court is limited to consider only Pinnix' statement as it was provided to law enforcement, as Pinnix did not testify at the evidentiary hearing. Though the Court can rely upon that statement in weighing whether Applicant has met his burden of showing prejudice, Pinnix' absence from the hearing denies this Court an opportunity to pass upon which parts of her testimony would have been credible, which parts would not be credible, and whether she would be able to remember anything at all given her evidently heavy drug use at the time of the

shooting. This Court is left with something more than mere speculation, but the inability to observe the witness must invariably weigh against Applicant's burden. For all of these reasons, the Court finds Applicant has failed to establish any deficiency on the part of Counsels by way of this allegation, nor any prejudice from the deficiency alleged, and his associated request for relief is DENIED.

11. Failure to Impeach Witnesses on Prior Convictions; Investigate, Raise Brady Violations

Applicant alleges Counsels were ineffective in failing to impeach witness Daisy Marthena Menendez, also known as Marthena Jackson (hereafter "Menendez"), with a prior conviction. Applicant additionally and in the alternative alleges Counsels were ineffective in failing to investigate and thereafter raise to the trial court alleged Brady³ violations insofar as the State did not disclose Menendez's alleged prior convictions.

"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). The mandate of Brady extends to evidence "that is not in the actual possession of the prosecution but known by others acting on the government's behalf in the particular case, including the police." State v. Kennerly, 331 S.C. 442, 452-53, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Kyles v. Whitley, 514 U.S. 419 (1995)). "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

³ Brady v. Maryland, 373 U.S. 83 (1963).

S.E.2d at 268 (citing United States v. Bagley, 473 U.S. 667 (1985)); see also State v. McCray, 413 S.C. 76, 95-97, 773 S.E.2d 914, 924-25 (Ct. App. 2015) (finding the prior convictions related to dishonesty of two witnesses were favorable to the defendant, in the State's possession, and were withheld by the State, but were immaterial where the witness' testimony was corroborated by numerous other witnesses).

For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Rule 609(a), SCRE. Convictions for which a person is pardoned or which have been expunged may not be used for impeachment purposes. Rule 609(c), SCRE.

At trial, Menendez testified that her niece Jacinda Wright called her in the early morning hours of May 1, 2012, and reported that Applicant wanted to park a car in her garage at 3651 Kate's Bay Highway; Applicant thereafter parked a black BMW in her garage. (Tr. 256-58). Applicant returned to the vehicle the next day and retrieved something, but Menendez did not know what, if anything, he actually took. (Tr. 258, ll. 14-24). Applicant left the car, and the BMW remained in Menendez' garage until law enforcement later retrieved it. (Tr. 258-59). Menendez noted that Jacinda lived just "two houses over." (Tr. 259, ll. 8-15).

On cross-examination, Menendez established that Applicant lived with Jacinda in her 3635 Kate's Bay Highway home for more than three years, and that she saw him there on a regular basis. (Tr. 260-61). Menendez knew nothing about Applicant shooting anybody until

law enforcement told her as much, and perceived nothing sinister or criminal in Applicant's request to park his car in her garage. (Tr. 260-61).

At the evidentiary hearing, Applicant asserted that Menendez had a criminal background, and that the solicitor had prosecuted Menendez previously for perjury, misconduct in office, and forgery. (PCR Tr. 93-94). The prosecutor, Elder, testified she could not recall if she disclosed any prior convictions for Menendez, but noted that the documents provided by PCR counsel to refresh her recollection reflected charges which were dismissed *nolle prosequi*. (PCR Tr. 117-18). Elder recalled that the charges were expunged from Menendez' record, and testified that to the best of her recollection, Menendez did not have any convictions at the time of her trial testimony. (PCR Tr. 118, ll. 16-21). Elder explained:

If, if – what I would've done at trial is when I prepare for trial, I get a – run a certified criminal record for witnesses and I present that to the Court. So, if I did not present it to the Court, then it would've not – it was not appearing on her criminal convictions.

(PCR Tr. 119, ll. 4-8). Elder could not recall prosecuting Menendez, nor could she recall whether she handled a Family Court proceeding to which only she obliquely referred. (PCR Tr. 119, ll. 9-18).

The Court finds Applicant has failed to meet his burden of showing any deficiency on the part of Counsels, or any prejudice from the deficiencies alleged. First, for reasons that have already been set forth in prior sections, this Court finds Applicant's testimony to be wholly lacking in credibility, and puts no weight in it. Applicant did not introduce any exhibits to establish Menendez had prior convictions, let alone any with which she could be impeached. Thus, this Court is left only with Elder's testimony, which despite some haziness due to the passage of time, did clearly provide (1) that Elder did not possess any records of convictions for Menendez at the time of trial, and (2) that Menendez had no convictions at the time of trial. This

Court does give weight to Elder's testimony and, accordingly, this Court finds Menéndez was not subject to any convictions at the time of her testimony at Applicant's trial. The absence of an impeachable prior conviction is dispositive of Applicant's claim.

Furthermore, and notwithstanding this Court's affirmative finding that there was no prior conviction and assuming for the sake of argument that *some* conviction exists, Applicant has not presented enough evidence or argument to meet his burden of showing he could have impeached Menendez under Rule 609, SCRE. This Court is without sufficient information to deem any prior theoretical convictions as within the time limits of Rule 609(b), SCRE, or for a crime of dishonesty under Rule 609(a)(2), SCRE, or for a felony under Rule 609(a)(1), SCRE, subject to Rule 403, SCRE.

As to both materiality under Brady and prejudice under Strickland, this Court is not convinced any such theoretical impeachment of Menendez would have been all that helpful to Applicant. While Menendez did establish Applicant stashed the BMW and may have obtained something from the vehicle, multiple other witnesses testified that Applicant left the scene in the black BMW, and the car's keyless entry device was recovered from the Camaro rented by Jacinda Wright. (Tr. 221, ll. 7-13; 233, ll. 1-6; Tr. 236, ll. 21-25; Tr. 268, ll. 16-18; Tr. 271-72; Tr. 338, ll. 14-17). Additionally, she provided testimony on cross-examination vital to Applicant to support a reasonable expectation of privacy in the residence at 3635 Kate's Bay Highway. Where the witness testified to a secondary detail and otherwise provided testimony beneficial to Applicant, it cannot be said that her generalized impeachment would have changed the outcome at trial.

As to Strickland deficiency, and again notwithstanding this Court's affirmative finding that there was no prior conviction and assuming for the sake of argument that *some* conviction

exists, Applicant has not presented any evidence to show that Counsels could or should have discovered Menendez' theoretical prior by the exercise of reasonable diligence. Applicant has presented no evidence to rebut the presumption of effective assistance of counsel—Applicant never questioned Counsels on the subject.

Applicant has failed to meet his burden under either prong of Strickland, has failed to establish a claim for relief under Brady that they could have or should have found and raised, and for all these reasons above, his request for relief by way of this allegation is **DENIED**.

B. Prosecutorial Misconduct under Brady v. Maryland.

As addressed in the context of ineffective assistance of trial counsel in Section II.A.11, above, Applicant alleges that the State failed to disclose evidence in its possession in violation of Brady v. Maryland, 373 U.S. 83 (1963). The summation and reasoning of Section II.A.11 is here incorporated in full without restatement. As explained above, Applicant has failed to present evidence sufficient to show that impeachment of Menendez would have been favorable to him, that the State knew of the prior conviction alleged, that the State withheld information about the prior conviction alleged, that the prior conviction exists, or that the impeachment based upon the prior conviction was material to his own conviction. Applicant has failed to meet any of the requirements of Brady, and as such his request for relief by way of this due process claim is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 13 day of August, 2020.


 WILLIAM H. SEALS, JR.
 Presiding Judge
 Fifteenth Judicial Circuit

Conway, South Carolina

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September 21, 2020

The Honorable Alan Wilson
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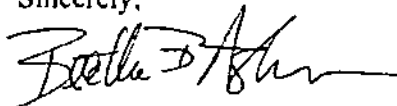
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Re: Notice of Appeal
Marcus Dwain Wright v. State of South Carolina
Horry County Case No. 2017-CP-26-02564

Dear Messrs. Wilson and James,

Enclosed please find the Notice of Appeal in the above-referenced case and Proof of Service for the same. Please contact me with any questions or concerns.

Sincerely,



Beattie B. Ashmore

BBA/rmb
Enclosures

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-CP-26-02564

Marcus Dwain Wright,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Marcus Dwain Wright appeals the Order of the Honorable William H. Seals, Jr. dated August 13, 2020 denying the appellant post-conviction relief. The appellant received written notice of this Order on August 26, 2020.



Beattie B. Ashmore, SC Bar No. 010419
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-CP-26-02564

Marcus Dwain Wright,

Appellant,

v.

State of South Carolina,

Respondent.

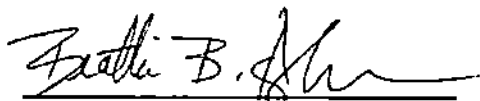
PROOF OF SERVICE

I hereby certify that I have served the Notice of Appeal on the State of South Carolina, South Carolina Attorney General's Office, by depositing a copy of it in the United States Mail, postage prepaid, on the 21st day of September, 2020, addressed to its attorneys of record:

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

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APPEAL FROM HORRY COUNTY
COURT OF GENERAL SESSIONS
John C. Hayes, III, Circuit Court Judge

SC Court of Appeals

Case No. 2012-GS-26-2339; 2012-GS-26-2340; 2012-GS-26-2551;
2012-GS-26-02552; 2012-GS-26-02553

Appellate Case No. 2013-001406

State of South Carolina, ... Respondent,

v.

Marcus Dwain Wright, ... Appellant.

BRIEF OF APPELLANT

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
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STATEMENT OF ISSUES ON APPEAL

1. Did the court err in admitting evidence from search of residence?
2. Did the defendant have a reasonable expectation in the residence searched?
3. Did the court apply the proper analysis?
4. Was the search warrant affidavit was sufficient?
5. Could the affidavit be supplemented by oral evidence where the affidavit contained false information?
6. Did the court err in admission of SCDMV records?
7. Did the court err in the admission of evidence
which was the result of illegal search of the defendant's hotel room?
8. Did the court err in excluding evidence of witness's prior inconsistent statement?
9. Did the court err in denying defendant's request to testify?
10. Does the court have to make specific findings as to prior convictions before it can sentence under LWOP?
11. Does the record support sentencing under LWOP?
12. If life is imposed and it is not clear whether or not it is under LWOP, should this Court remand for re-sentencing?
13. Did the trial court err in refusing to charge the jury on the law of self-defense and manslaughter?

STATEMENT OF THE CASE

The Appellant, Marcus Dwain Wright, was indicted for Murder, Trafficking Powder Cocaine, Possession with Intent to Distribute Cocaine Base, Possession of a Weapon During a Violent Crime. A jury trial was held on June 17-21, 2013, the Honorable John C. Hayes presiding. The Appellant was represented by L. Morgan Martin and Edward M. Brown. The State was represented by Donna E. Elder, Assistant Solicitor for the Fifteenth Judicial Circuit. Dixie Cox Eubank was the court reporter. The jury returned a verdict of guilty on all charges. The Appellant was sentenced to life on the murder, five years on the weapons charge, twenty-five years on the trafficking charge, and fifteen years for the possession with intent to distribute cocaine base. All sentences were run concurrent to each other and consecutive to the life sentence. Appellant timely filed notice of appeal. J. Falkner Wilkes represents the Appellant on the appeal of this case.

I. THE COURT ERRED IN ADMITTING EVIDENCE FROM SEARCH OF RESIDENCE.

A. THE COURT ERRED IN RULING THAT DEFENDANT DID NOT HAVE STANDING TO CHALLENGE SEARCH WARRANT.

Wright timely exercised his right to challenge evidence seized during the search of the residence located at 3635 Kate's Bay Road. (R. 53). Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). The court conducted a suppression hearing and as a result, ruled that Wright did not have standing to claim Fourth Amendment protection at that residence. In doing so the court failed to apply a proper analysis or consider relevant facts in its determination of standing.

Although the court initially stated the correct standard for determining standing, it failed to actually apply the law to the facts of the case. The trial court never made any findings as to the Wright's actual connection with the residence searched, focusing instead only on Wright's connection with *other* residences. (R. p. 143). Contrary to the trial court's "standing" analysis, the issue of protection under the Fourth Amendment turns entirely on whether or not an individual has sufficient contact with the property searched to establish a legitimate expectation of privacy in *that* property. In this case the trial court held that Wright did not have "standing" based on SCDMV records and Wright's bond sheet, both of which showed a different address for his residence. But regardless of what address Wright might have claimed on SCDMV records eight years prior, or on his bond paperwork a month after the search, the record shows that he clearly had sufficient contact with the residence searched to establish a legitimate expectation of privacy in that property.

The Fourth Amendment guarantees individuals the right to be free from unreasonable

searches and seizures. U.S. Const. amend. IV; S.C. Const. art. I, § 10. To claim protection under the Fourth Amendment of the U.S. Constitution, defendants must show that they have a legitimate expectation of privacy in the place searched. Rakas v. Illinois, 439 U.S. 128, 143, 99 S.Ct. 421, 430, 58 L.Ed.2d 387 (1978). Throughout its analysis the trial court in Wright's case continually referred to the issue as one of standing. Standing is not the correct standard for the Fourth Amendment issue. The United States Supreme Court has expressly rejected the application of an analysis based on the standing doctrine; instead, the analysis is based on substantive Fourth Amendment law. Rakas v. Illinois, 439 U.S. 128, 140, 99 S.Ct. 421, 429, 58 L.Ed.2d 387 (1978). The use of the term "standing" has created confusion in this context, and therefore "standing" is no longer appropriate to "connote the legitimate expectation of privacy in the evidence seized or the premises searched." United States v. Bouffard, 917 F.2d 673, 675 (1st Cir. 1990).

A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable. Oliver v. United States, 466 U.S. 170, 177, 104 S.Ct. 1735, 1741, 80 L.Ed.2d 214 (1984) (citing Katz v. United States, 389 U.S. 347, 361, 88 S.Ct. 507, 516, 19 L.Ed.2d 576 (1967) (*Harlan, J., concurring*)).

It is fundamental that Fourth Amendment rights are personal in nature and may not be vicariously asserted. Rakas v. Illinois (1978), 439 U.S. 128, 133-34, 99 S.Ct. 421, 58 L.Ed.2d (R. p. 387). A person aggrieved by the introduction of evidence secured by an illegal search of a third person's premises or property has not suffered any infringement upon his Fourth Amendment rights. *Id.* at 134.

Consequently, a person challenging the legality of a search bears the burden of proving that he has standing. The burden is met by establishing that the person has a legitimate expectation of privacy in the place searched that society is prepared to recognize as reasonable. Rakas, 439 U.S. at 143. Overnight guests have a reasonable expectation of privacy in the home in which they are staying, while a person merely present in the home with the consent of the owner may not. Minnesota v. Olson, (1990), 495 U.S. 91, 96-97, 110 S.Ct. 1684, 109 L.Ed.2d 85; Minnesota v. Carter, (1998), 525 U.S. 83, 119 S.Ct. 469, 142 L.Ed.2d 373.

In Carter the Supreme Court opened the door to argue that not just overnight guests will be afforded Fourth Amendment protection." *See Minnesota v. Carter*, 525 U.S. 83, 90, 91, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998); see also *id.* at 99, 101-02, 119 S.Ct. 469 (Kennedy, J., *concurring*); *id.* at 103, 119 S.Ct. 469 (Breyer, J., *concurring*); *id.* at 106-12, 119 S.Ct. 469 (Ginsburg, J., *dissenting*). "[T]he defendant must demonstrate that his own reasonable expectation of privacy was violated by the action of the State." *Id.*; see also Rakas v. Illinois, 439 U.S. 128, 133-34, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978). Our Supreme Court has recognized that at least five members of the United States Supreme Court — the three who dissented and the two who concurred in *Carter* — would be willing to extend protection to guests present for social reasons and present for some time less than an overnight stay. State v. Missouri, 361 S.C. 107 (2004).

Whether a person has a reasonable expectation of privacy in a third person's place falls somewhere on the continuum between the overnight guest in Minnesota v. Olson, 495 U.S. 91, 96-97, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990) (overnight guests have a reasonable expectation of privacy in a third person's property), and the person who was present solely for the purpose of

conducting a business transaction in Carter, 525 U.S. at 90-91, 119 S.Ct. 469 (a person legitimately on a third party's property solely for the purpose of conducting a business transaction does not have a reasonable expectation of privacy in that property).

In analyzing whether Wright had a reasonable expectation of privacy the trial court should have analyzed the connection between Wright and the property searched. This would include whether he or his wife owned or lived at the property, or whether Wright or his wife were guests at the property which would include the relationship to the property owner as well as the property itself. Here the record shows that Wright and his wife lived at the search location. Detective Cox testified that immediately prior to the search they sent a detective to 3635 Kate's Bay Highway where Detective Daniel Spencer spoke with Wright's wife, Jacinda Wright. Spencer "determined at that time that that is the residence where *they reside*." (R. p. 55, l. 24 - R. p. 56, l. 5). SCPPPS agent Johnson testified that he supervised Wright at the same location as the residence described in the search warrant. (R. p. 125). The defense also offered exhibits to show he resided at 3635 Kate's Bay Highway.¹ Detective Cox testified that Captain Buchanan lived in the area, was familiar with Wright's car, and had seen Wright coming and going from the search location in the days leading up to the search. (R. p. 54-55). Wright's cars were seen at the search location just prior to the search. (R. p. 89). The State's witness, Menendez, testified that Wright and his wife Jacinda lived at the search location. Menendez also testified that she had seen Wright at that residence on a regular basis. (R. p. 261). Despite the record, the trial court held that Wright failed in his burden to produce *any* evidence as to on the standing issue. (R. p. 99).

¹The trial court excluded Defense Exhibits 3 and 4 which showed 3635 Kate's Bay Highway as Wright's address.

Despite sufficient facts to establish a reasonable expectation of privacy in the search location the trial court instead focused on where Wright had claimed as his residence for other purposes. (R. p. 143). Subsequent to Wright's arrest Officer Chatfield testified that Wright gave him a Columbia address during a post arrest interview. (R. p. 129). The trial court focused on SCDMV records reflecting information from 2003 which indicated 3643 Kate's Bay Road address for Wright.² (R. pp. 130; 144; 603-604). The trial court also focused on the address given on Wright's bond sheet which was filled out over a month *after* the search. (R. p. pp. 136; 606; 612). None of the facts concerning these other addresses, either years before or more than a month after the search are sufficient to overcome the overwhelming evidence that Wright lived at that location.

The defense correctly argued that Wright's expectation of privacy does not turn on an address for a license or bond sheet. (R. p. 139). Yet instead of analyzing Wright's expectation of privacy based on his connection with the residence the trial court focused instead on his connection with other properties. (R. p. 326). Clearly the trial court failed to apply the proper analysis in determining whether Wright had a reasonable expectation of privacy in the search location. Regardless of what other addresses he may have claimed for various purposes before and after the search Wright had sufficient connection with the property to support a legitimate expectation of privacy.³

²These SCDMV Records were admitted over the defense's objection and were not proper evidence for the trial court to consider.

³Ironically, the State later argues that evidence found as a result of the search of the Kate's Bay residence established a connection to Wright by virtue of its discovery there. A receipt for Glock, ammo, magazines, and shell test fire casings from a Glock box found at the Kate's Bay residence were all argued as "linking" Wright to "a forty calibre" by virtue of their

B. THE COURT ERRED IN HOLDING THE SEARCH WARRANT AFFIDAVIT WAS SUFFICIENT.

In addition to the court's ruling that Wright didn't have standing, the court further held that the warrant was valid for Fourth Amendment purposes. (R. p. 144). The police had no evidence that specifically identified the residence that they wanted to search so they simply made up facts identifying 3635 Kate's Bay Road. During the trial the police admitted that numerous references to residence at 3635 Kate's Bay Road were untrue. Despite the "salted" affidavit, the court held the search warrant valid. The court's ruling was therefore error.

A search warrant may issue only upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). Search warrants may be issued "only upon affidavit sworn before the magistrate . . . establishing the grounds for the warrant." S.C. Code Ann. § 17-13-140 (1985). Oral testimony may be used to supplement search warrant affidavits. State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678-79 (2000). The magistrate's task in determining whether to issue the search warrant is to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found *in a particular place*. State v. Dunbar, 361 S.C. 240, 246, 603 S.E.2d 615, 618 (Ct.App. 2004) *emphasis added*.

In Wright's case the police did not have information specifically identifying the residence at 3635 Kate's Bay Road. Although they had information concerning the general area, there was no specific information as to that residence *in particular*. With reckless disregard for the truth, the police simply made up facts to identify 3635 Kate's Bay Road in particular. Absent the

discovery at that location. (R. p. 516-517).

statements that were not true, the warrant was not supported by sufficient information to justify a search of the 3635 Kate's Bay Highway residence.

Detective Cox admitted that the information provided in the affidavit was not accurate. (R. p. 73; 76-77). The statement that the weapon sought in the warrant was "obtained from his wife *at the above location*" was admittedly false. (R. p. 76). Cox also admitted that the statement in the affidavit that Wright *drove to 3635 Kate's Bay Road* after the shooting was also false. (R. p. 77). And while Weaver initially testified that the cell phone pinged to the *3635 Kate's Bay Road address*, he later admitted that this was untrue also. (R. p. 66, l. 25). At best the ping information provided only a "general area" for where the phone was located. (R. p. 66). At best Powell's statement provided only a general description of the Kate's Bay area. (R. p. 77). The several references to the 3635 Kate's Bay Road residences were necessary to link the property to the shooting and thus justify the search of that particular residence. They were added by the police and not supported by any evidence. There was no testimony explaining how false information of such importance was added not once, but three times to obtain the search warrant. Without those false statements, there was no evidence to support the search of 3635 Kate's Bay Road.

The trial court in this case noted that the police had "salted" the affidavit with information that could not be supported by the record. (R. p. 144). The court discussed the lack of evidence for the affidavit once you take out the inaccurate information. (R. p. 92). The court however focused on evidence of the cell phone pinging as supplementing the otherwise "salted" affidavit. (R. p. 145). For the court, this fact appears to have overshadowed the lack of any other credible facts in the affidavit. (R. p. 145). Unfortunately, the record shows that this supplemental

fact was also untrue.

Detective Weaver claimed that he had supplemented his affidavit with oral testimony.⁴ (R. p. 65). As part of this testimony Weaver testified that Wright's cell phone had been tracked to the 3635 Kate's Bay Road residence the night after the murder. (R. p. 65). On cross-examination however Weaver testified only that the cell phone pinged only to "the general area" of Kate's Bay Road. (R. p. 65-67). So the critical fact relied on by the court as to the particular location to be searched, the fact that overcame the lack of accurate information in the affidavit, was also false. The record shows that the police had only an idea of the general location, and added their own unsupported statements specifically identifying 3635 Kate's Bay Road in order to obtain a search warrant.

Here the police made false statements to obtain the search warrant for 3635 Kate's Bay Road. The false statements were clearly made with reckless disregard for the truth. When removed, there are insufficient facts to warrant the search of 3635 Kate's Bay Road in particular. Under a Franks analysis, probable cause simply did not exist. See State v. Jones, 342 S.C. 121 (2000).

In addition to the failure to meet Fourth Amendment standards for the issuance of a search warrant, the warrant also fails to meet the standard under South Carolina law as our General Assembly has imposed stricter requirements than federal law for issuing a search warrant. Both the Fourth Amendment of the United States Constitution and Article I, § 10 of the

⁴There is a lack of evidence showing the extent of supplemental oral information provided to the magistrate. The trial court discussed the lack of evidence of specific sworn oral testimony. (R. p. 86). It also discussed the lack of evidence for the affidavit once you take out the inaccurate information. (R. p. 92).

South Carolina Constitution require an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued: U.S. Const. amend. IV; S.C. Const. art. I, § 10. Additionally, the South Carolina Code mandates that a search warrant "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record..." S.C. Code Ann. § 17-13-140 (1985). Oral testimony may also be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause. *See State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997). However, "sworn oral testimony, standing alone, does not satisfy the statute." *State v. McKnight*, 291 S.C. 110, 352 S.E.2d 471(1987).

The issue here is that there is a distinction between an affidavit with insufficient information on its face and an affidavit with false information. In Wright's case, as in *Jones*, *supra*, the false affidavit is the equivalent of not having an affidavit at all. As such, §17-13-140 has been violated since *McKnight* requires the existence of a truthful written affidavit as a necessary foundation to any search warrant. If an affidavit is not truthful, then oral evidence is all the magistrate would have to depend on to determine if probable cause exists. But without a underlying valid affidavit, supplemental oral information can not be used to establish probable cause. Under *Jones*, absent a truthful written affidavit, oral information is insufficient to establish probable cause. Here, because all of the information in the affidavit identifying the particular residence to be searched was false, the trial court could not rely on oral information to establish the particularity requirement. Oral information may only be used by an affiant to supplement or to amend incorrect information in an affidavit which was not knowingly, intentionally, or recklessly supplied by the affiant. *See State v. Sachs*, 264 S.C. 541, 216 S.E.2d 501(1975). In

Wright's case the information in the affidavit as to the particularity of the premises was made up by the police. The additional oral information about cell phone pinging could not supplement the affidavit, and even if it could it still wouldn't change the outcome since it was false as well.

There simply wasn't sufficient evidence to identify the residence at 3635 Kate's Bay Road in particular. The trial court erred in failing to suppress evidence obtained as a result of the search of the 3635 Kate's Bay Road residence.

II. THE COURT ERRED IN ADMISSION OF SCDMV RECORDS WITHOUT PROPER FOUNDATION.

The State offered SCDMV records to establish that Wright had used a different address for his driver's license and for the title of a trailer. The defense timely objected to the records based on the State's failure to properly authenticate the records. (R. p. 139). The State argued that SCDMV records were business records and that it was not necessary to authenticate them through a record keeper. (R. p. 132). The records were admitted based on the records being "obtained through the normal processes as a law enforcement officer". (R. p. 132). The court's ruling was clearly erroneous.

Information contained in the documents was hearsay under Rule 803, SCRE. Although hearsay, certain business records kept in the normal course of business may qualify as an exception to the hearsay rule if certain criteria is met. Rule 803 SCRE provides:

(6) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, *all as shown by the testimony of the custodian or other qualified witness*, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness; provided, however, that subjective

opinions and judgments found in business records are not admissible. The term "business" as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Rule 803(6), SCRE, *emphasis added*.

The record fails to establish the required elements necessary under Rule 803(6) by a custodian or other qualified witness. The court held that the records were admissible merely because a police officer had obtained the records through his "normal processes as a law enforcement officer". (R. p. 132, l. 13-17). How the officer got the records however, is completely irrelevant under the Rule 803(6) analysis. The rule requires the testimony the custodian or other qualified witness to establish the elements necessary for admission. The State did not call an SCDMV representative to authenticate the records. And even if the police officer could have testified to a proper foundation to authenticate the records under Rule 803(6), he was never asked. Plus, the officer that testified wasn't even the officer that actually "ran" the driving record. (R. p. 132, l. 25-R. p. 133, l. 1). Admission of the documents as business records was therefore error.

Absent a custodian of records, the admissibility of SCDMV records is controlled by statute:

Photostatic, optical disk, or certified copies of motor vehicle registration applications, registrations, notices of cancellation, suspensions or revocations, reports of violations, and documents pertaining to the motor vehicle safety responsibility laws of this State, when certified by the director of the Department of Motor Vehicles, or his designee, as true copies of originals, on file with the Department of Motor Vehicles, shall be admissible in any proceedings in any court in like manner as the original thereof.

§ 19-5-30. Admissibility of photostatic or certified copies of certain motor vehicle records.

A review of the record shows that the exhibits in question were not certified by the director of the

Department of Motor Vehicles, or his designee, as true copies. As a result, the documents were inadmissible hearsay. It was therefore error for the court to allow their introduction or rely on them in its analysis of standing.

III. THE COURT ERRED IN THE ADMISSION OF EVIDENCE WHICH WAS THE RESULT OF ILLEGAL SEARCH OF THE DEFENDANT'S HOTEL ROOM.

Wright moved to suppress the evidence seized from his hotel room as the fruits of unlawful search and seizure. (R. p. 103). The record shows that the police received information that Wright was at a local hotel. In response, they proceeded to the hotel where they showed the hotel clerk a photo of Wright. The clerk informed them that Wright was in room (R. p. 105). The police then had the clerk call the room and ask the occupants to step outside. Detective Chatfield testified that when either Wright or Lanard Powell (he couldn't recall which) opened the door, "he was identified and when he tried to close the door and we held the door open and made an entry". (R. p. 104). Powell testified that he did not consent to the police entry. (R. p. 303). Chatfield admitted that he "forced" his way into the room. (R. p. 107).

Detective Chatfield did not have, nor was he aware of, any outstanding arrest warrants for either Wright or Powell. (R. p. 104-105). The only basis for Chatfield forcing his way into the room without a warrant was that they were "looking for Mr. Wright." (R. p. 107). Chatfield testified that when he walked into the room he saw drugs and money in plain view. (R. p. 105). Although Detective Johnson claimed that Chatfield had seen drugs in plain view when the door was first opened, Johnson was not present at that time, and that was not Chatfield's testimony at trial. (R. p. 105; 112). Chatfield's testimony establishes only that he saw the drugs *after* entering the room. (R. p. 105). Wright and his co-defendant were then detained while the police sought a

search warrant for the room. (R. p. 105).

The facts in the search warrant affidavit made it appear that the drugs were observed immediately upon the door being opened. (R. p. 596-601). The testimony at trial however showed this not to be the case as the Chatfield only saw the drugs when he walked into the room. (R. p. 105). The drugs were therefore discovered as the result of a warrantless entry into Wright's room.

For the plain view exception to the warrant rule to apply, the government must show that: (1) the officer was lawfully in a place from which the object could be viewed; (2) the officer had a "lawful right of access" to the seized items; and (3) the incriminating character of the items was immediately apparent. *See United States v. Jackson*, 131 F.3d 1105, 1109 (4th Cir.1997).

Because Chatfield had forcibly entered the room without a warrant prior to seeing the drugs, he was not lawfully in the place from which the drugs were first viewed. The plain view doctrine therefore does not apply to the discovery of the drugs. To the extent that the trial court's ruling is based on the plain view doctrine, it is in error. To the extent that it is based on any other exception to the search warrant rule, it is also in error.

The most basic principle of Fourth Amendment jurisprudence is that warrantless searches and seizures inside a home are presumptively unconstitutional. *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006). The police forcibly entered Wright's hotel room without a warrant where evidence was then discovered. The warrantless entry is therefore, presumptively unconstitutional.

"Nevertheless, because the ultimate touch-stone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." *Id.* (citing *Flippo v.*

West Virginia, 528 U.S. 11, 13, 120 S.Ct. 7, 145 L.Ed.2d 16 (1999) (*per curiam*)). Such reasonableness exceptions, however, must be narrow and well-delineated in order to retain their constitutional character. Flippo, 528 U.S. at 13, 120 S.Ct. 7 (*citing* Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)); United States v. Bush, 404 F.3d 263, 275 (4th Cir.2005) (*quoting* Mincey v. Arizona, 437 U.S. 385, 390, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978)); Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (*footnote omitted*).

As an exception to the warrant requirement the Supreme Court has recognized a variety of specific circumstances that may constitute an exigency sufficient to justify the warrantless entry and search of private property. These circumstances have included when officers must enter to fight an ongoing fire, prevent the destruction of evidence, or continue in "hot pursuit" of a fleeing suspect. Brigham City, 547 U.S. at 403, 126 S.Ct. 1943 (*citing* Michigan v. Tyler, 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978); Ker v. California, 374 U.S. 23, 40, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963) (*plurality opinion*); and United States v. Santana, 427 U.S. 38, 42, 43, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976)). None of which were present in Wright's case.

In addition to these well-established exigencies, the Supreme Court and the Fourth Circuit have held that more general "emergencies," if enveloped by a sufficient level of urgency, may also constitute an exigency and justify a warrantless entry and search. *See generally*, Brigham City, 547 U.S. at 403, 126 S.Ct. 1943; United States v. Hill, 649 F.3d 258, 265 (4th Cir.2011). Under this more general emergency-as-exigency approach, in order for a warrantless search to pass constitutional muster, "the person making entry must have had an objectively reasonable belief that an emergency existed that required immediate entry to render assistance or

prevent harm to persons or property within.” United States v. Moss, 963 F.2d 673, 678 (4th Cir. 1992). An objectively reasonable belief must be based on specific articulable facts and reasonable inferences that could have been drawn therefrom. *See* Mora v. City of Gaithersburg, 519 F.3d 216, 224 (4th Cir.2008) (*citing* Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). U.S. v. Yengel, 711 F.3d 392 (4th Cir. 2-15-2013). In this case the Detective Chatfield testified clearly that the only basis in his mind for forcing his way into the hotel room was that he was “[l]ooking for Mr. Wright.” (R. p. 107, l. 12-13). At the time of the forced entry, Wright was simply wanted for questioning in regards to the murder. This does not establish a valid exception to search warrant requirement. The warrantless search of Wright’s room therefore constituted a violation of Wright’s Fourth Amendment rights.

The drugs and any other evidence discovered in Wright’s room is inadmissible regardless of the subsequent issuance of a search warrant. The fruit of the poisonous tree doctrine, most often associated with violations of the Fourth Amendment's prohibition of unreasonable searches and seizures, prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure. Wong Sun v. U.S., 371 U.S. 471, 484, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). Such evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620 (1996). Here, the drugs and evidence from the hotel room were obtained in violation of Wright’s Fourth Amendment rights. This was not cured by the subsequent issuance of a search warrant. As a result, the trial court erred in refusing to suppress such evidence.

IV. THE COURT ERRED IN EXCLUDING EVIDENCE OF WITNESS'S PRIOR INCONSISTENT STATEMENT.

During the cross examination of Lanard Powell, the defense attempted to cross examine Powell based on a prior written statement Powell had given to Wright which exonerated Wright, and identified a third person as the having shot and killed the deceased. (R. p. 308). The State objected to the questioning claiming a discovery violation. (R. p. 308-309). Defense counsel could not locate Powell's letter when asked to do so by the trial judge. (R. p. 313). Stating that the defense could "not rely on your client's telling you what is in a written statement" the court sustained the objection and refused to allow Powell to be questioned as to the substance of the prior statement. (R. p. 313). There was no specific legal basis stated for the ruling. Nor is there any.

The State's stated objection fails to support a denial of the defense's right to effectively cross-examine Powell as to his prior inconsistent statement. Contrary to the State's argument, regardless of whether the statement is in writing, the defense was not required to provide Powell's statement to the prosecution under Rule 5, SCRCrimP:

Information Not Subject to Disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, his agents or attorneys.

Rule 5(b)(2) *emphasis added*.

Neither is the failure of the defense to locate and produce the actual letter during trial a proper basis for denying the right to cross-examine Powell as to his prior statement:

Examining Witness Concerning Prior Statement. In examining a witness concerning a

prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown *or disclosed to opposing counsel*.

Rule 613 (a) *emphasis added*.

All that was required under Rule 613 was that at trial the defense make the State aware of the contents statement. From the record, the facts surrounding the statement were clear by the time the State objected. (R. p. 308-310). In addition, it is also clear that prior to the trial the State knew about the existence of the Powell's prior statement and discussed it with Powell. (R. p. 310). Consistent with Rule 613(b), the defense argued that it did not have to produced a statement prior to its cross-examine Powell. (R. p. 310).

Under Rule 613 the defense had the right to cross-examine Powell as to the prior inconsistent statement. If he wished to offer extrinsic evidence of the statement he was required to meet the requirements set forth in Rule 613(b).

Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

Rule 613(b), *emphasis added*.

Defense counsel's questioning was appropriate under Rule 613(b), and was tracking almost exactly its requirements for the admission of a prior inconsistent statement. Counsel had already established the time, place, and person to whom the statement was made. (R. p. 304-308). And at the time the court stopped the cross-examination of Powell, counsel was questioning

Powell about the substance of the statement. (R. p. 308). When the defense could not readily locate the letter in the courtroom, the trial judge stopped the cross-examination and instructed the jury to disregard all of Powell's testimony regarding the letter. (R. p. 308-315).⁵ This was improper, as all that the defense could be required to do under the rule is disclose the substance of the prior statement, not necessarily produce the letter itself. As a result, the court's ruling was inconsistent with Rule 613 and unduly harsh in light of a defendant's right to effective cross-examination. Especially in this case where the Powell's prior statement exonerated Wright.

The trial court's suppression of Powell's testimony denied counsel's ability to effectively cross-examine and present favorable evidence in the case. "The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994) (*quoting* State v. Schmidt, 228 S.C. 301, 303, 342 S.E.2d 401, 402 (1986)). The Sixth Amendment is applicable to the states through the Fourteenth Amendment. *See* Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). As a result, the court erred in denying Wright the opportunity to effectively cross-examine Powell as to Powell's prior statement which exonerated Wright.

V. THE COURT ERRED BY DENYING DEFENDANT'S REQUEST TO TESTIFY.

Immediately after the close of the State's case in the afternoon of the last day of trial the

⁵Defense counsel located and introduced the envelope but could not for some reason could not locate the actual letter in the courtroom during the trial. Ex. 1, (R. 296-297; 703).

court advised Wright of his rights and asked him whether or not he had decided to testify. (R. p. 439). In response, Wright responded that he would exercise his right to remain silent. (R. p. 442). At that point the defense had not put up any evidence, although it apparently intended to call one or more witnesses. When he asked Wright if he would testify, the trial judge specifically told Wright that he was not bound by his response. (R. p. 442). That afternoon the defense then called Christopher McCray as its first witness. (R. p. 443). McCray was called outside the presence of the jury.⁶ After McCray's testimony *in limine*, the court ruled McCray's testimony was inadmissible. (R. p. 461). Without consulting his client, defense counsel immediately announced that he had no other witnesses. (R. p. 461). Without making any further inquiry as to Wright's desire to testify the judge then brought the jury back in and allowed the defense to rest on the record. (R. p. 462). After some brief discussions about the potential charges, the court recessed for the day. (R. p. 463).

The next morning there were further discussions about the charge, after which the court ruled that it would not charge manslaughter or self-defense. (R. p. 477). When the court asked if the defense was ready to proceed Wright interrupted and asked the trial judge if he could say something. (R. p. 477). A discussion ensued and it was revealed that Wright wanted to testify. (R. p. 477). The trial judge stated that he would not allow Wright to testify because it appeared that Wright had waited to see what the ruling on the charge would be before he decided to testify. (R. p. 478). Defense counsel however put on record that Wright had not been given an opportunity to talk to counsel before the defense rested, and that Wright had actually told counsel

⁶Apparently some issue as to McCray's testimony had been raised off the record that was to be considered before the testimony could be presented to the jury.

that before court started that morning of his desire to testify. (R. p. 480). Counsel also put on the record that when Wright told him before trial that he wanted to testify, counsel told him that he could not testify because the defense had rested its case. (R. p. 481). From the discussion on the record, it appears that the court would have allowed Wright to testify if counsel would have requested it when Wright told him. (R. p. 480-481). Counsel simply failed to advise the court timely. Wright was therefore denied the right to testify.

The denial of the right to testify presents a basis to proceed in direct appeal as a deprivation of a constitutional right separate from the ineffective assistance of counsel claim. *See State v. Rivera*, 402 S.C. 225 (2013). Although this appears to be a novel issue in this under South Carolina jurisprudence, there is support for requiring an abuse of discretion analysis for the refusal to allow the defendant to testify when he changes his mind after the defense has rested. *See State v. Dauzart*, 99-3471 (La. 10/30/00), 769 So.2d 1206; *See also State v. Thompson*, 2002-0361 (La.App. 4 Cir. 7/17/02); 825 So.2d 552. Applying the Dauzart/Thompson analysis requires a determination of whether the State would be prejudiced to allow the defense to reopen the case to allow the defendant to testify. This review is applied in light of the totality of circumstances. Thomson, *supra*. In the present case there would have been no prejudice to the State in allowing the defense to reopen the case to allow Wright to testify. In light of the importance of a defendant's right to testify, it was therefore error for the court to deny Wright's request to testify.

VI. THE COURT ERRED IN SENTENCING DEFENDANT TO STATUTORY LWOP WITHOUT EXPRESS FINDINGS OF FACTS AND WHERE RECORD DOES NOT CLEARLY SUPPORT STATUTORY LWOP.

The State sought to have Wright sentenced to life without parole (LWOP) based on S.C.

Code Section 17-25-45. (R. p. 549).

§ 17-25-45 provides in pertinent part:

Life sentence for person convicted for certain crimes. (A) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has either: (1) one or more prior convictions for: (a) a most serious offense;

S.C. Code Section 17-25-45.

The State specifically relied on the existence of a prior most serious offense as a basis for the life sentence in this case. (R. p. 549). The State represented that it had certified copies of the convictions which were entered in record. (R. p. 550; 553; 581-595). As a result, Wright was sentenced to life. (R. p. 552). LWOP in Wright's case appears to be based on the State's claim that Wright's record showed a conviction for a most serious offense. A review of the record shows that statutory LWOP is not supported by the record.

The court in this case failed to make specific finding as to the existence of a prior most serious offense. While a review of Wright's record does show a conviction for a carjacking, the record fails to show that this sentence was imposed as a most serious offense. Wright's sentencing sheet for carjacking does not indicate that it was entered as a most serious offense. Nor does Wright's sentencing sheet for the prior conviction for ABHAN indicate that it was a serious offense. Both convictions are the result of a guilty plea and neither indicate what the State

claims as its basis for imposing LWOP. (R. p. 581-595).⁷ In light of the failure of the prior convictions to indicate that they were pled to or entered as serious or most serious offenses, the record fails to establish a proper basis for application of a statutory LWOP sentence under §17-25-45. As a result, Wright's life sentence should be set aside and the case remanded for re-sentencing.

V. THE TRIAL COURT ERRED IN FAILING TO GIVE REQUESTED CHARGES ON MANSLAUGHTER AND SELF-DEFENSE.

The trial judge in this case denied the defense requests for manslaughter and self defense charges finding no evidence supporting a fear of imminent danger by the Wright when the shots were allegedly fired. The record, however, fails to support this conclusion. The State's witness, Lanard Powell, testified: "He said that he looked like he was -- he took like he said Mr. Green took like three steps into the home and was reaching by his abdomen, indicating he had a gun, so he shot him." (R. p. 276, l. 12-14). When the Solicitor asked Powell, during direct examination what Wright had told him about the incident, Powell testified that: "He told me that Mr. Green -- he say he heard him knock on the door. He say he swung the door open. He say he had a gun in his hand, say everybody else was just like basically roaming in there, and Mr. Green came in saying such things as you got these young boys in your house now. He indicated that Mr. Green looked as if he was going for a gun." (R. p. 275, l. 25- p. 276, l. 5). Here, the State introduced sufficient evidence from which Wright's fear of imminent danger could be inferred.

⁷Wright currently has a PCR application pending as to the validity of those pleas. The transcript from the plea shows that he was specifically informed during the plea on the record that the Carjacking was not a most serious offense.

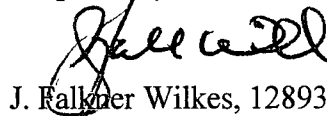
The record contains facts which, if taken in the light most favorable to Mr. Wright, would establish that Green came into the house making inflammatory and antagonistic comments towards Wright, either immediately before, or as he was drawing a gun on Wright. These facts are sufficient to give rise to an inference that Green was about to shoot Mr. Wright. Once the right to fire in self-defense arises, a person is not required to wait until his adversary is on equal terms in order to defend himself. State v. Starnes, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000). Powell's testimony is sufficient to support a jury's finding that Wright was in fear of imminent danger. "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." State v. Light, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008). Evidence that Green had made threatening comments just before or as he was drawing a gun on Wright is sufficient support for Wright's requests to charge.

Here the trial judge stated the it found "no evidence whatsoever of the crucial element required for both voluntary manslaughter and self-defense, of any fear of imminent danger on behalf of the Defendant at the time the shots were allegedly fired by -- allegedly by Mr. Wright, the Defendant, so I'm not going to charge either of those." (R. p. 477, l. 3-9). Given the "any evidence" standard, the trial judge's ruling is without support in the record. The failure to give the requested charges is therefore reversible error.

CONCLUSION

Based on the foregoing the convictions and sentences of the Appellant should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Falkner Wilkes", is written over the typed name.

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April 24, 2015.

ORIGINAL

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Horry County
John C. Hayes, III, Circuit Court Judge

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MAR 26 2015

SC Court of Appeals

THE STATE,

Respondent,

v.

MARCUS DWAIN WRIGHT,

Appellant.

Appellate Case No. 2013-001406

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the court err in admitting evidence from the search of residence?
2. Did the defendant have a reasonable expectation in the residence searched?
3. Did the court apply the proper analysis?
4. Was the search warrant affidavit was sufficient?
5. Could the affidavit be supplemented by oral evidence where the affidavit contained false information?
6. Did the court err in admission of the SCDMV records?
7. Did the court err in the admission of evidence which was the result of illegal search of the defendant's hotel room?
8. Did the court err in excluding evidence of witness's prior inconsistent statement?
9. Did the court err in denying defendant's request to testify?
10. Does the court have to make specific findings as to prior convictions before it can sentence under LWOP?
11. Does the record support sentencing under LWOP?
12. If life is imposed and it is not clear whether or not it is under LWOP, should this court remand for re-sentencing?
13. Did the trial court err in refusing to charge the jury on the law of self-defense and manslaughter?

STATEMENT OF THE CASE

Appellant murdered Jerome Green on April 30, 2012 in Horry County. Appellant was arrested on May 2, 2012. The Horry County grand jury indicted him for murder, trafficking in cocaine 28 grams or more, PWID crack, and possession of a weapon during a violent crime.¹ On June 17, 2013, appellant was tried by a jury before the Honorable John C. Hayes, III. He was found guilty as charged. Appellant was sentenced to life for murder, 5 years on the gun charge, 25 years for trafficking, and 15 years for PWID. All sentences were run concurrent but consecutive to the life sentence.² This appeal followed raising 13 issues. Rather than addressing the issues separately, Respondent will address the issues collectively under the appropriate topic.

RESPONDENT'S STATEMENT OF FACTS

In April of 2012, appellant Marcus D. Wright ("Wright") was a drug trafficker in cocaine who was using his subordinate Lanard Powell ("Powell") to distribute drugs out of a home at 5456 Figure Eight Road, in Socastee. The home's owner, Roy Sinclair ("Sinclair"), who is paralyzed and wheel chair bound, allowed Wright and Powell to use his home in exchange for Sinclair receiving free drugs. This arrangement was on-going for 3 to 4 weeks at the time of this murder.³ On April 30, 2012, Powell had been selling drugs out of the home and left that evening with his girlfriend, Qwanda Caldwell-Brown ("Qwanda") to make a drug sale or delivery for Wright and to go to the store. Powell took with him a 9 mm pistol Wright had provided Powell for protection during his drug distribution activities. (R. 176-200, 231-33, 247-50, 254, 265-70).

¹ (*Ind. #s 2012-GS-26-2339-40, 255 -53*).

² (R. 1, 11-12, 28-30, 46, 176-92, 279-80, 317-23, 351-52, 540-53, Indictments).

³ Powell testified that while operating their drug distribution business out of Sinclair's home he, Powell, sold approximately 2 to 3 ounces of crack per week. Powell received approximately \$1,300 to \$1,400 dollars for each ounce. The money was split as follows: Wright would receive about \$1,000 for each ounce, and Powell, would receive \$300 to \$400 per ounce. (R. 266-67).

Wright remained at the home sitting at the kitchen table cutting up drugs, with his loaded .40 caliber pistol beside him. Also there were Sinclair and several women there to buy, use drugs, or with someone who was there for that purpose. Around 11:30 p.m., Jerome J. Green, Jr. ("the victim"), known as "J.J.," knocked on the front door. Sinclair told Wright it was okay to open the door because it was his cousin, "J.J.". Wright, with his gun in his hand, opened the door and let the victim in. The victim looked around, saw what was going on, and stated to Sinclair: "you going to let these young boys come in here and run your house like this?" Wright took offense at the comment and asked the victim to repeat what he just said. The victim refused, ignored Wright, and continued to talk to a woman sitting in the living room. Wright, who had returned to the kitchen area, raised his loaded .40 caliber pistol and shot the victim 10 times including in the back, the chest, and the arms. The victim collapsed dead. (R. 176-90, 200-08, 215-20, 223-24, 230, 241, 268-70, 275, 355-57, 367, 375-82, 384, 395-96, 410-19, 428-34).

Several individuals who witnessed the shooting fled outside. Sinclair fled down a handicap ramp to his home and down the street in his wheelchair. One woman fled through the front door and one out the back door. Wright left the home. Outside, Wright told 1 witness, she better not say anything about what had just occurred. Wright got into his black BMW and started driving away when he saw his subordinate, Powell, returning with Qwanda in Powell's car. Wright spoke from his vehicle to Powell in Powell's vehicle. Sinclair, who was moving up the road in his wheel chair, heard Wright say to Powell: "go in the house, get your shit, I just murdered this nigger." Qwanda heard Wright say: "Pick up the shell casings Brah."⁴ Wright fled

⁴ When crime scene experts processed the murder scene, they found only 3 fired .40 caliber shell casings, 2 under couch seat cushions and 1 on the floor. No other caliber fired shell casings were found. No weapons were found at the murder scene. (R. 353-55, 375-79, 383-84, 389, 410-21).

the scene, drove to another location, abandoned his BMW there, and changed vehicles getting into a Cadillac Escalade. Wright also picked up a gas can and took it with him. (R. 181-82, 187, 202-08, 217-21, 223-24, 231-37, 256-59, 265-72, 269-72).⁵

Meanwhile, Powell and Qwanda pulled into Sinclair's residence. Veronica Chandler, an eyewitness, approached Powell and stated: "...that boy shot him. That boy shot him." Powell did as Wright instructed him. Powell got out of his car with his 9mm, went in the home, determined the victim was dead, and removed drugs and money from the residence. While inside, a woman tried to give or gave Powell some fired shell casings. Powell got the victim's keys, threw the money and drugs in the vehicle Qwanda was in, and Powell got in the victim's vehicle and drove it away from the scene with Qwanda following in Powell's car. (R. 182, 233-35, 265-72).

Wright and Powell contacted each other by cell phone, and agreed to meet up at another location. Once there, Powell and Qwanda followed Wright to another location where the dark Cadillac Escalade was abandoned, and Wright got in the victim's vehicle with Powell. Wright, Powell, and Qwanda proceeded to a gas station. Qwanda was instructed to purchase gasoline, after which Wright and Powell filled up the gas can with fuel. The 3 proceed to Johnsonville, where the victim's vehicle was disposed of on a dirt road in some woods. Wright and Powell used the gasoline to attempt to burn the victim's vehicle. (R. 233-37, 268-73).

The 3 then went to a motel where they rented a room in Qwanda's name and stayed for 1 night. Wright realized they needed another vehicle; so, they proceeded to the airport where a red

⁵ Daisy Menendez, Wright's wife's aunt, testified that during the *early morning hours of May 1st* she received a call from Wright's wife. Wright's wife asked if she could park the black BMW at Daisy's residence. Daisy agreed. Then still during dark, Wright came and parked the BMW in Daisy's garage. The BMW stayed there for 1 day. The next day, Wright appeared and stated he needed to get something out of the car. He went to the car and got something out of it. Later, police came and seized the BMW. (R. 256-59). The murder weapon was never recovered.

Chevrolet Camaro was rented by Wright's wife, Jacinda. Qwanda picked up the car, but Wright and Powell got in the Camaro at another location and began using it. Qwanda returned to her home. The 2 men drove to another motel, the Sleep Inn in Conway, where Powell rented a room under an alias using a fake I.D. Wright provided. By the morning of May 2nd, both Wright and Powell were suspects in the murder. Police located the 2 at the Sleep Inn by tracing Wright's cell-phone signal and determined both suspects were in Room 105 through the motel clerk. There, Wright and Powell were taken into custody after 1 of the men tried to flee back into the motel room after stepping outside the room and being identified by police. In plain view on a refrigerator of the room were over 28 grams of cocaine, several grams of crack, and \$3,000. A search warrant was obtained and the drugs and money were recovered along with car keys and hotel receipts from the first motel. Police found the rental car in the Sleep Inn parking lot. It was searched pursuant to a separate search warrant, and Powell's 9mm pistol and a set of digital scales was found within, along with a *.40 caliber Glock box*, which had paperwork in it showing the gun was registered to Wright's wife, and the receipt indicated it was for a *.40 caliber* pistol, and the gun had been purchased by Wright's wife on June 7, 2008. Police also found 2 ammunition clips in the *box*, containing 9 unfired rounds and 13 unfired rounds, all of which were *.40 caliber*. (R. 273-83, 317-23, 331-48, 402-21, 347, 237-41, 336-37).

Police executed a search warrant on Wright's wife's home finding 2 *fired .40 caliber shell casings* fired from a *.40 caliber* pistol by the manufacturer of the gun before it was sold.⁶ The serial number for the *.40 pistol* from the receipt found in the Camero matched the serial

⁶ The envelope containing these 2 shell casings indicated the *.40 caliber gun* had been test fired by the manufacturer and these casings recovered and put in the envelope to show the gun had been test-fired and was in working condition. This test firing occurred on May 20, 2008.

number on the envelope containing the 2 fired *.40 caliber* casings. Police also found on a nightstand a receipt from 7 days before the murder for 2 boxes of ammo. (R. 360-70, 379-82, 396, 410-21).

Forensic examination revealed the 2 shell casings found in Wright's wife's residence were fired from the same gun that fired the 3 *.40 caliber* shell casings recovered from the murder scene. The projectiles removed from the victim at autopsy were consistent with having been fired from a *.40 caliber* weapon, but not a 9mm. Police also executed a search warrant on the black BMW, which Wright fled the crime scene in, finding 1 unfired *.40 caliber bullet*. Although police searched, the murder weapon was never found. The autopsy determined the victim died as a result of multiple gunshot wounds. Six projectiles were removed from the victim's torso. (R. 355, 375, 410-21, 339-40, 347, 428-37, 360-67, 415-16).⁷

ARGUMENT I.

Judge Hayes did not err in denying the motion to suppress the fruits of the search of Jacinda Wright's home.⁸

⁷ At trial, Sinclair testified to the arrangement with Wright and Powell to sell drugs from his residence, to witnessing Wright murder the victim, to overhearing Wright admit to Powell he murdered the victim, and to Wright instructing Powell to remove the drugs and money from the residence after the murder. Veronica Chandler and Mildred Small also testified to being in the home for Chandler to purchase drugs, and Chandler testified how Wright murdered the victim with a firearm while she was talking with the victim. Powell also testified to the drug dealing arrangement he had with Wright and how Sinclair was letting them use his home as a drug distribution point. Powell also testified to what he saw upon returning to the mobile home shortly after Wright murdered the victim; and, how he [Powell] assisted with the attempted cover-up of the crime including removing the cash and drugs from the home and disposing of the victim's vehicle. Qwanda also testified and related what she overheard Wright say to Powell upon leaving the crime scene, to Wright's admission to her he shot and killed the victim, and to her and Powell's role in helping Wright to cover up the crime, get rid of any drug evidence from the scene, and avoid apprehension. (R. 176-200, 200-12, 214-30, 265-308, 315-16, 231-55).

⁸ In grounds 1 through 6 of his brief, Wright challenges Judge Hayes denial of his motion to suppress the fruits of the search of his wife Jacinda's residence. These grounds will be addressed collectively because they all have to do with this search, and there is no merit to these arguments

The Search at Issue

On May 2, 2012, police sought and obtained a search warrant from an Horry County Magistrate to search the residence of Wright's wife, Jacinda Wright, located at 3635 Kate's Bay Road in Horry County. Police executed the warrant and recovered the manufacturer fired casings and ammo receipt. Nothing else of real evidentiary value was admitted as a result of this search.⁹

What Occurred Below

Wright moved to suppress the fruits of this search. An *in camera* hearing was held at which both the officer who obtained the warrant [the affiant] and the chief investigating officer on the case testified. (R. 53-61, 61-82, 122, 137-45). The testimony established prior to obtaining the warrant, police had the following information pursuant to the murder investigation:

On April 30, 2012, at approximately 11:30 p.m., at 5456 Figure Eight Road in Horry County, Jerome J. Green, Jr. had been murdered. When police arrived at the scene shortly after midnight on May 1st, they found the victim's bullet riddled body on the floor of the home and recovered 3 fired .40 caliber shell casings there. As a result, police were aware the homicide was the result of a shooting, and they were looking for a .40 caliber pistol as the murder weapon. Police apprehend a co-defendant of Wright, Lanard Powell, who informed police Wright was the shooter in Green's death. Both Powell and Qwanda Caldwell-Brown, informed police Wright had fled the scene in a black BMW and then switched getaway vehicles into a dark in color

because the search of Jacinda's residence was lawful, and Judge Hayes did not err in denying the motion to suppress. Further, the admission of this evidence was harmless given *the other* overwhelming evidence of guilt independent of the fruits of *this search*.

⁹ The State established Wright's wife purchased a .40 caliber pistol before the murder through the evidence found in the red Camaro and established the victim was murdered with a .40 caliber pistol by what was recovered from the crime scene [3 fired .40 caliber casings] and what was recovered at autopsy [fired projectiles consistent with a .40 caliber weapon].

Cadillac Escalade. The police investigation revealed Wright eventually drove to his wife's residence and left the *Cadillac Escalade* there in the Conway. Powell also informed police Wright was carrying a firearm on the night of the shooting, and the gun was registered in the name of Wright's wife, Jacinda. Powell and Qwanda also informed police Wright's wife had rented another vehicle, a red Camaro, at the airport on May 1st, for them to operate in to avoid police. Police Captain Dale Buchanan, who lived in the same area as Wright's wife, and was familiar with the area, informed officers he had seen both the black BMW and the dark in color *Escalade* at the wife's home coming and going from the residence in the days leading up to and on the date of the murder. Police confirmed through driving and property records Wright's wife resided at 3635 Kate's Bay Road. Another officer, Daniel Spencer went to the home and confirmed the dark in color *Cadillac Escalade* was there and parked at the rear of the property. Spencer also confirmed Wright's wife lived there by knocking on the front door and briefly speaking with her when she answered. Finally, an individual at the crime scene had given police Wright's cell phone number, and on May 2nd, S.L.E.D., who was tracing Wright's cell phone, notified police that on the night of May 1st, 2012 Wright's phone "pinged" [sent a signal] at the location of 3635 Kate's Bay Road. (R. 53-61, 61-68, 68-82). At the time police sought the search warrant, the murder weapon, which belonged to Jacinda, had not been recovered.

As a result, on May 2, 2012, as is customary during a homicide investigation, the chief detective on the case, Todd F. Cox, directed another detective, David Weaver, to obtain a search warrant for Jacinda Wright's residence located at 3635 Kate's Bay Road to look for the murder weapon and any evidence related to the murder of Jerome Greene. As is common during a murder investigation, Cox related to Weaver the information that had been uncovered during the

investigation recited above. (R. 53-57). Detective Weaver went to Magistrate Mayers' office and submitted the following sworn search warrant affidavit to Magistrate Mayers. (R. 62-63):

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF HORRY

Personally appear before me, one *Detective David Weaver*, who, being duly sworn, says there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all items of evidentiary value that may aid in the investigation into the Homicide of one Jerome Green Jr. which occurred at the residence of 5456 Figure Eight Rd. located within the Myrtle Beach section of Horry County reference HCPD case # 12041053. These items may include but are not limited to any and all weapons, to include firearms and ammunition of any form, and any articles of clothing which may have been used or worn in the commission of said crime. Any vehicles, latent fingerprints shoe prints, blood, or blood residue or any time believed to contain blood. Any and all DNA, fibers, hairs, any form of biological or trace evidence. Any and all personal effects, papers, notes, documents, analog and/or magnetic media which may contain information that may aid in determining the identification of the person(s) occupied said vehicle and subsequently aided in said criminal action.

DESCRIPTION OF PREMISES (PERSON OF THING) TO BE SEARCHED

A tanish color vinyl sided manufactured home located at 3635 Kates Bay Road which is located in the Conway section of Horry County. The mobile has a rock veneer bottom skirt with a white in color front door and the numbers 3635, clearly marked, next to the front door. The residence has wooden stairs and deck leading to the front door. The property is surrounded by a wooden six foot fence. In the left corner of the rear of the property, the back yard, there is a ten foot by ten foot tanish, with white trim, shed. There are two visible vehicles parked in the rear of the property. One of the vehicles is a dark in color Cadillac Escalade with chrome wheels and an older light brown Chevrolet sedan.

A 2003 Cadillac Escalade Exit SUV (VIN) 3GYEK63N93G334144) bearing South Carolina plate of 656 2DL. The vehicle is currently located at the above described location of 3635 Kates Bay road in the Conway section of Horry County.

**REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

On 05-01-12, members of the Horry County Police Department responded to the residential address of 5456 Figure Eight Rd., located in the Myrtle Beach section of Horry County, in reference to a shooting incident wherein the victim Jerome Green Jr. was shot to death. A co-defendant, Lanard Powell, informed law enforcement the shooter, identified as Marcus Dewain Wright, fled the scene at the above said location in a black in color BMW vehicle and then later switch[ed] getaway vehicles to a dark in color Cadillac Escalat[d]e. The shooter then drove to the address of 3635 Kates Bay Road which is in the Conway section of Horry County, and left the above said vehicle at that address. The co-defendant also informed law enforcement the shooter obtained the mu[r]der weapon, from his wife, at the above location. It is believed the shooter transported the murder weapon in the Cadillac Escalat[d]e back to the said residence and that it may still be present in the home and/or described vehicles.

The affidavit and warrant was sworn before the magistrate. Prior to the warrant being issued, Detective Weaver also provided sworn supplemental oral testimony to the Magistrate. (R. 63-65). Weaver informed the magistrate S.L.E.D. had been tracking or tracing Wright's cell phone; and, on May 1, 2012 Wright's cell phone "pinged" at the 3635 Kate's Bay Road residence, the residence of his wife Jacinda Wright. (R. 63-65).¹⁰ After Weaver submitted the sworn affidavit and oral testimony, the magistrate issued the warrant for Wright's wife's residence to look for the murder weapon and any evidence related to the murder.

Trial Court's Ruling

At the hearing's conclusion, Judge Hayes denied the motion to suppress finding, first, Wright had not met his burden to show he had a possessory interest in the property searched;¹¹

¹⁰ Apparently, either Detective Weaver failed to include this information in the affidavit through inadvertence or it was not conveyed to him by Detective Cox until Weaver was on his way to the Magistrate's Office to obtain the warrant. (R. 66-67).

¹¹ During the *in camera* suppression hearing, Judge Hayes allowed the State to introduce Wright's official driving record from the S.C. Department of Motor Vehicles (DMV) which was introduced through the officer who "ran" the record by use of computer. Wright now challenges the admission of this evidence in the *in camera* hearing. The official driving record was admitted solely on the issue of appellant's standing to challenge the search of his wife's residence. The official driving record was admissible as a self-authenticating document. Furthermore, it makes no difference because the expectation of privacy issue was not dispositive of the search issue but the validity of the search warrant, and the search warrant was valid.

and second, even if Wright could make that showing, he would deny the motion, because even removing any factual inaccuracies from the affidavit, the affidavit along with the sworn supplemental testimony before the Magistrate established probable cause to search Wright's wife's residence. (R. 143-45). On appeal, Wright alleges both rulings were error, and he should be granted a new trial. Wright is wrong on both issues, and he is not entitled to a new trial.

