

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable R. Knox McMahon, Circuit Court Judge

WAYNE D. COOPER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001507

APPENDIX

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1 Q Where did you take those pictures?

2 A That were taken 9 05, 2006, at 905 Suzie Rembert
3 Road.

4 Q And again, this receptacle here, what -- or let me --
5 I'm sorry. Let me rephrase that. In what type of
6 container was that bottom photograph?

7 A It was in -- it was a trash bin.

8 MR. WILDER: Your Honor, same objection as to
9 the bottom picture. No objection to the top picture.

10 THE COURT: All right. They will be admitted
11 into evidence as State's number 22. Since the
12 objection is to the -- to the bottom picture, it's
13 admitted over the objection of the defendant based on
14 the Court's ruling in regard to State's number 21.

15 (WHEREUPON, State's Exhibit 22 was admitted into
16 evidence.)

17 BY MR. CORBETT:

18 Q Now Mrs. Pierson, I'm going to ask you to look at
19 this bag.

20 A (Complied.)

21 Q Okay. Are you able to tell us what this bag is?

22 A Yes, sir. That's packaging bag that we placed the
23 clump of tint, window tint inside.

24 Q Now, could you just pull that out the bag and show
25 that to us, please?

1 *THE COURT:* Can't do that till it's been offered
2 in evidence.

3 *MR. CORBETT:* I'm sorry, Your Honor.

4 *MR. WILDER:* Your Honor, I would move to
5 suppress it. And Your Honor, I do have an additional
6 ground at this point I'd like the Court to entertain.

7 *THE COURT:* All right. All right. Ladies and
8 gentlemen, want you to go to the jury room. Let me
9 take up these matters and I will send for you in just
10 a few minutes.

11 (Jury left the courtroom at 10:45 am.)

12 *THE COURT:* All right. Mr. Corbett, if you
13 would, establish where this exhibit came from, where
14 the contents of this exhibit came from so that then
15 Mr. Wilder can have his objection and I can rule on
16 it.

17 BY MR. CORBETT:

18 Q Mrs. Pierson, the clump of window tint here that I
19 have shown you just a moment ago, where did this come
20 from?

21 A Out of the trash bin behind the residence.

22 Q And that's the 905 Suzie Rembert Road address?

23 A Yes, sir.

24 Q And is that the same two trash bins you had taken
25 pictures of that we previously introduced?

1 A Yes, sir.

2 Q All right.

3 THE COURT: Anything else?

4 BY MR. CORBETT:

5 Q The trash cans, were they outside the residence?

6 A Yes, sir.

7 MR. CORBETT: Your Honor--

8 THE COURT: You offering it?

9 MR. CORBETT: Yes, sir, and we do offer--

10 THE COURT: All right. Yes, sir, Mr. Wilder.

11 MR. WILDER: All right. Your Honor, I'd like to
12 briefly ask a question at this point.

13 THE COURT: All right, sir.

14 CROSS-EXAMINATION

15 BY MR. WILDER:

16 Q The area where these trash cans are was fenced in in
17 a back yard; wasn't it?

18 A If I recall correctly, there was a privacy fence
19 around the back yard, but there was no fence between
20 the -- you could still drive around it. It was not fenced
21 in at that point.

22 Q But it was a privacy fence surrounding the majority
23 of that back yard?

24 A Around the back yard, yes, sir, but there was no
25 fence going into the back.

1 Q And these closed trash cans were inside the area of
2 the -- encompassed by the privacy fence?

3 A They were behind the house, yes, sir.

4 Q In the area encompassed by the privacy fence?

5 A Yes, sir.

6 Q Thank you.

7 THE COURT: Further questions, Mr. Corbett, I
8 will allow you.

9 MR. CORBETT: Bear with me one moment, please.

10 THE COURT: Go ahead.

11 EXAMINATION

12 BY MR. CORBETT:

13 Q Mrs. Pierson, I have showed you a photograph there
14 that's State's number 17 with reference to -- well,
15 actually both of those pictures, do those pictures show
16 the trash can?

17 A Yes, sir.

18 Q Now, was -- from where we see the trash can, was
19 there any type of fencing or anything separating those
20 trash cans from the highway?

21 A According to which way you want to go to the highway.

22 Q Okay. Could you drive into where the white car's
23 parked there without a fence?

24 A Yes.

25 THE COURT: All right. Go ahead.

1 BY MR. CORBETT:

2 Q Mrs. Pierson, in other words, you didn't have to step
3 over a fence to take that photograph?

4 A No, sir.

5 Q You could just back right on out the yard and
6 continue to widen that picture?

7 A Yes, sir.

8 MR. CORBETT: Your Honor, I believe at this time
9 we would offer that window tint into evidence.

10 THE COURT: All right. I'll hear from you,
11 Mr. Wilder.

12 MR. WILDER: Your Honor, the issue is
13 expectation of privacy. The witness has testified
14 that the garbage can was within an area that was
15 surrounded by a privacy fence.

16 THE COURT: Didn't say surrounded. She never
17 said that. She said there was a privacy fence.
18 There was also testimony in the record there was no
19 privacy fence on one side.

20 MR. WILDER: Well, Your Honor, I -- my
21 recollection is that it's within the area. Now, the
22 fact that you can get to the road by some opening in
23 the fence I don't believe is dispositive of the issue
24 of privacy.

25 In Sumter County you have to take your little

1 dumpsters out to the street and put them on the
2 street before they'll pick them up. They won't even
3 come into your yard. I have tried to get them to do
4 that.

5 *THE COURT:* What's that got to do with it,
6 Mr. Wilder?

7 *MR. WILDER:* Well, that's got everything I think
8 to do with it because if it's on the curtilage of the
9 property, if it's in -- if it's behind the house--

10 *THE COURT:* It's within the curtilage, then it's
11 covered by the search warrant. If it's no
12 expectation of privacy, then it's not -- there's no
13 problem with it being looked at without a search
14 warrant. That's where we are.

15 *MR. WILDER:* I guess my argument is this. The
16 purpose of the privacy fence is to create privacy.
17 And this was inside that area behind the house that
18 has a privacy fence around it. That's my argument.

19 *THE COURT:* All right. Subject to your
20 objection, the objection is overruled. I will allow
21 the photograph -- this photograph is already in.

22 Also without what we already plowed, the
23 contents of the trash can, the photographs of the
24 contents of the trash can are now really all we are
25 talking about are what were removed from the trash

1 can.

2 And based on my previous ruling, I still believe
3 that that is correct, it's not the expectation of
4 privacy with regard to trash put out and also very
5 well may be covered by being within the curtilage of
6 the -- of the description of the property to be
7 searched, and the objection is overruled.

8 The testimony will be allowed. The objection is
9 noted. All right. Ready to bring the jury in?

10 MR. CORBETT: Yes, Your Honor.

11 THE COURT: All right. Bring the jury out.

12 (Jury entered the courtroom at 10:52 am.)

13 MR. WILDER: Your Honor, may my objection and
14 motion to suppress run throughout the testimony?

15 THE COURT: Yes, sir.

16 MR. WILDER: Thank you.

17 THE COURT: All right. Thank you. We are ready
18 to go forward. Thank you very much, ladies and
19 gentlemen. Mr. Corbett, you may proceed.

20 MR. CORBETT: Thank you, Your Honor.

21 BY MR. CORBETT:

22 Q Now Mrs. Pierson, I would show you this brown bag and
23 asking you -- this right here -- asking you what is in
24 that bag, could you tell us please?

25 A Window tint.

1 Q And does that reflect the window tint that is
2 photographed in the two trash cans --

3 A Yes, sir.

4 Q -- that you previously identified for us?

5 A Yes, sir.

6 Q If you would, just lift that out of the bag for us.

7 A (Complied.)

8 Q Thank you. I'm going to let you -- I'm going to let
9 you return that to the bag.

10 A (Complied.)

11 Q Now Mrs. Pierson, I'll show you this item. If you
12 would take a moment --

13 MR. CORBETT: I'm sorry, Your Honor. At this
14 time we would move to offer the brown bag containing
15 the window tint as State's exhibit number 23.

16 THE COURT: Twenty-three? All right. State's
17 exhibit number 23 is in evidence subject to the
18 objections here before made on the record.

19 MR. WILDER: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit 23 was admitted into
21 evidence.)

22 BY MR. CORBETT:

23 Q Mrs. Pierson, the envelope I handed you, have you had
24 an opportunity to look at that?

25 A Yes, sir.

1 Q All right. And can you identify that item?

2 A This was a piece of window tint that was found on the
3 ground.

4 Q Found on the ground?

5 A Yes, sir.

6 Q Okay. Found on the ground where?

7 A It was in between the vehicle and the trash bins.

8 Q Okay. And that was also at 905 Suzie Rembert Road?

9 A Yes, sir.

10 Q All right. And that was laying out in the open?

11 A Yes, sir.

12 Q Okay. And did you take -- pick that up and take it
13 in as well?

14 A Yes, sir.

15 *THE COURT:* Is that -- has she testified to
16 that? Does it have a number or anything?

17 BY MR. CORBETT:

18 Q Did you mark that with any particular number?

19 *THE COURT:* No, I'm talking about for purposes
20 of the Court.

21 *MR. CORBETT:* Oh, Judge, I'm getting ready to.

22 *THE COURT:* Okay.

23 *MR. WILDER:* No objection.

24 *THE COURT:* All right. State's 23 be admitted
25 into evidence without objection -- 24 be admitted

1 into evidence without objection.

2 (WHEREUPON, State's Exhibit 24 was admitted into
3 evidence.)

4 BY MR. CORBETT:

5 Q Thank you, Mrs. Pierson. That's all the questions I
6 have.

7 THE COURT: Cross-examination, Mr. Wilder?

8 CROSS-EXAMINATION

9 BY MR. WILDER:

10 Q One of the pictures you took of the other vehicle in
11 the back yard?

12 A Excuse me?

13 Q Was one of the pictures you took of the other vehicle
14 in the back yard?

15 A Yes, sir.

16 Q What was the other vehicle in the back yard?

17 A The white vehicle or the green vehicle?

18 Q The white vehicle. The other one.

19 A I'm not sure of the make and model of the vehicle.

20 Q And did you measure the windshield of that one and
21 this window tint in this bag?

22 A No, sir, I did not.

23 Q And can you tell the jury when the window tint was
24 put in the garbage can that you opened and took the
25 picture?

1 A No, sir, I cannot.

2 Q And were any measurements taken of any of the window
3 tint to determine which vehicle it came out of?

4 A Not by myself it was not.

5 Q And the white vehicle at one point had had window
6 tint in it; had it not?

7 A I'm not aware if it did or not.

8 Q Well, you didn't examine it for glue or any scrape
9 marks; did you?

10 A No, sir, I didn't examine any of the vehicles.

11 Q And there is also a truck back there; wasn't it?

12 A I don't recall seeing a truck.

13 Q Okay. But if there was, you didn't examine that
14 vehicle to see whether window tint had come out of it
15 either; did you?

16 A No, sir.

17 Q Okay. Now, this whole area in the back yard is
18 surrounded by a privacy fence; correct?

19 A The back part and the side was. There was no fence
20 between -- you could still drive through the back yard,
21 there was no fence surrounding the whole yard. It was
22 partially fenced.

23 Q The privacy fence surrounded the back yard; right?

24 A Correct.

25 Q And the garbage cans were in the back yard?

1 A Yes, sir.

2 Q And two of these cars at least you remember being
3 back there and you don't remember whether there was a
4 truck there or not?

5 A I don't recall seeing a truck.

6 Q Okay. Okay. No other questions.

7 THE COURT: Cross-examination?

8 MR. CORBETT: Nothing further, Your Honor.

9 THE COURT: I mean redirect? Thank you, Mrs.
10 Pierson. You may step down.

11 (Witness left the stand.)

12 THE COURT: All right. Mr. Corbett?

13 MR. CORBETT: Your Honor, the State would recall
14 Ray Mackessy.

15 RAY MACKESSY, after being duly
16 reminded of oath, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CORBETT:

19 Q Mr. Mackessy, good morning.

20 A Good morning.

21 Q I'm going to show you -- excuse me. Let me show you
22 what has been marked as State's exhibit number 24 and ask
23 if you can identify that.

24 A Yes, sir.

25 Q Tell us what that is, please.

1 A State's 24 is a small piece of window tint.

2 Q Now, have you had any occasion to examine that
3 particular item?

4 A Yes, sir.

5 Q Okay. And what was the purpose of your examination?

6 A I was searching for fingerprints.

7 Q Okay. And were you able to determine if there were?

8 A Yes, sir, I developed a fingerprint on this piece of
9 tint.

10 Q Okay. And tell us, how do you develop a fingerprint?

11 A In this case I first examined it under a forensic
12 light to determine if there was any kind of fingerprints
13 on the item. I saw some ridge there.

14 MR. WILDER: Your Honor, I'd like my objection
15 to run throughout this testimony and subject to the
16 motion to suppress the item he's now testifying about
17 having examined.

18 THE COURT: All right. Come up.

19 (Whereupon a bench conference was held.)

20 THE COURT: Objection withdrawn, Mr. Wilder?

21 MR. WILDER: Yes, sir.

22 THE COURT: All right. Proceed.

23 MR. WILDER: The objection is withdrawn.

24 THE COURT: Talking about State's exhibit number
25 24.

1 MR. WILDER: Okay.

2 BY MR. CORBETT:

3 Q Now, you talked to us about developing prints from
4 that?

5 A Yes, sir. After I examined it under forensic light,
6 I then used fingerprint powder, developed a fingerprint on
7 the piece of window tint and lifted it with lifting tape
8 and placed it on a backing card.

9 Q Now, tell us a little bit about what you mean about
10 the backing card.

11 A A backing card is a -- is a card which a latent
12 fingerprint lift is placed on to make it more visible for
13 examination.

14 Q And did you do that in this particular case?

15 A Yes, sir, I did.

16 Q Okay. And what was the nature of the print that you
17 recovered?

18 A I don't understand the question.

19 Q Could you tell what part of the hand it came from?

20 A No, sir.

21 Q But you did lift a print from that; is that correct?

22 A Yes, sir. I saw some ridge detail there and -- and
23 placed the lift on the card.

24 MR. WILDER: No objection.

25 THE COURT: State's number 25 without objection.

1 (WHEREUPON, State's Exhibit 25 was admitted into
2 evidence.)

3 BY MR. CORBETT:

4 Q Now, as part of your investigation, were you asked to
5 take any prints from any individuals in this case?

6 A Yes, sir, I received an order from the Court to get
7 prints and fingerprints.

8 Q All right. I want to specifically ask you about
9 Derrick Cooper.

10 A Yes, sir.

11 Q All right. Did you take prints from Derrick Cooper?

12 A Yes, sir, I did.

13 Q Okay. And do you have those with you?

14 A Yes, sir.

15 Q Okay. If you would show us those, please.

16 A (Complied.) These are the -- this is the left palm
17 print of Derrick Cooper along with the side of the hand
18 which is located right here. This is the right hand of
19 the palm and the side of the hand.

20 Q Now, who's that on?

21 A That's on Derrick Cooper.

22 Q Okay.

23 A And also this is what we call a 10 print card. It
24 has the -- all the fingers on this 10 print card, and this
25 was taken from Derrick Cooper.

1 Q And you did that personally yourself?

2 A Yes, sir.

3 Q Now, let me ask you, if I may, the 10 print card is
4 the fingers; is that correct?

5 A Yes, sir.

6 Q Okay. And then there's two other cards that have
7 hands,

8 A Yes, sir.

9 Q Okay. But normally what we mostly see is the
10 fingers; right?

11 A Most of the time, yes, you see the 10 print card
12 which is just the fingers.

13 Q Okay. And in this particular instance you actually
14 did the hand, the whole hand?

15 A I did the whole hands, yes.

16 Q Okay.

17 MR. CORBETT: Your Honor, at this time we would
18 offer three cards together as State's number 26.

19 MR. WILDER: No objection.

20 THE COURT: State's number 26 admitted into
21 evidence without objection.

22 (WHEREUPON, State's Exhibit 26 was admitted into
23 evidence.)

24 MR. CORBETT: That's all the questions I have of
25 this witness.

1 THE COURT: Cross-examination, Mr. Wilder?

2 MR. WILDER: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WILDER:

5 Q Mr. Mackessy, do you make the comparisons yourself --

6 A No, sir.

7 Q -- of what these prints are? I mean, as I understand
8 it, you have to have somebody that's certified as a
9 fingerprint expert make the comparison?

10 A Yes, sir.

11 Q And the purpose of that would be like they're trained
12 to observe little patterns and count up the number of
13 identical markings and that sort of thing?

14 A Yes, sir.

15 Q That person would be Marie Hodge, would it, in this
16 case?

17 A Yes, sir.

18 Q And she's here in the courtroom?

19 A Yes, sir.

20 Q All right. Now, let's go back to where this piece of
21 tint I think is -- is found. Did you pick it up off the
22 ground?

23 A No, sir.

24 Q Who picked it up off the ground?

25 A Cindy Pierson.

1 Q Cindy Pierson. Okay. And exactly where it was
2 found, do you know that? Were you present supervising?

3 A I was there at the scene and she had photographed --
4 after photographing the scene, she picked it up from where
5 it was located.

6 Q Could you tell the jury exactly where it was lying
7 relative to the three automobiles that were in the yard?

8 A I -- I don't remember where it was exactly. I was
9 more concerned with the car at that point, trying to
10 arrange for towing and such.

11 Q Can you tell the jury where it was relative to the
12 garbage cans that we were talking about?

13 A No, sir, I don't remember where it was located there.
14 I was busy with something else.

15 Q Did you participate in any measurements of the tint
16 or of the windshield to determine which windshield that
17 tint fits?

18 A No, sir.

19 Q Did you examine the other two automobiles in the yard
20 to see if they had window tint on them?

21 A No, sir.

22 Q Did you respond to an investigation and to a tire
23 slashing incident at Mr. Cooper's house there at 905 Suzie
24 Rembert Road earlier in 2006?

25 A I don't remember responding there, no. That -- Suzie

1 Rembert Road is in the city, I believe.

2 Q Well, wherever this is, 905 Suzie Rembert -- oh, that
3 is the city?

4 A That is the city.

5 Q Okay. So you probably wouldn't have had anything to
6 do with investigating the tire slashing incident?

7 A No, sir.

8 Q Okay. All right. No other questions.

9 THE COURT: Re-direct?

10 MR. CORBETT: Nothing on re-direct, Your Honor.

11 THE COURT: All right. Thank you, Mr. Mackessy.

12 You may step down.

13 THE WITNESS: Thank you, Your Honor.

14 (Witness left the stand.)

15 THE COURT: All right. Mr. Corbett?

16 MR. CORBETT: Your Honor, the State would call
17 Marie Hodge.

18 THE COURT: All right. Mrs. Hodge?

19 MARIE HODGE, after being duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CORBETT:

23 Q Mrs. Hodge, good morning.

24 A Morning.

25 Q Tell us, by whom are you employed?

1 A The Sumter City Police Department.

2 Q And how long have you worked at the Sumter City
3 Police Department?

4 A 35 years.

5 Q And what have your duties with the police department
6 been?

7 A Originally I started in the records division in 1973,
8 was responsible for receiving fingerprints from the
9 correctional center and trying to determine if that person
10 had a prior record and maintaining the files of the case
11 jackets and other recordkeeping services with the City
12 Police Department.

13 Then I went to the detective division or
14 investigative services division after that and was
15 responsible for preparing case files and also looking at
16 latent print information and doing comparisons at that
17 time with suspects.

18 After that, I was the victim assistance officer for
19 16 years. During that period would also still do some
20 fingerprint work in, you know, with the detective division.
21 In 2005 the City Police Department received the Automated
22 Fingerprint Identification System and I was hired to
23 operate that, so I've been doing that since 2005.

24 Q And have you had training in fingerprint comparison?

25 A Yes, sir. My original fingerprint comparison

1 training was with the Federal Bureau of Investigation in
2 1968. I worked up there with the identification division
3 for about eighteen months.

4 During that time our study consisted of three months
5 before we could even go on the floor of the study of
6 fingerprints classification and identification. Left
7 there and of course came back to Sumter and started with
8 Sumter Police Department.

9 I have been to various schools especially since 2005,
10 the palm print identification courtroom testimony and the
11 forensic identification of latent fingerprint evidence
12 from David Ashbaugh.

13 *THE COURT:* Stop you just a minute. Mr. Wilder?

14 *MR. WILDER:* Your Honor, certainly if it will
15 save any time, I will stipulate that she's an expert
16 in fingerprint comparison. And I'm not trying to
17 stop her testimony --

18 *THE COURT:* I understand.

19 *MR. WILDER:* -- in any event, but there's no
20 point in--

21 *THE COURT:* I understand. I understand. All
22 right. Mr. Wilder has stipulated to her expertise.
23 I'll let you put in whatever you want to put in,
24 Mr. Corbett, but I will find that Mrs. Hodge is
25 qualified as an expert in the field of fingerprint

1 analysis and can testify as an expert giving her
2 opinion in regard to those matters, but you're
3 certainly welcome to put in whatever you wish to put
4 in.

5 MR. CORBETT: Thank you, Your Honor.

6 BY MR. CORBETT:

7 Q Mrs. Hodge, I'm going to show you three cards which
8 together have been marked as State's number 26. And if
9 you would please tell us if you have ever seen those?

10 A Yes, I have.

11 Q Okay. And in what capacity?

12 A These cards were transferred to me by the sheriff's
13 department on June the fifth, 2008, and I have marked them
14 with my initials and that date.

15 Q Now also I'm going to ask if you can identify what's
16 been marked as State's exhibit 25.

17 A Yes, sir. This is the latent print that was also
18 transferred to me on -- in originally on the 13th of
19 September, 2006, to be analyzed as far as the AFIS
20 quality. And again it was transferred to me on June the
21 fifth of 2008, and I have marked both dates with my
22 initials on this card.

23 Q And did you have occasion to compare the latent print
24 to the fingerprint cards there?

25 A Yes, sir.

1 Q What can you tell us about that comparison?

2 A After analyzing the latent print information for
3 quality and clarity, it was compared with all 10 prints of
4 this card bearing the name of Derrick Cooper and I was
5 able to identify that the latent print was left by the
6 left index finger of Derrick Cooper which we call finger
7 number seven.

8 Q And based on your training and your experience and
9 your expert opinion, that latent print belongs to Derrick
10 Cooper?

11 A That latent print was left by Derrick Cooper, yes,
12 sir.

13 MR. CORBETT: That's all the questions I have,
14 Your Honor.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. WILDER:

18 Q Mrs. Hodge, all your training and expertise on
19 fingerprints, can you tell us how long a fingerprint might
20 last on a surface, if you put it down?

21 A It can last indefinitely as long as it's not cleaned.
22 In other words, the fingerprint can be there for years,
23 weeks, days, months as long as it's not cleaned, wiped off
24 or disturbed.

25 Q Okay. So really there's no -- there's no real -- not

1 really any way to tell how long a fingerprint might have
2 been on something absent some other information?

3 A No, sir.

4 Q Okay. And let's talk about where this print was
5 lifted off of a piece of tint. Is there any way you know
6 of to tell how long the fingerprint might have been on the
7 tint?

8 A No, sir.

9 Q Conceivably it could last from the time the tint is
10 put on a car?

11 A Yes, sir, as long as it had not been cleaned or wiped
12 off.

13 Q Long as it had not been cleaned or wiped off. So a
14 piece of tint on a car was scraped off intact with the
15 fingerprint on it, it would still have the fingerprint on
16 it?

17 A Yes.

18 Q There would be no way to tell whether it was there
19 before, during or after, might have been put on or taken
20 off the car?

21 A That would be correct.

22 Q In fact, if it's just a scrap of tint on the ground,
23 no way to tell it was ever been on the car at all; right?

24 A I guess that would be correct.

25 Q Okay. Thank you.

1 A You're welcome.

2 *THE COURT:* Recorrect?

3 *MR. CORBETT:* Nothing on redirect, Your Honor.

4 *THE COURT:* All right. Thank you, Mrs. Hodge.

5 You may step down.

6 *THE WITNESS:* Thank you.

7 *THE COURT:* You may call your next witness.

8 (Witness left the stand.)

9 *MR. CORBETT:* Your Honor, may we approach?

10 *THE COURT:* Yes, sir.

11 (Whereupon a bench conference was held.)

12 *THE COURT:* All right. Ladies and gentlemen,
13 I'm going to ask that you go to your jury room for a
14 few minutes and we'll let you know whether this is
15 going to be a little bit of an extended recess.

16 I have got a couple of things that I have got to
17 do, but it may be that it will be about a 20 minute
18 recess depending upon where we are.

19 But if you would go to your jury room for just a
20 few minutes and I will send for you very shortly.

21 (Jury left the courtroom at 11:18 am.)

22 *MR. CORBETT:* The State will rest -- rest in
23 front of the jury.

24 *THE COURT:* All right. Then let's do take a
25 couple of minutes now, say five minutes for court

1 personnel, come back here in five minutes.

2 Mr. Wilder, I will be glad to hear from you with
3 regard to motions.

4 And during this five minutes or so, Mr. Wilder,
5 please talk to your client about his Fifth Amendment
6 rights so he will be in a position that he can advise
7 the Court what he wishes to do. Thank you. We'll
8 take five minutes.

9 (Whereupon a recess was had.)

10 THE COURT: All right. Let's have the defendant
11 back in the courtroom, please. All right. Yes, sir.

12 MR. CORBETT: I may have spoken to the Court too
13 quickly earlier. Your Honor, if I may, I would like
14 to call Investigator Turner to the stand for
15 extremely limited point of this.

16 Over my objection testimony was elicited about
17 information obtained from Coroner Verna Moore, and I
18 was going to have Investigator Turner step up and say
19 that she was not at the crime scene.

20 MR. WILDER: I don't object, Your Honor, but
21 I -- I want to--

22 THE COURT: Can we stipulate to the fact that
23 Verna Moore was not at the crime scene?

24 MR. WILDER: No, sir. I don't know if she was
25 or not. I -- and Your Honor, also this. I believe

1 that if he does recall Mr. Turner, he -- the way he
2 left it up was to reserve the right to recall him for
3 further testimony when he got off the stand. That's
4 the way he left it.

5 So if he puts him back on the stand, it's my
6 contention he's wide open for anything I want to ask
7 him, not just a limited purpose that he intends to
8 call him.

9 And it is his statement, State's case in chief
10 was still on, so I believe if he gets on the stand, I
11 get to ask him anything I want to.

12 THE COURT: Why is that?

13 MR. WILDER: Because he -- when he took him off
14 the stand, he reserved the right to recall him.

15 THE COURT: Right.

16 MR. WILDER: I think he gets to recall him if he
17 wants to, but -- but because he left it wide open, he
18 didn't close out his testimony.

19 THE COURT: All right. I'm going to deny the
20 motion to reopen the testimony. All right. Counsel,
21 first of all we are back on the record with regard to
22 State versus Cooper. Mr. Cooper is present.

23 Now understanding in view of that denial,
24 Mr. Corbett, the State's going to rest; is that
25 correct?

1 MR. CORBETT: That's correct, Your Honor.

2 THE COURT: All right. All right. Now, before
3 we go into motions, Mr. Wilder, I want to address
4 your motion under Brady and advise first of all that
5 I have reviewed the notes of Mr. Turner in connection
6 with this matter and his file folder which was
7 furnished to the Court.

8 I have looked at it especially from the view of
9 the question you had regarding whether there would be
10 anything in the record that would indicate that
11 Rodney Green furnished information to the police
12 either in the form of description of the car or
13 anything else. And also references to three black
14 males.

15 I have also reviewed the entire file as has my
16 Clerk and we have studied it and we have concluded
17 that there is nothing exculpatory in the file that
18 would entitle disclosure under Brady.

19 However, in order to protect the file -- to
20 protect the record in this case, the Court is going
21 to put that file in a sealed envelope, seal it, mark
22 it for what it is and have it made a Court's Exhibit
23 and made a part of the record so that if there's any
24 disagreement about it if the Court of Appeals or the
25 Supreme Court wishes to look at Mr. Turner's file,

1 they shall have the option to do so. Any objection
2 to that procedure, Mr. Corbett?

3 *MR. CORBETT:* Your Honor, could we be allowed to
4 make copies of that before it's sealed and put into
5 the record just so if Investigator Turner -- and
6 Judge, one of the issues--

7 *THE COURT:* I will make a copy of it then and --
8 as it is, as it exists right now. I will copy every
9 document in the file, will make the copy a -- the
10 Court's Exhibit and will give back Mr. Turner his
11 original file.

12 *MR. CORBETT:* No objection, Your Honor.

13 *THE COURT:* All right. Any objection to that,
14 Mr. Wilder?

15 *MR. WILDER:* Yes, Your Honor. Respectfully, and
16 I'm not disagreeing with the Court, but I do want to
17 preserve our position that we believe that the
18 correct thing to do would be to turn it over to us
19 and let me make a decision whether or not it's
20 exculpatory or would be useful in cross-examination
21 of any witness or in our case in chief as we present
22 our defense so that we can decide whether or not to
23 recall or to call any of the officers.

24 So we believe that at some point we ought to be
25 able to look at it to -- and to point them out while

1 the trial is going on.

2 THE COURT: Under what theory, the Brady theory
3 only?

4 MR. WILDER: Brady, yes. We can --

5 THE COURT: All right. Well, I made that
6 decision and I'm going to stick with that and that's
7 the ruling of the Court. I don't think it's
8 discoverable under rule five and 803 and I don't
9 think there's anything exculpatory in this file, the
10 notes reveal the same things that have been testified
11 to by the witnesses, you have specifically pointed
12 out things that you wanted the Court to look for.

13 The Court has looked for those things. They are
14 not there. And the Court's ruling stands. All
15 right. Mr. Wilder, I will be glad to hear from you
16 with regard to motions on behalf of the defendant.

17 MR. WILDER: All right. The State I take it
18 then has rested?

19 THE COURT: Yeah, they have rested.

20 MR. WILDER: All right. Your Honor, we would
21 move for directed verdict of not guilty feeling that
22 the State has not established a prima facia case.

23 THE COURT: What have they not established?

24 MR. WILDER: Well, Your Honor, I'm basically
25 making the record for the purposes of appellate

1 review because if the Court of Appeals determines
2 that some of the information that was let in over my
3 objection should have been excluded, then we wouldn't
4 be entitled to a dismissal of the charges unless I
5 make this motion at this point on the record. So for
6 the purposes of the record I'm making the motion.

7 But also making the motion, Your Honor, on
8 grounds that they have not established that my client
9 committed any murder, that they have failed in the
10 identification element to establish an entity.

11 We have a -- what we call a Tellfare situation,
12 if my understanding of identification law is correct,
13 tellfare being that there's only a one witness
14 identification involving here and that is Wanda
15 Rogers or whatever her last name was, that supposedly
16 were looking out her window that we believe you can't
17 even see the fire station from.

18 And if you could see it, the view is obstructed.
19 And that -- that the identification testimony is
20 insufficient. And we also believe--

21 *THE COURT:* Well, you talking about
22 insufficient. If we are talking about sufficiency,
23 isn't that beyond me as far as directed verdict
24 motion is concerned? And the rule -- under rule 19--

25 *MR. WILDER:* Under--

1 *THE COURT:* Under rule 19 all my determination
2 is whether there is or is not evidence in the record.

3 *MR. WILDER:* Yes, sir. But I have to make the
4 motion.

5 *THE COURT:* I understand. Go ahead. Anything
6 else?

7 *MR. WILDER:* Your Honor, I would also argue that
8 all things considered, the totality of the
9 circumstances is that the statement should be thrown
10 out and that for both of those reasons the case
11 against my client ought to fail and a directed
12 verdict of not guilty should be given.

13 *THE COURT:* All right.

14 *MR. WILDER:* Your Honor, I would also add to
15 that ground that the best evidence, if you -- if you
16 do take the statement as being true, is that the --
17 that what my client did was self-defense and a
18 response to an assault and that murder is therefore
19 not the proper charge but that -- that that charge as
20 indicted ought to be dismissed.

21 *THE COURT:* I'm not sure I understood that. If
22 you take the statement -- granted it does raise
23 self-defense, but that then makes it a jury issue;
24 does it not?

25 *MR. WILDER:* Again, on its face --

1 THE COURT: Okay.

2 MR. WILDER: -- the statement is he was shot at
3 and responded.

4 THE COURT: Right.

5 MR. WILDER: That's true, best I -- best case
6 scenario I think would be voluntary manslaughter.
7 But if it's self-defense, self-defense was a complete
8 defense and they ought to be no murder.

9 THE COURT: Okay. Mr. Corbett, do you want to
10 be heard?

11 MR. CORBETT: Judge, do I need to be heard?

12 THE COURT: Yes, sir.

13 MR. CORBETT: Yes. Your Honor, we believe that
14 there is sufficient evidence in the record to move us
15 beyond a directed verdict of acquittal. Your Honor,
16 we have a witness Wanda Rogers who Id'd the defendant
17 in the courtroom getting in a car, same car that
18 matched the description given by a victim -- another
19 eye witness which took place within just a -- which
20 she testified to was just seconds to minutes.

21 She indicated the shot came from the passenger's
22 side of that car. The other witness places the
23 defendant on the passenger's side of that car. In
24 addition, the defendant in his statement puts himself
25 at the scene and puts himself firing a shot.

1 So it's up to the jury to determine whether it
2 was self-defense or whether it was murder. But the
3 eye witness testimony together with the defendant's
4 statement creates a -- in our belief a jury question.

5 *THE COURT:* Okay. All right. Rule 19 of the
6 rules of criminal procedure provide the standard by
7 which the Court is to weigh the evidence and to -- or
8 the standard by which the Court is to handle a motion
9 for directed verdict and does provide that the Court
10 shall provide -- shall direct a verdict if there's a
11 failure of competent evidence -- as used here
12 competent means admissible -- evidence tending to
13 prove the charge in the indictment.

14 In ruling on the motion, the trial Judge shall
15 consider only the existence or nonexistence of the
16 evidence and not its weight. In my view and in view
17 of the testimony that I have admitted, and I still
18 believe that those rulings were correct, that there
19 is evidence in the record by which the jury could
20 conclude that the defendant committed the crime.

21 There is the eye witness testimony which of
22 course can be attacked by the defense and has been
23 attacked by the defense. There is also the statement
24 which the defense objects to.

25 But nonetheless, this is all evidence along with

1 the other evidence in this case that does prevent the
2 Court from directing a verdict with regard to the
3 defendant's charge of murder, and the motion would
4 therefore be denied.

5 All right. Mr. Wilder, is your client prepared
6 to address the Fifth Amendment matters?

7 MR. WILDER: Your Honor, we have discussed it.
8 I believe he understands his rights thoroughly and we
9 have also discussed the fact that if you put up a
10 case -- I believe I carefully not actually entered
11 any evidence.

12 THE COURT: You have not.

13 MR. WILDER: So but if we do at this point begin
14 to enter evidence, we will lose last argument, so I
15 advised him of that, that that was one of the cost of
16 presenting a case. He -- I believe he understands
17 that.

18 So at this point I believe we are ready to make
19 a decision about presenting a case and I would call
20 on the Court to ask my client if he understands that
21 if he presents the case, we'll lose last argument.

22 THE COURT: All right. Mr. -- would you stand
23 for a moment, please? All right. Mr. Cooper, do you
24 understand the two things that Mr. Wilder has talked
25 about?

1 First of all, I discussed with you yesterday
2 your rights under the Fifth Amendment and that is
3 your right to testify or not testify in this case. I
4 assume that you have also discussed your Fifth
5 Amendment rights with Mr. Wilder; is that correct?

6 *THE DEFENDANT:* Yes, sir.

7 *THE COURT:* And do you understand that you have
8 the right to remain silent and that you cannot be
9 required to provide testimony or evidence against
10 yourself and that if you do not take the stand, I
11 will advise the jury that they are not to infer
12 anything from your election not to testify in this
13 case? Do you understand that?

14 *THE DEFENDANT:* Yes, sir.

15 *THE COURT:* All right. Do you have any
16 questions you want to ask Mr. Wilder or me about your
17 Fifth Amendment rights?

18 *THE DEFENDANT:* No, sir, not at this point.

19 *THE COURT:* All right. Now, in addition to
20 that, whether you testify or not, you have the right
21 to present evidence on your own behalf and that is a
22 matter that is up to you, too, and your lawyer as to
23 whether you wish to present evidence or don't wish to
24 present evidence.

25 At this point of the trial no evidence has been

1 introduced by your lawyer on your behalf or has been
2 admitted into evidence, and of course except the
3 cross-examination, and that is for the
4 cross-examination of the State's witnesses.

5 And the way the things stand at this point, if
6 you don't present any evidence including your own
7 testimony or testimony of anybody else and you were
8 to rest at this point, then the State would have to
9 make the opening argument and your attorney would
10 have the right to make the last argument to the jury.
11 Do you understand that?

12 *THE DEFENDANT:* Yes, sir.

13 *THE COURT:* And do you understand that if you
14 present any evidence in this case, present one
15 document, introduce one document or present one
16 witness or anything, you will lose that right to have
17 the last argument to the jury? Do you understand
18 that?

19 *THE DEFENDANT:* Yes, sir.

20 *THE COURT:* All right. Do you have any
21 questions that you want to ask me about that
22 procedure?

23 *THE DEFENDANT:* No, sir, not at this time.

24 *THE COURT:* All right. Now, based on that, I'm
25 going to ask you two questions. First of all,

1 whether or not you wish to present any other evidence
2 to the jury other than your own testimony and then
3 the second question is whether have you made a
4 decision as to whether you wish to testify in this
5 case.

6 So the first question I wish to ask you at this
7 time is do you wish your lawyer to present any
8 evidence or testimony on behalf -- on your behalf at
9 this time or do you wish to not put -- or you don't
10 want him to? Which is your desire?

11 THE DEFENDANT: I...

12 THE COURT: I'm sorry. Do you want him to
13 present testimony or not present testimony other than
14 your testimony?

15 THE DEFENDANT: Oh, yes, sir.

16 THE COURT: You do? So you desire for him to
17 present testimony which means that you would give up
18 your last argument to the jury or his last argument
19 to the jury? You understand that?

20 THE DEFENDANT: Can I say that I agree? That's
21 what you asking me?

22 THE COURT: Yes, sir. Do you agree with that?

23 THE DEFENDANT: What I'm saying, agree to put up
24 a case?

25 THE COURT: Yes, sir, agree to put up a case and

1 give up the last argument to the jury.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. All right. Now, with regard
4 to your own testimony and your privilege against
5 self-incrimination, do you wish to waive that right
6 and testify in this case or do you wish to exercise
7 your privilege against self-incrimination and not
8 testify in this case?

9 THE DEFENDANT: Testify.

10 THE COURT: You wish to testify? And is that
11 decision being made by you on a freely and
12 voluntarily understanding --

13 THE DEFENDANT: Yes, sir.

14 THE COURT: -- all of your constitutional
15 rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. All right. The Court
18 would find then, Mr. Wilder, that the defendant has
19 made a free, voluntary, intelligent and knowing
20 decision to allow you on his behalf to present
21 testimony to this jury knowing that that gives up the
22 last argument to the jury and also has made a free,
23 voluntary, knowing and intelligent decision to waive
24 his privilege against self-incrimination under the
25 Fifth Amendment and to testify in this matter. Thank

1 you.

2 All right. I'm ready to go forward.

3 Mr. Wilder?

4 MR. WILDER: Yes, Your Honor. If I understand
5 it, the record is protected as concerns our directed
6 verdict motions, so Mr. Corbett is going to rest in
7 front of the jury when they come back in?

8 THE COURT: I will call on you.

9 MR. WILDER: Then you want me to proceed with my
10 case?

11 THE COURT: Yes, sir.

12 MR. WILDER: Okay.

13 THE COURT: Yes, sir.

14 MR. CORBETT: May I advise the Court that over
15 the break I asked Mr. Griffin from our office to call
16 officer Ricky Richards who is now with the Clarendon
17 County Sheriff's Department.

18 THE COURT: Yeah.

19 MR. CORBETT: He indicated that there were no
20 notes that he could find.

21 THE COURT: All right. I'm glad you reminded me
22 of that because that was one of the things that I
23 wanted to find out about so that we could handle the
24 Brady matters with regard to that as well.

25 So the representation as an officer of the Court

1 is that Mr. Richards was contacted and has advised
2 that he cannot find any notes.

3 MR. CORBETT: That's correct, Your Honor..

4 THE COURT: All right. Mr. Wilder, anything
5 further on that issue?

6 MR. WILDER: Your Honor, Mr. Richards would be
7 my first witness.

8 THE COURT: All right.

9 MR. CORBETT: Your Honor, may I ask -- and I'm
10 sorry for being unclear on the rule. My sequestered
11 witnesses, once I rest....

12 THE COURT: Again, reply. Again, if they are
13 going to come up in reply, then they can't come back
14 in the courtroom. That's the whole question.

15 MR. CORBETT: Even after my case has rested?

16 THE COURT: Yeah, because you won't know what
17 you're going to reply to until you have heard the
18 testimony.

19 MR. CORBETT: Very well.

20 THE COURT: Yeah. Is Mr. Richards here?

21 MR. WILDER: I didn't release him.

22 MR. CORBETT: I didn't say anything to him,
23 Judge.

24 THE COURT: Well, I did. I told him that he was
25 still subject to being here and that -- where is he?

1 Mr. Griffin, you talked to him. Where is he?

2 MR. GRIFFIN: Your Honor, I spoke to him via
3 telephone. I -- I didn't know that his whereabouts
4 would become an issue, so I don't personally know
5 where he is.

6 THE COURT: He was not released yesterday and I
7 thought I made that very clear to everybody. Do you
8 have him under subpoena?

9 MR. WILDER: Yes, sir. Your Honor, he was
10 served with a subpoena in the presence of Mr. Turner,
11 and maybe the Solicitor down in my office back there
12 in the last --

13 THE COURT: Mr. Griffin, go find out where he is
14 and find out why he is not here.

15 MR. GRIFFIN: Yes, sir, Your Honor.

16 MR. WILDER: Your Honor, we would move to
17 somebody else while they are doing that.

18 THE COURT: All right. We'll do that.

19 MR. WILDER: I don't want to waste any Court's
20 time or my time.

21 THE COURT: I know it. I agree. All right.
22 All right. Bring the jury in.

23 MR. FINNEY: Your Honor, if he wants to call my
24 client, it's going to take five minutes...

25 THE COURT: Went over this a minute ago. But

1 just to make sure it doesn't come up at the time, the
2 defendant has indicated that he wishes to testify in
3 this case. Mr. Corbett, are there any matters which
4 the State considers impeachable offenses?

5 MR. CORBETT: Judge, we show an out-of-state
6 record. It looks to be from Washington DC. Looks
7 like cocaine possession, but we cannot decipher it's
8 disposition.

9 MR. WILDER: Client says it was dismissed, Your
10 Honor.

11 THE COURT: Okay. They can't show a conviction.
12 I have got -- what difference does it make as far
13 as -- he's not on trial here. I'm going to do it
14 that way because I -- we got the -- he's got to have
15 to rest and then he's going to have to call a witness
16 and he hasn't even rested at this point, so... any
17 impeachable offenses, Mr. Corbett?

18 MR. CORBETT: On Wayne Cooper, no, Your Honor.

19 THE COURT: All right.

20 MR. CORBETT: On Derrick Cooper -- Your Honor,
21 Derrick Cooper's record reflects a first degree child
22 sexual abuse and that he is registered as a sex
23 offender in Washington and I believe that's
24 Washington DC.

25 THE COURT: All right. Mr. Wilder, do you have

1 any position with regard to whether he can be
2 impeached on that offense or not under 609?

3 MR. WILDER: Your Honor, we would object to
4 anything that's over 10 years old or...

5 THE COURT: When was it, Mr. Corbett?

6 MR. CORBETT: Your Honor, the record shows
7 two -- excuse me -- 2003.

8 THE COURT: All right. What else, Mr. Wilder?

9 MR. WILDER: That would be our -- whatever that
10 rule says about impeachment, Your Honor, we'll rely
11 on that.

12 THE COURT: All right.

13 MR. WILDER: For the Court's discretion. This
14 is not my client.

15 THE COURT: I understand. I was just asking if
16 you had a position. Okay. Mr. Derrick Cooper is
17 represented by Mr. Chip Finney. Mr. Finney, the
18 State contends that his testimony can be impeached
19 under 609. Do you have any position on that?

20 MR. FINNEY: As to...

21 THE COURT: Whether that's an impeachable
22 offense, the criminal sexual abuse case.

23 MR. FINNEY: My position, Your Honor, and
24 obviously it is out-of-state conviction, it is a
25 misdemeanor by all -- from all the information I have

1 been able to gather, it's a misdemeanor and it would
2 not be impeachable. My understanding is that he
3 received -- that the--

4 *THE COURT:* Well, even if it is a misdemeanor,
5 what was the punishment or possible punishment? It
6 doesn't matter whether it's a misdemeanor or a felony
7 under the rule.

8 The test is a conviction of a crime punishable
9 by imprisonment for in excess of one year under the
10 law under which the witness was convicted.

11 *MR. FINNEY:* And again, Your Honor, my client
12 received the 90 day sentence. My understanding is it
13 was a misdemeanor, but I'm not available to tell the
14 Court what the out-of-state charge -- I think it's a
15 New Jersey charge -- Washington DC?

16 *THE COURT:* They said Washington, yes, sir.

17 *MR. FINNEY:* Washington DC, what level.

18 *THE COURT:* Mr. Corbett? it's got to be
19 something that's punishable by more than one year.
20 And if you want to use it, you're going to have to
21 show me that it was something that was punishable by
22 more than one year.

23 *MR. CORBETT:* Your Honor, the records we have
24 before it indicates confinement 80 days suspended to
25 90 days probation one year supervised.

1 THE COURT: Okay. Nothing there indicates
2 anything of more than a year?

3 MR. CORBETT: No, sir, Your Honor.

4 THE COURT: That's what the rule says. I mean,
5 he may have been able to get more than a year but not
6 from the record that you have. All right.

7 State has not been able to show to the Court
8 that the crime for which he was convicted is a crime
9 that meets the requirements of 609A1. And for that
10 reason the Court will refuse to allow impeachment on
11 that grounds.

12 All right. Now, Mr. Finney, to take care of
13 this matter before I get the jury in, because I want
14 to go forward as soon as we can get the jury in here,
15 I need to make sure that your client understands what
16 his Fifth Amendment rights are and what his testimony
17 could mean if he -- if he testifies in this matter.

18 All right. You're Mr. Derrick Cooper; is that
19 correct?

20 DERRICK COOPER: Yes, sir, it is.

21 THE COURT: All right. Mr. Cooper, you are a
22 co-defendant in this case. Your case is not being
23 tried. But you're going to be called by your
24 co-defendant, who I understand is your brother, to
25 testify on his behalf in this case.

1 I want you to understand that you have a
2 privilege against self-incrimination. You can -- you
3 cannot be required to testify to anything that may in
4 any way incriminate you and you have the right to
5 refuse to testify to anything that may incriminate
6 you.

