

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

George M. McFaddin Jr., Circuit Court Judge

Appellate Case No. 2020-001432

Justin R. Simms,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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1 school with his mother. Young people sometimes are not
2 what they need to be. There's no doubt in my mind that he
3 hasn't made mistakes, but his mistakes that he's made is
4 not murder. The mistakes that he's made is not attempted
5 robbery. The mistakes that he's made is not having a
6 weapon in the commission of a violent crime. There is no
7 evidence that they put up, the State. And remember the
8 State has all the burden, I don't have to prove anything on
9 behalf of Justin Simms. And the Judge is going to charge
10 you on that. He's going to tell you that I don't have to
11 prove anything. Justin does not have to prove that he's
12 innocent. They have to prove to you by a legal standard
13 beyond a reasonable doubt that he is guilty of the charges
14 that he has been indicted on and the Judge is going to
15 instruct you as it relates to what beyond a reasonable
16 doubt is.

17 And beyond a reasonable doubt is a kind of doubt
18 that will cause a reasonable person to hesitate to act.
19 Therefore, if after you hear all of the evidence and the
20 charge from the Judge, if you would hesitate to convict my
21 client on any of these charges, you have a duty to come
22 back with a verdict of not guilty.

23 Now if you hear all -- if you heard all this
24 evidence here and you go back there in that jury room
25 and -- and you wouldn't hesitate to convict him, you've got

1 to come back with the verdict of guilty. But I have never
2 had a murder trial like this with so much reasonable doubt,
3 never. I've never had a murder trial with this much
4 reasonable doubt. The key -- the two key witnesses said
5 two totally different things and those would be the
6 codefendants.

7 One told you the truth; one told you a lie. And
8 the reason why we know one told you a lie because that's
9 all he does. It got so bad with him lying until when
10 Investigator McFadden was on the stand, remember what I
11 asked him; I said, Well was he telling the truth then and
12 he kind of gave a little -- little giggle laugh like, well
13 he wasn't; he was lying. They knew he was lying. They
14 knew this whole time that the basis of their case was on
15 Joshua Carraway. You can't trust him.

16 This man's life is on the line. The decision that
17 you make here today will remain with him for the rest of
18 his life. I do not envy being where you are. On behalf of
19 Josh, I want to thank you for your service. I want to
20 thank you for your attention. I want to thank you for your
21 time and the patience that all of you have had with both
22 the Solicitor and I. It's almost time for you to go back
23 there once you've heard the charge from the jury -- from
24 the Judge.

25 And when you go back there, I want you to look at

1 that video, I want you to look at those statements that Mr.
2 Davis made and particularly look at the two statements that
3 Joshua Carraway made and compare them to what he testified
4 to and when that don't smell right to you, when that don't
5 look right to you and that don't feel right to you, you
6 come back with a verdict that speaks the truth. You come
7 back with a verdict that speaks justice. You come back
8 with a verdict that says not guilty to murder; not guilty
9 to attempted armed robbery; and not guilty to being in
10 possession of a weapon in the commission of a violent
11 crime, because those are the only verdicts that make sense.
12 Those are the only verdicts that speak the truth. Thank
13 you.

14 THE COURT: Thank you. Thank you very much, Mr.
15 Scott.

16 All right. Solicitor.

17 MR. CLEMENTS: Thank you, Your Honor, if it please
18 the Court.

19 Ladies and gentlemen of the jury, it's been a
20 couple of days, and in one respect it seems like it's been
21 a long, long time, and another respect it seems like we've
22 just been sitting up here a couple of days. And I want to
23 make a couple of comments and then I'm going to start from
24 the beginning.

25 Mr. Scott just said if you believe, if anybody

1 believed Curtis Joe, he told the truth. Curtis Joe, on
2 that witness stand said, that two people went together to
3 rob the boys from Lake City. And he said they were Josh
4 Carraway and they were Justin Simms. And he said Justin
5 Simms ran back from that, after the shooting, and got in
6 his car and said they got Josh. So if you believe Curtis
7 Joe and nothing else, nothing else, then you believe Justin
8 Simms went to that car with Josh Carraway to rob the Lake
9 City boys. And then the shooting broke out and Justin
10 Simms ran back.

11 And Curtis Joe was about to leave and he got in the
12 car and he said, Man, he shot Josh. They got Josh; we got
13 to go. He called Squan on the phone and said, Where,
14 where's my boy; where's Josh. He said that he left; he
15 said I'm not with him; I left, he left. So the only -- if
16 you do what Mr. Scott says and that is believe Curtis Joe
17 and nothing else, you got to convict Justin Simms, of at
18 least armed robbery, if nothing else. Okay.

19 Now let me start, I want to talk to you about the
20 law a little bit here. The Judge is going to give you the
21 law and he's going to tell you that you've got to accept
22 the law as he gives it to you, the way it is; not how you
23 might think it should be. You got to accept the law from
24 him and you got to accept the law from him and you got to
25 apply it to the facts of this case.

1 After I finish talking about the law, I'm going to
2 talk about the facts and there's a bunch of facts we
3 haven't talked about yet this morning. A bunch of the
4 evidence is forensic evidence. You got to compare that
5 forensic evidence to the statements to see what makes
6 sense.

7 Now, reasonable doubt is a standard. That's the
8 burden of proof that I've got to overcome and the burden of
9 proof is on me and I embrace that burden. I represent the
10 State of South Carolina and we got to prove Justin Simms
11 guilty beyond a reasonable doubt; we got to remove that
12 robe of righteousness, that presumption of innocence from
13 him and we're about to do that. Because when you hear the
14 evidence and you take that evidence and what you've heard
15 from that witness stand and you take that evidence back
16 there, that circumstantial evidence back in that jury room
17 with you, and you apply that law that the Judge gives you,
18 you're going to be where he says you have to be about a
19 reasonable doubt and that's firmly convinced; firmly
20 convinced.

21 You've got two types of evidence; you've got direct
22 evidence that came from that witness stand and you've got
23 circumstantial evidence. And they're equal. They're
24 equal. Circumstantial evidence, direct evidence, they work
25 together. Circumstantial evidence is a chain of events or

1 circumstances that point -- points to a fact and I'm going
2 to talk about that, all the forensic evidence which points
3 to the fact of Justin Simms guilt.

4 Credibility, the Judge is going to tell you about
5 credibility of the witnesses. That's for you to judge, not
6 me, not Mr. Scott, not His Honor. That's for you to judge
7 credibility of these witnesses from this witness stand.
8 Now he's going to tell you you can believe all of what a
9 witness says, you can believe none what a witness says, you
10 can believe part of what a witness says. You can believe
11 part of what one witness says, part of what another witness
12 says. You got to judge their motive, their bias, their
13 credibility; that's on you, not on me, not on Mr. Scott;
14 that's on you. And I'm going to suggest to you though,
15 when you judge the credibility of the witnesses, you got to
16 take the whole picture. You got to take this
17 circumstantial evidence and you got to take that
18 circumstantial evidence and compare it to what that witness
19 said to see what makes sense.

20 And I'm going to tell you, when you do that, you're
21 going to see a whole lot of what Josh Carraway makes sense.
22 And you going to hear that some of what some other
23 witnesses may not make sense. But compare that
24 circumstantial evidence and that direct evidence.

25 Experts, you're going to hear about experts, what

1 Mr. Scott referred to as independent witnesses. He's not
2 talking about all of them. You know we had experts from
3 SLED. We had Dr. Presnell as an expert. And we had the
4 law enforcements that did the forensic tests and forensic
5 examinations and processing.

6 This is going to be something that's very key: The
7 hand of one is the hand of all and you know, sometimes they
8 refer to that as accomplice liability, which means if I'm
9 your accomplice and you do something, I'm liable for it.
10 We're doing it together; we've got a common scheme or plan
11 then the hand of one is the hand of all. And I think the
12 Judge is going to tell you something about if a crime is
13 committed by two or more people who are acting together to
14 commit that crime, that the act of one of them is the act
15 of all. If Josh Carraway and Justin Simms were acting
16 together, if they were acting together to attempt to rob
17 the Lake City boys and one of them shot and killed
18 somebody, then both of them are responsible.

19 That's what the hand of one the hand of all means.
20 It means that, you know, if something happens and it's
21 probable or natural consequence of the acts that are done
22 in carrying out a crime and carrying out that common plan
23 and purpose and scheme, then both are going to be
24 responsible. An example of that I would suggest to you
25 there's two people could be guilty of killing another

1 person even if one person had a weapon and the other one
2 didn't and only one person fires the bullet and the other
3 one didn't. So you can take the hand of one and hand of
4 all and you apply that to Justin Simms.

5 Now the charges are murder. Murder is when you
6 kill somebody with malice aforethought. And I would
7 suggest to you that if you go in to rob somebody, you got
8 malice. You got evil intent in your heart. And then
9 somebody gets killed, then that person was killed with
10 malice aforethought.

11 And armed robbery, armed robbery is just when you
12 try to take from somebody. And this is attempted armed
13 robbery, because nobody got anything. Once the shots were
14 fired and started going -- guns blazing everybody; they
15 were gone. The armed robbery was attempted but it wasn't
16 complete. But if you attempt to take something from
17 somebody by force and you have a weapon, that's attempted
18 armed robbery.

19 And the other charge is possession of a weapon
20 during the commission of a violent crime and violent
21 crimes, 16-1-60 of South Carolina Code of Laws says what
22 the violent crime are like armed robbery, murder,
23 manslaughter, those type things. The Judge will tell you
24 about that and if you think there was a violent crime being
25 committed and Justin Simms had a weapon, then he's guilty

1 of that charge. And the question is going to be of course,
2 did he have a weapon?

3 Well, I want to talk a little bit about some of the
4 forensic evidence. And y'all take all this back in the
5 jury room with you and look at all this. Mr. Scott didn't
6 talk about these things, but we've got a multitude of
7 pictures here. And you might think why in the world do you
8 take some many pictures; why do you take so much time,
9 Solicitor, putting all these pictures in. You know we got
10 tired of that.

11 Well, I apologize for doing that, but it's
12 necessary because I've got the burden of proof and I've got
13 to prove beyond a reasonable doubt and that car was
14 important. That car was very important.

15 You've heard from Paul Bird, you've heard from
16 Keith Lutcken, you've heard from Chris Owens, who was the
17 first deputy, the first witness, and he was there and they
18 had Josh at -- at the front of the Days Inn. They didn't
19 let him go anywhere. The ambulance was coming, he was
20 there to talk to them. He didn't say anything about he
21 left and went to the bathroom or anything else. He said he
22 was there and he remained and he listened to him talk to
23 the ER -- I mean the emergency people and they took him on
24 to the hospital.

25 And he went to the hospital and he shined the

1 flashlight in the car and he saw shell casings in the car.
2 And those shell casings were retrieved later and you heard
3 what those shell casings were; they were .45's and there
4 were .45's collected out on the scene. You had this little
5 diagram that Adam Moore did and he went to the scene and he
6 documented everything that he collected. He had this empty
7 spot here and then I think he looked at some of the
8 pictures. I think it's like an Infinity or something
9 parked right there. You see it in the picture, I believe.
10 And on the video you can see, when you look at that video,
11 you're looking from the other parking lot next door. Look
12 and see, you see that car there and this empty slot, that
13 was where the Lake City boys parked that Ford Focus; the
14 picture is in there.

15 And they pulled in there and then everything was
16 right outside that passenger side and you'll see it's
17 numbered and you've got number four where my hole punch
18 here punched it out, but if you'll look and see you can see
19 there's a three there. The .380 shell casing was out here
20 at Number Four where somebody stood at that passenger door
21 and shot into that car. You heard about the ejection port
22 from the gun; it ejects that and there's a .380 shell
23 casing. It's the only one; it's Number Four.

24 There are several .45 shell casings there and they
25 were there from the .45 that is in evidence. And there

1 were other items, cell phone and battery and charger and
2 lighter; they were all right out here, right outside where
3 somebody took off running and dropped that stuff. I know
4 if somebody was shooting at me, man, I'm going to take off.
5 And whatever I got I'm getting rid of because I'm getting
6 out of there as quick as I can and that's just what Josh
7 Carraway testified to. Those were his, he threw them down,
8 he ran. He ran all the way back to that store, I mean
9 motel. And all the forensic evidence matches up with what
10 Josh testified to.

11 You didn't hear about that from Mr. Scott. He
12 don't want you to believe a word from Josh Carraway. Yeah,
13 Josh Carraway lied in the beginning, but is he lying about
14 everything? Some of the things he said absolutely is true
15 and backed up by all the forensic evidence.

16 You've got the car being processed -- and this is
17 just critical. I'm trying not to get these out of order
18 for y'all, but you've got -- and yeah, and you can see when
19 you take these pictures back with you, there's pictures of
20 the holes and you see those holes going in and the officers
21 testified to. Those shots were fired from the front seat
22 to the back seat.

23 They had no bullet holes in anything going from the
24 back towards the front, nothing, no bullet holes. Had
25 three where one that a trajectory rod that I'm hunting for

1 this trying not to take a lot of time but you can see the
2 picture there; here it is. You've got one and they got a
3 shot from the front to the back and that shot or that hole
4 before they put that trajectory rod in there and they said
5 that that shot went from the passenger side, right in the
6 edge of the passenger side from front into the back. That
7 shot could not have killed Marcus Weaver. Matter of fact,
8 I submit to you that shot was fired by Marcus Weaver. He
9 had a .45 and he was shot through the arm and I think he
10 shot himself through the arm. That's what makes sense.
11 Everything broke loose and things started going bad. A
12 guy's at his window with a gun, a .380 according to Shane,
13 at the front passenger side and he's already focused on
14 Josh in the back, which is exactly what Josh testified to.
15 He was turned around and, Hey, let me see your pot; No, I
16 want to see the money; Well no, let me see the pot; Well I
17 want to know the money's not counterfeit; they've got that
18 conversation going back and forth.

19 Marcus was focused on the back seat with Squan and
20 Josh, right where Josh said he went; right where Squan said
21 he went. Shane looking at the other guy creeping around in
22 the mirror and he's like man, what in the world, you know,
23 I thought something's up here; I was just bringing the guys
24 to see the girls; what in the world is going on and he's
25 focusing on that until the guy comes around; give it up,

1 give it up, give it up at the window and that's it; Marcus
2 has got his gun; pow; he shoots himself through the arm.

3 You see, Dr. Presnell testified to a through and
4 through shot; he got caught in the meat of the arm and it
5 went through the back seat. And he probably shot more than
6 one time then because then he's got the guy in the front
7 seat with him and he's got another angle and you'll see, I
8 can find that picture for you real quick. Where you got
9 one going down from the seat, front to back, and it comes
10 to the rocker panel and there it is going down and it comes
11 out the back and hits that rocker panel or the door jamb
12 down at the bottom where Josh has already bailed out of
13 there and that shot went from front to back. And there's
14 another shot that went from front to back and it got stuck
15 in the seat and you heard them testify they dug it out.

16 So you got three shots going from front to back.
17 You don't have any shots in that car going from back to
18 front. And Mr. Scott would want you to believe Josh
19 Carraway shot Marcus Weaver. And I submit to you that's
20 impossible because if he'd a shot Marcus Weaver, you would
21 have shots going from front -- I mean from back of that
22 seat coming out the front. And you don't have that.

23 What you have is you have Marcus whose turned and
24 got his back exposed, and when that gun goes off pow, you
25 got Justin Simms standing outside the door and he might not

1 have intended to shoot anybody, but when that happened and
2 the gunshots started going, he -- pow; what did Josh
3 testify to, exactly that. Justin said man, the shot went
4 off and like pow, it went off and then the gun jammed and I
5 couldn't shoot anymore so I took off.

6 And how many .380 shell casings do we have; one.
7 And where is it? It's out on the outside of the car
8 towards the front on the passenger side. If Josh had of
9 shot him from the back seat it wouldn't, it might be in the
10 car because Josh had been in the car; that's where he was.
11 He's not going to run away and turn around and come back.
12 That makes no sense whatsoever. So regardless of what the
13 statements say and what Mr. Scott suggests to you, you got
14 to believe, I'm telling you, look at the forensic evidence.
15 There's no .380 shell in that car. Justin didn't have a
16 .380 shell in that car.

17 And what did Dr. Presnell said, well the holes in
18 the arm were bigger than the holes in the back and the
19 chest and she tells you the entrance wound was in the back
20 and you can see the pictures and the exit wound came out in
21 the chest. So he had his back exposed to the person that
22 shot him and we know because everybody said the focus was
23 on the back seat because that's where supposedly dope was
24 being brought into and that's where the conversation was
25 going on at. So his back is exposed to somebody standing

1 on the outside of that car.

2 I want to go through all these pictures, but I
3 don't need to do that I don't suppose. I'm kind of, I get
4 so wrapped up in that I got the burden of proof that I want
5 to just go over every minute detail and I know y'all don't
6 need me to do that because y'all have been sitting here all
7 day and all yesterday and all the day before paying close
8 attention and got all your minds together and you know what
9 these facts are and you can look at these pictures. But
10 you know what those officers did and what they testified to
11 and that is undisputed.

12 We got two different kind of facts in this case.
13 We've got disputed facts and that's what somebody said from
14 the witness stand that you know, one of the lawyers or one,
15 either me or Mr. Scott, don't like so we dispute those
16 facts and then we've got undisputed facts to this forensic
17 evidence that nobody can dispute. And so what I'm asking
18 you to do is take the facts from the statements that Mr.
19 Scott doesn't believe and he says they're a lie or -- or if
20 I say they're a lie and compare them to the undisputed
21 facts and see how they match up. And I suggest to you that
22 those undisputed facts show that Josh Carraway could not
23 have shot Marcus Weaver, no way, no how, because he was in
24 the back seat.

25 Now I want you to read these statements too. Like

1 Mr. Scott asked you to do, please do, these Defendant's
2 Exhibits 1, 2 and 3. Well Defendant Exhibit No. 1 is Squan
3 Davis' statement.

4 Now, you got to judge credibility of the witnesses
5 and the Judge is going to tell you that you can believe
6 part of what a witness says and disregard part of what a
7 witness says. Sometimes witnesses are bias; they have a
8 motive, sometimes they are just confused.

9 Now if you ask, Ed was Squan Davis confused on some
10 parts or not, the only thing I can say about that is,
11 exactly. You know what I'm saying? Exactly. You know
12 what I'm saying? You know? I think he got up there and I
13 hadn't testified in a murder trial; I don't know what that
14 feels like, but I imagine it may get you kind of
15 discombobulated. Well, look at Defendant's Exhibit No. 1,
16 which is his statement he gave to law enforcement on --
17 shortly thereafter when this thing happened on January
18 10th, 2010. And he gave this statement on the 12th of
19 January, 2010 at 11:31 a.m. And he told you because I
20 asked him and so did Mr. Scott, when is your memory better,
21 now, today or back then when you gave that statement. And
22 he said back then when I gave that statement.

23 Well, I want to refer you to a couple of places
24 when you go back in your jury room, I want you to look
25 particularly at page nine. I think on the witness stand,

1 he said there was person that came to the car; it had to be
2 the shooter in the back seat; it had to be.

3 Well no, it didn't have to be because Mr. Davis
4 didn't look at the forensic evidence. But back on the 12th
5 of January, 2010, on No. 9, on page nine, he says that um,
6 where were you sitting? You know, right behind the driver.
7 So you sent him around, talking about Josh Carraway? He
8 says, yeah, yeah, exactly because I don't know, you know
9 what I'm saying? Child lock on the door and everything, I
10 couldn't open the door and tell him to go around or nothing
11 so I just knocked on the window and tell him to go around,
12 you know what I'm saying? And then I thought later when he
13 said that he bailed out and went out the passenger side, I
14 was always thinking he went out the driver's back side, but
15 he said he went out the passenger side. I said what in the
16 world, oh yeah, the child lock; that's why he told Josh to
17 go around.

18 And you might ask Josh, Josh why did you go to the
19 driver's back door; normally you go to the driver's door,
20 whatever. Well he knew from what Curtis Joe told him
21 because Curtis Joe is talking back and forth with Squan
22 that that's who was the one getting the dope and he asked
23 him how many people you got in your car; I got three people
24 in my car; how many people in your car? So he knew. So
25 that's where Josh went and Squan told him to go around and

1 get in the passenger side back.

2 That's why he did it because the child locks on.
3 So now it makes sense to me why Squan went out the
4 passenger rear door because he couldn't get his door open
5 and that's why he thought Marcus was shooting at me because
6 Marcus was shooting in the back seat at least three times
7 because two of them went all the way through the seat and
8 one of them stuck into the seat. And we know at least one
9 of them, they had already gone out the door because it hit
10 the door jamb and they didn't find that bullet.

11 And they testified the door had to be open and
12 Keith Lutcken testified about the car and he said no shots
13 came from outside to inside the car with a downward
14 trajectory shooting Marcus Weaver, so that wasn't Josh.
15 Josh got in the back seat and when the shooting started, he
16 ran. He didn't come back and come to the front seat and
17 shoot Marcus in the back. He couldn't have because Marcus
18 by that time turned and he was firing as they ran away.

19 So just like Coroner Lutcken said, the shot from
20 outside of the car to the inside of the car; that's what
21 killed Marcus. It was not Josh; it was Justin Simms.
22 Also Squan Davis on page nine, he talked about two dudes.
23 On the witness stand he got confused and said one because
24 Josh was the one jumping in the back seat with him, but he
25 said on, on page nine, there were two dudes coming up.

1 I want you to look at something -- And then page
2 thirteen and fourteen, when Investigator Cox asked him some
3 questions and McFadden and on the bottom of page thirteen
4 asked him, well, so yes, how many people you saw at y'all
5 car and Davis said our, two, two.

6 McFadden said well what was in the door, the back
7 door with you; where was the other one? Like standing like
8 right behind me, like kind of like, McFadden says yeah,
9 well you know what Josh said; he said that Justin came to
10 his door, opened his door, had the gun and opened his door,
11 stuck the gun in and said give it up and then opened.
12 Marcus's door, stuck the gun in, give it up. That's when
13 the shooting started. When that gun pokes in past Josh,
14 maybe Squan's got that confused and that was Justin
15 sticking the gun in because he was standing right behind
16 Josh. Maybe he had the gun right behind Josh. Maybe Josh
17 didn't have a gun like he said. If he did have a gun, so
18 what; he didn't do the shooting. The forensic evidence
19 shows he didn't. He couldn't have.

20 McFadden, yeah. Davis, you know what I'm saying?
21 I mean honestly he must be come around and sneak up, which
22 is what Shane said. Came around the other side or
23 something because I ain't see him with, not one person came
24 up, you know what I'm saying? McFadden, um-hum. Davis, it
25 was like as soon as he pulled the gun out, the home boy

1 just blitzed the car. The second man pulled the gun out
2 and blitzed the car. You know what I'm saying? He came
3 right behind him. Real tall -- it happened that quick,
4 that quick.

5 Well, that's -- Squan's memory is a whole lot
6 better back then than it was on this witness stand.
7 Because we all know he got confused and got a lot of things
8 discombobulated. So anyway, McFadden says all right,
9 Investigator Cox, you got any questions for him? Cox said
10 you said that the second fellow was, did he walk, did you
11 see both of them walk up together? Davis, uh-huh. Cox,
12 you saw one? Davis, yes, sir. Cox, when did the second
13 fellow come up to the car? Davis, as soon as he pulled --
14 like had been sneaking around or something, you see what
15 I'm saying? McFadden, um-hum. Davis, they had that
16 planned good. They had that planned. He had to be
17 sneaking around; he had to be sneaking.

18 Cox said well how tall was he. Davis, I can't, I
19 don't even know. I don't even know. Cox, you see what he
20 was wearing? Davis, I ain't even see where he went. He
21 just sneaked up so quick; he pop up so quick and with that
22 gun in my face, I ain't know nothing, you know what I'm
23 saying? It didn't really contradict. Well he's got a gun
24 in his face and he really don't know what he's saying; it
25 don't contradict really what Josh said. It don't

1 contradict really what Shane said.

2 Shane was focused on that guy sneaking around that
3 Davis is referring to and sees him at the front open the
4 door, stick the gun in. That wasn't Josh. Everybody says,
5 Squan and Josh, says he jumped in the back seat. The
6 shooter's standing at the passenger front door and Marcus
7 directed his attention to the back and he, when everything
8 starts, when Josh pops Squan in the head like he said he
9 did and Squan said he did, Marcus either fired or the gun
10 just goes off out of nervousness and he gets shot in the
11 arm and that's when all hell breaks loose and Marcus shot
12 in the back and the outside of the car; Josh is in the car
13 or either trying to get out quick as he can. So I'm going
14 to ask you, Defense Exhibit 1, please read that. Please
15 read it.

16 Defendant's Exhibit No. 2, that is Josh Carraway's
17 statement that was taken at the hospital. He said he gave
18 it to somebody. He didn't remember it was Investigator
19 Cox, but that was when they thought he was a suspect. And
20 Mr. Scott asked you to read it. So out of deference to
21 him, I ask you to read it. Because I want to tell you,
22 it's a lie. Josh Carraway said it was a lie. They didn't
23 know he had been involved in robbing anybody or shooting
24 anybody; they thought he was a victim. He lied, but
25 Investigator Cox, experienced investigator and now retired,

1 said something ain't right about this. This doesn't sound
2 right.

3 He gets McFadden involved with it too. McFadden,
4 who specializes on homicides, he's on the homicide task
5 force and he's, I don't believe what he's saying. So read
6 it and even Josh will tell you this is a lie.

7 And then we got Defendant's Exhibit 3. Well even
8 we lawyers get confused sometimes because I recall the
9 testimony to be and I think you will as well that when
10 Investigator McFadden was on the witness stand, he said
11 that they went to Josh's house and talked to him and he
12 wasn't telling the truth then. That's when he laughed and
13 said you know, he lied and they searched his house. Josh
14 Carraway didn't call him and ask him to come to his house
15 like Mr. Scott said in his closing argument. That's a
16 mistake, a honest mistake. He's got that confused. They
17 went to his house because they knew he was lying, they
18 wanted to confront him again and he lied and they arrest
19 him.

20 And after they arrested him and he was put in
21 jail -- and you can read right here on Defendant's Exhibit
22 3. That is when Mr. Carraway said time for me to come
23 clean. And on the 20th of January, they Mirandized him and
24 they took his statement and it starts out here, I'm
25 Investigator Thomas McFadden with the Florence County

1 Sheriff's Office. Today's date is now 1/20/2010; the time
2 is 12:26 p.m. I'm doing a second interview with one Joshua
3 Carraway at the request of Joshua Carraway.

4 Today's date again is 1/20/2010 and as Investigator
5 McFadden said, that was at the jail. They took him out of
6 the cell to be able to talk to him. And I ask you to read
7 this very carefully. It doesn't go into a whole lot of
8 great detail, but it matches most everything that Josh
9 Carraway talked about on the witness stand. What it
10 doesn't do is it doesn't admit yeah, we were going to rob
11 the Lake City boys. We weren't just going to sit there and
12 sell them, you know marijuana, we didn't have marijuana.
13 We were going to rob them. That is what's left out of
14 here. And I believe when on the stand, Mr. Scott asked
15 Josh Carraway, why should they, this jury, believe you?
16 And I made a note to myself, because he's admitting they
17 didn't have any dope; the whole plan was to rob the Lake
18 City boys and Mr. Scott himself said listen to Curtis Joe;
19 what did Curtis Joe tell you from that witness stand and he
20 said we were going to rob them, you know. They were going
21 to rob them. And he told you about what the negotiations
22 were and you know a pound I normally sell for \$1200 and all
23 that; they did have conversation so certainly he wasn't
24 going to tell Squan, I don't have any dope, I'm just
25 messing with you; we're going to take your money; we going

1 to rob you. No, but Curtis Joe affirmed that. Curtis Joe
2 said Justin left with Josh. Curtis Joe said Justin came
3 running back said the Lake City boys started shooting.

4 Now, gunshot residue, that's some circumstantial
5 evidence. And Keith Lutcken said it's fragile; you can
6 wash it off your hands, you can wipe it off your hands
7 easy. But let's talk about Marcus Weaver first on that
8 gunshot residue. Because I, as we do, I think all of this
9 is going to make sense to you. And I meant to ask Shane
10 whether Marcus was right handed or left handed but I forgot
11 to. But I can tell you he was right handed. You want to
12 know why; because this gun went off and went into the seat
13 and went through his arm, his left arm and he had it in the
14 right hand. And the gunshot residue test said that Marcus
15 Weaver had gunshot residue on the back of his left hand, on
16 his left palm, and on the back of his right hand and didn't
17 have it in his right palm.

18 Why not? Because he was holding the gun and firing
19 it and the gunshot residue was coming out of those bullets
20 and coming out this ejection port and coming out this
21 barrel and coming out and getting on his hands, both sides.
22 And that is why he didn't have gunshot residue on his right
23 palm. Now Marcus fell, gets out of the car and he falls
24 and Shane said he didn't know, he thought maybe one foot
25 was in the car. Well if you look at the diagram and look

1 at the pictures, I think he got all the way out the car
2 because of the pools of blood where he fell was a good ways
3 away from that car and I don't think, if you look on the
4 autopsy report, I'm sorry, we didn't put that into
5 evidence, but I, I don't imagine it would say he was ten
6 feet off.

7 So he got out away from the car where the blood was
8 and he's got that gunshot residue coming out of his gun as
9 he's firing multiple times because he only had one bullet
10 left in the gun and the gunshot residue is coming at him
11 and gets on his hands and is also going to get on his
12 clothes. And I laid on the floor with my old fat self and
13 I asked Mr. Graham to show how he got Marcus up and thank
14 goodness he didn't have to pull me up off the floor; I was
15 able to do it myself. And he showed how he came and
16 grabbed Marcus, reached around and grabbed him because he
17 was on his stomach and grabbed him here and pulled up and
18 guess where did Marcus, Marcus's brother, Shane, where did
19 he have gunshot residue on him? He didn't have gunshot
20 residue; he had some lead particles, which is part of
21 gunshot residue. Where was it? Y'all remember. It wasn't
22 on the backs of his hands was it; it was on his palms where
23 he got it getting Marcus up getting him in the car and
24 getting him to the hospital.

25 Well, Mr. Scott got this theory why Josh didn't

1 have any gunshot residue on his hands because he jumped
2 over the fence and reached up and grabbed it. Well, if you
3 reached up and grabbed the fence, that doesn't do a daggone
4 thing to the back of his hands, does it? And that's where
5 most of the gunshot residue is going to be if you're
6 shooting a gun, it's going to be on the back of your hand.
7 There was none on the back of Josh's hands. He's got to
8 explain it some kind of way because he wants to make Josh
9 out to be the shooter so he's trying his best to explain it
10 some kind of way. He said oh, it came off when he went
11 over the fence and then he fell and he gets up and he had
12 his hands down. If he had his hands down, he's going to
13 wipe them off like this. He's not going to do them like
14 that; is he? There wasn't no gunshot residue on the backs
15 of his hands. No gunshot residue. Read them good.
16 Gunshot residue is not because he wiped it off; it's
17 because Josh was not a shooter and Josh was not a shooter
18 because he was sitting in the back of the car and he didn't
19 shoot through that seat and hit Marcus in the back.

20 There was somebody standing outside Marcus's window
21 that shot him in the back. We don't need statements for
22 that because we got that forensic evidence and it all shows
23 that.

24 Disputed facts versus undisputed facts, you got to
25 take the statements and you got to take the statements in

1 conjunction and weigh them, not just on their own, not just
2 because you like that person that's talking or you don't
3 like that person that's talking or you think that person
4 that's talking is a robber; you got to judge them on that
5 plus weighing their statement against all the other
6 evidence that you've got.

7 We've got plenty of evidence. We have got this gun
8 that we're not going to send back with you because it's got
9 a live bullet in the box with it, but if you've got a
10 hankering to look at the gun, I'm sure the Judge will let
11 you come out and look at the gun where it's away from the
12 evidence. Because we've got some other evidence here that
13 has some unfired bullets, I think maybe one that was in the
14 car. So take all that back and look at all that. And look
15 at those .45 casings and look and see how nice and shiny
16 they are because they were shot that night and collected.
17 And all those .45 casings were tested by SLED and what did
18 every single one of them come up to be; a shell that was
19 fired by State's Exhibit 45, the gun that Marcus dropped
20 out there on the asphalt when he succumbed to the fatal
21 shot fired by Justin Simms. All those shells came from his
22 gun and he was returning fire.

23 Now there's one other shell casing out there; it's
24 a .380. It's not corroded, it's not bent up and then
25 there's the one that we put in State's Exhibit 64. Mr.

1 Scott really wanted that one in because it was back there
2 towards the fence where Josh ran. Well, guess what. You
3 with your common sense can look at this shell and see how
4 bent up it is, see how corroded it is and you can conclude
5 most definitely that that shell was back there where Josh
6 went over that fence and that shell was back there long
7 before Josh went over that fence. So this .25 ain't got
8 nothing to do with anything in this case. It was just
9 there, out there, back towards the back of the Days Inn and
10 it had been out there for a long while. Look at it; take
11 it out.

12 Josh lied. Yeah, Josh lied. Josh lied at the
13 hospital, Josh lied at his house when Cox and McFadden went
14 there and he said he was scared. Mr. Scott doesn't believe
15 he was scared. When two investigators come to your house
16 talking to you about a murder and you know you were there,
17 who in their right mind wouldn't be scared? He was scared,
18 so he lied and they arrested him. And then he got in that
19 jail cell and he said you know, I need to talk to them
20 again and he asked them, they came and they pulled him out
21 and they interviewed him. And you can read it and it
22 pretty much goes along everything he testified to on that
23 witness stand except I'm sure there's more detail from the
24 witness stand because we asked him more questions.

25 The only difference is on that witness stand, he

1 admits they were robbing the Lake City boys. He held that
2 back on that statement, you know. But then he realized he
3 had to tell the whole truth, not just part of the truth.
4 Did he participate in this; is he bad actor, committing bad
5 acts; yeah, he was. He was trying to rip people off on a
6 drug deal and take their money and it all went bad,
7 everything. But you can take Josh's story and you can
8 compare it to all the physical evidence and you can
9 conclude beyond a reasonable doubt that Justin Simms is
10 guilty of attempted armed robbery, of possession of a
11 weapon in the commission of a violent crime and of murder.

12 Or if you don't want to believe Josh Carraway, you
13 can take Curtis Joe and you can believe him and you can
14 take what he says and compare it to all the rest of the
15 evidence and all the physical evidence and all the forensic
16 evidence and you can find Josh Carraway guilty of attempted
17 armed robbery and of murder beyond a reasonable doubt
18 because the hand of one is the hand of all. And Curtis Joe
19 said he went to that car with intent and a plan to rob the
20 Lake City boys.

21 He's the second dude that blitzed the car. Squan
22 Davis talked about on the 12th of January, 2010. He is the
23 guy that stuck the gun in there and said give it up, give
24 it up, give it up that Shane Graham testified to. And a
25 tussle broke out and Shane said he just hugged that

1 steering wheel and all those gun shots went off. And Squan
2 said, he wasn't really trying to see nobody; he was just
3 trying to get out of that car and he couldn't even get out
4 of his own door because the child proof lock was on. He
5 had to follow Josh out, who was trying to rob him and hit
6 him.

7 And the last thing I want to talk to you about is
8 this video. And I want you to look at it and I've looked
9 at it many, many, many times too and it doesn't dispute a
10 thing that Josh says, not a thing. You can't see what
11 happens in the car. You know you look at an angle and you
12 got one car and I think -- which is that silver Infinity
13 that may be in those pictures where they took pictures with
14 all the cones and you can see that car. That car is there
15 when you're looking past it and you got another car and you
16 know, it's not TV quality to begin with. You seen it. And
17 then you see absolutely that there were three people
18 running from that car and one approaching got in and then a
19 few seconds passed and somebody else comes up and comes
20 around the car. And that's critical because Josh is the
21 only one that says well, I got in the car and we had a
22 conversation, Hey man, what's up; what's up. All right.
23 Let me see the money? No, let me see the marijuana? Well
24 no, I want to check and make sure the monies right? No, I
25 want to make sure the marijuana's right? And there's a few

1 seconds pass by and then you see that second image.

2 So it's somewhere around like 50:28 the images
3 approach and you can see them coming through that
4 breezeway. You see them coming one come around the car,
5 the other one come around the car and then about 51:05 that
6 second image is coming up around the doors and then around
7 that 51:20 you see some flashes and you see people scatter
8 and you can see one individual run and he's running down
9 like the shrubbery that borders the two hotels, running
10 past that dump truck. And you see another one come out and
11 you see him run towards Highway 52, which is Squan. He
12 said he ran to Taco Bell. And Josh, we know he ran and he
13 jumped the fence. And then we see a third individual, you
14 may have to back it up a couple of times so you can follow
15 each of them. That third individual runs down that pass
16 those doors of that motel and cuts through that breezeway
17 and just like Josh said, he jumped the fence.

18 And just like Curtis Joe said, he was about to pull
19 out when he heard all those gun shots and Justin Simms
20 comes running up and jumps in the car where he had run
21 through that breezeway. That on that video I submit is
22 Justin Simms. He is in that video. He escapes. He gets
23 in the car with Curtis Joe and he rides off. Curtis Joe
24 see the gun? No, he says. It doesn't matter.

25 If you got a gun on you, you ain't always going to

1 show it. You know sometimes you might know that somebody's
2 packing, but you ain't seen the gun and you're probably
3 pretty sure they're packing, but you ain't seen it. Curtis
4 Joe didn't see the gun. So what? That ain't got nothing
5 to do with nothing. Curtis Joe didn't go to the car; he
6 didn't tell us what happened at the car, but he can tell us
7 what Josh -- Justin told him. That is they got Josh, they
8 got Josh and then he called Squan.

9 Squan testified that Curtis called him. I think if
10 you look at one other thing in the statements, I think
11 Squan calls this dude Dwayne and then there's a spot I
12 believe in Josh's where he says don't use the name Curtis;
13 don't mention the word Dwayne; it'll come back to me
14 because that was the name I used. And you can read his
15 statement where Josh says Justin told me not to say
16 nothing; don't say nothing and Justin said he was -- Josh
17 said he was scared. I don't blame Josh for being scared.
18 His buddy shot somebody, you know. Josh asked, he said
19 hey, I'll take the gun and I'll go rob these; he said no,
20 hu-huh, I'm coming with you. It's my gun; I ain't giving
21 you my gun. I'm coming with you and we'll do it.

22 Mr. Scott says you can't believe Josh; he's a liar.
23 And to begin with, he, he does lie. But now he's come
24 clean. He tells you, he ain't got -- he ain't got no help
25 for himself but to be truthful. He ain't got any friends

1 trying to reward, any enemies to punish, he's trying to
2 tell the truth and hope he can get whatever benefit he can
3 out of that. He's charged. He's got charges.

4 And even if you don't believe Josh; you believe
5 Curtis Joe and you believe all the forensic evidence.
6 Justin Simms was there. And the Judge, he's going to tell
7 you the law is the hand of one is the hand of all.

8 Ladies and gentlemen, I don't think there's any
9 other reasonable conclusion, any other logical conclusion
10 based on the testimony even with limited credibility. You
11 add in the forensic evidence and the physical evidence and
12 you weigh it and you deliver a verdict that speaks the
13 truth, you're going to come back and say Justin Simms is
14 guilty of murder beyond a reasonable doubt; and Justin
15 Simms is guilty of attempted armed robbery beyond a
16 reasonable doubt; and if you believe he was the man
17 standing outside that window while Josh was in the backseat
18 and shot Marcus Weaver, you will find him guilty of
19 possession of weapon during the commission of violent crime
20 beyond a reasonable doubt.

21 Ladies and gentlemen, thank you for your attention.
22 I hope I haven't repeated myself too much and haven't
23 rambled too much, but this is important. This is important
24 for Marcus Weaver and his family. This is important for
25 Justin Simms and his family. This is important for the

1 State of South Carolina. We believe we have met our burden
2 of proof. We ask you to do your sworn duty and we thank
3 you.

4 THE COURT: Thank you. Thank you very much,
5 Solicitor. Mr. Foreman, ladies and gentlemen of the jury,
6 we're going to take about a 15 minute recess. Do not
7 discuss the case during this brief recess. You may now go
8 with the bailiff.

9 (WHEREUPON the jury leaves the courtroom at 10:59
10 a.m.)

11 THE COURT: All right. Court will be in recess for
12 15 minutes.

13 (WHEREUPON a brief recess was observed.)

14 THE COURT: All right. To your knowledge,
15 Solicitor, you have all your folks in; anyone else?

16 MR. CLEMENTS: We're good to go, Your Honor.

17 THE COURT: Mr. Scott?

18 MR. SCOTT: Yes, Your Honor.

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

21 If you would bring our jury in, Madame Bailiff?

22 THE BAILIFF: Yes, sir.

23 (WHEREUPON the jury entered the courtroom at 11:16
24 a.m.)

25 ///

JURY CHARGE

THE COURT: All right. Welcome back, ladies and gentlemen of the jury, momentarily I will charge you or instruct you on the law that you must apply to the facts of the case as you find the facts to be. The procedure I use in instructing the jury on the law in a criminal case is I charge the general criminal law that applies to all criminal cases in South Carolina first. Then I will charge the three specific offenses charged in the indictment, murder, attempted armed robbery and possession of a weapon during the commission of a violent crime. I will then charge the law of hand of one, hand of all and finally, the form of the verdict.

Generally when I go from one area to another, I will give you the caption of the area I'm fixing to cover and will tell you when I'm changing to another particular topic or subject. I try to change, of course, the inflection of my voice as -- as much as I can. This is very much a scripted, it may not be easy to listen to, but it's a very important to listen to.

Charge, arrest, indictment, not evidence. The indictment charges the Defendant with murder, attempted armed robbery and possession of a weapon during the commission of a violent crime. I remind you that the fact that the Defendant was arrested, charged, and indicted in

1 this case is not evidence and cannot be considered by you
2 as evidence of guilt in this case. Nor does it create any
3 presumption or inference of guilt.

4 The indictment, that document is simply the formal
5 written instrument which contains the charges made against
6 the Defendant. It is the formal document by which the case
7 is brought into court.

8 Multiple charges. Again the indictment alleges
9 several different offenses against the Defendant. The
10 charges are murder, attempted armed robbery, possession of
11 a weapon during the commission of a violent crime. Each
12 indictment charges a separate and distinct offense. You
13 must decide each indictment separately on the evidence and
14 the law that applies to it uninfluenced by your decision as
15 to any other indictment, with of course the exception of
16 the indictment for possession of a weapon during the
17 commission of a violent offense. You could not find a
18 person guilty of possession of a weapon during the
19 commission of a violent offense if you first did not find
20 that person guilty of committing a violent offense. I'll
21 explain that to you in further detail later, but the murder
22 indictment and the attempted armed robbery indictment are
23 to be considered separately and distinctly based on the
24 evidence as to each of those offenses.

25 The Defendant may be convicted or acquitted on

1 either or both of those offenses charged. You will be
2 asked to write a separate verdict of guilt or not guilty
3 for each indictment.

4 Presumption of innocence. The Defendant has pled
5 not guilty to the indictment and that plea puts the burden
6 on the State to prove the Defendant guilty. A person
7 charged with committing an criminal offense in South
8 Carolina is never required to prove himself innocent. I
9 charge you, it is an important rule of the law that the
10 Defendant in a criminal trial, no matter what the
11 seriousness of the charges may be, will always be presumed
12 to be innocent of the crime for which he was charged and
13 the indictment was issued until guilt has been proven by
14 evidence satisfying you of that guilt beyond a reasonable
15 doubt. This presumption of innocence does not end when you
16 begin your deliberations, but it accompanies the Defendant
17 throughout the trial, until you reach a verdict of guilt
18 based on evidence satisfying you of that guilt beyond a
19 reasonable doubt.