Standard of Review
(Circuit Court's Affirmation of Probable Cause)

The standard of review of Fourth Amendment search and seizure issues on appeal is deferential and is limited to determining whether any evidence supports the trial court's finding, with this court only being able to reverse the ruling of a trial judge where there is clear error. State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013).¹² As a result, if there is any evidence to support the trial judge's ruling as to the validity of a search with a warrant, it will be affirmed on appeal. Id.; State v. Brown, 401 S.C. 82, 736 S.E.2d 263 (2012).¹³

Further, the good faith exception applies in this situation, and the exclusionary rule should not apply. Furthermore, the admission of the DMV record was harmless on the issue for which it was admitted where it only showed where appellant Wright resided in 2003. There was other evidence closer in time that showed Wright did not live at Jacinda Wright's residence. Further, Wright does not dispute the accuracy of the driving record as far as where he lived in 2003.

¹² State v. Tynes, 402 S.C. 211, 740 S.E.2d 512 (Ct. App. 2013); State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000)(whether a search violated the 4th Amendment depends upon "a number of antecedent determinations, each of which is inherently fact-specific" and "entails an inquiry into the totality of the circumstances" and on this court must affirm if there is "any evidence" to support the ruling); State v. Thompson, 363 S.C. 192, 199, 609 S.E.2d 556, 560 (Ct. App. 2005)(deferential standard of review applies in a challenge to a trial court's fact-driven affirmation of probable cause.).

¹³ State v. Cheeks, 400 S.C. 329, 733 S.E.2d 611 (Ct. App. 2012); State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 459-60 (2002)(appellate court may conduct its own review of the record to ascertain if there is any evidence to support the ruling). In criminal cases, appellate courts are bound by fact findings in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law. Tynes, *supra*, citing State v. Asbury, 328 S.C. 187, 193, 493

Standard of Review
(Magistrate's Issuance of a Search Warrant)

Search warrants are constitutionally preferred; and, in determining whether they should issue, magistrates are concerned with probabilities, not certainties. State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976). As a result, a reviewing appellate court gives great deference to a magistrate's determination of probable cause. State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000).¹⁴ When determining the propriety of the issuance of a search warrant, the duty of this Court is simply to determine whether the magistrate had a substantial basis for concluding probable cause existed. State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 495 (2009). In making such a decision, this Court must consider the totality of the circumstances. Jones, *supra* (under this test, a reviewing court considers all circumstances, including status, basis of knowledge, and veracity of informant, in determining whether probable cause existed to issue a search warrant); State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003).¹⁵

"A search warrant may issue only upon a finding of probable cause." State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997). Under S.C. Code Ann. Section 17-13-140

S.E.2d 349, 352 (1997).

¹⁴ The Fourth Amendment evidences a "strong preference for searches conducted pursuant to a warrant. Illinois v. Gates, 462 U.S. 213, 236 (1983). Searches based on warrants will be given judicial deference to the extent an otherwise marginal search may be justified if it meets a realistic standard of probable cause. Bowie, *supra*, citing State v. Bennett, 256 S.C. 234, 241, 182 S.E.2d 291, 294 (1971); State v. Arnold, 319 S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1995).

¹⁵ "The Fourth Amendment by its terms prohibits [only] unreasonable searches and seizures." McHam v. State, 404 S.C. 465, 480, 746 S.E.2d 41, 49, (2013), quoting New York v. Class, 475 U.S. 106, 116 (1986). The touchstone of an analysis under the Fourth Amendment is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." See Pennsylvania v. Mimms, 434 U.S. 106, 108-09 (1977), quoting Terry v. Ohio, 392 U.S. 1, 19 (1968). "Reasonableness, of course, depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.'" Id. at 109 (citation omitted).

(1985), a search warrant may be issued “only upon affidavit sworn to before the magistrate ... establishing the grounds for the warrant.”¹⁶ The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. Dupree.¹⁷ “[T]he duty of a reviewing court is simply to ensure that the magistrate had a ‘substantial basis’ for ... conclud[ing] that probable cause existed.” Weston, 329 S.C. at 290-91, 494 S.E.2d at 802-03. However, all that is necessary for the issuance of a warrant is probable cause. State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009). Probable cause does not mean absolute certainty. State v. Dean, 282 S.C. 136, 317 S.E.2d 744 (1984).¹⁸ South Carolina has adopted the “totality of the circumstances” test of Illinois v. Gates, in determining whether sufficient probable cause exists to issue a search warrant. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). “The task of the issuing magistrate is simply to make a practical,

¹⁶ On appeal, Wright argues the affidavit did not comply with the more strict requirements of Section 17-13-140; however, from Respondent’s review of the record, Respondent cannot find where this issue was raised below. As a result, Respondent believes this issue is not preserved for appellate review. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). However, as stated, Respondent will respond to all of Wright’s appellate arguments collectively under this argument.

¹⁷ For an affidavit in support of a search warrant to show probable cause, it must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at the time. State v. Winborne, 273 S.C. 62, 254 S.E.2d 297 (1979). The magistrate should determine probable cause based on all of the information available to him at the time the warrant is issued. State v. Driggers, 322 S.C. 506, 473 S.E.2d 57 (Ct. App. 1996). In determining the validity of the warrant, a reviewing court may consider only information brought to the magistrate’s attention. State v. Martin, 347 S.C. 522, 556 S.E.2d 706 (Ct. App. 2001).

¹⁸ Probable cause is a flexible, common-sense standard. Texas v. Brown, 460 U.S. 730 (1983). It is a fluid concept-turning on the assessment of probabilities in a particular factual context—nor readily, or even usefully, reduced to a neat set of legal rules. Maryland v. Pringle, 540 U.S. 366 (2003); Gates. It is incapable of precise definition or quantification into percentages, because it deals with probabilities and depends on the totality of the circumstances. Id. In dealing with determinations of probable cause, as the very term implies, a just determination must deal with **probabilities**, which are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Brinegar v. United States, 338 U.S. 160 (1949); State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995).

common sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a **fair probability** that contraband or evidence of a crime will be found in a particular place.” Gates, 462 U.S. at 238 (emphasis added); *accord* Herring, 387 S.C. at 212, 692 S.E.2d at 495-96; State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990)(adopting Gates test). Probable cause “does not demand any showing that such a belief be correct or more likely true than false.” State v. Bowie, 360 S.C. 210, 600 S.E.2d 112 (Ct. App. 2004), *quoting* Brown, 460 U.S. at 742.¹⁹ In determining whether a search warrant should issue, magistrates are concerned with probabilities not certainties. Bowie, *supra*, *citing* Sullivan, 267 S.C. at 617, 230 S.E.2d at 624.

An affidavit in support of a search warrant may be based on hearsay information and need not reflect the direct personal observations of the affiant. Sullivan, 267 S.C. at 614-15, 230 S.E.2d at 623 (search warrant can be supported by information given to the affiant by other officers); *see* Jones v. United States, 362 U.S. 257 (1960);²⁰ United States v. Ventresca, 380 U.S. 102, 108 (1965)(same); State v. York, 250 S.C. 30, 156 S.E.2d 326 (1967)(same); United States v. Weiebir, 498 F.2d 346 (4th Cir. 1974).²¹

¹⁹ “Under this formula, veracity and basis of knowledge are treated ‘as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is ‘probable cause’ to believe that contraband or evidence is located in a particular place.” Gates, 462 U.S. at 230; Weston, 329 S.C. at 290-91; 494 S.E.2d 802-03.

²⁰ *Overruled on other grounds* United States v. Salvucci, 448 U.S. 83 (1980).

²¹ Observations by fellow officers engaged in an investigation with the search warrant affiant are a reliable basis for a warrant. Ventresca, 380 U.S. at 111; State v. Pearson, 356 N.C. 22, 566 S.E.2d 50 (2002); State v. Hage, 568 N.W.2d 741 (N.D. 1997); United States v. Morales, 238 F.3d 952 (8th Cir. 2001)(probable cause may be based on collective knowledge of all officers involved in an investigation and need not be based solely on information within knowledge of officer on scene if there is some communication).

As recognized in Gates, affidavits are normally drafted by non-lawyers in the midst and haste of a criminal investigation, in light of which technical requirements of elaborate specificity once exacted under common law pleading have no place. *See Ventresca*, 380 U.S. 102.²² Affidavits must be judged on the facts presented, not on the precise wording used. *State v. Viard*, 276 S.C. 147, 276 S.E.2d 531 (1981).

The decision to issue a search warrant must include consideration of the veracity of the person supplying the information and the basis of the affiant's knowledge. *State v. Adolphe*, 314 S.C. 89, 441 S.E.2d 832 (Ct. App. 1994). "The 'experience of a police officer is a factor to be considered in the determination of probable cause.'" *Dupre*, 319 S.C. at 459, 462 S.E.2d at 282, *citation omitted*.²³ Eyewitnesses and non-confidential informants are often given a higher level of credibility when supplying information to support probable cause to search. *See State v. Driggers*, 322 S.C. 506, 473 S.E.2d 57 (Ct.App.1996).

Further, a warrant affidavit may be supplemented by sworn oral testimony before the magistrate. S.C. Code Ann. Section 22-3-710; Law v. S.C. Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).²⁴ Oral supplementation may only be used by an affiant "to supplement or to amend incorrect information in an affidavit which was not knowingly and intentionally, or recklessly supplied by the affiant." *State v. Jones*, 331 S.C. 228, 500 S.E.2d 499 (Ct. App.

²² "Affidavits are not meticulously drawn by lawyers, but are normally drafted by non-lawyers in the haste of a criminal investigation, and should therefore be viewed in a common sense and realistic fashion." *Bowie, citing Sullivan, supra; Dupree*, 354 S.C. at 683, 583 S.E.2d at 441.

²³ *See Taylor* (recognizing well-settled principle courts must give due weight to common sense judgments reached by officers in light of their experience and training), *citing United States v. Perkins*, 363 F.3d 317, 321 (4th Cir. 2004).

²⁴ *See State v. Crane*, 296 S.C. 336, 372 S.E.2d 587 (1988); *State v. Sachs*, 264 S.C. 541, 216 S.E.2d 501 (1975); *Gist v. Berkeley County Sheriff's Dept.*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999).

1999),²⁵ *affirmed* State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000); State v. Gore, 408 S.C. 237, 246, 758 S.E.2d 717, 721 (Ct. App. 2014)(noting the holding in Jones but pointing out “[o]ral testimony may also be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause.”).

The Lack of Merit of Wright’s Arguments

A. Lack of legitimate expectation of privacy in the premises searched

To claim protection under the Fourth Amendment of the U.S. Constitution, defendants must show they have legitimate expectation of privacy in the place to be searched. Rakas v. Illinois, 439 U.S. 128, 143 (1978). A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one society recognizes as reasonable. Oliver v. United States, 466 US. 170, 177 (1984), *citing* Katz v. United States, 389 U.S. 347, 361 (1967)(Harlan, concurring). It is fundamental Fourth Amendment rights are personal in nature and may not be vicariously asserted. Rakas, 439 U.S. at 133-34. A person aggrieved by the introduction of evidence secured by an illegal search of a third person’s premises or property has not suffered any infringement upon his Fourth Amendment rights. Id. at 134. Consequently, as Judge Hayes correctly found, a person challenging the legality of a search bears the burden of proving that he has a legitimate expectation of privacy in the premises searched. Rakas, 439 U.S. at 143.

²⁵ This Court noted in Jones what its decision did not do: “First, our holding does not prevent oral *supplementation* of a warrant affidavit which contains false information. In other words, oral supplementation pursuant to Sachs, *supra*, is not affected by this decision so long as it does not supplant false information knowingly and intentionally, or recklessly, provided by the affiant. Second, our holding does not prevent oral substitution of truthful information for false information contained within an affidavit so long as the affiant does not knowingly and intentionally, or recklessly provide it.” Id.

During the suppression hearing, Wright personally offered no testimony on this issue. Wright did not call his wife either. Wright did call his former probation officer; however, he could not verify where on Kate's Bay Road, he supervised Wright in *March* of 2012. And, he testified his supervision ended in March of 2012. SCDMV records from 2003 indicated Wright lived at 3643 Kate's Bay Road, not 3635 Kate's Bay Road, his wife's residence. (R. 130, 144). Officer Chatfield testified that on May 2, 2012 [the day this search warrant was issued], when he interviewed Wright, Wright informed Chatfield his residence was in Columbia, S.C. **not on Kate's Bay Road.** (R. 129).²⁶ In June of 2012, when Wright was released on bond, he indicated his address was **not 3635 Kate's Bay Road** but another location. (R. 136, State's Ex. 5). The issue on appeal is whether Judge Hayes' ruling, that Wright had failed to meet his burden of proof to show a legitimate expectation of privacy in the premises searched, is supported by *any evidence*. Taylor; State v. Tindall, 388 S.C. 518, 520, 698 S.E.2d 203, 205 (2010); Tynes; Brockman. The record clearly shows that it is. Id. As a result, there is no merit to this appeal.²⁷

²⁶ Earlier on the issue of probable cause to issue the search warrant, Detective Cox testified that Detective Daniel Spencer went to Jacinda Wright's residence and made contact with her and determined at that time that that is the residence where "they" reside. (R. 56-57). There was no explanation who "they" are.

²⁷ In his brief, Wright also argues the testimony of his wife's aunt in support of his argument of an expectation of privacy in his wife's home. However, Wright did not call his wife's aunt during the suppression hearing and offer any evidence from her on this issue. Wright's wife's aunt did not testify until during the trial before the jury. Wright also argues Captain Buchanan saw Wright coming and going from the residence in the days before the murder. (See IBOR, p, 5). That was not the testimony. Captain Buchanan saw the vehicles coming and going from the residence in the days leading up to the murder. (R. 55, ll. 4-6).

B. Wright's challenge to the search warrant and search has no merit

Wright alleges the affidavit contains recklessly false statements and the affidavit is not supported by probable cause.²⁸ Wright is wrong on both points.

The sworn affidavit states the victim was shot and killed at 5456 Figure Eight Rd., located in the Myrtle Beach section of Horry County, and police arrived at the crime scene on May 1, 2012. These statements are true and were learned by detectives through the investigation. Wright does not contest the veracity of these statements. The affidavit states a named co-defendant, Lanard Powell, informed law enforcement the shooter was Marcus Dewain Wright, and he fled the scene at the above said location in a black in color BMW vehicle. This statement is true and was learned through the investigation. (R. 76, 78-79). Wright does not contest the veracity of these facts. The affidavit states Powell informed police Wright then later switch[ed] getaway vehicles to a dark in color Cadillac Escalade. According to Detective Cox' sworn testimony at the suppression hearing, this information was related to police by Powell.²⁹

²⁸ Wright conceded below that there was no intentionally false statements by the affiant in filling out the search warrant affidavit. (R. 82, ll.12-16).

²⁹ Respondent has reviewed *the transcript* of Lanard Powell's orally recorded statement to police apparently prepared by the defense. Respondent cannot find a reference in that transcript where Powell told police Wright changed vehicles into a dark in color Escalade. In one portion of the statement, Powell is asked if Wright met him at a pawn shop in the Escalade, and Powell states he did not see him in that vehicle. However, Detective Cox testified at the suppression hearing that the actual recording of Powell's statement would be more accurate than the transcript that defense counsel submitted. Additionally, defense counsel's transcript indicates there are portions of the tape that are inaudible. Further, while Cox testified the oral recorded statement of Powell was the only interview of Powell, upon Respondent's review of the transcript of Powell's statement, it is clear that Powell talked to police in the police car on the way to the police station, and he mentions having talked to other police officers who were not in the interview room. Detective Cox testified at the suppression hearing that Powell definitely told them that Wright switched vehicles after the murder from the BMW into the Escalade. Further, Detective Cox testified at the hearing that Qwanda Caldwell-Brown also informed police Wright switched vehicles from the BMW to the Escalade after the murder. Both Powell and Qwanda testified

(R. 55, ll. 12-19). Further, Qwanda Caldwell-Brown, who police interviewed before Powell, informed police of the same information, including the fact Wright switched vehicles from the BMW into the dark in color Cadillac Escalade. (R. 55, ll. 7-11). Wright does not argue on appeal this statement in the affidavit was false or inaccurate. (IBOA). The affidavit then states that the shooter then drove to the address of 3635 Kates Bay Road which is in the Conway section of Horry County and left the above said vehicle [the Escalade] at that address. This is a true statement and came from several sources of information gathered during the investigation including the previously mentioned information or facts developed above. Additionally, Captain Dale Buchanan, who lived in the area of Wright's wife's residence had seen the black BMW and the dark Cadillac Escalade coming and going from the wife's residence in the days leading up to and on the day of the murder. (R. 54, l. 21 – 55, l. 7). Police also verified through going to the residence of 3635 Kate's Bay Road, after the murder, the dark in color Cadillac Escalade was *parked behind* the wife's residence. (R. 55, l. 24 – 56, l. 5, 78). The search warrant states the vehicle is at the location. The affidavit then states the co-defendant also informed law enforcement the shooter obtained the murder weapon, from his wife, at the above location. What the co-defendant Powell actually told the officers verbatim was the shooter, Wright, was carrying a firearm on the day of the murder, and the firearm was owned by his wife, Jacinda. (R. 73, 75-76). So, the weapon *did not* belong to Wright, and he would had to have obtained the firearm *from his wife*, who was the registered owner. The investigation, including a check of the property records and going to the residence, revealed Wright's wife, the owner of the gun, *did reside* at

during the trial that Wright switched vehicles from the BMW to the Escalade after the murder.

3635 Kate's Bay Highway.³⁰ Further, the officer provided sworn oral testimony to the magistrate that SLED traced Wright's phone and had detected it sending a signal at the 3635 Kate's Bay Highway address on May 1, 2012, which would have been shortly after the murder. (R. 61-72).³¹ This information was also gathered during the investigation and came from SLED to Horry County police. (R. 54, ll. 9-20, R. 68-72). Finally, the affiant stated that it is believed the shooter transported the murder weapon in the Cadillac Escalade back to the said residence and it may still be present in the home and/or described vehicles. This information was based on the fact investigators had been unable to locate the murder weapon, Wright had initially placed the gun in the black BMW, and then changed vehicles into the Escalade and parked it behind Jacinda's [the owner of the gun's] residence, which had been confirmed by an officer who had gone to the scene. Further, the sworn supplemental testimony before the magistrate was S.L.E.D. had traced Wright's cell-phone to the residence to be searched, on May 1st, the night immediately following the murder.

As a result, based on the totality of the circumstances outlined in the affidavit alone or the affidavit in conjunction with the sworn oral testimony, and considering the nature of the evidence sought (the murder weapon or any evidence related to the murder), the type of offense involved (murder), and the experience of the officer involved, the magistrate made a practical, common sense decision **a fair probability** existed additional evidence regarding the murder, including the murder weapon, could be found in or at the residence of the murderer's wife, the

³⁰ Police admitted at the pre-trial hearing the prepositional phrase, "at the above location," was factually incorrect. Powell told police the shooter, Wright, got the gun from his wife, who was the owner. Police determined through their own investigation Wright's wife resided at 3635 Kate's Bay Highway.

³¹ The murder was committed shortly before midnight on April 30th. Police did not arrive at the crime scene until just after midnight, May 1st.

registered owner of the gun. State v. Clifton, 302 S.C. 431, 396 S.E.2d 831 (Ct. App. 1990)(magistrate is to make practical, common sense, decision whether under the totality of the circumstances there is a fair probability evidence of a crime will be found in a particular location); ³² United States v. Severance, 394 F.3d 222, 230 (4th Cir.), *vacated on other grounds*, 544 U.S. 2047 (2005)(recognizing the nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence.); United States v. Suarez, 906 F.2d 977, 979 (4th Cir. 1990)(noting search warrant application was based on officer's surveillance of defendant during day before search, when he was seen walking to targeted residence of his girlfriend). A practical, common sense, and logical interpretation of the affidavit accompanying the warrant in this case, along with the deference which must be accorded a magistrate, overcomes any deficiency alleged by Wright. State v. Livingston, 282 S.C. 1, 6, 317 S.E.2d, 129, 132 (1984).

Further, even though there are some factual inaccuracies in the affidavit, removing any factual inaccuracies, the affidavit alone, and the affidavit with the supplemental sworn testimony,³³ provided sufficient probable cause to justify issuance of the search warrant. Franks

³² Police were working together in a joint criminal investigation. The chief investigator reported to the affiant information and facts developed by criminal investigators at the scene and during the investigation. These facts were included in the warrant and accompanying affidavit the affiant provided to the magistrate. There was no confidential informant, concerned citizen, or anonymous tipster involved in this investigation, so there was no requirement the affiant corroborate the information provided by other officers in the affidavit. *See Gates*. The salient facts in the affidavit were provided by criminal investigators engaged in a joint criminal investigation for murder who gathered the facts they directly observed. The magistrate could rely on this in determining the reliability and credibility of the information averred to in the affidavit. Taylor; Dupree; Fisher; Perkins. There is no merit to Wright's argument. Sullivan. *See State v. Pressley*, 288 S.C. 128, 341 S.E.2d 626 (1987)(during the execution of a lawful search, an officer may seize items in plain view that are related to the crime).

³³ Contrary to Wright's argument in his brief, the affiant was not attempting to supplant,

v. Delaware, 438 U.S. 154 (1978).³⁴ “There will be no Franks violation if the affidavit ... still contains sufficient information to establish probable cause.” Missouri, at 554, 524 S.E.2d at 397, citing Franks, 438 U.S. at 171-72.³⁵

In State v. Davis, 371 S.C. 412, 639 S.E.2d 457 (Ct. App. 2006), this Court held the trial judge erred in suppressing evidence obtained by a search warrant containing falsified or incorrect information in the affidavit, where such information was not directly relevant to the search. In State v. Rutledge, 373 S.C. 312, 644 S.E.2d 789 (Ct. App. 2007), this Court found where the search warrant affidavit stated officers recovered marijuana, marijuana seeds, and marijuana stalks from 162 Bailey Avenue, the fact officers actually found marijuana residue in a trash can outside of the residence, which affiant stated to the magistrate in supplemental testimony at the time the warrant was issued, did not constitute reckless disregard for the truth.

While Wright may have shown negligence or inadvertence on the part of the affiant, he did not show the officer filled out the affidavit in reckless disregard for the truth or with the

substitute, or amend incorrect information in the affidavit which was knowingly, intentionally, or recklessly supplied by the affiant. See Jones. The affiant and the State are using the “oral testimony” to supplement the search warrant affidavit, which is entirely proper. Gore, supra.

³⁴ In determining whether alleged misstatements render a search warrant invalid, the court must conduct the analysis set forth in Franks which outlined a 2 part test for challenging the warrant affidavit's veracity. First, to mandate an evidentiary hearing, there must be allegations of deliberate falsehood or of reckless disregard for the truth and those allegations must be accompanied by an offer of proof. Second, the court must consider the affidavit's remaining content, with the affidavit's false material set to one side, to determine if it is sufficient to establish probable cause. State v. Davis, 354 S.C. 348, 359-60, 580 S.E.2d 778, 784 (Ct.App. 2003), citing State v. Missouri, 337 S.C. 548, 524 S.E.2d 394 (1999).

³⁵ See Sachs, 264 S.C. at 555, 216 S.E.2d 501 (“However, even if the officer was delict, so long as probable cause was established by affidavit or affirmation without the aid of the erroneous fact, the warrant satisfies the constitutional demands.”); Rugendorf v. United States, 376 U.S. 528 (1964)(even if a veracity challenge were permitted, the alleged factual inaccuracies in that case’s affidavit were only of peripheral relevancy to the showing of probable cause, and not being within the personal knowledge of the affiant, did not go to the integrity of the affidavit).

intent to deceive or mislead the magistrate. Detective Weaver received the information he put in the affidavit from Detective Cox. He drafted the affidavit in the heat and hurry of an ongoing murder investigation. Any misstatements in the affidavit were supported by other information gained during the murder investigation.³⁶ Even striking from the affidavit those statements alleged to be inaccurate or erroneous, there is still sufficient probable cause to issue the warrant for Wright's wife's residence to look for the murder weapon or evidence of the crime. Franks. See State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999)(magistrate's task is simply to make a practical, common-sense decision whether, given all the circumstances there is **a fair probability** evidence of a crime will be found in a particular place).

The Exclusionary Rule Should Not Apply

Even if Judge Hayes erred in finding the magistrate's determination of probable cause was supported by substantial evidence, the exclusionary rule should not apply. The U.S. Supreme Court and our appellate courts have recognized the exclusionary rule should only apply as a last resort, only after balancing the deterrence value verses the societal costs, and only when there is flagrant police misconduct. Davis v. United States, 131 S.Ct. 2419 (2011); State v.

³⁶ Here, police knew through their investigation the victim had been murdered [shot to death] shortly before midnight of May 1st. A named co-defendant, Lanard Powell, informed police Wright was the person who shot and killed the victim and Wright was carrying a gun on the night of the murder that Wright had received from his wife, Jacinda, the gun's owner. Police confirmed Jacinda lived at 3635, Kate's Bay Road. Wright had left the murder scene in a black BMW, but he had switched vehicles into a dark in color Cadillac Escalade. The black BMW and the dark in color Escalade had been seen by a policeman, who lived in the area, coming and going from Jacinda's home in the days leading up to and on the date of the murder. Police confirmed the Escalade was now parked, just 1 day later on May 2nd, at the residence of Wright's wife, the same person from whom Wright had obtained the weapon, the gun's owner. And, police had traced Wright's cell-phone to the wife's residence on the night of May 1st.

Brown.³⁷ Police practices trigger the harsh sanction of exclusion only when they are deliberate enough to yield meaningful deterrence, and culpable enough to be worth the price paid by the justice system. Davis; Herring, 555 U.S., at 144. The conduct of the officers here was neither of these. Under the circumstances of this case, exclusion would not further the purposes of the exclusionary rule, and suppression is not proper. Id.; State v. Harvin, 343 S.C. 190, 194, 547 S.E.2d 497, 500 (2001)(main purpose of the exclusionary rule is deterrence of police misconduct). *See* Gates (recognizing affidavits are drafted by non-lawyers in the midst and haste of a criminal investigation). At most, there was some miscommunication of specific details of information police had from the chief investigator to the detective directed to obtain the search warrant. The conduct of the investigators here did not violate Wright's 4th Amendment rights deliberately, recklessly, or with gross negligence. Herring, *supra*.³⁸ The evidence from Wright's wife's residence should not be excluded. Id.³⁹

The Evidence is Admissible under the Good Faith Exception

In addition, judicially created exceptions have been established to ameliorate the harsh effects of the judicially-created exclusionary rule. Id.; Brown. The evidence recovered from Wright's wife's residence is admissible under the "good faith" exception to the warrant

³⁷ *See* Herring v. United States, 555 U.S. 135 (2009); Hudson v. Michigan, 547 U.S. 586 (2006); State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012); Weston, 329 S.C. at 293, 494 S.E.2d at 804; State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471 473 (1987); Sachs 264 S.C. at 566, 216 S.E.2d at 514; State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324 (Ct. App. 2011).

³⁸ Further, under the facts of this case, suppression would make no sense where there is no evidence of police misconduct, there is no question the residence searched was Wright's wife's; officers had probable cause to search the residence; they did not conduct a warrantless search, but obtained a search warrant from a neutral and detached magistrate before entering Wright's wife's residence. *See* Illinois v. McArthur, 531 U.S. 326 (2001); Davis, *supra*; Brown, *supra*.

³⁹ Furthermore, if Wright's argument is correct, that he had a possessory interest in the residence of his wife, this only adds to the probable cause police had to search the residence since he had been identified as the shooter and he had obtained the weapon from his wife, its owner.

requirement. Herring, 555 U.S. 135; Leon, 468 U.S. 897; United States v. Williams, 548 F.3d 311 (4th Cir. 2008); State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009). In Leon, the Court held the exclusionary rule does not ban evidence obtained by officers acting in reasonable reliance on a search warrant issued by a neutral magistrate but later found to be invalid for lack of probable cause. Id. As the Court made clear in Herring v. United States:

These principles are reflected in the holding of Leon: When police act under a warrant that is invalid for lack of probable cause, the exclusionary rule does not apply if the police acted “in objectively reasonable reliance” on the subsequently invalidated warrant. 468 U.S., at 922, 104 S.Ct. 3405.

Id., 555 U.S. at 142. The Fourth Circuit has addressed the “good faith” exception at length:

As the Supreme Court instructed in Leon, “a court should not suppress the fruits of a search conducted under the authority of a warrant, even a ‘subsequently ‘invalidated’ warrant, unless ‘a reasonable well-trained officer would have known that the search was illegal despite the magistrate’s authorization.’” United States v. Byrum, 293 F.3d 192, 195 (4th Cir. 2002) (*quoting Leon*, 468 U.S. at 922, n. 23, 104 S.Ct. 3405). The Leon Court explained “that the deterrence purpose of the exclusionary rule is not achieved through the suppression of evidence obtained ‘by an officer acting with objective good faith’ within the scope of a search warrant issued by a magistrate.” United States v. Perez, 393 F.3d 457, 461 (4th Cir. 2004)(*quoting Leon*, 468 U.S. at 920, 104 S.Ct. 3405, 82 L.Ed. 2d 677). “Hence, under Leon’s good faith exception, evidence obtained pursuant to a search warrant issued by a neutral magistrate does not need to be excluded if the officer’s reliance on the warrant was ‘objectively reasonable.’” Id. (*quoting Leon* 468 U.S. at 922, 104 S.Ct. 3405, 82 L.E.2d 677).

Williams, *supra* at 317.⁴⁰ South Carolina also recognizes a good faith exception to evidence seized pursuant to a warrant defective under S.C. Code Ann. Section 17-13-140, if the officers

⁴⁰ Leon admonished searches conducted “pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.” 468 U.S. at 922 (internal quotation marks omitted). An officer’s reliance on a warrant would not qualify as

made a good faith attempt to comply with the affidavit requirement under S.C. Code Ann. Section 17-13-140. Sachs. See McKnight, 291 S.C. at 112-13, 352 S.E.2d at 472 (refusing to apply exception where officers failed to attempt to comply in good faith to the affidavit requirements), and State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009), *Toal, C.J. concurring in result*. Recently, the Court again recognized a good faith exception to the search warrant requirement and the requirements of Section 17-13-140 in State v. Herring.

Recently, however, we recognized that there is a “good faith” exception to the statute’s [S.C. Code Ann. 17-13-140] requirements where the officers make a good faith attempt to comply with the statute’s affidavit procedures.” State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009), *citing McKnight*. [fn 6] [In Covert, we left open the question of whether a good faith exception applies when “the officers reasonably believe the warrant is valid when the search is made, but is subsequently determined to be invalid.” Id. at 209, 675 S.E.2d at 743. Given our recognition of an exception for an officer’s good faith attempt to comply with the affidavit requirement, we find no reason not to extend such a good faith exception to a warrant reasonably believed to be valid, but later determined invalid. Accordingly, even if we were to determine the affidavit was improper, we would find the SLED agents acted in good faith and reasonably believed the warrant valid, Such that the search should be upheld.]

Herring, 387 S.C. at 215. Here, police did not search Wright’s wife’s residence without a warrant, but obtained what they believed to be a valid search warrant from a neutral and detached magistrate, who independently determined probable cause existed; and, in reliance on

“objectively reasonable,” however, in 4 circumstances: (1) the magistrate in issuing the warrant was misled by information in an affidavit the affiant knew was false or would have known was false except for his reckless disregard of the truth; (2) the magistrate acted as a rubber stamp for the officers and so wholly abandoned his detached and neutral judicial role; (3) a supporting affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) a warrant is so facially deficient, i.e., in failing to particularize the place to be searched or the things to be seized, the executing officers cannot reasonably presume it to be valid. Williams, 548 F.3d at 317; Weston; State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990); Adolphe; State v. Austin, 306 S.C. 9, 409 S.E.2d 811 (Ct. App. 1991).

that warrant, police searched the residence for the murder weapon and evidence related to the murder. The affidavit was not based on an informant's information, but on facts developed in the murder investigation. On this record, none of the 4 circumstances listed above barring the application of the "good faith" exception apply: (1) There is no evidence the magistrate was misled by knowingly false or recklessly false information;⁴¹ (2) There is no contention the magistrate was not neutral and detached; (3) The affidavit was not "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable;" (4) The warrant particularly describes the place to be searched and the items to be searched for. This was the residence of Wright's wife. The good faith exception should apply and the exclusionary rule should not be enforced.

Harmless Error

Regardless, even if Judge Hayes erred in admitting this evidence, its admission was harmless because the evidence of Wright's guilt was overwhelming despite this evidence. State v. Herring (even if search of defendant's home was illegal, any error was harmless given the overwhelming evidence of the defendant's guilt independent of the evidence seized in his home), *citing* State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007); State v. Garner, 304 S.C. 220, 403 S.E.2d 631 (1991)(improperly admitted evidence harmless given evidence of guilt). The State established Wright's guilt of each of the crimes through the testimony of several different

⁴¹ While there may have been some factual inaccuracies or misstatements in the affidavit, those are attributable to the communication of information from one investigator to another who is directed to go obtain a search warrant during the heat and hurry of a murder investigation. Wright does not argue any intentional misstatements in the affidavit; he merely argues the misstatements were made in reckless disregard for the truth. Wright has not proven the statements were made with reckless disregard for the truth. The fact remains, officers had probable cause to search the residence based on information developed during the investigation.

witnesses including Roy Sinclair,⁴² Veronica Chandler,⁴³ Mildred Small,⁴⁴ Lanard Powell,⁴⁵ Qwanda Caldwell-Brown,⁴⁶ the forensic evidence,⁴⁷ and the evidence gathered during the

⁴² At trial, Sinclair testified to the arrangement with Powell and Wright to allow them to sell drugs out of his home, the crime scene. Powell left the residence earlier in the evening of April 30th, with Powell's girlfriend. Wright remained at the home sitting at the kitchen table cutting up drugs with his pistol next to him. Wright was acting strangely before the victim was murdered, accusing Sinclair of saying something derogatory about a woman in the residence. Thereafter, the victim arrived and made the previously referenced comment to Sinclair to which Wright took offense. Wright then shot the victim with his gun. The victim was not armed. Sinclair fled the home, but as he was fleeing down the road, he overheard Wright tell the returning Powell that he [Wright] had just murdered the victim and Powell needed to get his stuff out of the residence.

⁴³ Veronica Chandler testified consistent with Sinclair. She was at Sinclair's home and witnessed the murder of the victim. Sinclair was also in the home and witnessed the murder. The victim came into the residence and made a remark to Sinclair that Wright took offense to. The victim was talking to Veronica when Wright shot the victim numerous times, and she, Veronica, fled outside. Wright left the scene after the murder, and Powell arrived and went into the home. Veronica immediately left the scene, stopped at a store and called her husband and the police.

⁴⁴ Mildred Small testified she was present in the mobile home with Veronica who was in the living room as Veronica described. Sinclair was also there. There was a man in the kitchen at the kitchen table [Wright]. The victim came in the residence and then someone started shooting and the victim was killed. Mildred fled outside and Veronica fled outside as well. Wright left the scene; then another man [Powell] arrived and went into the home with a gun but did not fire his weapon. Mildred and Veronica left the scene.

⁴⁵ Powell testified as follows: There was an agreement with Sinclair in which Wright and Powell were allowed to sell drugs from Sinclair's home. Powell was selling drugs for Wright. Powell and his girlfriend left the home before the murder occurred to make a drug sale. When they left, Wright was still in the home sitting at the kitchen table. Wright carried a .40 caliber pistol, which belonged to Wright's wife. When Powell and Qwanda returned, Wright was leaving the residence in his black BMW. Wright spoke to Powell from his vehicle. Powell did exactly what Sinclair overheard Wright instruct Powell to do. Powell went in the residence, saw the victim had been killed, and removed drugs and cash from the residence and put them in his car. Powell took the victim's car keys, but he did not see any weapon on the victim or remove any other weapon from the scene. Powell left the scene in the victim's vehicle with his girlfriend following in Powell's vehicle. Powell and Wright made contact by phone; Powell met up with Wright, and he and Wright attempted to destroy the victim's car with gas. Powell and Wright then got a rental car and hid out at different motel rooms until they were arrested. Powell rented the last room under an alias using a fake I.D. Wright had given him. While Powell was with Wright before they were arrested, Wright told him he killed the victim.

investigation.⁴⁸ As a result, even if the admission of the fruits of the search of Jacinda's home was error, *its admission was harmless given the overwhelming evidence of Wright's guilt independant of that found in Jacinda's residence.* Herring; Gillian; Garner; Baccus.

ARGUMENT II.

Judge Hayes did not err in denying the motion to suppress the evidence found in the hotel room rented by Lanard Powell because the initial intrusion into the motel room was reasonable and the evidence was in plain view.

⁴⁶ Qwanda Brown testified consistent with Powell. Powell was selling drugs out of Sinclair's home. She and Powell left the home before the murder, but Wright was still at the home. When they returned, Wright was leaving the residence in his black BMW. Wright spoke out the window of his vehicle to Powell and told him to pick up the shell casings. There was a dead man lying on the floor inside the front door of the home. Powell entered the home with his 9mm but did not fire his weapon. Powell returned with a book bag containing something and put it in the car Qwanda was driving. She and Powell left the scene with Powell driving the victim's car. They later met up with Wright, who had switched vehicles, and they disposed of the victim's vehicle on a dirt road. She eventually rented a motel room for the 3 of them. They picked up a rental car, which Wright and Powell got into, and she returned home. Wright told her he killed the victim, and she heard Wright make an admission to killing the victim in the first hotel room.

⁴⁷ Crime scene technician's established consistent with the above witnesses' testimony the victim was murdered inside Sinclair's home; 3 fired *.40 caliber* shell casings were found inside the home; 2 of these casings were found under the cushions of a couch in the living room and 1 on the floor between the kitchen and the living room. No other shell casings were found. No weapon was found on or around the victim. The autopsy findings were consistent with the above witnesses' testimony and with what was found at the crime scene. The victim died from multiple gunshot wounds. The projectiles taken from the victim's body were consistent with a *.40 caliber* weapon and not a 9 mm pistol. Forensic examination revealed the 3 fired *.40 caliber* shell casings found at the crime scene were fired by *the same gun*. Even if the court were to exclude the 2 fired shell casings found in Jucinda's home, the firearm's examiner still testified the 3 fired shell casings found at the murder scene were fired by 1 and the same gun.

⁴⁸ Police arrested Wright and Powell together in the same motel room. In the rental car in the motel parking lot was a gun case containing 2 *.40 caliber* clips containing *.40 caliber* ammunition and registration papers for a *.40 caliber* pistol purchased by Wright's wife. Wright did not challenge the search of the red Camaro at trial or on appeal. Police searched the BMW which Wright fled the crime scene in and found 1 unfired *.40 caliber* bullet. Wright did not challenge the search of the BMW below or on appeal.

Standard of Review

When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling. State v. Missouri, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004). “The appellate court will reverse only when there is clear error.” Id..

The Seizure of the Evidence in Room 105 of the Sleep Inn Motel

On May 2, 2012, police tracked Wright and Powell to the “Sleep Inn” motel in Conway. Police already had an arrest warrant for Powell for murder, and were looking for Wright and Powell as suspects in connection with the shooting murder of Jerome Green. Police determined through the desk clerk Powell had rented a room with a fake I.D. in the name of Desmond Jetter, and by showing the clerk a photograph, that Wright was in the same motel room, Room 105. Police surrounded the motel room. Police had the clerk call the room and ask the occupants to step outside. When Powell or Wright opened the door to the room and stepped outside and saw it was police, that individual fled or retreated back into the room and attempted to slam the door shut, but police were able to prevent them from doing so and entered the room and detained Powell and Wright. Without searching, police saw in plain view on top of a refrigerator a quantity of crack and powder cocaine and over \$3,000. Police did not search the room, but secured it and obtained a search warrant, and pursuant to its execution, seized the drugs and cash.

What Occurred Below

Wright moved *in limine* to suppress the fruits of the search of the motel room rented by Powell. The State called 2 witnesses at the suppression hearing, Detectives Mark Chatfield⁴⁹ and

⁴⁹ Detective Chatfield testified that on May 2, 2012, he went to the Sleep Inn motel as part of the investigation of the victim’s murder, because police received information 1 person they were looking for, Wright, was at the motel. This information came from Lt. Squires of the Horry

Paul Johnson⁵⁰ of the Horry County Police Department and introduced the search warrant obtained by police for the room. The State also introduced the arrest warrant for Powell obtained the day before police entered Room 105. Wright did not testify or call witnesses at the hearing.

County P.D. who was receiving information from S.L.E.D. who was tracing Wright's cell phone and was receiving "pings" from the phone at the motel. Squires directed Chatfield to go to the motel and attempt to locate Wright. Chatfield also went to the motel in an attempt to locate Lanard Powell, Wright's co-defendant. When Chatfield arrived, he met Sgt. Trexell, his supervisor, who had a driver's license photo of Wright and showed it to the motel desk clerk who stated Wright was in Room 105. The clerk called Room 105 while police officers were standing outside the room. Someone stepped out of the room. Chatfield could not remember if it was Wright or Powell. That person was identified as 1 of the individuals police were looking for. Police identified themselves, and that person, either Powell or Wright, fled or retreated back in the room and attempted to close the door. Police held the door open and made entry, and Wright and Powell were detained and taken into custody. Chatfield was not aware an arrest warrant for Powell for murder was outstanding at the time police entered the room. When police entered the room, there were illegal drugs and cash in plain view. Wright and Powell were taken out of the room. Detective Johnson entered the room at that time. Chatfield provided Johnson with the information provided by the clerk regarding the identity of who was in the room. The room was not searched. Everyone backed out of the room, it was secured, and Johnson went to obtain a search warrant for the room from a magistrate. (R. 103-07).

⁵⁰ Detective Johnson testified he was instructed to go to the Sleep Inn motel *in relation to the homicide investigation* of Jerome Green's death. He was asked by Lt. Stewart to assist other officers in apprehending Wright. Johnson followed Stewart to the motel. Once there, he and other detectives set up an outside perimeter covering all exits. Det. Chatfield and Sgt. Trexell went to the front desk and the clerk confirmed Wright was in Room 105. At that time, Johnson positioned himself outside the window of the room in case the subjects inside ran or fled. It was then communicated to Johnson the front desk called the room and asked Wright to step outside. According to Johnson, once Wright opened the door and observed the police presence, he tried to close the door and at that time he was taken into custody. Johnson did not enter the room until after Wright and Powell were taken into custody. When the officers who entered the room notified others Wright was under arrest, Johnson went around to the front of the room. Before he entered the room, the door was open, and Johnson could see an amount of narcotic drugs sitting on the refrigerator of the room in plain view. Wright and Powell were removed from the room. Everyone left the room, it was secured, and Johnson went and obtained a search warrant from a magistrate. The search warrant was dated May 2, 2012. Johnson returned to the motel and executed the search warrant. Johnson seized the cocaine and crack and the \$3,000 found in the motel room in plain view. There were 2 individuals who were arrested, detained, or taken into custody in Room 105, Wright and Powell. Johnson identified State's Ex. 2, the arrest warrant for Powell for the crime of murder. Johnson confirmed the arrest warrant was issued and signed by

The Search Warrant

The search warrant Detective Johnson obtained provided as follows:

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

AFFIDAVIT

Personally appear before me one Detective Paul Johnson, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises of this County.

DESCRIPTION OF PROPERTY SOUGHT

Specifically, cocaine, marijuana, heroin, crack cocaine, and any other illegal controlled and controlled substances. Items used to facilitate the distribution of controlled substances such as scales, baggies, vials, containers, etc, firearms, ledgers, books and papers. Any computers, hard drives or any type of electronic storage devices including any GPS devices. Any cellular devices used for incoming, outgoing calls, text messages and voice messages to include telephone numbers from the address book and contacts list. Any and all saved or deleted text messages and voice messages. Any and all photograph and videos saved to the cellular SIM card. Any paraphernalia used to facilitate the use any controlled substances such as pipes, bongs, spoons, straws, hypodermics, and etc. that could show that the occupants of the residence are involved with the possession, personal use/or sale of controlled substances. Any currency, monies, or merchandise related to the sale of marijuana or any other illegal controlled substances. Items of personal property that may establish ownership and control of areas searched.

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

The place to be searched is the Sleep Inn Hotel located at 3145 Church Street Conway, South Carolina 29526. The room to be searched is specifically room 105. The room is plainly marked with a plastic marker with the number 105 beside the room door. Coming from ML Brown Public safety Building you will travel south west on Main street for 1.1 Mile and then turn left onto 16th Avenue and travel .5 Mile. Then you will turn right onto Highway 501 and travel 3.1 Miles and you will arrive at the Sleep Inn Hotel which will be located on the left side of the Highway.

the Magistrate on May 1, 2012, the day before police entered Room 105 and arrested Powell. The arrest warrant was marked as State's Ex. 2 for the purpose of the suppression hearing. (R. 108-09, 112-13, State's Ex. 1 [search warrant], State's Ex. 2).

**REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

I am a police officer, certified in South Carolina. I have been employed by the Horry County Police Department for 5 years and am currently assigned as a Detective. I have received training in the following: Criminal Investigations Class at the SC Criminal Justice Academy. I have been involved in other search warrants relating to the seizure of illegal narcotics. I am authorized to make searches and seizures. On May 2, 2012 Detectives with the Horry County Police Department responded to 3345 Church Street Conway South Carolina at the Sleep Inn Hotel in reference to a wanted murder suspect. Upon arrival Detectives confirmed with the front desk that the suspect was in room 105. The front desk called the suspect and when the suspect stepped outside the room, the detectives confirmed the identity of the suspect. While the front door was open the detectives observed in plain view a baggy of off white substance and a baggy of green leafy substance on top of the refrigerator. It is my belief that there may be more illegal substances in the residence.

(R. 596; State's Ex. 1). The search warrant affidavit was sworn to and the search warrant was signed by the Magistrate on May 2, 2012 at 9:50 a.m. (R. 596; State's Ex. 1).

At the conclusion of the *in camera* hearing, Judge Hayes denied the motion to suppress. Specifically, he found the officers had the right to act as they did in entering the room and eventually recovering the evidence that was in plain view. He found that based on articulable reasonable information the officers had at the time, their actions were reasonable. (R. 121-22).

Analysis

Judge Hayes did not err. There were several recognized exceptions to the search warrant requirement making entry by police into the motel room reasonable; and, as a result, regardless of the subsequent search warrant, the evidence seized in plain view was admissible.⁵¹

⁵¹ "Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced in evidence." State v. Beckham, 334 S.C. 302, 317, 513 S.E.2d 606, 613 (1999). To satisfy the "plain view" exception, two elements must be met: "(1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities. State v. Wright, 391

*The initial intrusion was reasonable and the evidence was in plain view**Exigent Circumstances*

Because the ultimate touchstone of the Fourth Amendment is “reasonableness,” the warrant requirement is subject to certain exceptions. Herring, 387 S.C. at 210, 692 S.E.2d 490, citing Katz v. United States, 389 U.S. 347, 357 (1967). The Supreme Court has recognized one exigency obviating the requirement for a warrant is the need to protect or preserve life or avoid serious injury. Id., citing Brigham City, Utah v. Stuart, 547 U.S. 398 (2006). An action is “reasonable” under the Fourth Amendment, regardless of the individual officer’s state of mind, “as long as the circumstances, viewed objectively, justify [the] action.” Id., at 210, quoting Scott v. United States, 436 U.S. 128, 138 (1978). “A fairly perceived need to act on the spot may justify entry and search under the exigent circumstances exception to the warrant requirement.” Id., citing Schmerber v. California, 384 U.S. 10, 15 (1948). “The likelihood a suspect will flee is also an exigency warranting such an intrusion.” Id., citing Johnson v. United States, 333 U.S. 10, 15 (1948). “Protecting the safety of police officers has also been held an exigent circumstance.” Id., citing Chimel v. California, 395 U.S. 752 (1969).⁵² “In such circumstances, a protective sweep of the premises may be permitted.” Wright, quoting Herring, citing Maryland v. Buie, 494 U.S. at 337, and State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344 (Ct. App.

S.C. 436, 443, 702 S.E.2d 324, 327 (2011); Brown, 289 S.C. at 587-88, 347 S.E.2d 882. See also State v. Abdullah, 357 S.C. 344, 351-52, 592 S.E.2d 344, 348-49 (Ct. App. 2004). The drug and cash evidence was admissible because it was seen in plain view; its illegal nature was readily apparent, and officers were lawfully within the interior of the room to detain the first subject. State v. Johnson, 410 S.C. 10, 763 S.E.2d 36 (Ct. App. 2014).

⁵² “A warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling.” State v. Wright, 391 S.C. 436, 444, 706 S.E.2d 324 (2011), quoting Herring, 387 S.C. at 210, 692 S.E.2d at 495, citing Minnesota v. Olson, 495 U.S. 91, 100 (1990).

2004). “The Fourth Amendment’s concern with ‘reasonableness’ allows certain actions to be taken in certain circumstances, *whatever* the subjective intent.” *Id.*, quoting *Whren v. U.S.*, 517 U.S. 806, 814 (1996)(citations omitted)(emphasis in original). In the Fourth Amendment context, a court is concerned with determining whether a reasonable officer would be moved to take action. *Id.*, referencing *Whren*, 517 U.S. at 815.

Police initially entered the motel room because an identified murder suspect, either Wright or Powell, fled or retreated into the motel room after recognizing police and attempted to close the motel room door. Exigent circumstances justified the officers’ entry into the room.⁵³

The initial entry was lawful pursuant to a Terry stop

Further, the police officers could lawfully seize or detain both Wright and Powell pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968) and its progeny. Under *Terry* and its progeny, a law enforcement officer may briefly detain and frisk a suspect, if the officer has a *reasonable*

⁵³ In this case, police responded to the motel because they received information S.L.E.D. had traced Wright’s cell phone to the motel. The clerk confirmed Wright was in Room 105. Powell rented the room under an alias. The above information allowed police to move forward in their investigation. Police could approach the door of the motel room and even knock to speak with Wright or Powell. *Wright, supra*, quoting *United States v. Daoust*, 916 F.2d 757, 758 (1st Cir. 1990)(citations omitted)(“A policeman may lawfully go to a person’s home to interview him ... In so doing, he obviously can go up to the door). Further, immediately outside of a motel room is a common area of the motel, not private property. When Wright or Powell opened the door to the motel room and stepped outside, that person was identified by police as 1 of the individuals they were looking for as suspects in the shooting murder of the victim. When that individual recognized police, he fled back into the motel room and attempted to close the door. “Exigent circumstances developed when the suspects [sic] started fleeing.” *Wright*, 391 S.C. at 445, 706 S.E.2d 324. Moreover, the presence of another individual or potential other individuals in the motel room who might be armed created a potential danger to the officers. *Id.* “Hence, the deputies had the authority to perform a protective sweep of the premises.” *Wright*, 391 S.C. at 445. The officers could stop the individual from closing the motel room door and enter to perform a protective sweep. *Id.*⁵³ “Police officers were looking for a suspected murderer whom they knew was likely to be armed with a deadly weapon.” *Herring*, 387 S.C. at 211, 692 S.E.2d 490. The drugs observed in plain view in the motel room were admissible at trial. *Wright*.

suspicion that the person has been *involved in* or is *wanted in connection with a completed felony*. United States v. Hensley, 469 U.S. 221 (1985);⁵⁴ United States v. Place, 462 U.S. 696 (1983); State v. Alexander, 309 S.C. 495, 424 S.E.2d 526 (1992).⁵⁵

Protective Sweep

Further, entry into the motel room was justified by the recognized exception of “protective sweep.” In State v. Brown, 289 S.C. 58, 347 S.E.2d 882 (1986), our Supreme Court recognized under almost the same exact factual scenario, police had the right to make a protective sweep of the interior of a motel room after apprehending a suspect who stepped outside the motel room for whom police had no arrest warrant or search warrant for the motel room. Id. The Court found police had the right to conduct a protective sweep of the motel room to make sure no further subjects were within the room that could endanger the officers, and

⁵⁴ See State v. Culbreath, 300 S.C. 232, 387 S.E.2d 255 (1990); State v. Foster, 269 S.C. 373, 237 S.E.2d 589 (1977); State v. Dean, 282 S.C. 136, 317 S.E.2d 744 (1984); State v. Khingratsaipon, 352 S.C. 32, 572 S.E.2d 456 (2002); State v. Morris, 312 S.C. 116, 439 S.E.2d 291 (Ct. App. 1993).

⁵⁵ When the officers responded to the motel, they were in the middle of a murder investigation regarding a shooting death. They were looking for 2 subjects, Wright and Powell, who were suspects in the shooting murder. Police had received information Wright was at the motel. S.L.E.D. had traced Wright’s cell phone to the motel. The desk clerk confirmed Wright was in Room 105. Powell, the other person they were pursuing, actually rented the room in a false name. (R. 279-81). Officers surrounded the room, and had the clerk call the room and ask Wright and Powell to step outside. One of the men [Wright according to Det. Johnson] opened the motel room door and stepped outside. His identity was confirmed. When he recognized police, he fled back into the motel room and attempted to close the door. See Illinois v. Wardlaw, 528 U.S. 119, 125-26 (2000). The officers stopped him from closing the door and escaping detention or apprehension. Officers entered the motel room and Wright and Powell were detained. Officers saw the drugs and cash in plain view while making a reasonable Terry stop or detention of the 2 subjects who officers had reasonable suspicion had committed and were wanted for a completed felony [murder]. Terry. Further, underscoring their reasonableness, they did not attempt to search the room, but secured it, and had an officer obtain a search warrant. They did not go in the room looking for narcotics but to detain or apprehend 2 wanted murder suspects for questioning. It was only after securing the warrant the room was searched.

anything found in plain view during that protective sweep would be admissible in evidence. *Id.*⁵⁶ However, in *Brown*, the case was reversed because the State failed to prove by any competent testimony the evidence recovered from inside the motel room was actually seen in plain view. *See Brown, supra.*⁵⁷ Here, the State established through the 1st officer who entered the room and the 2nd officer who was outside the room there were narcotic drugs visible in plain view.⁵⁸

Police could enter to room to arrest Powell because police had a warrant for his arrest

Police could also enter Room 105 because they had an arrest warrant for the person who rented the room, Powell. *See Payton v. New York*, 445 U.S. 573 (1980)(An arrest warrant carries with it by implication the authority to enter the suspect's dwelling when there is reason to believe he is within); *Goins v. State*, 367 S.C. 568, 574, 726 S.E.2d 1, 4 (2012)("police are allowed to enter a hotel room to arrest an occupant when acting pursuant to a valid arrest

⁵⁶ In *Brown*, the Court found the "exigent circumstances" exception to the warrant requirement did not apply because police had the motel surrounded for approximately 2 and 1/2 hours and could have gone and gotten a warrant. *Id.* However, the Court found that "the protective sweep" exception *did apply* for officer safety. *See Brown.*

⁵⁷ In *Brown*, the only witness who testified at the suppression hearing was Lt. Ennis who admitted he could not say under oath whether the seized evidence was in plain view or not. He did not go in the motel room. He would be relying on what other officers told him. *Id.*

⁵⁸ Here, officers were investigating a homicide in which the victim was shot 10 times. No weapon was found at the crime scene. Police had identified both Wright and Powell as suspects in the homicide and had actually obtained a warrant for Powell's arrest for murder. Police had information Wright was at the motel and confirmed he was in Room 105. Powell actually rented the room. When Wright or Powell opened the door to Room 105 and stepped out of the room, that person was identified by police. When that person recognized police, he fled or retreated back into the motel room and attempted to close the door. It was reasonable for police to believe that person *or* concealed persons remaining in the room might pose a danger to the officers or others given the crime they were investigating and the murder weapon was still missing. *See Herring*, 387 S.C. at 211, 692 S.E.2d 490 ("Police officers were looking for a suspected murderer whom they knew was likely to be armed with a deadly weapon."). It was reasonable for police to stop that individual from closing the motel room door and to enter the room to detain him, and police had the right to conduct a protective sweep of the room and detain any individuals within the motel room pursuant to *Brown*. The drugs and cash were in plain view.

warrant.”); *See State v. Asbury*; 328 S.C. 187, 493 SE.2d (1997)(same); *State v. Sims*, 304 S.C. 409, 405 S.E.2d 377 (1991); *State v. Loftin*, 276 S.C. 48, 275 S.E.2d 575 (1981)(same).⁵⁹ It makes no difference the officers who testified at the suppression hearing were unaware of the arrest warrant; the knowledge of the other officers in the investigation, is imputed to the officers who were seeking to apprehend Powell, through the “fellow officer rule” or the “collective knowledge doctrine.” *Johnson v. State*, 660 So.2d 648 (Fla. 1995)(“knowledge of the existence of a valid warrant is imputed to all officers in the departments working on the case from the moment the warrant is signed, without regard to actual knowledge, at least where the arrest is prompted by the crime identified by the warrant or its accompanying papers”).⁶⁰ As a result,

⁵⁹ Powell rented Room 105 of the Sleep Inn with a fake I.D. Wright provided. (R. pp. 279-81). Police confirmed both subjects, including Powell, were in the motel room before approaching the room. (R. 317-20). Police had an arrest warrant for murder for Powell, which had been issued the day before the officers went to the motel, May 1, 2012. (R. 113, 602; State’s Ex. 2 for Suppression Hearing). Officers entered the motel room on May 2, 2012. (R. 104, 113).

⁶⁰ Moreover, the collective knowledge doctrine provides an officer may act on instruction of another officer if the instructing officer or officers had sufficient information to justify taking such action [himself]. *United States v. Hensley*, 469 U.S. 221 (1985); *United States v. Massenburg*, 654 F.3d 480, 492 (4th Cir. 2011). *See United States v. Joy*, 336 F.App’x 337, 342 (4th Cir. 2009); *United States v. McRae*, 336 F.App’x 301, 305 (4th Cir. 2009)(collective knowledge doctrine can also supply reasonable suspicion), *citing United States v. Hensley*, 469 U.S. 221, 232 (1985); *United States v. Wells*, 98 F.3d 808, 810 (4th Cir. 1996)(Under the collective knowledge doctrine, police officers cooperating in an investigation are entitled to rely upon each other’s knowledge of facts when forming a conclusion a suspect has committed or is committing a crime); *United States v. Laughman*, 618 F.2d 1067, 1072 (4th Cir. 1980); *United States v. Pitt*, 382 F.2d 322, 324 (4th Cir. 1967); *Jones v. Camden Police Department*, 2010 WL 3489021 (D.S.C. 2010), *Report and Recommendation*, (UNPUBLISHED). *See also Morelli v. Webster*, 552 F.3d 12, 17 (1st Cir. 2009)(doctrine applies to police “engaged in a joint mission” and “derives from a felt sense that officers acting in concert actually do, and are entitled to, assume that fellow officers are acting in a manner consistent with their legal responsibilities”), *cited in Unites States v. Putt*, 990 F.Supp. 2d 571 (E.D. Va. 2013); *United States v. Williams*, 627 F.3d 247, 252 (7th Cir. 2010)(“[t]he collective knowledge doctrine permits an officer to stop, search, or arrest a suspect at the direction of another officer or police agency, even if the officer himself does not have firsthand knowledge of facts that amount to the necessary level of suspicion to permit the given action”).

police could lawfully enter the motel room to arrest Powell, and seize any items in plain view while lawfully in the room. See Johnson, 410 S.C. 10, 763 S.E.2d 36 (Ct. App. 2014).⁶¹

Entry Pursuant to a Lawful Warrantless Arrest

Further, police had the right to make a lawful warrantless arrest for a felony, and neither Wright nor Powell could defeat the arrest by retreating into the motel room to avoid arrest. United States v. Santana, 427 U.S. 38 (1976). Police officers can make a warrantless arrest for a felony when an officer of the law has reasonable grounds to believe a felony has been committed and the person arrested is the party who committed the felony. State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979)(other citations omitted); State v. Thomas, 248 S.C. 573, 151 S.E.2d 855 (1966). The limitation being the arrest must be in a public place. Kirk v. Louisiana, 536 U.S. 635, 123 S.Ct. 2458 (2002); United States v. Watson, 423 U.S. 411 (1976). However, once Wright or Powell stepped out of the motel room into a public place, they could not avoid a lawful felony arrest without a warrant by retreating back into the motel room. Santana.⁶²

Inevitable Discovery

Further, the evidence would have inevitably been discovered. Nix v. Williams, 467 U.S. 431 (1984); United States v. Allen, 159 F.3d 832 (4th Cir. 1998).⁶³ Officers had the motel room

⁶¹ In Johnson, this Court found the initial entry into a motel room to arrest a subject for whom officers had an arrest warrant, who cracked the door and then backed away from the door into the room, was justified and resulting protective sweep was justified and evidence seized in plain view was admissible); State v. Asbury, 328 S.C. 187, 493 S.E.2d 349 (1997)(entry into residence was lawful where officers had reasonable belief suspect was home-evidence in plain view was properly seized).

⁶² Santana, 427 U.S. 38 (“a suspect may not defeat an arrest which has been set in motion in a public place, and is therefore proper under Watson, by the expedient escaping to a private place”). In Santana, the defendant was standing in the doorway of her house, and retreated into her home.

⁶³ See United States v. Whitehorn, 813 F.2d 646 (4th Cir. 1987); State v. Brown (inevitable

surrounded. They were not going to allow Wright or Powell to escape.⁶⁴ As a result, the drugs and currency found on the refrigerator would have been inevitably discovered. Id.

The Search Warrant was Valid

Additionally, the search warrant was valid even though it *may* have contained a factual misstatement. Franks.⁶⁵ While this Court must determine the legality of the initial entry into the motel room, the Magistrate's sole determination was whether *there was probable cause to issue the search warrant to search the motel room for drugs or narcotics*, not the legality of the entry of the room. Even excluding any *possible* misstatement about when officers first saw the drugs in plain view, whether when the door was opened or after entry into the room, the fact remains officers inadvertently discovered drugs and currency in plain view. Further, the affiant saw the drugs in plain view from outside the motel room. Therefore, there was probable cause to issue the search warrant to search the motel room for drugs or narcotics. Franks.

discovery is an exception to the exclusionary rule); State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012)(remanding to determine if inevitable discovery applied); State v. Bruce, 402 S.C. 621, 741 S.E.2d 590 (Ct. App. 2013)(recognizing exception but finding exception not met); State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011)(evidence may be admitted "if the government can prove the evidence would have been obtained inevitably."

⁶⁴ Wright and Powell would have eventually come out of the room and surrendered, justifying a protective sweep of the motel room under Brown and the discovery of the drugs in plain view, or officers would have eventually brought the arrest warrant for Powell to the scene and entered the motel room to arrest Powell, or would have gone and gotten a search warrant to enter the motel room and seize Powell and Wright and search for evidence of the crime of murder.

