

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM COLLETON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Diane S. Goodstein

Appellate Case Number: 2018-000970

Lower Case Number: 2015-CP-15-1210

Antwan McMillan,.....Petitioner

v.

State of South Carolina,.....Respondent

APPENDIX - VOLUME 2 OF 2

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1 EVIDENCE.)

2 THE COURT: You may publish.

3 ASST. SOL. HASELDEN: Thank you, Your Honor.

4 Q Captain Johnson, I have no further questions for you.

5 If you'd answer anything defense counsel has for you.

6 THE COURT: Cross-examination by the Defendant

7 McMillan.

8 MR. MATHEWS: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MATHEWS:

11 Q Detective Johnson, you are a Captain?

12 A Yes.

13 Q Are you the third highest person at the Sheriff's

14 Office?

15 A I'm sort of, kind of, I'm one of three Captain's there.

16 Q One of three Captains, okay. You've been knowing

17 Brenda, I guess, for a long time?

18 A Very long time.

19 Q At least since high school?

20 A Yes, sir.

21 Q Okay.

22 MR. MATHEWS: I don't have anything further, Your

23 Honor.

24 THE COURT: Cross-examination by the Defendant Jakes?

25 MR. BEACH: No questions for this witness, Your Honor.

1 THE COURT: As to this witness, Solicitor.

2 ASST. SOL. HASELDEN: I ask that he be excused.

3 THE COURT: Very well. You may step down, Mr. Johnson,
4 leave my exhibit's with me please and you are excused from
5 the trial of this case, you may leave the courtroom at this
6 time. Call your next witness.

7 ASST. SOL. HASELDEN: The State calls John Graham.

8 WHEREUPON, THE WITNESS, JOHN GRAHAM, IS DULY SWORN.

9 THE COURT: State your full name and spell your last
10 name for the court reporter.

11 MR. GRAHAM: John Graham, G-R-A-H-A-M.

12 THE COURT: Your witness, Counsel.

13 ASST. SOL. HASELDEN: Thank you.

14 DIRECT EXAMINATION

15 BY ASST. SOL. HASELDEN:

16 Q Mr. Graham, what do you do for a living?

17 A I farm and I'm a DNR Officer.

18 Q Do you live in Colleton County?

19 A Yes.

20 Q Where do you live at?

21 A Smoaks?

22 Q You live on Sunrise Road?

23 A No, not on Sunrise Road, Lowcountry Highway.

24 Q Do you have any business out on Sunrise Road?

25 A Yeah, I farm land out there.

1 Q Where is the land that you farm land out there?

2 A It's on Sunrise Road, about 1800 blocks of field out
3 there, so I farm that property.

4 Q Do you do anything else but farm on that property?

5 A Hunt.

6 Q Were you out on that property, I believe it was last
7 June of 2010 at all?

8 A Yes.

9 Q Did you find anything in particular out there?

10 A I was checking around the deer stands and found some
11 .50 caliber hulls.

12 Q What did you do after you found those?

13 A Well, I understood that one of the detectives, I was
14 talking to them one day ---

15 MR. MATHEWS: Objection, Your Honor.

16 THE COURT: Objection sustained. Do not refer to what
17 someone else said. Only what you saw with your own personal
18 observation. Objection is sustained. Ask a question
19 counsel. Direct examination.

20 Q Please just refer, Mr. Graham, to what you did next as
21 far as those casings, other than what somebody told you;
22 just what did you do?

23 A I picked up the hulls and I showed them to a detective.

24 Q You contacted law enforcement?

25 A Yes.

1 Q They came out there?

2 A Yes.

3 Q Did you give them permission to come out on your land?

4 A Yes.

5 ASST. SOL. HASELDEN: Do you think, Your Honor, if I
6 could -- I know I told you I wasn't going to use this map
7 again, but if it's all right, if I can give him the portable
8 mic and have him come down?

9 THE COURT: Absolutely. Mr. Polk, bring the easel
10 around for her, hook Exhibit Ninety-One to the easel.
11 Counsel, you may come around so you can view the board. Are
12 you going to ask the witness to step down?

13 ASST. SOL. HASELDEN: Yes, sir.

14 THE COURT: Give him a portable microphone. You may
15 step down from the witness stand. Counsel, do you wish to
16 come around?

17 MR. MATHEWS: No, sir.

18 THE COURT: Mr. Beach?

19 MR. BEACH: No, sir.

20 A (INDICATING ON THE MAP.) This is the area that I found
21 the shells in.

22 Q If I could, in presence of the jury, get you to mark
23 that area, Mr. Graham?

24 THE COURT: Let the record reflect the Exhibit Number.

25 ASST. SOL. HASELDEN: Beg your pardon, this is State's

1 Exhibit Ninety-One, previously entered into evidence.

2 Q You marked that with this dark blue?

3 A Right.

4 Q That's all I have for you at the moment, you can get
5 back on the stand.

6 (WITNESS RESUMES THE STAND.)

7 Q Mr. Graham, how far off the road were you when you
8 found these things?

9 A How was what?

10 Q How far off the road were you when you found these .50
11 caliber casings?

12 A I'd say 100 or 150 yards.

13 Q Okay. What did the officers do when they got there?

14 A We looked around the stand for more shellings.

15 Q Okay. Did you locate anymore?

16 A Yes.

17 Q What did the officer's do with them?

18 A They took them and whatever they done with them.

19 Q Okay. Now, do you own a .50 caliber?

20 A No.

21 Q Are you the only one that shoots out there on that
22 land?

23 A No, I have other hunters that shoot out there, but none
24 of them use a .50 caliber.

25 Q How do you know that?

1 A We have a sign-in sheet and the person puts down the
2 caliber weapon he's using when he hunts.

3 Q Has anybody ever hunted with a .50 caliber on your
4 land?

5 A No.

6 Q I have nothing further for you, Mr. Graham. If you
7 could answer anything defense counsel has, I'd appreciate
8 it.

9 THE COURT: Cross-examination by the defendant
10 McMillan?

11 MR. MATHEWS: No, sir.

12 THE COURT: Cross-examination by the defendant Jakes.

13 MR. BEACH: Just one question, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. BEACH:

16 Q Mr. Graham, could you determine how long those shell's
17 had been there?

18 A I would say not long, because they weren't eroded or
19 anything.

20 Q Had you been to that stand anytime recently?

21 A I had been there about a week earlier.

22 Q Were they there when you were there a week earlier?

23 A Didn't pay any attention to them; didn't see them at
24 that time.

25 Q Okay. Thank you, sir.

1 MR. BEACH: No other questions, Your Honor.

2 THE COURT: Redirect?

3 ASST. SOL. HASELDEN: No, Your Honor.

4 THE COURT: As to this witness?

5 ASST. SOL. HASELDEN: I asked that he be excused.

6 THE COURT: Any objection to this witness being excused
7 from the counsel for McMillan?

8 MR. MATHEWS: No, Your Honor.

9 THE COURT: Counsel for Jakes?

10 MR. BEACH: No, Your Honor.

11 THE COURT: Mr. Graham, you may step down and you are
12 excused from the trial of this case. You may leave the
13 courtroom at this time. Call your next witness.

14 ASST. SOL. HASELDEN: The State calls Dave Thomas.

15 WHEREUPON, THE WITNESS, RIDDICK DAVID THOMAS, IS DULY
16 SWORN.

17 THE COURT: State your first name and spell your last.

18 DET. THOMAS: My name is Riddick David Thomas, T-H-O-M-
19 A-S.

20 THE COURT: Your witness, Counsel.

21 ASST. SOL. HASELDEN: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY ASST. SOL. HASELDEN:

24 Q Detective Thomas, who do you work for?

25 A Colleton County Sheriff's Office.

1 Q What is your position there?

2 A I'm a detective.

3 Q Were you working as a detective last June of 2010?

4 A Yes ma'am, I was.

5 Q Did you have an opportunity to respond out to a
6 location on Sunrise Road at all, in relation to this case?

7 A Yes, I did.

8 Q Did you meet with a John Graham, works with DNR, I
9 believe.

10 A Yes, he was the one I think that was there.

11 Q Okay. What did you do when you got there?

12 A Initially, I was out there, we were serving a search
13 warrant, but I ended up going -- after the search warrant, I
14 ended up in a field across from the address on Sunrise.

15 Q Okay. How did you end up in that field?

16 A There was information that a cartridge had been found
17 from a .50 caliber pistol.

18 ASST. SOL. HASELDEN: Your Honor, may I approach?

19 THE COURT: You may.

20 Q Detective Thomas, I'm going to show you what's been
21 marked for identification purposes only as State's Fifty-
22 Seven, Fifty-Eight, Fifty-Nine, Sixty and Eighty-Nine. If
23 you could take a minute to look over these items, review
24 them to yourself and let me know when you're done, please.

25 A Do I need to ---

1 Q You can open it, I believe there's scissors.

2 THE COURT: Hand him a pair of scissors.

3 Q Do you recognize those items?

4 A Yes ma'am. The photographs appear to be photographs
5 that I took of the recovered spent shell casings and this
6 appears to be ---

7 THE COURT: Hold on a second, you've got to refer to
8 the exhibit number.

9 A I'm sorry. The photographs, Exhibit Sixty, Fifty-Nine,
10 Fifty-Eight, and Fifty-Seven appear to be photographs of the
11 recovered spent shell casings and the shell casings here
12 appear to be the ones that were recovered.

13 THE COURT: And that would be exhibit number?

14 A I'm sorry, I'm sorry. Exhibit Eighty-Nine.

15 THE COURT: Proceed.

16 Q Are those all truthful and accurate depictions as
17 photographs of and the items that you recovered out in the
18 field on Sunrise?

19 A Yes, ma'am, they appear to be.

20 Q Did you alter them in any way?

21 A No, ma'am.

22 ASST. SOL. HASELDEN: Your Honor, at this time I'd ask
23 that Eighty-Nine, Fifty-Seven, Fifty-Eight, Fifty-Nine and
24 Sixty be entered into evidence.

25 THE COURT: Mr. Mathews, as to the defendant McMillan,

1 any objection to State's Exhibit's Fifty-Seven, Fifty-Eight,
2 Fifty-Nine, Sixty and Eighty-Nine?

3 MR. MATHEWS: No objection, Your Honor.

4 THE COURT: As to the defendant Jakes?

5 MR. BEACH: No objection.

6 THE COURT: Ladies and gentlemen of the jury, State's
7 Exhibit's Fifty-Seven, Fifty-Eight, Fifty-Nine, Sixty and
8 Eighty-Nine will be admitted into evidence in the trail of
9 this case without objection.

10 (STATE EXHIBIT NUMBER FIFTY-SEVEN IS RECEIVED INTO
11 EVIDENCE.)

12 (STATE EXHIBIT NUMBER FIFTY-EIGHT IS RECEIVED INTO
13 EVIDENCE.)

14 (STATE EXHIBIT NUMBER FIFTY-NINE IS RECEIVED INTO
15 EVIDENCE.)

16 (STATE EXHIBIT NUMBER SIXTY IS RECEIVED INTO EVIDENCE.)

17 (STATE EXHIBIT NUMBER EIGHTY-NINE IS RECEIVED INTO
18 EVIDENCE.)

19 THE COURT: You may now publish, Solicitor.

20 Q One quick question before I publish. Detective Thomas,
21 what did you do with those .50 caliber casings you recovered
22 once you got them?

23 A They were turned into evidence.

24 Q Evidence where?

25 A At the Sheriff's Office.

1 ASST. SOL. HASELDEN: May I approach?

2 Q You stated you were across the street earlier -- why
3 were you across the street?

4 A Actually, I ended up there doing -- there was a search
5 warrant being executed there.

6 Q Was it in connection with this case?

7 A Yes, ma'am it was.

8 Q Whose house was that?

9 A It was the McMillan residence. I think 1834 or
10 something like that.

11 Q I have no further questions, thank you.

12 THE COURT: Cross-examination by the defendant
13 McMillan.

14 MR. MATHEWS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MATHEWS:

17 Q Detective Thomas, the search warrant of the -- was that
18 you and Detective Taylor or who all executed the search
19 warrant of Sunrise Road?

20 A I don't recall who all was there; I ended up down at
21 that location.

22 Q You did the return on that search warrant?

23 A No, sir. I don't think so, I don't recall, actually.

24 Q Did you witness the return on that of Ray Taylor? Did
25 you and Ray Taylor witness the return?

1 A I might have witnessed it. I would have to look at it,
2 sir.

3 MR. MATHEWS: May I approach the court reporter?

4 THE COURT: You may.

5 Q Detective Thomas, I'm handing you what's been marked as
6 Defendant's Exhibit Number Ten for identification, and I ask
7 if you can identify that?

8 A Yes, sir.

9 Q What is that?

10 A That is the search warrant for the residence.

11 Q Now, having had a chance to look at the return on that,
12 did you, in fact, witness the return that nothing was taken
13 from Sunrise Road?

14 A Yes, sir.

15 Q Now, how far is that location at Sunrise Road from the
16 Clatty Farm site; a minute?

17 A Probably a minute, a couple of minutes. It's not a
18 long distance.

19 Q And how far is that residence from the corner of McLeod
20 Road and 95, about a half an hour?

21 A Where from?

22 Q From Sunrise Road -- not Sunrise Road, the lot across
23 next to a deer stand. Those were next to a deer stand?

24 A Yes, sir.

25 Q And that deer stand, how far was that from the corner

1 of McLeod and 95, twenty-three miles sound about right?

2 A About, possibly.

3 Q It would take about a half an hour compared to about a
4 minute. A minute to Clatty Farm, about a half an hour to
5 95.

6 A I don't think it'd be quite a half hour, but it would
7 be probably close to it.

8 MR. MATHEWS: Nothing further, Your Honor.

9 THE COURT: Cross-examination by the defendant Jakes.

10 MR. BEACH: There are no questions for this witness,
11 Your Honor.

12 THE COURT: Redirect?

13 ASST. SOL. HASELDEN: None, Your Honor.

14 THE COURT: As to this witness?

15 ASST. SOL. HASELDEN: I ask that he be excused.

16 THE COURT: Any objection to this witness being
17 excused, by the defendant McMillan?

18 MR. MATHEWS: Your Honor, may we approach?

19 THE COURT: Counsel approach.

20 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
21 AND OUT OF THE HEARING OF THE JURY.)

22 THE COURT: Any objection from the defendant McMillan
23 that this witness be excused?

24 MR. MATHEWS: No, Your Honor.

25 THE COURT: Any objection from the defendant Jakes that

1 this witness be excused?

2 MR. BEACH: No, Your Honor.

3 THE COURT: Mr. Thomas, you may step down from the
4 witness stand and you are excused from the trail of this
5 courtroom. You may leave the courtroom at this time. Call
6 your next witness.

7 ASST. SOL. HASELDEN: The State calls Jacky Lawson.

8 MADAME CLERK: Please place your left hand on the Bible
9 and raise your right.

10 WHEREUPON, THE WITNESS, JACKY LAWSON, IS DULY SWORN.

11 THE COURT: State your full name and spell your last
12 for the court reporter, please.

13 MR. LAWSON: Jackie Lynn Lawson, L-A-W-S-O-N.

14 THE COURT: Your witness, Counsel.

15 ASST. SOL. HASELDEN: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY ASST. SOL. HASELDEN:

18 Q Officer Lawson, who do you work for?

19 A Colleton County Sheriff's Office.

20 Q What's your position there?

21 A I'm a Sergeant First Class on Team Three. I'm the
22 supervisor of Team Three, currently. In this instance, I
23 was assigned to Team One.

24 Q Okay. What does all that mean, Sergeant First Class,
25 Team One, Team Three; what do you do?

1 A I'm in charge of all four men currently that I work
2 with and I was one of the two supervisors of Team One on the
3 night of this incident.

4 Q So, what do you do though, actually, day to day?

5 A We respond to calls for service, crimes in progress,
6 property checks, occasionally, mental transports.

7 Q So are you road patrol?

8 A Yes, ma'am, road patrol.

9 Q Were you working late at night on June 3rd, early in
10 the morning on June 4th of 2010?

11 A Yes, ma'am.

12 Q Were you working same capacity?

13 A Yes, ma'am.

14 Q Did you respond out to the intersection of I-95 and
15 McLeod Road?

16 A I was en route, along with Deputy Morris, to the scene
17 and they had BOLO'd out a suspect vehicle, ended up stopping
18 one vehicle, I believe it was a pick-up truck, which turned
19 out not to be one of the suspects. It had to be someone
20 passing by. As soon as we cleared him, we went back on duty
21 and I was instructed to go to the hospital.

22 Q Okay. You said they BOLO'd out the car, can you
23 explain what that means?

24 A A "BOLO" is a "be on the lookout." Calls will be
25 dispatched if there's a robbery in progress or whatever kind

1 of BOLO it is; a stolen vehicle if it was a stolen vehicle
2 and you look for a general description or general
3 descriptions of persons involved in the crime.

4 Q Do you remember what the BOLO vehicle was in this case,
5 what the description was?

6 A During the initial beginning of the call or response to
7 this call, we basically had it was black males in a vehicle,
8 we really didn't have a complete description as to what type
9 of vehicle; and we met a pickup truck -- excuse me, it was a
10 car with a black male in it. It was nighttime and you
11 couldn't tell exactly how many people were in it. We
12 stopped it and it was one black male in the car and there
13 were no weapons in the car. We cleared him and continued on
14 at that point.

15 Q So you went out there, you were on your way, anyways,
16 and then they told you to go somewhere else?

17 A I was instructed to go to the hospital that a person
18 was brought in with a gunshot wound.

19 Q So what did you do when you got to the hospital?

20 A I was second officer on the scene, Deputy Mike Strauss
21 was on the scene also, he and I and Deputy Eric Concepcion
22 were at the hospital. We secured the area, found out which
23 vehicle brought the person who had the gunshot wounds to the
24 hospital, which was a Ford Taurus. I want to say it was
25 light blue ---

1 ASST. SOL. HASELDEN: May I approach the witness at
2 this point?

3 THE COURT: You may.

4 Q Sergeant Lawson, I'm going to show you what's been
5 marked for identification purposes only so far as State's
6 Eight, Nine, Ten and Eleven. If you could please review
7 those to yourself and let me know when you've had a chance
8 to look over them.

9 A Yes, ma'am. This is the photos that I took after I
10 arrived at the hospital and it is the vehicle that
11 transported the individual that was wounded that they were
12 caring for on the inside when I arrived.

13 Q And are State's Eight, Nine, Ten and Eleven truthful
14 and accurate depictions of that vehicle, as you saw it that
15 night?

16 A Yes, ma'am.

17 ASST. SOL. HASELDEN: Your Honor, at this time I'd ask
18 that State's Eight, Nine, Ten and Eleven be entered into
19 evidence.

20 THE COURT: Any objection on the behalf of the
21 defendant McMillan as to State's Exhibit's Eight, Nine, Ten
22 and Eleven?

23 MR. MATHEWS: No objection, Your Honor.

24 THE COURT: How about from the defendant Jakes as to
25 Eight, Nine, Ten and Eleven?

1 MR. BEACH: None, Your Honor.

2 THE COURT: Ladies and gentlemen of the jury, State's
3 Exhibit's Eight, Nine, Ten and Eleven will be admitted into
4 evidence in the trial of this case, without objection. You
5 may publish to the jury.

6 (STATE EXHIBIT NUMBER EIGHT IS RECEIVED INTO EVIDENCE.)

7 (STATE EXHIBIT NUMBER NINE IS RECEIVED INTO EVIDENCE.)

8 (STATE EXHIBIT NUMBER TEN IS RECEIVED INTO EVIDENCE.)

9 (STATE EXHIBIT NUMBER ELEVEN IS RECEIVED INTO
10 EVIDENCE.)

11 Q Sergeant Lawson, what did you do after you determined
12 that that was the car and you took those pictures?

13 A We tried to determine who was in the car with him when
14 the individuals brought him for identification purposes. I
15 also took photographs of the people who were in the car,
16 attempted to ask questions -- they weren't real cooperative
17 on answering any questions.

18 Q Were you able to determine who was in that car?

19 A Yes, ma'am.

20 Q Do you remember what their names were?

21 A Angela Arnold. I believe she's also known as Angela
22 Dicks. Shaquita Bryant, Mr. Joseph Griffin, and Montez
23 Jenkins.

24 Q You attempted to talk to those people?

25 A I talked to everybody, except Montez Jenkins; he was

1 inside the hospital. The other individuals were on the
2 outside and we called for a detective to come on the scene
3 so he could follow up.

4 Q So you were able to speak to three of the four?

5 A Yes, ma'am.

6 Q Did those people give you statements?

7 A They initially ---

8 MR. MATHEWS: Objection, Your Honor, to the State.
9 He's sitting right in here.

10 THE COURT: To the extent that the question might
11 elicit a hearsay response, the objection is sustained. For
12 the witness's sake, Solicitor, ask a different question so
13 as not to elicit what someone else has spoke about; do you
14 understand?

15 ASST. SOL. HASELDEN: Yes, sir.

16 Q Did the people give you statements?

17 A Yes.

18 Q How long have you been in law enforcement?

19 A It will be thirty-one years this October.

20 Q How many times have you questioned witnesses involved
21 in any type of crime, in your thirty-one years of law
22 enforcement?

23 A It has to be -- I was a trooper for twenty-five years
24 investigating traffic accidents. Twenty of the twenty-five,
25 I did narcotic investigations for five years, it has to be

1 thousands of people I have talked to and spoke with and
2 questioned whether it's traffic related or criminally
3 related.

4 Q Were you able to determine if these people told you the
5 truth?

6 MR. MATHEWS: Objection, Your Honor.

7 THE COURT: Sustained.

8 Q Were there differences in the people's statements?

9 A Yes, ma'am.

10 Q So you spoke to three people out there at the hospital?

11 A Yes, ma'am.

12 Q Three people that were in that car?

13 A Yes, ma'am.

14 Q And there were differences in their stories?

15 A Yes, ma'am.

16 Q Then they were uncooperative?

17 A Yes, they did not give very detailed written statements
18 and they were a little bit on the evasive side when I spoke
19 to them initially.

20 Q Okay. You said you were never able to speak to a
21 Montez Jenkins?

22 A I went inside when the detective arrived and I'm pretty
23 sure I took a photo of him, so I would have complete photo
24 record of Mr. Jenkins, and I may have recorded his driver's
25 license, but I made no attempt to do any questioning since

1 the detective was on scene.

2 Q Okay. So you did attempt to talk to him on your
3 camera?

4 A Montez, no not on camera, but he was inside the
5 hospital. The other individuals were outside where the
6 audio camera could pick up.

7 Q You did make contact with him though, inside the
8 hospital?

9 A I did go inside, yes, ma'am.

10 Q And he would not give you a statement?

11 A I did not ask. Once the detective arrived, that's more
12 of his field of specialty.

13 Q Okay.

14 ASST. SOL. HASELDEN: Just a moment, Your Honor. Your
15 Honor, may I approach the witness?

16 THE COURT: You may.

17 Q I'm going to hand you a document. Please just review
18 it silently to yourself to refresh your memory.

19 (BRIEF PAUSE WHILE WITNESSES REVIEWS DOCUMENT.)

20 Q Is your memory refreshed?

21 A Yes, ma'am.

22 Q Was Montez Jenkins cooperative with you?

23 A Looking at his statement ---

24 MR. MATHEWS: Objection, Your Honor. That's just
25 hearsay.

1 THE COURT: Sustained.

2 Q I have no further questions.

3 THE COURT: Cross-examination by the defendant
4 McMillan?

5 MR. MATHEWS: Thank you, Your Honor. Your Honor, may I
6 approach the court reporter?

7 THE COURT: You may approach the court reporter.

8 CROSS-EXAMINATION

9 Q Sergeant Lawson, I'm holding what has been as
10 Defendant's Exhibit Number One, Two, Three, Four, Five,
11 Eleven, Twelve and Thirteen.

12 MR. MATHEWS: May I approach, Your Honor?

13 THE COURT: You may.

14 Q Do you recognize those?

15 A I took these photographs.

16 Q Okay. Would you, by number, identify what is the
17 subject of those photos?

18 THE COURT: You have to say defendant or state exhibit.

19 A It will be Defendant's Exhibit Number Thirteen, I'm
20 pretty sure that's Joseph Griffin. Defendant's Exhibit
21 Number Twelve, that's an individual that was there and I
22 took his photo; I don't know who he is.

23 Q Could that be Montez Jenkins?

24 A It very well could be. I had very limited contact with
25 Mr. Jenkins. Defendant's Exhibit Number Five, I don't

1 really recall who this individual is; it's a male. There
2 was a crowd gathering, if they were present, I took their
3 photos.

4 Q Why did you do that?

5 A Pretty much to preserve any visual evidence there and
6 also with any males that could be present on the scene, if
7 they were suspects they can later be identified --
8 Defendant's Exhibit Number Four, it's a female. Like I
9 said, I'm not really sure who that is.

10 Q Could that be Shaquita Bryant?

11 A Very well could be. Defendant's Exhibit Number One,
12 I'm not sure who that is also. Defendant's Exhibit Number
13 Two is another male, I do not know who that is. Defendant's
14 Exhibit Number Three, that's the interior of the Taurus with
15 a young lady sitting there, partially.

16 Q In that photo where you see a partial lady, I guess
17 that would be her hind quarters, I guess; is that a cell
18 phone she appears to be sitting on?

19 A That's what it appears to be, yes. And Defendant's
20 Exhibit Number Eleven, that's all of the ladies in the car,
21 as to her name ---

22 Q Could that be Angela Arnold?

23 A Her hairstyle has changed from then to current.

24 Q How many of the individuals that you talked to that
25 night, just from the photos, how many of them were carrying

1 cell phones?

2 A I didn't really recall there. I'm pretty sure that the
3 majority of them had cell phones on them at that time.

4 Q Would it be up to the detective to seize those and go
5 through them or whatever?

6 A If he had reasonable suspicion or probable cause to
7 cease those as evidence.

8 Q Okay. Has it been your experience that people use
9 their cell phone a lot, make a lot of calls with them --
10 it's like the coconut telegraph, if something happens did
11 you hear about what happened or let me tell you what
12 happened, all that sort of stuff?

13 A Phones are used frequently for legal and illegal
14 purposes. You can't determine when you're standing there
15 with people talking as to what they're doing.

16 Q No. Right. But if, for example, you needed help or
17 you needed emergency or needed to contact a friend, come
18 pick me up, so if you have a cell phone, you'd probably use
19 it, wouldn't you?

20 A Seems logical, yes.

21 MR. MATHEWS: Your Honor, I'd move those into evidence
22 at this time, those photos.

23 THE COURT: Now, you're referring to Defendant's One
24 through Five, inclusive Eleven, Twelve and Thirteen?

25 MR. MATHEWS: Yes, sir.

1 THE COURT: All right. Any objection by the State to
2 Defendant's One through Five, Eleven, Twelve and Thirteen?

3 ASST. SOL. HASELDEN: No, Your Honor.

4 THE COURT: Any objection by the defendant Jakes to
5 Defendant McMillan's One through Five, Eleven, Twelve and
6 Thirteen?

7 MR. BEACH: No, Your Honor.

8 THE COURT: Becky, I'm going to have you mark that
9 these are the Defendant McMillan's Exhibits, and not just
10 defendant's exhibits, since we have more than one defendant
11 in the trial of this case. Would you do so at this time
12 before we proceed?

13 MR. MATHEWS: I have no further questions, Your Honor.

14 THE COURT: Ladies and gentlemen of the jury, Defendant
15 McMillan's Exhibit's One through Five, and Defendant
16 McMillan's Exhibit's Eleven, Twelve, and Thirteen will be
17 admitted into evidence in the trial of this case without
18 objection.

19 (DEFENDANT McMILLAN EXHIBIT NUMBER ONE IS RECEIVED INTO
20 EVIDENCE.)

21 (DEFENDANT McMILLAN EXHIBIT NUMBER TWO IS RECEIVED INTO
22 EVIDENCE.)

23 (DEFENDANT McMILLAN EXHIBIT NUMBER THREE IS RECEIVED
24 INTO EVIDENCE.)

25 (DEFENDANT McMILLAN EXHIBIT NUMBER FOUR IS RECEIVED

1 INTO EVIDENCE.)

2 (DEFENDANT McMILLAN EXHIBIT NUMBER FIVE IS RECEIVED
3 INTO EVIDENCE.)

4 (DEFENDANT McMILLAN EXHIBIT NUMBER ELEVEN IS RECEIVED
5 INTO EVIDENCE.)

6 (DEFENDANT McMILLAN EXHIBIT NUMBER TWELVE IS RECEIVED
7 INTO EVIDENCE.)

8 (DEFENDANT McMILLAN EXHIBIT NUMBER THIRTEEN IS RECEIVED
9 INTO EVIDENCE.)

10 THE COURT: You may publish to the jury once the court
11 reporter finishes marking them.

12 MR. MATHEWS: I can just wait until they go back with
13 the jury, Your Honor ---

14 THE COURT: Very well.

15 MR. MATHEWS: I'll present them, Your Honor, after
16 Becky is done.

17 MR. MATHEWS: Thank you, Your Honor. May I approach?

18 THE COURT: You may.

19 MR. MATHEWS: Nothing further, Your Honor.

20 THE COURT: Cross-examination by the defendant Jakes?

21 MR. BEACH: No, Your Honor.

22 THE COURT: Redirect?

23 ASST. SOL. HASELDEN: Briefly.

24 REDIRECT EXAMINATION

25 BY ASST. SOL. HASELDEN:

1 Q Sergeant Lawson, you've been doing this a long time,
2 haven't you?

3 A Yes, ma'am.

4 Q Could you just snatch up somebody's cell phone because
5 they arrive at a hospital and you see them standing there?

6 A No, ma'am.

7 Q Nothing further; thank you.

8 THE COURT: Recross, by the defendant McMillan, limited
9 to redirect.

10 MR. MATHEWS: Yes, sir.

11 RECROSS-EXAMINATION

12 BY MR. MATHEWS:

13 Q Sergeant Lawson, you were in drugs; I guess you did DUI
14 cases, as well?

15 A I've done both.

16 Q What percentage of the cases did you obtain consent to
17 search their cars -- are they cases that where you made
18 cases for illegal weapons or illegal drugs or anything else,
19 what percentage of the cases did you start through consent
20 to search vehicles?

21 ASST. SOL. HASELDEN: Your Honor, I'd have to object.

22 THE COURT: Counsel approach.

23 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
24 AND OUT OF THE HEARING OF THE JURY.)

25 THE COURT: Objection overruled.

1 Q Sergeant Lawson, would you say that a significant
2 portion of the cases that you made involving illegal
3 substances, weapons, or so forth, were based on consensual
4 searches?

5 A Yes.

6 MR. MATHEWS: Nothing further, Your Honor.

7 THE COURT: Recross, limited to redirect by the
8 defendant Jakes?

9 MR. BEACH: Nothing, Your Honor.

10 THE COURT: As to this witness, Solicitor?

11 ASST. SOL. HASELDEN: I ask that he be excused.

12 THE COURT: Any objection to this witness being excused
13 from the trial of this case by the defendant McMillan?

14 MR. MATHEWS: No, Your Honor.

15 THE COURT: By the defendant Jakes?

16 MR. BEACH: No, Your Honor.

17 THE COURT: Mr. Lawson, you may step down and you are
18 excused from the trial of this courtroom. You left me all
19 my exhibits, very good. You may leave the courtroom at this
20 time. Call your next witness.

21 ASST. SOL. SHELTON: The State calls Amanda Webb.

22 THE COURT: Ms. Webb, you can come in and be sworn by
23 the Clerk of Court, please.

24 WHEREUPON THE WITNESS, MS. AMANDA WEBB, IS DULY SWORN.

25 THE COURT: State your full name and spell your last

1 for the court reporter.

2 WITNESS: Amanda Webb, W-E-B-B.

3 THE COURT: Your witness, Counsel.

4 ASST. SOL. SHELTON: Thank you, Your Honor. May it
5 please the Court?

6 DIRECT EXAMINATION

7 BY ASST. SOL. SHELTON:

8 Q Ms. Webb, who do you work for?

9 A South Carolina Law Enforcement Division.

10 Q And what do you do there?

11 A I'm a DNA Analyst.

12 Q Can you briefly describe your duties and what it
13 entails to the jury?

14 A As a DNA Analyst, I perform tests for serology, which
15 is the identification of body fluids. We will test for the
16 presence of blood, saliva, and also, semen; and then, also,
17 we will develop DNA profiles. In forensics, we will develop
18 DNA profiles from evidence samples, and then we also request
19 DNA standards from individuals, and what that is, is a known
20 sample of DNA from an individual. So we know that it's that
21 person's DNA. And if you develop any DNA profiles from any
22 evidence samples, you can compare it to that person to see
23 if it matches that person or doesn't match that person.

24 Q Can you explain a little bit more, what is a sample?

25 How do you develop a sample, say from a piece of clothing,

1 for example?

2 A A piece of clothing, they might be looking for specific
3 things: blood, or possibly just ownership. Meaning, they
4 would want to know who wore that t-shirt. So we will try to
5 get the DNA, the skin cells; or the blood off of the shirt
6 and it goes through different laboratory processes. And
7 then what happens is the final result is something that
8 would be unique to that individual, unless there's an
9 identical twin sibling, and once you have a unique profile
10 from an individual, you can compare it to the evidence and
11 see if it matches or not.

12 Q Before you go any more further into specifics,
13 obviously you know a lot about the subject; how did you get
14 to know that?

15 A I have a Bachelor's of Forensic Chemistry Degree from
16 Marshal University and I also have a Master's in Forensic
17 Science, also from Marshal University, and after completion
18 of my Master's degree, I was hired on at SLED and was
19 trained for approximately a year and a half under a court-
20 qualified DNA analyst, and upon my training, there's been
21 many tests I've had to complete, and also, throughout being
22 an independent case work analyst, I also have to complete
23 tests twice a year and my work is reviewed daily. Each
24 report is reviewed twice before it's sent out.

25 Q And how long have you been working -- it is proper to

1 call you a Forensic DNA Analyst?

2 A Yes, that's correct.

3 Q How long have you been working as a Forensic DNA
4 Analyst?

5 A I've been doing independent case work for approximately
6 two and a half years.

7 Q Have you been qualified as an expert in Court before?

8 A Yes, I have.

9 Q Approximately how many times?

10 A Approximately seven.

11 Q Seven times?

12 ASST. SOL. SHELTON: At this time, Your Honor, the
13 State would move for Ms. Webb to be qualified as a Forensic
14 DNA Analyst for the purposes of this trial.

15 THE COURT: Any objection to this qualification from
16 the defendant McMillan?

17 MR. MATHEWS: No, Your Honor.

18 THE COURT: From the defendant Jakes?

19 MR. BEACH: No, Your Honor.

20 THE COURT: Ladies and gentlemen of the jury, recalling
21 my earlier instruction to you, concerning expert testimony,
22 the witness is qualified, without objection, in the field of
23 Forensic DNA Analysis; without objection, you may proceed
24 Counsel.

25 ASST. SOL. SHELTON: Thank you, Your Honor.

1 Q I've been calling you Ms. Webb, you're actually Special
2 Agent Webb, is that correct?

3 A That's correct; either is fine.

4 Q I apologize for not using your title, but in any event,
5 now that you've been qualified as an expert, will you just
6 briefly, we hear a lot about DNA, will you briefly explain
7 to the jury what DNA is and where it is.

8 A Sure. DNA is, basically, essentially, just a chemical
9 in your body and it's found in every cell of your body.
10 It's found in skin cells, saliva, found in your hair, it's
11 found everywhere on the body and it's passed down -- you get
12 half of your DNA from your mom and half of your DNA from
13 your dad and that's why, you know, people sort of look
14 similar to their parents. It's the DNA that's being
15 expressed and causes the characteristics. So, as I said
16 before, it's unique to each individual, except for if
17 there's identical twins, and that's because they share the
18 same DNA.

19 So, essentially, if there's not identical twins,
20 though, it's unique to each individual.

21 Q Thank you. How does DNA end up on any object? Is it
22 just this cloud floating in the air or do you have to brush
23 up against it? Can you explain a little bit of that to the
24 jury?

25 A Yeah, our DNA is pretty contained; it's generally not

1 just floating around. I wouldn't expect to find a DNA
2 profile unless someone has been wearing an article of
3 clothing, or brushed up against it, or handled something,
4 you know. If they had their body fluids on it, though, like
5 if they happen to spit on something or bleed on something,
6 then I would expect to find their DNA on that item, but just
7 standing near someone, or something, I would not expect a
8 transfer of their DNA.

9 Q What is a DNA mixture?

10 A A DNA mixture means that more than one person's DNA was
11 found on a certain item that was tested, single source means
12 that there was only one individual found on that item.

13 Q When you have a mixture, are you able to separate the
14 two different sources of the DNA or three, four different
15 sources out?

16 A Sometimes it depends on the mixture itself. Now, I can
17 pull out one, differentiate, find one person versus the
18 other in the mixture. It's mainly because one person will
19 donate or shed more DNA on the item than like a second
20 person. So the DNA profile's end up -- I basically look at
21 the amount of DNA, so, one person will have more and I can
22 see a difference and tell that one person has a higher level
23 and the other person has the lower level, and so I can tell
24 a difference, but if they contribute the same amount of DNA,
25 then everything looks the same and it's harder to tell

1 whether or not what source of DNA came from who, and that's
2 when it becomes more or less, instead of a match statement,
3 or a non-match, it's just more of they can be included or
4 they can't be included.

5 Q And also, what is a partial profile?

6 A A partial DNA profile is where, during my testing, I
7 didn't get a DNA result at every place expected. The reason
8 for partial DNA profiles is that there wasn't enough DNA
9 deposited on that item to get a full result. Partial
10 profiles can sometimes be compared to known standards from
11 individuals, and sometimes they are so partial that I just
12 can't make a conclusion about the evidence.

13 Q When you have a mixture, last technical question I
14 think I'm going to ask you, but when you have a mixture, is
15 it possible to be able to exclude certain people from that
16 mixture and include other people as possible contributors to
17 that mixture?

18 A Yes. If there's enough information there, you can
19 sometimes include or exclude an individual from the item.

20 Q That depends on what that mixture contains?

21 A Yes, that's correct.

22 Q Special Agent Webb, I'm going to hand you what's been
23 previously marked and also entered into evidence as State's
24 Exhibit Number Seventy-One, Seventy-Two -- I'm going to hand
25 you a bunch of things, if that's all right.

1 A That's okay.

2 Q Seventy-Three, Seventy-Eight, Seventy-Nine, Eighty, .
3 Eighty-One, Eighty-Two and Eighty-Three. Now, I don't
4 expect you to speak on each one of these at the same time.
5 These have all been entered into evidence already. I'd like
6 you to take a moment of time and look at these individually,
7 and when you're ready let me know when you're prepared to
8 tell the jury if you recognize what they are. Thank you.

9 ASST. SOL. SHELTON: May I approach?

10 THE COURT: You may approach the witness.

11 A If I may refer to my notes, please.

12 THE COURT: Absolutely. Counsel, sidebar while she's
13 reviewing what she's handed.

14 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
15 AND OUT OF THE HEARING OF THE JURY.)

16 A Starting with State's Exhibit Seventy-One.

17 Q Before you start to speak on that one, I'm going to
18 hand you one more instead, okay. This has been previously
19 marked for identification purposes only as State's Exhibit
20 Number Ninety-Six.

21 ASST. SOL. SHELTON: May I approach?

22 THE COURT: Ask the question, Counsel.

23 ASST. SOL. SHELTON: Thank you. She's reviewing her
24 notes, Your Honor.

25 Q Do you recognize what that is?

1 THE COURT: You're referring to ---

2 Q State's Exhibit, marked for identification, Number
3 Ninety-Six.

4 A Yes, I do.

5 Q What is that?

6 A This was items of evidence I received on this case,
7 there is my items, 40.1, swabs from the inside of a pair of
8 gloves that were found on the rear driver's side of a
9 Cadillac. I also have Item 41.1, and that is a swab from a
10 black t-shirt found in the rear seat of the Cadillac. Item
11 42.1 is a swab from a white t-shirt from the passenger side
12 floor of the Cadillac. Item 43.1.1 is a swab from a
13 striped shirt from the passenger floor of the Cadillac.

14 Q Thank you. And for that item, Exhibit Number Ninety-
15 Six, is that in substantially the same condition as the last
16 time that you saw them, and if so, how do you know that?

17 A Yes, that's correct. I can tell because when evidence
18 is received at the lab, it's then placed inside of this
19 plastic pouch and then it is sealed with heat and whoever
20 has opened the pouch, which in this case it was me, seals it
21 back, and then initials and dates; and my date and my
22 initials are here. Also, it's given the lab number and
23 container number that it came in.

24 Q Does it appear to be altered or tampered with in any
25 way?

1 A It does not.

2 Q So substantially, it's in the same condition?

3 A Yes, correct.

4 Q Thank you.

5 ASST. SOL. SHELTON: At this time, Your Honor, the
6 State moves Exhibit Number Ninety-Six into evidence.

7 THE COURT: Any objection as to State's Exhibit Ninety-
8 Six from the defendant McMillan?

9 MR. MATHEWS: May I look at it, Your Honor?

10 THE COURT: You may. Hand the exhibit to Counsel.

11 MR. MATHEWS: No objection.

12 THE COURT: Any objection as to State's Exhibit Ninety-
13 Six from the defendant Jakes?

14 MR. BEACH: No objection, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury, State's
16 Exhibit Number Ninety-Six will be admitted into evidence in
17 the trial of this case without objection. State's Ninety-
18 Six now in evidence, you may approach and you may publish.

19 (STATE EXHIBIT NUMBER NINETY-SIX IS RECEIVED INTO
20 EVIDENCE.)

21 ASST. SOL. SHELTON: Thank you, Your Honor. If I may,
22 I'm going to hand it back to Special Agent Webb.

23 THE COURT: Very well.

24 Q Now that we have all those items in evidence, I ask
25 Special Agent Webb, if you would go through, as you were

1 just beginning to do before I interrupted you, Exhibit
2 Number Seventy-One, and tell the jury in order what it is
3 and what you did with it, please.

4 A In this heat sealed pouch I received Item Number
5 Twenty-One. It was a swab from a Item Number Five; I
6 believe this was a swab from the scene. I tested this item
7 for blood. Blood was indicated, and I performed DNA
8 Analysis and was able to develop a DNA profile from that
9 item.

10 The DNA profile developed from the swab from Item
11 Number Five matches the DNA profile of David Jakes and the
12 probability of randomly selecting an unrelated individual
13 having a DNA profile matching this item is approximately one
14 in thirty-eight quintillion and what that means is, it's
15 just a statistical calculation, if you were to choose any
16 one at random out of the population, the probability that
17 their DNA would be similar to what was found at the scene
18 would be one in thirty-eight quintillion.

19 Q Will you please comment on if you were ever -- identify
20 Number Seventy-Two for the record and then comment on any
21 tests and findings that you may have made on Exhibit Number
22 Seventy-Two.

23 A Exhibit Number Seventy-Two was a swab from what the
24 investigator labeled as Spot Number Four and that was from
25 the center console lid of the Cadillac and blood was

1 indicated on that item. I tested it for blood and also
2 developed a DNA profile. And again, with this item, the DNA
3 profile developed from the center console lid of the
4 Cadillac matches the DNA profile of David Jakes and it has
5 the same statistic that I mentioned before.

6 Q Thank you. And now, going back to Exhibit Seventy-One,
7 there's several items included within that exhibit; is there
8 not?

9 A Yes, that's correct.

10 Q Referencing what is labeled as Spot Number Three, rear
11 seat Cadi in that exhibit, will you please comment on that?

12 A Yes, I tested it for blood and blood was indicated, and
13 I got a partial DNA profile, meaning I just didn't get
14 information from the DNA profile that every spot -- but
15 there was enough information there for me to make a match,
16 so the DNA profile from -- I'm sorry, that was spot number
17 three?

18 Q Yes, ma'am.

19 A Also matches the DNA profile of David Jakes.

20 Q Now, moving on to Spot Number Two from Exhibit Number
21 Seventy-One, please.

22 A The swab from Spot Number Two from the Cadillac. There
23 was also blood indicated and the DNA profile developed from
24 Spot Number Two matches the DNA profile of David Jakes.

25 Q Now, moving on, this is still with State's Exhibit

1 Number Seventy-One. Will you please speak on any findings
2 that you found from the swab of the steering wheel from the
3 label steering wheel Cadi, or Cadillac.

4 A Yes. The swabs from the Cadillac steering wheel, I
5 didn't test for any body fluid, but attempted to develop a
6 DNA profile, and a partial DNA profile was developed from a
7 male individual. Jesse King, Amanda Metzfield, Jeanine
8 Metzfield and James Davis are excluded as being possible
9 contributors or donors of DNA to this item, so, there DNA
10 was not found.

11 No conclusive statement can be made regarding the
12 inclusion, or exclusion, of David Jakes or Antwan McMillan
13 to this item, and basically what that means is since it was
14 a partial profile, there wasn't really enough information
15 there for me to say whether or not David Jakes or Antwan
16 McMillan did donate DNA to the item; I just can't tell.

17 Q But you had enough information to exclude the other
18 people from that item?

19 A Yes, that's correct.

20 Q Thank you. Moving on to now another exhibit, State's
21 Exhibit Number Seventy-Three, if you will, reference and
22 describe by Spot Number One, Cadillac passenger rear fender.

23 A The swab from Spot Number One, Cadillac passenger rear
24 fender, blood was identified and I developed a DNA profile
25 from that spot, and the DNA profile developed matches the

1 DNA profile of David Jakes.

2 Q Thank you. Did you receive from Colleton County
3 Sheriff's Office any other evidence regarding this case
4 where they requested DNA analysis to keep performed?

5 A Yes, I did.

6 Q Did you -- to your knowledge, were samples taken from
7 those items of evidence?

8 A Yes. It would have been; I'm referring to the swabs of
9 the clothing.

10 Q Yes. I believe that you were at Item Number Forty and
11 henceforth from there?

12 A Yes, correct.

13 Q And that Item Number Forty is listed in your report as
14 a pair of black gloves; I believe its State's Exhibit Number
15 Ninety-Four, which is in evidence, however. And I believe
16 that profile for State's Exhibit Number Ninety-Four is there
17 with you. Excuse me, that sample. Would you please state
18 any findings that you found from that.

19 A The swab from the inside of the gloves that were found
20 in the rear driver side of the Cadillac, a DNA profile was
21 developed and that also matches the DNA profile of David
22 Jakes.

23 Q What about the -- excuse me, you're Item 41.1 and 41,
24 which is a swab from a black shirt from the rear seat of the
25 Cadillac; will you please comment on that?

1 A Yes, 41.1 is the black shirt from the Cadillac and a
2 DNA profile was developed and it matches the DNA profile of
3 James Davis, and the probability of randomly selecting an
4 unrelated individual having a DNA profile matching this item
5 is approximately one in eleven quintillion.

6 Q Would you just, instead of me going through every
7 single item, you can just report on the rest of your
8 findings in that report, if that's all right.

9 A That's fine. Item 42.1 was a white t-shirt found from
10 the passenger side floor of the Cadillac, and from the white
11 t-shirt a DNA profile was developed. It was a mixture of
12 three individuals, at least; and what that means is there
13 was more than one person's DNA found on that item, at least
14 three people from what I can identify.

15 James Davis is excluded as being a possible contributor
16 to this mixture, so I didn't find James Davis' DNA on this
17 item -- no, excuse me, I read that incorrectly. James Davis
18 cannot be excluded as a possible contributor to this
19 mixture, so therefore, James Davis' DNA profile was found in
20 that mixture, but the probability of randomly selecting an
21 unrelated individual who could have contributed to this
22 mixture is approximately one in sixty, and what that means
23 is if I were to randomly select someone out of the
24 population of the earth, it's just one in sixty people could
25 not be excluded from that mixture. So it just puts a

1 weight, sort of, to what it means that I wasn't able to
2 exclude James Davis. I mean, if I were to pick one out of
3 sixty people, they also couldn't be excluded.

4 Q What about Item 43.1.1?

5 A 43.1.1 is a swab from a striped shirt from the
6 passenger side floor of the Cadillac and it was also a
7 mixture of at least two individuals, and Antwan McMillan
8 could not be excluded as a possible contributor, meaning I
9 found his DNA there; but the probability of again randomly
10 selecting an individual who could have contributed to this
11 mixture is one in three. So if I were to randomly select
12 someone out of the population, the chances of finding
13 similar DNA would be one out of every three people.

14 Q And moving on to Item 45.1.

15 A 45.1 was a swab from some Nike Air Force One tennis
16 shoes from the rear seat of the Cadillac. It was a mixture
17 of at least two individuals and the mixture was such that I
18 couldn't differentiate one person versus another and no
19 conclusive statement can be made regarding the inclusion or
20 exclusion of David Jakes and Antwan McMillan, and that means
21 that there was just not enough information there to make a
22 conclusion whether or not David Jakes or Antwan McMillan's
23 DNA would be present on that item.

24 Q Were you able to exclude anyone from that item?

25 A Yes, I was. I excluded Jesse King, Amanda Metzfield,

1 Jeanine Metzfield and James Davis from that item.

2 Q And finally, the last item, which I'm flipping around,
3 and I apologize for that, is 44.1, that's the last section
4 of your previous page in your report.

5 A 44.1 was a swab from a towel found in the passenger
6 side floor in the Cadillac. It was a mixture of at least
7 three individuals, James Davis and David Jakes cannot be
8 excluded as possible contributors this mixture, meaning I
9 found James Davis and David Jakes' DNA there, and the
10 probability of randomly selecting an unrelated individual
11 who could have contributed to this mixture is approximately
12 one in two. So, one out of every two individuals also
13 couldn't be excluded from this mixture.

14 Q So, 44.1 and 43.1.1 are somewhat similar, as far as
15 your findings? It's not related to the individuals, but as
16 far as the findings cannot be excluded?

17 A Yes. As far as the probability of picking someone at
18 random and their DNA also being in that item, yeah, it's
19 similar in that one in three and one in two probability.

20 Q And 43.1.1, for the jury's information, what were your
21 findings again for that item?

22 A That was the swab from the striped shirt and that was a
23 mixture of at least two individuals, Antwan McMillan cannot
24 be excluded as a possible contributor, meaning that his DNA
25 was there. The probability of randomly selecting an

1 unrelated individual who could have contributed to this
2 mixture is one in three.