7 However, if you take the stand and testify in
8 this case, you waive your privilege against
9 self-incrimination and you can be required to answer
10 all the questions that are put to you, and any
11 answers that you give can and may be used against you
12 in your case against you when your case is called for
13 trial. Do you understand those rights?

14 DERRICK COOPER: Yes, sir.

15 THE COURT: Understanding and knowing that, is
16 it your intention to testify truthfully in this case
17 or do you wish to exercise your Fifth Amendment
18 rights?

19 DERRICK COOPER: Testify.

20 THE COURT: You wish to testify and waive any
21 privileges that you have under the Fifth Amendment?

22 DERRICK COOPER: Yes, sir.

23 THE COURT: And you're doing this after having
24 been advised by your counsel, Mr. Ernest Finney; is
25 that correct?

1 DERRICK COOPER: Yes, sir.

2 THE COURT: All right. Thank you, sir. All
3 right. Ready to go forward. Mr. Corbett?

4 MR. CORBETT: Ready, Your Honor.

5 THE COURT: Mr....

6 MR. WILDER: We're ready.

7 THE COURT: All right. Mr. Griffin, what did
8 you find out?

9 MR. GRIFFIN: Your Honor, I spoke with Sergeant
10 Richards. He said he was in Manning but he would put
11 his uniform on and come as soon as he could. I
12 expect 30 to 45 minutes it will take him to get here.

13 THE COURT: All right. We will go forward. All
14 right. Bring the jury in.

15 (Jury entered the courtroom at 12:06 pm.)

16 THE COURT: All right. Thank you very much.
17 Thank you, ladies and gentlemen. And we are now
18 ready to proceed. I told you that might be a little
19 bit of an extended matter because we did have some
20 matters that we had to take care of, but we have done
21 so. All right. Mr. Corbett?

22 MR. CORBETT: Thank you, Your Honor. The State
23 rests.

24 THE COURT: All right. Ladies and gentlemen,
25 you have heard the State announce that they have

1 rested. That means that they have presented all of
2 the evidence that they will present at this time.

3 The defendant now has the right to present any
4 evidence or any testimony to you that they wish to
5 present in connection with this matter. And in that
6 connection, I will call on Mr. Wilder. Mr. Wilder?

7 MR. WILDER: Your Honor, the Court having ruled
8 on our motions, we are ready to present our case and
9 we will call Derrick Cooper to the stand.

10 THE COURT: All right. Mr. Cooper?

11 DERRICK COOPER, after being duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WILDER:

15 Q Derrick, I'd ask that you look over this direction
16 while you talk so we can see your face, okay?

17 A Yes, sir.

18 Q How old are you?

19 A Twenty-eight.

20 Q Okay. Is your mother and father here in the
21 courtroom?

22 A Yes, sir.

23 Q All right. Could you point them out for the jury?

24 A My father have on the blue coat and my mom sitting
25 beside him with the brown leather jacket on.

1 Q Okay. What are their names?

2 A My father name Otis Cooper and my mother name Betty
3 Cooper.

4 Q Okay. Did Betty own a car that you were driving at
5 some point in time that was green in color?

6 A Yes, sir.

7 Q Okay. And the car was registered in her name; wasn't
8 it?

9 A Yes, sir.

10 Q All right. The last time that you had had access to
11 that car was back in September of 2006; wasn't it?

12 A Yes, sir.

13 Q Okay. Would you tell the jury where you were living
14 at that time, September of '06?

15 A 1435 Cherryvale Drive lot 26.

16 Q What--

17 A Sumter, South Carolina.

18 Q Now, let me show you a diagram just a minute and see
19 if you can -- you have never seen this picture; have you?

20 A No, sir.

21 Q All right. Are you able on this picture to pick out
22 the trailer you were living in? You study it a minute.

23 A Appear my...

24 Q All right. So now you are able to pick it out.

25 A Yes, sir.

1 Q That's what I wanted you to do. All right. So --

2 MR. WILDER: Your Honor, so that the jury can
3 see, I'd ask permission for Mr. Cooper to get down
4 and show them.

5 THE COURT: All right. Let's get the easel up
6 there so that we can handle it that way.

7 BY MR. WILDER:

8 Q All right. Derrick, if you would then step down here
9 to this easel.

10 THE COURT: And you need to keep your file up --
11 I mean keep your voice up, Mr. Cooper, because you're
12 away from the microphone and everybody's got to hear
13 you.

14 THE WITNESS: Yes, sir.

15 THE COURT: All right.

16 BY MR. WILDER:

17 Q All right. Now, I don't want anybody to not be able
18 to see. So okay. Now, point out the location of the
19 mobile home you were living in. Okay. Right there?

20 A Yes, sir.

21 Q Okay. And looks to me like it's got a white roof?

22 A Yes, sir.

23 Q And that kind of distinguishes it from some of the
24 other ones in the immediate vicinity, it's more down
25 there, but that's the one right there on that corner?

1 A Yes, sir.

2 Q Okay. Now, I just wanted you to point out to the
3 jury ways you can come and go from the mobile home you
4 were living at, okay? Could you do that for me?

5 A The way I come in and go out.

6 Q That's right, the way you come in and the way you got
7 out the mobile home park.

8 A My family house, Sumter this way.

9 Q Okay. That's up 378?

10 A Yes.

11 Q Okay.

12 A Make a left.

13 Q Right.

14 A Right. Come up Cherryvale Drive and make a left
15 beside mobile home park, make a right going around -- go
16 in my yard back up and stay right.

17 Q Time to leave, where do you go?

18 A Across -- come here, make a right -- a left here,
19 head towards Columbia, go to work.

20 Q All right. So when you are leaving your house in the
21 morning, you continue on around the circle?

22 A Yes, sir.

23 Q Okay. You don't go back up here by the way you came
24 in, do you, when you leave?

25 A No. This way you come in at. That the way you exit

1 out.

2 Q Okay. That's the way you exit out. All right. Now,
3 on September the ninth, did you have occasion to meet up
4 with your brother Wayne here? Excuse me, September the
5 second. That's where I want to go.

6 A Yes, sir.

7 Q Okay. Tell the jury what time of morning it was.

8 A It was around maybe -- he came to my house?

9 Q When he came to your house.

10 A Was around 5:35.

11 Q 5:35. Put your finger where he showed up, where you
12 and he got together that morning.

13 A My car sitting here facing this way. He came in,
14 pulled like right where that car is, right on down.

15 Q All right. Now, so you got your finger right in
16 front of your house?

17 A Yes, sir.

18 Q Now, why did you call your brother?

19 A Let him know he was late for work.

20 Q Late for work?

21 A Yes, sir.

22 Q All right. Now, did the two of you wind up leaving
23 your house together to go to work?

24 A Yes, sir.

25 Q When you left your house, which way did you go?

1 A This way.

2 Q Out -- out way?

3 A Yes, sir.

4 Q Were you driving?

5 A Yes, sir.

6 Q Okay. Did you have occasion to go back up this way
7 where you -- where you normally come in that morning?

8 A No, wouldn't make sense because -- because straight
9 come in this lane, go out, come on this way, come out the
10 mobile home park, I come to this way and I come in that
11 way.

12 Q Okay. So that morning Wayne shows up at your house?

13 A Yes, sir.

14 Q You're late for work?

15 A Yes, sir.

16 Q The two of you get in the car together?

17 A Yes, sir.

18 Q And you go off that direction?

19 A Yes, sir.

20 Q All right. You can get back on the stand now.

21 A (Complied.)

22 Q Now, you and Wayne at that point were working
23 together where?

24 A Fire Mountain on Garners Ferry in Columbia.

25 Q Fire Mountain in Columbia. And did you punch in for

1 work when you got there?

2 A Yes, sir.

3 Q Clock in? All right. Now, show you that. Before
4 September 2nd, I'm talking about immediately the day
5 before that, had you worked the days before?

6 A Yes, sir.

7 Q Okay. And did you work some of the days after
8 September 2nd?

9 A Yes, sir.

10 Q All right. Tell the jury which days you worked
11 before if you remember and which days you worked
12 afterwards.

13 A I worked--

14 MR. CORBETT: Objection, Your Honor.

15 THE COURT: Yes, sir.

16 MR. CORBETT: If the witness is reading from the
17 statement, then we need to address the statement.

18 THE COURT: All right. Under the rules,
19 Mr. Wilder, he has a right to look at a document, and
20 you have already disclosed what it is, if it
21 refreshes his memory, but let's do it according to
22 the rules, please.

23 BY MR. WILDER:

24 Q All right. You have your work records there with
25 you?

1 A Yes, sir.

2 Q And they show what time you got there and what time
3 you left?

4 A Yes, sir.

5 Q Those are the documents you were paid from?

6 A Yes, sir.

7 Q Okay. Now, you remember going to work; don't you?

8 A Yes, sir.

9 Q Okay. And you remember certainly September the
10 second?

11 THE COURT: Now let's don't lead him,
12 Mr. Wilder.

13 BY MR. WILDER:

14 Q Okay. Well, you remember all these days; don't you?

15 A Yes, sir.

16 Q When you went to work? All right. Okay. Let's
17 start then like on the last day of August, August 31st.
18 Did you work that day?

19 A August 31st.

20 Q Two days before this incident.

21 THE COURT: All right. Yes, sir.

22 THE WITNESS: Yes, sir.

23 THE COURT: Wait a minute. Objection is
24 sustained. Rephrase the question and do it according
25 to the rules, Mr. Wilder.

1 Either put the exhibit in or try to put the
2 exhibit in where he can testify to it or ask him
3 if -- what the document is, if it refreshes his
4 recollection, then let him testify from his own
5 recollection. That's the way it has to go. He can't
6 read from the document.

7 MR. WILDER: Okay.

8 THE COURT: Unless it's in evidence.

9 BY MR. WILDER:

10 Q All right. You have your work records in front of
11 you?

12 A Yes, sir.

13 Q Okay.

14 THE COURT: Whose work records are those?

15 MR. WILDER: Fire Mountain.

16 THE COURT: All right. So they are not his
17 records, they are Fire Mountain's records as I
18 understand it.

19 MR. WILDER: Well, they came from there, Your
20 Honor. That's true.

21 THE COURT: All right. Objection is sustained.
22 Proceed, Mr. Wilder, according to the rules.

23 BY MR. WILDER:

24 Q All right. Let's move then to September the second.
25 You remember that you did work some days before and some

1 days afterwards.

2 A Yes, sir.

3 Q Okay. September 2nd when you left the trailer park,
4 did anything unusual happen?

5 A No, sir.

6 Q Okay. You and -- you were with Wayne. Did y'all go
7 straight to work?

8 A Yes, sir.

9 Q Now, I want to ask you about your appearance that
10 morning. Your haircut, was it the same as it is today?

11 A Yes, sir.

12 Q How much do you weigh?

13 A 194.

14 Q Okay. Were you dressed for work that morning?

15 A Yes, sir.

16 Q When you got to work, did -- did you change before
17 you got there?

18 A No, sir.

19 Q Okay. Your brother left his car parked in front of
20 your trailer; didn't he?

21 A Yes, sir.

22 Q Why did you take your car instead of his?

23 A Because when we car pool, we go in my -- who have the
24 most amount of gas, and that morning I had the most amount
25 of gas -- I had more gas than he had.

1 Q All right. Did you clock in for work at 6:12 am?

2 A Yes, sir.

3 Q Had you been there at Fire Mountain before waiting in
4 the parking lot to get in?

5 A Yes, sir. We arrive at Fire Mountain approximately
6 around 6:07, 6:08.

7 Q Okay. So you were there for a few minutes, you
8 clocked in.

9 A Yes, sir. When you come in, we have to park across
10 the parking lot because we can't park where the customers
11 at. We have to park all the way in the corner by the
12 Popeyes and walk across the parking lot to the building.

13 Q Okay. Did either one of you have shorts on?

14 A No, sir, we can't wear short.

15 Q Why can't you wear shorts?

16 A Because we work in a restaurant. We got to wear work
17 pants. We have on black Dickie pants, work pants, and I
18 had on a white dress shirt with Fire Mountain on the
19 sleeve and pocket.

20 Q Okay. All right. Now, was Wayne with you the whole
21 time you were on the way over there?

22 A Yes, sir.

23 Q Now, is his car the same color as your car?

24 A No, sir.

25 Q What color is his car?

1 A His car is white.

2 Q White car. Was there anybody else with Wayne when he
3 got to your house?

4 A No, sir.

5 Q Were y'all in any particular hurry to get to work?

6 A No.

7 Q You driving an average speed?

8 A Yes, sir.

9 Q Did you speed --

10 A No, sir.

11 Q -- to get there?

12 A I couldn't afford to speed. I only had one more
13 point left on my license for speeding, so I couldn't
14 afford to speed there.

15 Q All right. Give the jury a guess as to how long it
16 took you to get there.

17 A I estimate like 28, 29 minutes to the most.

18 Q Okay. 29 minutes. All right. Okay. Now, let me
19 then ask you then after September the second, did you work
20 a couple of days thereafter?

21 A Yes, sir.

22 Q Okay. And were -- what were your hours like there?
23 What was a normal work week for you?

24 A On the weekends we have breakfast Saturdays and
25 Sundays so we have to be to work kind of early, 5:30 to

1 get the breakfast started before customers come in at
2 seven. On the weekdays we have to be there at 8:30 to get
3 everything ready for the restaurant opened up.

4 Q Okay. And did Wayne also work with you September the
5 third and fourth?

6 A No, I was -- I was off on the third. He worked the
7 third himself.

8 Q Okay. So Wayne worked the next day?

9 A Yes, sir.

10 Q And you didn't.

11 A Yes, sir.

12 Q And then both of you worked?

13 A That Monday.

14 Q Monday?

15 A Yes, sir.

16 Q Okay. Now, let's go then to September the fifth.

17 Did you work on September the fifth?

18 A Yes, sir.

19 Q What time did you get there on that morning?

20 A I believe we got there at nine to little -- little
21 before nine.

22 Q Little before nine?

23 A Yes, sir.

24 Q Okay. And did you work till late in the afternoon?

25 A Yes, sir.

1 Q Okay. Did you get paid that day?

2 A Yes, sir. That's the day we get our checks.

3 Q Wayne was with you that day?

4 A Yes, sir.

5 Q Did the two of you leave from Fire Mountain to come
6 back to Sumter?

7 A Yes, sir.

8 Q Did Wayne -- was he working at McDonalds at some
9 point prior to this?

10 A Yeah, prior. We both worked at McDonalds prior
11 before we worked at Fire Mountain.

12 Q Did Wayne have a injury from working at McDonalds?

13 A Yes, sir, he did.

14 Q What kind of injury did he have?

15 A He had slip and hit his head on the concrete, bust
16 his head open in the back. It was wet rain, he was on --
17 he was a manager. He was unloading a truck one weekend.
18 I came by to help. I didn't had to work that day, but I
19 came in to help him unload the truck.

20 And he was out taking things off the truck. And a
21 guy had came like, your brother had fell. When I went
22 outside, he was -- had his head bust open on the ground.

23 Q Did he have to go to the hospital?

24 A Yes, sir.

25 Q Was he treated by a doctor for it?

1 A Yes, sir.

2 Q Was he taking medication for it?

3 A Yes, sir.

4 Q Did he have a pain patch that he was wearing?

5 MR. CORBETT: Objection, Your Honor. Leading.

6 THE COURT: Overruled. That's not leading.

7 BY MR. WILDER:

8 Q Did he?

9 A Yes, sir. Yes, sir.

10 Q All right. Was a pain patch on him the day y'all
11 were coming back from Fire Mountain?

12 A Yes, sir, it was.

13 Q Now, I believe you said you got paid.

14 A Yes, sir.

15 Q And did y'all stop by any store at that point?

16 A When we got paid, we left out, I went to Piggly
17 Wiggly straight across the highway on Garners Ferry to
18 cash my check. He couldn't cash his because he didn't
19 have his ID.

20 So I went to cash my check. After I cash my check, I
21 went right back across the street to a game store that I
22 seen some games earlier on my break that I want to buy, so
23 I went in there, asked the guy can he get me two games I
24 asked him for. I paid for them.

25 We left and went to the gas station right diagonal

1 from where he work at. I filled my car up, bought us a
2 couple of beers, bought him a couple of beers, bought me
3 some beers, half a pint of E and J and I was rolling up a
4 blunt while my car was getting filled up with gas, a blunt
5 of marijuana before we left from the gas station to come
6 back to Sumter.

7 Q Tell the jury what size these beers were.

8 A I had bought him three 24 ounces and I bought me
9 three 24 ounces and a half a pint of E and J, it's split
10 in between me and him because we had a cup coming back
11 from work.

12 Q So three 24-ounce beers for him and three 24-ounce
13 beers for you?

14 A Yes, sir.

15 Q And a half a pint of what?

16 A E and J.

17 Q E and J?

18 A E and J, yes, sir.

19 Q Tell the jury what that is.

20 A E and J is a liquor. I don't know what E and J
21 stands for. But I know it's on a bottle, a half a pint,
22 and it got a burgundy label that says E and J with red
23 top -- a brand.

24 Q Okay. Did your brother take medication before he
25 left Fire Mountain?

1 A Yes, sir.

2 Q Why hadn't he taken the medication earlier if you

3 know?

4 A I don't know why he didn't take it earlier. I know

5 before.

6 Q I'm sorry.

7 A Okay.

8 Q I will ask your brother later.

9 A Okay.

10 Q Okay. Now, you -- so but you gave him the beer and

11 he drank the beer.

12 A Yes, sir.

13 Q On the way back?

14 A Yes, sir.

15 Q Three 24 ounces?

16 A Yes, sir.

17 Q Beers. And you saw him drink them?

18 A Yes, sir.

19 Q On the way back?

20 A Yes, sir.

21 Q And a half a -- of a pint of some kind of liquor

22 called E and J?

23 A Yes, sir.

24 Q All right. And then you know you bought -- rolled up

25 a marijuana cigarette of some kind?

1 A Yes, sir, I rolled, yes, sir.

2 Q And smoked that?

3 A Yes.

4 Q And you saw him take the pain medication --

5 A He--

6 Q -- before he left?

7 A Yeah, before he left work, yes, sir.

8 Q And he had this pain patch on his -- on his neck?

9 A Yes, sir.

10 Q Okay. So y'all made the trip back to Sumter.

11 A Yes, sir.

12 Q Okay. Now, you went to -- where Wayne -- Wayne was
13 staying over on Suzie Rembert; didn't you?

14 A Yes, sir.

15 Q Okay. Tell the jury why you were going there.

16 A Because the -- on the second when I came back home
17 from work on the second, I had ran back to my home on
18 September 2nd and my baby mama was there with my newborn
19 child. She was breastfeeding. So I had told my brother
20 hold on before he went in the house.

21 I went in the house and she explain to me that she
22 had been washed up her and the baby all day because they
23 turned my water off 11 am that second morning -- on the
24 morning of the second.

25 So I told her to grab the baby clothes because I

1 didn't have no money to pay the water bill. I had owed
2 back water bills since earlier that year, because only \$15
3 so I kept skipping the bill until it built up and they
4 turned my water off.

5 So I told her I don't get my check till Tuesday, so
6 just grab a couple clothes for you and the baby and my
7 other work clothes and we stay at my brother house until I
8 get my check and turn the water back on, just to pay a
9 little bit so they can re-activate my water back on.

10 Q Did -- did you take your baby's mama to Wayne's
11 house?

12 A Yeah, took her and my son and couple of his clothes
13 and pampers and stuff.

14 Q Okay. Now, so your car wound up in the back yard?

15 A Yes, sir.

16 Q Of Wayne's house?

17 A Yes, sir.

18 Q Okay. And I take it that the license plates had also
19 expired?

20 A Yes.

21 Q Now, at any point between or at any time was any gun
22 fired in that car?

23 A No, sir.

24 Q No?

25 A No.

1 Q Did Wayne ever have a gun in that car?

2 A No, sir.

3 Q Did you have a gun in that car?

4 A No. No, sir.

5 Q Did y'all shoot anybody or did anybody in your car
6 shoot at anybody?

7 A No, sir.

8 Q Did you have anything to do with a shooting?

9 A No, sir.

10 Q Other than the water was cut off in your trailer and
11 you had to move to Wayne's house, were you moving to try
12 to get away from any place?

13 A No, sir.

14 Q Okay.

15 A On the day of the second I came back home in my
16 vehicle. I came back to that same house I stayed at in
17 Cherryvale Drive.

18 Q That same day?

19 A Yes, sir, that--

20 Q September the second?

21 A Yes, sir.

22 Q Okay. What time did y'all get back there?

23 A It was like close to four, little -- little close to
24 4:00.

25 Q Okay. And it got back to the Cedar Hill Mobile Home

1 Park?

2 A Yes, sir.

3 Q And went straight to your house?

4 A Yes, sir.

5 Q Talk to your baby mama?

6 A Yes, sir.

7 Q About the water being off?

8 A Yes.

9 Q Okay. Now, did you remove any tint from your car?

10 A No, sir.

11 Q If you know, how did any tint get on the -- on the

12 ground or in the garbage can in the back yard back there?

13 A It was old tint. That tint been back there probably

14 for months.

15 Q Okay. Wayne had a truck around there, too; didn't

16 he?

17 A Yes, sir.

18 Q Describe the truck to the jury.

19 A He had a black and burgundy -- I don't remember what

20 year it was -- a Dodge Ram Charger.

21 Q Okay. In addition to the white car.

22 A Yes, sir.

23 Q What was the white car?

24 A I think it was a Plymouth Acclaim.

25 Q Okay. Was Wayne's haircut the same as -- about the

1 same as it is now?

2 A Yes, sir.

3 Q That day in September?

4 A Yes, sir.

5 Q So neither one of you had an afro?

6 A No, sir.

7 Q Did either one of you have any occasion to stop at
8 the fire department that morning at Cedar Hill Mobile Home
9 Park?

10 A No. What we stop there for?

11 Q You didn't?

12 A No, sir.

13 Q Okay. Were you having difficulty starting your car
14 that morning?

15 A Yes, sir.

16 Q Okay. Tell the jury what you and Wayne had to do to
17 get things started.

18 A When he came in the yard, right before he came there,
19 I had to call him back a second time and let him know that
20 my car wouldn't start.

21 I was trying to start it right after -- I knew my
22 voltage regulator was going bad previously with it.
23 Sometimes it starts, sometimes it wouldn't. But that
24 morning it kept click, click, click, click, clicking.

25 So when he got there, I pull his jumper cables out

1 the back of my trunk and he popped his hood. That's why
2 he came, pulled diagonal head-on with my car and he jumped
3 my car. We stood there for like five or ten minutes
4 jumping my car before he left.

5 Q Now, were the beer cans still in the car when you got
6 to the house on Suzie Rembert?

7 A The day we was arrested?

8 Q The day you were arrested.

9 A Yes, sir.

10 Q Okay. There was no drinking going on the morning --
11 or was there any drinking going on on the morning of
12 September the 2nd?

13 A No, sir.

14 Q Okay. So neither one of y'all had been to the party
15 down the road there, if one was happening, at Wanda's?

16 A I don't know who that -- I don't know who that is,
17 sir.

18 Q You don't know who that is?

19 A No, sir.

20 Q Okay.

21 MR. WILDER: Can I ask the Court's indulgence
22 for one moment?

23 THE COURT: Yes, sir.

24 (Whereupon there was a pause.)

25 BY MR. WILDER:

1 Q Okay. When y'all got to Suzie Rembert, were y'all
2 put in handcuffs on the 5th?

3 A Yes, sir.

4 Q September 5th?

5 A Yes, sir.

6 Q And was there -- were there a police officer there
7 yelling they were going to put you in jail for murder?

8 A Not that moment. They didn't tell us what for until
9 a little while after they had us in handcuffs.

10 Q A little while after they had the handcuffs, what
11 started happening?

12 A A lot of yelling, and you knew -- you knew what you
13 did, you knew what you going to jail for. And we still
14 were like, what was y'all detaining us for. And they had
15 us in handcuffs, and they was like, they -- they had us on
16 the ground when they pull out the car because I didn't get
17 a chance to put the car in park all the way.

18 I was pulling in to -- backing into the driveway and
19 I seen trucks and SUVs and people running up with guns and
20 rifles pointing at the car like, get out the car, get out
21 the car.

22 And when I put the car in park, I never get the
23 chance to turn it off. Once I open the door, a lady -- a
24 lady officer had grabbed me. She was on my side -- and
25 put me on the ground. And I didn't see who had my brother

1 because I was already on the ground.

2 And they put my hand up to me, where you ID at? And
3 I was like, my pocket. And they went and grabbed me and
4 put me in handcuffs while I was still on my knees by the
5 front tire.

6 Q Did they give you an arrest warrant?

7 A No, sir.

8 Q Now, were you afraid?

9 A Yes, sir.

10 Q Scared?

11 A Yes, sir.

12 Q You had had three beers to drink, too; hadn't you?

13 A Yes, sir.

14 Q And whatever portion of the liquor and some of the
15 marijuana, too?

16 A Yes, sir.

17 Q Okay. Now, did they charge you with murder?

18 A Yes, sir.

19 Q And you're still charged with it; aren't you?

20 A Yes, sir.

21 Q Did you commit the murder?

22 A No, sir.

23 Q Is there any way that you or Wayne could have
24 committed the murder?

25 A No, sir.

1 Q That you know about?

2 A No, sir. It was imposs -- I mean, we was together
3 that whole morning that they saying that we did it, but we
4 wouldn't -- that's stupid. I mean, why would we do
5 something like that and go to work and then we -- you
6 know, might had went nowhere.

7 I was still coming home to that same mobile home
8 park. I mean, that'd be kind of crazy, sir.

9 Q But you didn't?

10 A No, sir.

11 Q Answer any questions that Mr. Corbett may have for
12 you.

13 THE COURT: Cross-examination, Mr. Corbett?

14 MR. CORBETT: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. CORBETT:

17 Q Your name is Derrick Cooper?

18 A Yes, sir.

19 Q And in September of 2006 you were living at Cedar
20 Hill Mobile Home Park?

21 A Yes, sir.

22 Q Is that correct?

23 A Yes, sir.

24 Q I'm going to show you what has been marked as State's
25 exhibit number 16. Is that the car that you were driving

1 in September of 2006?

2 A Yes, sir.

3 Q What kind of car is that?

4 A A Chrysler Concord.

5 Q What color is that car?

6 A Like an emerald green.

7 Q Does it have any other color on it?

8 A And gray at the bottom.

9 Q On the morning of September 2nd, do you know what
10 time you clocked in for work at Fire Mountain?

11 A Yes, sir.

12 Q What time was that?

13 A 6:12.

14 Q Now, you indicated your brother had called you; is
15 that correct?

16 A No, I called him.

17 Q You called your brother.

18 A Yes, sir.

19 Q Okay. You called him to tell him that you were
20 having trouble with your car?

21 A The first time I called I called him to let him know
22 that he was late for work, did he know he was late, and he
23 tell me he was on his way now. That's before I even left
24 the house and when my car couldn't start.

25 Q What time did you first call him?

1 A At like 5:09, 5:08 because I had just woke up. I
2 normally get up at like 4:30 because of the baby and
3 everything.

4 Q What time were you planning on getting to work?

5 A We supposed to have gotten to work at 5:30.

6 Q At 5:30?

7 A Yes, sir.

8 Q So you woke up and you called your brother to tell
9 him he was late?

10 A Yeah, that we -- we both was late because like he
11 normally be at my house already because way we travel to
12 come to work, he have to come past my house in order for
13 us to go to Columbia.

14 So regardless, he have to stop at my house before we
15 go because we carpool to work.

16 Q What time did he arrive at your house?

17 A Probably 5:35, somewhere like that.

18 Q 5:35?

19 A 5:35, 5:30, yes, sir.

20 Q And then you had difficulty starting your car?

21 A Yes, sir.

22 Q And your testimony is that you were there another 10
23 minutes or so trying to--

24 A Between five and 10 minutes.

25 Q Okay. And then you left and went to Columbia?

1 A Yes, sir.

2 Q Okay. But it is a fact that you were having trouble
3 getting your car started; right?

4 A Yes, sir.

5 Q Now, the car that you were driving, the tag that was
6 on that car, was that the correct tag to that vehicle?

7 A Yes, sir.

8 Q I'm going to show you what's been marked as State's
9 number 15. Ask you to look at the bottom picture. Is
10 that the correct tag for that vehicle?

11 A Yes, sir.

12 Q Now, you had been driving that car for some period of
13 time; correct?

14 A Yes, sir.

15 Q Matter of months?

16 A Yes, sir.

17 Q How long had you lived at Cedar Hill?

18 A Like 15 months.

19 Q So it would not have been uncommon for people to have
20 seen you prior to September 2nd in Cedar Hill Mobile Home
21 Park driving that car?

22 A Yes, sir.

23 Q Now, you testified a moment ago that you did not
24 speed between Cedar Hill Mobile Home Park and Fire
25 Mountain?

1 A Yes, sir.

2 Q All right. It's your testimony that you were
3 supposed to be to work at 5:30?

4 A Yes, sir.

5 Q Is that correct?

6 A Yes, sir.

7 Q That you left sometime in the 5:40 to 5:45 range;
8 correct?

9 A No.

10 Q Well, you said your brother got there at 5:35.

11 A Yes, sir. He got there around 5:30, between 5:30 and
12 5:35.

13 Q Okay. And then you took some time to jump the car
14 off?

15 A Yes, sir.

16 Q And then you left to go to Columbia?

17 A Yes, sir.

18 Q So you were already late when you left?

19 A Yes, sir.

20 Q And your testimony is that you did not break the
21 speed limit on Highway 378 between Cedar Hill and Fire
22 Mountain?

23 A Yes, sir.

24 Q Is that your testimony?

25 A Yes, sir.

1 Q Mr. Cooper, let me jump forward. We'll come back to
2 that morning in just a minute. The day that you were
3 arrested, September 5, do you recall that day?

4 A Yes, sir.

5 Q Now, on that day you got off work at 3:36; is that
6 correct?

7 A Yes, sir.

8 Q Okay. What time did you get to Suzie Rembert Road?

9 A Almost like couple minutes before 5:00.

10 Q Between 4:30 and five?

11 A I got to say between 4:45 and five.

12 Q Is that correct?

13 A Yeah, between 4:45 and 5:45, in between, it was a
14 little closer to 5:00.

15 Q All right. Would you agree with me that you got off
16 work at 3:36?

17 A Yes, sir.

18 Q And then that you would agree with me that you got to
19 Suzie Rembert Road before 5:00?

20 A Yes, sir. Little bit before five, yes, sir.

21 Q Is that correct?

22 A Yes, sir.

23 Q Okay. And your testimony is that you left work on
24 September 5 and you went to Piggly Wiggly to cash your
25 check?

1 A Yes, sir.

2 Q Is that correct?

3 A Yes, sir.

4 Q You then went to the video game store and bought
5 video games?

6 A Yes, sir.

7 Q You then went to the gas station?

8 A Yes, sir.

9 Q Put gas in your car?

10 A Yes, sir.

11 Q Bought, what, six cans of beer?

12 A Yes, sir.

13 Q Is that correct?

14 A Yes, sir.

15 Q And some liquor?

16 A Yes, sir.

17 Q And a blunt?

18 A Yes, sir.

19 Q Now, did you buy the marijuana in Columbia or did you
20 already have--

21 A No, already -- already had it with me.

22 Q Where was it?

23 A In my wallet.

24 Q So what time did you leave Columbia or the area of
25 Fire Mountain?

1 A I can't -- I believe I left the gas station because I
2 bought everything.

3 Q So from 3:36 to 3:50 you went to Piggly Wiggly and
4 cashed a check.

5 A Yes, sir.

6 Q You went to the video game store and bought video
7 games?

8 A Yes, sir.

9 Q Put gas in the car?

10 A Yes, sir.

11 Q Bought beer and a blunt?

12 A Yes, sir.

13 Q And you were watching your watch?

14 A No, I got a clock on my -- my radio on my car.

15 Q So you did all that by 3:50?

16 A Yes, sir.

17 Q Okay. And then you ended up in Sumter between
18 4:30 and five?

19 A Yeah, little close to 5:00.

20 Q Did y'all stop?

21 A No, sir. We stop at red light 261, a couple of red
22 lights, not too long, two -- I know longest light I
23 stopped at was at 261, that was it. Everything else was
24 coming to Sumter.

25 Q So between Fire Mountain and Sumter, y'all drank

1 three 24-ounce beers each, split a fifth of brandy. Is
2 that what you called it?

3 A No, sir, a half a pint.

4 Q Excuse me. Split a half pint of brandy.

5 A Yes, sir.

6 Q And smoked marijuana.

7 A Yes, sir.

8 Q And you did all of that between Fire Mountain and
9 Suzie Rembert Road?

10 A Yes, sir. Me drinking I wouldn't have to pull over
11 to drink or smoke. I wouldn't have to stop the car
12 because the blunt is -- sits in the ash tray and I'm
13 constantly be in my lap when I'm driving, crack it open,
14 sipping, watching out for the police.

15 No one don't want to get -- ain't no tints on the
16 car, so I don't want the police to see me drinking.

17 Q And it's your testimony that each of you drank three
18 24-ounce cans of beer.

19 A Yes, sir.

20 Q A half gallon?

21 A Yes, sir.

22 Q Now, the morning you were leaving the Cedar Hill
23 Mobile Home Park, someone threw a beer bottle at your car;
24 correct?

25 A No, sir.

1 Q Never happened?

2 A No, sir.

3 Q Okay. The part about it having trouble starting is
4 true, but not the beer bottle?

5 A I ain't never seen nobody with no beer bottle.
6 Nobody threw a beer bottle at my car.

7 Q Okay. So you didn't see anything that morning in
8 Cedar Hill Mobile Home Park?

9 A No, sir, but vehicles rode past a few times before my
10 brother came, but that's normally during the club night
11 when they have club, people come home from club at night,
12 at the club up the street from where we live at.

13 Q Now, when you got to Suzie Rembert Road, your car was
14 there; correct?

15 A Yes, sir.

16 Q Backed in the back of Suzie Rembert Road?

17 A Yes, sir.

18 Q Behind the white car?

19 A Yes, sir.

20 Q Is that correct?

21 A Yes, sir.

22 Q With residue on the windshield from window tint.

23 A No, I don't think residue was on the window.

24 Q Okay. Now, the window tint that's laying there out
25 in the open on the ground with your hand print on it --

1 A Yes, sir.

2 Q -- how long had that been there?

3 A Probably about a month. I don't know, I can't keep a
4 count how long it been there.

5 Q A month?

6 A Yeah, it was pretty month -- almost. I can't keep a
7 accurate count. I don't remember too much how long the
8 tint been there.

9 Q Does the trash get -- in that house?

10 A That certain trash can, the trashmen don't pick that
11 trash can up because it's not built for the machine that
12 picks it up.

13 Q So that trash doesn't get picked up from that
14 residence?

15 A That trash, no, that trash don't get picked up. No,
16 it don't.

17 Q What time did you get home from Fire Mountain on the
18 second, September 2nd, 2006?

19 A Probably like four, a little bit after 4:30, a little
20 bit after 4:30.

21 Q Okay. And it's your testimony is that you took the
22 woman you were living with and your child and y'all went
23 to stay at Suzie Rembert Road?

24 A Yes, sir.

25 Q And so -- and that was because of some water problem?

1 A Yeah, they turned my water off. That was the second
2 time my water been turned off prior to two times almost
3 getting evicted for being late for paying the rent because
4 switching jobs and trying to save money and the kid coming
5 and everything.

6 Q Well, when did you pay that water and get it turned
7 back on?

8 A I haven't had a chance because I was arrested on the
9 fifth.

10 Q So your water bill was behind?

11 A Yes, sir.

12 Q So your --

13 A Prior that year -- earlier that year when I was at
14 work, my water got turned off and she had money in the
15 closet to pay for it, so I kept skipping the bill because
16 it was so -- so late and like so small, I had other bills
17 bigger than that.

18 So when I got the bills \$15, \$8, I'm going to push
19 the water bill to the side all the time and I never really
20 jumped on it until I came home that day and she told me
21 that they turned the water off and it was a red tag
22 hanging on my door letting me know that they -- in order
23 to get my water turned back on, I had to pay \$298 to get
24 it turned back on. It was \$3 and some change I had owed
25 on the water bill.

1 Q You owed \$3 and some change on your water bill?

2 A Yes, sir.

3 Q But you had to pay 298 to get it turned back on?

4 A Yes, sir. You ain't had to pay the full amount to
5 get it turned back on.

6 Q I'm sorry. Say that--

7 A You don't have -- I didn't have to pay the full
8 amount to get it turned on, just enough that knock the
9 bill back down.

10 Q Oh, it was 300 something?

11 A Yeah. No, to pay to get it turned back on? No, they
12 told me I had to pay 200 and some change to get it turned
13 on, but I had owed 300 and some change to get it, you
14 know, that's why they turn it off.

15 Q I understand. You owed 300 and something --

16 A Yes, sir.

17 Q -- dollars on your water bill?

18 A Yes, sir.

19 Q And the day you got paid, the first thing you did was
20 buy video games --

21 A Yes, sir.

22 Q -- and beer.

23 A Yes, sir.

24 Q Now, I guess you also bought marijuana?

25 A No, I been had the marijuana.

1 Q Did you buy it or did you grow it?

2 A No, I bought it, but it wasn't to that day. I been
3 had the marijuana.

4 Q But you--

5 A I came to work -- I came to work with the marijuana.

6 THE COURT: One at a time. Let him finish.

7 THE WITNESS: I came to work with the marijuana.

8 I buy like -- not large amounts, but I don't smoke
9 every -- so I buy like a 20 bag during that week and
10 I pinch out of it here and there when I come back
11 from work. That's normal routine.

12 And I grab a couple beers I get off from work
13 when I got some change, cigarettes, beer and
14 marijuana when I ride home from work.

15 BY MR. CORBETT:

16 Q So at some point in time you bought marijuana?

17 A Yes, sir, that week prior, yes, sir.

18 Q From who?

19 A I don't think -- say who I bought marijuana from. I
20 mean...

21 THE COURT: Yes, sir, you have got to answer the
22 questions.

23 THE WITNESS: A guy I knew in the Gamecock area
24 who -- in the Carolina area in Sumter County.

25 BY MR. CORBETT:

1 Q And who is he?

2 A His name is Fresh. I don't know his real name. I
3 know his nickname is Fresh.

4 Q From what area?

5 A In Carolina area, Carolina Road like behind
6 McLaughlin Ford.

7 Q Near Suzie Rembert?

8 A Yes, sir.

9 Q Now, the green car that you were driving on
10 September 2nd.

11 A Yes, sir.

12 Q Okay. That car had tinted windows; correct?

13 A No, sir.

14 Q That car never had tinted windows?

15 A No, sir, not at -- I took my tint windows off when I
16 got down here.

17 Q So--

18 A When I move to South Carolina.

19 Q It never had tinted windows in it when it was in
20 South Carolina?

21 A Yeah, it did had mirror tints, but I took them off.

22 Q Now, when you leave Cedar Hill Mobile Home Park going
23 to work, do you pass James Ervin Auto Sales?

24 A Yes, sir, on the side of the highway, yes.

25 Q And on the morning of September 2nd, you were driving

1 the green car --

2 A Yes, sir.

3 Q -- when you left the mobile home park going to work.

4 A Yes, sir.

5 MR. CORBETT: One moment please, Your Honor.

6 THE COURT: Yes, sir.

7 (Whereupon there was a pause.)

8 BY MR. CORBETT:

9 Q Now Mr. Cooper, back to September 5 when you pulled
10 up at Suzie Rembert Road, that trip took you, what,
11 something over an hour?

12 A No.

13 Q I'm sorry?

14 A No, sir.

15 Q All right. You left Columbia at what time?

16 A Probably around about -- leaving from the gas station
17 probably 3:50 and change.

18 Q What time did you arrive?

19 A In Sumter?

20 Q Yes.

21 A Little bit before 5:00.

22 Q How many miles is it from Cedar Hill Mobile Home Park
23 to Fire Mountain?

24 A I never looked in my -- my trip on my car.

25 Q Now, were you still drinking when you got to Sumter?

1 A Yes.

2 Q Talking about the fifth.

3 A Yeah. The fifth of what?

4 Q September. On September 5.

5 A Yes, sir.

6 Q Just before 5:00 when you arrived in town, were you
7 still drinking?

8 A Yes, sir, we still had -- I still had some left in my
9 cup, had Fire Mountain glass in the car.

10 Q Were you drinking beer out of it or liquor out of it?

11 A Both, I don't -- both. I mean, you pour licker in
12 there and pour beer on it like a boilermaker, call
13 boilermaker.

14 Q How long were you smoking the marijuana?

15 A Talking about in my life or...

16 Q No, that--

17 A At that time? I didn't start smoking it till
18 half-way to Sumter. I was still smoking it when I
19 arrived. I was just on a little piece on it like
20 basically call it a roach, you know.

21 Q Now, do you know Brandon Green?

22 A No, sir.

23 Q And your testimony is on the second when you left for
24 work, you didn't have any encounter with anyone?

25 A No, sir.

1 Q Didn't see anybody in Cedar Hill?

2 A No, sir.

3 Q Now, this charge is also pending against you; is that
4 correct?

5 A Yes, sir.

6 Q Now, you indicated that you were there at Suzie
7 Rembert Road when the police came and put handcuffs on
8 you; is that correct?

9 A Yes, sir.

10 Q And there was no shouting or anything like that
11 initially --

12 A Yes, sir.

13 Q -- I believe was your testimony?

14 A Yes. Yes, it was.

15 Q And then later on you --

16 MR. WILDER: Objection.

17 THE WITNESS: -- it was shouting.

18 MR. WILDER: Let him answer the question.

19 Mr. Corbett is interrupting him.

20 THE COURT: All right. Allow him to finish.

21 THE WITNESS: Yes, it was shouting, sir. A lot
22 of yelling and, you know, like real -- like shut
23 the -- you know, cussings and yelling, and asked the
24 guy could he stop because he was yelling, he spit in
25 my face at the same time.

1 BY MR. CORBETT:

2 Q How did it go from none of that to them yelling at
3 you?

4 A I never said it was none of that. When he came
5 around the car, they came on the car yelling like, get the
6 F out the car, yelling and tapping on the window. And I
7 was like hold on, hold on, hold on.

8 At the same time I was still trying to finish my
9 blunt, but I done put it in the ash tray and took another
10 sip, and I open the door and they went in and snatched it
11 out the car.

12 Q Wait a minute. Somebody runs up to your car --

13 A Yes, sir.

14 Q -- pointing a gun at you yelling, get out the car,
15 and you take a hit off your blunt and a -- and --

16 A Yeah.

17 Q -- swallow out the can of beer?

18 A Yes, sir. I knew the police wasn't no civilian, it
19 had the police, so...

20 Q So you're sitting in your car, the police come up
21 with a gun?

22 A Yeah, we was backing up. I was backing up. I was
23 still smoking when I was backing up. They didn't let me
24 get the car in park. They in the car whether you finish
25 backing up, by time they came from behind the house and

1 trucks was coming from across the highway across the
2 street jumping the ditch coming towards the -- the -- my
3 brother driveway.

4 They trap it open in front. And by time was backing
5 up, time I look forward I seen a vehicles coming. And
6 time I look, the officer was coming and I still had the
7 blunt in my hand. So it was like, you know, they was
8 shock me. I couldn't -- happen so fast, you know, what
9 would you do?

10 Q Did you just tell me that when the officer ran up
11 with the gun, you took a final sip of beer?

12 A Yes, sir.

13 Q Okay. Now, you're detained there for some period of
14 time and then is it some point later when you see the
15 officer is telling you you're going to go to jail?

16 A No, they was like immediately telling us that we was.
17 Like once they put us in handcuffs right there on the
18 ground, they was letting us know that we was being locked
19 up for some -- some reason, but they wouldn't -- it was
20 like I'm asking them what we being locked up for. You
21 know what you locked up for. I'm like, no I don't.

22 And if we came -- we got into a yelling match. I got
23 into a yelling match with one of the officers right in the
24 front yard talking about he was yelling and one officer
25 was holding me in handcuffs and I was like, no, I don't,

1 and he's like, you know what the fuck you -- you going to
2 tell me, saying to me you don't know what you're getting
3 locked up for?

4 I said, no, I don't, can you tell me? That's what
5 I'm asking you because I don't know. That's what --
6 reason why I took the last drink of the beer because, you
7 know, open container, figure if it wasn't no more liquor
8 in it -- in me, alcohol beverage in the cup, you know, so
9 might as well.

10 I ain't know what the reason why they was locking us
11 up. I thought it was some -- I thought it was for a lot
12 of reasons, I didn't think it was for no murder.

13 Q A police officer runs to your car with a weapon drawn
14 and you figure, I'll get one more sip before I get locked
15 up?

16 A Yes, sir.

17 Q After you were detained initially, was there a time
18 when another officer talked to you that wasn't there at
19 first?

20 A Other than Anthony Dennis, no.

21 MR. CORBETT: No further questions.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. WILDER:

25 Q Did they take you down to the law enforcement center

1 and you were sitting on a couch down there? Remember
2 that?

3 A No.

4 Q Okay. Now, I'm going to hand you a document and ask
5 you if you can identify that document.

6 A Yes, sir.

7 Q What is that document?

8 A My water bill.

9 Q From where you were out at Cherryvale?

10 A Yes, sir.

11 Q Now, Mr. Corbett asked you a lot of questions about
12 how much you owed. Is that a bill for how much you owed?

13 A Yes, sir.

14 Q What date is on it?

15 A This is for -- it's for September.

16 Q Okay. What's the date of the actual bill?

17 A The date of the actual bill 9-29-06.

18 MR. WILDER: Your Honor, we would offer this
19 into evidence.

20 THE COURT: Any objection?

21 MR. CORBETT: No objection, Your Honor.

22 THE COURT: Admitted into evidence as
23 Defendant's number 14 without objection.

24 (WHEREUPON, Defendant's Exhibit 14 was admitted
25 into evidence.)

1 BY MR. WILDER:

2 Q All right. And you had been renting a mobile home
3 out there since sometime in the middle of 2005; hadn't
4 you?

5 A Yes, sir.

6 Q Okay. And what was the amount of the monthly rent
7 out there?

8 A I believe we had to pay 335 a month.

9 Q Okay. Now, they talk -- well, talking about this
10 vehicle right here, this green vehicle. That is a picture
11 of your -- your vehicle; right?

12 A Yes, sir.

13 Q And it's actually registered to your mom?

14 A Yes, sir.

15 Q Okay. Now, were there other green vehicles or dark
16 vehicles out there in that mobile home park at that time?

17 A I seen a few that really stay -- I know a lot of dark
18 vehicles stay out there.

19 Q Okay. Do you have any specific recollection of
20 seeing any other vehicle similar to that out there that
21 morning in September, September 2nd?