20 The presumption of innocence has been said to be
21 like a robe or righteousness placed about the shoulders of
22 the Defendant which remains with a Defendant until it has
23 been stripped from the Defendant by evidence satisfying you
24 of the Defendant's guilt beyond a reasonable doubt. The
25 presumption of innocence is not a mere legal theory. It is

1 not just a legal phrase; it is a substantial right to which
2 every Defendant is entitled unless you, the jury, are
3 satisfied from the evidence of the Defendant's guilt beyond
4 a reasonable doubt.

5 What is a reasonable doubt in the law? A
6 reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. The State has the
8 burden of proving the Defendant guilty beyond a reasonable
9 doubt. Some of you may have served as jurors in the past
10 in civil cases where you were told that it is only
11 necessary to prove that a fact is more likely true than not
12 true, such as by the greater weight or the preponderance of
13 the evidence. In criminal cases, the State's proof must be
14 more powerful than that. It must be beyond a reasonable
15 doubt. Proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of the Defendant's guilt.
17 There are very few things in this world that we know with
18 absolute certainty and in criminal cases, the law does not
19 require proof that overcomes every possible doubt.

20 If based on your consideration of the evidence, you
21 are firmly convinced that the Defendant is guilty of the
22 crimes charge, you must find the Defendant guilty. If on
23 the other hand, you think there is real possibility that
24 the Defendant is not guilty, you must give the Defendant
25 the benefit of the doubt and find him not guilty.

1 Duties of jury and trial judge. I remind you that
2 during this trial, you and I have certain specific duties
3 to perform. As the trial judge, it is my responsibility to
4 preside over the trial of this case and I've also had the
5 duty to rule on the admissibility of the evidence offered
6 before you during this trial. You are to consider only the
7 competent evidence before you. You are to consider only
8 the testimony which has been presented from this witness
9 stand, any exhibits which have been made part of the record
10 in this case, and any stipulations or agreements of
11 counsel.

12 I have the additional duty to charge you the law
13 that applies to this case. As the presiding judge, I am
14 the sole judge of the law of this case and it is your duty
15 as jurors to accept the law and apply the law as I now
16 state it to you. If you already have any ideas as to what
17 the law is or what the law ought to be and it does not
18 agree with what I tell you the law is, you must abandon
19 your idea because you're sworn.

20 You have taken an oath to accept the law and apply
21 the law exactly as I state it to you. In every case tried
22 in this Court before a jury, the jury becomes the sole and
23 exclusive judge of the facts in a case. A trial judge
24 cannot intimate, state, comment on or make any statement to
25 a trial jury about the facts in a case. Since you the jury

1 are the sole judge of the facts in this case, you're not to
2 infer from what I have said during the progress of this
3 trial in ruling upon the admissibility of evidence or
4 otherwise, or anything that I now say to you in the course
5 of these instructions that I have any opinion about the
6 facts in this case. The law does not allow me to have an
7 opinion about the facts in this case. That is a matter
8 solely for you, the jury, to determine. As jurors, it is
9 your duty to determine the effect, the value, the weight
10 and the truth of the evidence presented during this trial.

11 Direct and circumstantial evidence. There are
12 generally two types of evidence presented during a trial,
13 direct evidence and circumstantial evidence. Direct
14 evidence is the testimony of a person who claims to have
15 actual knowledge of a fact, such as a eye witness or an ear
16 witness. It is evidence which immediately establishes the
17 main fact sought to be proven. Circumstantial evidence is
18 proof of a chain of facts and circumstances indicating the
19 existence of a fact. It is evidence which immediately
20 establishes a collateral fact from which the main fact may
21 be inferred. Circumstantial evidence is based on inference
22 and not on personal knowledge or personal observation. The
23 law, our law, makes absolutely no distinction between the
24 weight or the value to be given to either direct or
25 circumstantial evidence. Nor is there a greater degree of

1 certainty required of circumstantial evidence than of
2 direct evidence. You should weigh all of the evidence in
3 this case. After weighing all of the evidence, if you're
4 not convinced of the guilt of the Defendant beyond a
5 reasonable doubt, you must find the Defendant not guilty.
6 If on the other hand, after weighing all of the evidence in
7 the case, you are convinced of the guilt of the Defendant,
8 you must find the Defendant guilty.

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

1 stand.

2 Expert witnesses. Again, ladies and gentlemen, the
3 rules of evidence ordinarily do not permit witnesses to
4 testify to opinions or conclusions. An exception to this
5 rule exists for witnesses that we call expert witnesses. A
6 witness who by education and experience has become an
7 expert in some art, science, profession or calling, may
8 state an opinion as to relevant and material matter in
9 which the witness claims to be an expert and may also state
10 the reasons for the opinion. You should consider any
11 expert opinion received in evidence in this case. And like
12 any other evidence, give it the weight that you think it
13 deserves. If you decide that the opinion of an expert
14 witness is not based on sufficient education or experience,
15 or if you conclude that the reasons given in support of the
16 opinion are not sound or that the opinion is outweighed by
17 other evidence, you may disregard the opinion entirely. An
18 expert witnesses opinion testimony is to be given no
19 greater weight than that of any other witness simply
20 because the witness is an expert. Further, you are not
21 required to accept an expert's opinion even though it is
22 not contradicted.

23 I instruct you and emphasize the fact that this
24 Defendant did not testify is not a factor to be considered
25 by you in your deliberation and in your consideration of

1 the question of the guilt or the innocence of the
2 Defendant. It must not be considered by you in any manner
3 whatsoever. A Defendant has the constitutional right to
4 remain silent and the assertion of this right must not be
5 considered by you in your deliberations.

6 I repeat, under your oath, you are to draw no
7 conclusion whatsoever from the fact that this Defendant in
8 this case did not testify. The fact that this Defendant
9 did not testify should not even be discussed in the jury
10 room. The burden of proof as I have stated to you is on
11 the State. The Defendant is not required to prove his
12 innocence. The burden of proof remains on the State to
13 prove guilt beyond a reasonable doubt.

14 Intent. In order to establish criminal liability,
15 criminal intent is required. For example, the mental state
16 required to prove, to be proven by State for a particular
17 crime might be the mental state of purpose or intent,
18 knowledge, recklessness, or criminal negligence. Criminal
19 intent must be proven by the State beyond a reasonable
20 doubt. Criminal intent is always a matter that must be
21 determined by the jury from the circumstances surrounding
22 the situation.

23 Now there is no way to prove intent to a
24 mathematical certainty. There is no way medical science
25 can dissect a person's brain and determine what the person

1 had in mind. So the law says that criminal intent may be
2 inferred from the circumstances shown to have existed.
3 This is how you make your determination of whether or not
4 the element requiring intent was present. It is not
5 necessary to establish intent by direct and positive
6 evidence, but intent may be established by inference in the
7 same way as any other fact, by taking into consideration
8 the acts of the parties and all the facts and circumstances
9 of the case.

10 Criminal intent is a mental state, a conscious
11 wrongdoing. It is up to you to determine what the
12 Defendant intended to do based on the circumstances shown
13 to have existed. Criminal intent can arise from action or
14 a failure to act. It may arise from negligence,
15 recklessness, or an indifference to duty or to consequences
16 that is considered by the law to be the equivalent of
17 criminal intent.

18 Mr. Foreman, ladies and gentlemen of the jury, that
19 is the general criminal law in South Carolina. I will now
20 move to the specific charges in the indictment. The order
21 in which I'm going to cover this is murder, attempted armed
22 robbery, possession of a weapon during the commission of a
23 violent crime.

24 The Defendant is charged with murder. The State
25 must prove beyond a reasonable doubt that the Defendant

1 killed another person with malice aforethought. Malice is
2 hatred, ill will, or hostility towards another person. It
3 is the intentional doing of a wrongful act without just
4 cause or excuse and with an intent to inflict an injury or
5 under the circumstances that the law will infer an evil
6 intent.

7 Malice aforethought does not require that malice
8 exists for any particular time before the act is committed,
9 but malice must exist in the mind of the Defendant just
10 before and at the time of the act, at the time the act is
11 committed. Therefore, there must be a combination of the
12 previous evil intent and the act. Malice aforethought may
13 be expressed or inferred. These terms expressed and
14 inferred do not mean different kinds of malice, but merely
15 the manner in which malice may be shown to exist. That is
16 either by direct evidence or by inference from the facts
17 and circumstances which are proven.

18 Express malice is shown when a person speaks words
19 with express hatred or ill will to another. Or when the
20 person prepared beforehand to do the act which was later
21 accomplished; for example, lying in wait for a person or
22 any other act of preparation going to show that the deed
23 was within the Defendant's mind would be expressed malice.
24 Malice may be inferred from conduct showing a total
25 disregard for human life.

1 Inferred malice may also arise when the deed is
2 done with a deadly weapon. A deadly weapon is any article,
3 instrument or substance which is likely to cause death or
4 great bodily harm. Whether an instrument has been used as
5 a deadly weapon depends on the facts and the circumstances
6 of each case. The following are examples of instruments
7 which may be deadly weapons. A shotgun, a rifle, a pistol,
8 a dirk, a dagger, a knife, a slingshot, metal knuckles or
9 razor, gasoline, a fire bomb, Mai Tai cocktail, lighter
10 fluid. A gun may be a deadly weapon even if it is not
11 operating. If facts are proven beyond a reasonable doubt
12 sufficient to raise an inference of malice to your
13 satisfaction, this inference would be simply an evidentiary
14 fact to be considered by you, the jury, along with the
15 other evidence in the case and you may give it the weight
16 you decide it should receive. Now that is the charge
17 specific as to murder.

18 I'm going to charge attempted armed robbery,
19 possession of a weapon during the commission of a violent
20 crime and then hand of one hand of all, which would apply
21 to all three of those offences.

22 Attempted armed robbery is a statute in South
23 Carolina, 16-11-330(b). Robbery is defined as the
24 felonious or unlawful taking of money or goods of another
25 or other personal property of any value from the person of

1 another or in his presence by violence or by putting said
2 person in fear. The crime of armed robbery occurs when the
3 person commits a robbery while armed with a deadly weapon.
4 An attempt is an effort to accomplish a crime, which does
5 not succeed. An attempt includes a specific intent to do a
6 particular criminal act along with an act falling short of
7 the act intended. The State must show more than mere
8 preparation and intent. There must be some overt act
9 committed in the effort to commit the crime.

10 Intent means intending the result which actually
11 occurred. Not accidentally or involuntarily. Intent may
12 be shown by the acts and conduct of the Defendant and other
13 circumstances from which you may naturally and -- naturally
14 and reasonably inferred an intent. A person commits armed
15 robbery, attempted armed robbery, if while armed with a
16 deadly weapon he attempts to take from the person in the
17 presence of another by force, intimidation, goods or
18 property of any value.

19 And finally, ladies and gentlemen, possession of a
20 weapon during the commission of or attempt to commit a
21 violent crime.

22 The Defendant is charged with possession of a
23 weapon during the commission of or attempt to commit a
24 violent crime. The State must prove beyond a reasonable
25 doubt that the Defendant was in possession of a firearm or

1 visibly displayed what appeared to a firearm during the
2 commission of a violent crime. A firearm means, a machine
3 gun, automatic, rifle, revolver, pistol or any weapon,
4 which will -- or is designed or may be readily converted to
5 expel a projectile.

6 In order to find the Defendant guilty of a
7 possession of a weapon during the commission of a violent
8 crime, you must first find the Defendant guilty of either
9 committing a violent crime or attempting to commit a
10 violent crime. I instruct you that murder is a violent
11 crime. I instruct you that the attempted armed robbery
12 under 16-11-330(b) is a violent crime. The State must
13 prove beyond a reasonable doubt that the weapon further
14 advanced or helped in the commission or the attempted
15 commission of the violent crime.

16 Hand of one, hand of all. Ladies and gentlemen, if
17 a crime is committed by two or more people who are acting
18 together in committing a crime, the act of one is the act
19 of all. A person who joins with another to commit an
20 unlawful act is criminally responsible for everything done
21 by the other person which happens as a probable or natural
22 consequence of the acts done in carrying out the common
23 plan and purpose. For example, two people could be guilty
24 of a burglary, breaking into a person's home, when only one
25 of the two entered the residence of another person without

1 consent.

2 Two or more people could be guilty of the burglary
3 when only one of the persons entered the residence of
4 another without consent. For example, one person could
5 enter the residence without consent and begin gathering
6 property therein to steal and could hand that property out
7 the window to the accomplice who never enters the
8 residence, both would be guilty of burglary. Or one could
9 be acting as a lookout while the other goes in to commit a
10 burglary, both -- all would be guilty of the burglary by
11 way of example in that case. If two or more people are
12 together, acting together, assisting each other in
13 committing the offense, the act of one is the act of all,
14 or as it is sometimes said, the hand of one is the hand of
15 all.

16 Prior knowledge that a crime is going to be
17 committed without more is not sufficient to make a person
18 guilty of that crime. Mere knowledge that another person
19 is going to commit a crime, even if the Defendant is
20 present when the crime is committed is not sufficient to
21 convict the Defendant as a principal. Guilt as a principal
22 is shown by actual or constructive presence at the scene as
23 a result of prior arrangement. Therefore, a finding of a
24 prior arranged plan or common scheme is necessary for a
25 finding of guilt as a principal.

1 The State must prove beyond a reasonable doubt by
2 competent evidence the theory of the hand of one is the
3 hand of all. A principal in a crime is one who either
4 actually commits the crime or who is present, aiding,
5 abetting, or assisting in the committing of the crime.
6 When a person does an act in the presence of and with the
7 assistance of another person, the act is done by both.
8 Where two or more acting with a common plan or intent are
9 present at the commission of a crime, it does not matter
10 who actually commits the crime, all are guilty. The hand
11 of one is the hand of all. Presence at the commission of a
12 crime means to be sufficiently near to aid and abet and
13 assist the commission of the crime; however, mere presence
14 at the scene of the crime is not sufficient to convict one
15 as a principal on the theory of aiding and abetting.

16 Intent is also a necessary element. For there must
17 have been a common design or intent to commit the crime and
18 the crime must have been committed pursuant thereto with a
19 person aiding and abetting by some overt act. Intent means
20 intending the result which actually occurred, not
21 accidentally or involuntary. Intent again may be shown by
22 acts and conduct of the Defendant and other circumstances
23 from which you may naturally and reasonably infer intent.
24 The State must prove these elements beyond a reasonable
25 doubt.

1 Ladies and gentlemen, I assure you we are -- the
2 end of my charge is in sight.

3 You will have, Mr. Foreman, a verdict form with you
4 in the jury room that lists the charges and the
5 indictments, the caption of the case and the charges, and
6 the indictments. As to the charges in the indictments, I
7 have listed them again, murder, attempted armed robbery,
8 possession of a weapon during the commission of violent
9 crime. The significance of which I state them now to you,
10 the order in which they are on the form of verdict has no
11 significance whatsoever. One must be stated before the
12 other. It has no significance whatsoever. After your
13 deliberations and your determination of the facts in the
14 case and you compare those facts to the law as I told you
15 the law is, the standard as I told you the law. If you
16 find the State has met its burden of proof beyond a
17 reasonable doubt as to the charge of murder, you will see
18 on this form, it says, as to murder, We, the jury,
19 unanimously find the Defendant guilty or not guilty.

20 If you find the State has met its burden of proof
21 beyond a reasonable doubt and all twelve of you agree, your
22 verdict is unanimous, you would check to the left of the
23 word guilty. Then circle that check mark and the word
24 guilty.

25 If you find, based on your determination of the

1 facts in the case comparing that to the law as I told you
2 the law is, that the State has failed to meet its burden of
3 proof beyond a reasonable doubt as to murder, you would
4 then check to the left of the two words, not guilty, circle
5 both your check mark and the word, two words, not guilty.

6 Carry right on through as to attempted armed
7 robbery. Again your determination of the facts, compare it
8 to the law. If the State has met its burden of proof
9 beyond a reasonable doubt, you would find the Defendant
10 guilty, check to the left of the word guilty, circle the
11 checkmark and the word guilty. If you find the State has
12 failed to prove its case beyond a reasonable doubt as to
13 attempted armed robbery, you would check to the left not
14 guilty and circle both your checkmark and the two words not
15 guilty.

16 Now you must consider those separate and distinct,
17 the murder and the attempted armed robbery. As to the
18 possession of a weapon during the commission of a violent
19 crime, you may not find the Defendant guilty of possession
20 of a weapon during the commission of a violent crime unless
21 you find the Defendant guilty of a violent crime. So both
22 murder and attempted armed robbery are violent crimes under
23 our law. But if you find the Defendant not guilty of
24 murder, not guilty of attempted armed robbery. He may, he
25 may not be found guilty of possession of a weapon during

1 the commission of a violent crime. He may only be found
2 guilty of possession of a weapon during the commission of a
3 violent crime if first he has been found guilty of at least
4 one or more violent crimes, but at least one.

5 Ladies and gentlemen, your verdicts must be
6 unanimous ones. All twelve of you must agree. Your
7 verdicts may not be based on passion, prejudice, emotion or
8 any other consideration not in evidence in this case. You
9 are the fact finders in this case. You determine what the
10 facts are, you apply them to the law as I told you the law
11 is and you reach those unanimous verdicts that speak the
12 truth.

13 Once you have reached those unanimous verdicts, Mr.
14 Foreman, ladies and gentlemen of the jury, you have
15 properly filled out the verdict form, there's a place on
16 the second page stapled to it for the presiding jurors
17 signature and date it, whatever the date is, I think it's
18 the 12th, I'm not really sure to be honest with you -- the
19 12th; the 12th. Knock on your jury room door, we will then
20 receive you back in here and receive your verdict. If
21 during the course of your deliberations you have any
22 questions whatsoever, if you would please just write out a
23 note for me, I assure you we're not going to abandon you,
24 we're going to -- we're going to be here also. You write
25 out a note and I will certainly try to respond in a timely

1 manner.

2 I'm going to ask you to please step to your jury
3 room momentarily. Do not begin your deliberations until
4 you are directed to do so by the Clerk. The law requires I
5 meet with the attorneys one final time outside of your
6 presence. If I have to bring you back out for further
7 instructions, I will do so. If I do not have to bring you
8 back out, everybody looks great -- I hope everybody feels
9 great. Our alternate will then come out. The evidence
10 would then be presented to you and you'd be instructed by
11 the Court to begin your deliberations.

12 The weapon will not be in the jury room with you at
13 the same time there is any live ammunition in the jury
14 room. So I'm going to keep State's 45 out. If at any time
15 you wish to examine the weapon, let me know; we will make
16 arrangements to get the live rounds out, the weapon will
17 come out.

18 Also the, there's video I believe. If you need
19 equipment, I'm sure there's somebody savvy enough to show
20 it. On this jury all of you probably are, but -- if savvy
21 is the right word. I couldn't, but all I'm saying is if
22 you need equipment, you just -- you just let me know and
23 I'll make those arrangements. Do not begin your
24 deliberations until you're instructed to do so.

25 Thank you very much. You may now go to your jury

1 room.

2 (WHEREUPON the jury left the courtroom at 11:53
3 a.m.)

4 THE COURT: Any exceptions, Solicitor?

5 MR. CLEMENTS: No, Your Honor.

6 THE COURT: Mr. Scott?

7 MR. SCOTT: None from the Defense.

8 THE COURT: All right. This is the form of verdict
9 if you would like to look at it and have y'all already got
10 the evidence?

11 MR. CLEMENTS: We have, Your Honor. Thank you,
12 Your Honor.

13 THE COURT: Thank y'all very much. You bring, give
14 them, give them the evidence and form of verdict and bring
15 our alternate out?

16 THE BAILIFF: Yes, sir.

17 THE COURT: You are Mr. -- what is your name?

18 THE JUROR: Alexander Brown.

19 THE COURT: Brown?

20 THE JUROR: Yes, sir.

21 THE COURT: Mr. Brown, thank you. Thank you very
22 much for your service this week. I need you to report
23 downstairs at 2 o'clock. We're going to start another
24 trial.

25 THE JUROR: Yes, sir.

1 THE COURT: You all right with that?

2 THE JUROR: That's fine.

3 THE COURT: I'm picking -- I'm picking at you, Mr.
4 Brown. What kind of work you do?

5 THE JUROR: I work with the South Carolina
6 Department of Disabilities and Special Needs.

7 THE COURT: That's DDSN?

8 THE JUROR: Yes, sir.

9 THE COURT: And what do you do for them?

10 THE JUROR: An HSA.

11 THE COURT: Sir?

12 THE JUROR: An HSA, Human Service Assistant.

13 THE COURT: All right. So you assist people that
14 have disabilities and all?

15 THE JUROR: Yes, sir.

16 THE COURT: How long you been doing that?

17 THE JUROR: It's been about six months now.

18 THE COURT: What did you do before then?

19 THE JUROR: I helped assist people, like you said,
20 with disabilities.

21 THE COURT: And how long you been in that field?

22 THE JUROR 14: About six months.

23 THE COURT: That's some fine work. Thank you for
24 doing that.

25 THE JUROR 14: Yes, sir.

1 THE COURT: Thank you for being with us this week.
2 Good luck.

3 All right. Anything further from the State.

4 MR. CLEMENTS: No, Your Honor, thank you.

5 THE COURT: Defense?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: All right. Well, we'll be awaiting our
8 verdict. And, Solicitor, one of the other Assistant
9 Solicitors asked me to do a bond hearing.

10 MR. CLEMENTS: Yes, sir, let me go find them.

11 THE COURT: All right. If she wants me to do it,
12 I'll be glad to do it.

13 Thank y'all. Thank y'all very much.

14 (WHEREUPON deliberations began at 11:57 a.m.)

15 (WHEREUPON Court was at ease while awaiting a
16 verdict.)

17 (WHEREUPON a note was received from the jury.)

18 JURY QUESTION

19 I received a note. The solicitor is present and
20 Mr. Scott is also. The first question is, Can we get the
21 court reporters transcript of Curtis Joe. I can tell them
22 there is not a transcript, but they can listen to the
23 testimony. She can key it up and they can listen to the
24 testimony. The second question, Can you tell us the date
25 Justin was arrested. I can't tell them anything. The next

1 question is, Can we have a TV with DVD video footage.

2 (WHEREUPON the jury entered the courtroom at 1:09
3 p.m.)

4 THE COURT:

5 All right. Mr. Foreman ladies and gentlemen I
6 received your note.

7 Thank you, thank you Mr. Propes.

8 I received your note, Mr. Foreman and ladies and
9 gentlemen of the jury. Can we get the court reporter's
10 transcript of Curtis Joe. A transcript is not prepared.
11 That's for future transcription if necessary. If you want
12 to listen to the testimony it can be keyed up and you can
13 certainly listen to it. You have to listen to it in the
14 courtroom. By I'll make arrangements for that. You just
15 let me know if that's what you want to do, number one.

16 Number two, can you tell us the date Justin was
17 arrested. I cannot answer any questions. I can only tell
18 you that you must determine the facts of the case and that
19 would be based on your individual and collective memories
20 of the testimony that was presented before you by the
21 witnesses testifying under oath.

22 And the third, can we have a TV with video or
23 computer to watch the video footage, I'm making
24 arrangements for that now. But if you have a laptop, you
25 can watch it on a laptop. Would that be suitable.

1 THE FOREPERSON: Yes, sir.

2 THE COURT: That would be suitable. All right. So
3 I understand your lunch is here, so what I thought I would
4 do is send you back in your jury room, have the clerk bring
5 in your lunch and let me know if you want to hear Mr. Joe's
6 testimony and I'll have our court reporter key it up and
7 when you finish lunch, let me know and we'll reassemble and
8 we'll be glad to play that for you or any other part of the
9 testimony.

10 Okay. If you have any other questions please let
11 me know.

12 (WHEREUPON the jury left the courtroom at 1:12
13 p.m.)

14 THE COURT: Any objections to anything I told the
15 jury from the State?

16 MR. CLEMENTS: No, Your Honor.

17 THE COURT: From the defense?

18 MR. SCOTT: No Your Honor.

19 THE COURT: All right. Thank you.

20 And Madame Clerk you can get them their lunch and
21 if they want to hear that testimony I'm sure Brenda will
22 get it keyed up for us.

23 (WHEREUPON Court was at ease while the jury ate
24 their lunch.)

25 THE COURT: Anything before we bring our jury from

1 the State, Solicitor?

2 MR. CLEMENTS: No, Your Honor, thank you.

3 THE COURT: Defense?

4 MR. SCOTT: No, Your Honor.

5 THE COURT: All right. As I understand, when I
6 bring the jury out I'm going to inform them that I'm going
7 to allow -- tell me your last name again.

8 MR. GODBOLT: Godbolt.

9 THE COURT: I'm going to allow Mr. Godbolt. To go
10 in and set up the video equipment for them and then he --
11 while they're listening to this testimony -- and you can
12 come back out if you'll take that seat when you come back
13 out of the jury room.

14 Is that suitable with the State?

15 MR. CLEMENTS: It is, Your Honor.

16 THE COURT: Defense?

17 MR. SCOTT: It is, Your Honor.

18 THE COURT: All right.

19 (WHEREUPON the jury entered the courtroom at 1:43
20 p.m.)

21 THE COURT: All right. Welcome back, Mr. Foreman
22 and ladies and gentlemen of the jury. What I'm going to do
23 is while y'all are out here listening to the testimony, Mr.
24 Godbolt is going into the jury room and going to set up the
25 video equipment for you and it will be ready for you upon

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 your return. If you need some instruction on how to
2 operate it, please let me know once you get back in the
3 jury room. I understand Mr. Joe's testimony is about 20
4 minutes. So she'll key it up and put her mic close to it
5 you so you be able to hear it.

6 Mr. Godbolt, you can go on into the jury room.

7 All right. Madame Court reporter?

8 (WHEREUPON testimony of Curtis Joe was replayed for
9 the jury as follows:)

10 CURTIS JOE, JR., HAVING BEEN SWORN TESTIFIES AS
11 FOLLOWS:

12 THE CLERK: Please be seated in the witness chair.
13 And state your full name, for the record.

14 THE WITNESS: Curtis Joe, Jr.

15 THE COURT: All right.

16 **DIRECT EXAMINATION**

17 BY MR. CLEMENTS:

18 Q Mr. Joe, if you would sit up close to that
19 microphone, please. That young lady to your left is taking
20 down everything that's said. So if you will speak slowly
21 and clearly?

22 A Yes, sir.

23 Q And loud enough that this jury can hear you. I'm
24 going to stand back over here so if I can hear you, I know
25 they can hear you?

Curtis Joe, Jr. - Direct Examination by Mr. Clements

- 1 A Yes, sir.
- 2 Q All right. If you don't understand one of my
3 questions or other Counsel's questions, you ask us to ask
4 it again, we'll be happy to do so, okay?
- 5 A Yes, sir.
- 6 Q All right. What is your age, Mr. Joe?
- 7 A 25.
- 8 Q And where do you live?
- 9 A Darlington.
- 10 Q All right. And how much education do you have?
- 11 A Eleventh.
- 12 Q Eleventh grade?
- 13 A Yes, sir.
- 14 Q Okay. Now do you know Josh Carraway?
- 15 A Yes, sir.
- 16 Q Where is he from?
- 17 A Darlington.
- 18 Q Did you know Justin Simms?
- 19 A Yes, sir.
- 20 Q Where is he from?
- 21 A Darlington.
- 22 Q Okay. Did you know Squan Davis, also called
23 Slicey?
- 24 A No, sir.
- 25 Q He -- have you dealt with anybody from Lake City,

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 selling marijuana?

2 A Yes, sir.

3 Q Okay. And the name Slicey or Squan Davis doesn't
4 sound familiar?

5 A Yes, sir.

6 Q Okay. All right. Do you recall what you were
7 doing on January 10th, 2010?

8 A Yes, sir.

9 Q All right. Did you receive a phone call from
10 anyone?

11 A Yes, sir.

12 Q And you recall who that was?

13 A I can't remember his name, but it was a boy from
14 Lake City.

15 Q Okay. What did he want?

16 A He wanted some marijuana.

17 Q All right. And did you make arrangements for a
18 marijuana sell and a meet with him?

19 A Yes, sir.

20 Q Okay. Where were y'all supposed to meet?

21 A At Days Inn on 52.

22 Q Okay. And did you go to Days Inn on 52?

23 A Yes, sir.

24 Q Who'd you have with you?

25 A Mr. Carraway and Simms.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

- 1 Q Mr. Carraway and Simms?
- 2 A Yes, sir.
- 3 Q Okay. And did you meet people there at the 52 Days
- 4 Inn?
- 5 A The Lake City boy.
- 6 Q All right. And how did you communicate back and
- 7 forth with him?
- 8 A Cell phone.
- 9 Q All right. Did you talk to one or more of them?
- 10 A One.
- 11 Q One. Okay. And did y'all arrange by phone to meet
- 12 at the Days Inn?
- 13 A Yes, sir.
- 14 Q Okay. Were you talking about meeting somewhere
- 15 else before that or not?
- 16 A No -- no, sir.
- 17 Q All right. How were you going -- how did they want
- 18 to make the transaction work? Where?
- 19 A You say where.
- 20 Q Yeah. In a room? in a car? out in the parking lot?
- 21 Where?
- 22 A In the car.
- 23 Q Okay. In the car -- in their car?
- 24 A Yes, sir.
- 25 Q Okay. Did you go to their car?

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 A No, sir.

2 Q What did you think about going to their car?

3 A I ain't felt right. No, sir.

4 Q Okay. So what did you do, since you didn't feel
5 right about it?

6 A I was about to -- I was leaving.

7 Q All right. Did you leave?

8 A No, sir.

9 Q Okay. Where -- which side of the Days Inn did you
10 stop at and park?

11 A I parked beside them at first and then I ain't felt
12 right so I was leaving. And then Mr. Carraway told me he
13 was going over there, so I parked on the other side.

14 Q You parked on the other side?

15 A Yes, sir.

16 Q Would that be the Darlington side of the Days Inn
17 or the Florence side?

18 A The Darlington side.

19 Q Darlington side. Okay. All right. And did you
20 get out your car and go over to their vehicle?

21 A No, sir.

22 Q Who did?

23 A Mr. Carraway and Simms.

24 Q Mr. Carraway and Simms?

25 A Yes, sir.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

- 1 Q Did they have any marijuana?
- 2 A Not that I know of, no, sir.
- 3 Q Did you have any marijuana?
- 4 A No, sir.
- 5 Q So what were you going to do if you weren't going
6 the sell marijuana?
- 7 A I was taking Josh over there. Josh was going to
8 rob them.
- 9 Q Going to rob them?
- 10 A Yes, sir.
- 11 Q Okay. And what was Justin going to do?
- 12 A He was just with him. I didn't even know he was
13 coming, but he was just with him. He just came with Josh.
- 14 Q When you picked --
- 15 A When I -- yeah, when I picked him up.
- 16 Q And where did you pick them up?
- 17 A Off the West End, off the West Side -- I can't
18 remember the street. I want to say -- it's a little
19 street.
- 20 Q Is that in Darlington or Florence?
- 21 A Yes, sir, Darlington.
- 22 Q Darlington and then you came over to Florence?
- 23 A Yes, sir.
- 24 Q Okay. And you didn't have any marijuana with you.
- 25 A No, sir.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 Q Okay. So the plan was to do what?

2 A Was going to rob them?

3 Q Okay. All right. So you parked on the Darlington
4 side of the Days Inn and Josh and Justin got out of the car
5 and left?

6 A Yes, sir.

7 Q Did you see which direction they walked in?

8 A They walked through a -- they walked through the
9 breezeway, around.

10 Q A breezeway to the other side of the Days Inn?

11 A Yes, sir.

12 Q Okay. And what did you do?

13 A I was -- I sat in the car.

14 Q , sir. What was the next thing you recall
15 happening that you saw or heard?

16 A A couple of minutes later I heard some -- I started
17 hearing gunshots.

18 Q You started hearing gunshots?

19 A Yes, sir.

20 Q What did you think?

21 A Somebody -- I knew somebody was shooting.

22 Q And what did you do?

23 A That's when I backed up and I was leaving.

24 Q You backed up, you were leaving?

25 A Yes, sir.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

- 1 Q So you were going to leave Josh and Justin there?
- 2 A Yes, sir.
- 3 Q Okay. Where were you going to go?
- 4 A Where was I going to go.
- 5 Q Yeah?
- 6 A I was going to go on to my room.
- 7 Q Where's your room at?
- 8 A Motel 6.
- 9 Q Motel 6?
- 10 A Yes, sir.
- 11 Q Is that out at the same intersection of 95 and 52?
- 12 A It on the.
- 13 Q It's on the other side?
- 14 A Yes, sir.
- 15 Q Okay. So you had a room there?
- 16 A Yes, sir.
- 17 Q All right. Well did you get out of the parking
- 18 lot?
- 19 A No, sir.
- 20 Q What happened?
- 21 A That's when Simms was running to the car.
- 22 Q Simms was running to the car?
- 23 A Yes, sir.
- 24 Q He got in the car?
- 25 A Yes, sir.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 Q What did he say?

2 DEFENSE ATTORNEY: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. SCOTT: Hearsay, Your Honor.

5 THE COURT: No, sir this is party opponent. It
6 would be an exception.

7 BY MR. CLEMENTS:

8 Q What did Simms say?

9 A What did he said? He said that the boy started
10 shooting and Josh was still in the car. He think Josh was
11 still in the car.

12 Q So what did y'all do?

13 A Wait for -- waiting for -- I start call Josh, but
14 he didn't answer his phone. So we left and I took him
15 home.

16 Q All right. Did you ever talk to any of the Lake
17 City boys again?

18 A Yeah, I called them and ask them where Josh was.

19 Q What he say?

20 A They said they left him. He ain't with them.

21 Q All right. And you then took Simms back to
22 Darlington or you'd already taken Simms to Darlington?

23 A No -- yeah I had took him back to Darlington.

24 Q Before you made that call to the Lake City boys?

25 A Yes, sir.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 Q Okay. Now, what did you do after you dropped Simms
2 off?

3 A I had went out.

4 Q Do what now?

5 A I said I had went out -- I went to a club.

6 Q Okay. All right. And what, if anything did Simms
7 say about shooting anybody?

8 A Repeat that.

9 MR. SCOTT: Objection, Your Honor, that's a leading
10 question, Your Honor.

11 MR. CLEMENTS: I said --

12 THE COURT: No, sir. I overrule that objection.
13 You may ask that.

14 BY MR. CLEMENTS:

15 Q What, if anything, did Simms say about shooting
16 anybody or shooting at anybody?

17 A He was just saying the dude started shooting them.
18 He didn't never say he shot him.

19 Q He didn't ever say he shot him?

20 A No, sir.

21 Q All right. How about later? Did he talk you to
22 you about this after that event happened in the next days
23 or a couple of days? Did you talk to him again?

24 A Yeah, I talked to him one time.

25 Q And what did Simms tell you about it then?

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 A He was just -- he asked me was I'm all right and he
2 asked me was I all right. And he just told me that Josh
3 had got shot and -- he said Josh had got shot. And he said
4 that the boy had shot hisself in the arm and he had died.

5 Q Okay. All right. And he didn't say anything about
6 him shooting anybody or a gun or anything of that nature?

7 A No, sir.

8 Q Okay. All right. Did either -- did you either say
9 to him or him say to you or have any discussion about not
10 talking to anyone?

11 A Repeat that again.

12 Q Do you or him have any discussion or conversation
13 whatsoever about not talking to people about it -- this
14 event?

15 A Yes, sir.

16 Q Y'all did?

17 A Un-huh.

18 Q And what was that conversation about?

19 A He just said -- he was just saying don't talk about
20 the situation that the dude had shot himself and he had
21 died and he didn't want to talk about it.

22 Q All right. Did you get approached by law
23 enforcement?

24 A Did I get approached by law enforcement.

25 Q Yes. Regarding this incident?

Curtis Joe, Jr. - Direct Examination by Mr. Clements

- 1 A Yes, sir.
- 2 Q Did anybody come to you?
- 3 A Yes, sir.
- 4 Q Okay. Who was it came to you? Do you recall?
- 5 A No, they put a warrant out on me.
- 6 Q Put a warrant out on you?
- 7 A Yes, sir.
- 8 Q All right. So did they pick you up or did you turn
9 yourself in?
- 10 A I turned myself in.
- 11 Q Where did you turn yourself in at?
- 12 A At the Florence -- at Effingham.
- 13 Q At Effingham?
- 14 A Yes, sir.
- 15 Q All right. And when you turned yourself in, who
16 did you talk to out there?
- 17 A Mr. McFadden.
- 18 Q All right. And what did Investigator McFadden do?
- 19 A He locked me up.
- 20 Q Okay. Did he give you my Miranda Warnings? Talk
21 to you about your Miranda Rights?
- 22 A You said did he did it.
- 23 Q Yeah, did he ever give you your Miranda warnings?
- 24 A Yes, sir.
- 25 Q Okay. And after he gave you your Miranda warnings

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 what did you do?

2 A I didn't want to talk to him. They only had locked
3 me up.

4 Q Okay. Later on, after that did you give a
5 statement to him?

6 A Yes, sir.

7 Q Did he ever see you in any photographs?

8 A Yes, sir.

9 Q Did you ever identify any people in those
10 photographs?

11 A Yes, sir.

12 Q Who did you identify?

13 A I identified Josh and Simms.

14 Q All right. And did you tell him what happened
15 then? When you gave him a statement did you tell him
16 everything that happened?

17 A Yes, sir.

18 Q Were you completely honest?

19 A Not really, no, sir.

20 Q All right. Why not?

21 A I was scared at the time.

22 Q All right. Are you scared today in front of this
23 jury?

24 A No, sir.

25 Q Why not?

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 A Because this is it; the truth will set me free.

2 Q And what are you charged with?

3 A Accessory.

4 Q All right. Have you been made any promises or
5 anything?

6 A No, sir.

7 Q And -- but what you're telling today is the truth?

8 A Yes, sir.

9 Q You got any friends you trying to help?

10 A No, sir.

11 Q You got any enemies you trying to punish?

12 A No, sir.

13 Q You didn't go over to the other side of the Days
14 Inn that evening?

15 A No, sir.

16 Q You didn't see anything?

17 A No, sir.

18 Q You just heard stuff?

19 A Yes, sir.

20 Q Thank you. Please answer truthfully anything Mr.
21 Scott asks you?

22 A Yes, sir.

23 THE COURT: Thank you, Solicitor. Mr. Scott?

24 CROSS-EXAMINATION

25 BY MR. SCOTT:

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 Q Good afternoon, Mr. Joe?

2 A Good afternoon.

3 Q You born and raised in Darlington?

4 A Yes, sir.

5 Q How long have you known Justin?

6 A I really can't say -- a good -- probably about a
7 good while though.

8 Q What is that? Two years, five years?

9 A I say -- I say probably about two years.

10 Q And based on your testimony here today --

11 A Yes, sir.

12 Q -- you and a gentleman that you don't know from
13 Lake City, you all had a drug transaction that you were
14 going to do, correct?

15 A Yes, sir.

16 Q And you, I think you said you were going to sell
17 him a pound?

18 A Yes, sir.

19 Q And I think you also said on direct that when you
20 got there, something didn't seem right to you?

21 A Yes, sir.

22 Q Explain to the jury what you mean when you say that
23 something didn't feel right to you?

24 A Because he called for a pound and he said he had
25 had his tax money and that he knew it was the beginning of

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 January and I know he had his tax money. And when we
2 pulled up and he -- and I asked him if he wanted to get in
3 the car and said no. And he asked me how many people was
4 with me.

5 I told him -- I said how many peoples with him and
6 he told me. And then that was, that was when I pulled off
7 and I was like this ain't right that when -- when Mr.
8 Carraway -- when I pulled up on the other side, Mr.
9 Carraway was like not going to leave, I'm going to go get
10 them.

11 Q Okay. Now, so in other words, in your experience
12 in the drug game --

13 A Yes, sir.

14 Q -- you kind of -- basically you felt like they was
15 gone rob you?

16 A Yes, sir.

17 Q No doubt in your mind they was going to rob you;
18 that's why you pulled off, right?

19 A Yes, sir.

20 Q So you pulled off and you go to the other side,
21 right?

22 A Yes, sir.

23 Q Came out to the other side?

24 A Yes, sir.

25 Q And tell the jury who it was that said they were

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 going to go there?

2 A Mr. Carraway, Josh.

3 Q Josh did?

4 A Yes, sir.

5 Q And as far as you know, the only thing Justin
6 was -- he was just riding with y'all, right?

7 A Yes, sir.

8 Q And did Justin say I'm going with you; I'm going to
9 get this money, let's do it; let's go get this money? Or
10 did Carraway say I'm going and Justin was just going along
11 with it?

12 A Yes, sir.

13 THE COURT: Which one was it.

14 THE WITNESS: Oh, Josh said he was going and he
15 asked Mr. Sims to come with him.

16 BY MR. SCOTT:

17 Q Based on -- had Josh, did you know what Josh had
18 planned before you guys got there?

19 A Yes, sir.

20 Q You knew he was going to try to rob them or you
21 knew that he was going there to help you with the drug
22 transaction?

23 A Yeah, I thought he was going to help me with them,
24 but when we got there, he said he was going to rob them.

25 Q Josh Carraway said that?

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 A Yes, sir.

2 Q So the next thing you know, Justin comes back to
3 the car?

4 A Yes, sir.

5 Q And at the time that Justin came back to the car,
6 Justin was concerned about Josh, wasn't he?

7 A Yes, sir.

8 Q And didn't he tell you that them boys started
9 shooting?

10 A Yes, sir.

11 Q He said -- in fact, didn't he say them boys tried
12 to rob us?

13 A Yes, sir.

14 Q That's what Justin told you?

15 A Yes, sir.

16 Q Now when you were having this conversation with the
17 gentleman from Lake City, how -- how many times did you
18 talk to him between let's say 9:30 and the time that this
19 happened? How many times did you talk to him on the phone,
20 do you think?

21 A Between 9:30 and before the time the incident
22 happened.

23 Q Yes, sir?

24 A Probably about two or three times.

25 Q Two or three times?

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 A Yes, sir.

2 Q What were the length of those conversations?

3 A What was the length.

4 Q Yeah, an estimate, what was it, are we talking
5 about just a couple of minutes or was it --

6 A A couple of minutes.

7 Q A couple of minutes?

8 A Yes, sir.

9 Q And during one of them conversations, you all were
10 going back and forth about where you all were going to
11 meet; is that correct?

12 A Yes, sir.

13 Q And originally you guys were supposed to be in
14 room, in I think room 129 of the hotel, right?

15 A Yes, sir.

16 Q Who arranged that; was it you or was it one of the
17 gentlemen from Lake City?

18 A I did.

19 Q So that's where you wanted to meet at?

20 A Yes, sir.

21 Q And then apparently who called back to say they
22 couldn't meet you there?

23 A I was on the phone with him and I asked him if he
24 want to, and I ask him did he want to meet me in a room and
25 he said no, come to the car. You know, I asked how many

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 people was with him and that when he told me and then
2 because he said he didn't want to come get in the car with
3 me.

4 Q That's when you that you knew something was going
5 down?

6 A Yes, sir.

7 Q And you was ready to dip and leave?

8 A Yes, sir.

9 Q And Carraway was the one who kept going?

10 A Yes, sir.

11 Q Now, how much do you generally sell a pound of
12 marijuana for; what's the going rate?

13 I don't know anything about drugs, so tell me
14 what's the going rate?

15 A About twelve hundred.

16 Q Twelve hundred?

17 A Yes, sir.

18 Q What was the cost on the agreement, monetary
19 agreement, that you had with the gentleman from Lake City
20 this particular night to buy this pound of, of marijuana?