⁶⁵ The search warrant affidavit states that the officers who initially entered the motel room saw the drugs in plain view when the door was first opened and they were standing outside. The officer who obtained the search warrant testified before the jury that this was the information that was related to him before he went and obtained the search warrant. (R. 319-20). The affiant also testified at the suppression hearing that both officers who initially entered the room saw the drugs in plain view when the motel room door was first opened. (R. 112, ll. 7-23). However, at the suppression hearing, the officer who first entered the motel room was only asked what he saw after entering the motel room. (R. 105). In response, he stated he saw the drugs in plain view after entering the room. (R. 104-05).

The Exclusionary Rule should not apply

Further, the exclusionary rule should not apply in this situation. Johnson, 660 So. 2d 648 (finding exclusionary rule should not be applied where police had obtained valid arrest warrant for defendant but officer who actually made the arrest was not aware of the existence of the warrant; police had complied with the warrant requirement; there could be no remedial value in such a draconian penalty).⁶⁶ Further, police obtained a search warrant after inadvertently finding the drugs, and only then seized the drugs found in plain view.

Harmless Error

Finally, with regard to the murder and gun charge, the evidence seized from the motel room was harmless and could not have affected the verdict on either. The evidence seized from the motel room was important to the trafficking and PWID charge, not the murder or gun charge.⁶⁷ Even if the court erred in admitting the evidence from Room 105, its admission was harmless on the murder and gun charge. State v. Herring.

ARGUMENT III.

The issue alleging Judge Hayes erred in not allowing counsel to question a witness about a prior statement is not preserved for appeal; and, even if preserved Judge Hayes did not err in preventing counsel from questioning the witness about a prior

⁶⁶ Police had obtained a valid arrest warrant for Powell for murder; police had verified Powell was in the room as well; Powell rented the motel room; and, therefore police had the right to enter the room to arrest Powell where knowledge of fellow officers in the investigation was imputed to all officers working on the case, and these officers had been directed to go to the motel and apprehend the subjects. In any event, the exclusionary rule should not apply. Id.

⁶⁷ The testimony of the eyewitnesses to the murder, the cover-up of the murder as testified to by Qwanda and Powell, the admissions of Wright as testified to by Sinclair, Qwanda, and Powell, and the physical evidence recovered at the crime scene in addition to that in the red Camaro [Police established Jacinda rented the red Camaro for Wright by introducing the lease agreement and through the testimony of Qwanda and Powell], the BMW, and Wright's wife's residence was what resulted in his conviction for murder and the gun charge, not what was in Room 105.

statement where the defendant did not meet the requirements of the Rule; however, even assuming *arguendo* error, it was harmless given the other impeachment and admissions of the witness and the over-whelming evidence of Wright's guilt.

What Occurred Below

After lengthy cross-examination and impeachment of Powell, Wright sought to impeach Powell with the contents of a letter Powell purportedly wrote to Wright while the two were incarcerated together in the county jail. Wright *alleged* the witness stated in the letter a third person committed the murder, a man nicknamed "Two Guns." (R. 208). The Solicitor objected on the basis she could not tell what statement Wright was referring to, and she had requested the letter be provided or disclosed to her previously and it had not been disclosed, and she was again asking to see the letter before counsel cross-examined the witness on the contents of the letter. (R. 308-11). Wright argued that under the S.C. Rules of Evidence he did not have to produce the statement because there might be something in the statement that was nefarious to his client. (R. 309-10). The Solicitor indicated she had spoken to the witness prior to trial and the witness indicated he was coerced into writing a statement by the defendant, but the only thing he said in the statement was he did not see anything or know anything about the case, not what Wright was claiming. (R. 310). Wright did not produce the letter prior to trial when requested by the Solicitor, and he did not produce it to the Solicitor when requested during the examination of the witness. (R. 310-15). During the initial questioning of the witness on this issue, counsel claimed he could not find the letter, then outside the presence of the jury he admitted they could not find the letter. (R. 308-09, 313). After some *in camera* argument, counsel informed the court the witness admitted he wrote the statement, and counsel was satisfied with the fact he was able to ask the question in front of the jury. (R. 310, ln. 207, 313, ll. 11, 23-25). As the *in camera*

hearing continued, counsel acquiesced to the trial court's ruling he would not allow the impeachment. (R. 313, ll. 11, 23-25). Judge Hayes informed both parties he was going to give a curative instruction regarding this particular statement, and Wright made no objection to the curative instruction the court proposed. (R. 313, 314, ll. 1-15). And, Wright made no objection to the curative instruction when it was given to the jury or after it was given. (R. 314, l. 16 – 315, l. 1). Wright now alleges Judge Hayes erred in refusing to allow him to impeach Powell on the letter which he never produced to opposing counsel.

The Lack of Preservation of this Issue

This issue is not preserved for appeal. First, Wright stated he was satisfied with his cross-examination given the fact the witness admitted he wrote the statement, and given the fact Wright was able to ask the question in front of the jury regarding “Two Guns.” State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000). Further, Wright made no offer of proof what Powell's testimony would have been if he answered the question. State v. Simmons, 360 S.C. 33, 599 S.E.2d 448 (2004); State v. Anderson, 304 S.C. 551, 406 S.E.2d 152 (1991). And, there was no proffer of the extrinsic evidence. Id. Further, Wright acquiesced to the court's ruling, not once, but twice, and agreed he would ask no further questions of the witness on this subject. Benton; State v. Mitchell, 330 S.C. 189, 498 S.E.2d 642 (1998). Finally, Wright acquiesced to the curative instruction regarding the proposed impeachment and raised no objection to it. As a result, this issue is simply not preserved for appellate review and must be denied and dismissed.

The Lack of Merit of this Issue

Further, there is no merit to this issue. Rule 613(a), SCRE, provides in pertinent part:

(a) Examining witness concerning prior statement.

In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, *but on request the same shall be shown or disclosed to opposing counsel.*

Rule 613(a), SCRE (emphasis added). The record shows “opposing counsel” [the Solicitor] requested the written statement [letter] in question be shown to her or disclosed to her, as the Rule requires. Wright failed to do so. In fact, the Solicitor requested she be shown the statement or the statement be disclosed to her before trial and again at the time Wright sought to question the witness. Wright *did not* show her the statement or disclose the same to her prior to trial *or* at the time Wright sought to question the witness. In fact, Wright stated under the SCRE he did not have to produce the statement because it might contain something nefarious about him. Wright is wrong. The Rule provides the statement must be produced to opposing counsel when requested. As a result, Wright failed to comply with the requirements of the Rule before examining the witness about the prior statement and its alleged contents. Rule 613(a), SCRE; *South Carolina Evidence*, 2nd Ed., Danny R. Collins, p. 140, ll. 2-8 (pointing out the holding in State v. Rowell, 75 S.C. 494, 56 S.E.2d 23 (1906) suggesting a prior inconsistent statement does not have to be shown to opposing counsel before it is used for impeachment is no longer good law on this point), *citing* Rule 613(a), SCRE *and referencing also* State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981); State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979). The efficacy of this Rule is evident. Where only a portion of the statement is introduced for impeachment, the entire statement is generally admissible to explain the inconsistency. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); *South Carolina Evidence*, 2nd Ed., Danny R. Collins, p. 141.⁶⁸

⁶⁸ “[A]fter a witness has been impeached, the party offering the witness can use the rule of completeness to require the cross-examiner to bring out any other matters that ought in fairness

Wright wanted to impeach the witness but not allow the State to effectively offer any reply or rebuttal testimony with the contents of the statement itself.⁶⁹ As a result of the failure of Wright to comply with the requirements of Rule 613(a), SCRE, Judge Hayes could not have erred in denying the request to cross-examine the witness about the prior statement. Wright should not be heard to complain about his own actions in failing to comply with the Rule. *Id.*

Harmless Error

Even if the court erred in denying the requested impeachment, the error was harmless. In *State v. Fossick*, 333 S.C. 66, 70, 508 S.E.2d 32, 33-24 (1998) and *State v. Beckham*, 334 S.C. 302, 513 S.E.2d 606 (1999), our Supreme Court held the failure to allow impeaching evidence was subject to harmless error analysis and found in both cases the error was harmless.

In determining harmless error regarding any issues of witness credibility, we will consider the importance of the witness testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case. *State v. Holmes*, 320 S.C. 259, 464 S.E.2d 334 (1995), (*quoting Delaware v. Van Arsdall*, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

Id. at 70, 508 S.E.2d at 34. *See State v. McLeod*, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004). Here, Powell's testimony was not critical to the State's case for murder, trafficking, PWID, or the weapon charge.⁷⁰ An error, if any, in the limitation of cross-examination was harmless on this record. *Beckam*; *Fossick*; *McLeod*.

be considered with the prior statement.” *South Carolina Evidence*, 2nd Ed., Danny R. Collins, p. 143.

⁶⁹ And, this was not the first time during the trial Wright had sought to impeach a witness about something alleged to be in a prior statement, and the witness disputed what was actually in the statement. On that occasion, Wright did not offer the extrinsic proof to substantiate the prior inconsistency. (R. 209-12).

⁷⁰ Powell was not an eyewitness to the murder by his own admission. Powell was involved only

ARGUMENT IV.

Judge Hayes did not err in denying the defendant's late request to testify.

What Occurred Below

During the trial, Judge Hayes reviewed with Wright his right to testify and not testify and fully explained to Wright his constitutional rights in this regard. Wright stated under oath *he did*

in the cover-up of the crime, after the fact. Qwanda's testimony corroborated Powell's testimony regarding what occurred when she and Powell returned to the mobile home after the murder and regarding the cover-up of the crime by Wright, Powell and Qwanda. She testified Wright told Powell to "pick up the shell casings." She testified to Powell going in the mobile home after the murder and returning with items and placing them in her car. She testified to the fact she, Wright, and Powell disposed of the victim's vehicle and to Wright's admission to her he killed the victim. Roy Sinclair and Veronica Chandler *were eyewitnesses* to the murder. Sinclair testified to the fact Wright shot the victim because of the statement the victim made to Sinclair upon entering the mobile home. Chandler also testified the man in the kitchen [Wright] shot and killed the victim because of the comment the victim made to Sinclair. Chandler's companion also corroborated Powell's testimony he entered the mobile home after the murder and then took the victim's Durango from the scene. Sinclair also testified to the statement he overheard Wright make to Powell as Wright was leaving the crime scene, i.e. that Wright had just murdered someone and Powell needed to get his stuff [drugs] out of the home. Sinclair, Qwanda, and Chandler all testified to Wright being in possession of a firearm. None of the witnesses who were present at the crime scene when the murder occurred stated a person named "Two Guns" committed the offense, instead of Wright. Sinclair had known Wright for approximately 3 to 4 weeks at the time of the murder and positively identified Wright as the person who murdered the victim. Impeaching Powell with the letter in which Powell allegedly stated "Two Guns" committed the crime, would not have made any difference because Powell was not even inside the home when the crime occurred. The physical evidence also corroborated the fact Wright committed the murder. Fired .40 caliber shell casings were found at the crime scene adjacent to the victim's body. The projectiles removed from the victim's body were consistent with a .40 caliber weapon. A gun case was found in the car Wright's wife rented, and the gun case was for a .40 caliber pistol. The paperwork in the gun case showed the pistol was owned by Wright's wife. Further, an un-fired .40 caliber bullet was found in the BMW which Wright fled from the crime-scene in. Finally, 2 fired .40 caliber shell casings were found in Wright's wife's residence, and they matched the fired shell casings from the crime scene, i.e. they were fired from the same gun. Further, the drugs that were the basis of the trafficking and PWID charge were found in the motel room in which Wright and Powell were arrested. Sinclair also testified to the agreement he had with Wright and Powell to allow them to distribute drugs from his residence, and Sinclair testified Wright was sitting in the kitchen cutting up drugs before the murder occurred. Additionally, Judge Hayes allowed Wright to cross-examine Powell extensively before the jury regarding his credibility. (R. 285-308).

not wish to testify. The defense rested the following morning after Judge Hayes declined to allow a defense' witness to testify.⁷¹ The jury was instructed all of the evidence in the case had been introduced and the only thing remaining was closing arguments and the charge on the law. The parties then engaged in a charge conference with Judge Hayes. At its close, Judge Hayes informed the parties he would not charge self-defense or voluntary manslaughter and explained exactly what he would charge to the jury. Both the Solicitor and Wright's attorney stated they were ready for closing arguments and the charge on the law. The jury was being brought into the courtroom, and the parties were about to give closing arguments, when Wright informed Judge Hayes he wanted to speak with the court. Wright's attorney then informed the court Wright would now like to testify. Judge Hayes declined Wright's late request to testify. (R. 477-82). There is no merit to this appellate ground.

Analysis

Obviously, a criminal defendant has the right to testify in a criminal case. Rock v. Arkansas, 483 U.S. 44 (1987); State v. Rivera, 402 S.C. 225, 741 S.E.2d 694 (2013). However, a criminal defendant's right to testify is not unfettered, and there are limitations on its exercise, such as the accommodation of legitimate interests in the trial process. Rock 483 U.S. at 55; United States v. Scheffer, 523 U.S. 303, 308 (1998); Commonwealth v. Baldwin, 619 Pa. 178, 59 A.3d 754 (Pa. 2012)(same). Where the defendant tells the court he does not wish to testify, and the defense rests its case, the defendant's right to testify is no longer absolute and his request to re-open his case so he can testify may be declined. Baldwin, (Defendant was not entitled to reopen and testify after the parties had rested), *affirming Pennsylvania Superior Court's decision*

⁷¹ Wright does not challenge Judge Hayes' ruling regarding this witness on appeal.

in Commonwealth v. Baldwin, 8 A.3d 901 (Pa. Super. 2012); United States v. Peterson, 233 F.3d 101 (1st Cir. 2000)(court did not err in refusing to allow defendant to re-open his case and testify where his change of mind occurred after the jury had been told the parties had rested and to expect closing arguments and had recessed, and a charging conference had been held); United States v. Jones, 880 F.2d 55, 60, n. 5 (8th Cir. 1989)(court did not err in refusing to allow defendant to re-open for purpose of him testifying where the decision was not communicated until after the parties had prepared jury instructions and summations, and potential rebuttal witnesses had been released and were unavailable, and defendant had previously stated on the record he understood his right to testify and not testify and he chose not to.).⁷² The court did not err in declining the late request to testify after Wright rested, a charge conference, and the parties were preparing to argue and charge. This appellate ground must be denied and dismissed.

ARGUMENT V.

Wright's challenge to his sentence is not preserved for appellate review; and, there is no merit to the argument.

Wright alleges his sentence of life for murder is illegal or improper. He raises grounds 10-12 challenging the sentence. These grounds are not preserved for appellate review. At sentencing, Wright did not object to his sentence of life when it was imposed, on any basis. As a result, these issues are not preserved. Mahdi v. State, 383 S.C. 135, 678 S.E.2d 807 (2009).⁷³

⁷² See United States v. Byrd, 403 F.3d 1278, 1283 (11th Cir. 2005)(following 1st and 8th Circuit's decisions in Peterson and Jones); Harrison v. Commonwealth, 2011 W.L. 66016 (Va. App. 2011)(Unpublished)(similar); United States v. Larson, 596 F.2d 759, 779 (8th Cir. 1979). See Minor v. Commonwealth, 16 Va. App. 803, 433 S.E.2d 39 (1993); State v. Caillier, 450 So.2d 53 (La. App. 3rd Cir. 1984); C.J.S., Criminal Law, Section 900.

⁷³ See State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999)(challenge to sentencing must be raised at trial or issue will not be preserved for appeal); State v. Garner, 304 S.C. 220, 403 S.E.2d 631 (1991); State v. Shumate, 276 S.C. 46, 275 S.E.2d 288 (1981); State v. Winestock,

Further, the record does not reveal Judge Hayes sentenced Wright to life on the basis of the LWOP notice or recidivist statute S.C. Code Ann. Section 17-25-45. Wright was convicted of murder and eligible for a life without parole sentence based solely on the crime itself. S.C. Code Ann. Section 16-3-20(A).⁷⁴ Additionally, this was a particularly heinous murder. The victim was shot 10 times while Wright was engaged in drug trafficking in a 3rd party's home, and Wright attempted to burn the victim's vehicle after the murder. Finally, Wright had been to prison for several prior convictions including carjacking, ABHAN where he shot a 7 year old child with a high-powered BB gun, MIPP, and carrying a pistol; and, Wright had not been rehabilitated. (See R. 556; Court's Ex. 1). Judge Hayes could have sentenced Wright to life simply because of the circumstances of this crime and his prior record. In fact, the record reveals, Judge Hayes sentenced Wright on the murder indictment as he did for this very reason:

THE COURT: The sentence on murder is life imprisonment. All sentences are to run concurrent to each other and consecutive to the life sentence, and it is five years for the weapons charge, twenty-five years for the trafficking charge, and fifteen years for the possession of cocaine base, crack cocaine with intent to distribute, so it's life, followed by those three – two drug charges and the pistol charge sentences. Thank you.

(R. 552, ll. 14-21). There is no indication the court imposed the life sentence based on Section 17-25-45 instead of the facts and circumstances of this case and Wright's prior record. In fact, the court did not even use the words life without parole or the acronymic LWOP. Finally, and importantly, the sentencing sheet for murder reflects the court sentenced Wright to life for

271 S.C. 473, 248 S.E.2d 307 (1978); State v. Taylor, 399 S.C. 51, 731 S.E.2d 596 (Ct. App. 2012); State v. Conyers, 326 S.C. 263, 487 S.E.2d 181 (1997), *citing* State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995).

⁷⁴ S.C. Code Ann. Section 16-3-20(A) (“For the purposes of this section, “life” or “life imprisonment” means until death of the offender without the possibility of parole.” “No person sentenced to ‘life imprisonment’ pursuant to this section is eligible for parole, ...”).

murder, not pursuant to Section 17-25-45. (Sentencing Sheet, 2012-GS-26-02551).⁷⁵ Further, the sentencing sheet states Wright was sentenced to life imprisonment not LWOP.⁷⁶

ARGUMENT VI.

Judge Hayes did not err in declining to charge voluntary manslaughter or self-defense.

What Occurred Below

Wright requested Judge Hayes instruct the jury on the lesser included offense of voluntary manslaughter and on the complete defense of self-defense. Judge Hayes heard arguments from both sides and reviewed the testimony in the record. He declined to charge the jury on voluntary manslaughter or self-defense based on the testimony in the record. (R. 463-77). Judge Hayes did not err in declining to instruct the jury on voluntary manslaughter and self-defense given the evidence presented at trial.

⁷⁵ The sentencing sheet indicates Wright was sentenced to life imprisonment for violation of 16-3-20, and the box for sentencing Wright pursuant to 17-25-45 was not checked by the court.

⁷⁶ Finally, Wright was convicted of murder in this trial, a “most serious offense” under S.C. Code Ann. Section 17-25-45(A) & (C)(1). And, the record shows Wright had previously been convicted of carjacking, which is a “most serious offense” under Section 17-25-45 (C)(1). (See Court’s Ex. 1). Wright had been properly noticed by the State prior to this trial if he was convicted of murder or voluntary manslaughter the State was seeking a sentence of life without parole (LWOP). S.C. Code Ann. Section 17-25-45(A) & (B). As a result, Wright **was subject to an LWOP sentence** pursuant to Section 17-25-45(A) & (C)(1) of recidivist statute. Even if the court sentenced Wright to “life” pursuant to 17-25-45, the sentence was legal. Further, Wright had previously been convicted of assault and battery of a high and aggravated nature (ABHAN) a “serious” offense under Section 17-25-45(C)(2)(b). (Court’s Ex. 1). The carjacking and the ABHAN were separate offenses occurring in 2002 and 2001 respectively. (Court’s Ex. 1). This also made Wright subject to an LWOP sentence separately when the ABHAN conviction [a serious offense] is considered in conjunction with his prior conviction for carjacking [a most serious offense] under Section 17-24-45(B)(1),(2),(3),(4) & (C)(1) & (C)(2)(b). Wright had been properly noticed by the State prior to trial if he was convicted of murder or voluntary manslaughter the State was seeking a sentence of LWOP. S.C. Code Ann. Section 17-25-45(A) & (B). As a result, the Judge Hayes properly sentenced Wright.

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the appellant were prejudiced. State v. Bridges, 278 S.C. 447, 298 S.E.2d 212 (1982). Therefore, this Court reviews errors of law only and is bound by the trial court's factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007). If the instructions given to the jury afford the proper test for determining the issues, the failure to give one side's requested instructions is not prejudicial. State v. Hughey, 339 S. C. 439, 529 S.E.2d 721 (2000).

Jury Charges

"The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Mattison, 388 S.C. at 479, 697 S.E.2d at 583.⁷⁷

⁷⁷ If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction. State v. Smith, 391 S.C. 408, 706 S.E.2d 12 (2011). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand constitutes an error of law. State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2011). A trial court commits error when it fails to give a requested charge on an issue raised by the evidence presented. State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). The court has a duty to charge the jury as to the law applicable to the facts brought out in the testimony. State v. West, 138 S.C. 421, 136 S.E. 736 (1927).

In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in the light most favorable to the defendant. State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). For a court to refuse to charge a jury on voluntary manslaughter, there must be no evidence in the record tending to reduce the crime from murder to manslaughter. State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008). However, “[a]n instruction should not be given unless it is justified by the evidence.” State v. Moultrie, 273 S.C. 532, 534, 257 S.E.2d 730, 731 (1979). “Only the law applicable to the case should be charged to the jury.” State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). “If a jury instruction is provided that does not fit the facts of the case, it may confuse the jury.” Id.⁷⁸ When the record contains no evidence to support a lesser included offense, a charge on the lesser offense should not be given. *See* State v. Smith, 363 S.C. 111, 609 S.E.2d 528 (Ct. App. 2005).

In order to be entitled an instruction on the law of self-defense, the defendant must produce some evidence or some evidence must be presented at trial establishing the elements of self-defense. State v. Bryant, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999)(A self-defense charge is not required unless supported by the evidence); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994)(same).⁷⁹ “If there is any evidence in the record from which it could

⁷⁸ Further, a trial judge must be cautious in charging a lesser included offense. If a judge improperly charges the jury on a lesser included offense not supported by the facts, and the jury returns a verdict of guilty on the lesser included offense, then upon reversal of the conviction, the Double Jeopardy clause prevents retrial of the defendant on the greater offense. *See* Price v. Georgia, 398 U.S. 323 (1970); Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001)(discussing prosecution on retrial of greater offense than that which defendant was convicted of would constitute a violation of Double Jeopardy); Bozeman v. State, 307 S.C. 172, 414 S.E.2d 144 (1992)(counsel ineffective for falsely informing defendant he could be convicted of murder on retrial if he appealed and succeeded in vacating manslaughter conviction).

⁷⁹ *See* State v. Bruno, 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996)(defendant was not entitled to a self-defense charge where he presented no evidence he believed he was in imminent danger

reasonably be inferred the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." State v. Light, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008). "Because all of the elements are required to establish self-defense . . . [i]t is an axiomatic principle of law that [self-defense] has not been established if any one element is disproven." In re Tracy B., 391 S.C. 51, 704 S.E.2d 71 (Ct.App. 2011), *quoting* State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010). A self-defense charge is not required unless supported by the evidence. State v. Bryant, 336 S.C. at 344, 520 S.E.2d a 321; Goodson.⁸⁰

Voluntary Manslaughter

Voluntary manslaughter is the intentional and unlawful killing of a human being in sudden head of passion upon sufficient legal provocation. State v. Smith, 391 S.C. 408, 412,-13, 706 S.E.2d 12, 14 (2011); State v. Frazier, 401 S.C. 224, 736 S.E.2d 301 (Ct. App. 2013).⁸¹ The sudden heat of passion "must cause a person to lose control." State v. Starnes, 388 S.C. 590, 598, 698 S.E.2d 604 (2010).

when he shot the victim).

⁸⁰ Moreover, "[n]o instruction should be given which tenders an issue which has not been presented or supported by the evidence ...[as] even a slight remark, apparently innocent in its language, may, when uttered by the court, have a decided weight in shaping the opinion of the jury." *See* State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010), *quoting* State v. Mollison, 319 S.C. 41, 48, 459 S.E.2d 88, 93 (Ct. App. 1995)(internal citation and quotation omitted). *See also* Bruno, 322 S.C. at 536, 473 S.E.2d at 452.

⁸¹ The sudden heat of passion upon sufficient legal provocation, ...while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection and produce what, according to human experience, may be called an uncontrollable impulse to do violence. State Childers, 373 S.C. 367, 373, 645 S.E.2d 233, 236 (2007).

Self-defense

The elements of self-defense are as follows: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in actual danger of losing his life or sustaining serious bodily injury; (3) if his defense is based on his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such that would warrant a person of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or loss of his life; and (4) the defendant had no other probable means of avoiding the danger. If however the defendant was on his own premises he has no duty to retreat before acting in self-defense. State v. Rivera, 389 S.C. 399, 699 S.E.2d 157 (2010).⁸² Wright was not entitled to a charge on voluntary manslaughter or to a jury charge on self-defense given the evidence introduced at trial.

Analysis

Wright alleges his request for a jury instruction on the lesser included offense of voluntary manslaughter and the affirmative defense of self-defense should have been given based on statements he made to witnesses after the crime, and to some portions of eyewitness' testimony. Therefore, it is necessary to review the testimony of these witnesses at trial.

The Eyewitnesses

⁸² Citing State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). See also State v. Frasier, 401 S.C. 224, 736 S.E.2d 301 (Ct. App. 2013).

Roy Sinclair

Sinclair testified the victim, his cousin, was let into Sinclair's residence and the victim spoke to him, Sinclair. The victim stated "...you got these dudes running your house like that?" Sinclair responded: "...no, ain't nobody running my house but me." At this point, Wright stated: "...what the fuck you just say, nigger?" The victim responded "nah, man, I didn't say nothing. Everything cool." At that point, Wright jumped up from the table with the gun and said: "...aw, fuck this shit, nigger," and started shooting at the victim multiple times while walking toward the victim as he was shooting. (R. 181, ll. 10-24). Sinclair testified he never saw a weapon on the victim, the victim did not carry a weapon, and the victim did not threaten Wright before the shooting occurred. (R. 186, ll. 4-13). Obviously, this testimony would not entitled Wright to a charge on voluntary manslaughter or self-defense and needs no discussion.

Veronica D. Chandler

Chandler testified she had just arrived at Sinclair's home to purchase crack cocaine. The victim, J.J. arrived shortly after she did. When the victim came in Sinclair's home he "...made a statement because somebody opened the door and he [the victim] was like that's how you got your house run. You got people opening your doors and what not." When the victim came in he spoke to everybody in the home, and then he spoke to her. She and the victim were talking. She testified the man in the kitchen [Wright] said something, and the victim said: "...yeah, yeah, yeah." There was no argument or fussing or anything. She did not hear the victim threaten anyone, and he [the victim] resumed talking to her in the living room. Then the person in the kitchen [Wright] started shooting: "boom, boom, boom, boom." (R. 202, l. 12 – p. 203, l. 22, p. 204-05). She was close enough to the victim when he was shot, that she thought she had been

shot, and the victim's blood splattered on her clothing. (R. 205-07).⁸³ Obviously, this testimony would not entitle Wright to an instruction on voluntary manslaughter or self-defense.

Mildred B. Small

Small testified she was there because her friend Chandler was there to purchase something. She testified she was in the kitchen, and there was a man sitting at the kitchen table [Wright]. She testified she saw a clip for a semi-automatic weapon on the kitchen table where Wright was sitting. There was a knock at the door and Roy [Sinclair] said that's J.J. because he's supposed to be coming over here to bring me a drink. Chandler was in the living room. Mildred was talking to a white girl in the kitchen. She did not hear any arguing or fussing. She did not hear anyone threaten anyone. Wright disappeared from the kitchen table. The next thing she heard was "...pow, pow" and she got on the floor. When she looked up, the victim was laying on the floor and blood was coming out of his mouth. She saw no weapon in the victim's hand. She testified his hand was wrapped or looked like it was injured or something. She ran out of the house. Her friend Chandler came running from behind the house. Mildred testified Chandler thought she had gotten shot. She saw a man run to a black car. She heard someone say to her, if you say anything about what just happened, "we will kill you." (R. 215-20). Obviously, this testimony would not entitle Wright to a charge on voluntary manslaughter or self-defense. Small

⁸³ On cross-examination, defense counsel *tried* to get Chandler to admit she told police she thought she saw a gun on the victim. However, Chandler testified she did not recall ever telling the police she saw or thought she saw a weapon on the victim; she did not give a written statement as defense counsel suggested on cross-examination, and she only gave a recorded statement which she had reviewed prior to trial and in that statement she did not tell police she thought she saw a weapon on the victim. (R. 209-12). Wright did not introduce any prior inconsistent statement, written or recorded, to impeach Chandler on these facts. She did remember telling the police that she saw the victim raise his shirt up on one (1) occasion, but she did not see a gun on him. (R. 209-12).

did not hear the victim threaten Wright, she did not see a weapon on the victim, and she did not see the victim make any threatening gesture. She did not even hear any argument. (R. 215-30).

The non-eyewitnesses

Relevant Law Enforcement Testimony

Police found no weapon on the victim or around his body. (R. 353-55; 370-379, l. 4; 383, l. 23 – 384, l. 9). The autopsy determined the victim died from multiple gunshots. The victim was shot a total of ten (10) times, three (3) in the back. (R. 428-37, 360-67, 415-16).

Qwanda Caldwell-Brown

Qwanda testified when she and Powell returned to Sinclair's residence shortly after the murder occurred, she was driving the car she and Powell were in. Wright was leaving Sinclair's residence in his BMW, and Wright stopped beside her vehicle coming in the opposite direction from Qwanda and spoke out his driver's side window next to her driver's side window. (R. 233, ll. 1-9; 251, l. 4 – 252, l. 18). Wright stated to Powell: "Pick up the shells Brah." (R. 233, ll. 1-9; 251, l. 4 – 252, l. 17). That was all he said according to Qwanda. (R. 252, ll. 15-18).

Qwanda also testified to what Wright told her about the murder while she was assisting in the cover-up of the crime:

Q: During the time that you were in the vehicle with Marcus, did you ask him what happened at the trailer?

A: Yes, I did. I asked him what happened, and he told me that - - he was explaining to me that when - - when the victim came and knocked on the door and he asked who it was, he didn't recognize who it was, and he asked - - at that - - they called Roy Unc, the guy in the wheelchair, he asked Unc did he know who it was at the door, and he told him yes, that's my cousin, open the door.

So he said he opened the door for him and when he opened the door, he was explaining to me that when someone is walking in, you've got to watch how they stand because you never know what could happen, and he opened the door, the victim came in, and Marcus said that the victim, Jerome, asked Unc why you got these young boys in here, something to that extent, and I believe that's when words were exchanged, a argument happened, and then he said - - I can't

recall if he said that he - - that if that - - Jerome had a gun or not, but I do remember him saying that he [the victim] had to get got.

Q. And this was Marcus [Wright] talking?

A. Yes.

Q. What was - - as Marcus is describing this, and this is - - when y'all were talking about this, how long after the shooting is this?

A. Maybe five, six hours later.

Q. And what was his demeanor? Do you understand - - do you understand what I'm saying, demeanor?

A. Yes.

Q. What was Marcus's demeanor when he was telling you about this?

A. Just speak - - talking regular, just a regular conversation, you know, no jitterness, or regret, or remorse or anything, just like, you know, just explaining like this is what happened, this is how it is, in that sense?

Q. Have you seen Marcus [Wright] with a gun?

A. Yes, I have.

Q. Was it that day?

A. Yes, it was.

Q. Where was it?

A. It was on the kitchen table.

(Testimony continues on an unrelated subject)

(R. 241, l. 9 – 242, l. 23). Qwanda then testified as follows:

Q. Did Marcus ever tell you that he took a gun from the victim?

A. No.

(Testimony continues on an unrelated subject).

(R. 243, ll. 17-19). Qwanda also testified she only saw 2 guns that day, the 9 mm pistol Powell took with them in the vehicle when they left the home before the murder, and the gun Wright had on the kitchen table. (R. 242-43). Qwanda also testified that at the La Quinta motel she heard Wright say out loud: "he knew he was going to have to shoot him or kill him a nigger tonight."

(R. 245, ll. 9-15). Obviously, the testimony of Qwanda would not entitle Wright to an instruction on voluntary manslaughter or self-defense. The fact the victim made a statement to Sinclair, and Wright was offended, did not give Wright the right to shoot and kill the victim or lessen Wright's culpability. This evidence proves malice and murder, not voluntary manslaughter or self-defense.

Lanard Powell

Powell testified that when he and Qwanda returned to Sinclair's residence from making the drug delivery, Wright stated out the window of his car: "nigger trying to pull a jack move" or "nigger tried to pull a jack move." (R. 297, ll. 1-2; 298, l. 9). Powell did not hear Wright say anything else. No testimony was introduced at trial what a "jack move" was.⁸⁴ Powell testified when he entered Sinclair's residence, there was no weapon on or around the victim. Powell did not take a weapon off the victim, and no one gave Powell a weapon from the victim.

On direct examination, Powell testified to what Wright told him occurred during the shooting:

Q. Did you and Marcus talk about what had happened in the trailer?

A. Yes.

Q. What did Marcus tell you about that?

A. He told me that Mr. Green – he say he heard him knock on the door. He say he swung the door open. He say he [Wright] had a gun in his hand, say everybody else was just like basically roaming in there, and Mr. Green came in saying such things as you got these boys in your house now. He indicated that Mr. Green looked as if he was going for a gun.

Q. So if he indicated that Mr. Green looked like he was going for a gun, he [the victim] didn't have – he [the victim] wouldn't have had it in his hand, right?

A. No.

Q. So - - and it's important. Did Marcus – what did Marcus tell you about that?

A. He said that he looked like he was – he took like – he said Mr. Green took like three steps into the home and was reaching by his abdomen, indicating he had a gun, so he shot him.

Q. Did Marcus ever tell you he saw a gun?

A. No.

Q. Did he tell you what he [Wright] did with the forty [caliber, Wright's gun]?

A. No.

Q. Did you ask him?

A. No.

Q. Did you see it once y'all got in the car together, the Durango?

A. No ma'am.

Q. Did he say that Mr. Green threatened him in any way?

A. No.

⁸⁴ According to *Urban Dictionary*, a "jack move" is to steal something without their consent. An action which someone does to another person for their personal belongings.

(Testimony continues on another subject).

(R. 275, l. 21 – 277, l. 1).⁸⁵ This testimony would not entitle Wright to an instruction on voluntary manslaughter or self-defense.

There is nothing from this testimony that would entitle Wright to a charge on voluntary manslaughter. The fact that the victim took three (3) steps into the home and reached by his abdomen, even if indicating he had a gun, would not naturally disturb the sway or reason and render the mind of an ordinary person incapable of cool reflection, and produce what according to human experience may be called an uncontrollable impulse to do violence. Childers. There were no prior threats by the victim against Wright. The victim did not point a gun at Wright, or even pull a gun. And, Wright did not tell Powell he even saw a gun. Further, Powell never saw a gun alleged to have come off the victim at any time while covering up the crime with Wright or hiding out with him. Judge Hayes did not err in declining to charge voluntary manslaughter.

There is no evidence in the record the defendant was entitled to a charge on self-defense.

There is no evidence Wright was without fault in bringing on the difficulty. Wright went and opened the door with a gun in his hand, the .40 caliber. According to Wright, the victim made the comment to his cousin, Roy Sinclair. Wright took offense to the comment and started

⁸⁵ The only other thing that Powell testified to that could have any relation to a charge on voluntary manslaughter or self-defense was an admission that he, Powell, wrote a letter, *at Wright's insistence*, absolving Wright of any wrongdoing. Powell admitted that in the letter, he wrote at Wright's insistence, he stated that Wright did not do anything wrong. Powell testified that based on what Wright told him to write in the letter, Wright did not do anything wrong. However, Powell did not testify to what was in the letter, or what Wright had told him, that led him to believe Wright did nothing wrong. (R. 304, l. 25 – 308, l. 2). And, Wright did not introduce the letter. This testimony would not entitle Wright to an instruction on voluntary manslaughter or self-defense. If this is the same letter wherein Wright alleged Powell stated that "Two Guns" committed the crime **not Wright**, this would certainly not entitle Wright to an instruction on voluntary manslaughter or self-defense. (R. 304, l. 25 – 315, l. 6).

arguing at the victim with a loaded .40 caliber pistol in his hand. Wright simply cannot show he had no fault in bringing on the difficulty.

There is no evidence Wright was in actual imminent danger of losing his life or sustaining serious bodily injury when the fatal blow was struck or that he believed he was in imminent danger. Davis, *supra*.⁸⁶ See Bruno (the defendant was not entitled to a self-defense charge where he presented no evidence that he believed he was in imminent danger when he shot the victim); Goodson (same);⁸⁷ If Wright's alleged statement to Powell about a "jack move" relates to the victim allegedly trying to take his drugs and drug money, Wright was not in fear of his life or serious bodily injury but only of losing his illegal drugs and illegal drug profits. Additionally, Wright did not tell Powell that he ever saw a gun on the victim. In fact, Wright stated he [Wright] had a gun in his hand when he opened the door and let the victim into the residence. Further, there is no evidence Wright was in danger or losing his life or suffering serious bodily injury when he shot the victim a total of 10 times, 3 of which were in the back. No weapon was found on the victim or around the victim. Powell did not take a weapon off of

⁸⁶ see Tate v. State, 308 S.C. 163, 417 S.E.2d 553 (1992)(where there is no evidence to suggest defendant believed she was in imminent danger of loss of life at the time she killed, counsel's failure to secure expert on self-defense was not ineffective assistance because the defense was not applicable).

⁸⁷ Wright argues he was entitled to a self-defense instruction under State v. Light. Light is clearly distinguishable from this case. In Light the defendant was in his own home and had no duty to retreat. Further, in Light the victim had armed herself with a loaded rifle the defendant stated he took away from the victim and in taking the gun away from the victim it accidentally discharged. Id. That did not occur in this case. Further, in Light, the victim had previously threatened the defendant before that if she caught him running around with another woman it was going to be bad and had found what she believed was a woman's hair and confronted the defendant with it shortly before the shooting. In the present case, there was no evidence of any previous threats by the victim against the defendant, but the opposite. Light is not controlling on these facts.

the victim. Powell never saw a weapon in the 2 following days he spent with Wright that Wright represented or alleged belonged to the victim.

Even if Wright believed he was in danger of losing his life or suffering serious bodily injury that belief was not reasonable under the circumstances and a reasonable person would not have so believed. State v. Fuller, 297 S.C. 440, 442-43, 377 S.E.2d 328, 330 (1989).⁸⁸ No one saw a weapon on the victim, including Wright. The victim came to Sinclair's residence at Sinclair's invitation. No threats were ever made by the victim to Wright. Wright's paranoia as a drug trafficker or dealer would not entitle him to kill the victim because he saw the victim move his hand toward his abdomen.⁸⁹ And, there was no testimony in the record what a "jack move" was. Even if Wright's version is believed, the belief he needed to use deadly force was unreasonable. *See State v. Wood*, 1 S.C.L. (1 Bay)(1794)(key to self-defense is the defendant can only respond with proportionality).

Further, Wright was not in his own home but the home of Roy Sinclair. State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996).⁹⁰ The victim was an invitee to Sinclair's home.⁹¹ Wright had a duty to retreat and there was no evidence he retreated before the fatal blow or blows he

⁸⁸ *See State v. Lee*, 293 S.C. 536, 362 S.E.2d 24 (1987)(finding on the facts of that case any belief in the necessity of using deadly force was unreasonable as a matter of law; consequently holding the court did not err in failing to instruct on defense of habitation, and noting defendant *was not* entitled to self-defense instructions he did receive).

⁸⁹ The victim had a cell phone case containing a cell phone on his belt next to his abdomen. The victim's right hand was bandaged and had a splint on one finger. (R. 354-55, 371-74, 378-79).

⁹⁰ *See State v. Chambers*, 310 S.C. 43, 425 S.E.2d 45 (Ct. App. 1992).

⁹¹ Sinclair testified he invited the victim to come to his home that evening to drink, and he directed Wright to open the front door to let the victim in. *Compare State v. Osborne*, 202 S.C. 475, 25 S.E.2d 561 (1943); State v. Osborne, 200 S.C. 504, 21 S.E.2d 178 (1942)(a lawful guest attacked in the owner's home has no duty to retreat where the attacker is *an intruder*).

intentionally inflicted. Brown; Chambers.⁹² Even assuming a “jack move” is an attempted hijacking of drugs, Wright was not acting in self-defense but to protect his illegal contraband, crack and powder cocaine and illegal drug profits. “It is an axiomatic principle of law that the defense has not been established if any one element is disproven.” State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012), *quoting* Bixby, 388 S.C. at 554, 698 at 586. Wright *failed to present* any evidence retreating would have increased the danger to himself. And, *there was no evidence in the record* retreating would have increased the danger to Wright. Frasier; Jackson.

Finally, Wright had other means of avoiding the difficulty rather than to act as he did. Instead of shooting the victim 10 times with a .40 caliber pistol, Wright could have simply pointed his .40 caliber weapon at the victim, which Wright had in his hand when he opened the front door, and told the victim not to move when he reached by his abdomen. Or, waited until the victim actually started pulling out an actual gun before shooting the victim 10 times. As a result, Wright is not entitled to an instruction on self-defense. Rivera, supra.

The Defense case

Wright introduced no evidence during the defense case.⁹³ There was nothing introduced by Wright that would justify an instruction on voluntary manslaughter or self-defense. As a result, there was no error in declining to charge voluntary manslaughter or self-defense.

⁹² “It is one’s duty to avoid taking human life where it is possible to prevent it even to the extent of retreating from his adversary unless by doing so the danger of being killed or suffering serious bodily harm is increased or it is reasonably apparent that such danger would be increased.” Frasier, citing State v. Jackson, 227 S.C. 221, 279, 87 S.E.2d 681, 685 (1955).

⁹³ The only evidence Wright introduced during the trial was *an envelope* on cross-examination of a State’s witness. (R. 463-65).

Harmless Error

Even assuming *arguendo* Wright was somehow entitled to a voluntary manslaughter or a self-defense instruction, the failure to do so was harmless under the particular facts of this case. State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014)(finding harmless error analysis is appropriate for the failure to charge a lesser included offense); State v. Battle, 408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014)(same).⁹⁴ The failure to charge voluntary manslaughter and self-defense in this case was harmless where Wright's version of events was so preposterous and non-credible and the evidence of guilt was so overwhelming that the jury would not have accepted the same and convicted him of voluntary manslaughter or acquitted him of murder even had self-defense been charged. State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006). "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" Middleton, *supra*, quoting State v. Kerr, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998). "In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." Id., *citation omitted*. "Thus, whether or not the error was harmless is a fact intensive inquiry." Id. A fact intensive inquiry shows the trial court's not charging voluntary manslaughter and/or self-defense did not contribute to the verdict.⁹⁵ Given the evidence *in this*

⁹⁴ This Court has previously held the refusal to charge the jury with a requested instruction is subject to harmless error analysis. State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), *affirmed* 387 S.C. 310 (2010); State v. Jeffries, 316 S.C. 13, 21, 446 S.E.2d 427, 431 (1994)(harmless error analysis is appropriate where the error complained of is a "trial error" rather than a "structural defect" in the trial mechanism itself). *See also* Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41, *Toal, C.J. concurring. Contra Light; Lee*.

⁹⁵ The evidence presented at trial showed on April 30, 2012, Wright and Powell were distributing

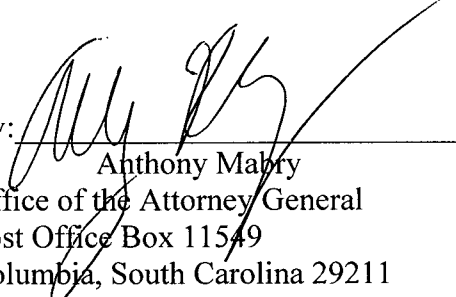
crack cocaine from Sinclair's home and had been doing this illegal activity for 3 to 4 weeks. Wright had given Powell a 9mm pistol to carry while dealing drugs from Sinclair's home and making drug deliveries. On the night of April 30th, Powell left the home with his girlfriend Qwanda to make a drug delivery and to go to the store. Powell took the 9mm with him. Wright remained at the home cutting up drugs at the kitchen table with his .40 caliber pistol beside him. Several witnesses arrived at Sinclair's residence, including Veronica Chandler and Mildred Small. Both women came into the residence with Small going into the kitchen and Chandler remaining in the living room. Both were in the residence before the victim arrived. The victim Jerome J. Green, Jr. was a cousin of Sinclair, the owner of the home. Green came to the residence to bring Sinclair some alcohol to drink. When the victim knocked on the door, Sinclair told Wright it was his cousin "J.J." and it was okay to let him in the residence. Wright opened the door with his .40 caliber handgun in his hand. After the victim entered, he spoke to Sinclair stating something to the effect: "So this is how it is, you going to let these young boys run your house." Wright took offense to the statement. Wright asked the victim to repeat what he just said. The victim declined and turned to speak with Chandler who was in the living room with the victim. Wright, who was in the kitchen, raised his .40 caliber pistol and shot the victim and continued shooting at the victim as he walked toward him. Wright shot the victim 10 times including 3 times in the back. Sinclair and Chandler both witnessed the murder. Neither Sinclair nor Veronica saw any weapon on the victim. Sinclair testified his cousin the victim did not carry a weapon. Neither eyewitness heard or saw the victim threaten Wright in any way. Small did not see the shooting but immediately dropped to the floor. Sinclair, Chandler, and Small fled from the residence. Wright fled from the residence, not out of fear, but because of what he had done. He took his .40 caliber pistol with him. He got into his black BMW and started driving away. Powell and Qwanda were returning, and Wright spoke to Powell. Sinclair overheard Wright say he had just murdered someone and Powell needed to get his stuff out of the mobile home. Qwanda heard Wright tell Powell to "pick up the shell casings." Wright then fled in his BMW. Powell did exactly as Wright told him to do. Powell, Qwanda, and Small all testified Powell pulled into the residence, got out of his car, and went into the residence with a 9mm pistol; but, Powell did not fire his weapon. Powell determined the victim was dead, got the drugs and money out of the residence, and threw them in the car driven by Qwanda. Powell did not see any weapons on the victim and did not pick up any weapons inside the home. Powell took the victim's car keys and drove away in the victim's vehicle. Qwanda followed him in Powell's car. While Powell was cleaning up the crime-scene at Wright's instructions, Wright drove his BMW to another location and switched vehicles. He then contacted Powell by phone and met Powell and Qwanda at another location. Wright was now driving a dark Cadillac Escalade. The 3 then drove to another location, where the Escalade was abandoned, and Wright got in the victim's truck with Powell. The 3 then drove to a gas station where Qwanda was told to purchase gas, and Wright and Powell put gas in a can Wright brought with him. The 2 men drove the victim's truck to a secluded location, and Wright attempted to burn the victim's vehicle. Qwanda picked them up in Powell's car. The 3 then proceeded to a motel where Qwanda rented a motel room for them. The following day, Wright's wife rented a red Camaro for Wright, which Qwanda picked up. Wright and Powell eventually got in the Camaro and went to another motel, where Powell rented a room using an alias and fake I.D. Wright provided. When police apprehended

particular case, the failure to charge voluntary manslaughter or self-defense was harmless beyond a reasonable doubt. Middleton (failure to charge lesser included offense was harmless after a fact specific inquiry); *see* Battle (failure to charge lesser included offense was not harmless after a fact specific inquiry). Further, the failure to charge voluntary manslaughter or self-defense could have had no effect on the guilty verdicts for PWID crack cocaine, trafficking greater than 28 grams, and the gun charge.

CONCLUSION

For the above stated reasons, Wright's convictions and sentences should be affirmed and this appeal dismissed.

Respectfully submitted,

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March 26, 2015

the 2 men in the motel room, there was a large amount of crack cocaine, over 28 grams of cocaine, and over \$3,000. Upon searching the Camaro, police found Powell's 9mm, scales, a gun case for a .40 caliber pistol, which contained paperwork showing Wright's wife purchased a .40 caliber pistol before the murder, and 2 ammunition clips containing .40 caliber ammo. Upon searching Wright's wife's residence, police found 2 fired .40 caliber shell casings that matched the 3 fired shell casings found at the crime-scene next to the victim's body. All 5 fired shell casings were fired by the same gun, a .40 caliber pistol. Upon searching, the black BMW Wright used to flee the crime scene, police found 1 unfired .40 caliber bullet. Police never found the .40 caliber pistol because Wright got rid of the murder weapon. Wright offered no evidence in the defense case.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Horry County
John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

v.

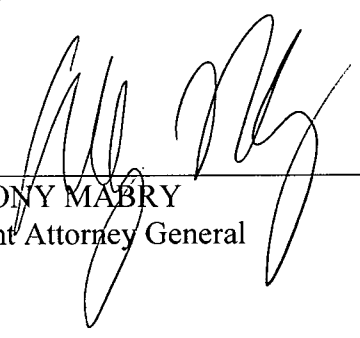
MARCUS DWAIN WRIGHT,

Appellant.

Appellate Case No. 2013-001406

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled A Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

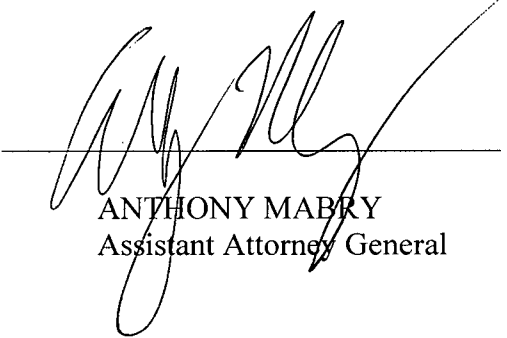


ANTHONY MABRY
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March 26, 2015

CERTIFICATE OF SERVICE

I, **Anthony Mabry**, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by depositing copies in the United States Mail, postage prepaid, to J. Falkner Wilkes, Esquire, 114 Whitsett Street, Greenville, SC 29601 this 26th day of March, 2015.



ANTHONY MABRY
Assistant Attorney General

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MAR 26 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF GENERAL SESSIONS
John C. Hayes, III, Circuit Court Judge

Case No. 2012-GS-26-2339; 2012-GS-26-2340; 2012-GS-26-2551;
2012-GS-26-02552; 2012-GS-26-02553

Appellate Case No. 2013-001406

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SC Court of Appeals

State of South Carolina, ... Respondent,

v.

Marcus Dwain Wright, ... Appellant.

REPLY BRIEF OF APPELLANT

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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STATEMENT OF ISSUES ON IN REPLY

1. Does the record support any exception to the search warrant requirement?
2. Does the record require the exclusion of evidence in this case?
3. Did the Appellant abandon the issue of cross-examination and if not, was the issue adequately preserved for appellate review?
4. In light of the state's position that the appellant was not sentenced under LWOP statutory provisions, can the Court enter an order so clarifying the basis of the sentence accordingly.
5. Was the failure of the court to give the requested charges harmless?
6. All other issues are believed to have been sufficiently raised and argued expressly or implicitly in the Appellant's Brief and failure to readdress any herein is not intended as a waiver thereof.

ARGUMENT IN REPLY

The Appellant only includes issues in reply that are not otherwise adequately addressed by the facts and arguments in the Appellant's Brief. No waiver of issues is intended.

I. THE RECORD FAILS TO SUPPORT THE STATE'S ARGUMENT AS TO THE EXISTENCE OF ANY EXCEPTION TO THE SEARCH WARRANT REQUIREMENT.

The record fails to support any exception to the search warrant requirement, or the application of the exclusionary rule in this case. The officers in this case obtained a search warrant using false information which identified in particular the residence at 3635 Kate's Bay Road, the property they wanted to search. In light of the nature and importance of the misrepresentations, they could not have been made without the intent to do so, or in the least, a reckless disregard for the truth.

The officer obtaining the warrant informed the magistrate that SLED had "pinged" the Appellant's cell phone *to the residence* at 3635 Kate's Bay Road. This was untrue, as cell phone information at best placed the phone only "in the general area" of the residence. (R. p. 66). It also appears that SLED did not begin the "pinging" until the night of May 1st, which was the day after the incident on the night of April 28th. (R. p. 54). Nor does it appear that the co-defendant actually told the police that the Appellant drove to 3635 Kate's Bay Road as the search warrant affidavit makes it appear. The record shows misrepresentations in both the affidavit as well as in the supplemental oral information provided by Detective Weaver to obtain the search warrant. The record shows that not only were the references to the particular residence at 3635 Kate's Bay Road untrue, but also not of the type that could be made absent a reckless disregard for the truth.

The record shows that the search warrant was obtained by the police "salting" the

information given to the magistrate with references to the specific residence they wanted to search. Even in its brief the State continues to cling to the assertion that the Appellant's cell phone "pinged" to the residence at 3635 Kate's Bay Road. (Resp. Brf. pg. 9). The record repeatedly shows this to be incorrect, as the cell phone was shown to have pinged only "in that general area". (R. p. 66, l. 10). Similarly, the representation in the search warrant affidavit that the police had been told that Appellant obtained a gun *from the residence* at 3635 Kate's Bay Highway was equally untrue. Contrary to the State's argument, these are not simple misinterpretations or inaccuracies made in haste. These are gross misrepresentations intended to point to 3635 Kate's Bay Road in particular. Unlike the statements of witnesses or minor misstatements of insignificant details, these are direct representations which the police, absent a reckless disregard for the truth, should have known to be untrue. Representations without which, probable cause would otherwise be lacking. *See State v. Sachs*, 264 S.C. 541, 216 S.E.2d 501(1975); *State v. Dunbar*, 361 S.C. 240, 246, 603 S.E.2d 615, 618 (Ct.App. 2004).

The exclusionary rule is applicable under the facts of this case. Here the police could not have acted "in objectively reasonable reliance" on a warrant obtained in reckless disregard for the truth. *See Leon*, U.S. 468 U.S. at 922, n. 23, 104 S.Ct. 3405; *McKnight*, 291 S.C. at 112-113, 352 S.E.2d at 472; *State v. Covert*, 382 S.C. 205, 675 S.E.2d 740 (2009). The record shows that the magistrate was misled by knowingly false or recklessly false information. As a result, application of the good faith exception to the exclusionary rule is barred in this case. Here the police made misrepresentations to obtain the search warrant for 3635 Kate's Bay Road. These misrepresentations, if not knowingly false, were made with reckless disregard for the truth. Where a magistrate is misled by knowingly false or recklessly false information, the good faith

exception to the exclusionary rule does not apply. Williams, 548 F.3d at 317; State v. Austin, 306 S.C. 9, 409 S.E.2d 811 (Ct. App. 1991). The trial court therefore erred in failing to suppress evidence obtained through the search of the Kate's Bay residence.

II. THE RECORD FAILS TO SUPPORT THE STATE'S ARGUMENTS AS TO THE SEARCH WARRANT REQUIREMENT AND EXCLUSION OF EVIDENCE IN THIS CASE.

Drug evidence in this case was discovered as the result of a warrantless entry into Wright's room. Here the police were at the motel in sufficient numbers to secure the area and apply for a search warrant. They chose instead to try and trick the occupants of the room into coming outside. When they would not come outside and tried to close the door, the police forced their way inside the room. It was only *after* entering the room that any illegal substance was observed. (R. 105). Absent a valid exception to the search warrant requirement, the officers were not lawfully inside of the room when the evidence was observed.

Because the police were at the motel in sufficient numbers, and as admitted by the State in its Brief, had surrounded the location and weren't going to allow the suspects to leave, there was no exigent circumstances to justify a warrantless entry.

Although Powell had an outstanding arrest warrant for an unrelated offense, neither the arrest warrant nor lawful warrantless arrest exception apply in the Appellant's case. Detective Chatfield admitted that he "forced" his way into the room unaware of any outstanding arrest warrants for either Wright or Powell. (R. 104-105). The forced entry was therefore not made with the intent to serve an outstanding arrest warrant. Here, because the record fails to show that the arrest at the hotel was for the crime identified by the outstanding warrant, the collective knowledge doctrine does not apply. Additionally, the collective knowledge doctrine does not

appear to have been applied to the search warrant issues under the South Carolina Constitution. An unrelated outstanding warrant for Powell, of which the officers at the scene were unaware, does not support an exception to the search warrant requirement in this case.

The State's argument as to the forced entry and resulting discovery of evidence being justified as a Terry stop is unsupported by the facts in this case. *Terry* authorizes certain brief detentions to allow for questioning. It does not authorize warrantless entry into a home. Neither Powell nor Appellant were in a public place or subject to detention pursuant to the *Terry* doctrine. Neither Powell nor Appellant were detained until after the warrantless entry into the room. The *Terry* doctrine does not justify the warrantless entry of the Appellant's hotel room.

The State's argument as to a protective sweep under State v. Brown is also unsupported by the facts of this case. Here, neither Powell nor Applicant were arrested prior to the police entry into the room. In fact, officers forcing entry into the room did so without any knowledge of the unrelated warrant on Powell. They did so only because they wanted to "talk" to Wright. The protective sweep doctrine is therefore inapplicable. Additionally, even if applicable, the facts of this case show clearly that the evidence was not observed until after Chatfield had entered the room. Under Brown the warrantless entry is not justified under as part of a valid protective sweep and the evidence must still be suppressed.

The State further argues that the evidence should not be excluded as it would have been discovered anyway. The burden of proving a factual basis for its eventual discovery rests with the State. The exclusionary rule provides that evidence obtained as a result of an illegal search must be excluded. State v. Sachs, 264 S.C. 541, 560, 216 S.E.2d 501, 511 (1975). The inevitable discovery doctrine is an exception to the exclusionary rule and states that if the prosecution can

establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information is admissible despite the fact it was illegally obtained. Nix v. Williams, 467 U.S. 431, 443-44, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). Here the State failed to produce evidence at trial to show that the evidence would have eventually been discovered even without the unlawful search. As a result, the doctrine of inevitable discovery does not apply under the facts of this case.

The State further argues that the evidence was lawfully obtained by the subsequent search warrant. This argument is unsupported as the subsequent search warrant was obtained using evidence gained through the prior unlawful search and seizure. The fruit of the poisonous tree doctrine, most often associated with violations of the Fourth Amendment's prohibition of unreasonable searches and seizures, prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure. Wong Sun v. U.S., 371 U.S. 471, 484, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). As a result of their being no valid exception to the search warrant requirement, the subsequent search warrant is invalid and the evidence must still be suppressed. The court therefore erred in refusing to suppress the evidence. As to the effect of the improper admission of the drug evidence, the State offered testimony that the motive for the shooting was entirely drug related. The Improper admission of drugs found in the Appellant's hotel room days later presented unduly prejudice, not only on the murder charge, but the drug charges as well. As a result, the improper admission of the drug evidence can not be harmless error in the Appellant's case.

III. THE RECORD FAILS TO SUPPORT THE STATE'S ARGUMENT AS TO ISSUE PRESERVATION AND HARMLESS ERROR ANALYSIS AS TO CROSS-EXAMINATION.

During the cross examination of Lanard Powell, the defense attempted to cross examine Powell based on a prior written statement Powell had given to Wright which exonerated Wright, and identified a third person as the having shot and killed the deceased. 308. As more fully set forth in the Appellant's Brief, the defense was not required to provide Powell's statement to the prosecution under Rule 5, SCRCrimP. It was only required to disclose the contents after the cross examination. The record is clear that the State was aware of the prior inconsistent statement before the trial. (R. 310). There is therefore no basis for the trial court to have terminated the defense's cross-examination of Powell as to the prior inconsistent statement. At the time of the defense's cross-examination was terminated Powell was admitting to everything he was asked about the statement. The defense's cross-examination was therefore, entirely proper.

The State argues that the issue was not preserved. It is clear from the record involving the discussion of the testimony that the defense never acquiesced in the trial court's ruling, indicated any intent to waive an objection thereto. The record shows quite the opposite. The defense engaged in a lengthy discussion as to its right to cross Powell on the prior inconsistent statement. (R. 300). The defense also argued that production of the written statement was not necessary for the cross-examination or necessarily required under the rules of evidence. (R. 310). The defense only stopped arguing once the trial court had made a clear ruling. (R. 310-313). Although the defense did not make an objection to the court's instruction to the jury immediately after it had ruled and brought the jury back in, it is not required to make an objection where the instruction immediately follows the ruling if it is clear that the court is not going to change its ruling. *See*

State v. Forrester, 343 S.C. 637, 642-43, 541 S.E.2d 837, 840 (2001) (where no evidence is taken between the trial court's *in limine* ruling and the admission at trial of the evidence, the issue is preserved). The issue is therefore adequately preserved for this Court's review.

In this case Powell's testimony against the Appellant was critical to the State's case. Attacking Powell's credibility through his prior inconsistent statement was a critical part of the Appellant's defense. It was important not only because it impeached Powell in general, but also because it expressly exonerated the Appellant. As a result of the importance of Powell's testimony to the State's case, as well as to the defense, denial of Powell's effective cross-examination can not be said to be harmless.

IV. IN LIGHT OF THE STATE'S POSITION THAT THE APPELLANT WAS NOT SENTENCED UNDER LWOP, THE COURT SHOULD ENTER AN ORDER CLARIFYING THE BASIS OF THE SENTENCE ACCORDINGLY.

The record shows that the State sought to have Wright sentenced to life without parole (LWOP) based on S.C. Code Section 17-25-45. 549. At sentencing the Solicitor alleged the existence of a prior most serious offense as a basis for the life sentence in this case and represented that sentencing under LWOP was mandatory in this case. (R. 549). The Solicitor represented that it had certified copies of the qualifying convictions, which were entered into the record in this case. (R. 550; 553; 581-595). Wright was subsequently sentenced to life by the trial court but without an explicit reference to the LWOP statute. (R. 552). Since the State appears to take the position that the LWOP statute was not applied as a basis for the sentence in this case, the Appellant submits that this Court should enter a ruling finding that the Appellant was not sentenced under the LWOP statute.

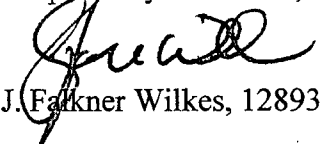
V. THERE IS SUFFICIENT EVIDENCE IN RECORD TO REQUIRE THE REQUESTED CHARGES AND REFUSAL TO DO SO CAN NOT BE SHOWN TO BE HARMLESS.

The State argues that the refusal to charge manslaughter or self-defense was harmless. Such error would be harmless only if it could not reasonably have affected the result of the trial. *See In re Harvey*, 355 S.C. 53, 584 S.E.2d 893 (2003). Here, based on the Appellant's view of the record, the jury could have reached a rational conclusion that the Appellant was not guilty of murder. Failure to charge is only harmless where it could not have reasonably affected the result of the trial. This occurs only where the defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. *See State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989).” Because there was evidence which, if believed by the jury, the Appellant could have been found not guilty, the failure to give the requested charges is harmful error. Our Courts have placed great emphasis on the importance of a defendant's right to assert self-defense when there is *any evidence* to support it. *See, State v. Taylor*, 356 S.C. 227, 235, 589 S.E.2d 1, 5 (2003). In the Appellant's case, there is evidence which would support the requested charges. As a result, the trial court's refusal to give the requested charges can not be said to be harmless.

CONCLUSION

Based on the foregoing the convictions and sentences of the Appellant should be reversed.