22 A I'm not sure. It was the bonder (sic) vehicle or --
23 I know it was a long vehicle, like black or blue I don't
24 remember exact color because it was dark.

25 Q Okay. Tell the jury where you saw this other car.

1 A Right before the morning when I came outside to start
2 my car and it wouldn't start, a vehicle was riding past
3 through the mobile home park. But you know, like I said,
4 every weekend that's like a normal thing because the club
5 lets out around that time and people still be woke coming
6 home from the club.

7 And they had rode past like I think three or four
8 minutes before my brother even arrived because my brother,
9 his headlights are square.

10 So when the car came with the headlights on, I had
11 looked from around the corner of the mobile home to see if
12 that was him, but it was kind of like a circle of
13 headlights, so I knew it wasn't him.

14 So he just ride on past, kept going. Then like a few
15 minutes later I seen some more headlights and I seen
16 square headlights--

17 MR. CORBETT: Your Honor, I object to this line
18 of questioning. This is redirect.

19 THE COURT: Yes, sir. Objection is sustained,
20 Mr. Wilder.

21 MR. WILDER: All right. No other questions at
22 this time.

23 THE COURT: All right. Re-cross?

24 MR. CORBETT: Nothing further, Your Honor.

25 THE COURT: All right. Thank you, sir. You may

1 step down.

2 THE WITNESS: All right.

3 (Witness left the stand.)

4 MR. WILDER: Your Honor, I see Mr. Richards
5 here.

6 THE COURT: Wait just a moment. Counsel, come
7 up.

8 MR. WILDER: Should be very brief.

9 (Whereupon a bench conference was held.)

10 THE COURT: All right. Mr. Wilder, you may call
11 your next witness.

12 MR. WILDER: Call Mr. Ricky Richards to the
13 stand.

14 THE COURT: All right. Come on up please,
15 Mr. Richards.

16 RICKY RICHARDS, after being duly
17 reminded of oath, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WILDER:

20 Q Mr. Richards, I believe you testified earlier in this
21 matter.

22 A Yes, sir.

23 Q Okay. And you arrived out there at the scene of the
24 crime on 6:05 am that morning?

25 A Yes, sir. I'm sure right around that time.

1 Q And you recall that Rodney Green got there at 6:11?

2 A I recall him being there. Like I said, I wasn't -- I
3 didn't do the crime scene, so I don't know exactly what
4 time.

5 Q And you know you talked to him?

6 A Yes, sir.

7 Q But you don't remember what he told you at this
8 point?

9 A Not right exactly, no.

10 Q Okay. Did you look for your notes that I asked you
11 to look for?

12 A Yes, sir, I did.

13 Q Did you find them?

14 A I didn't find anything other than last month.

15 Q So you did not find your notes?

16 A No. No, I didn't.

17 Q No other questions.

18 THE COURT: Mr. Corbett? Cross-examination,
19 Mr. Corbett. Witness testimony wasn't that long.

20 MR. CORBETT: No questions, Your Honor.

21 THE COURT: All right.

22 MR. WILDER: Your Honor, we have no objection,
23 I'd like to excuse him since he needs to go probably
24 to work in Clarendon County.

25 THE COURT: Any objections? Any objections to

1 the witness being excused?

2 MR. CORBETT: No, sir, Your Honor.

3 THE COURT: All right. You are excused. Thank
4 you, sir.

5 (Witness left the stand.)

6 THE COURT: All right. Ladies and gentlemen, we
7 have now reached the lunch hour and I am going to
8 adjourn and allow a recess and allow you to go get
9 your lunch. I would like to move on with this matter
10 as quickly as we can.

11 It's about five minutes after two -- I mean
12 after one. Does 55 minutes give everybody enough
13 time to get lunch and get back here? That's about a
14 little less than an hour. If so, we'd like to move
15 on.

16 Let me ask you if you would please go and get
17 your lunch and please be back in your jury room if at
18 all possible by 2:00 so we can start as promptly as
19 possible.

20 Please do not discuss the case among yourselves,
21 do not allow anyone to discuss it with you, and do
22 not discuss it with your -- among yourselves when
23 you're returning to the jury room. Thank you.

24 Please go get your lunch and try to be back at 2:00.

25 Thank you very much.

1 (Jury left the courtroom at 1:05 pm.)

2 THE COURT: After lunch I'm going to return,
3 Mr. Turner's file to him and advise and put on the
4 record that I have copied the -- or had the entire
5 file copied and sealed and have put on the front of
6 it file of Investigator Jamie Turner, Sumter Police
7 Department, was received by the Court pursuant to a
8 motion to disclose under Brady. Motion denied on
9 basis there was no exculpatory information filed,
10 copy sealed and made an exhibit of the Court.

11 Give this to the Court Reporter and have her
12 mark it as Court's exhibit so it will be a part of
13 the record. Return Mr. Turner's file to him. All
14 right. We'll be in recess then until 2:00. Thank
15 you. I'll see you at that time.

16 (WHEREUPON, Court's Exhibit No. 7 was marked for
17 identification only.)

18 (Court was in recess for lunch.)

19 THE COURT: All right. Back on the record with
20 regard to the State versus Cooper. Mr. Cooper is
21 present and in the courtroom with his attorney,
22 Mr. Wilder. The State is present and represented by
23 Mr. Corbett. Anything before we bring the jury in,
24 Mr. Wilder?

25 MR. WILDER: No, Your Honor.

1 *THE COURT:* Mr. Corbett?

2 *MR. CORBETT:* Nothing from the State.

3 *THE COURT:* All right. Bring the jury in,
4 please.

5 (Jury entered the courtroom at 2:05 pm.)

6 *THE COURT:* All right. Thank you very much.
7 Thank you, ladies and gentlemen. And we are now
8 ready to resume. The defense was presenting their
9 case at the time that we recessed for lunch and they
10 will have the right to continue presenting their
11 case. Mr. Wilder?

12 *MR. WILDER:* Your Honor, at this point we would
13 move the Newberry Pathologist report that was marked
14 for identification number 13, defense number 13 into
15 evidence.

16 *THE COURT:* Mr. Corbett?

17 *MR. CORBETT:* Objection, Your Honor.

18 *THE COURT:* Same grounds as to the grounds that
19 were made when the pathology report was published or
20 is it a new grounds?

21 *MR. CORBETT:* Same grounds, Your Honor, and the
22 witness was present earlier today and now we're
23 trying to put in a report from a witness who is not
24 present.

25 *THE COURT:* It was identified by her, though,

1 and that -- from the standpoint of authentication
2 that would be the only reason that she would have to
3 be present. Do you have some objection to the
4 authentication of the report?

5 MR. CORBETT: Judge, we object to the grounds
6 that it contains hearsay.

7 THE COURT: All right. That objection is
8 overruled and it will be admitted into evidence as
9 Defendant's exhibit number 13.

10 MR. WILDER: Thank you, Your Honor.

11 (WHEREUPON, Defendant's Exhibit 13 was admitted
12 into evidence.)

13 MR. WILDER: At this point, Your Honor, we would
14 call Mr. Larry Coronell to the stand.

15 LARRY CORONELL, after being duly
16 sworn, testified as follows:

17 THE COURT: All right. Counsel, wait just a
18 moment, please.

19 MR. WILDER: Yes, sir.

20 THE COURT: Counsel, come up.

21 (Whereupon a bench conference was held.)

22 THE COURT: All right. Ladies and gentlemen of
23 the jury, during the course of the voir dire we
24 originally asked the members of the jury about any
25 knowledge of, you know, if you knew any of the

1 witnesses and I read off to you a rather extensive
2 witness list.

3 This gentleman's name was not read to you at
4 that time. I understand his name is Larry Coronell.
5 Is that correct?

6 THE WITNESS: Uh-huh.

7 THE COURT: All right. Ladies and gentlemen of
8 the jury, I would ask you, is any member of the jury
9 panel related by blood or marriage or connected in
10 any way to this witness, Mr. Larry Coronell; if so,
11 please signify by raising your right hand.

12 All right. I would also ask if any member of
13 the jury panel knows this witness or has any
14 acquaintance with him in any manner whatsoever,
15 please signify by raising your right hand.

16 All right. Since the purpose of the voir dire
17 is to try to ascertain the truth, I am going to allow
18 the witness to testify even though his name is not
19 listed and disclosed. You may proceed, Mr. Wilder.

20 MR. WILDER: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. WILDER:

23 Q All right. State your name again for the jury.

24 A Larry Coronell.

25 Q Would you spell your last name for the Court

1 Reporter.

2 A C-o-r-o-n-e-l-l.

3 Q Okay. Mr. Coronell, do you live out at Cedar Hill
4 Mobile Home Park?

5 A Yes.

6 Q At this time?

7 A Uh-huh.

8 Q Have you been out there since April of this year?

9 A Yes.

10 Q And do you live in the mobile home that's on the
11 corner across the street from the fire department?

12 A Yes.

13 Q Let me show you some pictures. If you'd just take
14 your time and look through those pictures and tell me if
15 you can recognize the mobile home that's depicted in those
16 pictures.

17 A Yeah.

18 Q All right. Would you answer out loud? Do you
19 recognize those pictures?

20 A Yes.

21 Q And what do those pictures represent?

22 MR. CORBETT: Your Honor, objection.

23 THE COURT: Yes, sir. Basis of your objection?

24 MR. CORBETT: Basis of the objection is lack of
25 foundation and relevance.

1 *THE COURT:* All right. I'll sustain it on the
2 foundation at this time. Let's find out how the
3 pictures were made and who made them.

4 *MR. WILDER:* Okay.

5 BY MR. WILDER:

6 Q Were you present when Mr. Finney went out to see
7 about making pictures?

8 A No.

9 Q Here this week?

10 A No.

11 Q Okay. So you don't know exactly when those pictures
12 were taken, although you know what's in them pictures;
13 right?

14 A Right.

15 Q Okay.

16 *MR. WILDER:* Now, just for the record, Your
17 Honor, I'd like the record to reflect that he has
18 looked at Defendant's exhibit 10 and then they're
19 numbered one, two, three, four, five. Okay.

20 *THE COURT:* For identification.

21 *MR. WILDER:* For identification.

22 *THE COURT:* One, two, three, four, five and 10
23 for identification?

24 *MR. WILDER:* No, I think it's 10 -- several
25 numbers.

1 THE COURT: Oh, 10 -- oh--

2 MR. WILDER: Let me show it to the Court
3 Reporter so I don't mislead anyone. ID one through
4 five.

5 THE COURT: ID one through five. All right.

6 BY MR. WILDER:

7 Q All right. Now, saying you recognize your mobile
8 home?

9 A Yes.

10 Q Okay. Although you don't know when the pictures were
11 taken?

12 A No.

13 Q Now, describe your mobile home briefly for the jury.

14 MR. CORBETT: Objection, Your Honor.

15 THE COURT: All right. Sustained.

16 BY MR. WILDER:

17 Q Is your bedroom in the front of the mobile home?

18 MR. CORBETT: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. WILDER:

21 Q Where in the mobile home is your bedroom, if at all?

22 THE COURT: Sustained. Let's go -- come here,
23 counsel.

24 (Whereupon a bench conference was held.)

25 BY MR. WILDER:

1 Q Mr. Coronell, how many feet away from the fire
2 department is that mobile home at that lot address?

3 A 150 feet.

4 Q Are there trees that have been there on a permanent
5 basis, growing there for many years?

6 MR. CORBETT: Objection, Your Honor.

7 THE COURT: I'm going to sustain it as asked.

8 Lay the foundation for what he knows, Mr. Wilder.

9 BY MR. WILDER:

10 Q Have you tried to look out the front window toward
11 the fire department?

12 MR. CORBETT: Objection, Your Honor.

13 THE COURT: Sustained.

14 MR. WILDER: Your Honor, I'd like to stop asking
15 him questions now and have him available for recall
16 after I laid a foundation for the photos.

17 THE COURT: All right. Step down, please sir.

18 (Witness left the stand.)

19 MR. WILDER: Call Mr. Finney to the stand.

20 ERNEST FINNEY, after being duly
21 sworn, testified as follows:

22 THE COURT: Counsel, come up, please.

23 (Whereupon a bench conference was held.)

24 DIRECT EXAMINATION

25 BY MR. WILDER:

1 Q Mr. Finney, state your name, please.

2 A Ernest Finney the third.

3 Q And are you an attorney?

4 A I have practiced law in Sumter for 27 years.

5 MR. CORBETT: Your Honor, I need to interpose an
6 objection and approach.

7 THE COURT: All right. Come up.

8 (Whereupon a bench conference was held.)

9 BY MR. WILDER:

10 Q All right. You represent Derrick Cooper; do you not?

11 A Yes, sir, I do.

12 Q And you have been representing him for some number of
13 years now?

14 A Yes, sir.

15 Q Were you not in fact appointed to represent him on
16 this charge that he is accused of?

17 A Yes, sir.

18 Q Okay. So some years ago you began investigation of
19 this matter?

20 MR. CORBETT: Objection, Your Honor.

21 THE COURT: That's leading, Mr. Wilder.

22 BY MR. WILDER:

23 Q Did you begin an investigation in this matter as soon
24 as you were appointed?

25 A Yes, sir, I did.

1 Q And was part of that investigation to go out to the
2 crime scene and look -- take a look at it?

3 A Several times.

4 Q Okay. Now, so as long ago as two years ago have you
5 been out to Cherryvale and look at what the place looked
6 like?

7 A Yes, sir. I don't have any file with me today as far
8 as the dates I have been out there, but I have been out to
9 Cherryvale to view the scene several times.

10 Q In fact, we went out there ourselves.

11 THE COURT: No. Can't go -- no, sir.

12 MR. WILDER: Okay.

13 THE COURT: It's your witness, Mr. Wilder. You
14 certainly can't say that.

15 MR. WILDER: All right. I won't do that.

16 BY MR. WILDER:

17 Q Now, let me show you some pictures, Mr. Finney, and
18 ask you did you take them.

19 A Yes, sir, I did. I took these pictures this week
20 with a camera that was -- I borrowed from a lady
21 downstairs in the Public Defender's office.

22 Q Okay. And those have been marked for identification
23 on the back I believe. See what the identification number
24 is?

25 A These are Defendant's for ID one, two, three, four

1 and five.

2 Q Okay. Now, do those pictures accurately represent
3 the way the scene appeared?

4 MR. CORBETT: Objection, Your Honor.

5 THE COURT: Wait just a minute. Let him finish
6 his question and answer it, Mr. Finney. Ask the
7 question.

8 BY MR. WILDER:

9 Q Both when you first observed it sometime back and
10 also this week?

11 THE COURT: No, sir. That's not a proper
12 question. That's a compound question. Make it
13 singular.

14 MR. WILDER: Okay.

15 BY MR. WILDER:

16 Q First of all, do those pictures accurately reflect
17 the scene when you took the pictures?

18 A Yes, sir. Today is Wednesday. I believe the
19 pictures were taken either Monday or Tuesday. I'm -- I'm
20 sorry I have been a little busy and I don't remember
21 exactly, but the pictures were taken within an hour of the
22 testimony of the lady by the name of Wanda Rogers who
23 lived in this trailer.

24 Q Okay. And do the pictures accurately reflect the way
25 the scene appeared the first time you went out there?

1 MR. CORBETT: Objection, Your Honor.

2 THE COURT: Wait just a minute. He can answer
3 either yes or no.

4 THE WITNESS: Yes, sir, I can answer that.

5 THE COURT: Go ahead, sir.

6 THE WITNESS: Yes, the scene appears the same.

7 MR. WILDER: Now, Your Honor, I would now move
8 the pictures into evidence.

9 THE COURT: All right. I'm going to allow
10 Mr. Corbett to ask questions regarding that.

11 CROSS-EXAMINATION

12 BY MR. CORBETT:

13 Q Mr. Finney?

14 A Yes, sir.

15 Q You are Derrick Cooper's lawyer?

16 A I am.

17 Q So you are his defense lawyer?

18 A I am.

19 Q So anything that happens good here in this process--

20 THE COURT: No, talking only about admissibility
21 of the pictures at this point.

22 BY MR. CORBETT:

23 Q When did you take the pictures?

24 A I believe it was on Monday around the noon hour.

25 Q Okay. And you said that those pictures are an

1 accurate reflection of Monday. Is that correct?

2 A Yes, sir.

3 Q Okay. Now, when did Wanda Rogers move out of this
4 mobile home?

5 A I'm not aware of the date that she moved out. I know
6 it was more than six months ago because Mr. Coronell moved
7 in more than six months ago.

8 Q Okay. And do you of your own knowledge know if the
9 mobile home was changed out?

10 A Of my own knowledge, I do not.

11 Q So you can't tell us if the mobile home in that
12 picture is the same one that was there on September 2nd of
13 2006?

14 A I can tell you that the outside of the premises based
15 on what I have seen has remained the same since 2006, and
16 I'm talking about the natural vegetation, growth and
17 things like that.

18 Q No, sir. My question is, can you tell us if the
19 mobile home sitting there in those pictures is the same
20 mobile home that was there on September 2nd of 2006?

21 A No, sir. I didn't see the house on September 2nd,
22 2006.

23 MR. CORBETT: Your Honor, at this time we would
24 object to those pictures coming into evidence based
25 on lack of foundation.

1 THE COURT: Sustained.

2 MR. WILDER: Your Honor, if I might try to
3 rehabilitate the situation.

4 DIRECT EXAMINATION

5 BY MR. WILDER:

6 Q It was shortly after September of 2006--

7 THE COURT: No, sir. I have ruled the objection
8 is sustained, Mr. Wilder. Won't let it in.

9 MR. WILDER: Your Honor, I'd like to proffer his
10 testimony.

11 THE COURT: All right. We'll do that later.

12 BY MR. WILDER:

13 Q Mr. Finney, when you went out there in 2006, was
14 there vegetation in between the fire department and the
15 mobile home that was located there at that time?

16 MR. CORBETT: Objection, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: Yes, sir, there was.

19 BY MR. WILDER:

20 Q Why was the -- why was it important to you to go take
21 these pictures after Monday of this week?

22 A We had not been aware of what the testimony of the
23 witnesses for the State was going to be as to how they
24 picked Derrick and Wayne to be the people charged in this
25 case.

1 We were given certain things in terms of discovery,
2 but we didn't get any statements from Wanda Green,
3 Wanda -- from Wanda and Mary, Mary Green and Wanda -- I'm
4 sorry, I don't remember her last name now.

5 *THE COURT:* You're referring to we. Who is we?

6 *THE WITNESS:* The -- me and my office, but the
7 materials that we received in my office in discovery.

8 *THE COURT:* All right.

9 BY MR. WILDER:

10 Q And so because of the testimony Monday, you -- did
11 you feel it was important to get this?

12 *MR. CORBETT:* Objection, Your Honor.

13 *THE COURT:* Objection is sustained. That goes
14 to his defendant.

15 BY MR. WILDER:

16 Q So did I ask you to go see if you could find them?

17 A No, sir.

18 Q Okay.

19 A To find the pictures?

20 Q Yes.

21 A You did not ask me, sir.

22 Q Okay. But you came to me and told me that they --
23 that -- that you had them?

24 *MR. CORBETT:* Objection, Your Honor.

25 *THE COURT:* Sustained.

1 BY MR. WILDER:

2 Q Did you come to me and tell me that you had them?

3 A Yes, sir.

4 MR. CORBETT: Objection.

5 THE COURT: Same objection, same ruling,
6 sustained.

7 MR. WILDER: Your Honor, again I would like to
8 excuse the witness at this time and have him subject
9 to recall after my client testifies.

10 THE COURT: All right.

11 MR. WILDER: And I need to proffer testimony.
12 No other questions.

13 THE COURT: Questions of this witness, Mr.
14 Corbett?

15 MR. CORBETT: No questions, Your Honor.

16 THE COURT: All right. All right, sir.
17 Mr. Wilder, proceed. All right.

18 MR. WILDER: Your Honor, we'd call the defendant
19 to the stand.

20 WAYNE D COOPER, after being duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WILDER:

24 Q Mr. Cooper, back -- well, let's start a little bit
25 earlier. Your mother and father have been in the

1 courtroom most of the week. I think your mother is still
2 here?

3 A Yes, sir.

4 Q In 2006 you were living over on Suzie Rembert Road
5 here in Sumter; were you not?

6 A Yes, sir.

7 Q Okay. Let's just clear up one thing right away. Do
8 you live at 95 Suzie Rembert Road?

9 A No, sir.

10 Q What is your -- was your address on September the
11 fifth of 2006?

12 A 905 Suzie Rembert.

13 Q Okay. So the State put in this statement here which
14 is exhibit number 19 and it's got up at the top 95 Suzie
15 Rembert Road, that wasn't your address; was it?

16 A No, sir.

17 Q The phone number there was listed 803-236-8387. Is
18 that your phone number?

19 A No, sir.

20 Q Has it ever been your phone number?

21 A No, sir.

22 Q Now, moving directly into the contents of the
23 statement, everything that's written there in that
24 exhibit, before answering any questions or making any
25 statements, is any of that your handwriting?

1 A No, sir.

2 Q Is the name, address and date and social security
3 number and telephone number, is that your handwriting?

4 A No, sir.

5 Q The signature on the paper, on that one sheet of
6 paper, is that signature -- is that the only thing on that
7 piece of paper that you wrote?

8 A Yes, sir.

9 Q Did you tell Tommy Barron this information like it's
10 written out?

11 MR. CORBETT: Objection, Your Honor. Leading.

12 THE COURT: No, sir, that's not leading.

13 Objection overruled.

14 BY MR. WILDER:

15 Q Did you tell him this information like it's written
16 out?

17 A No, sir.

18 Q Was there anybody else in the room with you besides
19 Tommy Barron when you were talking to him?

20 A No, sir.

21 Q Now, back on the State's form here, exhibit --
22 State's exhibit 18, I'm going to show you that. It's got
23 a lot of pre-printed language on it. Are those initials
24 that appear on that page, are they your initials?

25 A Yes, sir.

1 Q Is that the way that you usually write your initials?

2 A No, sir.

3 Q How do you usually write your initials?

4 A WDC.

5 Q At the time that you signed that, was there anybody
6 in the room besides you and Tommy Barron?

7 A No, sir.

8 Q Is the last blank down there for the witness form,
9 does it have anything in it?

10 A No, sir, it's blank.

11 Q Okay. Now, let move backwards a little bit to the
12 days leading up to September the second of 2006. Were you
13 working at Fire Mountain?

14 A Yes, sir.

15 Q In Columbia?

16 A Yes, sir.

17 Q Tell the ladies and gentlemen of the jury how long
18 you had been working there.

19 A I been working at Fire Mountain for about an estimate
20 of a month and some weeks.

21 Q Okay. Did you continue to work there after September
22 the second?

23 A Yes, sir, two days after.

24 Q Okay. And did you work there all the way until
25 September the fifth?

1 A Yes, sir.

2 Q Your hours of work there, would you tell the ladies
3 and gentlemen of the jury what they customarily were?

4 A Through Monday and Friday our shift is eight -- 8:00
5 till five -- till 4:00 in the afternoon. On the weekends
6 we have to be to work at 5:30 because they serve breakfast
7 in the morning until 3:00.

8 Q Now, on the morning of September the second, 2006,
9 did you leave your home on Suzie Rembert to start for
10 work?

11 A Yes, sir, I did.

12 Q And about what time did you set out?

13 A I left my house about 5:20.

14 Q Now, had you had any word at that point from your
15 brother Derrick?

16 A My brother called me approximately around 5:09 in the
17 morning.

18 Q Were you in a car?

19 A When he called me? He -- he called me, I was in the
20 house.

21 Q In the house. Okay. Did you leave the house in a
22 car?

23 A Yes, sir.

24 Q What car were you driving?

25 A I was driving my '93 white Plymouth Acclaim.

1 Q Was anybody with you at that time?

2 A No, sir.

3 Q Did you go straight from your house to Cedar Hill
4 Mobile Home Park?

5 A Yes, sir, I did.

6 Q When you come into the park -- show you a picture.
7 Can you show -- let me ask you if it would be all right
8 for you to come down and I'll get to--

9 THE COURT: Get the easel, please. You may step
10 down, sir.

11 THE WITNESS: All right.

12 BY MR. WILDER:

13 Q Okay. When you came into the park that morning, what
14 was your route of travel?

15 A Get on -- I come up this 378.

16 Q You're going to have to speak up real loud.

17 A This is 378?

18 Q 378.

19 A Okay. I come in, I come -- I come in off of 378 and
20 I come into the mobile home park, I bared around this way
21 around to my right and come around from the road all the
22 way around to my brother's house.

23 Q Okay. Did anything unusual happen in this stretch
24 after you entered the mobile home park?

25 A I didn't see anything.

1 Q Okay. Nothing?

2 A Nothing.

3 Q All right. When you got down here, did you meet your
4 brother?

5 A Yes, sir, I did.

6 Q And what did you and your brother do at that point?

7 A We got his car jumped. His car wouldn't start.

8 Q Okay. And about what time did you get to the house?

9 A I got to the house around 5:35, 5:36, around that
10 somewhere.

11 Q Okay. Did you and your brother leave from there?

12 A Yes, sir.

13 Q Which direction did you go?

14 A We left out, we went around this way and out.

15 Q Okay. So did you go back by the same way you came in
16 when you were leaving?

17 A No, sir, we didn't.

18 Q Okay. Get back on the stand.

19 A Okay. (complied.)

20 Q On September the second, 2006, had you or did your
21 brother in your presence, did either one of you have
22 anything to drink?

23 A No, sir.

24 Q Were you intoxicated or doing any drugs or inebriated
25 in any way?

1 A No, sir.

2 Q Did you go straight on to work at Fire Mountain?

3 A Yes, sir, we did.

4 Q That day?

5 A Yes, sir, we did.

6 Q Okay. Do you remember what time you got up to work
7 at Fire Mountain?

8 A We got to work approximately 6:09, 6:09 another -- I
9 guess my time clock says 6:12.

10 Q Okay. You -- were you outside for any period of time
11 before you went inside?

12 A Yes, sir. We had -- we got out the car to smoke a
13 cigarette before we went inside.

14 Q All right. And did you punch the clock when you went
15 in?

16 A Yes, sir.

17 Q Okay. Now, did you work all day that day?

18 A Yes, sir, we did.

19 Q Okay. And did you work for several days after that?

20 A Yes, sir. I went on to work right after that.

21 Q Okay. And when you got up September the fifth, were
22 you working that day?

23 A Yes, sir, I was.

24 Q What day of the week, do you remember?

25 A I can't remember exactly what day the fifth was on,

1 but I know we went to work -- I went to work on the fifth.

2 Q What time did you get off work on the fifth?

3 A I got off a little earlier than my brother. I got
4 off at 3:12.

5 Q 3:12 pm?

6 A Yes, sir.

7 Q Is this over in Columbia?

8 A Yes, sir.

9 Q Now, let me back up to the second again. When you
10 were on your way over there on the second, what speed were
11 y'all traveling?

12 A I really couldn't -- I really didn't look, but my
13 brother was doing speed limit. I mean, we wasn't
14 speeding, you know. It was no use of trying to rush and
15 get yourself hurt because I, you know, deers come across
16 the road and police sit out there that time of morning,
17 state troopers sit out on the highway that morning.

18 Q Was there anything else you can tell the ladies and
19 gentlemen about whether or not you were in a hurry or not,
20 going fast or whether you were going fast or slow?

21 A We was going -- we was just going the regular speed.
22 You know, we know we was already late, so it's no use of
23 rushing when you already late, you know. We just -- when
24 we get there, you know, we just have to deal with the
25 supervisor penalizing us when we get to work.

1 Q Okay. All right. Now, coming back to the fifth,
2 that was payday; wasn't it?

3 A Yes, sir.

4 Q Okay. What happened on payday?

5 A When we got paid, I didn't -- I did not have my ID.
6 And when me and my brother got paid, we left. I went to
7 clock out, I went, took my muscle relaxer, my -- the
8 medicine that I was prescribed.

9 And once I took my two pills, I clocked out, and me
10 and my brother, we got in the car and then we went out, we
11 went to the store. He cashed his check.

12 Then we went to the Piggly Wiggly and he -- that's
13 when he cashed his check at the Piggly Wiggly and then we
14 went back across the street to the store and got a video
15 game and then we went back to the gas station.

16 We went to the gas station and he bought us some
17 beers and some liquor and he gas -- and gassed up his car,
18 then we left. And he had a blunt. Excuse me. He had a
19 blunt and he was rolling up when he was gassing up the
20 car.

21 Q Okay. And about that blunt, did he get arrested for
22 simple possession of marijuana over here in Sumter later?

23 A Yes, sir. When they came and arrested -- when they
24 arrested us, they charged him with simple possession of
25 marijuana.

1 Q Now, on the way home, did you have anything to drink?

2 A Yes, sir. I had three 24 ounces of beer, three cans.
3 of 24 ounces of beer and the brandy, and when me and my
4 brother split the brandy.

5 Q Did you smoke some of the blunt?

6 A Yes, sir, I had -- well, we passed it back and forth.
7 I can't tell you how many times we done passed it back and
8 forth, but yeah, I smoked some.

9 Q Okay. Now, tell the jury what happened when you
10 rolled up in the yard on -- what -- what car were y'all
11 traveling in on the day of the fifth?

12 A On the day of the fifth we was in a Chrysler navy
13 blue 300M.

14 Q Okay. And what happened when you got to your house
15 on Suzie Rembert?

16 A When we pulled up to the house, everything had look
17 normal. To me I observed different vehicles just sitting
18 around, but as -- I didn't pay it -- I didn't pay that no
19 mind.

20 I backed up in the -- when my brother backed up in
21 the yard, as he was backing up, these vehicles, trucks and
22 SUVs and cars start pulling up, people jumping out the car
23 with police vests on running down on us with guns and
24 telling us to get out the car.

25 Q Okay. Let me show you a copy of something and ask

1 you if you can identify it.

2 A Yes, sir. This is -- this is my time sheet, my work
3 record.

4 Q Is that time sheet accurately reflect the hours you
5 spent at work?

6 A Yes, sir.

7 MR. WILDER: Your Honor, I'd like to move this
8 into evidence.

9 THE COURT: Let Mr. Corbett--

10 MR. CORBETT: Objection, Your Honor. Hearsay.

11 THE COURT: It is the record of the company, not
12 his record?

13 MR. WILDER: That's correct.

14 THE COURT: It's a record of Fire Mountain.

15 MR. WILDER: That's correct.

16 THE COURT: Objection sustained.

17 BY MR. WILDER:

18 Q I believe you said you checked in on September the
19 second at what time?

20 A We clocked in at 6:12 but we was there a little -- we
21 came in the -- we came in the store a little early, but
22 only reason when we come, when the -- the type of machine
23 that they have for their time machine is when we go to
24 work, if you're late even by a minute, the computer
25 freezes you out. The manager have to put a code in.

1 So we was already late, supposed to been in there at
2 5:30. So when we clocked in, the computer freezes out, so
3 we had to tell our manager to come and log us in, so he
4 logged us in and clocked us in at 6:12.

5 Q Have you seen a video of when you came into work that
6 morning?

7 A Yes, sir, that you showed me earlier.

8 Q Were you in a hurry when you came in?

9 A No, sir. I just walked -- we just walked right in
10 normally and just went right to work.

11 Q Your hairstyle the same way as it is today?

12 A Yes, sir.

13 Q Was your brother's hairstyle the same way his was
14 today?

15 A Yes, sir, it was.

16 Q How much do you weigh?

17 A I weigh right at this moment? At this moment?

18 Q Well, how much did you weigh September the second.

19 A At September the second I -- I wore 160-pounds.

20 Q Okay. Now, neither you nor your brother weighed 200
21 or have ever weighed 200; do you?

22 A No, sir, I -- the closest I ever got to 200 was
23 180 pounds. I normally stay between the weight 130 and my
24 weight fluctuate from 130, 150, 160, back and forth.

25 Q And September the second you didn't have any afro;

1 did you?

2 A No, sir.

3 Q And your brother didn't have any afro; did he?

4 A No, sir, he didn't.

5 Q And neither one of you were wearing shorts; were you?

6 A No, sir.

7 MR. CORBETT: Objection, Your Honor. Leading.

8 THE COURT: Sustained. Don't lead him,

9 Mr. Wilder.

10 BY MR. WILDER:

11 Q Were either one of you wearing shorts?

12 A No, sir. Our base uniform they told us to wear is
13 dark black pants or navy blue pants and both of us had
14 Dickie. I had on navy blue Dickie pants and my brother
15 had on black Dickie pants.

16 Q All right. Now, let me back you up to the trailer
17 park. Did you have a gun with you in the car at the
18 trailer park?

19 A No, sir.

20 Q Did your brother have a gun with him?

21 A No, sir.

22 MR. CORBETT: Objection, Your Honor. Leading.

23 THE COURT: That's not leading. Overruled.

24 BY MR. WILDER:

25 Q Did your brother have a--

1 THE COURT: Ask another question, not making it
2 leading, it's whether an answer is suggested.

3 THE WITNESS: No, sir.

4 BY MR. WILDER:

5 Q Did either one of you have an access to a firearm in
6 the car with you that morning?

7 A No, sir, we don't.

8 Q Now, did you encounter anybody that threw a beer
9 bottle at you?

10 A No, sir. I didn't see nobody that morning.

11 Q Did anybody shoot at you?

12 A No, sir.

13 Q Did you know Brandon Green?

14 A I don't even know this person until we came to jail.

15 Q Did you ever meet him?

16 A Never met him, don't know him.

17 Q Was it necessary for you to help jump-start your
18 brother's car that morning?

19 A Yes, sir.

20 Q Describe that process to the jury.

21 A Well, we have to pop -- I had to pop my hood, my
22 brother popped his hood, get the jumper cables out, put it
23 on the battery, connect positive negative battery to his
24 and to mine and let it sit there for about a second so it
25 can charge up his battery, and then he have to turn, see

1 if his car turn over. If mine's getting enough juice to
2 his car, then his car will turn over.

3 Q All right. Let's move up to right after you got off
4 work on September the second. Did you and your brother go
5 back to Cedar Hill Mobile Home Park?

6 A Yes, sir, I had to go -- we had to go back to pick up
7 my vehicle.

8 Q Okay. Did you get your car that afternoon from Cedar
9 Hill Mobile Home Park?

10 A Yes, sir, I did.

11 Q Okay. Did you have -- did your brother come to stay
12 with you thereafter?

13 A Yes, sir, he did because his water got turned off.

14 Q And did his baby's mother come stay with you?

15 A Yes, sir, and his son, his newborn son.

16 Q All right. Now, for sometime prior to September 2nd,
17 had you been treated by a doctor for an injury to your
18 head?

19 A Yes, sir. And also injury to my -- my left -- my
20 left shoulder and my lower back.

21 Q Okay. Were you treated at Doctor's Care?

22 A Yes, sir, I was.

23 Q And did you also go to Tuomey Hospital for this
24 injury?

25 A Yes, sir, I did.

1 Q Tell the jury what happened to the back of your head.

2 A When I went to go unload the truck at work, I stepped
3 outside. It was raining. And I walked out and I slipped.
4 I went feet up first and then when I hit the ground, I
5 can't really -- the only thing I can remember that -- the
6 sky just fading out for a while. Feel like I wanted to
7 die, but my hands was stuck in this position.

8 And I just kept asking God to help me. And then when
9 I got -- got to -- I could feel my hands move and I set
10 up, and the truck driver of the company, he came over and
11 tell me don't move. He said the back of your head is
12 bleeding.

13 I had bust the back of my head in the back and I
14 damaged my shoulder and my lower back.

15 Q You working at McDonalds at the time?

16 A Yes, sir, I was. I was a manager.

17 Q Okay. And did you begin a course of treatment at
18 Doctor's Care?

19 A Yes, sir, I did.

20 Q What did they prescribe for you to do at Doctor's
21 Care?

22 A They gave me -- they gave me -- they gave me
23 medicine. They gave me 800 miligram Motrin and some
24 muscle relaxer and they gave me a pain patch and they keep
25 give -- they gave me therapy as far as helping my back out

1 and they tell me don't lift heavy materials.

2 Q Did you remain in treatment from Doctor's Care
3 leading up to September the second and on through
4 September the fifth?

5 A Yes, sir, I was.

6 Q And so when you were arrested, were you still under
7 the care of Doctor's Care?

8 A Yes, sir, I was.

9 Q All right. And on the day you were arrested, did you
10 have a pain patch on?

11 A Yes, sir. I had a pain patch on my neck.

12 Q Tell the jury what that was and what it did.

13 A That -- that type of pain patch is like a bandaid,
14 but it has a watch battery on the inside and it -- it
15 administrate medicine into my body to keep the pain down.

16 Q And how would that make you feel when that would
17 happen?

18 A The pain patch would make me feel a little drowsy.

19 Q Okay.

20 A A long -- along with the -- I just want to say along
21 with the -- now, if I take my Motrin 800 and my muscle
22 relaxer, then I'm really drowsy, but the pain patch makes
23 me a little drowsy.

24 Q Okay. Right before it was time to leave work on
25 September 5th, did you take any medication for this injury

1 you had?

2 A When I left work?

3 Q Right before you left work.

4 A Yes, sir, I did.

5 Q And tell the jury what you took.

6 A I took one Motrin 800 and a muscle relaxer before I
7 left work -- before I clocked out from work.

8 Q All right. So, on the way home, you were drinking?

9 A Yes, sir. I had my three beers and the liquor and
10 smoked some of the blunt, some of the marijuana.

11 Q And was the Motrin kicking in also?

12 A Yes, sir.

13 Q The pain patch was?

14 A Yes, sir, all -- all that was taking effect on me.

15 Q Then you get to the house and what happens then?

16 A We get to the house.

17 Q At Suzie Rembert.

18 A I'm -- I'm -- how can I use the word -- I'm highly
19 intoxicated and all -- I'm -- I'm high off the medicine
20 and the beer and the marijuana, so I'm -- I'm not clear --
21 in a clear state of mind right now when I got home.

22 Q What was happening in the yard when you rode -- when
23 you got there?

24 A When we backed up in the yard -- when we backed up in
25 the yard, the police, they was coming all up in the yard

1 rushing us with guns drawn telling us to get out the
2 vehicle.

3 Q Did they put you under arrest?

4 A Yes, sir. Once they took me out the car, they put me
5 in -- they put handcuffs on me and push me to the ground.

6 Q Were the beer cans still in the car with you?

7 A Yes, sir, the beer cans was on the floor in the car.

8 Q Now, there's a picture in evidence of some beer cans.
9 Do you know whether those are the same beer cans that were
10 in the car or not?

11 A They look like the same containers that was in our
12 vehicle.

13 Q Do you know how they got in the garbage can?

14 A It's the police put it in there because my mom said
15 when she picked up her vehicle, my mom said when she
16 picked up her vehicle, she didn't have no beer cans in her
17 car.

18 Q Okay. So let me ask you about then the pictures that
19 have been marked State's exhibit 21. Those look like the
20 beer cans that were in the car?

21 A Yes, sir. Yes, sir.

22 Q All right. What happened after they put the
23 handcuffs on you?

24 A They just -- yelling, we just -- I hear a lot of
25 yelling and they screaming asking us what we did, they --

1 they wouldn't really tell us what we was detained for,
2 that they had handcuffs on us for.

3 We kept asking them what you locking us up for, and
4 they -- all these officers yelling different things, so it
5 was hard for me to even to try to comprehend all that
6 everybody's yelling back and forth telling us this one,
7 telling us we know what we done, you know what you did,
8 and we constantly asking them what did we do.

9 Q And how long did that go on?

10 A That went on -- that went on for a while until they
11 even took me down to the station.

12 Q Okay. What happened when you got down to the
13 station?

14 A When I got down to the station Mr. Barron took me
15 upstairs in his -- in his office in his room and we -- and
16 shut the door and we sat down and he started talking.

17 Q Did you understand what you were doing at that point
18 in time?

19 A No, sir, because when they -- when the police had us
20 at the house, when they had us sitting on my couch in the
21 living room, they kept asking -- they still was keep
22 saying, y'all know what y'all did, y'all know what y'all
23 done.

24 And then some heavy-set officer came out and was
25 saying that y'all going down for murder, you going down

1 for murder. That scared me because that's a charge that I
2 don't think no man should have on them, and I'm -- I'm
3 nervous now.

4 Q All right. So they took you down to Mr. Barron's
5 office?

6 A Yes, sir.

7 Q Okay. And did you and he go in there and close the
8 door?

9 A Yes, sir, close the door behind us.

10 Q Okay. Now, how did your initials wind up in all
11 these places on this paper?

12 A Mr. Tommy Barron, he was talking to me, he slid this
13 piece of paper, he was telling me to sign here, put your
14 initials here, put your initials there, put your initials
15 there, and that's why I signed.

16 Q Were you reading anything?

17 A No, I didn't read anything.

18 Q Did you do what he told you to do?

19 A Yes, sir.

20 Q Why did you do what Tommy Barron told you to do?

21 A Because -- Mr. Barron had told me, you know, if I
22 cooperated with him, then he'll let me go, he'll let me go
23 home.

24 Q So he promised to let you go if you cooperated?

25 A Yes, sir.

1 Q Did you sign every place he told you to?

2 A Yes, sir, every place he put his finger at.

3 Q Did you read any of it?

4 A No, sir, I didn't at all.

5 Q Well, you must have told him something.

6 A I didn't tell Mr. Barron anything.

7 Q Did he get your address right on the form?

8 A No, sir, he didn't.

9 Q The phone number right?

10 A No, sir.

11 Q And did any of those things that he put in his own
12 handwriting happen?

13 A No, sir. Only thing that he got is when -- that's
14 when we was in the -- he must -- he got that information
15 when we was in the house when they was asking us -- when
16 they was asking all the questions about you know what did
17 y'all do the morning of the second.

18 We still don't know what we been locked up for, but I
19 just told them, you know, only thing that I stated when we
20 was in the house was that I went to help jump-start my
21 brother car and we went on to work. That's it.

22 As I look at the statement, that's the only thing I
23 see that he basically remembered of what I said as far as
24 jump-starting my brother's car, but everything else I
25 don't know where he get that from.

1 Q So you didn't shoot anybody and nobody shot at you?

2 A No, sir, I don't -- I don't have no gun.

3 Q Were you with your brother after you got to his house
4 at all times that day?

5 A Yes, sir, I was.

6 Q After they arrested you, were you afraid of what
7 they'd do to you?

8 A Yes, sir, because that's -- that's the saying that we
9 going to jail for murder, that's -- that's scary within
10 itself just hearing that, you know, just -- just hearing
11 going to jail for that.

12 Q Okay. Let me ask you why your brother's car wound up
13 behind your house. How did that happen?

14 A My brother tag is expired, so -- and by he having
15 problem with his car, we just -- he just went on and put
16 it behind the house. He just went on and park it behind
17 the house so for -- you know, until he get his tag
18 straightened out, then he can drive his car again.

19 Q Well, did you also have trouble with your tires being
20 slashed?

21 A Yes, sir. I -- I had put in a police incident. One
22 morning I woke up, I woke up, my vehicle tire was slashed.
23 I went to work at McDonalds. I come back home and another
24 tire was slashed so I made a police report about the
25 incident that happened.

1 Q Okay. Let me show you Defendant's for ID number 11.
2 Let you look at it. Is that the report you made to the
3 police when your tires were slashed?

4 A Yes, sir, it is.

5 Q Okay. Do you remember about how long before the
6 incident that was?

7 A This is probably a couple of months before, I say
8 about one or two months before.

9 Q And after that, did you park your car behind the
10 house?

11 A Yes, sir, when I talked to the police -- when I
12 talked to the police, I told them that I'm no longer going
13 to keep my car in the driveway because I don't know who
14 slashing my tires, so I said I'm -- I'm going to park my
15 car behind the house.

16 Q Now, did your brother's car have tint in it on the
17 morning of September the second?

18 A No, sir.

19 Q Did y'all make any attempt to remove tint between
20 September the second and September the fifth when the
21 police arrived?

22 A No, sir.

23 Q Was all that stuff out in the yard before September
24 the second?

25 A Yes, sir, because I changed the tint on the windows

1 of my car, on my white car.

2 Q Leftover stuff that you changed it out, did it wind
3 up in that garbage can?

4 A Yes, sir.

5 Q Did you or your brother wash down the inside of his
6 car after it got to the -- got to your residence?

7 A No, sir, we didn't do nothing to the vehicle.

8 Q Was there any cleaning of any vehicles going on?

9 A No, sir. Our cars were dirty.

10 Q Now let me show you some pictures. You came and went
11 from this mobile home park several times picking up your
12 brother; didn't you?

13 A Yes, sir.

14 Q Like you to take a moment and look at those pictures
15 if you would.

16 A (Complied.)

17 Q Every time you go in the mobile home park, you'd go
18 by that trailer; wouldn't you?

19 A Yes, sir.

20 Q Where is that trailer located?

21 A It's located in Cedar Hill Mobile Home Park.

22 Q And you have been locked up for two years; haven't
23 you?

24 A Yes, sir.

25 Q You have any difficulty recognizing those pictures?

1 A No, sir, I don't.

2 Q You haven't been anywhere near Cedar Hill Mobile Home
3 Park in two years to know what it looks like now; have
4 you?

5 A Yes, sir.

6 Q So that's the same way it looked back then; isn't it?

7 THE COURT: Sustained. Sustained. Not proper
8 question.

9 BY MR. WILDER:

10 Q Was there brush in front of the fire station over
11 there on the corner when you go in?

12 A Repeat the question.

13 Q All right. Across the street from the fire station,
14 is that mobile home back in on the corner back in
15 September 2nd of '06, was there brush out there?

16 A Yes, sir, it was.

17 Q Now, your car was a white car; was it not?

18 A Yes, sir, a white Plymouth Acclaim.

19 Q Did you drive your brother's car at all?

20 A No, I don't drive my brother's car. We don't switch
21 out cars.

22 Q So if somebody said they saw you driving the car and
23 it's parked, the green car, you wouldn't have ever had an
24 opportunity to be driving?

25 MR. CORBETT: Objection.

1 THE COURT: What's your objection?

2 MR. CORBETT: Objection is trying to pit this
3 testimony against another witness's testimony.

4 THE COURT: Objection sustained.

5 BY MR. WILDER:

6 Q Did you ever drive the green -- a green car, in
7 particularly your brother's green car?

8 A No, sir, I haven't.

9 Q Now, were there other green cars out there at the
10 trailer park?

11 A I seen a lot of dark vehicles out there. I couldn't
12 tell you exactly if they was green or not, but it was dark
13 colored vehicles out there.

14 Q Okay. On the morning of September the second, 2006,
15 did you observe a dark colored vehicle in the trailer
16 park?

17 A Yes, sir, I did.

18 Q Tell the jury where you saw it.

19 A When I came in, when I came into the mobile home park
20 and I pulled at my brother's house, as we was getting
21 ready to start -- getting ready to jump-start the car,
22 there was a dark colored vehicle, it looked like it had
23 tint on the window, and it went past.

24 I never -- I ain't pay it no more mind after that,
25 after they drove past us, and we just went on and jumped

1 his car and we left.