3 Q And, finally, for the steering wheel, that goes back to
4 the previous report, just to reiterate.

5 A The steering wheel from the Cadillac was a partial DNA
6 profile from a male individual. I excluded Jesse King,
7 Amanda Metzfield, Jeanine Metzfield, and James Davis,
8 meaning their DNA was not found on the steering wheel. I
9 could not make a conclusive statement about the inclusion or
10 exclusion of David Jakes or Antwan McMillan, meaning there
11 wasn't enough information there for me to decide whether or
12 not David Jakes or Antwan McMillan's DNA was present.

13 Q But there was enough information there to exclude James
14 Davis.

15 A Yes, That's correct.

16 Q I beg the Court's indulgence. That's all the questions
17 I have for you, Special Agent Webb, thank you so much.
18 Please answer any questions that Mr. Mathews or Mr. Beach
19 have for you.

20 THE COURT: Cross examination by the defendant
21 McMillan.

22 MR. MATHEWS: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. MATHEWS:

25 Q Good afternoon, Special Agent Webb, how are you doing

1 today?

2 A Good afternoon. Fine, thank you.

3 Q How was your trip over?

4 A It was nice, thank you.

5 Q Good. Let me see if I can summarize this, you can say
6 based on what you saw, conclusively, at some point, their
7 DNA, whether they were or not, the DNA of James Davis and
8 David Jakes was absolutely in that Cadillac?

9 A Item 41.1 which was a swab from a black shirt,
10 recovered from the rear seat of the Cadillac, and it matches
11 the DNA profile of James Davis.

12 Q Okay. All right. His shirt, at least, didn't match
13 anybody else. His shirt, a shirt that he wore, was
14 absolutely in that Cadillac?

15 A Yes, that's correct. He has the same DNA profile as
16 what was recovered from that item.

17 Q Okay. And, there are multiple DNA spots showing that
18 David Jakes was absolutely in that Cadillac?

19 A Yes, That's correct. There were multiple swabs taken
20 where blood was indicated or identified and then the DNA
21 profile developed most likely from the blood that matches
22 the DNA profile of David Jakes.

23 Q And several of them I think you found you indicated --
24 is there a reason why, in some points you mentioned you can
25 be sure there's a mixture of things, more than one DNA for

1 sure?

2 A Yes, that's correct.

3 Q Okay. Based on what you've seen in there, your report
4 there, is it fair to say that you cannot say, absolutely,
5 that Antwan McMillan was in that Cadillac?

6 A Not an absolute, but there's DNA similar to his that's
7 on the item.

8 Q Okay.

9 A That's why I do the statistic to give it a weight, to
10 give it significance.

11 Q One in three I think on a shirt, but two other
12 individuals, at least.

13 A Yes, at least two other individuals ---

14 Q Okay. Is there ---

15 THE COURT: Hold on. Let her finish. One at a time.

16 A At least two other individuals on one item and at least
17 one other individual on another item.

18 Q And, at least, part -- you did not mention on the
19 steering wheel that there was a mixture of DNA, is that
20 correct in your report?

21 A That's correct.

22 Q Okay. And, at least one of the markers on there
23 absolutely did not belong to Antwan McMillan, I think Number
24 Fourteen?

25 A I'm not sure what marker on Fourteen is.

1 Q At Spot Number D8S1179, the very first column.

2 A Oh, okay. The marker on the unit profile?

3 Q Right.

4 A And this is for?

5 Q Number Twenty-Two.

6 A There is a swab there that is similar to Antwan
7 McMillan's, but there's also another that cannot be from
8 him.

9 Q And you did not call that a mixture?

10 A That's correct. That's according to our protocol that
11 we use.

12 Q Okay. All right.

13 MR. MATHEWS: Thank you, Your Honor. Nothing further.

14 THE COURT: Cross-examination by the defendant Jakes.

15 MR. BEACH: I don't believe I have any questions for
16 this witness, Your Honor.

17 THE COURT: Very well. Redirect.

18 ASST. SOL. SHELTON: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY ASST. SOL. SHELTON:

21 Q Special Agent Webb, just a review, briefly, and you've
22 spoken at length to this. Item Number 43.1.1, you said that
23 Antwan McMillan could not be excluded as a possible
24 contributor to this mixture?

25 A Yes, that's correct.

1 Q And earlier, you told the jury that his DNA was found
2 in that; is that correct?

3 A Yes, that's correct.

4 Q No more questions. Thank you very much.

5 THE COURT: Recross-examination, by the defendant
6 McMillan limited to redirect.

7 MR. MATHEWS: Thank you, Your Honor.

8 RE-CROSS-EXAMINATION

9 BY MR. MATHEWS:

10 Q How many zeros are in quintillion?

11 A Excuse me, as I count on my fingers; eighteen zeros.

12 Q So on a couple of items on there, on items that you
13 found on David Jakes, as to him, that would be how many
14 zeros?

15 A That would be thirty-eight with sixteen zeros
16 following.

17 Q Okay. And on the item that you found related to James
18 Davis, how many zeros on that?

19 A That would be eleven with sixteen zeros after that.

20 Q As to the item, the shirt, that Antwan McMillan may
21 have been one of the people that wore it, it was one of
22 three?

23 A Yes, that's correct.

24 MR. MATHEWS: Nothing further, Your Honor.

25 THE COURT: Recross, by the defendant Jakes, limited to

1 redirect.

2 MR. BEACH: None, Your Honor.

3 THE COURT: As to this witness, Solicitor?

4 ASST. SOL. SHELTON: I ask that she may be excused,
5 Your Honor.

6 THE COURT: Any objection as to this witness' being
7 excused by the defendant McMillan?

8 MR. MATHEWS: None, Your Honor.

9 THE COURT: By the defendant Jakes?

10 MR. BEACH: No, Your Honor.

11 THE COURT: Ms. Webb, you may step down from the
12 witness stand. You just leave my exhibits right there. You
13 get your file, be careful. You're excused from the trial of
14 this case and you may leave the courtroom.

15 A Thank you, Your Honor.

16 THE COURT: Thank you. Madame Foreperson, ladies and
17 gentlemen of the jury, I'm going to take my mid-afternoon
18 break at this point. Please do not discuss the case. I'll
19 be right back with you just as soon as I know that you are
20 all finished and ready to come back. Please retire to your
21 jury room. Counsel, approach.

22 (4:15 P.M., 8-31-11, WHEREUPON THE JURY EXITS THE
23 COURTROOM.)

24 THE COURT: Is the State ready to proceed?

25 ASST. SOL. HASELDEN: State's ready, Your Honor.

1 THE COURT: Defendant McMillan ready to proceed?

2 MR. MATHEWS: Yes, Your Honor.

3 THE COURT: Defendant Jakes?

4 MR. BEACH: Yes, Your Honor.

5 THE COURT: Very well.

6 THE COURT: Could you bring us the jury, please?

7 (4:30 P.M., 8-31-11, WHEREUPON THE JURY ENTERS THE
8 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

9 THE COURT: Madame Foreperson, ladies and gentlemen of
10 the jury, we will not continue with the testimony in the
11 trial of this case. Solicitor, call your next witness.

12 ASST. SOL. HASELDEN: The State calls Suzanne Cromer.

13 MADAME CLERK: Please come forward to be sworn.

14 WHEREUPON, THE WITNESS, SUZANNE CROMER, IS DULY SWORN.

15 THE COURT: State your full name and spell your last
16 for my court reporter.

17 A My name is Suzanne Cromer, C-R-O-M-E-R.

18 THE COURT: Your witness, Counsel.

19 ASST. SOL. HASELDEN: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY ASST. SOL. HASELDEN:

22 Q Ms. Cromer, who do you work for?

23 A I'm employed by the South Carolina Law Enforcement
24 Division, commonly referred to as SLED.

25 Q What do you do for SLED?

1 A I work in the forensic service laboratory in the
2 firearms department as a firearm and tool mark examiner.

3 Q How did you become a firearm and tool mark examiner?

4 A I received a Bachelor's Degree from Clemson University.
5 I worked on my Master's at the University of South Carolina,
6 during that time I did an internship in the firearms
7 department at SLED. I have completed the SLED in-house
8 training program, which is a three to five year intense
9 study program, where I learned under five court-qualified
10 firearm examiners; it's more of an apprenticeship if you
11 will.

12 We take a written test, oral test, practical exercises
13 where we worked cases for examiners, then upon completion of
14 that training program, we're allowed to work cases on our
15 own, I've also taken classes through the Association of
16 Firearm and Tool Mark Examiners, commonly referred to as
17 AFT. I've attended several of their yearly seminars. It is
18 a international organization that gets together yearly for a
19 week to discuss advances in our field or practical issues in
20 our field.

21 I've also taken classes on ethics and barrel making
22 with AFT. I have taken numerous seminars with the South
23 Carolina Chapter of the International Association of
24 Identification, some of which are shooting scene
25 reconstruction. I have taken classes through the Bureau of

1 Alcohol Tobacco Firearms on serial number restoration and
2 integrative ballistics identification system.

3 Q Have you ever testified in General Sessions Court
4 before?

5 A Yes, ma'am.

6 Q Do you know how many times?

7 A I've testified over fifty times in General Sessions,
8 Federal, and Family Courts.

9 Q Were you declared an expert those times when you
10 testified?

11 A Yes, ma'am.

12 Q That was in General Sessions Court here in South
13 Carolina?

14 A Yes, ma'am.

15 Q Your Honor, at this time, I'd ask that Ms. Cromer be
16 recognized as an expert in the field of Firearm and Toolmark
17 analysis.

18 THE COURT: Any objection to these qualifications, from
19 the defendant McMillan?

20 MR. MATHEWS: No, Your Honor.

21 THE COURT: From the defendant Jakes?

22 MR. BEACH: No, Your Honor.

23 THE COURT: Ladies and gentlemen of the jury, recalling
24 my earlier instruction to you concerning expert testimony,
25 the witness is qualified without objection; you may proceed.

1 ASST. SOL. HASELDEN: Your Honor, may I approach the
2 witness?

3 THE COURT: You may.

4 Q Ms. Cromer, I'm going to hand you a whole bunch of
5 stuff. I'm going to get it all up there to you so that I
6 don't have to keep running back and forth and you don't have
7 to keep seeing my back. So bear with me for a moment.

8 First, I'm going to hand you what is in evidence as
9 State's Sixty-One, Sixty-Two, Sixty-Three, Sixty-Four,
10 Sixty-Five, Sixty-Six, Sixty-Seven, Sixty-Eight, Sixty-Nine,
11 and Seventy along with State's Seventy-Four, Seventy-Five,
12 Seventy-Six, Seventy-Seven and Eighty-Nine. I'm also going
13 to hand you what's in evidence as State's Eighty-Seven,
14 Eighty-Eight, Eighty-Six and Eighty-Six A, Eighty-Five and
15 Eighty-Five A, both of which have been made safe already,
16 ma'am and Eighty-Four and Eighty-Four A, also made safe.
17 Ms. Cromer, do you recognize those items in front of you?

18 A Give me a minute to go through them all.

19 Q Yes, absolutely.

20 (BRIEF PAUSE IN COURTROOM WHILE WITNESS EXAMINES ALL
21 THE EXHIBITS.)

22 A What I'm looking for is my lab number, my item number,
23 and my initials, and most of these are still in sealed
24 containers with my initials and my seal date. And also I'm
25 looking for is I engrave my item number on evidence. The

1 ones that are open, I'm looking for those markings.

2 Yes, ma'am. I recognize all of this as being part of
3 what I examined in this case.

4 Q So you did have an opportunity to examine all these
5 items?

6 A Yes, ma'am, I did.

7 Q Do you remember when you had the opportunity to
8 analyze? I know it was several different times, I believe.

9 A If I may check my notes?

10 Q Yes, ma'am.

11 A I started my initial examination on December 21st,
12 2010. I completed that examination on January 6th, 2011,
13 and I did an additional examination on this case starting
14 August the 4th of 2011 and completed that August the 8th,
15 2011.

16 Q Could you, please, walk us through your findings,
17 referring to the item numbers, just going through your
18 reports, and as you go through your reports, could you
19 please show the jury what item numbers you are referring to?

20 A Yes, ma'am.

21 Q Thank you.

22 A State's Exhibit Eighty-seven was my item numbers five
23 and twenty-nine.

24 Q And if I might, I'll just supplement that with the
25 bullet from ---

1 A These were the bullets that were listed from David
2 Jakes.

3 Q Thank you.

4 A These were found to be two solid copper projectiles,
5 nominal .38 caliber. A nominal .38 caliber can be a 9 mm
6 Luger; it could be .357 Sig caliber. Those bullets are very
7 similar in their construction, so I could not determine
8 whether they were exact 9 mm or .357 Sig, but I could tell
9 you they were consistent with being either one of those
10 calibers.

11 These are also fired from a firearm with six right
12 polygonal rifling. When we talk about rifling, rifling is
13 what's put in a gun barrel by the manufacturer to put rotary
14 motion on the bullet. Very similar to a quarterback
15 throwing a football. He wants to get it into a tight spiral
16 so it will go more accurately to its receiver. Well, that's
17 the premise behind rifling. We want it to go in a tight
18 spiral, more accurately to its target, so it's not wobbling
19 end over end.

20 We have two different types of rifling: we have
21 conventional rifling and we have polygonal rifling.
22 Conventional rifling just means its cut into the barrel at
23 right angles. Polygonal rifling is more scalloped edges.
24 You can have four lanes and grooves, which are part of the
25 rifling, lanes and grooves, raised and depressed areas. You

1 can have five, six, seven; you can have nine. And then you
2 can have your twist. Does it twist to the left or does it
3 twist to the right? These were consistent with being six
4 right polygonal, or fired from a firearm barrel with six
5 right polygonal rifling.

6 I could not conclude whether they were fired by either
7 of the firearms that I received that have that type of
8 rifling. I could say definitely that they were not fired
9 from State's Exhibit Eighty-four, which was a .50 caliber
10 Magnum Research Desert Eagle, because of difference of
11 caliber.

12 Q Now, let me interrupt you just really quickly, and I
13 apologize, did you first examine each of those three
14 firearms?

15 A Yes, I did.

16 Q And what do you do when you examine those three
17 firearms?

18 A We take two pages of notes on each firearm that we
19 receive. We check its safety's. We look for possible trace
20 evidence; blood, hair, fibers, and then we proceed to weigh
21 it -- not weigh it, sorry; measure it. We test the capacity
22 of the magazines and then once we determine whether or not
23 it's safe to fire. We will test-fire that firearm with
24 similar ammunition to what we received in the case.

25 Q Did you test fire all three of these guns?

1 A All three of these guns were test fired under my
2 supervision by my trainee.

3 Q So did you see those test fires?

4 A Yes, I did.

5 Q Are you able to estimate at all -- were you able to
6 estimate -- and I realize it's a perfectly controlled
7 setting at SLED, what happened to the casings when they came
8 out of those guns?

9 A Well, during test firing?

10 Q Yes, ma'am.

11 A It depends on the type of firearm. Like this firearm,
12 this would be considered the ejection port. It's at the top
13 ---

14 THE COURT: Refer to the exhibit number for the record.

15 A Oh, I'm sorry. This is Exhibit Eighty-four. This
16 firearm would eject straight out of the top. Now, it also
17 depends on how you're holding the firearm to know how it's
18 going to eject. If I'm holding it in the proper position,
19 with the muzzle pointed straight out, it will eject straight
20 up and to the point. But if someone is holding it pointed
21 sideways, it's going to eject in a different way. If I hold
22 it this way, it's going to eject in a different way. If
23 your -- what's around you is a factor. It could come out of
24 the gun and hit something and bounce and roll. That's why
25 at SLED we call that ejection pattern testing, and we don't

1 do ejection pattern testing because there are so many
2 factors that you can't control.

3 Q Were you able to see it, though, in your perfectly
4 controlled setting?

5 A Yes, actually with this firearm, we fired it in our
6 tunnel room. It's kind of a long range room, and it
7 actually bounced and hit the walls.

8 Q Okay.

9 A These -- this was my item 33; it's State's Exhibit
10 Eighty-six. This is a Glock Model 33, .357 Sig Caliber
11 firearm. The ejection port is to the right. Now, when we
12 test fire handguns like this, we're shooting straight down
13 into a two-story vat of water. We do that because it adds -
14 - well, it slows the bullet down without adding to or taking
15 from any of the markings that are left on the bullet or the
16 cartridge case through the firing process. So when we're
17 shooting downward, it usually comes out and to the right.

18 Q And it was in working order?

19 A Yes, ma'am, it was. State's Exhibit Eighty-five is an
20 H&K, or Heckler and Koch, I don't know how the pronunciation
21 is. USP Compact firearm, or semi-automatic pistol, and it
22 also is very similar to the Glock, it has the ejection port
23 on the right. So they come out to the right if you're
24 holding it straight out.

25 Q Thank you. And I'm sorry for interrupting you. Please

1 continue on.

2 A That's okay. My Item 5, 29, and 6; State's Exhibits
3 Eighty-seven and Eighty-eight were all bullets removed from
4 David Jakes at different locations. They were all
5 consistent with the solid copper projectile with the
6 polygonal rifling. And as I said before, I could not
7 determine conclusively which firearm fired these.

8 Q Does that happen frequently?

9 A With polygonal rifling, it's very difficult to identify
10 back to a firearm, just because of those scalloped edges,
11 there's no real place to kind of latch on to the bullet, so
12 they're not marked as well as a conventional rifled firearm.
13 And they're very hard to identify back to a firearm.

14 Q Does it matter at all with what the bullet may have
15 come into contact with?

16 A If the bullet is highly damaged, we may not be able to
17 identify it. It just depends on -- we're looking
18 microscopic markings. So it just depends on what part of
19 the bullet is damaged and what part is still in tact.

20 Q Okay. Please continue.

21 A Okay. Next, I have my Items 7 through 10. These were
22 ---

23 Q Could you tell me those State's Exhibit Numbers,
24 please?

25 A Oh, sorry. My Item 7 was State's Exhibit Sixty-one.

1 My Item 8 is State's Exhibit Sixty-two. My Item 9 is
2 State's Exhibit Sixty-three. My Item 10 is State's Exhibit
3 Sixty-four. These ---

4 Q I'm sorry to interrupt you. Is there a description of
5 where those items came from?

6 A I have them from placards four through one. These were
7 four fired 9 mm Luger caliber cartridge cases, and I
8 concluded that they were all fired by the same firearm, but
9 none of the firearms that I received here.

10 Q Thank you. Would you mind looking next at your SLED 17
11 through 20, which should correspond with State's Seventy-
12 four through Seventy-seven?

13 ASST. SOL. HASELDEN: Your Honor, may I approach the
14 witness?

15 THE COURT: You may.

16 Q If you want to hand me the four that you just looked
17 at, I will take those and put them up here to get them out
18 of your way.

19 A My Item 17 was State's Exhibit Seventy-four. My Item
20 18 was State's Exhibit Seventy-seven. My Item 19 is State's
21 Exhibit Seventy-five. My Item 20 is State's Exhibit
22 Seventy-six. These are also 9 mm Luger caliber fired
23 cartridge cases, and I determined that all of them, but my
24 Item 19, State's Exhibit Seventy-five, were fired by the
25 same firearm that fired my Items 7 through 10; and I'm

1 sorry, but I don't have the State Exhibit Numbers anymore.

2 Q That's fine. Is there a description on there of where
3 those were found?

4 A Seventeen, or State's Exhibit Seventy-four, was --
5 there's a time of spent casing, 14:37. My Item 18, State's
6 Exhibit Seventy-seven, was spent casing, passenger seat. My
7 Item 20, State's Exhibit Seventy-six, was under seat,
8 passenger side. And also, I took a swab of possible debris
9 or trace material from Item 17. My Item 19, State's Exhibit
10 Seventy-five, was a fired 9 mm Luger caliber cartridge case
11 from under seat, driver's side, which was fired by a
12 different firearm than the other cartridge cases I received,
13 other 9 mm cartridge cases I received.

14 Q Now, you stated that the three other than Twenty-five,
15 or your twenty-five ---

16 A It was my Nineteen.

17 Q Your Nineteen, that is different?

18 A Yes, ma'am.

19 Q What is that State's Exhibit?

20 A State's Exhibit Seventy-five.

21 Q Okay. So the four that I just took from you, which was
22 State's Sixty-one, Sixty-two, Sixty-three, Sixty-four, and
23 then what are the three that match from you?

24 A State Exhibit Seventy-six, State Exhibit Seventy-seven,
25 State Exhibit Seventy-four, were all fired by one firearm.

1 Q But it was not one of the firearms that you tested?

2 A No, ma'am, it was not.

3 Q Okay. And as to the one that does not match, what type
4 of casing is that?

5 A It's a 9 mm Luger caliber. Again, it's a Sellier and
6 Bellot manufacturer.

7 Q Is it the same manufacturer as the others?

8 A No, ma'am. There were several different manufacturers.

9 Q That were all fired by the same gun?

10 A Yes, ma'am.

11 Q It's kind of a stupid question, but it doesn't matter
12 what type of the bullet it is?

13 A No, ma'am.

14 Q As long as it's the same caliber?

15 A That's correct.

16 ASST. SOL. HASELDEN: I'll approach again, Your Honor,
17 if I can?

18 THE COURT: You may.

19 Q And if you want to go through this last stack over
20 here, if you could just identify.

21 A My Item 11, which is State Exhibit Sixty-five, my Item
22 12, which is State Exhibit Sixty-six. My Item 13, which is
23 State's Exhibit Sixty-seven. My Item 14, which is State
24 Exhibit Sixty-eight. My Item 15, which is State Exhibit
25 Sixty-nine. And my Item 16, which is State Exhibit Seventy.

1 State's Exhibits Sixty-five, Sixty-six, Sixty-seven,
2 and Sixty-eight are all fired .357 Sig caliber cartridge
3 cases.

4 Q Were you able to analyze those?

5 A Yes, ma'am, I did

6 Q What did you find?

7 A I found that all of these were fired by my Item 33,
8 State's Exhibit Eighty-six. I'm sorry, my Item 27, State's
9 Exhibit Eighty-six, the Glock model 33.

10 Q Okay. And those last two, ma'am, up there, please.

11 A Again, my Items 15 and 16, State's Exhibits Sixty-nine
12 and Seventy. These are two fired full metal jacket bullets.
13 Approximately 115 grain, most consistent with 9 mm Luger
14 caliber. These were inconclusive as to whether they were
15 fired by the Glock or the H&K. They were not fired by the
16 .50 caliber Magnum Research Desert Eagle.

17 ASST. SOL. HASELDEN: May I approach the witness?

18 THE COURT: You may.

19 Q Ms. Cromer, you did one final test, didn't you, in
20 this?

21 A Yes, ma'am, I did.

22 Q And what did you test?

23 A I was given two .50 AE Caliber cartridge cases to look
24 at.

25 Q And did you have a chance to analyze those?

1 A Yes, ma'am, I did.

2 Q And what did you find?

3 A I found that these two fired .50 caliber AE were fired
4 in fact by this Magnum Research Desert Eagle.

5 Q How do you know that?

6 A Due to the breach face markings. When a cartridge case
7 is fired in a semi-automatic, you have five areas that can
8 be marked on, on that cartridge case. You have the head of
9 the cartridge case which is forced into the breach face of
10 the firearm during firing.

11 When the firing pin strikes the primer of the
12 cartridge, starts that initial spark, and those sparks fly
13 through the flash hole and light the gunpowder. You have
14 all those gases burning and they're building up massive
15 pressure. Well, on one hand, the pressure pushes the bullet
16 down the barrel of the gun, but on the other hand, it pushes
17 that cartridge case back into the breach face of the gun.
18 So therefore, any imperfections that were left on that
19 breach face during the manufacturing process can be
20 imprinted on the head of the cartridge case.

21 You also have the firing pin itself, any defects during
22 the manufacturing of that firing pin or wear and tear on
23 that firing pin can leave marks on the cartridge case. You
24 also have the ejector, which is what hits the cartridge to
25 make it come out of the gun. You also have the extractor,

1 which holds the cartridge case into the slide so that way
2 when the slide is coming rearward, it will hold it until it
3 hits the ejector and comes out of the firing arm.

4 And also, you have the chamber itself, and based on the
5 breach face markings, all of these .50 caliber cartridge
6 cases, I could determine that they were fired, in my
7 opinion, by this firearm.

8 Q I have no further questions for you at this time, Ms.
9 Cromer. Thank you so much. If you'll answer anything that
10 the defense counsel has, I'd appreciate it.

11 A Okay.

12 THE COURT: Cross-examination by the defendant
13 McMillan?

14 MR. MATHEWS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MATHEWS:

17 Q Special Agent?

18 A Agent.

19 Q Secret Agent?

20 A Senior Agent.

21 Q Okay. Senior Agent Cromer, you don't do any trace
22 work?

23 A No, sir, I don't.

24 Q Okay. So you don't know anything about gunshot residue
25 or anything about that?

1 A No, sir. We don't do gunshot residue in the firearms
2 department. That's done by the Trace Department.

3 Q Okay. And you say when a gun comes in, they first send
4 it to Trace?

5 A Actually, no, if you request DNA swabs on it, it would
6 go to evidence processing. Usually, the firearms department
7 is the last person to get the evidence.

8 Q Okay. So they check it for prints, for fibers, I think
9 you said, and all that sort of stuff, and nothing of
10 evidentiary value is taken from that?

11 A We look at it if it hasn't been to any of those other
12 places. We look at it and see if we can see any, and we
13 will remove it. But what we do is we note it in our report
14 and then it's up to the submitter to bring it back in.

15 Q Okay. So you might look for something, but they got to
16 ask -- the submitter's got to ask?

17 A No, we look for it and we collect it, but they have to
18 ask for it to be resubmitted and analyzed.

19 MR. MATHEWS: Nothing further, Your Honor.

20 THE COURT: Cross-examination by the defendant Jakes?

21 MR. BEACH: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BEACH:

24 Q Senior Agent, the last two shell casings that you
25 talked about, the .50 calibers, do you have indication as to

1 where they came from?

2 A No, sir, I don't.

3 Q All right. So you don't know whether these were found
4 at the scene or whether these were the ones found at the
5 Graham Farm?

6 A No, sir. I don't know where they came from.

7 Q Okay. Now, as I understand your testimony, you found
8 initially, or were given and identified four casings that
9 came from a gun that was not submitted to you.

10 A Actually, I had eight cartridge cases that were from
11 two different firearms that were not submitted to me.

12 Q Right. I want to break that down a little bit. As I
13 understand it, four that were -- you had four that were --
14 that you were submitted, then you had four that said they
15 came out of the Cadillac; is that correct?

16 A May I check my notes? Yes, sir. That is correct.

17 Q Okay. The first four, it doesn't say where they came
18 from, but they did not come from a gun that was submitted to
19 you; is that correct?

20 A That is correct.

21 Q And the last four that we were talking about in this
22 grouping, they came from the same gun?

23 A Three of those last four were fired by the same
24 firearm.

25 Q And that was not one of the ones that was submitted to

1 you?

2 A That is correct.

3 Q So it was not from the .50 caliber, obviously, because
4 it was a different caliber. It was not from the 9 mm and it
5 was not from the .357?

6 A That I received ---

7 Q Right.

8 A That is correct.

9 Q Right. Okay. So we know then that there are two
10 different guns involved that were not submitted to you?

11 A That is correct.

12 Q All right. Now, and I think you have explained this,
13 but I wasn't exactly sure whether I understood. As I
14 understand it, there are two types of -- basically, two
15 types of handguns, a revolver and a semi-automatic; is that
16 roughly correct?

17 A Basically, you also have Derringers and things like
18 that.

19 Q Right. But now, in a Revolver, you don't recover the
20 shells, because they don't -- they're not ejected; is that
21 correct?

22 A That is correct. They usually stay in what's called a
23 cylinder that rotates around one single-firing mechanism.

24 Q But a semi-automatic throws them out?

25 A It can.

1 Q Okay. Now, you say there are two types that throw out
2 the top or throw out the side?

3 A Well, yes. I mean, there are -- different guns have
4 different places for the ejection port.

5 Q And which is the most common, out the right side or out
6 the top?

7 A I would say out the right side, but then, again, it
8 depends on the manufacturer.

9 Q Now, the -- the shells that you found, the ones that
10 did not match any of the guns that you were talking about,
11 could you tell whether they were top-ejected or whether they
12 were side-ejected?

13 A No, sir. There's no way to tell that.

14 Q No way to tell that?

15 A I could not tell that.

16 Q Okay. If you have a side ejection, how does that work?
17 As I understand, the slide comes back; is that from the
18 recoil?

19 A That is from the recoil.

20 Q And what happens then when the slide comes back?

21 A When the slide is coming back under spring tension,
22 when I explained about the extractor before, the extractor
23 works as a little claw and it's holding that cartridge case
24 in the slide. So when the slide comes back, the cartridge
25 case will actually hit an ejector and turn and make it come

1 out of the firearm.

2 Q And that's when it ejects from the firearm?

3 A That is correct.

4 Q Now, does it eject straight out of the firearm or does
5 it spin as it goes out of the firearm?

6 A It depends on multiple factors.

7 Q Okay. But the claw is at the back; is that correct?

8 A It's usually in the slide to the rear, in the back of
9 the slide.

10 Q So when it pulls back, it would fling that shell out
11 and spin it; is that not correct?

12 A Again, it depends on the particular design of the
13 firearm. Not having a firearm, I can't tell you how these
14 were ejected.

15 Q Right.

16 A I can't tell you if it was a top ejection or a side
17 ejection. I can only speak in generalizations.

18 Q But if it spins it out, it's going to spin out probably
19 in a clockwise direction?

20 A Again, I can't speak in generalization. I don't -- it
21 depends on the particular design of the firearm.

22 Q And I believe you said that where the shell lands
23 depends on a number of factors?

24 A Yes, sir, it does.

25 Q If it hits something, it's obviously going to land

1 somewhere else?

2 A It could bounce; it could land in your clothes. It
3 also depends on how you're holding the firearm. There's
4 numerous factors.

5 Q Yeah. So if you're holding it straight like you're
6 supposed to, it's going to go one way. If you're holding it
7 sideways, it's going to go another way?

8 A Depending on where the ejection port is on the firearm.

9 Q I don't think I have any other questions. Thank you,
10 ma'am.

11 A You're welcome.

12 THE COURT: Redirect?

13 ASST. SOL. HASELDEN: None, Your Honor.

14 THE COURT: As to this witness?

15 ASST. SOL. HASELDEN: Ask that she be excused.

16 THE COURT: Any objection to this witness being
17 excused, from the defendant McMillan?

18 MR. MATHEWS: No, Your Honor.

19 THE COURT: From the defendant Jakes?

20 MR. BEACH: No, Your Honor.

21 THE COURT: Ms. Cromer, you may step down and you are
22 excused from the trial of this case. You may leave the
23 courtroom.

24 MS. CROMER: Thank you, sir.

25 THE COURT: Just leave my exhibits here with me. Make

1 sure you have your file and I have my exhibits.

2 MS. CROMER: I do. Thank you.

3 THE COURT: Call your next witness.

4 ASST. SOL. SHELTON: The State calls Christine Wilson
5 of the Beaufort County Sheriff's Office.

6 MADAME CLERK: Please come forward and be sworn.

7 WHEREUPON, CHRISTINE WILSON, IS DULY SWORN.

8 THE COURT: Watch your step. Have a seat. Be
9 comfortable. Pull that chair up and adjust that microphone.
10 It's going to amplify your voice. I want you to use it,
11 please, so they can hear you at the end of the jury. State
12 your full name and spell your last name for the record.

13 MS. WILSON: Christine Wilson, W-I-L-S-O-N.

14 THE COURT: Your witness, counsel.

15 ASST. SOL. SHELTON: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY ASST. SOL. SHELTON:

18 Q How are you today, Detective Wilson?

19 A Fine, sir.

20 Q Will you please tell the jury where you work and what
21 your role is there?

22 A I'm a Sergeant of Criminal Investigators for the
23 Beaufort County Sheriff's Office.

24 Q What do your duties involve at the Beaufort County
25 Sheriff's Office?

1 A I investigate all criminal ---

2 THE COURT: You've got to speak up a little bit. I've
3 got a juror raising their hand telling me they can't hear
4 you. So speak up for me. I'm going to turn it up for you.

5 A I investigate all criminal offenses, murders, armed
6 robberies, rapes; in addition to investigating criminal
7 offenses, I'm also the latent print examiner for all of
8 Beaufort County.

9 Q What type of training have you had as a latent print
10 examiner?

11 A I've got well over 200 hours of training, basic
12 fingerprint training, advanced latent processing, palm print
13 examination, administrative fingerprinting, a two-week
14 internship with the South Carolina Law Enforcement Division.

15 Q And have you been qualified as an expert in
16 fingerprint, latent fingerprint analysis before?

17 A I have.

18 Q How many times?

19 A Approximately six.

20 ASST. SOL. SHELTON: At this time, Your Honor, I'd move
21 Detective Wilson as an expert in latent fingerprint
22 examination.

23 THE COURT: Any objection as to qualifications from
24 Defendant McMillan?

25 MR. MATHEWS: No, Your Honor.

1 THE COURT: From the defendant Jakes?

2 MR. BEACH: None, Your Honor.

3 THE COURT: Ladies and gentlemen of the jury, once
4 again, recalling my earlier instructions regarding expert
5 testimony, the witness is qualified without objection. You
6 may proceed, counsel.

7 Q Detective Wilson, are you familiar with the case of the
8 State v. James Davis, the State v. David Jakes, the State v.
9 Antwan McMillan?

10 A I am.

11 Q Did you have any opportunity to analyze any latent
12 lifts and prints that were brought to you during the course
13 of the investigation?

14 A I did.

15 Q Are you prepared to tell the jury about them today?

16 A I am.

17 Q Before you do that, will you please briefly explain to
18 the jury what are latent lifts and what are latent prints?

19 A If you look at the soles of your hands, your
20 fingertips, and the bottoms of your feet, there are skin on
21 those surfaces that are different from the other skin on the
22 rest of your body. That skin surface is actually ridged,
23 and if you were to look at it through a magnifier, it would
24 look almost like corduroy. It's called friction ridge
25 because it creates friction when you grasp an object and in

1 layman's terms for understanding it's called friction skin.

2 Now, on those ridges are sweat pores that are
3 constantly perspiring and whenever an object is gripped or
4 touched, a representation of that print is left on the item
5 that is touched. The difference between an imprint and a
6 latent print is that an imprint is an intentionally rolled
7 print in a controlled environment to get a perfect recording
8 of a fingerprint or a palm print for whatever purpose it
9 might be needed, for the record, or whatever case may be.

10 A latent print is a -- comes from what we call a chance
11 impression. It's just when you grab something, you may
12 leave a partial impression of your fingerprint. It can be a
13 swipe, it can be a grasp, or a chance touching. It's also
14 referred to as a hidden impression, because sometimes they
15 are not readily visible and they may need to be brought out
16 through powdering means or some type of chemical processing
17 for those to be brought out.

18 Q Thank you. Were you brought by an Investigator Jeff
19 Scott of the Colleton County Sheriff's Office any latent
20 lifts or latent prints involving this case?

21 A I was.

22 Q Would you please go over your findings with the jury at
23 this time?

24 A Should I cover all ---

25 Q First, let's speak of Item Number One -- Items Number

1 One through Three of your report.

2 THE COURT: Exhibit number.

3 ASST. SOL. SHELTON: Yes, Your Honor. May I approach,
4 Your Honor?

5 THE COURT: You may.

6 Q I'm handing you, Detective Wilson, what has previously
7 been marked as Court's Exhibit Number One o-one. There's
8 another Court's Exhibit somewhere up here.

9 THE COURT: That's not a Court's Exhibit.

10 ASST. SOL. SHELTON: Excuse me, State's Exhibit. I
11 apologize, Your Honor.

12 Q Correct the record, it's State's Exhibit Number One o-
13 one.

14 ASST. SOL. SHELTON: And may I approach again, Your
15 Honor?

16 THE COURT: You may.

17 Q At this time, Detective Wilson, I'm also handing you
18 what's been entered into evidence as State's Exhibit Number
19 Ninety-eight.

20 A They're all here.

21 Q Thank you. Do you recognize that?

22 A I do.

23 Q What is it?

24 A These eight items, the index card size items are the
25 latent impressions that were provided to me.

1 Q Okay. In reference to provided to you by whom and for
2 what?

3 THE COURT: If you don't mind, when you answer a
4 question, if you would refer to the exhibit number. It's on
5 the outside of the envelope to the right. You said "these"
6 and the record needs to be clear as to what exhibit you're
7 referring to.

8 A These eight index cards are from State's Exhibit
9 Ninety-eight.

10 THE COURT: Very well. Proceed.

11 ASST. SOL. SHELTON: And Your Honor, we may need to sub
12 mark these are exhibits for the record, certain ones, since
13 they haven't been opened yet.

14 Q That was State's Exhibit Ninety-eight, Detective
15 Wilson, is that correct?

16 A That's correct.

17 ASST. SOL. SHELTON: As Ninety-eight A, B, and so on.

18 THE COURT: If you so desire. That's entirely up to
19 you.

20 ASST. SOL. SHELTON: Okay. Just for purposes of the
21 record, I would like to do that, Your Honor .

22 THE COURT: All right. You want to do it now?

23 ASST. SOL. SHELTON: Yes, sir, Your Honor.

24 Q First of all, I would like to reference Item Number
25 One. It's described in your report as Latent Lift bearing

1 case number and labeled driver's side rear door with
2 initials MK, designated as latent lift two. Will you please
3 first locate what those placards?

4 A This is Item One.

5 Q That is Item one.

6 ASST. SOL. SHELTON: And at this time, Your Honor, I
7 would like to mark Item Number One as State's Exhibit
8 Ninety-eight A.

9 THE COURT: Any objection from the defendant McMillan?

10 MR. MATHEWS: No, Your Honor.

11 THE COURT: Any objection from the defendant jakes?

12 MR. BEACH: No, Your Honor.

13 THE COURT: Without objection.

14 ASST. SOL. SHELTON: Thank you, Your Honor. May I
15 approach?

16 (COURT REPORTER MARKS ITEM NUMBER ONE AS STATE'S
17 EXHIBIT NUMBER NINETY-EIGHT A.)

18 Q Now you are referencing Item One on your report which
19 is Ninety-eight A as State's evidence, would you please
20 state your findings in reference to that item?

21 A On this particular latent lift, there are three
22 impressions, three separate impressions, and I've labeled
23 them point one, point two, and point three. I compared
24 those to the known prints that I was provided and did make
25 an identification.

1 Q What identification was that?

2 A With the known standards bearing the name James Lavert
3 Davis.

4 Q James Davis. Now, moving on to your Item Number Six
5 contained within State's Exhibit Number Ninety-eight, would
6 you please locate that item?

7 A Okay. I have it.

8 Q Is that Item Six?

9 A Is it.

10 Q May I approach, Your Honor?

11 THE COURT: You may.

12 ASST. SOL. SHELTON: I request that this item be
13 designated as State's Exhibit Number Ninety-Eight B.

14 THE COURT: Any objection from the counsel for
15 McMillan?

16 MR. MATHEWS: No, Your Honor.

17 THE COURT: Counsel for Jakes?

18 MR. BEACH: No, Your Honor.

19 THE COURT: Without objection.

20 ASST. SOL. SHELTON: May I approach again, Your Honor?

21 THE COURT: You may.

22 ASST. SOL. SHELTON: Thank you, Your Honor.

23 Q Detective Wilson, now, will you please describe what
24 you see on that placard there.

25 A This is my Item Number Six, again, this has three

1 separate impressions on it. I've labeled those .1, .2 and
2 .3.

3 Q First of all, what type of prints are those, are those
4 fingerprints or are those palm prints?

5 A These are fingerprints.

6 Q Were you able to make any identification as to finding
7 of identification regarding those palm prints with the
8 submissions that you were given by Jeff Scott of the
9 Sheriff's Office?

10 A These fingerprints, the sublatents, the ones that I
11 labeled .1 and .2, I identified as coming from the same
12 source as a known standard bearing the name Antwan McMillan.

13 A third latent impression was deemed no value for
14 identification; it was not enough detail.

15 Q So the two of those latent impressions were identified
16 as the fingerprints of Antwan McMillan?

17 A That's correct.

18 Q And Item Number Six -- will you please tell the Court
19 what that Item Number Six is described as, in your report.

20 A Item Six is described as a latent lift bearing case
21 number and labeled, "back glass, white cad" South Carolina
22 tag FFV-798, with the initials NK, designated as latent
23 number three.

24 Q Now, moving on, will you please locate Item Number
25 Seven in the evidence. It's part of State's Exhibit Number

1 Ninety-Eight that you have there with you. What is that
2 item listed as in your report?

3 A In my report, this item is listed as a latent lift
4 bearing case number and labeled, "Rear Glass, White Cadi,
5 South Carolina tag, FFV-798" with the initials NK,
6 designated as latent Six.

7 ASST. SOL. SHELTON: At this time, Your Honor, the
8 State moves to designate this as State's Exhibit Ninety-
9 Eight C.

10 THE COURT: Any objection Mr. Mathews?

11 MR. MATHEWS: No, Your Honor.

12 THE COURT: Mr. Beach?

13 MR. BEACH: No, Your Honor.

14 THE COURT: Without objection, Ninety-Eight C.

15 (STATE EXHIBIT NUMBER NINETY-EIGHT C IS RECEIVED INTO
16 EVIDENCE.)

17 ASST. SOL. SHELTON: May I approach again, Your Honor.

18 THE COURT: You may.

19 Q Detective Sergeant Wilson, were you able to come with
20 any type of finding as for identification with the ink
21 prints submitted to you by Jeff Scott, as to that item which
22 is State's Exhibit Ninety-Eight C, your Item Number Seven?

23 A I was. I identified this latent impression as a
24 partial palm impression and I identified it with the known
25 palm impressions on a standard bearing the name Antwan

1 McMillan.

2 Q And that was titled Item Number Seven, latent lift
3 bearing case number and labeled, "Rear Glass, White Cadi, SC
4 tag FFV-798" as previously stated?

5 A That's correct.

6 Q Thank you. If you don't mind, I apologize for jumping
7 all over the place, but if you would move back to Item
8 Number Five. Without introducing as a separate exhibit,
9 were you able to make a finding as to that item?

10 A I was. This was another latent impression labeled,
11 "Driver Side Rear Panel near Window" I identified the single
12 impression on here as a standard bearing the name James
13 Lavert Davis.

14 Q At this time, Your Honor, we'd move for that to be
15 entered into evidence as State's Exhibit Ninety-Eight D.

16 THE COURT: Any objection?

17 MR. MATHEWS: No, Your Honor.

18 THE COURT: Mr. Beach?

19 MR. BEACH: No, Your Honor.

20 THE COURT: Without objection, Ninety-Eight D.

21 Q And were there any other items that you were able to
22 make an identification on? Referencing items found within
23 State's Exhibit Number Ninety-Eight.

24 A I believe there may be one more.

25 Q It's in Number Eight, I believe.

1 A That's correct.

2 Q Were you able to make a finding of identification for
3 Item Number Eight?

4 A I contained a sole latent impression that was
5 identified on a known standard bearing the name James Davis.

6 Q And is that a fingerprint impression or palm print
7 impression?

8 A That's a finger impression.

9 Q Thank you. At this time, Your Honor, we'd move for
10 Item Number Eight, State's Exhibit Number Ninety-Eight be
11 moved into evidence as Ninety-Eight E.

12 THE COURT: As to Ninety-Eight E, Mr. Mathews?

13 MR. MATHEWS: No objection, Your Honor.

14 THE COURT: Mr. Beach?

15 MR. BEACH: No objection, Your Honor.

16 THE COURT: Ninety-Eight E without objection, Counsel.
17 You may mark.

18 ASST. SOL. SHELTON: Thank you, Your Honor. Thank you,
19 may I approach again, Your Honor?

20 THE COURT: You may.

21 ASST. SOL. SHELTON: Detective Wilson, using those
22 prints that were provided to you by Detective Scott, the ink
23 prints and also the latent impressions of prints, once you
24 made matches, did you prepare anything using those prints,
25 those figures of the prints as a presentation for court

1 today?

2 A I did. I prepared images that could be enlarged and
3 brought in front of the jury so they could demonstrate for
4 you how I made match on two of those.

5 Q Specifically, did you prepare a image report for Item
6 Number Seven -- you have it in your hand. I'm sorry I did
7 not mark it in my notes.

8 A I do. Item Number Seven, State's Exhibit Ninety-Eight
9 C.

10 Q Ninety-Eight C. And, that's a palm print that you
11 identified as Antwan McMillan?

12 A It is.

13 Q I beg the Court's indulgence.

14 THE COURT: Counsel approach.

15 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD AND
16 OUT OF THE HEARING OF THE JURY.)

17 THE COURT: Madame Foreperson, ladies and gentlemen of
18 the jury, I have to take up a matter of law, it won't be
19 long, please retire to your jury room. Do not discuss the
20 case.

21 (WHEREUPON, THE JURY EXITS THE COURTROOM AND THE
22 FOLLOWING IS HELD ON THE RECORD.)

23 THE COURT: All right. Let the record reflect, I had a
24 conference at the bench with defense counsel and the
25 Solicitor. Mr. Shelton advised the Court that he has

1 requested this witness, Ms. Wilson, to make a blow-up of
2 what has been designated earlier as Ninety-Eight C.
3 Unfortunately, Ninety-Eight C, the blow-up, was never
4 provided to defense counsel. Mr. Mathews objects of him
5 using that without him having an opportunity to examine it.

6 I want the record to be clear that Mr. Shelton told me
7 in conference that he provided the actual print which is
8 contained in the demonstrative exhibit, but did not provide
9 the blow-up, which apparently Ms. Wilson has put lines and
10 other identifying characteristics on the blow-up.

11 Defense Counsel is certainly entitled to examine that
12 before it's used, even though it's not intended to be
13 introduced into evidence and just for the demonstrative
14 purposes and I've excused the jury at the request of Mr.
15 Mathews in order to allow him to do so before we proceed.
16 Mr. Mathews.

17 ASST. SOL. SHELTON: Ms. Wilson, I ask for your help
18 for this.

19 THE COURT: Certainly, Ms. Wilson, you may step down
20 and assist him in the middle of this. Now, she's in the
21 middle of her examination, if it's a question about the use
22 of equipment, I'm letting defense counsel see this because
23 it hasn't been shown to them. We're not getting into a
24 discussion with this witness.

25 ASST. SOL. SHELTON: No, no, no. All I need to know is

1 -- I'm trying to pull this up on the DVR drive -- I pulled
2 it up. I have a copy of it on my computer. This is a burnt
3 CD copy.

4 MR. MATHEWS: Your Honor, I haven't seen it. I don't
5 have any objection to it.

6 THE COURT: You now had the opportunity to see it. Do
7 you have any objections, sir?

8 MR. MATHEWS: No, sir.

9 THE COURT: Let the record reflect Madame Court
10 Reporter that Mr. Mathews has viewed the blow-up on the
11 screen with the assistance of the Solicitor and the witness;
12 he has no objection with it being used as demonstrative
13 purposes. Bring me the jury; turn the screen off -- Ms.
14 Wilson, will you return to the witness stand.

15 (WHEREUPON, THE JURY ENTERS THE COURTROOM AND THE
16 FOLLOWING IS HELD ON THE RECORD.)

17 THE COURT: Ladies and gentlemen, We will now continue
18 with the testimony in the trial of this case. Direct
19 examination, Solicitor, proceed.

20 ASST. SOL. SHELTON: Thank you, Your Honor.

21 Q Again, I ask you, Detective Wilson, did you prepare as
22 for Item Number Seven, which is State's Exhibit Ninety-Eight
23 C, a presentation for the demonstrative purposed which would
24 be a image of those actual latent and the ink print that you
25 compared for the purposes of providing more information for

1 the jury today?

2 A I did.

3 Q Have you reviewed it, what I showed you earlier, and is
4 it the same image?

5 A I did. It is the same image.

6 Q At this time, Your Honor, the State would request for
7 demonstrative purposes only that this image be shown to the
8 jury.

9 THE COURT: Very well. Mr. Beach, you and Mr. Mathews
10 may come around by my bailiff if you want to be able to view
11 the screen and save time; if you so desire.

12 MR. MATHEWS: I don't need to, Your Honor.

13 THE COURT: Mr. Beach?

14 MR. BEACH: I will, Your Honor.

15 THE COURT: All right. Come around if you would, you
16 can stand right beside Mr. Scott. I don't want a juror's
17 view blocked. Do you need the witness to step down?

18 MR. BEACH: Yes, sir, Your Honor.

19 THE COURT: Pat, I'm going to need the portable
20 microphone. Give it to the witness, please. Ms. Wilson, if
21 you would use this for me so your back's going to be to my
22 court reporter, and if you will try, I realize it puts you
23 in awkward positions, try not to block the screen so my jury
24 can see it. Is it going to remain there?

25 ASST. SOL. SHELTON: Yes, sir, Your Honor.

1 THE COURT: All right. You can step down for me,
2 please.

3 ASST. SOL. SHELTON: May I publish for the jury, Your
4 Honor, for the demonstrative purposes only?

5 THE COURT: Without objection, is that correct Mr.
6 Mathews?

7 MR. MATHEWS: That's correct.

8 THE COURT: Mr. Beach?

9 MR. BEACH: Yes, sir.

10 THE COURT: You may publish.

11 ASST. SOL. SHELTON: Thank you, Your Honor.

12 Q Detective Wilson, do you recognize this image?

13 A I do.

14 Q Will you please tell the jury what it is?

15 A This is a ---

16 THE COURT: You got to hold that microphone, Ms.
17 Wilson.

18 A This is a photographic enlargement of a demonstration I
19 put together to explain how I made the identification on
20 this particular print. On the left hand side is the known
21 partial palm impression of defendant Antwan McMillan. On
22 the right hand side is a portion of the latent impression
23 that came from the latent print carpet I was provided.

24 Q And what State Exhibit Number is that?

25 A This is State's Exhibit Number Ninety-eight C.

1 Q Thank you. Please continue, Detective Wilson.

2 A This may be difficult to see, but the portion that is
3 enlarged here is this very small portion right here that
4 contains sufficient details and I might can demonstrate for
5 you how this identification was made.

6 THE COURT: Just a moment. Mr. Mathews, walk outside,
7 come around, don't block the jury's view. Come by Mr.
8 Beach.

9 A Now, the red lines that you see on these charted
10 enlargements, they point out different characteristics.
11 These are the differences that we look like when we're
12 identifying features of prints. And you'll notice when you
13 look at these you'll see such things as ridges that end,
14 you'll see right here (INDICATING ON ENLARGED DOCUMENT.) a
15 dot. You might see a ridge that forks off and comes back
16 in; we refer to those as islands. And those are some unique
17 features that we look at when we compare the two impressions
18 to make sure that they are identical in appearance.