21 A Go through that again.

22 Q What were you going to charge the Lake City guy
23 that particular night for this pound of marijuana?

24 A Twelve hundred.

25 Q Twelve hundred?

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 A Yes, sir.

2 Q Now, was this your first time dealing with this guy
3 from Lake City?

4 A Yes, I dealt with him on, in a club that I had met
5 him, but you know I dealt with him once in the club. That
6 how he -- I got to know him.

7 Q But you hadn't had a drug transaction with him --

8 A Oh, no, sir. No. No.

9 Q -- never before this?

10 A No, sir.

11 Q So if he testified in here that --

12 THE COURT: You can't pit witnesses.

13 MR. SCOTT: Court's indulgence.

14 THE COURT: Yes, sir.

15 THE WITNESS: Sir.

16 THE COURT: I was talking to him. Thank you.

17 (WHEREUPON there was a pause in the proceedings.)

18 BY MR. SCOTT:

19 Q This particular night, did -- did you seen Justin
20 with a gun?

21 A No, sir.

22 Q Did you see Carraway with a gun?

23 A No, sir.

24 Q And as far as your understanding is, Justin knew
25 nothing about any of this thing that was going on?

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 A No, sir, not from my understanding, no, sir. I
2 don't know what him and Josh talked about, but, no, sir.

3 Q Were him and Josh there with --

4 A Yeah, they was together.

5 Q They were together?

6 A Yes, sir.

7 Q But you don't know what they talked about?

8 A No, sir.

9 Q You just know from your point of view?

10 A I didn't know he was coming here with his ride,
11 yes, sir.

12 Q No further questions?

13 THE COURT: Redirect?

14 **REDIRECT EXAMINATION**

15 BY MR. CLEMENTS:

16 Q Mr. Joe, you didn't really have any marijuana that
17 night to sell though, did you?

18 A No, sir.

19 Q So it was going to be a robbery the whole time?

20 A Yes, sir.

21 Q No further questions.

22 THE COURT: Recross?

23 MR. SCOTT: None, Your Honor.

24 THE COURT: Thank you.

25 (WHEREUPON the recording was stopped.)

1 THE COURT: All right. Before you retire, you set
2 up the equipment?

3 MR. GODBOLT: Yes, sir.

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen, if you'll return and restart your deliberations.
6 If you need any assistance with the equipment, just please
7 let me know. If you have any other questions just write
8 them out for me.

9 All right. Thank you, thank you very much.

10 MR. GODBOLT: Judge, I wrote down some instructions
11 on how to use it. Is it okay if I give it to them?

12 THE COURT: Yes -- is that all right? Do you have
13 any objections? Mr. Godbolt wrote down some instructions?

14 MR. SCOTT: I have none, Your Honor.

15 (WHEREUPON the jury left the courtroom at 2:03
16 p.m.)

17 THE COURT: All right. We'll be awaiting our
18 jury's verdict are we waiting our jury's verdict, yes, sir.

19 MR. SCOTT: Are we at recess now, Your Honor?

20 THE COURT: We are awaiting our jury's verdict,
21 yes, sir.

22 MR. SCOTT: Okay. Thank you.

23 THE COURT: Yes, sir.

24 (WHEREUPON Court was at ease while the jury
25 continued deliberations.)

JURY QUESTION

THE COURT: All right. I received a note from the jury that says that we, can you please explain the charge of "hand of one is the hand of all" again? And in it's entirety.

So I'm going to bring the jury out and recharge them on that part of my charge. Any objections to that, Solicitor?

MR. CLEMENTS: No, Your Honor.

THE COURT: Mr. Scott?

MR. SCOTT: No, Your Honor.

THE COURT: All right. If you'd bring our jury in.

(WHEREUPON the jury entered the courtroom at 3 o'clock p.m.)

THE COURT: All right. Welcome back, ladies and gentlemen of the jury panel. I received your note. As part of your note, you asked for me to explain, "Can you reread the of the hand of one is the hand of all." Is that correct?

THE FOREPERSON: Yes, sir.

THE COURT: All right. I'm going to read that first.

If a crime is committed by two or people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit

1 an unlawful act is criminally responsible for everything
2 done by the other person which happens as a probable or a
3 natural consequence of the acts done in carrying out the
4 common plan and purpose. For example, two people or more
5 can be guilty of burglary when only one person entered the
6 residence of another without consent. My example went on
7 to say, if one entered the residence and then was handing
8 the items out of the window to an accomplice on the
9 outside, the accomplice who did not go in the residence
10 would be guilty -- as guilty as the individual that went
11 into the residence. I also gave you an example if there
12 was a lookout for an individual while he went into a house
13 to commit a burglary, the lookout would be as responsible,
14 although only one entered, two or more could be guilty of
15 the crime of burglary.

16 If two or more people are together, acting together
17 assisting each other in the commission of the offense, the
18 act of one is the act of all. As it is sometimes said, the
19 hand of one is the hand of all. Prior knowledge that a
20 crime is going to be committed without more is not
21 sufficient to make a person guilty of that crime. Mere
22 knowledge that another person is going to commit a crime,
23 even if the Defendant is present when the crime is
24 committed is not sufficient to convict a Defendant as a
25 principal. Guilt as a principal is shown by actual or

1 constructive presence at the scene as a result of prior
2 arrangement. Therefore, a finding of a prior arranged plan
3 or common scheme is necessary for a finding of guilt as a
4 principal.

5 The State must prove beyond a reasonable doubt by
6 competent evidence the theory of the hand of one is the
7 hand of all. A principal in a crime is one who either
8 actually commits the crime or who is present, aiding,
9 abetting, or assisting in the commission of the crime.

10 When a person does an act in the presence of and with the
11 assistance of another, the act is done by both. Where two
12 or more acting with a common plan or intent are present at
13 the commission of a crime, it does not matter who actually
14 commits the crime, all are guilty. The hand of one is the
15 hand of all.

16 Present at the commission of crime means to be
17 sufficiently near to aid and abet and assist in the
18 commission of the crime. However, mere presence at the
19 scene of a crime is not sufficient to convict one as a
20 principal on the theory of aiding and abetting. Intent is
21 also a necessary element. There must have been a common
22 design or intent to commit the crime and the crime must
23 have been committed pursuant thereto with the person aiding
24 and abetting by some overt act.

25 Intent means intending the result which actually

1 occurred, not accidentally or involuntary. Intent may be
2 shown by acts and conducts of the Defendant and other
3 circumstances from which you may naturally and reasonably
4 infer intent. The State must prove these elements beyond a
5 reasonable doubt.

6 As to your charge, Does the charge a hand of one,
7 hand of all apply to indictment as to murder, the response
8 is yes. The hand of one is the hand of all applies to the
9 charge of murder as well as the charge of attempted armed
10 robbery.

11 Your next question, Can you explain what a
12 reasonable doubt is defined legally?

13 What is a reasonable doubt? A reasonable doubt is
14 the kind of doubt that would cause a reasonable person to
15 hesitate to act. The State has the burden of proving the
16 Defendant guilty beyond a reasonable doubt. Some of you
17 may have served as jurors in the past in civil cases where
18 you were told that it is only necessary to prove that a
19 fact is more likely true than not true, such as by the
20 greater weight or the preponderance of the evidence. In
21 criminal cases, the State's proof must be more powerful
22 than that. It must be beyond a reasonable doubt. Proof
23 beyond a reasonable doubt is proof that leaves you firmly
24 convinced of the Defendant's guilt. There are very few
25 things in this world that we know with absolute certainty

1 and in criminal cases, the law does not require proof that
2 overcomes every possible doubt.

3 If based on your consideration of the evidence, you
4 are firmly convinced that the Defendant is guilty of the
5 crimes charge, you must find the Defendant guilty. If on
6 the other hand, you think there is real possibility that
7 the Defendant is not guilty, you must give the Defendant
8 the benefit of the doubt and find him not guilty.

9 Now, that is all in response to your three
10 questions, is that correct, Mr. Foreman?

11 THE FOREMAN: Yes, sir.

12 THE COURT: All right. Thank you very much. If
13 you would please return to your jury room and resume your
14 deliberations. Thank you.

15 (WHEREUPON the jury left the courtroom at 3:06
16 p.m.)

17 THE COURT: Any exceptions, Solicitor?

18 MR. CLEMENTS: No, Your Honor, thank you.

19 THE COURT: Mr. Scott?

20 MR. SCOTT: None, Your Honor.

21 THE COURT: Thank you. Thank you very much. We'll
22 be awaiting our jury's verdict.

23 (WHEREUPON the jury entered the courtroom at 5:16
24 p.m.)

25 THE COURT: All right. Mr. Foreman, ladies and

1 gentlemen of the jury panel, I received your note
2 indicating that you have reached a unanimous decision on
3 the charge of attempted armed robbery and on the charge of
4 possession of a weapon during the commission of a violent
5 crime. I do not want to know what those unanimous verdicts
6 are at this time.

7 You further indicate you have -- but cannot come to
8 a unanimous, unanimous decision on the charge of murder.
9 Indicating that, as I have instructed you earlier, the
10 verdict of the jury must be a unanimous one. When a matter
11 is in dispute and -- this charge I'm giving you now goes
12 solely to the, to the murder charge itself.

13 When a matter is in dispute, it isn't always easy
14 for even two people to agree. So when twelve people must
15 agree, it becomes even more difficult. In most cases,
16 absolute certainty cannot be reached or expected. However,
17 you have a duty to make every reasonable effort to reach a
18 unanimous verdict as to the murder charge.

19 In doing this, you should consult with one another,
20 express your own views and listen to the opinions of your
21 fellow jurors. Tell each juror how you feel and why you
22 feel that way. Discuss your differences with open minds.
23 Although the verdict of the jury must be a unanimous one,
24 every one of you has the right to your own opinion. The
25 verdict you agree to must be your own verdict, the result

1 of your own convictions and you should not give up your
2 firmly held beliefs merely to be in agreement with your
3 fellow jurors.

4 The majority, I don't even know if there is a
5 majority and a minority, don't want to know. The majority
6 should consider the minority's position and the minority
7 should consider the majority's position. You should
8 carefully consider and respect the opinions of each other
9 and reevaluate your position for reasonableness,
10 correctness, and impartiality. You must lay aside all
11 outside matters and reexamine the question before you based
12 on the law and the evidence in this case.

13 If you do not agree on a unanimous verdict in this
14 case as to the murder charge, I must declare a mistrial as
15 to that charge. In that case, in the case of a mistrial,
16 it does not mean anybody wins. It just means that at some
17 future time, I or some other Circuit Court Judge would try
18 this case with another jury sitting where you now sit. The
19 same participants, witnesses will likely come forward and
20 say -- and the same lawyers will basically ask the same
21 questions and get basically the same answers and we will go
22 through the entire process again.

23 You were selected from the same pool in the same
24 manner as any future jury will be and there is no reason
25 for me to suppose that the case will ever be submitted to

1 twelve more intelligent, impartial, conscientious,
2 hardworking and competent jurors than you or that more or
3 clearer evidence will be produced on one side or the other.

4 So therefore, Mr. Foreman, ladies and gentlemen of
5 the jury, I'm going to ask you to return to your jury room
6 to resume your deliberations as to the charge of murder in
7 the hope that you can arrive at a verdict, a unanimous
8 verdict as to that charge within a reasonable time.

9 With that being said, Mr. Foreman, ladies and
10 gentlemen of the jury, if you would please return to your
11 jury room and resume your deliberations. Thank you. Thank
12 you very much.

13 If you have any questions please, Mr. Foreman, I
14 know you know how to write notes. Thank you so much.

15 (WHEREUPON the jury left the courtroom at 5:22
16 p.m.)

17 THE COURT: Any exceptions from the State,
18 Solicitor?

19 MR. CLEMENTS: No, Your Honor.

20 THE COURT: From Mr. Simms, Mr. Scott?

21 MR. SCOTT: No, sir, Your Honor.

22 THE COURT: Thank you very much. We'll be awaiting
23 our jury's verdict.

24 THE BAILIFF: Judge, we have some jurors that would
25 like to make a phone call. We have some jurors that wants

1 to make a phone call.

2 THE COURT: Madame Clerk, would you assist in that
3 please?

4 All right. Thank you. Thank you, Madame bailiff.

5 (WHEREUPON Court was at ease awaiting the jury's
6 verdict.)

7 THE COURT: Would you bring us our jury, please.

8 THE BAILIFF: Yes, sir.

9 THE COURT: Thank you. Thank you very much,
10 Mr. Scott.

11 (WHEREUPON the jury entered the courtroom at 8:02
12 p.m.)

13 THE COURT: All right. Welcome back ladies and
14 gentlemen of the jury panel. I note the hour is now 8 p.m.
15 Y'all have been diligently deliberating for a number of
16 hours now. I've received several messages where I
17 recharged you on various parts of the law and also you
18 reheard some testimony at your request.

19 The -- of course, the hour is late and the stakes
20 are high. So what I'm going to do is momentarily I'm going
21 to release you from your jury service for the remainder of
22 the evening. I'm going to advise you that during this
23 evening recess you're not to discuss this case with anyone.
24 That includes your family, friends, fellow jurors, or
25 anyone else.

1 Do not watch, listen to, read any news accounts
2 about the case, whether on radio, television, newspaper,
3 internet. Do not do any independent investigation, or any
4 investigation on the internet in any manner whatsoever I
5 will question you about that, of course, in the morning.
6 If anyone tries to talk to you about it, please let me know
7 promptly.

8 I'm going to ask you -- as my daddy would say,
9 sometimes it helps to sleep on things. Keep your own
10 counsel. Don't discuss it with anyone. Get you the rest
11 of a good night's rest. Go home and spend time with your
12 families. I know y'all all have lives outside of the
13 courtroom. Some of us do not. I am one that does not.
14 But be that as it may I respect y'all for the hard work,
15 the patience, the focus, the diligence you have.

16 So with that being said you're now excused for the
17 evening. I would ask you to please be back promptly at
18 9:30 in the morning.

19 Mr. Foreman, once all the members of the jury are
20 present, you may then re begin your deliberations.

21 All right. Thank you very much. Hope y'all have a
22 pleasant evening. See you in the morning.

23 (WHEREUPON the jury left the courtroom at 8:05
24 p.m.)

25 THE COURT: Madame Clerk, have you secured the

1 evidence?

2 THE CLERK: I have, Judge.

3 THE COURT: Along with that have you secured the
4 form of verdict?

5 THE CLERK: I have, Judge.

6 THE COURT: And that will be secured and until the
7 return of the jury tomorrow?

8 THE CLERK: Yes, sir.

9 THE COURT: Is that correct?

10 THE CLERK: Yes, sir.

11 THE COURT: All right. Thank you. Thank you very
12 much.

13 Anything further from the State, Solicitor?

14 MR. CLEMENTS: Just have a good evening, Your
15 Honor. Thank you.

16 THE COURT: Thank you.

17 Mr. Scott?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: Thank y'all. Thank you very much.

20 Court will be in recess until 9:30 in the morning.

21 (WHEREUPON Court was in recess for the evening.)

22 Friday, December 13, 2013

23 THE COURT: All right. My understanding, both the
24 State and the defense would like for me to inquire whether
25 as to whether or not any members of the jury panel have

1 heard, read or seen anything on the news about this matter.

2 Is that correct?

3 MR. SCOTT: That's correct.

4 MR. CLEMENTS: Yes, sir. Just keep the record
5 clear on that, Your Honor.

6 THE COURT: All right. Thank you. Thank you very
7 much. If you would bring the jury panel out, please.

8 (WHEREUPON the jury entered the courtroom at 9:54
9 a.m.)

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, good morning.

12 THE JURY: Good Morning.

13 THE COURT: I know I told you, you could begin your
14 deliberations and I suspect that you already have. But I
15 did want to inquire about several matters before you
16 continue:

17 Has anyone seen, heard, read anything about the
18 case since I last asked that question, whether on TV radio,
19 newspaper, on the internet, if so, please stand.

20 (WHEREUPON there was no answer.)

21 THE COURT: Has anyone discussed the case with
22 anyone besides your fellow jurors in your jury room during
23 your deliberations? If so, please stand.

24 (WHEREUPON there was no answer.)

25 THE COURT: And has anyone attempted to talk with

1 any member of the jury panel about the case since I last
2 questioned you concerning that matter? If so, please
3 stand.

4 (WHEREUPON there was no answer.)

5 THE COURT: One other thing Mr. Foreman. Again, as
6 I've said several times, I know you know how to write
7 notes. I appreciate that. That's very important. That
8 shows how hard working thorough y'all are reviewing the
9 evidence and the facts. If there is any part or parts of
10 the testimony that you want to rehear as you did Mr. Joe's;
11 if there's any parts of my charge that you want the rehear;
12 if there's any way that you think the Court can assist you
13 and the jury panel in reaching a unanimous verdict on that
14 one remaining count in the indictment, please do not
15 hesitate to write me a note and let me know.

16 All right. Anything further from the State? The
17 defense.

18 MR. CLEMENTS: No, Your Honor, thank you.

19 MR. SCOTT: No, Your Honor.

20 THE COURT: Thank you. Thank y'all very much for
21 your presence here today and for your service. You may now
22 return to your jury room and resume your deliberations.
23 Thank you..

24 (WHEREUPON the jury left the courtroom at 9:55
25 a.m.)

1 THE COURT: And keep State's 45 out.

2 (WHEREUPON the evidence and the verdict form were
3 returned to the jury.)

4 THE COURT: All right. Any objections, Solicitor?

5 MR. CLEMENTS: No, Your Honor.

6 THE COURT: Mr. Scott?

7 MR. SCOTT: No, Your Honor.

8 THE COURT: Thank you. Thank you very much. We'll
9 be awaiting our jury's verdict.

10 (WHEREUPON Court was at ease while the jury resumed
11 deliberations.)

12 (WHEREUPON another note was sent to the Court by
13 the jury.)

14 THE COURT: Would you bring you us our jury,
15 please.

16 (WHEREUPON the jury entered the courtroom at 10:55
17 a.m.)

18 JURY QUESTION

19 THE COURT: Mr. Foreman, ladies and gentlemen of
20 the jury panel, I received your note, can you please supply
21 this jury with a printed copy of the murder charge and the
22 hand of one is the hand of all, if not, will you please
23 read them both to us again.

24 I have conferred with the attorneys, with the
25 solicitor and Mr. Scot, and I have prepared copies of these

1 and I will send them in there with you, the murder charge,
2 which is a three page charge and the charge on the hand of
3 one, which is also a three page charge.

4 No objection, Solicitor; is that correct?

5 MR. CLEMENTS: No objection, Your Honor.

6 THE COURT: No objection, Mr. Scott?

7 MR. SCOTT: No objections, Your Honor.

8 THE COURT: I will, again, ladies and gentlemen,
9 advise you. You look at these charges incapsulating in the
10 entire general criminal law that I charged you previous
11 previously. But as I understand from a previous note,
12 already reached a unanimous verdict on attempted armed
13 robbery and possession of a weapon during the commission of
14 a violent crime.

15 But again, you take the murder and the hand of one
16 hand of all charge and you look at them against that
17 background of the general criminal law that I charged you
18 that applies to all criminal cases in South Carolina.

19 If you have any further questions, please let me
20 know and I will certainly try to respond to them in a
21 timely manner.

22 You may now return to your jury room and I'll have
23 the bailiff deliver this to you.

24 (WHEREUPON the jury left the courtroom at 10:57
25 a.m.)

1 THE COURT: Any objection, Solicitor.

2 MR. CLEMENTS: No, Your Honor, thank you.

3 THE COURT: Mr. Scott.

4 MR. SCOTT: No, sir Your Honor.

5 THE COURT: All right. Thank you. We'll be
6 awaiting our jury's verdict.

7 (WHEREUPON Court was at ease while the jury
8 continued deliberations.)

9 (WHEREUPON it was reported to the Court that the
10 jury had reached a verdict at 11:25 a.m.)

11 THE COURT: All right. I understand the jury has
12 reached a verdict in this case.

13 I would remind all of the spectators that I do not
14 allow any show of emotion at the time of the publication of
15 the verdict. I would consider that a contempt of this
16 Court and would ask the officers to take anyone into
17 custody that shows any type of emotion. This can be a very
18 emotional state for the parties, the family of Marcus, the
19 family of Justin.

20 If you do not feel that you can contain your
21 emotions, I would ask you to please leave at this time. If
22 you remain then I will take you on your -- the fact that
23 you remain that you're indicating to the Court that you can
24 contain your emotions. I have seen how respectful both
25 sides have been to the Court. I appreciate it very much

1 and I thank you for it. The attorneys have worked very
2 hard and diligently, both the solicitor's office,
3 Mr. Chevron -- excuse me, Mr. Scott. I have called him
4 Chevron in the hall and I apologize for that slip in my
5 decorum, Mr. Scott. Mr. Stucks. Very hard and a very well
6 tried case. I'm very proud of -- regardless of what the
7 verdict is and for our system and how the case was
8 presented.

9 The jury has worked very hard and very diligently.
10 They also deserve your respect. So again, please keep that
11 in mind.

12 All right. With that being said, Madame Bailiff.

13 THE BAILIFF: Judge, they're knocking on the door.
14 May I inquire what that's about?

15 THE COURT: Yes.

16 (WHEREUPON the jury entered the courtroom at 11:31
17 p.m.)

18 THE COURT: Madame Clerk?

19 THE CLERK: Members of the jury have you agreed
20 upon the verdict?

21 THE FOREPERSON: Yes, ma'am.

22 (WHEREUPON the verdict was handed up to the Court.)

23 **VERDICT**

24 THE COURT: All right. The verdict form appears to
25 be in proper form. It is signed by presiding juror and

1 dated today's date 12/13/13.

2 Madame Clerk; you may publish the verdict.

3 THE CLERK: The State of South Carolina versus
4 Justin Simms, Indictment No. 2010-GS-21-1427 as to murder,
5 We, the jury, unanimously find the defendant guilty.

6 Indictment 2010-GS-21-01427, as to attempted armed
7 robbery, We the jury unanimously find the defendant guilty.

8 Indictment 2010-GS-21-1427, as to possession of a
9 weapon during the commission of a violent crime, We the
10 jury unanimously find the defendant guilty.

11 Signed Foreperson, Russel Harter; dated December
12 13th, 2013.

13 Members of the jury, if this is your verdict,
14 please raise your right hand.

15 That's everyone judge.

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

18 Anything further for the jury from the State,
19 Solicitor?

20 MR. CLEMENTS: No, Your Honor. We know that they
21 wrestled hard with this and did their sworn duty and we're
22 very appreciative.

23 THE COURT: Thank you, Solicitor?

24 Mr. Scott?

25 MR. SCOTT: No, nothing from the jury at this time.

1 THE COURT: All right. Thank you. Thank you very
2 much. You may be seated Mr. Scott, Mr. Stucks, and Mr.
3 Simms.

4 Mr. Foreman, ladies and gentlemen of the jury, I
5 would like to take just a moment more of your time to thank
6 you for your presence and your hard work and your diligence
7 throughout the trial of this case. As I was -- I never
8 criticize nor commend a jury for its verdict or verdicts,
9 but when I see a jury that is hard working, and diligent,
10 focused, attentive, it reenforces my belief in our society
11 and our community and in our country.

12 As I was leaving yesterday evening with one of the
13 deputies, we were walking out I was thanking him for all
14 they have done while I've been down here. And he said,
15 Judge we didn't do anything. And I said, Well I don't
16 guess I did either. He said what you do is special. I've
17 never thought about that. This is special, but I'm not
18 special. But really what y'all do is special. I
19 volunteered. I asked to do this. I, at times, begged to
20 do this. Y'all didn't volunteer.

21 Y'all were selected at random to come in here and
22 to listen to this case and determine the facts, to follow
23 the law, and reach a verdict and in your heart and in your
24 head speaks the truth. And our system worked. These are
25 excellent trial attorneys. Your Solicitor, Mr. Scott, did

1 an excellent job in this presentation of this case and the
2 presentation of the defense.

3 He represents the State, the people of Florence
4 County, the solicitor does. Mr. Scott represents people
5 that deserve representation. They're entitled to
6 representation. Good representation. Excellent, excellent
7 lawyer. Excellent representation.

8 And y'all sat as fair and impartial jurors. So I'm
9 not special, the architecture of the courtroom tells you
10 that person is above the law. That's why the judge sits
11 higher. Y'all sit higher than the parties, I sit higher
12 than y'all. But it's not me, it's just this. That deputy
13 said a lot. Y'all are -- it's really special to work down
14 here in Florence County. Next week will be my last week of
15 court down here. I'm headed to the Upstate and the
16 Piedmont won't be any better than the Pee Dee. Please
17 don't call them in advance and tell them that.

18 I'm going to release you from your jury service at
19 this time. You do not have to call back. You do not have
20 to come back.

21 Madame Clerk, you will hand that out as they leave?

22 If y'all would allow me, momentarily, I'm going to
23 walk around and I'd like to shake each of your hands. Not
24 because of your verdict, but because of your service to
25 your community and to your fellow citizens.

1 Thank you, thank you very much.

2 Madame Clerk.

3 Y'all are now excused.

4 (WHEREUPON the jury left the courtroom at 11:37
5 a.m.)

6 THE COURT: All right. Any motions, Mr. Scott?

7 MR. SCOTT: Respectfully, Your Honor, we would ask
8 for a judgment notwithstanding the verdict and renew all of
9 our previous objections from the record.

10 THE COURT: All right. I would respectfully deny
11 the motion for judgment notwithstanding the verdict in the
12 matter. I think there was direct and circumstantial
13 evidence and a combination of both where the reasonable
14 jury returned the verdicts which they did. And I also
15 would renew all my previous trial rulings in this matter.

16 MR. SCOTT: Thank you, Your Honor.

17 THE COURT: Is there any reason why sentence cannot
18 be imposed at this time?

19 MR. SCOTT: No, Your Honor.

20 **SENTENCING**

21 THE COURT: Solicitor, do you have sentencing
22 sheets.

23 MR. CLEMENTS: Your Honor, I would ask before we do
24 sentencing, I have some of the family members that knew
25 that they would have a problem with their emotions in our

1 conference room. And Ms. Singletary, our victim witness
2 advocate is retrieving them right now. I would ask that we
3 wait just a moment for them, Your Honor.

4 THE COURT: All right. Certainly.

5 (WHEREUPON there was a pause in the proceedings.)

6 MR. CLEMENTS: Your Honor, we're ready to proceed.

7 THE COURT: All right. Yes, sir?

8 MR. CLEMENTS: Your Honor, for the record, I would
9 like to let you know who is here. I'm going to call some
10 names out, Your Honor. And I'm going to ask them if they
11 will raise their hand. At the appropriate time, Your
12 Honor, I think some of the family members would like to
13 speak to Your Honor.

14 THE COURT: All right. Certainly.

15 MR. CLEMENTS: First, Britney Weaver, the sister.
16 Ms. Linda Weaver is the mom.

17 THE COURT: Stand up for me, Ms. Weaver. I
18 couldn't see you. All right. Thank you.

19 MR. CLEMENTS: Debbie Cunningham is a cousin, Katie
20 Godwyn an aunt, Ferrel Turner, a cousin, Raymond Mills a
21 friend. Some of these people were here yesterday, Your
22 Honor and may not be here today.

23 Terrence Singletary, a cousin, Ronald Turner, a
24 cousin, Debra Sanders, a friend, April Godwyn, a cousin,
25 Shane Graham, brother, Your Honor, who you heard from on

1 the witness stand.

2 THE COURT: Yes, sir.

3 MR. CLEMENTS: Arlene Graham, cousin, Larry Cooper,
4 cousin. Another cousin, Cooper, I can not think -- I think
5 it's Robin, Robin Cooper, Latesha Cooper, cousin, Farah
6 Turner, a cousin. Russell Godwyn, uncle, Chandra Weaver,
7 sister, Blayne Graham, sister, Jennifer Singleton, a
8 sister, Reverend Hubert Godwyn, the uncle, Laura Toney,
9 Friend, and Denesha Simpson, a friend.

10 Your Honor, at the appropriate time, I think one or
11 two or three of the family members may wish to be heard
12 from.

13 THE COURT: Yes, sir.

14 MR. CLEMENTS: Your Honor, you've heard all the
15 evidence and you've heard the facts. If there's anything
16 additional you need me to add, Your Honor, I will, but I
17 think the trial kind of speaks for itself. This was a
18 horrible situation, Your Honor. Over something trivial as
19 a little bit of marijuana or a little bit of money. And
20 the marijuana was not even present. And it's just a
21 tragic, tragic occurrence and we think that the jury
22 considered everything and they wrestled with it and they
23 gave their jury service due diligence and they reached the
24 verdict and we would ask Your Honor that you sentence
25 accordingly to this violent, most serious offense -- and

1 two violent most serious offenses occurred with the
2 attempted robbery. And Your Honor, at the appropriate
3 time, if you'd hear from the family, they wish to address
4 the Court in regards to sentencing.

5 THE COURT: Solicitor, I'll hear from anyone you
6 want me to hear from. You just call them up.

7 THE COURT: I know Ms. Weaver would like to speak,
8 Your Honor, first. The mom. And also Britney Weaver, the
9 sister. And I -- Mr. Graham if you wish to speak or not?

10 He doesn't wish to speak.

11 Britney Weaver and Linda Weaver are going to speak
12 on behalf of the family. The sister and the mom.

13 THE COURT: All right. Yes, ma'am, tell me your
14 name.

15 THE SISTER: Britney Weaver.

16 THE COURT: All right. And tell me your
17 relationship to Marcus.

18 THE SISTER: I'm his sister.

19 THE COURT: All right. I'll be glad to hear from
20 you, Ms. Weaver.

21 THE SISTER: Yes, sir. I'd like to thank you again
22 for this day to give everyone an opportunity to be heard.
23 Marcus was my brother. He was also my great protector. I
24 am a first year law student, and I fully believe in the
25 justice system. I plan to serve this country with every

1 fiber of any being. I appreciate everyone here present
2 today and I just...

3 THE COURT: Thank you, thank you very much, Ms.
4 Weaver.

5 And tell me your name, please.

6 THE MOM: Linda Weaver.

7 THE COURT: All right. I'll be glad to hear from
8 you, Ms. Weaver.

9 THE MOM: Yes, sir. As a teacher, I'm a teacher
10 for the past 27 and-a-half years. And as I sat here and I
11 heard these young men talk and some of them said they only
12 had like 11th grade education, it hurt me as a teacher, but
13 my most basic instinct, my son was a high school graduate.
14 He attended Francis Marian University and I always wanted
15 him to receive his education and further his education. He
16 won't have that opportunity, but they will. As I sat here
17 I thought about my grandchildren because my son has two
18 children, two boys. One right now is 10 years old and one
19 is, L.M. , his name sake, he's 5 years old. And
20 they'll never have an opportunity to have a daddy.

21 And I also thought about the mother on the other
22 side and my heart hurt for her. But at the same time, I
23 have spent the last several Christmases without my child
24 and he was a case number. He was a series of papers. He
25 was pictures. He was an autopsy report, but he was my

1 child. When I brought him from the hospital he was 2
2 pounds 7 ounces. He loved me and I loved him. He was a
3 good child.

4 He didn't always do what I wanted him to do. He
5 didn't always do right, but every year I saw progress.
6 Every year, he got a little bit better. I really believe
7 over the last 4 years, because it's been 3 years and 11
8 months, January 10th, 2010, I'm never forget it as long as
9 I live. They had a chance to go back home. I sat through
10 bond hearings, one after another and they went home.

11 I wasn't even able to go visit my child's grave
12 because I was so hurt. I hurt for the other mother. But
13 she can see her child. I'll never be able to see my child
14 again. I ask that the Court give him the maximum, and
15 please -- I don't want revenge because I'm a civilized
16 person. I don't believe in an eye for eye and a tooth for
17 a tooth, but I do believe in justice. And I ask for
18 justice on behalf of my son.

19 THE COURT: Thank you. Thank you very much. Thank
20 you, Ms. Weaver.

21 MR. CLEMENTS: Your Honor, I don't know if
22 Investigator McFadden has anything he wishes to say. I'd
23 ask you to hear from him if he does.

24 THE COURT: Certainly.

25 MR. MCFADDEN: Well, same as Ms. Weaver. It's sad

1 on both sides. And when she talked about the education and
2 the young men. The day this happened, I was explaining to
3 both sides of the family, I think everybody destroyed on
4 both sides. I think a lot of people see one side, but two
5 families were destroyed at that time. When it all take
6 place, I coach a group of young kids in football, a young
7 group of men. I tried to give them a good foundation.

8 I think at some point in time, he was probably in
9 the same situation. As a young man, I think he probably
10 had the same foundation.

11 THE COURT: Does he need assistance.

12 THE CLERK: We're going to let him sit down.

13 (WHEREUPON the defendant was having difficulty as
14 well as some of his family members.)

15 MR. SCOTT: Your Honor, I asked that they escort
16 her out.

17 THE COURT: And who is that, Mr. Scott?

18 MR. SCOTT: May it please the Court, that's the
19 mother of Justin.

20 THE COURT: Did you want me to hear from her.

21 MR. SCOTT: Not at this point -- no, Your Honor, I
22 don't think that would be appropriate.

23 (WHEREUPON there was a pause in the proceedings.)

24 THE COURT: Mr. McFadden?

25 MR. MCFADDEN: And in teaching the young kids, we

1 always explain to them about choices and decisions in their
2 lives, watching the company they keep. And on that night
3 that Mr. Weaver spoke of. I said to myself, there were six
4 young men out there that made some choices and there was
5 some consequences and their -- not only justice, but there
6 are two other individuals that are going to have to answer
7 the same fate. That night, what they did, I know at some
8 day, a day of reckoning is going to come with that and
9 they'll deal with the consequences behind that.

10 And so, that's the choice, I wish I could have some
11 other kids -- I was telling the teacher with another class
12 that I spoke to, could sit in here today what happened, how
13 the decisions you make change your life dramatically. A
14 lot of times you make decisions you could go -- Mark Twain
15 said there are two roads, you've got different paths, two
16 choices to make. And they chose that path and now there's
17 consequences behind that path. And his grandma is a God
18 fearing woman and I know that. I know that. And I know
19 they taught them right from wrong, but sometimes no matter
20 how you raise a child or raise kids, sometimes they're
21 still going to make bad decisions.

22 That's all I have to say about that, Your Honor.

23 THE COURT: Thank you. Thank you very much.

24 Solicitor?

25 MR. CLEMENTS: Again Your Honor, this is tragic on

1 all sides, but there's accountability and there's a day of
2 reckoning. And this is as serious as it gets when you take
3 someone else's life. So Your Honor, I know your experience
4 as a trial judge and as a trial lawyer, I just defer to
5 you, Your Honor, what you think is appropriate judgement in
6 the case. And please take into consideration everything
7 Ms. Linda Weaver said.

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

10 Mr. Scott?

11 MR. SCOTT: May it please the Court, Your Honor.
12 Let me first say to -- I asked Solicitor Clements to give
13 my condolences to the family of Mr. Weaver. For purposes
14 of the record, I want to personally give my condolences to
15 the entire family because I -- there comes a time when
16 justice prevails. The jury has spoken and much like
17 everyone else here, we believe in the system. We believe
18 in the system of justice, Your Honor.

19 And what we would respectfully ask, Your Honor is
20 that you consider all of the factors as you know them.
21 Also consider the fact that Justin has no criminal record
22 and also consider the fact surrounding the circumstances of
23 this particular event, the culpability of the parties
24 involved. And we leave it in your sound discretion to
25 sentence him appropriately based on all your years of

1 experience as a judge.

2 THE COURT: Thank you, Mr. Scott.

3 Mr. Stucks, anything?

4 MR. STUCKS: Nothing, Your Honor.

5 THE COURT: Mr. Simms? Anything you'd like to say?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Speak up where I can hear you.

8 THE DEFENDANT: First I would like to thank you for
9 allowing me to speak.

10 THE COURT: Speak up for me.

11 THE DEFENDANT: First I would like to thank you for
12 allowing me to speak. But more than anything, in spite
13 of -- in spite of the verdict, I just would like to tell
14 the courtroom and my family, everybody, in spite of the
15 verdict I'm no murderer. I'm no robber.

16 In spite of the verdict I just would like to tell
17 everyone that I'm no murderer, I'm no robber. You see my
18 family. My family raised me the right way. My family
19 didn't raise me to do things that I'm accused of. This
20 situation has changed me so much.

21 I have two boys Javontay and David, and I'm sure --
22 I'm sure you have kids, and I'm not asking for anything,
23 but -- but I just, just like I said --

24 MR. SCOTT: Your Honor, may it please Your Honor.

25 THE DEFENDANT: I'm not murderer.

1 MR. SCOTT: May it please, as you can understand
2 this is a very traumatic time for all the parties involved.
3 At this time, Your Honor, we would just respectfully
4 request that examine all the evidence as you know it and
5 then you sentence according to your discretion.

6 THE COURT: All right. Yes, sir. Thank you.

7 MR. SCOTT: And Your Honor may it please, we would
8 also respectfully request that whatever sentences that you
9 impose that you run those concurrent.

10 THE COURT: Yes, sir.

11 I would like to say that I have tried quite a
12 number of cases, both as a trial attorney and as a trial
13 judge, and I have tried many cases in which there's very
14 few people there on behalf of the victim. And I've tried
15 many cases, too many cases that there are very few people
16 there on behalf of the defendant, except for sometimes an
17 appointed attorney.

18 The family support for the victim is impressive.
19 The family support for Mr. Simms is impressive. As I say.
20 I've seen way too many situations where a defendant has no
21 one with him or her except an appointed attorney.

22 I agree with so much of what Ms. Weaver, a teacher,
23 has said. I see and hear too many witnesses that do not
24 complete their education as -- it seems that's more the
25 rule than the exception in criminal court. And as

1 Detective McFadden said, and he mentors and assists young
2 men -- what a great role model he would be for any young
3 man.

4 And I know that Mr. Scott does the same thing.
5 What a great roll model Mr. Scott would be for so many --
6 for any young man.

7 As we do all know, though, behavior does have
8 consequences. As Ms. Weaver said, her son became a case
9 number, an autopsy tag, a toxicology report, and as we saw
10 Mr. Simms mother have to leave the courtroom because of her
11 emotions, her son now becomes a department of correction
12 number, an inmate number, wearing a striped suit, being
13 confined for a substantial part of his life, substantial
14 part of his life.

15 As I see the evidence, you had three young men --
16 perhaps Mr. Graham, I did find him to be quite credible in
17 his testimony, but you had Mr. Weaver and Mr. Davis coming
18 to alledgedly buy drugs. I don't believe they were coming
19 to buy drugs because they wouldn't have had to borrow six
20 dollars to get gas. I don't believe they had any money to
21 buy drugs.

22 Then you had three men there from Lake City coming
23 to Florence to buy drugs and you have three young men
24 coming from Darlington to sell drugs. So you've got one
25 group buying with no money and you've got one group selling

1 with no drugs. What a volatile combination that is, when
2 both sides are armed. Both sides have guns. There's no
3 question about that. No question that the .45 was in the
4 Ford vehicle with Mr. Graham, it was on the person of
5 Mr. Weaver.

6 No question that the .380 was in the Joe, Simms
7 Carraway side. No question whatsoever. And you've got all
8 these young men, intelligent young men. Maybe not
9 completed their education, intelligent young men. And it's
10 like that pebble in the pond. It won't -- that heart --
11 some wounds never heal. That wound won't heal.
12 Ms. Weaver's wound will not heal. I'm not a psychologist
13 or anything. But losing a child -- a mother's love, it
14 won't heal.

15 Mr. Simms's mother, her wound won't heal. Yes,
16 she'll be able to go see her child under the conditions and
17 the rules and regulations of the South Carolina department
18 of corrections. And that's better than a gravestone. I'd
19 rather be able to -- she would rather be able to hug him
20 and touch him and feel him, as opposed to just looking at a
21 name on a stone. No doubt about that.

22 I don't know when these tragedies are going to end.
23 I have so much respect for the teachers and the mentors and
24 the volunteers that work every day to -- I have no doubt
25 with that family support that Mr. Simms wasn't taught.

1 right, but he didn't choose right.

2 What was the old saying, Can't just talk the talk,
3 you've got the walk the walk.

4 2011-GS-21-1427 (sic) Justin Rashawn Simms, having
5 been found guilty of the crime of murder by the jury, the
6 defendant is committed to the state department of
7 corrections for a determinate term of 40 years.

8 2010-GS-21-1427, Justin Rashawn Simms having been
9 found guilty of attempted armed robbery, the defendant is
10 committed to the state department of corrections for a
11 determinate term of 20 years.

12 And 2010-GS-21-1427, Justin Rashawn Simms,
13 possession of a firearm during the commission of a violent
14 crime, the defendant is committed to the state department
15 of corrections for a determinate term of 5 years. Those
16 sentences are to run concurrently.

17 Good luck to you, Mr. Simms.

18 Good luck to you, Ms. Weaver. Thank you. Thank
19 you so much for you being here.

20 And, Sheriff, do you want the parties to leave in a
21 certain manner.

22 THE SHERIFF: We will take him out first.

23 THE COURT: So everyone else remain in the
24 courtroom.

25 (WHEREUPON the defendant was escorted out of the

1 courtroom.)

2 MR. SCOTT: Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Scott.

4 MR. CLEMENTS: Thank you, Judge.

5 THE COURT: Thank you, Solicitor.

6 MR. CLEMENTS: Judge, we had a roster meeting with
7 Judge Brown at the beginning of the term and for all the
8 defendants that were not here, Judge Brown issued bench
9 warrants. And I think he thought -- I don't know if
10 Mr. Simms was issued one. If he was, I need to lift that
11 on Mr. Simms.

12 THE COURT: He issued a bench warrant on Mr. Simms?

13 MR. CLEMENTS: He had me call the roll of the
14 defendants because a lot -- some of them, Mr. Simms was
15 here with Mr. Scott and left. Everyone -- he didn't tell
16 anybody they could go. So he issued bench warrants for
17 everybody.

18 Anyway it's taken care of now.

19 THE COURT: All right.

20 * * * * * END OF TRANSCRIPT * * * * *

21

22

23

24

25

1 State of South Carolina)

Certificate of Reporter

2 County of Aiken)

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 9th
11 through the 13th days of December 2013.

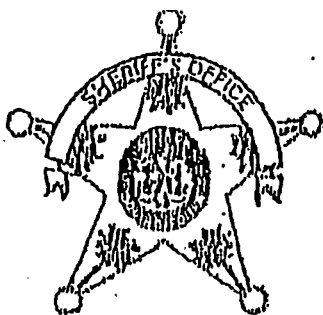
12 I FURTHER CERTIFY that the foregoing pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 18th day of July, 2014.

19
20
21 *Brenda J. Sigwald*

22 _____
23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.