2 Q Can you tell the jury whether it was an Intrepid or
3 whether it was the make and model of that car?

4 MR. CORBETT: Objection, Your Honor. Leading.

5 THE COURT: No, sir, that's not leading.
6 Overruled.

7 THE WITNESS: I couldn't -- I couldn't really
8 tell. It looks like a long-bodied vehicle. It
9 resembles -- it resembles a Dodge Intrepid or
10 Pontiac -- trying to think -- Pontiac Grand -- Grand
11 Prix, around that -- look like around that type of
12 body style.

13 BY MR. WILDER:

14 Q All right. But you can't swear what it was?

15 A I couldn't tell you what it was.

16 MR. WILDER: Ask the Court's indulgence for a
17 moment.

18 THE COURT: Yes, sir.

19 (Whereupon there was a pause.)

20 MR. WILDER: No other questions.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. CORBETT:

24 Q All right. Your name is Wayne Cooper?

25 A Yes, sir, it is.

1 Q Your brother is Derrick Cooper; is that correct?

2 A Yes, sir, it is.

3 Q In September of 2006, your brother Derrick was living
4 in the Cedar Hill Mobile Home Park?

5 A Yes, sir, he was.

6 Q How long had he been living in Cedar Hill Mobile Home
7 Park?

8 A I can't recall how long. I know he been there since
9 '05.

10 Q So more than nine months?

11 A Yes, sir.

12 Q So it would not have been uncommon for people to have
13 seen him in Cedar Hill Mobile Home Park?

14 MR. WILDER: Objection. Same ground that
15 Mr. Corbett.

16 THE COURT: No. Just give me your grounds.

17 MR. WILDER: Your Honor, hearsay.

18 THE COURT: Finish the question. Don't answer.
19 What is the question?

20 BY MR. CORBETT:

21 Q So it would not be uncommon for people to have seen
22 your brother in Cedar Hill Mobile Home Park for a period
23 of at least nine months?

24 THE COURT: All right. Hold on.

25 MR. WILDER: Pitting witnesses now since he

1 finished.

2 THE COURT: Objection is overruled.

3 THE WITNESS: Repeat the question again, sir.

4 BY MR. CORBETT:

5 Q Your brother had been living in the neighborhood for
6 more than nine months?

7 A Yes, sir.

8 Q Okay. It's likely neighbors would have seen him?

9 A Yes, sir.

10 Q Okay. Now, your testimony is that this picture here
11 with the beer cans, your testimony is that the police
12 cleaned out the 300 for you?

13 A Yes, sir, they did.

14 Q And there were six beer cans in that car?

15 A Yes, sir.

16 Q So if there's more than six beer cans in this
17 picture, where did they come from?

18 A It was beer cans already in the trash can.

19 Q Now, there's window tint in this trash can as well;
20 correct?

21 A Yes, sir.

22 Q All right. So what you're saying is is that the
23 police threw cans on top of that window tint?

24 A Yes, sir.

25 Q And other than that, there's no other trash on top of

1 it?

2 A No other trash.

3 Q That window tint had been off your car for a long
4 time?

5 A Been off my car for about -- I'd say about a month or
6 two.

7 Q Okay. And that period of time no other trash had
8 gotten put on top of it in that trash can?

9 A No, sir because the type of trash bin that I had,
10 the -- the trash company told me that they -- they level
11 machine can't pick that trash can up and they didn't want
12 to break my trash bin.

13 Q Now, when you pulled up in the yard at Suzie Rembert
14 Road on September 5, your brother was driving; is that
15 correct?

16 A Yes, sir, he was.

17 Q And how many officers approached the car?

18 A A lot of officers. I didn't really do no counting
19 because they came from all directions.

20 Q Who do you remember?

21 A Wayne Dubose and Afrika.

22 Q Afrika, one of the officers?

23 A Yes.

24 Q Trevor Brown?

25 A I saw Trevor Brown later as I was -- as I -- as they

1 detained me when I was on the porch.

2 Q And you were on -- I'm sorry. You were on the what?

3 A They put a -- they -- after they sat us on the
4 ground, they put us -- they set us on my porch.

5 Q On your porch?

6 A Yes, sir.

7 Q Okay. Is that an outside porch?

8 A Yes, sir, it is.

9 Q I'm sorry. I -- let me rephrase that. Is it an open
10 porch or is it screened-in or closed in in any way?

11 A It's an open porch.

12 Q At any point were you taken into the house?

13 A Yes, sir.

14 Q Other than the officers you just told me about, did
15 any other officers arrive?

16 A I notice Anthony Dennis.

17 Q Okay. Any others?

18 A It was a lot more. I don't know them by name. I
19 just know it was a lot of other officers, but...

20 Q Was Tommy Barron at the house?

21 A Tommy Barron was there.

22 Q As a matter of fact, it was you who said you wanted
23 to ride with Tommy Barron.

24 A No, sir.

25 Q You didn't say that?

1 A No, sir, I didn't.

2 Q Okay. You didn't tell Tommy Barron that you wanted
3 to talk to him?

4 A No, sir. They was getting ready to transport. One
5 officer took my brother and Tommy Barron took me.

6 Q Now, you said you had three cans of beer?

7 A Yes, sir, I did.

8 Q What did your brother drink?

9 A My brother drank three cans of beer and some liquor
10 and smoked some weed.

11 Q And as a matter of fact, I believe he -- well,
12 scratch that. Let me move on. The Chrysler 300M, whose
13 car was that?

14 A That's my mother's car.

15 Q Now, I'm going to show you what has been marked as
16 the State's exhibit number 18. Do you recognize that?

17 A Yes, sir.

18 Q What is that?

19 A It's a miranda waiving of rights.

20 Q Okay. And is this your signature right here?

21 A Yes, sir.

22 Q Okay. Are these your initials?

23 A Yes, sir.

24 Q Now, I'm going to show you what has been marked as
25 State's number 19 and ask if you know what that is.

1 A It's a voluntary statement paper.

2 Q Okay. And is your signature right here?

3 A Yes, sir.

4 Q Did you sign that form?

5 A Yes, sir.

6 Q Now, your testimony is that you did not give

7 Investigator Barron any of that information?

8 A Yes, sir.

9 Q Is that correct?

10 A Yes, sir.

11 Q Now, that form has your name on it at the top of it,

12 correct? And I am talking about this. Is that correct?

13 A Yes, sir.

14 Q And it has your correct--

15 THE COURT: Referring to 19.

16 MR. CORBETT: That's correct, Your Honor. I'm

17 sorry.

18 BY MR. CORBETT:

19 Q Now, I'm going to -- let's look at this Exhibit 19
20 for a few minutes, the one entitled voluntary statement.

21 It has your correct date of birth on it; does it not?

22 A Yes, sir.

23 Q And it also has your correct social security number
24 on it?

25 A Yes, sir.

1 Q Information that you gave Investigator Barron?

2 A They should already -- they had that information
3 already.

4 Q Did you give that information to Investigator Barron?

5 A I didn't give him that information.

6 Q Okay. You didn't give him any information?

7 A No.

8 Q So you sat in that room with Investigator Barron and
9 you did not say anything to him?

10 A Mr. Barron was -- Mr. Barron started talking. I just
11 sat there and listened to him before my cellphone went
12 off.

13 Q Did you say anything to Investigator Barron in that
14 room?

15 A I didn't say nothing to him. He was talking. I was
16 just listening to him.

17 Q So you didn't tell him about the car acting up?

18 A Whose car acting up?

19 Q Your brother's car not cranking.

20 A No, I didn't tell him that.

21 Q All right. You didn't tell him at 5:15 am you were
22 on your way to work?

23 A 5:15 I was still in my house.

24 Q You didn't tell him that in this statement?

25 A I don't know where he get that. I don't know where

1 Mr. Barron got that information. At 5:15 I was at home.

2 THE COURT: Listen to his questions and answer
3 his questions.

4 THE WITNESS: Okay.

5 BY MR. CORBETT:

6 Q Did you tell Investigator Barron that your brother
7 called you and said that he needed for you to come to his
8 residence to help him get his vehicle started?

9 A Repeat that question again.

10 Q Did you tell Investigator Barron that your brother
11 called you and asked you to come to his residence to help
12 you get his vehicle started?

13 A No, sir, I didn't tell him that.

14 Q Did you tell him that you decided to ride with your
15 brother?

16 A No, sir, I didn't tell him that.

17 Q Did you tell him that as you were leaving out, a
18 black male threw a beer bottle at your -- at the vehicle?

19 A No, sir, I didn't see anyone.

20 Q Did you tell your brother that you fired a gun?

21 A No, sir.

22 Q You did not tell Investigator Barron that?

23 A No, sir.

24 Q Did you tell him that it was thrown out in front of
25 James Ervin's Auto Sales?

1 A No, sir, I didn't tell him that.

2 Q Now, let me jump forward to September 5th if I may.
3 You indicated you got off work before your brother.

4 A Yes, sir, couple of minutes before.

5 Q Okay. What time did your brother get off work?

6 A Clocked out around 3:30, around 3:30, around that
7 time.

8 Q Okay. And then where did y'all go after he got out
9 off from work?

10 A We went across the street to Piggly Wiggly to the
11 store to cash his check.

12 Q And where else did you go?

13 A Then we came back to the -- we went to the game store
14 across the street and we bought two, three -- he bought
15 two or three games and then we went to the gas station
16 where he purchased the beers and got a blunt and went to
17 the liquor store.

18 Q What time did y'all arrive at Suzie Rembert Road?

19 A We got there a little bit after five, four -- excuse
20 me. 4:45, 5:00, around that time.

21 Q Now, when you were with Investigator Barron later at
22 the Police Department, what time was that?

23 A I don't know. I didn't -- I didn't look at a clock.

24 Q Now, let me back up to the second if I may. What
25 time did you arrive at your brother's residence that

1 morning?

2 A I arrive at my brother's residence about 5:35, 5:36.

3 Q And you indicated y'all had to jump his car off?

4 A Yes, sir, we did.

5 Q How long did that take?

6 A Took a couple of minutes.

7 Q And then you testified that y'all went to Columbia?

8 A Yes, sir.

9 Q And you got there a little bit before 6:12?

10 A Yes, sir.

11 Q Because you smoked a cigarette in the parking lot?

12 A Yes, sir, when we got out the vehicle.

13 Q All right. And you drove the speed limit?

14 A Yeah, we -- yeah, I could say. I didn't really look
15 at his speedometer, but we was going the speed limit
16 because we wasn't shooting past cars.

17 Q Okay. So when y'all left Cedar Hill Mobile Home
18 Park, you were already late for work?

19 A Yes, sir, we was.

20 Q Okay. And your testimony is that he drove the speed
21 limit all the way to Columbia?

22 A Yes, sir, wasn't no rush.

23 Q And that you then stood in the parking lot and smoked
24 a cigarette before going in.

25 A Yes, sir.

1 Q And did I understand you to say that there's a video
2 showing you doing this?

3 A Yes, sir, it's outside surveillance camera.

4 Q That you have seen before?

5 A I haven't seen the video from us being outside. I
6 saw the video of us walking inside the restaurant.

7 Q So you have possession of that?

8 A I saw it earlier from my attorney.

9 Q From that video are you able to identify yourself and
10 your brother?

11 A Yes, sir, I can.

12 MR. CORBETT: One moment please, Your Honor.

13 THE COURT: Yes, sir.

14 (Whereupon there was a pause.)

15 BY MR. CORBETT:

16 Q And it's your testimony then that this statement
17 here, none of -- you didn't provide any of this
18 information?

19 A No, sir, I didn't.

20 MR. CORBETT: One moment please, Your Honor.

21 THE COURT: Yes, sir.

22 (Whereupon there was a pause.)

23 BY MR. CORBETT:

24 Q Now, the statement that you signed, I believe you
25 testified a little bit ago that at the house they told you

1 that you were being charged with murder.

2 A Yes, sir.

3 Q Is that correct?

4 A Yes, sir.

5 Q Okay. So you go downtown with them; is that correct?

6 A Yes, sir.

7 Q After being told you're charged with murder?

8 A They say you are going to be charged with murder.

9 Q All right. You're going to be charged with murder.

10 A Yes, sir.

11 Q And Investigator Barron puts a piece of paper in
12 front of you and you're telling us that you signed it
13 without reading it?

14 A Mr. Barron had asked me to -- to cooperate with him
15 and he'll let me go home. That was his agreement.

16 Q So your testimony is that Investigator Barron, after
17 they told you you were going down for murder, said if you
18 cooperate, you can go home?

19 A Yes, sir.

20 Q And you didn't tell him that a black male threw a
21 bottle at the car and that there was another person
22 walking with him but you couldn't tell who?

23 A No, sir, because I didn't see no -- I didn't see no
24 one leaving the mobile home park.

25 MR. CORBETT: That's all the questions I have,

1 Your Honor.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. WILDER:

5 Q Wayne, I'm going to show you a still shot from a
6 video security tape and ask you can you identify who is in
7 it.

8 A Yes, sir, that's my brother and I.

9 Q Does it show you on the morning of September 2nd of
10 '06 pulling into the store at Fire Mountain?

11 A Yes, sir, it does.

12 Q All right. So, Mr. Cooper, this accurately depicts
13 what y'all were wearing that morning?

14 A Yes, sir, it does.

15 Q Anybody change clothes since the time you left Sumter
16 till the time you got to the store?

17 A No, sir.

18 Q And shows you with your hair cut the same way it is
19 today?

20 A Yes, sir.

21 Q Shows your brother with the same haircut?

22 A Yes, sir.

23 Q Okay. Y'all in any hurry when you walked in there?

24 A No, sir, we wasn't.

25 Q Business as usual?

1 A Yes, sir.

2 Q Answer any more questions that Mr. Corbett may ask
3 you.

4 THE COURT: Cross-examination or re-cross?

5 MR. CORBETT: May I ask that that image be made
6 available again for the witness?

7 THE COURT: Yes.

8 MR. WILDER: Your Honor, if there's some way for
9 us to offer it, I'd be glad to do that.

10 THE COURT: Well, that -- nobody has mentioned
11 that yet. We'll wait and see.

12 RECROSS-EXAMINATION

13 BY MR. CORBETT:

14 Q Now, Mr. Cooper, let me ask you this if I may. This
15 image, are you able to see that?

16 A Yes, I can see it.

17 Q What color shirt are you wearing?

18 A I'm wearing a dark green Fire Mountain shirt with
19 Fire Mountain on the sleeve and on the -- on the shirt
20 pocket.

21 Q What color shirt is your -- well, let me ask you.
22 The person beside you, is that your brother, Derrick?

23 A Yes, sir, it is.

24 Q And what color shirt is he wearing?

25 A He's wearing a white dress shirt, short sleeve,

1 button-down with Fire Mountain on the sleeve and on the
2 pocket of his shirt. You can't see it from that
3 side-view.

4 Q And this image indicates it was taken at 6:13?

5 A Yes, I -- I see it right there.

6 Q Now, in that picture I just showed you, who is the
7 bigger individual, you or your brother?

8 A My brother is a little bit bigger than me.

9 Q Mr. Cooper, tell me if you can identify that, please.

10 A It's a booking report.

11 Q Does it bear your signature?

12 A Yes, sir.

13 Q And you signed that document?

14 A Yes, sir.

15 Q And you signed that document when you got to the
16 jail?

17 A Yes, sir.

18 MR. WILDER: Your Honor, I do have objections.
19 Some of this will need to be redacted.

20 THE COURT: Come up, please.

21 (Whereupon a bench conference was held.)

22 THE COURT: Exhibit as redacted will be admitted
23 into evidence, but we'll -- and go ahead and mark it
24 at this time as State's number 27, but not to be
25 published to the jury until the redaction has taken

1 place.

2 (WHEREUPON, State's Exhibit 27 was admitted into
3 evidence.)

4 BY MR. CORBETT:

5 Q Now Mr. Cooper, what does it indicate your phone
6 number here?

7 A They got the same phone number off of Mr. Barron --
8 when they brought me in, Mr. Barron hands this information
9 to the booking officer and that's what the booking officer
10 wrote.

11 Q So your testimony is that Mr. Barron gave them that
12 information?

13 A Mr. Barron hand them -- hand them the statement and
14 they copy the top information off of that because that's
15 not my -- that's not my phone number.

16 Q But you did sign this; right?

17 A Yes, sir.

18 Q Okay. And what time was that done? No, do you know
19 what time it was done?

20 A No, I have no idea. I don't have -- I didn't have a
21 watch on.

22 MR. CORBETT: Your Honor, that's all the
23 questions I have.

24 THE COURT: All right. Thank you, sir. You may
25 step down.

1 (Witness left the stand.)

2 MR. WILDER: Your Honor, I believe the doctor is
3 here and I'd like to call him at this time.

4 THE COURT: All right. Let's get the exhibits
5 out of the way. You may be excused, Mr. Cooper.

6 THE WITNESS: Thank you.

7 THE COURT: All right. Call your next witness.

8 MR. WILDER: The doctor from Doctor's Care.
9 Doctor's Care. He wants a Koran to take an oath on.

10 THE COURT: How about an affirmation?
11 Affirmation? All right. We'll do it by affirmation.

12 DR. RASUL, after being duly
13 affirmed, testified as follows:

14 THE COURT: Not so help you God because this is
15 an affirmation.

16 BAILIFF: Sir?

17 THE COURT: This is an affirmation, not an oath.

18 DIRECT EXAMINATION

19 BY MR. WILDER:

20 Q Your name is?

21 A Mohammad Fayad Rasul (phonetic).

22 Q Okay. Please spell it for the Court Reporter.

23 A Last name is R-a-s-u-l.

24 Q So it would be proper to refer to you as Dr. Rasul?

25 A Yes, sir.

1 Q All right. Now Dr. Rasul, I would like to show you
2 some records from Doctor's Care. Where do you work?

3 A Doc...

4 Q Okay. I want to show you some records pertaining to
5 my client, Wayne Cooper, and see if you can tell me if
6 they are the records that are kept in the normal course of
7 business of Doctor's Care.

8 A Yeah, I can identify two of those, and the third one,
9 I don't know about this document.

10 Q Let's just deal with the ones you can identify. How
11 about some of these.

12 A Yes, I identify.

13 Q Okay. Now, are you the attending physician at
14 Doctor's Care?

15 A Yes, sir.

16 Q And so when folks come in to be prescribed medication
17 and things for their injuries and ailments, you're the one
18 they would see?

19 A Yes, sir.

20 Q Okay. And was -- can you tell from those forms
21 whether or not Mr. Wayne Cooper over here was your
22 patient?

23 A I can see on the papers what I'm seeing, but I don't
24 identify him today being telling with the papers. I don't
25 remember that person at that time, you know, today.

1 Q Okay. Well, do those papers reflect Wayne Cooper as
2 being your patient?

3 A Yes, sir.

4 Q Okay. Could you tell the jury what you were treating
5 him for on those occasions?

6 A Yeah, he had a discomfort in the neck and the
7 diagnosis was sprain of the neck, neck sprain.

8 Q Did he also have an injury to the back of his head?

9 A Not in the record that I'm seeing, no. I don't see
10 that.

11 Q Well, what medication, if any, did you prescribe for
12 him, sir?

13 A Yeah, I prescribed him two medications. One of them
14 is Flexeril and the other one is Arthrotek (phonetic),
15 they are two names.

16 Q Okay. Were y'all treating him with a pain patch to
17 his neck?

18 A Yeah, that was being given by the physical therapy
19 section of our office, you know, he was going to the
20 physical therapy.

21 Q Okay. And what was the pain patch be designed to do?
22 It has to be by prescription; doesn't it?

23 A Not really. I don't have any in my documentation
24 that I gave a pain patch.

25 Q Did I ask you to bring your documents with you in the

1 subpoena I sent for you?

2 A I don't remember. I don't know. I don't know. I
3 don't remember.

4 Q You didn't bring any of your own documents with you?

5 A No, sir. No, sir.

6 Q All right. So what do you know that you prescribed
7 for Wayne Cooper and when did you do it?

8 A On the 27th of July I prescribed two medications,
9 Flexeril and Arthrotek.

10 Q And was he still under treatment on September 2nd,
11 '06 and September 5th?

12 A No, as per the documentation that we have, it was in
13 November 1st that we wrote the prescription for those.

14 Q November 1st?

15 A No, I'm... July 27th, I miss -- the dates from
16 something else. July 27th was a visit when he was started
17 on those medications.

18 Q Started on them?

19 A Yes, sir.

20 Q Did he continue to take them? Y'all saw him several
21 times; did you not?

22 A I saw him three times in the office according to
23 these records that I have.

24 Q Okay. All right. When was the last time according
25 to those records?

1 A I saw him on August 10th the last time.

2 Q Okay. And as of that time he was still taking the
3 medication?

4 A Yes, sir.

5 Q Do you have a return to work authorization that was
6 issued by Doctor's Care there?

7 A Yes, sir.

8 Q What date was that issued?

9 A That was issued on August 10th, '06. That's what I
10 have in my hand.

11 Q All right.

12 A And this is...

13 Q All right. Now, the return to work authorization
14 doesn't mean that he's perfectly healed; does it?

15 A According to this one, no. We still had some
16 limitations.

17 Q Okay. So as of that day -- as of that date, he was
18 continuing to take medication?

19 A Yes, sir.

20 Q Answer any questions that Mr. Corbett --

21 MR. WILDER: Oh, I'd like to move these into
22 evidence now that I have the records identified that
23 he's looking at.

24 THE COURT: Any objection, Mr. Corbett?

25 MR. CORBETT: No objection, Your Honor.

1 *THE COURT:* All right. As a group they'll be
2 admitted into evidence as Defendant's exhibit
3 number -- what number is it, Miss Winfield? all
4 right. Well, we're talking about as a Defendant's
5 exhibit now. What will be the next...

6 *COURT REPORTER:* Now be Defendant's exhibit
7 number 15.

8 *THE COURT:* All right. Be admitted into
9 evidence as defense number 15.

10 *MR. CORBETT:* Your Honor, if I may, the witness
11 did not identify all of the documents, and I wanted
12 to make sure we had the--

13 *MR. WILDER:* I took the ones he could not
14 identify.

15 *THE COURT:* Out. He just gave him the ones that
16 he could identify.

17 *MR. WILDER:* That's right.

18 *THE COURT:* Defense number 15.

19 (WHEREUPON, Defendant's Exhibit 15 was admitted
20 into evidence.)

21 BY MR. WILDER:

22 Q Recognize that document?

23 *THE COURT:* Wait just one minute. She's still
24 working with the...

25 *MR. WILDER:* Oh, I'm sorry.

1 THE WITNESS: Yeah, this is from the physical
2 therapy section.

3 BY MR. WILDER:

4 Q And that's also at Doctor's Care.

5 A Yeah, there are the -- yeah, one of the associates of
6 us, yeah.

7 Q And those are some of the records that are kept in
8 the ordinary course of business; aren't they?

9 A Yes, sir.

10 Q What date does that indicate that he was discharged?

11 MR. CORBETT: Objection, Your Honor.

12 THE COURT: All right. Going to offer it into
13 evidence?

14 MR. WILDER: Yes, sir.

15 THE COURT: All right. Offer it into evidence.

16 Any objection?

17 MR. CORBETT: Yes, sir, Your Honor. Objection.

18 THE COURT: On what basis?

19 MR. CORBETT: Hearsay and lack of foundation.

20 THE COURT: I'm going to overrule that objection
21 if it's lack of foundation. He has testified that he
22 is from that office and I think it falls under 803
23 subparagraph six, records of regularly conducted
24 activity. Objection overruled.

25 BY MR. WILDER:

1 Q What date does it indicate Mr. Cooper was discharged?

2 THE COURT: Well, it's offered into evidence.

3 Let her mark it.

4 THE WITNESS: Um.

5 THE COURT: Wait just a minute.

6 MR. WILDER: Wait. Let her get it marked.

7 (WHEREUPON, Defendant's Exhibit 16 was admitted
8 into evidence.)

9 MR. WILDER: Your Honor, for the record this has
10 been marked as Defendant's exhibit 16.

11 THE COURT: All right. Defendant's number 16.

12 THE WITNESS: October the fifth, '06.

13 BY MR. WILDER:

14 Q October the fifth, '06. Okay. Answer any questions
15 Mr. Corbett may have.

16 THE COURT: Cross-examination, Mr. Corbett?

17 CROSS-EXAMINATION

18 BY MR. CORBETT:

19 Q Is it Rasul?

20 A Yes.

21 Q Dr. Rasul?

22 A Uh-huh.

23 Q Good afternoon.

24 A Yeah. Thanks.

25 Q The last time you saw Wayne Cooper according to your

1 records was August 10th?

2 A Right.

3 Q Do you don't have any first-hand knowledge of what
4 was going on over on the physical therapy side?

5 A Right.

6 Q Okay. So if he was retained or incarcerated in
7 October when he was released, you wouldn't know that?

8 A Right. I've not seen him after that date, yeah.

9 Q That's all the questions that I have.

10 THE COURT: All right.

11 MR. WILDER: No other questions. Ask that Dr.
12 Rasul be allowed to be released.

13 THE COURT: Any objections?

14 MR. CORBETT: None from the State.

15 THE COURT: All right. You are released,
16 doctor. Thank you very much. If you'll give that
17 exhibit to the Court Reporter. Thank you for coming,
18 doctor.

19 (Witness left the stand.)

20 THE COURT: All right. Counsel, if you'll come
21 up just a moment.

22 (Whereupon a bench conference was held.)

23 THE COURT: Ladies and gentlemen, I think it's
24 appropriate that we take our afternoon recess at this
25 time and we're going to do so. We will take that for

1 about 15 minutes and then we'll be ready to resume.

2 Please do not discuss the case among yourselves.

3 It's still premature for you to begin discussion.

4 We've got a matter that we're also going to have to
5 take up during the recess, but we will send for you
6 in about 15 minutes. Thank you. You may go with the
7 bailiff.

8 (Jury left the courtroom at 3:42 pm.)

9 *THE COURT:* Counsel, with regard to the records,
10 what was originally marked as a Court's exhibit
11 contained some additional things that -- what was
12 finally admitted did not.

13 So what I'm going to ask you to do, counsel, is
14 to copy the one that was admitted as Defense
15 exhibit 15 and let that be Defense exhibit and then
16 she can take all the other papers and make that
17 Court's five as it was originally proffered.

18 Is -- the one that has been marked as Court's
19 15, please copy that and make that -- I mean as
20 Defendant's 15, please copy that, make that a
21 Defendant's 15, then let her put all the rest of them
22 with the Court's exhibit so the record will be
23 complete.

24 *MR. WILDER:* All right.

25 *THE COURT:* All right. Let's take just about

1 five to six minutes as far as court personnel is
2 concerned and let's go forward in just a very few
3 minutes with whatever you want to proffer outside the
4 presence of the jury, Mr. Wilder.

5 MR. WILDER: Thank you, Your Honor.

6 THE COURT: All right.

7 (Whereupon a recess was had.)

8 THE COURT: Have the defendant brought back in,
9 please.

10 (Whereupon there was a pause.)

11 THE COURT: All right. Back on the record with
12 regard to the matter of the State versus Cooper.
13 Mr. Cooper is present in the courtroom with his
14 lawyer, Mr. Wilder. Mr. Corbett is also present on
15 behalf of the State.

16 Mr. Wilder, I believe you had some proffered
17 testimony that you wanted to do in the absence of the
18 jury.

19 MR. WILDER: Yes, sir. Mr. Larry Coronell come
20 back up. He's already under oath, Your Honor.

21 THE COURT: All right.

22 LARRY CORONELL, after being duly
23 reminded of oath, testified as follows:

24 THE COURT: Make timely objections so I will be
25 able to rule on them.

DIRECT EXAMINATION

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BY MR. WILDER:

Q All right. Mr. Coronell, I believe you previously stated your name and your address for the Court. And I was showing you some pictures, Defendant's ID one through five. Have you looked at those pictures, sir?

A Right. Yes.

Q Do they depict the place you live now?

A Yes.

Q And this week or earlier today in fact did Mr. Finney appear at your house?

A Yes.

Q Black attorney was in here a minute ago?

A Uh-huh.

Q And did he ask you to look out your front window toward the fire department?

A Yes.

Q Okay. Is your bedroom in the -- in the trailer in there?

MR. CORBETT: Objection, Your Honor.

THE COURT: All right. Objection noted.

BY MR. WILDER:

Q Is your bedroom in the trailer?

A Yes.

Q Okay. And did you look out your bedroom window

1 toward the fire department?

2 A Yes.

3 Q All right. Was the -- was the view out your bedroom
4 window in toward the direction of the fire department
5 obstructed?

6 MR. CORBETT: Objection, Your Honor.

7 THE COURT: Noted.

8 BY MR. WILDER:

9 Q Was the view obstructed?

10 A Yes.

11 Q What's in the way of being able to see the fire
12 department from your bedroom window?

13 MR. CORBETT: Objection, Your Honor.

14 THE COURT: Noted.

15 MR. CORBETT: And Your Honor, if I may.

16 THE COURT: You object to this whole line of
17 questioning?

18 MR. CORBETT: Well, I -- I don't want to keep
19 interrupting, but I--

20 THE COURT: Right.

21 MR. CORBETT: The way I understand the rule is I
22 have to make the objection as--

23 THE COURT: All right. I'll -- I'll note and I
24 will rule on them whether the testimony -- the line
25 of questioning. Right now we're talking about what

1 he could see -- what he could see when he looked out
2 the window from his bedroom window, and anything in
3 that line of questioning you're -- the objection is
4 noted.

5 If we get into something else, we'll get to that
6 when the time comes. All right. Go ahead, Mr....

7 BY MR. WILDER:

8 Q All right. When you look out your window toward the
9 fire department, what's in the way between your residence,
10 your bedroom window when you look out there and the fire
11 department?

12 A Trees.

13 Q Okay. Describe to the Court what manner -- if you
14 got a -- see, do you have an unobstructed view of the fire
15 department from your bedroom window?

16 MR. CORBETT: Objection, Your Honor.

17 THE COURT: I think that's the same line of
18 questioning.

19 THE WITNESS: No.

20 BY MR. WILDER:

21 Q Okay. And what distance is it from your bedroom
22 window to the fire department?

23 A About 150 feet.

24 Q Okay. Do you have occasion to get up at five am in
25 the morning?

1 A Yes.

2 Q Okay. When you get up at five am in the morning, is
3 the area in front of the fire department lit up or not?

4 A I--

5 THE COURT: All right. That objection is also
6 noted. All right.

7 THE WITNESS: No.

8 BY MR. WILDER:

9 Q It's not? Okay. Are there times when they do cut on
10 the lights?

11 A Yes.

12 Q Do they regularly cut on the light at five in the
13 morning?

14 MR. CORBETT: Objection, Your Honor.

15 THE COURT: Yes. The question with regard to
16 the lights, no further objection will be necessary
17 and that's noted as well.

18 BY MR. WILDER:

19 Q Do they regularly cut on the lights in front of the
20 fire department at five in the morning?

21 A No.

22 Q All right. Now, these pictures, they accurately
23 depict the way your home is now; don't they?

24 A Yes.

25 Q To your knowledge or is there any indication from any

1 evidence that you have seen that that mobile home ever
2 been moved in the last six years?

3 MR. CORBETT: Objection, Your Honor.

4 THE COURT: Noted and I don't personally -- I
5 mean, I'm going to rule on it, but it seems like to
6 me his testimony earlier was he had only been there
7 six months. I don't see how he can testify as to
8 anything that's happened before six months. But go
9 ahead. It is noted.

10 BY MR. WILDER:

11 Q Can you tell how long the mobile home had been there?

12 A No.

13 Q Okay. Well, let's talk about this two years because
14 you have been there six months.

15 A About nine months almost.

16 Q Nine months. Is there any indication that the mobile
17 home has been moved in the last two years?

18 MR. CORBETT: Objection, Your Honor.

19 THE COURT: All right. Noted.

20 THE WITNESS: Not that I could tell.

21 BY MR. WILDER:

22 Q How long can you -- can you give a guess as to how
23 long the mobile home has been in that location from what
24 you have observed?

25 THE COURT: All right. Now that's not a proper

1 proffer either, Mr. Wilder. If we're going to do
2 proffer, we are going to keep it to the rules and
3 we're not going to let him guess. I'm going to
4 sustain that without even having an answer.

5 BY MR. WILDER:

6 Q Okay. Answer any questions -- oh, one other
7 question. My lawyer is advising me, Your Honor.

8 MR. CORBETT: Your Honor, I -- I don't mean to
9 be a stickler, but is he his lawyer or his witness?
10 Because if he's recalling him, I'm a little--

11 THE COURT: Well, we'll get to that when we get
12 to the recall question, but we'll see what --

13 MR. WILDER: Your Honor, I'm certainly not
14 telling him what to say. He's telling me what to ask
15 a witness.

16 THE COURT: Well, he can't be both a witness and
17 an advisor in this case, but go ahead.

18 BY MR. WILDER:

19 Q Okay. The trees on the property, are they mature?

20 A Yes.

21 Q The pine trees in particular, how big around are
22 these pine trees?

23 A Ha ha ha. Excuse me. I'm not sure how big around
24 they are.

25 Q Okay. Some of them you can't even reach around?

1 THE COURT: Now, he's your witness now,
2 Mr. Wilder.

3 MR. WILDER: Okay.

4 THE COURT: Let's do this the right way or don't
5 do it at all.

6 BY MR. WILDER:

7 Q How long would it take to grow a pine tree like that?

8 MR. CORBETT: Objection, Your Honor.

9 THE COURT: Witness has -- he hasn't been
10 qualified to be able to testify to that fact,
11 Mr. Wilder.

12 BY MR. WILDER:

13 Q Would it take more than two years to grow a pine tree
14 that big?

15 MR. CORBETT: Objection.

16 THE COURT: I will allow him to answer that.

17 THE WITNESS: I would think so.

18 BY MR. WILDER:

19 Q Okay. All right. Answer any questions Mr. Corbett
20 might have.

21 THE COURT: All right. I'll hear from you with
22 regard to your objections, Mr. Corbett.

23 MR. CORBETT: Yes, sir, Your Honor.

24 THE COURT: First let's talk about the view from
25 the bedroom trailer. That's the first thing he

1 testified to.

2 MR. CORBETT: Yes, Your Honor. We object on the
3 grounds that this witness cannot testify to the facts
4 to the condition of vegetation, to the placement of
5 the mobile home, which room was being used as a
6 bedroom or which window was being looked out of as of
7 September 2nd, 2006.

8 THE COURT: All right. That objection is
9 sustained. This witness does not know the state of
10 the vegetation as of the date of the incident here,
11 neither does he know the state of the lighting of the
12 fire station at the date of the incident in question,
13 nor would he know the state of the vegetation on
14 September the third of 2006 -- September the second
15 of 2006, so the defendant's objection to this
16 witness's testimony is sustained.

17 MR. WILDER: All right. Your Honor, our
18 argument -- and I'm not arguing with the Court's
19 ruling. I understand it completely.

20 THE COURT: Yes, sir.

21 MR. WILDER: But I do want the record to reflect
22 that it is our belief that Mr. Finney's testimony
23 about the pictures coupled with this defendant--

24 THE COURT: Mr. Finney hasn't testified to the
25 pictures. They haven't been admitted.

1 MR. WILDER: All right. Well, I'd like to call
2 Mr. Finney back to the stand.

3 THE COURT: Well, this witness -- the testimony
4 of this witness is -- the objected testimony of this
5 witness is sustained. All right. Thank you,
6 Mr. Coronell. You may step down.

7 (Witness left the stand.)

8 MR. WILDER: Recall Mr. Finney.

9 ERNEST FINNEY testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. WILDER:

13 Q All right. Mr. Finney, I believe you're under oath?

14 A Yes, sir.

15 Q Please remain that way. Did you look out of the
16 front window of the mobile home?

17 A I did, sir.

18 Q Toward the direction of the fire department?

19 A I did so about 9:00 this morning.

20 Q Okay. And is the vision obstructed?

21 MR. CORBETT: Your Honor, the State would --

22 THE COURT: All right.

23 MR. CORBETT: -- interpose an objection based
24 upon the timeframes.

25 THE COURT: Objection is noted.

1 BY MR. WILDER:

2 Q Is the vision toward the direction of the fire
3 department obstructed?

4 A It is not only obstructed but it is a very hard angle
5 looking out of the window that the witness identified on
6 Monday to see the fire station.

7 MR. CORBETT: Objection.

8 THE COURT: Sustained. Again that's pitting one
9 witness against another and that's not proper either,
10 Mr. Wilder.

11 BY MR. WILDER:

12 Q Okay. Now, I asked you some questions previously
13 about the first time you went out to the scene and the
14 fact you did represent this defendant.

15 A Yes, sir.

16 Q And Mr. Corbett asked you about did you go out there
17 on September the second, I believe it was, but I believe
18 you had been out there shortly after the event took place;
19 did you not?

20 A I -- it would have been after, Mr. Wilder. I don't
21 know exactly when I got appointed and went to the first,
22 you know, to see where the mobile home park was and to see
23 what I was working with. But it wasn't very long after
24 September 2nd, 2006.

25 Q Were they always bushes out there like they are now?

1 A Yes, sir.

2 Q And did they appear to be trimmed back any between
3 the first time you saw them and now?

4 A No, sir.

5 MR. CORBETT: Objection, Your Honor.

6 THE COURT: Noted.

7 BY MR. WILDER:

8 Q And you took these pictures?

9 A Monday of this week.

10 Q Monday of this week. Okay. All right. And you have
11 testified that it is an accurate portrayal of--

12 THE COURT: No, don't put words in his mouth.

13 BY MR. WILDER:

14 Q Is it an accurate portrayal of the way things are
15 now?

16 A Yes, sir, it is.

17 THE COURT: Way they are now? Is that the
18 question? Okay.

19 BY MR. WILDER:

20 Q And the best of your recollection is it an accurate
21 representation of the way things were back in 2006?

22 MR. CORBETT: Objection, Your Honor.

23 THE COURT: Go ahead.

24 THE WITNESS: Based on my looking at the
25 vegetation and the size of the vegetation and the

1 position of the vegetation to the house and the fire
2 station, I don't see any evidence of anything that's
3 been changed.

4 If anything, things could have been removed, but
5 nothing has been added because the things that are
6 there have been there for a long time.

7 BY MR. WILDER:

8 Q Thank you. Answer any questions Mr. Corbett might
9 have.

10 THE COURT: Mr. Corbett?

11 CROSS-EXAMINATION

12 BY MR. CORBETT:

13 Q Mr. Finney, do you do any of your own yard work?

14 A Yes, sir, I do unfortunately.

15 Q Mr. Finney, I have a red maple tree in my yard.

16 THE COURT: No, let's just ask questions,
17 Mr. Corbett. Come on, let's shorten this thing up,
18 counsel. Y'all are wasting an awful lot of time.

19 BY MR. CORBETT:

20 Q Mr. Finney, do you know if anybody has cut any
21 branches out there in the last two years?

22 A No, sir, I do not.

23 Q Do you know how much the limbs on a tree will grow in
24 two years?

25 A Yes, sir, I do have some idea. Being a homeowner, I

1 have cut limbs back and seen them progress back to the
2 point where they obstructed again.

3 Q So over two years they can grow rather substantially.

4 A Depends on the tree and depends on where we are in
5 the -- in the sun or the shade of the house.

6 Q Are you an expert in that field?

7 A I'm not.

8 Q Okay. Do you know if this is the same mobile home in
9 these pictures that were there on September 2nd, 2006?

10 A No, sir, I don't know that.

11 Q Okay. As a matter of fact, you were not Mr. Cooper's
12 original attorney.

13 A No, I was not.

14 Q Mrs. Stevens was actually his original attorney?

15 A I believe that's correct.

16 Q So some time would have passed after September 2nd of
17 2006 before you ever became involved?

18 A That's correct.

19 Q So you wouldn't have been out there on September 2nd,
20 2006?

21 A No, sir, I was not.

22 THE COURT: All right. Let's go, counsel. Move
23 it.

24 BY MR. CORBETT:

25 Q Mr. Finney, do you recall the date that you became

1 Mr. Cooper's lawyer?

2 A I do not, sir.

3 MR. CORBETT: That's all the questions that I
4 have, Your Honor.

5 MR. WILDER: Your Honor, I'd move to be allowed
6 to introduce all of the stuff we proffered in front
7 of the jury.

8 THE COURT: All right. Including the pictures?

9 MR. WILDER: Yes, sir.

10 THE COURT: All right. Motion to admit the
11 proffered testimony is denied as far as this witness
12 is concerned. I've already denied the testimony of
13 Mr. Coronell. He of course was not there at the
14 time, did not know what the situation was at the time
15 that the incident took place.

16 Neither were these photographs taken. And I
17 notice notably that from -- go ahead. Step down, Mr.
18 Finney. I'm sorry.

19 (Witness left the stand.)

20 THE COURT: That the party offering the
21 photographs has not asked the very simple question
22 that it takes to get pictures in and that is, is this
23 picture an accurate representation of the way the
24 scene looked on September the second, 2006, and that
25 has not been proven and thus it's my view that the

1 pictures have not been properly authenticated and
2 therefore would not come in. Neither would the
3 proffered testimony come in.

4 MR. WILDER: Your Honor, I understand the
5 Court's ruling. For the record, I can't ask that
6 question because none of any witnesses were out there
7 on September--

8 THE COURT: And none of them could answer that
9 question.

10 MR. WILDER: And none of them could answer.

11 THE COURT: I know that. That's why it's not
12 admissible, Mr. Wilder.

13 MR. WILDER: Not want -- not wanting to ask the
14 question.

15 THE COURT: That's why it's not admissible.

16 MR. WILDER: Your Honor, I don't know where Mr.
17 Finney went, but I ask that he be allowed to be
18 excused and take the witness back out to Cedar Hill
19 Mobile Home Park.

20 THE COURT: Oh, that -- he's not my witness. If
21 you don't want him, he's... What other testimony do
22 you anticipate, Mr. Wilder? You got other witnesses?

23 MR. WILDER: Your Honor, I need to get Mr. John
24 Johnson back in here because he's been searching for
25 one of my witnesses with a subpoena.

1 THE COURT: See if you can find him. See if you
2 can find him. Got the jury waiting.

3 (Whereupon there was a pause.)

4 MR. WILDER: The last witness we were looking
5 for is Chris Porter. We have been looking for him
6 for some time now. I'm advised that -- a subpoena
7 has been issued for him.

8 I have been advised that Mr. Porter is in North
9 Carolina, located in the -- Mr. Johnson is available
10 to testify about the due diligence he's been using to
11 track down Mr. Porter. All we want him for is to
12 authenticate the records of the defendant and his
13 brother coming and going from work. That's the only
14 purpose we're looking for him for. And Your Honor,
15 I--

16 THE COURT: He was the manager of Fire Mountain
17 if I recall.

18 MR. WILDER: That's correct.

19 THE COURT: All right.

20 MR. WILDER: And if -- if the State will allow
21 us to put the records in, that would solve my
22 problem. What I want to make sure of is that nobody
23 accuses us of not using due diligence to do
24 everything we could.

25 THE COURT: Well, there's no question about the

1 due diligence and I'm sure you did that, Mr. Wilder.
2 The only thing is, of course, if he's in North
3 Carolina, he's outside the subpoena power of the
4 Court anyhow.

5 MR. WILDER: We didn't know where he was till
6 just now. We -- Your Honor, for the record, we
7 subpoenaed Fire Mountain -- Fire Mountain records so
8 that the Fire Mountain people would have to tell us
9 where Chris Porter was.

10 And until we got a subpoena properly served on
11 them to find out where Chris Porter was, we didn't
12 know how to get a manager in here who was there like
13 the Court -- you know, obviously wants us to have
14 somebody there from September 2nd who can say that
15 he--

16 THE COURT: Well, that's kind of different rule
17 with regard to what you are proposing now as opposed
18 to pictures.

19 MR. WILDER: Well, I understand.

20 THE COURT: Okay.

21 MR. WILDER: I'm just saying I'm doing my best
22 to get somebody in here from Fire Mountain.

23 THE COURT: What's your position, Mr. Corbett?

24 MR. CORBETT: Your Honor, the State chooses not
25 to stipulate to the records.

1 MR. WILDER: Your Honor, the State provided us
2 with the records. We believe that the State obtained
3 them and that therefore the -- there should be
4 self-authenticating because they came from the
5 State's records.

6 The State law enforcement seized these records
7 from Fire Mountain. Wasn't something we went out and
8 got on our own. We got them--

9 THE COURT: How about that, Mr. Corbett?

10 MR. CORBETT: Well -- I'm sorry, Your Honor?

11 THE COURT: How about the fact that the records
12 that he introduced were furnished to him by the
13 State?

14 MR. CORBETT: That's correct, Your Honor.
15 Investigator Turner obtained them from Fire Mountain,
16 but we have no independent way to verify those
17 records. We can't vouch for them.

18 THE COURT: Well, can you agree as the rule
19 requires that you can't vouch for the records or if
20 contents of the record but this is what the witness
21 would say if the witness were here, that these are
22 the records of Fire Mountain, not to the truthfulness
23 of what's contained in the records but these are the
24 in fact the records.

25 In other words, we're talking about -- looks

1 like to me we are not talking about that you don't
2 attack what's in the records.

3 What you're really attacking is the
4 authenticity of them and you furnished them as being
5 records that you received from Fire Mountain, so what
6 we're talking about here is authenticity, not
7 content.

8 MR. CORBETT: Your Honor, if you will bear with
9 me one moment.

10 THE COURT: All right.

11 (Whereupon there was a pause.)

12 MR. CORBETT: Your Honor.

13 THE COURT: Yes, sir.

14 MR. CORBETT: The State will stipulate to the
15 records coming in.

16 THE COURT: All right. Mark them.

17 MR. WILDER: Thank you, Your Honor.

18 THE COURT: State's number -- defense number --
19 show exactly which ones to Mr. Corbett that you plan
20 to propose. Make sure we're talking about apples and
21 apples.

22 MR. CORBETT: That's the correct documents, Your
23 Honor.

24 THE COURT: All right.

25 MR. WILDER: Your Honor, one of them had been

1 previously marked for ID and the other is right here.

2 THE COURT: All right. ID marking can simply be
3 changed to a State's Exhibit and a new number given
4 to the other one.

5 (WHEREUPON, Defendant's Exhibit 17 AND 12 were
6 admitted into evidence.)

7 MR. WILDER: And Your Honor, that does solve my
8 problem. Mr. Finney told me that Chris Porter could
9 be here tomorrow afternoon. I know the Court wasn't
10 going to give me anywhere--

11 THE COURT: Yeah, I'm afraid you're not going to
12 get that leeway.

13 MR. WILDER: That's what he told me.

14 THE COURT: All right.

15 MR. WILDER: But he did manage to make contact
16 with him to indirectly--

17 THE COURT: All right. So that would be the --
18 with the records and that statement, that would be
19 the conclusion of the defense case?