19 Now, for two prints that have been made by the same
20 finger, the same ridge characteristics have to appear in the
21 same position in both prints. This might be a little
22 difficult to explain, but bear with me on this. We're going
23 to start with the latent impression, which is the right hand
24 impression. We're going to start with Item Number One. This
25 line is very faint. This line ends at what is an ending

1 ridge impression. This ridge ends right here.

2 If you look at Number One on the known impression, that
3 is an ending ridge. Now, if I were to count, one, two,
4 three, four, ridges, I'd come to Number Two, which as you
5 can see is a very short ending ridge. Number Two is the top
6 end of that ending ridge. I start at Number One here and I
7 count down one, two, three, four, very faintly you can see
8 an ending ridge here. As I've stated before, a latent
9 impression is a chance impression. It's not going to be a
10 perfect impression. It's not going to be a nice, clear
11 impression that looks like this. You may get something that
12 might be twisted or a little bit muddy because it was
13 touched by chance.

14 So Number Two and Three, which is the top and bottom
15 edges of this ending ridge, two and three here, are the top
16 and bottom edges of that short ending ridge here.

17 Moving on to Number Four, if you look at the bottom end
18 of this short ridge and you follow it all the way down and
19 just to the right, there's another ending ridge right here.
20 You take the bottom of this ending ridge and follow it down
21 a little bit to the right, you see that ending ridge Number
22 Four in the same position as Number Four on the imprint.

23 Number Four and Number Five, the same thing. It's in
24 the same position and the same line as Number Four and I'll
25 mark that Number Five. Same thing here, take that ending

1 ridge, follow it down through the valley and the black is
2 going to be the ridge and the white is going to be the
3 valley in between those ridges. Following Four down through
4 that white valley, you come to the ending ridge at Number
5 Five. The same place as Number Five on the known
6 impression. If I count two ridges in, one, two, I come to
7 another ending ridge. In the same position as latent
8 impression, one, two is an ending ridge here that I have
9 marked.

10 Now, when you cross the palm and go to Number Seven, so
11 I am going to count one, two, three, four, five, six, seven,
12 eight, there's another ending ridge that I've marked Number
13 Seven, that is eight ridges away from this characteristic.
14 It's going to be a little hazier on here because it's not as
15 clear. One, two, three, four, five, six, seven, eight, is
16 the ending ridge that I've marked Number Seven, and is in
17 the same position as the ending ridge in the known
18 impression, Number Seven. One, two, three ridges up. One,
19 two, three ridges up, again, two ending ridges occupying the
20 same position in both of the impressions.

21 These are marked as Number Nine and they are in the
22 same location on both of the impressions, and continue that
23 way through Ten, Eleven and Twelve, count the ridges the
24 same way. I marked Twelve for identification purposes to
25 show why they would match, but as you look at these, there

1 were plenty of characteristics that I didn't mark that you
2 can actually see and look over here at the latent impression
3 and find them on here in the same position.

4 Q Please return to the witness stand.

5 (WITNESS COMPLIES.)

6 Q Is that the process that you use, Detective, except for
7 the twelve that you listed, obviously, many more, when you
8 find a match, or look for matches, of any unique impressions
9 or latent lifts?

10 A Yes, it is. That is the process that is used. The
11 ridge characteristics have to occupy the same location
12 relative position as the reference that you're trying to
13 identify it with. If they don't match up, they're not in
14 the same position, then it's not an identification.

15 Q And you did find an identification here?

16 A That's correct. I did.

17 Q And the identification is labeled Item Seven, State's
18 Exhibit Ninety-eight. Please read that identification in
19 your report again.

20 A Item Seven is a latent lift bearing the case number and
21 labeled "rear glass white Cadi, South Carolina Tag FFV-798,"
22 with the initials NK, designated as Latent Six, a partial
23 palm impression identified with known palm impression on the
24 standard bearing the name Antwan McMillan.

25 Q Thank you.

1 ASST. SOL. SHELTON: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 Q Thank you, Detective Wilson. Thank you for your time.
4 Please answer any questions that Mr. Mathews or Mr. Beach
5 may have for you.

6 THE COURT: Cross-examination by the defendant
7 McMillan.

8 MR. MATHEWS: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MATHEWS:

11 Q Detective Sergeant Wilson, how are you doing today?

12 A Fine, sir.

13 Q Good. (TO THE SOLICITOR.) Would you turn that back on?

14 (THE SOLICITOR TURNS THE SCREEN ON SHOWING STATE
15 EXHIBIT NINETY-EIGHT C.)

16 Can you see okay from there, Detective Wilson?

17 THE COURT: Do you need her to step down?

18 MR. MATHEWS: Could she, please.

19 THE COURT: Pat, give me the portable microphone. Mr.
20 Beach you may come around and Mr. Shelton you may come
21 around. Step back so the jury is not blocking the screen.

22 Q Detective Wilson ---

23 THE COURT: Just a moment. Okay, proceed.

24 Q Detective Sergeant Wilson, what percentage of the
25 population has ridged detail ending there as in spot one?

1 A There is no standard or any percentage or any such
2 statistic that I'm aware of.

3 Q And it potentially ---

4 THE COURT: Pull that microphone up a little higher for
5 me, please, Ms. Wilson. Proceed.

6 Q Okay. So you can't -- you don't have a number on what
7 percentage of the population has ridge detail like that?

8 A If you're referring to one, one characteristic, I would
9 have no idea.

10 Q Okay. Okay. So, okay, and that would be true of
11 Number Nine and Number Four, also?

12 A Individually, that is correct. I would have no way of
13 knowing.

14 Q All right. Okay.

15 MR. MATHEWS: That's all I have on that, Your Honor.

16 THE COURT: Can she return to the witness stand?

17 MR. MATHEWS: She can. I do have more questions, but
18 I'm finished with this.

19 THE COURT: Ms. Wilson, you may return to the witness
20 stand. Watch your step for me.

21 Q And you analyze, I guess, the prints that are given to
22 you, obviously?

23 A That is correct.

24 Q And you can't say, and from your understanding, what
25 you're saying is that all of these prints were on the

1 outside of the Cadillac?

2 A Some of them specifically -- I don't see any that say
3 "inside" or "outside". I see door handle and a diagram that
4 -- none of them specifically say inside or outside.

5 Q Okay. So you just know what they send you and as far
6 as that goes, can you say when those prints came to be
7 wherever they ended up?

8 A As when they were placed there?

9 Q Exactly.

10 A I have no way of knowing.

11 Q Okay. All right. To your knowledge, were you asked to
12 examine any prints from the inside of the Cadillac?

13 A I was asked to examine eight latent impressions; that's
14 what I received.

15 Q Okay.

16 MR. MATHEWS: I don't have anything further, Your
17 Honor.

18 THE COURT: Cross-examination by the defendant Jakes?

19 MR. BEACH: I don't have anything, Your Honor.

20 THE COURT: Very well. Redirect?

21 ASST. SOL. SHELTON: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY ASST. SOL. SHELTON:

24 Q Mr. Mathews spoke about individually no way of knowing;
25 the totality given all of the images and the identifiable

1 markings and ridge lines and valleys that you identified
2 generally, how did you come to that identification? Do you
3 have any type of conclusion as to that?

4 A Again, the arrangement, the unique features that are
5 contained within the print, the way they're arranged, the
6 way they're spaced, sometimes even the pores you might be
7 able to see, and sometimes the creases, that you can use as
8 a reference; all of the features taken into consideration
9 are used to make an identification, not individual points.

10 Q And you just showed us 12 individual points that you
11 had found?

12 A In a very small portion of the palm, correct.

13 Q Correct. And there were many more that you did not
14 show?

15 A That's correct.

16 Q Thank you. That's all the questions that I have.

17 THE COURT: Recross, limited to redirect, by the
18 defendant McMillan?

19 MR. MATHEWS: Thank you, Your Honor.

20 RECROSS-EXAMINATION

21 BY MR. MATHEWS:

22 Q So that's a very small portion of a given print?

23 A That's correct.

24 Q And if you moved it a little bit to the side, one way
25 or the other, if there's even one ridge detail that is

1 different, obviously, it's not that print? If it fails to
2 match in any way, you move it to the side a little bit and
3 you're looking at a little piece of it, if you expand out a
4 little bit and something is slightly different, it's not the
5 same?

6 THE COURT: All right, one question at a time, counsel;
7 not five. Start with one.

8 MR. MATHEWS: Yes.

9 A I -- especially -- particularly a palm print, it covers
10 a very wide area, especially under a magnifying glass; it's
11 huge. You take your known impression, or your latent
12 impression, and you examine it together. You find the
13 features, you find the characteristics and see if they match
14 each other, if they're in the same spatial location in
15 relation to each other. There is one requirement as to
16 where you have to stop, but if you find during your
17 examination that ridges are not in the same location as in
18 the other specimen that you're looking at, or if you see a
19 feature that is supposed to be an ending ridge here and you
20 look at the same location on the other print and it's an
21 island, or a dot, or a forking ridge, obviously, those are
22 features that are not matching.

23 Q And were you specifically asked to look for or to
24 compare with the incidental or chance prints with prints
25 from David Jakes?

1 A I was.

2 Q And did you find any?

3 A I did not.

4 Q All right.

5 MR.. MATHEWS: Nothing further.

6 THE COURT: Recross examination, limited to redirect,
7 by the defendant Jakes?

8 MR. BEACH: None, Your Honor.

9 THE COURT: As to this witness, Solicitor?

10 ASST. SOL. SHELTON: Ask that she may be excused.

11 THE COURT: Any objection to this witness being excused
12 by the defendant McMillan?

13 MR. MATHEWS: No, Your Honor.

14 THE COURT: By the defendant Jakes?

15 MR.. BEACH: No, Your Honor.

16 THE COURT: Ms. Wilson, I need for you to put my cards
17 back into my exhibits for me and hand those packages to the
18 court reporter, so that we've got everything straight. Make
19 sure you have your file and that I have my exhibits.

20 (BRIEF PAUSE WHILE WITNESS COMPLIES.)

21 THE COURT: You are excused from the trial of this
22 case. Thank you very much.

23 DETECTIVE WILSON: Thank you, Your Honor.

24 THE COURT: Call your next witness.

25 ASST. SOL. HASELDEN: Your Honor, at this time, the

1 State would rest.

2 THE COURT: Are there any matters of law that I need to
3 take up at this time?

4 MR. MATHEWS: Yes, sir.

5 THE COURT: Madame Foreperson, ladies and gentlemen of
6 the jury, I will be right back with you. I need to take up
7 a quick matter of law. Please do not discuss the case.
8 Please retire to your jury room.

9 (5:30 P.M., 8-31-11, WHEREUPON THE JURY EXITS THE
10 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
11 RECORD.)

12 THE COURT: Mr. Mathews?

13 MR. MATHEWS: Your Honor, I would move for a directed
14 verdict of acquittal as to several of the counts. The
15 testimony of both of -- of all three of the victims was that
16 if anybody was pointing a gun at anybody, it was initially
17 getting out of the car.

18 In the light most favorable to the State, as David
19 Jakes got out, and perhaps pointed the gun at Jeanine
20 Metzfield, and that when Jesse King popped up with his gun,
21 he faced and pointed toward her. Again, there is no
22 evidence that anybody ever pointed any firearms at Amanda
23 Metzfield. There is no evidence that Amanda Metzfield was
24 shot at or an attempt to be robbed. There is no evidence of
25 any kind that either Amanda Metzfield or Jesse King was the

1 object of the attempted robbery, and I would ask for a
2 directed verdict of acquittal as to Antwan McMillan on
3 attempted murder as to Amanda Metzfield and as to attempted
4 robbery of Amanda Metzfield and Jeanine Metzfield and Jesse
5 King.

6 THE COURT: Solicitor, I'll be happy to hear from you.
7 He's moving as to attempted murder and attempted armed
8 robbery; is that correct, Mr. Mathews?

9 MR. MATHEWS: Yes, sir.

10 THE COURT: Solicitor?

11 ASST. SOL. HASELDEN: Your Honor, our position is that
12 there has been both direct and circumstantial evidence as to
13 elements of each of those crimes, and precisely, neither of
14 these require the pointing of a firearm at them.

15 THE COURT: You're absolutely correct. The pointing of
16 a firearm is not an element of either offense.

17 ASST. SOL. HASELDEN: And Your Honor, I would state
18 that we have bullet holes in cars that people were crouched
19 behind.

20 THE COURT: Solicitor, do we not have the testimony of
21 Mr. Davis who claims to have been an occupant of the car
22 that said that someone who was in the car with him, over the
23 top of him, was shooting?

24 ASST. SOL. HASELDEN: Your Honor, we have that
25 testimony that somebody was shooting over him. We have

1 testimony by all three victims that somebody was shooting at
2 them. We have the physical evidence found at the crime.
3 Furthermore, you have the testimony of Ms. Jeanine Metzfield
4 as to what she perceived and saw and perceived it to be a
5 robbery.

6 As to Jesse King, you heard the 911 tapes and his
7 testimony, and furthermore, you have testimony of James
8 Davis as to what was supposed to be going down, to "give it
9 up." That testimony is clear that it was an easy lick,
10 that's why they turned the car around, and I believe that
11 based on the light most favorable to the State, that there's
12 been ample testimony, both direct and circumstantial, as to
13 each element of both the attempted armed robberies and
14 attempted murder, and further, the possession of a weapon
15 during the commission of a violent crime.

16 THE COURT: Well, I don't think Mr. Mathews moved on
17 possession of a weapon, did you Mr. Mathews?

18 MR. MATHEWS: I did not.

19 THE COURT: As to your motion for directed verdict in
20 the standard on attempted murder and attempted armed
21 robbery, and the standard I'm required to apply, at this
22 stage, at the close of the State's case, your motion is
23 respectfully denied.

24 Any motions on behalf of the defendant Jakes?

25 MR. BEACH: Yes, Your Honor.

1 THE COURT: Be happy to hear from you.

2 MR. BEACH: Your Honor, our motion would be the same as
3 Mr. Mathews' motion on behalf of his client. I believe I've
4 already moved on that, and I would so move it be the same.

5 THE COURT: Well, the evidence is different, Mr. Beach,
6 as to Mr. McMillan and Mr. Jakes; but you're aware of the
7 standard I have to apply at this stage?

8 MR. BEACH: Yes, sir.

9 THE COURT: I'm not concerned with the weight of the
10 evidence; I'm concerned with the existence of the evidence.

11 MR. BEACH: I agree, Your Honor. And that will be our
12 motion at this time, Your Honor. Also, we would move for a
13 directed verdict on possession of a stolen handgun. I
14 believe one of the elements is that it has to be stolen or
15 have reason to believe it's been stolen, and there's no
16 evidence of that. This is a gun that's been around since
17 2002, and I don't think the State has borne the burden of
18 proving that particular charge.

19 THE COURT: All right. Solicitor, I want to hear you
20 on possession of a stolen pistol, because the statute says
21 that I believe that you "knowingly" possessed a stolen
22 handgun. And I'll be happy to hear you on that, as well as
23 the motion for directed verdict, on behalf of Mr. Jakes as
24 to attempted murder and attempted armed robbery.

25 ASST. SOL. HASELDEN: Your Honor, I would first address

1 the attempted armed robbery and attempted murder, if I may.
2 In the exact same fashion I just discussed with the directed
3 verdict motion by defense counsel for Antwan McMillan. We
4 believe there has been both direct and circumstantial
5 evidence, clear evidence, testimony by all three witnesses,
6 and James Davis, that Mr. Jakes got out of the car. He
7 stated "Give it up!" or something along those lines of "Give
8 it up, pretty lady." and that there was the intent to rob
9 and that intent may have helped him when he jumped out of
10 the car, pointing a gun, and stating that.

11 Second of all, the attempted murder. Clearly, the hand
12 of one, hand of all, the co-defendant. We have testimony
13 there's a bullet being shot at them, and bullet holes, and
14 the testimony of James Davis. Your Honor, clearly, in the
15 light most favorable to the State, this should be a question
16 for the jury.

17 As to the stolen gun, there's been testimony that that
18 gun was stolen. There's testimony that that gun was not in
19 David Jakes' name. Instead, it came back from NCIC that it
20 was stolen. And when further research came back that it was
21 stolen from some time ago in San Diego, and as Your Honor
22 knows, guns are supposed to be registered to the individual
23 who purchases it, which would indicate to the jury, and I
24 believe to circumstantial evidence, that the individual knew
25 he wasn't supposed to have that gun or it would have been

1 registered as they are all supposed to be registered, and
2 therefore it would have come back in his name, like the
3 other two came back to Jesse King. I believe that's
4 circumstantial evidence and it's a question for the jury,
5 and in the light most favorable to us, it should properly be
6 presented to them.

7 THE COURT: Yes, sir, Mr. Beach?

8 MR. BEACH: Your Honor, we believe, first of all, we
9 dispute the hand of one is the hand of all. My client was
10 out of the picture when the firing started inside the car.
11 He was on the ground and had been shot several times. He
12 was completely out of the picture. His hand was no longer
13 the hand of one or the hand of all.

14 THE COURT: Mr. Beach, whoa. We're dealing with
15 possession of a stolen pistol. We're not dealing yet with
16 hand of one is the hand of all.

17 MR. BEACH: I'm sorry.

18 THE COURT: I realize you're taking the Solicitor's
19 argument to me. You want to argue some more on attempted
20 murder and attempted armed robbery?

21 MR. BEACH: No, sir. That would be our point on that,
22 but with regard to registration, there's no registration in
23 South Carolina. You can buy a gun from a person on the
24 street, the same as -- anytime you want to. There's no
25 registration law in South Carolina.

1 THE COURT: The statute says that a person shall not
2 knowingly buy, knowingly sell, knowingly transport,
3 knowingly pawn, knowingly receive, or knowingly possess any
4 stolen handgun or one from which the serial number has been
5 removed or obliterated.

6 MR. BEACH: Yes, sir.

7 THE COURT: Solicitor, I understand the argument here.
8 The argument is -- and I don't know that there's been any
9 testimony before the jury about registration and I don't
10 want to get into that. The argument that you're arguing to
11 me is that there's circumstantial inference, that he knew or
12 should have known, but I don't know that the burden is on
13 you when it says "knowingly" to establish that. Can you
14 point to me some evidence direct or circumstantial that
15 shows that the defendant knowingly -- I realize that you
16 believe you've proven that the gun was stolen. Can you
17 point to me evidence by inference or direct evidence, in
18 which the defendant knew the gun was stolen.

19 ASST. SOL. HASELDEN: Your Honor, I'm not sure I could
20 ever prove that somebody knows something.

21 THE COURT: Well, one way would be if you were in
22 possession of a weapon, because that's what's in the
23 statute, if you obliterate the serial number.

24 ASST. SOL. HASELDEN: Well ---

25 THE COURT: Because it's the same penalty and the same

1 offense if you're in possession of it with obliterated -- we
2 don't have that situation here. We have a serial number and
3 you were able to trace it and it came back stolen. But what
4 is prescribed by the Legislature is that a person shall not
5 knowingly possess a stolen pistol or one in which the
6 original serial number has been removed or obliterated.

7 ASST. SOL. HASELDEN: Your Honor, I don't think I could
8 ever prove unless the serial number is obliterated and I
9 don't think that it's the State's burden and the Legislature
10 left that "Okay, it's almost like an intent requirement that
11 Your Honor charges for murder or attempted murder. You can
12 never get into the head of a defendant.

13 THE COURT: This is not an attempt, now. That's a
14 whole different situation. This is a substantive offense.
15 And the requirements are knowingly, that the person shall --
16 and the reason knowingly is there is because you could, in
17 good faith, buy a weapon, not knowing it was stolen, and you
18 would not necessarily be guilty under this statute.

19 Now, I realize we're talking about a directed verdict
20 situation here, but there has to be some evidence for me to
21 get past this standard on this particular charge. I'll give
22 you a moment if you want to talk to counsel.

23 (BRIEF PAUSE IN COURTROOM.)

24 THE COURT: All right, Counsel. I've got a jury
25 waiting and I wanted to give you a minute to confer. Is

1 there anything else you would like to tell me on this?

2 ASST. SOL. HASELDEN: Your Honor, only that I believe
3 I've shown my absolute direct and circumstantial evidence.

4 THE COURT: What direct evidence is there in this trial
5 that the defendant knew that this gun was stolen?

6 ASST. SOL. HASELDEN: Your Honor, I'm saying that the
7 gun was stolen and he was in possession of it. Your Honor,
8 I don't think that I could ever prove ---

9 THE COURT: But it says "knowingly".

10 ASST. SOL. HASELDEN: Yes, Your Honor. I think ---

11 THE COURT: That's what I'm asking you. That's the
12 issue. The statute doesn't say that if you're in possession
13 of a stolen gun, you can be guilty, because you would be
14 absolutely correct. The statute says that you have to
15 knowingly be in possession of a stolen weapon, and the
16 question I'm asking you is what direct evidence there is of
17 knowingly, counsel?

18 ASST. SOL. HASELDEN: Your Honor, there is no direct
19 evidence. I think it's going to be a question of fact for
20 the jury.

21 THE COURT: Well, there has to be evidence in order for
22 there to be a question of fact, and the evidence has to be
23 direct or circumstantial. What evidence is there on this
24 offense in this trial?

25 ASST. SOL. HASELDEN: Your Honor, only that he was in

1 possession of it.

2 THE COURT: Mr. Beach, your motion for directed verdict
3 as to possession of a stolen pistol is granted.

4 MR. BEACH: Thank you, Your Honor.

5 THE COURT: Mr. Mathews, would you and Mr. Beach, and
6 your clients come around as soon as the Clerk returns to the
7 courtroom, because she stepped out to give a message to the
8 jury, and be sworn by the Clerk.

9 MR. MATHEWS: Yes, sir.

10 (BRIEF PAUSE UNTIL THE CLERK OF COURT RETURNS TO
11 COURTROOM.)

12 THE COURT: Come around, counsel, with your clients.
13 Madame Clerk, would you swear each of the defendants?

14 WHEREUPON, DEFENDANT, ANTWAN MCMILLAN, IS DULY SWORN.

15 WHEREUPON, DEFENDANT, DAVID JAKES, IS DULY SWORN.

16 MADAME CLERK: Please speak up.

17 THE COURT: All right. I want you to speak into the
18 microphones, and I'm going to speak to each of you in turn,
19 because I'm going to be advising you about certain of your
20 rights.

21 Let the record reflect now that Mr. Jakes and Mr.
22 McMillan are before me with their counsel, Mr. Beach and Mr.
23 Mathews. They have been sworn, each in turn, by the Clerk
24 of Court, and have acknowledged the oath to the Clerk.

25 Now, gentlemen, at this time, as I've told you, I'm

1 going to explain to you certain of your rights. If you do
2 not understand anything that I say, please let me know. If
3 you want me to explain anything in further detail, please
4 let me know. Do you understand, Mr. McMillan?

5 MR. MCMILLAN: Yes, sir.

6 THE COURT: Do you understand what I've just told you,
7 Mr. Jakes?

8 MR. JAKES: Yes, sir.

9 THE COURT: All right. We've now reached the stage of
10 the trial where each of you, independent of one another, may
11 present your defense. You have the right to testify in your
12 own behalf. However, no one can make you testify. In the
13 event that either of you have a record or any conviction
14 involving dishonesty or false statement, or for a crime
15 punishable by imprisonment of more than one year, and this
16 Court determines that the probative value of admitting this
17 evidence outweighs its prejudicial effect to you, the
18 Solicitor will be able -- or Assistant Solicitor will be
19 able to introduce this evidence, this record of criminal
20 convictions for impeachment purposes, for the sole purpose
21 of attacking your credibility or your believability with the
22 jury.

23 If you elect not to take the witness stand, I will
24 charge the jury that they are not to give the fact that you
25 did not testify any consideration whatsoever and there is to

1 be absolutely no prejudice to either one of you because you
2 did not testify. You have the Constitutional right to
3 remain silent and the assertion of your Fifth Amendment
4 Constitutional Right will not, in my charge to the jury, in
5 any way be used against you.

6 The decision as to whether or not either of you or both
7 of you testify in this case will be left entirely up to you
8 respectively. You may talk with your attorney and you may
9 listen to your attorney, but it is not your attorney's
10 decision. It is your decision. No one can make you testify
11 in this case. The decision as to whether or not you testify
12 will be left entirely up to each of you. Have you
13 understood what I've just told you, Mr. McMillan?

14 MR. MCMILLAN: Yes, sir.

15 THE COURT: Have you understood what I've just told
16 you, Mr. Jakes?

17 MR. JAKES: Yes, sir.

18 THE COURT: All right. Solicitor, does Mr. McMillan
19 have a record?

20 ASST. SOL. HASELDEN: Yes, Your Honor

21 THE COURT: Have you provided it to his attorney?

22 ASST. SOL. HASELDEN: No, Mr. McMillan does not have a
23 record. I apologize, Your Honor. Mr. Jakes has a record
24 and it has been provided.

25 THE COURT: All right. Mr. Beach, do you have a copy

1 of his record?

2 MR. BEACH: I've got a copy, Your Honor . .

3 THE COURT: All right. Mr. McMillan, I'm being advised
4 by the Solicitor, and your attorney is acknowledging by his
5 nod of the head, that he understands you do not have a
6 record?

7 MR. MCMILLAN: Yes, sir.

8 THE COURT: All right. Mr. Jakes, I'm being advised by
9 the Solicitor and your attorney, Mr. Beach, that you do have
10 a record and a certified copy of that record has been
11 provided to your attorney; is that right, Mr. Beach?

12 MR. BEACH: Yes, sir.

13 THE COURT: Now, I'll give each of you a moment. I
14 need for each of you to tell me, under oath, you've been
15 sworn by the Clerk, as to whether or not each of you wish to
16 testify in the trial of this case, understanding that I will
17 charge the jury that they are not to give the fact if you do
18 not testify any consideration whatsoever. There is to be no
19 legal prejudice to either one of you because you did not
20 testify if that is your decision.

21 Mr. Mathews, I'll give you a moment with Mr. McMillan.

22 MR. MATHEWS: I've talked to him just briefly. We've
23 talked about it before, and I think he's -- I think he's ---

24 THE COURT: Have you had enough time to make a
25 decision, Mr. McMillan?

1 MR. MCMILLAN: Yes, sir.

2 THE COURT: Do you wish to testify in the trial of this
3 case?

4 MR. MCMILLAN: No, sir.

5 THE COURT: All right. Mr. Beach, would you like a
6 moment with your client, Mr. Jakes?

7 MR. BEACH: Yes, Your Honor, I would.

8 THE COURT: You got it.

9 MR. BEACH: Your Honor, my client advises me that he
10 would decline to testify.

11 THE COURT: Mr. Jakes, have you had sufficient time to
12 discuss this matter with your attorney?

13 MR. JAKES: Yes, sir.

14 THE COURT: And is that your decision?

15 MR. JAKES: Yes, sir.

16 THE COURT: Not your attorney's decision? You do not
17 wish to testify in the trial of this case; is that correct?

18 MR. JAKES: That's correct.

19 THE COURT: Mr. McMillan, did anybody force you into
20 the decision not to testify?

21 MR. MCMILLAN: No, sir.

22 THE COURT: You did it of your own free will and
23 accord?

24 MR. MCMILLAN: Yes, sir.

25 THE COURT: Is that true as to you, Mr. Jakes; did

1 anyone force you?

2 MR. JAKES: No, sir.

3 THE COURT: You did it of your own free will and
4 accord?

5 MR. JAKES: Yes, sir.

6 THE COURT: Thank you very much. Both of you may
7 return to your seats with your attorneys.

8 THE COURT: All right. I've got a jury out. I realize
9 the time, but I'm trying, for y'all's sake so that we can
10 complete the trial in a timely fashion tomorrow; Mr.
11 Mathews, in the order in which we've proceeded in the trial,
12 I'm going to give you the opportunity to go first. Because
13 of that, I'm going to give you the opportunity at this time
14 to tell me if the defendant McMillan wishes to present any
15 other evidence now that the State has rested, so I can do
16 some planning for time purposes for the remainder of the
17 trial.

18 MR. MATHEWS: Yes, sir. I don't see him here, but
19 we've subpoenaed Allen Inabinett.

20 THE COURT: All right. Where is he?

21 ASST. SOL. HASELDEN: He's sequestered, Your Honor.

22 THE COURT: He's sequestered. So you're going to call
23 Mr. Inabinett?

24 MR. MATHEWS: To present the tape that was testified to
25 earlier.

1 THE COURT: Is there any objection to the tape?

2 ASST. SOL. HASELDEN: No, Your Honor.

3 THE COURT: Very well. Mr. Beach?

4 MR. BEACH: No, Your Honor.

5 THE COURT: All right. Other than that, is that your
6 only witness?

7 MR. MATHEWS: That would be it, Your Honor.

8 THE COURT: All right. Mr. Beach, is it your intention
9 to call any witness or -- I don't know if you listed anyone
10 other than Mr. Jakes. Do you intend to present any evidence
11 on behalf of Mr. Jakes?

12 MR. BEACH: I do not, Your Honor.

13 THE COURT: Very well. All right. Now, let me ask you
14 this just for planning purposes. It is my intention to
15 complete the testimony. I realize that it's not fair for me
16 to ask you yet if you want to put up reply testimony before
17 you haven't heard the defense witness, but please be
18 thinking about that because I'd like to complete the
19 testimony, then adjourn, then have a charge conference in
20 chambers, and we will let everyone else go home and we will
21 come back and finish the trial in the morning. I know it's
22 been a long day.

23 Bring me the jury, please.

24 MR. MATHEWS: Your Honor, also ---

25 THE COURT: Just a moment. Yes, sir?

1 MR. MATHEWS: Just these are two photos that I believe
2 the State is going to object to or I could just put them in
3 there. They were identified, but they were not moved into
4 evidence. They were identified by Jeff Scott and I did not
5 introduce them into evidence. I understand that they would
6 allow them to be presented into evidence without having to
7 call Jeff Scott again.

8 THE COURT: Is that right?

9 ASST. SOL. HASELDEN: Sure, Your Honor. Yes, sir.

10 THE COURT: Well, when you get to your case, Mr.
11 Mathews, instead of now, then you can do that if they don't
12 object to it. Mr. Beach doesn't object to it. However, I
13 don't want to do that outside the presence of the jury,
14 because your client and the jury have a right to hear that.
15 Bring me the jury. Take a seat.

16 (WHEREUPON, THE JURY ENTERS THE COURTROOM AND THE
17 FOLLOWING PROCEEDINGS ARE HELD ON THE RECORD.)

18 THE COURT: Ladies and gentlemen of the jury, I told
19 you I would be mindful of your time. I'm aware of the time,
20 but I'm trying to complete the evidence in this case. We
21 will complete the trial in the morning. Sometimes, I have
22 to take up matters. I'm aware that I promised you I would
23 be mindful of your time and I will, and I thank you for your
24 patience.

25 You've heard the evidence from the State of South

1 Carolina. We will now hear from the defendant McMillan.

2 Mr. Mathews, you may call your first witness.

3 MR. MATHEWS: The defense calls Lt. Allen Inabinett.

4 THE COURT: If you'll come around Lieutenant.

5 MADAME CLERK: Please come forward and be sworn.

6 WHEREUPON, THE WITNESS, ALLEN INABINETT, IS DULY SWORN.

7 THE COURT: Have a seat. Pull that microphone up.

8 Pull your chair up and state your full name and spell your
9 last name.

10 LT. INABINETT: Fred Allen, last name I'll spell first,
11 I-N-A-B-I-N-E-T-T, Inabinett.

12 THE COURT: Your witness, Mr. Mathews.

13 MR. MATHEWS: Thank you, Your Honor

14 DIRECT EXAMINATION

15 BY MR. MATHEWS:

16 Q Lt. Inabinett, you were one of the officers that worked
17 on this case?

18 A Yes, sir. That is correct.

19 Q And during the course of your investigation, did you
20 receive a request from David Jakes to talk to you?

21 A Yes, I did.

22 Q And as a result of his request to talk to you, did you
23 talk to him?

24 A I did.

25 Q And during that conversation, did he sign a waiver of

1 Miranda warnings and agree to talk to you?

2 A Yes, sir, he did.

3 Q And you advised him that he didn't have to, without his
4 attorney, but he chose to anyway?

5 A That's correct.

6 Q And as a result of his discussion with you, did he tell
7 you that he was -- that he had decided what had happened?

8 A Yes, sir.

9 Q Okay. And did you -- was that conversation videotaped?

10 A Yes, sir.

11 Q Okay.

12 MR. MATHEWS: Your Honor, may I approach the court
13 reporter?

14 THE COURT: You may.

15 (COURT REPORTER MARKS DOCUMENT FOR COUNSEL.)

16 MR. MATHEWS: May I approach the witness?

17 THE COURT: You may.

18 Q Lt. Inabinett, I've handed you what's been marked as
19 Defendant's Exhibit Number Fourteen and ask if you can
20 identify that.

21 A Yes, sir, I can.

22 Q Is that the video of your interview with David Jakes?

23 A Yes, it is.

24 MR. MATHEWS: Your Honor, at this point, I would ask
25 that that be admitted into evidence.

1 THE COURT: Any objection as to Defendant's Fourteen,
2 from the State?

3 ASST. SOL. HASELDEN: No, Your Honor.

4 THE COURT: From the defendant Jakes?

5 MR. BEACH: None, Your Honor.

6 THE COURT: Ladies and gentlemen of the jury, the
7 defendant McMillan's Exhibit Fourteen -- Becky, make sure
8 the exhibit accurately reflects that. Will be admitted into
9 evidence during the trial of this case without objection.

10 (DEFENDANT'S EXHIBIT NUMBER FOURTEEN, DVD INTERVIEW OF
11 DAVID JAKES, IS RECEIVED INTO EVIDENCE.)

12 THE COURT: Defendant's Fourteen in evidence. You may
13 proceed. Let the court reporter -- hand it back to her so
14 she can mark it. It's on behalf of Defendant McMillan.

15 Q Lt. Inabinett, in that interview, did he -- he
16 indicated that he admitted being present, but is it not true
17 that he said that at no point was Antwan McMillan there
18 during the course of this event?

19 A That's correct.

20 MR. MATHEWS: I would seek to publish this to the jury
21 at this time.

22 THE COURT: Very well.

23 MR. MATHEWS: Your Honor, there are a couple of lulls
24 in there. I've discussed with the Solicitors about ---

25 THE COURT: Counsel approach.

1 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
2 AND OUT OF THE HEARING OF THE JURY.)

3 THE COURT: Ladies and gentlemen of the jury, by
4 agreement, the parties have just advised me that there is --
5 the entire exhibit, Defendant's Number Fourteen, is in
6 evidence. However, they've been able to agree to reduce it,
7 because the length of the tape is longer than they wish to
8 publish. Now, if any of you on the jury wants to see, there
9 are some things that are just breaks, and rather than make
10 you sit through breaks, they have agreed to reduce it to a
11 certain time to reduce the time that your presence might be
12 required. And they are going to publish a portion. If any
13 member of the jury wishes to see the entire thing, the
14 entire tape will be in evidence, but it will require you to
15 come back into the jury room where we have the equipment to
16 do that for you.

17 All right. At this time, I understand, counsel, that
18 I've accurately stated what occurred at the bench; is that
19 correct from the State?

20 ASST. SOL. HASELDEN: . Yes, Your Honor.

21 THE COURT: Correct from defendant McMillan?

22 MR. MATHEWS: Yes, Your Honor.

23 THE COURT: Correct from Defendant Jakes?

24 MR. BEACH: Yes, Your Honor.

25 THE COURT: And that you have agreed on the portion

1 that you're going to publish to the jury; is that correct,
2 Mr. Mathews?

3 MR. MATHEWS: Yes, Your Honor.

4 THE COURT: Mr. Beach?

5 MR. BEACH: Yes, sir.

6 THE COURT: Ms. Haselden?

7 ASST. SOL. HASELDEN: Yes, Your Honor.

8 THE COURT: All right. You tell me when you're ready,
9 Mr. Shelton -- or is Mr. Mathews doing it?

10 ASST. SOL. SHELTON: I told Mr. Mathews I would help
11 him.

12 THE COURT: All right. Thank you.

13 (6:30 P.M. - DEFENDANT MCMILLAN'S EXHIBIT FOURTEEN
14 BEGINS PLAYING FOR THE JURY. DVD IS STOPPED AT 6:51 P.M.)

15 THE COURT: All right, counsel. You need to move
16 along. Mr. Mathews, I understand you've published as much
17 of --Defendant's Fourteen, Becky?

18 COURT REPORTER: Yes, sir.

19 THE COURT: Defendant's Fourteen as you seek to
20 publish.

21 MR. MATHEWS: Yes, sir.

22 THE COURT: And you're in agreement that no more needs
23 to be published, Solicitor?

24 ASST. SOL. HASELDEN: Yes, sir.

25 THE COURT: And Mr. Beach, you're also in agreement?

1 MR. BEACH: Yes, Your Honor.

2 THE COURT: Very well. All right. Direct examination,
3 Mr. Mathews. This is your witness.

4 MR. MATHEWS: I have nothing further, Your Honor.

5 THE COURT: Cross-examination by the State of South
6 Carolina?

7 ASST. SOL. HASELDEN: Yes, Your Honor.

8 CROSS-EXAMINATION

9 BY ASST. SOL. HASELDEN:

10 Q Lt. Inabinett, how are you doing?

11 A Good.

12 Q How did you first come to talk to this individual, and
13 I'm going to ask you some questions that are on the video --
14 and I apologize to go back over that, but you know it's
15 really hard for us all to hear that.

16 A Yes, ma'am.

17 Q So how did you first come to talk to Mr. Jakes?

18 A At the detention center when I was observing his palm
19 prints being taken.

20 Q And normally, you can't just talk to a defendant who is
21 represented by counsel, right?

22 A That's correct. He asked to speak to me and I advised
23 him the only way that he and I could speak is if he filled
24 out a request form, an inmate request form.

25 Q And if I can turn this down, I can hear this.

1 (REFERRING TO DVD INTERVIEW.) So when did he request to
2 speak to you?

3 A August the 2nd, 2011.

4 Q When did this event happen?

5 A Back in June of 2010.

6 Q So he just asked you less than a month ago to speak to
7 you?

8 A That's correct.

9 Q Has he asked to speak to you before?

10 A No, ma'am. That's the first time.

11 Q And let's start off with what he was saying in the
12 video. He said that he, Rat, and Chippy had been drinking;
13 is that correct?

14 A That's correct.

15 Q Did he say where they had been drinking?

16 A At Rat's house, which is -- I asked him to clarify who
17 Rat was, and it was Antwan McMillan, the co-defendant.

18 Q And what did he say they did after that?

19 A "They" being Chippy, which is James Davis and himself,
20 left McMillan's house, or Rat's house, and went down to
21 Jacksonboro to a cousin of the co-defendant, Mr. James
22 Davis.

23 Q Did he say about what time it happened?

24 A I don't believe he did.

25 Q Did he say what car they were in?

1 A Yes, ma'am. They were in his Cadillac or the Cadillac
2 he normally drives, which is registered to his family
3 member.

4 Q Okay. And who did he say that went to see in
5 Jacksonboro?

6 A He didn't know the guys full name, but he used his
7 street name of J-Sneez, which is a cousin of James Davis.

8 Q He said it was his street name, this J-Sneez?

9 A Correct. The only name that he knew him by was J-
10 Sneez, a young guy from Jacksonboro.

11 Q how long have you been with Colleton County Sheriff's
12 Office?

13 A Ten years.

14 Q Have you been in law enforcement any before that?

15 A With the Department of Corrections.

16 Q And how many cases have you worked in Jacksonboro?

17 A Basically, the majority of the cases. I don't know the
18 numbers. I don't know what the percent rate is, but I would
19 assume somewhere in the 80 to 85 percent range.

20 Q Okay. So have you ever encountered an individual named
21 J-Sneed or J-Sneez?

22 A No, ma'am.

23 Q You ever heard of an individual named that?

24 A No, ma'am.

25 Q Did you attempt to locate this individual?

1 A I did.

2 Q Were you able to?

3 A No, ma'am.

4 Q Why not?

5 A When I tried, it was met with negative results that no
6 one knew who a J-Sneez was in Jacksonboro.

7 Q What do you mean it was met with negative results?

8 A I couldn't ---

9 Q How did you try?

10 A By going out into the community and trying to ask
11 certain individuals that I'm familiar with. "Do you know a
12 young man named J-Sneez that drives a Burgundy Crown Vic or
13 a Burgundy car?" No one knew him.

14 Q So people that you made contact with in Jacksonboro had
15 never heard of such a person?

16 A No, ma'am.

17 Q Now, what did he say he did when he left Jacksonboro?

18 A They being Jakes, Chippy, which is Davis, and now, the
19 J-Sneez, left Jacksonboro and went back to Smoaks because
20 they decided to go out in Walterboro, but Mr. Jakes wanted
21 his firearm, or his strap, as they call it.

22 Q Why did Mr. Jakes want his firearm?

23 A Because of the reputation or the others standing about
24 the night light in Colleton County of some sort.

25 Q So they drove from Jacksonboro all the way back to

1 Smoaks so that Mr. Jakes could pick up his firearm?

2 A Correct. That's what he stated, Yes, ma'am.

3 Q All right. And then what happened?

4 A Upon retrieving his firearm, .50 cal, the three men
5 headed back toward Walterboro. He made a phone call to his
6 girlfriend, which he indicated was his snow bunny, which was
7 later identified as a white female. They headed towards
8 Walterboro and they were due to meet her at the railroad
9 tracks on Mt. Carmel Road. They didn't meet her. She
10 wasn't there. They then made a left turn off of Mt. Carmel
11 Road onto McLeod Road. Then proceeded to -- I'm sorry.

12 Q Please proceed with what he told you.

13 A And proceeded to head on to Walterboro to the club,
14 which was Racers or Racer's, commonly known as Spirits on
15 Highway 15.

16 Q Did he ask you, or did he tell you at this point how
17 Rat got involved in the picture?

18 A I asked him, but he said that he was definitely not in
19 the car with them, but he would enlighten me on how Rat or
20 McMillan was involved in the situation; and primarily, he
21 left his residence earlier drinking, and then went on in his
22 statement, he indicated that he had instructed Chippy, or
23 Davis, and J-Sneez to take his car back to McMillan's house
24 after he had been shot.

25 Q Okay. And then what happened once they got on McLeod?

1 A He said they received a phone call from his lady
2 friend, they turned around and upon turning around, he heard
3 his tire make a funny sound, because earlier that day, he
4 raced his Grandmother's Cadillac in Smoaks and had a flat
5 tire and he had changed it and put a spare on it. Well, he
6 heard this noise, they pulled over between -- near the
7 intersection of McLeod Road and I-95, which is Exit 62. He
8 exited -- he indicated he was the only person to exit the
9 vehicle. He saw two vehicles on the off ramp/on ramp of I-
10 95 and saw two ladies standing by the car. At that time, he
11 then yelled at them, "Hey, pretty lady," or made some
12 comment toward them to get them to come to them.

13 Q And he represented to you that they just happened to
14 stop right there because of the tire?

15 A Yes, ma'am.

16 Q What did he say Chippy's condition was?

17 A He said that everyone was intoxicated, but the J-Sneez
18 was a little less drunk than they were.

19 Q Okay. And is that why he told you J-Sneez was driving?

20 A Yes, ma'am.

21 Q And didn't he tell you that when he stopped to check
22 his alleged tire, that the victim warned him to leave?

23 A Right. When he exited his vehicle, he didn't elaborate
24 anymore about the tire, but he went straight to -- he
25 hollered at the two young women, "Hey, pretty lady. Come

1 here, pretty lady." They kind of moved back from their car.
2 At this time, he said he didn't see a third person or a male
3 subject. But eventually, the male subject then came up
4 between both cars and asked him to leave them along and
5 leave the area, or get back in his car and leave.

6 Q And what did he say back when the individual told him
7 to get back in the car and leave?

8 A He was intoxicated quite naturally and he used some
9 profanity toward the male victim and let him know that "You
10 know where you're at." The male victim again asked him to
11 leave his family alone. The male victim pulled out a weapon
12 or presented a weapon, and he, in turn, told him that
13 "You're not the only guy who has a gun," and then, he in
14 turn, turned around and reached for his weapon, which was a
15 .50 caliber, and then at that time, the male victim then
16 started discharging the weapon at him, striking him several
17 times.

18 Q So he claims that when he got out of the car, he didn't
19 even have a gun in his hand.

20 A Correct.

21 Q Okay. And he said, in fact, that the victim told him
22 more than once ---

23 A Yes, ma'am.

24 Q --- to leave?

25 A That's right.

1 Q Okay. And then he mentioned something about Chippy
2 leaning out of the car asking him what happened?

3 A Right. He stated that once he was shot and fell by the
4 rear door, or right door, the back passenger door, as he
5 laid on the concrete pavement, that eventually his partner
6 in the front seat was Davis, asked him "What's going on,
7 man?" And he told him, "I got shot. I've been shot." At
8 that time, he said he didn't know if he was drunk, asleep,
9 or what not, but Davis really knew what was going on, and
10 then started firing his 9 mm handgun in the direction of the
11 victims, which was on the on-ramp still.

12 He said that the shell casings from his partner's
13 handgun actually fell on him, or hit him as he lay on the
14 pavement. And eventually he got up on his own strength, his
15 own self, and then climbed back into the back seat of the
16 Cadillac, and then they left the area headed back towards
17 Smoaks.

18 Q Did he mention if Chippy was leaning out of the car
19 talking to him or was Chippy still in the car?

20 A He said that he was the only one that exited the
21 vehicle, and that Chippy, or James Davis, fired upon the car
22 in the direction of the victims.

23 Q But he stated that the shells were coming down all over
24 him?

25 A Yes, ma'am.

1 Q Okay. Now, he talks a little bit about what the victim
2 said, doesn't he?

3 A Yes, ma'am.

4 Q What does he say?

5 A That the male victim had to ask him twice, at least
6 twice, "Get back in your car and leave my family alone."

7 And he said that he wished he would have taken his advice
8 and left him alone, but he did ask him to leave his family
9 alone.

10 Q I'm sorry; I meant he talks about what the victim had
11 said in your statement to law enforcement.

12 A Oh, Yes, ma'am. He indicated that at least the two
13 female victims had made a truthful statement about he made a
14 comment, "Come here, pretty lady," or he said something
15 aptly to that.

16 Q Did he tell you that, in fact, the ladies were telling
17 the truth in their statements to law enforcement?

18 A Yes, ma'am.

19 Q Did he tell you the man was lying?

20 A Yes, ma'am.

21 Q He told you that the women were telling the truth?

22 A He did.

23 Q About what happened out there?

24 A Yes, ma'am.

25 Q Did he tell you that his gun was unloaded?

1 A No, ma'am. He said that his gun was .50 caliber. He
2 said it should still be loaded because he never fired it.
3 When we, law enforcement, had collected it from the crime
4 scene, he said once again, it should be loaded. He never
5 fired.

6 Q Okay. What did he tell you about his relationship with
7 Chippy?

8 A That he and Chippy, or Mr. Davis, are real tight, or
9 close, like family, actually. And that he and McMillan were
10 like friends or partners.

11 Q Did he say that there had been an altercation between
12 him and Rat at the jail?

13 A He mentioned that Mr. McMillan had, I guess, a jail
14 population thinking that he had spoke about what happened or
15 told on him, more or less ratted him out or snitched him
16 out. But that was basically the understanding I had.

17 Q So what did he tell you was Rat's actual involvement in
18 this situation?

19 A He said that McMillan was not in the car and that he
20 had advised his partner, which is Davis, and J-Sneez was
21 driving the car. Once he got out and got in the second
22 vehicle, he advised them to take his car back to McMillan's
23 house, or Rat's house, because he knew what to do with it.

24 Q Didn't he tell you in fact when they stopped their car
25 the first time out there at McLeod and I-95, he didn't even

1 see those two cars?

2 A He said that when they first passed by, he didn't see
3 anything; yes, ma'am.

4 Q And did he tell you -- did he give you an estimate of
5 where the cars were at on the exit ramp?

6 A He said that they were up the ramp. I asked him for a
7 specific distance, but he said they were up the ramp,
8 because he indicated how far he was from his vehicle. He
9 made comments to the female victims.

10 Q Okay. So he couldn't give you an exact distance?

11 A No, ma'am. He just indicated that they were up the
12 ramp. I'm not sure what that distance was.

13 Q And he stated that they were so far up that he was
14 having to scream at them?

15 A Yes, ma'am.

16 Q So did he ever meet his girlfriend?

17 A No, ma'am.

18 Q And why was he going to meet her?

19 A To get some money to go to the club.

20 Q And that he was not robbing those people?

21 A Right. He said he had never attempted to rob anyone.
22 He was just going to let the male victim know that he wasn't
23 the only guy who had a gun.

24 Q So why did he even attempt to contact those ladies?

25 A I'm not certain. He exited the car, he knew he was

1 drunk, intoxicated, and he saw two pretty women and he was
2 just hollering at them.

3 Q What did he tell you was the extent of injuries of his?

4 A He spoke about getting his leg shot, his arm, I think
5 and the chest area. He stated that the guy was a really
6 good shot and I advised him that he was a soldier in the
7 military, and he said, "Yeah, he almost killed me." He was
8 glad that they he met Toya coming along the road and that's
9 how he ended up going to the hospital.

10 Q Just one more, he told you that the two female victims
11 were telling the truth, didn't he?

12 A Yes, ma'am.

13 ASST. SOL. HASELDEN: Just a moment's indulgence, Your
14 Honor.

15 Q Has everything you testified to today, that's all based
16 only on this video; is that correct?

17 A That's correct.

18 Q That's not based on any other evidence in the case you
19 might have reviewed, is it?

20 A No, ma'am.

21 Q I have no further questions. Thank you, Lieutenant.

22 A Yes, ma'am.

23 THE COURT: Cross-examination by the defendant Jakes.

24 MR. BEACH: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. BEACH:

2 Q Lt. Inabinett, you said that the women were telling the
3 truth, did he tell you they were telling the truth about
4 everything they had said or just about the statement about,
5 "Hey, pretty ladies"?