FLORENCE COUNTY SHERIFF'S OFFICE

WILLIAM K. "KENNEY" ROONE, SHERIFF

STATEMENT AND INTERVIEW FORM

TODAY'S DATE: 01/12/10 TIME: _____LOCATION: FC50INCIDENT DATE: 1/10/2010 CASE #: 2010-01-0306REFERENCE TO: HomicideLAW ENFORCEMENT PRESENT: Inv. Russell CoxSUBJECT'S NAME: SQUAN DAVISSUBJECT'S ADDRESS: _____ OKCITY: Lake City STATE: SC ZIP: _____

HOME PHONE #: _____ WORK PHONE #: () _____

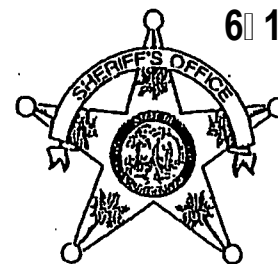
DOB: _____ AGE: 20 SSN: _____HEIGHT: 5'10 WEIGHT: 210 HAIR COLOR: Blk SEX: MalePLACE OF WORK OR SCHOOL: NO

*****QUESTIONS BELOW ARE OPTIONAL*****

EDUCATION COMPLETED: 11thUNDER THE INFLUENCE OF DRUGS OR ALCOHOL AT THIS TIME? NOARE YOU COMFORTABLE MAKING THIS STATEMENT HERE? YESHAVE YOU BEEN THREATENED OR MISTREATED IN ANY WAY TO MAKE THIS STATEMENT? NODEFENDANT'S
EXHIBIT



FLORENCE COUNTY SHERIFF'S OFFICE
WILLIAM K. "KENNY" BOONE, SHERIFF



611

MIRANDA WARNING

CASE# 200-01-306 LOCATION: FCSD

DATE: 01/12/2010 TIME: 10:00

THE CONSTITUTION REQUIRES (I/ WE) INFORM YOU THAT:

- SD 1.) YOU HAVE THE RIGHT TO REMAIN SILENT.
- SD 2.) ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
- SD 3.) YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
- SD 4.) IF YOU CAN NOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU WISH.
- SD 5.) YOU CAN DECIDE AT ANYTIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.
- SD 6.) DO YOU UNDERSTAND EACH OF THESE RIGHTS AS I HAVE EXPLAINED THEM TO YOU? Yes
- SD 7.) HAVING THESE RIGHTS IN MIND DO YOU WISH TO TALK TO US NOW? Yes

Squon Davis
NAME
Circle
ADDRESS
Si
CITY STATE

WAIVER OF RIGHTS

I HAVE READ THIS STATEMENT OF MY RIGHTS AND UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OF ANY KIND HAS BEEN USED AGAINST ME BY ANYONE.

SIGNED: X Squon Davis TIME: 10:15
WITNESS: [Signature] WITNESS: [Signature]

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

STATE OF SOUTH CAROLINA)
FLORENCE COUNTY)

CASE NUMBER: 2010-010-306

CRIMINAL INVESTIGATION DIVISION

INVESTIGATOR THOMAS MCFADDEN

STATEMENT COVER SHEET

STATEMENT TAKEN FROM:

SHAQUAN DAVIS

TYPIST: MS. DONNA MCDANIEL

THIS PAGE IS NOT PART OF RECORDED STATEMENT,

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

AND IS FOR RECORDS KEEPING PURPOSE ONLY.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

MCFADDEN: I'M INVESTIGATOR THOMAS MCFADDEN WITH THE FLORENCE COUNTY SHERIFF'S OFFICE. TODAY'S DATE IS 01-12-2010. THE TIME IS 11:31 A. M. DOING AN INTERVIEW AT THE FLORENCE COUNTY SHERIFF'S OFFICE IN ONE OF THE INTERVIEW ROOMS IN REFERENCE TO CASE NUMBER 2010-01-0306. INCIDENT DATE IS 01-10-2010 IN REFERENCE TO A HOMICIDE. WE INTERVIEWING—UM, LAW ENFORCEMENT PRESENT IS INVESTIGATOR RUSSELL COX. WE'RE INTERVIEWING ONE SHAQUAN DAVIS.

SHAQUAN, FOR THE RECORD COULD YOU, PLEASE STATE YOUR NAME, DATE-OF-BIRTH, AND WHERE YOU LIVE.

DAVIS: UM. MY, MY NAME IS SHAQUAN DAVIS. I STAY IN LAKE CITY ON
[REDACTED]

MCFADDEN: UM, HOW OLD ARE YOU?

DAVIS: I AM 20.

MCFADDEN: YOU WORKING OR GOING TO SCHOOL?

DAVIS: NO, SIR.

MCFADDEN: ALRIGHT, (CELL PHONE RINGING) WHAT'S THE LAST EDUCATION YOU COMPLETED?

DAVIS: UH, 11TH.

MCFADDEN: 11TH GRADE?

DAVIS: YES, SIR.

COX: (EXIT) HELLO.

MCFADDEN: ARE YOU UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOL, AT THIS TIME?

DAVIS: NO, SIR.

MCFADDEN: YOU FEEL COMFORTABLE TALKING WITH US?

DAVIS: I SURE ENOUGH DO, YES, SIR.

MCFADDEN: HAVE YOU BEEN THREATENED—MISLED ANY WAY TO TALK WITH US?

DAVIS: NO, SIR.

MCFADDEN: -ALRIGHT, FOR THE RECORD, I DID READ YOU RIGHTS AND YOU SIGNED THE MIRANDA FORM, BUT I'M GONNA READ THEM TO YOU, AGAIN.

UM, YOU KNOW, YOU HAD THE RIGHT TO REMAIN SILENT.

ANYTHING YOU SAID COULD BE USED AGAINST YOU IN THE COURT OF LAW.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

YOU HAD THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WHILE BEING QUESTIONED.

IF YOU CAN NOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU WISH.

YOU CAN DECIDE AT ANY TIME TO EXERCISE YOUR RIGHTS AND NOT ANSWER ANY QUESTION/MAKE ANY STATEMENT.

YOU DO UNDERSTAND YOUR RIGHTS?

DAVIS: YES, SIR.

MCFADDEN: HAVING YOUR RIGHTS IN MIND, YOU WANT TO EXPLAIN WHAT TOOK PLACE THAT NIGHT OR WHAT HAPPENED AT—IN FLORENCE AT THE MOTEL OR JUST EXPLAINED HOW YOU CAME IN COUNTER WITH THE TWO GENTLEMEN THAT YOU WERE WITH WHEN THE INCIDENT TOOK PLACE?

DAVIS: YES, SIR.

MCFADDEN: GO AHEAD.

DAVIS: ALRIGHT, SO, WE—YOU KNOW WHAT I'M SAYING? WE PARKED FACING, FACING,—

MCFADDEN: FIRST, FIRST, UM START WHERE Y'ALL—WHERE YOU WAS WHEN, UM, I GUESS, SHANE GRAHAM PICKED YOU UP. WHERE, WHERE WERE YOU?

DAVIS: WELL, I,—WELL, I—LIKE —UM- YOU KNOW A LITTLE BILLY'S—BILLY'S?

MCFADDEN: OKAY.

DAVIS: A LITTLE BOOTLEGGERS OR WHATEVER.

MCFADDEN: OKAY.

DAVIS: WE, WE OVER THERE CHILLIN—YOU KNOW WHAT I'M SAYING?

MCFADDEN: THAT IN LAKE CITY?

DAVIS: YEAH.

MCFADDEN: OKAY.

DAVIS: WE OVER THERE—

MCFADDEN: WHEN YOU SAY—WHO IS WE?

DAVIS: ME AND, UM,—ME AND MARCUS.

MCFADDEN: MARCUS—?

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

DAVIS: WEAVER.

MCFADDEN: WEAVER?

DAVIS: YEAH, MARCUS WEAVER, ALRIGHT.

MCFADDEN: WHO IS THAT, WHO IS THAT TO YOU?

DAVIS: WELL, THAT'S MY—THAT'S MY NEPHEW'S DADDY.

MCFADDEN: OKAY.

DAVIS: MY NEPHEW'S DADDY.

MCFADDEN: OKAY.

DAVIS: ALRIGHT, SO, WE (INAUDIBLE)—WITH HIM—AND, YOU KNOW WHAT I'M SAYING? WE CHILLIN OR WHATEVER. YOU KNOW, WHAT I'M SAYING? SO, UM, SHOOT—I CALLED, I CALLED—YOU KNOW, WHAT I'M SAYING? WAYNE,—

MCFADDEN: UMH, UMH. (INAUDIBLE).

DAVIS: I, I CALL WAYNE—YOU KNOW WHAT I'M SAYING?

MCFADDEN: I KNOW WHAT YOU SAYING.

DAVIS: EARLY, EARLIER THAT DAY, IT WAS ABOUT, I SAY IT--

MCFADDEN: WHAT NUMBER YOU GET IN TOUCH, WHEN YOU HAVE TO CALL WAYNE? WHAT NUMBER YOU GET IN TOUCH WITH HIM WITH HIM AT?

DAVIS: ON THE NUMBER RIGHT THERE I GAVE YOU, NUMBER I GAVE YOU.

MCFADDEN: IT'S -3897?

DAVIS: YES, SIR.

MCFADDEN: OKAY.

DAVIS: YES, SIR, ALRIGHT, SO-- HE WAS LIKE--YOU KNOW, WHAT I'M SAYING? HE LIKE, GIVE HIM A LITTLE HOUR—YOU KNOW, WHAT I'M SAYING?—HE TELL ME—I KNOW--

MCFADDEN: WHAT YOU CALL HIM FOR?

DAVIS: I KNOW—I KNOW—YOU KNOW, WHAT I'M SAYING? A LITTLE HALF OR WHATEVER—YOU KNOW, WHAT I'M SAYING? AND, UM,—

MCFADDEN: HALF OF WHAT?

DAVIS: HALF OF WEED-- THAT IT'S.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

MCFADDEN: OKAY.

DAVIS: YOU KNOW, I SELL WEED—THAT'S IT.

MCFADDEN: -UMH-HUH.

DAVIS: SO, -UM-YOU KNOW WHAT I'M SAYING? SO, UM, HE BEEN LIKE WORD—YOU KNOW, WHAT I'M SAYING?—SO, I KNOW, —YOU KNOW I SENSE SOMETHING WAS KIND OF FUNNY ABOUT LIKE HE AIN'T GONNA TO TRY TO—BECAUSE HE'S TALKING ABOUT—HE—HE TAKE ALL THAT LONG—HE WENT THROUGH A ROAD BLOCK OR WHATEVER—GIVE HIM A GOOD HOUR AND ALL. I'M LIKE, MAN COME ON—YOU KNOW WHAT I'M SAYING?

MCFADDEN: UMH, UMH.

DAVIS: TALKIN ABOUT HE WENT THROUGH A ROAD BLOCK—YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UM, HOW MUCH A HALF—HOW MUCH A HALF WAS GONNA COST Y'ALL?

DAVIS: HOW MUCH HALF?

MCFADDEN: YEAH.

DAVIS: LIKE -60.

MCFADDEN: OKAY.

DAVIS: LIKE-60. —YOU KNOW, WHAT I'M SAYING? AND, MARCUS LIKE—YOU KNOW, WHAT I'M SAYING? HE WANT TO SEE HOW IT LOOK —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: (INAUDIBLE).

DAVIS: SO, HE MIGHT GET A LITTLE (INAUDIBLE)—YOU KNOW, WHAT I'M SAYING? SO, —YOU KNOW, WHAT I'M SAYING? I'M LIKE, WORD—AIN'T NO BIG DEAL—YOU KNOW, WHAT I'M SAYING? I'M LIKE, AND I SAID, NOBODY AIN'T GONE JUST JUMP STUPID OVER NO LITTLE \$60.00—YOU KNOW, WHAT I'M SAYING? THEY CAN HAVE IT, THEY CAN HAVE IT—IF THEY WHAT TO ROB ME. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: --AIN'T NO BIG DEAL. —YOU KNOW, WHAT I'M SAYING? NO BIG DEAL AT ALL. SO, YOU KNOW, WHAT I'M SAYING? WORD—WE CHILLIN—YOU KNOW, WHAT I'M SAYING? WE DRINKING A LITTLE BIT. SO, UM, I BELIEVE MARCUS, HAD CALL HIS MOTHER UP. —YOU KNOW, WHAT I'M SAYING? -TO GET A FEW DOLLARS FROM HER OR WHATEVER. —YOU KNOW, WHAT I'M SAYING? GET A FEW DOLLARS FROM HER. EXACTLY, GET A FEW DOLLARS FOR HER. HE TOLD, HER TO, UM, THAT HE WAS FIXING TO GO SEE A FEMALE OR SOMETHING —YOU KNOW, WHAT I'M SAYING?

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

MCFADDEN: UH, UH.

DAVIS: HE AIN'T TOLD, HIS MOTHER. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: THAT Y'ALL GONNA GET WEED?

DAVIS: YEAH, EXACTLY. —YOU KNOW, WHAT I'M SAYING? EXACTLY, HE AIN'T TOLD, HER THAT.

MCFADDEN: OKAY.

DAVIS: —YOU KNOW, WHAT I'M SAYING? SO, WENT IN HIS HOUSE—JUNK—YOU KNOW, WHAT I'M SAYING? HE WENT OVER THERE AND PICK UP MONEY. AND, UM, SO, WE WENT, WE WENT TO FLORENCE, WE GAS UP. WE GAS UP—

MCFADDEN: BUT, BY THAT—WHO PICK Y'ALL UP FROM BILLY'S?

DAVIS: WHO PICK US UP?

MCFADDEN: YEAH.

DAVIS: SHANE, WE RIDING WITH SHANE.

MCFADDEN: SHANE GRAHAM.

DAVIS: YEAH, WE WERE RIDING—

MCFADDEN: WHAT WAS HE DRIVING?

DAVIS: A LITTLE BLACK FOCUS. —UH—

MCFADDEN: OKAY.

DAVIS: A LITTLE BLACK FOCUS.

MCFADDEN: SO, SHANE WENT, TOOK HIM TO HIS MOMMA'S HOUSE TO GET—

DAVIS: YEAH.

MCFADDEN: OKAY.

DAVIS: YEAH, SHANE TOOK THEM OUT—SHANE TOOK THEM OVER THERE.

MCFADDEN: ALRIGHT.

DAVIS: AND, I'M IN THE BACK SEAT. —YOU KNOW, WHAT I'M SAYING? WE WENT OVER THERE—YOU KNOW, WHAT I'M SAYING? SO,—YOU KNOW WHAT I'M SAYING?—WE WENT TO FLORENCE, WE WENT TO FLORENCE—YOU KNOW, WHAT I'M SAYING?—WE ON OUR WAY TO FLORENCE. —YOU KNOW, WHAT I'M SAYING?

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

MCFADDEN: YEAH, I KNOW WHAT YOU'RE SAYING.

DAVIS: SO, HE CALLED ME—YOU KNOW, WHAT I'M SAYING? LIKE, UM, HE'S LIKE HE AT —UM- DAYS, DAYS, UM, DAYS INN.

MCFADDEN: UMH, UMH.

DAVIS: ON 52—YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH, WHO CALLED? SHANE CALLED YOU? I MEANT--

DAVIS: NO, WAYNE.

MCFADDEN: WAYNE CALLED BACK?

DAVIS: YEAH, YEAH, YEAH, HE LIKE AT—ON 52 —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: IF I'M NOT MISTAKING, HE LIKE—I THOUGHT, HE HAD A ROOM OR HE LIKE COME, COME, COME, COME IN ROOM—I'M LIKE, NA. —YOU KNOW WHAT I'M SAYING? WHY, YOU KNOW, WHAT I'M SAYING? I AIN'T—WHY COME IN THE ROOM FOR—YOU KNOW WHAT I'M SAYING?

MCFADDEN: SO, HE (INAUDIBLE).

DAVIS: YOU AIN'T NOTHING, BUT GAVE ME THIS AND I'M GOING, I'M GONE —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YOU REMEMBER WHAT ROOM HE SAID COME IN?

DAVIS: 129, IF I'M NOT MISTAKING, THOUGH.

MCFADDEN: 129?

DAVIS: 129, IF I'M NOT MISTAKING, THOUGH.

MCFADDEN: OKAY.

DAVIS: 129—YOU KNOW, WHAT I'M SAYING?

MCFADDEN: OKAY.

DAVIS: SO, —YOU KNOW, WHAT I'M SAYING? I'M LIKE NA, WHY I GOT TO GO IN THE ROOM FOR. WE AIN'T NEVER BEEN GOING IN NO ROOM. —YOU KNOW, WHAT I'M SAYING? WE AIN'T NEVER BEEN GOING IN NO ROOM.

MCFADDEN: UH, UH.

DAVIS: SO, UM, HE BEEN LIKE WORD, LIKE WORD, NO PROBLEM. HE SAID, I'LL COME, COME TO THE CAR THEN.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

MCFADDEN: UH, UH.

DAVIS: THAT EXACTLY WHAT HE SAID. HE WAS LIKE WORD AIN'T NO PROBLEM I'LL COME TO THE CAR THEN. —YOU KNOW, WHAT I'M SAYING? HE AIN'T SHOW UP, THOUGH. —YOU KNOW, WHAT I'M SAYING? HE AIN'T CAME TO THE CAR. THEY, THEY TOOK 'BOUT—YOU KNOW, WHAT I'M SAYING? 'BOUT 30-30 MINUTES, BEFORE THEY EVEN COME TO THE CAR, —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UMH, UMH.

DAVIS: THEY TOOK A MINUTE BEFORE THEY, BEFORE THEY WENT TO THE CAR, —YOU KNOW, WHAT I'M SAYING? SO, DUDE ON—SOME LITTLE CAT WALK, WALKED FROM ROUND THERE. AND, I AIN'T SEE THE OTHER DUDE WALKED WITH, NOW. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UMH, UMH.

DAVIS: IT SEEM LIKE SOON AS— IT'S LIKE—ALRIGHT, ALRIGHT, I'M'MA TELL, SO HE WALKED IN I SAID, CAME THROUGH A LITTLE CUT—

MCFADDEN: Y'ALL, Y'ALL PARKED AT THE MOTEL?

DAVIS: YEAH, EXACTLY I'M LOOKING. WE GOT TO THE HOTEL—WE GOT THE CAR PARK, SO WE CAN SEE, SEE THEM COMING. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UH, UH.

DAVIS: —ALRIGHT, SO, I SEE HIM COME OUT. HE HAD LIKE A LITTLE WARM UP JACKET ON OR SOMETHING. IT'S A LITTLE WARM UP BLUE JACKET—IT'S A LITTLE WARM UP JACKET OR WHATEVER. —YOU KNOW WHAT I'M SAYING?

MCFADDEN: UH, UH.

DAVIS: YOU KNOW, WHAT I'M SAYING? HE HAD HIS HANDS IN HIS POCKET. —YOU KNOW, WHAT I'M SAYING? HE HAD HIS HANDS LIKE IN HIS COAT POCKET. —YOU KNOW, WHAT I'M SAYING? I COULDN'T SEE HIS HANDS. —SO HE WALK, YOU KNOW, WHAT I'M SAYING? I COULD TELL SOMETHING—HE WAS LOOKIN—HE WALKIN KINDA NERVOUS, YOU KNOW, I BEEN LIKE—HE-DUDE WALKIN—HE WALK KINDA NERVOUS. HE CAME TO MY SIDE. I'M SITTIN DOWN OVER HERE, NOW WHY YOU ON MY SIDE. —YOU KNOW, WHAT I'M SAYING? WALK ROUND THE OTHER WAY—YOU KNOW, WHAT I'M SAYING? SO, I SEND HIM AROUND THE OTHER SIDE. —YOU KNOW, WHAT I'M SAYING? AND, SOON AS HE COULD GET IN THE CAR—

MCFADDEN: SO, WHERE, WHERE WERE YOU SITTIN?

DAVIS: RIGHT HERE BEHIND, RIGHT HERE BEHIND THE DRIVER.

MCFADDEN: SO, YOU SEND HIM AROUND?

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

DAVIS: YEAH, YEAH, EXACTLY, CAUSE I DON'T—YOU KNOW WHAT I'M SAYING?—CHILD LOCK ON THE DOOR AND EVERYTHING; I COULDN'T OPEN THE DOOR AND TELL HIM TO GO AROUND AND NOTHING. I JUST KNOCK ON THE WINDOW AND TELL HIM TO GO AROUND. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: I KNOCK ON THE WINDOW AND TELL HIM TO GO AROUND. SO, HE WENT AROUND, —YOU KNOW, WHAT I'M SAYING? SO, UM, HE POINT—HE POINT—SOON AS HE GOT IN THE CAR HE GET—HE SAID, GIVE IT UP—YOU KNOW, WHAT I'M SAYING? HE STARTED PATTING EVERYTHING, PATTING ME DOWN—YOU KNOW, WHAT I'M SAYING? PATTING ME DOWN EVERYTHING—YOU KNOW, WHAT I'M SAYING? SO, UM,--

MCFADDEN: SO, HE WAS IN THE BACK SEAT AT—WITH YOU?

DAVIS: YEAH, WITH—PATTING ME DOWN AND HE PUNCH ME IN MY FACE. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UH, UH.

DAVIS: HE PUNCH ME IN MY FACE. —YOU KNOW, WHAT I'M SAYING? AND, NO BIG DEAL, THOUGH, SO—I'M LIKE, WORD—YOU KNOW WHAT I'M SAYING? SO, HE'S TALKING JUNK—YOU KNOW, WHAT I'M SAYING? AND, HE SLAP MARCUS IN THE HEAD WITH THE GUN. I'M LOOKING AT ALL OF THIS—HE SLAP MARCUS IN THE HEAD WITH THE GUN—HE TELL EVERYBODY TO GIVE IT UP. —YOU KNOW, WHAT I'M SAYING? GIVE IT UP, GIVE IT UP—YOU KNOW, WHAT I'M SAYING? THEN, I BELIEVE HE TRIED TO RUN ME—POP—PAT ME DOWN. THEN, UM, YOU KNOW, I SAID, I BELIEVE MARCUS TURNED AROUND AND STARTED SHOOTING—YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UH, UH.

DAVIS: TURN AROUND AND STARTED SHOOTIN' AND THEY STARTED EXCHANGING FIRE. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: THEY STARTED EXCHANGING FIRE. SO, SOON AS HE GOT OUT—SOON AS HE—YOU KNOW WHAT I'M SAYING? HE AIN'T STAYING IN THE CAR. THE SHOOTIN GOING ON—AS I REMIND YOU, NOW—I'M RIGHT IN THE CAR WHEN ALL THIS SHOOTIN GOING ON. —YOU KNOW, WHAT I'M SAYING? BULLETS, SO LOUD LIKE RINGING IN MY EARS. —YOU KNOW, WHAT I'M SAYING? ALRIGHT, SO, UM—YOU KNOW, WHAT I'M SAYING? LIKE THEY SCAT—YOU KNOW, WHAT I'M SAYING? I SAID, I AIN'T WANT LIE, THOUGH.—I AIN'T LOOKIN AT TRYING TO SEE NOBODY. I'M JUST TRYING TO GET UP OUT OF THERE. YOU KNOW WHAT I'M SAYING? (CELL PHONE RINGING.) SO, I JUMPED—WHEN I GOT OUT THE CAR--

MCFADDEN: GO HEAD.

DAVIS: WHEN I GOT OUT THE CAR--

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

COX: HELLO.

MCFADDEN: WHERE THE SHOOTER' WAS BY THAT TIME?

COX: YEAH.

DAVIS: WHERE THE SHOOTER WAS—I AIN—TO BE HONEST WITH YOU, I DON'T EVEN KNOW, I DON'T EVEN KNOW.

MCFADDEN: BUT, HE PULLED BACK OUT, AFTER THE SHOOTIN' START?

DAVIS: YOU SAID, WHO?

MCFADDEN: THE SHOOTER BACKED UP OUT THE CAR, AFTER THE--

DAVIS: YEAH, OH, YEAH, HE TRYIN TO GET UP OUT OF THERE.

MCFADDEN: YEAH.

DAVIS: YEAH, HE SCARED, TOO—HE TRYING TO GET UP OUT OF THERE. —YOU KNOW, WHAT I'M SAYING? HE TRYIN TO GET UP OUT OF THERE—AND, I THINK, I SEE—YOU KNOW, WHAT I'M SAYING? I JUMP OUT THE CAR. AND, I AIN'T WANT TO LIE—I KNOW THAT WAS MARCUS LAYING ON THE GROUND. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: HE SHOT AT ME. —YOU KNOW, WHAT I'M SAYING? I DON'T —HE PROBABLY BLACK OUT. —YOU KNOW, WHAT I'M SAYING? HE PROBABLY ALREADY BEEN SHOT.

MCFADDEN: YEAH.

DAVIS: —YOU KNOW, WHAT I'M SAYING? HE PROBABLY SEE SHADOW OR WHATEVER. HE SHOT AT ME. —YOU KNOW, WHAT I'M SAYING? HE LAYING ON THE GROUND AND SHOT AT ME. SO, IT'S LIKE I CAN JUMP OVER THE BULLET—REAL TALK.

MCFADDEN: UMH, UMH.

DAVIS: YOU CAN SEE ON—RAN FAST AS I CAN—FALL— RAN TO TACO BELL—SCRAPE MY HAND UP.

MCFADDEN: LET ME SEE YOUR HAND.

DAVIS: SCRAPE MY HAND UP AND EVERYTHING. —YOU KNOW, WHAT I'M SAYING? ALL SKIN-UP LIKE (INAUDIBLE) LONG AS I'M ALIVE—YOU KNOW, WHAT I'M SAYING? I DON'T CARE—

MCFADDEN: YEAH.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

DAVIS: I MIGHT BREAK A BONE; I DON'T CARE, IF I BREAK A BONE. SO, I RAN IN TACO BELL. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UH, UH.

DAVIS: AND, I CALL MARCUS PEOPLE. —YOU KNOW, WHAT I'M SAYING? FIRST PEOPLE I CALLED WAS HIS SISTER. CAUSE, LIKE I TELL I DON'T REALLY—YOU KNOW, WHAT I'M SAYING? —KNOW SHANE LIKE THAT—YOU KNOW WHAT I'M SAYING? JUST LIKE YOU SAY, YOU KNOW, WHAT I'M SAYING? I DON'T EVEN KNOW HIM LIKE THAT. I DON'T EVEN KNOW HIM LIKE THAT—YOU KNOW, WHAT I'M SAYING? SO, I CALL, I CALL BRITNEY—MARCUS' SISTER BRITNEY—YOU KNOW, WHAT I'M SAYING? I CALL MARCUS HOUSE PHONE—I CALL TWO TIMES, IF I'M NOT MISTAKING. NOBODY ANSWER FIRST TIME, I CALLED THE SECOND TIME—YOU KNOW, WHAT I'M SAYING? I'M LIKE BRITNEY WHAT SHANE'S NUMBER. GUESS, WHAT BRITNEY SAID, SLICEY, WHAT DONE HAPPEN—THAT'S EXACTLY WHAT SHE SAID, "SLICEY," WHAT DONE HAPPEN." —CAUSE, YOU KNOW, WHAT I'M SAYING? I'M CALLING THAT LATE—YOU KNOW WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: SHE LIKE, I DON'T USUALLY CALL THERE—YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: SHE SAID, "SLICEY," WHAT DONE HAPPENED?" UH, AIN'T NOTHING HAPPENED BRITNEY. WHAT SHANE'S NUMBER? SHE LIKE DON'T LIE TO ME. I SAID, AIN'T NOTHING HAPPEN, BRITNEY. —YOU KNOW, WHAT I'M SAYING? I AIN'T HONEST YOU KNOW, WHAT I'M SAYING. I COULD'VE CALL Y'ALL, POLICE OR WHATEVER-, BUT I AIN'T—YOU KNOW, WHAT I'M SAYING? AIN'T, HAD WEED AND, I AIN'T. —YOU KNOW, WHAT I'M SAYING? I WAS SCARED—I AIN'T GONNA LIE.

MCFADDEN: BECAUSE, OF WEED?

DAVIS: YEAH, I WAS SCARED. I COULD'VE—YOU KNOW, WHAT I'M SAYING? THAT WHAT I SHOULD OF DID GOT IN TOUCH WITH Y'ALL AND CALL Y'ALL, BUT I WAS, I WAS SCARE MAN—I AIN'T GONNA LIE.

MCFADDEN: UM....

DAVIS: —YOU KNOW, WHAT I'M SAYING? I WAS SCARED. I AIN'T GONNA LIE, I WAS SCARED.

MCFADDEN: SO, WHAT HAPPEN?

DAVIS: I HAD CALL BRITNEY. —YOU KNOW, WHAT I'M SAYING? SHE GAVE ME SHANE'S NUMBER. I CALL SHANE. HE AIN'T EVEN ANSWERING HIS PHONE OR NOTHING. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UH, HUH.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

DAVIS: I'M TALKING ABOUT 10-MINUTES BEFORE IT HAPPEN. I KNOW HE STILL IN THE CAR. I KNOW Y'ALL AIN'T GOT THERE, YET—YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UH, HUH.

DAVIS: HE AIN'T ANSWERING HIS PHONE OR DOING NOTHING, MAN. SO, I'M—YOU KNOW, WHAT I'M SAYING? I THINKING, HE DONE GOT SHOT OR WHATEVER. I'M LIKE, SHANE, SHANE, MAN.

MCFADDEN: YEAH.

DAVIS: WHEN THIS SHOOTIN WAS GOING ON—YOU KNOW, WHAT I'M SAYING? HE AIN'T EVEN TRY TO BACK UP OR TRY TO GET US OUT—YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: HE LIKE—HE WAS JUST LIKE DEATH STRUCK. (INAUDIBLE) SAID, HE WAS JUST DEATH STRUCK. DEATH STRUCK—HE AIN'T NEVER SEEN NOTHING LIKE THAT. I DIDN'T. —YOU KNOW, WHAT I'M SAYING? I KNOW BETTER I'M TRYIN TO GET UP OUT THERE. —YOU KNOW, WHAT I'M SAYING? --BULLET AIN'T GOT NO NAME ON IT.

MCFADDEN: YEAH.

DAVIS: —YOU KNOW, WHAT I'M SAYING? I AIN'T GONNA LIE OR NOTHING. —YOU KNOW, WHAT I'M SAYING? HE CAME OUT WITH THE GUN. —YOU KNOW, WHAT I'M SAYING? HOMEBOY, HE CAME OUT WITH THE GUN—YOU KNOW WHAT I'M SAYING? AIN'T NO TELLIN—LIKE I SAY—I AIN'T, HE— DUDE AIN'T STUPID—I DON'T THINK, HE WOULD KILL EVERYBODY. HE JUST WANTED TO ROB US, BUT—YOU KNOW WHAT I'M SAYING? MARCUS, KIND OF SAVE MY LIFE—EVERYBODY, YOU KNOW WHAT I'M SAYING? -- AIN'T NO TELLING WHAT THE DUDE—BUDDY WOULD HAVE DID. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: YOU KNOW, WHAT I'M SAYING? HE KINDA SAVED EVERYBODY LIFE IN THERE, MAN. REAL TALK—I AIN'T GONNA LIE FOR THAT. I GOT TO GIVE HIM THAT DOG; GOT TO GIVE HIM THAT. —YOU KNOW, WHAT I'M SAYING? I MEAN, THE DUDE HAD THE GUN IN MY FACE—YOU KNOW—T... IT WAS CRAZY. JUST LIKE THE MOVIES—(INAUDIBLE) WHEN ALL YOUR LIFE FLASH BEFORE YOUR EYES.

MCFADDEN: YEAH, SO HOW MANY PEOPLE YOU SAW AT Y'ALL CAR?

DAVIS: AT OUR—TWO, TWO.

MCFADDEN: WELL, WHAT, WHAT WAS IN THE DOOR— BACK DOOR WITH YOU? WHERE WAS THE OTHER ONE?

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

DAVIS: LIKE STANDING, LIKE RIGHT BEHIND HIM. LIKE KINDA LIKE—

MCFADDEN: YEAH.

DAVIS: —YOU KNOW, WHAT I'M SAYING? I AIN'T EVEN—HONESTLY, HE MUST BE CAME AROUND AND SNEAK-UP. CAME AROUND THE OTHER SIDE OR SOMETHING, CAUSE I AIN'T SEE HIM WITH—NOT ONE PERSON CAME UP. —YOU KNOW, WHAT I'M SAYING?

MCFADDEN: UMH, UMH.

DAVIS: IT WAS LIKE SOON AS HE PULLED THE GUN OUT OR WHATEVER, HOMEBOY JUST BLITZ THE CAR. —YOU KNOW, WHAT I'M SAYING? HE CAME RIGHT BEHIND HIM, REAL TALK. IT HAPPEN THAT QUICK, THAT QUICK.

MCFADDEN: -ALRIGHT, INVESTIGATOR COX, YOU GOT ANY QUESTIONS FOR HIM?

COX: YOU SAID, THAT THE SECOND FELLOW WAS—DID HE WALKED—DID YOU SEE BOTH OF THEM WALK UP TOGETHER.

DAVIS: HUH, HUH.

COX: YOU SAW ONE?

DAVIS: YES, SIR.

COX: WHEN DID THE SECOND FELLOW COME UP TO THE CAR?

DAVIS: SOON AS HE PULL—LIKE HE HAD TO BE SNEAKING AROUND OR SOMETHING.—YOU SEE WHAT I'M SAYING?

MCFADDEN: UMH, UMH.

DAVIS: THEY HAD THAT PLAN GOOD, THEY HAD THAT PLAN—HE HAD TO BE SNEAKING AROUND—HE HAD TO BE SNEAKING--

COX: HOW TALL WAS HE?

DAVIS: I CAN'T I DON'T EVEN KNOW. I DON'T EVEN KNOW.

COX: YOU SEE WHAT HE WAS WEARING?

DAVIS: I AIN'T EVEN SEE WHERE HE WENT. HE JUST—HE SNEAKED UP, SO QUICK—HE POP UP, SO QUICK AND WITH THAT GUN IN MY FACE—I AIN'T KNOW NOTHING--YOU KNOW, WHAT I'M SAYING?

COX: DID Y'ALL TELL SHANE WHAT Y'ALL WERE GOING TO FLORENCE FOR?

DAVIS: GOING TO LUNCH?

COX: TO FLORENCE FOR.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

DAVIS: DID WE TELL YOU SHANE?

MCFADDEN: DID YOU TELL SHANE? YEAH.

DAVIS: NA, --YOU KNOW, WHAT I'M SAYING?

COX: YOU TELL HIM--

DAVIS: BUT HE HAD, HE HAD, HE HAD PROBABLY--HE HAD A--HE HAD A FEELING
THOUGH, MAN. YEAH.

COX: NOW, LET ME ASK YOU. DID HE--DID YOU TELL HIM THAT YOU WERE GOING
TO SEE SOME GIRLS?

DAVIS: -GOING TO SEE SOME GIRLS? --THAT WAS, THAT WAS WHAT MARCUS--THAT
WHAT MARCUS TELL HIS MOTHER. --YOU SEE WHAT I'M SAYING?

COX: YEAH.

DAVIS: YEAH, SO SHANE HEARD THAT PART, YOU KNOW, WHAT I'M SAYING? SHANE
HEARD THAT PART, I AIN'T GONNA LIE--HE HEARD THAT--YOU KNOW, WHAT
I'M SAYING?

COX: ALRIGHT, I DON'T HAVE ANY MORE.

MCFADDEN: THAT'S ALL YOU HAVE?

COX: YEAH.

MCFADDEN: OKAY, -UM- IS THIS STATEMENT YOU GIVING US TODAY IS IT TRUE AND TO
THE BEST OF YOUR KNOWLEDGE?

DAVIS: I PROMISE EVERYTHING I LOVE, THAT'S AS TRUE AS IT CAN GET.

MCFADDEN: YOU GOT ANY REASON TO LIE ON ANY OF THESE FELLOWS OR INCLUDING
MARCUS OR SHANE, OR YOU LYING ON YOURSELF--

DAVIS: NO,--

MCFADDEN: TO MAKE YOURSELF LOOK GOOD (INAUDIBLE).

DAVIS: YOU KNOW YOU AIN'T--NO,--SIR.

MCFADDEN: DID YOU HAVE A FIREARM IN THIS INCIDENT?

DAVIS: NO, SIR, AT ALL, NOT ONE.

MCFADDEN: OKAY.

DAVIS: AND, THAT'S A BLESSING I AIN'T HAD NONE--YOU KNOW, WHAT I'M SAYING? I
PROBABLY BEEN?--LOCK UP--RIGHT NOW--REALLY TALK, DOG. --THAT'S A
BLESSING I AIN'T HAD NONE--BLESSING. AND, I AIN'T IN NO TROUBLE--I

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

DON'T GET IN NO TROUBLE AT ALL. I MEAN, --YOU KNOW, WHAT I'M SAYING? I DON'T GET IN ANY TROUBLE AT ALL. --YOU KNOW, WHAT I'M SAYING? THAT WHY I SAY IT'S A BLESSING I AIN'T HAD NO FIREARM. I AIN'T GOT SHOT. -- YOU KNOW, WHAT I'M SAYING? JUST BEING AT THE WRONG PLACE AT THE WRONG TIME. MY MOMMA ALWAYS TELL ME THAT. (INAUDIBLE) --YOU KNOW, WHAT I'M SAYING? AND SEEING THAT BOY THAT MAKE ME WAKE UP, BOY-- THAT MAKE ME WAKE UP, BOY. --KNOWING HOW CLOSE--YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YEAH.

DAVIS: HOW EASY SOMEBODY CAN GO OVER PETTY --SOMETHING PETTY--THAT LITTLE MAN. --YOU KNOW, WHAT I'M SAYING? LIKE, I SAID, THOUGH, YOU KNOW, WHAT I'M SAYING? I COULD OF CALL, YALL, THOUGH. --YOU KNOW, WHAT I'M SAYING? BUT, I BEEN SO, SO, SCARED, --YOU KNOW, WHAT I'M SAYING? (INAUDIBLE). --YOU KNOW, WHAT I'M SAYING?

MCFADDEN: YOU DID WANT TO TELL US ABOUT THE WEED--MEET, MEET THE BOY FOR MARIJUANA?

DAVIS: YOU KNOW, WHAT I'M SAYING? (INAUDIBLE) MY MOTHER, --YOU KNOW, WHAT I'M SAYING?

MCFADDEN: -UMH-HUH.

DAVIS: --THAT WHY I SAY, I AIN'T TELL MY MOTHER. I RATHER TALK TO Y'ALL--YOU KNOW, WHAT I'M SAYING? I AIN'T EVEN TELL MY MOTHER ABOUT THE LITTLE WEED PART OR WHATEVER. --YOU KNOW, WHAT I'M SAYING?

MCFADDEN: RIGHT.

DAVIS: THAT WHY I SAID, I RATHER JUST TALK TO Y'ALL--COME AND TELL Y'ALL THE TRUTH OR WHATEVER.

MCFADDEN: -ALRIGHT.

DAVIS: NO, SIR, I AIN'T TELL HER ABOUT IT.

MCFADDEN: OKAY, WELL, THIS CONCLUDES THE STATEMENT, AGAIN TODAY'S DATE IS 01-12-2010. THE TIME IS NOW 11:45. A. M.

*

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
INV. RUSSELL COX
CASE NUMBER: 2010-01-0306
INTERVIEW WITH: SHAQUAN DAVIS

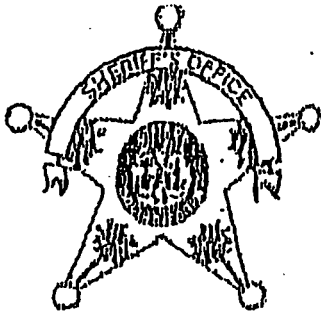
SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS _____ DAY OF _____, 20 ____.

NOTARY PUBLIC FOR SOUTH CAROLINA

WITNESSES:

THIS IS TO CERTIFY THAT I DID GIVE & HAVE READ THE ABOVE STATEMENT CONSISTING
____ PAGES AND HAVE BEEN GIVEN A COPY OF SAME AS OF THE _____ DAY OF
_____, ____.

TYPED BY: MS. DONNA MCDANIEL
DATE: JANUARY 28, 2010
PROOF READ BY: JENNIFER SMITH
DATE: 02-18-2010



FLORENCE COUNTY SHERIFF'S OFFICE

WILLIAM K. "KUNNEY" BOONE, SHERIFF

STATEMENT AND INTERVIEW FORM

TODAY'S DATE: 1/13/10 TIME: _____LOCATION: FCSDINCIDENT DATE: 01/10/10 CASE #: 2010-01-0306REFERENCE TO: MURDER

LAW ENFORCEMENT PRESENT: _____

SUBJECT'S NAME: JOSHUA CARRAWAY

SUBJECT'S ADDRESS: _____

CITY: Darlington STATE: SC ZIP: 29532

HOME PHONE #: _____ WORK PHONE #: _____

DOB: _____ AGE: 23 SSN: _____HEIGHT: 601 WEIGHT: 160 HAIR COLOR: Blk SEX: MPLACE OF WORK OR SCHOOL: NO

*****QUESTIONS BELOW ARE OPTIONAL*****

EDUCATION COMPLETED: 11thUNDER THE INFLUENCE OF DRUGS OR ALCOHOL AT THIS TIME? NOARE YOU COMFORTABLE MAKING THIS STATEMENT HERE? YESHAVE YOU BEEN THREATENED OR MISTREATED IN ANY WAY TO MAKE THIS STATEMENT? NODEFENDANT'S
EXHIBIT

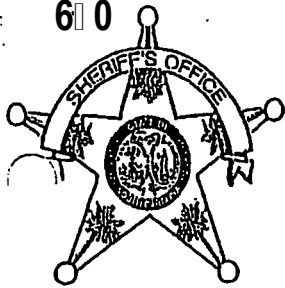
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FLORENCE COUNTY SHERIFF'S OFFICE
WILLIAM K. "KENNY" BOONE, SHERIFF



MIRANDA WARNING

CASE# 2010-01-0306 LOCATION: FC 80

DATE 01/13/10 TIME: 1:10 pm

THE CONSTITUTION REQUIRES (I/ WE) INFORM YOU THAT:

- JC 1.) YOU HAVE THE RIGHT TO REMAIN SILENT.
- JC 2.) ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
- JC 3.) YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
- JC 4.) IF YOU CAN NOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU WISH.
- JC 5.) YOU CAN DECIDE AT ANYTIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.
- JC 6.) DO YOU UNDERSTAND EACH OF THESE RIGHTS AS I HAVE EXPLAINED THEM TO YOU? yes
- JC 7.) HAVING THESE RIGHTS IN MIND DO YOU WISH TO TALK TO US NOW? yes

Joshua Carraway
 NAME

St
 ADDRESS

Darlington SC
 CITY STATE

WAIVER OF RIGHTS

I HAVE READ THIS STATEMENT OF MY RIGHTS AND UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OF ANY KIND HAS BEEN USED AGAINST ME BY ANYONE.

SIGNED: Joshua Carraway TIME: 1:15 pm

WITNESS: [Signature] WITNESS: [Signature]

6719 FRIENDFIELD ROAD EFFINGHAM, SOUTH CAROLINA 29541
 SHERIFF (843)665-2121 DETENTION CENTER (843)665-9944

CRIMINAL INVESTIGATION
INV. RUSSELL COX
CASE NUMBER: 2010-010-306
INTERVIEW WITH: JOSH CARRAWAY

STATE OF SOUTH CAROLINA)
FLORENCE COUNTY)

CASE NUMBER:
2010010306

CRIMINAL INVESTIGATION DIVISION

INVESTIGATOR RUSSELL COX

STATEMENT COVER SHEET

STATEMENT TAKEN FROM:

JOSH CARRAWAY

TYPIST: MS. DONNA MCDANIEL

**THIS PAGE IS NOT PART OF RECORDED STATEMENT,
AND IS FOR RECORDS KEEPING PURPOSE ONLY.**

CRIMINAL INVESTIGATION

INV. RUSSELL COX

CASE NUMBER: 2010-010-306

INTERVIEW WITH: JOSH CARRAWAY

COX: ALRIGHT, THIS STATEMENT IS BEING TAKEN AT MCLEOD HOSPITAL. IT'S 01/11. THE TIME NOW IS 1:15 A. M. IN THE MORNING. THIS STATEMENT IS BEING TAKEN IN THE PRESENTs OF KEITH LUTCKEN—THE LIEUTENANT IN FORENSICS.

OWENS: AND, THAT WILL BE CHRIS OWENS.

COX: CHRIS OWENS. THE STATEMENT IS BEING TAKEN FROM—STATE YOUR FULL NAME, SIR.

CARRAWAY: JOSH CARRAWAY.

COX: AND, YOUR ADDRESS?

CARRAWAY: STREET.