Respectfully submitted,


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April 24, 2015.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
John C. Hayes, Circuit Court Judge

Case No.: 2012-GS-26-2551; 2012-GS-26-2552;
2012-GS-26-2553; 2012-GS-26-2339
Appellate Case No.: 2013-001406

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SC Court of Appeals

The State, ... Respondent,

vs.

Marcus Dwain Wright, ... Appellant.

RECORD ON APPEAL (VOL. I)

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)
COUNTY OF HORRY) 2012-GS-26-02551; 02552; 02553
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STATE OF SOUTH CAROLINA)
)
-vs-) TRANSCRIPT OF RECORD
)
MARCUS DWAIN WRIGHT) June 17 - 21, 2013
) Conway, South Carolina
)
_____)

B E F O R E:

HONORABLE JOHN C. HAYES, III, Circuit Judge.

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

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ASSISTANT SOLICITOR
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DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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1 **THE COURT:** All right. Solicitor, you may proceed. We
2 will start with the first motion. Call the case.

3 **MS. ELDER:** Your Honor, this is the State versus Marcus
4 Wright. We have several indictments before the Court. We
5 have 2012-GS-26-2551. It is a true-billed indictment for
6 murder.

7 We also have 2012-GS-26-2552. It is a true-billed
8 indictment for trafficking powder cocaine. Also, 2012-GS-26-
9 2553; it's a possession with intent to distribute cocaine
10 base.

11 There are also two additional indictments, Your Honor.
12 I have put the Defense on notice they have just been true-
13 billed. They have agreed to accept service today. They are
14 2013-GS-26-2339; it is possession of a weapon during a
15 violent crime.

16 And also, 2013-GS-26-2340; it's unlawful possession of a
17 firearm and/or ammunition by a person convicted previously of
18 a violent offense. Your Honor, there is a small scrivener's
19 error on this indictment. The date in the indictment is
20 April 30th, two thousand and -- it should be 2012. The
21 scrivener's error says 2013. We would make a motion to
22 amend.

23 The Defense has been on notice, Your Honor, that this is
24 the offense the night of the murder. All this arises out of
25 the same set of circumstances.

1 **THE COURT:** Any objection?

2 **MR. MARTIN:** No, Your Honor.

3 **THE COURT:** And I understand that the Defense has a
4 motion to sever?

5 **MR. MARTIN:** We do, Your Honor. We had filed a motion,
6 and we would ask the Court at this time to sever for purposes
7 of the trial all the charges but the murder charge. We
8 believe that under the case law in the State of South
9 Carolina that that is appropriate for the Court to sever such
10 charges when it considers it necessary to prevent undue
11 prejudice to the Defendant, and we believe in this case that
12 it would do just that when it is unnecessary when each of the
13 indictments other than murder are -- well, let me go through
14 them one at the time, Judge.

15 First of all, he's indicted for trafficking cocaine,
16 possession with intent to distribute cocaine. Those charges
17 arise from the arrest of Mr. Wright two days after the
18 alleged shooting occurred at a completely different location,
19 in a manner that I don't believe that there is any evidence
20 in connection with those charges, the arrest of those charges
21 or the making those charges which are in any way necessary to
22 the State to establish its charge of murder.

23 The evidence they have related to the murder is totally
24 separate from that, and we believe that the only basis to
25 join those charges for trial would be to prejudice the

1 Defendant in that in addition to the charge of murder, he's
2 then charged with trafficking in cocaine, possession -- to
3 possess other drugs, when in this case if the State is
4 successful in its murder prosecution, they served notice that
5 the punishment they intend to seek is life imprisonment and
6 that should be the sentence that he gets, will be the
7 sentence that he gets, it appears, and therefore, it can be
8 no reason to pile on these unnecessary charges of trafficking
9 in cocaine and possession with intent to distribute cocaine
10 base.

11 In addition to that, Judge, they have indicted the
12 Defendant with the unlawful possession of a firearm ---

13 **THE COURT:** All right. Let's go -- go to that and let
14 me hear from ---

15 **MR. MARTIN:** All right. That's good.

16 **THE COURT:** --- Ms. Elder on the drug charges.

17 **MS. ELDER:** Your Honor, we did combine these or we are
18 calling these all together. Primarily this is the same set
19 of circumstances. We -- the testimony, we believe, is going
20 to come from the stand is that on April 30th there was, in
21 fact, a murder committed. The witnesses are going to
22 testify, at least one to two of them, are going to testify
23 that the victim came into the home of Roy Sinclair and said
24 are you going to let them run your house like this?

25 Your Honor, if they were using, from the testimony of

1 the co-defendant, Mr. Wright had his seller of his drugs in
2 that house for the purpose of selling drugs in that area.
3 That co-defendant is going to testify he was, in fact,
4 selling drugs for Marcus Wright and they were using that
5 house in the Socastee area to sell out of it and that the
6 owner of that house was getting a little bit of drugs or
7 whatever to allow him to stay there.

8 At the time of the murder, Your Honor, after Mr. Green
9 enters the house and makes that comment, the testimony is
10 going to be that the shooting happened almost spontaneously
11 without any other interjection or any other fight at that
12 point.

13 They left. Marcus Wright fled that house at that time.
14 We were able to eventually get phone numbers for these
15 individuals that fled. They came eventually to the Sleep Inn
16 in Conway, which was approximately twenty-four to thirty-six
17 hours later, approached the Sleep Inn in Conway. They
18 confirmed that this Defendant not only -- he got rid of the
19 victim's vehicle, but he rented a new vehicle in his wife's
20 name.

21 The police were up to the room, Your Honor. The co-
22 defendant opened the door. Police were able to identify the
23 co-defendant, who had an active warrant as well. They were
24 -- proceeded into the room, secured the room. Then they were
25 able to get a search warrant at that point. There were drugs

1 laying out.

2 The co-defendant, Your Honor, -- I don't know how you're
3 going to separate -- take out the drug component from the
4 murder case because the co-defendant is going to testify
5 that's what he was doing for Mr. Wright, that's why he was at
6 Roy Sinclair's house.

7 It would make absolutely no sense for the comment that
8 the victim said when he walked in the door, are you going to
9 let him run your house like this? The jury wouldn't have any
10 idea what that was about but for the drugs.

11 **THE COURT:** I thought you were going to have testimony
12 from someone that will testify that they were selling drugs.

13 **MS. ELDER:** They are, Your Honor, but this is evidence
14 of that. When they arrested Mr. Wright in the hotel room, he
15 had both cocaine and crack. He had a large sum of cash as
16 well. The co-defendant is going to indicate that that was
17 Mr. Wright's drugs. It further goes to the reason that they
18 were there at that location, why they were there.

19 In addition, Your Honor, I don't know how we would ever
20 try the trafficking drug case without talking about why we
21 were at the hotel room to begin with. There is a case on
22 point, Your Honor, State versus Rice. It actually is so
23 close factually -- it couldn't be much closer factually to
24 this case without being the actual case itself.

25 Your Honor, in Rice, it was identical just about to the

(—)

1 facts that we have. That Defendant was charged with murder.
2 Approximately six to eight weeks later they did a traffic
3 stop to arrest him on that warrant. During the traffic stop
4 they did find an amount of cocaine and they charged him with
5 trafficking.

6 The Court ruled in that case that it was appropriate for
7 the State to proceed with all the charges at the same time,
8 that it was out of one similarly situated event because the
9 murder and the drugs were in close connection to each other,
10 that they were the basis for at least the start of an
11 argument in that particular case, Your Honor, and I believe
() 12 that case is directly on point regarding trying these two,
13 the cocaine charges in with the murder charge.

14 Your Honor, in addition, the facts on the murder case,
15 witnesses are going to testify the reason that Marcus was
16 armed at that house is because of the drugs. The reason he
17 stayed armed and he armed Capone, which is his co-defendant,
18 with a nine millimeter, was because he was selling drugs.

19 We found one of the weapons at the hotel room at the
20 time of arrest, Your Honor, with the -- in the car with the
21 drugs.

() 22 THE COURT: Looking at this, the Rice case, on Page 5
23 or 6, the very bottom, Headnote Number 6, kind of catalogs
24 what the elements are to sever. Number one, arise out of a
25 single chain of circumstances. Arguably, you have that here;

1 are proven by the same evidence; I have a little problem with
2 that, but the third one is what really gives me some pause,
3 are the same general nature. A murder and drug possession to
4 me do not appear to be of the same general nature.

5 MS. ELDER: No, Your Honor, but I think it's because
6 they are -- just as in this case you had murder and you had
7 trafficking. I think that they were so closely connected in
8 the -- in the story, in the story and in the trafficking
9 story, I don't know how you could separate those and make
10 them two separate offenses.

11 When we talk about the drugs, and we talk about
12 arresting Wright, there's going to be an evidence that we're
13 going to try to produce from that arrest in that room, the
14 search warrants, the vehicles, Your Honor. There were things
15 that were taken from his house regarding drugs, possession,
16 intent.

17 I don't know how you pick and choose from search warrant
18 returns and things like that when it's all so closely
19 connected, that I don't know exactly how the jury is going to
20 get the full story without hearing the full story, and the
21 full story is he was -- they may very well not believe the
22 credibility of a witness when they say he was dealing drugs.
23 I think the State has a right to prove that, and the way we
24 prove that, Your Honor, in conjunction with the murder is the
25 victim walks in and he says you going to let them run your

1 house like this, and somebody says, yeah, he was selling
2 drugs. Well, the jury may not believe that person. I think
3 the State has a right to say when he was arrested within
4 twenty-four hours, he had all this dope on him that he took
5 to the house.

6 THE COURT: It was within twenty-four? I was thinking
7 it was longer than that.

8 MS. ELDER: It was twenty-four to thirty-six hours.

9 THE COURT: See, we're stretching it out now. What ---

10 MS. ELDER: I think it was thirty hours, thirty hours.

11 THE COURT: Okay.

12 MS. ELDER: It was on May the 1st. This homicide
13 happened approximately 11:30 on April 30th, and the next day,
14 which would have been May the 1st, was when he was arrested,
15 in that afternoon, Your Honor, but actually we're ---

16 MR. MARTIN: It was May 2nd, wasn't it?

17 MS. ELDER: Was it May 2nd? I'm sorry, May 2nd, May
18 2nd about twelve o'clock, I think, twelve or one o'clock.

19 THE COURT: All right.

20 Let me hear from Mr. Martin.

21 MR. MARTIN: Judge, the argument she's making is the
22 exact reason you need to sever these counts. He's charged
23 with murder. That's the primary count -- that's the primary
24 indictment they've got against him. You don't have to have
25 drugs for somebody to be guilty of murder. The penitentiary

1 is full of people convicted of murder that had nothing to do
2 with drugs.

3 Any evidence they got out of that -- I don't think they
4 got any drugs out of that house. Now, what they want to do
5 is to fast forward over to the motel room, where they didn't
6 have a search warrant, by the way. You know, they -- just so
7 you know, you know, they search your house with a search
8 warrant. They do -- they search the motel room where they
9 find these drugs without a warrant.

10 There's no evidence that they found at that house, which
11 is admissible in, and of -- excuse me, at that motel room that
12 I could think of which is admissible into the murder charge
13 itself. It's simply to prejudice this Defendant by the
14 introduction of drugs into the trial of the case. It's not
15 of the same set of circumstances. Had they found drugs there
16 at the house at that time, that would be one thing, and the
17 second thing you've got here is the Court makes it clear that
18 this is left up to the sole discretion of the trial judge.

19 In this Rice case, they just didn't overturn it because
20 that's what they decided to do, and they find ways to not do
21 that at times, but here, why this murder occurred will play
22 itself out. She says somebody says when they came in, you
23 got enough in here running your house or something.

24 There's going to be other witnesses who were there that
25 if they testify according to the statements they got never

1 heard such a statement as that, and so this is clearly an
2 attempt to reach over and bolster the case of murder by
3 tainting this Defendant with drugs. There's no other reason
4 to do it, no other reason to do it. He's looking at life
5 without parole on the murder charge.

6 **THE COURT:** Well, I'm ready to rule. I would not
7 probably have found the way the Court did, the Court of
8 Appeals, in the Rice case. I find it a little bit disturbing
9 case. I do note that two of the members of the panel are now
10 on the Supreme Court, Justice Hearn and Justice Kittredge.

11 I would deny the motion for severance based on the
12 quoting in Rice. The Court says the same thing several
13 different ways. While it's a parenthetical based on a
14 Simmons case, I think it's best stated, at least for me to
15 get my hands around it, where cases are triable if the
16 offenses are of the same general nature or character and
17 spring from the same series of transactions, are committed by
18 the same offender, and require the same or similar proof, and
19 I find the existence of those elements here and as to the
20 prejudice of the Defendant, I have to take that also into
21 consideration.

22 That was not one of the elements in the Simmons Opinion,
23 but on the bottom of Page 4 of 5 -- it says Page 5 of 6, and
24 it says Page 4 under that, it says Rice suffered no prejudice
25 from the joinder of charges because without the evidence of

1 cocaine trafficking, the jury would not have received an
2 accurate portrayal of the case.

3 Cocaine trafficking evidence was necessary for a, quote,
4 full presentation of the case without fragmentation, so based
5 on the Rice case, which quite frankly I might have voted the
6 other way had I been on that panel, but it is -- it is the
7 law, and I deny the motion to sever.

8 **THE COURT:** You also have the pistols?

9 **MR. MARTIN:** Yeah. Judge, he's also indicted for the
10 unlawful possession of a firearm by a person convicted of a
11 violent crime or of a violent offense, and again, we move to
12 sever that indictment from the trial of this case because
13 certainly that will prejudice this Defendant probably more
14 than the drug charges themselves because attendant -- an
15 element of that and attendant to that is that they must prove
16 that this Defendant has a -- been convicted of a violent
17 offense.

18 And as the Court knows, unless and until the Defendant
19 testifies, his character is not attackable in the courtroom
20 and the, once again, reason to add that offense, it would
21 appear to me, may be in order to prejudice the fair trial the
22 Defendant would get on the murder charges, because once
23 again, the penalty that he is looking at for the murder
24 cannot be enhanced in a practical effect from this particular
25 charge, but it would allow them to enter before the jury

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1 evidence that he had been convicted of a violent crime and/or
2 specifically carjacking, which I can't think of anything that
3 would be much more prejudicial in the trial of this case.

4 THE COURT: I don't think they would be allowed to, and
5 this is without research, to actually bring up the offense,
6 but rather ---

7 MR. MARTIN: But either way, Judge, I guess what gets
8 me, that my concern is that once again it is unduly
9 prejudicing him to say, okay, convict Mr. Wright of
10 possession of a firearm by a felon, because he is a convicted
11 felon, and I want you to go ahead and convict him of murder,
12 and the tangling of those two is unnecessary ---

13 THE COURT: Well, let me ask Ms. Elder, why -- his last
14 comment was it's not necessary. Why can't you try him
15 separately on that?

16 MS. ELDER: Your Honor, in that particular -- in this
17 indictment, even more so than the drug charges, in order to
18 prove that he had possession of a weapon, I have to prove
19 that he, in fact, shot somebody. That's -- we don't have the
20 murder weapon in this case, so in order for me to show that
21 he was in possession of a weapon under this indictment, I
22 have to in essence show that he was, in fact, the person who
23 shot Jerome Green.

()

24 THE COURT: Well, I understand that. I think you're
25 talking about two different charges, though. He -- I -- as

1 far as possession of a weapon during the commission of a
2 violent crime, he hadn't addressed that, and I agree with
3 that.

4 He's talking about the felon or the ---

5 MS. ELDER: Yes sir.

6 THE COURT: --- the five year penalty, one of felon in
7 possession of a firearm.

8 MS. ELDER: Yes sir. I under- -- and that's why I --
9 but even under that one, I still have to show he was in
10 possession of a firearm.

11 THE COURT: But why do you have to show it in this
12 trial is my question. You've got him charged, if I made my
13 list right, with possession of a firearm during the
14 commission of?

15 MS. ELDER: Yes sir.

16 THE COURT: And he hadn't made his motion on that, but
17 I don't think I would pay much atten- -- well, I shouldn't
18 say that. I don't think that he would be entitled to that,
19 to sever that charge, but this is a separate charge. It
20 would be like -- it's not the law now, based on a ruling I
21 made and then the Supreme Court upheld, it would be like
22 charging someone who committed a crime -- who committed a
23 murder of possession of a firearm during a violent offense
24 and possession of a firearm by a minor, somebody being under
25 twenty-one. It wouldn't matter how old a person was. It

1 wouldn't matter in this case whether he was a defender -- a
2 prior offender or not, so I don't see how -- tell me one more
3 time how that charge, not the commission of, but the just ---

4 MS. ELDER: A felon, yes sir, a violent offense?

5 THE COURT: A violent offense. I'm using felon because
6 it just comes out easier.

7 MS. ELDER: Your Honor, it's still an element of that,
8 and we certified his prior history, and he had a most
9 serious, and it was a violent -- it was classified as
10 violent. This charge is appropriate. If he ---

11 THE COURT: Well, the charge is appropriate. There's
12 no question about that.

13 MS. ELDER: Yes sir.

14 THE COURT: He's saying it shouldn't be tried in this
15 case.

16 MS. ELDER: I understand that.

17 THE COURT: I agree with you it's appropriate. No
18 question.

19 MS. ELDER: But in order for me to prove possession of
20 a firearm or ammunition by a person previously convicted of a
21 violent crime, I have to prove that, number one, he was, in
22 fact, convicted of a violent crime, but I also have to prove,
23 number two, that he was actually in possession of it.

24 Let's take this case separate and apart, if I had to try
25 him separate on -- which is -- which is the standard, I

1 think, for you. If I have to charge -- try him separately on
2 a possession of a firearm by a person convicted of a violent
3 crime, how do I show possession? I'm going to have to go
4 back through all the facts, all the evidence, on the murder
5 case in order to show that he had possession of a firearm by
6 a person previously convicted of a violent crime.

7 THE COURT: Well, you can do that, can't you? You're
8 getting ready to do it now.

9 MS. ELDER: Well, it would be two trials with the same
10 evidence, Your Honor.

11 THE COURT: Well, I know, but he's entitled to two
12 trials on the same evidence if he's charged with separate
13 offenses that ought to be severed.

14 I'm going to sever ---

15 MS. ELDER: Yes sir.

16 THE COURT: --- the possession of a firearm by one who
17 has committed a violent offense, and the other was possession
18 during the commission of a violent offense?

19 MS. ELDER: Yes sir.

20 THE COURT: And I'm not going to sever that.

21 MS. ELDER: Yes sir.

22 THE COURT: All right.

23 MR. MARTIN: Now, and also, Judge, I think your ruling
24 would cover it. There's the indictment for unlawful
25 possession of -- no, I'm sorry. That is -- it was ammunition

1 or a gun. The other one is possession of a weapon during a
2 violent crime, and I understand your ruling on that.

3 THE COURT: All right.

4 Can we get the jury up and draw them and then let them
5 go, and do the suppression motions?

6 MS. ELDER: Yes sir. I think that -- I want to make
7 sure that the Clerk is clear on the -- would you want -- do
8 you want me to read the indictments, Your Honor, or do you do
9 that or ---

10 THE COURT: I can read, but I'm going to let you read
11 them. You are the one presenting the case, ---

12 MS. ELDER: Yes sir.

13 THE COURT: --- so I'm going to let you announce to the
14 jury, and then do we have any voir dire?

15 MR. MARTIN: Yes sir.

16 MS. ELDER: Your Honor, ---

17 THE COURT: And we'll draw two alternates.

18 MS. ELDER: Yes sir.

19 THE COURT: The strikes will be ten, Defense, five for
20 the State, and one and two on the alternates, one for the
21 State and two for the Defense.

22 And the witness list, each side, if the Defense has one.

23 MR. MARTIN: Judge, let me hand up -- can we approach
24 for just a second?

25 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

1 **MS. ELDER:** Your Honor, it is my understanding that we
2 will not start testimony today so I can let my witnesses go?

3 **THE COURT:** Well, except for those you need in the
4 motions hearing.

5 **MS. ELDER:** No, just the lay witnesses I can ---

6 **THE COURT:** Yeah. I think it's already three, and if
7 we have a couple -- it will take us forty-five minutes or so
8 to draw the jury, and then get into the motions, I have no
9 idea how long it will take, so I don't want to have the jury
10 just sit there, and have them come back at 9:30. I will give
11 them introductory remarks, and we will reserve swearing them
12 and start back at, say, 9:30 in the morning.

13 **MS. ELDER:** Yes sir.

14 **THE COURT:** All right. Let's get them up here.

15 **MR. MARTIN:** Judge, while you are doing that, we would
16 move that the State be required to produce to the Defense a
17 copy of the SLED criminal histories of any witness that they
18 may call in connection with the case.

19 **THE COURT:** All right. I'm going to require that. I'm
20 going to require it be done now. I understand that SLED
21 prefers it to be done later, but I think that the Defense has
22 the right to review those with some sufficient time to digest
23 them.

24 **MR. BROWN:** And, Your Honor, there is one other matter.
25 We have a potential -- we don't have a written witness list,

JURY OUT/MOTIONS
JURY IN/VOIR DIRE

1 but there is a potential witness that is in the custody of
2 Horry County Detention Center and his name is Christopher
3 McCray, and we would expect that we would call him as a
4 witness. They have him in custody, so we would need him, I
5 would suspect -- well, not I would suspect, but when we put
6 up our defense.

7 THE COURT: Do you have any other witnesses?

8 MS. ELDER: Is he at J. Reuben Long? I'm sorry.

9 MR. BROWN: Yes, he is.

10 THE COURT: Well, I mean, other than your client.
11 Obviously I'm going to introduce him, but just for
12 purposes ---

13 MR. MARTIN: While you are bringing the jury, we will
14 -- we will put down for you a list of any potential
15 witnesses ---

16 THE COURT: That's good.

17 MR. MARTIN: --- to hand up to you.

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY VENIRE.)

20 THE COURT: All right. Members of the jury panel,
21 we're going to have some questions similar to what I asked
22 this morning. These will be a little more specific. They
23 have to do with the first trial we're starting this week, and
24 that is the case of the State versus Marcus Dwain Wright.

25 Mr. Wright, would you stand and let the jury see who you

1 are. (Mr. Wright stands.) This is Mr. Wright, and he's
2 represented by Mr. Martin and Mr. Brown. You may be seated.
3 (Mr. Wright is seated.)

4 The State is represented by Ms. Elder for the
5 Solicitor's Office, Solicitor Richardson.

6 Mr. Wright is charged with murder. It's alleged that on
7 or about April 30th of 2012 that Mr. Wright did wilfully,
8 maliciously, feloniously, and intentionally kill one Jerome
9 Green here in Horry County. Again, that's April 30th, 2012.

10 It's alleged that at that time he was in possession of a
11 firearm. Our South Carolina Legislature has made it an
12 offense to possess a firearm during the commission of a
13 violent crime.

14 He is also charged with being in possession with intent
15 to distribute cocaine base. That's what we know generally as
16 crack cocaine. It's alleged that this occurred on or about
17 May 2nd, 2012, when he did possess with intent to distribute
18 cocaine base, a controlled substance under the laws of our
19 state.

20 He is also charged with trafficking in cocaine, not
21 cocaine base, but cocaine. It's alleged that on May 2nd,
22 2012, he was in possession of twenty-eight grams or more of
23 cocaine, but less than one hundred grams of cocaine, which
24 again is a controlled substance, and again that that
25 possession was in violation of the law and constitutes under

1 the law of this State, the offense known as trafficking in
2 cocaine.

3 To these charges, Mr. Wright has entered pleas of not
4 guilty. These pleas of not guilty place on the burden --
5 place on the State the burden of proving his guilt beyond a
6 reasonable doubt. He is presumed innocent and does not need
7 to prove his innocence. The State must prove his guilt
8 beyond a reasonable doubt.

9 As to these charges, I have some questions to ask you.
10 First, are any of you related by blood or marriage or are you
11 a close personal friend or acquaintance of the Defendant,
12 Marcus Dwain Wright? If so, please stand. No one stands.

13 MR. MARTIN: Your Honor?

14 THE COURT: Yes sir.

15 MR. MARTIN: If I might, before you go forward with
16 this, can the Solicitor and I approach for one second?

17 THE COURT: Yes sir.

18 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

19 THE COURT: Have any of you been represented by Mr.
20 Martin or Mr. Brown in any legal proceedings, if so, at any
21 time, please stand. (No response.)

22 Have any of you been involved with the prosecutor,
23 Fourteenth (sic) Circuit Solicitor, prosecutor, in any way?
24 That is, have you been a witness for the Solicitor? Have you
25 been a volunteer for the Solicitor's Office, or are you

1 related by blood or marriage to anyone who works for the
2 Solicitor? If so, please stand.

3 All right. Yes ma'am, your name and number.

4 JUROR NUMBER 27: Barbara Blain-Olds, Number 27.

5 THE COURT: All right. And to whom are you related or
6 a friend?

7 JUROR NUMBER 27: I was once employed by the
8 Solicitor's Office as an Assistant Solicitor.

9 THE COURT: Okay. How long ago was that?

10 JUROR NUMBER 27: Close to ten years, Your Honor.

11 THE COURT: All right. Would that affect your ability
12 to be fair and impartial in the trial of this case?

13 JUROR NUMBER 27: No.

14 THE COURT: Could you base your verdict on the law and
15 the evidence in the trial?

16 JUROR NUMBER 27: Yes sir.

17 THE COURT: I appreciate that. Thank you, and remain
18 with us.

19 Were any of you members of the Grand Jury which passed
20 on these indictments at an earlier time? If so, please
21 stand. No one stands.

22 Have any of you heard anything about this case, heard
23 about it from any source whatsoever, or have any of you
24 formed or expressed any opinion about any matter or issue
25 involved in a case such as this? If so, please stand. No

1 one stands.

2 Are any of you or members of your immediate family
3 involved in law enforcement at any level or in the
4 prosecution of criminal cases at any level, anything from the
5 military police to the local police, to air marshal, Judge
6 Advocate General, Solicitor, District Attorney, anything like
7 that? If so, please stand.

8 We have some people standing. We'll start and work our
9 way across and back.

10 Yes ma'am, your name and number?

11 JUROR NUMBER 255: My number is 255. My son is a Horry
12 County police officer.

13 THE COURT: I'm sorry?

14 JUROR NUMBER 255: My son is a Horry County police
15 officer.

16 THE COURT: Okay.

17 Yes sir, your name and number.

18 Just remain standing if you don't mind.

19 JUROR NUMBER 251: Juror Number 251, Your Honor, Mark
20 Singleton. I'm the SWAT advisor and the Counter-Terrorism
21 Advisor for the County Police.

22 THE COURT: All right.

23 Yes ma'am, your name and number.

24 JUROR NUMBER 43: 43, Stella Carmody. My brother is an
25 A.D.A. in Pennsylvania. Thank you, Judge.

1 **THE COURT:** Yes sir.

2 **JUROR NUMBER 210:** My dad is a City of Conway police
3 officer.

4 **THE COURT:** City of Conway?

5 **JUROR NUMBER 210:** Yes sir.

6 **THE COURT:** All right, and your name again?

7 **JUROR NUMBER 210:** Michael Prosser.

8 **THE COURT:** Okay.

9 Yes ma'am.

10 **JUROR NUMBER 244:** Number 244. My name is Barbara
11 Shick. My son is a North Myrtle Beach police officer.

12 **THE COURT:** All right.

13 Now, Madam Solicitor, you'll have to help me. None of
14 these law enforcement agencies that have been mentioned are
15 involved in this case, are they?

16 **MS. ELDER:** The Horry County Police Department, Your
17 Honor.

18 **THE COURT:** All right.

19 **MS. ELDER:** I believe the -- this gentleman here, the
20 SWAT Team would be -- the SWAT Team would be tied to the
21 Horry County Police Department.

22 **THE COURT:** All right.

23 Well, I'll excuse you then. Just have a seat, and the
24 rest of you, just before you sit down, there are four of you
25 still standing. If based on your relationship with someone

1 in the law enforcement system, if that would prevent you from
2 being fair and impartial in the trial of Mr. Wright, please
3 raise your right hand. No one raises their hand. You may be
4 seated. Thank you.

5 Are any of you members of or contributors to an
6 organization such as Students Against Drunk Drivers, Mothers
7 Against Drunk Drivers, Citizens Against Violence, Troopers
8 Association, the Sheriff's Association, or Fraternal Order of
9 Police? If so, please stand. No one stands.

10 Have any of you or a member of your immediate family
11 either been what you consider the victim of or charged with a
12 violent crime, and I'm not going to ask you to give me the
13 particulars because this is a somewhat sensitive area, but I
14 do need to ask if you have been -- you or a member of your
15 immediate family been the victim of what you consider a
16 violent crime or you or a member of your family charged with
17 a violent crime?

18 All right, yes sir, your name and number, and you don't
19 need to go in and tell me what the crime was. Just the fact
20 that you're standing is enough.

21 **JUROR NUMBER 161:** Paul Lisi, Juror Number 161.

22 **THE COURT:** In spite of this as part of your history,
23 would you, in fact, -- would you be able to be fair and
24 impartial in the trial of Mr. Wright?

25 **JUROR NUMBER 161:** No sir.

1 **THE COURT:** All right. Well, I'll excuse you. Don't
2 leave, but you can have a seat, but thank you. That's why we
3 ask the question.

4 Do any of you or a member of your immediate family --
5 well, no, I'd better ask it this way. Do any of you have a
6 relative -- again, this is one of those sensitive -- and I
7 hate to ask it, but I have to. Do any of you have a relative
8 which is -- who is incarcerated at the present time? If so,
9 please stand.

10 All right. I'll ask you to just give me your names and
11 number, and again, don't tell me the specifics.

12 Yes ma'am, your name and number.

13 **JUROR NUMBER 281:** My name is Jeanne Voltz-Loomis. My
14 number is 281.

15 **THE COURT:** All right. Just remain standing.

16 Yes sir.

17 **JUROR NUMBER 174:** Matt McLaughlin, and I don't have my
18 number.

19 **THE COURT:** McLaughlin. Okay, we got it.

20 Yes ma'am.

21 **JUROR NUMBER 16:** My name is Heather Beall, and I'm
22 Number 16.

23 **THE COURT:** All right.

24 In spite of this, would you, in this case, be able to be
25 fair and impartial? If not, raise your right hand. None do.

1 Thank you. You may be seated.

2 The following are possible witnesses. I don't know that
3 all -- it's a fairly lengthy list and I do not know that all
4 of them will be called as witnesses, but even if they're not
5 called as a witness, their name may be mentioned, so if you
6 are related by blood or marriage or if you're a close
7 personal friend or acquaintance of any of these individuals,
8 please stand.

9 Crystal McCray. Then from the Horry County Police
10 Department, Todd Cox, Heather Brummett, Neil Frebowitz, Jim
11 Chatfield. From State Law Enforcement Division, David
12 Wheeler -- Weaver. From the Johnsonville Police Department,
13 Donnie Howell. Again, several from the Horry County Police
14 Department, Brandon Strickland, Damon Vescovi, Paul Johnson,
15 Kenneth Canterbury, T. J. Muller or Mueller, J. R. Caulder,
16 Darrell Williams.

17 Again, from State Law Enforcement Division, Michele
18 Eichenmiller. Again from Horry County Police Department,
19 Jill Domegauer, Lisa Floyd, Chemist. From Grand Strand
20 Regional Hospital, Dr. Edward Proctor. Finally, as far as
21 the police department, Dale Buchanan. And then individuals
22 who I consider to be just citizens without connection to any
23 of the agencies I've mentioned, just residents of Conway,
24 South Carolina, Kelly Pinnix, Roy Sinclair, Veronica
25 Chandler, Mildred Small, Marthena Jackson Menendez, and from

1 Columbia, Qwanda Brown-Caldwell and Lanard Powell.

2 All right, four of you are standing, and I'm just going
3 to ask you each to tell me who you have some friendship or
4 acquaintance with, your name and number and then who you have
5 an acquaintance with, starting ---

6 JUROR NUMBER 255: Deborah Smith, 255. I worked with
7 Dr. Edward Proctor at Grand Strand Regional Medical Center
8 about ten or twelve years ago.

9 THE COURT: All right. Just remain standing.

10 All right. Yes sir.

11 JUROR NUMBER 106: I'm Juror 106, William Gruber. I
12 knew Detective Frebowitz. I taught his son.

13 THE COURT: Okay.

14 Yes ma'am.

15 JUROR NUMBER 27: I'm Barbara Blain-Olds, Number 27.
16 Marthena Menendez is my former sister-in-law.

17 THE COURT: All right. Just remain standing.

18 Yes sir.

19 JUROR NUMBER 210: Juror 210, Michael Prosser. I've
20 grown up with Paul Johnson.

21 THE COURT: All right.

22 Yes ma'am.

23 JUROR NUMBER 58: Juror Number 58. I'm an acquaintance
24 and a friend of Damon Vescovi.

25 JUROR NUMBER 65: 65, Armillas Deegan. I work with Jim

(---)

1 Chatfield a lot.

2 THE COURT: All right. Keeping in mind that these are
3 witnesses, would the fact that they are witnesses in this
4 trial affect your ability to be fair and impartial in the
5 trial of this case? If so, please raise your right hand. No
6 one does. Thank you. You may be seated.

7 Anything further from the State?

8 MS. ELDER: Your Honor, I believe there were two
9 additional witnesses that I received, Russell Dean from
10 Columbia, South Carolina, and Jacinda Wright.

11 THE COURT: I did not get those. Jacinda Wright and
12 Russell Dean from Columbia. Anyone related by blood or
13 marriage or a close personal friend or acquaintance of those
14 two individuals. If so, please stand.

15 Yes ma'am. Your name and number again. I know you,
16 based on what you've done in your past, you know that I have
17 to get the record of ---

18 JUROR NUMBER 27: Yes sir. Barbara Blain-Olds, Juror
19 Number 27. Jacinda Wright was my niece by marriage, my
20 former marriage.

21 THE COURT: Would that affect your ability to be fair
22 and impartial?

23 JUROR NUMBER 27: No sir.

24 THE COURT: All right. Thank you.

25 Anything further from the State?

1 MS. ELDER: No sir, Your Honor.

2 THE COURT: Anything further from the Defense?

3 MR. MARTIN: No, Your Honor.

4 THE COURT: Do any of you on the jury panel know of any
5 reason whatsoever why you could not or should not serve as a
6 fair and impartial juror in the trial of this particular
7 case? If so, please stand. No one stands.

8 Now, the way we draw juries in this type court is as
9 follows, and this is the first time I've tried a case in this
10 courtroom, so if I say it wrong, somebody will correct me,
11 I'm sure.

12 I believe a bailiff will come and stand -- a bailiff
13 will stand here in front of the Court Reporter, and when your
14 name is called, please come forward and stand by the bailiff
15 and turn around and face first the table where Ms. Elder is
16 seated. Ms. Elder will say either present the juror or
17 excuse the juror. If she says excuse the juror, return to
18 your seat. If she says present the juror, turn to the table
19 where Mr. Wright and his counsel are seated. One of them
20 will say either swear the juror or excuse the juror.

21 Excuse the juror means you would return to your seat.
22 If you hear the words, swear the juror, take -- step over
23 here and the bailiff will show you how to arrange yourself in
24 the jury box.

25 We are going to draw twelve jurors and two alternates,

1 and I've gone over the number of strikes with the State and
2 the Defendant, so Madam Clerk.

3 THE DEPUTY CLERK: Juror Number 148, Sandra Kline.
4 What say the State?

5 MS. ELDER: Please excuse the juror from this case.

6 THE DEPUTY CLERK: You're excused from this particular
7 case.

8 218, James Revell. What say the State?

9 MS. ELDER: Please present this juror.

10 THE DEPUTY CLERK: Defense?

11 MR. MARTIN: We'd excuse Mr. Revell on this particular
12 case.

13 THE DEPUTY CLERK: You're excused from this particular
14 case.

15 50, Sherri Chestnut. What say the State?

16 MS. ELDER: Please present this juror.

17 THE DEPUTY CLERK: Defense?

18 MR. BROWN: Please seat the juror.

19 THE DEPUTY CLERK: Please be seated in the jury box.

20 94, Philip Goguen. What say the State?

21 MS. ELDER: Please excuse the juror from this case.

22 THE DEPUTY CLERK: You're excused from this particular
23 case.

24 27, Barbara Blain-Olds. What say the State?

25 MS. ELDER: Please present this juror.

1 THE DEPUTY CLERK: Defense?

2 MR. BROWN: May we have a minute, Your Honor?

3 THE COURT: Yes.

4 MR. BROWN: Please seat the juror.

5 THE DEPUTY CLERK: Please be seated in the jury box.

6 174, Matthew McLaughlin. What say the State?

7 MS. ELDER: Please present this juror.

8 THE DEPUTY CLERK: Defense?

9 MR. MARTIN: We'll excuse the juror on this particular

10 case.

11 THE DEPUTY CLERK: You're excused from this particular

12 case.

13 119, Leslie Hewitt. What say the State?

14 MS. ELDER: Please present this juror.

15 THE DEPUTY CLERK: Defense?

16 MR. MARTIN: Swear the juror.

17 THE DEPUTY CLERK: Please be seated in the jury box.

18 180, Patricia Merritt. What say the State?

19 MS. ELDER: Please present this juror.

20 THE DEPUTY CLERK: Defense?

21 MR. MARTIN: Swear the juror.

22 THE DEPUTY CLERK: Please be seated in the jury box.

23 217, Paul Repik. What say the State?

24 MS. ELDER: Please present this juror.

25 THE DEPUTY CLERK: Defense?

1 **MR. MARTIN:** We'll excuse the juror on this particular
2 trial.

3 **THE DEPUTY CLERK:** You're excused from this particular
4 case.

5 274, Victoria Tudor. What say the State?

6 **MS. ELDER:** Please present this juror.

7 **THE DEPUTY CLERK:** Defense?

8 **MR. MARTIN:** Swear the juror.

9 **THE DEPUTY CLERK:** Please be seated in the jury box.
10 16, Heather Beall. What say the State?

11 **MS. ELDER:** Please excuse the juror from this case.

12 **THE DEPUTY CLERK:** You're excused from this particular
13 case.

14 20, Peter Bennett. What say the State?

15 **MS. ELDER:** Please excuse the juror from this case.

16 **THE DEPUTY CLERK:** You're excused from this particular
17 case.

18 187, Matthew Monette. What say the State?

19 **MS. ELDER:** Your Honor, may we approach?

20 **THE COURT:** Yes.

21 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

22 **THE COURT:** Mr. Monette, if you'll come up here just a
23 minute.

24 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

25 **THE COURT:** He's going to be excused.

1 **THE DEPUTY CLERK:** Juror Number 131, Charles Jacobs.
2 What say the State?
3 **MS. ELDER:** Please present this juror.
4 **THE DEPUTY CLERK:** Defense?
5 **MR. MARTIN:** Swear the juror.
6 **THE DEPUTY CLERK:** Please be seated in the jury box.
7 141, Jannie Jones. What say the State?
8 **MS. ELDER:** Please present this juror.
9 **THE DEPUTY CLERK:** Defense?
10 **MR. MARTIN:** Swear the juror.
11 **THE DEPUTY CLERK:** Please be seated in the jury box.
12 296, Anthony Woodle. What say the State?
13 **MS. ELDER:** Please present this juror.
14 **THE DEPUTY CLERK:** Defense?
15 **MR. MARTIN:** We'll excuse the juror on this particular
16 case.
17 **THE DEPUTY CLERK:** You're excused from this particular
18 case.
19 116, Amber Harshman. What say the State?
20 **MS. ELDER:** Please present this juror.
21 **THE DEPUTY CLERK:** Defense?
22 **MR. MARTIN:** We'll excuse the juror on this particular
23 case.
24 **THE DEPUTY CLERK:** You're excused from this particular
25 case.

1 285, Rebecca Walters. What say the State?

2 MS. ELDER: Please present this juror.

3 THE DEPUTY CLERK: Defense?

4 MR. BROWN: Seat the juror.

5 THE DEPUTY CLERK: Please be seated in the jury box.

6 222, Victor Rivera. What say the State?

7 MS. ELDER: Please present this juror.

8 THE DEPUTY CLERK: Defense?

9 MR. MARTIN: We excuse the juror on this particular
10 trial.

11 THE DEPUTY CLERK: You're excused from this particular
12 case.

13 300, Daniel Yeager. What say the State?

14 MS. ELDER: Please present this juror.

15 THE DEPUTY CLERK: Defense?

16 MR. BROWN: Seat the juror.

17 THE DEPUTY CLERK: Please be seated in the jury box.

18 240, Regina Sharpe. What say the State?

19 MS. ELDER: Please present this juror.

20 THE DEPUTY CLERK: Defense?

21 MR. MARTIN: Swear the juror, please.

22 THE DEPUTY CLERK: Please be seated in the jury box.

23 244, Barbara Shick. What say the State?

24 MS. ELDER: Please present this juror.

25 THE DEPUTY CLERK: Defense?

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1 **MR. MARTIN:** We'd excuse the juror.

2 **THE DEPUTY CLERK:** You're excused from this particular

3 case.

4 43, Stella Carmody. What say the State?

5 **MS. ELDER:** Please present this juror.

6 **THE DEPUTY CLERK:** Defense?

7 **MR. BROWN:** Seat the juror.

8 **THE DEPUTY CLERK:** Please be seated in the jury box.

9 281, Jeanne Voltz-Loomis. What say the State?

10 **MS. ELDER:** Please present this juror.

11 **THE DEPUTY CLERK:** Defense?

12 **MR. MARTIN:** Swear the juror, please.

13 **THE DEPUTY CLERK:** Please be seated in the jury box.

14 114, Josephine Harriotte. What say the State?

15 **THE COURT:** Now, this is for the alternates. The

16 strikes will be one for the State and two for the Defense.

17 **MS. ELDER:** Please present the juror.

18 **THE DEPUTY CLERK:** Defense?

19 **MR. MARTIN:** Swear her.

20 **THE DEPUTY CLERK:** Please be seated in the jury box.

21 280, Nancy Vinesett. What say the State?

22 **MS. ELDER:** Please present the juror.

23 **THE DEPUTY CLERK:** Defense?

24 **MR. MARTIN:** Excuse the juror on this particular trial.

25 **THE DEPUTY CLERK:** You're excused from this particular

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JURY SELECTION
COURT TO JURY

1 case.

2 198, Judy Norris. What say the State?

3 MS. ELDER: Please present this juror.

4 THE DEPUTY CLERK: Defense?

5 MR. MARTIN: Seat the juror, please.

6 THE DEPUTY CLERK: Please be seated in the jury box.

7 THE COURT: Anything from the State involving the
8 striking of the panel?

9 MS. ELDER: No, Your Honor.

10 THE COURT: Anything from the Defense involving the
11 striking?

12 MR. MARTIN: No, Your Honor.

13 THE COURT: All right.

14 Those of you who were not chosen, I'm going to allow you
15 to leave. Please call back tonight after six, and whatever
16 instructions you receive, please follow them as I talked
17 about this morning. If you have some emergency and cannot be
18 here for some legitimate reason, let us know. Otherwise, we
19 will look for you to follow whatever the instructions are.
20 They may be to report at a certain time. They may be to call
21 at a certain time.

22 I'm going to ask you to leave quietly because I'm going
23 to start talking to this jury panel and I will probably see
24 you some more later this week. Thank you.

25 Those of you who were chosen, if you'll give me your

(--)
1 attention just for a minute. We have some legal matters to
2 take care of, so we're not going to actually start into the
3 trial this afternoon. We're going to -- rather than have you
4 sit in the jury room, we're going to let you go in just a
5 minute and have you report back at 9:30 A.M., 9:30 in the
6 morning.

7 When you leave, the bailiff will show you how to get in
8 and out and move around the building while you are serving as
9 a juror, or you'll be in the jury room, and I don't know
10 exactly the logistics of how you move around, but the bailiff
11 will show you that.

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12 I'm going to chat with you just a minute, and then
13 tomorrow when you get here, I'll have some instructions to
14 give you, and then we'll start with the attorneys making
15 their opening statements, but what I need to tell you tonight
16 before you leave is that you are on this jury.

17 We're not going to administer the oath until in the
18 morning, but you are on this jury panel, so you're not to
19 discuss this case among yourselves or with anyone else.
20 You're not to try to make up your own mind.

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21 Until we reach the point in the trial where I instruct
22 you to jointly deliberate and return a unanimous verdict,
23 you're not equipped to make a fair decision, so don't try to
24 make up your mind until I instruct you to jointly deliberate,
25 and do not discuss the case among yourselves until I instruct

1 you to do so.

2 Do not let anyone discuss this case with you outside the
3 courtroom. If anyone tries to discuss this case with you,
4 tell them you cannot do so, that you are serving as a juror.
5 Report back to me if anyone tries to discuss the case with
6 you. Ideally, you can give me, if you would, if you know it,
7 the identity of that person, because I'll have to take action
8 against someone who has tried to talk to a seated juror.

9 I do not know that this case will receive any news
10 coverage, but if it does, do not let yourselves be exposed to
11 it. Don't read about anything, watch anything, or listen to
12 anything that could remotely deal with this trial. You must
13 base your verdict on the law and the evidence that you
14 receive in this trial.

15 You don't know where these things took place, but as you
16 find out, don't go do any independent research. Don't go to
17 try to figure out -- if someone says something happened at a
18 particular place, don't go there. You don't need to, and
19 things may have changed, and you're not to do any independent
20 investigation.

21 You're not to do any independent research. We now have
22 access to the world through Google and Cloud, and all these
23 other electronic means. You can punch in a name or anything
24 and get something, a response. Don't do that. It would be
25 inappropriate. You have to base your verdict on the law and

1 the evidence here in the courtroom, the evidence presented
2 through the exhibits, and the testimony, and the law that I
3 charge you, so don't go on-line to look up anything about me,
4 about the case, about Mr. Wright, about his lawyer, about the
5 law, about evidence. That would all be inappropriate. You
6 have to confine your decision to what you see here in the
7 courtroom.

8 While this may sound a little silly, it's not. Don't go
9 on-line to any social media, like Facebook or any of these
10 things, and put on there that you are a juror. You think
11 that's rather innocent, and it sounds rather innocent, but as
12 soon as you do that, somebody may e-mail you back with some
13 comment, or some remark, or some information that would be
14 inappropriate, so while you're on the jury, just -- that's
15 your main focus and don't be -- I'm not saying you can't use
16 Facebook and stuff like that, but don't through any
17 communications indicate that you're serving as a juror.
18 Again, it may cause a problem.

19 Ms. Blain-Olds, I'm going to ask you to be the forelady.
20 When you come back tomorrow, you'll take the first seat. The
21 two alternates will sit in the seats that the bailiffs assign
22 to them, and for the rest of the jurors, the jury will have
23 no assigned seating. Just sit wherever you happen to come
24 in.

25 Anything else the State wants me to cover before we

COURT TO JURY
JURY OUT/ON RECORD

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1 leave for today?

2 **MS. ELDER:** I think they'll be instructed, Your Honor,
3 but we ask them to wear their juror badges while they're
4 around the courthouse so we'll know that they are jurors,
5 Your Honor.

6 **THE COURT:** All right.

7 You'll be given a jury badge -- a juror badge, and wear
8 it around so we'll know who you are and other people will,
9 too, so someone won't inadvertently come up and say something
10 to you or speak to you.

11 Anything from the Defense before we ---

12 **MR. MARTIN:** No sir.

13 **THE COURT:** All right.

14 Everybody remain seated. The jury follow the bailiff,
15 and we'll see you at 9:30 in the morning.

16 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
17 JURY.)

18 **THE COURT:** Why don't we take about a ten minute break
19 before we get into the matters we have to take up.

20 **MR. MARTIN:** Thank you, Your Honor.

21 **MS. ELDER:** Yes.

22 **THE COURT:** But before we do that, we have that one
23 thing to put on the record.

24 When Juror Number 187 was called forward, Mr. Matthew D.
25 Monette, it was called to the Court's attention by Ms. Elder

1 that she had prosecuted Mr. Monette. I don't remember what
2 the charge was, but whatever it was, it was remanded back to
3 Magistrate's Court. When I asked him about why he did not
4 respond, he just said it had been so long -- I'm paraphrasing
5 -- that he had forgotten about it. I did directly ask him
6 whether since Ms. Elder had prosecuted him if he would be
7 able to be fair and impartial in this trial. He said no, so
8 I excused him for cause.

9 Any comments on that from the State?

10 MS. ELDER: No, Your Honor.

11 THE COURT: Any from the Defense?

12 MR. MARTIN: None, Your Honor.

13 THE COURT: All right.

14 We'll take about a ten minute break.

15 MS. ELDER: Thank you.

16 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
17 PRESENCE OF THE JURY.)

18 THE COURT: All right.

19 MS. ELDER: Your Honor, I think a couple of motions
20 that have been filed by Mr. Martin or Mr. Brown that I know
21 that are not an issue. The motion to sequester witnesses, I
22 have no objection to, provided it's on both sides.

23 THE COURT: We will make it reciprocal.

24 MS. ELDER: Yes sir, and that excluding my -- my lead
25 detective, which is ---

1 **THE COURT:** Yes, the case agent can be ---

2 **MS. ELDER:** Yes sir, Detective Cox.

3 The other motion, I believe, that was filed, was to
4 prevent an in-court identification by witnesses, Kelly Pinnix
5 and Mildred Small. We had no intent of doing that, Your
6 Honor.

7 **THE COURT:** Okay.

8 **MS. ELDER:** Those are the two that I'm aware of that we
9 can resolve quickly.

10 **MR. BROWN:** Your Honor, for clarification, does that
11 mean you're going to call them, but you're not going to use
12 them for in-court identification?

13 **MS. ELDER:** That's correct.

14 **MR. BROWN:** Okay. All right. I don't have -- I mean,
15 that resolves the motions for me.

16 **THE COURT:** All right.

17 Mr. Martin?

18 **MR. MARTIN:** Only if she will just agree to the rest of
19 them. If she has, those just won't take long.

20 **MS. ELDER:** That's where we're going to have a problem.

21 **THE COURT:** Okay. What's the next one, the first one
22 for us to deal with?

23 **MS. ELDER:** Your Honor, we have actually four search
24 warrants. I don't know which ones. I've got -- I've
25 received one motion for suppression on the Kate's Bay house,

JURY OUT/ON RECORD
IN CAMERA - TODD F. COX - DIRECT BY ELDER

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1 and we're prepared to go forward with that. I don't know if
2 they're going to have a suppression motion on the other three
3 search warrants or not.

4 MR. MARTIN: Probably not, but we're ready to go
5 forward with this one.

6 THE COURT: Okay. And it's called Case Bay?

7 MR. MARTIN: Kate's Bay, K-A-T-E'S.

8 THE COURT: Kate's Bay, okay.

9 MS. ELDER: Yes sir. That was the -- it's the house on
10 Kate's Bay Road.

11 THE COURT: Okay. All right.

12 You want to call your first witness?

13 MS. ELDER: All right. Your Honor, we would call
14 Detective Cox.

15 TODD F. COX, being first duly sworn, testifies
16 as follows:

17 THE DEPUTY CLERK: Please state your full name and
18 spell your last name.

19 MR. COX: Todd F. Cox, C-O-X.

20 DIRECT-EXAMINATION BY MS. ELDER:

21 Q. Detective Cox, you're with the Horry County Police
22 Department, is that correct?

23 A. Yes, that's correct.

24 Q. And you've been there for how long?

25 A. Seventeen years.

1 Q. And I believe you were the lead case agent involving
2 the death of or the homicide that's involving Jerome Green,
3 is that correct?

4 A. Yes ma'am, I was.

5 Q. And you assisted or directed search warrants to be
6 obtained for several different locations of property, is that
7 correct?

8 A. Correct.

9 Q. And could you specifically go to the one of -- on
10 Kate's Bay, on 3635 Kate's Bay Road. Can you tell us how you
11 came about getting that location and asking Detective Weaver
12 to obtain that search warrant?

13 A. Yes ma'am. The investigation initially got rolling
14 and we got the Defendant's cell phone number from a witness
15 there at the scene. The request was put into the State Law
16 Enforcement Division and they began pinging his cell phone,
17 which basically tracked the cell phone signal. That signal
18 on the night of May 1st, 2012, was the night following this
19 murder, the ping to that area of this residence on Kate's Bay
20 Road.

21 We began obviously discussing amongst the unit this
22 location in Conway and the captain of our unit, Captain Dale
23 Buchanan, indicated that he was familiar with the description
24 of two vehicles that we got for the Defendant, those being a
25 black in color BMW, the seven series, and a black in color

1 Escalade.

2 Captain Buchanan described the residence and said it's
3 a tan colored doublewide, has like a stockade privacy-type
4 fence around it, and that he sees those -- or has seen those
5 vehicles come and go from that location on a regular basis in
6 the days leading up to this event.

7 We talked with a co-defendant, Qwanda Caldwell-Brown
8 specifically, who stated that the Defendant had left the
9 incident location at -- at the conclusion of this homicide in
10 a black BMW, seven series, and a short time later had
11 switched in a black Cadillac Escalade.

12 We subsequently arrested a co-defendant, Lanard
13 Powell, in this case on the morning of May 2nd. He was in
14 the presence or in the company of the Defendant. At that
15 time, a post-arraignment interview was conducted with Mr.
16 Powell, at which time he indicated also that the Defendant
17 had left the incident location at the time of the murder in a
18 black seven series BMW and a short time later switched into a
19 black Cadillac Escalade.

20 Mr. Powell also informed us that the weapon involved
21 in the crime had been put in the black BMW and that the black
22 BMW, the gun that was used, and the black Cadillac Escalade
23 belonged to the Defendant's wife, Ms. Jacinda Wright.

24 Based on that, we had sent a detective, a property
25 crime detective, to that location on Kate's Bay Highway, and

1 that detective, Detective Daniel Spencer, observed the black
2 Cadillac Escalade in the backyard of that residence, and he
3 knocked on the front door and made contact with Jacinda
4 Wright and determined at that time that that is the residence
5 where they reside.

6 Q. And I believe also in reference to Ms. Jacinda Wright,
7 did you obtain information from the interview of the co-
8 defendant Qwanda and Lanard of involvement that she may have
9 had in the -- after the fact assisting them to evade police?

10 A. Yes, that she had gone and rented them a vehicle.
11 When they swapped out these vehicles, she had gone and rented
12 them a vehicle on the 1st of May at Enterprise Rental at
13 Myrtle Beach Airport, and she rented them a black -- I'm
14 sorry, a red Chevrolet Camaro for them to be in, operating.

15 Q. And once you obtained that information and Officer
16 Spencer verified that Ms. Wright was at that particular
17 location and visually saw the black Escalade, did you direct
18 anyone to obtain a search warrant based on the information
19 you just provided to the Court?

20 A. I did. I sought the assistance of Detective Weaver.
21 He's now an employee or a special agent with SLED. At that
22 time, he worked in our Violent Crime Section, and I sought
23 his assistance in obtaining a search warrant for that
24 location.

25 Q. And is it common practice in an investigation that is

IN CAMERA - TODD F. COX - DIRECT BY ELDER
CROSS BY MARTIN

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1 ongoing and just immediate after the homicide to get the
2 assistance of other detectives to help you and assist you in
3 obtaining search warrants?

4 A. It is very common.

5 MS. ELDER: Your Honor, that's all I have of this
6 witness.

7 THE COURT: Okay.

8 Cross?

9 CROSS-EXAMINATION BY MR. MARTIN:

10 Q. Well, let me ask you a couple of questions. Who got
11 the search warrant for the residence on Kate's Bay Highway?

12 A. Detective Weaver.

13 Q. And who drafted the affidavits?

14 A. I would assume that he did, sir.

15 Q. Okay. And who interviewed the co-defendant, Lanard
16 Powell, after his arrest on May 2nd?

17 A. Myself and Detective Vesco.

18 Q. Where was that?

19 A. At the Conway Police Department.

20 Q. Was it recorded?

21 A. It was.

22 Q. The entire statement?

23 A. It was.

24 Q. What time was the arrest of Mr. Powell, as best you
25 can recall, at the Sleep Inn on May 2nd?

1 A. I would estimate eight-thirty or nine o'clock in the
2 morning.

3 Q. Okay. Do you know what the basis given in the search
4 warrant for the probable cause to search that residence was?

5 A. Not -- if you have it, I'll be happy to take a look at
6 it.

7 Q. Okay. If you would, I'll just let you read it into
8 the record, the affidavit for the search warrant.

9 A. Which part, the whole page or ---

10 Q. No, no, the affidavit of probable cause for the
11 warrant ---

12 A. Okay.

13 Q. --- at the bottom of the page.

14 A. It reads on 5/1/12, members of the Horry County Police
15 Department responded to the residence address -- residential
16 address of 5456 Figure Eight Road located in the Myrtle Beach
17 section of Horry County in reference to a shooting incident
18 where the victim, Jerome Green, Jr., was shot to death.

19 A co-defendant, Lanard Powell, informed law
20 enforcement the shooter, identified as Marcus Dwain Wright,
21 fled the scene at the above said location in a black in color
22 BMW vehicle and then later switched getaway vehicles to a
23 dark in color Cadillac Escalade.

24 The shooter then drove to the address of 3635 Kate's
25 Bay Road, which is in the Conway section of Horry County, and

1 left the above said vehicle at that address. The co-
2 defendant also informed law enforcement the shooter obtained
3 the murder weapon from his wife at the above location.

4 It is believed the shooter transported the murder
5 weapon and the Cadillac Escalade back to said residence and
6 that it may still be present at the home and/or described
7 vehicle.

8 (STATEMENT OF LANARD POWELL IS MARKED AS DEFENDANT'S
9 EXHIBIT NUMBER 1 FOR IDENTIFICATION ONLY.)

10 Q. Okay. Let me show you, Officer Cox -- I think the
11 first time you've seen it. Look at it, and I would represent
12 to you that it is a statement from co-defendant, Lanard
13 Powell, taken on May 2nd, 2012, about 9:32 A.M. Without you
14 reading the whole thing, can you take a look at it and tell
15 me whether or not that appears to you to be a transcript of
16 your statement from Mr. Powell on that morning?

17 A. Yes, it could be. I have no reason not to believe
18 that.

19 Q. Okay.

20 A. It's easier to listen to, but ---

21 Q. All right. Having -- now, that statement was taken at
22 the Horry County Police Department, am I correct?

23 A. Yes sir.

24 Q. And that was the only statement taken from Mr. Powell
25 prior to the search warrant being issued?

1 A. That's correct.

2 Q. Do you have any notes anywhere that contain any
3 information that is not in the statement itself?

4 A. No sir.

5 Q. The information that was provided to Detective Weaver,
6 -- well, let me go back and ask you. On the search warrant
7 itself, which is dated May 2nd, 2012, is that Detective
8 Weaver as the ---

9 A. I don't know.

10 Q. It's hard to read that signature?

11 A. Yes sir.

12 Q. It's not your signature?

13 A. No, it is not my signature.

14 Q. You didn't get the search warrant?

15 A. That is correct.

16 Q. The information about somebody going to the house,
17 about the pinging of the cell phones, that information is not
18 contained in the search warrant affidavit, is it?

19 A. No sir, it isn't.

20 Q. The basis for that search warrant is based off the
21 statements that were supposed to have been made by co-
22 defendant Lanard Powell during his interrogation or his
23 statement that day with you and whichever other officer it
24 was?

25 A. That's a part of the basis for the search warrant.

IN CAMERA - TODD F. COX - CROSS BY MARTIN
DAVID WEAVER - DIRECT BY ELDER

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1 That's not the basis in its entirety.

2 Q. Okay. Well, is there any other basis put forward in
3 the affidavit to the search warrant here?

4 A. No. The affidavit is as I just read it verbatim.

5 Q. Okay.

6 MR. MARTIN: That's all the questions that I have for
7 Detective Cox at this time.

8 THE COURT: Recross?

9 MS. ELDER: No other questions, Your Honor.

10 THE COURT: All right.

11 You can step down.

12 MS. ELDER: Detective Weaver.

13 DAVID WEAVER, being first duly sworn,
14 testifies as follows:

15 THE DEPUTY CLERK: Please state your full name and
16 spell your last name.

17 MR. WEAVER: David Weaver, W-E-A-V-E-R.

18 DIRECT-EXAMINATION BY MS. ELDER:

19 Q. Detective Weaver, are you employed with the Horry
20 County Police Department?

21 A. Not ---

22 Q. Or you're employed with the South Carolina Law
23 Enforcement Division now, is that correct?

24 A. That's correct, yes ma'am.

25 Q. Previously you were employed with Horry County Police

1 Department?

2 A. That's correct.

3 Q. For how long?

4 A. Approximately fifteen years.

5 Q. Did you have an opportunity to assist Detective Cox in
6 regards to the homicide of Jerome Green?

7 A. Yes ma'am, I did.

8 Q. And I believe you interviewed Mr. Wright, is that
9 correct?

10 A. That's correct, yes ma'am.

11 Q. And did Mr. Cox -- Detective Cox ask you to assist him
12 in getting -- obtaining search warrants?

13 A. He did.

14 Q. And the search warrant in question was for 3635 Kate's
15 Bay Road, do you recall that?

16 A. Yes ma'am, I do.

17 Q. And you were present during -- just briefly during the
18 testimony a few minutes ago?

19 A. Yes ma'am.

20 Q. And from your recollection, is that the information
21 that was presented to you?

22 A. Yes ma'am.

23 Q. Did you -- what did you do with that information?

24 A. Detective Cox gave me that information. I was the
25 affiant. I authored the affidavit, typed it up, and I took

IN CAMERA - DAVID WEAVER - DIRECT BY ELDER
CROSS BY MARTIN

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1 it over to Judge Mayers, and he had -- he signed the search
2 warrant.

3 Q. Is it commonplace for detectives when they're
4 obtaining search warrants to supplement a written affidavit
5 with oral testimony?

6 A. Yes ma'am.

7 Q. And did you do so in this case?

8 A. Yes ma'am.

9 Q. In regards to your affidavit, you indicated that the
10 vehicles that were in question, the black BMW and -- I'm
11 sorry, the Escalade, the dark in color Escalade, was that
12 identified at that location?

13 A. Yes ma'am, to my knowledge, yes.

14 Q. And is what was conveyed to you, was Ms. Wright also
15 identified as being at that location?

16 A. That's correct.

17 Q. And in your -- what was presented to you to base your
18 search warrant on, was it also presented that Mr. Powell
19 indicated that the weapon that he and Mr. Wright carried were
20 in his wife's, Jacinda Wright's, name?

21 A. Yes; yes ma'am.

22 MS. ELDER: I have no other questions, Your Honor.

23 CROSS-EXAMINATION BY MR. MARTIN:

24 Q. Detective Weaver, who did you get the search warrant
25 from?

1 A. Judge Mayers.

2 Q. Judge Mayers?

3 A. Yes sir.

4 Q. And who typed up the warrant?

5 A. I did. I was the affiant.

6 Q. You were the affiant, and did you actually type it up?

7 A. Yes sir.

8 Q. All right. And you typed it up and then took it to
9 Judge Mayers?

10 A. Yes sir, that's correct.

11 Q. And the information that is based as a probable cause
12 for the search was given to you by who?

13 A. Detective Cox.

14 Q. Did you talk to Lanard Powell?

15 A. No sir, I did not.

16 Q. So Lanard Powell didn't tell you anything?

17 A. No sir, he didn't.

18 Q. Okay. And you did not include any information in the
19 affidavit for the search warrant other than the fact that the
20 co-defendant, Lanard Powell, had provided information that
21 you wanted to use to get the search warrant?