6 A He stated that they were telling the truth in their
7 statements. I took that as the truth for everything.

8 Q Okay. And were you able to confirm that there was a
9 donut tire on this vehicle.

10 A I'm uncertain. I don't know.

11 Q Did you ever examine the vehicle?

12 A No, sir, I didn't.

13 Q And is this the only statement that he's given to you?

14 A Yes, sir, that's correct.

15 MR. BEACH: I have no other questions, Your Honor.

16 THE COURT: Redirect?

17 MR. MATHEWS: Nothing, Your Honor.

18 THE COURT: You may step down, Lieutenant. Call your
19 next witness, Mr. Mathews.

20 MR. MATHEWS: Your Honor, I don't have any other
21 witnesses; just these exhibits.

22 THE COURT: I understand that there is an agreement?

23 ASST. SOL. HASELDEN: Yes, Your Honor.

24 THE COURT: Have they been pre-marked?

25 MR. MATHEWS: Yes, sir.

1 THE COURT: Mr. Beach, are you in agreement?

2 MR. BEACH: I am, Your Honor.

3 THE COURT: All right. Hand them to the court
4 reporter. Without objection, is that right, Solicitor?

5 ASST. SOL. HASELDEN: Without objection.

6 THE COURT: Mr. Beach?

7 MR. BEACH: Yes, Your Honor, without objection.

8 THE COURT: What number, Becky?

9 COURT REPORTER: Defendant McMillan Six, Seven and
10 Eight.

11 THE COURT: Defendant McMillan Six, Seven and Eight,
12 without objection, will be admitted into evidence in the
13 trial of this case, ladies and gentlemen.

14 (STATE EXHIBIT NUMBER SIX, PHOTO, IS RECEIVED INTO
15 EVIDENCE.)

16 (STATE EXHIBIT NUMBER SEVEN, PHOTO, IS RECEIVED INTO
17 EVIDENCE.)

18 (STATE EXHIBIT NUMBER EIGHT, PHOTO, IS RECEIVED INTO
19 EVIDENCE.)

20 Do you wish to publish them to the jury at this time?

21 MR. MATHEWS: Yes, please.

22 THE COURT: All right.

23 MR. MATHEWS: Or we could just do it tomorrow, Your
24 Honor. I'm done.

25 THE COURT: Hand them to the jury, Mr. Mathews.

1 Any additional evidence from the defendant McMillan?

2 MR. MATHEWS: No, sir.

3 THE COURT: Very well. Mr. Beach, call your first
4 witness.

5 MR. BEACH: Your Honor, we would call no witnesses, and
6 the defendant Jakes rests at this time.

7 THE COURT: Very well. Is there any reply testimony
8 from the State of South Carolina?

9 ASST. SOL. SHELTON: Beg the Court's indulgence, Your
10 Honor.

11 ASST. SOL. HASELDEN: Your Honor, may I approach?

12 THE COURT: You may.

13 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
14 AND OUT OF THE HEARING OF THE JURY.)

15 THE COURT: Solicitor, does the State wish to introduce
16 any reply testimony?

17 ASST. SOL. HASELDEN: The State would call Jeanine
18 Metzfield at this time.

19 THE COURT: Ms. Metzfield, come around. You've been
20 previously sworn in the trial of this case. Have a seat on
21 the witness stand for me.

22 You understand you're still under oath, Ms. Metzfield?

23 MS. METZFIELD: I do.

24 THE COURT: Very well. Watch your step and have a
25 seat. Pull your chair up and adjust the microphone.

1 THE COURT: Your witness, Solicitor.

2 REPLY TESTIMONY BY THE STATE OF SOUTH CAROLINA

3 DIRECT TESTIMONY

4 BY ASST. SOL. HASELDEN:

5 Q Ms. Metzfield, you gave a statement to law enforcement
6 when this incident happened the night of June 3rd, the early
7 morning of June 4th, 2010, didn't you?

8 A I did.

9 Q And did you tell them the truth?

10 A I did.

11 Q Did you tell them the defendant had a gun in his hand?

12 A I did.

13 Q Was that immediately when he exited the car?

14 A When he came out of the car, he had a gun in his hand.

15 Q What else -- what else did he have about his
16 appearance?

17 A He had a black t-shirt over his head, covering a lot of
18 his face or something of that sort that was draped, and I
19 could only see that, and he had both his hands pointed with
20 his gun at me. (DEMONSTRATING.) Saying, "Put them up,
21 pretty lady," or "Get up, pretty lady."

22 Q And that was in your statement to law enforcement?

23 A That is my statement, yes.

24 ASST. SOL. HASELDEN: May I approach the witness?

25 THE COURT: You may.

1 Q Jeanine?

2 A Yes, ma'am.

3 Q Not acting as a firearms expert, but does this gun look
4 like the gun that was pointed at you that night?

5 THE COURT: Identify the exhibit for the record.

6 Q This is State's Exhibit Eighty-four.

7 A Ma'am, I would not be able to identify that gun as the
8 gun that pointed at me. I know that it was a very large
9 gun.

10 Q Do you remember the color of the gun?

11 A I remember that everything was dark.

12 Q Okay. You could clearly see that, right?

13 A I could see.

14 Q I have nothing further; thank you.

15 THE COURT: Cross-examination, by the defendant
16 McMillan?

17 MR. MATHEWS: Nothing, Your Honor.

18 THE COURT: Cross-examination, by the defendant Jakes?

19 MR. BEACH: Nothing, Your Honor.

20 THE COURT: Very well. You may step down. Anything
21 further in reply from the State?

22 ASST. SOL. HASELDEN: Nothing, Your Honor.

23 THE COURT: Does the State rest in Reply?

24 ASST. SOL. HASELDEN: The State rests in Reply at this
25 time.

1 THE COURT: Very well. Madame Foreperson, ladies and
2 gentlemen of the jury, we will stop at this point. I wanted
3 to complete testimony in the trial of this case. I
4 appreciate your patience, so that we can complete the trial
5 in a timely fashion tomorrow. I ask that you be back in
6 your jury room by 9:30 in the morning. You've heard the
7 evidence in this case. We will have closing arguments and
8 my charge to you on the law in the morning.

9 Over the overnight recess, as I've instructed you
10 throughout the trial, please do not discuss this case with
11 anybody. This trial will be completed tomorrow morning. I
12 want to thank you for your patience. Don't discuss it with
13 each other or with anyone else. Please do not read, watch,
14 or listen to any news account -- I don't know that there
15 will be any, in the newspaper, radio, or television about
16 this. You must decide this case solely upon the evidence
17 introduced in this courtroom when both sides are present
18 with the right of cross-examination.

19 Now, my bailiffs are here; if anybody wants to be
20 walked to their car. Everyone else will remain in the
21 courtroom. If anyone needs assistance or transportation,
22 let my bailiffs or the deputy know. I will see you in the
23 morning. Please report to your jury room prior to 9:30.
24 You may leave the courtroom at this time.

25 Everyone else remain seated.

1 (7:20 P.M., 8-31-11, WHEREUPON JURORS EXIT THE
2 COURTROOM AND THE TRIAL IN THIS CASE IS RECESSED FOR THE
3 EVENING.)

4 (9:30 A.M., 9-1-11, WHEREUPON, THE COURT IS RECONVENED
5 IN THIS CASE AND THR FOLLOWING IS HELD ON THE RECORD.)

6 THE COURT: Let the record now reflect that everyone is
7 present this morning. Last night until after -- those of
8 you who have been attending the trial, we worked until 9:00
9 last night. I have been over the entire verdict form with
10 all of my attorneys in chambers last night. I have been
11 over my entire charge with all of my attorneys. Now, Ms.
12 Haselden Would any attorney like to see the final,
13 corrected verdict form, based on the conference we held in
14 chambers last night; Mr. Mathews?

15 MR. MATHEWS: No, Your Honor, I'm fine.

16 THE COURT: Mr. Beach?

17 MR. BEACH: No, Your Honor.

18 THE COURT: I point out to you that we're going to talk
19 to them that we put the instructions after the verdict and
20 both sides have done that last night. The verdict form is
21 five pages long because of the indictments. I will not be
22 submitting the offense of possession of a stolen pistol to
23 the jury. I directed a verdict on that indictment.

24 So there will be seven indictments submitted as to Mr.
25 Jakes, and seven as to Mr. McMillan. And I will be telling

1 the jury, of course, that they would have to find the
2 defendants guilty of a violent crime in order to find the
3 defendant guilty of the possession of a weapon during the
4 commission of a violent crime.

5 I will be charging, at the request of both sides in
6 this case, both defendants and the State -- at the request
7 of the defendants without objection from the State, the
8 lesser included offense of assault and battery in the first
9 degree.

10 I've been over everything in the charge. We had a
11 discussion last night about the order of argument. The
12 rule, as many of you know, where the defendant does not
13 present any evidence, they are entitled to closing argument;
14 otherwise, the party with the burden of proof has the final
15 argument, which would be the State.

16 In this case, the defendant McMillan put up evidence;
17 the defendant Jakes did not put up evidence, which because
18 we're trying co-defendants together, put us in the position
19 of determining the order of argument.

20 It was agreed between counsel, in chambers, that each
21 side would be -- of the three arguments, McMillan, Jakes and
22 the State, each would have 30 minutes. The order of
23 argument will be as follows: Mr. Mathews would argue first,
24 on behalf of Mr. McMillan, followed by Ms. Haselden, on
25 behalf of the State of South Carolina, and concluded by Mr.

1 Beach, on behalf of Mr. Jakes.

2 When you have reached 25 minutes in your argument, you
3 will hear the familiar tapping (THE COURT DEMONSTRATES) to
4 let you know you've got five more minutes to wrap it up. I
5 think that covers everything that we've discussed in
6 chambers. Have I accurately stated everything that occurred
7 in chambers, insofar as the State is concerned?

8 ASST. SOL. HASELDEN: Yes, sir, Your Honor.

9 THE COURT: Insofar as counsel for McMillan is
10 concerned?

11 MR. MATHEWS: Yes, Your Honor.

12 THE COURT: Insofar as counsel for Jakes is concerned?

13 MR. BEACH: Yes, Your Honor.

14 THE COURT: Very good. All right, then, I'm assuming
15 my lawyers are prepared and ready to move forward. Now, for
16 the benefit of those of you waiting, Ms. Hudson, I see Ms.
17 Gentry, and it is my estimate that the argument is going to
18 take an hour and a half, the charge is going to take a half
19 hour. It's about three minutes till Ten. The jury's not
20 going to get the case -- I'm probably going to ask them if
21 they want a bathroom break after all the arguments, before I
22 charge them; I'm estimating lunch at 12:30. We'd like to
23 eat lunch right here and go right back to work, because we
24 have to stop by 4:15 in order to attend the investiture,
25 assuming we have a verdict. If we don't have a verdict, I'm

1 not leaving. So I want you to plan your schedule around
2 that time schedule. That's my best estimate right now.

3 Mr. Shelton, I'll expect you to transport anybody to
4 the jail for a bond hearing. We certainly ought to be
5 working again somewhere around 1:45 at the very latest, even
6 if I give everybody an hour for lunch; you understand?

7 ASST. SOL. SHELTON: Yes, sir, Your Honor.

8 THE COURT: All right. With that, is the State ready
9 to proceed?

10 ASST. SOL. HASELDEN: The State's ready, Your Honor.

11 THE COURT: Is the defendant McMillan ready to proceed?

12 MR. MATHEWS: Yes, Your Honor.

13 THE COURT: Is the defendant Jakes ready to proceed?

14 MR. BEACH: Yes, Your Honor.

15 THE COURT: Bring us a jury, please.

16 (10:00 A.M., 9-1-11, WHEREUPON THE JURY ENTERS THE
17 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

18 THE COURT: Good morning, Madame Foreperson, good
19 morning, ladies and gentlemen of the jury. Thank you for
20 being here on time. We had a little work we needed to
21 accomplish this morning, but we've gotten that done.

22 We're now at the point in the trial where you're going
23 to hear the final arguments of the attorneys, followed by my
24 charge to you on the law.

25 Now, I told you before that what the attorneys tell you

1 is not evidence, that they have worked hard for their
2 clients, and I want you to listen carefully to the
3 attorneys. They are here to assist you, but they are
4 advocates of the parties they represent. So they are trying
5 to be a good advocate for their clients.

6 Now, ladies and gentlemen, so you'll have some idea for
7 planning today, because we worked long after you left last
8 night, and the arguments are probably going to take about
9 an hour and a half total. I'll give you, if you so desire,
10 a break then before I charge you. However, I instruct you
11 that you are not to discuss the case if I take a break, and
12 then we'll have charge. After the charge, and when I tell
13 you to begin your deliberations, I will also be serving you
14 hopefully if I've planned it right, lunch, pretty close to
15 the time that you begin your deliberations; trying to
16 minimize the inconvenience.

17 Now, the order of argument that we're going to follow
18 is that you're first going to hear argument from one of the
19 attorneys for the defendant, Mr. McMillan, by Mr. Mathews.
20 Followed by an argument by attorney for the State of South
21 Carolina, Ms. Haselden; followed by the final argument by
22 the attorney for Mr. Jakes, Mr. Beach. I ask that you give
23 the attorneys your careful consideration.

24 Mr. Mathews.

25

CLOSING ARGUMENT

1 BY MR. MATHEWS: Madame Foreperson, ladies and gentlemen of
2 the jury, good morning. I get to talk to you first, and
3 then as His Honor has told you, you'll hear from Ms.
4 Haselden, and then Mr. Beach. You've listened very well.
5 It's been evident that you've been paying attention, and
6 that's a good thing.

7 The judge is going to tell you what the law is at the
8 end of this case. And one important element to always
9 remember is that the State has to prove its case beyond a
10 reasonable doubt; every element of this case beyond a
11 reasonable doubt. They -- the State has presented some
12 evidence of what happened at the intersection or the off-
13 ramp of McLeod Road and I-95, and briefly, I think there is
14 evidence in which, if you believe it, in the light most
15 favorable to the State, you perhaps could find that somebody
16 has attempted an armed robbery, perhaps. And that perhaps
17 of Jeanine Metzfield, but no one else. No one else was
18 robbed. No one else attempted to be, and perhaps an assault
19 and battery, first degree, as to Jesse King; perhaps.

20 But that really doesn't concern my client, Antwan
21 McMillan, because the State is not able to prove beyond a
22 reasonable doubt that he was even there. There is -- you've
23 had the chance to listen to a tape, kind of, but mostly
24 you've had a chance to listen to Lt. Inabinett talk about
25 the statement that David Jakes gave to him; his version of

1 what happened.

2 And he said that earlier in the evening, he was
3 drinking with James Davis, Chippy, and with Antwan at
4 Antwan's house. They brought the car over from Dinky's
5 house, from David Jakes' house, over to Antwan's house, and
6 they were drinking in his yard.

7 After that, they left and picked up a cousin of James
8 Davis that Dinky only knew as J-Sneez from Jacksonboro and
9 came back. They went back by -- they went back by Dinky's
10 house and he picked up his gun, because he was coming into
11 town.

12 That's the testimony there, and whatever happened,
13 happened after that, and Antwan was not there. Now, the
14 only evidence that you have that Antwan was there, there's
15 two pieces of possible evidence that there could be. One is
16 the testimony of James Davis. Now, we'll get into that in a
17 minute. The other is that testimony of Shaquita Bryant, but
18 Shaquita Bryant said she only ever heard Rat's name; she
19 didn't see him.

20 A car picked them up. A car driven -- a car in which
21 Chippy and David Jakes were in, the Cadillac, flagged down a
22 car in which Shaquita Bryant was a passenger. And they took
23 them on to the hospital; and in that car was Joseph Griffin,
24 Montez Jenkins, Shaquita Bryant, and Angela Dicks. Those
25 are the people in that car.

1 Shaquita Bryant says that she was a passenger in the
2 car and she didn't see who was driving the Cadillac. She
3 said she heard somebody, maybe her cousin, Angie, say
4 something about Rat. But having somebody's name called
5 doesn't mean you did anything wrong. Your name can be
6 called and you maybe didn't do anything wrong; maybe weren't
7 even there.

8 In this case, nobody there saw -- the only person who
9 testifies that Antwan McMillan had anything to do with this
10 is James Davis. And James Davis is not a person to be
11 believed. Listen to this testimony. He makes a good
12 appearance. He looked nice on the stand. He was well-
13 dressed, had a tie on, and sounded okay. But what he said
14 wasn't okay. And what he said didn't make any sense.

15 The first thing he said when he got called in, he said
16 that he told Officer Scott that he didn't have anything to
17 do with this. He didn't know what he was talking about.
18 Det. Scott asked him, "What happens when we find your DNA in
19 the car?" "No." Well, we know that his DNA was on a black
20 shirt in the car. James Davis' DNA was on a black shirt --
21 the only black shirt found in the Cadillac. I think the DNA
22 SLED Agent testified that the odds that it was somebody
23 other than James Davis's DNA was one in 11 quadrillion --
24 eighteen zeroes.

25 There's no question, James Davis said he was in the

1 car. His shirt was in the car. No question about that. He
2 says that -- he says that his fingerprints wouldn't be on
3 the car, and his fingerprints weren't on the car. He was
4 right about that. Asked whether or not his sweat or blood
5 or anything like that would be in the car, and he said no.
6 But then later on he changed his mind and said, "Yeah, after
7 Jeff Scott said to him -- Det. Scott said, "You aren't going
8 to put your life on the line for Rat and Dinky, are you?"
9 Now, why is that significant? It's significant because the
10 source -- they already had their suspects, already had their
11 suspects when they were questioning James Davis.

12 So they knew the names they needed for him to say, and
13 James Davis knew what it was going to take to get himself
14 out of the situation. Not only did he have to lie and say
15 he didn't have anything to do with anything, he had to lie
16 and say he did. Now, there's no question that -- that David
17 Jakes was there; that Dinky was there. There's no question
18 about that. He was shot. He went to the hospital. The
19 bullets fired from the victim's gun were in him. His blood,
20 one in 38, I think, quintillion of blood at the scene and in
21 the Cadillac. There's no question that David Jakes was
22 there and he doesn't deny that.

23 But in order to get by scot-free, James Davis has to
24 not only not had anything to do with it, he has to say that
25 Rat did. That's the only way. That's the only way he's

1 going to walk.

2 Now, what are some of the lies that he's told? And
3 that's the biggest one. But some of the other things, some
4 of the lies that he told don't even make any sense. Don't
5 even matter. He leaves his girlfriend, who is pregnant with
6 his child now; leaves his girlfriend, obviously lied to her,
7 "I'm going to go meet some other girls," lied to her. Lied
8 to his parents. Lied to police. Then, he says, "We weren't
9 drinking." Now, David Jakes says, "We were all drinking.
10 We were all drinking." Defendant's Exhibit Number Eight,
11 the State has one, too, there's a Seagram's bottle right
12 there at the bottom. Clearly, they were drinking. There's
13 no question. That's a silly lie. It doesn't even make any
14 sense. There's no question but that they were drinking.

15 It's not even close. And then he lies about that.
16 Why? He wants to be seen as a really great guy, I guess,
17 but that's a lie, and it's a lie that doesn't even make any
18 sense. He says that -- he says that "I didn't see any guns.
19 I didn't know anything about that." When -- when -- when
20 Dinky went into pick something from his house, he didn't
21 know what it was. Did you see the size of that gun? That
22 Desert Eagle is huge. You could just as easily carry a
23 horse into the car under concealment as you could that gun,
24 and he said that he didn't see any gun. He didn't know what
25 was going down.

1 They get into the car and at the last second he doesn't
2 say, even when this is taking place on scene, he doesn't say
3 he saw a gun until after he saw the Desert Eagle on the
4 ground. He said the first notion he had of any actual shots
5 -- now, he says that Antwan said something about "This is an
6 easy lick. Let's get this done." "Oh, no, I don't want
7 anything to do with that. That's just silly. I'm not going
8 to do that." He still doesn't say that he sees any guns.

9 He says the first notion he's got of that is when he
10 hears shots. Now, that's just crazy. That doesn't make any
11 sense at all. He doesn't see this enormous gun come into
12 the car and he doesn't even see it when they're firing. He
13 said he was ducked down like that and he heard the shots.
14 That's crazy. That's just silly. And then he says, of
15 course, he didn't have a gun, but there were two kinds of
16 shells, fired shells, out of two different guns inside the
17 Cadillac. The Desert Eagle was on the ground, no shots
18 fired. Two different fired shells from two different guns
19 inside the Cadillac; that's three guns, and he says he
20 didn't see any. That's a lie and that's a lie that doesn't
21 even make any sense, but that's what he has to say to
22 escape. To get by scot-free. He's got to say this.
23 Doesn't make any sense, but that's what he's got to say.

24 Now, he says he has cell phone with him, but he didn't
25 use it all night long. I don't know anybody that has a cell

1 phone that goes all day without using it. Now,
2 particularly, you got somebody shot inside the car and you
3 don't call 911? Well, maybe he didn't, because apparently
4 he didn't call 911. Why? He didn't say that Antwan or
5 anybody else held a gun to his head. He doesn't say that
6 anybody made him do anything. So why didn't he call 911?
7 Because he shot, that's why.

8 He shot. He fired a gun. And somebody else in that
9 car fired a gun. He had to say it was Antwan in order to
10 get gone. On Shaquita Bryant, it's similar. She said, "I
11 didn't see him." And the idea that it was Rat, I think she
12 said that when Det. Inabinett was questioning her, the State
13 asked her, "Didn't you tell Det. Inabinett that it was Rat
14 that was there?" And she said, if I recall correctly, "He
15 told me." He told me. That's the thing, when you got your
16 suspects already, you don't want to change your story.

17 Now, we're talking about J-Sneez. I don't know anything
18 about J-Sneez. I don't know anything about a lot of people.
19 I don't know anybody in Jacksonboro, really, but beyond
20 that, as far as not being able to find him, I think Lt.
21 Inabinett said that he tried to find him but couldn't find
22 him. But if he hadn't been arrested before, then he
23 necessarily wouldn't be.

24 It's not uncommon for people just to only know people
25 by their street names. I think you hear that, you got Rat

1 and Dinky, and J-Sneez, and Chippy. These are the names
2 that people use, and that's just how it is. So that's not
3 unusual, and if you're not on the radar on law enforcement,
4 they may not know who you are.

5 In any event, one thing we know, too, is that there was
6 some DNA. Here's another thing. Say you're starting out
7 with, okay, you've got contradictory stories. You've got
8 James Davis's story that doesn't make any sense. Then
9 you've got David Jakes' story that puts himself right in the
10 thick of things and they're all friends. They -- you see
11 the Cadillac belongs to -- the tag belongs to Brenda, a
12 friend of Captain Johnson's for years. Her tag, apparently,
13 is on the back of the Cadillac.

14 Okay, they know each other. It's a small community.
15 They all live close to each other. But we're looking at the
16 fingerprints. There are fingerprints on the Cadillac, on
17 the outside of it. It appears that his hand was on the
18 Cadillac, on the outside, but all the prints on the Cadillac
19 are on the outside. There is nothing, other than -- we've
20 got some pictures of some of the things that are on the
21 inside of the Cadillac. I don't see a picture on the inside
22 of the Cadillac showing a striped shirt. There's a striped
23 shirt apparently in there that is a good chance that Antwan
24 was one of the people that wore a striped shirt. I don't
25 see it in the pictures, but I see a picture of a black

1 shirt. There's a State's Exhibit here, Thirty-nine, that's
2 a black shirt that was seen inside that. That's the shirt
3 that there was a one in 11 quadrillion chance that it was
4 anybody other than James Davis. That's his shirt and that's
5 right there on the seat. You can see this. It's one of the
6 pictures you have to look at. The shoes were tested but
7 don't have any conclusions about where that came from.

8 They took some DNA from the steering wheel and the SLED
9 Agent that came out testified that it was only a partial.
10 She couldn't determine everything. She did not conclude
11 that it was a mixture of the -- and I don't see a picture of
12 the striped shirt, which incidentally had gloves inside it,
13 and the gloves don't match anybody. I mean, at least two
14 other people wore it. There's a mixture inside the striped
15 shirt, inside that, wherever that is. I don't see a
16 picture, ⁺ but the gloves inside don't match Antwan McMillan. ^x
17 They don't match anybody in that car. Could they be J-
18 Sneez? I don't know. Nobody tested. Nobody found it and
19 nobody bothered to ask about this.

20 On the steering wheel, the DNA found and the way they
21 work, and I think she said that you've got a gene that you
22 get from your mom and a gene that you get from dad. They
23 give numbers. You say you got a 15 or a 16 or something;
24 those are just numbers they give to describe something. You
25 can call it you know, chocolate and vanilla if you wanted

1 to. It doesn't matter. But one comes from one side and one
2 comes from the other. And on the steering wheel, it's
3 inconclusive that there's some DNA that you couldn't
4 necessarily exclude Antwan, but there was one marker, and I
5 think she said it was a 14 along the first column. Let me
6 see where she said was -- I asked her and I think she said
7 was -- it was -- in the first column she looked at, and I
8 think she said it was a 14 and that that 14 marker could not
9 have come from Antwan. It was not a mixture of DNA. It was
10 not -- one of the things she said, there were certain things
11 that were mixtures, but that was not one of them.

12 If there is any marker in there that does not belong to
13 a person, that can't be your DNA. Whatever else matches,
14 there was a 14 on there that did not match Antwan. So
15 somebody other than Antwan was driving -- had their hands on
16 the steering wheel; somebody other than Antwan. Otherwise,
17 how do you explain that 14?

18 If it had been a mixture -- if she had testified that
19 it had been a mixture of DNA, then you can say, "Okay, maybe
20 some of it came from Antwan; maybe some of it came from
21 somebody else, but you can say that." But she didn't say it
22 was a mixture. Could that be somebody else? That obviously
23 has to be.

24 Another thing that they tested and this is Defendant's
25 Exhibit Number Seven, and I think there's a similar one in

1 the State's. Here is the center console, and there is a hat
2 right there. And they took a swab from that hat and that
3 swab didn't match James Davis, didn't match David Jakes, did
4 not match Antwan McMillan. Whoever was wearing that hat,
5 right next to the driver's seat ---

6 ASST. SOL. SHELTON: Objection, Your Honor.

7 THE COURT: Counsel approach.

8 (WHEREUPON, A BENCH CONFERENCE IS HELD OUTSIDE THE
9 HEARING OF THE JURY.)

10 MR. MATHEWS: No DNA on this hat is contributed to
11 Antwan, because he is not the donor of any DNA on that hat,
12 which was right next to the driver's seat. *The DNA on the
13 steering wheel, not Antwan's.* So he may have been on the
14 outside, probably was on the outside. When you're sitting
15 out there drinking beer with your buddies, sitting by a car,
16 sit on the car, lean against the car; you do all that sort
17 of stuff. Nothing inside the car. Nothing like that.

18 The sad thing is one of the common threads through all
19 of this was this, the cell phone. This was inside the
20 Cadillac. The people that were at the hospital. There's
21 some other people at the hospital who had cell phones.
22 Shaquita Bryant testified; what was she holding? Holding a
23 cell phone. Somebody else was at the hospital and they were
24 holding a cell phone. These aren't even in their pocket.
25 They're holding them out for the world to see.

1 It's inexplicable to me that you couldn't break this by
2 just asking, "Can I hold your cell phone?" Law enforcement
3 asks me to hold my cell phone, I'm going to give it to him.
4 You've had a chance to listen to Sgt. Lawson testify. He's
5 been in law enforcement a long time. He's on the Highway
6 Patrol, and he has been at the Sheriff's Department for a
7 while. He says a significant portion of his cases, he did a
8 lot of drugs and DUI's and different other things. A
9 significant portion of those, he got the evidence that he
10 needed by consent.

11 There are a couple of ways you can go about it; one's a
12 search warrant. When Jeff Scott testified that he had four
13 search warrants issued in this case, four search warrants.
14 One for the Cadillac, one for Antwan McMillan's residence,
15 Brenda McMillan's residence; one for David Jakes' residence,
16 and one for James Davis's residence. The Cadillac and the
17 three residences out there. What did they find? At Antwan
18 McMillan's house, they didn't even take anything, must less
19 enter anything into evidence. They didn't take anything.
20 They went, they looked, they found nothing. Across the
21 field, they found some .50 caliber shells, and next to 150
22 yards away they found some shells near a deer stand. Okay.
23 Well?

24 David Jakes lives a half mile away; maybe he was out
25 there hunting, I don't know. I know it has nothing to do

1 with this case. That's 20 minutes or more away. Half an
2 hour away where things happened out at McLeod. A long way
3 away. Has nothing to do with anything. That's what you
4 call a red herring. That's a false lead. Those shells,
5 those .50 caliber shells mean nothing at all. David Jakes
6 says, "That's my gun." David Jakes' gun was found on the
7 scene. His shells were found near a deer stand. That's a
8 lot of ammo for a deer, but that's what they think.

9 'Nothing from Antwan McMillan's house.' On the other
10 hand, at David Jakes' house, they found some guns that they
11 took into evidence. They couldn't use them. They weren't
12 the right caliber or whatever. Pistol was taken and it was
13 actually charged to another case. Somebody else lived in
14 the house apparently.

15 And interestingly in the house of James Davis, they
16 took what? Cell phones, among other things. At least three
17 sitting on the counter. They said they weren't of any
18 evidentiary value, but you know what? If you don't look for
19 something, you're sure not going to find it.

20 The cell phone they found in the car, they said the
21 battery was dead. I don't know how long it was, maybe a day
22 or so, before they got around to processing it. The thing's
23 on and would be dead after a while. But you know, Wal-mart
24 is selling chargers all day long for \$25, \$26, you can
25 charge that thing up and find out every call that is made on

1 that. And as Sgt. Lawson said, consent, consent, consent.
2 If you've got a search warrant, that's one way to get
3 evidence; consent is another. Just ask somebody, let me
4 hold your cell phone. Let me see if you called me. Because
5 the odds -- nobody in that car, in either car, with the
6 Taurus with all those people that are pictured in there,
7 they called somebody. Nobody is going to be involved in
8 something like that. "Hey man, did you hear what happened?"
9 No way that they didn't make calls. And there had to be
10 calls from that Taurus and there had to be calls from that
11 Cadillac; had to have been. But no one bothered to ask.
12 Nobody bothered to ask. Det. Scott said, "I already had the
13 names." I never said that. But then I asked him if he ever
14 tried. Do you think the phone companies don't know whose
15 name is attached to the phone number? Of course they do.
16 You open up the phone, you flip it open, you press whatever
17 and it tells you what number it is, and then you can check
18 the history. If they erase it, then you can send a search
19 warrant as far as that goes, but nobody even tried. We can
20 know, we could. We could know what calls were made from the
21 Cadillac. We could know what calls were made from the
22 Taurus, but we don't. So what are we stuck with? We're
23 stuck with a passing reference from somebody we've never
24 heard from, never testified, about the name "Rat".
25 Shaquita Bryant said she heard that name, didn't see

1 him. And we're left with a story of James Davis who's got
2 every reason in the world to lie. That's what we got. And
3 that is not beyond a reasonable doubt. Whatever happened on
4 McLeod Road, whatever happened on McLeod Road, David Jakes
5 is adamant that Antwan McMillan had nothing to do with it.
6 And that's a reasonable doubt. Whatever else you may feel,
7 whatever else you may have an idea about, that's a
8 reasonable doubt. And that's enough. The State has to
9 prove guilt. God forbid that we should ever live in a
10 country where you have to prove you didn't do something.
11 Consider carefully all the evidence. You've got a ton of
12 stuff to look at back there, but when it comes right down to
13 it, there's simply not anything close beyond a reasonable
14 doubt that Antwan McMillan had anything to do with this.
15 Thank you.

16 THE COURT: Counsel for the State of South Carolina?

17 ASST. SOL. HASELDEN: Thank you, Your Honor. May it
18 please the Court?

19 THE COURT: Yes, ma'am.

20 CLOSING ARGUMENT

21 BY ASST. SOL. HASELDEN:

22 An active duty member of the military has been to Iraq
23 as an Infantryman in the Army. He has never been involved
24 in a firefight until he comes here to Colleton County. A
25 woman who used to pride herself on not having prejudices

1 against other people, is now afraid of black men. Her
2 daughter thought she and her husband were going to die.

3 Southerners pride themselves on southern hospitality.
4 These people were not shown hospitality. They were preyed
5 upon. They were preyed upon by those two men who took
6 advantage of their weaknesses when they broke down by the
7 side of the road in the middle of the night; an easy lick.
8 An easy lick. That's what you heard.

9 These people had never been here before. They didn't
10 have any beef with anybody. They didn't have any prior
11 arguments. It's a random act of violence, a scariest time.

12 We believe a random act of violence, random to them,
13 but not random to them which you heard about that
14 conversation in the car, an easy lick.

15 Now, this has been a long case and whole lot of stuff
16 has been in front of you. You heard the exhibits numbering
17 up into the hundreds. Det. Scott was on the stand for many
18 hours. So I'm going to try and refresh a little bit of what
19 the State believes the evidence shows. And if you believe
20 something different, if you recall something different, you
21 go on what you remember. You can come out and listen to it
22 again, too, just like the judge told you. So let's recap.

23 You know that the victims radiator overheated when they
24 were coming south on I-95 heading to Florida. You know that
25 they pulled off I-95 at the exit ramp, pulled all the way to

1 the end of the exit ramp, because they didn't move the cars
2 after the shooting. You know they moved the U-Haul after
3 they called the tow truck who told them that they couldn't
4 tow the U-Haul, so they had to move the U-Haul to the back
5 of the second car, where it had previously been on Jeanine's
6 car which had probably caused the radiator to overheat her
7 truck.

8 Look at these -- look at these pictures. There is the
9 sign from McLeod Road. You aren't way up that ramp. Look at
10 the evidence. Now, you know that while they were moving the
11 U-Haul around, that a masked robber jumped out of the back
12 of a silver sedan after it screeched to a halt, a short
13 distance away from Jeanine Metzfield. Jeanine was up by her
14 car, kind of in front of that. A man jumped out of the back
15 passenger seat with his head wrapped in something and with a
16 gun pointed like this at her.

17 She was scared, she couldn't hear exactly, but it was
18 either "Give it up, pretty lady!" "Get up, pretty lady!"
19 but either way it was in a really threatening tone and she
20 was terrified. You heard her say how terrified she was.
21 You saw her shaking. That is what she saw. That's what she
22 told law enforcement that night. That's what she told you
23 on that stand, and that's what David Jakes in his statement
24 said to Allen Inabinett, said, "That lady is telling the
25 truth."

1 How do we know that? Because we have the evidence of
2 them testifying. How do we know that? Because you also
3 have the evidence of James Davis corroborated. And what
4 else do we know though from the evidence? There's a whole
5 lot more, ladies and gentlemen.

6 You know that Jesse King warned the masked gunman to
7 "get back in the car and go away. Leave us alone, get back
8 in that car and go away." He warned them multiple times.
9 But he wouldn't. The masked gunman then turned his gun on
10 Jesse. So you have Jeanine Metzfield scurrying around the
11 back of the car. Amanda is backing away; she's a little bit
12 further back. You heard her testify as to where she was.
13 Both of them are trying to get back behind that U-Haul.
14 Jesse King has his concealed gun permit. A concealed permit
15 gun, small, for self-protection. After he warns this masked
16 gentleman several times, he shoots. He shoots several times
17 just like he's trained in the military, and he pauses to
18 assess. The person is still going like this (INDICATING
19 HANDS HELD OUT HOLDING A GUN.)

20 So he shoots a couple more times until that person
21 falls and drops the gun. The threat is then gone and he
22 stops shooting.

23 And we know this because he told you and that's what
24 the evidence shows. Don't forget about that physical
25 evidence. Look at those photographs.

1 Now, you know that James Davis was at his house all day
2 doing yard work with the whole family, because not only he
3 said that, but his dad got up here and said that; until
4 about dusk dark. Well, it's June, ladies and gentlemen, you
5 know exactly what time it gets dark, or roughly thereabout,
6 in June. It's not December with daylight savings time.
7 It's pretty late. I'm not going to give you an hour. I'm
8 not a meteorologist and I cannot tell you exactly what time
9 it got dark or even dusk dark on June 3rd of 2010; but I
10 want you to use your common sense and I want you to think
11 about that, and it's not going to be very hard.

12 Now, we know that after they got through, I think they
13 testified that they were cutting grass, they were trimming,
14 they were doing all kinds of stuff out there. Got done,
15 they were drinking sodas. They got through about dusk dark.
16 They went inside the house, they chilled a little bit,
17 played on the computer, they sat around talking, ate dinner.
18 Then, David Jakes calls James Davis and said let's go out
19 and meet some females.

20 Now, I am not going to judge, but should he have gone
21 to meet some females when his girlfriend was at that house?
22 Ladies and gentlemen, I think we all agree that it was a bad
23 idea for James Davis to get in that car that night and I
24 think he feels that way, now, too.

25 But either way, he went and showered up. David Jakes

1 came to get him in the silver Cadillac, owned by his
2 grandmother. Now, where'd they go? According to James
3 Davis, they went and picked up Antwan McMillan and headed
4 into town just like planned, to go see some ladies. How do
5 we know that? We know that was James Davis's testimony. We
6 know somehow that three people got in that car on the side
7 of the road. So what evidence we do have on that
8 corroborates that story.

9 You eventually learn that it was, in fact, David Jakes
10 who was the masked robber that jumped out of the car, tried
11 to rob these people. And you know that several ways. Not
12 just by James Davis's testimony. You know about the
13 physical evidence. There's blood on the ground, his blood
14 is all over the back seat of that car. There's testimony
15 from these three people. Not really concrete. You just
16 heard Mr. Mathews tell you that yeah, he was there and he
17 got shot. You heard Mr. Beach tell you that in his opening,
18 yeah, he was there, he got shot. All you got to worry about
19 on David Jakes is who do you believe? Do you believe the
20 three people who got up here, terrified, shaking. Or do you
21 believe the person that came forward 14 months later
22 suddenly after he had read the same from the victims,
23 because you heard him talking about their statement. He had
24 plenty of time to concoct this story. No, we were checking
25 the tire. We just happened to stop right there and I jumped

1 out and if you could hear in that video -- and I know it's
2 really hard to hear, he commented on their rear end and said
3 come here, let me talk to you, because they were so far up
4 that ramp that he had to scream at them. He didn't even see
5 them at first.

6 How do I know that's a lie? I know that's a lie
7 because I have his blood on the ground on the other side of
8 the exit ramp from where they were. That number five
9 marker, and it's kind of hard to see, but you'll have all
10 the pictures back there, is where he was. His blood is on
11 the ground. You don't even have to worry about the
12 testimony, what you believe and what you don't believe. If
13 you don't believe James Davis, if you do believe James
14 Davis, because you have the physical evidence in front of
15 you as to where he was. Use your common sense, ladies and
16 gentlemen.

17 What else do we know, though? We know more. You know
18 that Antwan McMillan was the driver of the silver Cadillac.
19 You know that it was his idea to come up with the idea to
20 rob those people. The mastermind, if you will.

21 They had already passed those people, but they turned
22 around. They turned the car around and came back. That's
23 why they were pointed back in the direction of Smoaks and
24 that's why David Jakes, in the back passenger seat, could
25 jump right out that back passenger door.

1 Now, you also know there was Antwan who was pumping up
2 the other people. You know it was Antwan that shot a 9 mm
3 inside from the driver's seat out, at least seven times,
4 because we have seven matching shell casings. And you know
5 this for various reasons. You know because James Davis
6 testified, and you know, and I'm going to beg to differ a
7 little bit with Mr. Mathews as to what the physical evidence
8 shows you. I took notes. In fact, I have an exact quote
9 from Amanda Webb, and you can re-listen to her testimony; as
10 to the DNA profile that she read directly off of her notes,
11 developed from Item 43.1, which was a swab from a striped
12 shirt from the passenger side floor of the Cadillac. I
13 found his DNA there. His DNA was there. Now, she did say
14 that one in three other people, and I certainly know
15 quintillion, you know as well as I do, I'm not going to make
16 light over this, could have matched. But who are we
17 concerned about? Antwan McMillan. And his DNA was there.

18 Now, I also disagree with the steering wheel. Why do I
19 disagree? Because I think that the evidence shows something
20 different, and I'm pretty sure she testified to something a
21 little different.

22 Now, Item 22, Sled Item 22, is a cloth from the
23 Cadillac interior. She read a partial male DNA profile was
24 developed from Item 22. And you remember Mr. Shelton
25 talking to her about what a partial profile was. It was

1 complete enough that she could say it was not Jesse King,
2 Amanda Metzfield, or Jeanine Metzfield, or James Davis, as
3 possible contributors. So we know none of those people
4 touched that steering wheel. So what else did she say? No
5 conclusive statement can be made regarding the inclusion or
6 the exclusion that it was David Jakes or Antwan McMillan.
7 Not verdict evidence, but it sure does corroborate the
8 story. It sure does corroborate the story that David Jakes
9 was driving first, and that Antwan McMillan was driving
10 later. The story that James Davis told law enforcement
11 eventually on the night of June 4th, and then again in
12 December, and then again on the stand.

13 Now, Mr. Mathews says you only have two pieces of
14 evidence linking Antwan McMillan to this crime, that I only
15 have James Davis and David Jakes. That's not true because
16 I'm pretty sure we have talked about some other evidence.
17 Amanda Webb said to me that and you have the fingerprints.
18 You saw that amazing presentation by Chris Wilson. You saw
19 it. It's a match. She sat there and walked you through it
20 and it matched.

21 I believe, and I quote -- and excuse the profanity,
22 "Hell no." That's what he said when Allen Inabinett asked
23 him, "So Rat wasn't even in the car with you?" That's what
24 he said. So why do we have traces of his DNA and his
25 fingerprints on the car and testimony by two other people

1 that he was involved. You heard Mr. Shelton examining
2 Shaquita Toya Bryant on the stand. You saw her demeanor.
3 You heard how she admitted to telling Allen Inabinett that
4 it was Rat, James, and Chippy in the car that night. No,
5 she got up here and she said, Oh, no, no, no, no. Allen
6 Inabinett told me that. Really? Because that's not what
7 she said in her statement. She changed from her statement
8 on the stand.

9 Now, why are there seven matching shell casings, four 9
10 mm found outside the car and three found inside the car?
11 Why is that important? Think about where you're sitting in
12 a Cadillac. You've got your pictures. If you're in the
13 front passenger seat and the window is down, and you're
14 shooting a 9 mm like David Jakes said James Davis was, are
15 you going to turn the gun like this and shoot it so that all
16 the casings stay inside the car? Or are you going to put
17 your hand out the window and shoot it? And if so, the
18 casings are going to shoot straight up or sideways,
19 depending on what type of gun that was; and we know that gun
20 -- you heard Agent Cromer talk about different places that
21 gun shells can shoot, but she said they're going to shoot
22 straight up or they're going to shoot sideways. Now, they
23 can hit other stuff and they can roll other places, but they
24 ain't going to shoot backwards into that car. Three of them
25 aren't going to be in that car, but you know how three of

1 them are going to be in the car? Is if somebody's shooting
2 from the driver's seat -- shoom, shoom, shoom. And then you
3 turn a little bit and they go out the window. But if you're
4 in the front passenger seat shooting, all of them will be
5 outside. All of them will be out of the car. Use your
6 common sense, ladies and gentlemen.

7 Now, the almost completely indecipherable video of
8 David Jakes. Almost completely. Fortunately, Lt. Allen
9 Inabinett came in here and told us a little bit more about
10 what he said after the 14 months of silence. After 14
11 months, he comes up with this story. Did you hear what he
12 said about Antwan McMillan getting in his face at the jail,
13 accusing him of being influenced. Of course, all of a
14 sudden he's going to say Antwan had nothing to do with it.

15 Now, this mystery man, J. J. Snead, J. J. Sneeze, just
16 like Smoaks is a small community, Jacksonboro is a small
17 community, and an investigator with the Sheriff's Office who
18 has been in law enforcement for over 10 years and who has
19 worked 80 to 85 percent of all cases that come out of
20 Jacksonboro is going to have heard about this individual.
21 He followed up. He went down there and asked around.
22 There's only so many people in Jacksonboro. A young man
23 named Jay or J. J. Sneeze, or Snead, that drives a burgundy
24 Crown Victoria. There's only so many cars in Jacksonboro.
25 You would find if he existed, if he existed. A mystery man,

1 a convenient substitute for his buddy, Antwan McMillan. He
2 told you those ladies got it right and that's the most
3 important thing. He told you the ladies got it right.

4 Now, from time to time, we have a legal term that's
5 called a red herring, a red herring, a fish, like they throw
6 to the seals at Sea World. They throw this over here to see
7 what's happening over here. It's a tactic, and it's a good
8 tactic. Focus on the fact that they didn't take these eight
9 people's cell phones so that you won't look over here and
10 see all this evidence. Don't get distracted by a red
11 herring. What do cell phones really have?

12 And first of all, you heard Jacky Lawson, who has been
13 in law enforcement for over 31 years say that you can't just
14 walk up to somebody and snatch their cell phone. Now while
15 Mr. Mathews contends he would give them his cell phone, do
16 you think everybody in Colleton County is just going to hand
17 over their cell phone? No. You don't have to.

18 Now, would it be great if we had cell phones? Sure.
19 Is it reasonable to collect every single cell phone from
20 every single person in Smoaks, South Carolina, who were at
21 the hospital that night? No. And what is it that cell
22 phones tell us anyway generally? They tell us that this
23 number called this number. Is it really that weird that
24 people who have grown up together for years and years and
25 years and years call each other on a Thursday night to go

1 out? We might get text messages; we might not. Otherwise,
2 all we have is that they called each other. They lived
3 around the corner from each other. It's not that odd.
4 Let's focus on the red herring. We know something else
5 though. There's just so many things.

6 We know that John Graham owns a piece of property
7 located right here with the blue drawn around it. We know
8 that Mr. Graham was out there around the time of this
9 incident and what did he find? He found some .50 caliber
10 casings. You know that nobody in his hunting club uses .50
11 caliber because they have to testify as to what gun they are
12 out there with when they sign in to go hunting. Pretty
13 common. We know that June is not hunting season. We know
14 that from our common experience. Well, what else do we
15 know, though, about where he found these shell casings,
16 about 100 to 150 yards off the road. We know that Antwan
17 McMillan lived across the street, directly across the
18 street. Oh, yeah, Chippy and David Jakes lives down here,
19 but who lived across the street? Circumstantial evidence.
20 And now where is the evidence that whose .50 caliber was it?
21 It was this .50 caliber gun dropped at the scene by David
22 Jakes. It was this gun. It was this gun that shot.

23 So we've got several casings across the street. Now,
24 David Jakes would have you believe that this gun is for
25 self-protection. I guess if you follow that, all guns could

1 be that way. He would have you believe that because he was
2 going into Walterboro and he went back to the house to get
3 his gun that it was for self-protection. This is not a gun
4 for self-protection. This is a gun to rob and it is a gun
5 to kill. This is a gun for self-protection that you carry
6 to protect yourself. Use your common sense. Look at these
7 two weapons.

8 You know Jesse King had that 357 on him. You know he
9 warned that guy to leave. He tried to get him to go away,
10 but he wouldn't. David Jakes wouldn't listen to that. And
11 instead, he swung a gun towards Jesse, so Jesse shot him;
12 drilled him three times. And I don't want you to get hung
13 up on the fact at all. Don't even let it cross your mind
14 that somehow he was in the wrong, because the law in South
15 Carolina is very clear. It doesn't require somebody to
16 shoot at you first. In fact, we have case law on point that
17 says you do not have to wait for someone to get the jump on
18 you. You are allowed to shoot to protect yourself if you
19 believe you are in danger, you are allowed to shoot and you
20 are allowed to keep shooting until the gun is gone. He's
21 shooting, oh, just like Jesse King did. In fact, he even
22 paused to see if the threat was gone and it wasn't; wasn't
23 gone. Don't get hung up on that. Don't even let it cross
24 your mind. Use your common sense.

25 Now, you've heard the term reasonable doubt thrown

1 around. You heard it from Mr. Mathews and you're going to
2 hear the judge explain it to you. Don't get hung up on
3 reasonable doubt. Reasonable doubt is not beyond every
4 single doubt that ever exists, because really is there
5 anything that we can prove in this world beyond every single
6 doubt. You put a bunch of really smart people together and
7 they just argue that the sun rises in the morning all day
8 long. If you are firmly convinced of the guilt for
9 reasonable doubt, firmly convinced.

10 To prove anything to you, I have to prove to you
11 attempt. Attempt requires that not only did they think
12 about something and planned it out, like Antwan McMillan did
13 in that car, but also that there was an overt act and
14 furtherance to crime. All that means is that they did
15 something else other than talk about it. Something else
16 such as turn the car around, jump out with a gun and shoot
17 at them. Shoot seven times at least.

18 You got all the evidence you need for attempt. For an
19 attempted armed robbery I have to show you that someone
20 commits armed robbery while they're armed with a deadly
21 weapon, or what someone perceives to be a deadly weapon, and
22 that they attempt to take something away from their person.
23 So is that logical to think that pointing this at somebody
24 and saying "Give it up" is an attempted armed robbery? Sure
25 looks like a deadly weapon. Give it up, what does that

1 mean? Intent in that car, an easy lick, let's go rob them.

2 An easy lick.

3 For attempted murder, you have to prove specific
4 intent. Specific intent is different than just like
5 something happened and it can be a little confusing, because
6 for attempted murder it's defined as someone with the intent
7 to kill, and that's specific intent, the intent to kill.
8 Attempt to kill someone with malice aforethought, either
9 expressed or implied, our judge is going to go over all of
10 that with you. Here's what you need to know about specific
11 intent: dead through the chest of the driver's seat, into
12 the yoga blanket behind the seats where the dog had just
13 been. The driver's seat of the truck. Thank goodness
14 Jeanine Metzfield didn't get back in that truck.

15 Specific intent, drilling these cars with bullet after
16 bullet after the bullet had skipped under the car and took
17 out the back wheel. Didn't shoot in the air. Shot at the
18 cars that the people were hiding behind. Skipped bullets
19 under cars to take out tires that were in the back.

20 The intent to kill. Isn't it logical to think that
21 somebody that shoots seven times at people is an intent to
22 kill them. Not once, not twice, not in the air, an intent
23 to kill them. You've got it in this case.

24 Under South Carolina law, you have the hand of one is
25 the hand of all theory, and the judge is going to explain

1 that to you. So don't get tripped up on the fact that oh,
2 David Jakes never shot that gun. He didn't have to. His
3 cohort in crime, Antwan McMillan, did.

4 In South Carolina it's the hand of one is the hand of
5 all. If you join together with someone to commit crime, you
6 are just as liable for everything they do as they are for
7 everything you do. The hand of one is the hand of all.

8 Now, you have your intent, you have your DNA, you have
9 everything you need in this case. All that's left if for
10 you, the jury, to do your job. Go back there, review the
11 evidence, and remember the testimony. Think about all of
12 this and return a verdict of guilty on all counts of
13 attempted murder and all counts of attempted armed robbery
14 for what happened to there three people that night here in
15 Colleton County. Thank you.