20 MR. WILDER: Your Honor, with evidence and --
21 okay. We'll rest in front of the jury.

22 THE COURT: All right. Anything in reply?

23 MR. CORBETT: Yes, sir, Your Honor. We do
24 anticipate calling one reply witness, possibly two.

25 THE COURT: All right. Of course, be sure and

1 keep it to reply. All right. Bring the jury in
2 then, please.

3 (Jury entered the courtroom at 4:20 pm.)

4 *THE COURT:* All right. Thank you very much,
5 ladies and gentlemen, and I apologize for keeping you
6 a little longer than I wanted to, but we have taken
7 care of some legal matters that we had to address.
8 All right. Mr. Wilder, you may proceed.

9 *MR. WILDER:* Your Honor, we have moved the
10 employment records into evidence.

11 *THE COURT:* That they have been admitted into
12 evidence, the employment records from Fire Mountain.
13 They have been admitted into evidence as a defense
14 exhibit.

15 *MR. WILDER:* Thank you, Your Honor. And with
16 that, the defense rests.

17 *THE COURT:* All right. Anything in reply?

18 *MR. CORBETT:* Yes, sir, Your Honor.

19 *THE COURT:* All right, sir.

20 *MR. CORBETT:* The State would call Investigator
21 Tommy Barron.

22 *THE COURT:* All right. Mr. Barron?

23 TOMMY BARRON, after being duly
24 reminded of oath, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. CORBETT:

2 Q Investigator Barron, good afternoon.

3 A How you doing?

4 Q Believe you already had occasion to testify, so we
5 know who you are. And I'm going to show you this document
6 that's been marked as State's exhibit number 27 and I'm
7 going to ask you if you can identify that specific
8 document.

9 A Yes, sir, this is a Sumter County Correctional Center
10 booking report.

11 Q Okay. And did you have any input or involvement with
12 the creation or filling out of that form?

13 A No, sir, I did not.

14 Q Now, you had previously testified that you met with
15 Wayne Cooper and took a statement from him; is that
16 correct?

17 A That's correct.

18 Q At the conclusion of taking that statement from
19 Mr. Cooper, did you take him anywhere?

20 A I walked him out of my office and turned him over to
21 Captain Turner.

22 Q So you did not transport him outside the building?

23 A I did not.

24 Q Did you take him out to the detention center?

25 A No, sir.

1 Q Now, I'm going to show you what's been marked as
2 State's exhibit 19. That's the statement we were
3 discussing earlier; correct?

4 A Yes, sir.

5 Q Now, Investigator Barron, the information for that
6 statement came from where?

7 A Information from this statement came from Wayne
8 Cooper.

9 Q Now, if the information were not from Wayne Cooper,
10 solely from you, would you have written it that way?

11 A No, sir.

12 Q If you were making it up, is that what you'd have
13 made up?

14 A No, I wouldn't 'have made that up.

15 Q And were you aware that Investigator Turner and other
16 officers searched the area of James Ervin or side of the
17 road near James Ervin Auto Sales?

18 A I have knowledge that they--

19 MR. WILDER: Your Honor, unless he had personal
20 knowledge, I would object.

21 THE WITNESS: I don't have personal knowledge.

22 THE COURT: All right. Sustained.

23 BY MR. CORBETT:

24 Q I'm sorry. I may not have asked that completely.
25 Had you been creating this statement, is that what you

1 would create?

2 A This is not what I would create.

3 Q Where did that content come from?

4 A This statement was written by me by what Wayne Cooper
5 himself told me. This is his statement.

6 Q Did Wayne Cooper appear unable to talk with you?

7 A He was very able to talk.

8 Q No physical problems?

9 A None.

10 Q No mental problems?

11 A None that I knew of.

12 Q No indication that he was under the influence of
13 anything?

14 A He was not under the influence. They was definitely
15 no indication.

16 MR. CORBETT: That's all the questions that I
17 have, Your Honor.

18 THE COURT: Cross-examine?

19 CROSS-EXAMINATION

20 BY MR. WILDER:

21 Q No video?

22 A No video.

23 Q No tape?

24 A No tape.

25 Q Nobody else in the room but you?

1 A Nobody but Wayne and I.

2 Q Okay. Now, the Solicitor asked you if you were going
3 to make up one, what -- what you would put in it.

4 A I wouldn't.

5 Q How long have I known you?

6 A Probably 20 years.

7 Q You wouldn't make up a statement?

8 A I wouldn't make -- I wouldn't make -- make one up.

9 Q You wouldn't make up a statement?

10 A No, sir, I wouldn't make up nobody's statement.

11 Q Well, if you were going to answer his -- his
12 question, what would you put in a statement if you were
13 going to put one and make up something--

14 A I wouldn't -- the thing about it, I wouldn't make one
15 up.

16 Q I didn't think so. Thank you.

17 THE COURT: Anything further, Mr. Corbett?

18 MR. CORBETT: Nothing further, Your Honor.

19 THE COURT: All right. Thank you, Mr. Barron.

20 You may step down.

21 (Witness left the stand.)

22 THE COURT: Mr. Corbett?

23 MR. CORBETT: Nothing further, Your Honor.

24 THE COURT: All right. All right, ladies and
25 gentlemen. By the State resting at this point, that

1 means that you have now heard all of the testimony in
2 this case. And there are only two things that remain
3 to be done. Those are the arguments of counsel and
4 the instructions on the law by the Court.

5 The arguments of counsel will probably take --
6 well, will definitely run us past the 5:00 hour as
7 will the charge, and I want you to not feel that the
8 night is closing in on you and you have got to make a
9 decision based on that.

10 And so I think the appropriate thing for us to
11 do is to recess this afternoon and then we'll do
12 arguments and charge in the morning. And then you
13 will be allowed to go to your jury room to deliberate
14 your verdict.

15 So I am going to excuse you for the evening and
16 allow you to go to your homes and families. I'm
17 going to ask that you be back in the courtroom -- in
18 your jury room tomorrow morning at 9:00. Again we
19 will try to start at 9:00 in the morning and we will
20 try to start promptly.

21 We're going to work on some matters this
22 afternoon that will hopefully expedite it so that we
23 can start promptly with the jury tomorrow morning at
24 9:00.

25 Over the evening recess, don't discuss the case

1 with anyone. Don't allow anyone to discuss it with
2 you. And while you are assembling in the jury room
3 tomorrow morning, do not discuss it among yourselves.
4 It still would be premature for you to begin any
5 discussion of this case among yourselves.

6 I will also tell you that there may be some
7 publicity about this matter either in the form of
8 broadcast media or print media.

9 If there is anything on television or radio,
10 please turn those broadcast media off and do not
11 listen to those reports or if there is anything in
12 the newspaper about this matter tomorrow morning,
13 please do not read those statements or read those
14 stories as it would be improper for you to listen to
15 any news reports regarding this case because you have
16 got to decide the case based upon your view of the
17 evidence and what you have heard in this courtroom.

18 Now, before we go, let me ask counsel just to
19 step up here just a minute. And Mr. Herring, let me
20 see your jury list. I can't put my hands on mine.

21 (Whereupon there was a pause.)

22 *THE COURT:* I'm going to excuse you, all of you,
23 allow you to go back to your homes and businesses.
24 Please be back in the jury room at 9:00 in the
25 morning.

1 Mr. Watts, I'll ask that you stay with me just a
2 minute, please. All right. Thank you. You're free
3 to go.

4 (Jury left the courtroom at 4:28 pm.)

5 *THE COURT:* All right. Mr. Watts, I do
6 understand from the bailiff that you do have a
7 medical appointment tomorrow and have of course hoped
8 that this matter would be concluded and that would
9 not interfere with that, and I want you to be able to
10 make that appointment, and of course this is the
11 reason that we draw alternates.

12 So I am going to excuse you from any further
13 service on this case and we will substitute one of
14 the alternates in your place.

15 I would tell you that once you have been excused
16 by the Court there is nothing illegal about your
17 talking with your service -- about your service on
18 this case, there is nothing illegal about anyone
19 talking with you about your service on this case.

20 I would ask, however, that you not talk with
21 anybody about it or not allow anyone to talk with you
22 about it until after this jury has reached a verdict
23 which will probably be sometime late tomorrow.

24 So I would ask that you not discuss it with
25 anyone tonight or tomorrow, allow anyone to discuss

1 it with you until after this is concluded. You don't
2 know exactly when that is but I think you will be
3 safe if you wait until after tomorrow night.

4 But with that I am going to excuse you from any
5 further service on this case and also any further
6 service this week. You will not have to come back.
7 You will not have to report back. Next week sometime
8 you will get a small check from the Clerk's office.
9 It won't compensate you for your time...

10 (Juror excused.)

11 *THE COURT:* All right. Counsel, that is the
12 procedure that I had discussed with counsel earlier
13 and I believe that both parties indicated there was
14 no objection to that and they would leave it up to me
15 to determine if it was necessary, and I do have --
16 have concluded that having talked with Mrs. Watts
17 during the lunch recess and she does have this
18 medical appointment so it is necessary for her to
19 keep. Any objection, Mr. Corbett.

20 *MR. CORBETT:* No objection, Your Honor.

21 *THE COURT:* Mr. Wilder?

22 *MR. WILDER:* We have no objection.

23 *THE COURT:* All right. At this time, Mr. Clerk,
24 if you will put the two alternates names in a... in a
25 cup or something and let's draw one name out. See

1 what we got. Any objection -- the two names that are
2 being placed in there are juror number 31, Janet
3 Caldwell and juror number 159, Jeremy Wright. Both
4 those names have been... let Mr. Wilder...

5 MR. WILDER: Is Mr. Herring a blind person or a
6 child?

7 THE COURT: You waive the requirement?

8 MR. WILDER: If he covers his eyes.

9 THE COURT: I will let Mr....

10 MR. WILDER: No objection to either one of them.

11 THE COURT: All right. Any objection? No?

12 MR. CORBETT: Nothing from the State, Your
13 Honor.

14 THE COURT: Drawing for the alternate is going
15 to be taking place.

16 BAILIFF: Jeremy Wright.

17 THE COURT: All right. Mr. Wright's name has
18 been drawn as the alternate. And under the statute,
19 when they are drawn by lot, he will take the place of
20 the juror that has been excused and Mrs. Caldwell
21 will continue to be the alternate. All right.

22 Thank you. All right. Counsel, let's talk for
23 a minute about arguments. Mr....

24 MR. WILDER: If it please the Court.

25 THE COURT: Yes, sir.

1 MR. WILDER: I would like to renew my motions at
2 this stage.

3 THE COURT: All right. I meant to get to that,
4 too. But go ahead and make your motions.

5 MR. WILDER: The evidence is complete now so it
6 would be--

7 THE COURT: It is.

8 MR. WILDER: We would renew our motion for
9 directed verdict. And I believe that the burden
10 changes somewhat at this point more in favor of it
11 not just being a scintilla kind of thing, but Your
12 Honor -- Your Honor has -- now able if you wish, I
13 believe, to decide that the case has not been proven
14 to the point where it ought to be submitted to the
15 jury.

16 Now, we believe that -- that the thing should be
17 dismissed and would so move at this point.

18 THE COURT: All right. Mr. Corbett?

19 MR. CORBETT: Thank you, Your Honor. Your
20 Honor, since the time that the motions were
21 previously denied in this case, the only testimony
22 bearing on the facts and circumstances the day in
23 question came from the defendants themselves. That's
24 an issue of credibility.

25 That's an issue for the jury to weigh. And Your

1 Honor, we believe that there's sufficient evidence
2 before the Court or before the jury for the jury to
3 consider this case.

4 THE COURT: Well, I understand the position,
5 both of your positions and that while I think there
6 is some lack of direct evidence in this case,
7 specifically of the actual shooting and who -- and
8 exactly what happened, some corroborative direct
9 evidence, there is a great deal of circumstantial
10 evidence.

11 And in addition to that, even though I know
12 Mr. Wilder does not agree with its admission, I think
13 that the statement alone is enough direct evidence to
14 allow this matter to make it to the jury and so I --
15 and there is other direct evidence in the record that
16 would put me in the position of -- of weighing the
17 evidence and making a credibility decision, and this
18 I cannot do. That is a matter for the jury.

19 My job is to determine under the existence or
20 non-existence of the evidence, and my view there is
21 sufficient evidence in the record to submit the
22 matter to the jury, so the motion for directed
23 verdict would be respectfully denied.

24 All right. Mr. Wilder, are you going to require
25 the State to open?

1 MR. WILDER: No, Your Honor. We'll waive the
2 opening.

3 THE COURT: All right. So how long do you need,
4 Mr. Wilder, in your -- well, you're going to argue
5 last. Let me hear from Mr. Corbett. Mr. Corbett,
6 how -- no, that's right. Procedure right.
7 Mr. Corbett gets the last argument. Do you wish to
8 open on the law or he's -- he's willing to waive it.

9 MR. CORBETT: Yes, sir, Your Honor, I'll just
10 wait and do it all at once.

11 THE COURT: All right. How much time do you
12 need, Mr. Wilder?

13 MR. WILDER: Well Your Honor, I don't like to
14 talk past 30 minutes, but may I have up to 45 if I
15 need it?

16 THE COURT: I'll tell you like I tell my
17 preacher, anything over 20 minutes is lost anyhow.
18 And the -- can appreciate that. Let's -- let's try
19 to keep it -- I won't call time on you till 40
20 minutes, but let's try to keep it at 30 each, okay?
21 all right. Mr. Wilder, do you -- you will go first
22 and Mr. Corbett on behalf of the State.

23 Special requests to charge? Counsel, I have
24 made some notes about what I think are appropriate
25 things to be charged, and I found the charge and my

1 general felony charge which includes reasonable
2 doubt, presumption of innocence, burden of proof.

3 And I also of course will charge the charge on
4 murder. And I'm assuming, Mr. Wilder, from your
5 entire presentation that you want an alibi charge and
6 a charge on the confession which I will also make
7 both of those, and an expert witness testified,
8 expert witness charge about the weight of the expert
9 witness's testimony, and an identification charge.
10 Anything else?

11 MR. WILDER: Your Honor, on the identification
12 charge I believe there is one called the Tellfare
13 charge.

14 THE COURT: There is the Tellfare charge.

15 MR. WILDER: And it concerns where -- I believe
16 where there has just been one person to make an eye
17 witness identity, and I believe that's what we have
18 in this case. So I would ask for that charge, a
19 special charge has got more information about
20 opportunity to observe and all that kind of stuff.

21 THE COURT: All right. I would tell you,
22 Mr. Wilder, I will give you a chance to tell me about
23 it in the morning. If you'll look up in Judge
24 Anderson's book section 6.6-one, there is a charge
25 about identification that he identifies -- US

1 versus -- and US versus Tellfare and then he does
2 include there Tellfare charge with exactitude, and I
3 will let you look at that and tell me why you think
4 that that is appropriate.

5 But it appears to me that the 6.6-one
6 original -- basic charge as Judge Anderson has in his
7 book will be sufficient. But let's look at Tellfare
8 over the recess and let me know if you -- and if it
9 seems like I have got to read Tellfare to see how --
10 it's just little more detailed than the basic charge,
11 but -- but if you'll look at Tellfare and if Tellfare
12 is necessary, tell me why you think it's necessary, I
13 may consider that.

14 MR. WILDER: All right.

15 THE COURT: Be prepared to tell me that in the
16 morning about a quarter to nine.

17 MR. WILDER: All right. Your Honor, also, and
18 the Court is right and I'm rather heavily riding
19 alibi as a defense. But also, Your Honor, the State
20 is relying heavily on the statement my client
21 allegedly gave, and in the statement it said that he
22 returned fire.

23 So, I would request a charge on duress and
24 necessity and also a charge on self-defense.

25 THE COURT: I have some problems with that.

1 It's been inconsistent with your defense, Mr. Wilder.
2 You know, I -- how can -- I want some law on this in
3 the morning.

4 If you think you're entitled to a self-defense
5 charge when you rely on a -- an alibi charge that
6 your client was not even there, whether you are
7 entitled to a -- a self-defense charge under that
8 circumstance. I -- there is some law out there on
9 that and I'm just not sure what it is.

10 But I will have to add that in the morning at
11 8:30.

12 MR. WILDER: All right. Your Honor, I will do
13 that. Of course, the strength of my argument is all
14 based on the contents of the statement that the State
15 put into evidence, and if -- in the event that of
16 course the jury believes that that's the way it
17 happened, I believe the statement all by itself gives
18 rise to those defenses.

19 THE COURT: I understand that's your position.
20 And I -- not sure what the answer to that is. We are
21 going to look at that right now.

22 What's your position, Mr. Corbett? Do you think
23 that he's entitled to a alibi defense and a
24 self-defense -- and tell me what duress is,
25 Mr. Wilder, before I call on Mr. Corbett.

1 MR. WILDER: Your Honor, the duress would be
2 that the statement says that he was shot at and he
3 returned fire, shot once.

4 THE COURT: That's not duress. That's not a
5 defense of duress. That's the defense of
6 self-defense, but not duress. Duress is when
7 somebody -- let's look at it.

8 MR. WILDER: I always thought of it, Your Honor,
9 like if somebody pointed a gun at you and made you do
10 something and that's exactly what we got here. We
11 got somebody not only pointing a gun at you and
12 shooting it, that's -- that's duress it seems to me.

13 THE COURT: All right. Let me hear from
14 Mr. Corbett about first of all whether he is entitled
15 to the alibi and self-defense slash duress defense
16 and then we'll compare duress with self-defense and
17 if -- if we get beyond that. First of all, alibi
18 needs to be self-defense.

19 MR. CORBETT: Your Honor, I do not believe that
20 he is entitled to an alibi in that he has not shown
21 that he could not have been there at the time that it
22 happened. He showed that he was in--

23 THE COURT: Wait a minute. So you object to his
24 request on an alibi charge?

25 MR. CORBETT: That's correct, Your Honor.

1 THE COURT: All right.

2 MR. CORBETT: Because testimony was he was in
3 Columbia at 6:12. Other testimony said that -- from
4 witnesses said that that trip could be made in as
5 little as 22 minutes.

6 Our testimony does not put it -- or does not put
7 it within that timeframe, so he -- it's not
8 exclusive. He could -- our argument is that he could
9 have been on the scene.

10 THE COURT: I know, but you -- as far as the
11 alibi defense, have to look at it from the standpoint
12 of all of the testimony in this case including his
13 testimony that there was enough time in there between
14 the time this happened and the time he arrived at the
15 scene or arrived in Columbia. I mean, isn't that a
16 factual question for the jury's determination?

17 MR. CORBETT: Your Honor, I will concede that
18 that's a factual determination.

19 THE COURT: All right. So he's entitled to
20 the -- he's charge -- he's entitled to the charge
21 based on a factual determination of the jury and I
22 will give him that. So I think the alibi defense --
23 I mean the alibi charge is appropriate based on the
24 conflict in the testimony.

25 MR. CORBETT: Your Honor, with regard to the

1 self-defense charge, there is some elements about
2 self-defense, about duty to retreat, bringing about
3 circumstances, fearing for your life, et cetera, none
4 of which he testified existed.

5 He said, I was shot at, I shot back. But there
6 was no other testimony from the defendant that he met
7 or fit into any of the criteria of self-defense. As
8 a matter of fact, I believe in his statement it was,
9 we were leaving when I shot.

10 So Judge, I don't know how he can say nothing
11 from the stand, I wasn't there, it didn't happen.

12 *THE COURT:* Well, disregard that for a minute.

13 *MR. CORBETT:* Okay.

14 *THE COURT:* We'll get to that in a minute.

15 *MR. CORBETT:* And then within the body --

16 *THE COURT:* Let's assume that -- that his
17 statement, the testimony -- only testimony in the
18 record is his statement. Would that be enough to
19 justify the circumstance?

20 *MR. CORBETT:* Judge, I do not believe that it
21 would be because there's no -- nothing in the
22 statement about any of the other elements of
23 self-defense, about his ability to retreat, what --
24 whether he felt fear of his life or anything of that
25 nature.

1 *THE COURT:* All right. Then finally let me ask
2 you what your view of duress defense. I know it --
3 as far as whether it's charged or not it's going
4 to -- would -- it will fall to some degree in the
5 same category as self-defense, whether he's entitled
6 to it when he says he's not there, but is duress --
7 what's the difference between duress and
8 self-defense?

9 *MR. CORBETT:* Your Honor, I understood duress to
10 be me threatening -- or I'm using example -- he
11 threatening Investigator Turner to get him to do
12 something. Now, if I assault Investigator Turner and
13 make him fear for his life and he shoots at me, then
14 that's self-defense. But I don't believe that's
15 duress.

16 *THE COURT:* Well, as I read duress, there's got
17 to be some coercion. In fact, the actual definition
18 is duress slash coercion. To establish duress it
19 will excuse a criminal act to a degree of coercion
20 must be present, eminent and of such nature to induce
21 a well-rounded apprehension of death or serious
22 bodily harm if the act is not done.

23 Coercion is no defense if there is any
24 reasonable way other than committing the crime to
25 escape threat or harm. The fear of injury may be

1 reasonable. Finding duress requires evidence showing
2 that degree of coercion was present.

3 In fact, State versus Rocheville, 310 South
4 Carolina 425 Southeastern second 32 apparently
5 holds -- and I am not looking at the case but looking
6 at an annotation to the case, that duress is not a
7 defense to murder.

8 Duress is the only means of avoiding greater
9 harm is for the defendant to engage in illegal
10 conduct resulting in a lesser harm, he should not be
11 held criminally responsible for the illegal conduct.

12 The commission of the crime which results in the
13 lesser harm is therefore justified. That's the way I
14 read the duress defense, Mr. Wilder. I'm not sure.
15 I haven't made up my mind with regard to the alibi,
16 vis-a-vis self-defense yet, but I'm not sure if
17 you're entitled to alibi -- I mean to self-defense
18 and duress.

19 But I will hear from you in the morning and at
20 8:30. Let's be here at 8:30 to take up that so we
21 can get these matters resolved and be ready to go the
22 jury and I think be ready to hear arguments at 9:00.
23 Thank you, counsel.

24 We'll be in recess until about 8:30 in the
25 morning and 9:00 with the jury. Thank you.

1 (Court in recess for the evening.)

2 ***** November 13th 2008 *****

3 THE COURT: All right. We are back on the
4 record with regard to the matter of the State versus
5 Wayne Darnell Cooper. Mr. Cooper is present in the
6 courtroom with his attorney, Mr. Wilder.

7 Several things, counsel, before we get started.
8 I understand we are still lacking a couple of jurors.
9 They are not supposed to be here till 9:00 but I
10 wanted to go ahead and get these matters on the
11 record and get them cleared up so we can start
12 promptly with the jury at 9:00.

13 First of all with regard to the defense's
14 request that I charge the Tellfare charge on
15 identification, I am going to charge the Tellfare
16 charge as contained in Judge Anderson's book. I
17 believe that it is section 6.1 or six-one. And I
18 will charge the Tellfare charge as is contained
19 there.

20 Secondly, with regard to the request for a
21 charge on duress, I respectfully deny that charge.
22 Don't think duress is applicable to the facts of this
23 case because it is nothing -- no testimony or no
24 evidence that he was -- what actions he took were
25 because he was in fear of anybody, and that would be

1 the duress situation. The facts simply don't fit the
2 duress situation.

3 Secondly, with regard to the request to charge
4 of self-defense I would respectfully deny that as
5 well. I think that it is not compatible with the
6 facts of this case and the defendant's alibi defense
7 that he has raised in this matter, especially in view
8 of the fact that he testified himself and denied that
9 he was even at the scene or that he made the
10 statement that the only place that the possibility of
11 a self-defense could be raised would be in that
12 statement.

13 And as I say, the defendant testified that he
14 didn't make that statement and it was made up base --
15 basically that it was made up by the police officers,
16 and I think it is completely inconsistent with his
17 alibi defense.

18 Put him in the position, if you believe the
19 statement, the defendant made the statement, then the
20 defendant perjured himself on the stand by denying
21 that he was even there or that he made the statement.
22 I just don't think that that's appropriate and so I
23 would respectfully deny that.

24 And I understand, Mr. Wilder, that you object to
25 that or take exception to that and I will be glad for

1 you to put your position on the record.

2 MR. WILDER: Thank you, Your Honor. Your Honor,
3 first of all, to the extent that a written request to
4 charge might be appropriate or needed at this time, I
5 would ask the Court to allow me to rely on the way
6 that the self-defense charge is typed out also in
7 Mr. Anderson's book which would be section six-six
8 which I respectfully requesting the charge -- the
9 Court to charge. I understand that you have ruled
10 that that be denied.

11 But our position, Your Honor, is -- and that's
12 on page 457 of his book. Your Honor, to the extent
13 that I believe that it's appropriate, I would like to
14 say this. State versus Lord Byron Slater, Your
15 Honor, was decided by the State of South Carolina
16 Supreme Court April ninth, 2007. It's opinion 26299.

17 And of course, as the Court's aware, the Supreme
18 Court they said, well, it's not reversible error when
19 they fail to charge self-defense in that case. But
20 that was appeal -- a case that reversed the Court of
21 Appeals finding that it was reversible error to fail
22 to charge it.

23 And I'm relying on the strength of the Court of
24 Appeals analysis in Lord Byron Slater for the
25 proposition that it would be appropriate in this case

1 also because the distinguishing factor between this
2 case and Lord Byron Slater is that it would not be
3 unlawful for my client to have possessed a firearm
4 and therefore that element of self-defense wouldn't
5 be apodictically absent.

6 *THE COURT:* Well, my recollection of the facts
7 of that case, and I confess I have not read it in --
8 our brief in-chambers discussion was first of all,
9 I'm not sure whether the defendant testified in that
10 case, but the other factor in that case is that it
11 was a situation of denying that he fired the gun, not
12 denying that he was there. There's no alibi defense
13 in that case.

14 *MR. WILDER:* Let's see. Well, having spent most
15 of last night on my closing argument, I can't
16 exhaustively--

17 *THE COURT:* I can't either. But I -- that's
18 going to the ruling of the Court. Your position is
19 noted.

20 *MR. WILDER:* Thank you, Your Honor and I -- but
21 I do respectfully want to point out that the -- the
22 statement came in over our objection on finding that
23 the Court thought preponderance of the evidence
24 indicated that that statement was free and
25 voluntarily, knowingly and intelligently given and so

1 the -- it is before the jury.

2 The statement I believe would put a reasonable
3 person, if you -- if you believe everything it says,
4 would put a person, reasonable person, in fear of
5 great bodily harm before the fatal shot was fired.

6 The statement only says that one shot was fired,
7 not multiple shots, and it -- the statement goes on
8 to say that it was in direct response to being fired
9 upon by the victim.

10 So Your Honor, with all of that, we believe that
11 self-defense is before the jury if pragmatically
12 looking at it the jury refuses to believe anything
13 that defense evidence shows but only believes what's
14 in that statement.

15 *THE COURT:* All right.

16 *MR. WILDER:* That's our position.

17 *THE COURT:* The exception is noted and you're
18 protected on the record.

19 *MR. WILDER:* Thank you, Your Honor.

20 *THE COURT:* Now, Mr. Herring, the juror that was
21 excused yesterday, did I give you back the juror
22 list?

23 *BAILIFF:* Yes, sir.

24 *THE COURT:* Sir?

25 *BAILIFF:* Yes, sir.

1 *THE COURT:* Let me see it. All right.
2 Yesterday counsel had discussed the juror Mrs. Watts
3 had a conflict this morning that she needed to take
4 care of and I had discussed that with the counsel and
5 decided that it was appropriate that she be dismissed
6 and the alternate juror was selected, and Mr. Wright
7 was selected to take her place.

8 I believe you put on the record yesterday
9 that -- that that was the procedure that was being
10 followed and there was no objection by the State. Is
11 that right, Mr. Corbett?

12 *MR. CORBETT:* That is correct, Your Honor.

13 *THE COURT:* Mr. Wilder?

14 *MR. WILDER:* That is correct, Your Honor.

15 *THE COURT:* All right. I will take care of that
16 juror when the jury comes back in. Secondly,
17 counsel, there was an article in this morning's
18 newspaper about it that the newspaper erroneously
19 reported that the defendant Derrick Cooper was on
20 trial and in fact both brothers were on trial.

21 I am going to ask the jury, make sure that no
22 jurors read that newspaper story or anything to do
23 with it and followed my instructions with regard to
24 that. But this is the very reason that we instruct
25 jurors not to listen to broadcast media or news

1 stories concerning a case.

2 A reporter comes in here and sits in the
3 courtroom for 20 minutes and writes a story that is
4 completely wrong. All right. So we got all the
5 jurors?

6 BAILIFF: Yes, sir.

7 THE COURT: All right. Anything before we bring
8 the jury in, Mr. Corbett?

9 MR. CORBETT: Nothing from the State, Your
10 Honor.

11 THE COURT: All right. Bring the jury in,
12 please.

13 (Jury entered the courtroom.)

14 THE COURT: Thank you very much, ladies and
15 gentlemen, and thank you for your promptness in being
16 back here and you will note that one of your members
17 are missing and that is because of a matter that
18 arose that required me to excuse her.

19 And this is the purpose for which we draw
20 alternates. And so I have excused Mrs. Watts from
21 any further responsibility on this case and we have
22 gone through the procedure for determining which of
23 the alternates will serve in her place.

24 And Mr. Wright, you are the one that was chosen
25 of the two alternates to serve as a 12th juror in

1 this case, so I'm going to ask if you will take a
2 seat in the main part of the jury box. All right.
3 And you 12 will be the principal jury in this case.
4 Mrs. Caldwell still serving as the alternate.

5 Now ladies and gentlemen, I need to ask you now
6 and would ask that you respond if anyone over the
7 evening recess has read any news stories regarding
8 this case or heard any broadcast media regarding this
9 case, please indicate by raising your hand at this
10 time.

11 Okay. Thank you very much. No response. And
12 that's good. As I told you yesterday, we have
13 concluded all of the testimony in this case and there
14 are only two things that remain to be done. Those
15 are the arguments of counsel and the instructions on
16 the law by the Court.

17 I will tell you now as I did at the first of
18 this case that the arguments of the lawyers are not
19 evidence in this case. They are simply the lawyers'
20 views of what they think the facts show or the
21 evidence shows.

22 You will decide this case based upon the
23 evidence that you have heard from these witnesses who
24 have testified in this matter from this witness stand
25 and from any exhibits that have been introduced into

1 evidence which you will have the right to take with
2 you back to the jury room at the time that you retire
3 to reach your verdict.

4 And the lawyers' arguments are not evidence, but
5 the lawyers do have a right to -- not only the right
6 but the duty on behalf of their clients to address
7 you now and to give you their views of what they
8 think the evidence shows.

9 When they have concluded that, I will then
10 instruct you on the law of South Carolina as it
11 pertains to the facts of this case as you may find
12 those facts to be and then you will be allowed to
13 retire to your jury room to deliberate your verdict.

14 You will hear first from Mr. Wilder on behalf of
15 the defendant and then from Mr. Corbett on behalf of
16 the State. Mr. Wilder.

17 MR. WILDER: May it please the Court.

18 THE COURT: Yes, sir.

19 CLOSING STATEMENT

20 MR. WILDER: Good morning. I have been
21 practicing law for over 30 years. And it is a great
22 privilege and an honor to be in this courtroom, to
23 have the responsibility of representing Mr. Cooper in
24 this case because our justice system is the finest
25 justice system in the world.

1 Built on good folks just like you to judge these
2 folks over here, law enforcement, like my client,
3 depends on all of us to look in the mirror every
4 morning, know we are doing the right thing.

5 That's the most important thing. To get up in
6 the morning, look in the mirror, you want to know
7 you're doing the right thing.

8 And a criminal case, as his honor is going to
9 tell you in a little while, proof in that case, that
10 rests with the State. They have the burden. They
11 have to -- the defendant does not have to prove
12 anything. Never has to prove anything. Doesn't have
13 to prove alibi, doesn't have to prove self-defense.
14 Doesn't have to prove anything. No burden on the
15 defendant at all.

16 Come to the end of the case, you have a
17 reasonable doubt, it was the State's burden to prove.
18 The State's burden to take away any doubt. What is a
19 reasonable doubt?

20 The Court will tell you that sometimes we think
21 of it like this. It's not every doubt that you might
22 have, not a fanciful doubt, not a whimsical doubt,
23 it's a doubt that would cause a reasonable person to
24 hesitate to act. Hesitate.

25 Maybe in life when you get up in the morning,

1 you're on the way to work, you're cooking something
2 on the stove, you get in your car. Think to
3 ourselves, well, did I cut the stove off before I
4 left. You hesitate. Well, I can't remember if I did
5 that or not. I better go back inside and check.

6 I have had to do that many times. Seen other
7 people do it. Go back and check, make sure. Why?
8 Because making a mistake in an insinuation like that
9 will cause terrible, terrible consequences. Might be
10 a terrible...

11 Ladies and gentlemen, you cannot afford to make
12 a mistake. The Judge is going to tell you that the
13 burden is on the State and they have to prove murder
14 beyond a reasonable doubt.

15 You have doubt that causes you to hesitate, if
16 you're thinking about the evidence in this case, if
17 it causes you to hesitate, your sworn duty as jurors
18 in this case is to come back with a verdict of not
19 guilty. That's the law.

20 And the only way this system of justice works is
21 if we all abide by the law and we do the right thing.
22 So tomorrow morning when you get up, whatever you do
23 today, I want you to be able to look in the mirror
24 and know that you did the right thing.

25 And I submit to you after you look at all this

1 evidence sitting up here, you're going to conclude --
2 and think about what you heard on that witness stand,
3 you're going to conclude that there are many, many,
4 many reasons why you have a doubt and why you should
5 hesitate to act and why you should never, ever vote
6 guilty to convict Wayne Cooper of committing this
7 offense.

8 The first thing I want to say about the
9 evidence -- talking about the law for a minute. I
10 want to talk about the evidence now -- is that we
11 have a situation where Miss Mary Green is out on the
12 road with Brandon Green. They had been to a party
13 all night long. That's obvious.

14 Somewhere there was enough drinking going on at
15 that party for Brandon Green had .25 in the way of a
16 blood alcohol level inside of him. And Mary Green,
17 oh, I didn't see him drink. I didn't -- and he had
18 THC in his system which meant that Brandon Green was
19 smoking marijuana. I didn't see him using any drugs.

20 Is that believable? Is Mary Green telling you
21 the truth? And then she doesn't identify anybody in
22 this courtroom. No, I can't say that that's the man
23 that did it. Doesn't -- doesn't identify Wayne
24 Cooper.

25 Some black males in a car, a dark car, tinting

1 involved somehow apparently, but she's not able to
2 see, doesn't see who it was involved. Whatever took
3 place, she doesn't make an identification.

4 Is it credible that the police never asked her
5 to pick anybody out of a line-up? Didn't even try?
6 How about the photo show-up? Didn't even take
7 pictures of folks and show it to her and say, can you
8 pick out one of these people.

9 So there's no identification of anybody by Mary
10 Green. There's no even identification of a specific
11 car by Mary Green. A dark car. The police, when
12 they get there and they begin to investigate this
13 thing miss the obvious.

14 The lady is there at the scene. A box -- an
15 empty box of bullets is lying right next to the guy.
16 Where is the gunshot residue kit on Mary Green? She
17 got on the stand and testified she had been at this
18 party all night long till early, 5:00 -- 5:00 later
19 after 5:00, 5:15, 5:30, I don't know exactly what
20 time she said she left.

21 We know what time the call came into law
22 enforcement. That's the first absolute certain thing
23 in this case.

24 Call came in at 5:58 am. It's two minutes
25 before 6:00. All right. They're going to try to

1 back that up three minutes, but that's not what the
2 report says. Let me show you this. Here is the
3 Coroner -- not the Coroner, the Pathologist test.
4 This is Dr. Ross' information that they gave her when
5 they... report signed by Dr. Ross.

6 This 19 year old black male was the victim of a
7 shooting which occurred on 9-2-06 at approximately
8 5:58 am, Sumter, South Carolina, walking home when a
9 car came up behind him with three males in it and a
10 shot came from the victim -- vehicle. Allegedly he
11 was a drug user. The body was brought to this -- for
12 autopsy.

13 That's the information the police were given
14 that morning. So the police are out there under the
15 impression that Brandon Green is a drug dealer. We
16 know he had crack cocaine in his pocket. That was
17 testified to, plastic bag with crack cocaine in it.
18 We know he had THC in his system. Smoking marijuana.
19 We know that he was very, very highly intoxicated.
20 .25 alcohol level or even possibly greater.

21 He did not pass away at the scene. You look at
22 that report, you will find he passed away later at
23 Tuomey Hospital.

24 Now, so Mary Green never identifies anybody.
25 Trying to connect this event back to what Wanda

1 Rogers said she saw earlier that morning some 25
2 minutes before she finds out about any shooting.

3 She says looking out one window of her house
4 toward the fire station that she sees the car and
5 some chubby black male switching places in the car
6 with somebody else, one of them's got an afro out to
7 here -- you remember I asked her about the afro --
8 about an inch about a half she said, hair was
9 sticking out.

10 220 pounds maybe up to 250 pounds. This is the
11 information she gave to the police. Two black males,
12 one of them wearing a white T-shirt and the other one
13 wearing black shorts.

14 Now here's the problem. She doesn't attach any
15 name to these people until two months later. And
16 then two months -- and two months later she wants to
17 say, well yeah, I saw them before in the mobile home
18 park, and you know what the -- the one of them was
19 driving a dark green vehicle and I seen him there
20 before.

21 Doesn't say exactly when, doesn't say how many
22 times, and I -- you know, that would be -- that would
23 be Wayne Cooper. That's who that was. First
24 problem.

25 It's five in the morning. Five in the morning.

1 And she is supposed to be looking out her window down
2 the street toward the fire department. Well, the
3 problem is even on the pictures that the Solicitor's
4 been using, there are trees in the way.

5 And the second thing is her bedroom isn't on the
6 house next to the fire department, it's on the front
7 of the house which is down the other direction on her
8 trailer according to her testimony.

9 And did you pick up on the fact that as -- as
10 Wanda's testifying and I'm certain to point out that
11 the bushes are in the way, that her bedroom isn't on
12 the end of the trailer right there next to the fire
13 department. Oh, well, you know, it's out in front
14 and I could see out the front.

15 And then we begin to develop information the
16 angle. You can't even see out that window. Now, the
17 reason it's important for you to start thinking about
18 that is because that -- I believe goes to her
19 opportunity to observe, the accuracy of her
20 identification, whether or not the people that she
21 says she saw are actually this man and his brother.

22 The description she gave the police doesn't
23 match these two guys. And friends, they didn't have
24 time to get a hair cut that morning and change their
25 clothes and all of that kind of stuff. They were on

1 their way to work just like they had been doing every
2 day before this thing and every day after it.

3 And we know that now because although we had to
4 wait till it was my case, I'm trying to put into
5 evidence, here is Wayne Cooper's work record which
6 the State had all along. But did they want you to
7 see this? Did they put it in in their case?

8 My friends, all of us in our system of justice
9 depend upon whether or not law enforcement and the
10 Solicitor's office are doing the job that we think
11 they ought to do.

12 If you want justice in California and Washington
13 DC and New York City, we have to do justice here. We
14 have to look in the mirror and know we're doing the
15 right thing.

16 If Wanda Taylor -- I mean Wanda Rogers in her
17 identification was so accurate, why didn't they let
18 her pick somebody out of a line-up? They had these
19 two guys in custody as of September the fifth, 2006.
20 And all the way from then to now they never tried to
21 see, not even see, if Wanda would pick them out of a
22 line-up.

23 What's wrong? What's going on here? What don't
24 they want you to know? Procedurally after I put up
25 the defense case, you noticed that Mr. Corbett called

1 Tommy Barron back to the stand to talk about that
2 statement he took. You remember?

3 That tells you that the State, which they knew,
4 had the opportunity even after I finished my case to
5 put up what they call reply testimony. And if they
6 can disprove anything that I put up there in the way
7 of evidence for the defense, then they have that
8 opportunity to show to you, the ladies and gentlemen
9 of the jury, anything we said that wasn't accurate
10 isn't so.

11 So they put Tommy Barron back up there and they
12 go through this jail record because they are wanting
13 to make sure that y'all understand that all that
14 information in that statement came from my client, of
15 course, to show that the phone number is the same on
16 here as it was on the statement. And we know this
17 phone number is inaccurate. Okay.

18 Well, did Tommy Barron have anything to do with
19 that? No. Okay. If they really wanted to prove
20 something, why didn't they call this guy right down
21 here, Corporal Mullner. He's the one that got that
22 information. He knows where he found that phone
23 number. But they didn't do that in reply.

24 The point of that is to say that if the State
25 didn't come back in their reply case and disprove

1 what we said, you're entitled to believe it because
2 the State got nothing to challenge it. And let's
3 talk about what they didn't challenge.

4 They didn't challenge the fact that the Wyboo
5 Plantation Utilities Inc cut off the water first of
6 the month out there. Derrick and his brother wound
7 up staying over there on 905 Suzie Rembert.

8 They didn't challenge the fact that these work
9 records are in any way incorrect. They didn't
10 challenge Dr. Rasul's testimony.

11 Although, be frank with you, I don't think I'm
12 going to go to Doctor's Care, I really don't. Makes
13 me a little nervous the treatment they got out there.
14 But any way, that's where my client was being
15 treated. They didn't challenge that.

16 They didn't challenge the fact that he was on
17 medication, right? And picture-wise, remember this?
18 Number 21. Picture of the cans of the garbage can.
19 Remember my client said, well, they must have taken
20 them out of the car and put them in there because
21 that's where they are.

22 They had an army of police officers over there
23 at 905 Suzie Rembert. If these cans weren't taken
24 out of my client's car and put in the trash can, they
25 had an army of officers they could have called in

1 reply to say that that didn't happen. But did they
2 call a single person who was over there? Not one.

3 Okay. So those cans were in my client's car
4 just like he testified to. All right. And here's
5 something else. The State at some point realized
6 that the work records from Fire Mountain were totally
7 inconsistent with their theory of the case.

8 I don't know what date they realized that, but
9 it was sometime shortly after September 5th I submit
10 because they never wanted you to see any of that
11 video.

12 Jamie Turner testified he went over and he saw
13 it with his own two eyes, saw a video of these two
14 guys arriving at the Fire Mountain several minutes
15 before they clocked in.

16 You -- he said you could see them out in the
17 parking lot coming up to work, how they were dressed.
18 He says he went over there and requested that he get
19 a copy of that video.

20 Well, I ask you, how hard did he try? How hard
21 did he really try to show you where my clients were
22 that morning? How hard did he try? Because when our
23 investigator went over there, there was still a piece
24 of the inside thing left. And if we had tried, he
25 could have got that, too.

1 MR. CORBETT: Objection, Your Honor.

2 THE COURT: What's the objection?

3 MR. CORBETT: The testimony as to what my
4 investigator did.

5 THE COURT: No, sir. That is -- limit your
6 comments, can't testify what the investigator did.
7 Got to be testimony that's in the record, Mr. Wilder.
8 Make sure you confine your arguments to testimony
9 that's in the record.

10 MR. WILDER: Yes, sir. If Mr. Turner had wanted
11 to, he could have found it. And the fact that it was
12 still there, the inside part of it is evidence of
13 that which you have, was testified to in the
14 courtroom.

15 MR. CORBETT: Objection, Your Honor.

16 THE COURT: All right. Again, let Mr. -- limit
17 the testimony to the evidence that's in the record,
18 Mr. Wilder, or matters reasonably inferable from
19 matters in the record.

20 MR. WILDER: All right. You recall that my
21 client identified his picture from the security
22 camera video when the Solicitor got up and asked,
23 didn't you see a picture?

24 And at that point that was shown to my client
25 and identified by my client as he and his brother

1 coming into work that morning, the interior camera
2 shot, and that was testified to. And that's what I'm
3 referring to.

4 That was still available to be there. But did
5 the State want you to see it? I submit they did not
6 because they did not bring it to you in their case.

7 You know, reasonable doubt cannot only be found
8 by evidence. It can be found by the absence of
9 evidence.

10 I want to talk now about this statement. And
11 I'm referring now to State's exhibit 19, State's
12 exhibit 18. This is what they say my client told
13 Tommy Barron behind the closed doors with no other
14 witnesses. If you will look at it closely, you will
15 see that it's dated September 5th, 2006, at 8:00 pm
16 right here.

17 A little bit later on its dated September the
18 fifth, 2006, 8:05 pm, five minutes later down there,
19 then you look down here, 8:50 pm which is almost at
20 the end of the hour, okay.

21 So we got the beginning of the hour and almost
22 10 minutes close to the end of the hour. Fifty
23 minutes. About 50 minutes he was locked in that
24 room, shut in that room with the door shut. The only
25 person in there is Tommy Barron.

1 Okay. Now, I wish my client didn't drink. I
2 wish on payday he hadn't smoked any marijuana. I
3 wish he wasn't being treated by a doctor on that day
4 and had a pain patch and had Motrin that he took
5 right after he got off work.

6 But I imply you to drink all that and to take
7 all that medication and to know what you were doing.
8 And the police don't want you to know that he was
9 highly intoxicated.

10 And I think you can reasonably conclude that
11 from the evidence. And the way you can is by the
12 fact that when I asked him, well, didn't you take a
13 drink out of his hand?

14 Oh, no. Well, didn't you -- or, you know, later
15 on we get from Derrick Cooper they arrested him with
16 simple possession of marijuana. They knew that they
17 were smoking marijuana in the car. Did the police
18 want you to know that? No. Why don't they want you
19 to know that?

20 I submit they don't because if you find that
21 Wayne Cooper on that day and that time did not
22 knowingly, voluntarily and intelligently waive his
23 rights and did not freely, voluntarily and
24 intelligently give a statement, then the Judge is
25 going to tell you that you may not consider this as

1 evidence in this case.

2 And let's discuss some reasons why you might
3 want to hesitate to act on evidence like this. First
4 of all, although their department policy obviously
5 requires two witnesses because there's a blank for
6 the second witness -- this is their form -- no second
7 witness.

8 Second of all, although their statement says
9 that they initial these things, no initials. Why is
10 that important? Well, because somebody could have
11 signed a blank form. This is not my client's
12 handwriting. None of it except the signature which
13 my client looked at, said, yeah, he asked me to sign
14 on that line, so I did.

15 Is there any testimony in the record that my
16 client read it before he signed it? Is there any
17 testimony in the record that my client wrote it?

18 You know why he initialed these things? You
19 initial them so that if you have to prove it later,
20 you can prove that the defendant actually looked at
21 the spot where they changed something, that the
22 defendant actually read the words that are on the
23 page and put their initials there because something
24 happens to those two points on the piece of paper.

25 There is no initial on this piece of paper,

1 ladies and gentlemen, so I submit that there is
2 another reason to hesitate to take this as meaning
3 anything except my client sat in the room for 50
4 minutes with Tommy Barron with no other witnesses.

5 Tommy Barron did not make up this statement. I
6 agree with that. You know what this is? I submit
7 that this is law enforcement's theory of the case.
8 This is what they think happened out there. And
9 Tommy Barron wrote it out.