COX: IN WHERE?

CARRAWAY: DARLINGTON.

COX: ALRIGHT, BEFORE WE GO ANY FURTHER:

YOU KNOW YOU HAVE A RIGHT TO REMAIN SILENT.

ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.

AND, YOU HAVE A RIGHT TO HAVE A LAWYER WITH YOU WHILE YOU BEING QUESTIONED.

IF YOU CAN NOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE YOU QUESTIONING, WISH.

YOU CAN DECIDED AT ANY TIME TO EXERCISE RIGHTS AND NOT ANSWER—MAKE ANY STATEMENT.

YOU UNDERSTAND YOUR RIGHTS?

CARRAWAY: YES, SIR.

COX: AND, YOU ARE NOT UNDER ARREST AT THIS TIME?

CARRAWAY: YES, SIR.

COX: ALRIGHT, TELL ME WHAT TOOK PLACE TONIGHT AT THE DAYS INN. AND, WHO WAS WITH YOU? AND, WHEN YOU GOT THERE?

CARRAWAY: ALRIGHT, JERMAINE WAS DRIVING AND CURTIS WAS IN THE—

COX: JERMAINE WHO?

CARRAWAY: JERMAINE JONES WAS DRIVING. CURTIS WAS IN THE PASSENGER'S SIDE AND I WAS IN THE BACK SEAT.

COX: WHO IS CURTIS?

CRIMINAL INVESTIGATION
INV. RUSSELL COX
CASE NUMBER: 2010-010-306
INTERVIEW WITH: JOSH CARRAWAY

CARRAWAY: CURTIS—I DON'T KNOW HIS LASTNAME.

COX: YOU DON'T KNOW HIS NAME?

CARRAWAY: NO, SIR.

COX: ALRIGHT,—LET'S

CARRAWAY: I DON'T KNOW HIS LAST NAME.

COX: LET'S STOP RIGHT THERE. JERMAINE JOHNSON LIVES WHERE?

CARRAWAY: UM, STREET.

COX: UMH, UMH.

CARRAWAY: I THINK, IT'S STREET.

COX: -ALRIGHT, AND, HE WAS DRIVING WHAT KIND OF CAR?

CARRAWAY: UH, UM, SILVER MERCURY.

COX: AND, CURTIS LIVES WHERE?

CARRAWAY: UM, ROAD—TRAILER PARK. I DON'T KNOW THE NAME OF THE TRAILER PARK. IT'S THE THIRD TRAILER ON THE LEFT.

COX: FROM THE MAIN ENTRANCE?

CARRAWAY: FROM THE MAIN ENTRANCE.

COX: ALRIGHT, TELL ME WHAT TOOK PLACE TONIGHT.

CARRAWAY: ME AND SOME GUYS WAS GOING TO MEET SOME GIRLS AND CURTIS—

COX: WHO WAS THE GUY'S NAME?

CARRAWAY: ME AND JERMAINE WAS GOING TO MEET SOME GIRLS. AND, CURTIS HAD TO —UM- MEET SOME GUYS AT MOTEL—AT DAYS INN. AND, HE HAD GOT OUT THE CAR AND STARTED TALKING TO—

COX: WHAT, WHAT REASON DID HE MEET THEM?

CARRAWAY: HE WAS GOING TO BUY SOME DRUGS FROM SOME GUYS OR GOING TO SELL THE GUYS SOME DRUGS. AND—

COX: ALRIGHT, WHEN YOU PULLED UP WHAT DID Y'ALL SEE? WHAT DID YOU SEE?

CARRAWAY: I SEE THE, UM, THE THREE GUYS IN A BLACK, UM, —I THINK, IT WAS A HONDA, SOMETHING LIKE THAT.

COX: ALRIGHT, CURTIS--

CARRAWAY: CURTIS, GOT OUT THE CAR—WENT UP TO THE, UM- CAR, STARTED TALKING TO THE GUYS.

COX: DID, ALRIGHT, DID THE GUYS—WERE THEY OUT THE CAR.

CARRAWAY: ONE GUY GOT OUT THE CAR.

COX: ON THE PASSENGER'S SIDE?

CARRAWAY: YES, SIR.

COX: ALRIGHT.

CARRAWAY: AND, THE NEXT THING YOU KNOW, THEY WAS TALKING. AND, THEY JUST STARTED SHOOTING AT EACH OTHER. SO, THE GUY IN THE BLACK HONDA GOT OUT THE CAR AND START SHOOTIN' AT THE CAR. AND, I JUMPED OUT THE CAR AND RAN BEHIND DAYS INN AND CAME TO THE FRONT AND CALLED THE POLICE.

COX: ALRIGHT, CURTIS WAS SHOOTING AT THE GUY ON THE DRIVER'S SIDE?--

CARRAWAY: UM,

COX: PASSENGER'S SIDE?

CARRAWAY: THE DUDE WAS SHOOTIN' AT CURTIS FIRST.

COX: HE STARTED SHOOTIN' AT HIM FIRST?

CARRAWAY: YES, SIR. THEN, I SEEN CURTIS REACH IN HIS PANTS, AND, I GUESS, HE START SHOOTIN' BACK.

COX: WHAT KIND OF GUN DID CURTIS HAVE?

CARRAWAY: UH, 380.

COX: 380?

CARRAWAY: 380.

COX: -ALRIGHT, HOW MANY TIMES DID CURTIS SHOOT?

CARRAWAY: UM, I THINK, TWO OR THERE TIMES.

COX: HOW MANY--

CARRAWAY: AND, THE OTHER GUYS SHOT LIKE TEN TIMES.

COX: ABOUT TEN TIMES?

CARRAWAY: YES, SIR.

COX: WHO WAS SHOOTIN' A 45? THE OTHER, THE OTHER—DID, UM,--

CRIMINAL INVESTIGATION
INV. RUSSELL COX
CASE NUMBER: 2010-010-306
INTERVIEW WITH: JOSH CARRAWAY

CARRAWAY: THE, UM,--

COX DID JERMAINE HAVE A 45?

CARRAWAY: NO, SIR, JERMAINE AIN'T NEVER GOT OUT THE CAR.

COX: HE NEVER GOT-- THE SILVER CAR?

CARRAWAY: NO, SIR, CURTIS GOT OUT THE CAR.

COX: AND, Y'ALL WENT THERE--AND WHAT DID CURTIS SAY AGAIN, HE'D GONE THERE FOR?

CARRAWAY: WHAT HE SAY?

COX: YEAH.

CARRAWAY: HE WAS GONNA -UM- TALK TO HIS FRIENDS, TRY TO GO GET SOME WEED. THE NEXT THING YOU KNOW, THEY JUST STARTED SHOOTING AT EACH OTHER.

COX: HE DIDN'T GO THERE TO ROB THEM OR ANYTHING, DID HE?

CARRAWAY: NO, SIR, HE WENT TO BUY SOME DRUGS.

COX: SO, HE KNEW THE FELLER HE WAS GOING THERE TO TALK WITH?

CARRAWAY: YES, SIR HIS FRIENDS.

COX: WHERE WERE YOU AT WHEN THE SHOOTING STARTED?

CARRAWAY: IN THE BACK SEAT ON THE DRIVER'S SIDE, IN THE BACK SEAT.

COX: DID THE FELLER HIT THE CAR THAT YOU WERE IN?

CARRAWAY: YES, SIR, HE SHOT THE CAR UP.

COX: IT'S BEEN HIT?

CARRAWAY: YES, SIR.

COX: -ALRIGHT, WHERE DID HE HIT THE CAR AT?

CARRAWAY: I THINK, IN THE LIKE IN THE BACK BY THE TRUNK, CAUSE WE WAS PULL LIKE RIGHT BESIDE HIM.

COX: SO, YOU KNOW HE HIT THE CAR?

CARRAWAY: YEAH, HE HIT THE CAR. -THAT WHAT MADE ME JUMP OUT THE CAR-- HE HIT THE CAR.

COX: HE HIT THE CAR WITH GUN FIRE?

CARRAWAY: YES, SIR.

CRIMINAL INVESTIGATION
INV. RUSSELL COX
CASE NUMBER: 2010-010-306
INTERVIEW WITH: JOSH CARRAWAY

COX: SO, (INAUDIBLE).

CARRAWAY: --THAT WHEN CURTIS--NO, AIN'T NO DOUBT ABOUT THAT.

COX: WHICH ONE SHOT YOU?

CARRAWAY: THE GUY IN THE BACK SEAT.

COX: THE ONE THAT JUMPED OUT?

CARRAWAY: YES, SIR.

COX: HE WAS SHOOTING AT YOU?

CARRAWAY: IN THE, IN THE -UM- PASSENGER'S SEAT OF THE CAR--THE DUDE, WELL, HE CHASED ME, BUT, THEY AIN'T NEVER CAUGHT ME--I JUMPED THE, THE BACK GATE. IT WAS THREE GUYS.

COX: YEAH, THREE GUYS? IS THERE ANYTHING ELSE THAT YOU CAN ADD TO THIS STATEMENT?

CARRAWAY: UM.... NO, SIR.

COX: ALRIGHT.

CARRAWAY: BUT, I AIN'T KNOW WHAT BEEN GOING ON. I JUST BEEN IN THE WRONG PLACE AT THE WRONG TIME.

COX: AND, YOUR NAME IS WHAT?

CARRAWAY: JOSH CARROWAY.

COX: ALRIGHT, THIS STATEMENT CONCLUDED FROM JOSH CARROWAY AT THE MCLEOD E-R.

CRIMINAL INVESTIGATION
INV. RUSSELL COX
CASE NUMBER: 2010-010-306
INTERVIEW WITH: JOSH CARRAWAY

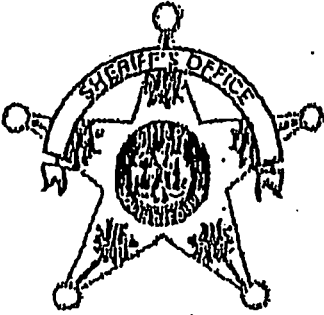
SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS _____ DAY OF _____, 20 ____.

NOTARY PUBLIC FOR SOUTH CAROLINA

WITNESSES:

THIS IS TO CERTIFY THAT I DID GIVE & HAVE READ THE ABOVE STATEMENT CONSISTING
____ PAGES AND HAVE BEEN GIVEN A COPY OF SAME AS OF THE _____ DAY OF
_____, _____.

TYPED BY: MS. DONNA MCDANIEL
DATE: JANUARY 19, 2010
PROOF READ BY: JENNIFER SMITH
DATE: 01-20-2010



FLORENCE COUNTY SHERIFF'S OFFICE

WILLIAM K. "KENNEY" ROONE, SHERIFF

STATEMENT AND INTERVIEW FORM

TODAY'S DATE: 01/20/10 TIME: 12:26pm

LOCATION: FCSD

INCIDENT DATE: 01/10/10 CASE #: 2010-01-00306

REFERENCE TO: MURDER

LAW ENFORCEMENT PRESENT: _____

SUBJECT'S NAME: Joshua McKinney

SUBJECT'S ADDRESS: _____ St

CITY: Darlington STATE: SC ZIP: _____

HOME PHONE #: _____ WORK PHONE #: () _____

DOB: _____ AGE: 23 SSN: _____

HEIGHT: 601 WEIGHT: 152 HAIR COLOR: BLK SEX: M

PLACE OF WORK OR SCHOOL: NO

*****QUESTIONS BELOW ARE OPTIONAL*****

EDUCATION COMPLETED: 11th

UNDER THE INFLUENCE OF DRUGS OR ALCOHOL AT THIS TIME? NO

ARE YOU COMFORTABLE MAKING THIS STATEMENT HERE? YES

HAVE YOU BEEN THREATENED OR MISTREATED IN ANY WAY TO MAKE THIS STATEMENT? NO

DEFENDANT'S
EXHIBIT

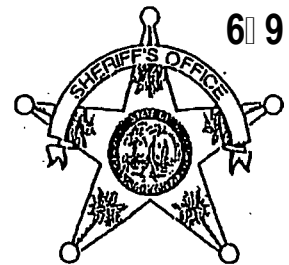
6719 FRIENDFIELD ROAD EPPINGHAM, SOUTH CAROLINA 29541
SHERIFF (843) 665-2121 DETENTION CENTER (843) 665-9944

12-11-13

Smr

3

no



FLORENCE COUNTY SHERIFF'S OFFICE
WILLIAM K. "KENNY" BOONE, SHERIFF

MIRANDA WARNING

CASE# 2000-01-306 LOCATION: FCSD

DATE: 01/20/10 TIME: 12:18 pm

THE CONSTITUTION REQUIRES (I/ WE) INFORM YOU THAT:

JC 1.) YOU HAVE THE RIGHT TO REMAIN SILENT.

JC 2.) ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.

JC 3.) YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.

JC 4.) IF YOU CAN NOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU WISH.

JC 5.) YOU CAN DECIDE AT ANYTIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

JC 6.) DO YOU UNDERSTAND EACH OF THESE RIGHTS AS I HAVE EXPLAINED THEM TO YOU? yes

JC 7.) HAVING THESE RIGHTS IN MIND DO YOU WISH TO TALK TO US NOW? yes

Joshua Carraway
NAME

87

Darlington ADDRESS
CITY STATE

WAIVER OF RIGHTS

I HAVE READ THIS STATEMENT OF MY RIGHTS AND UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OF ANY KIND HAS BEEN USED AGAINST ME BY ANYONE.

SIGNED: Joshua Carraway TIME: 12:24 pm

WITNESS: [Signature] WITNESS: _____

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
CASE NUMBER: 2010-010-306 #2
INTERVIEW WITH: JOSHUA CARROWAY

STATE OF SOUTH CAROLINA)

FLORENCE COUNTY)

CASE NUMBER: 2010-010-306 #2

CRIMINAL INVESTIGATION DIVISION

INVESTIGATOR THOMAS MCFADDEN

STATEMENT COVER SHEET

STATEMENT TAKEN FROM:

JOSHUA CARROWAY

TYPIST: MS. DONNA MCDANIEL

**THIS PAGE IS NOT PART OF RECORDED STATEMENT,
AND IS FOR RECORDS KEEPING PURPOSE ONLY.**

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN

CASE NUMBER: 2010-010-306 #2

INTERVIEW WITH: JOSHUA CARROWAY

MCFADDEN:

I'M INVESTIGATOR THOMAS MCFADDEN WITH THE FLORENCE COUNTY SHERIFF'S OFFICE. TODAY'S DATE IS NOW 01-20-2010 OR 2010. THE TIME IS 12:26 P. M. I'M DOING A SECOND INTERVIEW WITH ONE JOSHUA CARROWAY, AT THE REQUEST OF JOSHUA CARROWAY. TODAY'S DATE AGAIN IS 01-20-2010. THE CASE NUMBER IS 2010-01-0306 IN REFERENCE TO A HOMICIDE AND AN ATTEMPTED ARM ROBBERY.

UM, JUSTIN, FOR THE RECORD COULD YOU; PLEASE STATE YOUR NAME DATE-OF-BIRTH AND WHERE YOU LIVE?

CARROWAY:

MY NAME IS JOSHUA CARROWAY. -STAY ON STREET, DARLINGTON, SOUTH CAROLINA.

MCFADDEN:

WHAT, WHAT'S YOUR DATE-OF-BIRTH?

CARROWAY:

MCFADDEN:

I WAS CALLING YOU JUSTIN A SECOND AGO, ISN'T IT? MAKE CORRECTION THAT JOSHUA.

CARROWAY:

JOSHUA.

MCFADDEN:

JOSHUA CARROWAY. -UH- INCIDENT DATE WAS 01-10-2010. IT HAPPENED ON WEST LUCAS STREET -UM- IN FLORENCE AT THE DAYS INN, IT WAS AN INCIDENT THAT TOOK PLACE. UM, WHAT'S THE LAST EDUCATION YOU COMPLETED?

CARROWAY:

11TH.

MCFADDEN:

ARE YOU UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOL?

CARROWAY:

NO, SIR.

MCFADDEN:

DO YOU FEEL COMFORTABLE TALKING WITH ME?

CARROWAY:

YES, SIR.

MCFADDEN:

HAVE YOU BEEN THREATENED OR MISLED TO TALK WITH ME?

CARROWAY:

NO, SIR.

MCFADDEN:

ALRIGHT, UM, UM, BEFORE WE STARTED THIS I DID LET YOU SIGN YOUR WAIVER FORM, AND YOU READ YOUR RIGHTS:

YOU KNEW YOU HAVE THE RIGHT TO REMAIN SILENT.

ANYTHING YOU SAY COULD BE USED AGAINST YOU IN THE COURT OF LAW.

HAD A RIGHT TO TALK TO A LAWYER—HAVE HIM PRESENT WHILE YOU ARE BEING QUESTIONED.

IF YOU COULD NOT AFFORD TO HIRE ONE, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONS, IF YOU WISH.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
CASE NUMBER: 2010-010-306 #2

INTERVIEW WITH: JOSHUA CARROWAY

YOU CAN DECIDE AT ANYTIME TO EXERCISE YOUR RIGHTS—NOT
ANSWER ANY QUESTIONS—MAKE ANY STATEMENTS.

DO YOU UNDERSTAND YOUR RIGHTS?

CARROWAY: YES, SIR.

MCFADDEN: HAVING YOUR RIGHTS IN MIND, IN YOUR OWN WORDS YOU WANT TO
EXPLAIN WHAT TOOK PLACE THAT NIGHT OR WHAT HAPPENED ON
WEST LUCAS STREET?

CARROWAY: YES, SIR.

MCFADDEN: ONE, ONE THING, OTHER THING, JOSH, AND YOU DID REQUEST THAT I
COME BACK AND TALK WITH YOU?

CARROWAY: YES, SIR.

MCFADDEN: YOU CALL FOR ME TO COME TALK TO YOU? ALRIGHT, UM, IN YOUR
OWN WORDS YOU WANT TO EXPLAIN WHAT TOOK PLACE THAT
NIGHT.

CARROWAY: OKAY, ME AND JUSTIN AND CURTIS WENT TO THE HOTEL TO MEET—
THEY WENT TO MEET SOME GUYS THERE.

MCFADDEN: WHEN YOU SAY CURTIS, YOU KNOW, YOU KNOW WHAT HIS NAME IS?

CARROWAY: NAH, HUH.

MCFADDEN: I GOT A PICTURE HERE, IS THIS THE INDIVIDUAL YOU'RE SPEAKING
OF?

CARROWAY: YES, CURTIS—

MCFADDEN: MAKE A NOTE—

CARROWAY: JOE—

MCFADDEN: MAKE A NOTE—THE INDIVIDUAL THAT HE IS SPEAKING OF IS ONE
CURTIS JOE, CURTIS JOE. —UM, AND THE OTHER ONE IS JUSTIN—

CARROWAY: JUSTIN—

MCFADDEN: YOU, YOU, YOU, YOU KNOW—WE GOT A JUSTIN BOATWRIGHT—

CARROWAY: BOATWRIGHT.

MCFADDEN: ALRIGHT.

CARROWAY: UM, WENT TO, UM, PURCHASE OR BUY SOME WEED FROM SOME GUYS
FROM LAKE CITY.

MCFADDEN: WERE Y'ALL BUYING IT OR SELLING IT?—OR YOU'RE NOT SURE?

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
CASE NUMBER: 2010-010-306 #2

INTERVIEW WITH: JOSHUA CARROWAY

CARROWAY: I THINK THEY WAS—I THINK, THEY WAS—WE WAS SELLING IT TO THEM.

MCFADDEN: OKAY, GO AHEAD.

CARROWAY: AND, UM—

MCFADDEN: YOU KNOW WHO TALK TO THEM? WHO, WHO, WHO—

CARROWAY: CURTIS —UM- TALK TO THEM ON THE PHONE AND HE TOLD, US TO MEET US AT DAY'S INN. WE GOT THERE—WE PARKED ON THE OTHER SIDE OF DAY'S INN. AND, THE OTHER GUYS—

MCFADDEN: I MEAN, WHAT WERE DRIVING—RIDING IN?

CARROWAY: A—UM- SILVER---A SILVER—

MCFADDEN: (INAUDIBLE)

CARROWAY: —JUST A SILVER CAR.

MCFADDEN: HOW MANY DOORS?

CARROWAY: FOUR-DOOR.

MCFADDEN: FOUR-DOOR, OKAY.

CARROWAY: YEAH, SO, UM, JUSTIN, GOT OUT THE CAR. I GOT OUT THE CAR--

MCFADDEN: DID YOU SEE WHERE THEY WAS PARKED AT?

CARROWAY: THE, UM, --

MCFADDEN: THE BOYS?

CARROWAY: THEY WAS PARKED IN FRONT OF THE STAIRWAYS IN FRONT—BY DAY'S INN THE SECOND ENTRANCE.

MCFADDEN: WHAT WERE THEY DRIVING?

CARROWAY: A BLACK, UM, A BLACK CAR— FOUR-DOOR CAR.

MCFADDEN: A BLACK FOUR-DOOR CAR. OKAY, GO HEAD.

CARROWAY: SO, WE WENT TO—I WENT TO THE CAR-- TALK TO ONE OF THE GUYS. ONE OF THE GUYS —UM- WAS ABOUT TO PURCHASE THE WEED. AND, JUSTIN CAME FROM BEHIND THE CAR WITH A GUN—PUT IT INSIDE THE CAR—TOLD, HIM TO GIVE UP. HE OPEN THE PASSENGER'S DOOR, PUT THE GUN IN THE CAR—HE WAS TRYING TO GO IN, IN HIS POCKETS, THAT WHEN I JUST HEARD, START HEARING GUN FIRE AND I JUST JUMPED OUT AND RAN, AND, GOT SHOT IN THE FOOT. AND, I RUN BACK TO THE FRONT DESK AND CALLED THE POLICE. AND, THEN BASICALLY THAT WAS IT.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
CASE NUMBER: 2010-010-306 #2

INTERVIEW WITH: JOSHUA CARROWAY

MCFADDEN: -ALRIGHT, -UM, WHEN YOU SAID, HE JUMP OUT—WHERE, WHERE, WERE YOU AT? OR DID YOU GET IN THE CAR?

CARROWAY: YES, SIR.

MCFADDEN: WHERE YOU WAS AT?

CARROWAY: IN THE BACK SEAT.

MCFADDEN: --IN THE BACK SEAT--UM, WHERE, SO, WHERE WAS HE AT THEN?

CARROWAY: WHO JUSTIN?

MCFADDEN: YEAH, JUSTIN WHERE--?

CARROWAY: JUSTIN WAS -UM- ON THE SIDE OF THE HOTEL.

MCFADDEN: I'M SAYING WHERE HE—I'M TALKING ABOUT WHEN YOU WERE IN THE BACK SEAT WITH THE OTHER BOY, WHERE WAS JUSTIN?

CARROWAY: JUSTIN WAS OUTSIDE OF THE CAR. HE CAME AROUND BEHIND THE CAR--

MCFADDEN: UH, UH.

CARROWAY: AND, OPEN MY DOOR. HE OPENED MY DOOR FIRST AND PUT THE GUN IN THE CAR, WAS LIKE, GIVE IT UP. AND, THEN HE WENT TO THE PASSENGER'S DOOR.

MCFADDEN: UH, UH.

CARROWAY: TOLD THEM TO GIVE IT UP.

MCFADDEN: UH, UH, AND THEN WHEN YOU HEARD GUN SHOTS?

CARROWAY: WHEN I HEARD GUN SHOTS, I JUST DROP THE WEED, JUMP OUT THE CAR, AND RAN, GOT SHOT IN THE FOOT, AND, RAN ON THE ON ROUND THE OTHER SIDE OF THE HOTEL, WENT TO THE FRONT DESK AND CALLED 911.

MCFADDEN: UM, DID YOU HAVE A GUN WHEN YOU--- IN YOUR POSSESSION?

CARROWAY: NO, SIR.

MCFADDEN: UM, COULD YOU SEE THE GUN JUSTIN HAD OR WHAT KIND HE HAD?

CARROWAY: HE HAD A 380 SILVER AND BLACK.

MCFADDEN: SILVER/BLACK. UM, HOW ABOUT WHERE WAS KURTIS?

CARROWAY: CURTIS, NEVER GOT OUT THE CAR.

MCFADDEN: HE STAYED ON THE OTHER SIDE? -ALRIGHT, WHAT Y'ALL, WHAT Y'ALL—WHAT HE TOLD—WHAT Y'ALL TOLD, HIM -WHAT HE, WHAT HE SUPPOSE TO DO?

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
CASE NUMBER: 2010-010-306 #2
INTERVIEW WITH: JOSHUA CARROWAY

CARROWAY: HE WAS JUST; HE WAS JUST IN THE CAR. I WENT TO SELL THE WEED TO THE BOYS.—THAT WHEN I JUST SEEN JUSTIN COME BEHIND THE CAR.

MCFADDEN: -UMH-HUH, UM, HAVE YOU TALK TO THEM, WELL, (INAUDIBLE) YOU DID SAY YOU TALKED TO HIM. UM, WHAT CONVERSATION—WHAT HAPPENED WITH THE CONVERSATION, AFTER THE FACT—SINCE—?

CARROWAY: AFTER THE FACT, JUSTIN SAY, UM, DON'T TELL THE POLICE NOTHING. HE BURIED GUN IN HIS BACK YARD. AND, EVERYTHING WAS GONNA BE ALRIGHT. I GOT--

MCFADDEN: DID HE TELL YOU ABOUT, ABOUT THE PHONE NUMBER? YOU KNOW ABOUT THE OTHER BOY, ABOUT THE NAME HE WAS USING/

CARROWAY: OH, UM, YEAH, HE DID, HE TOLD, ME, UM, TH...DOG, WHAT HE SAID,—SOMETHING ABOUT -UM- DWAYNE—HE SAID, DO NOT TELL THEM MY NAME IS DWAYNE, BECAUSE HE WOULD LEAD BACK TO ME; CURTIS SAID THAT.

MCFADDEN: OH, CURTIS SAID THAT?

CARROWAY: CURTIS SAID,—

MCFADDEN: CURTIS SAID—AND, NOT, NOT--

CARROWAY: YEAH.

MCFADDEN: NOT JUSTIN.

CARROWAY: THE GUYS FROM LAKE CITY KNOW CURTIS, THEY DON'T KNOW.

MCFADDEN: OKAY, THEY DON'T KNOW JUSTIN?

CARROWAY: THEY DON'T KNOW JUSTIN.

MCFADDEN: THEY DIDN'T KNOW, THEY DIDN'T KNOW YOU—DID THEY EVER MET YOU?

CARROWAY: I MET THE GUY THAT GOT KILL—

MCFADDEN: OKAY.

CARROWAY: IN THE CLUB.

MCFADDEN: AT THE CLUB, OKAY?

CARROWAY: YEAH, HE WAS BUYING THE WEED FROM ME. I DIDN'T KNOW JUSTIN WAS GONNA ROB US.

MCFADDEN: UM, HOW ABOUT, UM, YOU SAY, WHAT ELSE YOU HAD SPOKE TO HIM ABOUT JUSTIN?

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
CASE NUMBER: 2010-010-306 #2

INTERVIEW WITH: JOSHUA CARROWAY

CARROWAY: -UM- I JUST KNOW, HE SAY, HE WAS GONNA TRY TO MOVE TO GEORGIA. AND JUST SAID, HE BURIED THE GUN AND KEEP MY MOUTH SHUT. BASICALLY, I WAS SCARED, SO I LIED FROM THE BEGINNING, BUT--

MCFADDEN: THEY DIDN'T TELL YOU ABOUT--UM- WHAT THEY SAY WHEN THEY LEFT YOU THAT NIGHT?

CARROWAY: WHAT THEY SAY--?

MCFADDEN: DID THEY TELL ANY ABOUT LEAVING?

CARROWAY: I AIN'T, NO, I AIN'T NEVER TALK TO THEM THAT NIGHT--THEY JUST LEFT ME.

MCFADDEN: NO, I'M SAYING, DID YOU TALK TO THEM AFTER THE FACT?

CARROWAY: UH, I HAD GOT PRIVATE CALLS FROM THEM SOMEBODY THREATENING ME, SAYING, I WAS TELLING THE POLICE WHERE THEY STAY AND SUCH AND SUCH.

MCFADDEN: OH, OKAY, WE HAVE TO TAKE A PAUSE. (PAUSE) ALRIGHT, UM, ANYTHING ELSE YOU WANT TO ADD OR TAKE AWAY?

CARROWAY: BASICALLY, THE REASON FOR ME LYING FROM THE BEGINNING, I WAS SCARED THAT THE, THE GUYS WAS GOING TO SHOOT MY MOMMA'S HOUSE UP AND EVERYTHING, SO I LIED. SO, THAT'S WHY I CALLED THE INVESTIGATOR BACK TO TELL THE TRUTH ABOUT EVERYTHING.

MCFADDEN: AND-- THAT WAS ON--UH, YOU CALLED BACK ON YOUR OWN FREEWILL?

CARROWAY: ON MY OWN FREEWILL.

MCFADDEN: UM, WHAT ELSE, I WANT TO ASK YOU ONE MORE QUESTION? UM--

CARROWAY: YES, SIR.

MCFADDEN: CURTIS, DID YOU TALK TO CURTIS--AFTER, AFTER THIS INCIDENT? WHAT DID CURTIS--YOU TALK TO HIM? OH, YOU DID SAID, YOU TALKED TO HIM.

CARROWAY: YEAH, I TALKED TO HIM.

MCFADDEN: AND, HE SAID, ABOUT--

CARROWAY: -ABOUT DWAYNE--

MCFADDEN: DWAYNE--WHAT HE SAY ABOUT THE BOY DYING--WHAT Y'ALL--WHAT, WHAT, WHAT HE--

CARROWAY: HE AIN'T NEVER SAY NOTHING ABOUT--HE AIN'T NEVER TOLD, ME THAT THE GUY DIED OR NOTHING.

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
CASE NUMBER: 2010-010-306 #2

INTERVIEW WITH: JOSHUA CARROWAY

MCFADDEN: ALRIGHT, DID YOU TELL, DID YOU TELL HIM YOU HAD TALK TO US—
THAT WE TALKED TO YOU?

CARROWAY: NO.

MCFADDEN: YOU NEVER TOLD, HIM WE HAD CAME TO GET YOU AND TALK TO
YOU?

CARROWAY: OH, YEAH, YEAH I DID, I DID.

MCFADDEN: WHAT THEY SAY?

CARROWAY: THEY WAS LIKE DON'T TELL ON THEM. THEY GONNA PAY FOR MY
LAWYER AND EVERYTHING. JUST MAKE SURE THEY—THAT I KEEP
THEIR NAME OUT OF EVERYTHING.

MCFADDEN: UMH, UH. IS THIS STATEMENT YOU GIVING TODAY IS IT TRUE AND TO
THE BEST OF YOUR KNOWLEDGE?

CARROWAY: YES, SIR.

MCFADDEN: MM...MM...THIS CONCLUDES THIS STATEMENT. AGAIN TODAY'S DATE
IS 01-20-2010. THE TIME NOW IS 12:34 P. M.

*

CRIMINAL INVESTIGATION
INV. THOMAS MCFADDEN
CASE NUMBER: 2010-010-306 #2
INTERVIEW WITH: JOSHUA CARROWAY

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS _____ DAY OF _____, 20 ____.

NOTARY PUBLIC FOR SOUTH CAROLINA

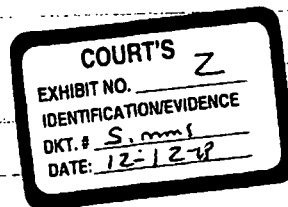
WITNESSES:

THIS IS TO CERTIFY THAT I DID GIVE & HAVE READ THE ABOVE STATEMENT CONSISTING
_____ PAGES AND HAVE BEEN GIVEN A COPY OF SAME AS OF THE _____ DAY OF
_____, _____.

TYPED BY: MS. DONNA MCDANIEL
DATE: FEBRUARY 4, 2010
PROOF READ BY: JENNIFER SMITH
DATE: 02-17-2010

Can you please get the court
reporter to key up Curtis Joe's
testimony?

Russell Warner 12-12-13
Russell Warner

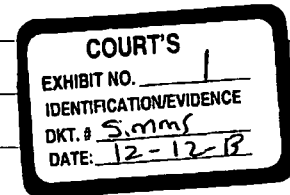


Can we get the court reporter transcript
of Curtis Joe?

Can you tell us the date Justin
was arrested?

Can we have a T.V. with DVD or
computer to watch the video footage?

Russell Warner 12-12-13
Russell Warner



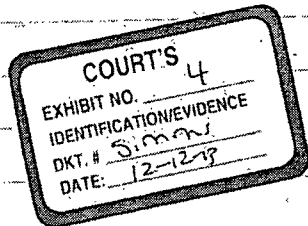
Does the Charge "A hand of one is
a hand of all" apply to the
indictment as to murder?

Can you reread the Charge of "The Hand
of One is A Hand of All"?

Can you explain what "A reasonable
doubt" is defined legally?

Russell W. Harker III

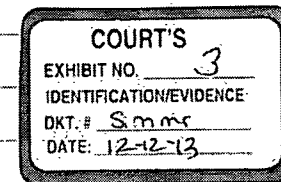
Russell W. Harker III 12-12-13



Can you please explain the
Charge of "A Hand of One is A
Hand of All" again? And in its
entirety?

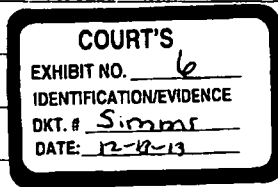
Russell W. Harker III

Russell W. Harker III 12-12-13



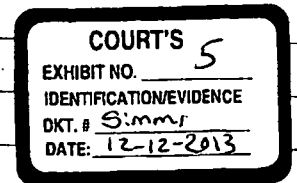
Can you please supply this jury with a printed copy of the murder charge and "A Hand of One is a Hand of All"? IF not, will you please read them both to us again?

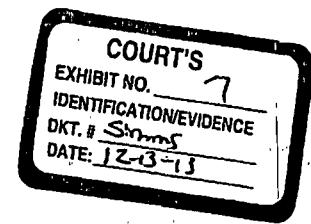
Russell W. Harter III 12-13-13
~~Sam W. Harter III~~



We have come to a unanimous decision on the charge of attempted armed robbery and to the possession of a weapon during the commission of a violent crime but can not come to a unanimous decision on the charge of murder.

Russell W. Harter III
~~Sam W. Harter III~~ 12-12-13





MURDER

THE DEFENDANT IS CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

MALICE IS HATRED, ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLECT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME OF THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT

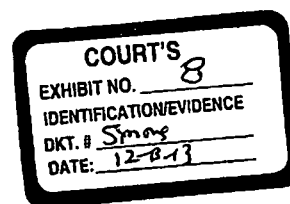
EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON. A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLING SHOT, METAL KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB OR MOLOTOV COCKTAIL, AND LIGHTER

FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING.

IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE CONSIDERED BY YOU, THE JURY, ALONG WITH THE OTHER EVIDENCE IN THE CASE, AND YOU MAY GIVE IT THE WEIGHT YOU DECIDE IT SHOULD RECEIVE.



HAND OF ONE

IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO ARE ACTING TOGETHER IN COMMITTING A CRIME, THE ACT OF ONE IS THE ACT OF ALL. A PERSON WHO JOINS WITH ANOTHER TO COMMIT AN UNLAWFUL ACT IS CRIMINALLY RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON WHICH HAPPENS AS A PROBABLE OR NATURAL CONSEQUENCE OF THE ACTS DONE IN CARRYING OUT THE COMMON PLAN AND PURPOSE. FOR EXAMPLE, TWO PEOPLE CAN BE GUILTY OF BURGLARY WHEN ONLY ONE OF THE TWO ENTERED THE RESIDENCE OF ANOTHER WITHOUT CONSENT AND THE OTHER STAYED OUTSIDE. BOTH CAN BE GUILTY WHEN ONE PERSON ENTERS THE RESIDENCE WITHOUT CONSENT, TAKES PROPERTY THEREIN, AND THROWS THE PROPERTY OUT OF THE WINDOW TO THE OTHER PERSON. ALSO BOTH CAN BE GUILTY OF BURGLARY WHEN ONLY ONE PERSON ENTERS THE RESIDENCE OF ANOTHER WITHOUT CONSENT AND THE OTHER PERSON WAITS OUTSIDE AS A LOOKOUT. IF TWO OR MORE PEOPLE ARE TOGETHER, ACTING TOGETHER, ASSISTING EACH OTHER IN COMMITTING THE OFFENSE, THE ACT OF ONE IS THE ACT OF ALL OR, AS IT IS SOMETIMES SAID, "THE HAND OF ONE IS THE HAND OF ALL".

PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED, WITHOUT MORE, IS NOT SUFFICIENT TO MAKE A PERSON GUILTY OF THAT CRIME. MERE KNOWLEDGE THAT ANOTHER PERSON IS GOING TO COMMIT A CRIME, EVEN IF THE DEFENDANT IS PRESENT WHEN THE CRIME IS COMMITTED, IS NOT SUFFICIENT TO CONVICT THE DEFENDANT AS A PRINCIPAL. GUILT AS A PRINCIPAL IS SHOWN BY ACTUAL OR CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF PRIOR ARRANGEMENT. THEREFORE, A FINDING OF A PRIOR ARRANGED PLAN OR COMMON SCHEME IS NECESSARY FOR A FINDING OF GUILT AS A PRINCIPAL. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT BY COMPETENT EVIDENCE THE THEORY OF THE HAND OF ONE IS THE HAND OF ALL.

A PRINCIPAL IN A CRIME IS ONE WHO EITHER ACTUALLY COMMITS THE CRIME OR WHO IS PRESENT AIDING, ABETTING, OR ASSISTING IN COMMITTING THE CRIME. WHEN A PERSON DOES AN ACT IN THE PRESENCE OF AND WITH THE ASSISTANCE OF ANOTHER, THE ACT IS DONE BY BOTH. WHERE TWO OR MORE, ACTING WITH A COMMON PLAN OR INTENT, ARE PRESENT AT THE COMMISSION OF A CRIME, IT DOES NOT MATTER WHO ACTUALLY COMMITS THE CRIME. ALL ARE GUILTY. THE HAND OF ONE IS THE HAND OF ALL. PRESENT AT THE COMMISSION OF A CRIME MEANS TO BE SUFFICIENTLY NEAR

TO AID AND ABET AND ASSIST IN THE COMMISSION OF THE CRIME. HOWEVER, MERE PRESENCE AT THE SCENE OF A CRIME IS NOT SUFFICIENT TO CONVICT ONE AS A PRINCIPAL ON THE THEORY OF AIDING AND ABETTING. INTENT IS ALSO A NECESSARY ELEMENT, FOR THERE MUST HAVE BEEN A COMMON DESIGN OR INTENT TO COMMIT THE CRIME AND THE CRIME MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH THE PERSON AIDING AND ABETTING BY SOME OVERT ACT. INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS; NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT. THE STATE MUST PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2010-GS-21-01427

RECEIVED

DEC 23 2013

SC Court of Appeals

 The State,

Respondent,

v.

Justin R. Simms,

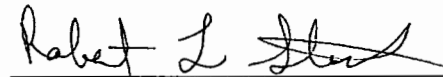
Appellant.

NOTICE OF APPEAL

Justin R. Simms appeals his conviction and sentence in this case. The sentence was imposed by the Honorable R. Knox McMahon dated December 13, 2013. Appellant received written notice of entry of this order on December 13, 2013.

Dated at Florence, South Carolina this 18th day of December 2013.

By:



ROBERT L. STUCKS

P.O. Box 7378

Florence, SC 29502

(843) 679-5468

Attorney for Appellant

Other Counsel of Record:

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Solicitor

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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2010-GS-21-01427

The State,

Respondent,

v.

Justin Rashawn Simms,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State by depositing a copy of it in the United States Mail, postage prepaid, on December 17, 2013 addressed to its attorney of record, Edgar L. Clements, 180 North Irby Street, MSC-Q Florence South Carolina 29501

December 17, 2013



Robert L. Stucks
Post Office Box 7378
Florence, South Carolina 29502
(843) 679-5468
Attorney for Appellant

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN R. SIMMS

APPELLANT

APPELLATE CASE NO. 2013-002748

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to charge the lesser-included offense of voluntary manslaughter?

STATEMENT OF THE CASE

On September 30, 2010, a Florence County grand jury indicted appellant Justin R. Simms for murder, attempted armed robbery, and a weapons charge. R. 620. On December 9, 2013, appellant was tried before the Honorable R. Knox McMahon and a jury. R. 1. E. L. Clements represented the State. R. 1. Chevron Scott and Robert Stucks represented appellant. R. 1. The jury convicted appellant. R. 601, ll. 2 – 15. Judge McMahon sentenced appellant to concurrent terms of forty years' imprisonment for murder, twenty years' imprisonment for attempted armed robbery, and five years' imprisonment on the weapons charge. R. 617, ll. 4 – 16. This appeal follows.

ARGUMENT

The trial court erred in refusing to charge the lesser-included offense of voluntary manslaughter.

In his opening statement, the solicitor anticipated that the defendant would receive a jury instruction on voluntary manslaughter. R. 86, ll. 9 – 12. After explaining the elements of murder, the solicitor told the jury that the trial judge “may also talk about a lesser-included-offense of murder called voluntary manslaughter where you take somebody’s life in the heat of passion with legal provocation.” R. 86, ll. 9 – 12.

The shooting death of Marcus Weaver (“Weaver”) happened at a drug deal gone wrong in the parking lot of a Day’s Inn in Florence. Weaver, his brother Shane Graham (“Graham”), and his friend Squan Davis (“Davis”) traveled together in one car to buy marijuana. R. 276, l. 17 – 277, l. 6. Davis was going to buy marijuana from a man named Curtis Joe (“Joe”). R. 278, ll. 5 – 7. Davis had purchased marijuana from Joe in the past. R. 278, ll. 10 – 13. Graham drove, Weaver was in the passenger seat, and Davis sat behind Graham. R. 279, ll. 8 – 18.

On direct-examination, Davis testified that after they parked at the hotel, the man he did not know came to his side of the car. R. 281, ll. 13 – 25. Davis directed them to the other side. R. 281, ll. 21 – 25. The man opened the door, pulled out a gun, and punched Davis in the face. R. 282, ll. 1 – 7. He held a gun on everyone and told them to “give it up.” R. 282, ll. 8 – 15. The man hit Weaver with the gun. R. 282, ll. 16 – 18. Davis then heard shooting coming from inside the car and he ran. R. 282, l. 23 – 283, l. 11.

Joe testified for the State. He claimed he did not know Davis, but said he received a call from "a boy from Lake City" who wanted some marijuana. R. 338, l. 20 – 339, l. 14. He arranged to meet the man at the Florence Day's Inn and appellant and Joshua Carraway ("Carraway") went with him. R. 339, ll. 15 – 25. Joe claimed that he never had any marijuana, but that Carraway planned to rob the purchasers. R. 341, l. 17 – 342, l. 8. Carraway and appellant went to the purchasers' car while Joe stayed behind. R. 343, ll. 1 – 11. Joe heard gunshots. R. 343, ll. 12 – 15. Appellant came back to the car. R. 344, ll. 18 – 23. Appellant told Joe, "the boy started shooting and Josh was still in the car." R. 345, ll. 6 – 9. Appellant never told Joe that he shot Weaver. R. 346, ll. 13 – 18.

Carraway testified for the State. He claimed no promises had been made to him in exchange for his testimony. R. 413, ll. 22 – 24. He claimed that he and appellant had planned together to rob the men in the other car. R. 413, ll. 13 – 21. Carraway unpersuasively claimed that he went to a car containing three men to rob them and did not take a gun. R. 392, ll. 8 – 12. Carraway testified that appellant had a .380 pistol. R. 392, ll. 15 – 18.