16 THE COURT: Mr. Beach?

17 MR. BEACH: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. BEACH: Solicitor, Mr. Mathews?

20
21
22 CLOSING ARGUMENT

23 BY MR. BEACH:

24 Good morning, ladies and gentlemen. I know that you
25 have been here a long time and there's been a whole lot of

1 testimony, and I want to thank you just like everybody else
2 has for your attention and listening to all of this stuff.
3 I watched you and I knew that you were listening intently.

4 There is nothing more boring than DNA testimony and
5 there's nothing more boring than fingerprint testimony, and
6 there's nothing more boring than who gave what to whom and
7 who did what and what specific exhibit, but it's stuff we
8 have to get in, and it's also stuff that tells us a lot
9 about this case and a lot about what happened that day and a
10 lot about who did what.

11 Now, the State has made a big thing about proving that
12 my client, David Jakes, was on the scene. We admitted that
13 to you the first day. They have made a big thing about
14 showing you that or proving to you that this Desert Eagle
15 .50 caliber gun was his. We admitted that the first day.
16 There's no doubt about that. You know, what we've got is
17 three or four versions of what happened that night. We've
18 got Mr. Jakes' version, we've got the victim's version, and
19 we've got little Jimmy Davis's version. I call him "little
20 Jimmy" not to be derogatory to him, but because of the way
21 he said he was down in the floorboard, slipping around the
22 side opening the door, getting it out, and then closing it
23 back up when all of this going on. I just thought that was
24 apt to call him "little Jimmy."

25 What Mr. Jakes says is that he had been drinking that

1 day. The evidence shows a Seagram's bottle inside the car
2 that he drove around with his friends. You know, if you're
3 an adolescent or if you're in high school or whatever, or
4 whatever the ages of these boys are; that's what boys do.
5 They ride around. Ride to the club. Ride around and do
6 things like that. He was riding around. He went and picked
7 up Mr. Davis and all that fits in the timeline because Mr.
8 Davis quit working around dusk, did a few things at his
9 house, and this didn't happen till midnight. This is quite
10 a long bit later. So there would be time for him to go to
11 Jacksonboro, ride around, drink, and talk about going out
12 and seeing girls. All this stuff, all this fits in the
13 timeline. The State says it doesn't fit, but think about
14 the number of hours you've got there. It's not that far
15 from these places, even though we're talking about 20 miles
16 from Smoaks to where the incident happened and we're still
17 not talking about a long area to cover in a fairly compact
18 period of time, but you can do that. Just think about it
19 and use your common sense of going back and forth to these
20 places.

21 He picks up Mr. Davis, they go to Jacksonboro. They
22 pick up Mr. Snead. Now, they've been drinking. This is Mr.
23 Jakes' car, and why do I believe that that's correct about
24 he was drinking, because he was in the backseat of the car;
25 he drank too much. Mr. Snead's driving the car, whoever Mr.

1 Snead is. He's driving the car. They're driving around,
2 driving back to Smoaks, gets his gun. Now, he shouldn't
3 have done that. He's going to the club. Obviously,
4 everybody involved in this whole case had a gun. So there
5 are many guns around. He took the gun with him. He might
6 not have been here today if he hadn't, but he took the gun
7 with him.

8 They're going to the club; this makes sense, because
9 they're going down McLeod Road over to Highway 15, going to
10 Racers. That's exactly the way you go. That's the shortest
11 way to go. He didn't have a whole lot of money. He gets
12 contacted by his girlfriend, or somebody, turns back around
13 to go and remember he said they had a problem with the tire.

14 They had a donut tire on that car; remember that?
15 Remember the officer's testified, yes, there was a donut
16 tire. Y'all know what a donut tire is. That's one of those
17 little spare tires that you put on when you lose your tire
18 and you're supposed to only keep it a certain amount of time
19 until you get a new tire. That's what a donut tire is. It
20 was all there. It was bumping, so they stopped.

21 Mr. Jakes gets out of the car to check the tire. He's
22 still under the influence. What did he see? Women. Where
23 was he going that night? To the club so they could see
24 women. That's where he was going and that's when he made
25 his infamous statement, "Hey, pretty ladies." And that's

1 where we're not sure what is said next, either "Get up" or
2 "Get over here," as he said in his taped confession, taped
3 statement, or "Get'em up," one or the other.

4 Now, that's what Ms. Metzfield said when she got back
5 on the stand as the last witness. "Get up" or "Get'em up".
6 Not "Give it up," or anything like that. He gets out of the
7 car. He has a confrontation with Mr. King. He pulls out
8 his gun, or his gun is already out. I don't know, that's a
9 dispute in the evidence. And Mr. King shoots him. Now, I'm
10 not going to criticize Mr. King for shooting him. I'm not
11 going to stand up here and say that wasn't the thing to do,
12 because I wasn't there and he had already been warned -- Mr.
13 King had already been warned ahead of time that this was a
14 bad neighborhood and to watch out, and that's why he had his
15 gun out.

16 So everything was already primed, and that's what
17 happened. He got shot. He got shot three, maybe four
18 times, we don't know exactly how many. He fell on the
19 ground. At that point, he's out of everything. He has been
20 removed from the scene. He's been removed from what was
21 going on. He's no longer a part of the group. He's laying
22 on the ground trying to keep himself from dying. And that's
23 when the other shooting starts that he had no input into, no
24 input into whatsoever.

25 Now, the State says he is guilty of attempted armed

1 robbery. Whatever attempted armed robbery is, let's put him
2 aside for a minute. Let's talk about him in just a minute.
3 Is there any other evidence of it? No. Is there evidence
4 that he got out of the car and made a jackass out of
5 himself? Yes. He got shot for it. If that ain't justice,
6 I don't know what is.

7 He never asked for anything. He never asked them for
8 property. He never tried to take anything. He never got to
9 take anything. He was taken out of the picture. They say
10 that he is guilty of attempted murder. He never fired his
11 weapon. How do I know that? Because the detective sat up
12 here, Jeff Scott, the detective sat up here and he knows his
13 firearms, obviously, from the way he was testifying. He
14 said that the Desert Eagle had a full clip minus one shell
15 and there was one shell in the chamber. That means it was
16 loaded and it had never been fired, never once been fired.

17 Now, you can go by what the State's position is, that
18 he was waving the gun around the whole time and he had
19 plenty of opportunity to shoot anybody, but he never did.
20 And it seems to me like that raises the inference that he
21 did not intend to kill anybody, because he didn't aim the
22 gun at anybody. That's his statement.

23 Now, all the stuff that happened at the hospital and
24 all this other stuff, I don't know about, and it really
25 doesn't make any difference in my situation, and I'm not

1 going to really talk to you about whether Mr. McMillan was
2 in the car, because I don't know. My client said he wasn't,
3 and I can't imagine why he would say he wasn't in the car if
4 he was in the car. I mean, what's in it for him?

5 I'm not even going to go into who else was in the car.
6 But we do know that one other person was in that car, and
7 that was little Jimmy. Now, that's the State's case.
8 That's what they're relying on. That is the whole
9 underpinning of why we are here today is what little Jimmy
10 said. If you believe him, that's one thing. If you don't
11 believe him, that's quite another. And I don't think you
12 should believe him, and let me tell you why I don't think
13 you should believe him.

14 Little Jimmy is a liar by habit. He's one of these
15 people who would climb a tree to tell a lie. Let me tell
16 you why I think that. First of all, he starts out lying to
17 his family about where he's going. Lying to his girlfriend
18 with whom he is living. He's going to go out and see girls
19 at the club. He admitted that. I asked him, "What did you
20 tell your girlfriend?" "Well, I don't want to go into
21 that."

22 He's already lied to her, so we know what his character
23 is and we know that he will tell a lie. He lied to his
24 parents when he got back, "I didn't have anything to do with
25 that." because he was in trouble. "I didn't have anything

1 to do with it." He lied to them. Then they took him to the
2 police station and what did he do? He lied again. "I
3 didn't have anything to do with that. I don't know what
4 happened. I don't know what happened." And what did they
5 tell him? Oh, now, you don't want to go to prison for Rat
6 and Dinky now do you? So then they start putting this into
7 his head. And then they have a little recess and then they
8 come back and then he makes this immaculate confession.
9 What did the Solicitor ask him about what he was saying?
10 "Is it the truth?" "Oh, yeah, it is the truth." "You're
11 going to tell the truth, aren't you?" "Oh, yeah."

12 Now, he tells this story. He tells this story about "I
13 was in the car. I wasn't drinking. I wasn't around any
14 drinking. Yeah, we were going to see girls. They saw these
15 people. They said it was an easy lick." I said, "No, don't
16 do that. No, it's stupid." That's what he said, "It's
17 stupid. I'm not having any part of it." And then he
18 proceeded to get down into the floorboard of the car to
19 avoid everything. That's what he says. Now, if that's
20 true, that's a good story. If that's true, then he has
21 nothing to do with this. Then he is merely present, and the
22 judge is going to tell you what mere presence is. He was
23 merely present that's what he said.

24 The police were so impressed with his statement that
25 they put the handcuffs on him, arrested him, and took him

1 away. They didn't believe him. Nobody believed him. Now,
2 it's convenient, because they want to convict these two
3 young men. Now, it's convenient. Is he working for some
4 kind of deal? Sure, he is. He's already had one deal. You
5 want to know what they offered him? What they were talking
6 about? Accessory. He's still admitting he did it, but
7 accessory's a lot better. But you've got to testify.
8 You've got to put these people away. He has a vested
9 interest in convicting David Jakes. He has a vested
10 interest in convicting Antwan McMillan, and that means he
11 can't be believe because he has his own agenda.

12 Now, what really happened in that car after Mr. Jakes
13 was shot? What really happened? Think about the evidence.
14 The State says don't look at the red herrings. Although
15 they threw the red herring in there of these two .50 caliber
16 casings that have nothing to do whatsoever with this entire
17 thing; that was 20 miles away in Smoaks. Just to get you
18 not to think maybe about the fact that this man never fired
19 his weapon, that .50 caliber was never fired. That cannon
20 was never fired. But there's plenty of 9 mm, which would
21 indicate that somebody in that car had a 9 mm. Mr. Davis
22 said he didn't see the man bring the gun into the car. I
23 don't see how you could miss that. Did he not see the other
24 gun, too, because there were at least two other guns. We
25 know that because the lady who testified on the ballistics,

1 do you remember this? She said there were three shell
2 casings in the car that matched a certain gun, the same gun
3 that there were four shell casings outside the car, and
4 there was another one in there that didn't match any gun --
5 that didn't match that gun and didn't match a gun that was
6 turned in. We know there was more than one gun.

7 Now, they can't tell you that that wasn't in there
8 earlier, but it raises some questions about what actually
9 went on in that car. But let's talk about the seven shots.
10 Seven shots. Little Jimmy said he was on the floor. The
11 only thing he did was get around the seat, around the back,
12 open the back door of the Cadillac so that Dinky could get
13 in the Cadillac, and then maybe he closed it up; maybe. I
14 can't do that. He's a lot younger than me. Maybe he can
15 slither around and do that. That's why I call him "little
16 Jimmy". Maybe he can do that; I can't. But nonetheless,
17 that's what he said. He said he was out of it, that he was
18 down there. He didn't see the shooting.

19 I submit to you, ladies and gentlemen, that he was the
20 shooter. That he was the one firing for several reasons.
21 One, he was on the side where the firing was. Think about
22 this and think about the evidence and you'll have these --
23 these items in the back, these exhibits in the back, and
24 you'll see pictures of the inside of that car of that
25 Cadillac. Not a Toyota Corolla, or something small, or

1 something narrow. It's what we call a big car, now. One of
2 the larger cars, although we don't really have big cars
3 anymore. The person sitting in the driver's seat, the State
4 says that's the shooter, and in order to shoot, would have
5 to scoot over to shoot out the window. Now, the reason I
6 say that is because there were shells outside the car, which
7 means you had to be outside the car with the gun for those
8 shells to be on the ground. He had to. There's no other
9 way. And maybe one might have bounced out of the car, but
10 not four out of seven. That's just crazy.

11 Now, to get across there, you've got to cross the
12 center console, which is tough. You can see a picture of
13 it. You've got to crawl over that, you've got to crawl into
14 that seat, you've got to crawl over "little Jimmy" who is in
15 the way, in order to do that. That doesn't make sense.
16 What makes more sense is that "little Jimmy" pops up. He's
17 been drinking and he's about half asleep, and he pops up,
18 doesn't know what's going on. He pulls his gun out, his 9
19 mm, which was never found -- never found because he was gone
20 and he didn't go to police or anything like that. He was
21 gone.

22 Nobody knows what happened that night. He hops up.
23 Gunfire came from across the road. Remember what's across
24 the road? Car, car, U-Haul. There's a long line of
25 targets. What does he do? He pops up. He gets out the

1 window and he starts firing. Remember what Mr. King said?
2 He thought it was an automatic weapon because of how rapidly
3 the firing occurred. He wasn't sure whether it was a
4 handgun or whether it was an automatic weapon. And he's
5 been in Iraq, so he knows the difference. He's practiced
6 with handguns. He knows the difference. He thought he was
7 under fire with an automatic weapon, because of the bang,
8 bang, bang, bang, bang, bang, bang, bang.

9 Well, what he was doing -- remember the ballistics
10 expert. The ballistics expert said with an automatic, the
11 shell either comes out of the top or the shell comes out of
12 the right side. Flinging out of the right side or flinging
13 out of the top.

14 Have you ever looked when it comes off the top, because
15 there weren't any on top of the car, there weren't any in
16 the road, there weren't any away from where the car was. We
17 know it was being thrown out the right, that's the only
18 thing that makes sense. What did he do? He shot along that
19 line of cars. Why do I say that? Because the bullet holes
20 were in the different vehicles. He was spraying the area.
21 He wasn't shooting at where Mr. King was, because Mr. King
22 had gotten down and he didn't know where he was. He was
23 firing the weapon. He was shooting like that. He went
24 bang, bang, bang, bang. Four shots, they're all on the
25 outside of the car. And he keeps going. Bang, bang, bang,

1 bang. When he's over here. Where are those shells going?
2 They're going either in the open back door that he says he
3 opened, or they're going in the back window into the car and
4 that's why they ended up in the car. Any other way, they
5 would have either have been all outside the car or all
6 inside of the car.

7 Physics only works one way. That's the only way they
8 could have been there. Jimmy was the shooter inside that
9 car. Jimmy lied to them. Now, if he didn't have anything
10 to do with this and he knew it was going to come down hard,
11 then why didn't he go to the police and say, "I didn't have
12 anything to do with this, but this is what happened. Those
13 sorry so-and-so's did this and I didn't have anything to do
14 with it." He didn't do that. He went home and he hid. He
15 had to be brought to the station. And when he was brought
16 to the station, he lied.

17 If his story was true, he's absolutely innocent; but
18 nobody believed his story. They promptly indicted him.
19 They promptly arrested him. He's still under charges
20 hanging over him, so he'll say what everybody wants him to
21 say.

22 You've got to remember, the State is making a deal with
23 the devil. He did this. We sort of lost sight with Mr.
24 Jakes. Where is Mr. Jakes? He's laying on the ground.
25 He's trying to call in the car. He's been shot three times,

1 four or five times, and the State says the hand of one is
2 the hand of all. I love that because that's always their
3 last refuge when you don't have a case. That's what you
4 back up to. The hand of one is the hand of all. It's a
5 legal doctrine that says that you are participating in a
6 group of people, or two people, and if one of them does
7 something, then all of you can be convicted with the one.
8 Well, my point is that he was no longer involved in the
9 group. He was no longer taking part in anything that was
10 going on and he had been surgically removed and was on the
11 ground. His hand of was not the hand of all. His hand of
12 one was trying to keep his insides from becoming his
13 outsides. That's what was happening to Mr. Jakes. He wasn't
14 involved in it anymore. He had been removed.

15 Now, what happened after he was shot was between the
16 other folks, not David Jakes. No hand of one, no hand of
17 all, no hand in it at all.

18 I ask you to look at the evidence. I know a lot of it
19 is probably boring, but it tells you so much. The gun
20 casings tell you so much, where they ended up tell you so
21 much. But isn't it just as likely that the person who did
22 the shooting was outside that -- maybe even outside the
23 door, firing and the bullets, the last three bullets were
24 inside the car. And if that's the case, then little Jimmy
25 is lying because the driver of that car couldn't physically

1 get over there in that period of time to do that. He
2 couldn't get over there and shoot at those people in that
3 position. He would be restricted.

4 The evidence shows something else, too. Something that
5 has bothered me throughout this case since this thing came
6 about. There was testimony that there was a black t-shirt
7 on the shooter. They found a black t-shirt and whose DNA is
8 on it? Mr. Davis', nobody else. Is his involvement even
9 more than what we've speculated here? The DNA on the t-
10 shirt, the casings that do not match. It just boggles the
11 mind. It's been a fascinating case. I ask you, ladies and
12 gentlemen, to look at this, look at all the evidence, weigh
13 it all, take all these things back here and look at these
14 pictures on the inside of the car. The Seagram's bottle;
15 little Jimmy said "No drinking"; no, no, no, no, no. The
16 console, you can't get across. Look at them. Look at all
17 these things. And I ask you to find my client not guilty of
18 any of these charges.

19 It is obvious that he got out and made a fool of
20 himself. He got shot three times for it. And as I said
21 earlier, justice has already been done with regard to him.
22 He didn't try to rob those people and he didn't try to kill
23 those people. The evidence just doesn't add up. Thank you
24 very much.

25 THE COURT: Madame Foreperson, ladies and gentlemen of

1 the jury, before I begin my charge, I'm going to give you
2 about five minutes to use the restroom and stretch your
3 legs. Please do not discuss this case. I'll be right back
4 with you as soon as I've known you've had your break.

5 (WHEREUPON, THE JURY EXITS THE COURTROOM.)

6 THE COURT: All right. So everybody understands,
7 you're going to stay in here. You're going to stay seated.
8 You're not going to get up and leave. There's not going to
9 be any getting up and walking around during the charge. If
10 you can't comply with that, get up and leave right now.

11 Another thing, I don't tolerate any kind of outbursts
12 in the presence of the jury. If you can't control your
13 emotions when the verdict is published later on in this
14 case, you need to leave the courtroom. I'll enforce that
15 with the contempt powers of this Court. There's not going
16 to be anybody talking about loud. There's not going to be
17 any comments made in the presence of these jurors. If you
18 can't control your emotions, you better get up and leave
19 now, because I'll promise you I can handle it if you don't.
20 Very well. Bring me the jury.

21 (WHEREUPON, THE JURY ENTERS THE COURTROOM AND THE
22 FOLLOWING IS HELD ON THE RECORD.)

23 JURY CHARGE

24 THE COURT: Madame Foreperson, ladies and gentlemen of
25 the jury, it's now my duty to charge you on the law of this

1 case. Now, let's start that the beginning. The State of
2 South Carolina has charged the defendant, David Jakes, with
3 attempted murder in indictment numbers 2010-704, 2010-705,
4 2010-706. The State has charged Mr. Jakes with attempted
5 armed robbery in indictment 2010-703, 2010-707, 2010-708.
6 The State has charged with Mr. Jakes with the offense of
7 possession of a weapon during the commission of a violent
8 crime in indictment 2010 at 709.

9 In addition, the State, in this case, has charged the
10 defendant, Antwan McMillan with attempted murder in
11 indictment numbers 2010-501, 2010-502, 2010-503.
12 Additionally, the State has charged the defendant, Antwan
13 McMillan, with the offense of attempted armed robbery in
14 indictment 2010 at 504 and indictment 2010 at 505, in
15 indictment 2010 at 506. Finally, the State has charged the
16 defendant Antwan McMillan, also, with the possession of a
17 weapon during the commission of a violent crime in
18 indictment number 2010 at 507.

19 Now, ladies and gentlemen, that means that there are
20 seven indictments now against the defendant, David Jakes,
21 and seven indictments now against the defendant, Antwan
22 McMillan, which you will be asked to consider. You will not
23 be asked to consider the eighth indictment, which has been
24 taken care of as a matter of law, the possession of a stolen
25 pistol.

1. Now, I remind you, first of all, ladies and gentlemen,
2 that the fact that the defendants in this case were
3 arrested, the fact that they were charged, the fact that
4 they were indicted in this case, is not evidence in the
5 case, nor does it create any presumption or inference of
6 guilt.

7 These indictments, these documents, are simply the
8 formal written instruments by which the case is brought into
9 this Court. In order for the Court of General Sessions to
10 have jurisdiction, or power to hear the cases, an indictment
11 has to be issued under usual circumstances.

12 These indictments, these documents, are just the
13 written instruments in which contain the charges made
14 against each of the defendants, and they are the formal
15 documents by which the case is brought before this Court and
16 before you, the jury, a trial jury, in the Court of General
17 Sessions.

18 Now, ladies and gentlemen, the defendants, each of
19 them, has pled not guilty to these indictments; as to each
20 of the seven indictments. As to the defendant, David Jakes,
21 and as to the defendant, Antwan McMillan, they have each
22 pled not guilty to all seven of the indictments.

23 That plea of not guilty puts the burden on the State of
24 South Carolina to prove the defendants guilty beyond a
25 reasonable doubt. A person that is charged with committing

1 a criminal offense in South Carolina is never required to
2 prove himself or herself innocent.

3 I charge you, ladies and gentlemen of the jury, that it
4 is an important rule of law that the defendant in a criminal
5 trial, no matter what the seriousness of the charge may be,
6 will always be presumed to be innocent of the crime for
7 which the indictment was issued, unless guilt has been
8 proven by evidence, satisfying you of that guilt beyond a
9 reasonable doubt.

10 This presumption of innocence does not end, ladies and
11 gentlemen, when you begin your deliberations, but it
12 accompanies every defendant throughout the entire trial,
13 until you, as a jury, reach a verdict of guilt, based on
14 evidence satisfying you of that guilt beyond a reasonable
15 doubt.

16 The presumption of innocence, ladies and gentlemen of
17 the jury, is not just a mere legal theory. It's not just a
18 legal phrase. It is a substantial right to which every
19 defendant is entitled, unless you, the jury, are satisfied
20 from the evidence of the defendant's guilt beyond a
21 reasonable doubt.

22 Now, what is a "reasonable doubt" in the law? A
23 reasonable doubt is the kind of doubt that would cause a
24 reasonable person to hesitate to act. The State has the
25 burden of proving the defendant, or defendants, guilty

1 beyond a reasonable doubt. Some of you may have served as
2 jurors in civil cases, where you were told that it is only
3 necessary to prove that a fact is more likely true than not
4 true. We call that, in civil cases, by the greater weight,
5 or the preponderance of the evidence, in a civil case.

6 In a criminal case, ladies and gentlemen of the jury,
7 the State's proof must be more than that. It must be beyond
8 a reasonable doubt. Proof beyond a reasonable doubt is
9 proof that leaves you firmly convinced of the defendant's
10 guilt.

11 There are very few things in this world that we know
12 with absolute certainty, and in criminal cases, ladies and
13 gentlemen, the law does not require proof that overcomes
14 every possible doubt. If, based on your consideration of
15 the evidence, you are firmly convinced that the defendant is
16 guilty of the crime charged, you must find the defendant
17 guilty. On the other hand, if you think there's a real
18 possibility that the defendant, or defendants, are not
19 guilty, you must give the defendant the benefit of the doubt
20 and find the defendant, or defendants, not guilty.

21 I remind you, ladies and gentlemen, and charge you that
22 during this trial, you and I have had certain duties to
23 perform. As a trial judge, it's been my responsibility to
24 preside over the trial of this case, and I also have the
25 duty to rule on the admissibility of evidence offered during

1 the trial of this case.

2 You, as a juror, are to consider only the competent
3 testimony, or evidence, before you. If there was any
4 testimony or evidence ordered stricken from the record in
5 this case during this trial, you should disregard that
6 testimony. You are to consider only the testimony which has
7 been presented from the witness stand, any exhibits which
8 have been made a part of the record in this case, and any
9 stipulations of counsel, or agreements, which occurred
10 during the trial of this case, in making your decision as a
11 jury.

12 Now, I, also, as the presiding judge, have the
13 additional duty to charge you the law that applies to this
14 case. As the presiding judge, I am the sole judge of the
15 law, and it is your duty as jurors to accept and apply the
16 law exactly as I now state it to you.

17 If any of you came into this courtroom, as many people
18 do, with any preconceived ideas, or opinions, or thoughts,
19 about what the law is or what you feel the law ought to be,
20 or what you believe the law is, you must put aside any of
21 your preconceived ideas, or opinions, or beliefs, or
22 conclusions, because you are sworn in that oath which each
23 of you took, you swore or affirmed that you would accept and
24 apply the law exactly as I state it to you, now.

25 In every case tried in this Courtroom before a jury,

1 the jury becomes the sole and exclusive judges of the facts
2 in the case. A trial judge, such as myself, cannot
3 intimate, cannot comment on, can't make any statement,
4 whatsoever, to a trial jury, such as yourself, about the
5 facts in a case.

6 Since you, the jury, are the sole judge of the facts of
7 this case, you are not to infer from what I have said during
8 the progress of this trial, in ruling upon the admissibility
9 of evidence, or otherwise, or anything that I say now during
10 this instruction to you on the law, that I have any opinion,
11 whatsoever, about the facts in this case. The law does not
12 allow me to have an opinion about the facts in this case.
13 This is a matter solely for you, ladies and gentlemen of the
14 jury, to determine.

15 As jurors, it becomes your duty to determine the
16 effect, the value, the weight, and ultimately, the truth of
17 the evidence that has been presented during the trial of
18 this case.

19 Ladies and gentlemen, there are two types of evidence
20 that are generally presented during a trial, and like many
21 things in the law, ladies and gentlemen of the jury, we have
22 names for those types of evidence. We call the two types of
23 evidence, direct evidence and circumstantial evidence. Let
24 me explain the difference.

25 Direct evidence is the testimony of a person who claims

1 to have actual knowledge of a fact, such as an eyewitness to
2 an event. It is evidence which immediately establishes the
3 main fact to be proved.

4 Circumstantial evidence, as contrasted with direct
5 evidence, is proof of a chain of facts and circumstances
6 indicating the existence of a fact. Circumstantial evidence
7 is evidence which establishes collateral facts from which
8 the main fact may or may not be inferred. Circumstantial
9 evidence, therefore, is based on inference, and not on
10 personal knowledge or personal observation.

11 The law makes absolutely no distinction, ladies and
12 gentlemen, between the weight, or the value, to be given to
13 either direct or circumstantial evidence, nor is a greater
14 degree of certainty required of circumstantial evidence than
15 of direct evidence. You, ladies and gentlemen of the jury,
16 should weigh and consider all of the evidence in this case,
17 both direct and circumstantial. After weighing all of the
18 evidence, if you are not convinced of the guilt of the
19 defendants beyond a reasonable doubt, you must find the
20 defendants not guilty.

21 On the other hand, after weighing all of the evidence
22 in this case, both direct and circumstantial, if you are
23 convinced of the guilt of the defendant beyond a reasonable
24 doubt, you must find the defendant guilty.

25 You have heard the term during this trial, stipulation.

1 As I instructed you during this trial, a stipulation can be
2 a part of evidence in the case, just as sworn testimony from
3 the witness stand or exhibits introduced into evidence
4 during the trial of the case.

5 A stipulation is an agreement. It is an understanding.
6 It is a concession made in a judicial proceeding by the
7 parties, or their attorneys on behalf of the parties.
8 Stipulations, as I told you, ladies and gentlemen, are
9 binding upon those who make them. A stipulation is an
10 agreement. It is an understanding. The Court, myself, and
11 the jury, must accept a stipulation as binding upon the
12 parties who made them.

13 If counsel for the parties have stipulated during this
14 trial of any fact or any fact that has been admitted by
15 counsel for the parties during this trial, you as a jury
16 will regard that fact as being conclusively proven as to the
17 party, or parties, making the stipulation.

18 Necessarily, ladies and gentlemen of the jury, you as a
19 jury must determine the credibility, or believability, of
20 the witnesses who have testified during this case.
21 Credibility simply means believability. It becomes your
22 duty as jurors to analyze. It becomes your duty as jurors
23 to evaluate the evidence, and determine which evidence
24 convinces you of its truth.

25 In determining the believability of the witnesses who

1 have testified in this case, you may believe one witness
2 over several witnesses, or several witnesses over one
3 witness. You may believe a part of the testimony of a
4 witness, and reject the remaining part of the testimony of
5 that same witness. You may believe the testimony of a
6 witness in its entirety or you may reject the witness's
7 testimony in its entirety.

8 You may consider whether any witness has exhibited to
9 you any interest, any bias, any prejudice, or other motives
10 in this case. You may also consider, as I told you at the
11 outset, the appearance, or the manner, of the witness while
12 on the witness stand. We call that the demeanor of the
13 witness while the witness is on the witness stand in judging
14 the credibility, or the believability, of the witnesses who
15 have testified during the trial of this case. Anything that
16 is in evidence, ladies and gentlemen of the jury, you, as a
17 jury, have the right to consider in evaluating the
18 credibility, or the believability, of the witnesses who have
19 testified during the trial of this case.

20 Now, I told you, ladies and gentlemen, during the trial
21 of this case, we have the Rules of Evidence do not normally
22 permit a witness to take an oath, sit down on that witness
23 stand, look at you, and say "My opinion is so-and-so." We
24 call that the Opinion Rule. And, normally, a witness cannot
25 give their opinion. They can't give their conclusion. An

1 exception to this Opinion Rule exists for those witnesses
2 whom we call expert witnesses. A witness who by education,
3 training, or experience, claims to have become an expert in
4 some art, science, or profession may give an opinion as to
5 the subject that the witness claims to be an expert in and
6 they also give the reasons for his or her opinion, if
7 qualified by the Court.

8 You should consider any expert opinion given by a
9 witness, and like any other evidence in this case, you, as a
10 jury, give it the weight you think it deserves. If you
11 think that an expert witness's opinion is not based on
12 sufficient education and experience, or if you decide that
13 the reasons given in support of the opinion were not sound,
14 or that the opinion is outweighed by other evidence, you may
15 disregard the opinion entirely. An expert witness's
16 testimony is to be given no greater weight than that of
17 other witnesses simply because the witness is an expert.

18 I charge you, ladies and gentlemen, that the fact that
19 the defendants in this case did not testify in this case on
20 the witness stand is not a factor to be considered by any of
21 you in your deliberations and in your consideration of the
22 question of the guilt or innocence of the defendants. It
23 must not be considered by you in your jury room in any
24 manner whatsoever. A defendant has the Constitutional Right
25 to remain silent, and the assertion of this right to remain

1 silent must not be considered by you in your deliberations.
2 I repeat, under the oath which each of you took, you are to
3 draw no conclusion whatsoever of the fact that the
4 defendants in this case did not testify. The fact that the
5 defendants did not testify should not be discussed in your
6 jury room at all. The burden on proof, as I have stated to
7 you, is on the State of South Carolina. The defendant, or
8 defendants, are not required to prove themselves innocent.
9 The burden of proof remains on the State to prove guilty
10 beyond a reasonable doubt.

11 I charge you, ladies and gentlemen, that there may have
12 been during the course of this trial, and if so, this is the
13 reason I'm charging you this, evidence presented that
14 witnesses have made prior statements, which are not
15 consistent with the witness's present testimony in Court.
16 You may use this evidence if it so exists of inconsistency
17 to decide whether to believe the witness. You may also use
18 evidence of the earlier contradictory statements to
19 determine the truth of those statements.

20 It is up to you as a jury to decide whether to believe
21 the earlier statement, or statements, or the testimony that
22 may have been given at trial. If a witness has shown to
23 you, from evidence, to have knowingly testified untruthfully
24 concerning any matter, you may consider this in determining
25 whether to trust the witness's testimony as to other

1 matters. You may reject all testimony of that witness or
2 give all or part of the testimony the weight you think it
3 deserves.

4 I charge you, ladies and gentlemen, that an issue in
5 this case may be the identification of the defendant as the
6 person who committed any alleged crime charged. The State
7 has the burden of proving identity beyond a reasonable
8 doubt. You, as a jury, must be satisfied beyond a
9 reasonable doubt of the accuracy of the identification of
10 the defendant before you may convict the defendant.
11 Identification testimony is an expression of belief, or it
12 is an impression of a witness.

13 You as the jury must weigh the evidence and determine
14 the accuracy of any identification of any defendant. You
15 must consider as the jury the believability of each
16 identification witness in the same way as any other witness.
17 You may consider whether the witness had an adequate
18 opportunity to observe the offender at the time of the
19 offense. This will be affected by things such as how long
20 or short the time was available, how far or close the
21 witness was, the lighting conditions and whether the witness
22 had the chance to see or know the person in the past.

23 Once again, I instruct you, ladies and gentlemen of the
24 jury, that the burden of proof is on the State and it
25 extends to every element of the crime charged and this

1 specifically includes the burden of proving beyond a
2 reasonable doubt the identity of the defendant, or
3 defendants, as the person who committed the crime or crimes.
4 If, after examining the testimony, you have a reasonable
5 doubt as to the accuracy of the identification, you may find
6 the defendant, or defendants, not guilty.

7 I charge you, ladies and gentlemen of the jury, that a
8 statement, or statements, made or alleged to have been made
9 by the defendant, has been admitted into evidence during the
10 trial of this case. While the Court has determined as a
11 matter of law that the statement was admissible, I instruct
12 you that the ultimate decision of whether or not the
13 defendant made any statement, or statements, is up to you.

14 If the defendant, in your opinion, did make the
15 statement or statements, you must determine whether it was
16 made by the defendant voluntarily and of his own free will.
17 This means that the statement was not caused by pressure,
18 force, fear, threats, coercion, or intimidation, or by hope,
19 or by promise of leniency, or by reward of any kind. In
20 determining whether the statement or statements were
21 voluntary, you should consider, based on evidence introduced
22 during the trial of the case, the characteristics of the
23 defendant, the details of the questions, some of the factors
24 if in evidence in this case you may consider are the age of
25 the defendant, the defendant's education, or lack thereof,

1 the defendant's mental ability or capacity, the defendant's
2 intelligence, the defendant's background and environment,
3 the place and length of detention, the nature of the
4 questioning, and the advice or lack thereof to the defendant
5 of his constitutional rights, including but not limited to
6 the right to remain silent, that any statement could be used
7 against him in a court of law, the right to have a lawyer
8 present, that if he could not afford a lawyer, a lawyer
9 would be appointed to represent him without any costs to
10 him, that he could stop making a statement at any time.

11 You, as the jury, must carefully consider all of the
12 surrounding circumstances from evidence introduced during
13 the trial of the case before you give any weight to any
14 alleged statement. You decide if any statement was made.
15 you decide to give any weight to any alleged statement,
16 based on evidence introduced during the trial of the case.

17 The State has the burden of proving beyond a reasonable
18 doubt that any alleged statement was voluntary. If you
19 determine that it was, you may give the statement any
20 further consideration that you deem proper. You must decide
21 what weight, if any, should be given to any alleged
22 statement, or statements. If you determine the alleged
23 statement, or statements, were not the free and voluntary
24 statement of the defendant, you should not consider the
25 statement at all.

1 I charge you, ladies and gentlemen, that if a crime is
2 committed by two or more people who are acting together in
3 committing a crime, the act of one is the act of all. A
4 person who joins with another person to commit an unlawful
5 act is criminally responsible for everything done by the
6 other person, which happens as a probable or natural
7 consequence of the act done in carrying out the common plan
8 and purpose.

9 For example, two people can be guilty of killing
10 another person when only one of the two had a gun. There
11 was only one bullet, and only one of the two fired the shot
12 which caused the death. If two or more people are together,
13 acting together, assisting each other in committing the
14 offense, the act of one is the act of all; or as it is
15 sometimes said, the hand of one is the hand of all.

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

1 The State must prove beyond a reasonable doubt by
2 competent evidence the theory of the hand of one is the hand
3 of all. A principle in a crime, ladies and gentlemen of the
4 jury, is one who either actually commits the crime, or who
5 is present aiding, abetting, or assisting in committing the
6 crime.

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

13 Present at the commission of a crime means to be
14 sufficiently near to aid, and abet, and assist in the
15 commission of a crime. However, mere presence at the scene
16 of a crime is not sufficient to convict one as a principle
17 on the theory of aiding and abetting.

18 Intent is also a necessary element. There must have
19 been a common design or intent to commit the crime, and the
20 crime must have been committed pursuant thereto with the
21 person aiding and abetting by some overt act.

22 Intent means intending the result which actually
23 occurs, not accidentally or involuntarily. Intent may be
24 shown by acts and conduct of the defendant and other
25 circumstances by which you, as a jury, may naturally and

1 reasonably infer intent based on evidence introduced during
2 the trial of the case. The State must prove these elements
3 beyond a reasonable doubt.

4 Mere presence alone at the scene of a crime is not
5 sufficient to prove someone guilty of a crime. The
6 defendant's presence where a crime is being committed or
7 mere association with a person who commits a crime does not
8 make a defendant an accomplice or an aider or abettor of the
9 person committing the crime.

10 The burden is on the State to prove every element of
11 the crime charged. If you find after reviewing all of the
12 evidence that the State has proved that the defendant was
13 only present at the scene and they have not proved beyond a
14 reasonable doubt any other participation in the crime, then
15 you must find the defendant not guilty. The law is that
16 proof of mere presence at the scene is not sufficient to
17 find someone guilty.

18 Now, in order to establish criminal liability, or
19 criminal responsibility, criminal intent is required. And
20 this is in general, ladies and gentlemen of the jury, before
21 I talk about this case. The mental state, for example, that
22 the State might be required to prove for any particular
23 crime. It might be -- I'll give you examples of criminal
24 intent. It might be purpose, intent, knowledge,
25 recklessness, in some cases even criminal negligence. Those

1 are examples of criminal intent. Criminal intent must be
2 proven by the State beyond a reasonable doubt. Criminal
3 intent is always a matter that must be determined by the
4 jury from the circumstances surrounding the situation, based
5 on evidence introduced during the trial of the case.

6 Now, there is no way, ladies and gentlemen of the jury,
7 to prove intent to a mathematical certainty. There is no
8 way that medical science can dissect a person's brain and
9 tell what that person had in mind. So the law says, ladies
10 and gentlemen, that criminal intent may be inferred from the
11 circumstances shown to have existed from evidence introduced
12 during the trial of the case. This, ladies and gentlemen of
13 the jury, is how you as a jury make any determination of
14 whether or not any element in any crime requiring intent was
15 present.

16 It is not necessary to establish intent by direct
17 evidence, but intent may be established by inference, in the
18 same way as any other fact, by taking into consideration the
19 acts of the parties, and all the facts and circumstances of
20 the case, based on evidence introduced during the trial of a
21 case.

22 Criminal intent is a mental state. It's a conscious
23 wrongdoing. It is up to you, the jury, to determine what
24 the defendant, or defendants, intended to do based on the
25 circumstances shown to have existed from evidence introduced

1 during the trial of the case.

2 Criminal intent can arise from action or it can arise
3 from a failure to act. It may arise from recklessness,
4 negligence, or indifference to duty, or consequences
5 considered by the law to be the equivalent of criminal
6 intent.

7 I charge you, ladies and gentlemen of the jury, that
8 the indictments in this case allege different offenses
9 against the defendant, David Jakes. The defendant, David
10 Jakes, has been charged in three indictments with attempted
11 murder; he's charged in three indictments with attempted
12 armed robbery; he's charged in one indictment with
13 possession of a weapon during the commission of a violent
14 crime.

15 The indictments in this case also allege different
16 offenses against the defendant, Antwan McMillan. The
17 defendant, Antwan McMillan, is charged in three indictments
18 with attempted murder, three indictments of attempted armed
19 robbery, and one indictment with possession of a weapon
20 during the commission of a violent crime.

21 Each of these charges is a separate and distinct
22 offense. You must decide each charge separately on the
23 evidence and the law that applies to it, uninfluenced by
24 your decision on any other charge. If you find the
25 defendant guilty of one charge, then you may also find the

1 defendant either guilty or not guilty of other charges
2 consistent with my instructions to you on the verdict form.
3 There are some limitations on that, but you will be asked by
4 this Court, and I have prepared it for you, to write a
5 separate verdict of guilty or not guilty on each charge,
6 depending on what you find on the greater charge, and then
7 in which case if you found the person guilty of the greater
8 charge, you would not have to consider the lesser charge.
9 Or if you did not find the person guilty of committing a
10 violent crime, you cannot find a person guilty of possession
11 of a weapon during the commission of a violent crime.

12 You will write a verdict consistent with those
13 instructions on your verdict form of guilty or not guilty
14 for each charge with those exceptions, following those
15 instructions that I've given you in writing on your verdict
16 form.

17 Now, let's talk about the offenses in this case. An
18 attempt, Ladies and gentlemen, we have attempted murder and
19 attempted armed robbery. An attempt is an effort to
20 accomplish a crime which does not succeed. An attempt
21 includes a specific intent to doing a particular criminal
22 act, along with an act falling short of the act intended.
23 The State must show more than mere preparation, an intent.
24 There must be some overt act committed in the effort to
25 commit the crime. Intent means "intending the result; not

1 accidentally, not involuntarily." Intent may be shown as I
2 told you by the acts and conduct of the defendant, or
3 defendants, from the evidence and other circumstances from
4 which you as a jury may naturally and reasonably infer
5 intent from evidence introduced during the trial of the
6 case.

7 Attempted murder, a person who with the intent to kill
8 attempts to kill another person with malice aforethought,
9 either expressed or implied, commits the offense of
10 attempted murder. Malice is hatred, ill-will, or hostility
11 towards another person. It is the intentional doing of a
12 wrongful act without just cause or excuse, and with an
13 intent to inflict an injury, or under circumstances that the
14 law will infer an evil intent.

15 Malice aforethought does not require that malice exist
16 for any particular time before the act is committed, but
17 malice must exist in the mind of the defendant just before
18 and at the time of the act being committed. Therefore,
19 there must be a combination of the previous evil intent and
20 the act.

21 Malice aforethought may be expressed or implied, or
22 inferred. These terms express and inferred do not mean
23 different kinds of malice, but merely the manner in which
24 malice may be shown to exist. That is, either by direct
25 evidence or by inference from the facts and circumstances

1 which are proved, based on evidence introduced during the
2 trial of the case.

3 Express malice is shown when a person speaks words
4 which express hatred or ill-will for another, or when a
5 person prepared beforehand to do the act, which was later
6 accomplished. For example, lying in wait for another
7 person, or any other act of preparation going to show that
8 the deed was within the defendant's mind; that would
9 constitute express malice.

10 Malice may also be inferred from conduct showing a
11 total disregard for human life, included in the greater
12 offense of attempted murder is the lesser included offense
13 of assault and battery in the first degree. Assault and
14 battery -- so included in the offense of attempted murder is
15 the lesser offense of assault and battery in the first
16 degree.

17 Assault and battery in the first degree occurs if the
18 defendant unlawfully offers or attempts to injure another
19 person with the present ability to do so and the act is
20 either accomplished by means likely to produce death or
21 great bodily harm or occurred during the commission of a
22 robbery, burglary, or kidnapping, or theft. That is the
23 definition of assault and battery in the first degree.

24 I charge you, ladies and gentlemen, that the defendants
25 are each charged with the offense of attempted armed

1 robbery. In order to prove this offense, the State must
2 first prove beyond a reasonable doubt that the defendant, or
3 defendants, attempted to take personal property from the
4 person or presence of another person. Property is in the
5 presence of a person if it is within the person's reach or
6 person's inspection, of the person's observation or control
7 so that the person could, if not overcome with violence or
8 prevented by fear, keep possession of their property.

9 The State must also prove for attempted armed robbery
10 beyond a reasonable doubt that the defendant carried the
11 property away intending to permanently deprive the owner of
12 the property and to keep the property for the defendant's
13 own use. The attempt or even the slightest removal of the
14 property, or the complete possession of the property, even
15 for an instant, by the defendant, is sufficient to show a
16 taking a carrying away of the property.

17 The attempted taking and carrying away of the property
18 must have been done with violence or by putting the owner of
19 the property in fear of violence.

20 Finally, the State must show for attempted armed
21 robbery and prove beyond a reasonable doubt that the
22 defendant was armed with a deadly weapon during the
23 attempted armed robbery or alleged either by action or words
24 that he or she was armed using a representation of a deadly
25 weapon or any object which a person present during the

1 commission of a robbery, or attempted armed robbery,
2 reasonably would believe to be a deadly weapon. The display
3 of a deadly weapon is not required to prove attempted armed
4 robbery. Words, coupled with a representation that the
5 defendant possesses a deadly weapon, are enough if it leads
6 a victim to reasonably believe the defendant is armed.

7 A deadly weapon is any article, instrument, or
8 substance, which is likely to cause death or great bodily
9 harm.

10 In this case, the defendants are each charged with the
11 offense of possession of a weapon during the commission of a
12 violent crime. For this offense, the State must prove beyond
13 a reasonable doubt that the defendant, or defendants, were
14 in possession of a firearm or visibly displayed what
15 appeared to be a firearm during the commission of a violent
16 crime.

17 A firearm means any machine gun, automatic rifle,
18 revolver, pistol, or any weapon which will, is designed to,
19 or may readily be converted to expel a projectile. In order
20 to find the defendant or defendants in this case, guilty of
21 possession of a weapon during the commission of a violent
22 crime, you must first find the defendant guilty of either
23 committing a violent crime or attempting to commit a violent
24 crime.

25 I charge you, ladies and gentlemen of the jury, that

1 under the laws of the State of South Carolina, the offenses
2 of attempted murder and attempted armed robbery are violent
3 crimes under the laws of the State of South Carolina.

4 Now, Madame Foreperson, ladies and gentlemen of the
5 jury, we've spent quite a bit of time working on your
6 verdict form in this case because of the number of
7 indictments. Don't be scared by it. It's five pages long,
8 and believe me, I've tried my best, along with the excellent
9 help of my law clerk, to try to make it as simple for you as
10 possible. Now, I'm going to tell you again at the end, it
11 has a line for your signature, the date. There are 20
12 questions. However, not all of them necessarily have to be
13 answered, and I've tried to give you instructions as we went
14 along.

15 First thing I want you to know, pay no attention
16 whatsoever to the order in which we've wrote the forms of
17 verdict. We obviously had to write one before the other.
18 So the order has no significance whatsoever. And I've put
19 the caption of the case on your verdict form. It's got
20 State of South Carolina, County of Colleton, State of South
21 Carolina v. David Jakes, Defendant. I've got Court of
22 General Sessions and I've got all of his indictment numbers.
23 Below that, I've got State of South Carolina, County of
24 Colleton, State of South Carolina v. Antwan McMillan,
25 defendant. I've got Court of General Sessions and I've got

1 all of his indictment numbers and I've got the word
2 "verdict".

3 Now, I don't want to confuse anybody. We decided to do
4 this by offenses, so I'm going to switch back and forth and
5 explain to you by the offense charged and the defendant and
6 the victim, which I've written on your verdict form so
7 you'll understand the order in which we've presented the
8 questions.

9 The first question, number One, we, the jury, by
10 unanimous consent, find the defendant, David Jakes, in
11 indictment number 2010-GS-15-704, and the first form of
12 verdict is guilty of attempted murder as to Jesse King. If
13 that be your form of verdict, Madame Foreperson, you would
14 put a check on the line beside that form of verdict.

15 Under Question One, we, the jury, by unanimous consent,
16 find the defendant, David Jakes, in indictment number 2010-
17 GS-15-704, the second form of verdict is not guilty of
18 attempted murder as to Jesse King. If that be your form of
19 verdict, you would check on the line beside that form of
20 verdict for the entire jury.

21 I wrote you a note in parentheses after question one,
22 because I want to make sure you follow the Court's
23 instructions. If you find David Jakes, and we're just
24 talking about Mr. Jakes, now, and we're talking about only
25 attempted murder as to Jesse King. If you find David Jakes

1 guilty of attempted murder as to Jesse King, you do not have
2 to answer question seven. Question seven is the lesser
3 included offense as to Jesse King on David Jakes, as to the
4 offense of assault and battery in the first degree.

5 So if you find the defendant guilty on question one,
6 attempted murder as to David Jakes, with the victim, Jesse
7 King, you would not have to answer question seven, and I've
8 written that on your verdict form.

9 Question Two, We, the jury, by unanimous consent, find
10 the defendant, David Jakes, in indictment 2010-GS-15-705,
11 first form of verdict under question two is guilty of
12 attempted murder as to Amanda Metzfield. If that be your
13 form of verdict, Madame Foreperson, you would check on the
14 line beside that form of verdict.

15 The second form of verdict under question two is not
16 guilty of attempted murder as to Amanda Metzfield. If that
17 be your form of verdict, you would check on the line beside
18 that form of verdict. I wrote you a note in parentheses
19 under question two. If you find the defendant, David Jakes,
20 guilty of attempted murder as to Amanda Metzfield, you do
21 not have to answer question eight. Question eight is the
22 lesser included offense as to David Jakes, as to the offense
23 of assault and battery in the first degree. You would only
24 go to the lesser included offense if you found the defendant
25 not guilty of attempted murder, and it's considered a lesser

1 included offense.

2 Question Number Three, we, the jury, by unanimous
3 consent, find the defendant, David Jakes, in indictment
4 2010-GS-15-706, the first form of verdict under Question
5 three is guilty of attempted murder as to Jeanine Metzfield.
6 If that be your form of verdict, Madame Foreperson, you
7 would check on the line beside that form of verdict.

8 Second form of verdict under question three, not guilty
9 of attempted murder as to Jeanine Metzfield. If that be
10 your form of verdict, you would check on the line beside
11 that form of verdict. You cannot find both forms of
12 verdict. You must find one or the other.

13 I wrote you a note in parentheses under question three.
14 If you find the defendant, David Jakes, guilty of attempted
15 murder as to Jeanine Metzfield, you do not have to answer
16 question nine, which is the lesser included offense of
17 assault and battery in the first degree, as to David Jakes
18 and the victim, Jeanine Metzfield.

19 Question Four, we now are switching in Question Four to
20 the other defendant, Mr. Antwan McMillan, but we're staying
21 on the same offense, attempted murder, which is the order we
22 followed in the verdict form. Question four says, We, the
23 jury, by unanimous consent, find the defendant, Antwan
24 McMillan, in indictment 2010-GS-15-501, verdict form under
25 question four, guilty of attempted murder as to Jesse King.

1 If that be your form of verdict, you would check on the line
2 as to that form of verdict.

3 Second form of verdict as to the defendant, Antwan
4 McMillan, and the victim, Jesse King, for attempted murder
5 is not guilty of attempted murder, as to Jesse King, under
6 question four. If that be your form of verdict, Madame
7 Foreperson, you would check on the line beside that form of
8 verdict. I gave you instructions there.