10 Now, the Judge is also going to tell you that if
11 you think -- if you find that my client was promised
12 anything, you're not supposed to accept that
13 statement either.

14 So if you think that he was told that by Tommy
15 Barron, look, I'll let you go if you sign this, then
16 you're not supposed to look at this at all. That's
17 the truth.

18 If you think Tommy Barron said, I'll let you go
19 in you sign this, this is not evidence. It's that
20 simple. And that's what my client said happened.

21 Now, he's highly intoxicated once again. I defy
22 you to drink that much, smoke that much and get about
23 a half a pint of brandy, the medication. I just
24 don't think you would know what you were doing even
25 at 8:05, 8:50 pm when you got off work at

1 3:30 something and on your way home you had that much
2 to drink.

3 Now, let's go back to what happened on that
4 morning. Here is the test that Ila Simmons did on
5 GSR. Remember we don't have one on Mary Green. So
6 even though she was right there at the scene, may
7 have fired a weapon -- and why do I suggest that?

8 Because there was some chemical, some metallic
9 chemicals on Brandon Green's hand that may have come
10 from a gun that was close to him when it was being
11 fired.

12 Ila Simmons said within a foot and a half. That
13 distance is important because the Pathologist said
14 that Brandon was killed by a bullet that came from
15 more than 3 feet away from him. Okay.

16 So Mr. Corbett wants to suggest, well, couldn't
17 somebody be pointing the gun at Brandon Green and
18 then this gunpowder residue somehow get on his hands
19 from over 3 feet away? Ila Simmons says, nope, has
20 to be within one and a half feet for there to be any
21 gunpowder residue.

22 Okay. So we're looking at that. This report by
23 Ila Simmons says that there were chemicals on Brandon
24 Green's hand that come from gunpowder. It says that
25 there are not enough of them for her to conclude that

1 he fired a weapon.

2 Somebody close to him may have fired a weapon,
3 but not the person that shot the bullet that entered
4 his back. Presumably his hands were on this side of
5 him when somebody is behind him 3 feet or more and
6 fired that -- that gun. Again, read the
7 Pathologist's report. Distant gunshot wound.
8 Distant. It's important.

9 So, the police. I submit it's their theory of
10 the case that Brandon Green was shot in response to
11 him firing a weapon at somebody else. That's their
12 theory of the case. So I submit that's what was
13 written down here by Tommy Barron.

14 Now, up here we know he writes down 95 Suzie
15 Rembert Road. I never lived at 95 Suzie Rembert
16 Road. That's not his address. One or two things
17 going on.

18 Tommy Barron is making up what he's writing down
19 here, he's got it wrong, or my client is telling him
20 wrong, maybe my client is so intoxicated he doesn't
21 remember where he lives at that point.

22 But there's incorrect information on there.
23 Again, another reason to hesitate to use that as any
24 evidence.

25 The last reason on that statement is this. We

1 know this is the most important case that we have in
2 the law. Murder. That's what they're saying. Why
3 in the world didn't they tape record what was going
4 on in that room? Why didn't they do it?

5 Where is the videotape? They got cameras over
6 there. Why didn't they just take them in there and,
7 okay, you're going to give us a statement about what
8 happened, tell us what happened, and have it all on
9 tape where we could all watch it here today. No
10 tape. No videotape. No notes. I didn't take any
11 notes Tommy Barron says.

12 All we have is an uninitialed in Tommy Barron's
13 handwriting statement where he says he allegedly got
14 this information from my client. It doesn't match
15 anything Mary Green or Wanda Rogers said. It's not
16 the same thing.

17 You would expect it to be corroborated in some
18 way by some other witness. But if you listen to what
19 Wanda says happens, she never said she talked with
20 anybody.

21 She said she saw a car turn around and two
22 people change places. Miss Green never identified
23 anybody. But what she said happened doesn't match up
24 with what allegedly is in that statement.

25 Remember her testimony was, well, there were

1 three shots and nobody shot from our side, you know,
2 so her statement doesn't match that at all. Okay.
3 so the information that's in there doesn't match
4 anything and has not been corroborated by any other
5 independent fact.

6 I got to thinking about last night, said, well
7 why would -- Mr. Corbett and I were going to be real
8 clever about my argument, how would I approach this
9 thing.

10 Well, they are late for work. Late for work.
11 Set out to work on time but then they had this little
12 encounter over there in Cedar Hill Mobile Home Park
13 that slowed them down. So it took them longer to get
14 to work that morning than usual, late for work.

15 That means they were going -- be going pretty
16 fast, too; wouldn't it? Okay. We might make that
17 work. Well, let me think about that for a minute
18 with you.

19 The testimony is they usually get to work at
20 5:30. That's on time for them on that day. They
21 would have to be leaving out of there at 5:00 in
22 order to be work on time.

23 We know that this incident did not take place
24 until after 5:30 and all the way probably up until
25 5:58 on the -- what it says. Three minutes before,

1 if you want to accept law enforcement.

2 So if they started out to work on time, if
3 that's going to be Mr. Corbett's argument, which I
4 don't know what it's going to be, but if he was going
5 to try that, this incident would have had to have
6 taken place a lot earlier and therefore none of it
7 would make any sense because Mary -- and you remember
8 Rodney Green which I want to mention his appearance
9 on the stand, everything has already happened by
10 5:58 am in the morning.

11 *THE COURT:* Five minutes, Mr. Wilder.

12 *MR. WILDER:* Thank you, Your Honor. Okay.
13 Ricky Richards. Don't you want to know what he was
14 told by the witnesses who were on the scene that
15 morning? How did they put out a bolo on a Chevy
16 Capri? Where did that information come from?

17 Don't you want to know who said they were a eye
18 witness to the thing where three black males were in
19 a car and drove by? Don't you want to know that?

20 Ricky Richards, you take some notes? Oh, yeah,
21 I took some notes. Where are they? I... that's two
22 years ago. I'll -- I didn't say I destroyed them,
23 I'll go look for them. Okay. So I called him back.
24 Did you look for the notes? I can't find them.

25 Ladies and gentlemen, there's a reasonable

1 doubt, not just one reasonable doubt, there are so
2 many reasonable doubts in this case. Let's look at
3 the booking report just a minute. 145-pounds is what
4 Wayne Cooper weighed. Okay.

5 Evidently they think taking the tint is somehow
6 important in the case which -- there's enough
7 evidence to show that the tint was removed at any
8 particular time?

9 Remember Marie Hodge's testimony, that that --
10 that fingerprint or palm print or whatever it was of
11 Derrick could have gotten on that piece of tint that
12 was on the ground at any point in time indefinitely
13 back in history.

14 We talked about the gunshot residue. There was
15 no, none, no gunshot residue on the car that
16 Mr. Turner says is similar to the one described out
17 there. No gunshot. I got a little upset when Ray
18 Mackessy was on the stand.

19 I said, Ray, you did take a swab from the inside
20 of the car also? And that's so important because you
21 know, Mr. Corbett was trying to insinuate that the
22 rain had washed it away. This was on the inside of
23 the car door as well as the outside. No gunshot
24 residue.

25 Now, in order for you to think that's important

1 at all, Mr. Corbett's going to have to convince you
2 that they -- that somebody cleaned it all up. I
3 submit to you there is no evidence of that in the
4 record.

5 Lastly I want to say, these pictures that are in
6 evidence do not depict anything in the way of
7 evidence against Mr. Wayne Cooper or his brother. I
8 asked him about, did you run fingerprints on this box
9 that were on the scene? They didn't even try hard.

10 There are tests that they can do that they
11 should have done in order to try to establish Brandon
12 Green's fingerprints on that box. Okay. Please,
13 please when you go back there consider forensic
14 reports, the autopsy report -- read every word of
15 them, please, to one another.

16 Remember that why if it's so reliable did they
17 not take a videotape of my client in the room with
18 Tommy Barron. I ask you to please ignore that.

19 There was not a single witness called to show
20 that they ever looked for the gun opposite of the car
21 dealership. Not that you have heard. You did not
22 hear any testimony about that.

23 They admit they made no attempt to corroborate
24 this statement that was given, if it was given
25 correctly, and I submit that that is also a

1 reasonable doubt.

2 Derrick, when he testified, he testified exactly
3 what happened that morning. Wayne, when he
4 testified, told you exactly what happened that
5 morning.

6 They were not at Cedar Hill Mobile Home Park
7 when this guy was shot. They were either already at
8 work or on their way to work at Fire Mountain on
9 Garners Ferry Road in Columbia. That is an alibi the
10 defendant does not have to prove. They have to
11 disprove.

12 And those are the reasons why you should vote
13 not guilty and acquit this man of this horrible
14 charge.

15 *THE COURT:* Mr. Corbett?

16 *MR. CORBETT:* Thank you, Your Honor.

17 CLOSING STATEMENT

18 *MR. CORBETT:* Ladies and gentlemen of the jury,
19 good morning. I want to talk to you about the law
20 for a few moments and then in just a minute I'm going
21 to talk to you a little bit about the evidence that
22 we have seen this week.

23 The law in this case, the charge, is murder.
24 The killing of any person with malice aforethought
25 either express or implied. The killing of another

1 person with malice.

2 What is malice? Perhaps I can maybe, you know,
3 shorten in a sense, say it's wickedness, it's evil.
4 It's something that doesn't necessarily have a rhyme
5 or a reason to it.

6 So, somebody may have tried to attach some
7 reason to it, a beer bottle hitting my car or
8 something like that. But you can't put a reason to
9 shooting somebody in the back on the side of the
10 road.

11 Evil is just that. Evil. And it doesn't have
12 to have a reason to exist in the time -- the day time
13 began, evil hasn't had to have a reason to exist. It
14 just does.

15 Ladies and gentlemen, what you're going to hear
16 in this case is about murder. You're going to hear
17 about murder.

18 Now, as I talk about the facts of this case, I
19 had an occasion to sit here and listen to another
20 summation. Sometimes I want to jump up from that
21 table and I want to say, you know what, Tommy Barron
22 is a liar, call him a liar to his face and let's go
23 home because isn't that what he just did? Call him a
24 liar to his face.

25 A man who has been in law enforcement for 30

1 years, who retires and comes back, is out there
2 assisting that day -- not even the case agent who
3 tells you he says he wants to talk to me, and I go
4 and sit down and we take a statement.

5 It is hard to sit here and listen to someone
6 like Tommy Barron be demeaned for doing his job with
7 this statement.

8 I want to come back to that statement in a few
9 minutes. Mary Green is walking down the road with
10 Brandon Green. They have left Wanda's. They come
11 down here, they have an altercation on the side of
12 the road with a green car with a stripe on the bottom
13 of it.

14 Two people get out. One of them leaves walking
15 from there. The other one drives it away. She says
16 they shoot one time there. I don't know if it was in
17 the air or what. I couldn't tell who they were.

18 Mr. Wilder stands here and tells you Mary Green
19 is a liar. Let me ask you something, folks. If Mary
20 Green wanted to lie, how easy would it have been for
21 her to sit right there and look over there and go,
22 Wayne Green's the one who did it. How easy would
23 that have been for her to do?

24 It doesn't make her less believable. It makes
25 her more believable that she didn't sit here and do

1 something that would have been, they. Mary could
2 have sat right there and went, there he is right
3 there.

4 But what did she tell you? I couldn't see him
5 well enough to tell you. That makes her believable,
6 not unbelievable. So then they leave. And what was
7 her testimony? Seconds to a few minutes later they
8 come back. Brandon, you got it, you got it, I don't
9 got nothing, bam, bam, bam.

10 Where is Brandon Green shot? Right back here.
11 Goes through both of his lungs and his aorta. He's
12 bleeding to death on the side of the road in Cedar
13 Hill Mobile Home Park.

14 Mary runs up to get some help. It takes some
15 time to get everybody around to find a phone. Tameka
16 actually has to run back to Wanda's and use the
17 phone. Now remember -- let me stop right here.
18 Jamie Turner's testimony actually the first call was
19 5:55. His testimony the first call was 5:55.

20 So we know that the shooting had happened. Mary
21 tried to find out what was wrong with him, ran home,
22 woke people up and sent them -- Tameka had to go to
23 two places to make that phonecall. That's the
24 evidence and the testimony in this case.

25 Now, as the officers began investigating it,

1 they talked to Wanda where they had been earlier.
2 They had just left. Mr. Wilder wants to say, oh,
3 Wanda just happened to be up. Well yeah, people had
4 just left her house a few minutes before.

5 Well, she couldn't see the fire station. Says
6 who? Wanda said, oh, I was standing right there and
7 said I could see the fire station from my house.
8 There's a big light out in front of the fire station.
9 Is that a surprise that there's a big light out in
10 front of a fire station where people can see?

11 And I looked out my window and I saw the green
12 car with the stripe on the bottom come up. The
13 smaller one was driving. He got out and went around
14 to the passenger's side. The bigger one.

15 Nobody ever said Wayne Cooper weighed 200 pounds
16 ever. The bigger one walked around right -- I think
17 she said to the corner of my yard and got on the
18 driver's side of the car and then it went back into
19 the neighborhood.

20 Then that's when Mary told us about the shooting
21 that left Brandon dead. Now, Mr. Wilder wants to
22 stand here and say, oh, we are trying to keep things
23 from you, we want to keep something from you.

24 We brought Ricky Richards over here to tell you
25 I got some bad information to start with. They told

1 me about a two-toned car and I knew of one in the
2 area, so I put it out as a Caprice with three guys in
3 it.

4 A few minutes later I found out that was wrong,
5 so I put out the green car. Well, good God, let's
6 just all pack up and go home because Ricky Richards,
7 it took him five minutes to fix his mistake. That's
8 absolute nonsense.

9 Now another group of officers were called to
10 come in. Angie Boland, I'm the one who wrote afro on
11 the report. They described it as a close haircut.
12 She told you, that was my work.

13 Erin Boland came in and testified that he
14 couldn't -- he wasn't there, but he testified about
15 what he found when he saw and unfortunately he said
16 it didn't appear that he was breathing when he left
17 the scene. Erin Boland. What we're trying to do is
18 show you how the police go about getting there and
19 the steps that they take.

20 Detective Skinner, I brought him in. Well
21 really, what I did when I got there and I realized
22 how serious it was, I called for more experienced
23 investigators, turned it over to them.

24 So what happens when Jamie Turner gets there?
25 Jamie Turner gets there and they start looking around

1 trying to figure out what's going on, and he tells
2 you, I run down leads for two days before we
3 ultimately get to this house. He's working the case.

4 But I'm pointed a location down there, so I go
5 down there and I look and see the white Plymouth
6 Acclaim comes back to Wayne Cooper. That's where
7 witnesses sent me that morning. That morning.

8 So we're working putting this all together.
9 Sitting to that location, white car was there, Wayne
10 Cooper. And he testifies as they begin to develop
11 this information they discover this Suzie Rembert
12 Road address. And he has some officers go to that
13 address.

14 What do they see there? Green car, silver
15 bottom. White car, Plymouth Acclaim at that
16 residence. Okay.

17 So, who shows up there? Wayne Cooper and
18 Derrick Cooper. Well, Derrick Cooper, who lives at
19 Cedar Hill Mobile Home Park where Wayne is -- as well
20 sometimes.

21 They arrest them. What do they find? Because
22 remember witnesses had testified about green car
23 having tinted windows. They find window tint. Not
24 only do they find window tint, what did Investigator
25 Turner told you? I looked at the green car and you

1 could still see the marks on the glass from the
2 residue where it had been scraped off. From where it
3 had been scraped off.

4 Now, according to Mr. Wilder -- let me jump out
5 of order here for just a second if I may because I
6 want to talk about believability again. According to
7 Mr. Wilder, the police clean out the 300M for them
8 and threw it on top of the window tint? Does that
9 sound like something the police would do?

10 Hey guys, we're looking for a green car with
11 tinted windows. Well, here's a green car -- excuse
12 me -- but I don't see tinted windows. Wait a minute,
13 here's some window tint.

14 There it is, but I tell you what, y'all go over
15 to the 300 and bring me all those beer cans and the
16 Welchs juice cans and whatever else and let's throw
17 it on top of the window tint. Gee Whiz, does that
18 even make sense at all?

19 So we get to that point. Here's what we know.
20 Witness puts the shooter firing from the passenger
21 side of the green car with the silver stripe on the
22 bottom. Wanda Rogers says just before that, I saw
23 the car come to the police -- excuse me -- the fire
24 department. By the way, I know those guys. I don't
25 know them by name, but I have seen them in the

1 neighborhood before.

2 Wanda, do you see the person who got out the car
3 and got in the passenger's side? Yes, I do. It's
4 Wayne Cooper sitting right there. Wanda, could you
5 see him? Yes, from my window I could see that fire
6 department. I could see it. I recognize the other
7 guy, too. I didn't know his name at the time, but I
8 recognized him from living in the neighborhood. Told
9 you that.

10 Then the car goes back into the neighborhood.
11 Mary tells us, that's when the shots are fired and
12 they take out and take off. That car was -- with
13 window tint residue still on it and window tint in
14 the trash can is found at Wayne's house.

15 The police are doing their job putting this
16 together. So then while on scene Wayne says, I'll
17 talk to you.

18 Now, this has got to be my favorite part today.
19 When you do multiple pages, you initial the pages and
20 you sign the last one. This is a one page document
21 with a signature on it, a signature.

22 How is putting an initial down here going to
23 change his signature? To stand here and tell you
24 that somehow this statement is not valid because it
25 doesn't have an initial on it when it got the

1 signature? That's absolutely ludicrous.

2 So Tommy Barron takes the statement. Wayne
3 Cooper fills out his waiver of rights, okay. Keep in
4 mind, now, that he's already testified he's been told
5 we've got y'all for murder.

6 So he fills out his waiver of rights form and he
7 signs it. Then he talks to Tommy Barron and he signs
8 his statement. Tommy Barron tells you he reads it
9 before he signs it. Uh-oh, I have got a problem now,
10 I have given a statement.

11 Now, I did the best I could on my statement. I
12 had to come up with a reason why I shot. Yeah, he
13 shot at me so I shot back at him as we were leaving.
14 But no, I put myself there, now I got to do
15 something.

16 Okay. Derrick, here is what we are going to do.
17 We were drinking. That's right. We were -- wait a
18 minute. We were drinking a lot and I had the pain
19 patch on and I was taking some more medicine.

20 They weren't drinking so much that Derrick
21 couldn't drive a car. But yeah, he was drinking so
22 much that he fesses up to murder? How much you got
23 to drink to be able to fess up to a murder? That's
24 absolutely ridiculous.

25 And by the way, if Tommy Barron is going to

1 write a statement and make it up, is this what he
2 would have made up? Please. A man that's been in
3 law enforcement for 30 years, if he's trying to put
4 the frame up on you, he can do better than that.

5 He's not even going to put the part in there,
6 the -- the lie in there about the other guy shooting
7 at me. He's not going to put that in there if he's
8 going to make this up. Absolutely ridiculous to sit
9 there and think that Tommy Barron made that up.

10 Now, let's see what else I was accused of here.
11 See, apparently I didn't want you to see this. Well,
12 it's not my water bill, it's Derrick Cooper's water
13 bill. This is water service for October on it. For
14 October.

15 I thought this was the one that was cut off in
16 September. So it's my fault for not putting in his
17 water bill that has his October service on it?
18 Excuse me -- turned off in September.

19 Now, the other great thing about this is has the
20 State -- if we don't do it, our police -- excuse me,
21 if police don't do it, they are incompetent or idiots
22 for doing it, and if they do do it, they do it wrong.
23 They can never win in court cases it seems.

24 And what I mean by never win is they can always
25 have a way where the defense lawyer is going to get

1 them or bad mouth them for something. The GSR kit.
2 Did we hide the GSR kit from you? No.

3 Ila Simmons came and testified. Quantities of
4 metals on Brandon Green did not indicate gunshot
5 residue. Yeah, you can sit up here and say, oh, they
6 were metals on his hands but it did not indicate
7 gunshot residue.

8 Remember what else Ila Simmons said? There are
9 certain thresholds that have to be met because some
10 metals you just come into contact with in every day
11 life.

12 No gunshot residue on Brandon Green. No gunshot
13 residue on the car. Did we try to hide that from
14 you? No. But what did Ila Simmons tell you about
15 gunshot residue? Consistency of flour.

16 What are some of the things that can effect it?
17 Wind, water, wiping. Is it hard to believe that a
18 car would have gunshot residue on it if wind and
19 water and wiping can effect it? It's not something
20 we were trying to hide from you.

21 Let's see, what else was I accused of trying to
22 hide from you? Payroll records. An unsigned piece
23 of paper with some numbers on it for Wayne Cooper and
24 Derrick Cooper. And it's my fault for not putting
25 that in front of you?

1 What did Investigator Turner testify to? I went
2 to Columbia and looked at the videotape. I saw them
3 coming in at 6:12. That's what was on their system.
4 I went there and looked at it. I called them back
5 and asked them for a copy of it.

6 They said they couldn't make me a copy of it, I
7 didn't get it. I couldn't get it. Who had the
8 videotape if they wanted you to see it?

9 Now, there was a big deal made about the
10 Newberry pathology report. This paragraph here about
11 the 19 year old black male shot at 5:58. Now, we
12 know Dr. Ross wasn't there that morning.

13 We asked her about that. Where did that
14 information come from? The Coroner, I think. Was
15 she there? I don't know. She might have been, I
16 don't know.

17 The first call came in at 5:55. She's obviously
18 getting information from somewhere that doesn't have
19 the right information because they have got this at
20 5:58. We know that is after the first call came in.
21 That's not the evidence in the case.

22 The evidence in the case is the witnesses. Mr
23 Wilder stood here and told you that they didn't try
24 to get fingerprints off of this. Ray Mackessy told
25 you, I looked at it, I couldn't tell how long it had

1 been out there. Nobody said it was next -- right
2 next to the body, and said -- and I looked at it. I
3 even put the light on it and there were no
4 fingerprints on it. Okay.

5 Not only is Tommy Barron a liar, Ray Mackessy
6 now doesn't know what he's doing because he didn't
7 cook the superglue to try to look at it.

8 I have been doing this for a long time. I used
9 the light because I thought that was the best way to
10 see if there were prints on it and there weren't.

11 Mr. Wilder was talking about things that we did
12 not attempt to refute such as the water bill which I
13 have already pointed out had the October service bill
14 on it.

15 And his client taking medication. Well, who
16 does he want me to put up here to say whether or not
17 he drank beer and smoked weed and took pills?
18 There's nobody in law enforcement that was riding
19 with Wayne Cooper that day.

20 By the way, let me talk about that stop there at
21 the house because we're talking -- throughout the
22 whole thread of this we have to talk about
23 believability.

24 Derrick Cooper says he backs up in the yard,
25 police come running out -- and I think this was his

1 phrasing -- get the F out the car, get the F out the
2 car, with a rifle and pistols drawn around us, so I
3 took a hit of weed and a swig of beer.

4 Let me ask you, who is believable here? A
5 police officer pointing a rifle at you telling you to
6 get out the car and you're going to reach back and
7 pick up your beer because they had to cook that story
8 up about the alcohol and the drugs.

9 He was arrested for possession of marijuana, not
10 for smoking marijuana. But they had to come up with
11 that story to try to undo this. Which one has it --
12 is Tommy Barron making it up or did I give this
13 statement because I was wrong and under the influence
14 or maybe it was both, yeah, but we got to come up
15 with some things.

16 So they chose the, let's get off work at 3:36,
17 go to the Piggly Wiggly and cash a check, go to the
18 video store and buy video games, put gas in the car,
19 buy beer, and boy, we're going to start hammering
20 them down because we're heading straight to Sumter
21 and we are going to be there before five and we got
22 to get all this beer down and we have got to get some
23 medication in us and we have got to smoke some weed
24 so that this statement we gave we never gave and that
25 I signed the statement confessing to shooting

1 somebody and it was the fault of the beer and all the
2 other stuff.

3 Now, one other thing I thought was interesting
4 that I noticed. Here we go Ila Simmons. She does
5 the report January 8th of 2007 for an incident date
6 of September 2nd of 2006. Now remember, Mr. Wilder
7 said Tommy Barron wrote this report that fit into the
8 theory of the case.

9 So he had to do that with the gunshot residue
10 and all this other kind of stuff. This wasn't even
11 done yet. This wasn't even done yet. How did Tommy
12 Barron know that this was going to be the theory of
13 the case if it hadn't even been turned in yet? That
14 is just another attempt and effort to demean Tommy
15 Barron for absolutely no reason.

16 He says that because there's a blank on the form
17 here that Tommy Barron -- Barron somehow violated
18 department policy. There's no testimony or evidence
19 to that. None.

20 Just because he stands up here and says it
21 doesn't make it evidence. Evidence is the people
22 that are telling you the truth from right here.
23 There's no violation of department policy.

24 Wayne Cooper picked out Tommy Barron to talk to.
25 Took him in the room and talked to him. He puts

1 himself in that scenario and puts himself firing the
2 gun. Is it odd that he would try to minimize his
3 involvement or explain it away? No, that's not odd.

4 Of course he's going to try to come up with some
5 reason of why he did it. About 5:15 I was on my way
6 to work, went by my brother's. When did our
7 witnesses tell you this happened? Sometime in the
8 neighborhood of 5:30?

9 Wait a minute, we were at Fire Mountain at 6:12.
10 Okay. What did Jamie Turner tell you about Fire
11 Mountain? The day I was hurrying I did the trip in
12 22 minutes. Twenty-two minutes.

13 The first call came in at 5:55... 6:12, 17
14 minutes there. And there's already been testimony
15 that some time elapsed from the time of the shooting
16 until that call came in.

17 Folks, let me tell you what happened. Wayne
18 Cooper and Derrick Cooper are in that car. Somehow
19 form or fashion or other, I don't know, maybe Brandon
20 Green did throw a beer bottle at that car. They get
21 out and they have words there on the side of the
22 road. They ride up to the fire station. They decide
23 this isn't over. This isn't over.

24 They switch places in the car. They go back
25 into that mobile home park, how about it now? Pow,

1 pow, pow, one of those shots catches Brandon Green in
2 the back. It's time to high-tail it.

3 Let's get to Columbia, let's get into work so
4 that we have a place to be other than that mobile
5 home park out on 378 next to Shaw. They hightail it
6 to Columbia, a trip that Captain Turner could do in
7 22 minutes they could do as well, especially that
8 time of the morning.

9 All right. We got another problem. We in this
10 car, what are we going to do? All right. Here's
11 what we're going to do. You're going to drive your
12 car to Suzie Rembert Road and back it in behind my
13 house and we're going to--

14 MR. WILDER: There's no testimony of that in the
15 record. I object.

16 THE COURT: All right. Overruled. I think it's
17 reasonably inferrable.

18 MR. CORBETT: We're going to put that green car
19 behind my house at Suzie Rembert--

20 MR. WILDER: I ask the Court to note a motion,
21 please.

22 THE COURT: Noted.

23 MR. CORBETT: And we're going to get the window
24 tint off because we can't be seen back in Cedar Hill
25 in that green car.

1 Ladies and gentlemen, on the morning of
2 September 2nd, 2006, Wayne Cooper for no good reason
3 at all took the life of Brandon Green, for no good
4 reason at all.

5 He shot him down in the street for no good
6 reason. That's what the evidence in this case shows.
7 Thank you.

8 JURY CHARGE

9 *THE COURT:* All right. Mr. Foreman and ladies
10 and gentlemen of the jury, if you would give me your
11 attention. You have followed very patiently and
12 listened very attentively to the presentation of the
13 evidence in this case and also to the able arguments
14 made by the Solicitor, Mr. Corbett, on behalf of the
15 State and to Mr. Wilder on behalf of the defendant
16 and I thank you for that.

17 It now becomes the duty of the trial judge under
18 the Constitution of this state to charge and instruct
19 you on the law applicable to this case. Excuse me.

20 And it is your duty as jurors to accept and
21 apply the law as the Court will now state it to you.
22 And as jurors it is your exclusive duty to decide all
23 of the issues of fact in this case and for that
24 purpose to determine the effect, the value, the
25 weight, and the truth of the evidence presented.

1 Both the State and the defendant have the right
2 to expect that you will conscientiously consider and
3 evaluate the evidence, apply the law of the case
4 thereto to the end that both the State of South
5 Carolina and the defendant will receive and obtain a
6 fair and impartial trial in this case.

7 Now, when I use the word defendant, I refer of
8 course to Mr. Wayne Darnell Cooper. The State of
9 South Carolina by the bill of indictment in this case
10 charges the defendant with the offense known in the
11 law as murder.

12 And the indictment reads in part that Derrick --
13 that Wayne Darnell Cooper along with another did in
14 Sumter County on or about September the second, 2006
15 feloniously, willfully and with malice aforethought
16 either expressed or implied kill one Brandon Green by
17 means of shooting him and that the said Brandon Green
18 died as a result thereof.

19 To this charge and to this indictment the
20 defendant has entered a plea of not guilty. This
21 plea of not guilty by the defendant places the burden
22 of proof on the State to prove the guilt of the
23 defendant beyond a reasonable doubt before you, the
24 jury, can find the defendant guilty.

25 The defendant, Mr. Cooper, is presumed in the

1 law innocent of the charge contained in the
2 indictment. It is a cardinal and fundamental rule of
3 the law of evidence and the law of this state that a
4 defendant, irrespective of the enormity of the charge
5 against him, will always be presumed innocent of the
6 crime for which he is indicted unless and until the
7 guilt of the defendant has been proven by evidence
8 which satisfies you, the jury, of the guilt of the
9 defendant beyond a reasonable doubt.

10 The presumption of innocence is not a mere legal
11 theory. It is not just a legal phrase. The
12 presumption of innocence is a substantial right to
13 which every accused is entitled.

14 Our Supreme Court has declared that the
15 presumption of innocence is like a robe of
16 righteousness placed about the shoulders of this
17 defendant and it remains with him and assigns to him
18 that class, the innocent, until the presumptive robe
19 of righteousness has been stripped from his person by
20 evidence satisfying you the jury of his guilt beyond
21 a reasonable doubt.

22 The presumption of innocence accompanies the
23 defendant from the time of his arraignment and
24 appearance in this court and continues with the
25 defendant after you retire to the jury room to

1 deliberate your verdict.

2 The presumption of innocence continues in
3 existence to the benefit of the defendant until you,
4 the jury, reach the conclusion that he -- that the
5 State has proven his guilt beyond a reasonable doubt.

6 Now, the State is not required to prove the
7 guilt of a defendant beyond all doubt or beyond every
8 reasonable doubt, but beyond a reasonable doubt.
9 What is a reasonable doubt?

10 It is not an imaginary or fanciful doubt or a
11 weak doubt. It is a substantial doubt. It is a
12 doubt which the words imply, a doubt for which you
13 can give or assign a reason based on the testimony
14 and evidence in the case.

15 A reasonable doubt is not any sort of a doubt.
16 You and I know from every day life experiences that
17 you may have a sort of a doubt about any matter that
18 arises, no matter how trivial it may be or how
19 serious it may be.

20 A reasonable doubt is a doubt which makes an
21 honest, sincere, conscientious juror in search of the
22 truth hesitate to act.

23 Proof beyond a reasonable doubt is proof which
24 leaves you firmly convinced of the defendant's guilt.
25 If you have a doubt for which you could give or

1 assign a reason as to the guilt of the defendant,
2 then he is entitled to a verdict of not guilty.

3 A reasonable doubt may arise from the evidence
4 which is in the case or from the lack of evidence
5 which is in the case. You the jury must make the
6 determination of whether or not reasonable doubt
7 exists as to the guilt of the defendant.

8 The very fact, however, that the jury engages in
9 a full and free discussion of the issues of guilt or
10 not guilt in this case with the normal conversational
11 eb and flow of these issues does not automatically
12 mean that reasonable doubt exists in this case or in
13 any other case.

14 I charge you that the defendant is entitled to
15 every reasonable doubt arising in the whole case or
16 arising in any defense asserted by the defendant. If
17 upon any issue of fact essential to a conviction and
18 a verdict of guilty you have a reasonable doubt as to
19 how that issue should be resolved, it would be your
20 duty to resolve that doubt in favor of the defendant.

21 A defendant, ladies and gentlemen, is not
22 required to prove his innocence. But the State is
23 required by law to prove every essential element of
24 the offense charged against the defendant by evidence
25 which satisfies you, the jury, of the guilt of the

1 defendant beyond a reasonable doubt before you could
2 convict the defendant and find him guilty.

3 If then upon the whole case you have a
4 reasonable doubt as to the guilt or innocence of the
5 defendant, he is entitled to that reasonable doubt
6 and would be entitled to an acquittal and a verdict
7 of not guilty.

8 But on the other hand, if upon the whole case
9 you find that the State has proven by evidence which
10 satisfies you the jury of the guilt beyond a
11 reasonable doubt -- guilt of the beyond a reasonable
12 doubt defendant, then in such circumstances it would
13 equally be your duty to convict the defendant and
14 find him guilty.

15 Now I instruct you that the indictment in this
16 case which I have in my hand is not evidence and
17 cannot be considered by the jury as evidence in the
18 case.

19 The indictment is simply the formal written
20 instrument which contains a charge -- the charge
21 against the defendant and it serves as the formal
22 document by which this matter is brought to court.

23 During this trial, each of us, you and I, have
24 certain duties to perform. As the trial judge it is
25 my responsibility to preside over the trial of this

1 case and I also have the duty to rule upon or pass
2 upon the admissibility of evidence offered during the
3 progress of the trial.

4 You are to consider only the competent evidence
5 before you and you are to disregard and disabuse from
6 your mind any testimony ordered stricken from the
7 record of this case during the progress of the trial,
8 if there be any, and you are to consider only the
9 testimony which has been presented from the witness
10 stand along with any exhibits admitted into the
11 record and any stipulations of counsel made into the
12 record, if there be any.

13 I have the additional duty to charge you the
14 applicable law of this case. As the presiding Judge,
15 I am the sole judge of the law of the case and it is
16 your duty to accept and apply the law as I now state
17 it to you.

18 If you have a preconceived idea as to what the
19 law is or what the law ought to be and it does not
20 agree with what I tell you the law is, you're
21 obligated under your oath to abandon this
22 preconception on your part because you are sworn to
23 accept the law precisely as the Court now states it
24 to you.

25 In every case tried in this court before a jury,

1 the jury becomes the sole and exclusive judge of the
2 facts. You, the jury, are the judge of the facts.
3 The Court is the judge of the law.

4 The Constitution of this State has declared the
5 trial judge shall not state, comment upon or make any
6 statement to a trial jury about the facts of a case.

7 Since you are the sole judge of the facts you
8 are not to infer from anything that I have said
9 during the progress of this trial in ruling upon the
10 admissibility of evidence or otherwise or anything
11 that I say to you now during the course of this
12 charge to you that I have any opinion about the facts
13 of this case.

14 I do not. The law does not permit me to have an
15 opinion about the facts of a case. This is a matter
16 solely for you, the jury, to determine.

17 As jurors then it is your duty to determine as I
18 have stated to you the effect, the value, the weight,
19 and the truth of the evidence presented during the
20 course of this trial.

21 Necessarily then you must assess the credibility
22 of the witnesses who have testified in this case.
23 Credibility is simply a legalistic word meaning
24 believability. It becomes your duty then to analyze
25 and evaluate the evidence and to determine that

1 evidence which you or which convinces you of its
2 truth.

3 I charge you that in determining the credibility
4 of witnesses, you may believe one witness as against
5 several witnesses or several witnesses as against one
6 witness.

7 You may believe the -- a part of the testimony
8 of a witness and reject the remaining part of the
9 testimony of that same witness. You may believe the
10 testimony of a witness in its entirety or you may
11 reject the witness -- the testimony of a witness in
12 its entirety.

13 You may consider whether any witness has
14 exhibited any interest, any bias or any prejudice in
15 the case. And you may consider the demeanor of a
16 witness, that is the appearance of a witness from the
17 witness stand.

18 And you may consider the opportunity for
19 knowledge concerning those things about which a
20 witness testified.

21 These considerations you do not exercise
22 arbitrarily, but if in your good judgment there is
23 sound reason in the record for so doing. Because
24 your objective, ladies and gentlemen, is to find the
25 truth whether it comes from a witness or witnesses

1 for the State of South Carolina or a witness or
2 witnesses for the defendant.

3 And in doing so, in exercising your mental
4 processes and in determining what you consider to be
5 true, the law simply requires that you exercise your
6 good judgment, your common sense, your sense of logic
7 and reason and your experiences in life. You then
8 apply these attributes of ability to the evidence and
9 determine what you consider to be the truthful
10 evidence.

11 And to these true state of facts as determined
12 by you, the jury, you take and apply the law as I now
13 state it to you and thus arrive at a true verdict in
14 this case.

15 Now as I said earlier and as you know, the
16 defendant in this indictment is charged with the
17 offense of murder. I will now define this offense
18 for you.

19 Murder is defined as the willful, felonious
20 killing of a human being by a human being with malice
21 aforethought, that malice being either express or
22 implied malice.

23 Section 16-3-10 of the code of laws of South
24 Carolina provides murder is quote the killing of a
25 person with malice aforethought either express or

1 implied, end quote.

2 The State must prove beyond a reasonable doubt
3 that the defendant killed another person with malice
4 aforethought. The presence of malice is a required
5 element of murder.

6 Malice is defined as being hatred or ill will.
7 Malice in its legal sense does not necessarily import
8 illegal -- ill will toward the individual injury --
9 injured, but signifies rather a general, malignant
10 recklessness of the lives and safety of others or a
11 condition of the mind which shows a heart regardless
12 of social duty and fatally bent on mischief.

13 Malice is the wrongful intent to injure another
14 person. It indicates a wicked and deprived spirit,
15 intent or wrongdoing. Malice is a legal term
16 implying wickedness and excluding a just cause or
17 excuse. It is the doing of a wrongful act
18 intentionally and without just cause or excuse.

19 The term malice indicates a formed purpose and
20 design to do a wrongful act under the circumstances
21 that exclude any legal right to do so.

22 Malice may be either express or implied. The
23 words express or implied add nothing to the meaning
24 of the word malice. They do not imply different kind
25 of malice but merely the manner in which the only

1 kind of malice known in the law may be shown to
2 exist. That is, either by positive evidence or by
3 inference.

4 Express malice is when a -- when there is a
5 deliberate intention to unlawfully take the life of
6 another.

7 Implied malice is when circumstances demonstrate
8 a wanton or reckless disregard for human life or a
9 reasonably -- reasonably prudent man would have known
10 that according to common experience there was a plain
11 and strong likelihood that death would follow the
12 contemplated act.

13 The law says if one intentionally kills another
14 with a deadly weapon, the implication of malice may
15 arise.

16 If facts are proven beyond a reasonable doubt
17 sufficient to raise an inference of malice for your
18 satisfaction, this inference would be simply an
19 evidentiary fact to be taken into consideration by
20 you, the jury, along with the other evidence in this
21 case and you may give it such weight as you should
22 determine it should receive.

23 A deadly weapon is any article, instrument or
24 substance which is likely to cause death or great
25 bodily harm. Whether an instrument or object has

1 been used as a deadly weapon depends upon the facts
2 and circumstances of each case.

3 Although malice must be aforethought, there is
4 no requirement that it must exist for any appreciable
5 length of time before it -- the commission of the
6 act. It may be conceded at the very moment the act
7 occurs. There must be a combination of the evil
8 intent and the act producing the result.

9 Now, ladies and gentlemen, there has been
10 admitted into the evidence in this case a statement
11 allegedly made by the defendant. While the Court
12 determines the admissibility of the evidence as
13 regards to any alleged oral or written statement or
14 confession by the defendant, the jury makes the
15 ultimate determination of whether first the defendant
16 made the alleged statement, secondly if he made the
17 statement, if he made the statement; whether it was
18 made by the defendant voluntarily and of his own free
19 will and accord, and third, what weight, if any,
20 should be given to an alleged statement of the
21 defendant.

22 You must determine if the alleged statement or
23 confession was the product of an essentially free and
24 unconstrained choice by its maker. If you determine
25 it was, and the burden is upon the State to prove

1 this fact beyond a reasonable doubt, then you may
2 give the statement such further consideration as you
3 deem proper.

4 If you determine the alleged statement or
5 confession was not the free and voluntary willed
6 expression of the defendant, then you should not
7 consider the statement at all.

8 In determining whether a defendant's will was
9 overcome in obtaining a statement or confession, you
10 can -- should consider both the characteristics of
11 the defendant and the details of the interrogation,
12 which is referred to in the law as the totality of
13 the circumstances.

14 Some of the factors you must or should consider
15 are the age of and youth of the defendant, mental
16 ability or capacity of the defendant, his education
17 or lack thereof, his IQ or intelligence, his
18 background and environment, the advice or lack
19 thereof of -- to the defendant of his constitutional
20 rights including but not limited to the procedural
21 safeguards known as the miranda warnings concerning
22 the right to remain silent, that any statement could
23 be used against him in a court of law, the right to
24 have a lawyer present, if indigent then the lawyer
25 would be appointed to represent him without cost, and

1 that he could stop making the statement at any time.

2 Another factor is the place and length of the
3 detention and the nature of the question. You the
4 jury must carefully scrutinize all of the surrounding
5 circumstances.

6 Before you give any weight to the alleged
7 statement or confession you must be satisfied beyond
8 a reasonable doubt that it was made by the defendant
9 uninfluenced by promise or reward, threat of injury
10 or diminution of his constitutional rights.

11 You may not consider any statement or confession
12 unless you find beyond a reasonable doubt that the
13 statement or confession was freely and voluntarily
14 given.

15 Now, one of the important issues in this case is
16 the identification of the defendant as the
17 perpetrator of the crime. The government has the
18 burden of proving identity beyond a reasonable doubt.
19 It is not essential that the witness himself be free
20 from doubt or as to the correctness of his statement.

21 However, you the jury must be satisfied beyond a
22 reasonable doubt of the accuracy of the
23 identification of the defendant before you may
24 convict him.

25 If you are not convinced beyond a reasonable

1 doubt that the defendant was the person who committed
2 the crime, you would find the defendant not guilty.

3 Identification testimony is an expression of
4 belief or impression by the witness who makes the
5 statement or the identification. Its value depends
6 upon the opportunity the witness had to observe the
7 offender at the time of the offense and to make a
8 reliable identification later.

9 In appraising the identification testimony of a
10 witness, you should consider the following. First,
11 are you convinced that the witness had the capacity
12 and the adequate opportunity to observe the offender.

13 Whether the witness has an adequate opportunity
14 to observe the offender at the time of the offense
15 would be effected by such matters as how long or
16 short a time was available, how far or close the
17 witness was, how good were lighting conditions,
18 whether the witness had any occasion to see or know
19 the person in the past.

20 Secondly, are you satisfied that the
21 identification made by the witness -- the witness
22 subsequent to the offense was the product of his own
23 recollection. You may take into account both the
24 strength of the identification and the circumstances
25 under which the identification was made.

1 If the identification of the witness may have
2 been influenced by circumstances under which the
3 defendant was presented to him for identification,
4 you should scrutinize the identification with greater
5 care.

6 You may also consider the length of time that
7 lapsed between the occurrence of the time and the
8 next opportunity of the witness to see the defendant
9 as a factor bearing on the reliability of the
10 identification.

11 Third, you may take into account any occasions
12 in which the defendant failed to make the
13 identification of the defendant or made the
14 defendant -- the identification that was inconsistent
15 with his identification at trial.

16 And fourth, you must consider the credibility of
17 each identification witness in the same way as any
18 other witness, consider whether he is truthful and
19 consider whether he had the capacity and opportunity
20 to make a reliable observation on the matter covered
21 by his testimony.

22 I again emphasize that the burden of proof is on
23 the prosecutor and it extends to every element of the
24 crime charged and this specifically includes the
25 burden of proving beyond a reasonable doubt the

1 identity of the defendant as the perpetrator of the
2 crime for which he now stands charged.

3 If, after examining the testimony, you have a
4 reasonable doubt as to the accuracy of the
5 identification, you would find the defendant not
6 guilty.

7 Now ladies and gentlemen, in this case the
8 defendant has raised a defense of alibi. This means
9 the defendant was not at the scene of the crime at
10 the time the -- the time it was committed and was
11 elsewhere and had nothing to do with it.

12 The word alibi means elsewhere. There is no
13 burden on the defendant to prove that he was not at
14 the scene of the crime. There is no burden upon the
15 defendant to prove his alibi. The defendant need not
16 prove that he was elsewhere.

17 The burden is on the State to prove beyond a
18 reasonable doubt that the defendant was present at
19 the scene of the crime, actually participated in the
20 crime, and was not somewhere else.

21 Thus the State has the burden of proving beyond
22 a reasonable doubt that the defendant was present and
23 committed the crime, the State has the burden of
24 disproving the defendant's alibi defense.

25 Now ladies and gentlemen, there are generally

1 two types of evidence which are presented during a
2 trial, direct evidence and circumstantial evidence.
3 Direct evidence is the testimony of a person who
4 asserts or claims to have actual knowledge of a fact
5 such as an eye witness.

6 Circumstantial evidence is proof of a chain of
7 facts and circumstances indicating the existence of a
8 fact.

9 The law makes absolutely no distinction between
10 the value or the weight to be given to either direct
11 or circumstantial evidence nor is a greater degree of
12 certainty required of circumstantial evidence than of
13 direct evidence.

14 You should weigh all of the evidence in this
15 case. And after weighing all of the evidence, if
16 you're not convinced of the defendant -- the guilt of
17 the defendant beyond a reasonable doubt, you would
18 find him not guilty.

19 Now there has also been testimony admitted in
20 this case of witnesses who have been classified as
21 experts. Although lay witnesses are limited to
22 testifying about facts within their knowledge and are
23 not allowed to give an opinion, certain witnesses who
24 by their training, experience, education are
25 considered experts in a particular field may give

1 their opinions in that field based upon the facts of
2 the matter and their conclusions.

3 These opinions constitute evidence to be
4 considered by you in connection with all of the other
5 testimony and evidence in this case. You may
6 consider the expert's opinion just as you do all
7 other evidence in this case.

8 It is for you, the jury, to give it such weight
9 as you in your experience and discretion may
10 determine.

11 You must weigh such evidence and accept or
12 reject it in the same manner that you treat all other
13 evidence in this case.

14 Now ladies and gentlemen, I have just about
15 finished my instructions to you. But I would tell
16 you that it has often been said that when you serve
17 on the jury, you are not partisans or advocates for
18 the State of South Carolina or for this defendant.

19 You have no friends to reward and no enemies to
20 punish. Obviously such a perverted system of justice
21 would be intolerable. You have been selected by both
22 the State and this defendant as fair and impartial
23 jurors.

24 It is your duty then by your joint deliberations
25 to determine the truth in this case giving to the

1 defendant the benefit of each and every reasonable
2 doubt on each and every issue and then to the facts
3 which you determine to be true, you then take and
4 apply the law which has been given to you by this
5 Court and thus arrive at a verdict in this case.