Admitted into evidence was a prior statement Carraway gave the police. R. 642. In this statement, Carraway stated that he and Joe went to the Day's Inn to sell drugs, Joe was talking with the men, and the men began shooting. R. 645. The men in the car fired first. R. 645. On cross-examination, Davis testified that Weaver was the first one to shoot. R. 294, ll. 4 – 8. Graham testified that a man opened the front passenger door, stuck a .380 inside and yelled "give it up." R. 366, l. 21 – 367, l. 23. Graham saw Weaver jump at the man and then Graham put his head down and heard gunshots. R.

368, ll. 5 – 9. When he lifted his head, he saw Weaver lying on his stomach on the ground, pulled him into the car and drove him to the hospital. R. 370, ll. 5 – 15. Weaver died from a gunshot wound to the back. R. 193, ll. 8 – 13. After the close of the evidence, the trial judge ruled that he would not charge any lesser-included offenses. R. 484, l. 22 – 485, l. 1.

The trial court erred in not charging voluntary manslaughter. “A court may eliminate the offense of manslaughter where it clearly appears that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.” State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2008). “In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in a light most favorable to the defendant.” State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001).

Manslaughter is “the unlawful killing of another without malice, express or implied.” S.C. Code Ann. § 16-3-50. “Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation.” State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). “Words accompanied by hostile acts may, according to the circumstances, reduce a charge from murder to voluntary manslaughter.” State v. Byrd, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996).

While Carraway’s testimony and his statement conflicted as to whether he and appellant intended to rob Weaver, it is not the court’s duty to weigh evidence, but merely to determine its existence. See State v. Light, 378 S.C. 641, 648-49, 664 S.E.2d 465, 468-69 (2008) (holding that defendant was entitled to self-defense and involuntary manslaughter charges despite inconsistent statements). In Carraway’s statement, shots

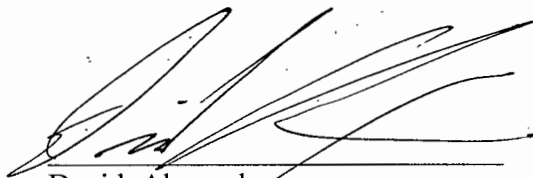
erupted following a discussion during a drug deal and there is no mention of any intent to commit a robbery. Davis testified that Weaver shot first. There were multiple shots from Weaver's gun going from the front of the car towards the back. R. 212, l. 18 – 25. Weaver shot himself in the arm. R. 194, ll. 6 – 12. Weaver was drunk and had marijuana in his system. R. 200, ll. 3 – 23. This evidence establishes that appellant could have been acting under a sudden heat of passion after legal provocation.

Indeed, the solicitor thought this case warranted a voluntary manslaughter instruction and told the jury as much in his opening statement. R. 86, ll. 5 – 12. The jury was conflicted about whether appellant was guilty of murder and sent a note indicating they were not unanimous. R. 588, l. 25 – 589, l. 6. The jury deliberated for ten hours, asked multiple questions, and broke overnight. R. 557, l. 14 – 599, l. 10. Under these circumstances, the failure to give a voluntary manslaughter charge was prejudicial and this case should be reversed and appellant should be given a new trial.

CONCLUSION

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

Respectfully submitted,

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

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of April, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Florence County

 R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN R. SIMMS

APPELLANT

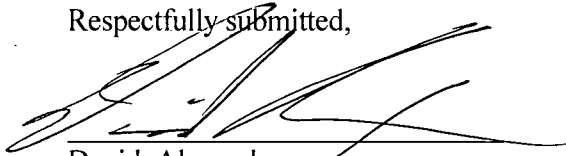
 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Justin R. Simms states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on December 13, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Justin R. Simms.

Respectfully submitted,



 David Alexander
 Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of April, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN R. SIMMS

APPELLANT

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

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

- (1) True-billed indictment(s);
- (2) Trial transcript;
- (3) Defendant's Exhibits 1-3;
- (4) Court's Exhibits 1-8.

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

April 21st, 2015
David Alexander
Appellate Defender

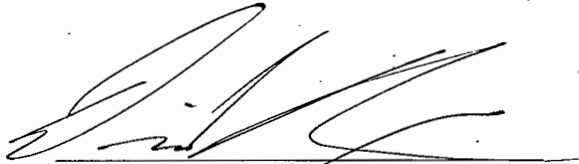
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

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

April 21st, 2015

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

David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Florence County

 R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

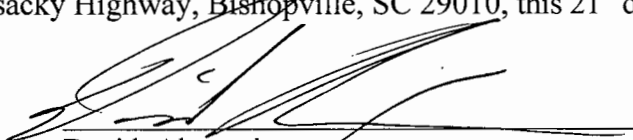
V.

JUSTIN R. SIMMS

APPELLANT

 CERTIFICATE OF SERVICE

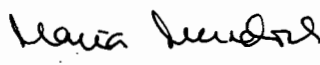
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Justin R. Simms, #358130 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 21st day of April, 2015.



 David Alexander
 Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
 this 21st day of April, 2015.

 (L.S.)

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM FLORENCE COUNTY
R. KNOX McHAHON, CIRCUIT JUDGE

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

JUSTIN SIMMS,

APPELLANT,

CASE No.2013-002748

APPELLANT'S PRO SE BRIEF

RECEIVED
JUL 23 2015
SC Court of Appeals

JUSTIN SIMMS #358130
LEE CORRECTION INSTITUTION
990 WISACKY HIGHWAY/F4-B-2227
BISHOPVILLE, S.C. 29010

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THE TRIAL COURT ABUSED IT DISCRETION IN ALLOWING THE STATE NOT TO DISCLOSE MATERIAL EVIDENCE UNDER BRADY AND SCRCrimp RULE 5?

WHETHER TRIAL COURT SHOULD HAVE GRANTED DIRECTED MOTION?

On September 30th, 2010 a Florence County Grand Jury indicted Appellant for murder, attempted armed robbery and a weapon charge. On December 9th, 2013 Appellant was tried before the Honorable R. Knox McMahon and a Jury. Clemments represented State, Chevron Scott and Robert Stucks represented Appellant. The Jury found Appellant guilty and Judge McMahon sentenced Appellant to forty years for murder twenty years for attempted armed robbery and five years for weapon charge.

Whether trial court abused its discretion in allowing the State not to disclose material evidence under Brady and SCRCimp Rule 5?

The court incorrectly ruled that the state's failure to allow the defense to inspect the Ford Focus was not in violation of Brady v. Maryland, 373 U.S. 83(1963) SCRCrimp Rule 5. The state's compliance with Brady is a constitutional requirement. See State v. Kennerly, 331 S.C. 442(1991) the Brady rule is grounded in the defendant's fundamental right to a fair trial mandated by the Due Process Clause of the Fifth and Fourteenth Amendments.

Brady requires that the prosecution disclose evidence which is favorable to a defendant and material to guilt or punishment. See Pennsylvania v. Ritchie, 480 U.S. 39(1987) This rule applies to impeachment evidence as well as exculpatory evidence. See United States v. Bagley, 473 U.S. 667(1985) "Evidence is material under Brady 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." Bagley, id, at 682,.

The materiality test is the same under Brady and under Rule 5 Kennerly, supra. A reasonable probability is a probability sufficient to undermine confidence in the outcome. i.d. at 682,. Once a defendant makes a threshold showing that the evidence sought is material within the meaning of Brady and Rule 5 the trial judge should conduct a hearing. See State v. Bryant, 307 S.C. 48(1992) Reversal of a conviction is required if the undisclosed evidence is material and the omission deprived the defendant of a fair trial. See State v. Jones, 325 S.C. 310(1995) SCRCrimp Rule 5(a)(1)(c) states:

"Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs tangible objects, buildings or places, or copies or portion thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant."

Here, the defense counsel moved to not allow the introduction of photos of a Ford Focus that had been involved in the incident and was in possession of the state (Tr.Tr. pg. 56; lines 14-21) The car was examined by law enforcement and the state relied on forensic reports and pictures to prove that Appellant was the shooter. However, the car was released by law enforcement in February, 2010 back to the victim's family. The defense became aware of this fact when it contacted the state about examining the car. The defense made a Prima Facie showing that the withheld evidence was material. As defense counsel told the court. "The significance of the vehicle in summary is that it is the main item of evidentiary value in this particular case. That's the whole, that's the foundation of the entire case." (Tr.Tr. pg 59; lines 20-25; pg. 60; line 1) Additionally, he noted "Clearly to have an opportunity to physically examine the alleged vehicle in this particular incident, being able to have my people go out to examine it. That would be critical to our defense." (Tr.Tr. pg. 65; lines 22-25) At this point the trial court should have ordered the state to produce the undisclosed evidence for inspection Bryant, supra.

However, the court merely relied on the state's representation that nothing was exculpatory in the car and that the forensic evidence would prove their

case(Tr.Tr. pg. 57; lines 11-13) Even the state argued the evidence was material, telling the court "There's a couple of photographs that we think that certainly has great probative value where they ran a rod through two places where there was a shot from the front seat to the back seat(Tr.Tr. pg. 56; lines 24-25; pg. 57; lines 1-2) "We do not believe there's anything exculpatory there potentially and we didn't receive them until late yesterday and they had to be found(Tr.Tr. pg.57; lines 11-13) Further he stated, the importance of the pictures that were made in the day time of course where they would be instructive to the jury because they have the rods passing through the seat that demonstrates, it shows the path of the bullets and, and Mr. Bird and Mr. Lutcken put that in the report and will be testifying to that, your Honor(Tr.Tr. pg. 65; lines 2-7) The problem with non-disclosure of the evidence was that the defense never had a chance to do an independent examination of the actual car that the state introduced pictures of to convict Appellant. There were conflicting theories about whether state's witness Joshua Carraway was in the back or out of the car when the fatal shot was fired. A state witness Paul Bird testified that the back door had to be open when the shots were fired.(Tr.Tr. pg. 224; lines 5-18)

An examination of the car certainly could have led to impeachment evidence about the conflicting theories. The United States Supreme Court has ruled, for Brady purposes, in determining the materiality of non-disclosed evidence, an appellate court must consider the evidence in the context of the entire record, See United States, v. Agurs, 427 U.S. 97(1976) The Appellant's right to a fair trial was impaired because of the state's non-disclosure of material evidence. The court is to determine if the Appellant's right to a fair trial

has been impaired. See, State v. Osborne, 291 S.C. 265()

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The other evidence produce by the state was less than overwhelming against the Appellant. Only state's witness Joshua Carraway identified Appellant as the shooter. All other witnesses who were on the scene said Carraway came to the car and brandished a firearm for an attempt to rob victims. He had given at a minimum three different version of the events in statements to law enforcement. There was no weapon found and the state relied on the pictures and the forensics related to the car to convict Appellant. As the Solicitor said in his closing "...We've got undisputed facts to this forensic evidence that nobody can dispute." (Tr.Tr. pg. 515; lines 20-14)

Appellant was not given a fair trial because of the Brady violation and the conviction should be overturned.

ARGUMENT 2

Whether trial court should have granted Directed Verdict Motion?

The Due Process Clause of the Fourteenth Amendment permit the conviction of a criminal defendant only when the state proves every necessary fact "Beyond a Reasonable Doubt" in Re Windship, 397 U.S. 358(1970) At the end of trial, counsel moved for a directed verdict(Tr.Tr. pg. 475; lines 8-18; pg. 481; lines 1-7) which was denied and as such contend that the court was in error for doing so.

Accordingly, Appellant contends that the suppressed evidence violated his right to confrontation, when defense was not given opportunity to conduct cross-examination. See State v. Gathers, 369 S.E.2d 140(1988) The testimony at trial, reveals that some of the prosecution witnesses gave conflicting

theories about whether Joshua Carraway was in the car or out when he fired 69
fatal shot. With the "trustworthiness approach" announced in *Opper v. United*
states, 348 U.S. 83(1954); *State v. Abraham*, 759 S.P2d 440(2014) it is
required that testimony be corroborated with forensic evidence in this case.
Abraham id. Therefore, Appellant will address two factors under *Opper* to show
how this suppressed evidence violated Brady and denied Applicant a fair trial.

1) CREDIBILITY

According to the evidence presented at trial, Mr. Joe, Mr. Simms and Mr.
Carraway went to the Days Inn to sell drugs.(Tr.Tr. pg. 276; lines 17-20;
pg.278; lines 2-13) However, it is not clear where defendant was when all of
this was going on. Only Mr. Carraway identified Appellant as the shooter, but
Mr. Carraway lied to the police numerous time on day of crime(Tr.Tr. pg. 418;
lines 12-22) and Mr. Carraway also told police that he was with Jermaine,
Curtis (Tr.Tr. pg. 420; lines 2-21) and at that time did not mention Appellant
at all when questioned at hospital. Moreover, as noted that the only state's
witness who places Appellant at crime scene must be scrutinized under the
Opper. Id "Trustworthiness Approach" with other testimony. For instance, at
trial Mr. Carraway testified:

Q: All right, what did he say about anybody getting shot?

A: Just like when he put the gun in the car and when Marcus shot he just
pulled the trigger and it jammed on the first shot he ran. Tr.Tr. pg. 411;
lines 21-25

However, Mr. Davis testified that:

Q: All right, can you tell us, tell the jury what happened?

A: Okay. When we pull up I call and he say he'd be right out so he sends somebody else. He sent somebody---

Q: How many people?

A: One I seen one person

Q: You saw one person?

A: Yes Sir. Tr.Tr. pg. 281; lines 13-20

Q: you just, and so its basically just one dude comes up and did he have a gun?

A: He he had a gun. Tr.Tr. pg. 304; lines 1-6

Without even referring to Mr. Graham's testimony, it is clear nothing corroborates the extra-judicial statement of Mr. Carraway. See State v. Person, 2012 W110829743. As such, Appellant contends Mr. Graham testimony corroborates the testimony of Mr. Davis where he said that:

Q: What were you focused on?

A: The gun in the front seat.

Q: All right, So somebody opened Marcus' door and yelled give it up?

A: Yes Sir. Tr.Tr. pg. 367; lines 13-17

The only testimony given by Mr. Carraway, is uncorroborated by testimony of two witnesses of the crime. Therefore, the "corroboration rule" requires that extra-judicial confession of co-defendant be corroborated by proof of the corpus delicti. See, State v. Osborne, 335 S.C. 172, 175(1999) This rule is satisfied if the trial testimony herein, provides sufficient independent evidence that corroborates the co-defendants extra-judicial statements. The word "Corpus Delicti" means "Body of Crime" Blacks Law Dictionary 9th Ed.

2009. Despite Mr. Carraway testimony that him and Mr. Simms was at car and Mr. Simms brandished a firearm. There are two critical pieces of testimony, which would allow a court to conclude Mr. Carraway evidence is untrustworthy. First, at trial Mr. Davis testified that:

Q: Okay what did he do on the other side?

A: He opened the door.

Q: All right and then what did he do?

A: Pulled the gun out. Tr.Tr. pg. 282; lines 1-4

Moreover, Mr. Carraway admitted that he was the only one who approached vehicle(Tr.Tr. pg. 396; lines 11-12) and was sitting behind Mr. Weaver. Also Mr. Davis testified that:

Q: All right, and--and he hit you?

A: Correct.

Q: All right, what was being said?

A: He just "Give it up." Tr.Tr. pg. 282; lines 12-15

Based on Mr. Graham, Mr. Davis testimony, it is reasonable to assume these two witnesses are referring to Mr. Carraway who admitted being only person approaching this vehicle(Tr.Tr. pg.430; lines 3-13) and corroborated by Mr. Graham, Mr. Davis direct and cross-examination testimony. Accordingly, no one else approached this car and if no one else came to this vehicle, in light of this evidentiary fact, the state has failed under *Oppenheimer, Id. Abraham, Id.*, that together with such statements permits a reasonable belief Appellant aided or assisted Mr. Carraway in this crime. Nor can it be reasonably concluded on the basis of Mr. Joe's testimony, me and Mr. Carraway left vehicle together without more is not adequate proof of participation(Tr.Tr. pg. 353; lines

3-25; pg. 357; lines 17-25) See, State v. Hill, 234 S.E.2d 219(1977) Osborne, Id. at 180 N.9

In Hill, the appellant previously discussed the robbery with perpetrators, appeared at crime scene and may have viewed the commission of the robbery, but he was possibly unaware of the final planning and did not accompany the perpetrators as they committed the robbery. Hill Id at 221., Herein, there is no proof Appellant and Mr. Carraway discussed the robbery or knew anything about it.(Tr.Tr. pg.342; lines 3-11; pg. 353; lines 3-13) Despite coming to the crime and was probably standing around watching it, still there is not proof defendant engaged in any actions or discussed anything relating to what anyone was going to do. Person, Id. Osborne, Id. State v. Thompson, 64 7 S.E.2d 702(2007) since Appellant co-defendant was discredited, then the only testimony that can reasonably be deemed credible is Mr. Joe, Mr. Graham and Mr. Davis. As a direct consequence Mr. Joe told court that Appellant knew nothing about this crime(Tr.Tr. pg. 357; lines 22-25; pg. 342; lines 9-13)

This testimony negates a critical element, and with the corpus delicti "corroboration rule" neglected it is clear trial court committed error by denying both Brady and directed verdict motions Thompson, Id at 704. Simpson v. Moore, 627 S.E.2d 701(2006)

2) MATERIALITY/PREJUDICE

Suppression by prosecution of evidence favorable to the accused upon request violates Due Process where evidence is material either to guilt or to punishment irrespective of good faith or bad faith of prosecution. See State

The defense as noted moved to exclude these photos under Brady, and Under Brady the Appellant must meet three criterias in order to prevail is as follows:

- 1] That the evidence is favorable either because it is exculparoty or impeaching.
- 2] That the Government suppressed the evidence.
- 3] That evidence was material to defense, See, Stricklev. Greene, 527 U.S. 26 3(1999) United States v. Higgs, 663 F.3d 726(4th Cir.2011)

As counsel informed court that:

"Your honor, as it relates to the pictures that were just received on yesterday, I was there with the Solicitor when he got them. We'd already pulled the jury. I've already got my case prepared for trial and then these additional materials come up and I think in the spirit of Brady, your honor, I just don't believe that they should be admissible." Tr.Tr. pg. 66; lines 2-8

Thus, Appellant has satisfied the first two prong under both Strickler, Higgs, so the remaining question is how vehicle is material to the defense. We begin with pathologist, who testified that:

Q: Now can you please tell the jury where exactly he had gun shot wounds?

A: He actually had two gunshot wounds. The fatal gunshot wound was to his back, his right upper back just a little bit to the right of his midline. It wen into his back, went through the aorta, which is the main vessel bringing blood from the heart to the rest of body through aorta, also hit the airway and the left lung before it exited the front chest. Tr.Tr. pg. 193; lines 22-25; pg. 1 94; lines 1-6

Now Investigator McFadden testified that:

Q: Okay and what did you with regards to debriefing or discussing with the forensic officers what they had found and comparing physical evidence to what you had gotten in statements?

A: I asked him what they had because I'd explained to them from everybody's statement that it seemed like everybody saw everything they seen, everybody saw a different angle. So I had to ask them to explain it in what they found from then car because in fact paul Byrd was processing the car, him and Chief Lutcken and they explained to me that there was a shot from front to back from the passenger seat.

I asked him was there any shots from back to front and they said no, there wasn't a shot from back to front. So Shane Graham, his theory was that the person that shot was at the front door. Tr.Tr. pg. 458; lines 13-24

One would believe Mr. Graham testimony or theory, that the shooter was at Mr. Weaver's door waiving a gun(Tr.Tr. pg. 367; lines 13-17) or Mr. Carraway that Appellant was at Mr. Weaver's door with a gun and fired into car.(Tr.Tr. pg. 412; lines 1-9; pg. 431; lines 1-9) But all of this testimony is not corroborated by forensic evidence, as it is required before case is submitted to the jury. The proper standard of materiality must reflect our overriding concern with justice than with a finding of guilt. See Chavis v. North carolina, 637 F.2d 213(4th Cir.1980) Such finding is not permissible in case at bar, since it is not supported by evidence establishing guilt beyond a reasonable doubt, it is necessarily follows the omitted evidence creates a reasonable doubt that did not otherwise exist. Chavis, Id. When the pathologist testimony is supported my Mr. Adams(Tr.Tr. pg. 179; lines 13-17)

constitutional errors has been committed which means the omission must be evaluated in the context of entire record if there is nor reasonable doubt about guilt.

"The materiality standard for Brady claims is met when the favorable evidence could be reasonably be taken to put the whole case in such a different light to undermine confidence in the verdict" Banks v. Dretke, 540 U.S. 668(2004) Porter v. State, 629 S.E.2d 353(2006) The evidence from crime scene investigators, indicates as Investigator McFadden testified that;

"I asked him was there any shots from the back to front and he said no, there wasn't a shot from back to front. So Shane Graham, his theory was that the person that shot was at the front door. Squan theory was the person had to be in the back seat." Tr.Tr. pg.458; lines 21-25

Q: Do you recall if it was front to back or back to front what do you recall?

A: It was from front to back. Tr.Tr. pg. 242; lines 20-22

Q: Okay when you saw the bullet holes, what direction were they moving from? Back to front? Front to back? Top to the bottom?

A: Well, it appeared that they originated from the front passenger seat area.

Q: Okay, how many bullet holes did you see moving from front to back?

A: Three. Tr.Tr. pg. 212; lines 18-22; pg. 213; lines 1-3

When these crime scene investigators testified on direct examination, these bullets holes originated from front to the back(Tr.Tr. pg. 213; lines 7-12) clearly questions validity of all forensic evidence, as well as testimony of Mr. Carraway. As Mr. Weaver was shot in the back(Tr.Tr. pg. 59; lines 5-8) But also told the court that:

And it went from front to back, through the seat into the back seat and the

second one went from front to back at an angle through the seat, hit the rocker panel of the back passenger side door, which was open and—and exited the car. And then third shot went into the—into the seat from the front and was lodged in there and they retrieved it from the seat. Tr.Tr. pg. 64; lines 12-8

Either the court could conclude that pathologist, Investigator McFadden and Mr. Moore testimony contradicts testimony of Lieutenant Lutcken and Officer Byrd or their testimony contradicts or refutes pathologist, Investigator McFadden testimony.

For this evidence to satisfy Opper analysis, the forensic evidence must be corroborated with other evidence. So when as herein, the forensic evidence does not satisfy Opper "Trustworthiness Approach," then it is reasonable to conclude the suppressed evidence denied Appellant a fair trial. See, Porter v. State, 629 S.E.2d 353(2006) The impeachment value of this vehicle is clear, either Mr. Carraway is outside vehicle firing gun or inside car and refutes testimony of both Mr. Byrd and Lieutenant Lutcken. Who both said shots originated outside of car(Tr.Tr. pg. 213; lines 1-3) Either Mr. Carraway was outside or inside. Thus, Officer Byrd and Lieutenant Lutcken could not have been telling the truth. But the same can be said, as noted about Officer Moore,. Investigator McFadden and pathologist.

When determining whether suppression of vehicle is material under Brady, we consider the collective impact of the undisclosed evidence. See Kyles, Whitley, 514 U.S. 419(1985) Because Brady is founded upon a sense of fairness and justice, the focus in a Brady analysis is not on the misconduct of solicitor, but on the fairness of Appellant trial. As the court said in Gibson v. State, 334 S.C. 515(1999) that:

"If suppression of evidence results in constitutional error, it is because of the character of the evidence not the character of the Prosecutor." Gibson, Id. at 528

01

The questionable character of evidence, is on conflicting theories. However, defense never had an opportunity to examine evidence. Out State Supreme Court, has adopted the duty to preserve analysis of Arizona V. Youngblood, 488 U.S. 51(1988) in its jurisprudence Moses v. State, 390 S.C. 502(2010) While recognizing that the state does not have an absolute duty to preserve potentially useful evidence, our Supreme Court has held Appellant must either demonstrate either the state destroyed evidence in bad faith. Which the Appellant can not on basis of record prove. But state did destroy evidence that possessed exculparoty value that is apparent before the evidence was destroyed, then it is clear neither Mr. Carraway testimony or prosecution's theory can be supported by forensic evidence which creates a doubt about his credibility or prosecution's theory of case. (Tr.Tr. pg. 515; lines 22-24)

Wherefore, Appellant asks court to vacate conviction

Respectfully Submitted:

s/_____

Justin Simms/Pro Se

Date: _____ day of _____, 20____,

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

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

The State, Respondent,

v.

Justin R. Simms, Appellant.

Appellate Case No. 2013-002748

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

Unpublished Opinion No. 2016-UP-296
Submitted March 1, 2016 – Filed June 15, 2016

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, and
Justin R. Simms, pro se, for Appellant.

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

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

APPEAL DISMISSED.

LOCKEMY, C.J., and WILLIAMS and MCDONALD, JJ., concur.

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11828
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 07, 2016

The Honorable Connie Reel-Shearin
180 N Irby St MSC-E Rm B11
Florence SC 29501-3456

REMITTITUR

Re: The State v. Justin R. Simms
Lower Court Case No. 2010GS2101427
Appellate Case No. 2013-002748

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Justin R. Simms, 358130
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
David Alexander, Esquire

FILED
2016 JUL 13 PM 4:16
CLERK OF COURT
CLERK & GS
FLORENCE COUNTY, SC

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Florence)Justin Simms #358130)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

20 16 CP 21 2267APPLICATION FOR
POST-CONVICTION RELIEFFILED
SEP 19 PM 3:41
CLERK OF COURT
FLORENCE COUNTY, SCINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correction Institution / 990 Wiscoky Highway
Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Florence County General
Sessions Court
3. Name(s) of co-defendant(s) (if any) Curtis Joe Joshua Carraway
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-21-1427 Murder
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12-13-13
- (b) (40 yrs For murder) (30 for Armed Robbery) 5 yrs weapons charge/
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court Of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 15th. 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance Of Counsel
- (b) Counsel Failed to object to Judges charge to Jury
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Prosecution destruction of evidence made counsel ineffective
- (b) Trial court charge on reasonable doubt/hands of one confused Jury
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. N/A
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. N/A
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. N/A
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. N/A
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. N/A
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- iii. _____

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

(a) _____
 (b) N/A
 (c) _____

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

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

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

(a) the name and address of each attorney who represented you:

i. Cheron Scott ~~XXXXXXXXXX~~
 ii. David Alexander
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial/Sentencing Preliminary Hearings/Bond
 ii. South Carolina Appellate Defense / Appeal
 iii. _____

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

vacate conviction / New trial

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

No

STATE OF SOUTH CAROLINA)

County of Lee)

VERIFICATION

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

SWORN to and subscribed before me this 13th
day of Sept, 2016.

Dorine Pamy (L.S.)
Notary Public

My Commission Expires: 9/27/23

2016 SEP 19 PM 3:41
JAMES HILL SHEARIN
ROOF & GS
LEE COUNTY, SC

FILED

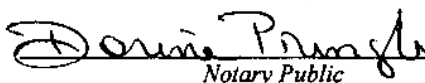
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Justin Simms, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
13th day of Sept, 2016.


Notary Public

My Commission Expires: 9/27/23

2016 SEP 19 PM 3:41
CLERK OF COURT
JUDGE ROBERT H. HARRIS
COURT & CLERK
GREENSBORO COUNTY, SC

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Justin R. Simms, #358130,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

2016-CP-21-2267

RETURN

FILED
2017 FEB 16 PM 3:25
JUDGE J. P. O'HARA
CLERK & GS
FLORENCE COUNTY, SC

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on September 9, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the October 2010 term of the Florence County Grand Jury on one count each of Murder, Attempted Armed Robbery, and Possession of a Weapon During Commission of a Violent Crime (2010-GS-21-1427). Applicant was represented by Cheveron T. Scott, Esq., and Robert Stucks, Esq. On December 9-13, 2013, Applicant proceeded to trial before the Honorable R. Knox McMahon and a jury, and he was convicted as indicted. Judge McMahon sentenced Applicant to a term of imprisonment for forty years for murder, twenty years for attempted armed robbery, and five years for possession of weapon, all to be served concurrently.

Applicant filed a timely Notice of Appeal. An Anders¹ brief was, thereafter, submitted by David Alexander, Esq., on behalf of Applicant. The South Carolina Court of Appeals affirmed Applicant's conviction on June 15, 2016. State v. Simms, Op. No. 2016-UP-296 (S.C.

¹ 386 U.S. 738 (1967).

Ct. App. 2016). The Remittitur was returned on July 7, 2016.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. "Prosecution destruction of evidence made counsel ineffective" (sic)
 - b. "Counsel failed to object to Judges (sic) charge to Jury (sic)"
 - i. Trial court charge on Reasonable (sic) doubt/hands of one confused jury"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code § 17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. SCRCP Rule 11. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only person authorized to file amendments. SCRCP Rule 11.

III.

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

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in his or her application. Id. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id.

Applicant takes particular issue with trial counsel's failure to object to the court's charge to the jury. However, failure to request particular instructions is not ineffectiveness where those given by the court are adequate. See Campbell v. United States, 364 F.3d 727, 733 (6th Cir. 2004). In addition, if an instruction as given is legally accurate, failure to request additional instructions is not ineffective assistance. See Aparicio v. Artuz, 269 F.3d 78, 99-100 (2d Cir. 2001). Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alludes to a claim of prosecutorial misconduct in his Application. However, prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

VII.

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

Respectfully submitted,

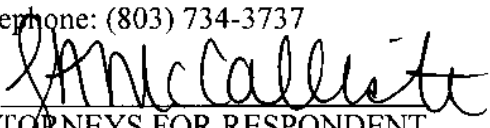
ALAN WILSON
Attorney General

ROBERT BOLCHIOZ
Chief Deputy Attorney General

DON ZELENKA
Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

2/15, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

JUSTIN R. SIMMS, #0358130)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)
_____)

IN THE COURT OF COMMON PLEAS

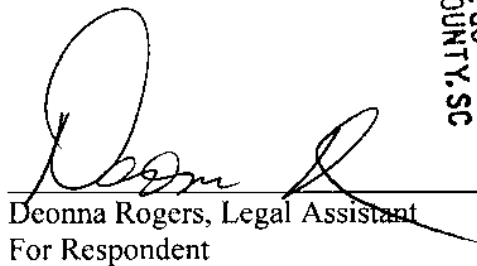
2016-CP-21-2267

AFFIDAVIT OF SERVICE BY MAIL

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

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

DATED this the 15th day of February, 2017.


 Deonna Rogers, Legal Assistant
 For Respondent

2017 FEB 16 PM 3:26
 DONNA ROGERS O'HARA
 CLERK & GS
 FLORENCE COUNTY, SC

FILED

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2016-CP-21-02267
	)	
Justin Simms,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

April 6, 2018
 Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

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

Jonathan Waller, Esquire
 Attorney for the Plaintiff

Lindsey McCallister, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
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1 APRIL 6, 2018

2 (WHEREUPON, the proceedings began at 9:48 a.m. The
3 applicant was present in the courtroom with his
4 counsel.)

5 THE COURT: I'm ready, ma'am.

6 MS. MCCALLISTER: May it please the Court, Your Honor.
7 This is Justin Simms versus the State of South Carolina,
8 2016-CP-21-2267.

9 Your Honor, Mr. Simms was indicted in October of 2010 by
10 the Florence County Grand Jury for one count each of murder,
11 attempted armed robbery, and possession of a weapon during
12 the commission of a violent crime. He was represented on
13 those charges by Chevron Scott and Robert Stucks.

14 On January 9th -- I'm sorry -- December 9th through the
15 13th, 2013, he proceeded to trial before Judge Knox McMahon
16 and a jury and was convicted as indicted. Judge McMahon
17 sentenced Mr. Simms to a term of imprisonment of 40 years for
18 murder, 20 years for attempted armed robbery, and five years
19 for possession of a weapon, all to be served concurrently.

20 He filed a timely notice of appeal and an Anders brief
21 was submitted by David Alexander of the Office of Appellate
22 Defense on his behalf. The South Carolina Court of Appeals
23 confirmed his conviction on June 15th, 2016, and issued the
24 remittitur on July 7th, 2016.

25 He timely filed his application for post-conviction

1 relief on September 9th, 2016. Mr. Jonathan Waller has been
2 appointed to represent Mr. Simms in this matter, and both Mr.
3 Waller and Mr. Simms are present in the courtroom. And I
4 would ask if Mr. Waller could just put the allegations on the
5 record at this time.

6 THE COURT: Yes, sir, Mr. Waller, if you could give me a
7 list of what they are, please.

8 MR. WALLER: Thank you, Your Honor.

9 The allegations fall under allegations of ineffective
10 assistance of counsel. Your Honor, more specifically, the
11 applicant alleges that counsel was ineffective for, I guess,
12 a lack of preparation, particularly in not anticipating the
13 State's theory of the case.

14 Counsel was ineffective for failing to object to an
15 incomplete copy of the jury charge being submitted or sent
16 back with the jury. There was, I believe, two individual
17 sections sent back after a jury question.

18 There was no polling of the jury.

19 Counsel waited until a week prior to trial to file a
20 motion to inspect the vehicle. It had already been returned.

21 Your Honor, those are the specific allegations. There
22 are some general preparation-type allegations as well.

23 THE COURT: All right. Are you ready, Ms. McCallister?

24 MS. MCCALLISTER: Yes, Your Honor.

25 THE COURT: All right. Proceed, sir.

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 MR. WALLER: Thank you, Your Honor. The applicant would
2 call Justin Simms.

3 THE CLERK: Mr. Simms, place your -- right there. Place
4 your left hand on the Bible and raise your right hand as much
5 as you can.

6 Do you swear or affirm that the testimony you give will
7 be the truth, the whole truth, and nothing but the truth, so
8 help you God?

9 THE APPLICANT: Yes, ma'am.

10 MR. WALLER: May it please the Court, Your Honor.

11 THE COURT: Yes, sir.

12 JUSTIN SIMMS, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WALLER:

16 Q: Good morning, Mr. Simms. How are you today?

17 A: Yes, sir. I'm fine. How are you doing?

18 Q: I'm doing well. Thank you for asking.

19 Mr. Simms, what -- what all charges were you arrested
20 for?

21 A: I was arrested for murder, originally I was arrested for
22 armed robbery, and I guess possession of a firearm or
23 something like that.

24 Q: Okay. And that armed robbery -- was that originally --
25 or eventually changed to attempted armed robbery?

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 A: Yes, sir.

2 Q: Okay. You were not the only person arrested; is that

3 right?

4 A: No, sir, I wasn't.

5 Q: You had how many co-defendants?

6 A: I had two co-defendants.

7 Q: Okay. When you got to trial, you were the only one on

8 trial; is that right?

9 A: Correct.

10 Q: Okay. Both of your co-defendants testified against you?

11 A: Yes, sir.

12 Q: Okay. What were the names of those co-defendants?

13 A: Joshua Carraway and Curtis Joe, Jr.

14 Q: Okay. And a little bit of background so the judge

15 understands. What were the allegations, as you understood

16 them, against you, Mr. Carraway, and Mr. Joe?

17 A: Okay. The allegations were that -- that first it was a

18 drug -- it was supposed to be a drug deal, according to the

19 State. They said that it was supposed to be a drug deal, and

20 it turned into an armed robbery.

21 Q: Okay. And there were three people on your side; is that

22 right?

23 A: Yes, sir.

24 Q: Including you. And three people on the other side; is

25 that right?

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 A: Yes, sir.

2 Q: Okay. Which group was alleged to have been buying the
3 drugs and which group was alleged to have been selling drugs?

4 A: Well, to my knowledge -- to my knowledge, we were
5 supposed to sell drugs to the other group.

6 Q: Okay.

7 A: And the other group was supposed to -- was supposed to
8 buy them.

9 Q: Okay. Was it your understanding that the -- that the
10 other group intended to rob the --

11 A: Yes, sir.

12 Q: -- drug sellers as well?

13 A: Yes, sir. It was -- you know, I -- at first, I didn't
14 think about it, but, you know, at first -- first, my co-
15 defendant -- they called me and they asked me to go with them
16 on a drug deal, which is -- you know. You know, that's what
17 they do. They sell drugs. And, you know, but --

18 Q: Mr. Joe was the drug dealer; is that correct?

19 A: Yes, sir.

20 Q: Okay.

21 A: And he asked me to go with them. So I'm like, that's
22 fine. We had a hotel. Not at Days Inn, but across the --
23 across the street, and that's where we were until he received
24 the phone call to say -- from the guys who said that they --
25 that they were ready to buy the drugs. So we went over there

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 and when we went over there, you know, it just was so
2 suspicious because they was acting like they wasn't there,
3 you know.

4 Q: Okay.

5 A: And --

6 Q: All right. And y'all's group was coming from where?

7 A: Darlington.

8 Q: Okay.

9 A: We was coming from Darlington.

10 Q: And the other group was coming from Lake City?

11 A: Yes, sir, I guess.

12 Q: And y'all kind of met in the middle in Florence?

13 A: Yeah. I never -- I never knew any of those guys.

14 Q: Okay. Essentially, it was a group of people that were
15 going to buy drugs with no money and a group of people who
16 were going to sell drugs with no drugs; is that right?

17 A: No. Actually --

18 Q: That your understanding of the allegations?

19 A: Yes, sir. The allegations, yes, sir.

20 Q: Okay.

21 A: According to the State, yes, sir.

22 Q: All right. And it's alleged at some point that, you
23 know, everybody realizes that what is supposed to happen is
24 not going to happen; is that right? There's no drug deal.
25 So everybody -- the allegations were that everybody was

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 intending to rob each other?

2 A: Well, I mean to my knowledge, it was supposed to be a
3 drug deal.

4 Q: Okay.

5 A: To my knowledge, you know, but when I went to trial --
6 when I went to trial, Curtis Joe said something about
7 Carraway planned to rob them. But, you know, I had no -- I
8 had no knowledge of this. You know, I'm -- I'm just
9 supporting the drug deal.

10 Q: Okay.

11 A: Making sure that drug deal goes right, you know.

12 Q: Okay. When you were arrested -- and so the individual
13 that had passed away was not either Mr. Carraway or Mr. Joe?

14 A: No, sir.

15 Q: He was with the other group?

16 A: No, sir.

17 Q: Okay. Mr. Carraway was actually shot as well; is that
18 right?

19 A: Yes, sir. He was shot twice.

20 Q: Okay. The individual who ultimately passed away -- he
21 shot a great deal of time; is that right?

22 A: Yes, sir.

23 Q: Okay. Including shooting himself once in the arm?

24 A: That's what the State alleges.

25 Q: Okay.

JUSTIN SIMMS - DIRECT BY MR. WALLER

- 1 A: That he shot hisself.
- 2 Q: After you were arrested, how long after that did you get
- 3 an attorney?
- 4 A: I -- I got -- I was arrested on the 20th of January and
- 5 the week -- before -- before February, I had -- I had an
- 6 attorney.
- 7 Q: Okay. Who was your attorney?
- 8 A: Chevron Scott.
- 9 Q: Okay. Ms. McCallister, in giving the procedural history
- 10 of the case to the Court, mentioned a Robert Stucks. Who is
- 11 that to you?
- 12 A: That's my father.
- 13 Q: Okay. So was he representing you day to day or was that
- 14 Mr. Scott?
- 15 A: He was just trying to assist Mr. Scott and, you know, he
- 16 didn't really -- he just was trying to assist Mr. Scott, you
- 17 know, who was the leading attorney.
- 18 Q: Okay. And that was my question. All right. When you
- 19 and Mr. Scott first met, you had been charged with all three
- 20 offenses; is that right?
- 21 A: Yes, sir.
- 22 Q: Okay. Did y'all discuss the elements of each of those
- 23 offenses?
- 24 A: No, sir.
- 25 Q: Okay. Did you discuss the potential penalties of each

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 of those offenses?

2 A: No, sir. But I knew, but me and him didn't discuss it.

3 Q: Okay. But you knew it from some other source?

4 A: Yes, sir.

5 Q: Okay. What did y'all discuss?

6 A: We -- we discussed -- he talked to me about pleading
7 and, you know, that wasn't no -- I didn't have no -- no means
8 of pleading because -- you know, because I wasn't guilty of
9 the crime. I wasn't guilty of murder.

10 So he asked me -- I asked him about the car because, you
11 know, I felt like the car has something in it and, you know,
12 it has something in it that could prove that I wasn't the
13 shooter.

14 Q: Okay. Let me back you up just a little bit. Let me ask
15 you about the car. The -- there were a bunch of shots fired
16 that struck the car, either from inside or outside; is that
17 right?

18 A: Yes, sir.

19 Q: Okay. And everyone was aware that the individual that
20 passed away was shooting from inside the car?

21 A: Yes, sir.

22 Q: Okay. It was unclear from the State even whether the --
23 where the other shots came from? Is that your understanding
24 that they came from inside the car or outside the car?

25 A: Say that -- say that again? I didn't -- I didn't quite

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 understand that.

2 Q: Was it your understanding that the shots not from the
3 victim -- the State wasn't quite sure where they came from,
4 either inside or outside the car?

5 A: Are you talking about the 15 shots the victim shot or
6 some other?

7 Q: The other -- the other shots. The shot that killed the
8 victim.

9 A: Oh. Well, according to my -- well, when I went to
10 trial, I see that there was a conflict with the investigators
11 -- the investigators and the -- the expert witnesses, who --
12 and their stories was different. The expert actually said
13 that the shots came from the outside, but the investigator
14 who -- who was -- who was leading the case or whatever, he
15 felt like they came from inside.

16 Q: Okay.

17 A: He wasn't sure if it come from the inside or the
18 outside.

19 Q: Okay.

20 A: He wasn't sure.

21 Q: Mr. Carraway was actually in the car?

22 A: Yes, sir. He was in the car.

23 Q: Okay. So to back up to the car, you thought that the
24 car had some evidence that you wanted to be able to address;
25 is that right?

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 A: Yes, sir.

2 Q: Y'all wanted to look at how the shots that were fired
3 struck the car?

4 A: Yes, sir.

5 Q: Okay. Did you and Mr. Scott ever discuss retaining an
6 expert to review the holes in the car or how the shots might
7 have been fired?

8 A: No, sir. When I -- when I asked him about the car, it
9 was right before my preliminary hearing. And when I went to
10 my preliminary hearing, the judge asked -- he was -- he asked
11 about the car. He asked the prosecutor and the investigator
12 about the car, and they said that they released the car.

13 MS. MCCALLISTER: Your Honor, I need to object to
14 whatever --

15 THE COURT: Sustained. Sustained.

16 MS. MCCALLISTER: -- is hearsay.

17 BY MR. WALLER:

18 Q: Mr. Simms, you can't testify to what someone else said.
19 Okay?

20 A: Okay. Okay.

21 Q: The car was released very early on; is that right?

22 A: Ten days after they received the car.

23 Q: Okay. Did you and Mr. Scott ever discuss filing any
24 motions to inspect the car?

25 A: I told him to.

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JUSTIN SIMMS - DIRECT BY MR. WALLER

1 Q: Okay. What response did you get?

2 A: I mean he couldn't -- he couldn't -- if -- if the State
3 releases the car before February, the crime -- if this
4 happens in January and the State releases the car before
5 February, then he can ask for it all he want to. He can't --
6 he can't get it.

7 Q: Okay.

8 A: Because the State released it.

9 Q: When you say January, what year are we talking about?

10 A: 2010. January 2010.

11 Q: And what was the date of your trial?

12 A: December -- I'm thinking it started December.

13 Q: In 2013?

14 A: '13.

15 Q: Okay.

16 A: In December.

17 Q: So three -- almost four years later; is that right?

18 A: Yes, sir.

19 Q: Okay. You testified that you and Mr. Scott did not
20 discuss the elements of the offenses, but you knew what they
21 were?