9 If you find the defendant, Antwan McMillan, guilty of
10 attempted murder as to Jesse King, you do not answer
11 question number 10, which is the lesser included offense as
12 to Antwan McMillan of assault and battery in the first
13 degree, as to question 10.

14 If you find Mr. McMillan not guilty of attempted murder
15 in question number four, you must answer question number 10,
16 and that is guilty or not guilty of the lesser included
17 offense of assault and battery in the first degree.

18 We now go to Question Number Five. We're on attempted
19 murder and it deals with the defendant, Antwan McMillan.
20 We, the jury, by unanimous consent, find the defendant,
21 Antwan D. McMillan, in indictment 2010-GS-15-502, either
22 guilty of attempted murder as to Jeanine Metzfield or not
23 guilty of attempted murder as to Jeanine Metzfield. You
24 would check on the line beside which form of verdict the
25 jury chose. You must find one or the other. You cannot

1 find both.

2 I gave you a note. If you find the defendant, Antwan
3 McMillan guilty of attempted murder as to Jeanine Metzfield,
4 you would not answer question 12, which is the lesser
5 included offense as to the defendant, Antwan McMillan, as to
6 the offense of attempted murder, which is assault and
7 battery in the first degree.

8 Question Six, and the last question concerning the
9 offense of attempted murder. We, the jury, by unanimous
10 consent, find the defendant, Antwan D. McMillan, in
11 indictment 2010-GS-15-503, either guilty of attempted murder
12 as to Amanda Metzfield or not guilty of attempted murder as
13 to Amanda Metzfield. You would check on the line beside
14 which form of verdict the jury chose. You must find one or
15 the other. You cannot find both.

16 I gave you instructions on question six. If you find
17 the defendant, Antwan McMillan, guilty of attempted murder
18 as to Amanda Metzfield, you would not answer Question 11,
19 which is the lesser included offense as to the defendant,
20 Antwan McMillan, as to the offense of attempted murder,
21 which is assault and battery in the first degree. If you
22 find the defendant not guilty of attempted murder as to
23 Amanda Metzfield, you must answer question 11, which is the
24 lesser included offense of assault and battery in the first
25 degree.

1 That brings us now to the next charge in this case.

2 And that would be the charge of number seven, which I've
3 already told you about, which is a lesser included offense.
4 Question Seven, would be answered, obviously, it involved
5 the defendant, David Jakes, and it involves the first victim
6 that I told you for attempted murder, Jesse King. And it is
7 guilty or not guilty of the lesser included offense of
8 assault and battery in the first degree. You would check
9 one or the other, if appropriate, based on your finding on
10 the greater offense.

11 That applies to Number Eight as to David Jakes, guilty
12 or not guilty of assault and battery in the first degree, as
13 to Amanda Metzfield; and that applies also to David Jakes in
14 Number Nine, guilty or not guilty of assault and battery in
15 the first degree as to Jeanine Metzfield. Depending on what
16 you did as to David Jakes on attempted murder and the first
17 three questions, following my instructions on the verdict
18 form.

19 That brings us to questions 10, 11 and 12. Ten,
20 eleven, and twelve deal with the defendant, Antwan McMillan.
21 They also deal with the lesser included offense of assault
22 and battery in the first degree. Ten would be guilty or not
23 guilty as to Antwan McMillan of assault and battery in the
24 first degree as to Jesse King. Eleven would be guilty or
25 not guilty as to the defendant, Antwan McMillan, as to the

1 victim, Amanda Metzfield, of assault and battery of the
2 first degree. Twelve would be as to the defendant, Antwan
3 McMillan, guilty or not guilty of the lesser included
4 offense of assault and battery in the first degree as to the
5 victim, Jeanine Metzfield.

6 You may or may not be answering those questions,
7 depending on how you answer the question earlier on the
8 verdict form.

9 That brings us now to Question 13, and we are now
10 dealing with the defendant, David Jakes, and the offense of
11 attempted armed robbery. Question 13 on your verdict form
12 says, we, the jury, by unanimous consent, find the
13 defendant, David Jakes, in indictment 2010-GS-15-703, the
14 first form of verdict is guilty of attempted armed robbery
15 as to Jeanine Metzfield. If that be your form of verdict,
16 you would check for the jury on the line beside that form of
17 verdict.

18 The second form of verdict under Question 13 is we, the
19 jury, by unanimous consent, find the defendant, David Jakes,
20 in indictment 2010-GS-15-703, not guilty of attempted armed
21 robbery as to Jeanine Metzfield. You would check one or the
22 other. You can't find both. You have to find one or the
23 other. You would check for the jury, Madame Foreperson,
24 based on the vote of the entire jury.

25 Question 14, we, the jury, by unanimous consent, find

1 the defendant, David Jakes, in indictment 2010-GS-15-707,
2 either guilty or not guilty of attempted armed robbery as to
3 Amanda Metzfield. You would check one or the other.

4 Question 15, we, the jury, by unanimous consent, find
5 the defendant, David Jakes, in indictment 2010-GS-15-708,
6 either guilty or not guilty of attempted armed robbery as to
7 Jesse King. You would check one or the other.

8 Now, those three questions, 13, 14, and 15, deal with
9 the defendant, David Jakes, and I put his name on the
10 verdict form for you so you'd know. Each verdict form tells
11 you which victim. That brings us now to Question 16, 17,
12 and 18. Those three questions also deal with attempted
13 armed robbery, but we are now dealing with the defendant,
14 Antwan McMillan.

15 Question 16, we, the jury, by unanimous consent, find
16 the defendant, Antwan McMillan, in indictment 2010-GS-15-
17 505, either guilty of attempted armed robbery as to Jeanine
18 Metzfield or not guilty of attempted armed robbery as to
19 Jeanine Metzfield. You would check one or the other.

20 Question 17 and 18, deal also with Antwan McMillan.
21 They also deal with attempted armed robbery. Question 17
22 deals with the victim, Amanda Metzfield. Question 18 deals
23 with the victim, Jesse King.

24 In Question 17 you will be asked to find either guilty
25 or not guilty of attempted armed robbery as to Amanda

1 Metzfield involving the defendant, Antwan McMillan.

2 In Question 18, you will be asked to find the verdict
3 of guilty or not guilty of attempted armed robbery as to
4 Jesse King involving the defendant, Antwan McMillan.

5 That now brings us to the last two questions on your
6 verdict form. And I apologize for all the words, but we
7 wanted to make sure we were clear.

8 Question 19 deals with the possession of a weapon
9 during the commission of a violent crime. Question 19 says,
10 we, the jury, by unanimous consent, find the defendant,
11 David Jakes, in indictment 2010-GS-15-709, and the verdict
12 forms are either guilty or not guilty of possession of a
13 weapon during the commission or attempt to commit a violent
14 crime.

15 So there are two verdict forms as always, on 19; but I
16 wrote you a long note to remind you of what I charged you in
17 my charge earlier today. You may only find the defendant
18 guilty of this crime, possession of a weapon during the
19 commission or attempt to commit a violent crime, if you have
20 previously found the defendant guilty of either the violent
21 crime of attempted murder or the violent crime of attempted
22 armed robbery, as to any of the alleged victims.

23 If you found the defendant not guilty of the violent
24 crime of attempted murder and attempted armed robbery, as to
25 all of the alleged victims, then you must find the defendant

1 not guilty of possession of a weapon during the commission
2 of a violent crime.

3 And that brings us to the last question on your verdict
4 form. Question 20, we, the jury, by unanimous consent, find
5 the defendant, Antwan McMillan, in indictment 2010-GS-15-50,
6 and the verdict form here is either guilty or not guilty of
7 possession of a weapon during the commission or attempt to
8 commit a violent crime. I wrote you the same caveat. You
9 may only find the defendant, Antwan McMillan, just like the
10 defendant, David Jakes, guilty of this crime if you have
11 previously found the defendant guilty of the violent crime
12 of attempted murder or attempted armed robbery as to any of
13 the alleged victims. If you found the defendant, Antwan
14 McMillan, not guilty of the violent crimes of attempted
15 murder and attempted armed robbery, as to all of the alleged
16 victims, then you must find the defendant not guilty of
17 possession of a weapon during the commission of a violent
18 crime, because in order to be convicted of this offense, you
19 must have been convicted of a violent crime, and I've
20 charged you that attempted murder and attempted armed
21 robberies are violent crimes under the laws of the State of
22 South Carolina.

23 When you have completed the verdict form and filled out
24 appropriate sections by checking for the jury, you will then
25 sign your name on the line where it says Foreperson and fill

1 in today's date. When you have finished your deliberations,
2 you will knock on your jury room door and tell my bailiff
3 that you've reached a verdict. We will bring you back into
4 the courtroom to publish your verdict.

5 Now, ladies and gentlemen, your verdict must be
6 unanimous. That is, it must be the verdict of each and
7 every one of you. All twelve of you must agree on a
8 verdict. I do not, however, want you to begin your
9 deliberations quite yet when I send you to your jury room.
10 It may be necessary for me to bring you back in the
11 courtroom for some brief additional instruction.

12 Ladies and gentlemen, I've now charged you on the law
13 in order to help guide you to a fair and just result in this
14 case. You're the sole judges of the facts in this case,
15 based on evidence introduced during the trial of this case
16 and based on your determination of the facts in this case,
17 and the law as I have explained it to you.

18 Now, ladies and gentlemen, I remind you that each of
19 you was selected as fair and impartial jurors. You were
20 sworn to apply and you were sworn to impartially try and
21 determine the facts in this case, and when you comply with
22 that oath to be fair and impartial, no one can criticize
23 your verdict.

24 You are to decide the case, ladies and gentlemen, based
25 solely on the testimony that you've heard from the witness

1 stand and any exhibits, which you will have with you in your
2 jury room, during your deliberations. You must decide the
3 issues in this proceeding without any bias, or prejudice,
4 towards either party. You cannot allow yourself as a juror
5 to be governed by prejudice for or against any person by
6 public opinion, by emotion, by sentiment, or any other
7 arbitrary factor not in evidence in the trial of this case.

8 Both the defendant and the State of South Carolina have
9 the absolute right to expect that each of you on the jury
10 will carefully and each of you will impartially consider all
11 of the evidence in this case, and that each of you will
12 follow the law as I have instructed it to you to be in
13 reaching your verdict in this case.

14 Now, Madame Foreperson, ladies and gentlemen, I'm going
15 to ask you to retire to your jury room. Do not begin your
16 deliberations. It may necessary for me to bring you back
17 into the courtroom for some brief additional instructions.
18 When it is time for you to begin your deliberations, I will
19 have the bailiff bring you your verdict form, along with all
20 the exhibits which have been introduced into evidence that
21 do not require the equipment in the courtroom to play the
22 exhibit, and have the bailiff inform you that you may then
23 commence your deliberations. But do not begin your
24 deliberations until I have instructed you to do so.

25 Now, there is an exhibit in this case, it is a -- I

1 always mix this up. I don't know whether you call it a CD
2 or a DVD, but I think it's a DVD. It will require you to
3 come back to the courtroom because of the equipment if you
4 want to play it, which you're perfectly permitted to do so,
5 by agreement of the parties.

6 However, the other exhibits that don't require a player
7 will be with you in your jury room. Should you need to use
8 the equipment in the courtroom, knock on your door, inform
9 the bailiff, and I'll be happy to accommodate you.

10 Will my alternate jurors remain in the courtroom with
11 me. Ladies and gentlemen of the jury, would you please
12 retire to your jury room and await instructions from me
13 through the bailiff.

14 (12:45 P.M., 09-01-11, WHEREUPON, THE JURY EXITS THE
15 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
16 RECORD.)

17 THE COURT: My alternate jurors, first of all, on
18 behalf of Colleton County, I want to thank you for your
19 service. No one became ill or for some reason could not
20 continue their service as a juror in this case, so we did
21 not have to use your services. I've watched each of you
22 during the trial and all a judge can do is ask that you
23 listen and listen carefully. Each of you did that. This
24 concludes your service in the trial of this case. This also
25 concludes your service for the week. You're now exempt from

1 jury duty by virtue of your service this week for three
2 years, if you choose to claim your exemption if you are to
3 be chosen.

4 If any of you need a work excuse for serving on the
5 jury, Vicky, they need to go where?

6 MADAME CLERK: General Sessions.

7 THE COURT: If you'll go downstairs to the door marked
8 General Sessions, we'll be happy to provide a work excuse
9 for you to show your employer if you need it for working
10 that you've been here with us this week. On behalf of
11 Colleton County and this Court, I want to thank you for your
12 service on the jury this week. I hope it's been an
13 educational experience for you. I ask this, ladies and
14 gentlemen, if you want to discuss how you felt about the
15 case, you can, but you don't have to discuss anything with
16 anybody if you don't want to..

17 I'm going to return you now to your homes, your jobs,
18 your families, with my thanks and the thanks of Colleton
19 County. Does everyone have all of their belongings out of
20 the jury room? Nobody left anything in there? Now, they'll
21 provide you -- my bailiffs will see to this, sir, if your
22 lunch as arrived, they will give you your lunch to go, but
23 you cannot go back in the jury room, now that we're using
24 the main jury and didn't have to use an alternate. Thank
25 you for your service you may leave the courtroom at this

1 time.

2 (REMAINING ALTERNATE JURORS EXIT COURTROOM.)

3 THE COURT: Any exceptions or additions to the charge
4 from the State of South Carolina?

5 ASST. SOL. HASELDEN: No, sir.

6 THE COURT: Any exceptions or additions to the charge
7 from the defendant McMillan?

8 MR. MATHEWS: No, Your Honor.

9 THE COURT: From the defendant Jakes?

10 MR. BEACH: None, Your Honor.

11 THE COURT: Very well. I'd ask that Counsel come
12 forward and certify that you're satisfied the court reporter
13 has all the exhibits and that you have no objection to the
14 bailiff taking the exhibits and the verdict form into the
15 jury, and the bailiff telling the jury they may now commence
16 their deliberation.

17 (BRIEF PAUSE WHILE EXHIBITS ARE PUT IN ORDER AND
18 ACCOUNTED FOR.)

19 THE COURT: Is the State so satisfied that the court
20 reporter has all of the exhibits?

21 ASST. SOL. HASELDEN: Yes, sir.

22 THE COURT: Does the State have any objection to my
23 bailiffs taking the exhibits and the verdict form into the
24 jury and the bailiff telling the jury that they may now
25 commence their deliberation?

1 THE COURT: All right. Is the defendant McMillan so
2 satisfied that the court reporter has all the exhibits?

3 MR. MATHEWS: Yes, sir.

4 THE COURT: Does the defendant McMillan have any
5 objections to the security people and the bailiffs taking
6 the exhibits to the jury room, along with the verdict form,
7 and telling the jury they may now commence their
8 deliberations?

9 MR. MATHEWS: No, sir.

10 THE COURT: All right. Is the defendant Jakes
11 satisfied that the court reporter has all the exhibits?

12 MR. BEACH: Yes, Your Honor.

13 THE COURT: Does the defendant Jakes have any
14 objections to the security people and the bailiffs taking
15 the exhibits and the verdict form into the jury, and the
16 bailiff informs the jury that they may now begin their
17 deliberations?

18 MR. BEACH: No, sir.

19 THE COURT: Everyone agrees that Exhibit Numbers ---

20 ASST. SOL. HASELDEN: State's Ninety-two and
21 Defendant's Fourteen.

22 THE COURT: State's Ninety-two and defendant's fourteen
23 will remain in the courtroom so they have the capability to
24 play it. Is that agreeable with the State?

25 ASST. SOL. HASELDEN: Yes, sir.

1 THE COURT: Mr. Mathews?

2 MR. MATHEWS: Yes, Your Honor.

3 THE COURT: Mr. Beach?

4 MR. BEACH: Yes, sir.

5 THE COURT: Everyone also agrees that I can send a box
6 of rubber gloves back to the jury so that if they want to
7 handle any of the evidence they can wear gloves; any
8 objection from the State?

9 ASST. SOL. HASELDEN: No objection.

10 THE COURT: Mr. Mathews?

11 MR. MATHEWS: No, sir.

12 THE COURT: Mr. Beach?

13 MR. BEACH: No, sir.

14 THE COURT: Finally, everyone agrees to put all the
15 bullets that are with the guns, because the guns are
16 inoperable, according to my law enforcement personnel. They
17 have a lock which requires a key inside the weapon and it
18 cannot be fired even with the bullets going back to the
19 jury; is the State satisfied that it can go back?

20 ASST. SOL. HASELDEN: Yes, sir.

21 THE COURT: Mr. Mathews?

22 MR. MATHEWS: Yes, sir.

23 THE COURT: Mr. Beach?

24 MR. BEACH: Yes, sir.

25 THE COURT: Take them into the jury and tell them they

1 may commence their deliberation.

2 (1:00 P.M., 09-01-11, WHEREUPON, EXHIBITS AND VERDICT
3 FORM ARE TAKEN TO THE JURY AND THE COURT IS IN RECESS IN THE
4 TRIAL OF THIS CASE.)

5 (1:45 P.M., 09-01-11, NOTE IS RECEIVED FROM THE JURY.)
6 (COURT'S EXHIBIT NUMBER FOUR IS RECEIVED INTO
7 EVIDENCE.)

8 THE COURT: Mr. Beach, do you waive your client's
9 appearance for this?

10 MR. BEACH: I do, Your Honor.

11 THE COURT: Are you willing to waive your client's
12 appearance, for purposes of this jury question?

13 MR. MATHEWS: Yes, Your Honor.

14 THE COURT: All right. As I know they are eating
15 lunch. I've just received a note from the jury, which has
16 been marked by the court reporter as Court's Exhibit Number
17 Four. I've met with the attorneys in chambers. There are
18 two questions, and the questions are, are we allowed to have
19 a transcript of the proceedings for deliberation; Question
20 One, signed by the Foreperson, Dawn Allen. Question two is
21 from juror number 66, April Gadson, the third person that
22 was in the car, is he not supposed to be here if the law
23 states that the hand of one is the hand of all; and if one
24 is guilty, the other is?

25 The lawyers have agreed that the answers to the two

1 questions are as follows: as to the transcript of the
2 proceedings, the court reporter has an audio recording of
3 each witness's testimony, which is available to you.
4 However, no written transcript is available at this time.

5 As to Question Two, you must decide this case based on
6 the law given and the evidence presented. Have I accurately
7 stated what you've asked my law clerk to write on Court's
8 Exhibit Number Four, from the State?

9 ASST. SOL. HASELDEN: Yes, Your Honor.

10 THE COURT: From the defendant McMillan?

11 MR. MATHEWS: Yes, sir.

12 THE COURT: From the defendant Jakes?

13 MR. BEACH: Yes, sir.

14 THE COURT: All right. It's been marked. Take it to
15 the jury with the answers written on there. I understand
16 they're eating lunch. Let's finish ours and then we will
17 continue to work until we hear from the jury.

18 (1:50 P.M., 09-01-11, COURT CONTINUES IN OTHER NON-JURY
19 MATTERS.)

20 (3:40 P.M., 09-01-11, WHEREUPON, A NOTE IS RECEIVED
21 FROM THE JURY

22 THE COURT: All right. Solicitor, about seven or eight
23 minutes ago I received a note from the jury, it is now seven
24 minutes prior to 4 o'clock. The note states as follows,
25 "May we please hear the testimony of James Davis and his

1 father, James; signed Dawn S. Allen, dated today September
2 1, 2011 -- any objection to making the jurors note a Court's
3 Exhibit from the State of South Carolina?

4 ASST. SOL. HASELDEN: No, Your Honor.

5 THE COURT: On behalf of Defendant McMillan?

6 MR. MATHEWS: No, Your Honor.

7 THE COURT: On behalf of Defendant Jakes?

8 MR. BEACH: No, Your Honor.

9 THE COURT: Court's Exhibit Number Five, without
10 objection.

11 (COURT'S EXHIBIT NUMBER FIVE IS RECEIVED INTO
12 EVIDENCE.)

13 Counsel, I've inquired of my court reporter, Becky
14 Hill, she tells me that the testimony of James Davis is --
15 and I'm referring, I realize the names are the same from
16 what I understood. I'm referring to the James Davis, whose
17 nickname was known to some of you as "Chippy" that that
18 total testimony was one hour and five minutes from beginning
19 to end, and in an estimate by the court reporter, and also
20 the testimony of James Davis, who I will designate as the
21 father of Chippy, to be thirty-five minutes, for a total
22 testimony being requested by the jury of one hour and forty
23 minutes. It is my intention to bring the jury out. Becky's
24 ready to start publishing the first James Davis known as
25 "Chippy."

1 I will ask the foreperson of the jury to signify when
2 they've heard as much of the testimony as they want to hear
3 and when they've heard enough, the foreperson can check or
4 raise their hand and tell us that's sufficient. I've also
5 received a second note, just this moment while I was
6 speaking, from the jury saying, "May we rehear Detective
7 Johnson's testimony also?" signed by the foreperson. Becky,
8 how long is Detective Gean Johnson's testimony?

9 COURT REPORTER: Twenty minutes.

10 THE COURT: She tells me it's twenty minutes. I will
11 do the same thing for each one, that being James Davis
12 "Chippy," James Davis, the father and Gean Johnson. Are you
13 cued on Gean Johnson, too, so you can do him one?

14 COURT REPORTER: I need just a second.

15 THE COURT: All right, take a minute.

16 COURT REPORTER: Judge, Detective Johnson's on another
17 day. I'm just going to have to go into my Wednesday
18 afternoon computer file; it won't take long. I'll just have
19 to stop when the father Davis is done.

20 THE COURT: I don't know if y'all can hear her. The
21 court reporter is telling the Court that because Mr.
22 Johnson's testimony was Wednesday, she's going to have to
23 stop the trial she has in the computer, take it out and put
24 another file in and find it. She does not think it will be
25 a long interval, but I want ya'll to know that she has to do

1 that work in the presence of the jury because she can't play
2 the first two on one file without moving to another file,
3 does everybody understand that?

4 Any objection to the procedure the Court intends to
5 employ from the State?

6 ASST. SOL. HASELDEN: None, Your Honor.

7 THE COURT: From the defendant McMillan?

8 MR. MATHEWS: No, Your Honor.

9 THE COURT: From the defendant Jakes?

10 MR. BEACH: No, Your Honor.

11 THE COURT: All right. Bring us the jury.

12 (4:00 P.M., 9-1-11, WHEREUPON, THE JURY ENTERS THE
13 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

14 THE COURT: All right. Madame Foreperson, ladies and
15 gentlemen of the jury, I've received your note. The first
16 note I got from you was "May we please hear the testimony of
17 James Davis and his father again?"

18 Now, ladies and gentlemen, I have to ask the court
19 reporter to check those each, there's two and I'm not trying
20 to delineate; one has the nickname, I believe, "Chippy,"
21 that testimony is estimated to be one hour and five minutes
22 in total length. There's a second James Davis, who I'll
23 designate for you as the father of the first James Davis;
24 that testimony is thirty-five minutes in length.

25 Then I received your second note, "May we rehear

1 Detective Johnson's testimony, too?" Mr. Johnson's
2 testimony was yesterday. It's on a different file. It is
3 twenty minutes in length, which means the court reporter
4 will have to switch files.

5 Now, Madame Foreperson, you're talking about a total of
6 two hours in testimony. Let me tell you what we'll do. We
7 will start the testimony of each person. When you feel that
8 the jury is satisfied with the length of hearing the
9 testimony, raise your hand for the jury for me. I'll be
10 watching and we'll stop and go to the next, as long as
11 everybody on the jury is satisfied.

12 Otherwise, the testimony will take, and I want you to
13 realize this, two hours to replay in its entirety, do you
14 understand Madame Foreperson?

15 All right. Now, my court reporter has two microphones
16 on the desk. We're going to turn this up and I realize --
17 you know I'm very sensitive about your hearing. I'm going
18 to have it loud, because I want my voice, of course, you're
19 going to hear me fine on this, but we do have some people on
20 here that you might not be able to hear. We'll get it as
21 loud as we can get it for you. If you can't hear, let me
22 know. Becky can try to make some adjustments, but we're
23 going to use these and that's why she brings these speakers
24 for you.

25 Now, Madame Foreperson, I'm going to be watching you,

1 so when you're at the point where you felt you've heard
2 enough, and you felt the jury's heard enough of the
3 questions anybody on the jury might have, you raise your
4 hand for me; get my attention so that I can direct the court
5 reporter to stop. This is my agreement of all the parties
6 as well.

7 We're going to begin the first testimony in its
8 entirety. James Davis, also known by nickname "Chippy," an
9 hour and five minutes total. Counsel approach.

10 All right, ladies and gentlemen, this will be the
11 testimony of James Davis, known as "Chippy." Let me know if
12 you can't hear. Let me know by raising your hand, Madame
13 Foreperson, when you've heard a sufficient amount for the
14 jury. Proceed. Counsel, let me know if you have any
15 problems.

16 (AUDIO TESTIMONY OF "CHIPPY" DAVIS BEGINS PLAYING AT
17 4:05 P.M. AND IS ENDED AT 4:17 P.M.)

18 (AUDIO TESTIMONY OF JAMES DAVIS, SR., BEGINS AT 4:18
19 P.M. AND IS ENDED AT 4:27 P.M.)

20 THE COURT: Now, the court reporter will have to change
21 files; bear with us one moment. This is Wednesday's
22 testimony and Gean Johnson is the request.

23 (AUDIO TESTIMONY OF GEAN JOHNSON BEGINS PLAYING AT 4:29
24 P.M. AND IS ENDED AT 4:32 P.M.)

25 THE COURT: Stop the tape. Madame Foreperson, have we

1 now answered each of the jury's questions concerning
2 testimony that you have requested in the trial of this case
3 to be replayed?

4 JUROR: Yes, sir.

5 THE COURT: I ask you, if you would please return to
6 your jury room and continue your deliberations.

7 (WHEREUPON, THE JURY EXITS THE COURTROOM AND THE
8 FOLLOWING IS HELD ON THE RECORD.)

9 THE COURT: Any exceptions or additions to the Court's
10 comments to the jury, from counsel for the State?

11 ASST. SOL. HASELDEN: None, Your Honor.

12 THE COURT: Counsel for the defendant McMillan?

13 MR. MATHEWS: No, sir.

14 THE COURT: From the defendant Jakes?

15 MR. BEACH: None, Your Honor.

16 THE COURT: Let the record reflect that I forgot to
17 mark, and I called counsel to the bench, the second note
18 from the jury that I received while I was explaining the
19 answer and the procedure that we were going give -- what was
20 marked as Court's Exhibit Number Five, the bailiff brought
21 me a second note which was a request in rehearing Detective
22 Johnson's testimony. Any objection to making that second
23 note, Court's Exhibit Six, from the State?

24 ASST. SOL. HASELDEN: None, Your Honor.

25 THE COURT: From the defendant McMillan?

1 MR. MATHEWS: No, sir.

2 THE COURT: From the defendant Jakes?

3 MR. BEACH: No, sir.

4 THE COURT: All right. We'll make that Court's Exhibit
5 Number Six, without objection. Mr. Mathews and Mr. Beach, I
6 need you to stay.

7 (COURT EXHIBIT SIX IS RECEIVED INTO EVIDENCE.)

8 I've got Ashley, so let's go back to work, while we're
9 waiting, let's get work done; doesn't look like I'm going
10 anywhere.

11 I'll take five minutes so we can get everybody up and
12 y'all can take a break.

13 (WHEREUPON, THE COURT IS IN RECESS FOR A BRIEF TIME.)

14 THE COURT: All right, on the record now. It is now
15 approximately five minutes to five. I took a break at
16 approximately 4:40, about fifteen minutes ago. As I ended
17 the break, we came out into the courtroom and about seven
18 minutes ago, I was approached by all of the lawyers in this
19 case, I was informed that a probation agent, here with the
20 Colleton County Probation and Parole, Mr. Nyle Eltzroth,
21 informed Ms. Haselden that he believed a juror on the jury
22 was actually on probation, this led to a review of the
23 jurors qualifications, the NCIC records that the solicitor
24 had in selecting the jury do not show that the juror has any
25 criminal records, at least the copy that the solicitor's

1 office has. However, the solicitor's office checked further
2 and Mr. Eltzroth has his records from probation and it is
3 learned that the juror has a habitual traffic offender
4 conviction for which he is on probation.

5 This information was important to counsel for Mr.
6 Mathews and Mr. McMillan, and for Mr. Jakes and Mr. Beach;
7 what is even stranger is Mr. Beach, who is a long time
8 officer of this court and who this Court has complete faith
9 in, represented this juror, does not recall it, and informed
10 the court of such, so the public defender was his lawyer.
11 While I'm being told this information, the bailiff walks
12 into my office, with all the lawyers present, and informs me
13 the jury has a verdict and that they are ready to publish
14 their verdict.

15 Counsel then agrees that they would waive any
16 disqualification of the juror for having a criminal record
17 in order to receive the verdict, since we have been trying
18 this case this entire week and they wanted to have
19 resolution of the case. I told the Solicitor that I would
20 give them time to speak to the victims. I told Counsel for
21 defendants I would give them time before any verdict was
22 published to speak to their clients and that there would be
23 a knowing waiver of this on the record with everybody
24 understanding exactly how it occurred.

25 This procedure of doing this is because the parties

1 won't publish the verdict, and defense counsel object at
2 this point to disqualifying the juror, even though if it is
3 true, he clearly would be disqualified for failing to
4 disclose that he has an offense carried more than one year
5 in prison as the habitual traffic offender carries five
6 years.

7 Despite that fact, the parties won't publish the
8 verdict even if there were a disqualifying offense because
9 they want an end to the matter and they've had the
10 opportunity to go over this with their respective clients.
11 Have I accurately stated the agreement insofar as the State
12 is concerned?

13 ASST. SOL. HASELDEN: Yes, Your Honor.

14 THE COURT: Have I accurately stated the agreement
15 insofar as the defendant McMillan is concerned?

16 MR. MATHEWS: Yes, Your Honor.

17 THE COURT: Your client understands and waives any
18 defect that the juror might have?

19 MR. BEACH: Yes, sir.

20 THE COURT: Is that correct, Mr. McMillan?

21 MR. MATHEWS: Yes, sir.

22 THE COURT: Mr. Beach, have I accurately stated the
23 agreement as so far as Mr. Jakes is concerned?

24 MR. BEACH: You have, Your Honor.

25 THE COURT: Your client waives any defect or

1 disqualification this juror might have and you wish for me
2 to publish the verdict?

3 MR. BEACH: Yes, sir.

4 THE COURT: Is that correct, Mr. Jakes?

5 MR. BEACH: Yes, sir.

6 THE COURT: And that's your decision?

7 MR. BEACH: Yes, sir.

8 THE COURT: That is your decision also, Mr. McMillan?

9 MR. MATHEWS: Yes, sir.

10 THE COURT: And Ms. Haselden, that's also the State's
11 decision?

12 ASST. SOL. HASELDEN: Yes, sir.

13 THE COURT: Very well. All right, now, ladies and
14 gentlemen, when this verdict is published, I do not permit
15 any outbursts; I've got numerous law enforcement in this
16 courtroom. I'm not going to tolerate any type of emotional
17 outburst of any kind. There will be no noise and if you
18 can't control your feelings or your emotions, you need to
19 step out of here right now. If I hear any such, I can
20 assure you I'm going to take action. I will not tolerate
21 any type of emotion in the presence of the jury. Is the
22 State ready to publish the verdict?

23 ASST. SOL. HASELDEN: State's ready.

24 THE COURT: Is the defendant McMillan ready?

25 MR. MATHEWS: Yes, Your Honor.

1 THE COURT: Is defendant Jakes ready?

2 MR. BEACH: Yes, Your Honor.

3 THE COURT: Bring us the jury.

4 (WHEREUPON, THE JURY ENTERS THE COURTROOM AND THE
5 FOLLOWING IS HELD ON THE RECORD.)

6 MADAME CLERK: Madame Forelady, have y'all reached the
7 verdict?

8 JUROR: We have.

9 THE COURT: The State of South Carolina, the County of
10 Colleton, in the Court of General Sessions, the State of
11 South Carolina vs. David Jakes, Indictments 2010-703, 2010-
12 704, 2010-705, 2010-706, 2010-707, 2010-708, 2010-709.

13 Also, the State of South Carolina vs. Antwan D.
14 McMillan, in Indictments 2010-501, 2010-502, 2010-503, 2010-
15 504, 2010-505, 2010-506, 2010-507. Question One, we, the
16 jury, by unanimous consent, find the defendant, David Jakes,
17 in indictment number 2010-GS-15-0704, not guilty of
18 attempted murder as to Jesse King.

19 Question Two, we, the jury, by unanimous consent, find
20 the defendant, David Jakes, in indictment number 2010-GS-15-
21 705, not guilty of attempted murder as to Amanda Metzfield.

22 Question Three, we, the jury, by unanimous consent,
23 find the defendant, David Jakes, in indictment number 2010-
24 706, not guilty of attempted murder as to Jeanine Metzfield.

25 Question Four, we, the jury, by unanimous consent, find

1 the defendant, Antwan D. McMillan, in indictment number
2 2010-501, not guilty of attempted murder as to Jesse King.

3 Question Five, we the jury by unanimous consent find
4 the defendant Antwan D. McMillan in indictment number
5 2010502 not guilty of attempted murder as to Jeanine
6 Metzfield.

7 Question Six, we, the jury, by unanimous consent, find
8 the defendant, Antwan D. McMillan, in indictment number
9 2010-503, not guilty of attempted murder as to Amanda
10 Metzfield.

11 Question Seven, we, the jury, by unanimous consent,
12 find the defendant, David Jakes, guilty of the lesser
13 included offense of assault and battery in the first degree
14 as to Jesse King.

15 Question Eight, we, the jury, by unanimous consent,
16 find the defendant, David Jakes, guilty of the lesser
17 included offense of assault and battery in the first degree
18 as to Amanda Metzfield.

19 Question Nine, we, the jury, by unanimous consent, find
20 the defendant, David Jakes, guilty of the lesser included
21 offense of assault and battery in the first degree as to
22 Jeanine Metzfield.

23 Question Ten, we, the jury, by unanimous consent, find
24 the defendant, Antwan D. McMillan, guilty of the lesser
25 included offense of assault and battery in the first degree

1 as to Jesse King.

2 Question Eleven, we, the jury, by unanimous consent,
3 find the defendant, Antwan D. McMillan, guilty of the lesser
4 included offense of assault and battery in the first degree
5 as to Amanda Metzfield.

6 Question Twelve, we, the jury, by unanimous consent,
7 find the defendant, Antwan D. McMillan, guilty of the lesser
8 included offense of assault and battery in the first degree.
9 as to Jeanine Metzfield.

10 Question Thirteen, we, the jury, by unanimous consent,
11 find the defendant, David Jakes, in indictment number 2010-
12 703, guilty of attempted armed robbery as to Jeanine
13 Metzfield.

14 Question Fourteen, we, the jury, by unanimous consent;
15 find the defendant, David Jakes, in indictment number 2010-
16 707, guilty of attempted armed robbery as to Amanda
17 Metzfield.

18 Question Fifteen, we, the jury, by unanimous consent,
19 find the defendant, David Jakes, in indictment number 2010-
20 708, guilty of attempted armed robbery as to Jesse King.

21 Question Sixteen, we, the jury, by unanimous consent,
22 find the defendant, Antwan D. McMillan, in indictment number
23 2010-505, guilty of attempted armed robbery as to Jeanine
24 Metzfield.

25 Question Seventeen, we, the jury, by unanimous consent,

1 find the defendant, Antwan D. McMillan, in indictment number
2 2010-504, guilty of attempted armed robbery as to Amanda
3 Metzfield.

4 Question Eighteen, we, the jury, by unanimous consent,
5 find the defendant, Antwan D. McMillan, in indictment number
6 2010-506, guilty of attempted armed robbery as to Jesse
7 King.

8 Question Nineteen, we, the jury, by unanimous consent,
9 find the defendant, David Jakes, in indictment 2010-709,
10 guilty of possession of a weapon during the commission of or
11 attempt to commit a violent crime.

12 Question Twenty, we, the jury, by unanimous consent,
13 find the defendant, Antwan D. McMillan, in indictment 2010-
14 507, guilty of possession of a weapon during the commission
15 of or attempt to commit a violent crime, signed Dawn P.
16 Allen, Foreperson, dated September 1st, 2011.

17 Ladies and gentlemen of the jury, if this be your
18 verdict, as published by the Court, would you signify by
19 raising your right hand.

20 Let the record reflect twelve hands were raised.
21 Counsel, anything further from this jury before I excuse the
22 jury from the defendant McMillan?

23 MR. MATHEWS: No, Your Honor.

24 THE COURT: From the defendant Jakes?

25 MR. BEACH: I ask for a toll of the jury, Your Honor.

1 THE COURT: Madame Clerk, would you toll the jury?

2 MADAME CLERK: Yes, I will. As I call your name,
3 please stand. Madame Foreperson, Dawn P. Allen. Is this
4 your verdict?

5 JUROR: Yes, ma'am.

6 MADAME CLERK: Is it still your verdict?

7 JUROR: Yes.

8 MADAME CLERK: Rakime Jenkins. Is this your verdict?

9 JUROR: Yes.

10 MADAME CLERK: Is it still your verdict?

11 JUROR: Yes.

12 MADAME CLERK: Glory R. Smith, is this verdict?

13 JUROR: Yes.

14 MADAME CLERK: Is it still your verdict?

15 JUROR: Yes.

16 MADAME CLERK: Lamonica Williams, is this your verdict?

17 JUROR: Yes.

18 MADAME CLERK: Is it still your verdict?

19 JUROR: Yes.

20 MADAME CLERK: William D. Clark, is this your verdict?

21 JUROR: Yes, ma'am.

22 MADAME CLERK: Is it still your verdict?

23 JUROR: Yes, ma'am.

24 MADAME CLERK: Raymond Whitlock, is this your verdict?

25 JUROR: Yes, ma'am.

1 MADAME CLERK: Is it still your verdict?

2 JUROR: Yes, ma'am.

3 MADAME CLERK: Jonathan C. Fulford, is this your
4 verdict?

5 JUROR: Yes, ma'am.

6 MADAME CLERK: Is it still your verdict?

7 JUROR: Yes, ma'am.

8 MADAME CLERK: Oleksa A. Gadson, is this your verdict?

9 JUROR: Yes.

10 MADAME CLERK: Is it still your verdict?

11 JUROR: Yes.

12 MADAME CLERK: Yvone D. Lightsey, is this your verdict?

13 JUROR: Yes, ma'am.

14 MADAME CLERK: Is it still your verdict?

15 JUROR: Yes, ma'am.

16 MADAME CLERK: Janice N. Ulmer, is this your verdict?

17 JUROR: Yes, ma'am.

18 MADAME CLERK: Is it still your verdict?

19 JUROR: Yes, ma'am.

20 MADAME CLERK: Frank A. Pinckney, is this your verdict?

21 JUROR: Yes, ma'am.

22 MADAME CLERK: Is it still your verdict?

23 JUROR: Yes, ma'am.

24 MADAME CLERK: Raymond L. Lairmore, is this your
25 verdict?

1 JUROR: Yes, ma'am.

2 MADAME CLERK: Is it still your verdict?

3 JUROR: Yes, ma'am.

4 MADAME CLERK: Your Honor, the jury has been tolled.

5 THE COURT: Mr. Beach, the jury's been tolled, the
6 verdict stands. Anything from the defendant Jakes before I
7 excuse the jury?

8 MR. MATHEWS: No, sir.

9 THE COURT: Please be seated. Madame Foreperson,
10 ladies and gentlemen of the jury, on behalf -- now, Madame
11 Foreperson, Hope's going to need you to sign indictments,
12 she's got them right here in front of her. She's going to
13 meet you at that door back there by the bailiff where he can
14 use the room right there at the table to sign your name,
15 because she's going to have the verdict form with you to
16 make sure the numbers correspond to the indictments and I'm
17 giving that to her.

18 Now, sentencing is going to take place in this case in
19 just a few moments. I invite you if you would like to stay,
20 you certainly don't have to, but if you'd like to stay for
21 sentencing, you can either stay in the jury box or you can
22 go and have a seat in the courtroom, or if you'd like to
23 leave, you certainly are free to leave. This concludes your
24 service on the jury for this week. It also concludes, not
25 only for this case, but for the week. It also means that if

1 you listen to me, that each of you are exempt in jury
2 service for three years should the computer choose to select
3 you. If any of you need a work excuse, Vicky will meet you
4 in the hall. We will be happy to provide a work excuse to
5 any of you for serving on the jury.

6 Now, ladies and gentlemen what occurs in the jury room
7 is up to the jurors. If you want to talk about your
8 deliberations, you're free to do so, but you do not have to
9 talk to anyone about your deliberations unless you want to.
10 If someone persists at trying to talk to you and you don't
11 want to talk about it, get their name and give it to me, and
12 as I told you throughout this trial, I will handle that
13 problem for you; that will not be a problem for you.

14 On behalf of Colleton County, on behalf of this Court,
15 I want to thank you for your service. You know, and I want
16 you to remember this, I asked you at the beginning, if you
17 had a case pending in this Court this week, would you want
18 someone like yourself to have been willing to given of their
19 time to serve on the jury, without you, ladies and gentlemen
20 of the jury, justice can never be accomplished in a
21 courtroom, so when your time comes to serve on the jury,
22 remember, it is a right that our forefathers gave us and I
23 appreciate that service and Colleton County appreciates that
24 service.

25 With that, ladies and gentlemen, if you'd like to stay

1 for sentencing, as soon as the sentence sheets are prepared,
2 the defendants and their attorneys will come forward. I
3 will sentence the defendants in your presence and in the
4 presence of the public; however, if you would like to leave,
5 you are free to do so.

6 I'll send you back now to your families, your homes. I
7 hope you have a safe trip and I thank you for your service
8 for those of you that would like to leave, except for my
9 foreperson who my law clerk needs to check and those of you
10 that need to see Vicky Syfrett to get a work excuse, you'll
11 meet at that door. You may leave at this time. Everyone
12 else remain seated while the jury is leaving.

13 (WHEREUPON, THE JURY PANEL IS EXCUSED FROM THE TRIAL
14 AND THE COURTROOM. THE FOLLOWING IS HELD ON THE RECORD.)

15 THE COURT: All right, counsel, I understand that there
16 are post-verdict motions that counsel wishes to make on
17 behalf of the defendant McMillan.

18 MR. MATHEWS: Yes, Your Honor, as to the attempted
19 armed robbery verdicts as to Amanda Metzfield and Jesse
20 King, I'd ask for a new trial on that basis. The only --
21 the only evidence there was in that case is that if you take
22 it in the light most favorable to the State is that the
23 Jakes walked up to Jeanine Metzfield and said, "Put them
24 up." He testified that -- and so did, in fact, James Davis,
25 that they were even unaware that Jesse King was there. They

1 didn't know that any men were there. So you can't attempt
2 to rob somebody that you don't know is there. So at least,
3 as to Jesse King, there's no evidence that anybody attempted
4 to rob him. They didn't even know he was there. Your
5 Honor, I'd ask for a new trial as to the attempted armed
6 robbery of Jesse King. I don't know that there's a bunch of
7 evidence as to Amanda Metzfield since no firearm was pointed
8 at her. I just ask for -- and some of those on the armed
9 robbery portion, I've made those similar arguments to
10 motions and the motion to quash before the trial began, but
11 you can't steal something from somebody. There's no
12 personal property of Amanda Metzfield that would have been
13 taken. There might be evidence to support attempted armed
14 robbery conviction as to Jeanine Metzfield, but there is
15 none as to Amanda Metzfield, and as to Jesse King, there's
16 no indication when they approached that they even knew he
17 was there.

18 So I'd ask for a new trial as to the attempted armed
19 robbery of Jesse King and Amanda Metzfield.

20 THE COURT: Very well. Thank you. Mr. Beach, any
21 post-verdict motions on behalf of the defendant Jakes?

22 MR. BEACH: We would join that motion, Your Honor.

23 THE COURT: Very well. Well, let me just tell you both
24 -- first of all, Mr. Mathews, there is no requirement of
25 pointing a firearm as an element of attempted armed robbery.

1 And your motions for new trial on the grounds that you've
2 enumerated as to the attempted armed robbery for both the
3 victim, King, and the victim, Metzfield, are respectfully
4 denied. I believe there was ample evidence to which the
5 jury could conclude it. That each of your clients was
6 guilty of both assault and battery in the first degree, and
7 there was ample evidence to which the jury could have
8 concluded that they were guilty of attempted armed robbery.
9 I do not believe that there's an element that the defendant
10 has to know how many people are exactly present.

11 As I recall testimony, Ms. Metzfield said she heard and
12 was frightened. There was, obviously, testimony that Mr.
13 King saw a weapon. There was, obviously, testimony that Ms.
14 Metzfield saw a weapon and whether or not the defendant, or
15 any defendant, knew how many people were present is not a
16 sufficient ground to grant a new trial when the evidence
17 that was adduced in this case, and therefore, your motion
18 for a new trial is respectfully denied.

19 Now, counsel, as to both defendants, Jakes and
20 McMillan, on the grounds enumerated by counsel, I ask that
21 you come around with your clients, along with the Solicitor,
22 for sentencing.

23 Do you have the sentence sheets prepared now,
24 Solicitor?

25 ASST. SOL. HASELDEN: Yes, sir. May I approach?

1 THE COURT: My law clerk has a lot of work to do. You
2 and Mr. Shelton have done a lot of work.

3 Obviously, Solicitor, I've heard the evidence in this
4 case. The defendants did not testify, but I was advised
5 that only one of the defendants had a record and that the
6 other defendant did not have a record. I obviously realize
7 that I've got the victims here in the courtroom who have
8 remained throughout this entire trial. If they wish to be
9 heard, I'm happy to hear from them.

10 I also note that I probably have family members of the
11 defendants present, and I'm willing, if they so desire, to
12 hear from family members. But I will not tolerate any
13 emotional outburst, so if you feel you can't control your
14 emotions, I suggest that you do not address the Court on a
15 matter of sentencing.

16 I certainly will hear from the attorneys in mitigation
17 and I'll hear from the defendants in mitigation; if they so
18 desire. Solicitor, does the State wish to advise me of
19 anything else and of anybody that might wish to address me,
20 before we begin?

21 ASST. SOL. HASELDEN: Your Honor, I know that the
22 victim, Jesse King, would like to address Your Honor.

23 THE COURT: All right. And that would be the only one
24 of the victims that wishes to address the sentencing?

25 ASST. SOL. HASELDEN: He'd like to speak on behalf of

1 all three.

2 THE COURT: Very well. Be happy to hear from Mr. King.

3 MR. JESSE KING: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. JESSE KING: Your Honor, ladies and gentlemen, Your
6 Honor, you began these proceedings speaking of oaths and
7 service. I, too, raised my right hand and swore an oath to
8 serve this country and to protect the Constitution that this
9 nation was founded on. Not only have I made sacrifices to
10 this nation, but also, my wife and entire family has as
11 well. Every time we have to uproot our home and our lives
12 to move to a new duty station, just like we were doing on
13 the night of June 3rd, not to mention the sacrifices that my
14 wife has to endure while I'm deployed. In these last four
15 years of my service, I have sweat, cried, and bled for this
16 country, and I am proud to have done so.

17 Yet, when I returned home from my year long deployment,
18 we were confronted by individuals such as these. They were
19 just looking for an easy score with vulnerable victims.
20 They were heedless of the consequences of their actions for
21 themselves and for the people that they chose to hurt that
22 night.

23 Just as my fellow soldiers continue to protect the
24 people overseas today from injustices, me and my family, we
25 put our faith in this court system and the ladies and

1 gentlemen of the jury to see that the law was upheld, and to
2 see that justice was done today. Thank you, Your Honor.

3 THE COURT: Thank you. Mr. King, before you leave, I
4 realize that this has been -- I don't know how to describe
5 it for your family, an ordeal. I want you to know that you
6 have my prayers in your deployment and your family will have
7 my prayers.

8 MR. KING: Thank you, Your Honor.

9 THE COURT: All right. Mr. Mathews, I'm happy to hear
10 from you in mitigation on behalf of Mr. McMillan.

11 MR. MATHEWS: Thank you, Your Honor. Your Honor,
12 Antwan is 22 years old. He has completed the 11th grade.
13 He was born and has lived his whole life in Smoaks. He has
14 no prior record. This is his mother, Brenda, who is here
15 and has been here the entire trial. This, of course, is a
16 horrible situation. Antwan has steadfastly maintained that
17 he didn't do this. Your Honor, I'd like for the Court to
18 consider that he has no prior record and that he does have,
19 he has family here that loves him and -- would you like to
20 speak?

21 His mother and father and his step-father have been
22 here through the whole proceedings and they're here now.
23 Just ask the Court ---

24 THE COURT: I have no doubt that they love their child.

25 MR. MATHEWS: Yes, sir.

1 THE COURT: Mr. Beach, I'll be happy to hear from you
2 on behalf of Mr. Jakes.

3 MR. BEACH: Thank you, Your Honor.

4 Your Honor, Mr. Jakes is 20 years old. He's a lifelong
5 resident of Colleton County. He has had a couple of
6 juvenile problems, that's his record as a juvenile.

7 THE COURT: What was it, Mr. Beach?

8 MR. BEACH: He had a weapon on school grounds and I
9 handled it when he was a juvenile. The weapon turned out to
10 be tear gas, a canister, which was dropped; it exploded, and
11 caused uproar. That was the weapon on school grounds. He's
12 had some scrapes in school, but other than that, he has no
13 other criminal record. That one is three years old. His
14 mother is here with him. She may wish to say something to
15 the Court, but he's been a pretty good kid. You've heard
16 all the evidence and everything, and I think this was just
17 something that happened out of the blue, or I guess this, at
18 that time of the night, out of the dark.

19 I don't think this was something that was ever planned
20 or something that was ever pre-meditated. It was just
21 something that happened on the spur of the moment. We would
22 ask the Court to be as lenient as possible in this. I know
23 that these are severe charges and we would ask the Court to
24 run them concurrent, if possible, and that would be our
25 submission, Your Honor.

1 THE COURT: Very well. Mr. McMillan, is there anything
2 that you would like to tell the Court prior to sentencing?

3 MR. MCMILLAN: No, sir.

4 THE COURT: Mr. Jakes, is there anything you would
5 like to tell the Court prior to sentencing?

6 MR. JAKES: No, sir.

7 THE COURT: Anything further from you, Mr. Mathews?

8 MR. MATHEWS: No, Your Honor.

9 THE COURT: Anything further from you, Mr. Beach?

10 MR. BEACH: No, Your Honor.

11 THE COURT: Let me say this, nothing probably makes a
12 family feel more vulnerable than to be alone in a strange
13 place in the middle of the night and to be confronted by
14 what they consider to be a danger to the health and safety
15 of the family.