22 A. Yes sir.

23 Q. You say what -- you say other information was provided
24 to the Magistrate?

25 A. Just when I presented -- when I presented the

1 affidavit, I just went into about the cell phone, how it
2 pinged and how we found the location of the vehicles, of the
3 Defendant's vehicle, and I just -- and I'm paraphrasing, but
4 I just mentioned that to the Judge, and it's common practice.
5 I don't -- I don't put everything in the affidavit of my
6 search warrant.

7 Q. Well, I guess what I'm trying to figure out is if you
8 had the information upon which you wanted to search, why
9 didn't you include it in the search warrant when you typed
10 it?

11 A. I -- I believe it might have been an error on my part,
12 something that I didn't include. It was pre-typed, but I
13 didn't have that information at that time.

14 Q. Do you have any notes of what information you would
15 supply the Magistrate in addition to what is written?

16 A. No sir, I don't.

17 Q. And your recollection of what you presented in
18 addition to that was about the cell phones pinging at this
19 residence?

20 A. Yes sir. It gave us the location, the channel
21 location. We also -- the information was from the
22 Defendant's wife. Her vehicles were registered to the
23 address in that area. Again, Captain Buchanan was familiar
24 with the address. It wasn't particularly that address, but
25 from -- from DMV, so we got the general location from the

1 pinging on the cell phone and from the DMV from the
2 Defendant's wife's vehicles.

3 Q. Well, what I'm getting at is, if I heard you
4 correctly, what you told me in addition to the warrant, the
5 information you gave the Magistrate is that there had been
6 cell phones pinging out of this residence or in connection
7 with this residence? That's what I'm trying to figure out,
8 is if that's the information you gave them in addition to
9 what's in the warrant?

10 A. In that general area, yes sir.

11 Q. All right. And so what specifically was that that you
12 told him about the cell phones that generated in your mind a
13 reason to search?

14 A. Based on the information that Detective Cox gave me
15 and the cell phone pinging in that area.

16 Q. Whose cell phone?

17 A. The Defendant's is the information that I got. The
18 Defendant's cell phone was pinging in that area.

19 Q. And how did they know the Defendant's cell phone
20 number?

21 A. That, I don't know. It was information that was
22 provided me from Detective Cox.

23 Q. So the information that you gave the Judge was what's
24 in the warrant and that you had information that the
25 Defendant's cell phone was pinging at that residence?

1 A. Yes sir. And it was a miscommunication. Detective
2 Cox relayed that information to me. It was al- -- the search
3 warrant was already typed up, and I was on my way to the
4 Judge.

5 Q. Okay. I understand. I understand. But that's the
6 information that was given to the Court and he signed the
7 warrant based on that?

8 A. That's correct, yes sir.

9 Q. Have you ever observed any evidence of the cell phone
10 of the Defendant pinging at this location?

11 A. No sir, I did not.

12 Q. What evidence would there be of that?

13 A. I don't know. I can't ...

14 Q. Do you know whether or not the information in the
15 warrant that you provided about what the co-defendant, Lanard
16 Powell, said is accurate or not?

17 A. No sir. Just but it's common, if I may, it's common
18 practice for detectives and police officers to relay
19 information, report information. It's a fluid process. It
20 was information that was provided for me from the lead
21 detective, Cox.

22 Q. Okay. I understand that. I'm just trying to be sure
23 if you knew -- you had no conversation with Lanard Powell?

24 A. No sir, I did not.

25 Q. You talked to nobody else about what Lanard Powell had

1 said in order to prepare the warrant?

2 A. That's correct.

3 MR. MARTIN: That's all the questions I have, ---

4 THE COURT: All right.

5 MR. MARTIN: --- Mr. Weaver.

6 THE COURT: Redirect?

7 MS. ELDER: No, Your Honor.

8 THE COURT: All right.

9 You can step down, Mr. Weaver. Thank you, Detective
10 Weaver.

11 MS. ELDER: That's all the testimony on this, Your
12 Honor.

13 THE COURT: All right.

14 Does the Defense have any witnesses?

15 MR. MARTIN: I want to re-call Mr. Todd Cox for a ---

16 THE COURT: All right. Mr. Cox, come on up. You're
17 still under oath.

18 TODD F. COX, being previously duly sworn, testifies
19 as follows:

20 DIRECT-EXAMINATION BY MR. MARTIN:

21 Q. Mr. Cox, tell me about the pinging cell phone. What
22 kind of information was that now specifically that you had?

23 A. We had SLED pinging the Defendant's cell phone, and
24 that phone had pinged to that area on Kate's Bay Highway the
25 previous night, so we had information that the Defendant at

1 some point after this murder occurred had driven or his cell
2 phone went to that area where this search warrant was signed
3 and executed.

4 Q. What evidence does there exist today of the pinging of
5 that cell phone at that location after the murder?

6 A. That, I don't know. SLED pinged the phones, so I
7 don't know what kind of records they maintain. I don't know.

8 Q. Who at SLED pinged the -- who were you working with at
9 SLED that night?

10 A. I don't recall his name.

11 Q. Did they provide you any written documentation of that
12 pinging?

13 A. No sir.

14 Q. Were you talking to them by telephone?

15 A. Actually, Lieutenant Squires who was then -- I think
16 he was a Sergeant then, he was talking with them by cell
17 phone, yes sir. It was a verbal communication that was
18 occurring.

19 Q. So did you talk to the people at SLED or Squires
20 talked to the people at SLED?

21 A. Squires talked to the people at SLED.

22 Q. You never talked to the people at SLED?

23 A. That's correct.

24 Q. Do you know what area on Kate's Bay Highway that phone
25 pinged at?

1 A. It was my understanding that it was there at that
2 location.

3 Q. At the house?

4 A. Yes sir.

5 Q. Well, you say it was your understanding, but I'm
6 asking you now here today do you know of your own personal
7 knowledge where the phone pinged, if it pinged at all, on
8 Kate's Bay Highway?

9 A. I didn't witness any pinging with my own two eyes, but
10 that being said, certainly I don't -- I don't believe at all
11 that the SLED agent would have any reason to lie to Sergeant
12 Squires.

13 Q. I'm not saying he's lying. I'm just saying I don't
14 have a clue what he said. Is there any written documentation
15 in your files as the chief investigator for the Horry County
16 Police Department from SLED or created by an Horry County
17 police officer on information received from SLED about this
18 pinging of the telephone?

19 A. No, sir. There's no documentation in my case file
20 from SLED and I don't know that they actually prepare any
21 kind of documentation under those circumstances, but no,
22 there is none in my case file.

23 Q. Kate's Bay Highway is a relatively long road, is it
24 not?

25 A. I believe so, yes sir.

1 Q. Do you have any evidence to give to the Court today
2 that that cell phone pinged at 3635 Kate's Bay Road
3 specifically?

4 A. The information that was provided to us from SLED.

5 Q. But you told me that that was on the area of Kate's
6 Bay Road. I'm saying ---

7 A. No, no. I said -- I said at the area where the -- at
8 the location where the search warrant was located is what I
9 said.

10 Q. Okay. So you're saying now that the information you
11 got was that the cell phone pinged from 3635 -- wait a
12 minute; let me give you the right number here.

13 A. That's right.

14 Q. Well, it's 5456 -- no, that's the wrong ---

15 A. No, that's -- that's right.

16 Q. At 3635 Kate's Bay Road?

17 A. Correct.

18 Q. And the cell phone can ping to a specific residence?

19 A. Apparently.

20 Q. Well, do you know that of your own knowledge?

21 A. I -- I don't -- I don't do any cell phone pinging.

22 Q. Did you provide this information you're talking about
23 to the detective, Weaver?

24 A. I did.

25 Q. Do you know why it's not in the affidavit?

1 A. No, I do not.

2 Q. Let me ask you, of course this was a long statement
3 from Mr. Lanard Powell on May the 2nd, 2012, and after having
4 listened to it and read it, and I might have missed it, but I
5 don't see in there where Lanard Powell provides the
6 information that is written in the search warrant, so let me
7 hand this back to you and ask you where it starts there in
8 the affidavit, it says a co-defendant, Lanard Powell. Read
9 that statement.

10 A. A co-defendant, Lanard Powell, informed law
11 enforcement the shooter, identified as Marcus Dwain Wright,
12 fled the scene at the above location in a black in color BMW
13 vehicle ---

14 Q. All right. Let's stop right there. Are you saying
15 that that information was provided to Lanard Powell in that
16 manner with that specificity when he gave the statement to
17 you on May 2nd?

18 A. I believe he did, yes sir.

19 Q. Well, you believe he did?

20 A. Uh huh (**indicating positive**).

21 Q. Because, yeah, we got a transcript of it?

22 A. Okay.

23 Q. You know that?

24 A. Yes.

25 Q. All right. And you would agree with me that the

1 transcript of the tape would be more accurate than your
2 memory?

3 A. I would -- yeah, if the transcript is accurate, yes
4 sir. As I said before, the most -- the most accurate is the
5 actual recording probably.

6 Q. No question about it; no question about it. Let me
7 ask you, and the other thing in here that says the co-
8 defendant also informed law enforcement the shooter obtained
9 the murder weapon from his wife at the above location. Do
10 you believe that Lanard Powell told you that in that
11 statement that day?

12 A. Not specifically, and if I may explain.

13 Q. Yes.

14 A. What he said is that the weapon belonged to Jacinda
15 Wright. He didn't -- he didn't actually say where it was
16 obtained. He just merely said that the weapon itself
17 belonged to Jacinda, the Defendant's wife.

18 Q. Now, this statement says the co-defendant also
19 informed law enforcement the shooter obtained the murder
20 weapon from his wife at the above location, so that's
21 inaccurate, isn't it?

22 A. Is it inaccurate that he obtained the weapon at that
23 location?

24 Q. The statement that's in the warrant. The co-defendant
25 also informed law enforcement the shooter obtained the murder

1 weapon -- let me ask you this.

2 A. Yes sir.

3 Q. Did you know what the murder weapon was at that time?

4 A. It's kind of a vague question.

5 Q. No.

6 A. I knew that it was a firearm. I knew it wasn't a
7 knife.

8 Q. Well, okay.

9 A. I knew -- I knew it was a forty calibre handgun.

10 Q. You knew it ---

11 A. But I don't know that it was a, just for argument's
12 sake, a Smith and Wesson model whatever with a specific
13 serial number, so to that specificity, no, I didn't.

14 Q. And I think, Mr. Cox, that's my point.

15 A. Okay.

16 Q. The warrant says that the law enforcement -- says the
17 co-defendant also informed law enforcement the shooter
18 obtained the murder weapon.

19 A. Okay.

20 Q. Now, a matter of fact is that did Lanard -- well, let
21 me go this way. The point is at that point in time you
22 didn't know what the murder weapon was when this warrant was
23 issued, did you?

24 A. We knew that it was a forty calibre handgun.

25 Q. All right. You knew a -- it appeared, at least, that

1 what -- and the reason you knew that was there were shell
2 casings from a forty calibre pistol at the crime scene?

3 A. Right.

4 Q. All right. Now, from that -- but to say that the
5 murder weapon was received by the shooter from his wife at
6 the above location, the first problem with that premise is we
7 don't know for certain what the murder weapon was, do we?

8 A. We know that Lanard Powell said that the weapon that
9 Marcus Wright had on that night that was left in the black
10 BMW belonged to Jacinda.

11 Q. And that, in and of itself, doesn't mean it was the
12 murder weapon? Lanard Powell didn't say he saw Marcus Wright
13 shoot anybody, did he?

14 A. No, but there -- certainly there was other witnesses
15 there that said that they did, ---

16 Q. Well, ---

17 A. --- but we were armed with that knowledge at the time.
18 It wasn't just out of thin air that we came up with that
19 concept. I mean, we had -- there was several other
20 interviews and things that had gone on.

21 Q. I understand that, but let me go back to you, ---

22 A. Okay.

23 Q. --- because you and I guess could argue about our
24 premise about whether it's the murder weapon or not, but it's
25 categorically a fact that the co-defendant did not inform law

1 enforcement that the shooter obtained the murder weapon from
2 his wife at the above location? That's not accurate, is it?

3 A. I would say that it's not accurate that he said that
4 the weapon was gotten at the residence. His statement, as I
5 testified to repeatedly now was that the weapon belonged to
6 Jacinda Wright. That was his statement to me.

7 Q. That the weapon belonged to Jacinda Wright?

8 A. Correct.

9 Q. Let me go back and ask you again while I do have you
10 here. It says here that the co-defendant, Lanard Powell,
11 informed law enforcement the shooter identified as Marcus
12 Dwain Wright -- and who had identified the shooter as Marcus
13 Dwain Wright at that point in time?

14 A. Well, we had witness statements from the scene, okay?
15 The ---

16 Q. None of them named Marcus Dwain Wright as the shooter,
17 if I recall correctly?

18 A. Right, and I believe that Qwanda Caldwell-Brown did
19 the previous night in an interview with Detective Frebowitz,
20 and Lanard Powell did.

21 Q. He identified Marcus Dwain Wright as the shooter on
22 May 2nd?

23 A. He identified him on May 2nd, yes sir.

24 Q. All right. But going back, the statement that co-
25 defendant, Lanard Powell, informed law enforcement the

1 shooter identified as Marcus Dwain Wright fled the scene at
2 the above lo- -- at the above said location in a black color
3 BMW vehicle and then later switched get-away vehicles to a
4 dark in color Cadillac Escalade. Is that an accurate
5 statement?

6 A. It is.

7 Q. The shooter then drove to the address, to 3635 Kate's
8 Bay Road, which is in the Conway section of Horry County, and
9 left the above said vehicle at that address. Is that an
10 accurate statement of what Lanard Powell told you on May 2nd?

11 A. He said -- he didn't -- he didn't give us an address.
12 He described an area, and he's -- he's unfamiliar with this
13 -- with this area. He's from Columbia originally, but he
14 described that general area as where the vehicle transferred
15 to.

16 Q. So it is not accurate that Lanard Powell told you that
17 he drove to 3635 Kate's Bay Road, is it?

18 A. He didn't tell us a specific address, that's correct.

19 Q. But yet, it was the specific address of 3635 Kate's
20 Bay Road that you were trying to get a search warrant for?

21 A. Absolutely.

22 Q. Well, you would agree with me then, officer, that this
23 information that is the basis for the affidavit of this
24 search warrant is false?

25 A. No, sir.

IN CAMERA - TODD F. COX - DIRECT BY MARTIN
CROSS BY ELDER

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1 Q. Well, is it true that he told you that he drove to
2 3635 Kate's Bay Road highway?

3 A. No, he didn't say -- he didn't provide a specific
4 address.

5 Q. Well, then ---

6 A. That address -- that address was generated or the
7 information about that address was generated through the
8 other mean. In other words, the basis for that search
9 warrant wasn't entirely on what Lanard Powell had told ms.

10 Q. I understand that, but let -- but, you know, of course
11 that's what's in the warrant here, but at any rate, there is
12 an affidavit statement in the warrant which I contend has
13 information in it that is not accurate, and you agree with me
14 that it's not accurate?

15 A. Correct.

16 MR. MARTIN: That's all the questions that I have for
17 you.

18 THE COURT: All right.

19 CROSS-EXAMINATION BY MS. ELDER:

20 Q. Detective Cox, when you interview -- when the
21 interview was done of Lanard, did he, in fact, give you the
22 information that Marcus Wright told him and Qwanda that he
23 had shot Jerome Green?

24 A. Yes ma'am.

25 Q. No doubt?

1 A. Well, -- no doubt whatsoever.

2 Q. Did Lanard Powell also tell you that the gun that
3 Marcus carried is registered to his wife, Jacinda?

4 A. Yes ma'am.

5 Q. Did he also tell you that he left in a black vehicle?

6 A. He did.

7 Q. And you identified that vehicle as a black BMW, is
8 that correct?

9 A. Yes ma'am.

10 Q. Did Qwanda give you black BMW as well?

11 A. Yes ma'am.

12 Q. Did the other two witnesses, a Veronica and Mildred
13 Small, that were interviewed prior to this search warrant,
14 did they also describe a black BMW?

15 A. They did.

16 Q. Prior to the search warrant, was the phone being
17 pinged actively to try to locate all these individuals?

18 A. Yes ma'am.

19 Q. And I know that you talked a lot with Mr. Martin about
20 pinging, but did you respond to several locations in trying
21 to locate these individuals?

22 A. Yes ma'am.

23 Q. Were the pings accurate when you responded to those
24 locations?

25 A. Yes ma'am.

1 Q. And I believe you had an incident in the Burger King's
2 drive-through, is that correct?

3 A. That's correct.

4 Q. And were they ---

5 MR. MARTIN: Are you talking about the same or a
6 different case now?

7 MS. ELDER: This is the same case.

8 MR. MARTIN: Okay.

9 Q. And they had, in fact, been there in the drive-through
10 just moments prior to y'all arriving, is that correct?

11 A. Correct.

12 Q. So the ping is ---

13 THE COURT: When you say they ---

14 MS. ELDER: I'm sorry.

15 Q. The co-defendants, Lanard, Marcus, Qwanda, ---

16 A. Correct.

17 Q. --- is that correct?

18 A. Correct.

19 Q. Or, I'm sorry, their phone had been there?

20 A. Uh huh (**indicating positive**).

21 THE COURT REPORTER: Excuse me.

22 A. I'm sorry.

23 THE COURT REPORTER: Your answer?

24 A. Yes.

25 Q. Mr. Martin indicated we don't know that the gun Marcus

IN CAMERA - TODD F. COX - CROSS BY ELDER
REDIRECT BY MARTIN

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1 Wright had that night that Lanard identifies as his wife's
2 was, in fact, the murder weapon, but Lanard describes the gun
3 that that's the gun that Marcus was carrying that day and
4 that evening, is that correct?

5 A. That is correct.

6 Q. You also indicated that Captain Buchanan lived in that
7 area, Kate's Bay Road?

8 A. He does, yes ma'am.

9 Q. And you got information from him, I believe you
10 previously testified, of the fact that he saw both a black
11 BMW and a black Escalade at this 3635 location, ---

12 A. Yes ma'am.

13 Q. --- is that correct?

14 A. Yes ma'am.

15 Q. And, in fact, prior to getting the search warrant,
16 Detective Spencer, Officer Spencer, actually made contact
17 with Jacinda Wright at this location, is that correct?

18 A. Yes ma'am, that's correct.

19 MS. ELDER: I have no further questions, Your Honor.

20 MR. MARTIN: Just one question.

21 REDIRECT-EXAMINATION BY MR. MARTIN:

22 Q. How do you know that they had been at Burger King
23 shortly before you got there?

24 A. From talking to Mr. Powell.

25 Q. Talking to Mr. Powell?

1 A. Yes sir.

2 MR. MARTIN: That's all the questions I have.

3 THE COURT: And you can step down. Thank you.

4 MR. MARTIN: Judge, what I would do, is I want to get a
5 -- well, first of all let me say I intend to introduce a copy
6 of the tape of the statement taken from Lanard Powell, but I
7 think for purposes of argument of the motion, I don't need to
8 do that unless I need it for the record because Mr. Cox has
9 forthrightly agreed that the information contained in the
10 search warrant is not accurate, on more than one occasion,
11 so, therefore, it's false.

12 Therefore, it is not worthy of the Court issuing a
13 warrant at that time based on that because it provides -- I'm
14 not saying it's intentional, but certainly it's not -- it is
15 the officer's interpretation of what was said that contains
16 statements that are wrong.

17 According to Detective Weaver, there was only two pieces
18 of information given the Magistrate, the warrant, the -- and
19 you've got his testimony in the record about what I recall
20 the pinging of a cell phone in the Kate's Bay area. Now, it
21 seems clear to me that the warrant reads that they are
22 looking for a search warrant for 3635 Kate's Bay Highway.

23 That's the wrong one. Let me get the right one here in
24 front of me. 3635 Kate's Bay Highway ---

25 THE COURT: Has the search warrant been made a Court's

1 Exhibit?

2 MR. MARTIN: No, but I'm getting ready -- we can do
3 that.

4 THE COURT: Okay. Well, I mean, I would like to be
5 looking at it. It would be very helpful if I could ---

6 MR. MARTIN: Well, here's what -- let me mark it as a
7 Court's Exhibit and we'll hand it up to you.

8 THE COURT: Any objection, Ms. Elder?

9 THE COURT REPORTER: A Court's Exhibit or a
10 Defendant's ---

11 MR. MARTIN: A Defendant's Exhibit, I guess.

12 (SEARCH WARRANT IS MARKED AS DEFENDANT'S EXHIBIT NUMBER
13 2 FOR IDENTIFICATION ONLY.)

14 THE COURT REPORTER: Defendant's 2 for I.D.

15 MR. MARTIN: I'll hand it up to the Court. It will
16 probably be easier to let you read it to understand my
17 argument.

18 THE COURT: Okay. Go ahead.

19 MR. MARTIN: Essentially, Judge, in order to get what
20 they needed to get a search warrant, I believe it is true
21 that they enlarged and exaggerated and added to the statement
22 of Lanard Powell in material specifics, such as he drove to
23 365 -- 3635 Kate's Bay Highway with the gun. Well, the
24 testimony in the record is he didn't tell them that. He
25 didn't tell them that.

1 Any other information that they got, according to the
2 testimony in the record, which I can only assume is accurate,
3 other than ping in that warrant was not given to the
4 Judge, so this business about they went to the house and
5 found Jacinda and identified her at the house, whether that's
6 relevant or not, it's not relevant here because that was not
7 presented to the Magistrate.

8 None of this information which they talked about which
9 they knew or they figured out at some point in time, be it
10 before or after the issuance of the search warrant, is not
11 relevant because according to the record it was not presented
12 to the Magistrate.

13 The only thing that was presented to the Magistrate was
14 a false affidavit and some unspecific information about a
15 ping cell phone, of which there is absolutely no record or
16 documentation thereof as far as I can see, and I believe
17 under the law of the State of South Carolina, and
18 specifically State versus Jones, which has to do with
19 searches and seizures, that once you have information that is
20 inaccurate or false in a search warrant, that a search for it
21 cannot flow therefrom, and I would ask that any evidence
22 taken from the house as a result of that search warrant be
23 suppressed.

24 THE COURT: All right.

25 Ms. Elder.

1 **MS. ELDER:** Your Honor, I disagree. Mr. Martin asked
2 Detective Weaver, obviously you just heard it, that he asked
3 him was this -- was this pinging given to the Judge, but my
4 first question to Detective Weaver was did you just hear
5 Detective Cox indicate the facts and basis up to this point
6 in this case? Yes. Because that was what he presented to
7 the Judge? Yes.

8 So I disagree with Mr. Martin in saying that the only
9 two things that were presented was this affidavit and oral
10 testimony on pinging.

11 **THE COURT:** Well, there really wasn't any evidence that
12 there was oral testimony. There was no testimony from Mr. --
13 Detective Weaver that he was sworn in and he just -- the way
14 he testified to it, it sounded to me like he just casually
15 told the Magistrate, oh, by the way, we've also had some
16 pinging. I didn't hear anything about him being sworn in and
17 supplementing the affidavit by sworn testimony.

18 **MS. ELDER:** Your Honor, I think I did ask him if he
19 provided oral testimony.

20 **THE COURT:** Well, you asked him if he provided oral
21 testimony, but I don't recall it being as specific as there
22 being any indication that it was under oath. I mean,
23 testimony supposedly is under oath.

24 **MS. ELDER:** Yes sir.

25 **THE COURT:** I guess you could -- I guess you could

1 infer, always dangerous, that when he used the word testimony
2 -- we can always read that back in just a minute.

3 MS. ELDER: Your Honor, in addition, I do not think
4 that -- Your Honor, at this point the affidavits are based on
5 hearsay and based legitimately on what in the point of this
6 investigation was received from witnesses. There was a
7 multitude of things that led up to this search warrant.

8 THE COURT: Well, I hate to keep interrupting, but the
9 problem is I'm looking at it and there are definite
10 statements in here, and that's what Mr. Martin is pointing
11 out, is that ---

12 MS. ELDER: Yes sir.

13 THE COURT: --- these definite statements aren't
14 holding water.

15 MS. ELDER: Your Honor, the definite statements, I
16 completely understand. I understand the argument on those.
17 They were the -- for example, he fled the scene in a black
18 color BMW, later switched get-away vehicles to a dark
19 Escalade. Your Honor, that is a correct statement.

20 THE COURT: All right. Well, that's not the grounds
21 for a search warrant so far.

22 MS. ELDER: Yes sir. He drove down to the address of
23 Kate- -- 3635 Kate's Bay Road.

24 THE COURT: I did not hear -- I did not hear any
25 confirmation that Mr. Powell said that, or that anybody else

1 said that.

2 MS. ELDER: No, Your Honor. Mr. Cox, I believe,
3 testified that we pinged the -- pinged it to that location
4 and that he did not -- that he did acknowledge that Mr.
5 Powell did not say he drove to 3635 Kate's Bay Road, but he
6 did indicate -- he gave, as Mr. Cox is indicating, Mr. Powell
7 did, in fact, give a description during his interview,
8 although he was not familiar with the area.

9 THE COURT: Well, and maybe we're splitting hairs here,
10 but that's what we have to do on this. You take the first
11 part of that sentence, the shooter then drove to the address
12 of 3635 Kate's Bay Road in the Conway section. All right,
13 that could be based arguably on the pinging.

14 MS. ELDER: Yes sir.

15 THE COURT: What about the next phrase?

16 MS. ELDER: Left the said vehicle at the address.

17 THE COURT: How could you -- how was that confirmed by
18 pinging?

19 MS. ELDER: Your Honor, Mr. Powell told Detective Cox
20 -- I believe Detective Cox testified that he switched
21 vehicles to the Escalade.

22 THE COURT: No. We've now moved to something else.
23 This says that the vehicle was left at the Kate's Bay
24 address.

25 MS. ELDER: Yes sir.

1 **THE COURT:** What is that based on?

2 **MS. ELDER:** Your Honor, that -- that was what, I
3 believe, Detective Cox was testifying that the Defendant was
4 -- I mean the co-defendant, Lanard Powell, was giving a
5 description of the area that the car was left in. He was not
6 familiar with the location because he's not from here.

7 Your Honor, the next sentence, the co-defendant informed
8 law enforcement the shooter obtained the murder weapon from
9 his wife. That is a true and accurate statement that was
10 testified to. Detective Cox indicated at the above location
11 was not something that was specifically provided by the co-
12 defendant. However, the officers did verify that Ms. Wright
13 lived at this residence.

14 So, Your Honor, even with those two small faulty issues
15 in the specific affidavit, getting past that, Your Honor, I
16 believe that based on the totality of the circumstances and
17 what the officers testified that they provided to the
18 Magistrate, I believe it is sufficient even if taking out
19 those two things, Your Honor, I believe it is still
20 sufficient.

21 **THE COURT:** Well, taking out those two things, what is
22 left as accurate?

23 **MS. ELDER:** That the shooter in this case left the
24 residence. He had a weapon that he had gotten from his wife,
25 Jacinda Wright. He left in a black BMW. The ping from his

1 cell phone pinged to this location. That upon verifying
2 through various sources, the BMW -- the Escalade, which was
3 the switched car that Mr. Powell indicated, was at this
4 location prior to the search warrant. It was still there.
5 The officers verified that Jacinda Wright lived in that
6 location, that we had the weapon Mr. Powell identified
7 as ---

8 THE COURT: Well, you don't weigh -- I'm asking you to
9 say what's in this affidavit, not all this extraneous stuff,
10 we got all this other information. What's in the affidavit
11 word ---

12 MS. ELDER: Well, Your Honor, ---

13 THE COURT: --- the words in the affidavit that ring
14 true?

15 MS. ELDER: That the shooter identified as Marcus
16 Wright was at the scene in a black color BMW, later switched
17 vehicles, in a dark in color Cadillac Escalade, that is true.

18 The shooter then drove to the address of 3635 Kate's Bay
19 Road. That is from the ping, Your Honor. That does not say
20 that Lanard Powell says he drove there. It says the shooter
21 then drove to the address. It doesn't say that Lanard Powell
22 said the shooter drove to that address. That's true.

23 Left above said vehicle at that address. That is true.
24 That is also verified by an independent witness and officer
25 at the scene prior to the search warrant.

1 **THE COURT:** Well, but when did the officer go to the
2 scene?

3 **MS. ELDER:** Your Honor, they testified that he was
4 there prior to -- just prior -- he had ---

5 **THE COURT:** I'm talking about in relation to the
6 murder.

7 **MS. ELDER:** On this same day that this search warrant
8 was executed.

9 **THE COURT:** And the search warrant was?

10 **MS. ELDER:** May 2nd.

11 **THE COURT:** And the shooting was the 30th of April?

12 **MS. ELDER:** It was just shortly before midnight on that
13 day.

14 **THE COURT:** So the car was seen by an officer two days
15 later and that confirms that it was taken there the night of
16 the murder?

17 **MS. ELDER:** Well, the ping confirmed that he was there
18 the night of the murder. Mr. Powell confirmed in his
19 interview that he switched vehicles that night to the
20 Escalade.

21 **THE COURT:** But you're using something that you
22 observed two days later to confirm something that you said
23 happened two days earlier, i.e. he left the vehicle at a
24 certain address.

25 **MS. ELDER:** Your Honor, we've got Mr. Powell saying he

1 left the shooting in a BMW. We drove to this general area.
2 The ping happened at this location. He switches vehicles
3 into his black Escalade that we then -- I won't get into the
4 other part of it, but we switched vehicles into this black
5 Escalade. The gun that Marcus carried belonged to Jacinda,
6 and within thirty-six hours the Escalade is at this location
7 after Mr. Wright has been arrested, and we don't have the
8 murder weapon.

9 **THE COURT:** You completely lost me how that logical
10 ties -- that logic ties together, but I'll take your word for
11 it, but I can't see how, you know, thirty-six hours ago my
12 car was in Rock Hill, South Carolina, parked in my driveway.
13 It's parked outside the courthouse right now. How does that
14 confirm ---

15 **MS. ELDER:** Your Honor, we have a fleeing felon.

16 **THE COURT:** I know you got the ping.

17 **MS. ELDER:** On May 1st, which would have been after
18 midnight, driving this Escalade, and that a shooting just
19 happened, and how this Escalade on May 2nd is at this house
20 where his wife lived, where the gun is registered to his
21 wife, and is observed by the officer, and she's identified
22 there at that location.

23 **THE COURT:** All right. The gun, which gun was
24 registered to his wife?

25 **MS. ELDER:** The forty calibre that is ---

1 **THE COURT:** Which forty calibre?

2 **MS. ELDER:** The one we suspect is the murder weapon in
3 this case, Your Honor.

4 **THE COURT:** Well, how do you know -- if it's a
5 suspected weapon, how do you know who it was registered to?

6 **MS. ELDER:** Because we have the test-fired bullets that
7 were retrieved from this search warrant that are forty
8 calibre with the serial number on it ---

9 **THE COURT:** But that's working backwards.

10 **MS. ELDER:** I thought you were -- I'm sorry. I thought
11 you were asking me how I knew that.

12 **THE COURT:** Well, how did you know it or how did -- I
13 probably said it wrong. How did we know -- how did the
14 people getting the search warrant know it at the time?

15 **MS. ELDER:** Because Lanard Powell says it's registered
16 -- the gun is registered to his wife. Actually in the
17 transcript itself, I know his old lady got a gun and it's
18 register her and it's also in a black car.

19 **THE COURT:** A gun?

20 **MS. ELDER:** Your Honor, I understand that we can't --
21 because we don't have the gun, but Lanard Powell is saying
22 that Marcus Wright shot him. The gun he had with him is the
23 gun that he's talking about. I don't -- you know, for
24 purposes of a search warrant, Your Honor, we don't have to
25 prove that that is, in fact, the gun. We just have to prove

1 that we have probable cause to believe it is the gun.

2 Mr. Martin wants to say we've got to show it's the
3 murder weapon. No, that is not the standard for a search
4 warrant. It's probable cause.

5 MR. MARTIN: Judge, at the appropriate time, I would
6 like to respond.

7 THE COURT: Okay. You can go ahead now.

8 MR. MARTIN: Well, Judge, let me say first of all, I'm
9 not saying that the other statements they attribute to Lanard
10 Powell in that warrant are accurate, other than the two which
11 they admit are not accurate. I contend they are not.

12 For example, and if I'm not badly mistaken when Ms.
13 Elder says -- and this is confusing for a lot of us, that
14 Lanard Powell said Marcus Wright said he shot him, I don't
15 believe it's in that statement, wasn't in that statement.

16 When he says, for example, you know, they're trying to
17 say that the murder weapon was registered to his wife and
18 that she -- and that he said that his old lady had the gun
19 and had given it to Marcus. He said a gun.

20 If you go back again, no information, according to the
21 testimony from this witness stand, was given other than
22 something about pinging and what's in the affidavit, and
23 there is no testimony that he was sworn when he provided this
24 anecdotal information.

25 But Judge, what's more troubling than that, you know,

1 they're entitled to a search warrant if they've got probable
2 cause, but it is a very important part of our constitutional
3 law that you've got to have a proper search warrant in an
4 instance like this to search a house.

5 This thing is built upon supposition, plus supposition,
6 that is supposed to equal a fact of one plus one, but it's
7 always turning out to be three, and you've got in here what
8 are two admittedly wrong statements that are critical to the
9 search of a residence at 3635 Kate's Bay Highway. They have
10 nothing putting Marcus Wright there.

11 Even the ping of the cell phone, which the testimony
12 I believe you have in the record is unspecific and unreliable
13 about that, at best would put a cell phone there. There's no
14 testimony that Marcus Wright had that particular cell phone
15 on his person. They've got a picture of -- they took at that
16 house when they did search it with several cell phones laying
17 out on the counter, and this business about a policeman
18 confirmed this later, or he saw that later, is not relevant
19 whatsoever.

20 You've got a statement there that the murder weapon --
21 that's false. I mean, I hate to be a stickler, but that's
22 what you've got to be here if you've got an affidavit that a
23 search is based on that is full of false information and, I
24 mean, there comes a point in time when you can't take one,
25 plus one, plus one, and make it five under the law and the

1 Constitution.

2 And I want to make, depending on how the Court rules,
3 that tape of that conversation with Lanard Powell a part of
4 the record because I think you're going to find that in
5 addition to these statements that admitted are inaccurate,
6 that the other statements are exaggerations of what he did
7 say, but I don't think you've got to go that far.

8 My goodness alive, he sits right there, they put in
9 there we want to search 3635 Kate's Bay Highway for evidence
10 of a murder, and then they say the reason we ought to be able
11 to do that is that the co-defendant says that the shooter
12 took the murder weapon back to 3635 Kate's Bay Highway and
13 left it there. That's wrong. They know that's what they
14 need. That's why they put it in there, but it's false, and
15 -- it just is, and they've admitted it on the record.

16 THE COURT: You say you've got Mr. Powell's statement
17 transcribed?

18 MR. MARTIN: It is, Your Honor.

19 THE COURT: Do you think it's got any discrepancies, I
20 mean, as opposed to listening to it ---

21 MR. MARTIN: It's a long statement and you don't want
22 to listen to it, I'm sure, ---

23 THE COURT: Well, I mean, but I could read it ---

24 MR. MARTIN: --- and there's a copy of it, but again,
25 you know, you say things, for example, it is my contention

1 that when they talk about his wife having the gun and him
2 getting the 'gun from his wife based on the statement, says it
3 was a damn -- I know it -- I know he's like -- I know his old
4 lady got a gun and it's register to her and it's also in the
5 black car, but I don't know how that gets you from one point
6 to another.

7 You've got a statement here where they took a long and
8 rambling statement from him and he's not trying to give them
9 truthful information ---

10 **THE COURT:** If he said it was in the black -- if he
11 said the gun was in the black car, wouldn't that lead to the
12 possibility of a search warrant for the car?

13 **MR. MARTIN:** Well, that's a different deal. They got a
14 search warrant for the car, and we'll deal with that later,
15 but here we're talking about the search at 3635 -- maybe that
16 one's admissible, I don't know yet, but this one at 3635
17 Kate's Bay Highway is based on false information and
18 inaccurate information, and I just don't see how, you know,
19 with all candor that -- that it should be that you could take
20 a warrant with information that is inaccurate at best --
21 maybe false is a different word, I'm not sure, but it's not
22 true. It's not a true statement of what he said and then get
23 a warrant based off of it when there's material facts that
24 the warrant is based on -- in the affidavit that are false.

25 **MS. ELDER:** Your Honor, just another completely

1 different grounds that I haven't had an opportunity to touch
2 on yet. I would argue in addition that if the Court did
3 consider that -- or was considering setting aside the search
4 warrant, my big question on this is the standing that Mr.
5 Wright has to object to this particular search warrant.

6 **THE COURT:** Well, I thought about standing. That's
7 what you always think about first, but ---

8 **MS. ELDER:** Your Honor, in his statement, he clearly
9 says in his statement, and he's always contended that he
10 didn't live here in Myrtle Beach. In his statement at the
11 time of arrest he said he was living in Columbia. His
12 driver's license is not for this address. There's nothing
13 that indicates this is his residence, Your Honor.

14 **THE COURT:** Well, I mean, that's, I guess, like I keep
15 using the word inference, which is sort of like using the
16 word assumption, neither one are too good, but since his wife
17 lived there and all of this was going on, I concluded that he
18 resided there, but if he didn't reside there, what standing
19 does he have, and isn't it upon him to establish standing?

20 **MR. MARTIN:** Wait a minute, Judge. Now, we haven't
21 said anything about where he lived or didn't live and that
22 kind of thing. That -- you know, they have spent the last
23 hour and a half trying to convince you that's where Marcus
24 Wright lived, worked, and played, and that's his house,
25 that's his wife, he went there, did this, did that, and it is

1 inartful to take the position, okay, he doesn't have standing
2 to object because he doesn't live there.

3 There's no testimony in the record that you've got
4 before you he don't live there. There's testimony in the
5 record, I think, to the contrary that he did live there, that
6 his wife lived there, that his vehicles were there, that he
7 had -- his guns were there, his cell phone was pinging there,
8 and now that they think they're in trouble with the warrant
9 to do an about-face on that fact, because I promise you,
10 Judge, as a officer of this Court, they take the position
11 throughout that Marcus Wright lived there.

12 They've got pictures that they took in the house of the
13 things that are there. They know, as a matter of fact, that
14 he's lived there since this time because he's been under
15 electronic monitoring at that house, and so to say that they
16 don't believe that he lived there and thus he doesn't have
17 standing is inartful.

18 MS. ELDER: Your Honor, that's inaccurate. I have
19 never said that he lived there, absolutely not. In his
20 interview, he says in an hour of being arrested he lives in
21 Columbia. I've got a copy of his D- -- his DMV that does not
22 show him at that address.

23 Your Honor, I have -- I have never said he lives there,
24 nor am I contending in the case that he lives there. What I
25 am contending is that he stashed the car and the gun there

1 because it was somebody he knew, which was his wife. That's
2 -- that's -- Your Honor, I have never once said he lived
3 there.

4 MR. MARTIN: Well, ---

5 THE COURT: Let me think out loud. Who has the burden
6 of proving standing?

7 MR. MARTIN: The State, I think.

8 MS. ELDER: Your Honor, we can -- we can raise
9 objection to standing. That's an argument. That's not
10 something we have to put on the stand.

11 THE COURT: I know, but if I've got to decide the issue
12 of standing, who has to convince me? Who has the burden of
13 proving that he does not have standing?

14 MS. ELDER: I ---

15 THE COURT: I mean, there's nothing in the record. All
16 of this -- all this stuff you're talking about isn't in the
17 record, none of that that you're talking about, that we've
18 got this information that he said he lived in Columbia,
19 that's not in the record.

20 MS. ELDER: Your Honor, I would -- I would assume that
21 the Defense does since it's their motion.

22 THE COURT: Well, that's why I asked because ---

23 MS. ELDER: It is their motion that they filed.

24 MR. MARTIN: Well, I ---

25 MS. ELDER: In defending that motion, I am now raising

1 the argument of standing. I think it then falls back to them
2 because it is their motion to show that he does have standing
3 to argue the suppression.

4 **MR. MARTIN:** And I filed a motion and we argued the
5 standing, and there was not one word throughout the testimony
6 that you had that he wasn't a resident at the house or that
7 we had -- or any objection to our argument or filing the
8 motion. If they didn't think he had standing ---

9 **THE COURT:** They can't object to you filing a motion.

10 **MR. MARTIN:** Well, I know, but they could have said ---

11 **THE COURT:** They may object to it, but ---

12 **MR. MARTIN:** But as soon as we filed the motion -- I
13 mean as soon as we came here to hear the motion, they didn't
14 have to call an officer to the witness stand to talk about
15 whether it was a good or a bad search warrant. They'd say,
16 well, he doesn't have standing. You didn't hear that, and so
17 it's clear to me that what they've done is they have waived
18 any objection that he doesn't have standing.

19 **THE COURT:** Now, I don't know that they can waive -- he
20 either has standing or he doesn't. I mean, that's -- I don't
21 think you can waive that. He's got -- in order for him to
22 prevail that his priv- --, that he had an expectation of
23 privacy at this address, I think he's got to establish that
24 he had that expectation of privacy.

25 **MR. MARTIN:** Well, Judge, I -- what I would ask then is

1 that the Court allow us to establish that fact at this point
2 in time. There was no objection to it, and I would disagree
3 that we have not established standing by virtue of what we've
4 done, but it is a fact that I believe that the Defendant
5 lived at the house, and so, you know, we would -- if that's
6 what we need to do, we would ask that we be allowed to do
7 just that.

8 **THE COURT:** All right. Since the State has now raised
9 it as an issue and apparently it hadn't -- apparently it
10 hadn't been raised earlier, do you have any -- any evidence
11 to present, either side, evidence to present on the standing
12 issue, let's go ahead and do that.

13 **MR. MARTIN:** All right. Could I have just a moment to
14 confer with my co-counsel, Your Honor?

15 **THE COURT:** Yes sir.

16 **MR. MARTIN:** Would you give us about five minutes? I
17 don't want to ---

18 **THE COURT:** We'll take about a ten minute break.

19 **MS. ELDER:** Thank you, Your Honor.

20 (END DAY.)

21 (THE FOLLOWING TAKES PLACE ON JUNE 18, 2013, OUTSIDE THE
22 PRESENCE OF THE JURY.)

23 **THE COURT:** All right. Are we ready to proceed?

24 **MS. ELDER:** Yes sir.

25 **MR. MARTIN:** We are, Your Honor. Let me ask the Court

1 this: I would like to ask the Court if we could go to the
2 suppression of the drugs at the motel and come back to the
3 issue of standing on this because I'm trying to get someone
4 from the Probation Office here, and we're working on that
5 right now, but when we left at six yesterday and they didn't
6 get over until 8:30 this morning.

7 Logistics is taking me a minute to get somebody from
8 there, which I believe will confirm that that was Mr.
9 Wright's residence through the Probation Office, as well as
10 we're looking for a Deed to establish that in addition to any
11 testimony we would give, so I don't want to slow the process
12 down any more, so I would ask the Court if we could move to
13 the suppression of the motel.

14 I do not have a motion to suppress the search of the two
15 automobiles.

16 **THE COURT:** Okay. And you are assuming that I am
17 adroit enough to hear one in the middle of the other?

18 **MS. ELDER:** Your Honor, and if I could clarify, is this
19 Probation or Home Detention?

20 **MR. MARTIN:** Probation.

21 **MS. ELDER:** Not to monitor people? Okay.

22 **THE COURT:** All right. Any objection?

23 **MS. ELDER:** As long as we ---

24 **THE COURT:** Move?

25 **MS. ELDER:** Yes sir.

JURY OUT/ON RECORD

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IN CAMERA - JAMES MARK CHATFIELD - DIRECT BY ELDER

1 **THE COURT:** All right. Then let's move into then the
2 -- this is the search of the Escalade?

3 **MS. ELDER:** I think he is -- Mr. Martin is making a
4 motion on suppressing the drugs in the hotel.

5 **THE COURT:** The Sleep Inn, okay. All right.

6 **MS. ELDER:** I believe.

7 **THE COURT:** All right. You want to call your first
8 witness on that.

9 **MS. ELDER:** All right. Your Honor, we would call Jim
10 Chatfield.

11 **JAMES MARK CHATFIELD**, being first duly sworn,
12 testifies as follows:

13 **THE DEPUTY CLERK:** State your full and spell your last
14 name.

15 **MR. CHATFIELD:** James Mark Chatfield,
16 C-H-A-T-F-I-E-L-D.

17 **DIRECT-EXAMINATION BY MS. ELDER:**

18 Q. Detective Chatfield, do you work with the Horry County
19 Police Department?

20 A. Yes ma'am.

21 Q. And how long have you been there?

22 A. Approximately twenty-three years.

23 Q. I want to take you back. Were you involved in an
24 investigation involving the murder of Jerome Green?

25 A. Yes ma'am.

1 Q. I want to take you back to May 2nd of 2012. Do you
2 recall going to the Sleep Inn here in Conway?

3 A. Yes ma'am.

4 Q. And could you tell me how you arrived at that
5 location?

6 A. Yeah. Lieutenant Squires who was receiving pings from
7 SLED sent me to the Sleep Inn, said that the person we were
8 looking for was at that motel.

9 Q. And do you know who the person you were looking for
10 was?

11 A. Yes. Marcus Wright.

12 Q. And what did you do when you arrived at the Sleep Inn?

13 A. When I got to the Sleep Inn, I met Sergeant Tim
14 Troxell, my supervisor. He had, I believe it was, a driver's
15 license photo of Mr. Wright. He showed the clerk the
16 picture. The clerk stated that Mr. Wright was in Room 105.

17 Q. And what did you do -- what did -- happened at that
18 point?

19 A. At this time the clerk called Room 105 and we were
20 standing outside Room 105. Someone stepped out. I can't
21 remember if it was Mr. Wright or the co-defendant, and at
22 that time he was identified. He tried to close the door and
23 we held the door open and made an entry.

24 Q. Okay. And did you have a -- do you know if you had a
25 -- there was a warrant also against this co-defendant, Lanard

1 Powell?

2 A. I wasn't aware of that at the time.

3 Q. And when you walked in, did you observe -- do you know
4 if there was anything out, contraband?

5 A. Yeah, there was -- I don't remember what type. It was
6 contraband and some currency. I don't know how much or ---

7 Q. When we say contraband, are we referring to drugs?

8 A. Yeah. It looked like -- yes ma'am.

9 Q. And was Detective Johnson there as well?

10 A. Yes ma'am.

11 Q. And did he come into the room at that point?

12 A. Yes ma'am.

13 Q. Did you provide him the information regarding the
14 clerk and the identity in the room?

15 A. Yes ma'am.

16 Q. Do you know if he obtained a search warrant at that
17 point?

18 A. Yes ma'am.

19 Q. So y'all did not conduct a search at that point?

20 A. No ma'am. I backed out of the room.

21 Q. Okay. Was the location secured?

22 A. Yes ma'am.

23 Q. And were the individuals in the room detained at that
24 point?

25 A. Yes ma'am.

1 Q. And taken out?

2 A. Yes ma'am.

3 MS. ELDER: I have no further questions, Your Honor.

4 CROSS-EXAMINATION BY MR. MARTIN:

5 Q. When you went, Officer Chatfield, to the Sleep Inn,
6 did you have a search warrant of any kind?

7 A. No, sir.

8 Q. Did you have an arrest warrant of any kind?

9 A. No, sir.

10 Q. And you were looking for who?

11 A. Marcus Wright and his co-defendant, sir.

12 Q. Did you have the name, Marcus Wright?

13 A. Yes sir. Sergeant Troxell had a driver's license
14 picture, sir.

15 Q. Of Marcus Wright?

16 A. Yes sir.

17 Q. All right. And you were looking for the two of them
18 -- looking for Marcus Wright?

19 A. Yes sir.

20 Q. Did you have an arrest warrant for Marcus Wright?

21 A. No, sir.

22 Q. Did you have an arrest warrant for Lanard Powell?

23 A. No, sir.

24 Q. And when they came -- when somebody came to the door,
25 you did what?

1 A. Identified ourself as a police officer and he tried to
2 close the door on us, sir.

3 Q. You identified yourself as a police officer?

4 A. Horry County, yes sir.

5 Q. And what then?

6 A. We made an entry, sir, after they tried to close the
7 door on us.

8 Q. And forced your way into the room?

9 A. Yes sir.

10 Q. Without a warrant?

11 A. Yes sir.

12 Q. And what was the basis in your mind for that?

13 A. Looking for Mr. Wright.

14 Q. Looking for Mr. Wright?

15 A. Yes sir.

16 **MR. MARTIN:** That's all I have.

17 **THE COURT:** Redirect?

18 **MS. ELDER:** No, Your Honor.

19 **THE COURT:** All right.

20 You can step down. Thank you.

21 **MS. ELDER:** Your Honor, Detective Johnson.

22 **PAUL JOHNSON,** being first duly sworn,
23 testifies as follows:

24 **THE DEPUTY CLERK:** State your full name and spell your
25 last name.

1 MR. JOHNSON: Paul Johnson, J-O-H-N-S-O-N.

2 DIRECT-EXAMINATION BY MS. ELDER:

3 Q. Officer Johnson, you work with the Horry County Police
4 Department?

5 A. Yes ma'am.

6 Q. And how long have you been there?

7 A. Six and a half years.

8 Q. And where are you assigned?

9 A. The Narcotics and Vice Section.

10 Q. Okay. Are you involved in Special Operations as well?

11 A. Yes ma'am.

12 Q. And in your capacity, were you called to go to a
13 location at the Sleep Inn here in Conway in relationship to
14 the homicide of Jerome Green?

15 A. Yes ma'am.

16 Q. And tell me what -- when you arrived, what did you do?

17 A. I was contacted by my supervisor, Lieutenant Stewart,
18 to go and assist the Violent Crime Section in apprehending
19 Marcus Wright. On that morning, I followed him to the Sleep
20 Inn Motel in Conway. Once I arrived on scene, myself and
21 other detectives that were there set up an outside perimeter
22 covering all exits.

23 Sergeant Troxell and Detective Chatfield went to the
24 front desk. The employees at the front desk confirmed that
25 Marcus Wright was in Room 105. At that time, I positioned

1 myself on the outside window of 105 in case the subjects ran
2 or fled.

3 We communicated then that the front desk called and
4 asked the Defendant to step outside. Once he opened the door
5 and observed the police presence, he tried to close the door,
6 and at that time they took him into custody.

7 Q. Did you arrive shortly after he was taken into
8 custody?

9 A. Yes ma'am. As soon as we -- Tom contacted Joe on the
10 radio and as soon as they said that he was under arrest, that
11 he was in custody, I walked around to the front of the room.

12 Q. All right. And when you walked into the room, did you
13 observe anything?

14 A. Yes ma'am. Before I walked into the room, the door
15 was open. I could see an amount of narcotics sitting on the
16 refrigerator in the room.

17 Q. And then you obtained a search warrant, is that
18 correct?

19 A. Yes ma'am. The room was secured. Everyone left the
20 room, and we got a search warrant for that room.

21 (SEARCH WARRANT IS MARKED AS STATE'S EXHIBIT NUMBER 1
22 FOR IDENTIFICATION ONLY.)

23 Q. If you would look at State's Exhibit 1 for the purpose
24 of this hearing. Is that the search warrant you obtained?

25 A. Yes ma'am.

1 Q. And when you obtained that from the Magistrate, did
2 you provide him -- you signed an affidavit, I believe?

3 A. Yes ma'am, I did.

4 Q. Okay.

5 MS. ELDER: Your Honor, if I could ---

6 THE COURT: All right. Is it in evidence?

7 MS. ELDER: Yes sir. It's been marked.

8 THE COURT: Okay. Thank you.

9 Q. And when you appeared in front of the Magistrate, were
10 you sworn?

11 A. Yes ma'am.

12 Q. And do you also provide him or supplement that in any
13 way that he deems necessary?

14 A. Yes ma'am.

15 Q. Is it a common practice for you to tell -- to go
16 through your affidavit with the Magistrate?

17 A. Yes ma'am.

18 Q. Verbally?

19 A. Yes ma'am.

20 Q. Do you -- do you read the affidavit word for word, or
21 do you tell him what your knowledge of the case is?

22 A. Tell him what our knowledge is of the case.

23 Q. Okay. So it may -- there may be things not in the
24 affidavit that you provided to the Magistrate, is that
25 correct?

IN CAMERA - PAUL JOHNSON - DIRECT BY ELDER
CROSS BY MARTIN

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1 A. Yes ma'am, that would be correct.

2 Q. Would that be consistent with the testimony you
3 provided here today?

4 A. Yes ma'am.

5 MS. ELDER: I don't have any other questions, Your
6 Honor.

7 CROSS-EXAMINATION BY MR. MARTIN:

8 Q. What was Mr. Marcus Wright placed under arrest for at
9 -- when y'all went to the motel and you said he was taken
10 into custody and was placed under arrest, ---

11 A. Yes sir.

12 Q. --- do you know what he was placed under arrest for?

13 A. It would be involving the case of the victim, of the
14 murder.

15 Q. Did you hear them -- anybody say you're under arrest
16 for murder, stand over in the corner, or -- or what I'm
17 trying to get at, was he simply, as Officer Chatfield says,
18 detained at that time until you can get a search warrant for
19 the motel room, do you recall?

20 A. I didn't hear anybody say you're under arrest. When
21 he was actually placed in detention, I was on the outside of
22 the room anyway. I wouldn't have heard that.

23 Q. Okay.

24 A. That wouldn't have been something to put on the radio.

25 Q. I understood you to say earlier he was placed under

1 arrest, but clarification is, as far as you know, he was not
2 placed under arrest? He was just detained?

3 A. Detained, that would be right.

4 Q. Okay.

5 **MR. MARTIN:** Is there a copy of that warrant?

6 **THE COURT:** Yes.

7 Q. The warrant says, Officer, that while the front door
8 was open, the detectives observed in plain view a bag,
9 baggie, says all, but I guess of an off-white substance and
10 baggie of green, leafy substance on the top of the
11 refrigerator. Did you see that or somebody else?

12 A. At the time when the door opened, Detective Chatfield
13 and Detective Cole were standing at the front door. They
14 observed it. Once he was detained, I came around to the room
15 on the inside, and I also observed it before I even went in
16 the room. You could see it in plain view sitting on the
17 refrigerator. I was not the first to see it, but I did see
18 it.

19 Q. But you did see it?

20 A. Yes sir.

21 Q. So if it says that detectives, whether you're a
22 detective or not, you did observe it?

23 A. Yes sir.

24 Q. Okay. Did you go back and execute the search warrant?

25 A. I did.

IN CAMERA - PAUL JOHNSON - CROSS BY MARTIN
REDIRECT BY ELDER

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1 Q. All right. And you took whatever there was in
2 possession?

3 A. Yes sir.

4 Q. Okay.

5 MR. MARTIN: That's all the questions I have.

6 REDIRECT-EXAMINATION BY MS. ELDER:

7 Q. Do you know how many individuals they took out of the
8 room?

9 A. Two.

10 Q. Do you know who the other individual was?

11 A. Lanard Powell.

12 (ARREST WARRANT/AFFIDAVIT FOR LANARD POWELL IS MARKED AS
13 STATE'S EXHIBIT NUMBER 2 FOR IDENTIFICATION ONLY.)

14 Q. Would you take a look at what's been marked as State's
15 Exhibit 2.

16 A. Yes ma'am.

17 Q. Do you know what that document is?

18 A. It would be an arrest warrant for Lanard Powell for
19 the offense of murder.

20 Q. And can you look at the bottom and tell me when the
21 Judge signed that arrest warrant for Lanard Powell?

22 A. May 1st, 2012.

23 Q. And the search warrant was on May 2nd, is that
24 correct?

25 A. May 2nd, 2012.

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1 Q. Okay.

2 THE COURT: Could I see that?

3 MS. ELDER: I'm sorry, Your Honor.

4 No other questions, Your Honor.

5 THE COURT: All right.

6 Recross?

7 MR. MARTIN: No, sir.

8 THE COURT: You can step down. Thank you.

9 MS. ELDER: That would be the State's showing on the
10 sufficiency of the warrant, Your Honor.

11 THE COURT: All right. Any witnesses for the Defense?

12 MR. MARTIN: No, sir.

13 THE COURT: All right. What's the Defense's position?

14 MR. MARTIN: That is was an improper search that the --
15 under the testimony before the record is that it was a motel
16 room that Marcus Wright was in, related to standing, and that
17 they went there and they told him that was the room he was
18 in, and then that they went without a warrant, search or
19 arrest, got them to the door, forced their way in without a
20 warrant, search or arrest, detained them, no arrest, went and
21 got a warrant to search the room.

22 And it would be the Defense's position that that was
23 not a search incident to an arrest. It was -- because they
24 had no arrest warrant. There's no testimony that they placed
25 anybody under arrest, but simply that they went there

1 looking, found, and the probable cause then that they got was
2 improperly derived in that the search is improper.

3 **THE COURT:** All right. I need the warrant, the search
4 warrant, back and then I'll hear from the State.

5 All right, thank you.

6 All right. Yes ma'am.

7 **MS. ELDER:** Your Honor, I believe that, again, we're
8 looking at the sufficiency. We did not have to prove that
9 the -- everything is correct in leading up to this. All we
10 have to show that is that we have reasonable suspicion that
11 we are likely to find either a suspect or evidence in the
12 room.

13 Your Honor, there was an active ping to that Sleep Inn.
14 That's how they got to that location. They did verify that
15 one of the suspects was, in fact, in that room. They opened
16 the door. They were on the phone at the time. Officer ---

17 **THE COURT:** I hadn't heard any testimony about the
18 phone.

19 **MS. ELDER:** Excuse me?

20 **THE COURT:** I didn't hear any testimony about somebody
21 being on the phone at the time. I heard that the clerk
22 called the room, but I didn't hear anybody testify that
23 somebody was on the phone at the time the door was opened. I
24 didn't hear that testimony if it was ---

25 **MS. ELDER:** I think the tes- -- well, I'm sorry.

1 Detective Chatfield, I believe, testified that they called.
2 As he was talking to the front desk, he was coming out the
3 door.

4 THE COURT: Okay.

5 MS. ELDER: I think that's -- I'm sorry -- that was my
6 recollection of his testimony, Your Honor.

7 THE COURT: Okay.

8 MS. ELDER: That the door was opened, officers were
9 standing there. They did see -- Officer Johnson testified
10 you could plainly see the dope from outside the doorway.

11 The co-defendant in this case, there was, in fact, an
12 active warrant on him. He was in the room as well, Your
13 Honor. I believe that that is sufficient at this point based
14 on the standard for finding -- for suppression at this point,
15 Your Honor.

16 THE COURT: All right.

17 MR. MARTIN: Well, Judge, once again, I think the
18 testimony is a little different from the argument Ms. Elder
19 is making in that it's clear to me that they went there, from
20 the testimony, to talk to the clerk, then went to Room 105.
21 Somebody came to door. They forced their way in.

22 The testimony was they did not have a warrant for either
23 person, either person, and that they just simply detained
24 them, saw drugs then, got a warrant, and I think that under
25 those circumstances, that the entry was illegal and you can't

1 obtain probable cause by a plain viewing of contraband when
2 you are improperly or illegally in a motel room.

3 THE COURT: All right. Help me a little bit. We
4 talked about -- I don't want to be mixing concepts together.
5 You used the words reasonable suspicion, Madam Solicitor. Is
6 reasonable suspicion enough to force your way into someone's
7 room?

8 MS. ELDER: Well, Your Honor, they didn't force their
9 way in, first of all. That ---

10 THE COURT: That's what -- well, I thought that was the
11 word actually.

12 MS. ELDER: They had the door -- Mr. -- Morgan Martin
13 has been using that word.

14 MR. MARTIN: No.

15 MS. ELDER: But he said that he tried to close the door
16 on them.

17 THE COURT: Well, I must have written it down wrong.
18 I've got Defendant tried -- this is from Chatfield.
19 Defendant tried to close the door, quote, forced way into
20 room without warrant looking for Mr. Wright.

21 MS. ELDER: But the door was open, Your Honor. They
22 did not force their way in as ---

23 THE COURT: Well, I don't think they knocked the door
24 down. I think the door was -- no, I don't think that. I
25 understand that. I understand that the door was opened by

1 the occupant. The question comes when they crossed over the
2 threshold, that's the point of concern.

3 MR. MARTIN: Well, Judge, you can play the record back
4 if you want to, but it's crystal clear that what the officer
5 testified to was what you just said. They opened the door,
6 he tried to close the door, they, quote, forced their way in.

7 Now, you can cut that any way you want to, but that's
8 what it is. They don't want them in. They're going in one
9 way or the other, and I'm sure they were. Now, they might
10 have thought they had the right to do that, but it is what it
11 is, and if they'd have had -- my opinion is if they'd have
12 had probable cause to get a search warrant or whatever for
13 that room, they'd have got it before they went there.

14 THE COURT: Or after he opened the door and closed it,
15 they could have contained them in the room and gone to a
16 Magistrate ---

17 MR. MARTIN: Detained them and go get a search warrant.

18 THE COURT: --- and get a search warrant at that point.

19 MR. MARTIN: They can't have it both ways.

20 MS. ELDER: Your Honor, we did have a arrest warrant
21 for ---

22 THE COURT: I got that, yeah. No testimony these
23 officers knew that that was outstanding, though. I mean,
24 we're looking at their actions and their actions were not
25 based on this warrant for Mr. Powell. The warrant -- their

1 entry was based on them believing Mr. Wright was in there.

2 MS. ELDER: Yes sir.

3 THE COURT: No evidence that Mr. Wright -- I don't see
4 anything yet that indicates there was a warrant out on him at
5 that time.

6 MS. ELDER: No, sir. Your Honor, he -- the Magistrate
7 that issued the warrant, I believe the case law indicates
8 that the Magistrate's determination -- I'm sorry, Your Honor.
9 Let me see if I can find that. There isn't -- has to be a
10 finding of probable cause, Your Honor. However, if we look
11 at the totality of the circumstances, oral information, I
12 believe that the courts have said that a Magistrate's
13 issuance of a warrant would not be -- I'm sorry, Your Honor.
14 I'm looking for the language.

15 THE COURT: Well, the affidavit certainly supports the
16 warrant, is while the front door was open the detectives
17 observed in plain view a baggie of white substance and a
18 baggie of -- I mean, if that's the facts, then there is -- it
19 was a plain view -- they op- -- the suspects opened the door,
20 that supports his search warrant, I think, with no question.
21 The actual facts are a little different.

22 MS. ELDER: Your Honor, I think it's -- I don't think
23 they are different. The door was opened. They saw the
24 contraband. Now, the Defendant opened the door himself.
25 Now, officers at that time, even without a warrant, could go

1 into the room. He was a suspect that they have identified on
2 a murder case. For public safety, for -- there's exceptions
3 to going into a -- I believe there's some case law actually
4 on that that says if a person is attempting to locate or put
5 into arrest or apprehend an individual, that individual
6 cannot escape apprehension by merely closing a door.