22 A: Yes, sir.

23 Q: Okay. What -- other than the plea and the car, what
24 else did y'all talk about?

25 A: He told me that it was going to -- it was going to be

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 hard to win because my co-defendants were going to testify
2 against me, and he was just trying to persuade me to plead,
3 and I just wasn't -- I didn't want to plea. I wanted to go
4 to trial. I didn't want to forfeit my rights.

5 Q: Okay.

6 A: You know, he didn't really -- he didn't really talk to
7 me much. I was home. I received a bond and I was home for,
8 like, 36 months, and I never -- he never came and saw me, not
9 once, you know, and I just -- I was waiting on him every day.
10 You know, I just -- you know, I knew he was paid and I just
11 was waiting, but he never came and saw me to prepare my case
12 like he should have.

13 Q: Okay.

14 A: You know.

15 Q: When you say you were waiting on him, were you under any
16 sort of electronic monitoring or anything like that?

17 A: Yes, sir, I was.

18 Q: Okay.

19 A: Yes, sir.

20 Q: What kind of restrictions did you have as far as where
21 you could go?

22 A: I could go to church. That's it.

23 Q: All right. Could you go to your lawyer's office?

24 A: Yes, I could go there.

25 Q: Okay. And you said you met with him one time after you

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 bonded out?

2 A: No. I didn't meet with him at all. I went to -- I went
3 and got a court date at the courthouse and there was a
4 conflict and I received a court date. That's it. I never
5 met with him before. No, the whole time I was home, I never
6 met with him.

7 Q: Okay. What was your -- when you get closer to trial and
8 you make the decision to go to trial, what was your
9 understanding of y'all's defense? What was it going to be?

10 A: I mean he never -- he never -- like I said, I didn't
11 speak to him. I didn't -- he never -- he didn't -- he didn't
12 come see me until that week to prepare a defense. I was just
13 hoping that he -- being that he didn't come see me, I was
14 just -- you know, he's my lawyer. He's paid already, and I
15 don't really know much about a lawyer and their job
16 description, but I know that they're supposed to help their
17 clients.

18 Q: Okay.

19 A: You know, so --

20 Q: Did you all ever discuss the theory of the hand of
21 one/hand of all?

22 A: Sir, we never discussed nothing really.

23 Q: Did y'all ever discuss what's also known as accomplice
24 liability?

25 A: No, sir, we didn't.

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 Q: Okay. Did y'all ever discuss the legal theory of mere
2 presence?

3 A: No, sir, we didn't.

4 Q: Okay. When you show up the morning of trial, what did
5 y'all talk about then? Did you ask him what was going?

6 A: Yes, sir. I asked him, hey, did you -- I asked him
7 about the car, you know, because he told me the experts --
8 the expert witnesses was going to testify and I'm like, okay,
9 how can you dispute this evidence if you never, you know, had
10 the car to -- you know. Because that's what the State -- to
11 me, that's what the State solely based their case off of.

12 Q: Okay. What did you -- you testified you didn't talk to
13 your lawyer. What did you think your defense was?

14 A: I just felt like, you know, the guys was trying to rob
15 us, and I feel like it wasn't murder. I felt like it wasn't
16 aforethought. I felt like -- hey, I felt like I didn't -- I
17 didn't -- I didn't wake up and say, hey, I'm going to go kill
18 this guy or, hey, I'm going to do anything like that, you
19 know. I was under the impression that this was a drug deal,
20 and that's what I wanted him to -- you know, to -- to dispute
21 for me that, you know.

22 Q: Okay.

23 A: That's -- I mean --

24 Q: I asked this a little -- a different way earlier, but
25 did you and Mr. Scott ever discuss that a person in South

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 Carolina can be found guilty whether or not they actually
2 pull the trigger?

3 A: No, sir. No, sir.

4 Q: Okay.

5 A: No, sir, he didn't. I have no knowledge of that.

6 Q: Did y'all discuss that a person can be found guilty of
7 participating in a crime, even if they weren't the one that
8 committed the crime, if they were actively participating or
9 aiding and abetting that crime? Did y'all discuss that?

10 A: No, sir, not at all. No, sir.

11 Q: Okay. Discussing the co-defendants briefly, your -- it
12 was alleged that Mr. Carraway and you got out of the car.

13 You got out of Mr. Joe's car; is that right?

14 A: That's the allegation, but it's not true.

15 Q: Okay. The allegations were that Mr. Joe stayed in the
16 car?

17 A: Yes, sir.

18 Q: Okay. And he's the one that set up the whole thing?

19 A: Yes, sir.

20 Q: Okay.

21 MR. WALLER: I beg the Court's indulgence for just a
22 moment.

23 THE COURT: Yes, sir.

24 BY MR. WALLER:

25 Q: Mr. Simms, when did you find out that the vehicle was no

JUSTIN SIMMS - DIRECT BY MR. WALLER

1 longer available?

2 A: I found out at my preliminary hearing.

3 Q: Okay. Okay. You just found out it have been released;
4 is that right?

5 A: Yes, sir.

6 Q: Okay. Mr. Simms, I have no further questions for you.
7 Is there anything that you think I've left out or that the
8 judge needs to be aware of Mr. Scott or Mr. Stucks'
9 representation of you?

10 A: I just feel like Mr. Scott -- he could -- I feel like
11 there were -- there were jurors sleeping during -- during my
12 trial and, you know, I kind of, like, nudged him and was
13 like, hey, they're sleeping. He was like, hey, well, maybe
14 that'll help us.

15 MS. MCCALLISTER: Your Honor, I'm going to object to
16 this. There's no allegation about that in the application.

17 THE COURT: Not even close. Sustained.

18 MR. WALLER: Sure.

19 Mr. Simms, please answer any questions that Ms.
20 McCallister has.

21 THE APPLICANT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MS. MCCALLISTER:

24 Q: Good morning, Mr. Simms.

25 A: Good morning.

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JUSTIN SIMMS - CROSS BY MS. MCCALLISTER

1 Q: You testified just a few minutes ago that this incident
2 happened in January of 2010?

3 A: Yes, ma'am.

4 Q: And you had hired Mr. Scott by sometime in February; is
5 that correct?

6 A: Before February.

7 Q: Before February? So you hired him pretty quickly after
8 this happened; is that right?

9 A: Yes, ma'am.

10 Q: Okay. And you testified a couple times that he talked
11 to you about some things. He talked to you about a plea and
12 he told you that your co-defendants were going to testify and
13 some experts were going to testify; right?

14 A: That's when I was -- when I was in the county jail.

15 Q: Okay. That's what I'm getting at.

16 A: Oh, yes, ma'am.

17 Q: When were those conversations?

18 A: Those were when I was arrested. I was in the county
19 jail for 15 months from January -- January of 2010 until --
20 until April the 4th of 2011, and I received a bond.

21 Q: Okay. So you received bond in April of 2011 and then
22 you were home with electronic monitoring until your trial
23 started; is that correct?

24 A: Yes, ma'am.

25 Q: Okay. And your trial started in December of 2013?

JUSTIN SIMMS - CROSS BY MS. MCCALLISTER

1 A: Yes, ma'am.

2 Q: Okay. So these conversations that you're saying took
3 place with Mr. Scott took place in those months between
4 January of 2010 and April of 2011?

5 A: Yes, ma'am. They took place when I was arrested and
6 when I was detained. When I was --

7 Q: Okay.

8 A: -- incarcerated.

9 Q: When you were incarcerated? And you testified when you
10 were released at home you kept expecting him to come and see
11 you?

12 A: Yes, ma'am.

13 Q: Did you call him and ask him --

14 A: Yes, ma'am.

15 Q: -- to come and see you?

16 A: Yes, ma'am.

17 Q: Do you recall how many times you called him?

18 A: Him -- him and my father -- they -- they speak a lot.
19 So it's not -- you know, all I have to do is just tell my
20 father, hey, call him and, you know, he'll tell him. He'll
21 call him.

22 Q: Did you personally call Mr. Scott?

23 A: Yes. I called him maybe three times.

24 Q: Three times? And what did -- what happened when you
25 called him? Did you get to talk to him over the phone?

JUSTIN SIMMS - CROSS BY MS. MCCALLISTER

- 1 A: Yes, ma'am. I talked to him. He's -- I know -- I think
2 he was a teacher then. So I'm not going to say that he said
3 he was busy, but he just -- you know, he didn't -- he really
4 didn't know what to do. I could tell that he didn't know how
5 to -- to help me, you know.
- 6 Q: Okay. When you talked to him on those three phone calls
7 and you actually reached him and spoke to him --
- 8 A: Yes, ma'am.
- 9 Q: Did you ask him questions about your case?
- 10 A: Yes, ma'am.
- 11 Q: Did he answer those questions?
- 12 A: I mean he didn't really -- he didn't really answer them.
- 13 Q: Okay. And did you -- did you tell him anything you
14 wanted him to do other than this issue about the car?
- 15 A: I wanted -- I told him that I wanted him to show that my
16 co-defendants were lying and that they received a deal from
17 the State. That's what I wanted him to do.
- 18 Q: Okay.
- 19 A: Because I knew that that was a big part in the -- with
20 the State. I know that the State was trying to -- I knew
21 what the State was trying to do; so I just wanted him to help
22 me from that aspect.
- 23 Q: Okay. So that was what you wanted your strategy to be
24 was show that the co-defendants were lying and that they were
25 testifying because they had received a deal?

JUSTIN SIMMS - CROSS BY MS. MCCALLISTER

- 1 A: No. Not my strategy. That's not my strategy, but I
2 mean that's just a part of what I wanted him to help. I
3 wanted him to defend. I wanted him to dispute that.
- 4 Q: Okay.
- 5 A: To show the jurors that. That's not -- not my strategy.
- 6 Q: To be your defense?
- 7 A: A part of my defense.
- 8 Q: A part of your defense? Okay. And do you recall at
9 trial that -- your co-defendants testified at trial; right?
- 10 A: Yes, ma'am.
- 11 Q: And your -- and Mr. Scott got up and cross-examined
12 them; correct?
- 13 A: Yes, ma'am.
- 14 Q: And he had some previous statements that they had given
15 to law enforcement; correct?
- 16 A: Yes, ma'am.
- 17 Q: And he used those statements to sort of show what the
18 inconsistencies were in their stories; correct?
- 19 A: Yes, ma'am.
- 20 Q: And he talked about this issue about them -- you know,
21 why are you here testifying? Are you getting anything out of
22 this? Correct?
- 23 A: Yes, ma'am.
- 24 Q: Okay. So that part of your strategy -- of your defense
25 -- sorry, you said it wasn't a strategy, but part of your

JUSTIN SIMMS - CROSS BY MS. MCCALLISTER

1 defense, Mr. Scott actually did that at trial; correct?

2 A: You said that kind of fast. Can you say that one more
3 time?

4 Q: Okay.

5 A: I'm sorry. Can you say that one more time?

6 Q: Okay. So you're saying -- you just told me a minute ago
7 that you wanted Mr. Scott to help you show that your co-
8 defendants were lying and that they were doing this because
9 they had some kind of deal that they were expecting to get
10 something from the State in return?

11 A: Yes, ma'am.

12 Q: And at trial, Mr. Scott did that; correct? He used
13 their previous statements to show that things had changed
14 between the first time they talked and what they said on the
15 stand, and he -- and he asked them questions about whether
16 they were expecting to get any kind of deal from the State;
17 correct?

18 A: Yes, ma'am.

19 Q: Okay.

20 A: He did do that, and I -- yes, ma'am, he did do that. He
21 tried. He -- he attempted.

22 Q: Okay.

23 MS. MCCALLISTER: I think that's all the questions I
24 have, Your Honor.

25 THE COURT: Mr. Waller?

JUSTIN SIMMS - REDIRECT BY MR. WALLER

1 MR. WALLER: Very briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. WALLER:

4 Q: Mr. Simms, you -- you knew from early on that your co-
5 defendants had written statements implicating you?

6 A: Yes, sir. That's how -- yes, sir. Yes, sir.

7 Q: How did you understand after your conversations with Mr.
8 Scott how that would affect your defense?

9 A: Say that -- say that again, sir?

10 Q: Did you understand how that might affect your defense
11 after talking with Mr. Scott about those contradictory
12 statements?

13 A: I knew that if, you know, you have someone saying, hey,
14 yeah, I did this with him, you know, that's -- that's kind of
15 hard to dispute. That's going to be hard to dispute. So I
16 don't -- I just know that it was going to be hard and that's
17 the main thing he told me. He just kept saying it's going to
18 be hard to win the case if your co-defendants say, hey, this
19 and that, but I'm like, it has to be more, you know.

20 Q: Did you understand that you could be convicted -- based
21 on participating or aiding and abetting the co-defendants in
22 committing a crime, you could still be convicted?

23 MS. MCCALLISTER: Your Honor, I --

24 THE APPLICANT: For being there?

25 MS. MCCALLISTER: Asked and answered.

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JUSTIN SIMMS - REDIRECT BY MR. WALLER

1 THE APPLICANT: For being there you said? For aiding
2 them?

3 MR. WALLER: Hold on, Mr. Simms.

4 THE COURT: Yes, ma'am.

5 MS. MCCALLISTER: He's asked this question, Your Honor,
6 and I think it's been answered.

7 THE COURT: All right.

8 MR. WALLER: Your Honor, I'm asking for --

9 THE COURT: Go ahead.

10 MR. WALLER: -- because of the co-defendants.

11 THE COURT: Yeah. I'll let you. Go ahead. Go ahead,
12 sir.

13 BY MR. WALLER:

14 Q: Did you understand that -- that based on your co-
15 defendants' statements saying that you aided and abetted and
16 helped them commit this crime, even if you weren't actively
17 participating or they said you were actively participating --
18 did you understand you could still be convicted of that?

19 A: No, sir.

20 MR. WALLER: Nothing further. Thank you, Mr. Simms.

21 THE COURT: Ms. McCallister?

22 MS. MCCALLISTER: Nothing further, Your Honor.

23 THE COURT: You may step down, sir.

24 THE APPLICANT: Yes, sir.

25 THE COURT: Mr. Waller?

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 MR. WALLER: Your Honor, the applicant would call
2 Chevron Scott.

3 THE COURT: Okay.

4 THE CLERK: Do you swear or affirm that the testimony
5 you give shall be the truth, the whole truth, and nothing but
6 the truth, so help you God?

7 THE WITNESS: I do.

8 THE COURT: Yes, sir.

9 MR. WALLER: May it please the Court, Your Honor.

10 THE COURT: Yes, sir.

11 CHEVRON SCOTT, being first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WALLER:

15 Q: Good morning, Mr. Scott. How are you today?

16 A: Good morning. How are you?

17 Q: I'm doing well. Thank you for asking.

18 Mr. Scott, how did you come to represent Justin Simms?

19 A: This particular case was a news media kind of case. I
20 heard about it over the news initially, maybe the night it
21 happened or maybe the day afterwards. I did not know Justin
22 personally, but I knew his father, who was Robert Stucks, and
23 I received a phone call from the family asking me for some
24 guidance on it. So that's how I initially got involved in
25 this because they are my family.

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 Q: Okay. So it was relatively quickly after Mr. Simms was
2 arrested?

3 A: Yes.

4 Q: Okay. If you could, so the judge has an understanding,
5 what was the general allegations against Mr. Simms, as well
6 as the co-defendants?

7 A: At that particular time, I don't think he was charged
8 with murder. I think it was, like, an armed robbery and
9 possession within -- of a weapon during the commission of a
10 crime, and those were the general allegations or the -- or
11 the main ones.

12 Q: Okay. And it was a drug deal gone bad, so to speak; is
13 that right?

14 A: Are you asking me as of that particular time? Because
15 at that particular time, I didn't know any of the specifics
16 at that particular time.

17 Q: When you first became aware of the State's allegations,
18 what was your understanding of the allegations by the State?

19 A: That it -- that you had two factions of groups of men
20 that were coming together to do a drug transaction that ended
21 up being deadly.

22 Q: Okay. And what was alleged to be Mr. Simms's role in
23 this drug deal?

24 A: Now, I'm going to ask you -- I want to make -- I want to
25 make sure I understand the question because you had the co-

CHEVRON SCOTT - DIRECT BY MR. WALLER

- 1 defendants saying one thing, then I had confidential
2 conversations with my client with something else, and then
3 you had the discovery that I got that said something else.
4 So when you're asking me, I'm confused as it relates to what
5 perspective are you asking me on.
- 6 Q: What did the discovery tell you?
- 7 A: Based on the State's information, the allegations were
8 that my client was the -- the gunman who fired the fatal
9 shots.
- 10 Q: Okay. He was never alleged to have gotten in the car;
11 is that right? He was supposedly on the outside of the car?
- 12 A: Based on all of the discovery that I initially got,
13 there was no -- I saw nothing in there where he actually was
14 in the car.
- 15 Q: Okay. Mr. Carraway was in the car? Is that what you
16 recall? And I know it's been quite some time.
- 17 A: Based on the discovery that I received, yes.
- 18 Q: Okay. Did you have information that was different from
19 that?
- 20 A: I had conversations that I had with -- confidential
21 conversations that I had with my client.
- 22 Q: Okay. Okay. Let me ask it this way. When y'all
23 ultimately got to trial, what was your defense? What was
24 your theory of the case?
- 25 A: Our theory was that my client did not participate in the

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CHEVRON SCOTT - DIRECT BY MR. WALLER

1 fatal shot, meaning that he was not the one who -- well, who
2 allegedly killed the victim in this matter.

3 Q: Okay. What -- he didn't fire the shot, that someone
4 else fired the shot; is that right?

5 A: Correct.

6 Q: Okay. What was your understanding of his participation
7 in the robbery or drug deal, so to speak?

8 A: I'm not quite sure how -- how I can answer that without
9 divulging and going into specific confidentiality that I had
10 with my client. I understand the parameters of this, even
11 though this is only the second time I've ever had a PCR.

12 So if I -- within my -- without violating
13 confidentiality, if you would like for me to go into that, if
14 it's -- if it's the ruling of the Court, I will go into that.

15 Q: Let me ask it a different way.

16 MS. MCCALLISTER: Your Honor?

17 THE COURT: Ms. McCallister?

18 MS. MCCALLISTER: Your Honor, if I can say something
19 about that? I think Mr. Simms has waived that
20 confidentiality when he filed this -- this application.

21 THE COURT: I agree.

22 MS. MCCALLISTER: At least as far as it goes towards
23 these allegations in the application.

24 THE COURT: Yes, ma'am. And I agree. I agree.

25 MR. WALLER: I agree with that as well, Your Honor. I

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 would agree he can answer my questions.

2 THE COURT: I understand.

3 BY MR. WALLER:

4 Q: What was your defense as far as Mr. Simms's involvement
5 in the drug deal?

6 A: Our theory was that he did not have the specific intent
7 for murder because he did not fire the fatal weapon, nor was
8 he a part of the actual robbery.

9 Q: Okay. All right. Did you discuss with Mr. Simms the
10 theory of hand of one/hand of all or accomplice liability?

11 A: I discussed that theory with him. I did not
12 specifically discuss that theory with him, the hand of one is
13 the hand of all, prior to the trial.

14 Q: Okay.

15 A: And the reason why I didn't was because I did not know
16 specifically what all of the testimony was going to be
17 because of all of the inconsistencies that we had.

18 Q: Okay.

19 A: But during the trial, we had an extensive conversation
20 about that.

21 Q: Okay. So once the trial started and you saw what the --
22 what the State was presenting, you had that conversation with
23 him?

24 A: Yes.

25 Q: Okay.

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 A: And may I add not only -- not only did I have the
2 conversation with him, but this was a very unique kind of
3 representation. What made it unique was that not only was I
4 representing him, but I had a young lawyer, who was his
5 father, who was also a part of it.

6 So what made it unique was the sense that a lot of the
7 conversations that we had, I had someone who was a family
8 member of his who could actually kind of relate it to him in
9 a different way than it would be me relating it to him, which
10 I thought was a very positive thing.

11 So I had numerous conversations and extensive
12 conversations not only with Mr. Stucks, but throughout this
13 whole representation, I had conversations with -- with my
14 client as well. As a matter of fact, very few -- he had my
15 cell phone number.

16 Q: Right.

17 A: So we had a number of conversations prior to us even
18 getting to the trial.

19 Q: Okay. So you thought it was a positive to have his
20 father as co-counsel in this case?

21 A: Absolutely.

22 Q: Okay. What -- when did you find out the vehicle had
23 been released?

24 A: I don't recall exactly when, but it was probably
25 sometime around the preliminary hearing, around that

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 particular time, but by the time I had found out that it had
2 been released, it already -- It had already been -- it had
3 already been released. So there was no reason to try to --
4 from my point of view, there was no reason to try to get the
5 vehicle when it had already been released because even if it
6 had been released, there would've still been issues as far as
7 discovery and the authentic -- the authentication of all of
8 the information of the -- of the discovery that was a part of
9 it anyway. So there was no need for me to do that at that
10 point.

11 Q: Okay. You ultimately did file a motion to inspect that
12 vehicle; is that right?

13 A: Correct.

14 Q: Okay. So I understand your explanation, was there a
15 strategy decision behind waiting until it was approximately a
16 week prior to trial to file that motion or were you just
17 trying to preserve it for an appeal?

18 A: Well, as you are aware as an attorney, oftentimes we
19 have to make strategic decisions in regards to how we go
20 about formulating our motions. I did not want to kind of
21 show my hand prior to the trial. I wanted to try to wait and
22 see whether or not -- what else I could get as far as the
23 extensive discovery in order to determine what I was going to
24 do, and that was just one of those things that we, meaning me
25 and Mr. Stucks, decided to do right before the trial.

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 Q: Okay. Mr. Scott, have you had a chance to review the
2 transcript of this -- of this trial?

3 A: I have reviewed some of it. I have not reviewed all of
4 it, but I have reviewed it enough and I remember this case
5 enough to probably be able to answer any questions regarding
6 it.

7 Q: Okay.

8 MR. WALLER: Your Honor, may I approach briefly?

9 THE COURT: Yes, sir.

10 BY MR. WALLER:

11 Q: Mr. Scott, if you recall, how long was the jury
12 deliberating in this matter?

13 A: I want to say they deliberated for over -- over a course
14 of a couple of days. After we -- after the judge had given
15 the charge and everything, there were some issues that they
16 had in regards to some questions and some testimony of one of
17 the co-defendants, but it went on to the next day. So it was
18 over the course of probably about 20 -- over 20 hours.

19 Q: Okay. So they deliberated for a lengthy amount of time
20 and the judge actually released them overnight; is that
21 right?

22 A: Absolutely.

23 Q: And they came back the next day and deliberated for
24 several more hours?

25 A: It was -- it was a very -- it was a very charged-up

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 case, and there was just so much information. There was so
2 much inconsistencies. There were so many things going on and
3 I -- I would not have wanted -- honestly, I would not have
4 wanted to be a juror on that particular case.

5 Q: Okay. There was a question from the jurors and, if it
6 helps, it's on page 597, where the jury asked that a printed
7 copy of the murder charge and the hand of one/hand of all
8 charge be sent back with them into their jury room. It's at
9 the bottom and continues on to 598.

10 Was there a strategic decision behind not objecting to
11 that individual -- or those two individual charges being sent
12 back to the jury as opposed to the whole charge in its
13 entirety?

14 A: I'm sorry. Repeat the question?

15 Q: Was -- just the two pieces were sent back, murder and
16 hand of one/hand of all. Was there a reason you did not
17 object to just those two pieces being sent back as opposed to
18 the whole charge being sent back?

19 A: At that particular time, based on all the evidence that
20 was presented, we really felt confident that the jury, based
21 on the evidence, that they could not find the intent
22 necessary for murder. So strategically, we said that we
23 would let them see those two because we felt pretty
24 comfortable about those two based on all of the facts. So it
25 was a strategic decision not to object to that as far as

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 letting all of it back in.

2 Q: Okay. When the jury came back with its verdict, you did
3 not request a polling of the jury. Was there a strategic
4 decision behind that?

5 A: Again, at that particular point, I didn't see whether or
6 not that would be substantial in regards to whether or not
7 the verdict would remain the same or it would be something
8 else. I mean it's just something -- I know a lot of times
9 some attorneys like to do that procedurally, but at that
10 particular point, I think they had already made their
11 decision. I don't think by polling a jury that would have
12 made them change their mind one way or the other.

13 Q: Okay.

14 MR. WALLER: I beg the Court's indulgence, please.

15 THE COURT: Yes, sir.

16 BY MR. WALLER:

17 Q: Mr. Scott, you testified that you discussed at length
18 with Mr. Simms, once the trial started, the hand of one/hand
19 of all. Okay? What -- did you discuss with him that he
20 could still be charged and convicted of that even if he was
21 participating just in the drug deal that went bad?

22 A: I discussed -- not only did I discuss that with him, but
23 me -- well, his father, Robert Stucks, and I -- we had a long
24 conversation with him discussing this even before the charge
25 was given to the jury because in this particular case, of

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 course, as Your Honor knows, before the judge gives any kind
2 of instructions, he asks for input from the attorneys.

3 Once I saw the instructions that he was going to give,
4 we had a long conversation in order to determine whether or
5 not I was going to in any way object to that. But based on
6 the testimony of all of the parties, then there was no reason
7 to object to the hand of one/hand of all because of all of
8 the testimony in regards to this matter.

9 But that was really not my concern as much as it was
10 whether or not -- because in order for them to get to the
11 hand of one is the hand of all, they've got to first
12 establish the specific intent necessary for the murder. And
13 in this particular case, we didn't think that they had
14 established that as a part of it.

15 So again, that was a strategic move, but no decision did
16 I ever make in this particular case did I ever do it
17 unilaterally. I always checked with his father, who was a --
18 who was co-counsel with me, even though he was a young
19 attorney and I think he was a brand-new attorney. I'm not
20 sure how many years he had been practicing, but he was -- he
21 was a relatively new attorney.

22 But even then, I wanted two heads and I wanted him to be
23 able to articulate it to Justin because of the relationship
24 that they had. So that's why I say this was a very unique
25 kind of representation. It was something different than I

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 was used to, but I felt comfortable with everything that we
2 did because I had a second ear on this as well.

3 Q: Okay. So you -- you didn't feel that the State could
4 establish intent for the murder, regardless of who the jury
5 decided was the shooter, because of the way that the buyers
6 -- the drug buyers had attempted or were planning on robbing
7 them as well? Is that a fair way to characterize it?

8 A: No. I don't think I would characterize it that way. I
9 think in various simplistic terminology, the whole point was
10 that they had to establish -- the State had the burden of
11 proof of establishing the intent that my client had to commit
12 this particular crime.

13 Based on all of the testimony, based on the
14 inconsistencies, based on the physical evidence, particularly
15 when it came to the autopsy report and the expert dealing
16 with the fact that the -- one of the victims in this
17 particular matter actually shot themselves, you know, based
18 on all of these kinds of things, we knew that at least one
19 side had a gun. We knew that. The issue was, based on the
20 testimony, whether or not my client had a gun in his hand,
21 and we were confident that based on the testimony, based on
22 the expert witnesses, that he did not.

23 Q: Because of the experts and the inconsistencies of the
24 statements given by all the parties involved; is that
25 correct?

CHEVRON SCOTT - DIRECT BY MR. WALLER

1 A: Correct.

2 Q: Okay. So you didn't think that the jury could find that
3 Mr. Simms actually had a gun and pulled the trigger?

4 A: I wouldn't say that I wouldn't -- I would not think
5 that. I mean there was circumstantial evidence that could
6 have placed the weapon in his hand, but we were confident
7 that we had established the reasonable doubt necessary for
8 the charge to go forward as it was. And I think as -- as
9 evidence that we had almost -- that we did a good job of this
10 case is the jury staying out as long as they did.

11 Q: Okay.

12 MR. WALLER: Thank you, Mr. Scott. No further
13 questions. Please answer any questions Ms. McCallister has.

14 THE COURT: Ms. McCallister?

15 MS. MCCALLISTER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. MCCALLISTER:

18 Q: Okay. You've heard the testimony here from -- from Mr.
19 Simms that -- about you not coming to talk to him and calling
20 him and all of that stuff. Do you recall -- did you ever go
21 out to his home to talk to him?

22 A: I don't recall going to his home, but I do recall having
23 -- I had so many conversations with him I mean.

24 Q: Even once he had been released from jail?

25 A: Yes.

CHEVRON SCOTT - CROSS BY MS. MCCALLISTER

1 Q: Okay. And were these -- were these in person or phone
2 calls?

3 A: Most of them were phone calls.

4 Q: Okay.

5 A: Most of them were phone calls, but more importantly, his
6 father -- we spent a great deal of time together discussing
7 all of these matters and, in particular, preparing the case
8 for trial. So I'm -- I'm kind of dumbstruck here listening
9 to some of the testimony that I've heard here today. It's
10 disappointing to me.

11 Q: So you've testified that you spent a significant amount
12 of time preparing for trial; correct?

13 A: Absolutely.

14 Q: And when the trial came around, you felt like you had
15 your evidence and your witnesses, and you were prepared to
16 try this case?

17 A: I've been practicing law since 2001. This is only the
18 second time I've ever had a PCR, and this particular case was
19 a case that was not just a -- it wasn't just a professional
20 case to me. It was a personal case to me. I spent a lot of
21 time, a lot of prayer, a lot of effort, a lot of tears, a lot
22 of everything invested in this particular case.

23 Q: Okay.

24 A: I have -- I have not tried a murder case where I have
25 put more effort in than this case right here.

CHEVRON SCOTT - CROSS BY MS. MCCALLISTER

1 Q: And when you went to trial with Mr. Simms, did you feel
2 confident that going to trial was his decision? That's what
3 he wanted to do?

4 A: I wanted to plead this case out based on all of the
5 evidence that I got. I expressed that to my client. My
6 client -- my client was adamant that he wanted to go to trial
7 and at that particular point, my client, myself, and his
8 father -- we had a long conversation several weeks leading up
9 to this trial and once he made the decision to go to trial,
10 it was his decision and we put all of the efforts in in order
11 to try to try this case so that justice was served.

12 Q: Okay. In these long conversations that you had with Mr.
13 Simms about that, about his two options, did you talk to him
14 about -- did you talk to him about the discovery and what was
15 -- what was in the discovery?

16 A: Yes.

17 Q: And you talked to him about what the State -- you felt
18 like the State could prove?

19 A: Yes.

20 Q: Did you talk to him about the fact that the co-
21 defendants had given statements against him?

22 A: Not only did I talk to him about it, we actually went
23 over each one of the testimony -- we went over all of the
24 statements and all, and my client was very helpful in
25 painting the picture that he painted so that we could try to

CHEVRON SCOTT - CROSS BY MS. MCCALLISTER

1 create the reasonable doubt that we needed in this particular
2 case. He was a part of all of those conversations.

3 Q: Okay. And did you talk to him more specifically about
4 some of the legal issues, like what the elements of the
5 charges were and the possible punishments on those offenses?

6 A: We talked about the possible punishments. I don't
7 recall specifically talking to him about each and every
8 element, but I know as a part of me talking with me and him
9 and his father talking, we talked about the consequences
10 behind what would happen if he were to be found guilty.

11 Q: Okay. Did you feel like by the time he went to trial he
12 understood what the State was going to have to prove against
13 him?

14 A: Absolutely.

15 Q: Okay.

16 A: There's no question in my mind that he understood that.

17 Q: Okay.

18 MS. MCCALLISTER: One moment, Your Honor.

19 BY MS. MCCALLISTER:

20 Q: Mr. Waller asked you about this issue with the jury
21 instructions. I just want to make sure that I'm
22 understanding what you're saying.

23 When they asked for just part of the charge to go back
24 with them, you said you felt confident about those two issues
25 that they were asking for and so you didn't see any reason to

CHEVRON SCOTT - CROSS BY MS. MCCALLISTER

1 object to those issues going back or those jury instructions
2 going back?

3 A: That's correct.

4 Q: Okay. Do you also recall whether or not the jury had
5 reached a verdict on the other charges at that time?

6 A: Based on my recollection, I do not believe that they had
7 reached a verdict on anything. As a matter of fact,
8 throughout -- once they were -- once the case was given to
9 them, they stayed out. And their initial -- if my
10 recollection is correct, their initial issue dealt with --
11 they wanted to hear some testimony in regards to a -- one of
12 the co-defendants, a Curtis Joe.

13 Q: Okay.

14 A: And we -- opposing counsel, who would had been the
15 solicitor, Ed Clements -- he prosecuted this case hisself.
16 Both Ed and I went -- we spoke with the -- with the judge in
17 this matter, and the judge advised us -- he said he had some
18 concerns because they wanted to see the transcript, but there
19 was no transcript available.

20 So we decided collectively that the best way for them to
21 do it -- because I wanted them to hear the testimony. So the
22 best way for us to do it was for us to do like a tape -- have
23 them to listen to the actual tape of his testimony from the
24 court reporter.

25 Q: Okay. Do you have the transcript in front of you, Mr.

CHEVRON SCOTT - CROSS BY MS. MCCALLISTER

1 Scott?

2 A: I do.

3 Q: Could you look at page 598? I think we're -- I think
4 we're talking about two -- two different things here. I
5 think it actually starts on the bottom of page 597 and goes
6 on to 598, this issue about them asking to supply a printed
7 copy of the murder charge and the hand of one/hand of all.

8 And if you will look down on page 598, line 11 I
9 believe, does that refresh your recollection about whether
10 they had actually reached a verdict on the other charges at
11 that point?

12 A: Okay. They had already reached one.

13 Q: Okay. So you just didn't know what it -- you didn't
14 know what the verdict was, but they had -- they had reached
15 one?

16 A: Correct.

17 Q: So they weren't deliberating on the other issues anymore
18 at that point?

19 A: Correct.

20 Q: Okay. Okay. And you testified that you talked to Mr.
21 Simms about what hand of one/hand of all meant once the trial
22 started and you realized that was what was -- that was going
23 to be at least part of the State's theory or one of the
24 State's theories?

25 A: Once I began to understand what the issue is and after

CHEVRON SCOTT - CROSS BY MS. MCCALLISTER

1 speaking with the solicitor and the judge in this matter and
2 when the judge advised us that that would be one of the
3 things that he would consider, we discussed this matter.

4 Q: Okay. And the trial was still going on at that point?

5 A: Correct.

6 Q: You were still taking evidence at that point?

7 A: Correct.

8 Q: Okay. And the charge that was ultimately given -- did
9 you see any objection to that charge on the hand of one/hand
10 of all issue?

11 A: Based on this particular charge, I didn't see an issue
12 with it, but for purposes of the record, the judge wanted to
13 do a different hand of one/hand of all charge prior to that
14 one, and I objected to that because I felt like that was --
15 had some prejudicial issues within it or aspects in it. So
16 the judge agreed, based on talking with the solicitor and I,
17 that he would amend that and just give a more general kind of
18 hand of one/hand of all charge, which is what he did.

19 Q: Okay. So this hand of one/hand of all charge was
20 actually sort of based on an objection or the charge
21 conference when you had discussions about what to say?

22 A: Correct.

23 Q: And you were satisfied with that charge?

24 A: Correct.

25 MS. MCCALLISTER: I beg the Court's indulgence, Your

CHEVRON SCOTT - CROSS BY MS. MCCALLISTER

1 Honor.

2 THE COURT: Yes, ma'am.

3 BY MS. MCCALLISTER:

4 Q: Mr. Simms testified that there was some -- that the
5 State's evidence was unclear as to whether the shots came --
6 the fatal shot for the victim came from inside the car or
7 outside the car. Do you remember -- do you remember that
8 issue at trial specifically?

9 A: I'm sorry. Could you repeat the question?

10 Q: So Mr. Simms earlier -- he characterized -- his
11 characterization of the State's evidence was that there was
12 some dispute as to whether the shot that killed the victim
13 came from inside the car or outside the car. Do you remember
14 that? Do you remember that issue at trial, that question
15 being an issue, whether it was inside or outside?

16 A: I think part of the -- part of the reasonable doubt was
17 that I think the experts -- based on the expert testimony and
18 based on the witnesses, there was a question as to whether or
19 not who shot, what, where, and I mean there was just so much
20 going on.

21 Q: Okay.

22 A: And so I think part of the totality of the -- of the
23 evidence was that really we didn't know who did what. That
24 was the whole point in doing the -- in having the witnesses
25 to -- to impeach the witnesses the way that I attempted to

CHEVRON SCOTT - CROSS BY MS. MCCALLISTER

1 do.

2 Q: Okay. So it was really just a credibility contest and
3 who the -- which story the jury was going to decide to
4 believe?

5 A: It absolutely was, and that was one of the things that
6 we spoke about this prior to even going to trial. And part
7 of my hesitance in going to trial was -- and I recall even --
8 I don't recall exactly what we -- what I told my client, but
9 I know I said, listen, it's going to be your word against
10 theirs or our evidence against theirs. It's whoever the jury
11 is going to believe. Then that's where we are. That was one
12 of the main reasons why I really wanted to plead this case
13 out --

14 Q: Okay.

15 A: -- initially.

16 Q: And I think you covered this a little bit with Mr.
17 Waller, but this motion that you filed to inspect the
18 vehicle, you filed that motion knowing that the State had
19 already released it; correct?

20 A: Correct.

21 Q: And that was just kind of a trial strategy just so that
22 they -- that the State -- to see what they might give you at
23 that point; is that right?

24 A: Correct. Because see, at that point, even though they
25 didn't -- we didn't physically have the vehicle, I was hoping

CHEVRON SCOTT - CROSS BY MS. MCCALLISTER

1 that they in their discovery -- because, of course, you know
 2 that there's an -- there's an extended duty of discovery
 3 throughout the whole process. I was hoping that after the
 4 initial discovery that I got that they would have some kind
 5 of discovery dealing with the vehicle itself, and Ed told me
 6 -- Ed being Ed Clements, said that they did not have any
 7 additional evidence in regards to that.

8 Q: Okay. But you did get some pictures and the tests that
 9 the State did on the vehicle with the rods and all of that?
 10 You received all of that evidence in discovery?

11 A: Correct.

12 MS. MCCALLISTER: Your Honor, I think that's all I have.

13 THE COURT: Mr. Waller?

14 MR. WALLER: Just very briefly.

15 REDIRECT EXAMINATION

16 BY MR. WALLER:

17 Q: Mr. Scott, just to touch on that last point of Ms.
 18 McCallister, you did receive some pictures and some testing
 19 or expert -- from the State's expert on the vehicle; is that
 20 right?

21 A: Correct.

22 Q: Did you ever consider retaining your own expert to
 23 review the pictures and the report by the State's expert?

24 A: Mr. Stucks and I -- we discussed it, but based on the
 25 financial situation that we were -- we had at that particular

CHEVRON SCOTT - REDIRECT BY MR. WALLER

1 time, we didn't feel like it was -- it was necessary because
2 we had the witnesses' statements that would verify what we
3 believed our version of the facts were.

4 Q: Okay.

5 MR. WALLER: Nothing further. Thank you, Mr. Scott.

6 THE COURT: Ms. McCallister?

7 MS. MCCALLISTER: Nothing further, Your Honor.

8 THE COURT: Thank you, sir.

9 THE WITNESS: Thank you.

10 MR. WALLER: Your Honor, based on some of the testimony,
11 I think at this point I need to make, I guess, a motion to
12 leave the record open and continue the matter to take the
13 testimony of Mr. Stucks.

14 Your Honor, he was not an active participant in the
15 trial, but based on Mr. Scott's testimony, it was obvious
16 that he was involved in the preparation, very involved, as
17 well as he filed the notice of appeal from the trial. So I
18 need to make that a motion at this time.

19 THE COURT: Ms. McCallister?

20 MS. MCCALLISTER: Your Honor, I mean I don't -- I don't
21 have much of a basis to object except for that this -- you
22 know, we've had this scheduled for some time now.

23 THE COURT: Okay.

24 MS. MCCALLISTER: So that would be my basis.

25 THE COURT: All right. So you want to leave it open to

1 hear that testimony?

2 MR. WALLER: Yes, sir. And that testimony only.

3 THE COURT: Okay. I will -- I will grant that, which
4 obviously assumes I have to hear the rest of it; right?

5 MR. WALLER: I believe so, Your Honor.

6 THE COURT: I think so. I think so. And I'm not sure.
7 I live week to week, as I say, so I'll find out where I'll be
8 and where we can do that and if it's here. We'll work it out
9 together. We'll figure it out. Okay?

10 MR. WALLER: Thank you, Your Honor.

11 THE COURT: All right. Thank y'all.

12 MS. MCCALLISTER: Your Honor?

13 THE COURT: Yes, ma'am.

14 MS. MCCALLISTER: At this time, I am going to release
15 Mr. Scott from his subpoena, unless anyone has any
16 objections.

17 MR. WALLER: There's no objection to that.

18 THE COURT: All right. Thank you, Mr. Scott.

19 THE WITNESS: Thank you.

20 (WHEREUPON, the proceedings ended at 10:48 a.m.)

21

22 --- END REQUESTED TRANSCRIPT ---

23

24

25

1 State of South Carolina)
 2) Certificate
 3 County of Florence)
 4

5 I, the undersigned, Krystal J. Smith, Notary Public and
 6 Official Court Reporter for the Twelfth Judicial Circuit of
 7 the State of South Carolina, do hereby certify that the
 8 foregoing pages, numbered 1 through 51, constitute a true,
 9 accurate, and complete Transcript of Record of all the
 10 proceedings had and evidence introduced in the hearing of the
 11 above captioned case, relative to appeal, in the Court of
 12 Common Pleas for Florence County, South Carolina, on the 6th
 13 day of April, 2018.

14 I do further certify that I am neither of kin, counsel,
 15 nor interest to any party hereto.

16
 17 Krystal J. Smith

18 Court Reporter

19
 20 Florence, South Carolina

21 November 24, 2020

22

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25

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE 21st JUDICIAL CIRCUIT

JUSTIN SIMMS,

Applicant,

vs.

CASE NUMBER: 2016-CP-21-02267

STATE OF SOUTH CAROLINA,

Defendant.

HEARING BEFORE: HONORABLE GEORGE M. MCFADDIN, JR.

DATE: August 23, 2018

REPORTED BY: KYMBERLEE M. WILLIAMS, CSR/RPR
State of South Carolina
Official Circuit Court Reporter
P.O. Box 8091
Beaufort, South Carolina 29903

APPEARANCES:

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I N D E X

PROCEEDINGS	3
WITNESS: Robert Stucks	
Direct Examination	4
Cross-Examination	9
PROCEEDINGS CONCLUDED	18
CERTIFICATE OF REPORTER	19

EXHIBITS

(NONE OFFERED)

P R O C E E D I N G S

* * *

THURSDAY, AUGUST 23, 2018

FLORENCE, SOUTH CAROLINA

* * *

(Whereupon, the following proceedings were held in
pen court. The defendant was present along with his
attorney and the attorney for the State.

THE COURT: Thank you all so very much.

Please be seated. I have spoken to the two lawyers
here. We are here today to finish up a PCR started in
Florence, right?

MS. MCALLISTER: That's correct, Your Honor.

MR. WALLER: That's correct, Your Honor

THE COURT: I am ready. If you have any opening
comments you want to make, that is certainly understandable.

MS. MCALLISTER: Judge, just for the record and to
catch you back up, this is the hearing of Justin Simms, back in
April in Florence county, -- it's a Florence County case.
Back in April, we took the testimony of Mr. Simms, as well as
Chevron Scott, who was trial counsel. Mr. Simms had another
attorney who represented him, but he did not actively
participate in the trial. He was not present on that day, so
we're reconvening to take his testimony. His name is Robert
Stuck's. At this time, I believe it's still the Applicant's

1 case.