6 The verdict that you arrive is a verdict that
7 will speak the truth because the word verdict, ladies
8 and gentlemen, means to speak the truth or true
9 saying and it has -- it comes from the latin verb
10 veredicto.

11 And when you have accomplished these
12 responsibilities, you will have satisfied your oath
13 as jurors and you will have discharged your duty to
14 this court.

15 Now I will instruct you on the forms of verdict
16 in this case. If the State has failed to prove the
17 guilt of the defendant beyond a reasonable doubt,
18 your verdict would be two words, not guilty. If the
19 State has proved the guilt of the defendant beyond a
20 reasonable doubt your verdict would be one word,
21 guilty.

22 The verdict which you render in this case must
23 be the verdict of each and every juror. It must be
24 your unanimous verdict, all 12 jurors must agree on
25 the verdict which you authorize the foreman to write.

1 Now Mr. Foreman, I have prepared a verdict form
2 for your use in the jury room and I will tell you
3 that the order in which I have put the possible
4 verdicts on this form has absolutely no significance
5 whatsoever and you should not infer from the order in
6 which I have put the possible verdicts on this paper
7 that I have any opinion as to what your verdict
8 should be.

9 I do not. The law does not allow me to have an
10 opinion. That is up to you. But obviously in
11 putting something down on a piece of paper I had to
12 put something first and put something second.

13 But across the top up here we have the State of
14 South Carolina, County of Sumter, the formality of
15 the Court, the name of the case, State of South
16 Carolina versus Wayne Darnell Cooper and on the right
17 verdict.

18 We the jury by unanimous consent find the
19 defendant, Wayne Darnell Cooper, on the charge of
20 murder either guilty or not guilty.

21 You would indicate by making an X or a
22 checkmark, whichever one of those is your unanimous
23 verdict, and sign right here and date it and notify
24 us and we will return you to the courtroom as soon as
25 possible.

1 Now I'm going to send you to your jury room,
2 going to ask that you not begin your deliberations
3 just yet. The law does require that I take up
4 certain matters of law with the attorneys involved.

5 If it is not necessary for me to bring you back
6 into the courtroom for additional instructions, the
7 bailiff will bring you this verdict form, they will
8 bring you all of the exhibits and instruct you when
9 to begin your deliberations.

10 And when you have reached a verdict, you knock
11 on the door and we will return you to the courtroom
12 as soon as possible. Thank you. You may go with the
13 bailiff but do not begin your deliberations just yet.

14 (Jury left the courtroom at 10:43 am.)

15 *THE COURT:* Additions or exceptions on behalf of
16 the State, Mr. Corbett?

17 *MR. CORBETT:* Nothing from the State, Your
18 Honor.

19 *THE COURT:* Mr. Wilder, other than the fact that
20 the defense requested self-defense and duress and the
21 Court declined to charge those, are there any
22 additions or exceptions to the charge?

23 *MR. WILDER:* Yes, Your Honor. In addition to
24 those two, respectfully except on the Tellfare
25 charge, Your Honor. On page 452 of the Ralph King

1 Anderson book which the Court had indicated it would
2 charge--

3 *THE COURT:* Well, I charged--

4 *MR. WILDER:* When you got down to paragraph two
5 and there is a bracket in the section which under
6 subparagraph two which states, you may also take into
7 account that an identification made by picking the
8 defendant out in a group of similar individuals is
9 generally more reliable than one which results from
10 the presentation of the defendant alone to the
11 witness.

12 That -- that statement was left out, Your Honor,
13 I believe. And I would respectfully except on
14 grounds that that statement was left out because it
15 is I believe essential in this case as part of my
16 argument to the jurors was they never had a line-up,
17 they never had--

18 *THE COURT:* All right. Noted. Okay.

19 *MR. WILDER:* Your Honor, we also respectfully
20 except that when the Court was publishing the
21 indictment, read portion of the indictment relative
22 to Mr. Cooper and then instead of saying and Derrick
23 Leon Cooper, you said along with another individual
24 or along with the--

25 *THE COURT:* All right. I don't have any problem

1 with that. I was trying to be fair to your client
2 when I did that rather than put the other -- you want
3 me to read the indictment exactly as written, I'll
4 bring them back in here and do that.

5 MR. WILDER: Your Honor, I'm not asking for
6 remedy. I'm respectfully excepting to the way it was
7 done.

8 THE COURT: Well, if you except the way that
9 it's done, what solution do you propose?

10 MR. WILDER: I have another motion I'd like to
11 make.

12 THE COURT: Sir?

13 MR. WILDER: I have another motion, Your Honor.

14 THE COURT: All right.

15 MR. WILDER: Respectfully move for a mistrial.

16 THE COURT: Well, we'll get to that in a little
17 while. Let's talk about the charges. Let's go back
18 to the -- do you desire that I read the indictment as
19 written or not, yes or no?

20 MR. WILDER: At this point, Your Honor, my
21 motion is for a mistrial.

22 THE COURT: On what basis?

23 MR. WILDER: Your Honor, during the State's
24 closing argument--

25 THE COURT: That -- that's not the issue at this

1 point, Mr. -- we're going to get there in a minute.
2 I want to know --

3 MR. WILDER: Yes, sir.

4 THE COURT: -- about the indictment. You have
5 excepted to the way that I summarized the indictment
6 to the jury.

7 MR. WILDER: Very respectfully.

8 THE COURT: I'm willing to correct that. Do you
9 want me to correct that or not?

10 MR. WILDER: I want to move for a mistrial on
11 that ground.

12 THE COURT: On what grounds?

13 MR. WILDER: On ground that the indictment
14 language was improperly published to them. And Your
15 Honor, this is my logic. The various accounts of how
16 this went down that morning include three unknown
17 individuals.

18 THE COURT: Well, I know exactly what the
19 accounts are, Mr. Wilder, and I want to -- I want you
20 to tell me how my correcting that indictment by
21 reading the indictment exactly as written prejudices
22 your client to the point that he's entitled to a
23 mistrial.

24 MR. WILDER: I believe that that along with the
25 Solicitor's mistake during his closing argument and

1 the way the Court ruled on it is now resulted in a
2 situation where my client cannot get a fair trial.

3 THE COURT: All right. I'll tell you what I'm
4 going to do. I'm going to re-charge the Tellfare
5 charge and I'm going to read the indictment exactly
6 as written and re-publish that to the jury.

7 And the basis for the -- the grounds for
8 mistrial on the basis of the indictment is denied
9 because I don't think that -- I started to say
10 Derrick Leon Cooper, but I thought that since we're
11 just trying one defendant and that's the way I
12 summarized the case when we started the trial of this
13 case because I did not know that Mr. Derrick Leon
14 Cooper would be brought in and that he would testify
15 and he testified that he was also charged, and I
16 specifically at the beginning of this case summarized
17 the indictment to the jury by saying, Wayne Darnell
18 Cooper and another because I didn't know what you
19 planned to present with regard to the involvement of
20 Mr. Derrick Leon Cooper.

21 But now since Mr. Derrick Leon Cooper has
22 testified in court that he was there or was --
23 allegedly was not there but he was with his brother
24 and you don't want me to avoid the mention of
25 Mr. Derrick Leon Cooper, I will bring the jury back

1 in and tell them the specific language of the
2 indictment, and the motion for mistrial on that
3 charge -- on that is denied.

4 I will also read the Tellfare charge summarizing
5 the first point under Tellfare. But under two, I
6 will read it exactly as presented as bracketed in
7 Judge Anderson's book, and I believe that that will
8 correct that.

9 All right. I'll take care of that. What other
10 exceptions to the charge?

11 *MR. WILDER:* Your Honor, none other to the
12 charge. I do want to place my grounds for the motion
13 for the mistrial on the record.

14 *THE COURT:* With regard to Mr. Corbett's...

15 *MR. WILDER:* Corbett's argument.

16 *THE COURT:* All right. We'll come back to that
17 after get this instruction straight for the jury.
18 Bring the jury back in.

19 (Jury entered the courtroom at 10:50 am.)

20 *THE COURT:* All right. Ladies and gentlemen, I
21 just wanted to clarify a couple of things with you.
22 First of all I summarized the indictment in this
23 case. And I want to read you the exact language of
24 the indictment again telling you that the indictment
25 is not evidence but is simply the charging document

1 that brings this matter to court.

2 But the indictment reads as follows. Quote,
3 that Derrick Leon Cooper and Wayne Darnell Cooper did
4 in Sumter County on or about September the second,
5 2006, feloniously, willfully and with malice
6 aforethought either expressed or implied kill one
7 Brandon Green by means of shooting him and that the
8 said Brandon Green did die as a proximate result
9 thereof.

10 And that is the language of the charging
11 document, the indictment, in this case.

12 I also want to charge you again with regard to
13 the matter of identification. You will recall that I
14 told you that one of the important issues in this
15 case is the identification of the defendant as the
16 perpetrator of the crime.

17 The Government has the burden or the State has
18 the burden of proving the identity beyond a
19 reasonable doubt. It is not essential that the
20 witness himself be free of doubt as to the
21 correctness of his statement.

22 However, you the jury must be satisfied beyond a
23 reasonable doubt of the accuracy of the
24 identification of the defendant before you may
25 convict him.

1 If you are not convinced of the -- beyond a
2 reasonable doubt that the defendant was the person
3 who committed the crime, you would find the defendant
4 not guilty.

5 Identification testimony is an expression of
6 belief or impression by the witness. Its value
7 depends on the opportunity of the witness to observe
8 the offender at the time of the offense and make a
9 reliable identification later.

10 In appraising the identification testimony of a
11 witness, you should consider the following. First,
12 are you convinced that the witness had the capacity
13 and an adequate opportunity to observe the offender.

14 Whether the witness had an adequate opportunity
15 to observe the offender at the time of the offense
16 will be effected by such matters as how long or short
17 a time was available, how far or how close the
18 witness was, how good were the lighting conditions,
19 whether the witness had an occasion to see or know
20 the person in the past.

21 Secondly, are you satisfied that the
22 identification made by the witness subsequent to the
23 offense was the product of his own recollection. You
24 may take into account both the strength of the
25 identification and the circumstances under which the

1 identification were made.

2 If the identification of the witness may have
3 been influenced by circumstances under which the
4 identification was presented to him for
5 identification, you should scrutinize the
6 identification with great care.

7 You may also consider the length of time that
8 elapsed between the occurrence of the crime and the
9 next opportunity of the witness to see the defendant
10 as a factor bearing on the reliability of the
11 identification.

12 You may also take into account that an
13 identification made by picking the defendant out of a
14 group of similar individuals is generally more
15 reliable than one which results from the presentation
16 of the defendant alone to the witness.

17 You may also take into account the occasions on
18 which the witness failed to make an identification of
19 the defendant or made an identification that was
20 inconsistent with his identification at trial.

21 And finally, you must consider the credibility
22 of each identification witness in the same way as any
23 other witness, consider whether he is truthful and
24 consider whether he had the capacity and opportunity
25 to make a reliable observation on the matter covered

1 in his testimony.

2 I again emphasize that the burden of proof is on
3 the prosecutor or the State and it extends to every
4 element of the crime charged. And this specifically
5 includes the burden of proving beyond a reasonable
6 doubt the identity of the defendant as the
7 perpetrator of the crime with which he stands
8 charged.

9 If after examining the testify -- the testimony
10 you have a reasonable doubt as to the accuracy of the
11 identification, you must find the defendant not
12 guilty.

13 With those additional instructions then I am
14 going to ask you to return to your jury room but
15 again please do not begin your deliberations just
16 yet. Thank you.

17 (Jury left the courtroom at 10:55 am.)

18 *THE COURT:* Any exceptions to the additional
19 charges on behalf of the State, Mr. Corbett?

20 *MR. CORBETT:* Nothing from the State, Your
21 Honor.

22 *THE COURT:* Mr. Wilder?

23 *MR. WILDER:* Your Honor, I have no exception
24 with respect to the Tellfare identification charge
25 now.

1 THE COURT: All right. What about any exception
2 to my reading the indictment to the jury other than
3 the fact that I denied your mistrial on that grounds?

4 MR. WILDER: No, Your Honor, that is the correct
5 language in the indictment. Other than the fact that
6 you didn't grant my mistrial, I have no --

7 THE COURT: All right.

8 MR. WILDER: -- exception to it.

9 THE COURT: Tell me how that is prejudicial to
10 your client.

11 MR. WILDER: Your Honor, this is my feeling on
12 it. And it's some -- and in all honesty it's
13 somewhat balanced by the fact that you did do the
14 Tellfare charge over.

15 But any time you re-publish the accusation
16 against the defendant, I've always felt that it kind
17 of shifted things against my client in favor of the
18 State.

19 Every time you mentioned murder to them, for
20 instance, that kind of compounds the prejudice
21 Against my client. But then--

22 THE COURT: So you want to except to it but you
23 don't want me to correct it.

24 MR. WILDER: Well, the reason I don't want you
25 to correct it is this. With all respect, not

1 intending any disrespect, Your Honor, but in
2 Mr. Corbett's argument he said--

3 *THE COURT:* Wait just a minute. We're coming to
4 that in a minute.

5 *MR. WILDER:* Okay.

6 *THE COURT:* I'm just talking about the
7 publication to the jury. All right. I understand.
8 I think your position is protected on the record.

9 Bring me the alternate and also here's the
10 verdict form and the -- get the exhibits and tell the
11 jury to begin their deliberations. And let me take
12 care of the matter with the alternate and then I will
13 hear from you with regard to your mistrial motion,
14 Mr. Wilder.

15 *MR. WILDER:* Thank you, Your Honor.

16 (Alternate juror entered the courtroom.)

17 *THE COURT:* Wait. I better put this on the
18 record. Okay. The law does not permit me to have 12
19 jurors. Even though you have heard all the testimony
20 in this case, you will not be able to participate in
21 the decision. As you know, we have had to replace
22 one of the jurors with one of the alternates, but it
23 did not happen to be you under our selection process.

24 So even though you have heard all the testimony,
25 you will not participate in the decision and I'm

1 going to excuse you from any further participation in
2 this case and any further -- anything to do with the
3 case and allow you to go about your home and your
4 business.

5 I will tell you that once you have been excused
6 as a juror, there is nothing illegal about your
7 talking with anyone about your service on this case.
8 It's nothing illegal about anybody talking to you
9 about your service. It is a practice of which I
10 strongly disapprove and I strongly discourage, but
11 it's not illegal, but it's up to you.

12 You have the right to talk with anyone or not
13 talk to anyone. And if anybody wants to talk to you
14 about your service on this case and you tell them you
15 do not wish to talk with them and they continue to
16 harass you or bother you, you let the court personnel
17 know and I will deal with them.

18 I will also tell you that I would ask that you
19 not talk with anybody about this case until after
20 this jury returns a verdict in this matter, and you
21 won't know when that is, so I would ask that you not
22 talk with anybody about it until at least tomorrow.
23 By then we will know exactly what the jury is going
24 to do with the case.

25 But other than that, I'm going to excuse you

1 from any further service and I do thank you for your
2 service this week.

3 I will tell you that by serving on the jury this
4 week, you have met your citizenship responsibilities
5 for jury service in the Circuit Court, up here in
6 this courtroom, for the next three years. You can't
7 be called as a juror in the Circuit Court for the
8 next three years.

9 Also next week you'll get a small check from the
10 Clerk. It won't pay you for the time that you have
11 been up here, but it's a small token of appreciation
12 on behalf of the county. Thank you for your service
13 and you are free to go.

14 (Juror left the courtroom.)

15 *THE COURT:* All right. Got the exhibits to the
16 jury?

17 *BAILIFF:* Got them, Your Honor.

18 *THE COURT:* All right. And got the verdict
19 form?

20 *BAILIFF:* Yes, sir.

21 *THE COURT:* And the exhibits? Tell them to
22 begin their deliberations.

23 *BAILIFF:* Yes, sir.

24 *THE COURT:* And Mr. Wilder, I will be glad to
25 hear from you with regard to your motion.

1 (Jury began deliberations at 11:00 am.)

2 MR. WILDER: Thank you, Your Honor. My motion
3 was made at the point in Mr. Corbett's argument where
4 he was elaborating on, let me tell you what happened.
5 Then he said that the -- that the Derrick and Wayne
6 got together and discussed let's -- let me tell you
7 what let's do, let's remove the tint from the
8 windshield.

9 In other words, he was articulating his argument
10 to the jury. And I'm just vaguely summarizing
11 because I can't recall specific verbatim what he
12 said, but he was summarizing to the jury a
13 conversation between the defendant and the
14 co-defendant which never was testified by any to --
15 by anybody and was not in evidence and was highly
16 prejudicial argument I felt and was -- it's kind of
17 testifying to the jury about what he thought had gone
18 on between the defendant and a co-defendant.

19 So I objected. And when I objected, Your Honor,
20 Your Honor stated, if I recall correctly, that's
21 reasonably inferred from the evidence.

22 THE COURT: Yes, sir.

23 MR. WILDER: And rather than ruling sustained or
24 just overruled, that's reasonably inferred from that,
25 so I felt that the Court was commenting on the facts

1 and the jury heard all of that which is my second
2 reason for wanting a mistrial on grounds that I felt
3 that the jury may have received that as a comment on
4 the facts from the Court.

5 *THE COURT:* All right, sir. All right. That
6 motion is respectfully denied. That is the test as
7 to whether or not the comments of the -- of the
8 Solicitor are or any lawyer in arguing to the jury is
9 whether it is reasonably inferrable from the
10 evidence.

11 And in my view based upon the evidence, the
12 Solicitor's comments were reasonably inferrable as to
13 what his views of the evidence are, and for that
14 reason I would respectfully deny your motion for a
15 mistrial.

16 All right. We'll be at ease, counsel, until we
17 hear from the jury.

18 (Whereupon a recess was had.)

19 *THE COURT:* State versus Wayne Darnell Cooper in
20 indictment number 07-GS-43-277. The Court has been
21 advised that the jury has reached a verdict in this
22 case and I am going to bring the jury back into the
23 courtroom.

24 Before I do so, I want to say to everyone here
25 in the courtroom and all the spectators and the

1 parties involved in this that I know that this is a
2 very important matter to everybody in this courtroom.

3 It is important to the State. It is important
4 to the victim's family. It is important to the
5 defendant and his family and everyone else.

6 However, I am going to have to require that the
7 order and decorum be maintained in the courtroom.
8 And that means that when the jury comes in and
9 does -- and the verdict is published in this case,
10 that I'm going to require that everyone maintain
11 order, that there not be any displays of emotion or
12 clapping or any emotional displays whatsoever.

13 If there is anyone in the courtroom that feels
14 they cannot sit quietly when the verdict is
15 published, I would ask that you leave now.

16 All right. Anything before we bring the jury
17 in?

18 *MR. CORBETT:* Your Honor, if I could have just a
19 moment. Stepped out a moment ago and sent
20 Investigator Turner a message.

21 *THE COURT:* Yeah.

22 *MR. CORBETT:* If I could have just a moment to
23 see if he's...

24 *THE COURT:* All right.

25 *MR. CORBETT:* Your Honor, if we could wait, give

1 him just a moment.

2 *THE COURT:* We'll give him a couple of minutes.

3 (Whereupon there was a pause.)

4 *THE COURT:* All right. Mr. Corbett, I see
5 Mr. Turner is now in the courtroom. Anything before
6 we bring the jury in?

7 *MR. CORBETT:* Nothing from the State, Your
8 Honor.

9 *THE COURT:* Mr. Wilder?

10 *MR. WILDER:* No, sir.

11 *THE COURT:* All right. Bring the jury in.

12 (Jury entered the courtroom at 12:53 pm.)

13 VERDICT

14 *THE COURT:* All right. Thank you very much.
15 Mr. Foreman, I have been advised that you have
16 reached a verdict. Is that correct?

17 *FOREMAN:* Yes, sir.

18 *THE COURT:* Would you hand it up to the bailiff,
19 please?

20 (Bailiff approached the foreman then approached
21 the Court.)

22 *THE COURT:* All right. Mr. Wilder, would you
23 and your client stand? From the standpoint of form,
24 the verdict appears to be correct. Mr. Herring, you
25 may publish the verdict.

1 *BAILIFF:* Case number 2007-GS-43-277, the State
2 of South Carolina versus Wayne Darnell Cooper. We
3 the jury by unanimous agreement find the defendant
4 Wayne Darnell Cooper on the charge of murder guilty.
5 Signed James L Reynolds, foreperson, dated
6 November 13th 2008. This be your verdict, so say ye
7 all by raising your right hand. Thank you.

8 *THE COURT:* Thank you. You may be seated.
9 Mr. Wilder, anything before the jury is excused?

10 *MR. WILDER:* Yes, Your Honor. We would move
11 that the jury be polled.

12 *THE COURT:* All right. Mr. Herring, if you'll
13 poll the jury for me, please.

14 *BAILIFF:* Ladies and gentlemen, when I call your
15 name, would you please stand and answer the questions
16 I have for you. Lawanda Conyers, is this your
17 verdict and still your verdict?

18 *JUROR:* Yes, sir.

19 *BAILIFF:* Thank you. Stacey Robertson; this
20 your verdict and still your verdict?

21 *JUROR:* Yes, sir.

22 *BAILIFF:* Thank you. Ronald Wright, is this
23 your verdict and still your verdict?

24 *JUROR:* Yes, sir.

25 *BAILIFF:* Thank you. Donald Hauptman, is this

1 your verdict and still your verdict?

2 JUROR: Yes, sir.

3 BAILIFF: Thank you. Kevin Elliott, is this
4 your verdict and still your verdict?

5 JUROR: Yes, sir.

6 BAILIFF: Thank you. Robert Welch, is this your
7 verdict and still your verdict?

8 JUROR: Yes, sir.

9 BAILIFF: Thank you. Mary Williams, is this
10 your verdict and still your verdict?

11 JUROR: Yes, sir.

12 BAILIFF: Thank you. Rebecca Prater, is this
13 your verdict and still your verdict?

14 JUROR: Yes, sir.

15 BAILIFF: Thank you. Kristin Shumaker, is this
16 your verdict and still your verdict?

17 JUROR: Yes, sir.

18 BAILIFF: Thank you. James Reynolds, is this
19 your verdict and still your verdict?

20 JUROR: Yes, sir.

21 BAILIFF: Thank you. Mae Myers, is this your
22 verdict and still your verdict?

23 JUROR: Yes, sir.

24 BAILIFF: Thank you. Jeremy Wright, is this
25 your verdict and still your verdict?

1 *JUROR*: Yes, sir.

2 *BAILIFF*: Thank you. Your Honor, the jury has
3 been polled and the verdict stands.

4 *THE COURT*: All right. Thank you very much.
5 All right. Mr. Wilder, anything before the jury is
6 excused?

7 *MR. WILDER*: No, Your Honor.

8 *THE COURT*: All right.

9 (Whereupon the jury was excused from service on
10 this case.)

11 *THE COURT*: All right. Mr. Wilder, motions on
12 behalf of the defendant?

13 *MR. WILDER*: If it please the Court, I'd like to
14 make a motion for a directed verdict of not guilty,
15 an arrested verdict actually, a judgment of
16 non-obstante veredicto of not guilty or in the
17 alternative -- and in the alternative a motion for a
18 new trial.

19 Your Honor, the grounds would be that the --
20 that the Court's denial of the various motions and
21 objections that the defense made during the trial and
22 the -- and further the ground, Your Honor, that the
23 evidence as a whole does not support the verdict of
24 the jury.

25 We'd ask the Court sitting as a 13th juror to

1 arrest the verdict and to either give us a verdict of
2 not guilty or in the alternative a new trial.

3 *THE COURT:* All right, sir. All right, sir. I
4 will respectfully deny the motions. With the record
5 being protected all the way through with your
6 exceptions to the Court's rulings including the
7 admissibility of certain evidence, the identification
8 question, the statement, under Jackson versus Deno
9 and the motions made for mistrial and the general
10 motion made for new trial or verdict in arrest of
11 judgment.

12 In my view I believe that the rulings of the
13 Court were carefully considered and carefully made at
14 the time that the rulings were made and also it's my
15 view that there was evidence in the record by which
16 the jury could have reached the determination that
17 they did.

18 And my job is to determine the existence or
19 non-existence of the evidence and not the weight that
20 is to be given to it, and I would therefore
21 respectfully deny all motions.

22 I do believe the record is adequately protected
23 with the entire rulings of the Court and the
24 arguments of counsel during the two and a half or
25 three days of this trial. All right.

1 MR. WILDER: Your Honor, I would like the record
2 to reflect -- and I understand the Court's ruling,
3 not arguing with that, but I do want the record to
4 reflect that understanding the jury deliberations
5 started at 11 am and the verdict, a knock on the door
6 came about 12:45, so--

7 THE COURT: About an hour and 45 minutes, that's
8 correct.

9 MR. WILDER: So for the record for appeal so
10 that they will know, we did have a three day trial
11 and they only took an hour and 45 minutes to
12 deliberate.

13 We don't believe that was sufficient
14 consideration, Your Honor, for them to consider all
15 of our defenses.

16 THE COURT: All right. Record will so reflect.

17 MR. WILDER: Thank you, Your Honor.

18 THE COURT: All right. Mr. Corbett, do you have
19 the sentencing sheet?

20 MR. CORBETT: I do, Your Honor.

21 THE COURT: Mr. Wilder, would you and your
22 client come on around, please, and...

23 SENTENCING

24 THE COURT: All right. Mr. Corbett, is there
25 anything on behalf of the State before I call on

1 Mr. Wilder? I believe previously the State had
2 advised me that there was no criminal record that you
3 had; is that correct?

4 MR. CORBETT: That's correct, Your Honor.

5 THE COURT: All right.

6 MR. CORBETT: Your Honor, I was just seeing if
7 there were any -- anyone from the victim's family who
8 wanted to address...

9 THE COURT: All right. Go check with them and
10 have them come up. All right. Let me address you as
11 the mother of the victim in this case. First of all,
12 give me your name again.

13 MRS. GREEN: Theresa Green.

14 THE COURT: All right. Mrs. Green, and I do
15 know from your earlier testimony that you are the
16 mother of the victim in this case and I would tell
17 you that under the victim's rights act in South
18 Carolina you of course have the right to be kept
19 advised of everything that's going on.

20 You have the right to be present at all times
21 and all court proceedings and you also have the right
22 to address the Court.

23 So if there is anything you would like to tell
24 me, I will be glad to hear from you.

25 MRS. GREEN: Yeah. I would like for him to

1 get -- well, whatever the sentencing is because I
2 mean it didn't make no sense the way they took my
3 child from me. So I would like to get the --
4 whatever, 30 years to life, whatever.

5 *THE COURT:* All right.

6 *MRS. GREEN:* Because it was horror and it still
7 is.

8 *THE COURT:* Thank you, ma'am. Anything else,
9 Mr. Corbett?

10 *MR. CORBETT:* Your Honor, the Court has had the
11 opportunity to hear the case over the previous three
12 days. From my perspective I don't know what else I
13 can add to it that the Court hasn't already heard.

14 I'll ask Investigator Turner if there's anything
15 that he would like to make the Court aware of. We
16 feel like it was -- all the facts were fully brought
17 out here in the courtroom.

18 *OFFICER TURNER:* I agree with him, Judge.

19 *THE COURT:* All right. Thank you. All right.
20 Mr. Wilder?

21 *MR. WILDER:* Your Honor, in the courtroom are
22 his mother and father, and I'd like to ask that they
23 come forward.

24 *THE COURT:* Sure.

25 *MR. WILDER:* Be allowed to -- and also Wayne's

1 mother's -- the mother of his child. And Your Honor,
2 you do have some discretion as I understand it that
3 you could impose a 30 year sentence. You may choose
4 to give him life if you wish.

5 *THE COURT:* Or in between.

6 *MR. WILDER:* Or in between. Feel that's
7 warranted. Your Honor, I'm going to beg for mercy or
8 beg for the 30 year sentence for him, for you to be
9 as lenient as possible. I certainly understand the
10 loss of the victim, and I'm not going to say about
11 anything to do with that.

12 But Wayne, though he's been convicted of this,
13 everything I have looked about at his record, he
14 worked. It's true that he payday came around, he
15 would drink some and his brother had some weed, he
16 smoked some of that.

17 But the kind of life he was living was trying to
18 make a living earning money for his family and the
19 places that they lived in and stuff, Judge, they --
20 they obviously -- I'm a Public Defender, I represent
21 folks who are indigent.

22 While I don't condone the lifestyle of going out
23 and getting drunk on payday, that's -- that seems to
24 be a -- if I had to live under the circumstances that
25 they lived in, I could almost understand it because

1 they -- they work so hard and they make so little of
2 their money.

3 He worked in restaurants, he worked at
4 McDonalds, he worked at the -- well, the -- worked at
5 Fire Mountain, and it was very low pay and very long
6 hours and he worked very hard to try to earn the
7 money.

8 He -- as the Solicitor said, he's been convicted
9 of nothing else. So that means that every dollar
10 he's earned, he got it through working and trying to
11 support for his family.

12 Your Honor, I know his mother and father love
13 him. It's kind of rare that I get a client that has
14 both parents standing up whenever they get convicted
15 of anything. And they have been with him throughout
16 this trial and they still love him.

17 Your Honor, I'm begging for mercy and at --
18 would like to hear -- I know they would like to
19 address you.

20 THE COURT: I'll be glad to hear from them.
21 Just give me your name and I'll--

22 MRS. BETTY COOPER: Yes, sir, Mr. King. Every
23 time they bring Wayne and Derrick Cooper up--

24 THE COURT: Your name. Your name.

25 MRS. BETTY COOPER: My name is Betty Jane

1 Cooper.

2 THE COURT: Yes, ma'am.

3 MRS. BETTY COOPER: I'm for -- Wayne and
4 Derrick's mother.

5 THE COURT: Okay.

6 MRS. BETTY COOPER: But what I can't understand,
7 I don't think the law go for that, they never reduce
8 the bond, and every time they come up for bond, I
9 have spend money.

10 Mrs. Green stop the bond and y'all listened to
11 her. Y'all didn't use common -- it was you the one
12 that made the decision. Y'all let her make the
13 decision--

14 (Mr. Wilder conferring with Mrs. Cooper.)

15 THE COURT: But the issue before the Court --

16 MRS. BETTY COOPER: Wayne got children born he
17 never seen. Derrick got a daughter born he never
18 see.

19 THE COURT: I understand the issue of bond is
20 not before the Court today. We are long past that,
21 Mrs. Cooper, and that's really not the issue here,
22 but I will be glad to hear from you with regard to
23 anything you'd like to tell me about Derrick -- or I
24 mean not of Derrick--

25 MRS. BETTY COOPER: I have it so hard. I got

1 sick behind this. They operate on my heart last week
2 of going and try to save my children. I got Wayne's
3 son taking care of little Wayne. He goes to the door
4 every night asks is my daddy coming home from work.

5 *THE COURT:* All right.

6 *MRS. BETTY COOPER:* It's hard.

7 *THE COURT:* All right. Thank you, ma'am. Yes,
8 sir. Anything you'd like to tell me?

9 *OTIS COOPER:* Yes, sir.

10 *THE COURT:* Give me your name.

11 *OTIS COOPER:* Otis Cooper, C-O-O-P-E-R. And I
12 just hurt me in my heart to lose another son. I just
13 had one older son come back from Afghanistan. But
14 thanks the Lord he came back alive. And I hope we
15 can live through this. The Lord have mercy on us.

16 *THE COURT:* Thank you, sir.

17 *OTIS COOPER:* Thank you.

18 *THE COURT:* Yes, ma'am. Anything you'd like to
19 tell me? Give me your name and I will be glad to
20 hear from you.

21 *MS. HILTON:* My name Latonya Hilton. I have
22 four--

23 *THE COURT:* You will have to speak up a little
24 bit. Move up a little closer.

25 *MS. HILTON:* I have four kids. Long as he was

1 here, I had no problems.

2 *THE COURT:* Speak up. Talk into the microphone,
3 please.

4 *MS. HILTON:* I said long as he was here was
5 helping me and the kids, I had no problems. Now it's
6 real hard on me and the kids.

7 *THE COURT:* All right. Thank you, ma'am.

8 *MR. WILDER:* Your Honor, I--

9 *THE COURT:* All right. If y'all would have a
10 seat back out there, please. Thank you.

11 *MR. WILDER:* Just beg for mercy, Your Honor. No
12 prior record. Young man worked all his life. And I
13 know the jury said he did it, the thing that he's
14 charged with, I... I do feel that he's respectful and
15 well behaved during the time I represented him and
16 observed every kind of decorum in my presence and
17 never -- never been disrespectful to me or to anybody
18 in my presence have I seen him be disrespectful.

19 I would ask you to give him the opportunity to
20 one day -- and to rejoin his family even though it
21 might be a 30 year sentence and give him credit also
22 for time he served as well.

23 *THE COURT:* All right. I'll be glad to hear
24 from Mr. Cooper if there's anything he'd like to tell
25 me, but keep in mind you might tell him, Mr. Wilder,

1 of course with regard to matters on appeal that what
2 statements he may or may not want to make. I won't
3 hold it against him if he doesn't wish to say
4 anything.

5 *THE DEFENDANT:* Yeah, I want to speak. How you
6 doing. My name is Wayne Darnell Cooper. You know,
7 I'm -- I'm a respectable citizen, you know, I work
8 with law enforcement, I worked as a correctional
9 officer. I had plenty of jobs.

10 I worked in a nursing field. I have worked as
11 going to school currently as an EMT. I been a nurse
12 ever since '95 in school. You know, I'm a hard
13 working citizen.

14 I have my ex-wife which we have six children and
15 with my girlfriend Latonya that makes four, I have
16 nine children to support. And that's all I did was
17 go to work, come home, and then try to get a -- a
18 second education.

19 You know, I -- I grieve with the Green family
20 and I wish they found who they looking for, but I
21 wasn't the one there and I went to work because I'm
22 trying to support my family.

23 I'm just... I'm just lost for words right now,
24 you know. I grieve with them, but I'm not the one
25 they looking for and I wish they found who they

1 looking for.

2 *THE COURT:* All right. Thank you, sir.

3 (Whereupon there was a pause.)

4 *THE COURT:* All right. Court personnel and
5 lawyers here have heard me say this since I have been
6 on the bench over 13 years ago or about 13 years ago.
7 When I got this job I was told by my colleagues that
8 the most difficult thing that we judges would have to
9 do would be the imposition of criminal sentence.

10 And it is the most difficult thing that we have
11 to do. We have no crystal ball. We cannot see the
12 future. All we can do is to use our judgment based
13 upon our experience and the evidence that we have
14 heard in court and impose a sentence that we think is
15 appropriate.

16 But it is the most difficult thing to do. And I
17 have also heard some judges have been on the bench
18 longer than I have and have retired from the bench
19 saying that it was something they never got
20 comfortable with.

21 And I have never gotten completely comfortable
22 with it and I hope that I never do get completely
23 comfortable with imposing criminal sentences because
24 of the effect that it has on the life not only of the
25 defendant but those that are close to him.

1 Sometimes the sentence we impose satisfies some
2 and not others, and sometimes it satisfies no one.
3 But we do try to impose a sentence that we think is
4 the appropriate sentence based on the evidence and
5 the experience that we have had in this position.

6 And in this particular case I do not think
7 that -- well, the law does provide for a minimum
8 sentence in this case or does require a minimum
9 sentence in this case of 30 years. Carries up to
10 life.

11 And of course my view of the evidence I don't
12 think is that a life sentence is appropriate, but
13 neither do I think the minimum sentence is
14 appropriate because the evidence is that this
15 defendant was the individual who actually did the
16 shooting and not his co-defendant, his brother,
17 Mr. Derrick Leon Cooper.

18 Factoring all of those matters in, the sentence
19 of the Court is that the defendant is committed to
20 the State Department of Corrections for a term of 40
21 years. Give him credit for the time that he has
22 served.

23 I think that is the appropriate sentence in this
24 case and that is the sentence of the Court. All
25 right.

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(End of requested transcript of record.)

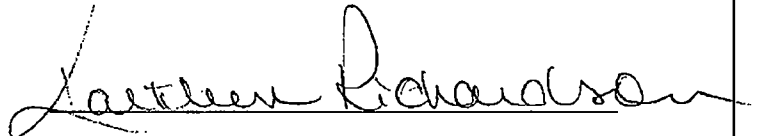
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

I, KATHLEEN RICHARDSON, RPR, CRR, Official Court Reporter for the third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the thirteenth day of November, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 16, 2009



KATHLEEN RICHARDSON, RPR, CRR

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

2012 JUL 25 } PM 12:26

IN THE COURT OF COMMON PLEAS

2012-CP-43-1286

Wayne Darnell Cooper 331763
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Leiber Correctional Institution
2. Name and location of Court which imposed sentence Sumter County
3. Name(s) of co-defendant(s) (if any) Derrick L. Cooper
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder 2007-04-GS-0277
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 13, 2008; 40 years @ 85%
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty YES _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Affirmed _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See page 3(a)
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See page 3(a)
- (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? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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
- ii. _____
- iii. _____

Page 3(a)

Applicant sets forth this cause of action pursuant to the Jurisdiction that are set forth in chapter 17 section 17-27-20(2)(6) collateral attack upon any ground of alleged error heretofore available under this uniform that are being submitted or amended.

Applicant asserts ineffective assistance of counsel, due to the lack of records and the assistance of counsel pursuant to the S.C.R. Civ. P. Rule 21.1(e) et. seq. state that the burden of proof is on the applicant to show his entitlement for relief by a preponderance of the evidence, and for the appointment of counsel to insure that all available grounds for relief are included in the application and shall be amended if necessary. It would be chronologically impossible for the Applicant to carry such a burden without the aid of counsel to help establish his Constitution claims.

The Applicant request that this court appointed Counsel in the above mention application. Applicant moves before this Honorable Court to grant leave to amend the application in this cause of action due to the Lack of Counsel and applicant is also a lay person in law.

Applicant seeks this court approval of this application so that applicant right to a P.C.R. won't be deem abandon, due to the fact that Applicant has only one(1) year to file this application from the date of a final judgement or from the remittiture to the Lower Court which ever comes first.

Wayne D. Cooper
Wayne D. Cooper #331763

Ridgeville, S.C.

- 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?

N/A

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A
- 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) N/A
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Arthur H. Wilder Public Defender Office Courthouse Room #100 Sumter, S.C.
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Reversed Reversed and Remanded or Vacated
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, _____, 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.

Wayne D. Cooper

SWORN to and subscribed before me this 21ST
day of June, 2012

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

**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.

Wayne D. Cape
Applicant

SWORN or affirmed to and subscribed before me this

21ST day of June, 2012.

Sylva Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2013 JAN 25 PM 1:51

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Wayne Darnell Cooper, #331763,

JAN 25 2013
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2012-CP-43-01286

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for post-conviction relief, filed June 25, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the April 2007 term of the Sumter County Grand Jury for Murder (2007-GS-43-277). Arthur Wilder, Esquire, represented him. On November 10-13, 2008, Applicant proceeded to a jury trial before the Honorable Howard P. King. On November 13, 2008, Applicant was found guilty of Murder. Judge King sentenced Applicant to forty years imprisonment.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Wayne Darnell Cooper, Op. No. 2011-UP-544 (S.C. Ct. App. filed December 6, 2011). The Remittitur was sent on December 22, 2011.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department

of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

January 24, 2013

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

FILED
2013 JAN 25 PM 1:51
IN THE COURT OF COMMON PLEAS

JAN 25 2013
CLERK OF COURT
SUMTER COUNTY, S.C. 2012-CP-43-1286

WAYNE DARNELL COOPER, 331763,

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:

David C. Holler, Esquire
Lee Erter Wilson James Holler & Smith, LLC
Post Office Box 580
Sumter, SC 29151

DATED this 24th day of January, 2013.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 State of South Carolina) In the Court
2 County of Sumter) Of Common Pleas
3
4 Docket Number: 2012CP4301286
5
6 Wayne D. Cooper,)
7 Applicant,)
8 vs.) Transcript of Record
9)
10 State of South Carolina,)
Respondent.)

11
12 October 1, 2013
13 Sumter, South Carolina
14

15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge.
17

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

19 David Holler, Esquire
20 Attorney for the Applicant

21 Daniel F. Gourley, Assistant Attorney General
22 Attorney for the Respondent
23

24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 MR. GOURLEY: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. GOURLEY: The next case is Wayne Cooper versus
4 State of South Carolina, Docket Number 2012CP431286. The
5 applicant is presently confined in the South Carolina
6 Department of Corrections pursuant to orders of commitment
7 of the Sumter County Clerk of Court. The applicant was
8 true-bill indicted at the April 2007 term of the Sumter
9 County Grand Jury for murder.

10 He was represented by Mr. Arthur Wilder. On
11 November 10th through the 13th the applicant proceeded to a
12 jury trial before the Honorable Howard P. King. On
13 November 13th, 2008, the applicant was found guilty of
14 murder. Judge King sentenced the applicant to 40 years
15 imprisonment.

16 A timely notice of appeal was filed. The South
17 Carolina Court of Appeals affirmed the applicant's
18 conviction. Remittitur was issued on December 23rd, 2011.

19 Subsequently applicant filed a post conviction
20 relief on June 25th, 2012, alleging that he was being held
21 in custody unlawfully for the following reason:
22 Ineffective assistance of counsel. The State filed a
23 return on January 24th, 2013.

24 He is represented in this matter by Mr. David
25 Holler.

1 Your Honor, at this time I would ask that
2 Mr. Holler place the applicant's allegations on the record
3 as there were no specific allegations in the PCR
4 application.

5 THE COURT: Thank you, thank you very much
6 Mr. Gourley.

7 Mr. Holler?

8 MR. HOLLER: Thank you, Judge McMahon. Mr. Cooper
9 has asked me to request a continuance, Judge.

10 This matter has been continued one time before and
11 that was at my request. This was a trial with a lengthy
12 transcript, and I don't remember the exact timing, but I
13 have not had a chance to adequately review the transcript
14 and prepare. Judge, Mr. Cooper tells me that he would like
15 to have some additional expert analysis of some of the
16 evidence that was used at trial for the purpose of showing
17 that he had ineffective assistance of counsel.

18 Two examples that he mentioned to me, Judge, is
19 that at the trial there was testimony that there was no
20 residue on the inside or outside of the car that was
21 allegedly used when the shooting happened, no gun powder
22 residue. The statements at the trial was that the gun
23 powder was easily washed away. Mr. Cooper believes that an
24 expert can testify that the gun powder is not easily washed
25 away and that if the car had been used in the shooting that

1 there still would have been gun powder residue present.

2 Secondly, the allegation in the trial was that the
3 car that Mr. Cooper had been driving had recently had
4 window tinting removed. Mr. Cooper tells me that when
5 someone puts the tint on a car window and then removes that
6 tinting, he said he had some experience with that prior to
7 being incarcerated, that it's virtually impossible to
8 remove all of the glue and he believes that also is
9 evidence that would have bolstered his case -- I'm sorry
10 would have weakened the State's case against him in terms
11 of that being the vehicle that was used when the shooting
12 occurred.

13 Another reason -- additionally, we'd like
14 additional time to do legal research, Judge. He states
15 that he's had a difficult time at Broad River getting
16 access to the law library and he's asked me to request more
17 time so that he can more -- read more and to be able to
18 prepare a complete case for ineffective assistance of
19 counsel.

20 THE COURT: Thank you, thank you, Mr. Holler.

21 Mr. Gourley?

22 MR. GOURLEY: Your Honor, it's the State's position
23 that this case has already been continued one time. We
24 would object. The applicant's request for experts
25 regarding the gunshot residue and the window tinting, it's

1 the State's position that all those issues were adequately
2 addressed during direct and cross-examination at the trial.
3 The gunshot residue was brought in by a SLED expert who
4 testified at trial regarding the gunshot residue and the
5 window tinting was discussed various times from various
6 police officers that were present at the crime scene. And
7 Your Honor, due to the length of this case and the fact
8 that it's already been continued one time, we would
9 respectfully ask that you deny the applicant's motion for a
10 continuance.

11 THE COURT: All right. Thank you.

12 I'm going to deny the motion to continue the case
13 at this time. If after I hear it I think there should be
14 any supplement to the record as to gun primer residue on
15 hands or as to the Chrysler Concord or glue as to the tint,
16 I will allow the record to remain open for that sole
17 purpose. That is, again, if based on the testimony I hear
18 today.

19 With that being said, Mr. Holler, you may call your
20 first witness.

21 MR. HOLLER: Thank you, Your Honor. Arthur Wilder.

22 THE COURT: All right. Mr. Wilder if you'd come
23 around and be sworn for us, please.

24 THE BAILIFF: State your name, please.

25 THE WITNESS: Arthur Harrison Wilder Jr.

Arthur Wilder - Direct Examination by Mr. Holler

1 ARTHUR WILDER was duly sworn

2 THE BAILIFF: State your name and spell your last
3 for the record.

4 THE WITNESS: My name the Arthur Harrison Wilder
5 Jr., last name spelled W-I-L-D-E-R.

6 MR. HOLLER: Judge, we would request permission to
7 treat Mr. Wilder as a hostile or adverse witness under Rule
8 611(c), I think it is.

9 THE COURT: You going to be a hostile witness,
10 Mr. Wilder?

11 THE WITNESS: I'm going to try to answer the
12 questions just as best as I can, Your Honor.

13 MR. HOLLER: And that's a term of art.

14 THE COURT: I understand. If you're talking about
15 being able to ask leading questions, of course, you may
16 certainly do so to move the proceeding along.

17 MR. HOLLER: Thank you, Judge. And this was a
18 multiple day trial that resulted in a verdict, and I think
19 that would ease the burden. The things I plan on leading
20 questions about, I do not believe would be in dispute.

21 THE COURT: All right. Thank you, Mr. Holler.

22 Thank you, Mr. Wilder.

23 **DIRECT EXAMINATION**

24 BY MR. HOLLER:

25 Q Mr. Wilder, if it's okay, I'll stand here if you

Arthur Wilder - Direct Examination by Mr. Holler

1 can hear me.

2 A I can hear you fine.

3 Q I've got a microphone here. You have one.

4 You were a PD for most of your career?

5 A 30 -- in excess of 30 years, yes.

6 Q You're now retired?

7 A I am.

8 Q And you represented Mr. Cooper in a murder trial?

9 A I did. I was appointed to represent Mr. Cooper
10 September 18th of 2006 and I represented him for several
11 years leading up to the trial and filed his appeal for him.

12 Q And you had benefit of an investigator, Joe
13 Johnson?

14 A John Johnson.

15 Q I'm sorry, John Johnson.

16 A His company is known as Global Investigations, but
17 we did retain his services to investigate Mr. Cooper's
18 case.

19 Q And is as typical in a murder case, you were able
20 to get ex parte orders to get funding to actually have him
21 do work at your direction?

22 A I did.

23 Q And also at Mr. Cooper's direction?

24 A He worked with the two of us. He met with
25 Mr. Cooper individually and both with myself and

Arthur Wilder - Direct Examination by Mr. Holler

1 Mr. Cooper, so I would say he was directly under my
2 supervision more than Mr. Cooper's, but we did work
3 together on the case, yes.