16 There is no father or husband or son who would not have
17 felt exactly what Mr. King felt when confronted with the
18 situation here. I completely feel the jury had ample
19 evidence from which to reach the conclusion that they did.

20 Now, Mr. Beach, you asked me to temper my sentence and
21 be as lenient as possible. Solicitor, my understanding is
22 that the maximum offense for attempted armed robbery is 20
23 years. The maximum punishment for assault and battery,
24 first degree, is 10 and five for possession of a weapon
25 during the commission of a violent crime. So as to each

1 victim, the defendants are facing 35 years for a total, if
2 my math is correct, Solicitor, of what?

3 ASST. SOL. HASELDEN: Ninety-five each.

4 THE COURT: Ninety-five years in jail each, as a result
5 of this. Nothing makes me sadder than to see young people
6 who have families that love them, who care about them, to be
7 brought in this Court over something that places a family
8 that is a visitor to our community in this kind of fear, in
9 this kind of concern for their own safety.

10 Now, I recognize, Mr. McMillan, that you don't have a
11 juvenile record and I recognize, Mr. Jakes, that your
12 record, Mr. Beach said he handled it, involved a weapon on
13 the school grounds. Yes, ma'am?

14 ASST. SOL. HASELDEN: Your Honor, it was not just
15 carrying a weapon on school grounds. The records that I
16 have show carrying a weapon on school grounds, disturbing
17 school, assault and battery of a high and aggravated nature,
18 and assault and battery by a student upon a school employee.
19 And I have details of that if you would like for me to go
20 into it.

21 THE COURT: Well, I wasn't there, so you'll have to
22 tell me this because there's a difference between having a
23 record and not having a record.

24 ASST. SOL. HASELDEN: Yes, sir, Your Honor. While Mr.
25 Jakes was a student at Colleton County High School, he

1 smuggled in a maximum strength pepper spray and at one
2 point, released it, and sprayed it upon a classroom, hitting
3 four different students and a teacher. The classroom and
4 the surrounding area had to be basically shut down and fire
5 and rescue had to be brought in to treat all of those
6 individuals, and the entire area had to be decontaminated.

7 So unfortunately, much like the attack on multiple
8 people that we're here about today, this also was an attack
9 on multiple people with a weapon, and that is what most
10 concerns the State, even though it is a juvenile record.

11 THE COURT: Very well.

12 (BRIEF PAUSE WHILE THE COURT REVIEWS INDICTMENTS.)

13 MR. BEACH: Your Honor, Mr. Jakes' mother has asked if
14 she can say something to the Court.

15 THE COURT: Absolutely.

16 MS. JAKES: Hello, Your Honor. How are you doing?

17 THE COURT: Come on up. Yes, ma'am, you've got to come
18 forward for my court reporter to a microphone. State your
19 name for the record.

20 MS. JAKES: My name is Margie Lee Jakes. I'm David
21 Jakes' mother.

22 THE COURT: Yes, ma'am.

23 MS. JAKES: I apologize to the family what my son done.
24 I'm not in the law system, but my son wore a whole, numerous
25 amount of bullets. He was 80 percent dead and 20 percent

1 alive. And I'm not saying to, you know, you know, asking
2 you to get him off just because of that. I think when he
3 went down by those bullets, that was his payment of his
4 justice right over there.

5 THE COURT: I understand your ---

6 MS. JAKES: And another thing, about the schoolhouse,
7 he did not enter into the school with that mace. He was
8 given it by a female student. It should be on that paper,
9 if I'm correct. And thank you, Your Honor. I'm just kind
10 of nervous right now, but the bullets that my son wore, I
11 think he done did a lot of that time, and a little bit can
12 be put on for that; he almost died.

13 THE COURT: Anything further from the State?

14 ASST. SOL. HASELDEN: Nothing further from the State,
15 Your Honor.

16 THE COURT: Anything further from the defendant,
17 McMillan?

18 MR. MATHEWS: No, Your Honor.

19 THE COURT: Anything further from the defendant Jakes?

20 MR. BEACH: No, Your Honor.

21 THE COURT: Now, you know, Solicitor, what each of
22 these individuals are facing, if my math is correct, it's
23 actually 105 years, because it's 35 years if they are
24 consecutive. It's 20, 10 and 5; is my math wrong? Thirty-
25 five, thirty-five, and thirty-five?

1 ASST. SOL. HASELDEN: Yes, Your Honor. My math is
2 wrong.

3 THE COURT: Gentlemen, you're too young to be in Court
4 facing that amount of time. Now, Mr. Jakes, your mother
5 wants me, and your lawyer argued this to the jury, that I'm
6 supposed to give you credit because you got shot. I'm
7 blessed that you're still alive, and you should be, too.
8 But I don't believe credit should be given in a sentence for
9 that. I believe that you have to face responsibility for
10 what you did. Now, I'm thankful that you were not killed or
11 injured any further. I know your mother is glad that you're
12 still here, but I don't believe in giving credit in a
13 sentence for that.

14 Mr. McMillan, I recognize that you don't have any prior
15 record. Both of you are young. I don't want to see young
16 people at any time for this type of violent offense. I
17 believe justice should always be tempered with mercy, but I
18 believe justice, nevertheless, should be something that
19 sends a message to people in our county that we're not going
20 to tolerate, whether you're young or not, pulling out a gun
21 and putting people in fear of their safety; whether they be
22 visitors to our community or residents of our community,
23 that conduct will not, cannot, be tolerated in our
24 community.

25 First of all, as to Mr. Jakes, Indictment 2010-GS-15-

1 703, indictment for attempted armed robbery, the sentence of
2 this Court is defendant is committed to the State Department
3 of Corrections for a term of 20 years.

4 On Indictment 2010-GS-15-704, the jury found you guilty
5 of the lesser included offense, assault and battery, first
6 degree. The sentence of this Court is the defendant, Mr.
7 Jakes, is committed to the State Department of Corrections
8 for a term of 10 years.

9 On Indictment 2010-GS-15-00709, Mr. Jakes, which is
10 possession of a weapon during the commission of a violent
11 crime, the sentence of this Court is defendant is committed
12 to the State Department of Corrections for a term of 5
13 years. Those three sentences will run consecutive to each
14 other, for a total of 35 years.

15 The other sentences, Mr. Jakes, 2010 at 708, the
16 offense, which is attempted armed robbery, the sentence is
17 20 years. 2010 at 706, assault and battery, first degree,
18 the sentence is 10 years. 2010 at 707, attempted armed
19 robbery, the sentence is 20 years and 2010 at 705, assault
20 and battery, first degree, the sentence is 10 years. Those
21 sentences will run concurrent to the others.

22 On Mr. McMillan, which means, Mr. Jakes, the effect of
23 your sentence, and your lawyer will discuss this with you
24 and the Department of Corrections will implement it. So
25 your lawyer can't tell you - I'm going to give you credit

1 for the time that you've served in jail, but the total
2 amount of your sentence is 35 years, the maximum for
3 attempted armed robbery, the maximum for assault and
4 battery, first degree, the maximum for possession of a
5 weapon, and run the other offenses concurrent to that 35-
6 year sentence, with credit for time served.

7 Now as to you, Mr. McMillan, I take into consideration
8 on your sentence that unlike Mr. Jakes, you didn't have a
9 prior record. However, I do not believe, Mr. McMillan, that
10 the type of conduct that the jury found you guilty of, and
11 they found you guilty of the lesser included offense,
12 assault and battery, first degree. This type of conduct,
13 regardless of age, cannot be tolerated in our community or
14 in any civilized society.

15 I will give you credit for not having a prior criminal
16 record, but I believe you should face the consequences of
17 what the jury clearly had sufficient evidence to find you
18 guilty on.

19 Therefore, on Indictment 2010 at 505 as to Antwan
20 McMillan, indictment for attempted armed robbery, the
21 sentence of the Court is the defendant is committed to the
22 State Department of Corrections for a term of 20 years.

23 On Indictment 2010 at 502. The jury found you guilty
24 of the lesser included offense, Mr. McMillan, assault and
25 battery, first degree. The sentence of this Court is the

1 defendant is committed to the State Department of
2 Corrections for a term of 10 years. Those sentences will
3 run consecutive to each other for a total of 30 years.

4 Your other sentences, 2010 at 507, possession of a
5 weapon during the commission of a violent crime, 5 years.

6 2010 at 506, attempted armed robbery. The sentence of
7 the Court is you be committed for 20 years.

8 2010 at 503, which is assault and battery, first
9 degree. The sentence of the Court is defendant is committed
10 to the State Department of Corrections for a term of 10
11 years.

12 And at 2010 at 501, assault and battery, first degree,
13 the sentence of the Court is defendant is committed to the
14 State Department of Corrections for a term of 10 years.

15 And finally, on indictment 2010 at 504, attempted armed
16 robbery, the sentence of the Court as to Mr. McMillan, the
17 defendant is committed to the State Department of
18 Corrections for a term of 20 years. Those sentences, after
19 the first two, will run concurrent to each other.

20 The effect of the sentence is you are receiving a
21 sentence of 30 years imprisonment. Mr. Jakes, you are
22 receiving a total sentence of 35 years in prison.

23 Each of you will be given credit for time served. That
24 is pursuant to South Carolina Code Section 24-13-40. That
25 is to be calculated and applied by the State Department of

1 Corrections. This concludes sentencing in connection with
2 this matter, and as to this case, this Court now stands
3 adjourned.

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1 STATE OF SOUTH CAROLINA)

CERTIFICATE

2 COUNTY OF COLLETON)

3
4 I, REBECCA H. HILL, Official Court Reporter for the
5 Judicial Department of the State of South Carolina, do
6 hereby certify that the foregoing is a true, accurate and
7 complete Transcript of Record of the proceedings had in the
8 trial of the captioned case, in the Court of General
9 Sessions for Colleton County, South Carolina, on the 29th day
10 of August, 2011 through the 1st day of September, 2011.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13
14 December 9th, 2011

15
16
17
18 Rebecca H. Hill,
Official Court Reporter

COUNTY OF
STATE

Colleton

VS.

Antwan Mcmillan

AKA:

Race: B

Sex: M

Age: 22

DOB: 1988

SS#: [REDACTED]

Address:

City, State, Zip:

Summers, SC

DL#:

SID#: SC019116727

SENTENCE SHEET

INDICTMENT/CASE#: 2010GS1500503

A/W#: M103086

Date of Offense: 6/3/2010

S.C. Code §: 16-03-0029

CDR Code #: 3410

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery - 1st Degree

X CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0000(c)(1) of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-452The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Amanda S. Haselden

75079

Haselden, Amanda Stillley

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 10 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. 2010-GS-15-00501; 2010-GS-15-00502; 2010-GS-15-00504;

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-15-00505; 2010-GS-15-00506; 2010-GS-15-00507☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Breath Alcohol testing ☐

Fines may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

Certified TRUE COPIES OF RECORDS paid to Public Defender's Office

Other _____

CLERK OF COURT, COMMON PLEAS COURT
COLLETON COUNTY, SOUTH CAROLINA
9/2/11☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (03/2011)

Patricia C. Hunt
Rebecca A. Hall

Presiding Judge

Judge Code:

Sentence Date:

0122

9-1-11

COUNTY OF _____
STATE _____

Colleton

VS.

Antwan Memillan

AKA: _____

Race: B

Sex: M

Age: 22

DOB: 1-1-1988

SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____

SID#: SC01916727

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery - 1st Degree

in violation of § 16-03-0600(6)(i) of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45

3412

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.

ARREST:

Amelia S. Haselden

75079

Haselden, Amanda Stilley

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 10 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: 2010-05-15-605☒ 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. CONCURRENT TO: 2010-05-15-601; 2010-05-15-00603; 2010-05-15-00604☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

_____ 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 paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

Satisfied TRUE COPIES OF RECORDS paid to Public Defender Fund

Other _____

CLERK OF COURT, COMMON PLEAS COURT

COLLETON COUNTY, SOUTH CAROLINA

DATE: 9/2/11

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 0122

Sentence Date: 9-1-11

Clerk of Court/Deputy Clerk

Court Reporter: Rebecca A. Hill

SCCA/217 (03/2011)

COUNTY OF
STATE

Colleton

VS.

Antwan Mcmillan

AKA:

Race: B Sex: M Age: 22

DOB: 1988 SS#: [REDACTED]

Address:

City, State, Zip: Summerville, SC

DL#: [REDACTED] SID#: SC01916727

*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

INDICTMENT/CASE#: 2010GS1500505

A/W#: M103088

Date of Offense: 6/3/2010

S.C. Code §: 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin 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 ☐ §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.TEST: Amanda S. Haselden 75079
Haselden, Amanda Stille 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: 200 GS 15 502 2010 GS 15 504
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-20 to be calculated and applied
by the State Department of Corrections. CONCURRENT: 2010-GS-15-00501, 2010-GS-15-00502, 2010-GS-15-00503, 2010-GS-15-00504,
2010-GS-15-00505, 2010-GS-15-00506, 2010-GS-15-00507, 2010-GS-15-00508, 2010-GS-15-00509, 2010-GS-15-00510,
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

_____ 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 _____CERTIFIED TRUE COPIES OF RECORDS
Paid to Public Defender FundOther: Patricia C. Grant
CLERK OF COURT, COMMON PLEAS COURT
COLLETON COUNTY, SOUTH CAROLINA

DATE: 9/1/11

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk: Patricia C. Grant

Court Reporter: Rebecca A. Zell

SCCA/217 (03/2011)

Presiding Judge: [Signature]

Judge Code: 0122

Sentence Date: 9-1-11

COUNTY OF _____
STATE _____

Colleton

VS.

Antwan Mcmillan

AKA:

Race: B

Sex: M

Age: 22

DOB: 1988

SS#: _____

Address:

City, State, Zip: Summerville, SC

DL#:

SID#: SC019116727

*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

INDICTMENT/CASE#: 2010GS1500504

A/W#: M103087

Date of Offense: 6/3/2010

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)

☐ §17-25-45

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:

Haselden, Amanda Stilley

SC Bar# 75019

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. 2010-45-15-00501; 2010-45-15-00502; 2010-45-15-00503;

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-45-15-00503; 2010-45-15-00504; 2010-45-15-

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied 00507
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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$ 5.00
TOTAL	\$ 133.90

_____ 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 ☐

_____ may be paid equal, consecutive weekly/monthly

progs. of \$ _____ TRUE BEGINNING OF RECORDS

_____ paid to Public Defender Fund

Other _____

CLERK OF COURT, COMMON PLEAS COURT

COLLETON COUNTY, SOUTH CAROLINA

DATE: 9/2/11

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 0127

Sentence Date: 9-1-11

COUNTY OF
STATE

Colleton

VS.

Antwan Mcmillan

AKA:

Race: B

Sex: M

Age: 22

DOB: 1988

SS#: [REDACTED]

Address:

City, State, Zip:

DL#:

SID#: SC01916727

*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 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:

Haselden, Amanda Stillely

SC Bar# 75079

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. 2010-GS-15-00501; 2010-GS-15-00502; 2010-GS-15-00503

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-15-00504; 2010-GS-15-00505; 2010-GS-15-00507☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied 00607☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2010GS1500506

A/W#: M103089

Date of Offense: 6/3/2010

S.C. Code § : 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

_____ 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 paid in equal, consecutive weekly/monthly
payments beginning _____Other: ☐ Public Defender Fund
CERTIFIED TRUE COPIES OF RECORDSSE [Signature]
CLERK OF COURT, COMMON PLEAS COURT
COLLETON COUNTY, SOUTH CAROLINA
DATE: 9/1/11☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 0122

Sentence Date: 9-1-11

COUNTY OF Colleton
STATE VS.

Antwan Mcmillan

AKA:

Race: B Sex: M Age: 22

DOB: 1988 SS#: [REDACTED]

Address:

City, State, Zip: SMOKE, SC

DL#: SID#: SC019 16727

*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, if not also sentenced to life with

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Haselden, Amanda Stillley

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. 2010-GS-15-00601; 2010-GS-15-00602; 2010-GS-15-00603;

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-15-00604; 2010-GS-15-00605; 2010-GS-15-☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied. 00606

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$133.90

INDICTMENT/CASE#: 2010GS1500507

A/W#: M103090

Date of Offense: 6/3/2010

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP 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 paid on equal, consecutive weekly/monthly

prets. of \$ beginning

CERTIFIED TRUE COPIES OF RECORDS

Other: *Patricia C. Grant*
CLERK OF COURT, COMMON PLEAS COURT
COLLETON COUNTY, SOUTH CAROLINA

DATE: 9/12/11

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 0122

Sentence Date: 9-1-11

Clerk of Court/ Deputy Clerk

Court Reporter: Rebecca A. Hill

SCCA/217 (03/2011)

**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.

Antwan McMillan, Appellant.

Appellate Case No. 2011-199106

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2013-UP-317
Heard May 8, 2013 – Filed July 10, 2013
Withdrawn, Substituted, and Refiled September 25, 2013

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Julie Kate Keeney, both of Columbia,
for Respondent.

PER CURIAM: A grand jury indicted Appellant Antwan McMillan for three counts of attempted murder, three counts of attempted armed robbery, and one

count of possession of a weapon during the commission of a violent crime.¹ During the subsequent trial's *voir dire*, the trial judge asked, *inter alia*, whether any potential juror: (1) was a member of a law enforcement agency; (2) was related to, or had a close relationship with, any of the named witnesses; or (3) was biased, prejudiced, or otherwise unable to give either party a fair trial. Based upon the responses, the trial judge excused a few panel members and, thereafter, McMillan utilized four of his five allocated strikes. Among the seated jurors was Juror 102 (Juror).

After three witnesses testified, the trial judge informed counsel, *in camera*, about a note he received from Juror expressing concern about her qualification, in light of her husband's employment as a reserve deputy. The trial judge called in Juror; Juror confirmed her husband was a reserve deputy and that she had not discussed the case with him. The trial judge then asked Juror if her husband's employment affected her ability to give either party a fair and impartial trial. Juror responded, "No, it wouldn't," and was allowed to return to the jury room.

Defense counsel then objected to Juror's continued service, noting the juror information sheet, which the Clerk's Office prepared, listed the occupation of Juror's spouse as only "Environmental Health Management." Defense counsel further contended that he would have utilized McMillan's strikes differently had he known Juror's husband was a reserve deputy. Shortly thereafter, the trial judge verified that Juror did fully disclose her husband's employment on the *juror questionnaire* as including both "Environmental Health Management" and "reserve deputy," but "the Clerk's Office didn't transmit everything" that Juror filled out on her *juror questionnaire* when the Clerk's Office provided counsel with the *juror information sheet*. The trial judge then declined to excuse Juror due to this "Scri[ve]ner's error," noting that defense counsel did not request any *voir dire* question about spousal employment and that a compilation of information from the juror questionnaires was available, upon request, from the Clerk's Office.

The jury subsequently convicted McMillan on three counts of assault and battery in the first degree (a lesser-included offense), three counts of attempted armed robbery, and one count of possession of a weapon during the commission of a violent crime. McMillan was sentenced to thirty years' incarceration. This appeal followed.

¹ The State tried McMillan and David Jakes together. Jakes was indicted for three counts of attempted murder, three counts of attempted armed robbery, and one count of possession of a weapon during the commission of a violent crime.

LAW/ANALYSIS

McMillan alleges the trial judge erred in refusing to excuse Juror and replace her with an alternate because, had he known Juror's husband was a reserve deputy, he would have exercised his peremptory challenges differently. Thus, McMillan essentially argues that because he would have been permitted to exercise a peremptory strike against Juror, even if she was impartial, based solely upon the occupation of Juror's husband, the omission of such alleged material information constituted prejudice that required replacing Juror with an alternate when the information later came to light.

Notably, McMillan cites no authority for the specific proposition that a trial court abuses its discretion in not removing a juror when a defendant contends he would have exercised his peremptory challenges differently had he known "material," but previously omitted, facts about any particular juror, regardless of that juror's professed impartiality. Because McMillan cites no authoritative support for his specific contention, we proceed to determine solely whether Juror was impartial. *See State v. Porter*, 389 S.C. 27, 35, 698 S.E.2d 237, 241 (Ct. App. 2010) (requiring an appellant to cite authority in "specific support of his assertion"). Thus, to the extent Juror was impartial, the trial court did not err in refusing to excuse Juror.

Section 14-7-1020 of the South Carolina Code (Supp. 2012) requires a trial judge, upon motion of either party, to determine whether a juror is impartial:

The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein . . . If it appears to the court that the juror is not indifferent in the cause, he must be placed aside . . . and another must be called.

Accord State v. Cochran, 369 S.C. 308, 321, 631 S.E.2d 294, 301 (2006) (citing section 14-7-1020). While such determinations are within the sound discretion of the trial judge, "[t]here is no rule of the common law, nor is there a statute disqualifying a juror on account of his relationship to a witness, either by affinity or consanguinity, within any degree." *State v. Burgess*, 391 S.C. 15, 18, 703

S.E.2d 512, 514 (Ct. App. 2010) (citation omitted); *accord State v. Mercer*, 381 S.C. 149, 158, 672 S.E.2d 556, 560-61 (2009).

Accordingly, the mere fact that a juror's spouse is a law enforcement officer, who is not involved in the case, does not, in and of itself, render a juror biased and, thus, unable to serve on a jury; rather, the crux of that determination is whether it "appears to the court that the juror is not indifferent in the cause." *See* § 14-7-1020 (stating the trial judge must determine whether a proposed juror is related to either party or is otherwise interested in, formed an opinion about, or is biased or prejudiced toward a party). Moreover, even jurors related by affinity or consanguinity to a testifying witness or those who closely knew the putative victim of a crime are not, absent an inability to maintain impartiality, unqualified. *See State v. Wells*, 249 S.C. 249, 259-60, 153 S.E.2d 904, 909-10 (1967) (finding a juror who directly employed victim qualified); *Burgess*, 391 S.C. at 18, 703 S.E.2d at 514 ("There is no rule of the common law, nor is there a statute disqualifying a juror on account of his relationship to a witness, either by affinity or consanguinity, within any degree." (citation omitted)).

In the instant matter, Juror was unrelated to the defendants and the potential witnesses, and she did not know the victims; she was merely related to a non-testifying law enforcement officer. Furthermore, once the trial judge learned Juror's husband was a reserve deputy, he asked Juror whether her husband's employment would "in any way affect [her] ability to give the [State] or [McMillan] . . . a fair and an impartial trial." Juror confirmed "it wouldn't." Because Juror appeared neither biased nor partial, the trial court did not err in finding Juror appeared impartial, despite her husband's status as a reserve deputy.

Additionally, because Juror did not conceal any information, partiality cannot be imputed to her on such a basis. *State v. Woods*, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001) (recognizing that a court may infer that a juror who intentionally *conceals* information inquired into is not impartial). "[I]ntentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." *Id.*

At the outset, Juror disclosed her husband's status as a law enforcement officer on her self-completed *juror questionnaire*. Thus, Juror unquestionably did not conceal her husband's occupation at this phase of the jury selection process. Additionally, the trial judge asked no question during *voir dire* that required Juror to respond with her husband's occupation. While the trial judge did ask whether

any potential juror was a member of law enforcement or was related to or a close personal friend of the named potential witnesses, which did include some law enforcement officers, neither inquiry required Juror to disclose the employment status of her non-testifying husband. Moreover, while McMillan could have requested the trial judge to ask whether any panel members were related to law enforcement officers, McMillan concedes he made no such request. Because no *voir dire* question required Juror to respond with her husband's occupation, no concealment occurred and, thus, it cannot be inferred that juror was not impartial.² *See id.* at 587, 550 S.E.2d at 284 (requiring a new trial when an identified *concealment* of information (a) was intentional and (b) would have supported a challenge for cause or would have been a material factor in the use of peremptory challenges). "As we find no intentional concealment on Juror's part, we need not further determine whether the information would have been a material factor in the exercise of . . . peremptory strikes." *State v. Guillebeaux*, 362 S.C. 270, 276, 607 S.E.2d 99, 102 (Ct. App. 2004). Hence, the trial court did not err in refusing to dismiss Juror and to replace her with an alternate.

CONCLUSION

Based on the foregoing, the decision of the circuit court is

AFFIRMED.

FEW C.J., and GEATHERS and LOCKEMY, JJ., concur.

² Both parties conceded in their briefs that juror concealment did not exist.

**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 Supreme Court**

The State, Respondent,

v.

Antwan McMillan, Petitioner.

Appellate Case No. 2013-002715

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Colleton County
Perry M. Buckner, III, Circuit Court Judge

Memorandum Opinion No. 2015-MO-035
Heard May 20, 2015 – Filed June 17, 2015

**CERTIORARI DISMISSED AS IMPROVIDENTLY
GRANTED**

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia, for Respondent.

PER CURIAM: We granted certiorari to review the Court of Appeals' decision in *State v. McMillan*, Op. No. 2013-UP-317 (S.C. Ct. App. refiled Sept. 25, 2013). After careful consideration of the Appendix, Record, and briefs, the writ of certiorari is

DISMISSED AS IMPROVIDENTLY GRANTED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE, JJ., and Acting Justice James E. Moore, concur.

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

ANTWAN D. MCMILLIAN

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 15- 1210

Submitted By: Cory H. Fleming
Address: P O Drawer 507
Beaufort, SC 29901

SC Bar #: 6999
Telephone #: 843-524-3373
Fax #: 843-379-1322
Other: 843-986-6379
E-mail: cory@mossandkuhn.com
tanya@mossandkuhn.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature: _____

Date: 10/13/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous SCCA / 234 (06/2015)

FC... MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

ANTWAN D. MCMILLIAN)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

15-CR15-1210

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible, handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber
2. Name and location of Court which imposed sentence Colleton County General Sessions, Walterboro, South Carolina
3. Name(s) of co-defendant(s) (if any) David Jakes
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010GS1500501
 - (b) 2010GS1500502
 - (c) 2010GS1500503
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2010GS1500501: 09/01/2011: 10 years

additional →

Revised 3/2003

ADDITIONAL INFORMATION FOR QUESTIONS 4 and 5

- 4. (d) 2010GS1500504
- (e) 2010GS1500505
- (f) 2010GS1500506
- (g) 2010GS1500507

(b) 2010GS1500502; 09/01/2011; 10 years

(c) 2010GS1500503; 09/01/2011; 10 years

additional →

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. South Carolina Supreme Court

iii. _____

(b) the result in each such Court to which you appealed:

i. On Writ of Certiorari

ii. Certiorari dismissed as improvidently granted

iii. _____

(c) the date of each such result:

i. South Carolina Court of Appeals, 09/23/2013

ii. South Carolina Supreme Court, 06/17/2015

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. South Carolina Court of Appeals Unpublished Opinion No. 2013-UP-317

ii. South Carolina Supreme Court Memorandum Opinion No. 2015-MO-035

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in

- 5. (d) 2010GS1500504; 09/01/2011; 20 years
- (e) 2010GS1500505; 09/01/2011; 20 years
- (f) 2010GS1500506; 09/01/2011; 20 years
- (g) 2010GS1500507; 09/01/2011; 5 years

custody unlawfully:

(a) Ineffective assistance of trial counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel failed to properly request adequate voir dire which resulted in the seating of a juror who was married to a member of the prosecuting law enforcement agency.

(b) _____

(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. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

Revised 3/2003

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. The seating of said juror was an issue in the direct appeal.

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. Direct Appeal

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

Revised 3/2003

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes, David Mathews
 - (b) your trial, if any? Yes, David Mathews
 - (c) your sentencing? Yes, David Mathews
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, Kathrine Hudgins
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes, Cory H. Fleming (current

PCR action)

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. David Mathews, Esquire, Fourteenth Circuit Public Defender, 115 Benson Street, Walterboro, SC 29488
 - ii. Kathrine Hudgins, SC Commission on Indigent Defense, 1330 Lady St., Ste. 401, Columbia, SC 29201

iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. David Mathews; Trial Counsel
- ii. Kathrine Hudgins; Appellant Counsel
- iii. _____

19. State clearly the relief you seek in filing this application:

To be granted a new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of COLLETON

)
)
)

VERIFICATION

I, Antwan D. McMillan, 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.

Antwan McMillan

SWORN to and subscribed before me this 21st
day of September, 2015

Ludeman Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, 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.

Antwan M^emilan
Applicant

SWORN or affirmed to and subscribed before me this
21st day of September, 2015

Ludrea Bryant
Notary Public

My Commission Expires: May 24, 2020

ALICIA C. GRANT
CLERK OF COURT
COMMON PLEAS
2015 OCT 16 PM 3:17

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Antwan D. McMillan, #347617,
Applicant,

2015-CP-15-1210

v.

RETURN

State of South Carolina,
Respondent.

In response to the post-conviction relief application filed on October 16, 2015, the Respondent would show this Court:

I. PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. The Applicant was indicted by the August 2011 term of the Charleston County Grand Jury for three counts of Attempted Murder, First Degree, three counts of Attempted Armed Robbery, and one count of Possession of a Weapon during the Commission of a Violent Crime (2010-GS-15-0501, -0502, -0503, -0504, -0505, -0506, -0507). David Matthews, Esquire, represented him.

On August 11, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted on three counts of Attempted Armed Robbery and one count of Possession of a Weapon During the Commission of a Violent Crime. The Applicant was found guilty of three counts of the lesser included offenses of Assault and Battery, First Degree. The Honorable Perry M. Buckner, III sentenced the Applicant to confinement for ten years for two counts of Assault and

Battery, First Degree, twenty years for the three counts of Attempted Armed Robbery, and five years for the count of Possession of a Weapon During the Commission of a Violent Crime (2010-GS-15-501, -503, -504, -505, -506, 507). The sentences were to be run concurrently except a consecutive sentence of ten years for the additional count of Assault and Battery, First Degree (2010-GS-15-502).

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. McMillan, Op. No. 2013-UP-317 (filed on July 10, 2013). The Remittitur was issued on June 17, 2015. The Applicant subsequently filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. The South Carolina Supreme Court initially granted certiorari, but following briefs submitted by the parties, the petition was dismissed as improvidently granted. State v. McMillan, Op. No. 2015-MO-035 (filed on June 17, 2015).

II. ALLEGATIONS

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
 - a. "Trial counsel failed to properly request adequate voir dire which resulted in the seating of a juror who was married to a member of the prosecuting law enforcement agency."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal, Court of Appeals opinion, and the South Carolina Supreme Court Memorandum Opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466

U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. CONCLUSION

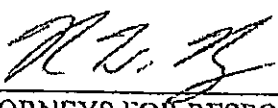
Each and every allegation contained within the application not expressly admitted, qualified, or explained is hereby denied. WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 3rd, 2017

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS

2015-CP-15-1210

ANTWAN D. MCMILLAN, #347617

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

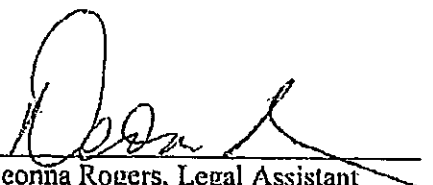
STATE OF SOUTH CAROLINA,

Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Cory Howerton Fleming, Esquire
Moss Kuhn & Fleming, PA
PO Drawer 507
Beaufort, SC 29901

DATED this the 3rd day of May, 2017.


Deonna Rogers, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

COURT OF COMMON PLEAS
2015-CP-15-01210

ANTWAN McMILLAN,
Applicant,

-vs-

STATE OF SOUTH CAROLINA,
Respondent.

)
)
)
)
)
)
)

TRANSCRIPT OF RECORD

June 6, 2017

Beaufort, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge.

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

Cory H. Fleming, Esquire
Attorney for the Applicant

Ruston W. Neely, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

E X A M I N A T I O N S

WITNESS	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
David Matthews	7	19	--	--

1 (June 6, 2017.)

2 MR. NEELY: The Applicant was indicted during
3 the August 2011 term by the grand jury for attempted
4 murder, three counts, three counts of attempted armed
5 robbery, and one count of possession of a weapon during
6 the commission of a violent crime. He was represented by
7 David Matthews at trial.

8 He was convicted of the lesser included three
9 counts of assault and battery in the first degree and
10 three counts of attempted armed robbery. Came back not
11 guilty on one count of possession of a weapon during the
12 commission of a violent crime. His sentence was ten
13 years for the attempted armed robbery with a consecutive
14 ten years for the assault and battery charges.

15 THE COURT: All right. Yes, sir.
16 Mr. Fleming?

17 MR. FLEMING: Good morning, Your Honor. At
18 this time I would like to make a brief statement
19 concerning the case, sort of direct us to focus on the
20 particular issue, and then I would call David Matthews to
21 the stand. I am told that and believe that the
22 transcript of the trial has been made a part of the Court
23 file and record.

24 THE COURT: Yes.

25 MR. FLEMING: And I would specifically

1 reference and alert the Court that the majority of the
2 information that I will be focussing on with regards to
3 this case is found from page 187 to page 199.

4 In this case, the claims of ineffective
5 assistance of counsel in this case turn on the issue of a
6 particular juror that served in the case that very
7 clearly the transcript shows what took place, and I will
8 obviously address that with the witness, but what I can
9 tell you is ultimately what we will show and what the
10 record or the transcript says is that juror 102, and I'll
11 just use that right now, was seated on the jury, and
12 after several witnesses had testified, that juror sent a
13 note via the Clerk of Court to the trial judge
14 indicating -- and the note said, I need to make sure that
15 I'm a suitable juror for this trial due to the status of
16 my husband.

17 As is appropriate, the judge then had the
18 juror -- actually, they thought it was the foreperson
19 because that's just the person who signed the jury note.
20 It actually turned out to be juror 102. Juror 102 came
21 out. The judge inquired about what relationship with her
22 husband that she was referring. She indicated he was a
23 reserve deputy with the Colleton County sheriff's
24 department, and prior to being a reserve deputy, he had
25 been an active duty, full-time deputy before that.

1 At that point, the judge asked appropriately
2 whether or not that fact would prevent her from giving
3 both the State and the defendant a fair and impartial
4 trial. She believed she could do so, and then he excused
5 her and had her remain as a juror.

6 At that time, both Mr. Matthews, who
7 represented my client, and Mr. Beach, who represented the
8 codefendant, both asked in sort of a fashion that that
9 juror be excused and presumably an alternate would be
10 set. Although those words weren't specifically said,
11 that's how the Court of Appeals interpreted it as well,
12 and I think we can interpret it that way.

13 The Court declined to do that, kept the
14 juror, and the issue at hand today is that -- which is
15 contained in the pages that I listed. Interestingly
16 enough, this juror did disclose the relationship in her
17 juror questionnaire. That questionnaire was transcribed
18 into a list by the Clerk of Court's office.
19 Unfortunately, and by no means do I think this was
20 intentional, his second occupation was not listed on that
21 form.

22 When the -- obviously, trial counsel -- it's
23 my understanding that trial counsel reviewed that form.
24 Unfortunately, and what we believe is the gravamen of our
25 ineffective assistance claim, is that neither trial

1 counsel, but in this particular case Mr. Matthews,
2 requested any specific voir dire of a juror's -- a
3 potential juror's relationship -- their family members
4 being in law enforcement, so the question was never
5 asked.

6 It is without -- the Court of Appeals felt
7 this was very important and I think it's very important
8 to put on the record. It's very clear that this juror
9 voluntarily provided that information. It is also very
10 clear that the juror came forward of her own to alert the
11 Court of the status and it was obvious she felt that was
12 a concern she needed to raise.

13 We contend, and my client contends, that had
14 the proper voir dire been provided to the judge, it's
15 almost a certainty that the judge would have asked that
16 question. The judge specifically references that in the
17 transcript, and it is also clear, I believe, that there
18 will be testimony today that trial counsel would have
19 struck that juror using a peremptory strike. I will tell
20 you that I've done the math and gone through and the
21 transcript shows that each defendant had five strikes.
22 My client had only exercised three strikes when that
23 juror's name was called; therefore, there was a
24 peremptory challenge available, and I believe that today
25 we'll learn that trial counsel would have exercised that

DAVID MATTHEWS - DIRECT EXAMINATION

1 peremptory challenge had he known that.

2 We believe that that, under these
3 circumstances, I think, I will elicit testimony as well,
4 that there were eight members of the sheriff's department
5 that testified in this case, and we'll get into that.
6 That's sort of irrelevant, but that's the gravamen of
7 this case, and that is what -- essentially limited to
8 that sole issue.

9 THE COURT: Okay. Got it.

10 MR. FLEMING: May I call David Matthews?

11 THE COURT: Yes.

12 MR. FLEMING: Thank you.

13 THE COURT: Mr. Neely, anything you want to
14 add or respond?

15 MR. NEELY: The recitation of facts was
16 accurate. I have the transcript.

17 DAVID MATTHEWS,

18 having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 THE COURT: Tell us who you are.

22 THE WITNESS: I'm David Matthews.

23 THE COURT: Your witness, Mr. Fleming.

24 BY MR. FLEMING:

25 Q. You are an attorney?

1 A. I am.

2 Q. And you are currently employed by the public
3 defender's office for the Fourteenth Circuit?

4 A. I am.

5 Q. And you were the trial attorney for Antwan
6 McMillan, correct?

7 A. I was.

8 Q. In the case that has been referenced at the call
9 of this case?

10 A. Right.

11 Q. You've heard my short recitation of the facts to
12 the judge, but I think we need to go ahead and get some
13 testimony in to support some of that.

14 The first thing that I would like to talk to you
15 about is you recall, do you not, that y'all first learned
16 that this juror, juror 102, was the spouse of a deputy
17 when she brought it forward?

18 A. That's correct.

19 Q. All right. Now, is it true in preparation for
20 trial you review the clerk's summation of the jury
21 responses?

22 A. Yes.

23 Q. Okay. And did you do that in this case?

24 A. I did.

25 Q. And when you did that, you saw nobody in that

1 list, as I've looked at it, that was specifically related
2 to a Colleton County deputy?

3 A. Not that sat on the jury.

4 Q. That's right, not that sat on the jury. Now, when
5 you -- when the Court and everybody present was informed
6 of her relationship, is that when you realized that you
7 had not specifically asked voir dire of that question?

8 A. That's correct.

9 Q. Is it typically your practice to ask voir dire --
10 in voir dire or ask the judge to ask the jury if they are
11 related by blood or marriage to a member of law
12 enforcement?

13 A. I do sometimes. I don't every time. I should. I
14 should do it all the time.

15 Q. And what is the purpose of that?

16 A. To make sure I don't have law -- people that are
17 overly sympathetic to law enforcement on my jury.

18 Q. When you recognized that you nor Mr. Beach had
19 requested that that voir dire be issued, it appears in
20 the transcript that you asked the judge to excuse that
21 juror?

22 A. That's correct.

23 Q. Or you joined in with Mr. Beach in that request?

24 A. Right.

25 Q. When you -- you also told the judge that you would

1 have -- had you known that information, you would have
2 struck the juror in a different way?

3 A. I would have struck that juror.

4 Q. Okay. And there is no question about that? That
5 would have been your normal practice?

6 A. I had two left to go. I certainly would have used
7 one of those remaining two for her.

8 Q. And you agree with my sort of math that I did that
9 you did have peremptory challenges remaining?

10 A. Yes.

11 Q. Now, I'd like to talk a little bit about the trial
12 itself, because I want to ask you about how it -- well,
13 let's talk about the strength of the case, if you will,
14 based on the transcript, and then how potentially it
15 could have affected a jury's result. As I read the
16 transcript, it's clear to me, and would you agree, that
17 none of the victims of this crime were able to identify
18 Antwan McMillan?

19 A. That's my recollection.

20 Q. Okay. And it's also clear the main evidence
21 against Mr. McMillan in this case was the testimony of a
22 codefendant; is that correct?

23 A. That's correct, yes.

24 Q. And in your cross-examination of the codefendant,
25 it is clear you were able to point out multiple

1 inconsistencies with his statement?

2 A. I think that's accurate.

3 Q. Okay. And you also brought out in your
4 cross-examination the bias that he may have and his wish
5 to be treated leniently?

6 A. People don't testify against other people unless
7 they hope to get something out of it.

8 Q. That's correct. Now, interestingly enough, y'all,
9 you and Mr. Beach, were able to elicit the statement of
10 the codefendant on trial; is that correct?

11 A. Yeah.

12 Q. Okay. And that was David Jakes, correct?

13 A. Right.

14 Q. And Mr. Jakes gave a video -- I think it was -- I
15 didn't see it, obviously, but a video statement in which
16 he said he was there, he was present at the time that
17 this crime occurred?

18 A. Right.

19 Q. David Jakes was present?

20 A. Right.

21 Q. He was the one shot by the victim, correct?

22 A. I think that's right.

23 Q. And that he specifically testified that Antwan
24 McMillan was not present?

25 A. That was my recollection.

1 Q. So you have one codefendant who wasn't on trial
2 saying Antwan was there?

3 A. Right.

4 Q. And you had one codefendant who had given a
5 statement to law enforcement that said that he was not
6 there.

7 A. Right.

8 Q. And so you obviously got some significantly
9 conflicting testimony.

10 A. Right.

11 Q. Now, the -- there was no -- there were no alleged
12 confessions or any statements by Mr. McMillan --

13 A. Right.

14 Q. -- in the case? And I also went back and did the
15 math, and it appears that seven Colleton County sheriff's
16 deputies testified -- well, there was a lot, as far as
17 you know.

18 A. Right.

19 Q. And the statement will speak for itself, and then
20 one who was an employee of Colleton County sheriff's
21 office, which was the 911 operator, for a total of eight
22 employees?

23 A. Right.

24 Q. So there was a significant presence of Colleton
25 County sheriff's deputies testifying in this trial?

1 A. Right.

2 Q. By a great majority of the witnesses?

3 A. Yes.

4 Q. Now, one of the people that testified was
5 Detective Inabinett; is that correct?

6 A. Yes.

7 Q. And that was fairly crucial testimony.

8 A. I don't remember specifically, but I remember --
9 didn't he say -- I haven't looked at the transcript.
10 Didn't he testify that the alibi witness is not somebody
11 he was able to find or cure about or something to that
12 effect?

13 Q. Correct. So, if you recall, Detective Inabinett
14 was the person who took the statement from the
15 codefendant, David Jakes?

16 A. Right.

17 Q. And in that statement, David Jakes said Antwan
18 McMillan wasn't there, correct?

19 A. Correct.

20 Q. And he said the person who was driving that was
21 there has the street name of Jay Sneezy or something like
22 that.

23 A. Something like that.

24 Q. Lord knows, but in direct -- or I believe it was
25 actually cross-examination by the State, Inabinett

1 testified that he was an expert in the town of
2 Jacksonboro; basically, that he knew all about
3 Jacksonboro, and that he's never heard about anybody
4 named Jay Sneezy and that person didn't exist.

5 A. That sounds about right.

6 Q. And the solicitor, in her closing statement, used
7 that fact very eloquently and strongly to prove, or to
8 try to prove, that Mr. Jakes's statement was not
9 believable?

10 A. Right, yes.

11 Q. But the truth of the matter is it rested on
12 Detective Inabinett's statement that he didn't know
13 anybody named Sneezy?

14 A. That was important, yeah.

15 Q. So in many ways, he was a crucial witness, a
16 member of the Colleton County sheriff's office, and, as a
17 matter of public record, we know he was subsequently
18 fired in disgrace?

19 A. Right.

20 Q. And he's no longer in law enforcement?

21 A. Right.

22 Q. And was indicted federally and pled guilty to
23 lying to FBI agents.

24 A. That's right.

25 Q. So that's the person that ultimately could very

1 well have hinged this case.

2 A. It was not a small role.

3 Q. It was not a small role. Okay. Then the
4 remaining evidence I will call marginal physical
5 evidence, right? So you had a fingerprint on the outside
6 of the vehicle, is that --

7 A. I think that's right. There was some, but they
8 lived in the same general neighborhood and stuff, and
9 it's certainly possible that that could have come from
10 someplace other than that one time.

11 Q. In fact, there was earlier testimony he was around
12 the vehicle ahead of time?

13 A. Right.

14 Q. But the assailants left, and he stayed where he
15 was. Mr. McMillan did not go with them?

16 A. Right, right.

17 Q. And there was a shirt found in the back seat of
18 the vehicle that had some DNA on --

19 A. I don't remember that, but I have no reason to
20 doubt what you're saying.

21 Q. But no witness ever identified any of the people
22 wearing that shirt as being an assailant?

23 A. That's right.

24 Q. And so the statement of the codefendant
25 implicating Mr. McMillan said he was the driver.

1 A. Right.

2 Q. And there was no DNA or any physical evidence
3 found on the driver's position linking Mr. McMillan?

4 A. I think that's accurate.

5 Q. So when it boils down to it, you've got a
6 compromised codefendant, essentially, lynch-pinning *
7 this case?

8 A. Right.

9 Q. And then the rest of the sheriff's office?

10 A. Right.

11 Q. Would it be fair to say in your estimate that the
12 sheriff's department had a great deal to do --

13 A. I think that's fair.

14 Q. -- with obtaining this conviction?

15 A. I think that's fair.

16 Q. Other than in some cases where they're simply
17 taking a report.

18 A. Right.

19 Q. Now, you also challenged in the trial the
20 sufficiency of the investigation, specifically -- and
21 I'll try to jog your memory, about the fact that they
22 never did any work with the cellphones found?

23 A. Right, right, right.

24 Q. And the cellphones could have indicated who called
25 what and who was where, et cetera?

1 A. Yeah.

2 Q. And that was a direct challenge to the sheriff's
3 office's thoroughness in their investigation?

4 A. That's correct, yes.

5 Q. So in many ways -- and I hate to say it this way,
6 but in many ways, part of the defense, or a great
7 majority of the defense, was casting reasonable doubt
8 based on the sufficiency of what the Colleton County
9 sheriff's department did?

10 A. Sure. If you've got one witness who says he
11 wasn't there, one says he was, trying to save his own
12 butt, the law enforcement is the tie, and if you've got a
13 jury that's not listening fairly, then what you're
14 arguing for is going to be a lot harder to do.

15 Q. So you were arguing to the jury that the Colleton
16 County sheriff's office didn't do their job?

17 A. Sure.

18 Q. And you had to look this juror in the face, and
19 you knew that she was married to a member of that
20 organization?

21 A. A hard sell.

22 Q. And is that the factor that would have driven you,
23 obviously, to have struck that juror?

24 A. Oh, sure.

25 Q. Okay.

1 A. Absolutely.

2 Q. All right. And you certainly can't testify to
3 what took place in the jury room.

4 A. Wasn't there. Don't know.

5 Q. But with regards to how you tried that case --

6 A. I know she thought it was significant enough that
7 she came forward, and so if she thought it was
8 significant, obviously it was significant, and once she
9 got to that point, I really -- I should have asked that
10 an alternate juror be seated. I didn't do that. I wish
11 I had.

12 Q. And I think -- and so the record is clear, I
13 think -- in your defense, I think the judge accepted
14 y'all's objection as if you were asking for that, and I'm
15 certain that the Court of Appeals did because that's how
16 they ruled.

17 A. Okay.

18 Q. Yeah, so for purpose of clarity of the record, I
19 don't believe that really is an issue. I think the
20 record was sufficient on that issue. I think the problem
21 came prior to jury selection.

22 A. Yeah.

23 Q. Yeah.

24 MR. FLEMING: Judge, I believe that's all the
25 questions I have.

DAVID MATTHEWS - CROSS-EXAMINATION

1 THE COURT: Okay. Cross-examination.

2 MR. NEELY: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. NEELY:

5 Q. Mr. Matthews, in Colleton County is it usual for
6 the Clerk of Court to provide you with a list of the
7 occupations of the juror and the juror's spouse?

8 A. It was, it was. At that time, it was. At that
9 time we had a more detailed list. We don't always get so
10 detailed a list now, but at the time, it was very common.
11 At that time, that was the norm.

12 Q. In your many years of practice in Colleton County,
13 have you ever come across the situation where the list
14 was inaccurate?

15 A. It's hard to know that. Like I said, people come
16 up, and -- yes, it happens from time to time, sure.

17 Q. But is it fair to say that you rely on the list
18 for the occupations?

19 A. Yeah, yes.

20 Q. So there was no reason whenever you let that juror
21 be selected for you to believe that that juror had any
22 relation to law enforcement?

23 A. Well, you know, you ask some questions because you
24 know that people sometimes aren't complete in how they
25 ask that. A question typically that we ask as a matter

1 of course, is anybody a member of a victims' group -- a
2 group that advocates for law enforcement or victims, such
3 as MADD, GLAD, SADD, BADD, whatever, and so, you know, it
4 is -- we rely on it, but you can't rely on everything
5 completely because this is somebody jotting something
6 down and they might not get it right, or it might not be
7 presented right. Yes, I rely on it, typically, but I
8 also ask some questions typically, expecting that it's
9 not going to be complete.

10 Q. Certainly. And the judge, during the voir dire
11 that he did give, did ask the jury panel whether they
12 knew any of the witnesses that were involved or were
13 going to testify in this trial, correct?

14 A. I'm sure he would have.

15 Q. And that was never challenged, that the juror in
16 question, juror 102, did not know any of the witnesses,
17 and, in fact, specifically stated that she hadn't spoken
18 with her husband about the case and knew nothing about
19 the case?

20 A. I mean, those are two different things. I mean,
21 you're right. You ask that. Do you know anything about
22 this case specifically? You ask, Do you know any of the
23 witnesses involved? Do you know anything particularly
24 about this set of circumstances? And that's certainly a
25 reason to strike somebody if they're not removed for

1 cause, but the additional thing is you're trying to find
2 out what kind of sympathies they may have, and that's the
3 question that that question doesn't address. Do you know
4 and have you discussed is not the same thing as are you
5 related to because if the pride of your life is that your
6 boy is on the highway patrol or your daughter works for
7 SLED or something like that, if that's a part of how you
8 define yourself, it's a different kind of bias, but yeah,
9 I ask. It's not exactly the same.

10 Q. And that -- the bias that would remove somebody
11 from jury consideration, if the judge asked that catchall
12 question of is there any other reason anybody knows of
13 why they can't be a fair and impartial juror?

14 A. Yeah, but that's not -- you ask them if they're
15 going to be fair, most of the time they're going to say
16 they're going to be fair, but if you ask the question to
17 determine for yourself, you know, if you are -- if the
18 pride of your life is my son is on the highway patrol,
19 they you still think they can be fair, even though
20 they're going to be more inherently biased toward law
21 enforcement and believe something law enforcement says
22 more than somebody -- if you got any doubt at all, you're
23 going to resolve it in favor of law enforcement, so it's
24 not the same.