2 The Applicant will call Robert stuck's.

3 THE COURT: All right.

4 **ROBERT STUCKS,**

5 Called as a witness by and behalf of the Applicant
6 to testify, being first duly sworn was examined
7 and testified as follows:

8 * * *

9 DIRECT EXAMINATION

10 BY MR. WALLER:

11 Q. State your name for the record and spell your last
12 name, please.

13 A. Robert Stucks, S-t-u-c-k-s.

14 Q. Good morning, Mr. Stucks. How are you today?

15 A. I am fine, good morning.

16 Q. Mr. Stucks, where do you practice law?

17 A. I practice law in Darlington. Basically in the
18 Pee Dee area: Darlington, Florence, all the surrounding
19 counties.

20 Q. How long have you been practicing law?

21 A. I started in Illinois in 2010. I got into the
22 South Carolina bar in 2011. Right now, about eight, nine
23 years.

24 Q. What is your practice?

25 A. I'm doing a lot of criminal work, a fair amount of

1 family law. Some personal injury. A little probate matters.

2 Q. Did you have some involvement in the trial of
3 Justin Simms?

4 A. I did.

5 Q. What is your relation to Justin Simms?

6 A. He is my son.

7 Q. Did you have -- you didn't actively participate in
8 the trial, is that right?

9 A. I didn't.

10 Q. What was your role in the defense of Mr. Simms?

11 A. Basically, I assisted Mr. Scott in the preparation
12 of the case, trying to formulate a strategy for the defense,
13 things of that nature.

14 Q. Did you have any concern about representing your
15 son?

16 A. I did.

17 Q. Why were you concerned?

18 A. I think based on our relationship, it was a tenuous
19 position for me to have to separate the two. That is why I
20 basically took the role of just helping him analyze the case
21 from a strategic standpoint.

22 Q. Okay.

23 A. And for support.

24 Q. Okay.

25 A. It was a tough place to be in.

1 Q. That is why you didn't try the case?

2 A. That is why I didn't try the case.

3 Q. You mentioned strategy and helping come up with a
4 strategy. What did you ask Mr. Scott -- what was your
5 understanding of the strategy that you-all would come up with?

6 A. Based on what we thought the State would present
7 and what they could prove, we didn't think they -- for one,
8 that they would be able to place him there, based on the
9 conflicting statements from the co-defendants, and, also based
10 on the statements given by the other two passengers that were
11 in the car.

12 Q. Couldn't place him at the scene at all?

13 A. At the scene.

14 Q. Or at the car?

15 A. At the car.

16 Q. Not necessarily at the scene --

17 A. Not necessarily at the scene, but certainly we
18 didn't think they could place him at the car, and we didn't
19 think that they would be able to prove that he was the actual
20 shooter, based on the evidence.

21 Q. Did you-all discuss the theory of hand of one, hand
22 of all, accomplice liability?

23 A. We didn't.

24 THE COURT: You did or did not?

25 THE WITNESS: We did not.

1 THE COURT: Okay.

2 BY MR. WALLER:

3 Q. Did you do any research on the co-defendants and
4 how they may be tried together under a theory of accomplice
5 liability?

6 A. I don't think we did.

7 Q. Okay.

8 A. I am also certain we didn't, because, I think, had
9 we thought they were trying them together, certainly it would
10 have been something we would have talked about. We just
11 didn't.

12 We knew the two co-defendants were -- they were
13 cooperating to some extent with the State. So we never, you
14 know -- we knew they wouldn't be tried at the same time. We
15 just didn't talk about it in terms of the trial.

16 Q. Okay. Did you all the talk because Mr. Simms would
17 be tried by himself, that the State wouldn't raise accomplice
18 liability, or it just never came up?

19 A. Looking back -- and I have thought about it a
20 lot -- we never talked about it until, I guess until the jury
21 charge, until the judge -- once he talked about what he would
22 actually charge the jury with.

23 Q. Did you meet with Mr. Simms by yourself, or was it
24 also with Mr. Scott as well?

25 A. No. By myself most of the time. If we met with

1 Mr. Scott, it would be whenever there was some sort of court
2 appearance or something like that. But, basically by myself.

3 Q. Did you meet with Mr. Scott by yourself without Mr.
4 Simms?

5 A. I did.

6 Q. To your knowledge, did Mr. Scott and Mr. Simms meet
7 without you?

8 A. They may have met. I am almost certain he went to
9 the jail one time early on there the case. I don't think it
10 was after that. I don't think they met much after that.

11 Q. Okay. Is it safe to say that you were kind of the
12 go-between to pass information?

13 A. Certainly.

14 Q. Is there anything that you and Mr. Scott came up
15 with a strategy that did not come up in the trial.

16 A. Nothing I can think of.

17 MR. WALLER: Beg the Court's indulgence

18 THE COURT: Yes, sir.

19 BY MR. WALLER:

20 Q. Mr. Stucks, were you involved early on after Mr.
21 Simms' arrest?

22 A. In what capacity are you referring to?

23 Q. Were you aware that the vehicle -- that the
24 incident location vehicle had been returned back to the family
25 of one of the victims?

1 A. No. I didn't realize that.

2 Q. When did you become aware of that?

3 A. I think we had picked the jury -- I am almost
4 certain it was a Monday morning. After the jury selection, we
5 would go back with the solicitor. We were reviewing the
6 evidence he plans -- we were trying to see what we could
7 stipulate to of the things the State wants to introduce.

8 At that point, I think that is when I found out
9 that the car -- they didn't have the car anymore.

10 Q. So you didn't find out until after the trial had
11 technically started?

12 A. Pretty much it was -- right.

13 MR. WALLER: Nothing further. Please answer any
14 questions MMs. McAllister has. Thank you.

15 THE COURT: Ms. McAllister

16 MS. MCALLISTER: Thank you, Your Honor.

17 * * *

18 CROSS-EXAMINATION

19 BY MS. MCALLISTER:

20 Q. Mr. Stucks, you testified that your role was -- you
21 were kind of a go-between and you were behind the scenes
22 helping analyze the case strategy and come up with a trial
23 strategy, correct?

24 A. Yes.

25 Q. Is that a fair assessment?

1 A. It is.

2 Q. What was the trial strategy that you came up with,
3 just briefly?

4 A. You mean me individually or --

5 Q. Well, no. I mean you as a team.
6 What was your defense going to be, as you understood it?

7 A. Basically, our defense was -- as I stated earlier,
8 we didn't think that based on the evidence -- based on the
9 evidence the State presented to us and going through witness
10 statements and everything that was before us, we thought that
11 they couldn't prove it beyond a reasonable doubt that he was
12 the shooter.

13 Q. You have talked about the witness' statements. The
14 witness' statements that you had prior to trial were different
15 than what the co-defendants actually ended up testifying to, is
16 that right? They changed their story once they got on the
17 stand, is that right?

18 A. Who?

19 Q. The co-defendants.

20 A. Which one?

21 Q. Carroway. Mr. Carroway.

22 A. I think his story stayed basically the same.

23 Q. Okay.

24 A. He alleged that he didn't know anything about it,
25 and he didn't do anything.

1 Q. He alleged that Mr. Simms had the gun and was the
2 shooter?

3 A. Right.

4 Q. Okay.

5 A. His story basically stayed the same.

6 Q. Okay.

7 A. Now, there was another co-defendant, Curtis Joe.
8 His testimony changed slightly. As far as the State's
9 witnesses, I think their testimony stayed the same, as far as
10 what they presented to law enforcement during the recorded
11 video.

12 Q. Okay. But Mr. Carroway placed the blame squarely
13 on Mr. Simms with his testimony. Is that fair to say?

14 A. Yes.

15 Q. Okay. There was also testimony from some of the
16 State's witnesses, I think SLED, or some of the investigating
17 officers, that the shots that were fired had to have come from
18 outside of the car -- the fatal shot, is that correct?

19 A. Yes. There was testimony to that.

20 Q. There was also a witness who testified that it was
21 -- that Mr. Carroway was in the car and the other person was
22 outside the car, correct?

23 A. I don't know if that would be -- at some point he
24 was in the car, but there was also testimony that the door was
25 open. The only person that really said he was in the car at

1 the time was him. The state's witnesses said, hey, somebody
2 was shooting a gun. I don't know what happened.

3 Q. Okay. You don't recall one of the State's witnesses
4 who was also a passenger in the car ID-ing Mr. Carroway as the
5 man who got in the backseat who was actually in the car?

6 A. Right. I think he did. That is what I just said.

7 Q. Okay.

8 A. Initially, yeah. They said he got in the car. I
9 don't recall them saying that he was in the car when the shots
10 were fired. Actually, I think one of them said he was the one
11 who fired.

12 Q. I guess what I am getting is that the State
13 presented evidence through Mr. Carroway that Mr. Simms was the
14 shooter, and that Mr. Simms was outside of the car, which is
15 where the fatal shot came from.
16 Is that a fair thing to say?

17 A. It is.

18 Q. Is it fair to say that if the jury believed all of
19 that evidence, then Mr. Simms was convicted as the principal,
20 as the shooter, correct?

21 A. Ask the question again. I want to make sure I
22 understand what you are asking.

23 Q. Assuming that the jury believed that evidence, that
24 they believed the co-defendant's testimony, then Mr. Simms was
25 convicted as the principal.

1 He was the shooter, correct?

2 A. If they believe Carroway's testimony, yes.

3 Q. You testified a minute ago that the issue of the
4 hand of one, hand of all -- you talked about that for the first
5 time that you can remember when it came up as a jury charge,
6 correct?

7 A. Yes.

8 Q. You did then explain the concept of hand of one,
9 hand of all and accomplice liability to Mr. Simms, correct?

10 A. I don't think we did. We didn't. I remember --
11 here is what happened. I stayed in the courtroom, and the
12 lawyers go back to discuss the jury charges to the judge.

13 Q. Okay.

14 A. Mr. Scott comes back out and he says, "The judge is
15 going to charge the hand of one, hand of all."

16 That was it.

17 Q. Did you also have some discussions with Mr. Simms
18 with Mr. Requesting a voluntary manslaughter charge, or did
19 Mr. Scott have those discussions? Do you know?

20 A. Okay. On the day the trial starts, before the
21 first witness is called, I think he relays to them, there is
22 some offer on the table. The response is, no. But after the
23 judge says, hey, we are going to -- after he says, hey, the
24 judge is going to charge hand of one, hand of all, I think the
25 solicitor wants a voluntary manslaughter charge -- I don't

1 think we ever, you know, said, hey, do you want to do this? I
2 think it was --

3 Q. The solicitor wanted it?

4 A. Right.

5 Q. Why didn't it end up being charged? Do you know,
6 or is that something Mr. Scott would know?

7 A. I mean, I don't know. But we didn't talk about it.

8 Q. You and Mr. Scott didn't talk about it?

9 A. We didn't talk about it after it was -- after it
10 was agreed upon what would be the jury charge, what the judge
11 said he would charge.

12 Q. Right.

13 A. I think the question is, did we discuss it with him
14 about the voluntary manslaughter charge to the jury, to Mr.
15 Simms?

16 Q. Right.

17 A. No, we didn't.

18 Q. So you never had any discussion with Mr. Simms
19 about a voluntary manslaughter charge. And nothing about Mr.
20 Simms saying, I don't want that charge?

21 A. No. I didn't.

22 Q. You didn't?

23 A. No.

24 Q. But you don't know if Mr. Scott did?

25 A. I don't think he did. I was right there. Like I

1 said, the only thing I remember in terms of pleading, was to
2 voluntary manslaughter, but never the jury charge.

3 Q. Okay.

4 A. That was before the trial even started.

5 Q. So there was a plea for a voluntary manslaughter,
6 and Mr. Simms turned -- he rejected that plea offer?

7 A. Before the trial started.

8 0. Before the trial started?

9 A. Right.

10 Q. Okay.

11 MR. WALLER: I think those are all the questions I
12 have, Your Honor.

13 THE COURT: Mr. Waller.

14 MR. WALLER: Briefly, Your Honor.

15 * * *

16 REDIRECT EXAMINATION

17 BY MR. WALLER:

18 Q. You testified Mr. Simms rejected an offer of
19 voluntary manslaughter before the trial?

20 A. Yes.

21 Q. Was that --

22 A. Wait. I don't know -- I think it was a voluntary
23 manslaughter charge. It had to be.

24 Q. You and Mr. Scott were -- you-all had talked to him
25 at that point -- before he accepted or rejected any offer,

1 you-all had talked to him about the offer and then explained
2 your defense and all of that stuff to him, is that correct?

3 A. We did, but, I mean, really this offer was almost
4 like -- I don't think there ever was any written offer, like,
5 pretrial, which is what generally happens in a criminal case.
6 This offer was like, right before trial. Hey, is he willing to
7 plead? You know, we really didn't have time to talk about it
8 in depth. He had to make a decision at that time. They were
9 about to call the first witness.

10 Q. Okay. But the timing of it, you-all had already
11 formulated your strategy, and you were ready to go to trial?

12 A. Right.

13 Q. Okay. The co-defendant, Joe, I believe his name
14 was -- correct me if I am wrong. His testimony was that Mr.
15 Simms and Mr. Carroway got out of the car, and he stayed with
16 the car?

17 A. Right.

18 Q. Mr. Carroway was supposed to execute this robbery?

19 A. I don't think that was his testimony. He testified
20 that Carroway was supposed to sell marijuana. His statement
21 was -- the statement he gave to the police was to that effect,
22 but his testimony was, he was going there to sell the
23 marijuana. He got out of the car. He didn't know anything
24 about a robbery. That was Curtis Joe's testimony.

25 Q. All right. I apologize.

1 He testified -- he was consistent that Mr. Simms got out of the
2 car with Mr. Carroway.

3 A. He was. And he was consistent that there was a
4 weapon that was in the car and then left the car with the two
5 of them.

6 A. I don't think it's fair to say it left with the two
7 of them. He said Carroway left with the weapon. If you go
8 back to it, he specifically said he never saw Simms with a
9 weapon. So he did say he saw a weapon.

10 Q. But he testified he left with Mr. Carroway?

11 A. Right.

12 MR. WALLER: I don't have anything further.
13 Thank you, Mr. Stucks

14 THE COURT: Ms. McAllister.

15 MS. MCALLISTER: Nothing further, Your Honor.

16 THE COURT: you may be seated sir. Anything else?

17 MR. WALLER: Nothing from the applicant, Your
18 Honor.

19 THE COURT: Ms. McAllister.

20 MS. MCALLISTER: Nothing from the State, Your
21 Honor.

22 THE COURT: All right. As we discussed earlier
23 with both of you present, I am going to ask respectfully that
24 you send to me the proposed orders in this case. I think we
25 mentioned a transcript also. So you certainly may send that

1 also if you so desire.

2 MS. MCALLISTER: Thank you, Your Honor.

3 MR. WALLER: Thank you, Your Honor.

4 THE COURT: I know you are both loaded down and
5 have lots of work to do, and this is not your only file. So --
6 I don't want to set a drop-dead deadline date. I know you will
7 both work to get it to me soon.

8 MS. MCALLISTER: Thank you, Your Honor.

9 THE COURT: Otherwise, we will wait to get that
10 information, and I will issue a ruling from that point. I
11 would like to thank the Department of Corrections for helping
12 us today with this transport. It does mean a lot to me. I do
13 appreciate your efforts very much.

14 All right. Thank you all very much.

15 Let me see both lawyers in the back for just a
16 minute.

17 (Whereupon, at 9:26 a.m. the proceedings were
18 concluded.)

19 * * *

20 END OF TRANSCRIPT

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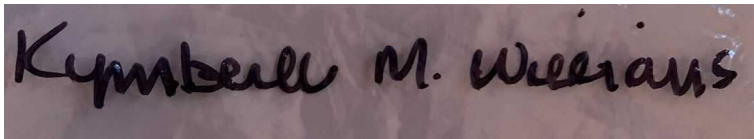
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CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand
Reporter/Registered Professional Reporter for the State of
South Carolina, do hereby certify that the foregoing is a true,
accurate, and complete Transcript of Record of the proceedings
and evidence introduced in the hearing of the captioned case,
relative to appeal, in the Circuit Court for Florence County,
South Carolina, on the 23rd day of August, 2018.

I do further certify that I am not related, of
counsel, or of interest to any party hereto.

This, the 2nd day of February, 2021.

A rectangular image showing a handwritten signature in black ink on a light-colored, slightly textured background. The signature is written in a cursive, flowing style and reads "Kymberlee M. Williams".

Kymberlee M. Williams, CSR/RPR

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Justin Simms, # 0358130,
Applicant,

v.

State of South Carolina,
Respondent.IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2016-CP-21-2267

**ORDER DENYING APPLICATION
FOR POST-CONVICTION RELIEF**DOUGLAS F. HARRIS
CLERK OF COURT
FLORENCE COUNTY, SC

2020 OCT -7 PM 3:30

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 19, 2016. Respondent made its Return on February 15, 2017. An evidentiary hearing into the matter was convened on April 6, 2018, at the Florence County Courthouse, and again on August 23, 2018, at the Sumter County Courthouse, before the Honorable George M. McFaddin, Jr. Jonathan D. Waller represented Applicant. Assistant Attorney General Lindsey A. McCallister, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant also presented testimony from Applicant's trial counsel, Cheveron T. Scott (Scott) and Robert Stucks (Stucks). At the close of all the evidence, the Court indicated it would take this matter under advisement and asked the parties to submit proposed orders. This Court now denies and dismisses the application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the October 2010 term of the Florence County Grand Jury on one count each of murder, attempted armed robbery, and possession of a weapon during commission of a violent crime (2010-GS-21-1427).



Applicant was represented by Cheveron T. Scott (Scott) and Robert Stucks (Stucks). On December 9-13, 2013, Applicant proceeded to trial before the Honorable R. Knox McMahon and a jury, and he was convicted as indicted. Judge McMahon sentenced Applicant to a term of imprisonment for forty years for murder, twenty years for attempted armed robbery, and five years for possession of weapon, all to be served concurrently.

Applicant filed a timely Notice of Appeal. An Anders¹ brief was, thereafter, submitted by David Alexander, of the South Carolina Commission on Indigent Defense – Appellate Defense Division. The brief raised the sole issue of whether the trial court erred in refusing to charge voluntary manslaughter. The South Carolina Court of Appeals affirmed Applicant's conviction on June 15, 2016. State v. Simms, Op. No. 2016-UP-296 (S.C. Ct. App. 2016). The remittitur was returned to the circuit court on July 7, 2016.

SUMMARY OF FACTS ADDUCED AT TRIAL

The shooting death of Marcus Weaver (Weaver) arose out of a “drug deal gone wrong” in the parking lot of a Day's Inn in Florence. Weaver ultimately died from a gunshot wound to the back. Tr. p. 193. Weaver; his brother, Shane Graham (Graham); and his friend, Squan Davis (Davis) traveled together in one car to buy marijuana from a man named Curtis Joe (Joe). Tr. p. 278. Davis had purchased marijuana from Joe in the past. Tr. p. 278. Graham drove; Weaver sat in the front passenger seat; and Davis sat behind Graham. Tr. p. 279.

Davis testified that after their group parked at the hotel, a man he did not know approached his side of the car. Tr. p. 281. Davis directed the man to the other side. Tr. pp. 281-82. The man opened the door, pulled out a gun, and punched Davis in the face. Tr. p. 282. The man then held a gun on everyone and told them to “give it up.” Tr. p. 282. The man struck Weaver with the gun. Tr.

¹ 386 U.S. 738 (1967).

p. 282. Davis then heard shooting coming from inside the car, and he ran. Tr. pp. 282-83. On cross-examination, Davis testified Weaver was the first one to shoot. Tr. p. 294.

Joe testified and claimed he did not know Davis, but he received a call from "a boy from Lake City" who wanted some marijuana. Tr. pp. 338-39. Joe arranged to meet the caller at the Florence Day's Inn, along with Applicant and a friend, Joshua Carraway (Carraway). Tr. p. 339. Joe testified he never had any marijuana, but they went to meet the "buyer" anyway because Carraway planned to rob the purchasers. Tr. p. 341. According to Joe, Applicant and Carraway went to the purchasers' car while he stayed behind. Joe testified he heard gunshots, and only Applicant returned to the car. Tr. p. 344. Applicant told Joe, "the boy started shooting and Josh was still in the car." Tr. p. 345. Applicant never told Joe he shot Weaver. Tr. p. 346.

Carraway also testified. He explained that he and Applicant planned together to rob the men in the other car. Tr. p. 413. Carraway testified he went to the car, but he did not take a gun. Tr. p. 392. According to Carraway, Applicant carried had a .380 pistol. Tr. p. 392. On cross-examination, Carraway's prior statements were admitted in to evidence. Tr. pp. 418, 424. In the first statement, Carraway stated he and Joe went to the Day's Inn to sell drugs, Joe talked with the men, and the men in the car fired first. Tr. pp. 420-22.

Graham testified a man opened the front passenger door of the car he was riding in with Davis and Weaver, stuck a .380 inside, and yelled "give it up." Tr. pp. 366-67. Graham saw Weaver jump at the man, and then Graham put his head down and heard gunshots. Tr. p. 368. When Graham lifted his head, he saw Weaver lying on his stomach on the ground. He pulled Weaver into the car and drove him to the hospital. Tr. p. 370.

Investigator McFadden, of the Florence County Sheriff's Office, testified he obtained surveillance video from the Sleep Inn, next door the Day's Inn, which clearly showed two people

approach the car, one at the front and one at the back. Tr. pp. 445-48. McFadden also testified he conducted a photo lineup with Davis, who identified Carraway as the man who got into the back seat next to him. Tr. pp. 448. Investigator Bird, the crime scene investigator, testified the victim's car was impounded from the scene, in order to conduct forensic testing. Tr. p. 209-10. Bird explained he placed rods in the car to determine the trajectories of the various bullets fired. Tr. p. 219. Bird testified there were multiple shots fired from the front of the car to the back, likely from Weaver's gun, but none were fired from the back – where Carraway was seated – to the front. Tr. pp. 219-22. Lieutenant Lutcken testified the shot from outside the car to the inside was the shot that killed Weaver. Tr. pp. 237, 243-44. Further, Lutcken testified he conducted a gunshot residue (GSR) test on Carraway, which was negative. Tr. pp. 234, 241-42.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Prosecution destruction of evidence made counsel ineffective" (sic)
 - b. "Counsel failed to object to Judges (sic) charge to Jury (sic)"
 - i. Trial court charge on Reasonable (sic) doubt/hands of one confused jury"

At the evidentiary hearing, PCR counsel for Applicant explained the allegations consisted of ineffective assistance of counsel for: (1) failure to properly prepare for trial, in that counsel failed to anticipate the State's theory of the case; (2) failure to object to an incomplete copy of the jury instructions being sent back to the jury; (3) failure to request the jury be polled; and (4) failure to timely file a motion to inspect the vehicle. To the extent the allegations in Applicant's original

application can be construed as additional grounds for relief, this Court finds those allegations are waived, and they are hereby denied and dismissed with prejudice.

SUMMARY OF TESTIMONY

Applicant testified he was arrested for these charges along with two codefendants – Carraway and Joe – but he was the only defendant who opted to go to trial. Applicant explained Carraway and Joe both testified against him. Applicant testified he understood the State’s alleged theory of the case. Applicant explained the State alleged the charges arose from a drug deal, in which he and his friends were the sellers, and the victim and his two friends were the buyers, but each group intended to rob the other rather than actually complete a transaction. However, Applicant maintained he had no knowledge of the planned robbery at the time, and he was only there to “support” a drug deal.

Applicant testified Scott was his lead attorney on the case, and Stucks – who is Applicant’s father – was assisting. Applicant testified he and Scott never discussed the elements of the charges or the potential penalties, but Applicant knew them from other sources. Applicant testified he and Scott talked about pleading guilty, but Applicant did not want to do so because he was not guilty. Applicant also stated he asked Scott to investigate the victim’s car because he felt the car would have “something” in it to prove he was not the shooter. However, Applicant testified the State had already released the car by the time he had a preliminary hearing, and although he directed Scott to file a motion to inspect it, there was nothing Scott could do.

Applicant further testified he was released on bond for approximately thirty-six months before his trial, and although he waited on Scott every day to come see him, Scott never did. Applicant testified he did not see Scott or speak to him about a defense until the week before trial. Applicant testified he and Scott did not discuss “anything really,” including the concept of accomplice liability or “the hand of one/hand of all.” Applicant testified he asked Scott about the

car on the morning of trial because Scott told him the State had experts to testify about evidence from the car. Applicant explained his defense was that he thought this was to be a drug deal, not a robbery, and it was not murder because there was no "aforethought." Applicant testified Scott did not explain how he could be found guilty as a participant in the crime even if he did not pull the trigger.

However, on cross-examination, Applicant testified he had conversations with Scott while in jail before making bond, which is when Scott told him his codefendants would testify against him and that the State had expert witnesses to testify as well. Applicant testified he personally called Scott "maybe three times" from April 2011 until December 2013, when the trial began. Applicant further stated he was able to speak with Scott on the phone, but Scott did not know what to do to help him. Applicant testified he told Scott he wanted Scott to show the codefendants were lying, and they received a deal from the State. Applicant agreed Scott cross-examined his codefendants at trial with their previous statements to highlight the inconsistencies in their testimony, and Scott impeached them by asking questions about their motivation for testifying.

Applicant further testified he knew from early in the case that his codefendants had written statements implicating him. Applicant stated Scott repeatedly advised him it would be hard to win the case with the codefendants testifying against him, and he knew it would be hard to dispute the codefendants' testimony. However, Applicant testified he did not know he could be convicted based on the codefendants' statements that he "aided and abetted and helped them commit this crime."

Scott testified he got involved in Applicant's case shortly after it happened, when he received a call from Stucks asking for guidance. Scott testified, at that time, Applicant had not been charged with murder, but Applicant had charges for armed robbery and possession of weapon.

Further, Scott testified he had many conversations with Applicant, even after Applicant was released on bond. Scott stated most of their conversations were by phone, but they spent a significant amount of time discussing the issues and preparing the case for trial. Scott testified he believed Applicant should agree to plead guilty, and he explained his position to Applicant, but Applicant insisted he wanted to go to trial. Scott stated once Applicant made that decision several week before the trial date, he put in his full effort to prepare the case for trial. Scott testified, in the conversations leading up to Applicant's decision to go to trial, they discussed the discovery and what he felt the State could prove, including the codefendants' statements and their expected testimony. Scott also testified he and Applicant discussed the possible punishments and consequences if Applicant were to be found guilty. Scott stated there was no question in his mind Applicant understood what the State was going to have to prove against him for a conviction. On cross-examination, Scott further testified he explained to Applicant the trial would be a credibility contest with Applicant's word against his codefendants.

Scott explained his understanding of the allegations by the State were that the two groups came together for a drug transaction which ended up being deadly. According to Scott, when he received discovery, he became aware the State was alleging Applicant was the gunman who fired the fatal shot. Scott testified nothing in the discovery indicated his client got into the car, but he believed otherwise after speaking with Applicant. Scott explained the defense theory was that Applicant was not the person who fired the fatal shot, nor was he part of the robbery. Scott agreed he did not discuss the "hand of one/hand of all" theory with Applicant prior to the trial because the testimony of the witnesses was inconsistent, but once it became apparent during trial the State was presenting that theory, he and Stucks had extensive conversations with Applicant about it.

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Scott agreed they found out around the time of the preliminary hearing the victim's vehicle had already been released. Scott testified he did not think there was any point in pursuing it at that time because there would have been problems with authenticating any evidence obtained, and the State's evidence was included in the discovery. Scott explained he waited to move to view the vehicle until just prior to trial because he did not want to "show his hand," and he filed the motion to ensure he had received all the discovery relating to that issue. Scott stated he was satisfied the State had turned over all of the evidence they obtained from the car, and he received it in discovery. Scott explained he and Stucks discussed hiring their own expert to review the pictures and testing, but ultimately they did not feel it would be a good use of their financial resources because they had witness statements they believed verified their version of the facts.

Scott further testified the jury deliberated for approximately twenty hours over the course of two days. He explained the jury asked for copies of the murder charge and the hand of one/hand of all charge, and he did not object to only those portions of the instructions being sent back to them. Scott stated they felt confident the jury would not find the intent necessary for murder, so it was a strategic decision not to object. On cross-examination, Scott reviewed the transcript and explained the jury's note indicated they had reached a verdict on the other charges, so there was no need for the rest of the jury instructions to be sent back. He also testified he did not ask for the jury to be polled after the verdict because he did not believe it would make anyone change their mind.

Scott testified once he understood accomplice liability was going to be one of the State's theories, he discussed with Applicant that Applicant could still be convicted of the charges even if he was only participating in the drug deal. Scott explained on cross-examination this conversation occurred while the trial was ongoing and evidence was being received. Scott explained he talked at length with Stucks and Applicant once the judge gave them proposed jury charges about whether

they should object to the hand of one/hand of all charge, but they decided not to because, based on the testimony that had been presented, there was no reason to do so. Scott explained he was not concerned about the hand of one/hand of all charge because they did not believe the jury would find the requisite intent for murder. Scott testified there were numerous inconsistencies between the physical evidence, the expert testimony, and the victims; it was clear the men in the other group also had a gun; and they were confident based on the expert witness testimony the State had not established Applicant had a gun in his hand.

Stucks testified he was admitted to the Illinois Bar in 2010 and to South Carolina in 2011. He explained Applicant is his son. Stucks further testified he did not actively participate in the trial; he assisted Scott in preparing the case and formulating a defense strategy. Stucks explained he was in a tenuous position representing his son, which is why he asked Scott to try the case instead. Stucks stated he met with Applicant many times, usually without Scott, and if they spoke to Scott together, it was usually at the courthouse for some type of appearance. Stucks further testified he and Scott met many times without Applicant, and he believed Scott met with Applicant without Stucks present at least once.

Stucks stated, based on the witness statements and evidence they received in discovery, he and Scott felt the State would not be able to prove Applicant had gone to the victim's car or that Applicant was the shooter. Stucks testified he never discussed accomplice liability with Applicant or Scott because Applicant was the only codefendant going to trial, and they knew the codefendants would testify against him. According to Stucks, he stayed in the courtroom while Scott and the solicitors went to the judge's chambers to discuss the jury charge. When Scott returned, he said the judge would charge hand of one/hand of all, but they did not discuss it with Applicant. However, on cross-examination, Stucks conceded there was evidence through Carraway's testimony and that of

the expert witness from which the jury could have convicted Applicant as the principal – as the shooter.

Finally, Stucks testified the State offered Applicant a plea to voluntary manslaughter immediately before trial, but Applicant refused the offer.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court finds Applicant's allegations of ineffective assistance of counsel are without merit. This Court has had the opportunity to review the record in its entirety and has heard the testimony at the PCR hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

1. Failure to properly prepare for trial and anticipate the State’s theory of the crime

Applicant alleges his trial counsel was ineffective in preparing for trial and failed to anticipate the State’s theory of the crime. Specifically, Applicant contends trial counsel was unprepared for the State’s hand of one/hand of all argument. For the reasons explained below, this Court disagrees and finds this allegation should be denied and dismissed.

The testimony given by Scott and Stucks as to whether they discussed the hand of one/hand of all theory with Applicant is at best confusing, and, at times, contradictory. However, this Court finds credible Scott’s testimony he did not discuss the theory with Applicant until it became apparent at trial the State was arguing it as an alternative way for the jury to convict Applicant. Scott further credibly testified he reviewed the State’s evidence and discovery, which indicated the State believed Applicant fired the fatal shot – i.e. Applicant was the principal in the murder, not a mere accomplice. Scott further testified he explained to Applicant – and Applicant testified he



understood – this case would be difficult to win because both codefendants would testify against him. As both Scott and Stucks explained, however, the defense believed the number of contradictions between the witness statements and the forensic evidence created reasonable doubt as to whether Applicant even went to the victim's car, and certainly that he was not the shooter. This Court finds trial counsel were not deficient in preparing for trial by focusing on the most obvious theory suggested by the discovery and evidence.

Additionally, this Court finds Applicant has failed to prove he was prejudiced by trial counsels' allegedly deficient conduct. Both Scott and Applicant testified Applicant adamantly refused to plead guilty because he was not the shooter and did not know anything about the plan to rob Weaver's group. Scott credibly testified, once he realized the State was arguing accomplice liability in the alternative to presenting Applicant as the shooter, he and Applicant had an extensive discussion. Scott stated this discussion occurred while the trial was ongoing and evidence was still being received; thus, Applicant had the opportunity to stop the trial to plead guilty, but he chose to continue. At the conclusion of Applicant's trial when he was given the opportunity to speak prior to sentencing, Applicant again stated he was innocent and had not committed these crimes. Moreover, Applicant never testified at the evidentiary hearing that he would have changed his mind and pleaded guilty had he known about hand of one/hand of all theory.

Most significantly, this Court finds ample evidence in the record supported the State's contention Applicant was the shooter. During the State's closing argument, the solicitor's focus was on arguing the evidence showed Applicant was the shooter, and it could not have been Carraway because Carraway did not have a gun and was in the wrong position to have fired the fatal shot. Tr. pp. 511-14. This argument was supported by the testimony of multiple witnesses, including Carraway, Davis, and Investigators Bird and McFadden. This Court therefore finds, although the

jury asked for the instruction regarding hand of one/hand of all in connection with deliberating the murder charge, it is at least equally likely Applicant was ultimately convicted as a principal given the strength of the State's evidence to that point. In any event, Applicant had no jurors present to testify at the evidentiary hearing, and the record contains no indication as to which theory the jury ultimately used to convict Applicant. Thus, Applicant has failed to prove how he was prejudiced by the hand of one/hand of all argument.

Because Applicant has proven neither deficiency nor prejudice as to this allegation, it is denied and dismissed.

2. Failure to object to an incomplete copy of the jury instructions being sent back to the jury

This Court finds this allegation is without merit. As evidenced by the transcript, at the time the jury requested the instructions on murder and hand of one/hand of all, it had already reached a verdict on the charges of armed robbery and possession of weapon. Tr. pp. 597-98. Therefore, the only relevant jury instructions were the ones the jury requested – instructions related to the murder charge. Additionally, Scott credibly testified the defense decided not to object to the request because that was not the theory the defense was concerned about regarding the murder. This Court has reviewed the jury instructions and finds they were correct and proper. The jury did not request instructions on any other issues, and the other charges had been decided. Therefore, this Court finds Applicant has failed to prove either deficiency in counsel's conduct or prejudice resulting therefrom. This allegation is denied and dismissed.

3. Failure to request the jury be polled

The Court finds this allegation to be wholly without merit. Nothing in the record of the trial or the evidentiary hearing suggests the jury's verdict was not unanimous. After the trial court announced the verdict, all jurors raised their hands to indicate it was their verdict. Tr. p. 601. This

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Court agrees with Scott that verbally polling the jury would have made no difference in the outcome. This Court finds trial counsels' conduct was not deficient as a defense attorney has "no affirmative duty to request the trial judge to poll the jury," particularly where, as here, there was no indication the verdict was not unanimous. Green v. State, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002). Because Applicant has proven neither deficiency nor prejudice, this allegation is denied and dismissed.

4. Failure to timely file a motion to inspect the vehicle

Applicant alleges his trial counsel was ineffective for failing to file a motion to inspect the vehicle before trial. However, Scott credibly testified he found out the vehicle had been released around the time of Applicant's preliminary hearing, so he did not pursue it further because he believed any evidence obtained at that point would likely have problems with admissibility at trial. Scott further credibly testified he filed the motion solely as a precaution to make sure the State did not have any additional discovery regarding the vehicle; the State assured him it did not, and Scott testified he was satisfied he received everything the State had collected. Therefore, this Court finds trial counsel were not deficient for failing to file the motion prior to the beginning of trial.

Moreover, although Applicant speculated there was additional helpful evidence to be found in the car, Applicant did not produce any such evidence or the testimony of any expert witnesses at the evidentiary hearing. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1999) (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998)

("This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. . . ."); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial)

Therefore, this Court finds Applicant has failed to meet his burden of proving he was prejudiced by his trial counsels' failure to file the motion. Accordingly, this allegation is denied and dismissed.

CONCLUSION

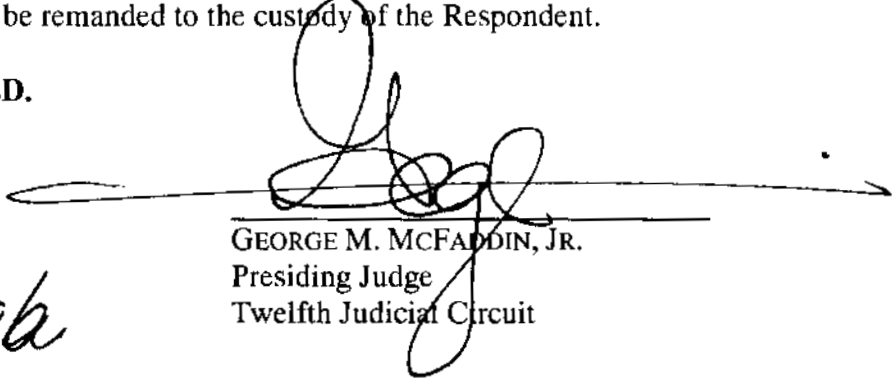
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by his representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit

5 March 2020
Rec'd pro tem
for Sept 29, 2020

2020 OCT -7 PM 3:30
DORIS FOLLOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED



ALAN WILSON
ATTORNEY GENERAL

2020 OCT -7 PM 3:30
DORIS FOULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

October 5, 2020

The Honorable Doris Poulos O'Hara
Florence County Clerk of Court
180 N. Irby Street MSC-E
Florence, SC 29501

Re: Justin Simms, #358130 v. State of South Carolina
2016-CP-21-2267

Dear Ms. O'Hara:

Enclosed please find the original Order of Dismissal signed by the Honorable George M. McFaddin, Jr., in the above-captioned case, for filing in your office.

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,


Lindsey A. McCallister
Assistant Deputy Attorney General

LAM/jaj

cc: Jonathan D. Waller, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2102267

Justin Simms

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

10/7/2020

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **October 7, 2020**, and a copy mailed first class or placed in the appropriate attorney's box on **October 8, 2020**, to attorneys of record or to parties (when appearing pro se) as follows:

FILED
2020 OCT - 7 PM 4:09
CLERK OF COURT
FLORENCE COUNTY, SC

Jonathan D Waller 1116 Blanding Street Suite 2B
Columbia, SC 29201

Samuel Leonard Key PO Box 11549 Columbia SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
George M. McFaddin, Jr., Circuit Court Judge

2016-CP-21-2267

RECEIVED

OCT 26 2020

S.C. SUPREME COURT

Justin R. Simms, # 358130,

Appellant,

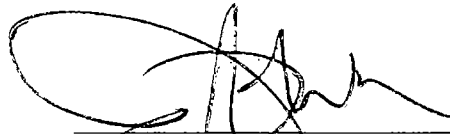
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Justin R. Simms, # 358130, appeals the Order of Dismissal denying his
Application for Post-Conviction Relief filed October 7, 2020, issued by the Honorable
George M. McFaddin, Jr., Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

October 21, 2020

Other Counsel of Record:

Lindsey A. McCallister, Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211

(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 26 2020

S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
George M. McFaddin, Jr., Circuit Court Judge

2016-CP-21-2267

Justin R. Simms, # 358130,

Appellant,

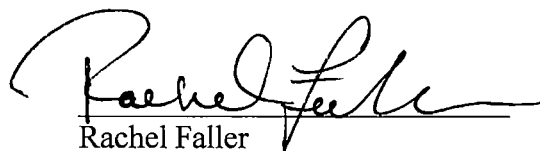
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.


Rachel Faller

October 21, 2020

WITNESSES

Thomas Mcfadden

Florence County Sheriff

DOCKET NO. 2010-GS-21-1427

The State of South Carolina

County of

FLORENCE

FILED

2010 SEP 30 AM 9:29

CONNIE REE SHEARIN
CLERK OF COURT
FLORENCE COUNTY, S.C.

COURT OF GENERAL SESSIONS

OCTOBER

TERM

2010

E. L. CLEMENTS, III

THE STATE

vs.

ARREST WARRANT NUMBER

M271272 2010GS2101427A
2010GS2101427B

JUSTIN RASHAWN SIMMS

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 9/30/10

VERDICT

person of Petit Jury

Date:

Indictment for

MURDER,
ATTEMPTED ARMED ROBBERY,
AND
POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

MURDER, ATTEMPTED ARMED ROBBERY,
AND POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on SEPTEMBER 30, 2010 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116

16-03-0010,0020; 16-01-0060

That JUSTIN RASHAWN SIMMS did in Florence County on or about January 10, 2010, feloniously, willfully and with malice aforethought kill one Marcus A. Weaver, by means of shooting him in the back with a handgun, at the Days Inn on West Lucas Street, Florence, SC, while attempting an Armed Robbery, and that the said Marcus A. Weaver did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT TWO- ATTEMPTED ARMED ROBBERY

CDR: 0026

16-11-0330(B), 16-01-0060

That JUSTIN RASHAWN SIMMS did in Florence County, on or about January 10, 2010, in that while armed with a deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, did attempt to rob Marcus A. Weaver and/or Shawn Davis while at the Days Inn on West Lucas Street, Florence, SC, by means of force or intimidation, goods or monies of the said Marcus A. Weaver and/or Shawn Davis; in violation of Sections 16-11-0330(B) and 16-01-0060, S.C. Code of Laws, 1976, as amended.

25-02-MA

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, ATTEMPTED ARMED ROBBERY, AND POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME WITH THE AFORESAID NAMES(S) OF JUSTIN RASHAWN SIMMS SHOWN THEREON:

**COUNT THREE - POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME**

CDR: 1245

16-23-0490

That JUSTIN RASHAWN SIMMS did in Florence County on or about January 10, 2010, was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun, during the commission of a violent crime, to wit: Murder and/or Attempted Armed Robbery; in violation of Section 16-23-0490, S.C Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E.L. Clements, III

E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFIED: A TRUE COPY
Christa K. [Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

1 STATE OF SOUTH CAROLINA

COUNTY OF Florence
 STATE VS.
Justin Rashawn Simms

AKA:

Race: B Sex: M Age: 22DOB: SS#:

Address:

City, State, Zip: Darlington, SC 29532DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Murder30 years to LIFEin violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Clements, III, E. L.SC Bar#DefendantAttorney for DefendantSC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
 and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
 of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ — plus 20% fee: \$ —

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% (County (if paid in installments))		\$
TOTAL		\$ <u>105.00</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-21-1427A/W#: M271272Date of Offense: 1/10/2010S.C. Code § : 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ — beginning —\$ — paid to Public Defender FundOther: —

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

13 DEC 13
13 DEC 13

CERTIFIED: A TRUE COPY
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

Justin Rashawn Simms

AKA:

Race: B Sex: M Age: 22

DOB: SS#:

Address:

City, State, Zip: Darlington, SC 29532

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Attempted armed, or allegedly armed, robbery

IN THE COURT OF GENERAL SESSIONS

15

INDICTMENT/CASE#: 2010-GS-21-1427

A/W#: 2010GS2101427A

Date of Offense: 1/10/2010

S.C. Code §: 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Clements, III, E. L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☒ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ <u>105.00</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Jim Rde
22143
13 DEC 13

CERTIFIED TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

COUNTY OF Florence
 STATE VS.
Justin Rashawn Simms

AKA: _____
 Race: B Sex: M Age: 22
 DOB: _____ SS#: _____

Address: _____
 City, State, Zip: Darlington, SC 29532
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Weapons / Poss. weapon during violent crime (no longer used) 5 years

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 1245
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 15295
Clements, III, E. L. SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
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§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>105.00</u>

Clerk of Court/ Deputy Clerk _____

Court Reporter: _____

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-21-1427

A/W#: 2010GS2101427B

Date of Offense: 1/10/2010

S.C. Code § : 16-23-0490

CDR Code #: 1245

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge _____

Judge Code: _____

Sentence Date: 13 Dec 13

CERTIFIED TRUE COPY
[Signature]
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.