7 They have identified Marcus Wright as a suspect on a
8 murder, a felony at that, a violent felony. Public safety,
9 they knew he was in that room. That door was opened. They
10 spotted him, and as soon as they spotted him, he tried to
11 close the door. There's no testimony that the door was, in
12 fact, closed. He tried to close the door. They prevented
13 it. They apprehended them. When they did, they saw drugs on
14 -- in plain view. They backed out. They did the right
15 thing, backed out, and got a search warrant.

16 **THE COURT:** All right.

17 One last time, Mr. Martin.

18 **MR. MARTIN:** There was no testimony that they saw
19 Marcus Wright. Somebody came to the door, tried to close the
20 door. They forced the door open. That's when they saw
21 whatever they saw. That's the problem with the search. It
22 doesn't have to do with the warrant. It's got to do with the
23 probable cause that they used to get the warrant, according
24 to the testimony in the record, was obtained after a forced
25 entry.

1 That's the testimony in the record, and that is the
2 problem. You can't use tainted probable cause or improperly
3 gained probable cause to then go back and get a warrant and
4 correct the wrong that has occurred, and that's the testimony
5 in the record, and the record will stand for what it says,
6 but that's the testimony in the record.

7 **THE COURT:** All right.

8 **MR. MARTIN:** And that's the problem here is that it's a
9 search based on improperly gained and/or false information in
10 the warrant.

11 **THE COURT:** All right. Well, I'm going to deny the
12 motion to suppress. Without rearticulating it, I accept
13 verbatim the argument of Ms. Elder. As to the grounds, I
14 find that as she articulated it, the chain of events
15 establish the right for the officers to act as they did,
16 thereafter to get the search warrant, so I'm going to deny
17 the motion to suppress the search warrant for the Sleep Inn,
18 Room 105.

19 **MR. MARTIN:** All right. And I respect-- I understand
20 that, and respectfully I would say that the -- for the
21 record, which I think is there, is that the basis of the
22 testimony and that Ms. Elder's argument to the extent that
23 it's inconsistent with the record is not a proper basis for
24 the Court's ruling.

25 **THE COURT:** Well, I -- where was it not -- where was it

1 lacking?

2 **MR. MARTIN:** Well, she says they didn't force their way
3 in.

4 **THE COURT:** Well, I believe they did force -- force is
5 what the officer said, so to the extent that she did not say
6 the word force, I find they did force their way in, but I
7 find based on articulable, reasonable information that the
8 officers had at the time, that their actions were supported,
9 so I -- when I say I -- there's no question in my mind that
10 the word forced was used.

11 **MR. MARTIN:** I understand, Your Honor. I respectfully
12 just want my position noted for the record.

13 **THE COURT:** Okay.

14 All right. Now, can we go back to the search warrant?
15 I've denied the motion to suppress the drugs from 105, Sleep
16 Inn, Conway, South Carolina, and I find the search was
17 supported by articulable facts, the totality of the
18 circumstances with the warrant being issued by the
19 Magistrate. Again, the affidavit and the warrant, there's no
20 concern about it. It's just the obtaining of the information
21 in the warrant that caused the Court some concern, and I find
22 that the officers acted within the law in obtaining the
23 warrant.

24 Now, going back to this search warrant that we've been
25 dealing with, we've got the standing issue. Yes sir.

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1 **MR. MARTIN:** Judge, we -- Mr. Brown is going to handle
2 this. We intend to call Marcus Wright for the limited
3 purpose in the suppression hearing to establish standing as
4 to the residence on Kate's Bay Highway.

5 **MS. ELDER:** Your Honor, can I approach briefly? Can we
6 approach? I'm sorry.

7 **THE COURT:** Sure.

8 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

9 **MR. MARTIN:** Your Honor, we would call Biff Johnson to
10 the witness stand.

11 **THE COURT:** All right. Please come up and be sworn.

12 **WILLIAM B. JOHNSON,** being first duly sworn,
13 testifies as follows:

14 **THE DEPUTY CLERK:** State your full name and spell your
15 last name.

16 **MR. JOHNSON:** William B. Johnson. Last name is
17 J-O-H-N-S-O-N.

18 **DIRECT-EXAMINATION BY MR. MARTIN:**

19 Q. And, Mr. Johnson, where were you employed in March of
20 2012?

21 A. With the State Probation and Parole here in Conway.

22 Q. And is it your -- part of your job there to monitor
23 those individuals under community supervision?

24 A. That's correct.

25 Q. For the State of South Carolina?

1 A. That's correct.

2 Q. And did you have as one of your individuals Marcus
3 Wright?

4 A. I'm not familiar with that name.

5 Q. Marcus Majheed?

6 A. Yes, he was under my supervision.

7 Q. All right. And that's the same individual that's
8 seated here at the Defense table with me today, is it not?

9 A. That's correct.

10 Q. All right.

11 **THE COURT:** And what was the name, Majheed?

12 **MR. MARTIN:** Marcus Majheed.

13 **THE COURT:** How do you spell that?

14 **MR. MARTIN:** M-A-G-H-E-E-D, I believe.

15 A. I believe it's M-A-J.

16 Q. M-A-J.

17 **THE COURT:** H-E-E-D? Okay.

18 Q. And how long was Marcus under your supervision?

19 A. I'm not really sure. I have since left the
20 Department, so I don't have access to pull those dates up,
21 but I know it was approximately a year or more.

22 Q. All right. And under that today, do you happen to
23 have for your records an address or residence for them?

24 A. I don't have the numerical address, but it was on
25 Kate's Bay Highway.

IN CAMERA - WILLIAM B. JOHNSON - DIRECT BY MARTIN
CROSS BY ELDER

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1 Q. And where would the numerical address be? Obviously
2 it's in the file somewhere?

3 A. Yes sir, and I don't have access to that being I'm no
4 longer employed with them.

5 Q. Had you been out to the house?

6 A. Yes sir. When I supervised him, I was visiting the
7 house several times, quite often.

8 Q. All right. The description of the residence in this
9 search warrant says a tannish, vinyl sided, manufactured home
10 located at 3635 Kate's Bay Road, which is located in the
11 Conway section of Horry County.

12 It has a rock veneer bottom skirt with a white in color
13 front door with the Number 3635 clearly marked. The
14 residence has wooden stairs and a deck leading to the front
15 door, and the property is surrounded by a wooden fence. In
16 the left corner of the rear property of the backyard, there
17 is a ten foot by ten foot tannish, white-trimmed shed.
18 That's the location that you monitored Marcus Majheed or
19 Wright out of, is it not?

20 A. That sounds to be correct.

21 **MR. MARTIN:** That's all the questions that I have.

22 **CROSS-EXAMINATION BY MS. ELDER:**

23 Q. You don't have any records with you?

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

25 Q. So you don't know if that was -- you had him at 3643

1 Kate's Bay Road or 3635 Kate's Bay Road, do you?

2 A. Not at this time I do not. The description of the
3 home is where I ---

4 Q. And you don't know when you had him under supervision?

5 A. At this time I do not.

6 Q. You indicated you had him about a year, is that
7 correct?

8 A. That or more, yes ma'am.

9 Q. Okay. And when did you leave the Department?

10 A. Friday.

11 Q. Okay. And when did he go off of supervision?

12 A. I honestly can't answer that because I can't recall
13 the date. I know it's probably been six months or so, or
14 more.

15 Q. And Kate's Bay Road, there's several mobile homes out
16 on Kate's Bay Road, isn't there?

17 A. I would imagine so.

18 MS. ELDER: No other questions, Your Honor.

19 REDIRECT-EXAMINATION BY MR. MARTIN:

20 Q. The description that I read out for the mobile home,
21 that is, in fact, the location that you monitored Marcus
22 Wright out of, isn't it?

23 A. To my recollection, yes sir. That's what I'm familiar
24 with. I remember the wooden fence, and when you spoke about
25 the wooden fence, that was the big part.

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1 Q. All right. And just so we are clear, I mean, that is
2 it, right?

3 A. Without looking at the number and what not, the
4 description sounds very familiar up to where I was.

5 Q. The description not only sounds familiar, it is a
6 description of the place that you went to visit your client,
7 Marcus Wright, wouldn't you agree with that?

8 A. I would say probably so, yes sir.

9 Q. Yes sir.

10 MR. MARTIN: Okay. That's all the questions I have.

11 MS. ELDER: No questions.

12 THE COURT: Okay.

13 You can step down and you can be excused. We appreciate
14 your time. Thank you. Good luck in your new endeavor.

15 All right. Call your next witness.

16 (LOAN PAYMENT BOOK IS MARKED AS DEFENDANT'S EXHIBIT
17 NUMBER 3 FOR IDENTIFICATION ONLY.)

18 (CHASE HEALTH ADVANCE LETTER IS MARKED AS DEFENDANT'S
19 EXHIBIT NUMBER 4 FOR IDENTIFICATION ONLY.)

20 MR. MARTIN: Your Honor, we would enter into the record
21 two items which are marked as Defense Exhibits 3 and 4, which
22 are Chase Health Advance, a policy letter, and a loan coupon
23 book that are under the name of Marcus D. Wright with the
24 address of 3635 Kate's Bay Highway, Conway, South Carolina.

25 THE COURT: What does the State have to say about

1 those?

2 MS. ELDER: Your Honor, I can't verify the legitimacy
3 of those documents, so ---

4 THE COURT: All right. I can't -- I mean, I can't let
5 them come into evidence without some support.

6 MR. MARTIN: Well, ---

7 THE COURT: So if they're offered into evidence and the
8 State objects, it -- does the State object?

9 MS. ELDER: Yes sir, Your Honor.

10 THE COURT: You just said you couldn't consent. The
11 objection is sustained. You've got to have some predicate to
12 get those in, somebody, a custodian of records or somebody
13 other than just the counsel.

14 MR. MARTIN: Okay. One second, Your Honor.

15 MR. BROWN: Your Honor, may we approach?

16 THE COURT: Yes sir.

17 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

18 MR. MARTIN: That would be our showing, Your Honor.

19 THE COURT: All right.

20 Does the State have any witnesses on this issue?

21 MS. ELDER: Yes sir.

22 THE COURT: Okay. Call your first witness.

23 MS. ELDER: Your Honor, we would call Jim Chatfield,
24 Officer Chatfield.

25 THE COURT: Mr. Chatfield, you are still under oath for

1 the purposes of this trial, so we won't go through that
2 again.

3 **JAMES MARK CHATFIELD**, being previously duly
4 sworn, testifies as follows:

5 **DIRECT-EXAMINATION BY MS. ELDER:**

6 Q. Officer Chatfield, you interviewed Marcus Wright after
7 his arrest on May 2nd, is that correct?

8 A. Yes ma'am.

9 Q. And did you ask him where he lived?

10 A. Yes ma'am.

11 Q. What address did he provide?

12 A. He provided me an address in Columbia, South Carolina.

13 Q. And have you had a chance to look up his interview?

14 A. Yes ma'am.

15 Q. We had it transcribed, and in the interview he
16 indicated 2429 Sea Gull Lane in Columbia. Do you recall
17 that?

18 A. I remember the area in Columbia. I don't remember Sea
19 Gull, but yes ma'am.

20 Q. And I believe you also asked him where Jacinda lived,
21 is that correct?

22 A. That's correct.

23 Q. And do you recall what he said?

24 A. It was somewhere in Columbia.

25 Q. If you can take a look at that, I believe on Page 4 of

1 that transcription.

2 A. Okay. I said where does Miss Jacinda live? She stay
3 with her aunt. And where is that address? And he said um, I
4 don't know the area too much. I said okay. And he said to
5 be honest, I don't know the area too much. I just know
6 landmarks.

7 Q. Now, as a law enforcement officer, you can run DMV
8 records, is that correct?

9 A. That's correct, ma'am.

10 (DRIVER'S RECORD OF MARCUS WRIGHT IS MARKED AS STATE'S
11 EXHIBIT NUMBER 3 FOR IDENTIFICATION ONLY.)

12 (TITLE HISTORY IS MARKED AS STATE'S EXHIBIT NUMBER 4 FOR
13 IDENTIFICATION ONLY.)

14 Q. I want you to take a look at what's been marked as
15 State's Exhibit 3 for this hearing. Do you know what that
16 document is?

17 A. Yes ma'am, Mr. Wright's driver's record.

18 Q. And has that got an address on it?

19 A. Yes ma'am, it does.

20 Q. What's that address?

21 A. 3643 Kate's Bay Highway, Conway.

22 MS. ELDER: Your Honor, this has been marked as State's
23 Exhibit 3.

24 Q. Now, do you also have access to run title histories
25 for titled vehicles as a detective?

1 A. Yes ma'am.

2 Q. Could you take a look at what's been marked as State's
3 Exhibit 4.

4 A. It's a title history where it says Marcus Dwain Wright
5 at 3643 Kate's Bay Highway, Conway.

6 Q. And that's 3643?

7 A. That's correct.

8 Q. And could you tell me what property that title is for?
9 I believe it's at the top.

10 A. For a 2000 Clay Summers vehicle.

11 Q. Vehicle or mobile home?

12 A. I'm sorry. Mobile home, ma'am.

13 MS. ELDER: Your Honor, that's been marked State's
14 Exhibit 4.

15 THE COURT: Any objection to the three year driver
16 record and the title history?

17 MR. MARTIN: Let me see what he's got right quick,
18 Judge.

19 MS. ELDER: Your Honor, can I approach the clerk while
20 he's looking?

21 THE COURT: Yes.

22 MR. MARTIN: Yes, I would object to those because they
23 are records just like the letters that I had. I don't know
24 that Mr. Chatfield is a records custodian capable of
25 admitting those, and I would object to them.

1 **MS. ELDER:** Your Honor, Mr. Chatfield is law
2 enforcement and has access to that database. It's records
3 kept in the normal course of business, Your Honor. We do not
4 need for the purpose of a probable cause hearing to establish
5 from a recordskeeper, Your Honor.

6 **THE COURT:** Yes, I find these are different. Number
7 one, we actually have a witness testifying to them, which we
8 did not for the documents that were being produced by the
9 Defense. I'm not saying the Defense couldn't have gotten
10 them in. I'm not saying who could have gotten them in for
11 them. I just said nobody was testifying as to their
12 authenticity.

13 Here, we do have the officer testifying that these were
14 obtained through his normal processes as a law enforcement
15 officer, so I see this as an entirely different situation,
16 and I overrule your objection as to State's Exhibit for I.D.
17 3 and 4.

18 **CONTINUING DIRECT-EXAMINATION OF JAMES MARK CHATFIELD BY MS.**
19 **ELDER:**

20 Q. One more thing. On State's Exhibit 3, Detective
21 Chatfield, does it have a date that y'all run those?

22 A. Yes ma'am.

23 Q. And what date on there did you run that -- certify
24 that driving record?

25 A. This was ran by Detective Cox on May 2nd, 2012, at

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CROSS BY MARTIN

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1 9:05 A.M.

2 MS. ELDER: No further questions, Your Honor.

3 THE COURT: Cross.

4 CROSS-EXAMINATION BY MR. MARTIN:

5 Q. Now, you aren't saying, Officer Chatfield, that with
6 his driver's license information there that he didn't reside
7 at 3635 Kate's Bay Highway, are you?

8 A. No, Your Honor -- or no, sir.

9 Q. So you're as well aware, as I am, that many times
10 people get a driver's license one place and move to another
11 and they don't immediately go back and change their driver's
12 license, for example, do they?

13 A. Yes sir.

14 Q. And during this investigation that you've been
15 involved in, this mobile home that was described in the
16 search warrant at 3635 Kate's Bay Highway, with the big
17 wooden fence around it, you're familiar with that wooden
18 fence, aren't you?

19 A. Yes sir.

20 Q. That has been known to you as an investigator in this
21 case as the residence of Marcus Wright, hasn't it?

22 A. I would -- it would be hard to answer that. I would
23 say it was known to me as a residence that he's visited.

24 Q. Now, you're under oath, Jim?

25 A. Yes sir.

1 Q. Now, let's talk about this. When y'all talked about
2 the house that Marcus Wright lived in or you went looking for
3 him, that's the residence and the location with the big
4 wooden fence around it, isn't it?

5 A. Yes sir. The date of the search warrant, I was sent
6 out there, but I don't -- Mr. Martin, I don't know if he
7 lived there, or Columbia. I ---

8 Q. I'm not saying you know. I'm just saying for law
9 enforcement purposes, if they sent you out to look for Marcus
10 Wright before this trial started last week, that's where you
11 would have gone, was to 3635 Kate's Bay Highway, to that
12 mobile home with the big wooden fence around it?

13 A. Wherever I was sent, sir, I would go.

14 Q. So that -- if they told you to look for the best place
15 where you think you can find him, that's where you would
16 start, isn't it?

17 A. Kate's Bay is a long road, sir. I ---

18 Q. 3635, there's a big wooden fence around it. You can't
19 miss it.

20 A. If the address ---

21 Q. How many times have you been out there? Have you been
22 out there since the -- how many times you been out there
23 since this case started?

24 A. Maybe twice.

25 Q. All right. And do you know that Mr. Wright has been

IN CAMERA - JAMES MARK CHATFIELD - CROSS BY MARTIN
HEATHER LEWIS - DIRECT BY ELDER

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1 under electronic monitoring and supervised release from the
2 Horry County Sheriff's Office to that address, don't you?

3 **MS. ELDER:** Objection, Your Honor.

4 **THE COURT:** If he knows, I'll let him testify to it, if
5 he knows.

6 A. I wasn't aware, Mr. Martin.

7 **MR. MARTIN:** That's all the questions I have, Mr.
8 Chatfield.

9 **MS. ELDER:** I'd ask that -- we don't have any other
10 questions for Mr. Chatfield.

11 **THE COURT:** All right.

12 You can step down. Thank you.

13 Any other witnesses?

14 **MS. ELDER:** Yes, Your Honor, one more.

15 **THE COURT:** Okay.

16 **MS. ELDER:** Heather Lewis from the Clerk of Court's
17 Office.

18 **HEATHER LEWIS,** being first duly sworn,
19 testifies as follows:

20 **DIRECT-EXAMINATION BY MS. ELDER:**

21 Q. Ms. Lewis, you work in the Clerk of Court's Office, is
22 that correct?

23 A. I do.

24 Q. And you work in the Criminal Section?

25 A. Yes ma'am.

1 Q. And part of some of your duties, do you take bond
2 paperwork from defendants out on bond?

3 A. We do.

4 Q. And do you file that in the Clerk's Office?

5 A. Yes ma'am.

6 Q. And are they obligated to keep a correct address on
7 file as a condition of their bond?

8 A. Yes ma'am.

9 (BAIL FORM II FOR MARCUS WRIGHT IS MARKED AS STATE'S
10 EXHIBIT NUMBER 5 FOR IDENTIFICATION ONLY.)

11 Q. Okay. And If you will take a look at what has been
12 marked as State's Exhibit 5. Is that one of those documents?

13 A. Yes ma'am.

14 Q. Okay. And is it clocked in with the Clerk of Court's
15 Office?

16 A. It is.

17 Q. And could you tell me the address that the Defendant
18 signed as his address?

19 A. It's 3643 Kate's Bay Highway, Conway, South Carolina
20 29527.

21 Q. Thank you.

22 MS. ELDER: Your Honor, at this time will be State's
23 Exhibit 5.

24 THE COURT: Any objection?

25 MR. MARTIN: No.

1 MS. ELDER: Your Honor, I have no further questions for
2 Ms. Lewis.

3 THE COURT: All right.

4 MR. MARTIN: No questions.

5 THE COURT: All right.

6 You can step down, but you can't be excused.
7 Anything else?

8 MS. ELDER: No, Your Honor.

9 THE COURT: All right. Let's have some brief arguments
10 on the standing issue, from the Defense first since it's
11 their motion -- well, no, from the State. This is the
12 State's -- it's kind of an awkward position.

13 This is the State's defense to the motion in a way.
14 That's not technically correct because the burden is on the
15 Defense to establish standing. Well, I'd better hear from
16 the Defense first then. Go ahead and tell me ...

17 MR. MARTIN: Your Honor, I think that it is clear from
18 the testimony of Agent Biff Johnson that at the time this
19 search warrant was issued and that the residence of this
20 Defendant was at 3635 Kate's Bay Highway.

21 He testified that he had him under supervision, that he
22 couldn't remember at that time, and he hadn't had time to get
23 access to his records the exact number, but it was on Kate's
24 Bay Highway, and when he was read the description of a unique
25 location that he had visited on multiple occasions to check

1 in on his client, Marcus Wright, that it was the one and the
2 same and the only address there at 3635 Kate's Bay Highway,
3 with a specific description, him remembering the big, wooden,
4 tall fence around that premises.

5 Now, what's happening is, Judge, the State knows that at
6 least since May 2nd that the residence of Marcus Wright has
7 been at 3635 Kate's Bay Highway, ---

8 **THE COURT:** Which -- which really doesn't matter.

9 **MR. MARTIN:** Well, it doesn't, but it does matter to
10 the extent that they attempt to introduce evidence to you
11 contrary to that position when that is where he has lived,
12 where they know that's where he has lived, where ---

13 **THE COURT:** But this really isn't contrary to that
14 position.

15 **MR. MARTIN:** Well, what it -- well, I've got a feeling
16 she's going to say when she argues, Judge, there are -- there
17 is a driver's license and bond paperwork that's got 3643,
18 which is his wife's aunt's address next door.

19 And so, therefore, maybe he didn't live at 3635 and thus
20 he has no standing, but you and I both know that under the
21 Constitution, what we are dealing with is not the address on
22 your driver's license. It's not the address on your bond
23 paperwork. It is the place, the shelter, the roof that you
24 have an expectation of privacy in.

25 Now, the best evidence of that in this record is the

1 testimony of Biff Johnson. It's not a question of maybe his
2 driver's license is some evidence of that, but it is
3 certainly trumped in this instance by the testimony of Mr.
4 Johnson, and it's a fact, it's not anything we're trying to
5 pull over on you, that that's where the man lived, and the
6 best evidence in the record is that of Mr. Johnson.

7 His testimony, I think, makes it abundantly clear that
8 that's the residence. I read the warrant description of the
9 place, and he said that's it. I recall the big, high fence.
10 Without seeing the number, most probably, yes, that's it.

11 Now, I don't know how you get any stronger than that.
12 What they're going to be arguing to you is nuance, and I know
13 that ---

14 **THE COURT:** Well, I don't know, and I hate to keep
15 interrupting, but I don't think it's nuance to say that he
16 signed a bond paper with an address on it, and that he gave
17 in an interview a different address. That's not nuance.
18 That's pretty hard -- pretty hard -- hard, cold ---

19 **MR. MARTIN:** Well, the interview is a different thing.
20 The interview is a different thing, Judge, I'd say to you,
21 but I think the bond paperwork is because I think they know,
22 and the courts know, though we don't always want it to be
23 that way, that it's not unusual at all that they get a
24 different address on a warrant, or bond paperwork, or
25 something for the court system because of this driver's

1 license business.

2 And nobody goes to the trouble usually to correct that
3 in the system that we operate in, in the system that we
4 operate in, and, you know, I'm not say- -- maybe nuance isn't
5 the right word, but it's not as nearly as material as the
6 fact of the probation agent who actually went out to visit in
7 the home on multiple occasions at the address.

8 **THE COURT:** When he signed something -- your client
9 signed something on June 6th of last year, and right -- left
10 of his name is 3643 Kate's Bay Highway, that wasn't anything
11 that they kind of slid in there. That's pretty open and
12 obvious.

13 **MR. MARTIN:** And again -- I again, Judge, think that if
14 you want to get down to -- when was that, June 6th of last
15 year?

16 **THE COURT:** Yeah. Yeah, it was.

17 **MR. MARTIN:** And to the extent that you want to get
18 technical, how about when this event occurred, but I hear
19 what you're saying ---

20 **THE COURT:** Well, I hate to keep -- and I know we kind
21 of sound like we're splitting hairs, but this is obviously
22 very, very important, but we've got this address in June, and
23 the last contact from the probation officer testified, his
24 last contact was sometime in March. He didn't give a date,
25 but take that to the end of March, ---

1 MR. MARTIN: Right.

2 THE COURT: --- and you've got all the way through
3 April, you've got another whole month, and a couple of days
4 before the interview, so ---

5 MR. MARTIN: Well, but in March -- I guess what I'm
6 saying, I believe that the officer's testimony -- the agent
7 -- agent's testimony surrounds the dates in question, and I
8 go back and say again, I understand the items that have been
9 introduced, but I don't think they trump the testimony of the
10 agent that has to have him under supervision.

11 And if he didn't have him under supervision at an
12 address that he visited, would issue a warrant for him, and
13 that he visited him on multiple occasions at that
14 residence, and that he specifically remembers the residence
15 and the big wooden fence around it, which is a fact that
16 has been -- these officers are very familiar with, as
17 Chatfield says, and, you know, Officer Chatfield was as
18 squirmy as a good officer could be, but he knows that's the
19 place that they have all considered to be the address of
20 Marcus Wright.

21 And I believe for the record, Judge, as we say that the
22 testimony in the record from the agent, as well as other
23 evidence in this case, the fact that that's where the search
24 took place, would indicate that that's the residence of Mr.
25 Wright.

1 **THE COURT:** All right.

2 State?

3 **MS. ELDER:** Your Honor, first, probation didn't know
4 the address, even though Mr. Martin tried, and tried, and
5 tried to put words in his mouth to make him effectively say
6 that, in fact, is the address, he never would. He said it
7 kind of sounds like it. I don't know the number.

8 Your Honor, I have produced a title document that shows
9 a mobile home on 3643 Kate's Bay Road, which is title into
10 Mr. Wright's name. Also, the probation officer only
11 indicated that he may have met with him at this mobile home,
12 some mobile home on Kate's Bay Road. He never did say that's
13 where he was residing.

14 Again, Your Honor, Mr. Wright in his interview on May
15 2nd says I live in Columbia. He then said he doesn't know
16 where his wife lives. I don't know the area. She lives with
17 her aunt. I don't know where she lives. He said that. We
18 didn't make that up. We read it in the record. There's
19 testimony. That comes out of his own mouth on May the 2nd,
20 the date that that entry was made into that house.

21 In addition, we have the driver's license, Your Honor,
22 that was run the day on May -- I believe it was May 2nd,
23 showing 3643 Kate's Bay Road. He has his bond paperwork.
24 There's just nothing, nothing that -- that he lives at 3635
25 Kate's Bay Road, nothing at all, and I'm sure that Mr. Martin

1 didn't mean to insinuate that the State was trying to
2 purposely mislead the Court in saying that we knew he lived
3 at 3635.

4 Your Honor, I base what I know on that bond paperwork.
5 He's under an obligation to provide me with the correct
6 address under his bond. That is the address he provided. I
7 have, in fact, made motions to revoke bond based on a
8 defendant providing improper information on a bond when I
9 later find out about it.

10 Your Honor, I believe that Mr. Wright has not met his
11 burden of providing that he has sufficient standing to argue
12 that the warrant at 3635 Kate's Bay Road should be
13 suppressed.

14 **THE COURT:** All right. I'm ready to rule.

15 I find that Mr. Wright has not carried his burden of
16 proof and proved that he had standing, that is any right of
17 expectation of privacy in the 3635, was that it, 3635 Kate's
18 Bay Road. This is based on primarily the most significant
19 evidence in spite of the probation officer's testimony, and
20 he really didn't give us an address, but the Defendant
21 himself has indicated two different addresses within that
22 time frame or at least one within the time frame of the
23 search, that being a Columbia address, and on his bond paper
24 of June 7th, he indicated the 3643 Kate's Bay Highway as his
25 address.

1 Although they are somewhat old, there's a consistency
2 there because on the title history, which emanates, as best I
3 can tell from 2009, February 25, 2009, which has been three
4 -- a little over three years before the incident in question.

5 He indicated that that is where he and Jacinda Pack
6 Wright lived, or at least that's where the mobile home was
7 going to be located, and on his driver's record, which
8 apparently his driver's license expired in 2002, he does have
9 two suspensions, an accident and a driving under suspension
10 after that time, all the way up through 2003, but as of that
11 date, that date being the last entry date, not looking at the
12 date this was sent to law enforcement.

13 The important date for me is the last date of any
14 activity, which looks like August 2nd, 2003, but still there
15 is a consistency to an address of 3643 Kate's Bay Highway as
16 opposed to 3635 Kate's Bay Highway, so I find that Mr. Wright
17 lacks standing to attack the warrant at issue, that issued by
18 a Magistrate Judge on May 2nd, 2012, for the 3635 Kate's Bay
19 Road.

20 In addition, even if he had standing, I would suppress
21 the motion because I find that even though the affidavit may
22 be -- and I use this sort of as a -- well, I don't want to be
23 too harsh on law enforcement, but the affidavit does appear
24 to be a little, what I would call, salted. It's got some
25 information that I don't find the record truly supports, but

1 I do find that it has at least -- that the affidavit has at
2 least enough verifiable information to support the warrant.

3 I did look at my notes and it indicated that there was
4 oral testi- -- oh, it said -- I put my words, a oral
5 supplement, by Officer Weaver to the Magistrate dealing with
6 this ping in the area, this Kate's Bay address where the
7 ping in the area or in the area in which the ping
8 emanated was confirmed by an officer named Buchanan as having
9 seen the vehicles at issue or of concern at that address, and
10 it was confirmed by the detective, and I don't remember his
11 name, who actually went to the scene and met someone who was
12 testified to be his wife, his being Mr. Wright, at that
13 address.

14 I can't remember whether it was actually the day of the
15 incident, but it was at least within the time period of the
16 day or the day before, so I deny the motions to suppress, the
17 motion to suppress the search warrant of May 2nd, 2012, for
18 the Kate's Bay, 3635 address.

19 All right. Any other motions?

20 MS. ELDER: Your Honor, I just want to be clear. There
21 was a search warrant on a red Camaro at the Sleep Inn. My
22 understanding is they accept the legitimacy of that warrant
23 and the evidence obtained from that Camaro.

24 MR. MARTIN: That's correct.

25 MS. ELDER: There was also a search warrant by

1 Detective Cox for a black BMW. It's my understanding that
2 they have agreed the legitimacy of that search warrant and
3 the evidence obtained therefrom.

4 MR. MARTIN: That is correct.

5 THE COURT: All right. Well, let's take a break and
6 then when we come back, I will make a few remarks and ---

7 MS. ELDER: We have a Denno hearing, Your Honor, that
8 shouldn't take long.

9 THE COURT: All right. Well, let's take a break.
10 We've been at it for a while and then we'll do the Denno
11 hearing and should be able to go straight into bringing in
12 the jury, but I want my friends to be comfortable.

13 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
14 PRESENCE OF THE JURY.)

15 THE COURT: All right. Now we're down to the Jackson
16 V. Denno matter?

17 MS. ELDER: Yes sir.

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

19 MS. ELDER: Your Honor, the State would call David
20 Weaver.

21 DAVID WEAVER, being first duly sworn, testifies as
22 follows:

23 THE DEPUTY CLERK: State your full name and spell your
24 last name.

25 MR. WEAVER: David Carr Weaver, W-E-A-V-E-R.

1 DIRECT-EXAMINATION BY MS. ELDER:

2 Q. Detective Weaver, we've already heard from you before.
3 You worked with Horry County at one time, is that correct?

4 A. Yes ma'am.

5 Q. And on May 2nd, 2012, you were involved in an
6 investigation involving the Defendant, Marcus Wright, is that
7 correct?

8 A. Yes ma'am.

9 Q. And at that time did you have an opportunity to be
10 involved in an interview with Mr. Wright?

11 A. Yes ma'am.

12 Q. And pursuant to that, you were present -- do you
13 recall who you were interviewing Mr. Wright with?

14 A. Detective Chatfield.

15 Q. And as a course, do you advise defendants of their
16 Miranda rights?

17 A. Yes ma'am.

18 Q. And do you provide a form based on those Miranda
19 rights?

20 A. That's correct.

21 (ADVISEMENT OF RIGHTS FORM IS MARKED AS STATE'S EXHIBIT
22 NUMBER 6 FOR IDENTIFICATION ONLY.)

23 Q. Would you take a look at what's been marked as State's
24 6 for the purpose of the pre-trial hearing.

25 A. Yes ma'am.

1 Q. Is that a copy of the Miranda that was provided to
2 Marcus Wright during that interview?

3 A. Yes, it is.

4 Q. And does contain his signature?

5 A. His initials and his signature, yes ma'am.

6 Q. Okay. And does it have a question on there if you
7 wish to talk at this time?

8 A. Yes. It is checked yes, he wished to talk.

9 MS. ELDER: Your Honor, I'd like to introduce Item 6.

10 THE COURT: Any objection?

11 MR. MARTIN: None.

12 THE COURT: In without objection.

13 (ADVISEMENT OF RIGHTS FORM INTRODUCED INTO EVIDENCE AS
14 STATE'S EXHIBIT NUMBER 6.)

15 Q. Now, were you present during the full course of the
16 interview?

17 A. Yes ma'am.

18 Q. And was it audio-taped as well?

19 A. Both, yes.

20 Q. And during the course of the interview, where did you
21 interview Mr. Wright at?

22 A. At the Horry County Police Department.

23 Q. And had he been placed in custody at that time?

24 A. Yes ma'am.

25 Q. How many people were present during the interview?

1 A. Just myself and Detective Chatfield.

2 Q. Did you have -- were you -- were you armed at the
3 time? Did you have your weapon with you?

4 A. Yes ma'am, I did.

5 Q. Did you have it drawn?

6 A. No ma'am.

7 Q. Were you in uniform or were you in plain clothes?

8 A. Plain clothes.

9 Q. And I assume you didn't pull out your weapon and
10 threaten Mr. Wright during the interview?

11 A. No ma'am.

12 Q. Did anybody in your presence do that?

13 A. No ma'am.

14 Q. Did anybody in your presence coerce him, or require
15 him, or force him in any way to give a statement to you?

16 A. No ma'am.

17 Q. And I believe you've listened -- have you listened to
18 Mr. Wright's statement?

19 A. Yes ma'am.

20 Q. And I believe several times in his statement he
21 acknowledges his right to have an attorney and desiring to go
22 forward and talk to y'all anyway?

23 A. That's correct.

24 Q. Do you recall how long the interview lasts?

25 A. I do not. I don't know the duration.

IN CAMERA - DAVID CARR WEAVER - DIRECT BY ELDER
JAMES MARK CHATFIELD - DIRECT BY ELDER

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1 Q. Would thirty or forty minutes be appropriate?

2 A. That sounds fair.

3 Q. And was Mr. Wright provided for water or things like
4 that?

5 A. Yes ma'am, he was.

6 MS. ELDER: Your Honor, I don't have any other
7 questions.

8 THE COURT: All right.

9 MR. MARTIN: No questions, Judge.

10 THE COURT: All right.

11 You can step down. Thank you.

12 MS. ELDER: Your Honor, I would call Detective
13 Chatfield.

14 THE COURT: All right.

15 You are still under oath, of course.

16 MR. CHATFIELD: Yes, Your Honor.

17 JAMES MARK CHATFIELD, being previously duly sworn,
18 testifies as follows:

19 DIRECT-EXAMINATION BY MS. ELDER:

20 Q. Detective Chatfield, were you involved in an interview
21 on May 2nd, 2012, with Marcus Wright?

22 A. Yes ma'am.

23 Q. And do you recall who was present during that
24 interview?

25 A. Yes ma'am, myself, Marcus Wright, and Detective David

1 Weaver.

2 Q. And as a -- prior to the initiation of any type of
3 interviewing, do you provide the defendant an advisement of
4 Miranda rights?

5 A. Yes ma'am.

6 Q. And is that recorded on audio?

7 A. Yes ma'am, we recorded it.

8 Q. If you will take a look at what's been marked State's
9 Exhibit 6, is that a copy of the Miranda rights provided to
10 the Defendant?

11 A. That's correct.

12 Q. He indicated a desire to waive his Miranda and proceed
13 with giving you a statement at that time?

14 A. That's correct.

15 Q. And did he, in fact, give a statement regarding the
16 incident that we're talking about?

17 A. Yes ma'am.

18 Q. While in your presence, did anybody force, coerce,
19 require him, hold a gun to his head, anything like that to
20 provide a statement?

21 A. No ma'am.

22 Q. And was he provided an opportunity for water, or
23 drinks, things like that?

24 A. Yes ma'am.

25 Q. All right. While you were present, did anybody

IN CAMERA - JAMES MARK CHATFIELD - DIRECT BY ELDER
JURY OUT/ON RECORD

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1 mistreat him in any way?

2 A. No ma'am.

3 MS. ELDER: Your Honor, I don't have any other
4 questions.

5 THE COURT: All right.

6 MR. MARTIN: No questions.

7 THE COURT: All right.

8 You can step down. Thank you.

9 MS. ELDER: Your Honor, that would be the showing that
10 it was voluntarily and freely given by Miranda warning.

11 THE COURT: All right.

12 Any witnesses on behalf of the Defense?

13 MR. MARTIN: No, Your Honor.

14 THE COURT: Okay.

15 I find that the State may introduce the statement. I
16 find that the statement was made by Mr. Wright freely,
17 voluntarily, knowingly, and intelligently after he had been
18 advised of his rights. I find that this is true, and I make
19 this finding based on a preponderance of the evidence again
20 that he voluntarily, knowingly, and intelligently, after
21 being properly advised of his rights under the Fifth and
22 Sixth Amendment and the rights as required by Miranda and its
23 progeny, that he had the right to remain silent, that
24 anything he could say would be used against him in a court of
25 law, that he had the right to talk with an attorney, a

1 lawyer, and have him present with him while he was being
2 questioned, that if he could not hire a lawyer, one would be
3 appointed to represent him before any questions if he
4 desired, and that he could make a statement or answer any
5 questions and had the right to stop at any time, and he
6 initialed yes under the statement, quote, do you understand
7 your rights as I have read them to you, question mark, end
8 quote.

9 I find there is no evidence of any threat, coercion,
10 mistreatment, no -- and I make these findings by a
11 preponderance of the evidence. Of course, the jury will have
12 a right to review the voluntariness of the statement also,
13 and, of course, they will apply the beyond a reasonable doubt
14 standard.

15 So I find that after being properly mirandized, the
16 Defendant, Mr. Wright, freely, voluntarily, knowingly, and
17 intelligently waived those rights and that the State can
18 introduce the statement.

19 Now, anything else before we get the jury in?

20 MS. ELDER: Yes sir, Your Honor. We've got, I believe,
21 -- we have not agreed on two prior records for impeachment
22 purposes of what could be used and what could not be used,
23 and instead of having the jury come out, we would go ahead
24 and take care of that.

25 THE COURT: Sure.

1 **MS. ELDER:** One of them is Roy Sinclair, Your Honor. I
2 have provided the NCIC, as required by the Court, to the
3 Defense. Our position is I believe they are trying to seek
4 to introduce a 1985 conviction for housebreaking. We do not
5 think that is appropriate. It is clearly beyond the ten year
6 period. In addition, Your Honor, it is not a -- we do not
7 believe that housebreaking is a crime of dishonesty.

8 **THE COURT:** All right.
9 Mr. Martin.

10 **MR. MARTIN:** Judge, I believe housebreaking -- is that
11 housebreaking and larceny or just housebreaking?

12 **MS. ELDER:** It's housebreaking and larceny, Your Honor.
13 We would -- we would agree that larceny is appropriate, but
14 housebreaking would not be.

15 **MR. MARTIN:** Well, I would take the position that both
16 the housebreaking and larceny are crimes of dishonesty in a
17 general reading of the law and, therefore, they should be
18 admissible in order for us to impeach this defendant.

19 **THE COURT:** I'm inclined to philosophically agree with
20 you, but I think there was a case not long ago that burglary,
21 which was not a crime of dishonesty, -- of course, you can
22 commit burglary for matters other than dishonesty. You can
23 commit burglary and you commit housebreaking, which is
24 tantamount to burglary now, for purposes other than larceny,
25 but in this case it was housebreaking and larceny.

1 I will allow you to impeach him on the larceny, but not
2 the housebreaking.

3 MR. MARTIN: And also, Your Honor, there is a question
4 -- Ms. Elder has two or three convictions for criminal
5 domestic violence and escape.

6 MS. ELDER: Your Honor, the State's conviction was in
7 1989.

8 THE COURT: That would not be admissible -- not be --
9 you cannot ask him about the 1989 escape.

10 MR. MARTIN: All right, sir.

11 MS. ELDER: The criminal domestic violence is in --
12 conviction was in 2002.

13 THE COURT: Well, there's several of them ---

14 MS. ELDER: I was going down the row here.

15 THE COURT: Okay.

16 MS. ELDER: There was one in 2002. It's a conviction
17 -- looks like you've got two in 2002. Your Honor, we believe
18 that's out- -- it's not a crime of dishonesty. It's outside
19 the scope of the ten year period.

20 THE COURT: What sort of sentence did he receive? Did
21 the sentence extend into the ten year period? That would be
22 the question.

23 MS. ELDER: Your Honor, the sentence on his NCIC says
24 two years suspended upon probation for one year.

25 MR. MARTIN: It says the start date of that, Judge,

1 10/15/2003. That's criminal domestic violence third, a
2 subsequent offense, convicted two years, revoke ---

3 MS. ELDER: That was his revocation, Your Honor. He
4 got revoked on probation in October of 2003.

5 THE COURT: Well, that would be within ten years. We
6 haven't gotten to October 2013.

7 MS. ELDER: That was not the conviction for CDV. That
8 was a probation revocation.

9 THE COURT: I know, but he was on probation for the
10 CDV, ---

11 MS. ELDER: Yes sir.

12 THE COURT: --- so that it would -- the penalty
13 extended through the time it was revoked, ---

14 MR. MARTIN: Yes.

15 THE COURT: --- so I would say they could use that.

16 MS. ELDER: But that's one count of criminal ---

17 THE COURT: Right.

18 MS. ELDER: --- criminal domestic violence?

19 THE COURT: Right.

20 MR. MARTIN: Third offense.

21 MS. ELDER: Your Honor, ---

22 THE COURT: No, you can't just say third offense, but
23 just say you -- isn't it -- is it not true that you have been
24 convicted of criminal domestic violence at whatever time it
25 was without denominating the number of the offense?

1 **MR. MARTIN:** All right. Very well, Your Honor, so what
2 we're dealing with then is the larceny and one criminal
3 domestic violence?

4 **THE COURT:** Yes.

5 **MS. ELDER:** Your Honor, the next, I believe, one that
6 we had issues on was Lanard Powell. He's a testifying co-
7 defendant. Your Honor, he has a 2001 conviction for
8 possession of a stolen vehicle. We acknowledge that that one
9 is admissible as a sign of dishonesty.

10 He got a -- during that time he had a possession of a
11 weapon at the same time in 2001, at the same time as the
12 possession of stolen vehicle. Your Honor, we would argue
13 that that is not admissible.

14 **THE COURT:** What kind of sentence did he get for the
15 weapon?

16 **MS. ELDER:** Your Honor, he got five years probation,
17 for two years credit for jail time of forty-six days.

18 **THE COURT:** All right.

19 **MR. BROWN:** Your Honor, our position would be that that
20 is relevant for the purpose of impeachment.

21 **THE COURT:** You're going to have to speak up, Mr.
22 Brown. You have a very soft ---

23 **MR. BROWN:** In any event, our position would be that
24 that is -- that is impeachable -- that's an impeachable
25 offense and we should be able to use that to impeach him, and

1 there's another matter that ---

2 **THE COURT:** Let's take care of that one first. And on
3 what basis? It was 2001, which is over ten years. You've
4 got a suspended sentence.

5 **MR. BROWN:** I think there was a revocation on that if
6 I'm not mistaken.

7 **THE COURT:** Well, we can't go on think. We've got to
8 go on know.

9 **MR. BROWN:** The revocation -- it says here ---

10 **MS. ELDER:** Yes, Your Honor. Well, Your Honor, he
11 didn't get revoked for -- he got revoked -- it appears that
12 in 2001 he was convicted of possession of a pistol by a
13 certain person and the possession of a stolen vehicle. In
14 2002, it looks like he was revoked for possession of stolen
15 vehicle, and they have it keyed on his NCIC as possession of
16 a weapon during a violent crime.

17 That -- the 2002 is the revocation, Your Honor. I
18 believe that's the same offense as the 2001 conviction
19 because the sentence on the 2001 actual conviction was five
20 years suspended upon probation. The revocation sentence was
21 five years suspended upon three years probation.

22 **THE COURT:** Say that one again. I don't know how you
23 -- I've never heard of anybody being revoked and given a
24 suspended revocation. You either revoke or you don't.

25 **MS. ELDER:** He received in 2001 -- he was convicted of

1 a weapon's offense that they have listed possession by a
2 certain person, I assume unlawfully to hold a weapon. He was
3 also convicted at the same time of possession with -- of a
4 stolen vehicle over Five Thousand Dollars.

5 On the weapon offense in 2001, he received a five year
6 sentence suspended to probation for two years, with jail time
7 of forty-six days.

8 On the weap- -- on the stolen vehicle ---

9 THE COURT: What was the date of that sentence?

10 MS. ELDER: October of 2001.

11 THE COURT: So he was on probation until October of
12 2003?

13 MS. ELDER: It looks like he was on probation until
14 2002 and they revoked him.

15 THE COURT: All right. I'll allow the use of that
16 also.

17 MS. ELDER: We would like to know how we're going to
18 word this, Your Honor. Are we going to say -- there's one
19 count of possession of stolen vehicle and one count of a
20 weapon. Now, they've got it listed two separate ways.

21 THE COURT: Again, I'm not sure what you're asking.

22 MS. ELDER: How are they going to -- what are they
23 going to ask him he's been convicted of?

24 THE COURT: Those crimes.

25 MS. ELDER: But I need to clarify. These are not two

1 separate offenses. This is the same offense.

2 **THE COURT:** Well, you certainly have a right to, you
3 know, open that door and close it before even they get to
4 cross if it's your witness, of course, which it would be, and
5 if they bring it out and you haven't already covered it, you
6 can certainly -- I think that's in your hands, not the
7 Court's.

8 **MS. ELDER:** Right, but are we agreeing that those --
9 those are one -- there's not two separate convictions?

10 **THE COURT:** No, it's one conviction, two offenses.

11 **MR. BROWN:** I think the sentence might have run
12 concurrent or something like that, but there are two separate
13 -- there are two separate charges.

14 **THE COURT:** Yeah. I think he ---

15 **MS. ELDER:** Right; right. There's one vehicle charge
16 and one gun charge. That's what I'm trying to clarify, Your
17 Honor.

18 **THE COURT:** Well, he can ask him weren't you convicted
19 of these two charges?

20 **MS. ELDER:** Right.

21 **THE COURT:** And then if you're so inclined and you
22 think the jury thinks it was two separate occasions, on
23 cross-examination or direct, if you'd like, you can make sure
24 the jury understands they were only one -- one event.

25 **MS. ELDER:** Okay. And that's it for Mr. Powell, Your

1 Honor.

2 MR. BROWN: Your Honor, I'm -- I'm going to disagree
3 with that. In -- in Mr. Powell's statement to the police
4 authorities, he said he was in prison -- at Turbeville for
5 armed robbery. Now, that's not -- that's not listed on the
6 NC- -- on this report. I don't understand why, but as I
7 understand it, he was at Turbeville and he was there for
8 armed robbery.

9 THE COURT: Well, what does the State have to say about
10 that?

11 MS. ELDER: Your Honor, I can't verify that. It's not
12 on his history. He pled to -- if he did, in fact, plead to a
13 possession of a weapon during the commission of a violent
14 crime, ---

15 THE COURT: Had to have a violent crime ---

16 MS. ELDER: --- and they could dismiss the violent
17 crime, Your Honor, so that doesn't necessarily mean he was
18 convicted.

19 THE COURT: Well, here's what we'll do on that. We'll
20 have an in camera on that issue before it's -- before it's
21 brought before the jury, we'll let the jury go out and we can
22 ask him about that and clarify what he's talking about.

23 MR. BROWN: Yes sir.

24 MS. ELDER: Yes sir.

25 THE COURT: Anything else?

JURY OUT/ON RECORD/JURY IN
JURY SWORN/COURT TO JURY

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1 **MS. ELDER:** I think we're ready to start, Your Honor.

2 Your Honor, I need to just mark some pictures. I didn't
3 have a chance -- if I could have two minutes to mark.

4 **THE COURT:** You may.

5 **MS. ELDER:** Your Honor, can we -- the first witness is
6 in a wheelchair. It takes us a little bit of time. Can we
7 have him in here for opening?

8 **THE COURT:** Sure.

9 **MS. ELDER:** Go ahead and bring Mr. Sinclair in.

10 **(FOUR (4) LARGE PHOTOS MARKED AS STATE'S EXHIBIT NUMBER**
11 **7, 8, 9, AND 10 FOR IDENTIFICATION ONLY.)**

12 **THE COURT:** Ready?

13 **MS. ELDER:** Yes sir.

14 **THE COURT:** All right.

15 Bring in the jury.

16 **(THE FOLLOWING TAKES PLACE AT 11:15 A.M. WITHIN THE**
17 **PRESENCE OF THE JURY.)**

18 **THE COURT:** Now that you're all comfortably seated, I'm
19 going to ask you to stand and the Clerk will administer the
20 oath.

21 **(THE JURORS ARE ADMINISTERED THEIR OATH BY THE DEPUTY**
22 **CLERK OF COURT.)**

23 **THE COURT:** You may be seated.

24 Members of the jury panel, I'm sure when you look at the
25 clock you think I missed that class in kindergarten when they

1 taught you how to tell time. I really didn't. Some of you
2 may have seen when you were coming in this morning, we
3 started at nine o'clock, and we worked until six last night
4 taking care of matters that would make the case go further.
5 That is there are certain issues that the Court has to rule
6 on outside your presence, and rather than chop up the case
7 and get to a certain point and excuse you, we -- I -- I think
8 most judges try to do that up front so once we get started we
9 can roll along.

10 As I told you, I believe yesterday, the Defendant, Mr.
11 Wright, was charged with the charges that I articulated to
12 you yesterday, possession with intent to distribute cocaine
13 base, commonly called crack, trafficking in cocaine, murder,
14 and possession of a weapon during the commission of a violent
15 crime.

16 To these charges, Mr. Wright has pled not guilty. This
17 places on the State the burden of proving his guilt beyond a
18 reasonable doubt. Mr. Wright is presumed, as is anyone
19 charged with any offense in our system, presumed innocent of
20 this charge and need not prove his innocence. The State is
21 required to prove his guilt beyond a reasonable doubt.

22 At this moment the attorneys have the right to come
23 before you, no obligation, but they have the right to come
24 before you and make opening statements. These opening
25 statements are not evidence. That is the attorneys are not

1 witnesses, so they are not giving you testimony, and at this
2 point, they are not arguing their case. That is they're not
3 trying to tell you what your verdict should be. They are
4 simply giving you an outline, or a blueprint, or some
5 lawyers call it a road map of the trial. They'll tell you a
6 little bit more about what this case entails and what they
7 expect to occur during the presentations of the evidence.

8 I have three primary jobs. One is I am the logistics
9 person. I sometimes call it wagonmaster. That is I make
10 sure we take breaks, that one person talks at a time, the
11 mechanical part of the trial.

12 My second job is that I rule on the question of
13 admissibility of evidence. If one side believes certain
14 evidence is admissible for the purposes of your consideration
15 and the other based on some evidentiary or other legal reason
16 believes that evidence is not admissible, it's up to me to
17 make a determination as to whether it's admissible or not,
18 and that determination I make is binding on the witness, the
19 lawyers, in the case.

20 The third job is that I am the sole judge of the law.
21 It is solely up to me to give you the law, and it is up to
22 you, under your oath, to take, accept, and apply the law as I
23 charge it. This is true even if you think I charged the law
24 in error or if you think -- or even if you think the law
25 should be different from that which I tell you it is.

1 I am giving you some legal principles now during the
2 trial and perhaps will give you some at the end of the trial.
3 I will give you a precise -- I mean a comprehensive charge on
4 the law which you are to apply to the facts in this case.

5 Do not infer from anything I say or do at any time
6 during this trial as being any indication of an opinion of
7 mine on the facts. Our law does not allow a trial judge to
8 formulate or express to a jury any opinion on the facts.
9 It's totally up to you as the trial jury to examine the
10 evidence, give to the evidence the effect, the value, the
11 weight, and the truth you believe the evidence should have.

12 In doing this, you may believe one witness as opposed to
13 several, several witnesses as opposed to one. You may
14 believe all, a part, or none of a witness's testimony. As
15 judges of the facts, you must use your everyday common sense,
16 your sense of logic and your sense of reason, and you must
17 analyze the credibility or determine the believability of the
18 witnesses who testify.

19 In addition to those things I've already chatted about,
20 you can, in determining credibility, look at a witness's
21 demeanor, how they act on the stand, are they hesitant,
22 straightforward, is their testimony consistent, inconsistent,
23 do they have any reason to help or hurt one side or the
24 other, that is are they biased or prejudiced for or against a
25 party.

1 And you can consider the opportunity a witness has to
2 actually know those things about which the witness testified.
3 All these things you consider, determine the true facts,
4 apply the law, and you will be in a position to return a
5 verdict which speaks the truth.

6 I'm not going to go over the -- I call the admonitions I
7 gave you yesterday about not making up your mind, not
8 discussing the case, not letting anyone discuss the case, no
9 exposure to news coverage, and no on-line or any other
10 outside the courtroom attempts to gain any information that
11 would remotely deal with this trial, electronic, social
12 media, or otherwise.

13 We try to take breaks about every hour and a half. I
14 find that's a pretty good comfort level, but if any of you at
15 any time need a break, simply raise your right hand and no
16 questions asked, we'll take a break. We would like to move
17 the case along, but we're not in such a hurry that we would
18 not honor someone's need to take a break, so if you need a
19 break, and I extend that to counsel and Mr. Wright, if they
20 need a break, they'll let me know and we'll take a break.

21 You don't need to take notes. Madam Forelady, you will
22 be the liaison between the jury and myself, preside over the
23 jury's deliberation, and ultimately sign, on behalf of the
24 jury, its unanimous verdict.

25 Counsel.

1 MS. ELDER: May it please the Court, Your Honor.

2 THE COURT: Yes ma'am.

3 MS. ELDER: Good morning, finally. My name is Donna
4 Elder, and as I introduced or the Judge introduced me
5 earlier, I work for State of South Carolina, in particular
6 the Solicitor's Office in the Fifteenth Circuit. The
7 Fifteenth Circuit covers Horry and Georgetown County, and my
8 responsibility is to bring to a jury or a court, prosecute
9 those matters, those criminal cases that occur in Horry --
10 Horry County.

11 As the Judge just told you, an opening statement, it is
12 kind of like my opportunity to give you a preview, and I know
13 that nobody likes to sit through a lot of previews, so I'm
14 going to try to be brief. I'll get another chance to talk
15 with you at the end of the trial after the testimony in what
16 we call closing, and I'll talk to you a little bit more about
17 what we have the Defendant charged with at that time, but
18 right now I just want to take you through real quick a
19 preview of what we're going to put on the stand to show our
20 case.

21 Marcus Wright is a businessman. His business is drugs.
22 He had an individual working for him named Lanard Powell, and
23 they -- Mr. Wright put Lanard Powell up in a house that
24 belonged to a gentleman named Roy Sinclair. He put him in
25 this house for the purpose of selling his dope in the

1 Socastee area.

2 And on April 30th, 2012, Marcus Wright was in the house
3 of Roy Sinclair, along with Lanard Powell and some other
4 individuals that you're going to hear from, and he was there
5 checking on his business. He was there, had his gun, and he
6 had his gun out while he was sitting in the house, had it
7 laid up on the kitchen table beside him.

8 The front door was locked, couldn't come in, had to
9 knock on the door, so why would somebody have their gun out
10 and you have to knock on the door to get in? Like I said,
11 it's where he's conducting his business. The doors are
12 locked, guns are out in case something happens.

13 There were several individuals that went in and out of
14 Roy Sinclair's house that day for various reasons, and they
15 are going to come in here and they're going to tell you, and
16 they're going to be honest and say, yep, I was drinking,
17 yeah, we were doing a little bit of drugs in there, sure
18 were, but later that evening, approximately eleven-thirty to
19 eleven forty-five, a gentleman walked in, knocked on the
20 door. His name is Jerome Green.

21 Now, I would probably, and most witnesses will probably
22 refer to him as J.J., because that is how his friends and
23 family knew him. J.J. knocked on the door. Roy Sinclair
24 tells Marcus, hey, it's okay; it's okay. It's my cousin, my
25 relative. He's good.

1 The door is opened. Marcus has his gun right there with
2 him. J.J. walks in, sees what's going on, looks at Roy. Roy
3 is in a wheelchair, looks at him and says something to the
4 nature of you going to let them come in here and run your
5 house like this?

6 Marcus is arrogant; he's the man. He has an attitude.
7 Nobody is going to disrespect him like that, so he says, what
8 did you say? J.J. doesn't respond, blows it off, continues
9 to talk to another young lady in the house. But Marcus
10 Wright wasn't going to let that go. To him, that's a slight.
11 That's disrespect. He picks up his weapon, fires from the
12 kitchen into the living room of that mobile home and shoots
13 J.J. at least ten times.

14 J.J. had no weapon. There was no weapon on J.J. at the
15 crime scene when police got there. There was only one
16 weapon, and there was only one evidence -- evidence of one
17 weapon. We received casings from the crime scene. We
18 received projectiles from the autopsy. They were all forty
19 calibre ammunition. It's important that you remember that,
20 forty calibre.

21 After Marcus shoots J.J. ten times, he runs out the
22 door. On his way out the door, he sees a lady named Mildred,
23 and he tells her you better not say anything about this. As
24 he's running out the door, he sees his friend Lanard Powell,
25 who happened to be pulling up about the same time. Lanard is

1 asking him, hey man, what happened? What happened? And
2 Marcus was speeding away in his black BMW.

3 Lanard goes into the house. He has a weapon as well.
4 It's a nine millimeter. He has it. He goes in. He sees
5 J.J. on the floor. He nudges him to see what -- if he's
6 alive. He doesn't move. He steps over him, goes into the
7 room that he was occupying and grabbed his backpack, and
8 we'll tell you what was in that backpack. There was some
9 stuff in there he didn't want to leave behind.

10 He runs out the door. He takes J.J.'s vehicle. He and
11 Marcus are on the phone. They meet up. When they meet up,
12 Marcus had ditched the black BMW, had hid it. He is now in a
13 black Escalade. He abandons the black Escalade. He gets
14 into the vehicle with Lanard, and that vehicle belongs to the
15 victim.

16 Lanard's girlfriend, Qwanda, is following behind in her
17 car. They go to a gas station. They fill up a gas can.
18 They are going to get rid of the victim's vehicle. Marcus
19 brings the gas can. They get into the same vehicle and they
20 get the gas. They then proceed to Johnsonville and they pull
21 the victim's vehicle into the woods to hide it.

22 Qwanda is waiting for them on the road, on the main
23 road, but unfortunately, her timing is not so good. A police
24 officer pulled up behind her. Out of the middle of nowhere,
25 he pulls up. He asks her what she's doing there. She

1 indicates that she gives him some -- some excuse about being
2 lost.

3 Marcus and Lanard are in the woods. They see the patrol
4 car, and they run. Qwanda is able to eventually find --
5 locate Marcus. They're on the cell phones. They locate
6 Marcus. He gets into her car, and then Lanard gets into her
7 car. Now, this is all occurring -- that murder happens at
8 about eleven forty-five. We're into -- that's on a Monday.
9 We're now into Tuesday, early Tuesday morning, still dark
10 outside.

11 After they ditch the victim's car in Johnsonville, they
12 drive to a hotel in Myrtle Beach. They get a room at the
13 hotel in Myrtle Beach under a fake I.D. They stay there for
14 one night. Marcus knows he has to get another vehicle.
15 Another vehicle, a red Camaro, is rented.

16 They get that red Camaro. He and Lanard go to yet
17 another hotel, and they go to the Sleep Inn in Conway. They
18 register again under a different name, and the police finally
19 locate them at the Sleep Inn. When they located them at the
20 Sleep Inn in Conway, they placed them under arrest, and then
21 a series of search warrants happened.

22 There is a search warrant done on the room that they're
23 in, and in the room that they're in, we find both cocaine and
24 what we call cocaine base, or crack. We find keys. We find
25 hotel slips from the first hotel or hotel keys from the first

1 hotel.

2 Also at that hotel is that red Camaro that was rented
3 for Marcus Wright by his wife, Jacinda. We search that
4 vehicle, and what do we find in that red vehicle? We find
5 the nine millimeter that Lanard said he had. We find a forty
6 calibre Glock box, has the paperwork in it. That gun is
7 registered to Jacinda Wright.

8 There's also some identification, serial number, on that
9 box that was located in that Camaro. We go and do a search
10 warrant at Kate's Bay Road, Jacinda Wright's residence. At
11 that residence, we find two forty calibre casings. These are
12 casings that the manufacturer shot from that vehicle -- I'm
13 sorry, shot from that forty calibre at the time of
14 manufacturing, and we're going to have an expert talk to you
15 about that.

16 Those two forty calibre casings at Jacinda Wright's
17 house, the ones that the manufacturer fired at the time of
18 making the weapon, matched the casings taken from the scene
19 of that murder, the same gun, and somebody from SLED is going
20 to tell you those two casings were fired from the same gun,
21 forty, forty.

22 Also in the Camaro, we found two magazines. Guess what
23 calibre they were, forty calibre. The black BMW, where he
24 drove that from the scene, we find one unfired forty calibre
25 bullet.

OPENING STATEMENT FOR THE STATE BY MS. ELDER
OPENING STATEMENT FOR THE DEFENDANT BY MR. MARTIN

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1 Now, you have to ask yourself sometimes are there people
2 out there that are that cold, that hard, that mean, that
3 insensitive to life that they would shoot someone ten times,
4 ten times, and over the next day or so, you're going to find
5 your answer, because, yes, there are people that cold, that
6 insensitive to life, and he's sitting right here in the
7 courtroom with you.

8 **MR. MARTIN:** Please the Court.

9 **THE COURT:** Yes sir.

10 **MR. MARTIN:** There's no question that J.J. Green was
11 shot multiple times, and the story that you've just heard
12 from the Solicitor is her version of the events that has been
13 crafted and created with the tools of the government to make
14 a case against somebody, and I'll go with that -- over that
15 with you in a few minutes. The question in this case, in
16 this case is who shot J.J. Green and why he was shot.

17 Now, my name is Morgan Martin. I, along with Ed Brown
18 over here, represent Marcus Wright. Mr. Brown is an attorney
19 who is working with me in this particular case, and we're
20 here as a part of the American judicial justice system
21 because the State has accused Marcus Wright of the various
22 charges on the indictments that the Judge read out and that
23 Ms. Elder talked about.

24 Those indictments are just a piece of paper that don't
25 mean anything. The testimony that you believe to find

1 anybody guilty of anything has to come from the witness
2 stand. It's one thing for the prosecutor to tell you a
3 story. It's another thing to prove it through credible
4 witnesses, credible witnesses, credible witnesses who get on
5 that witness stand.

6 Now, I'm not going to take up a lot of your time and try
7 the case now as opposed to the case, but I can tell you that
8 the assortment of witnesses that the State has put together
9 to convict Marcus Wright, whatever they say he may be, are
10 themselves drug dealers, drug addicts, and liars, self-
11 avowed, self-confessed liars, and you can get a lot of
12 testimony.