25 Q. So what we're talking about here is potential

1 subconscious leanings.

2 A. I mean, that's one of the things that we have to
3 ask, I mean, because if you ask somebody if they're going
4 to be fair, they're going to say they're going to be
5 fair. It is a rare and especially unusually honest juror
6 who's going to get up there and say, I've thought about
7 this, and I just -- sometimes you'll get somebody up
8 there and they'll say, On religious grounds, I can't be
9 fair, but part of my job is to figure out whether I think
10 they can be fair, not whether they think they can be
11 fair, and by not asking that question, I didn't have the
12 tools. You know, I think I tried a pretty good case, but
13 that's something I would have done differently.

14 Q. I understand you would have done it differently,
15 and you actually objected and told the judge you would
16 have done it differently in trial, correct?

17 A. Right.

18 Q. Is it ever possible to ask enough voir dire
19 questions to fully understand a juror's mind in South
20 Carolina particularly?

21 A. Probably not.

22 Q. So there are always going to be extra voir dire
23 questions you could have asked that would help you
24 further understand the jury pool?

25 A. That's true.

DAVID MATTHEWS - CROSS-EXAMINATION

1 MR. NEELY: That's all the questions I have,
2 Your Honor.

3 THE COURT: Redirect?

4 MR. FLEMING: I don't have any. Thank you,
5 Judge.

6 THE COURT: And is this witness free to leave
7 and any objection?

8 MR. NEELY: No objection, Your Honor.

9 THE COURT: All right. Thank you for being
10 here.

11 MR. FLEMING: Judge, I do have one further
12 matter, and it is by way of a motion/request. The
13 two-prongs, essentially, to a post-conviction relief
14 case, when it deals with ineffective assistance of
15 counsel, first, there has to be a finding that there was
16 ineffective assistance of counsel, and then there also
17 has to be evidence and a finding that it materially
18 affected the outcome of the case, and any time that you
19 have a case in which it deals directly on the seating of
20 a juror and juror deliberations, proving prejudice with
21 regard to what took place in the jury room is very
22 difficult.

23 The information I elicited from Mr. Matthews
24 that is contained in the record simply related to the
25 strength of the prosecution's case, the type of

1 witnesses, the fact that there is no eyewitness
2 identification from victims, the fact there's no real
3 physical evidence directly linking, the fact that you've
4 got a codefendant and nobody else, and then,
5 particularly, the importance and the role of the Colleton
6 County sheriff's office and the detectives in both
7 investigating this case and them allegedly failing to
8 investigate this case.

9 I believe, Your Honor, that that is
10 sufficient to prove the requisite prejudice, if you will,
11 with regard to seating someone who is the spouse of a
12 member of that organization; however, out of an abundance
13 of caution and in my search for a thorough evidentiary
14 hearing, I contemplated the notion of sending a subpoena
15 to the jurors to come to this hearing.

16 It is, however, a longstanding practice, both
17 from the bench and jurisprudence, that jurors are not
18 summoned to answer for their verdict in almost every
19 situation, and while I have done my own research and
20 investigation with regard to it, I did not feel that it
21 was appropriate as an officer of the court to send a
22 subpoena to a juror unless the Court approved that
23 request.

24 What I am asking is that if the Court finds
25 after deliberation and review that there is sufficient

1 evidence to show ineffective assistance of counsel and
2 then begins to reach the analysis of whether or not there
3 is prejudice that I be allowed -- that we reconvene an
4 evidentiary hearing and that I be allowed to subpoena the
5 jurors to testify about the effect that this juror may
6 have had with regards to the verdict and the issues that
7 I've presented today with regards to the effect of the
8 Colleton County sheriff's office on this investigation.

9 We are left at this juncture with sort of the
10 longtime lawyers' assumption that someone just like
11 Mr. Matthews testified. When you are related to somebody
12 and they are involved in an organization, you have a bias
13 toward that organization, generally. I think that would
14 be common sense. You know, it's very flippant, but when
15 you talk about the Gamecocks, I have a bias, and if it's
16 negative, I don't believe you, and if it's positive, I
17 believe you, and it doesn't matter what the truth is.

18 And in a much serious note, when your husband
19 has been a longtime employee of the organization that's
20 being criticized in a trial for not doing an appropriate
21 investigation and that the answers to those -- to that
22 investigation may have shed light on the guilt,
23 innocence, or the lack of proof on my client, it's very
24 difficult, I believe, to sit in the jury room and look at
25 this person -- and I'm not using the name in the record,

1 but juror 102.

2 It's very difficult if I'm on the jury and
3 having an open discussion about the facts and
4 circumstances of the case as presented in the trial to
5 look at that and say, you know, your husband -- people
6 just didn't do what they were supposed to do, and that's
7 tough. I'm sure that it happens, and I'm sure it could
8 happen, but, in any event, I cannot present that evidence
9 without that type of evidentiary hearing, but I thought
10 that it was appropriate under this unusual circumstance
11 to instead of on my own sending subpoenas request that I
12 be granted leave to do that, if necessary, if the Court
13 believes so, and then I would just ask that you take that
14 under advisement, and, if appropriate, obviously, that's
15 what I'm asking for.

16 THE COURT: Got it. Yes, sir?

17 MR. NEELY: Thank you, Your Honor. Just
18 first off, dealing with the deficiency, the first prong,
19 I think what we're dealing with here is just a case of
20 hindsight is 20/20. He certainly would have asked the
21 question after finding out that the husband of juror 102
22 had a second job as a reserve deputy, you would have
23 asked whether you were related by blood or marriage to a
24 law enforcement officer; however, as Mr. Matthews
25 testified to, there's always going to be questions you

1 could have asked to the jury that you could try to
2 pinpoint exactly what their leanings or biases are, and
3 you're never going to be able to do that. Just like a
4 jury room, the mind of a juror is a secret, private
5 place, and you're never going to know exactly what is
6 going on in their head.

7 I think he very reasonably relied on the
8 Clerk of Court's jury information sheet and could see
9 whenever he was selecting jurors whether that juror was
10 related by blood or marriage to somebody that was
11 employed in law enforcement, checked, and they were not.
12 Obviously, this was apparently a strange case where
13 somebody is a reserve deputy as a secondary job as
14 opposed to a first job, but that juror testified, first
15 by silence, in saying she didn't have a bias or prejudice
16 when the judge asked the catchall question, and then when
17 the judge brought the juror out, juror 102, asked her
18 specifically whether -- spoke about the case to her
19 husband, whether that affected her ability to be fair and
20 impartial, and she testified that it did not, I think
21 that defendant is entitled to a fair and impartial juror,
22 and I think that's what they had.

23 Certainly, we would have done things
24 differently. I think in every case that a defense
25 attorney loses, they would probably choose a different

1 juror if they had to do it again because you never know
2 what each juror is going to think, what each juror is
3 going to bring to the jury room. Again, I don't think
4 he's deficient, and I think his objection was preserved
5 for the record, and I think the Court needs to rule on
6 it.

7 If the judge decided to grant his objection
8 and replace that juror with an alternate, we wouldn't
9 have this conversation because the objection was
10 preserved for the record. I think that's all he could
11 have done at that point in time, and I think the rest is
12 just hindsight is 20/20.

13 THE COURT: Well let me hear from you in the
14 event that I make a determination that Mr. Fleming is
15 correct, that it is a deviation from acceptable standards
16 and this is therefore the -- you look then to the second
17 prong, the prejudice prong, that there was ineffective
18 assistance or there was deficient representation, so we
19 look to the prejudice.

20 What about the idea of calling the jurors to
21 show prejudice as opposed to the protection of the
22 deliberations of the jury?

23 MR. NEELY: Your Honor, I certainly would
24 object to that, and I think it is -- there's a reason the
25 jury room is a secret and sacred place, because all the

1 conversations there need to be protected from the
2 outside, kind of peek into the minds of the juries and
3 figure out why they're doing what they're doing, I think
4 it's stifling, and I think that whenever you call a juror
5 to the stand and make them testify about what they're
6 told is going to be a secret and private discussion of
7 the case so that they can discuss and fully investigate
8 among themselves the nature of the case and each
9 individual component of the case, I think it's a
10 dangerous thing to mess with that.

11 I also think that especially in this case
12 where the alleged prejudice, or alleged bias, is not a
13 lie. That was told. The juror certainly didn't lie and
14 actually brought it up to the judge herself, just to make
15 sure everything was okay, so you don't have any
16 allegations of juror misconduct, really, you just have a
17 juror volunteering information just to be extra safe.

18 I think any testimony by that juror or any
19 other juror in that jury panel would not be able to show
20 prejudice. They would only be able to show jury
21 deliberation, and every single person, as Mr. Matthews
22 testified to, comes in, and, as Mr. Fleming argued, every
23 person comes into the jury room with a different set of
24 beliefs, experiences. That's what makes a jury so
25 special, is you've got 12 people with very difficult

1 beliefs, experiences, and ways of analyzing materials,
2 and they all have to agree in order to find a defendant
3 guilty.

4 THE COURT: Do you believe that this is a
5 situation where if there is a -- the representation was
6 deficient that prejudice is presumed, given the nature of
7 the issue?

8 MR. NEELY: No. I would certainly say that's
9 not the case. Even when you have a case of juror
10 misconduct being alleged, the burden still lies on the
11 defendant to prove the prejudice prong. So it's -- and I
12 think -- and to me, at least, that is a much stronger
13 case when you have juror misconduct. There was a case
14 where a juror was passing around religious pamphlets in
15 the jury room, and the Supreme Court found that did
16 not -- you know, should not have been done, but it did
17 not affect the jury's impartiality and ability to be fair
18 and impartial.

19 Even in those cases, the defendant must still
20 prove prejudice, so I think in this case they would have
21 to prove prejudice as well, but, again, I think it's
22 impossible to prove prejudice other than what one juror
23 brings to a jury panel of 12 people.

24 THE COURT: Okay. Any response?

25 MR. FLEMING: Just for a second, I want to be

1 clear, Judge, that my argument of ineffective assistance
2 of counsel is not the perfection of the record. I
3 believe that there was an adequate objection raised by
4 both trial counsel in this case, and I believe that it
5 was ruled on and it's very clear that the Court of
6 Appeals did not say -- they didn't affirm --

7 THE COURT: It wasn't an issue preservation.

8 MR. FLEMING: It's not an issue preservation
9 thing. My contention is, and I think the Court
10 understands this -- my position is before any of that
11 happened the error was made. The error was made when you
12 don't ask the right voir dire on, and as -- you know, I
13 have never tried a criminal trial in my life that I
14 didn't ask that question, and, as Mr. Matthews testified,
15 you don't put spouses and families of law enforcement on
16 juries if you can help it. You might run out of strikes,
17 but you just don't do it, and that is the issue, that he
18 may have relied on that list, but the proper -- the
19 standard is to ask the question and you ask it under
20 oath, and that way you get the right answer.

21 It's not whether or not this juror was not
22 qualified to set. The juror answered all of those
23 questions in the way that is appropriate for a juror to
24 answer and be qualified. The question is, despite her
25 qualifications that she says she could be fair and

1 impartial -- I mean, that's the reason for her peremptory
2 challenge. You don't have to exercise a peremptory
3 challenge if they're not qualified.

4 The question is, would you have sat that
5 juror had you found out about that information about her
6 relationship, her husband, and why didn't you find it out
7 and if the question -- if the reason you didn't find it
8 out is because you didn't send -- didn't do the right
9 voir dire, then it's an error, and it's one as
10 Mr. Matthews says it should have been done.

11 And I honestly don't think, to be very
12 honest, that that -- I mean, the transcript's fairly
13 clear. I don't think that's a factual issue. I think
14 that's fairly clear. The question is how it relates to
15 the prejudice. What is the prejudice that results from
16 that? And there is the inherent prejudice that
17 Mr. Matthews talked about bias, and I believe that the
18 Attorney General is right. There's scant cases that talk
19 about any presumptive problems. There's almost none and
20 I'm unaware of any in South Carolina, and, in fact, the
21 Court of Appeals references that.

22 I believe that to me the analysis is when you
23 determine -- you have to evaluate the strength of the
24 State's case based on the evidence presented. If it's
25 overwhelmingly strong, you've got seven eyewitnesses and

1 one in quintillion DNA on the murder weapon and the video
2 confession, I mean, obviously, it's hard to have
3 prejudice in any way in that case, unless a confession
4 comes in improperly, but when the case hinges on some
5 sketchy testimony and then the potential for some
6 problems with the investigation, then it's almost a
7 situation in which when the proof falls, the prejudice
8 rises almost, because at that point, you're left to
9 assume that there was something swaying them besides an
10 overwhelming element of proof that I don't think the
11 record is replete with that.

12 I mean, there's just not -- it's a very short
13 level of proof, and I think that when that level of proof
14 is lower, then the feeling -- the understanding that
15 there may be prejudice almost rises diametric to that, so
16 to speak. It rises at the same time the truth falls.
17 What do they say, a sliding scale? And that's -- but
18 with the exception of the evidence listed in the
19 transcript, beyond the ability to invade the jury room, I
20 don't know that -- I don't know what else I could provide
21 to the Court to show that other than the evidence, what I
22 contend was the small amount of evidence in the trial.

23 THE COURT: Let me ask you this question:
24 What evidence could be, would be, more compelling than
25 the evidence that was already elicited? Because,

1 otherwise, you've just got 50/50 hindsight because at
2 that moment, at that moment prior to the deliberation, at
3 the time of the disclosure, questions were asked, and at
4 that point, obviously, the juror knows that there are
5 witnesses being -- that are from the sheriff's
6 department, and specifically as opposed to generally,
7 because at that point, the Court would have been over
8 with the juror all of the witnesses from the sheriff's
9 department, and at the point in time when there was the
10 colloquy, this witness, as I understand, half of the
11 witnesses from the sheriff's department, so what is
12 the -- at that the point, isn't that the preeminent time
13 to ascertain whether there's going to be a prejudice or
14 not?

15 MR. FLEMING: I believe what happened was the
16 first -- and I've read this transcript a lot, but I'm
17 going on memory. I believe the first three witnesses
18 that testified were all the victims.

19 THE COURT: Okay.

20 MR. FLEMING: There was an older female, a
21 younger female, and then that female's husband.

22 THE COURT: Okay. I thought y'all had told
23 me --

24 MR. FLEMING: The law enforcement had not
25 testified at that point.

1 THE COURT: Okay.

2 MR. FLEMING: And so I think what you can
3 glean in between the lines is they began -- they broke, I
4 think. They began opening statements. The witnesses
5 were sort of boom, boom, boom, and then they broke, and
6 it was sort of that time that the juror most likely
7 reflected and said, Nobody's ever asked me about my
8 husband being in the sheriff's office. They listed the
9 sheriff's deputies that are going to be testifying. I
10 need to let them know that I'm related to one of the
11 deputies, and that's exactly what she did, and the
12 Attorney General is absolutely correct. She did
13 everything that she was supposed to do, and this is not a
14 misconduct on her part.

15 She did exactly what she's supposed to do,
16 twice, and that's not really what it is. The
17 prejudice -- you don't know what the prejudice is going
18 to be. You don't know what that witness is going to
19 testify to, that sheriff's deputy, so the 911 operator.
20 Yes, I took the call. This is it. Play the tape.
21 Obviously not a ton of prejudice, but when you start
22 getting into the two or three specific witnesses --
23 number one was Inabinett, who has left a trail behind him
24 in Walterboro, Colleton County that's awful. His
25 testimony sort of torpedoed the, for lack of a better

1 word, alibi, even though it's technically not, it's a
2 witness statement saying that Mr. McMillan was not there,
3 his certainty, if you will, that this third party doesn't
4 exist because he's the expert in Jacksonboro and he knows
5 everybody and there's nobody named that, that's almost
6 directly on his credibility.

7 I mean, there's no other way to say that, but
8 I'm saying that there is nobody, can't disprove that, and
9 then the witnesses about why didn't you collect this
10 piece of evidence that's right there? Why didn't you
11 test it? Why didn't you collect this piece of evidence?
12 Why didn't you test it, et cetera, that's the challenge
13 related to the sheriff's office, that this juror could
14 not possibly have contemplated when she said that she
15 could be fair and impartial, and I have no doubt that she
16 believed that she could be fair and impartial.

17 That's not what our job as lawyers are. Our
18 job as lawyers is to evaluate the juror and say no way.
19 They may think they can be fair and impartial, but I'm
20 not taking a risk on this juror. I'm going to exercise
21 one of my two remaining peremptory challenges on this,
22 and, in fact, didn't even use them, the record shows.
23 Had two in his pocket when the jury was sworn, and,
24 obviously, had the peremptory challenges been gone prior
25 to this juror being called, it wouldn't have mattered.

1 It wouldn't have mattered. Couldn't have struck her
2 anyway, but the fact that, you know, the lawyer, in
3 preparing the case, knows that you're going to be
4 challenging certain things and knows that part of that
5 challenge is going to be the classic law enforcement
6 didn't do their job sort of defense.

7 The evidence in this case supported that type
8 of defense, I believe, in the record, and so when you're
9 talking about the fact that there is potential evidence
10 out there not collected that could have exonerated or
11 pointed to this other person, didn't mention that it's in
12 the record, didn't mention it, there was DNA found on the
13 driver's seat that wasn't related to anybody, so that's a
14 piece of evidence that maybe there was a third party, Jay
15 Sneezy, that sort of thing, and while this isn't a
16 third-party guilt case, because of the way it -- the way
17 it sort of played out with Mr. Inabinett testifying that
18 there is this Jay Sneezy doesn't exist, it sort of went
19 that way.

20 So you got the credibility of that particular
21 detective, and you've got the -- credibility is not the
22 correct word, but competency of the investigation, and
23 that when you're picking a jury and you know that's what
24 your challenge is going to be, the last person in the
25 world you want is somebody whose husband works with them,

1 and it's not because we don't believe that they're being
2 honest in say something, I can be fair and impartial,
3 it's just that we don't think they even know what they're
4 getting into. They don't know what they're getting ready
5 to have to decide, and that's the reason you strike many
6 of these people.

7 From time to time I do hear answers like, oh,
8 I don't think I want to be in that position, which is
9 actually the most honest question because that is, I
10 don't know what it is I got to decide, but if I got to
11 decide it against them, I don't want to have to show up
12 to the sheriff's barbecue on Thursday, and that's tough.
13 That's a tough thing, and that really is why this type of
14 juror is dismissed, and when they, by error, get on the
15 jury, you're stuck with it.

16 The Court did everything legally. I have no
17 problem at all, or no challenge with what the Court did,
18 and certainly the Court of Appeals agreed, that proper
19 standards were met, it's just the standard from the
20 lawyer's perspective, he made a mistake, and it was a big
21 mistake, and it's one that he wishes he hadn't made and
22 he admitted he made it, and the question then becomes
23 what is the prejudice? And I think the prejudice is the
24 type of defense.

25 Now, you asked if you had two victims, two of

1 the three victims, and they said, Oh, I saw Cory Fleming.
2 I saw the man. He was six-two -- although I think I'm
3 getting a little shorter now -- he was six-two, bald, you
4 now, sort of reddish face because he doesn't wear
5 sunscreen, whatever, and they show him a lineup and they
6 pick me out of a lineup, then you've got two victims that
7 are identifying the attacker, so that has nothing to do
8 with law enforcement.

9 That has nothing to do with the Colleton
10 County sheriff's office. If there was DNA on the
11 steering wheel or identification or something that the
12 person was wearing that the person was found in or if it
13 was a confession, all of that type of evidence, they took
14 it away from what the sheriff's office said to just what
15 the evidence said, then there would be a different story,
16 but when you've got a case that sort of focuses on a
17 pretty sketchy testimony by a codefendant, which always
18 brings with it various biases and prejudices that
19 everybody understands, coupled with some certainty,
20 certainty by a detective -- a detective about something
21 and then potentially the failure to procure some
22 evidence, then you're starting to talk about a case that
23 hinges on a person having to say, I think the Colleton
24 County sheriff's office did what they were supposed to
25 do, and that's a tough question to ask someone's husband

1 who gets paid by them. It's really tough.

2 THE COURT: Okay.

3 MR. FLEMING: Thank you for hearing me out.

4 MR. NEELY: And, just briefly, in response,
5 Your Honor, at the end of the trial, after the verdict
6 was returned, each of the jurors was polled, and all 12
7 jurors said this is my verdict. I think when you're
8 talking about potential prejudice of one juror
9 overturning a case to show prejudice you would have to
10 show the juror behind juror 102, juror 103 or 104 would
11 have decided differently. We have no idea, and we would
12 have to call each prospective juror. Those jurors could
13 have law enforcement wallpaper all over their room, or
14 they could be the one holding the sheriff's barbecue or
15 donating money to the sheriff's campaign. There are
16 always a million questions you can ask, and you just
17 don't know, with the limited voir dire in South Carolina,
18 where each individual prejudice is going to come down,
19 and to show prejudice, you would have to show a
20 reasonable probability of being different, and I think at
21 that point you're trying to pick between jurors in a jury
22 pool.

23 THE COURT: Okay. I think I'm going to ask
24 for proposed orders, 30 days, unless you all need longer,
25 and if you do, just get together and shoot my office an

1 email.

2 MR. FLEMING: Thank you, Your Honor.

3 - - -

4 (Whereupon, the proceedings were concluded.)

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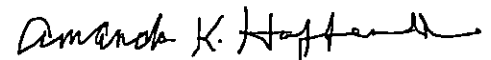
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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Colleton County, South Carolina, on the 6th of June 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 22, 2018



Circuit Court Reporter

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	
	)	
ANTWAN D. MCMILLAN	)	Case No.: 2015-CP-15-1210
#347617	)	
Applicant	)	
-versus-	)	ORDER GRANTING POST
	)	CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
Respondent	)	

This matter comes before the Court by way of an Application for Post Conviction Relief (PCR) filed October 16, 2015. The Respondent made its Return on or about May 3, 2017. An evidentiary hearing into the matter was convened on June 6, 2017 at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by Cory H. Fleming. Ruston W. Neely of the South Carolina Attorney General's Office represented the Respondent.

Applicant did not testify on his own behalf at the PCR hearing. Applicant's trial counsel, David Mathews testified at the hearing. This Court had before it the records of the Colleton County Clerk of Court, the trial transcript and Applicant's PCR application. The August 29, 2011 through September 1, 2011 trial transcript was introduced at the hearing without objection.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. David S. Mathews represented the Applicant at his jury trial August 29, through September 1, 2011, after which a jury found Applicant guilty of all charges including Assault and Battery 1st degree (2010 GS 15-00502), Assault and Battery 1st Degree (2010 GS 15-00503), Attempted Arm Robbery (2010 GS 15-00504), Attempted Arm Robbery (2010 GS 15-00505), Attempted Arm Robbery (2010 GS 15-00506), Possession of a Weapon during the Commission of a Violent Crime (2010 GS 15-00507). The Honorable Perry M. Buckner, III sentenced Applicant to a concurrent 20 years on three counts of

Attempted Armed Robbery, concurrent 5 years on Possession of a Weapon During the Commission of a Violent crime, 10 years concurrent on two counts of Assault and Battery 1st degree and 10 years consecutive on 1 count of Assault and Battery 1st degree on September 1, 2001.

A timely Notice of Appeal was filed on Applicant's behalf and the appeal was perfected. Katherine H. Hudgins of the South Carolina Commission on Indigent Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed the Applicant's conviction and Sentence (State V. McMillan, Op. No. 2013-UP-317 (filed July 10, 2013)). The Remittitur was issued on June 17, 2015. The Applicant subsequently filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, however although initially granted, the petition was dismissed as improvidently granted. State V. McMillan, Op. No. 2015-MO-035 (filed on June 17, 2015)

ALLEGATIONS

In his Application, the Applicant alleged he is being held in custody unlawfully for the following reasons:

- (1) Ineffective assistance of trial counsel
 - (a) Trial counsel failed to properly request adequate voir dire which resulted in the seating of a juror who was married to a member of the prosecuting law enforcement agency.

DISCUSSION

Applicant presented his claims of ineffective assistance of trial counsel at the PCR solely on the issue of whether trial counsel's performance was deficient. The Applicant argues that the trial attorney's performance was deficient as measured by its reasonableness under professional norms. The Trial transcript shows that the trial counsel did not submit voir dire asking prospective jurors whether they were related by blood or marriage to any law enforcement and specifically to any member of the Colleton County Sheriff's office. The jury was selected and sworn and the trial commenced. The State had presented several witnesses before the lunch recess. Following the recess, a

juror submitted a request to the Clerk of Court stating, "I need to make sure I'm a suitable person for this trial due the status of my husband." (Transcript at Pg. 190) Following some brief discussion, the Trial Judge brought juror 102 before the court to inquire about the meaning of her request. At this point the juror disclosed that she was married to a current reserve deputy of the Colleton County Sherriff. She also indicated that he had been a full time deputy with Colleton County two and a half years before. (Tr. pg. 191-192) The Trial Court correctly asked juror 102 whether this fact would prevent her from giving both the State and the Defendants a fair and impartial trial. (Tr. Pg. 192) Following this colloquy with juror 102, the Trial Judge confirmed with trial counsel that he did not request voir dire concerning a prospective juror's relation to law enforcement. Trial counsel confirmed that he did not. (Tr. Pg. 194) Trial Counsel indicated the he relied on the written juror information provided by the Clerk of Court's office. Although juror 102 wrote on her juror return that her husband was a reserve deputy, the Clerk's office only listed environmental health management as his occupation on the summary provided to attorneys. (Tr. Pg. 195) There is no indication that this omission was intentional.

The Trial Judge found that juror 102 was qualified and allowed her to remain as a juror in the trial of the case. Trial counsel effectively objected to juror 102 continuing to serve as a juror which was denied. During this discussion, trial counsel admitted that he may have exercised a peremptory strike on juror 102 had he known of her spouses occupation.(Tr. Pg. 194) The record further indicates that the Applicant had two available peremptory challenges remaining when juror 102 was called. During the trial, the State called 6 members of the Colleton County Sherriff's Office as witnesses. Additionally, the Applicant called a Detective with Colleton County Sherriff's Office.

Trial counsel David Mathews testified at this PCR hearing. He asserted that he had relied on the Clerk of Court juror information summary when selecting the jury in this case. He admitted that he did not request voir dire specifically asking prospective jurors if they were related by blood or marriage to any law enforcement and specifically the Colleton County Sherriff's Office. He further testified that had he known that juror 102 was related to a deputy he would have excused the juror with a peremptory strike.

He indicated that he should have requested that specific voir dire and relying on the Clerk of Court's summary alone was a mistake.

Concerning the trial strategy, Mr. Mathews indicated that the defense strategy focused on the deficiency of the investigation by the Colleton County Sheriff. Additionally, he challenged the evidence collection and the lack of compelling physical evidence against the Applicant. Mr. Mathews opined that it is difficult to persuade a juror using these strategies when they are related to a member of the very organization that you are criticizing. Mr. Mathews also testified as to the great importance placed on the testimony of Detective Inabinette. The Detective was called by the Defense in order to admit a statement by a codefendant taken by Detective Inabinette. In that statement the codefendant states that the Applicant was not present at the scene of the crime and that the responsible person was a man known only as J-Sneez from the Jacksonboro area. If true this would serve as not only an alibi but evidence of guilt by a third party. However, the transcript reflects that Detective Inabinette testified on cross examination that he is very familiar with Jacksonboro and that he knows nobody named J-Sneez. Thereby casting great doubt on this theory of the defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must

overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625.

Against that backdrop, this Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe the witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Counsel failed to properly request voir dire concerning the prospective juror's relationship by blood or marriage with law enforcement

I find that trial counsel was ineffective in not properly submit voir dire asking prospective jurors whether they were related by blood or marriage to any law enforcement and specifically to any member of the Colleton County Sherriff's office. Such actions were deficient, fell below the prevailing standards of competence, were not reasonable under professional norms, and "so undermined the proper functioning of the judicial process that the trial cannot be relied upon as having produced a just result." See Strickland, 104 S.Ct. at 2064.

I further find that the result of this error was the actual seating of a juror whose spouse was a current member of the Colleton County Sherriff's Office. Significantly, this Sherriff's Office was the prosecuting law enforcement agency and seven of the States witnesses were members of this agency. The Sherriff's office witness's credibility, investigative methods and proficiency were all a primary focus of the Applicant's defense. One purpose for the use of peremptory challenges is to allow a litigant to excuse

a juror who may have a conscious or subconscious bias towards a particular litigant or witness.

Trial counsel's deficient performance so prejudiced Applicant that but for his errors there is a reasonable probability that the result of the proceeding would have been different.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has established grounds, individually and cumulatively, that he received ineffective assistance of counsel, and that trial counsel's deficient performance was so prejudicial to Applicant that there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. As such, I hereby vacate Applicant's convictions and sentence and grant the Petition for Post-Conviction Relief.

IT IS THEREFORE SO ORDERED.

Hon. Diane Schafer Goodstein
Presiding Judge
14th Judicial Circuit

_____, South Carolina.

Dated: _____, 2017

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2015-CP-15-1210

Antwan D. McMillan, #347617,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

COLLETON COUNTY
PROBATE COURT
2018 MAY -4 AM 8:45

This Court convened an evidentiary hearing into this matter on June 6, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by Cory H. Fleming, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's trial counsel, David S. Matthews (Counsel), Esquire, was present and testified. Applicant was also present and testified. This Court had before it a copy of the trial transcript, the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the appellate record, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted by the August 2011 term of the Colleton County Grand Jury for three counts of attempted murder, three counts of attempted armed robbery, and one count of possession of a weapon during the commission of a violent crime (2010-GS-15-0501, -0502, -0503, -0504, -0505, -0506, -0507).

On August 11, 2011, Applicant proceeded to a jury trial. Applicant was found guilty of three counts of the lesser included offenses of first degree assault and battery, three counts of attempted armed robbery, and possession of a weapon during commission of a violent crime. The Honorable Perry M. Buckner, III sentenced Applicant to confinement for ten years for two counts of first degree assault and battery, twenty years for the three counts of attempted armed robbery, and five years for the count of possession of a weapon during the commission of a violent crime. The sentences were to run concurrently except for one consecutive sentence of ten years for the additional count of first degree assault and battery.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. McMillan, Op. No. 2013-UP-317 (filed on July 10, 2013). The Remittitur was issued on June 17, 2015. Applicant subsequently filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. The South Carolina Supreme Court initially granted certiorari, but following briefs submitted by the parties, the petition was dismissed as improvidently granted. State v. McMillan, Op. No. 2015-MO-035 (filed on June 17, 2015).

II. ALLEGATIONS

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
 - a. "Trial counsel failed to properly request adequate voir dire which resulted in the seating of a juror who was married to a member of the prosecuting law enforcement agency."

III. STATEMENT OF FACTS

On June 3, 2010, Jesse King, an explosive disposal specialist in the United States Army, was driving along I-95 in Colleton County with his wife, Amanda Metzfield, on the way to a military base in Pensacola, Florida. King's mother-in-law, Jeanine Metzfield, was following behind them towing a U-Haul trailer with her truck. Tr. 114-115; 119; 133-134; 142-144. As they passed through Colleton County, King's mother-in-law began to experience mechanical problems with her truck, and they all pulled off at an exit and stopped on a deserted road next to the highway. Tr. 119-120; 133; 144-145. A few moments later, a concerned passerby saw their vehicles and stopped to speak with them. Tr. 133-134; 145. During their conversation with the passerby, he provided them with a phone number for a tow truck operator that could assist them and warned them they had stopped in a dangerous area. Tr. 133-134; 145.

After the passerby left, King called the tow truck operator, arranged for him to come to their location, and began transferring the U-Haul trailer from his mother-in-law's truck to his own. Tr. 120; 133; 145. While he was crouched down behind his truck connecting the trailer, a light-colored sedan screeched to a halt at a nearby intersection, and a man with something wrapped around his face jumped out of the back of the sedan, pointed a large pistol at King's mother-in-law, and yelled for her to put "em" up. Tr. 121-124; 135; 145-147. In response, King sprang up, drew his own firearm, pointed it at the man, and ordered him to get back into his car and drive away. Tr. 123; 130; 135; 146. However, the man turned his gun in King's direction, so King shot at the man until the man fell to the ground. Tr. 123; 146. At that moment, the man's confederates inside of the sedan began yelling, and one of the men fired several shots from inside of the vehicle at King and the others, striking both of their trucks with bullets. Tr. 123-124; 137;

153-154. The man who had been shot by King then dropped his gun and crawled into the sedan, and the sedan rapidly sped away from the scene. Tr. 124-125; 146-147.

Once the would-be robbers were gone, King and the others called 911 to report the shooting and attempted robbery, and law enforcement officers were quickly dispatched to their location. Tr. 113-114; 135; 147. Shortly thereafter, Detective Jeff Scott of the Colleton County Sheriff's Office arrived at the scene, interviewed the victims, and began searching for evidence. Tr. 328-329. During his search, he located blood stains, a .50-caliber pistol that had been stolen from a California police department in 2002, and several spent shell casings fired from both a nine-millimeter pistol and a .357-caliber weapon. Tr. 339-341. He then collected that evidence and took swabs of the blood stains, and the evidence was subsequently submitted to S.L.E.D. for analysis. Tr. 360-361.

Meanwhile, David Jakes was brought to the emergency room at the Colleton Medical Center suffering from multiple gunshot wounds, and staff members at the hospital reported his arrival to law enforcement officers. Tr. 116; 264-269. In response, Sergeant Jackie Lawson of the Colleton County Sheriff's Office went to the hospital and spoke with the individuals who brought Jakes to the hospital, including Shaquita Bryant. Tr. 442-446. However, those individuals were all uncooperative and provided Sergeant Lawson with inconsistent stories about Jakes. Tr. 446-448.

Shortly thereafter, law enforcement officers located the sedan involved in the incident at Jakes' grandmother's home. Tr. 210; 291; 310. The officers then secured it, and a subsequent search of the vehicle led to the discovery and collection of fingerprints, palm prints, bloods stains, nine-millimeter shell casings, gloves, various items of clothing, and an open bottle of gin.

Tr. 291-293; 313; 318; 320; 360-361; 378; 464. Upon further investigation, the officers discovered the sedan was registered to someone named David Jenkins while the license plate affixed to the vehicle was actually associated with a different vehicle registered to Brenda, the mother of Applicant Antwan McMillan. Tr. 393; 395; 425.

Later that day, James Davis and his family contacted officers with the Colleton County Sheriff's Office to discuss Davis' role in the shooting and attempted robbery. Tr. 275-278. During Davis' conversation with the officers, he initially denied any involvement in the crimes. Tr. 278. However, after he spoke with his family, Davis told the officers the truth about what happened and was placed under arrest. Tr. 214-215; 237-239; 281. Then, on the following day, Applicant surrendered to authorities and was arrested for his role in the incident, and Jakes was also placed under arrest. Tr. 425; 540. Subsequently, Davis, Jakes, and Applicant were all indicted for numerous offenses, and Jakes and Applicant proceeded to trial together. Tr. 9; 222; 721-734.

At the outset of trial, the trial judge conducted *voir dire* of the prospective jurors. Tr. 10-11. During *voir dire*, the trial judge asked the prospective jurors if any of them: (1) were related by blood or marriage or close personal friends with Jakes, Applicant, the solicitor, the defense attorneys, or any of the witnesses that would be testifying during trial; (2) had ever been represented by any of the attorneys involved in the case in the past; (3) were aware of the allegations against either Jakes or Applicant; (4) had formed opinions about the facts of the case or about the guilt or innocence of either Jakes or Applicant; (5) were members of or employed by a law enforcement agency; (6) were members of the grand jury that issued the indictments involved in the case; (7) were members of or contributors to groups affiliated with law

enforcement or victims' rights; (8) had been victims of a violent crime; or (9) knew of any reasons why they might be biased, might be prejudiced, or could not give either the State or the defendants a fair trial. Tr. 15; 19-23; 27; 31; 37; 41; 44-45. At the conclusion of voir dire, the trial judge asked the solicitor and defense counsel whether they wished him to ask any additional questions of the prospective jurors, and defense counsel for both Jakes and Applicant asserted they did not. Tr. 44-45.

Thereafter, the trial judge began the jury selection process, and the parties selected a jury for trial. Tr. 45-55. During the selection process, defense counsel for Jakes exercised three peremptory strikes, defense counsel for Applicant exercised four peremptory strikes, and Juror #102 was seated on the jury without objection. Tr. 48-52. After a jury was selected, the trial judge asked the parties whether there were any issues with the jury selection process, and neither the solicitor nor defense counsel raised any objections. Tr. 54-55. The jury was then sworn, and the trial proceeded into the evidentiary phase. Tr. 81; 111.

Subsequently, after several witnesses – including the three victims – testified during the State's case, the trial judge informed the parties there was a matter that needed to be placed on the record. Tr. 167-168. Specifically, the trial judge stated Juror #102 sent him a note indicating she needed to make sure she was a suitable juror for the trial in light of her husband's employment status as a reserve deputy with the Colleton County Sheriff's Office. Tr. 168-169. Based on the note, the trial judge informed the parties he intended to question Juror #102 to determine if her husband's job status would impact her ability to be fair and impartial while noting the prospective jurors were not questioned about their spouses during *voir dire*. Tr. 169. The trial judge then brought Juror #102 into the courtroom and questioned her about her note. Tr.

171-173. During the questioning, Juror #102 confirmed her husband was a part-time reserve deputy with the Colleton County Sheriff's Office at that time and had previously worked as a full-time deputy in Colleton County. Tr. 172-173. She further confirmed she had not had any discussions with her husband about the case and her husband's employment status would not impact her ability to be fair and impartial in any way. Tr. 172-173. The trial judge then excused Juror #102 from the courtroom. Tr. 173.

After Juror #102 retired to the jury room, the trial judge noted he received several *voir dire* requests from the parties and asked questions in regard to whether the jurors were employed by a law enforcement agency. Tr. 174. However, he further noted he did not ask any questions related to whether any of the jurors had spouses involved in law enforcement and Juror #102 voluntarily elected to disclose that information on her own. Tr. 174. He then asked the parties whether they were ready to proceed with trial, and defense counsel for both Jakes and Applicant indicated they were not. Tr. 175-176. Specifically, defense counsel for Applicant stated he might object to Juror #102 remaining on the jury because he "may" have used his peremptory strikes differently had he been aware of her husband's employment status, and defense counsel for Jakes asserted he objected to Juror #102 remaining on the jury because she allegedly only disclosed her husband worked in environmental health management on the clerk of court's juror questionnaire form. Tr. 175-177.

In response to defense counsel's contentions, the trial judge reviewed the original juror questionnaire form filled out by Juror #102 and verified she stated her husband worked both in environmental health management and as a reserve deputy on that form. Tr. 176. He then reviewed the list of information compiled by the clerk of court from the juror questionnaire

forms and determined the clerk of court mistakenly failed to include Juror #102's response about her husband's work as a reserve deputy on that list. Tr. 177-178. After the trial judge discovered the error, defense counsel for Jakes reasserted he wanted Juror #102 to be excused based on her husband's status as a reserve deputy. Tr. 177. However, the trial judge declined to do so since the juror disclosed her husband's employment status on the juror questionnaire form and juror #102 did not intentionally conceal any information. Tr. 178-179.

Thereafter, the trial judge proceeded forward with the trial, and, at the conclusion of trial, the jury convicted Jakes and Applicant of three counts each of attempted armed robbery, three counts each of first-degree assault and battery, and one count each of possession of a weapon during the commission of a violent crime. Tr. 180; 669-672. Following the verdict, the trial judge sentenced Applicant to an aggregate term of imprisonment of thirty years and Jakes to an aggregate term of imprisonment of thirty-five years. Tr. 688-691.

Subsequently, Applicant appealed his convictions, arguing the trial judge erred in refusing to excuse Juror #102 and replace her with an alternate after he learned the juror's husband was a reserve deputy and alleged he would have exercised his peremptory strikes differently had he known that information during the jury selection process. App. 34. On appeal, the Court of Appeals affirmed. App. 37. In affirming, the Court of Appeals determined the trial judge committed no error in finding Juror #102 was impartial in light of the fact the juror confirmed she could be fair and impartial upon questioning from the trial judge, was not related to the defendants or any of the potential witnesses, and had not concealed any information from the parties or the trial judge. App. 34-35. Because the juror did not conceal any information and

appeared to be impartial, the Court of Appeals concluded the trial judge did not err in refusing to dismiss Juror #102 and replace her with an alternate. App. 35-36.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

This Court finds that Applicant has failed to satisfy his burden to prove that Counsel was deficient or that he was prejudiced by Counsel's alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984). The proper measure of performance is whether Counsels provided representation within the range of competence required in criminal cases. Id.

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). 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. 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant’s testimony lacked credibility and Counsel’s testimony was credible. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel was deficient. Applicant also failed to prove he was prejudiced by the alleged deficiency. For the reasons below, Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation and it is, therefore, denied and dismissed:

A. Counsel’s decision not to request additional *voir dire* was not deficient.

This Court finds Counsel’s decision not to request additional *voir dire*, concerning information he reasonably believed was available via the information sheet, was not deficient. There are a multitude of ways by which an attorney can decide to strike or seat a juror. Likewise, there are infinite questions an attorney can ask of jurors to weed out potential disfavor. South Carolina courts have not envisioned or allowed extensive examination of jurors through *voir dire*. “The unbridled examination of jurors by counsel serves to not only unnecessarily add to the length and expense of the trial, but also serves to antagonize jurors and lessen public respect for jury duty. The extent to which *voir dire* examination is being permitted by trial judges causes this Court concern and, therefore, this admonition.” State v. Smart, 278 S.C. 515, 523, 299 S.E.2d 686, 691 (1982) (overruled on other grounds).

In South Carolina, parties are not granted extensive *voir dire* rights. “The responsibility of the trial court is to focus the scope of *voir dire* examination as described in S.C. Code Ann. §14-7-1020. “The manner in which these questions are pursued and the scope of any additional *voir dire* is within the sound discretion of the trial court.” Wilson v. Childs, 315 S.C. 431, 438,

434 S.E.2d 286, 291 (Ct. A 1993). "The trial court is not required to ask every question submitted by counsel." State v. Middleton, 266 S.C. 251, 257, 222 S.E.2d 763, 765 (1976).

Here, Counsel reasonably relied on an information sheet provided by the clerk of court to determine the occupation of each juror and their spouse. The information sheet listed the current employer of each juror and their spouse. Juror #102 had a spouse with a part-time secondary job as a reserve deputy with the sheriff's office. The information sheet listed only the spouse's main occupation, his employment with Environmental Health Management. Counsel reasonably relied on the information sheet to determine each juror's occupation and the occupation of their spouse. The measure of performance required of an attorney is reasonableness under prevailing professional norms. Cherry, 300 S.C. at 117, 386 S.E.2d at 625. Counsel testified he determines whether to request additional *voir dire* on a case-by-case basis. He testified he has requested *voir dire* concerning whether any juror member is married or has a close personal relationship to a law enforcement officer. He testified there are always more questions he would like to ask the jurors, but *voir dire* is limited. He also testified he relied on the information concerning the occupations of each juror and their spouse provided on the information sheet. He testified, and his objection in the record reflects, if he had known the juror #102's husband was part-time law enforcement he would have struck her from the jury. However, "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. In this case, Counsel reasonably believed further *voir dire* concerning the jurors' occupations was redundant. This Court finds Counsel's decision not to request additional *voir dire* did not fall below prevailing professional norms.

Accordingly, this Court finds Applicant has failed to satisfy his burden of proving

Counsel was deficient under Strickland. Therefore, this allegation is denied and dismissed.

B. Applicant has not proven prejudice.

Applicant failed to prove he was prejudiced by the seating of juror #102. Counsel's decision not to request additional *voir dire* could only have prejudiced Applicant if juror #102 could have reasonably changed the result of the trial. The trial court found the juror to be fair and impartial. Tr. 195. Applicant must show he was prejudiced by the juror's presence on the jury. "Petitioner failed to make the requisite showing of prejudice resulting from Counsel's alleged deficiency in regards to additional jury *voir dire*." Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007). Both the United States Constitution and South Carolina Constitution guarantee a criminal defendant's right to a trial by an impartial jury. "The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to a trial by an impartial jury." Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038 (1973). Applicant did not provide evidence indicating the juror was not fair and impartial.

"As we have stressed on more than one occasion, the Constitution entitles a criminal defendant to a fair trial, not a perfect one." State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). "While a criminal defendant has a constitutional right to a trial by a competent and impartial jury; he does not have a constitutional right to a trial by any particular jury." Smith, 375 S.C. at 520, 654 S.E.2d at 530. These constitutional guarantees do not guarantee that a prospective juror will be free of all preconceived notions relating to guilt or innocence. See Beck v. Washington, 369 U.S. 541, 82 S.Ct. 955 (1962) (holding that "it is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.") Rather, it is the requirement that a jury's verdict "be based upon the evidence developed

at the trial" that goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by a fair and impartial jury. Turner v. Louisiana, 379 U.S. 466, 472, 85 S.Ct. 546, 549 (1965).

Here, the trial judge overruled Counsel's timely objection and seated juror #102 after making the determination she was fair and impartial. Tr. 195. This objection was properly preserved by Counsel and was reviewed by the Court of Appeals and affirmed. McMillan, Op. No. 2013-UP-317. The Court of Appeals found, "[T]he mere fact that a juror's spouse is a law enforcement officer, who is not involved in the case, does not, in and of itself, render a juror biased and, thus, unable to serve on a jury... Moreover, even jurors related by affinity or consanguinity to a testifying witness or those who closely knew the putative victim of a crime are not, absent an inability to maintain impartiality, unqualified." The court further found, "Juror appeared neither biased nor partial, the trial court did not err in finding Juror appeared impartial, despite her husband's status as a reserve deputy... Juror did not conceal any information, therefore, partiality cannot be imputed to her on such a basis." See State v. Woods, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001). "As we find no intentional concealment on Juror's part, we need not further determine whether the information would have been a material factor in the exercise of ... peremptory strikes." State v. Guillebeaux, 362 S.C. 270, 276, 607 S.E.2d 99, 102 (Ct. App. 2004).

Juror #102's testimony, and the trial court's finding, that she was fair and impartial are undisputed by any evidence. Applicant's mere speculation as to what the prejudice might have been is not sufficient to support a PCR claim. See State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. See also Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

This Court finds Applicant had a fair and impartial jury and was not prejudiced by the presence of juror #102. Juror #102 did not conceal any information. Tr. 191. Juror #102 stated she could be fair and impartial. Tr. 192. Applicant presented no evidence to support the proposition juror #102 was not fair and impartial. Applicant is not entitled to a jury of his choosing. See Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999). ("A criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury.") Counsel's alleged deficiency 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. There is no evidence to prove juror #102 was not fair and impartial. Applicant cannot be prejudiced by a fair and impartial jury. Applicant has not proven prejudice because he failed to prove he was not afforded a fair and impartial jury. Applicant was found guilty by the unanimous decision of twelve impartial jurors. This Court finds there is no reasonable probability the result of the trial would have been different because Applicant had a fair and impartial jury.

Further, the evidence against Applicant was overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). There were 3 witnesses who were victims. A codefendant, James Davis, also testified against Applicant. David Jakes, who was jointly tried with Applicant, was shot by one of the victims; bled at the scene and inside of the escape vehicle. Jakes' blood was identified via DNA analysis which further corroborated his testimony against Applicant and his codefendants.

Accordingly, this Court finds Applicant has failed to satisfy his burden to prove he was prejudiced by the alleged deficiency.

V. CONCLUSION

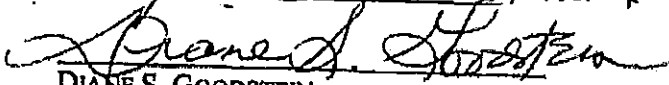
Based on the foregoing, this Court finds and concludes Applicant, Antwan McMillan, has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

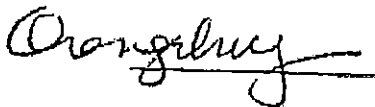
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate 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, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24 day of April, 2018.


DIANE S. GOODSTEIN
Presiding Judge
14th Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
IN THE COURT OF COMMON PLEAS

ANTWAN D. MCMILLAN, #347617

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Cory H. Fleming, Esquire
Moss Kuhn & Fleming, PA
Post Office Drawer 507
Beaufort, South Carolina 29901**

This 19th day of June, 2018.


Tamiaka Russell-Brown
Legal Assistant for the Respondent

SWORN to before me this 19th day of June, 2018.


Notary Public for South Carolina
My Commission Expires: 10/1/2025

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein

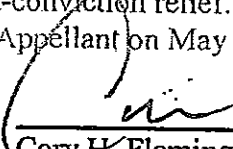
Case Number 2015-CP-15-1210

State of South Carolina,.....Respondent
v.
Antwan D. McMillan, #347617,.....Appellant.

NOTICE OF APPEAL

Antwan McMillan appeals the judgment of the Circuit Court, the Honorable Diane S. Goodstein, presiding, denying Applicant's request for post-conviction relief. The Order was signed on April 24, 2018, and received by counsel for the Appellant on May 7, 2018.

May 23, 2018



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Opposing Attorney of Record:
Ruston W. Neely

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein

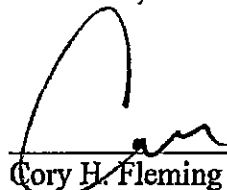
Case Number: 2015-CP-15-1210

State of South Carolina, ...Respondent
v.

Antwan D. McMillan, #347617, ...Appellant.

PROOF OF SERVICE

Counsel for Antwan D. McMillan hereby certifies that he has prepared and served a Notice of Appeal on this 23rd day of May, 2018, upon the State, as specified in S.C. Code Section 203 (b) (1), by depositing a copy, postage pre-paid, in the United States Mail, addressed to Attorney for Respondent, Ruston W. Neely, Office of the Attorney General, PO Box 11549, Columbia, SC 29211-11549.



Cory H. Fleming
Attorney for Appellant

May 23, 2018

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THE STATE OF SOUTH CAROLINA
In The State Supreme Court

APPEAL FROM COLLETON COUNTY
Court Of Common Pleas

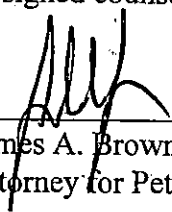
The Honorable Diane S. Goodstein, Judge.

Appellate Case No: 2018-000970

Antwan D. McMillian.....Petitioner
v.
The State of South Carolina.....Respondent

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Appendix complies with SCACR Rule 243(f).



James A. Brown, Jr.
Attorney for Petitioner

October 29, 2018

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