13 You take Lanard Powell, for example, the State charged
14 him with murder. They made a deal with Lanard. That's just
15 one example of how this thing works.

16 Now, Marcus Wright, me, you, the Judge, Detective Todd
17 Cox, everybody in this courtroom is entitled to a fair trial.
18 That's all you're entitled to, though. You're entitled to
19 your day in Court, and you folks, when you got your
20 invitation to come down to the Horry County Courthouse on the
21 week of June 17th, 2013, were probably all very excited about
22 that. I don't know whether some of you would be here if you
23 had a way out of it.

24 Probably some of you talked to the Judge and said I
25 would like to do this another week, but I believe that you

1 will find when this week is over that it has been an
2 enriching experience for you to be a part of the judicial
3 system because it is so important that people like yourselves
4 come and serve on a jury, because this is ultimately what
5 everybody is entitled to.

6 The prosecutor don't get to decide. The Judge don't get
7 to decide. The Court Reporter don't get to put down other
8 than what's said in the Court. You folks on the jury make
9 the determination of what this case is about.

10 Now, Marcus Wright has pled not guilty to these
11 indictments and these charges, and by that he is saying I am
12 not guilty. I want a trial, and thus it is up to the
13 government to prove, as it is in every criminal case, the
14 guilt of Marcus, not up to prove him he's not guilty, not up
15 to you to prove you're not guilty.

16 We live under that old adage here that it's better that
17 a hundred innocent go -- guilty go free than one innocent
18 person is convicted, and I don't think anybody could disagree
19 with that concept, so that leads you back to the process that
20 it's up to the State to prove the guilt of an accused beyond
21 each and every reasonable doubt.

22 Now, the government says Marcus is guilty. Marcus says
23 I'm not guilty, so where does that leave us? They've got to
24 prove the case. You've got to listen to the evidence.
25 You've got to make the determination, and I'll leave you with

OPENING STATEMENT FOR THE DEFENDANT BY MR. MARTIN
ROY JAMES SINCLAIR - DIRECT BY ELDER

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1 this.

2 It's college baseball season. I don't know if any of
3 you follow it, but we're in the college world series, and
4 you've got the story about the three baseball umpires that
5 are talking about calling the game in balls and strikes, and
6 one of them says I call them like they are. The second one
7 says I call them like I see them. And the last umpire, they
8 aren't anything until I call them. And that's what a trial
9 is. This isn't anything until you determine what the proper
10 verdict should be. Thank you.

11 **THE COURT:** All right. Call your first witness.

12 **MS. ELDER:** Your Honor, the State would call Roy
13 Sinclair.

14 **ROY JAMES SINCLAIR,** being first duly sworn,
15 testifies as follows:

16 **THE DEPUTY CLERK:** State your full name and spell your
17 last name.

18 **MR. SINCLAIR:** Roy James Sinclair, S-I-N-C-L-A-I-R.

19 **DIRECT-EXAMINATION BY MS. ELDER:**

20 Q. Mr. Sinclair, first I want to ask you back in April of
21 2012, where did you reside?

22 A. Where did I live?

23 Q. Yes sir.

24 A. 5456 Figure Eight Road, Socastee.

25 Q. And that's in Horry County?

1 A. Yes ma'am.

2 Q. Now, I want to go to those events that happened -- do
3 you remember a night on April 30th, 2012?

4 A. Yes ma'am.

5 Q. I want you to tell me what happened that evening.

6 A. Okay. Can I ask a question? Will you allow me to
7 curse the same way that he told it?

8 Q. Yes, yes sir.

9 A. Okay. Me and my friend was in my back room doing ---

10 Q. Who was your friend?

11 A. I forgot her name, the white girl, ---

12 Q. Okay.

13 A. --- the short, white girl, was in my room smoking and
14 what-not, and then J.J. came over and Capone told me, said,
15 well, some nigger at the door named J.J., and I said, oh,
16 that's my cousin. I said let him in. So when J.J. came in
17 the back, he was like -- when he came in the door, he was
18 like hey, there's a whole lot of stuff on this table in here,
19 and I said, yeah, so do you still do it? He said no, I don't
20 do that anymore, man. I'm a changed person. I said, well,
21 you sure look big. So he said yeah.

22 He said let me get on up out of here. I'll be back by
23 here later on to drink something with you. I don't smoke no
24 more, but I drink some, which I said okay, that's cool.

25 Q. What -- about what time was this when he came?

1 A. I really don't know because, like I say, I was, you
2 know, doing what I was doing, and it was like -- like it had
3 to have been probably about like six something, about five or
4 six.

5 Q. In the evening?

6 A. In the evening.

7 Q. Okay.

8 A. Okay. J.J. left. Then when J.J. left, I told the
9 girl, I said I'm about to go outside. I said you can stay
10 here and do what you're doing. I said I'm going outside for
11 a little while, so I went out in the living room. When I
12 went out in the living room, I noticed Capone left. He was
13 gone already. After J.J. left, I guess Capone left.

14 Q. Do you know what Capone's name is?

15 A. I don't know his name. I just called him -- I called
16 him Capone.

17 Q. Okay.

18 A. I never knowed his name.

19 Q. All right. So he leaves?

20 A. He leaves.

21 Q. Okay.

22 A. I goes out in the living room. When I goes out in the
23 living room, was waiting on her to come outside, was going to
24 go outside, and this guy right here, I call him Brah. I
25 don't -- I ain't never know his name. I call him Brah. He

1 was like -- had his head down like this, had a gun on the
2 table, had his head down.

3 I looked at him and I said, Brah, what's wrong? He
4 won't say nothing to me. I said it again. I said, man,
5 what's wrong with you, man? He got his head down and ain't
6 saying nothing.

7 All of a sudden, out of the blue, he just come out and
8 said, Unc, he called me Unc, he said what did you say just
9 now? I said what you mean? Well, you just called that girl
10 a bitch. I said what girl? Talking about my friend? I
11 said, man, I ain't called nobody no bitch. He said yes, you
12 did, man. You called the girl a bitch.

13 I said, man, look, I ain't called nobody no bitch. He
14 said, man, you just called that girl a bitch again, so it was
15 two times I called the girl a bitch. I didn't heard nothing
16 -- I didn't call nobody nothing, so he's got his head down
17 still like he's -- like he's trying to set me up to say
18 something that I didn't say so he can get me right here so he
19 can probably do something to me. I don't know what it was.

20 So the third time, he goes again, he say you sure you
21 didn't the girl no bitch? I said, man, I didn't call her no
22 bitch. And he say, Qwanda, you heard Unc call you a bitch?
23 Qwanda is Capone's girlfriend, and she was like, no, I didn't
24 heard him call me no bitch. He say you sure? I don't know,
25 he gave her a look on her face and it make her change her

1 mind, so she goes, yeah, I heard him, I heard him call me a
2 bitch.

3 I say, oh, Lord. I say why are y'all doing this to me
4 for? I said I didn't do nothing. I said what are you doing
5 this for? I say I'm not going to apologize to the girl. You
6 better apologize to the girl because if Capone come back and
7 hear me telling you to apologize, it's going to be -- you
8 going to really be in trouble. He going to do something to
9 you. So I say, man, look, I say I don't care because I'm not
10 apologizing to nobody for something I ain't did. So he say I
11 know.

12 Capone's come back. He walks in the door. Yo, brother,
13 what's wrong? He said man, Unc just called your girl a bitch
14 three times.

15 **MR. MARTIN:** Your Honor, ---

16 **MS. ELDER:** Your Honor, ---

17 **MR. MARTIN:** --- I object to the hearsay.

18 **THE COURT:** All right. Yes.

19 Q. Mr. Sinclair, let's go to the time right before J.J.
20 comes to your -- back to your house.

21 A. Okay. The second time J.J. comes to me -- the second
22 time J.J. comes to my house, J.J. knocks on the door. Okay,
23 my door is -- I ain't got no knob. I can't, you know,
24 opening it when the padlocks on the door, so when J.J. knocks
25 on the door, I was like who is it? He was like J. So he was

1 like who the fuck is J.?

2 Q. And who said that?

3 A. Marcus. I call him Brah.

4 Q. Right, okay.

5 A. So he said who the fuck is J.? I said my cousin. I
6 said the one that's been here the first time. And he say all
7 right. So I had to open the door for J.J. ---

8 Q. I'm sorry.

9 A. J.J., he ---

10 Q. Does he still -- does Marcus still have the gun on the
11 table?

12 A. Marcus still got the gun on the table.

13 Q. Okay.

14 A. So when I did open the door for J.J., J.J. says you
15 got these dudes running your house like that? I open the
16 door up. I say no, ain't nobody running my house but me. So
17 he says -- Marcus says what the fuck you just say, nigger?
18 And J.J. walked past me and say, nah, man, I didn't say
19 nothing. Everything cool.

20 He jumps up with the gun, say aw, fuck this shit,
21 nigger, and started firing off at J.J., just walking up to
22 him, just keep on firing, firing, firing, firing. At that
23 point, I'm scared. I didn't know what to do. I didn't even
24 look back.

25 I opened the door and I went out. When I went out, I

1 saw Veronica white car with Mildred in the car with her,
2 pulling up, and I went out and I said this guy just killed my
3 cousin, and that's all I said.

4 I went to my neighbor house, knock on the side of the
5 trailer to try to get -- because I had my phone in my pocket.
6 I couldn't get to it. I was so shaky, I had to drive my
7 wheelchair. My neighbor wouldn't open the door, so I went
8 from to my neighbor house going down the road, and when I
9 went down the road, I saw the other dude coming back, which
10 was Capone.

11 Capone came in. He was like bro, what's going on? He
12 said man, go in the house, get your shit. I just murdered
13 this nigger.

14 Q. And who said that?

15 A. Marcus.

16 Q. He told who that?

17 A. He told Capone to go in the house, get your shit, I
18 just murdered this nigger.

19 Q. And did Capone go in the house at that time?

20 A. Yeah. I think he went in, yeah. I didn't see him
21 went in, but I'm pretty sure he did. So I went down and I
22 got my phone out of my pocket, and I called 9-1-1. They was
23 asking me who shot him and what was going on. I was so
24 nervous. I was so scared for my own life, so I told them
25 that I didn't know who did it at that time in point.

1 Then when the police did came and they questioned me
2 or whatever, a couple of days ago, whatever, then I finally
3 came out with the truth. By then, they was gone.

4 Q. When you talked to 9-1-1, you just said that you
5 didn't know -- you didn't know nothing?

6 A. I didn't know who did it.

7 Q. Okay. Were you asking for service to your house?
8 Were you asking for an ambulance, or police, or both?

9 A. Yes.

10 Q. Okay. And did an officer come in response to your
11 9-1-1 call?

12 A. Yes.

13 Q. And when they arrived on scene, did you talk to the
14 officer that arrived on scene?

15 A. Yes.

16 Q. Immediately?

17 A. Yeah, immediately.

18 Q. That same night?

19 A. The same night.

20 Q. And eventually, other -- did other officers arrive on
21 scene as well?

22 A. Yes, they did.

23 Q. And did you recall talking to Detective Frebowitz?

24 A. Yes.

25 Q. Did you give him a statement at that time?

1 A. I think I did.

2 Q. And that -- was that -- where did you give that
3 statement at? Where were you?

4 A. I think I was at my neighbor's.

5 Q. But you were still -- you were still around your
6 house?

7 A. Yeah. It was like my neighbor's -- my neighbor's
8 house right there in front of mine, like it's practically in
9 my yard, not exactly, just that close.

10 Q. Okay. Now, Mr. Sinclair, who was staying at your
11 house at the time?

12 A. Just me and Capone.

13 Q. And what was Capone there for?

14 A. To sell drugs.

15 Q. Okay. Who was he selling drugs for?

16 MR. MARTIN: Object.

17 A. For Marcus.

18 THE COURT: Okay. I sustain the objection.

19 Just disregard that question and answer, members of the
20 jury.

21 Q. Did you -- how did Lanard come to stay in your house?

22 A. Okay, we was coming from -- okay, my roommate -- I had
23 another roommate at the time before they got there, before I
24 even know them, a girlfriend, it was in Columbia, stranded,
25 and I had a friend of mine who went to pick her up. She said

1 she going to pay for the gas or whatever, what-not, so on the
2 way coming back, we broke down, ran out of gas, and pulled on
3 the side of the road. My other roommate that I had at the
4 time was trying -- trying to push the truck out of the road
5 and saw Marcus driving the Escalade, and he gave him a ride
6 to the gas pump to get some gas and was telling him about his
7 little thing he got going on, what-not, ---

8 MR. MARTIN: Objection.

9 THE COURT: Yeah, I sustain the objection as to that
10 conversation. Disregard that.

11 Q. Nothing that you did not hear yourself, okay? Did --
12 did you know Marcus?

13 A. At that time, no.

14 Q. Did you come to know Marcus?

15 A. Yes.

16 Q. And did he have any conversation with you about Lanard
17 staying at your house?

18 A. Yes.

19 Q. And is that how Lanard came to stay at your house?

20 A. Yes.

21 Q. And what was Marcus doing at your house that day on
22 April 30th?

23 A. In the kitchen cutting up, bagging up.

24 Q. When you say cutting up and bagging up, are you
25 talking about ---

1 A. Drugs.

2 Q. --- drugs?

3 A. Yeah.

4 Q. Now, Mr. Sinclair, when J.J. walked in, did you see a
5 weapon of any kind on him?

6 A. No ma'am.

7 Q. Did you ever see J.J. pull out a weapon?

8 A. No ma'am. I ain't never knowed J.J. to have a weapon.

9 Q. Did you hear J.J. threaten Marcus in any way?

10 A. Never was a threat, only for what I just said, and I
11 didn't ---

12 Q. What you testified or ---

13 A. Yes.

14 Q. I'm going to show you what's been marked State's
15 Exhibit 9. Do you recognize that?

16 A. It's my house.

17 Q. Okay.

18 MS. ELDER: Your Honor, I believe we would like to
19 introduce that. I showed it to Mr. Martin prior to it being
20 identified.

21 MR. MARTIN: No objection.

22 THE COURT: Did you say no objection?

23 MR. MARTIN: No objection.

24 THE COURT: In without objection.

25 (LARGE PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT

1 **NUMBER 9.)**

2 Q. And is this -- tell me what the door -- which door did
3 J.J. come in?

4 A. Okay. J.J. came in -- this is the back door. This is
5 the front door.

6 Q. Okay. And which door did he come in?

7 A. The front.

8 Q. Up the ramp?

9 A. Up the ramp.

10 Q. And when the shooting happened, how did you leave?

11 A. I left down the ramp.

12 Q. Okay. And did you see Marcus leave?

13 A. No.

14 Q. When you heard him say I just murdered this guy to
15 Capone, where was he standing?

16 A. I have no idea where Marcus was standing because I was
17 like going down the road.

18 Q. So was your back to him?

19 A. My back was to him.

20 Q. Okay. Which way were you going down the road?

21 A. I was going down this way.

22 Q. So you were going this ---

23 A. That way.

24 Q. That way. I show you what's marked State's Exhibit 7
25 and 10. Do you recognize that?

1 A. Yes ma'am.

2 Q. What is that?

3 A. My kitchen table.

4 THE COURT: Which number is that?

5 MS. ELDER: That is Number 7, Your Honor.

6 Q. And Number 10, do you recognize that?

7 A. Yes.

8 Q. What is that?

9 A. It's my living, -- my kitchen, my living room, and my
10 cousin.

11 Q. Okay.

12 MS. ELDER: Your Honor, we would move to introduce
13 those two.

14 THE COURT: Any objection?

15 MR. BROWN: Without objection.

16 THE COURT: In without objection, both of them, 7 and
17 10.

18 (LARGE PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
19 NUMBER 7.)

20 (LARGE PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
21 NUMBER 10.)

22 Q. All right. On Number 7, you said that was your
23 kitchen table, is that correct?

24 A. Correct.

25 Q. And could you show me where Marcus was sitting when

1 you saw him prior to the shooting?

2 A. He was sitting -- he was sitting here, right here, but
3 the chair wasn't like that. The chair was like -- faced like
4 this, like this.

5 Q. Okay. And where was the weapon at?

6 A. On the table.

7 Q. Out in the open?

8 A. Yes, just right there on the corner.

9 Q. So State's Exhibit 10, tell me what this is?

10 A. Okay. This is my living room.

11 Q. Where is your front door?

12 A. The front door is right here.

13 Q. Right there?

14 A. Right there, and I would have been right here when
15 J.J. walked in, in the wheelchair.

16 Q. Beside the chair?

17 A. Beside -- on this side.

18 Q. On this side?

19 A. Right in front of the door.

20 Q. And where was Marcus at?

21 A. In the kitchen right there behind this -- behind this
22 right here, in the front.

23 Q. All right. Is that a microwave or something?

24 A. Yes ma'am.

25 Q. And does this -- does this open, go to the kitchen?

1 Is that a counter or something?

2 A. That's a couch, and this right -- this is the counter
3 right there, and all this blocks 'off. You've got to walk
4 around this way?

5 Q. Okay, but that is ---

6 A. Yes ma'am.

7 THE COURT: Mr. Martin, I'm going to ask you to keep
8 your seat while she's examining the witness.

9 A. That's in the kitchen, too.

10 Q. Okay. Now, when Marcus starts shooting, where is he
11 -- where is he standing?

12 A. He is standing over here in the kitchen. When he
13 started shooting, he started shooting from the kitchen all
14 the way into the living room to right to this table right
15 here, still doing just bam, bam, bam, bam, bam, bam, bam.

16 Q. Okay. And when he was in the living room, do you know
17 if J.J. was still standing up or was he on the ground?

18 A. I'm pretty sure he was on the ground. He wasn't
19 standing up. The first shot, he was on the ground.

20 Q. And do you see a portion of J.J. in that picture?

21 A. Yes ma'am.

22 Q. Is that where he was standing when he was shot?

23 A. Yes ma'am.

24 Q. All right. Mr. Sinclair, I just want to -- just a few
25 more things. Now, you've had some prior convictions, have

1 you not, criminal convictions?

2 A. Yes ma'am.

3 Q. And I believe a long time ago in 1985 you had a
4 larceny, is that correct?

5 A. Yes ma'am.

6 Q. And in 2003, you had a criminal domestic violence, ---

7 A. Yes.

8 Q. --- is that correct?

9 A. Yes ma'am.

10 Q. After this incident and you gave a statement to
11 police, did you have any contact with Marcus Wright?

12 A. No; after the murder, no.

13 Q. Did you ever talk to him again on the phone?

14 A. I talked to him like one time. It was about --
15 something about giving me some money or something, but he
16 wasn't -- he didn't talk to me about it. He had talked to my
17 nephew about it.

18 Q. Right. I don't ---

19 **MR. MARTIN:** Object.

20 Q. Just what you heard directly.

21 A. From what they told me?

22 **THE COURT:** No; no.

23 Q. What, if anything, -- did Marcus Wright say anything
24 to you ---

25 A. No.

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1 Q. --- after this murder?

2 A. No.

3 Q. And you're under subpoena to be here today, is that
4 correct?

5 A. Yes ma'am.

6 Q. And ---

7 **MS. ELDER:** No further questions, Your Honor.

8 **THE COURT:** All right.

9 Mr. Martin.

10 **MR. MARTIN:** If it please the Court.

11 **CROSS-EXAMINATION BY MR. MARTIN:**

12 Q. All right, Mr. Sinclair, you say that you are a person
13 who had been convicted of grand larceny, stealing?

14 A. Yes.

15 Q. You did that, and you've been convicted of criminal
16 domestic violence against women, is that correct?

17 A. Yes.

18 Q. And you used drugs, is that correct?

19 A. Yes.

20 Q. And I notice you are in a wheelchair. Was that the
21 result of being shot?

22 **MS. ELDER:** Objection, Your Honor.

23 **THE COURT:** I sustain the objection. I sustain the
24 objection.

25 A. Yes.

1 **THE COURT:** Well, disregard the question and answer. I
2 sustained the objection.

3 Q. Well, let me ask you this: You say that on the time
4 -- the day in question when these events occurred that
5 Capone, whoever that is, -- is that Lanard Powell or do you
6 know?

7 A. I don't know.

8 Q. All right. He lived at your house? You say he was
9 selling drugs. Was he selling drugs with your knowledge?

10 A. Yes.

11 Q. And you were getting money out of that?

12 A. No.

13 Q. You were getting something out of that?

14 A. Yes.

15 Q. For letting Capone stay there and sell drugs?

16 A. Yes.

17 Q. And then there were people who came to your house and
18 bought drugs?

19 A. Yes.

20 Q. Did they ever buy any from you?

21 A. No.

22 Q. They bought them from Lanard Powell?

23 A. Yes.

24 Q. J.J. came to your house that day, right?

25 A. Right.

1 Q. You say you've never known J.J. to carry a gun?

2 A. No, never.

3 Q. Have you ever known him to use drugs?

4 A. Yes.

5 Q. Using drugs that day, was he not?

6 A. No.

7 Q. You don't know that for a fact, do you?

8 A. No.

9 Q. You have talked to the police. Help me with this.

10 How many times have you talked to the police and told them
11 what happened that night? You called 9-1-1 that night,
12 right?

13 A. Yes.

14 Q. And then the police came out and you were outside your
15 home, and you gave a statement there that was video-taped,
16 did you not?

17 A. I don't remember.

18 Q. You don't remember, and then you gave a taped
19 statement to the police that night?

20 A. I don't remember.

21 Q. You don't remember? Well, you remember telling them
22 about what had happened? You remember them asking you what
23 happened, Roy?

24 A. Yeah.

25 Q. Did you come down to the police station to talk to

1 them?

2 A. No.

3 Q. So you talked to the 9-1-1 operator, and then you
4 talked to the police at your house later that night?

5 A. Right.

6 Q. And those are the statements that you gave, right, and
7 today in the courtroom is the first time you have given the
8 story that you just gave this jury, is it not?

9 A. Yeah.

10 Q. As a matter of fact, when you called 9-1-1, you told
11 them somebody had been shot at your house, that I came home
12 and found him shot, is that correct?

13 A. Yes, because I was scared.

14 Q. All right. You were scared?

15 A. Yes, I was.

16 Q. And they asked you what happened, and you said I don't
17 know?

18 A. I don't know.

19 Q. And you said, as a matter of fact, I was gone up the
20 road for about ten minutes, right?

21 A. Right.

22 Q. Up to the top of the road ---

23 A. Yeah.

24 Q. --- to meet a girl?

25 A. Yeah.

1 Q. I come back, somebody shot in my house, so you didn't
2 just tell them you didn't know what happened? You told them
3 that you had gone up the road to meet somebody, didn't you?

4 A. Right.

5 Q. And you lied to them, didn't you?

6 A. Yes, because I was scared for my life.

7 Q. Scared for your life?

8 A. Yeah, because they was still around.

9 Q. And then when you talked to the police later that
10 night with the police there, you again lied to the police,
11 didn't you?

12 A. Yeah.

13 Q. And you didn't tell them what you told in this
14 courtroom ---

15 A. No.

16 Q. --- today, did you?

17 A. No.

18 Q. Did they charge you with any drug charges?

19 A. No.

20 Q. You know you should be charged with drug charges,
21 don't you?

22 MS. ELDER: Objection, Your Honor.

23 THE COURT: I sustain the objection. That's not his
24 determin- ---

25 Q. Were you selling drugs out of your house? Lanard

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REDIRECT BY ELDER

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1 Powell was selling drugs out of your house, isn't he, sir --
2 was he, sir?

3 A. (Nods negative.)

4 Q. Well, you just told -- I'm asking was Lanard Powell
5 selling drugs out of your house?

6 A. Yes.

7 Q. To your knowledge?

8 A. Yes.

9 Q. And you were getting money out of it from him?

10 A. No.

11 Q. No?

12 A. No.

13 Q. You were getting what out of it, drugs?

14 A. Yes.

15 Q. Now ---

16 **MR. MARTIN:** One second, Your Honor.

17 That's all the questions I have, Your Honor.

18 **THE COURT:** All right.

19 Redirect?

20 **REDIRECT-EXAMINATION BY MS. ELDER:**

21 Q. Mr. Sinclair, I think you may be confused. You told
22 9-1-1 that you weren't there at the time of the shooting,
23 right?

24 A. Yes ma'am.

25 Q. And a police officer, a uniformed police officer,

1 arrived, is that correct?

2 A. Yes ma'am.

3 Q. Did you talk to him?

4 A. Yes ma'am.

5 Q. And then you indicated earlier you also talked to
6 Detective Neil Frebowitz?

7 A. Yes ma'am.

8 Q. Do you remember talking to Neil Fre- -- the detective,
9 Frebowitz?

10 A. Yes ma'am.

11 Q. And that was out there at your house, is that correct?

12 A. At my neighbor's.

13 Q. And that was right after the shooting?

14 A. Yeah.

15 Q. And you actually did, in fact, tell Neil Frebowitz ---

16 **MR. MARTIN:** Objection.

17 Q. --- about what you just testified?

18 **MR. MARTIN:** I object to her leading the witness.

19 **THE COURT:** All right.

20 Just rephrase the question.

21 I sustain your objection.

22 Q. Do you recall giving a statement to Mr. Frebowitz
23 about who you saw shoot J.J.?

24 A. Yes ma'am.

25 Q. And who did you tell Detective Frebowitz you saw shoot

1 J.J.?

2 A. Brah, was Marcus.

3 Q. But you did tell the police that night?

4 A. Yes ma'am.

5 Q. So this is not the first time that you've said that
6 Marcus was the shooter, is it?

7 A. No ma'am.

8 **MR. MARTIN:** Objection. Object to her leading because
9 that's not what he said.

10 **THE COURT:** All right. That's a leading question.
11 That's a leading question. Rephrase the question, please.

12 Q. Have you told other people prior to today who the
13 shooter was?

14 A. Yes ma'am.

15 Q. Did you tell people prior to today who else was in
16 your house?

17 A. Yes ma'am.

18 **MS. ELDER:** Just a minute, Your Honor.

19 Your Honor, I have no other questions for this witness.

20 **THE COURT:** Recross?

21 **RE CROSS-EXAMINATION BY MR. MARTIN:**

22 Q. You did not tell the police that night, or anybody
23 else that night, that a Marcus Wright shot that man, did you?

24 A. Yes, I did.

25 Q. You did? And you told them Marcus Wright?

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1 A. Not Marcus Wright.

2 Q. What did you tell them?

3 A. I said Brah.

4 Q. Brah. You told them you didn't know who Brah was,
5 didn't you?

6 A. Yes.

7 MR. MARTIN: That's all I have.

8 THE COURT: All right.

9 Mr. Strickland (sic), you can be excused now. Thank
10 you. We appreciate your time.

11 All right, do you want to call your next witness.

12 MS. ELDER: Yes sir. Veronica Chandler.

13 VERONICA DENISE CHANDLER, being first duly sworn,
14 testifies as follows:

15 THE DEPUTY CLERK: Please state your full name and
16 spell your last name.

17 MS. CHANDLER: Veronica Denise Chandler,
18 C-H-A-N-D-L-E-R.

19 DIRECT-EXAMINATION BY MS. ELDER:

20 Q. Ms. Chandler, I'm going to take you back to April 30th
21 of 2012. Do you remember that day?

22 A. Yes ma'am.

23 Q. Did you have an occasion to be at Figure Eight Road?

24 A. Yes ma'am. I went there to -- to buy something.

25 Q. What did you go there to buy?

1 A. Crack cocaine.

2 Q. And who did you go to buy it from?

3 A. Capone.

4 Q. And who lives at that address?

5 A. Roy James. It was Roy James' house.

6 Q. Okay. And you say Roy James. Is he in a wheelchair?

7 A. Yes ma'am, he is.

8 Q. Is that the person that just rolled out of the
9 courtroom?

10 A. Yes ma'am.

11 Q. Now, when you arrived at Roy James' house, what did
12 you do?

13 A. At first when -- me and another friend went there.
14 When we got there, Roy James was sitting on the porch with a
15 female, and I told him why I came there, and he told me
16 Capone had just left, and he called Capone and tell Capone
17 what I wanted, and Capone told me to wait, wait for him until
18 he got back, and that's when Roy James invited me and the
19 other female inside the house.

20 Q. And did you go in the house?

21 A. Yes ma'am, I did.

22 Q. And what did you go -- what did you do when you were
23 in the house?

24 A. When me and my friend got in there, we -- I sat down
25 in the living room. My female friend went in the kitchen and

1 she started talking to a male that I didn't know, and they
2 were having a conversation at the kitchen table.

3 Q. And where were you?

4 A. I was sitting in the living room, actually in the den,
5 in the little La-Z-Boy right beside the T.V.

6 Q. Okay. And were you talking to anybody?

7 A. I spoke to everybody, I mean, but I wasn't in the
8 conversation that was going on in the kitchen. I did had a
9 couple of words with the guy that was in there, but that was
10 it. My main focus was to get what I came there to get and to
11 be on -- go on about my business.

12 Q. And did anyone else arrive after you?

13 A. Yes ma'am, J.J.

14 Q. And tell me about how -- what happened when he walked
15 in.

16 A. Before J.J. arrived, Roy James made a statement
17 saying ---

18 MR. MARTIN: Objection.

19 Q. Not what anybody else told you. Tell me what you saw.

20 A. Okay. Well, when J.J. came in, he came into the
21 house, he made a statement because somebody opened the door
22 and he was like that's how you got your house run. You got
23 people opening your doors and what-not. When J.J. came in,
24 he spoke to everybody that was in the house, and he came to
25 me, I was the last person he spoke to because I'm a friend of

1 the family's, so at the time he was standing beside me in the
2 living room, and I was telling him what's up, Sam, it was a
3 long time, and everything happened like within a split
4 second, I mean ...

5 Q. What happened?

6 A. The guy in the kitchen said something, and J.J. say,
7 yeah, yeah, yeah, and the next thing I know, all I heard was
8 boom, boom, boom, boom. It was no arguments, no fussing, or
9 anything.

10 Q. Did you hear J.J. threaten the guy in the kitchen in
11 any way?

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

13 Q. And at the time of this shooting, who was he talking
14 to?

15 A. Who?

16 Q. J.J.

17 A. He was talking -- he was beside me talking to me. We
18 were having a conversation.

19 Q. And the guy in the kitchen, was he still in the
20 kitchen when the shots were started?

21 A. Yes ma'am. He was standing -- actually he was
22 standing up at the bar in the kitchen.

23 Q. Would you take a look at what's been marked as State's
24 Exhibit 10.

25 MR. MARTIN: Judge, I just want to get where I can see

1 what she's testifying to.

2 THE COURT: Okay. You can stake yourself over there.
3 That will be fine.

4 Q. All right. Show me where you were standing.

5 A. Right over here, the T.V. in the front, right beside
6 the chair I was sitting in.

7 Q. Okay. You were sitting here, this chair?

8 A. Yes ma'am, but when J.J. came in, we were standing up
9 talking in front of each other.

10 Q. Okay. And where was the guy in the kitchen?

11 A. He was standing over here where the sink is at.

12 Q. Is that -- is that a bar or something right there?

13 A. It's the kitchen sink. Well, I guess you can call it
14 a little bar, but it's the kitchen sink. It separates the
15 kitchen from the living room.

16 Q. Okay. And do you know if this -- if this -- do you
17 know what that is right there?

18 A. Where?

19 Q. Is that an opening right here?

20 A. No ma'am. That's the couch pushed towards the bar.

21 Q. Okay. All right. So was the guy in the kitchen in
22 front of the bar or behind the bar?

23 A. He was behind the bar, still in the kitchen.

24 Q. Okay. And when the shots came out, where were the
25 shots coming from?

1 A. In the kitchen, in the living room.

2 Q. And did you see the guy in the kitchen?

3 A. Yes ma'am.

4 Q. Did you see a gun?

5 A. Yes ma'am, in his hand.

6 Q. Did you see J.J. have a gun in his hand?

7 A. No ma'am.

8 Q. When the shots started ringing, what did you do?

9 A. Everything happened so fast, it was like fireworks,
10 and I don't know how I managed to get to the back door, but
11 somehow I busted the back door, and it felt like my whole
12 skin was on fire because I was so close to J.J., that every
13 bullet that hit him, like I don't know what you call it, but
14 I could feel like the stuff hitting my skin, and my main
15 concern was, was I shot, but when I got to the back door,
16 when I busted the back door, I peeped back in the living
17 room, and that's when I saw J.J. on the floor. He had on a
18 white t-shirt, and you could see like the blood -- the blood
19 patches in his shirt.

20 Q. Just take a breath.

21 **THE COURT:** Do you need some water?

22 A. No, sir. I'm okay.

23 Q. When you left the house, what did you do?

24 A. The female who I came there with, she was actually
25 already outside in my car, and when we left, I was nervous.

1 We both were nervous. We went to the -- when you leave out
2 of Figure Eight Road, it's a complex right in front called
3 the Socastee -- I think it's the Socastee Commons. It's a
4 brick building, like soon as you leave out of Figure Eight
5 Road. We went there.

6 We didn't know what to do, so the friend that I was
7 with, she called her husband, who was also a relative of J.J.
8 and she told him what happened, and I guess he went there,
9 and by the time he came there, the police and everything was
10 there, and they said that J.J. was dead on the spot.

11 Q. I know it's upsetting, but just a few more questions
12 about the house, okay?

13 A. Okay.

14 Q. When you were standing, talking to J.J. when the shots
15 started, ---

16 A. Yes ma'am.

17 Q. --- how close were you to J.J.?

18 A. I was close until his blood splattered on my clothes.
19 They took my coat for evidence.

20 Q. All right. Show me how close.

21 MS. ELDER: Your Honor, can I have her come down,
22 please?

23 THE COURT: Yes.

24 Q. You can come down here. If I'm J.J., ---

25 A. It was like this. Actually, he was turned like this

1 in front of the T.V., and we were talking, and I was like
2 close to him.

3 Q. And if we're standing, if you're you and I'm J.J.,
4 where is the T.V. at?

5 A. Right in the front of us.

6 Q. Okay. Right here?

7 A. And the blue chair is behind me, and that's the
8 kitchen.

9 Q. The kitchen is over here?

10 A. Yes ma'am.

11 Q. All right. So you and J.J. are talking?

12 A. Yes ma'am.

13 Q. Okay. And that's when the shots started firing?

14 A. The guy in the kitchen made a remark, and J.J. did
15 come around and said yeah, yeah, yeah, and that's when
16 everything went boom, boom, boom, boom, boom, and ---

17 Q. All right. You can go back to the stand for me.
18 Did you see Capone after you left the house?

19 A. Yes ma'am. He actually showed up as soon as me and --
20 as soon as me and the other person was leaving the house, he
21 actually showed up. I know he went in the house, but I
22 didn't see anything that he did because we were trying to get
23 out of there.

24 Q. When Capone -- you said he went in the house?

25 A. Yes ma'am.

1 Q. Had the shots already been fired?

2 A. Yes ma'am.

3 Q. Did you hear any additional shots ---

4 A. No ma'am.

5 Q. --- after Capone went to the house?

6 A. No ma'am.

7 Q. And did you and your friend leave at that point?

8 A. Yes ma'am.

9 Q. Now, Veronica, just quickly, because I'm sure Mr.
10 Martin is going to ask you, you were convicted in 2009 of a
11 shoplifting, is that correct?

12 A. Yes ma'am, I was.

13 Q. And I believe you also have a 2010 criminal domestic
14 violence?

15 A. Yes ma'am, I do.

16 Q. You're not under any kind of charges now, are you?

17 A. No ma'am. I'm SLED certified to do security guard
18 work, and your record has got to be clean to do -- to have a
19 SLED license.

20 Q. And you're under subpoena here today?

21 A. Yes ma'am.

22 Q. You didn't voluntarily show up, did you?

23 A. No ma'am.

24 MS. ELDER: Just a moment, Your Honor.

25 No further questions, Your Honor.

1 **THE COURT:** All right.

2 Mr. Martin or Mr. Brown.

3 **CROSS-EXAMINATION BY MR. MARTIN:**

4 Q. Ms. Chandler, ---

5 A. Yes sir.

6 Q. --- you went to this place for the purpose of buying
7 some drugs ---

8 A. Yes sir.

9 Q. --- from Capone, right?

10 A. Yes sir, I did.

11 Q. And you gave a statement to the police after this
12 occurred?

13 A. Yes sir, I did.

14 Q. And you told them at that time that J.J. reached to
15 pull for what you thought was a gun?

16 A. I didn't see a gun.

17 Q. And that's what I want to ask you about.

18 A. Okay.

19 Q. Because when you gave a statement to the police -- do
20 you remember giving a statement to the police?

21 A. Yes sir, I do.

22 Q. Okay. And do you -- and I've got the statement here
23 and I can give it to you if that's necessary.

24 A. I know the whole complete statement. I gave it.

25 Q. All right. But you told the police at that time, you

1 said I don't know if he had a gun or everything happened so
2 fast, but he lift up his shirt?

3 A. Yes sir.

4 Q. Do you remember saying that?

5 A. Yes, I did say that.

6 Q. And that's true?

7 A. Yes sir, but he -- I did not see a gun present.

8 Q. All right. All right. And then ---

9 **MR. MARTIN:** Give me a second, Judge.

10 **THE COURT:** Sure.

11 Q. And then they keep talking to you about that and you
12 say I'm quite convinced I saw a gun.

13 A. I don't remember saying that.

14 Q. All right. Well, let me ask you this: Let me look at
15 your statement here. You read this with me.

16 **MS. ELDER:** Objection, Your Honor. If we can approach.

17 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

18 Q. Again, you gave a statement, correct?

19 A. Okay, and like I said, I don't recall saying that.

20 Q. All right, but you don't recall saying that. You do
21 recall saying that you thought he had a gun, as we talked
22 about earlier, but you're not sure?

23 A. I mean, like I say, I don't recall saying that, so I'm
24 not going to answer to that. If they got it in the paper,
25 then I evidently say it, but I don't recall saying it.

1 Q. Well, let me go back and make sure because I don't
2 want to put words in your mouth.

3 A. Okay.

4 Q. I just asked you about one statement that you made and
5 you said that you did say that?

6 A. I saw when he did lift his shirt a little bit, but I
7 did not see a gun present.

8 Q. But you said that, again, I'm convinced, I'm quite
9 convinced I saw a gun, but I don't know?

10 MS. ELDER: Objection.

11 A. I cannot ---

12 THE COURT: Yeah, I sustain the objection.

13 Q. Well, let me ask you now then in this manner. Did you
14 see a gun?

15 A. No, I did not see a gun.

16 Q. Did you tell the police I thought I saw a gun?

17 A. I don't recall saying that. That happened a year ago.

18 Q. All right. But you don't deny saying that, do you?

19 A. I don't recall saying that.

20 Q. Okay.

21 MR. MARTIN: That's all the questions I have.

22 MS. ELDER: Briefly, Your Honor.

23 THE COURT: Okay.

24 REDIRECT-EXAMINATION BY MS. ELDER:

25 Q. You didn't give a written statement to police, is that

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1 correct?

2 A. No ma'am.

3 Q. All right. You did one on recording?

4 A. Yes ma'am.

5 Q. Have you had a chance to listen to your statement?

6 A. Yes ma'am, I did. That was not in there.

7 Q. That was not in there?

8 A. No ma'am, not if I'm recalling. I just listened at my
9 statement last week and that was not in there.

10 MS. ELDER: All right. No other questions.

11 I would -- I would ask that she be excused, Your Honor.

12 THE COURT: All right.

13 You can step down and be excused. We appreciate your
14 time. Thank you.

15 Members of the jury panel, even though we got a little
16 late start, it was around eleven, it's almost twelve-thirty,
17 so it would be time for us to take a break. We'll go ahead
18 and break for lunch until 1:45. I think that's enough time.
19 We'll try to start as promptly at that time as we can, but
20 have a pleasant lunch and be back and ready to go at 1:45.

21 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, we're still in session.

24 All right, let's cover a little bit of protocol. I'm
25 not a stickler for everybody being completely still, but we

1 need to restrict movement. We've got people moving around
2 this courtroom. It's distracting to me. It's distracting to
3 the jury. I know the group to my right, seated in the left
4 side of the courtroom apparently is a group associated with
5 the victim. There's a box of Kleenex there. I think if the
6 Solicitor will make the Victim's Witness assistants a box of
7 Kleenex available for each row or somehow to keep the deputy
8 from having to walk around giving out Kleenex. It's
9 distracting, and it's also -- I'm not going to say
10 prejudicial, but it's not a good image.

11 MS. ELDER: We'll make sure it's taken care of, Your
12 Honor. I wasn't aware of that. I obviously can't see that
13 up here.

14 THE COURT: I understand, but I can, and so can the
15 jury. And also, on at least one occasion, one of the
16 deputies went over and talked to somebody in the Victim's
17 Witness crowd, and they have every right to be here and I
18 welcome them here, and I understand this is emotional, but we
19 can't have that either, so let's restrict our movement.

20 Unless your job description requires you to be standing,
21 be seated. Unless you have some reason to be coming in and
22 out, either be in or out, and again, I'm not a stickler for
23 that. I'm not like some judges who require no movement in
24 the courtroom, and -- but it is a little too much.

25 And Counsel needs to remain seated while the other

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1 Counsel is examining a witness, unless there's some reason to
2 get up. Again, that's distracting and takes the focus -- I
3 don't think it's done intentionally, but it takes the focus
4 off of the questioning attorney and the witness who is being
5 questioned, so those are just some little tidying up ideas I
6 have that I would like to see implemented.

7 All right. We'll see you back at 1:45.

8 MS. ELDER: Thank you, Your Honor.

9 MR. MARTIN: Thank you, Judge.

10 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND
11 OUTSIDE THE PRESENCE OF THE JURY.)

12 THE COURT: Is the State ready to proceed?

13 MS. ELDER: Yes sir, Your Honor.

14 THE COURT: Is the Defense ready to proceed?

15 MR. BROWN: We are, Your Honor.

16 THE COURT: All right.

17 Bring in the jury.

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: The jury is present. You may proceed.

21 MS. ELDER: Thank you, Your Honor.

22 The State would call Ms. Small.

23 THE COURT: Please come up here and ...

24 MILDRED BOBBI SMALL, being first duly sworn,
25 testifies as follows:

1 **THE DEPUTY CLERK:** Please state your full name and
2 spell your last name.

3 **MS. SMALL:** Mildred Bobbi Small, S-M-A-L-L.

4 **DIRECT-EXAMINATION BY MS. ELDER:**

5 Q. Ms. Small, I'm going to take you back to April 30th,
6 2012, okay?

7 A. Uh huh (**indicating positive**).

8 Q. Do you remember that day?

9 A. Uh huh (**indicating positive**).

10 Q. You're going to -- Ms. Small, you're going to have to
11 say yes or no because she's trying to take it down.

12 A. Yes ma'am.

13 Q. Where were you at on -- in the eveningtime of April
14 30th, 2012?

15 A. I was catching a ride home -- I mean catching a ride
16 home from -- with this girl named Veronica, and we went
17 through Socastee area and she told me that she had to make a
18 stop over to Roy James' house.

19 Q. And if you will, move just a little bit closer.

20 A. Uh huh (**indicating positive**).

21 Q. And Roy James, does he live in a house, a mobile home,
22 or what?

23 A. A mobile home.

24 Q. And is he a guy in a wheelchair?

25 A. Yes ma'am.

1 Q. Did you ride over there with Veronica?

2 A. Yes ma'am.

3 Q. And what did you do when you got there?

4 A. When we got there, she said she had to go use the
5 bathroom, and Roy James and a white girl was sitting on the
6 porch, and I guess when she went in the house, Roy James
7 asked her who was that in the car, and she told him it was
8 me, and he called me in the house.

9 So I went in the house, me and him and the white girl,
10 and Veronica, I guess she went on back to the bathroom, and I
11 went in the kitchen, and I was trying to open up a beer and
12 there was a guy sitting at the table, but I don't know who
13 the guy was. I can't even tell you who he was, and then ---

14 Q. Did you notice anything about the guy?

15 A. I just was looking at a hat and his shirt, and a
16 tattoo, but I didn't really pay it no attention what was on
17 the arm or nothing like that.

18 Q. Was the guy black, white, Hispanic?

19 A. It was a black guy.

20 Q. Did you see a weapon at that time?

21 A. No ma'am. The only thing I saw was a shell case that
22 was sitting on the table. I didn't see no gun.

23 Q. The guy, where was he at in the kitchen?

24 A. He was sitting in the corner right over there by the
25 refrigerator, and the white girl was standing over there -- I

1 mean sitting over there on the other corner, and I was
2 standing up in the house, in the kitchen.

3 Q. Okay. And after you got in the house, and you were
4 trying to do what in the kitchen?

5 A. Trying to open a beer.

6 Q. What happened after that?

7 A. After I was trying to open the beer, I turned around
8 to the cabinet door to try to open the beer at the cabinet
9 door, and then Veronica chair had hit the wall, and then a
10 couple of seconds after that a knock came to the door, and
11 Roy James said that's J.J. because he's supposed to be coming
12 over here to bring me a drink.

13 Q. Was Veronica back in the living room at this point?

14 A. Yes ma'am.

15 Q. Okay. And you said J.J. was at -- somebody was
16 knocking on the door?

17 A. Yes ma'am.

18 Q. Did they come in?

19 A. Yes ma'am.

20 Q. Do you know who it was that came in?

21 A. I just heard his voice. That's how I know it was J.J.
22 I didn't really pay it no attention to try to look back there
23 or nothing.

24 Q. You still -- where were you at when he walked in?

25 A. Still in the kitchen, talking to the girl, the white

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1 girl.

2 Q. Was the black guy still in there with you?

3 A. I don't know. He just wasn't there no more.

4 Q. All right. And what happened next?

5 A. The next thing, I just heard pow, pow, and I said oh,
6 my God, and I heard somebody say get down, or get down, or
7 something like that. I'm not exactly sure, and then I got
8 down, and I peeped up, and then when I looked up, he was
9 laying down there on the floor and blood was coming out of
10 him, so I ran out of the house.

11 Q. All right. Ms. Small, just take your time. Where
12 were the shots coming from?

13 A. It was over there on that side of the living room. I
14 didn't see who shot him. Can I take a break, please?

15 **THE COURT:** Yes.

16 We'll let the jury go to the jury room for just a minute
17 and let the witness compose herself.

18 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
19 **JURY.)**

20 **THE COURT:** Would you like some water?

21 **MS. SMALL:** Yes.

22 **THE COURT:** Let the bailiff get her some water.

23 Ms. Small, just take your time. When you're ready, let
24 me know.

25 **MS. SMALL:** Yes sir.

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1 **THE COURT:** All right. Do you think you're okay now?

2 **MS. SMALL:** I'm ready.

3 **THE COURT:** Okay.

4 We can bring the jury back in.

5 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
6 **JURY.)**

7 **THE COURT:** Okay.

8 **MS. ELDER:** Thank you, Your Honor.

9 **CONTINUING DIRECT-EXAMINATION BY MS. ELDER:**

10 Q. Now, Ms. Small, ---

11 A. Yes ma'am.

12 Q. --- you said you heard someone say get down, is that
13 correct?

14 A. Yes ma'am.

15 Q. Was that a male voice or a female voice?

16 A. I don't really remember, ma'am. I just heard get
17 down.

18 Q. Did you recall hearing anybody say anything prior to
19 the shooting?

20 A. No ma'am. I didn't hear no talking or no
21 conversation. I don't know what they was saying around there
22 because I couldn't hear them on that side over there.

23 Q. What happened after the shooting?

24 A. I was outside the car and Veronica came running from
25 behind the house, that she got shot, she got shot, and I was

1 trying to get the key in the door of the car, but I was
2 shaking so bad, I couldn't even get the key in the door of
3 the car. Then a white car pull up behind -- on the side of
4 us, behind, somewhere up in there, and somebody ran in the
5 house and they were standing over -- standing over J.J. with
6 a gun in their hand, but whoever it was never shot the gun,
7 and then I finally got the key to the car open, and me and
8 her jumped in the car and rode across the highway, and I told
9 her, I said we got to call 9-1-1, and she said check me first
10 to see if I'm bleeding. I was like oh, my God, girl, what
11 have you got me into? And that was it, and I went home.

12 Q. Okay. Slow it down just a little bit, okay?

13 A. Yes ma'am.

14 Q. You said that someone ran into the house after the
15 shooting?

16 A. Right.

17 Q. Was that a male or a female?

18 A. I couldn't see if it was a male or a female. The only
19 thing I was looking at, I seen was a gun in a hand. That's
20 all I saw.

21 Q. Did you hear any shots fired at that point?

22 A. No ma'am.

23 Q. Had the shots already been fired before ---

24 A. Yes ma'am.

25 Q. --- that person went in?

1 A. Yes ma'am.

2 Q. And did you see J.J. on the ground prior to that guy
3 going in?

4 A. He was laying down there, laying on the floor, because
5 I could see him -- like right now, I could just picture
6 seeing him laying on the floor right there.

7 Q. When you were outside, did you see the other guy run
8 out of the house?

9 A. I just seen somebody going to a black car.

10 Q. What kind of car was it?

11 A. It was a black car and had like this grill thing on --
12 the shiny grill thing on the front of it, and had like a
13 Florida tag chain things on the front part of the car.

14 Q. When that person was running to the car, did they say
15 anything to you?

16 A. I don't know if they ran to the car or if they walked
17 to the car because I wasn't paying it no attention, and then
18 we heard, if you say something, we'll kill you, but I can't
19 say if that car said it or who said it because a bunch of
20 people out there.

21 Q. Who was out there at the time?

22 A. It was me, Veronica, Roy James, then these people from
23 next door, they were hei- -- had their windows and stuff
24 heist up. A lot of people were just out there hollering and
25 talking.

1 Q. Now, you talked to police shortly after this incident

2 -- did you talk to police shortly after this incident?

3 A. Yes ma'am. They came to the house and got us.

4 Q. Okay. Did you give them a statement?

5 A. Yes ma'am.

6 Q. And do you remember that it was taped?

7 A. Yes ma'am.

8 Q. And have you had a chance to listen to your taped
9 statement?

10 A. Yes ma'am.

11 Q. Do you know if you told them about seeing a gun?

12 A. I don't remember, but I know the only gun I saw was
13 the gun in the dude hand that got out of the white car. I
14 did not see nobody else with no gun.

15 Q. You don't -- you don't recall any other statements
16 about the gun being on the table?

17 A. No ma'am.

18 Q. If it was on that recording ---

19 A. It wasn't a gun on the table. It was a clip.

20 Q. When you say a clip, what ---

21 A. A bullet -- a bullet clip with bullets in it was on
22 the table. There wasn't no gun on the table.

23 Q. Is that a -- is that -- what is a clip, because I just
24 want to make sure I understand ---

25 A. It's a clip like to go inside of a nine millimeter

1 gun, something like that right there. It's to put in a gun.

2 Q. You don't know what calibre weapon it was, do you?

3 A. No ma'am.

4 Q. Did you see J.J. with a gun?

5 A. No ma'am.

6 Q. Did you hear him threaten anyone?

7 A. No ma'am.

8 Q. I'm going to ask you to take a look at State's Exhibit

9 10.

10 A. I don't want to look at that, please.

11 Q. How about we do this -- all right, here we go. Can
12 you tell me where or show me where you were standing when the
13 shooting happened?

14 A. Right up here inside the kitchen.

15 Q. And when you walked in, where was the other black male
16 when you first got there?

17 A. Sitting over there in that corner by the refrigerator.

18 Q. Is that a table right there?

19 A. Yes ma'am.

20 Q. And when the shooting started, you don't know where he
21 went?

22 A. Huh uh (**indicating negative**). I went out there, out
23 that door.

24 Q. That door?

25 A. Yes ma'am.

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1 Q. Okay. And where was J.J.?

2 A. He was laying on the floor on the other side, back
3 going next to the back door, a little bit in the living room.

4 Q. Did you see him as you were running out?

5 A. Yeah. You can't miss it.

6 Q. So you were able to see him?

7 A. Uh huh (**indicating positive**).

8 Q. Did he have a weapon in his hand?

9 A. I didn't see nothing. Look like his hand or something
10 was wrap, or something was wrong with it. I didn't see no
11 gun.

12 MS. ELDER: One moment, Your Honor.

13 That's all I have for this witness, Your Honor.

14 THE COURT: All right.

15 Cross?

16 MR. BROWN: May it please the Court.

17 THE COURT: Yes sir.

18 **CROSS-EXAMINATION BY MR. BROWN:**

19 Q. Ms. Small, I realize this is very, very emotional for
20 you, and I am going to try to be as gentle as I can, but this
21 is a very, very important -- important matter for our client.

22 A. Yes sir.

23 Q. When you got to the house, you said you saw Roy James
24 and I think you said a white girl on the outside?

25 A. Sitting on the front porch.

1 Q. And what were they doing?

2 A. They were listening to music.

3 Q. All right. Did Mr. James indicate to you that he had
4 been drinking that day?

5 A. We all was.

6 Q. Everybody was drinking. All right. And how much had
7 you -- how much had they had to drink, if you know?

8 A. Oh, I don't know how much they had to drink because
9 when I got there, he just handed me a beer.

10 Q. Okay. And how much had you had to drink that day?

11 A. I drunk -- oh, my God. I drunk about a half a pint of
12 gin.

13 Q. A half a pint of gin?

14 A. Uh huh (**indicating positive**).

15 Q. Did you drink -- you drank that in what period of
16 time?

17 A. Me and three other people drunked it at the club.

18 Q. All right. Now, all this occurred in the dark? It
19 was dark that night, wasn't it?

20 A. Yes sir. I had just got off of work.

21 Q. And there are no flood lights out there where that
22 house is ---

23 A. No.

24 Q. --- or that trailer is?

25 A. Huh uh (**indicating negative**). I didn't see them.

1 Q. And there are no -- there are very few, if any,
2 exterior lights on the trailer, is that correct?

3 A. I don't know. I guess so, sir.

4 Q. So it was dark? Ma'am?

5 A. Yes sir. It was nighttime.

6 Q. Okay. And you -- were they doing anything -- were
7 these people doing anything other than drinking whiskey?
8 Were they smoking crack? Were they doing cocaine or smoking
9 reefer?

10 A. Sir, no disrespect to you, but you're going to have to
11 ask Roy James and Veronica, them, that. That was their
12 house. I don't know nothing about what going on in that man
13 house because I wasn't in there that long.

14 Q. I can certainly appreciate that.

15 A. Yes sir.

16 Q. Did you smell any marijuana?

17 A. No, sir.

18 Q. Okay. So you gave a statement to the Horry County
19 Police Department, and in that statement, you indicated that
20 -- the detective asked you -- asked you what about the white
21 girl? And you said I don't know. That was Roy James'
22 friend. She said she was Roy James' friend. She's a white
23 girl, real skinny. She was drunk.

24 A. Yes, she was.

25 Q. All right. And you further said in a separate

1 question that was asked you, about how old do you think she
2 was, and your answer was she was so drunk, I didn't pay her
3 really no attention, is that correct?

4 A. Yes sir.

5 Q. So was she able to speak? Was her speech slurred?

6 A. Yeah, it was slurred a little bit.

7 Q. All right. And what about Mr. James?

8 A. He was talking normal like he always talked.

9 Q. All right. So this other person -- this other person,
10 the caucasian girl that you talked about, she was extremely
11 drunk?

12 A. Uh huh (**indicating positive**).

13 Q. You've got to say yes.

14 A. Yes sir. She was drunk because she had a time trying
15 to get off the porch in the house.

16 Q. All right. So would you conclude then that she was a
17 -- she was so drunk that she could not recognize, that she
18 was hallucinating?

19 A. I can't judge that, sir.

20 Q. All right. Well, here's what you told the detective.
21 You said the detective asked you was she ---

22 **MS. ELDER:** Objection, Your Honor.

23 **THE COURT:** I sustain the objection.

24 **MR. BROWN:** Well, Your Honor, it's a prior inconsistent
25 -- prior statement.

1 THE COURT: You've got to introduce the statement.

2 MR. BROWN: Your Honor, I'm just trying to get the
3 facts straight here and ---

4 THE COURT: I understand that. Just go ahead and ---

5 MR. BROWN: Yes sir.

6 Q. So you -- then you would agree with me that this --
7 this other person and Roy James were -- did you get the
8 impression that they were drinking all day or drinking a long
9 time prior to that?

10 A. Now explain that again to me.

11 Q. Did you get the impression when you came up there that
12 night that they were drinking a long time prior to your
13 coming there?

14 A. I can't judge how long they been drinking, sir,
15 because I wouldn't know how long you been drinking at
16 home, ---

17 Q. All right. But you ---

18 A. --- but I know that -- I do know that she was drunk.

19 Q. She was drunk. Okay. All right. Now, and did you
20 have anything to smoke that day?

21 A. No, sir.

22 Q. Did you ---

23 A. I wanted to, but I had to get home.

24 Q. Okay. All right. And you testified in direct-
25 examination that you don't know who did the shooting, isn't

1 that correct?

2 A. I don't.

3 Q. All right. And you don't know who it was that said,
4 allegedly said, I'll kill you, or something of that nature,
5 as the person was leaving?

6 A. I don't know who it was that said it, sir.

7 Q. All right. Because you were -- you were frightened,
8 isn't that correct?

9 A. Yes sir.

10 Q. And your memory then when you gave the statement would
11 certainly have been better than what you are telling us
12 today, right?

13 A. Maybe so. I don't even know, sir.

14 Q. Okay. And what you told us -- what you are telling us
15 today is the same thing you said then? You don't know who
16 did what, isn't that correct?

17 A. I'm only telling the truth about what I saw.

18 Q. Ma'am, that's all we want here, is the truth.

19 A. That's all I'm giving.

20 Q. And you don't know who did what ---

21 A. No.

22 Q. --- on that -- on that -- on that day?

23 A. No, sir.

24 Q. You just happened to be in an unfortunate situation at
25 the right time?

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1 A. Wrong -- no, wrong place at the wrong time.

2 Q. All right.

3 MR. BROWN: Your Honor, I don't think I have anything
4 further for this witness.

5 THE COURT: Okay.

6 REDIRECT-EXAMINATION BY MS. ELDER:

7 Q. All right. Ms. Small, ---

8 A. Yes ma'am.

9 Q. --- just following up, just a few more minutes.

10 A. Yes ma'am.

11 Q. When you were -- just prior to the shooting and you
12 walked into the house, who was in the house with you?

13 A. It was me, Roy James, the white girl trying to get in
14 the house, and there was a dude sitting in the kitchen.

15 Q. And was your friend, Veronica, in there?

16 A. Yeah, she was there. ,

17 Q. So there was Roy, the black dude in the kitchen, and
18 J.J. Did you see any other males in there prior to the
19 shooting?

20 A. No ma'am.

21 MS. ELDER: No other questions, Your Honor.

22 THE COURT: All right.

23 MR. BROWN: We have nothing further, Your Honor.

24 THE COURT: All right.

25 You can step down and be excused, Ms. Small. We

1 appreciate your time. Thank you.

2 Call your next witness.

3 **MS. ELDER:** We would call Qwanda Caldwell-Brown.

4 **THE COURT:** Please come on up here where this lady is
5 standing.

6 **QWANDA CALDWELL-BROWN,** being first duly sworn,
7 testifies as follows:

8 **THE DEPUTY CLERK:** Please state your full name and
9 spell your last name.

10 **MS. CALDWELL-BROWN:** Qwanda Patrice Caldwell-Brown.
11 Last name Caldwell, C-A-L-D-W-E-L-L - Brown, B-R-O-W-N.

12 **DIRECT-EXAMINATION BY MS. ELDER:**

13 Q. All right. Now, I'm going to take you back to April
14 30th, 2012.

15 A. Uh huh (**indicating positive**).

16 Q. Were you here in Horry County?

17 A. Yes.

18 Q. And were you at a location in Socastee at Roy
19 Sinclair's house?

20 A. Yes.

21 Q. And why were you there?

22 A. I was visiting my boyfriend at that time, Lanard
23 Powell.

24 Q. Do you know if he also goes by Capone?

25 A. Yes.

- 1 Q. And was he staying there?
- 2 A. Yes.
- 3 Q. And how long had he been staying there?
- 4 A. Maybe three weeks.
- 5 Q. Now, on that particular day, who was in the house?
- 6 A. It was me, Lanard, Roy, and Marcus, and Kelly.
- 7 Q. Is Kelly a black female or a white female?
- 8 A. She's a white female.
- 9 Q. Now, you know Marcus?
- 10 A. Yes.
- 11 Q. How long had you known him?
- 12 A. Maybe a day or two.
- 13 Q. Did your boyfriend introduce you to him?
- 14 A. Yes.
- 15 Q. What were you doing -- what were y'all -- were y'all
- 16 -- what were y'all doing at Roy's house that day?
- 17 A. I was making baked spaghetti. We were hanging out,
- 18 having drinks.
- 19 Q. And did you and Lanard leave the house for any reason?
- 20 A. Yes. We left the house to go to the gas station.
- 21 Q. Was this in the evening or the daytime?
- 22 A. In the evening, late that night.
- 23 Q. And did you go back to Roy's house after the store?
- 24 A. Yes.
- 25 Q. Tell me what you see when you go back.

1 A. When we go back, I make a right down Figure Eight, and
2 as I'm driving down the road, Marcus is pulling out in his
3 car and he stops right back and yells out the window, pick up
4 the shells, Brah, to Lanard.

5 Q. What kind of car is Marcus in?

6 A. He's in a black BMW.

7 Q. After Marcus yells pick up the shells, where does
8 Marcus go then?

9 A. He drives off.

10 Q. And what do you do?

11 A. I'm in my car and I'm pulling up slowly towards the
12 trailer. Lanard jumps out of the car and goes into the
13 trailer and I'm sitting in my car. I'm sitting there for a
14 little bit and then I decide to drive and make a U-turn and
15 come back, and I parked, so now the trailer is on my right.

16 Q. Does Lanard come out of the trailer?

17 A. Yes, he does.

18 Q. Do you see what is inside the trailer?

19 A. I do get out of my car, sitting there for a while, you
20 know, wondering what is going on because I thought it was a
21 fight that happened, and as I get out of my car and I walk
22 up, the slope to the trailer, I see a body on the floor.

23 Q. Do you know who that is?

24 A. No.

25 Q. After you arrived with Lanard, do you hear any

1 gunshots?

2 A. No.

3 Q. Does Lanard come out of the house?

4 A. Yes.

5 Q. And what does he do when he comes out of the house?

6 A. By this time I'm sitting back in my car, and when he
7 comes out the house, he's putting things in my backseat of my
8 car.

9 Q. Do you know what those are?

10 A. No. I have no idea what it was at that time.

11 Q. And do you stay at that location?

12 A. Stay as far as sitting there waiting, yes.

13 Q. All right. Do you eventually leave?

14 A. Yes. Yes.

15 Q. Who is in the car with you?

16 A. No one is in the car with me.

17 Q. Does Lanard leave?

18 A. Yes.

19 Q. And how do you know he left?

20 A. Because he was in the victim's truck.

21 Q. And did you stay with Lanard?

22 A. I was sitting in my car. I was in shock. The truck
23 goes by me. I didn't know that was him, so I'm thinking he's
24 still in the trailer, and then he backs up and, you know,
25 yells like what are you doing, you know, and I'm looking.

1 He's like come on, let's go, so he drives off and I follow
2 him.

3 Q. And how long did you follow him?

4 A. We made a left and probably rode maybe ten minutes
5 down a road. The area we ended up at was downtown, and I
6 don't know what building it was we were at, but we parked
7 and, you know, I get out of the car, you know, just my mind
8 is gone, and then he's telling me, you know, calm down. My
9 brah is coming to get us. The next thing I know, I see the
10 black Escalade drive by. He's like there's my brah. Come
11 on, let's go. Now, let's go.

12 Q. Do you know that black Escalade?

13 A. I know the black Escalade belonged to Marcus.

14 Q. What does Lanard do at that point?

15 A. He goes and gets in his car, and we're pulling off and
16 we ended up in some neighborhood.

17 Q. All right. What car is Lanard getting into?

18 A. He's getting into the green Durango.

19 Q. Okay. And where is the Escalade?

20 A. The Escalade is -- by this time is crossing over the
21 bridge. There's a bridge over there, so it crosses over the
22 bridge and we're going that way, so it's the Escalade, the
23 Durango, and my car.

24 Q. And the Durango belongs to?

25 A. The -- the victim.

1 Q. And your -- you've got just the three of y'all are
2 driving?

3 A. Yes.

4 Q. Do you stop at some point?

5 A. Yes, we do. We stop in a neighborhood. I have no
6 idea where that neighborhood is located. The street was
7 dark. It was a couple of lights in the neighborhood, and,
8 you know, the Escalade and the Durango kind of come up next
9 to each other, so, you know, I stop where I'm at and they're
10 kind of a few feet ahead.

11 And then Lanard comes back to me. He's like stay right
12 there. We'll be right back, and they left, you know, and I'm
13 -- I didn't know what to do, if I should just leave or what,
14 you know, because I didn't want nothing to happen, you know,
15 to me, so I sat there, and then they came back in the green
16 Durango.

17 Q. The both of them?

18 A. Yes.

19 Q. Do you know what happened to the Escalade?

20 A. No.

21 Q. You indicated that Marcus left in a black vehicle from
22 the -- from the scene itself?

23 A. Yes, a black BMW car.

24 Q. Do you know what happened to that black BMW?

25 A. No.

1 Q. So you see them leave, and then the next time you see
2 them, is he in the Escalade?

3 A. Yes.

4 Q. Once he gets into the Durango, the victim's vehicle,
5 with Lanard, where do y'all go?

6 A. Okay, after that we ended up at a gas station.

7 Q. Okay. And what were they doing at the gas station?

8 A. At the gas station I was told to go in and purchase
9 gasoline.

10 Q. Did you do that?

11 A. Yes.

12 Q. Did they, in fact, get gasoline?

13 A. Yes.

14 Q. Where did y'all go after that?

15 A. After we left the gas station, we ended up on a dark
16 road. They pulled up next to me and I was told to sit on the
17 side of the road, they're going to go up the dirt road and
18 they'll be right back. So I'm sitting on the side of the
19 road and they're up a dirt road, kind of hilly a little bit.

20 Q. And what happened?

21 A. As I'm sitting there, a State Trooper pulls up behind
22 me, and he asked me if I was okay, and I told him that I was
23 lost and I was trying to get back to Conway. You know, at
24 that time, I knew they were right there, and I know what --
25 you know, what I had just saw with the victim, and I know

1 that officer was by hisself, and I didn't want anything to
2 happen. You know, I didn't want anyone to get shot any more
3 or nothing, so I told him I was lost, and he told me how to
4 get back to Conway, and he pulls off and I pull off behind
5 him just a little, and then I make a U-turn and come back
6 down the road, and when I come back down the road, I see
7 Marcus walking down the street, and he jumps into the car,
8 and I ask him where is Trell, and he said he ran.

9 Q. Who is Trell?

10 A. Lanard.

11 Q. Okay. You call him Trell?

12 A. Yes, I call him Trell. I asked him where Lanard was,
13 and he said that he ran when he saw the blue lights, and, you
14 know, I'm like, well, oh, you know, we've got to get him, you
15 know. I don't know Marcus like that, and I didn't want to be
16 in the car like that -- I don't want to be in the car with
17 him by myself. Trell had to be with me -- Lanard had to be
18 with me because that was my boyfriend and I felt like, you
19 know, he was keeping me safe.

20 We're driving around looking for Trell, couldn't find
21 him. I don't know how long the time was, probably about two
22 or three hours altogether by the time we found Lanard.

23 Q. And did you eventually find him?

24 A. Yes.

25 Q. Did he get in the car with you?

1 A. Yes.

2 Q. Where did y'all go from there?

3 A. We went back to the dirt road where the hill is at,
4 where I was pulled over at.

5 Q. What did you do when you went back there?

6 A. When I went back over there, Lanard and Marcus got out
7 of the car. We went back because Marcus said that he had to
8 finish what they started. He was talking to Lanard. I had
9 no idea what he was talking about.

10 Q. Okay. So they left you once again?

11 A. Yes.

12 Q. Did they eventually come back to your vehicle?

13 A. Yes. Yes. This time it was Lanard that came walking
14 down the street, so we're driving and I'm like, okay, where's
15 Marcus, and he's like he's right there. Go down the street
16 right here. We pick him up. He gets in the car and Marcus
17 says that we need to go to a hotel.

18 Q. Do you go to a hotel?

19 A. Yes, we do.

20 Q. What hotel, do you remember?

21 A. I'm not quite sure what the name was. I can't
22 remember if it was the LaQuinta Inn or Hampton Inn. I'm not
23 sure which one it was. We did go to a few before we ended up
24 to the final hotel.

25 Q. Do you know who rented the room?

1 A. I rented the room.

2 Q. What name was used?

3 A. My name.

4 Q. And who was in the room with you?

5 A. It was me, Lanard, and Marcus.

6 Q. And how long did you stay in the room at the LaQuinta?

7 A. We weren't there that long, maybe about an hour, an
8 hour or two, and then Marcus said that we had to go to the
9 airport.

10 Q. What was -- do you know why you were going to the
11 airport?

12 A. He had to get his car.

13 Q. Did you, in fact, go with them to the airport?

14 A. I had to take them.

15 Q. You drove them?

16 A. Yes.

17 Q. And did you see a vehicle at the airport?

18 A. We pulled up where the rental cars were. At that time
19 I thought it was his vehicle. He gave me the keys and I went
20 and got the car, because he told me to drive it.

21 Q. What kind of car was it?

22 A. It was a red Camaro.

23 Q. Where did you drive it to?

24 A. A park- -- maybe -- I think it was a Wal-Mart parking
25 lot, so we drove the car to a Wal-Mart parking lot and that's

1 when I got my car back, because Lanard drove my car.

2 Q. And what happened to the Camaro?

3 A. They got into the -- Lanard and Marcus got into the
4 Camaro.

5 Q. And when you got back into your car, where did you go?

6 A. I went home. I went back to Columbia.

7 Q. And you left them with the red Camaro?

8 A. Yes.

9 Q. During the time that you were in the vehicle with
10 Marcus, did you ask him what happened in the trailer?

11 A. Yes, I did. I asked him what happened, and he told me
12 that -- he was explaining to me that when -- when the victim
13 came and knocked on the door and he asked who it was, he
14 didn't recognize who it was, and he asked -- at that -- they
15 called Roy Unc, the guy in the wheelchair; he asked Unc did
16 he know who it was at the door, and he told him yes, that's
17 my cousin, open the door.

18 So he said he opened the door for him and when he
19 opened the door, he was explaining to me that when someone is
20 walking in, you've got to watch how they stand because you
21 never know what could happen, and he opened the door, the
22 victim came in, and Marcus said that the victim, Jerome,
23 asked Unc why you got these young boys in here, something to
24 that extent, and I believe that's when words were exchanged,
25 a argument happened, and then he said -- I can't recall if he

1 said that he -- that if that -- Jerome had a gun or not, but
2 I do remember him saying that he had to get got.

3 Q. And this was Marcus talking?

4 A. Yes.

5 Q. What was -- as Marcus is describing this, and this is
6 -- when y'all were talking about this, how long after the
7 shooting is this?

8 A. Maybe five, six hours later.

9 Q. And what was his demeanor? Do you understand -- do
10 you understand what I'm saying, demeanor?

11 A. Yes.

12 Q. What was Marcus's demeanor when he was telling you
13 about this?

14 A. Just speak- -- talking regular, just a regular
15 conversation, you know, no jitteriness, or regret, or remorse,
16 or anything, just like, you know, just explaining like this
17 is what happened, this is how it is, in that sense.

18 Q. Have you seen Marcus with a gun?

19 A. Yes, I have.

20 Q. And was it that day?

21 A. Yes, it was.

22 Q. Where was it?

23 A. It was on the kitchen table.

24 Q. And did you know if Lanard had a weapon as well?

25 A. Yes.

1 Q. And where was that?

2 A. During that -- the murder time, it was in the glove
3 compartment of my vehicle.

4 Q. When y'all were at the store?

5 A. We were at the store.

6 Q. How about after the fact?

7 A. It was in my glove compartment. When we pulled up, I
8 remember he took it out of my glove compartment before we
9 left.

10 Q. Who is he?

11 A. I'm sorry, Lanard. When he was putting things in my
12 -- in the back of my car, I remember he -- Lanard opened the
13 front door to the passenger side and took the gun out of my
14 glove box.

15 Q. You don't know what he did with it?

16 A. No.

17 Q. Did Marcus ever tell you that he took a gun from the
18 victim?

19 A. No.

20 Q. Did Marcus at the LaQuinta -- did Marcus tell you what
21 kind of room to rent?

22 A. A suite.

23 Q. Is there a reason for that? Was there -- did he say
24 why he wanted a suite?

25 A. Because it was three of us.

1 Q. Now, Qwanda, I'd like to just touch base with why
2 you're here today, ---

3 A. Okay.

4 Q. --- okay, but first you have -- back in 2000 you had a
5 couple of bad check convictions, is that correct?

6 A. Yes.

7 Q. And as a result of what you just told the jury, with
8 you assisting Lanard and Marcus, have you been charged in
9 conjunction with this case? You've been charged criminally?

10 A. Charged, yes.

11 Q. Do you know what you were charged with?

12 A. Yes.

13 Q. Okay. What is that?

14 A. Accessory to murder after the fact.

15 Q. And this is your lawyer with you today, is that
16 correct?

17 A. Yes.

18 Q. And ---

19 **THE COURT:** For the record, we probably ought to put a
20 name with that.

21 **MS. ELDER:** I'm sorry.

22 Q. This is John Long, your lawyer, ---

23 A. Yes.

24 Q. --- is that correct?

25 A. Yes.

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1 Q. And have you talked to me prior to today?

2 A. Yes.

3 Q. You were testifying in an effort to assist yourself,
4 is that correct?

5 A. That's correct.

6 Q. Have we made any promises regarding what type of
7 assistance you would receive on your charge?

8 A. No, you have not.

9 Q. One more question. At the hotel, did you hear Marcus
10 tell Lanard anything about killing somebody?

11 A. Yes.

12 Q. What did he say?

13 A. When I was sitting in the room, I recall Marcus saying
14 that he knew he was going to have to shoot him or kill him a
15 nigger tonight.

16 MS. ELDER: No other questions.

17 THE COURT: Cross?

18 CROSS-EXAMINATION BY MR. MARTIN:

19 Q. Ms. Powell, you were at the house and left with Lanard
20 to go to the store?

21 A. Correct.

22 Q. What time was that?

23 A. I'm not sure of the time. I know it was at night.

24 Q. And when you left there, who was at the house?

25 A. When I left the trailer, it was Kelly at the house,

1 Roy at the house, and Marcus at the house.

2 Q. What about King?

3 A. That's Marcus.

4 Q. That's Marcus?

5 A. Yes.

6 Q. Now, how long had you known Marcus? You said a day or
7 two?

8 A. Yes.

9 Q. And how did you meet him?

10 A. Through Lanard.

11 Q. Through Lanard?

12 A. He introduced him to me.

13 Q. He introduced him to you?

14 A. Yes.

15 Q. And you'd come down from Columbia to visit Lanard who
16 lived at the house with Roy James?

17 A. Correct.

18 Q. Were you using any drugs that day?

19 A. No. I don't do drugs.

20 Q. You don't do drugs. Were you drinking any alcohol
21 that day?

22 A. Yes.

23 Q. All right. And how long had you been drinking
24 alcohol?

25 A. Maybe an hour or two, not much. It ---

1 Q. An hour or two?

2 A. Right. Kelly had a little pint-size bottle of vodka.
3 I wasn't drinking much because I was cooking.

4 Q. And Kelly is another girl that was there?

5 A. Yes.

6 Q. All right. And Kelly was drinking?

7 A. Yes.

8 Q. Was Kelly drunk, high?

9 A. Yes.

10 Q. How about Roy?

11 A. Yes.

12 Q. Roy using drugs?

13 A. I didn't see him use any drugs, but he probably was
14 high.

15 Q. Drinking as well?

16 A. Yes.

17 Q. And when you left, you don't know who came in after
18 that?

19 A. Correct.

20 Q. But what you do know is that you came to visit Lanard
21 Powell?

22 A. Yes.

23 Q. And when you came to visit, you stayed at Roy
24 Sinclair's trailer with Powell?

25 A. Correct.

1 Q. And on how many occasions had you been?

2 A. I would go up there almost every day when I got off if
3 I had the time.

4 Q. Where were you living? Were you living here?

5 A. Columbia.

6 Q. Columbia?

7 A. Yes.

8 Q. You would drive down from Columbia every day?

9 A. Yes.

10 Q. And then go back to Columbia?

11 A. Yes.

12 Q. Were you working in Columbia?

13 A. Yes.

14 Q. And you were driving down every day to see Lanard
15 Powell for how long?

16 A. Until the next morning.

17 Q. Until the next morning?

18 A. Then I'll go back home to Columbia.

19 Q. All right. But, I mean, has that gone on for one
20 week, two weeks, or the three weeks that Powell had lived
21 here?

22 A. Yes, the three weeks.

23 Q. The three weeks. All right. Now, you knew then, that
24 being the case, that this was a place where Lanard sold drugs
25 out of?

1 A. Yes.

2 Q. And his name is Lanard, and Capone, and Trell?

3 A. Yes.

4 Q. All right. And, of course, -- and you know he was
5 selling drugs out of the house?

6 A. Yes.

7 Q. And Roy knew he was selling drugs out of the house?

8 A. Yes.

9 Q. And all kind of people would come to the house to buy
10 drugs?

11 A. Yes.

12 Q. And they would use drugs at the house?

13 A. Yes.

14 Q. And they would use drugs together?

15 A. To my understanding, yes.

16 Q. And this occasion or this night was no different than
17 any other?

18 A. It wasn't every night.

19 Q. And when people came to the house and Lanard sold them
20 drugs, he would go to the door with a gun in his hand?

21 A. Yes.

22 Q. And all kinds of people came into that place?

23 A. Yes.

24 Q. And Lanard was afraid for his safety?

25 A. He had a gun in his hand.

1 Q. Had a gun in his hand?

2 A. Yes.

3 Q. And he dealt in a dangerous world?

4 A. Yes.

5 Q. And he was a dangerous man himself?

6 A. No.

7 Q. Huh?

8 A. No.

9 Q. He wasn't?

10 A. I didn't believe he was.

11 Q. Well, how big was that pistol he was riding around
12 with in your car that night?

13 A. I know it was a -- I don't know what their -- what the
14 sizes are called, but it was probably about this big
15 (indicating), like a little gun.

16 Q. And there's no doubt that when he came back to the
17 house, that he got out of your car and went into the house?

18 A. Correct.

19 Q. And then he got a gun and went back into the house?

20 A. I don't know if he went back into the house with the
21 gun because we left.

22 Q. Well, he came to your car and got the gun?

23 A. Correct.

24 Q. And he had taken the gun out of the house when he got
25 into the car to leave with you, right?

1 A. When we went to the store, correct.

2 Q. And y'all went to the store for what purpose?

3 A. To get beer and cigars.

4 Q. All right. And you went to the store and you come
5 back, and you say as you're coming back that Marcus is
6 leaving?

7 A. Correct.

8 Q. Of course, you're driving one way and he is driving
9 another way?

10 A. Correct.

11 Q. And it's dark?

12 A. Yes.

13 Q. And your windows are rolled up?

14 A. No.

15 Q. Your windows are rolled down?

16 A. Yes.

17 Q. All right. But you pass him, driver's side to
18 driver's side or passenger side to passenger side?

19 A. Driver's side to driver's side.

20 Q. All right. So you would have been next to him when he
21 came by?

22 A. Correct.

23 Q. Now, he drives an automobile that you say is a black
24 BMW?

25 A. Correct.

- 1 Q. Tinted windows?
- 2 A. Yes.
- 3 Q. You don't know who was in that automobile, do you?
- 4 A. I do know.
- 5 Q. You do know?
- 6 A. Yes.
- 7 Q. And how do you know?
- 8 A. Because I seen his face.
- 9 Q. You saw his face?
- 10 A. Yes.
- 11 Q. In the dark?
- 12 A. Correct. He was right here next to me.
- 13 Q. Right there next to you?
- 14 A. Yes.
- 15 Q. And he said what?
- 16 A. He said pick up the shells, Brah.
- 17 Q. And that was it?
- 18 A. Yes, and then he sped off.
- 19 Q. And, of course, now, you've been charged with
- 20 accessory after the fact to murder, right?
- 21 A. Correct.
- 22 Q. And the State has told you, true, -- and John Long is
- 23 your lawyer, right?
- 24 A. That's correct.
- 25 Q. And they told you that they will help you if you will

1 testify for them in this case, have they not?

2 A. No, they have not.

3 Q. They haven't?

4 A. No, they have not.

5 Q. They haven't. Your expectation is that they will help
6 you if you testify in this trial, is it not?

7 A. No. I'm helping myself.

8 Q. You're helping yourself?

9 A. Yes.

10 Q. Right. And that's because you have got charges
11 pending against you, felony charges, for accessory after the
12 fact of murder that can put you in the penitentiary, can't
13 they?

14 A. That is correct.

15 Q. And the person that's making the decision on what to
16 do with charges against you is this lady right here, isn't
17 it?

18 A. I believe so, and the jury.

19 Q. And the jury?

20 A. Yes.

21 Q. Well, the jury is not trying you today?

22 A. They're -- I don't know. They're here.

23 Q. You don't know for sure?

24 A. No.

25 Q. At any rate, it is your boyfriend that came out and

1 for whatever reason got into what you say was the victim's
2 vehicle?

3 A. Correct.

4 Q. All right. How do you know it was the victim's
5 vehicle?

6 A. I did not know it was the victim's vehicle at that
7 time. I ---

8 Q. But he told you that later?

9 A. Later, I figured out that that was his Durango.

10 Q. All right. And who got in it and drove it away?

11 A. It was Lanard.

12 Q. And who, once they got away with it, drove it into the
13 woods?

14 A. It was Lanard.

15 Q. It was Lanard. And who had drugs in the house there
16 at Roy James's place?

17 A. I don't know who exactly had drugs in the trailer.

18 Q. Lanard had some there that he was selling, did he not?

19 A. That is correct.

20 Q. And when he came out of the trailer, those things he
21 put in your backseat, some of them were drugs, weren't they?

22 A. I have no idea what was all put back in the back of my
23 car.

24 Q. You can't deny that it was drugs that he put back in
25 there?

1 A. It was -- I don't know if it was drugs.

2 Q. How about the money? Did he tell you or did you see
3 any of the money that he got out of the trailer?

4 A. I didn't even know it was money in my car.

5 Q. You never saw anybody shoot anybody that night?

6 A. I did not see no one get shot.

7 Q. You and Lanard were gone?

8 A. Correct.

9 Q. You don't know who came to the house after you and
10 Lanard left?

11 A. That's correct.

12 Q. And you don't know who left the house in addition to
13 Marcus?

14 A. That's correct.

15 **MR. MARTIN:** One second.

16 That's all the questions I have.

17 **THE COURT:** All right.

18 Redirect?

19 **MS. ELDER:** No further questions, Your Honor. We would
20 ask that this witness be excused.

21 **THE COURT:** You can be excused, and we appreciate your
22 time, Ms. Caldwell-Brown.

23 All right. Call your next witness.

24 **MS. ELDER:** Your Honor, we would call Marthena Jackson.

25 **DAISY MARTHENA MENENDEZ**, being first duly sworn,

1 testifies as follows:

2 **THE DEPUTY CLERK:** Please state your full name and
3 spell your last name.

4 **MS. MENENDEZ:** Daisy Marthena Menendez,
5 M-E-N-E-N-D-E-Z.

6 **DIRECT-EXAMINATION BY MS. ELDER:**

7 Q. I'm sorry. Could you tell me what your last name is
8 now?

9 A. Menendez.

10 Q. Menendez?

11 A. Yes.

12 Q. Ms. Menendez, were you previously known as Marthena --
13 I believe it's Marthena Jackson, is that correct?

14 A. Yes.

15 Q. Ms. Menendez, I want to take you to a time in early
16 May of 2012. Did you come a time to make contact with law
17 enforcement regarding the black BMW?

18 A. I'm sorry. Repeat that.

19 Q. In May of 2012, did you talk to law enforcement about
20 a black BMW?

21 A. Yes.

22 Q. Could you tell me the circumstances of why you made
23 contact with law enforcement?

24 A. Law enforcement contacted me.

25 Q. Okay. And ---

1 **MR. BROWN:** Your Honor, could you ask the witness to
2 bring the -- a little closer.

3 **THE COURT:** Yeah. Speak a little louder into the
4 microphone, please ma'am. Thank you.

5 Q. Do you know who Jacinda Wright is?

6 A. Yes.

7 Q. And who is she?

8 A. She's my niece.

9 Q. And in the early hours of May 1st, 2012, did you get a
10 call from your niece?

11 A. Yes.

12 Q. And as a result of that phone call, did you come in
13 contact with a black BMW?

14 A. Yes.

15 Q. Tell me how that came about.

16 A. She called and asked if I would -- that her husband
17 wanted to know if he could park the car in my garage.

18 **MR. BROWN:** Your Honor, ---

19 Q. And who is her husband?

20 **MR. BROWN:** Your Honor, I'm going to object to anything
21 the husband said.

22 **THE COURT:** Yeah. I sustain the objection.

23 Q. Who is her husband?

24 A. Marcus Wright.

25 Q. And did Marcus -- was a black BMW, in fact, parked in

1 your garage?

2 A. I'm sorry?

3 Q. Did they park a black BMW in your garage?

4 A. He did.

5 Q. Did you see him park it in your garage?

6 A. Yes.

7 Q. Was it on -- do you remember what time it was on -- on
8 May 1st?

9 A. No.

10 Q. Was it daytime or nighttime?

11 A. Nighttime.

12 Q. How long did it stay there?

13 A. It was -- it was one day.

14 Q. Did you see Marcus Wright return to that vehicle after
15 he parked it?

16 A. It was the next day.

17 Q. And what did he do?

18 A. I didn't see what he did. He came back to my home and
19 said that he needed to get something from the vehicle, but I
20 did not see what he got.

21 Q. But he came back to get something out, ---

22 A. Yes.

23 Q. --- or that's what he told you?

24 A. Yes.

25 Q. Did he take the vehicle with you -- with him at that

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1 time?

2 A. No.

3 Q. And who eventually came and got the vehicle?

4 A. Law enforcement.

5 Q. And where were you living at the time when this
6 vehicle was parked? What address was that at?

7 A. 3651 Kate's Bay Highway, Conway.

8 Q. Did your niece, Jacinda, live in that area?

9 A. Yes.

10 MS. ELDER: One moment, Your Honor.

11 Q. How far away did your niece live at the time?

12 A. She's two houses over.

13 Q. Okay. But they parked it in your garage, is that
14 correct?

15 A. Yes.

16 MS. ELDER: No other questions.

17 THE COURT: Cross.

18 CROSS-EXAMINATION BY MR. BROWN:

19 Q. I'm sorry. Would you repeat your name again.

20 A. I'm sorry. I can't hear.

21 Q. Would you repeat your name for me, please.

22 A. Daisy Marthena Menendez.

23 Q. Ms. Menendez, you do know what you are here about
24 today?

25 A. Yes sir.

1 Q. Now, let's make sure we get some things straight. You
2 have never told the police or any law enforcement authority
3 that you saw Marcus with a gun?

4 A. No.

5 Q. Okay. You have never told law enforcement or any
6 police authority that you saw Marcus Wright shoot anybody?

7 A. No.

8 Q. Now, what is Marcus' address?

9 A. Kate's Bay Highway. It's 36- -- I'm sorry. I don't
10 know the house -- that house number.

11 Q. What is your address?

12 A. 3651.

13 Q. And does he live on the right or the left of you?

14 A. From facing my house, it would be to the left.

15 Q. And he lived there with his wife?

16 A. Yes.

17 Q. And how long has he lived there with his wife?

18 A. When he moved to Horry County, Conway.

19 Q. And that's been more than three years?

20 A. Now, yes.

21 Q. And is that the house with the big fence around it?

22 A. Yes.

23 Q. And if I understand correctly, is it a stick-built
24 house or is it a mobile home?

25 A. It's a mobile home.

1 Q. And it's, I think, what's commonly referred to as a
2 double-wide?

3 A. Yes.

4 Q. And you have seen him there before?

5 A. Yes.

6 Q. How often have you seen him there?

7 A. Not quite on a daily basis, but I've seen him on the
8 property, I mean, you know, in the yard.

9 Q. Your address, again, is what?

10 A. 3651.

11 Q. Is your niece address 5456, or do you know?

12 A. It would be thirty-six ---

13 Q. How about 3635?

14 A. 3635, yes.

15 Q. All right. And that's the address where she lived
16 with, -- did Marcus live there?

17 A. Yes.

18 Q. Okay. And you've seen him there on a daily basis -- I
19 mean, not on a daily basis, but on a regular basis?

20 A. Yes.

21 Q. All right. And you have not indicated in any fashion
22 that the police authority informed you that Marcus Wright
23 shot somebody?

24 A. Sorry?

25 Q. I'm sorry. Did you indicate in any fashion that the

1 police authority informed you that Marcus Wright shot
2 someone?

3 A. They informed me, yes.

4 Q. But you didn't tell them that?

5 A. No.

6 Q. So that's what they told you in an interview?

7 A. Yes.

8 Q. Okay. And I think you were shocked when you heard
9 that?

10 A. Yes.

11 Q. There was nothing untoward about the car being parked
12 in your garage, was there?

13 A. Sir?

14 Q. There was nothing untowards about the car being parked
15 in your garage, was there?

16 A. Untowards?

17 Q. Sinister?

18 A. No, sir. No.

19 Q. And that was not something that gave you any pause or
20 any concern, did it?

21 A. No.

22 MR. BROWN: Thank you. I have nothing further.

23 THE COURT: Redirect?

24 MS. ELDER: No other questions. Your Honor, we'd ask
25 that this witness be excused.

1 **THE COURT:** You can step down, Ms. Menendez, and be
2 excused. We appreciate your time. Thank you.

3 **MS. ELDER:** We have a matter of law, Your Honor, before
4 the next witness is called.

5 **THE COURT:** Okay. Well, it's probably getting close to
6 a break time anyway, so we'll let the jury go to the jury
7 room and we will send for you when we can.

8 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
9 **JURY.)**

10 **THE COURT:** All right.

11 **MS. ELDER:** Your Honor, the State's next witness is
12 Lanard Powell. I believe you indicated earlier you want to
13 do a hearing with Mr. Powell regarding his prior record.

14 **THE COURT:** Well, that's not exactly the way I put it,
15 but I just said before they go into the armed robbery matter
16 that we needed to have an in camera, so in a way, you're
17 right. That would be only if they intend to do it, which I
18 anticipate.

19 **MR. BROWN:** I'm sorry?

20 **THE COURT:** Do you want to make a proffer on this armed
21 robbery with Mr. Powell?

22 **MR. BROWN:** Yes, Your Honor. In his statement to the
23 police ---

24 **THE COURT:** Well, no. I mean, let's call him and see
25 what he says.

1 MR. BROWN: Okay, sure.

2 MS. ELDER: I believe we need to, Your Honor, because
3 of the housing situation, we've got to get -- he's
4 downstairs. We need to bring him upstairs.

5 THE COURT: Okay. Why don't we take our break.

6 MS. ELDER: Yes sir.

7 THE COURT: We'll take about a ten to fifteen minute
8 break, and then when we get back, we'll have Mr. Powell and
9 be ready to go.

10 MS. ELDER: Thank you.

11 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
12 PRESENCE OF THE JURY.)

13 THE COURT: Is the State ready?

14 All right. Let's come to order.

15 MS. ELDER: Your Honor, Mr. Fox is here. He is -- Eric
16 Fox represents Lanard Powell, and we may be able to
17 stipulate. Mr. Fox has talked with Mr. Powell, has indicated
18 that it appeared in 2002, sometime about 2002, Mr. Powell was
19 convicted of an armed robbery and kidnapping. He served
20 active time for that. We would -- Mr. Fox indicates that
21 that is his recollection as well.

22 He did say there was a burglary charge in addition to
23 that, but they did not know the disposition. So the State
24 would be willing to stipulate that there was a 2002 armed
25 robbery conviction and a kidnapping conviction that they

JURY OUT/ON RECORD/JURY IN
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1 would be allowed to use for impeachment purposes.

2 MR. FOX: I agree with that.

3 THE COURT: You're okay?

4 MR. FOX: Yes sir.

5 THE COURT: All right.

6 Bring in the jury then.

7 While the jury is coming in, I have to comment. It's
8 kind of scary that that wasn't on the NCIC.

9 MS. ELDER: Yes sir, especially that one.

10 THE COURT: Well, I know. It kind of shakes your faith
11 in that system, wonder what may be on some of them that
12 shouldn't be when there's something not on it that should be.

13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JURY.)

15 THE COURT: You may call your next witness. The jury
16 is present.

17 MS. ELDER: Thank you, Your Honor. We would -- the
18 State would call Lanard Powell.

19 LANARD POWELL, being first duly sworn, testifies as
20 follows:

21 THE DEPUTY CLERK: Please state your full name and
22 spell your last name.

23 MR. POWELL: Lanard Powell, P-O-W-E-L-L.

24 DIRECT-EXAMINATION BY MS. ELDER:

25 Q. Mr. Powell, I want to take you back to the date of

1 April 30th, 2012. Were you in Horry County?

2 A. Yes ma'am.

3 Q. Where were you living at the time?

4 A. 5456 Figure Eight Road.

5 Q. Could you pull up a little bit closer to the
6 microphone. Where is that?

7 A. 5456 Figure Eight Road.

8 Q. Who else lived there?

9 A. Me and Mr. Roy Sinclair.

10 Q. And what was the reason that you were living there at
11 that time?

12 A. I was selling drugs.

13 Q. Who were you selling drugs for?

14 A. Mr. Wright.

15 Q. Did he -- how did you come about getting into Mr.
16 Sinclair's house?

17 A. Basically was he called -- Mr. Wright called me and
18 told me he had a little -- he wanted me to get some money or
19 whatever, trying to help me out, and he told me I had -- he
20 had a spot where I can go at, and that's how I came about
21 doing that for him.

22 Q. And Marcus set that up for you?

23 A. Yes ma'am. I never knew Roy.

24 Q. And what kind of drugs were you selling?

25 A. Crack cocaine.

1 Q. And how much were you selling? Let's do it by the
2 week.

3 A. Probably about two or three ounces.

4 Q. And how would you and Mr. Wright work out that
5 business of it?

6 A. He would just come by and give it to me.

7 Q. And what would he get in return?

8 A. The money that I made.

9 Q. How much money did he get off of an ounce?

10 A. Thirteen or Fourteen Hundred Dollars.

11 Q. And how much of it would go to Mr. Wright?

12 A. Probably a Thousand.

13 Q. And you would keep the Three or Four Hundred?

14 A. Yes ma'am.

15 Q. How long had you been selling drugs for him in Horry
16 County?

17 A. From the time I came down here, about a month.

18 MR. BROWN: I didn't hear that last answer.

19 THE COURT: He said about a month.

20 Q. Mr. Powell, do people also call you Capone?

21 A. Yes.

22 Q. And do you know what Marcus Wright goes by?

23 A. Marcus or King.

24 Q. King. Do you know who Money is?

25 A. No.

1 Q. I want to take you to the night at Roy Sinclair's
2 house when a shooting occurred. Do you recall that night?

3 A. Yeah, I recall that night.

4 Q. What had y'all been doing that day?

5 A. Me -- the same as usual, sitting around the house, me
6 and Roy, selling -- I was selling crack. That was about it.

7 Q. And who else was there at the house with you?

8 A. My girlfriend, Qwanda.

9 Q. I'm sorry. Who?

10 A. My girlfriend, Qwanda.

11 Q. And was Marcus there at the house?

12 A. That day, no.

13 Q. Let's go into the later evening hours. Was he at the
14 house?

15 A. Yes.

16 Q. And do you know -- do you know what he rode to Roy's
17 house in?

18 A. A black BMW.

19 Q. And did you and Qwanda stay there all evening?

20 A. No.

21 Q. Tell me -- tell me, did you leave at some point?

22 A. Yes. We left later that night.

23 Q. And where did you go?

24 A. We went to the -- to the beach and went to the store.
25 Then I went to make a sale.

1 Q. Did you come back to Roy's house?

2 A. Yes.

3 Q. What did you see when you came back to Roy's house?

4 A. I seen Mr. Wright and his car.

5 Q. Okay. And what else?

6 A. He pulled off. The door was swinging to the mobile
7 home, and Ms. Chandler, she came up to me. She was like that
8 boy shot him. That boy shot him. I didn't know who she was
9 talking about until I stepped inside the home and I seen Mr.
10 Green laying on the floor.

11 Q. Did you have a gun?

12 A. Yes.

13 Q. What kind of gun did you have?

14 A. It was a nine millimeter.

15 Q. Where did you get that gun from?

16 A. Mr. Wright.

17 Q. Do you know who it was registered to?

18 A. No idea.

19 Q. Did he ever tell you?

20 A. No.

21 Q. Why did he give you that nine millimeter?

22 A. Basically because of the situation I was in over there
23 selling drugs.

24 Q. How long before this shooting had he given you that
25 gun?

1 A. The very first day I came.

2 Q. So about a month?

3 A. About a month.

4 Q. And did you have it when you went into the -- back
5 into the house when Mr. Green was on the ground?

6 A. Yes.

7 Q. And why did you have it with you then?

8 A. I always kept it with me for protection, never know
9 what was going to happen around there.

10 Q. When you went into the house, what did you see?

11 A. I seen Mr. Green laying on the floor.

12 Q. Did you do anything?

13 A. I made a motion to like nudge him and see if he was
14 alive. It was like a -- like a kick, but it wasn't no
15 vicious kick. It was like a kick to see if he was alive.

16 Q. Okay. And then what did you do?

17 A. I jumped over him and ran into the room and grabbed a
18 book bag full of money.

19 Q. And where did you take that book bag?

20 A. I took it outside and put it in Qwanda's car.

21 Q. Who is Qwanda?

22 A. That's my girlfriend.

23 Q. And what did you do after that?

24 A. I went back into the home, went in kind of -- there
25 was some dope in the house, so I grabbed that, and Ms.

1 Pinnix, Ms. Kelly, she -- she had a whole bunch of shells in
2 her hand and she tried to give me the shells, and then she
3 was asking me, what should I do? I said go home.

4 Q. And is Kelly a black female or a white female?

5 A. A white female.

6 Q. And when you say shells, what are you talking about?

7 A. Shells to the crime scene.

8 Q. Are you talking about ammunition shells?

9 A. Ammunition.

10 Q. After you had -- after you saw that, did you leave the
11 house at some point?

12 A. Yes.

13 Q. What did -- what did you -- what car did you leave the
14 house in?

15 A. In the green Durango.

16 Q. And where did you go in the green Durango?

17 A. I really didn't know where I was going. Mr. Wright
18 led me to a location. He met me there.

19 Q. And what -- when he -- when he met you, what vehicle
20 was he in?

21 A. In his Escalade.

22 Q. Had you seen that vehicle before?

23 A. Yes.

24 Q. So he left Roy's in the BMW?

25 A. Yes.

1 Q. And met you in the Escalade?

2 A. Yes.

3 Q. How long between the two did that occur?

4 A. Twenty minutes, twenty-five minutes, somewhere around
5 there.

6 Q. When he met you in the Escalade, where did you go
7 then?

8 A. We went to an unknown location, and he jumped in the
9 car with me.

10 Q. In the Durango?

11 A. Yes.

12 Q. What did he do with the Escalade?

13 A. He parked it.

14 Q. Do you know where he parked it?

15 A. No, I don't.

16 Q. Did you see him park it?

17 A. No, I didn't see him park it. I was following behind
18 him.

19 Q. And once he got in the Durango with you, where did you
20 go?

21 A. We went to a gas station and filled up with gas.

22 There was a gas canister in the back. He filled that up,
23 and ---

24 Q. Who filled that up?

25 A. I filled that up.

1 Q. How did the gas can get back there?

2 A. I was -- I think it was already back there.

3 Q. And then filled the gas can up?

4 A. Yes ma'am.

5 Q. What were y'all going to do with the gas can?

6 A. Get rid of the vehicle.

7 Q. Okay. Where did you take the vehicle?

8 A. Now that I know, Johnsonville.

9 Q. And were you driving or was Marcus driving?

10 A. I was driving.

11 Q. And where in Johnsonville did you drive?

12 A. Down a long road, that's all I know.

13 Q. Were there houses there?

14 A. Like three or four houses.

15 Q. Okay. And did you drive the vehicle on a paved road

16 or a dirt road?

17 A. It was on a paved road, but we went off the road onto

18 a dirt road.

19 Q. And when y'all were out in the woods, then where was

20 Qwanda?

21 A. In her vehicle.

22 Q. Where?

23 A. Outside on the paved road.

24 Q. And did you see police at any point in time?

25 A. Yes. I seen blue lights.

1 Q. And what did you do at that point?

2 A. I ran.

3 Q. And prior to you running, did Marcus say anything to
4 you about the blue light?

5 A. No, he didn't say anything about the blue lights. He
6 just -- I heard him telling me, come back.

7 Q. And did you go back?

8 A. No.

9 Q. Did he run? Did Marcus run?

10 A. No.

11 Q. Do you know where he went?

12 A. From my understanding, I guess he went and got back in
13 the car with Qwanda.

14 Q. Okay. So the only thing that he said to you out in
15 the woods was come back?

16 A. Come back.

17 Q. When y'all got out of the vehicle after you parked the
18 vehicle, what did y'all talk about?

19 A. Once we was in the woods?

20 Q. Yes.

21 A. Just trying to burn it.

22 Q. Do you know why y'all were trying to burn it?

23 A. I later figured out that was Mr. Green's truck.

24 Q. Does Marcus carry a weapon?

25 A. Yes ma'am.

1 Q. What kind of weapon does he carry?

2 A. A forty.

3 Q. Is that a Glock?

4 A. Yes.

5 Q. Did you see Marcus with a weapon that day?

6 A. Yes.

7 Q. Where was the weapon at?

8 A. In his hand, on the table.

9 Q. When you say on the table, was that in Roy's house?

10 A. Yes.

11 Q. State's Exhibit 7, is that the table you're talking
12 about?

13 A. Yes ma'am.

14 Q. Was Marcus sitting there at the table?

15 A. Yes ma'am.

16 Q. Where was he at when you and Qwanda left for the
17 store?

18 A. He was sitting at the table.

19 Q. Was the gun out?

20 A. Yes.

21 Q. Did you and Marcus talk about what had happened in the
22 trailer?

23 A. Yes.

24 Q. What did Marcus tell you about that?

25 A. He told me that Mr. Green -- he say he heard him knock

1 on the door. He say he swung the door open. He say he had a
2 gun in his hand, say everybody else was just like basically
3 roaming in there, and Mr. Green came in saying such things as
4 you got these young boys in your house now. He indicated
5 that Mr. Green looked as if he was going for a gun.

6 Q. So if he indicated that Mr. Green looked like he was
7 going for a gun, he didn't have -- he wouldn't have had it in
8 his hand, right?

9 A. No.

10 Q. So -- and it's important. Did Marcus -- what did
11 Marcus tell you about that?

12 A. He said that he looked like he was -- he took like --
13 he said Mr. Green took like three steps into the home and was
14 reaching by his abdomen, indicating he had a gun, so he shot
15 him.

16 Q. Did Marcus ever tell you he saw a gun?

17 A. No.

18 Q. Did he tell you what he did with his forty?

19 A. No.

20 Q. Did you ask him?

21 A. No.

22 Q. Did you see it once y'all got in the car together, the
23 Durango?

24 A. No ma'am.

25 Q. Did he say that Mr. Green threatened him in any way?

1 A. No.

2 Q. Now, once you got back in the Durango and y'all were
3 out of the woods, how did y'all get back from Johnsonville?

4 A. I ran. I didn't leave Johnsonville. I ran.

5 Q. Okay.

6 A. I was out there just roaming in the woods.

7 Q. Did you ever get back in the car with Qwanda?

8 A. Yes.

9 Q. And who was in the car with her when you got back in?

10 A. Mr. Wright.

11 Q. And when the three of y'all got back in the car, where
12 did you go?

13 A. Went to a hotel.

14 Q. And who rented that room?

15 A. Qwanda.

16 Q. And do you recall what the name of that hotel is?

17 A. I want to say LaQuinta Inn.

18 Q. And how long -- did you stay there?

19 A. Yeah, for a couple hours.

20 Q. Where did you go after you left the LaQuinta?

21 A. We went to the airport.

22 Q. And why did you go to the airport?

23 A. To get a rental car.

24 Q. And did you go to the airport?

25 A. Yes.

- 1 Q. Did you get a rental car?
- 2 A. Yes.
- 3 Q. Who was with you at the time?
- 4 A. Me, Qwanda, and Mr. Wright.
- 5 Q. What kind of car was it?
- 6 A. A red Camaro.
- 7 Q. And who rented that vehicle?
- 8 A. I don't know. I didn't know at the time.
- 9 Q. Who drove it from the airport?
- 10 A. Qwanda.
- 11 Q. And who was driving her vehicle?
- 12 A. I was.
- 13 Q. Did she get her vehicle back at some point?
- 14 A. Yes.
- 15 Q. When?
- 16 A. Fifteen minutes later.
- 17 Q. Where at?
- 18 A. At the mall parking lot.
- 19 Q. And did you leave the mall parking lot with Qwanda?
- 20 A. No, I didn't.
- 21 Q. Who did you leave with?
- 22 A. Mr. Wright.
- 23 Q. And what vehicle were y'all in?
- 24 A. The red Camaro.
- 25 Q. Once you got in the red Camaro, where did you go?

1 A. To -- to some home -- some mobile home area. I think
2 it was some apartment area. I don't know exactly.

3 Q. What did you do there?

4 A. Talked to a couple of his friends and smoked some
5 weed. That was it.

6 Q. And this was a day after the shooting?

7 A. Yeah.

8 Q. Did you go to another hotel?

9 A. Yes.

10 Q. Where is that one at?

11 A. Somewhere in Conway. I don't -- I'm not familiar
12 around here.

13 Q. Okay. Who rented that room?

14 A. I did.

15 Q. Did you use your name?

16 A. No ma'am.

17 Q. Do you recall what name you used?

18 A. Desmond Jetter.

19 Q. Did you have an I.D. with Desmond Jetter's name on it?

20 A. Yes ma'am.

21 Q. Who did you get that I.D. from?

22 A. Mr. Wright.

23 Q. And did y'all, in fact, get a room?

24 A. Yes.

25 Q. How long were y'all in the room prior to the police

1 arriving?

2 A. About seven, eight hours.

3 Q. When you were in the red Camaro, did you see the box
4 for the Glock, for the forty calibre?

5 A. No ma'am.

6 Q. What happened to the nine millimeter?

7 A. It was put in the glove compartment of the Camaro.

8 Q. And did you have it with you when y'all were in the
9 Durango?

10 A. No ma'am.

11 Q. Where was it?

12 A. Mr. Wright had it.

13 Q. How did Mr. Wright get it?

14 A. I gave it to him.

15 Q. Did you ask him -- why did you give it to him?

16 A. He wanted it back.

17 Q. Okay. Did you ask him why he wanted it back?

18 A. No, I didn't, but I kind of figure already.

19 Q. What was that?

20 A. He wanted to get all the weapons away from the scene
21 or whatever.

22 Q. Did you ask him at that time where the forty was?

23 A. No ma'am.

24 Q. Now, when the police went into the hotel room in
25 Conway, did they find drugs?

1 A. Yes.

2 Q. Did they find money?

3 A. Yes.

4 Q. And who did those drugs and money belong to?

5 A. Mr. Wright.

6 Q. Where did they come from?

7 A. What, the money? It was his money.

8 Q. And where did that money come from?

9 A. Selling drugs.

10 Q. And who carried the money and the drugs into the room

11 in Conway?

12 A. He did.

13 Q. And where did he get them from?

14 A. I don't know.

15 Q. Did you give it to him?

16 A. Yes, I gave it to him when I found it. I had dropped

17 it and we went and found it.

18 Q. Where did you drop it at?

19 A. That night when I was running from the police, about

20 at McDonald's when we got up that morning.

21 Q. Is that the drugs that you had in Roy's house that you

22 were selling for Marcus?

23 A. Yes ma'am.

24 Q. And the money?

25 A. He already had the money. I didn't have any money.

1 Q. How much money was it, do you remember?

2 A. From my notion, Three Thousand Dollars.

3 Q. So when did you give Marcus the -- where did y'all
4 find the dope at when y'all went back to look for it?

5 A. It was laying in the field where I laid it down at.

6 Q. In Johnsonville?

7 A. Yeah. It's right next to a McDonald's.

8 Q. Was it in something?

9 A. It was in plastic bags.

10 Q. Was it ---

11 A. No. It was just laid there.

12 Q. Clear plastic bags?

13 A. Yes.

14 Q. All right. Where was the money at?

15 A. He had the money. That never took place.

16 Q. All right. He had always had the money?

17 A. Yeah, he always had the money.

18 Q. Okay. And when you went to retrieve the drugs in
19 Johnsonville, who retrieved them?

20 A. I got out of the car and I spotted them. I got out of
21 the car and grabbed them.

22 Q. And what did you do with them?

23 A. I gave them to him.

24 Q. Did he ask for them?

25 A. Yes. That was the reason for looking for them.

1 Q. What car were y'all in at the time?

2 A. The red Camaro.

3 Q. So Qwanda was not with you at this time?

4 A. No. She was in -- she went back to Columbia already.

5 Q. All right. Mr. Powell, I want to go over a few things
6 about prior statements, okay?

7 A. Yes.

8 Q. You made a prior statement to police, is that correct?

9 A. Yes.

10 Q. Was that statement -- do you recall when that
11 statement was given?

12 A. The same day when they came into the room.

13 Q. Were you arrested that day?

14 A. Yes.

15 Q. And do you recall that statement?

16 A. Piece by piece, yes. For the most part, yes.

17 Q. And when you initially started that interview with
18 police, did you tell them what you're telling me today?

19 A. Yes.

20 Q. From the very beginning?

21 A. Yes.

22 MS. ELDER: Just a minute.

23 Q. Do you recall referring to Marcus as Money during that
24 interview?

25 A. Yeah; yeah.

1 Q. Now, Mr. Powell, you have some prior convictions, is
2 that correct?

3 A. Yes ma'am.

4 Q. In 2001, you had a possession of a stolen vehicle, is
5 that correct?

6 A. Yes ma'am.

7 Q. You also had a gun charge at that time, is that also
8 correct?

9 A. Yes ma'am.

10 Q. You also were convicted in 2002 of armed robbery?

11 A. Yes ma'am.

12 Q. And kidnapping?

13 A. Yes ma'am.

14 Q. You served time for that?

15 A. Yes ma'am.

16 Q. And you were charged in conjunction with the murder of
17 Jerome Green, is that also correct?

18 A. Yes ma'am.

19 Q. What are you charged with?

20 A. Murder.

21 Q. And since your arrest, you met with me, is that
22 correct?

23 A. Yes ma'am.

24 Q. And your attorney, Mr. Fox, who is here today, was
25 also with you, is that correct?

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CROSS BY BROWN

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1 A. Yes ma'am.

2 Q. And you've agreed to testify for the State today?

3 A. Yes ma'am.

4 Q. Did I make any promises to you about any charges?

5 A. No ma'am.

6 Q. You, I assume, are hoping to assist yourself, is that
7 correct?

8 A. Yes ma'am.

9 Q. When you gave the statement to police at the time of
10 your arrest on May 2nd, 2012, you had not met with me, is
11 that correct?

12 A. No ma'am.

13 Q. And did you know you were charged at that time?

14 A. Yes ma'am.

15 **MS. ELDER:** One minute, Your Honor.

16 Your Honor, I have no further questions.

17 **THE COURT:** All right.

18 Cross?

19 **MR. BROWN:** May it please the Court.

20 **THE COURT:** Yes sir.

21 **CROSS-EXAMINATION BY MR. BROWN:**

22 Q. Mr. Powell, on May 1st, 2012, were you on probation
23 for the armed robbery and kidnapping charge?

24 A. No, I wasn't on probation for that. It was ---

25 Q. Were you on probation for anything?

1 A. Probation and parole of two years supervision.

2 Q. Okay. And when they charged you, did they put a hold
3 on you?

4 A. Yes sir.

5 Q. Do you know what that is?

6 A. Yes sir.

7 Q. And because of that, you could not get out of jail, is
8 that correct?

9 A. Yes sir.

10 Q. And since you have been arrested, you have been in
11 jail all that time?

12 A. Yes sir.

13 Q. And, now, you wrote -- and we'll get to that in a
14 minute, you wrote a number of letters to Mr. Marcus Wright
15 while you were in jail, is that correct?

16 A. Yes.

17 Q. And Mr. Wright never forced you to write those
18 letters?

19 A. No, sir.

20 Q. You wrote those letters because you wanted to get out
21 of jail?

22 A. Yes sir.

23 Q. And you wanted Mr. Wright to help you get out of jail?

24 A. He told me he was going to help me.

25 Q. But the purpose -- so how many letters do you think

1 you wrote Mr. Wright?

2 A. Numerous.

3 Q. More than ten, more than twenty?

4 A. Probably more than ten.

5 Q. Okay. And in each one of those letters, you wanted
6 Mr. Wright to go to a bondsman, I think it's called Silver
7 Fox?

8 A. Actually he brought that to me about Silver Fox.

9 Q. You wanted Mr. Wright to go to Silver Fox?

10 A. Yes.

11 Q. Okay, and post your bond?

12 A. Yes sir.

13 Q. Because you state in one of those letters that you
14 want to get out because you have children and you need to be
15 with your family?

16 A. Yes sir, true.

17 Q. But you never got out of jail?

18 A. No, sir.

19 Q. And you are here today to try to assist yourself in
20 getting out of jail?

21 A. Yes sir.

22 Q. Okay. Now, you are a convicted felon, is that
23 correct?

24 A. Yes sir.

25 Q. And you had in your possession a firearm?

1 A. Yes sir.

2 Q. Okay. And you had that firearm in your possession for
3 over a month?

4 A. Yes sir.

5 Q. And that firearm was used, according to your
6 statement, for the purpose of protection when you were
7 selling drugs out of Roy Sinclair's house?

8 A. Yes sir.

9 Q. And having that firearm, you kept saying in those
10 statements or you told the police in your statement that
11 people were plotting to move in on you; you -- were those
12 your words?

13 A. I don't recall.

14 Q. All right. Well, when you have drugs, a drug house,
15 sometimes they get robbed, don't they?

16 A. Yes sir.

17 Q. And the purpose of that weapon was to protect you or
18 to protect the drug house?

19 A. Yes sir.

20 Q. And if someone came to the drug house to rob you, you
21 would use the weapon?

22 A. Yes sir.

23 Q. Okay. Now, on this day -- now, you didn't see Marcus
24 Wright shoot anybody, did you?

25 A. No, sir.

1 Q. And do you know whether or not there was any DNA
2 evidence of Marcus Wright being at that scene?

3 MS. ELDER: Objection, Your Honor.

4 THE COURT: Well, I think he can ask him if he has any
5 knowledge of it.

6 Go ahead. Answer the question.

7 A. Repeat the question.

8 Q. Did you know from your own personal knowledge whether
9 or not there was any DA -- DNA evidence of Marcus Wright
10 being at that scene?

11 A. Yes.

12 Q. And how do you know that?

13 A. We was drinking. There was a Heineken bottle.

14 Q. DNA, do you know what that is?

15 A. Yeah. Saliva was on the bottle, I guess, with him
16 drinking.

17 Q. Okay. And who put the saliva on the bottle?

18 A. Mr. Wright.

19 Q. And what were y'all drinking?

20 A. I was drinking Ciroc and he was drinking Heineken's.

21 Q. All right. And did you -- at no time did you see Mr.
22 Wright shoot J.J., or Mr. Green, or anyone else?

23 A. No, I didn't.

24 Q. Okay. Now, as the prosecutor has said, you've been
25 charged with murder in this case?

1 A. Yes sir.

2 Q. And who are you charged -- who are you supposedly to
3 have murdered or when did you murder them?

4 A. They said Mr. Green.

5 Q. So did you murder Mr. Green?

6 A. No, sir.

7 Q. But they charged you with murder and you say you
8 didn't murder Mr. Green?

9 A. Yes sir, I didn't.

10 Q. Okay. But you had a gun?

11 A. Yes sir.

12 Q. Mr. Green was not related to you?

13 A. No, sir.

14 Q. And when people come to rob a drug house, you had that
15 gun for the purpose of protecting the drug house?

16 A. Yes sir.

17 Q. Now, when you left the drug house with his money and
18 drugs in the bag, that was your money, was it not?

19 A. No, sir.

20 Q. Well, whose money was it? Who was selling the drugs
21 in that house?

22 A. I was selling drugs for Mr. Wright. That was his
23 money.

24 Q. And how much money did you keep out of the money --
25 out of the money you made off of drugs?

1 A. Little to nothing.

2 Q. But it was your -- so whose money was it?

3 A. Mr. Wright's.

4 Q. None of it was your money?

5 A. Whatever he let me keep.

6 Q. Well, according to your testimony, you had an
7 arrangement with him, so it was -- it was your drugs and your
8 money, too, was it not?

9 A. Yes, when he put it in my hand.

10 Q. Okay.

11 MR. BROWN: Would you mark this as a Defendant's ...

12 (HANDWRITTEN ENVELOPE IS MARKED AS DEFENDANT'S EXHIBIT
13 NUMBER 5 FOR IDENTIFICATION ONLY.)

14 Q. And you wrote -- first let me ask you to identify this
15 if you would, please. Is that your handwriting, Mr. Powell?

16 A. Yes sir.

17 Q. Is that your name?

18 A. Yes sir.

19 Q. Is that your handwriting?

20 A. Yes sir.

21 Q. And to whom is that addressed?

22 A. Mr. Wright.

23 Q. And what is the date on that?

24 A. May 21st.

25 Q. Okay. And that was just before this trial, is that

1 correct?

2 A. Yes sir.

3 Q. All right. And you were asking Mr. Wright in this
4 letter ---

5 MR. BROWN: I would move for introduction.

6 MS. ELDER: Your Honor, he's going to introduce it? Is
7 that ---

8 MR. BROWN: I'm introducing it now.

9 THE COURT: He's asking to introduce it.

10 MS. ELDER: Okay. Just a moment, Your Honor.
11 Let me -- can I see which letter you're ---

12 THE COURT: That's just an envelope.

13 MR. BROWN: Yes, this is just an envelope.

14 MS. ELDER: Oh, the envelope.

15 MR. BROWN: Yes.

16 MS. ELDER: If he's marking it for evidence, I have no
17 objection.

18 THE COURT: In without objection.

19 (HANDWRITTEN ENVELOPE INTRODUCED INTO EVIDENCE AS
20 DEFENDANT'S EXHIBIT NUMBER 5.)

21 Q. In this May 21st letter, you told -- in that envelope
22 was a letter, and you said --

23 (A JUROR RAISES HER HAND.)

24 THE COURT: You just need a break? Yes, we will ---

25 A JUROR: It is difficult to hear him when he is

1 walking around ---

2 THE COURT: Yeah. When you walk away and when you have
3 your back to us, it is hard, so ---

4 MR. BROWN: Well, okay. I -- sometimes I get excited
5 and I walk around.

6 A JUROR: It's okay. It's just hard to hear.

7 MR. BROWN: All right. I will try to ---

8 THE COURT: Thank you.

9 Q. In that letter, Mr. Wright -- I mean Mr. Powell, you
10 said to Mr. Wright ---

11 MS. ELDER: Objection, Your Honor.

12 THE COURT: I sustain the objection.

13 Q. What did you say to Mr. Wright in that letter that was
14 included in that envelope that I just marked?

15 A. I can't remember.

16 Q. Okay. And of all of the letters that you wrote to Mr.
17 Wright, did you want Mr. Wright to get you back out on the
18 street?

19 A. Yes.

20 Q. All right. And you were angry because Mr. Wright
21 would not get you back out on the street?

22 A. Not necessarily.

23 Q. Well, didn't you tell him that you are about to sell
24 him to save you?

25 A. No.

1 Q. Well, what did you say, Mr. -- to him, Mr. Powell?

2 A. The promises that he was making to me, I was just
3 going off of what he was saying.

4 Q. So you were -- you were upset pretty much, and you're
5 still upset because he did not get you out of jail?

6 A. I couldn't get out. I had a hold.

7 Q. So when did you find out you had a hold?

8 A. Approximately thirty days before this trial date.

9 Q. All right. Thirty days before the trial date. Prior
10 to that thirty days, you wanted him to get you out?

11 A. Yes.

12 Q. All right. And you sent him a total of fifteen
13 letters wanting him to get you out of jail, put the money --
14 and you also wanted him to put money in your account, didn't
15 you?

16 A. He did that on his own.

17 Q. Okay. Didn't you ask him for Forty Five Hundred
18 Dollars for the bondsman on a couple of occasions?

19 A. Yes.

20 Q. Did you ask him for Nineteen Hundred Dollars for
21 another bondsman on a couple of occasions?

22 A. No. It was only Forty Five Hundred.

23 Q. And did you tell him that you had this bondsman
24 already lined up, all he had to do was give you the money?

25 A. Yeah, put it on my account.

1 Q. All right. And he didn't do that, did he?

2 A. No, sir.

3 Q. And, in fact, because he didn't do that is why you are
4 here today?

5 A. No, sir.

6 Q. Well, did you have a -- while you were incarcerated,
7 did you have a roommate?

8 A. Yes sir.

9 Q. What was the name of the roommate?

10 A. I had numerous roommate.

11 Q. Did you ever have a roommate by the name of Mr.
12 Christopher McCray?

13 A. Yes sir.

14 THE COURT: Keep in mind don't turn your back to the
15 jury. They can't hear you.

16 MR. BROWN: Yes sir.

17 Q. And how long was he a roommate?

18 A. Maybe a month or so.

19 Q. And do you remember what month that was?

20 A. March to April, April, May, somewhere around there.

21 Q. And did you -- and when you have a roommate and you're
22 incarcerated, of course you talk about the charges and why
23 you are there?

24 A. Yes sir.

25 Q. And you talked to Mr. McCray about the charges and why

1 you were there?

2 A. Yes sir.

3 Q. And you talked to Mr. McCray about alleged promises
4 that had been made to you by Mr. Wright and how he broke
5 them?

6 A. Yes sir.

7 Q. You did. All right. And you were really disturbed
8 because Mr. Wright did not keep those alleged promises?

9 A. No, I wasn't really disturbed.

10 Q. Well, did you not want him to get you out of jail?

11 A. Yeah. I just wanted my freedom just like he had his.

12 Q. Okay. Now, when you got back to -- when you got back
13 to this house, you said you went into the room, grabbed the
14 money in the book bag, and the dope in the book bag. Were
15 they in the same book bag?

16 A. No. The drugs was on the table in the room.

17 Q. And you took those -- and you took that and put it in
18 the -- in the backseat of the car?

19 A. Yes sir.

20 Q. Whose car?

21 A. Qwanda's car.

22 Q. All right. Now, you didn't -- on your way out --
23 according to your testimony, you left. You didn't hear Mr.
24 Wright saying anything to anyone, did you?

25 A. When I was coming in, when me and Qwanda was coming in

1 at first, he said -- pardon my language, he said nigger
2 trying to pull a jack move.

3 Q. All right. Let me ask you this. You were in the car
4 when he supposedly said that to you?

5 A. Yes.

6 Q. All right. And you said Qwanda was driving?

7 A. Yes.

8 Q. And you were on the passenger side?

9 A. Yes.

10 Q. And y'all were passing as two ships in the night?

11 A. Yes. We wasn't passing. We was pulling in. He was
12 still sitting still, and he pulled off.

13 Q. Well, I thought you said he was leaving?

14 A. Yes, he was leaving out. While we were pulling in, he
15 was leaving out.

16 Q. Were the windows up or were the windows down?

17 A. Which window?

18 Q. Well, was Mr. Wright in the passenger vehicle -- the
19 passenger side of the vehicle or the ---

20 A. He was in the driver ---

21 Q. --- driver's side?

22 A. The driver.

23 Q. So if he was in the driver's side and you were not on
24 the driver's side of Ms. Wright's (sic) vehicle, then you
25 were away from him? You were on the passenger side?

1 A. Yes, I was in the passenger side of Ms. Caldwell's
2 car.

3 Q. Okay. So my question to you is was the window up or
4 was the window down on the driver's side?

5 A. It was down.

6 Q. Which window?

7 A. The driver's side window was down, as well as his.

8 Q. Okay. And you heard him say what?

9 A. Nigger tried to pull a jack move.

10 Q. All right. And that's all you heard him say?

11 A. That's it.

12 Q. And you didn't hear him say anything else?

13 A. No. He was gone.

14 Q. All right. And you didn't hear him say anything about
15 pick up shells and doing all that kind of stuff, did you?

16 A. No, I ain't hear none of that.

17 Q. All right. And when you -- when you -- when you first
18 were arrested by the Horry County Police Department, you told
19 them -- or did you tell them that after you left this house
20 with Qwanda, seeing the deceased person, you went -- and
21 eventually you and Qwanda went back to Columbia?

22 A. No.

23 Q. You did not tell them that?

24 A. No. I didn't go back to Columbia. I stayed with Mr.
25 Wright.

1 Q. I understand you didn't go back to Columbia. My
2 question is what did you tell the police officers initially?

3 A. I told that I stayed with Mr. Wright. When Qwanda
4 left, we stayed together, me and Mr. Wright.

5 Q. Now, did you tell the police officer that -- the
6 police authority this Roy, and Ms. Pinnix, and the other
7 people or persons that were there were up smoking all night?

8 A. Yes.

9 Q. And what were they smoking?

10 A. Crack cocaine.

11 Q. And you would agree with me that crack cocaine is a
12 recess from reality?

13 A. Yes.

14 Q. And when you have a recess from reality, what you see
15 is maybe not what is there?

16 A. Yes.

17 Q. Okay. So what those people thought smoking crack
18 cocaine was really not what they saw?

19 A. Well, I don't know how -- that's probably what they
20 seen, a dead man on the floor.

21 Q. And they were pretty much what we -- what they said in
22 the sixties, stoned? Do you know what that means?

23 A. Yes.

24 Q. So they were out of it?

25 A. They weren't out of it. They was pretty stoned,