4 Q If Mr. Cooper asked him to do something, you would
5 have to give the green light before you let your
6 investigator do it?

7 A I would. Mainly because of the funding order. We
8 couldn't pay Mr. Johnson just to do anything and
9 everything. It had to be related to the case. And so he
10 would take his marching orders from me.

11 Q Okay. You've been through a number of these
12 hearings before, I have not. Basic premises of what we're
13 doing here today, and I ask this as much for my benefit as
14 anybody else's, Mr. Cooper must demonstrate that you were
15 ineffective as his attorney in doing something you
16 shouldn't have done or not doing something you should have
17 done as a reasonable criminal defense attorney, correct?

18 A I would defer to the case law to establish what you
19 must prove.

20 Q And secondly you must prove -- Mr. Cooper must
21 prove that it would have made a difference in trial?

22 A That's certainly true.

23 Q You agree with those general fundamentals, we've
24 got to show that you did something wrong?

25 A My understanding of the case law is that you must

Arthur Wilder - Direct Examination by Mr. Holler

1 prove that the result of the proceeding is rendered such as
2 is not worthy of being trusted or that --

3 Q Okay. Basic what happened: September 2nd, 2006,
4 okay, this was a young man, a 19-year-old was it not,
5 correct?

6 A At the Cherry Trail Mobile Home Park.

7 Q In the Cherry Vale Mobile Home Park.

8 A In the early morning hours.

9 Q Okay. Sometime around five or six o'clock in the
10 morning. This was a Friday night, Saturday morning?

11 A Correct.

12 Q Victim was highly intoxicated?

13 A I would defer to the alcohol test that was
14 performed at autopsy.

15 Q Okay. And you wouldn't argue that he had more than
16 twice the legal limit of alcohol in his system?

17 A Again, I would defer to whatever the autopsy
18 results and the toxicology reports state.

19 Q And that's certainly in the transcript. He had
20 rocks of crack cocaine in his pocket?

21 A I would say that's probably true.

22 Q Okay. And he had other residue of drugs in his
23 system in addition to Ethyl alcohol?

24 A Again, I would defer to the toxicology record.

25 Q Okay. He died from one shot from a 22 bullet that

Arthur Wilder - Direct Examination by Mr. Holler

1 pierced both of his lungs and his aorta?

2 A I'll defer to the autopsy on that.

3 Q Okay. Again, it's in the record, it's in the
4 testimony.

5 A Okay.

6 Q When Mr. Cooper was picked up a few days after
7 this, he allegedly gave a confession, correct?

8 A According to the police reports and testimony at
9 the trial, I believe it was Mr. Tommy Barron that was
10 taking a statement from him and Mr. Barron indicated that
11 Mr. Cooper had essentially admitted shooting the victim and
12 that his gun immediately thereupon malfunctioned and
13 apparently told Mr. Barron that he had discarded the weapon
14 at some point along the highway. And what we didn't know
15 initially was that a second officer had also overheard the
16 statement given by the defendant, and that is Mr. Jamie
17 Turner.

18 Q Who claims to be sitting around the corner.

19 A That's correct. And so that was somewhat of a
20 surprise to us. But the two investigators indicated that
21 they had heard Mr. Cooper confess to shooting the victim;
22 that's correct.

23 Q So from your perspective as a criminal defense
24 attorney, you have a very difficult case, correct?

25 A It was difficult.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q You have someone who has died and you have an
2 alleged confession. And the allegations -- I'm sorry,
3 Mr. Cooper's position was that when he gave that
4 confession, he'd gotten off of work, consumed alcohol,
5 consumed other drugs and was on pain medication for an
6 injury?

7 A It was a very difficult position to be in; that's
8 correct.

9 Q Okay. Now, we have a confession and we had other
10 evidence that put Mr. Cooper at the scene?

11 A -- Yes.

12 Q Prior to the victim being shot, there was testimony
13 from his aunt that she was with him and they were at a
14 Ms. Wanda Rogers's house until five o'clock, 5:15 in the
15 morning somewhere in there. And again, I'm just trying to
16 establish the baseline.

17 A Right. I would defer to the transcript as to what
18 she testified to.

19 Q Okay. And we'll look at that. We can do that in
20 just a second.

21 Essentially what Ms. -- the aunt that was with the
22 young man that was shot said that they left and went down
23 the road. They left this mobile home and went down the
24 road, at which time there was a car that passed by and
25 there was bottles dropped and something happened and then a

Arthur Wilder - Direct Examination by Mr. Holler

1 shot rang out, correct?

2 A There was a confrontation between the Cooper
3 brothers who were in the car and the victim who was on the
4 street walking and again according to the statement that
5 Mr. Wayne Cooper gave --

6 Q The alleged confession.

7 A Alleged statement, or what he told Tommy Barron,
8 according to Tommy Barron's testimony, was that something
9 was thrown at the car, a brick or a bottle or something and
10 that he had shot the victim as a result of that.

11 Q Okay. The alleged confession actually set up what
12 was argued was a self-defense?

13 A I certainly argued that it could be a self-defense.

14 Q That the alleged confession said, We stopped, why'd
15 you throw a bottle at the car, a shot was fired at them and
16 he returned the fire, got in the car and left?

17 A I was trying to establish that as a possible
18 telephone defense scenario.

19 Q And the case went up on appeal on whether or not
20 you were entitled, Mr. Cooper was entitled to a
21 self-defense charge?

22 A It did.

23 Q Okay. And again, I don't -- have we gotten into
24 any areas that are in dispute? This is what the trial was
25 about?

Arthur Wilder - Direct Examination by Mr. Holler

1 A I don't think so.

2 Q Okay. Mr. Cooper, of course, told you, he did
3 confess?

4 A That's what he said and his brother said that as
5 well.

6 Q Well, his brother said they weren't involved in the
7 shooting. He didn't know anything about his brother
8 confessing.

9 A He was not in the room at the time, no. That's
10 true.

11 Q But -- but, your understanding from Mr. Finney, who
12 represented his brother is that they both were claiming
13 they weren't there.

14 A That's correct.

15 Q Okay.

16 A Well, they were driving out of the trailer park
17 that morning, but that neither one of them had shot the
18 victim was their contention.

19 Q They were driving from where they lived --

20 A At the trailer park.

21 Q -- to work?

22 A Work.

23 Q They both worked at the same place?

24 A Yes, but they were leaving one of their residences
25 there at the trailer park at that time of morning.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q And where did they both work?

2 A Fire Mountain towards Columbia on Garner's Ferry
3 Road

4 Q And that's one of the Ryan Family Steak House chain
5 families?

6 A I think so. I subpoenaed his work records, so they
7 would be in the trial.

8 Q And oddly enough, you did get the time card?

9 A I believe so, yeah.

10 Q Oddly enough, they sent you somebody else's
11 personnel file?

12 A Well, it wasn't oddly, I subpoenaed Chris Porter's
13 time file.

14 Q Who's Chris Porter?

15 A Umm --

16 Q Co-worker?

17 A Yeah. I was trying to establish other witnesses
18 who might have seen them arrive there at that -- at the
19 Fire Mountain that morning.

20 Q Is that before you knew there was a video?

21 A No, it was after I knew there was a video. But I
22 -- I had not been able to acquire any video of the parking
23 lot when they arrived and I wanted to try the first
24 employee who may have seen Mr. Cooper arrive that morning.
25 To try to push the timeline back as far as I could, you

Arthur Wilder - Direct Examination by Mr. Holler

1 know, as early in the morning as I could establish.

2 Q You were kind enough to provide me with a copy of
3 your file?

4 A I did.

5 Q Thank you. Now --

6 A After you subpoenaed me.

7 Q When I -- I'm not real good and I'm not real
8 bright, but when I got a copy of your file, so I wouldn't
9 make any mistakes or lose anything or misplace anything, I
10 put these numbers on your file which we call Bates Stamps
11 Numbers, at least on the civil side.

12 A All right.

13 Q 3218. It started out with with 3,000. That's the
14 218th page, I'll make this available to you if you want to
15 see, if you want to look in your file.

16 A Okay.

17 Q If we look here, one of these things that was
18 produced to you from this restaurant is the time card,
19 electronic time card for Wayne Cooper?

20 A All right.

21 Q And if we go down here and we see sat September
22 2nd, okay? And we move over, we see that he clocked in at
23 6:12 a.m.?

24 A That's what it says.

25 Q Okay. In -- and again, I don't do criminal

Arthur Wilder - Direct Examination by Mr. Holler

1 defense. Is it fair to say that eyewitness identification
2 is one of the weakest forms of evidence in the criminal
3 defense world?

4 A It has been said that.

5 Q And likewise when you have a confession, you have
6 human beings that were a part of that and may not be as
7 reliable as say science or a computer and a time card. You
8 agree?

9 A The time card might be wrong too.

10 Q Might be.

11 A Depends on if the clock was set at the proper time
12 and so I can't say which would be more reliable. It would
13 just depend on the circumstances.

14 Q Unless the computer is wrong, this's nothing
15 subjective -- if when Tommy Barron testified that
16 Mr. Cooper was sober when he got his alleged confession,
17 that's a subjective determination. That's Tommy Barron
18 using a subjective interactions with him to determine that
19 he's sober?

20 A In Tommy Barron's case, I can't answer that
21 question.

22 Q So much for character. Okay.

23 Assuming the computer is timing right, that's
24 objective. We know that's accurate?

25 A No --

Arthur Wilder - Direct Examination by Mr. Holler

1 Q It was interpreting the six o'clock?

2 A We don't know that that was accurate. We have to
3 -- we have to establish a foundation through a credible
4 witness that that time is accurately entered on the clock.

5 Q You'll agree with me that Jamie Turner, as part of
6 his investigation -- you filed a notice of alibi, did you
7 not?

8 A I did.

9 Q And Jamie Turner drove to this restaurant and he
10 looked at the video?

11 A Yes, he did. According to his testimony.

12 Q Right. Now, unfortunately, they never got a copy
13 of those videos?

14 A That's true. But I did.

15 Q Your notes reflected that you thought that if those
16 videos would have helped them, they would have definitely
17 got a copy?

18 A Well, that's true. I was going to argue that to
19 the jury.

20 Q But for whatever reason, they didn't get a copy,
21 but Jamie Turner acknowledged that he saw the video that
22 showed him clocking in at 6:12, correct?

23 A I think that's what he said, yes.

24 Q And so we have the clock at 6:12, but also when he
25 was looking at the security video, there was a date stamp,

Arthur Wilder - Direct Examination by Mr. Holler

1 according to his testimony, that also acknowledged 6:12 was
2 when Mr. Cooper clocked in at the Fire Mountain Grill?

3 A I believe the video is right here if you want to
4 introduce it, that's up to you, but --

5 Q There's no need to introduce it because Jamie
6 Turner acknowledged that he clocked in at 6:12. That was
7 not in dispute, the fact of the time?

8 A Well, see, Jamie wouldn't have known that for a
9 fact. Jamie would have been investigating and relying on
10 something like that and relying on what he may have looked
11 at on the video. But as to establishing that being the
12 accurate time, again, a foundation has to be laid in order
13 to establish that the time reflected on those statements
14 are actually correct.

15 Q Did you argue in good faith to the jury that that
16 6:12 was correct?

17 A I was trying to argue that it was as close to being
18 correct as possible. The point I'm trying to get to is in
19 order to get some of these things in evidence, we would
20 have had to have found the supervisor or the person in
21 custody of those records in order to put some of them into
22 evidence.

23 Q But they admitted -- they admitted it was 6:12. No
24 one disputed it was 6:12 when he clocked in except you here
25 today?

Arthur Wilder - Direct Examination by Mr. Holler

1 A You're asking me if we can rely on it. I'm saying
2 that you can in certain circumstances, but it's not
3 necessarily reliable if there's no foundation for it.

4 Q Okay. And what, if anything, as his criminal
5 defense attorney, did you do to determine whether that 6:12
6 was reliable then?

7 A Well, I interviewed the salespeople that I could
8 interview, which was Wayne and his brother Derrick as to
9 their recollection of the time and we tried to subpoena the
10 people who were in charge of those records, somewhat
11 unsuccessfully.

12 Q You couldn't find anybody to come in and say the
13 computer was accurate at Fire Mountain Grill?

14 A Not only had certain of the records been destroyed
15 by the time the trial came around or by the time it became
16 obvious that pursuing those things would have been
17 advantageous but some of the witnesses were not available.
18 Chris Porter for one.

19 Q Okay. You've got a co-worker, but is a co-worker
20 really going to remember exactly what time somebody clocked
21 in on a Saturday morning?

22 A I don't know what he would have remembered, but I
23 was trying to find him in case he had encountered
24 Mr. Cooper in the parking lot before he walked in the door
25 to try to push the timeline back a little further.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q Okay. We know they had -- there's a security
2 camera in the parking lot?

3 A I believe that there was.

4 Q Okay.

5 A And I believe that Mr. Turner was able to view that
6 video.

7 Q He did view it.

8 A However, I was not able to obtain it.

9 Q You have a copy of what was inside the store, but
10 not in the parking lot?

11 A I do have a copy of a portion of what was inside
12 the store, that is correct. My recollection is that it
13 showed Wayne and Derrick walking past the salad bar on
14 their way into work. Now, whether there's a date stamp on
15 it, I can't recall. But if it's on that disk, you should
16 have access to it.

17 Q Okay. How do you normally -- do you recall how you
18 counseled Mr. Cooper about the use of an alibi in a
19 criminal defense trial?

20 A Well, alibi is simply saying that I wasn't at the
21 place and time where the crime occurred. And that's what
22 we were trying to establish through use of the Fire
23 Mountain video and the time, times that they arrived at
24 work, was that there just wasn't sufficient time for them
25 to have arrived at work when they did and also have

Arthur Wilder - Direct Examination by Mr. Holler

1 committed the crime at the time the police say it was
2 committed.

3 Q Okay. Again, I'm a civil guy, I do car wrecks.
4 I've heard the alibi defense is one where the criminal
5 defendant actually accepts the burden of proof. You
6 accepted upon yourself as a defendant if you try to pursue
7 an alibi because you've got to prove you weren't there.
8 It's now your burden of proof. Is that a fair assessment?

9 A I don't think so. I think the burden is always on
10 the State.

11 Q An alibi is an affirmative defense?

12 A It may be considered an affirmative defense, but
13 the burden is still on the State.

14 Q Okay. So the benefit of an alibi goes to the
15 criminal defendant? It's a 50/50?

16 A The burden's always on the State of South Carolina.

17 Q Okay. Again from the standpoint, it's a murder
18 trial, you've got a client who alledgedly gave a
19 confession, at trial now heard by two officers, not one.
20 And is it made even more complicated that your client's
21 asked you to pursue an alibi defense?

22 A We were trying to establish reasonable doubt. In
23 -- an alibi is a recognized defense, but the ultimate goal
24 is to convince the jury that the State can't prove the case
25 beyond a reasonable doubt. It's made more difficult, yes.

Arthur Wilder - Direct Examination by Mr. Holler

1 In this case, it was unfortunate that the defendant did not
2 elect to pursue self-defense as his primary defense.

3 Q That there was a plausible self-defense -- assuming
4 the alleged confession was such, it was a confession, there
5 was a plausible self-defense argument?

6 A Right. The reason it made more sense to argue that
7 was because you wouldn't have had to pit the Cooper
8 brothers against the police officers and there really
9 wasn't any reason to disbelieve the testimony of Tommy
10 Barron and Investigator Jamie Turner.

11 Q Good point. One of your last questions to Tommy
12 Barron, you asked him how long you'd known him?

13 A Right.

14 Q And it was -- it was an issue of how long you'd
15 known each other, 20, 30 years and there was some
16 understanding between the two of you that there was an
17 integrity there?

18 A I don't know what the understanding may have been.

19 Q But the impression of the jury is that you were
20 kind of vouching for him a little bit?

21 A I'll defer to the transcript as to what it says
22 there.

23 Q You remember asking that, do you?

24 A I believe it's in there.

25 Q Yeah. Okay.

Arthur Wilder - Direct Examination by Mr. Holler

1 We do know what time -- okay. Let's assume
2 something --

3 A Could I elaborate on that? That doesn't
4 necessarily mean I was vouching for his integrity, it could
5 mean that I was aware of his lapses over the course of that
6 time period. So, you know it could be taken either way. I
7 certainly wasn't trying to vouch for his integrity during
8 the course of my cross-examination.

9 Q Fair enough, but the history between you and
10 Mr. Barron, just him being a police officer and you being
11 the lead PD. You have a history?

12 A Yes, we do and I have cross-examined him on many
13 occasions and have accused him of telling the truth or not
14 telling the truth on many occasions as well. So it just
15 varied on what the evidence showed in particular cases.

16 Q You're using -- let's assume that as his -- you
17 were able to verify that the computer was right, the time
18 clock was right, it was 6:12, when the brothers clocked in,
19 at least when Wayne clocked in, okay? It's your
20 understanding that Jamie Turner saw the video of the
21 brothers outside as well and that that could have been as
22 early as 6:09?

23 A I don't know. It could have been, how early? I
24 can't answer that.

25 Q But Jamie Turner and your argument and your notes

Arthur Wilder - Direct Examination by Mr. Holler

1 reflected, did they not, I looked at your notes when you
2 were preparing for trial and for closing arguments, your
3 notes reflected it could have been two or three minutes?

4 A That's what I was preparing -- you know, hoping to
5 -- any length of time.

6 Q We do know that they probably didn't clock in at
7 the same time they pulled into the parking lot?

8 A One would imagine that would be the case.

9 Q And based upon the description given of them at the
10 scene where the shooting occurred, I think it was actually
11 said three black males; isn't that right?

12 A I believe that's true too.

13 Q That the aunt said three black males, not two. But
14 they were dressed completely different than they were when
15 they arrived at the restaurant?

16 A If the description was correct, they would have had
17 to change clothes.

18 Q Thank you. That's the point I'm trying to make.

19 A Yes, sir.

20 Q So we know -- and of course, I guess someone,
21 theoretically could change their clothes while there
22 driving?

23 A Theoretically.

24 Q But at some point in time, they had to change
25 clothes from from their alleged identification at the scene

Arthur Wilder - Direct Examination by Mr. Holler

1 and when they clocked in at Fire Mountain?

2 A If the description was correct.

3 Q If the description was correct. You talk about the
4 weakest link of all the evidence is the eyewitness
5 identification.

6 A Well, I don't believe that lady was telling the
7 truth from the get go if you want to know the truth about
8 it.

9 Q Let's --

10 A So --

11 Q When you say that lady, Wanda Rogers?

12 A Yeah, the lady that was looking out the window,
13 that alledgedly saw them earlier.

14 Q We had two ladies that testified early in the
15 trial.

16 A Correct.

17 Q One was the aunt who was accompanying the victim as
18 he walked away from --

19 A Could you use names so I don't get confused about
20 which one we're talking about.

21 Q Mary Green?

22 A All right.

23 Q So Mary Green is the victim's aunt and they walk
24 away from this party sometime circa 5 a.m.?

25 A All right.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q She says it's three black males in the car dressed
2 differently than the two Cooper brothers when they clocked
3 in to work. But she doesn't, quote, ID anybody?

4 A Okay.

5 Q The lady that you said you don't think she was
6 telling the truth was the lady who was hosting the party,
7 Wanda Rogers?

8 A That's correct.

9 Q Okay. Wanda Rogers's testimony was that the last
10 people left her party around 5, 5:15 in the morning and
11 that she heard a car drive up outside and stop across the
12 street from her house.

13 A All right. Could we go back to Ms. Green for a
14 minute?

15 Q Sure.

16 A Could you tell me where she testified what these
17 people were wearing?

18 Q I'm sorry. 224 to 252 is her testimony. It was
19 Ms. Rogers and Ms. Green who testified to what they were
20 wearing.

21 A Well, see I'm looking for Ms. Green's -- you said
22 that Ms. Green said they were wearing something and I'm
23 looking for where she said that.

24 Q It may have been Ms. Rogers, but let me look?

25 (There was a pause in the proceedings.)

Arthur Wilder - Direct Examination by Mr. Holler

1 BY MR. HOLLER:

2 Q I don't see where she said it.

3 A I don't think she did, Mr. Holler. And Ms. Green
4 didn't describe what they were wearing, but Ms. Rogers, I
5 believe, did make reference do to it. The point being that
6 Ms. Rogers was in a place where I don't believe she could
7 have seen the defendants at all. Which is why what she
8 said they were wearing really has nothing to do with what
9 they might have been wearing when they walked in front of a
10 camera. I was trying to establish that Ms. Rogers did not
11 have the vantage point to see these people in the first
12 place. And we did the best we could with that issue.

13 Q And you made a motion, actually, to have
14 Ms. Rogers's testimony excluded?

15 A I would hope --

16 Q You did.

17 A Whatever I did, I did to try to cast dispersion on
18 her alleged recollection of what she saw.

19 Q By all admission, Ms. Rogers -- let me just run
20 through what Ms. Rogers said. She said these people leave
21 her house after five o'clock in the morning.

22 A Right.

23 Q They've been partying all night.

24 A Right.

25 Q Of course, she said she hadn't had any alcohol.

Arthur Wilder - Direct Examination by Mr. Holler

1 A Which I don't believe for a minute.

2 Q Okay. She said that a few minutes later, 10 to 15
3 minutes later, she heard a vehicle drive fast and stop
4 across the street from her trailer. And that was outside a
5 fire station.

6 A Yeah.

7 Q She said was lit up so that she was able to
8 identify persons she said were Derrick Cooper stopped the
9 car and got out of the driver's side?

10 A Right.

11 Q Walked around and got in the other side. I'm
12 sorry. Wayne got out of the car and walked to the other
13 side and Derrick walked over and got in the car on the
14 driver's side.

15 A Right.

16 Q And I know you're shaking your head. That was very
17 weak testimony, you agree?

18 A That's what she said.

19 Q Okay. And you're saying based upon what you saw in
20 your investigation, that from where she said she saw this,
21 there was a tree and a bunch of bushes in her way?

22 A I did my best to show that.

23 Q Okay.

24 A And we tried -- you know, John Johnson had gone out
25 there. We had some pictures. We had done as much.

Arthur Wilder - Direct Examination by Mr. Holler

1 investigation as we could. We actually went out and found
2 the current owner of that trailer, interviewed him --

3 Q Put him on the stand.

4 A Put him on the stand, tried to get it into
5 evidence, did everything we could. But see what we didn't
6 know when we began the case, was that was going to be the
7 vantage point she says she was standing at when she said
8 what she said she saw. So we couldn't go back and recreate
9 evidence that we didn't have.

10 Q Right. And Wanda Green actually testified twice,
11 once not in front of the jury and once in front of the
12 jury.

13 A Okay. I defer to the record.

14 Q Okay. And when she testified when she was not in
15 front of the jury, she said -- Well, let's go back for a
16 second. I'm sorry. It's a long trial, I'm trying to cut
17 some time out here.

18 Ms. Wanda Rogers testified that she didn't know who
19 these boys were, but she'd seen them before. Didn't know
20 their names, but knew them by seeing them before.

21 MR. GOURLEY: Your Honor, I understand we're
22 allowing Mr. Holler to lead to a certain extent. This is
23 PCR, we're not hear to retry the case. If he can get to an
24 allegation of ineffective assistance of counsel based off
25 of this testimony, I would certainly appreciate it.

Arthur Wilder - Direct Examination by Mr. Holler

1 THE COURT: All right. Yes, sir.

2 You may move along Mr. Holler.

3 MR. HOLLER: Thank you, Judge.

4 BY MR. HOLLER:

5 Q I'm sorry, where were we?

6 THE COURT: About Wanda Rogers. She didn't know
7 who those boys were, she'd seen them before.

8 BY MR. HOLLER:

9 Q She said -- and again, I'm trying to speed this up,
10 I apologize.

11 She didn't know who the boys were but said she'd
12 seen them around. She wasn't told who they were until
13 months later when she was told there was a confession and
14 didn't make an identification until she was sitting in the
15 courtroom and she pointed the defendant out sitting next to
16 you.

17 A Right. Again, I would defer to whatever the record
18 would reflect.

19 Q And you fought that tooth and nail?

20 A Instinctively.

21 Q When she testified for your motion to suppress
22 hearing, she testified that she actually saw the boys twice
23 that morning.

24 A All right. That would be on what page of the
25 transcript?

Arthur Wilder - Direct Examination by Mr. Holler

1 Q Sure. Page 185.

2 A All right. I don't see that testimony on page 185.

3 Q I'll get you there in a second. Hold on.

4 MR. HOLLER: Court's indulgence, we're having
5 computer issues here.

6 (There was a pause in the proceedings.)

7 BY MR. HOLLER:

8 Q You looking at page 185? Okay. I believe if I
9 stay away from this stuff it would work a whole lot better.

10 Looking at the top of page 185.

11 A Okay.

12 Q Okay. There's a page number. Okay. We can go
13 back and look at the question if we need to, but the answer
14 was, I saw the car around the time the shooting happened.
15 The car came back through the park.

16 Question -- your question to her on
17 cross-examination, this ends the in-camera hearing -- 15 to
18 20 minutes later?

19 No, no, I can't.

20 Question: Another green car comes back through?

21 Answer: No, it was the same green car that I saw.

22 Question: Same green car? You didn't see the
23 occupants in the car on that occasion though, did you.

24 Answer: No.

25 A All right.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q So she testified in-camera two times she saw the
2 car. First is when the car stopped.

3 A Right.

4 Q Driver who got out and went around --

5 A Well, I hate to be splitting hairs, but you asked
6 me if she saw the defendants. She saw the car twice.

7 Q I'm sorry, I said car. I apologize?

8 A I'm sorry if I misunderstood you.

9 Q I apologize to.

10 A Okay.

11 Q Again, I don't think any of this is in dispute, I'm
12 trying to set the stage?

13 A All right.

14 Q So Ms. Rogers says she saw the car, identified the
15 boys by face, not knowing a name until months later when
16 she's told they confessed. She makes an ID in court. And
17 then she says after that she sees the car again. Don't
18 know who the occupants are?

19 A The identification was of the people who were
20 standing outside of the fire station, not the occupants of
21 the car.

22 Q But she says it's the same green car.

23 A But we don't know who's driving it.

24 Q Fair enough?

25 A We don't know who's in it.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q Fair enough. The car. She sees the occupants and
2 then 15 minutes later --

3 A Right.

4 Q -- she sees the same car.

5 A True. She said that.

6 Q Assume that the jury would conclude the same people
7 were still in the car.

8 MR. GOURLEY: Your Honor, objection, that's
9 speculation.

10 THE WITNESS: No leaps of faith in a criminal case.

11 BY MR. HOLLER:

12 Q Well this is a civil case. I have a preponderance
13 of the evidence burden to meet.

14 A And I don't know who's in the car.

15 Q Okay.

16 A I still don't know who was in the car at that time.

17 Q She says it's the same green car that she
18 identified Mr. Cooper and the brother.

19 A I defer to the testimony on page 184 and 185.

20 Q Okay. We do know what time -- let's go back to
21 Ms. Green's testimony. Ms. Green was with the victim. She
22 says she described the altercation, the shot. She said she
23 stayed with her nephew, the victim for about five minutes
24 before she went to her sister's house and knocked on the
25 door and said, Call 9-1-1.

Arthur Wilder - Direct Examination by Mr. Holler

1 A All right.

2 Q And we know, I note from your notes as well as some
3 of the other evidence it was about 5:58 when the police
4 first received a call, when the first notice went out over
5 their records. And I just need a yes or no. These are
6 your notes, aren't they?

7 A Those are my notes, yes, they are.

8 Q Call came in at 5:58.

9 A That's what my notes reflect, yes.

10 Q And that's what the other notes in the evidence was
11 too?

12 A Those are my notes in preparation for my argument,
13 my closing argument.

14 Q And you would only argue things that are based upon
15 the record and you can in good faith make the argument?

16 A I would have been basing it on something in the
17 record, that is true.

18 MR. GOURLEY: Your Honor, I believe the record
19 speaks for itself on this issue.

20 THE COURT: All right.

21 BY MR. HOLLER:

22 Q In your records there was a log of the first
23 responders at the scene, correct?

24 A That was in the discovery, yes, it was.

25 Q Okay. And it looks like the first responders were

Arthur Wilder - Direct Examination by Mr. Holler

1 on the scene --

2 A It looks like 6:55 to me.

3 Q No time in, time out?

4 A Okay. 6:01.

5 Q 6:01. You'll agree with me that those times, 6:58
6 and 6:01, assuming a computer or clock's not wrong --

7 A That's more likely to be right than the Fire
8 Mountain records because that's based on the dispatcher's
9 time clock.

10 Q Okay. Fair enough.

11 So we know 5:58, but you were going to argue 6:01
12 -- and if we take Mary Green's word five minutes after the
13 shooting she went, knocked on her sister's door and they
14 called 9-1-1, there's no reason to think that anybody
15 delayed.

16 A Mr. Holler --

17 MR. GOURLEY: Your Honor, that's speculation --

18 THE WITNESS: I wouldn't take Mary Green's word for
19 anything --

20 THE COURT: Wait a minute. The court reporter
21 can't get two or three of us talking at the same time.

22 Restate the question, please, Mr. Holler.

23 BY MR. HOLLER:

24 Q Mary Green's testimony was that five minutes after
25 the shooting, she knocked on her sister's door and told

Arthur Wilder - Direct Examination by Mr. Holler

1 them to call 9-1-1?

2 A I defer to the record.

3 Q Okay. Do you really want -- do you remember that?

4 Do you want to take the time to look in the record?

5 A I don't dispute she said that, Mr. Holler, but if
6 the question is, do I have reason to believe that there was
7 no delay, the answer is, I believe there was delay because
8 they would have been hiding a gun, they would have been
9 hiding drugs, they would have been hiding the liquor out
10 there. They wouldn't have called the police officer until
11 they knew they had to. That's the very last thing that I
12 believe they would have been doing that morning. They
13 didn't want the police there more than anybody else did.
14 Ms. Green probably took her time about going down there and
15 calling the police.

16 Q So her 19-year-old nephew bled out. Well, he did
17 bleed out, that's not an argument.

18 A That's what I think.

19 Q Correct. Her testimony at trial, however, and
20 that's what you're trying, you're trying the case based on
21 the testimony --

22 A That's right.

23 Q -- given the jury?

24 A And I was doing my best to establish his alibi. So
25 I wasn't going to be arguing that to the jury.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q That she remained with her nephew for five minutes,
2 knocked on her sister's door and said, Call 9-1-1.

3 A I defer to the record. If that's what she
4 testified to --

5 Q I'm not saying it's believable, I'm saying do you
6 remember her saying that?

7 A No, I don't remember her saying that, that's why
8 I'm deferring to the record.

9 THE COURT: If you're saying as an officer of the
10 Court that it's in the record, Mr. Holler --

11 MR. HOLLER: It is.

12 THE COURT: -- I believe that it is in the record.

13 MR. GOURLEY: I would just ask that there be a
14 point to all these questions, a relating claim of
15 ineffective assistance of counsel. I have yet to hear that
16 Mr. Wilder was ineffective at all. Mr. Holler is merely
17 reciting facts that are already in the record. I would
18 just ask that he move along and actually state an
19 allegation for this PCR claim.

20 THE COURT: Thank you, thank you, Mr. Attorney
21 General.

22 MR. HOLLER: Thank you.

23 BY MR. HOLLER:

24 Q Let's do that. You said aggressively pursuing and
25 supporting Mr. Cooper's alibi defense.

Arthur Wilder - Direct Examination by Mr. Holler

1 A That's correct.

2 Q How far was it -- this is a time, speed, distance
3 issue. How far is it from the scene of the shooting to
4 where the boys had to go the work?

5 A I don't recall specifically, but my recollection
6 was it was about 45 miles.

7 Q I want to -- I thought I had this thing
8 preprogrammed, but it's not cooperating with me to -- to --
9 I'm going to put some addresses in and we're going to look
10 very briefly at where this happened.

11 MR. GOURLEY: Your Honor, just for the record, I
12 would argue that it's speculation at best.

13 THE COURT: Well, it's not speculation from Cherry
14 Vale to Fire Mountain. I mean he's --

15 MR. HOLLER: Judge, I plan on building something
16 on that.

17 THE COURT: I take it he's trying to get time and
18 distance, a timeline and distance line also. I think I
19 pass both of those locations on my way home every
20 afternoon.

21 MR. HOLLER: You do, sir.

22 MR. GOURLEY: And I believe, again, it's stated in
23 the record.

24 THE COURT: All right.

25 MR. HOLLER: Well, we'll get to that, I promise.

Arthur Wilder - Direct Examination by Mr. Holler

1 BY MR. HOLLER:

2 Q Jamie Turner testified, he's the lead investigator
3 in this case, he basically testified that he drove it and
4 it took him 37, 38 minutes or something to that effect. He
5 said one night late at night coming back from Columbia he
6 timed it and he did it in 22 minutes. That was the
7 testimony in the record?

8 A Okay.

9 Q You didn't cross-examine him or challenge him on
10 that? That would be a no?

11 A I defer to the record as to whether I crossed
12 him --

13 Q Would you like to take a moment and look at Jamie
14 Turner's testimony?

15 A I'll be glad to. I'll be glad to. What page is
16 that on? Let's see, 120.

17 Q 121 to 132?

18 THE COURT: 121 to?

19 MR. HOLLER: 132.

20 THE WITNESS: All right. My cross-examination
21 begins on page 125 and redirect is on 130. So there's five
22 pages of cross-examination by me.

23 BY MR. HOLLER:

24 Q Let me show you what I've -- point you to two
25 references here try to show you what the distances are.

Arthur Wilder - Direct Examination by Mr. Holler

1 A Well, it was another cross-examination on -- of
2 Mr. Turner on 395. Let me see if I mentioned it there.

3 I'm crossing him also at 407.

4 Q Did you cross-examine him about the distance and
5 the time --

6 A Well, that's what -- I have to read them all to
7 make sure, you know. Let's see here --

8 Because that section of the examination that I'm
9 reading right now has to do with the tape at Fire Mountain
10 or the video.

11 All right. Now, on page 419 Mr. Corbett gets back
12 into the distance from Fire Mountain to Cedar Hill.

13 THE COURT: Cedar Hill? It's not Cherry Vale?

14 THE WITNESS: Well, that's what Mr. Corbett called
15 it in his direct.

16 MR. HOLLER: It was actually Cedar Hill Mobile
17 Home Park in Cherry Vale.

18 THE COURT: Thank you.

19 MR. HOLLER: There's far too many mobile home parks
20 to call any one Cherry Vale.

21 THE COURT: All right.

22 THE WITNESS: All right. I do not believe I
23 cross-examined Mr. Turner on his trip.

24 BY MR. HOLLER:

25 Q So the only testimony in the record was that he did

Arthur Wilder - Direct Examination by Mr. Holler

1 it in the 22 minutes one night late at night after there
2 was no traffic on the street?

3 A I don't know if that's the only testimony in the
4 record, but that was his testimony.

5 Q Okay.

6 THE COURT: And where is that in the record? Can
7 you tell me, Mr. Holler?

8 Well, you can move along, you can point it out to
9 me later. That's fine.

10 MR. HOLLER: I'll be happy -- I'm sorry, Judge.

11 THE COURT: That's quite all right. That's fine.

12 BY MR. HOLLER:

13 Q Okay. Let's look, Mr. Wilder at the screen up
14 here. We can all see. Try to help you get your bearings.
15 Try to do a little calculation on the time. I put in two
16 addresses. We'll find that. He did say 22 minutes is the
17 fastest he did it and he gave a distance which differs from
18 what we're going to look at.

19 Tell me when you're ready, Mr. Wilder.

20 A I was just trying to help the Judge find that
21 testimony.

22 It's on age 419, what he said was, First time I did
23 it was like 4:30 in the afternoon. I drove 60 miles an
24 hour. Unfortunately at 4:30 in the afternoon, traffic is
25 quite heavy. I caught every light and it took about 32

Arthur Wilder - Direct Examination by Mr. Holler

1 minutes to make that trip. It's a little over 27 miles.

2 One night I was coming back from Columbia about eleven and

3 I actually drove around 70 miles an hour. I was able to do

4 it in a little over 22 minutes. No traffic light, there

5 was no traffic, number one and this were no traffic lights.

6 I didn't catch a traffic light coming in. I was able to

7 drive through. It was a little over 22 minutes.

8 That's his testimony.

9 Q Okay. And he was not --

10 A That's 419.

11 Q He was not cross-examined on that?

12 A No. I did not cross-examine him on that.

13 Q Let's look. I've used the address here 1155 Rondo
14 Road, which is the current fire station in Cherry Vale?

15 A Okay.

16 Q And just so we get some landmarks down, you can see
17 that's the airfield for Shaw Air Force Base. You see that?

18 A I do.

19 Q And we'll even come down and you see where the blue
20 line starts?

21 A Yes, sir.

22 Q You see the blue line on that screen?

23 A I do.

24 Q And do you see the fire station with the green roof
25 right in the middle? Here I'll put it right in the middle.

Arthur Wilder - Direct Examination by Mr. Holler

1 Okay. Can you see across the top? I know that's hard to
2 see, but there's no way I could make it bigger, but it says
3 28.5 miles.

4 A Okay.

5 Q All right. Let me tie the string together. That's
6 one end of the string which is the Cherry Vale Fire
7 Department here. And we'll drive it. Come out to 378,
8 turn left and I'm going to, for the sake of making this too
9 difficult to follow, I'm going to go to a map instead of
10 satellite image so we don't spend our time waiting for my
11 computer to upload.

12 And we drive all the way through the swamp, across
13 the Wateree River, past Lower Richland High School. You're
14 familiar with this path, aren't you?

15 A Oh, yes.

16 Q Okay. So once you get past 441, which is the first
17 major intersection after you turn left, the speed limit is
18 then 60 miles an hour.

19 A Okay.

20 Q There are no tricks here. Just trying to establish
21 so the judge can take judicial notice on the way home.
22 When you get into Horrell Hill after you've gone through
23 the swamp, it drops down because of the traffic light at
24 the top of Horrell Hill?

25 A Okay.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q When you -- and then from that point on, it stays
2 at 45 and it may drop down again when you get in front of
3 Lower Richland High School.

4 A That's my recollection.

5 Q And then after that point you're in a commercial
6 area and the speed limit stays well within 60.

7 A All right.

8 Q Okay. I can go back following Lower Richland High
9 School, I'm sorry if you can't see that. Can you read
10 Lower Richland from there?

11 A No, but I'll take your word for it. That's fine.
12 Okay. I can see that.

13 Q Okay. And we go to the other end of the string
14 here that's 28.5 miles long and I'm going to go back to
15 satellite image. And we can drive around this to confirm
16 where we were in terms of this address, but I've used this
17 Colonial Villa Drive as the road that was closest to the
18 restaurant. This will be the restaurant in the center of
19 the screen. And I want you -- you don't want you to take
20 my word for it, I want you to be comfortable with this.
21 This is the Super Walmart right here.

22 A Okay.

23 Q The really big building. Down here you've got my
24 children's favorite restaurant, Popeye's Fried Chicken.

25 A Familiar with it.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q And down at the bottom of the hill, of course, is
2 that -- is the restaurant, the Fire Mountain Grill.

3 A Correct.

4 Q And the blue line actually stops right over here.

5 A All right.

6 Q That's the red point where it stops. So you agree
7 with me, roughly 28.5 miles?

8 A According to your Google map there, yes.

9 Q My Google map, this is actually the map application
10 that came from Apple. Google Maps gave me something
11 different?

12 A Well, that last little turn you took there, you
13 know, may change it by half a mile.

14 Q Right. And when I did the Google maps it was 28.2.
15 And that's what I want to demonstrate to you.

16 A I'll take your word for it, Mr. Holler.

17 Q See when I ran this, I don't know if I can make
18 this any bigger. Bring this over to you. See where it
19 shows the distance?

20 A Which is 28.2 miles.

21 Q 28.2.

22 A Let me look at that again.

23 Q Sure, as much time as you want.

24 A That's okay. Again, you're going down Colonial
25 Villa Road which is out of the way.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q Okay. Well, our other point to point we looked at,
2 and we can look at this one point to point if you want, but
3 it was --

4 This is, again, Google Maps. Can you see Colonial
5 Villa Drive?

6 MR. GOURLEY: Your Honor, I'll stipulate that it's
7 approximately 28.2 miles and 28.5 miles according to that
8 route. I would -- it's speculation as to how fast the
9 defendants were going, what route they exactly took, but as
10 far as the distance that Mr. Holler's putting up, no
11 problems.

12 THE COURT: All right.

13 MR. HOLLER: And I apologize about being slow.
14 This, of course, would be the fastest route.

15 THE COURT: Sir?

16 MR. HOLLER: I'm, I was asking Mr. Wilder if this
17 is the fastest route.

18 THE WITNESS: I believe that it would be,
19 Mr. Holler, except for that last little dog leg you took
20 off of the road. And you know, see what Mr. Turner says
21 here is it's a little over 27 miles.

22 BY MR. HOLLER:

23 Q Okay.

24 A Which is still consummate to what you're putting up
25 on the board there. 28, 28.2, take away a half a mile, a

Arthur Wilder - Direct Examination by Mr. Holler

1 little over 27 miles.

2 Now, you know, at the speed limit, granted that's
3 what it is now, it probably was pretty close to that at the
4 time that this happened, but that doesn't mean anybody was
5 going that fast. I mean they could have been going 90
6 miles an hour down there, for all I know.

7 Q Good point.

8 A So, I just don't know don't how fast they would
9 have been going. That's -- you know, also an important
10 detail to --

11 Q It is, it's a very important detail.

12 A It is.

13 Q It's extremely critical.

14 A It is.

15 Q It's one worthy of arguing to a jury; isn't it?

16 A Well, early in the morning the length of time that
17 it takes you to get there, you could have been going any
18 speed.

19 Q Let's look at this. The things that we know and
20 these are references to the records to your notes and also
21 the transcript. 6:12, Wayne clocked in with Derrick. You
22 agree with that?

23 A I'd defer to the record.

24 Q Okay.

25 A But, okay.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q And it's in the record. That's fine. Your
2 argument was that you were going to make based on your
3 notes in your file was that they were in the parking lot
4 for some period of time, so at 6:09 they pulled in the
5 parking lot.

6 A I was going to go for every anyone I could get out
7 of it, yes, sir.

8 Q We know at 6:01, that's the first responder on the
9 scene. We looked at that paperwork.

10 A Okay.

11 Q All right. 5:58 was the first contact with the
12 police that started this process.

13 A Again, I would defer to the record, but I won't
14 dispute that.

15 Q I'm going by the record and by your notes.

16 A Okay.

17 Q You argued to the jury on page 725 that 5:58 was
18 the call.

19 A Okay.

20 Q We're cool with that, right?

21 So let's look -- are you familiar with this
22 formula?

23 A I'm no good at math, I'll tell you right now.

24 Q But you got a private investigator?

25 A Well, I got a calculator.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q Okay. And we'll do the math.

2 MR. GOURLEY: Your Honor, I'm going to have to
3 object to the formula. I don't know -- I don't really see
4 a basis for this.

5 MR. HOLLER: Time, speed, and distance, Judge.
6 It's pretty scientific. And I can do it on a calculator
7 and show this --

8 MR. GOURLEY: Never mind. I withdraw my objection,
9 Your Honor.

10 THE COURT: All right. Thank you.

11 BY MR. HOLLER:

12 Q Okay. Speed equals distance over time?

13 A Yes.

14 Q If you're driving 70 miles an hour, it takes you an
15 hour to drive 70 miles.

16 A Right.

17 Q Okay.

18 A I got that.

19 Q Trust me, my math is not that strong either.

20 If someone is driving at 70 miles an hour, we
21 should be able to calculate how long it takes them to go
22 28.2 miles?

23 A Yes.

24 Q That's simple math.

25 A If they were, that's true.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q And this would be -- that would be 70 miles an hour
2 from the moment they start and they stop going from 70 to
3 0?

4 MR. GOURLEY: Speculation, Your Honor.

5 THE COURT: Well, he's just using that as part of
6 his hypothetical. It still doesn't compute, necessarily,
7 down to what Mr. or Mr. Cooper was operating their motor
8 vehicle at on that morning.

9 MR. GOURLEY: All right. Thank you, Your Honor.

10 MR. HOLLER: I absolutely agree.

11 BY MR. HOLLER:

12 Q Now, I -- I Googled -- we can use any of these you
13 want or we can double check on three or four of them. But
14 I just Googled something called speed, distance, time
15 calculators.

16 MR. GOURLEY: I'll stipulate to the time frame of
17 the 70 miles per hour.

18 MR. HOLLER: This the simple calculation, Judge
19 and we can recreate --

20 MR. GOURLEY: I'll stipulate it to move things
21 along.

22 THE COURT: I'm anxious to know how long it takes.

23 MR. HOLLER: I'm sorry. I'm sorry, Judge.

24 BY MR. HOLLER:

25 Q Okay. 70 miles an hour, traveling at 70 miles an

Arthur Wilder - Direct Examination by Mr. Holler

1 hour as an average to go 28.2 miles is 27 minutes and 48
2 seconds. And again, I'll be happy to run these
3 calculations.

4 A Okay.

5 Q This stuff isn't changing.

6 A I'll take your word for it.

7 Q Okay.

8 A That looks about right to me.

9 Q So if we go back to here, you're arguing an alibi
10 for your client, we know he clocked in at 6:12. If it
11 takes him that long, the absolute last time that he could
12 leave to be at Fire Mountain if he's traveling at 70 miles
13 an hour the entire time, no slowing down, no speeding up,
14 start to stop, it's 5:44 and if we assume he's in the
15 parking lot at 6:09, it's 5:41?

16 MR. GOURLEY: Objection, Your Honor: Speculation.
17 He don't know --

18 THE WITNESS: It's a hypothetical. I'M good with
19 that.

20 MR. HOLLER: Okay.

21 THE COURT: It is a hypothetical. He's just
22 extrapolating, kind of like the old breathalyzer machines.
23 I'm sure Mr. Wilder tried many of them as I did at one
24 point in time.

25 MR. GOURLEY: Yes, sir.

Arthur Wilder - Direct Examination by Mr. Holler

1 THE COURT: So he's just extrapolating back, if you
2 take the 27 minutes and 46 seconds off of the 6:12 time
3 frame, you get to -- he's just backing that up
4 hypothetically. What is it 5:44; is that what you just
5 said, Mr. Holler?

6 MR. HOLLER: Yes, sir, 5:44, 5:41.

7 THE COURT: All right.

8 BY MR. HOLLER:

9 Q Which would have been -- to get there going 70
10 miles the whole time, you'd have to leave at 5:44 to be
11 there to clock in at six o'clock?

12 A All right. And hence the notion that it's an
13 alibi.

14 THE COURT: Because he's elsewhere.

15 MR. HOLLER: Because he's elsewhere.

16 THE WITNESS: That's right, he's on the road to
17 Fire Mountain.

18 BY MR. HOLLER:

19 Q And remember, they still got to change clothes,
20 they still got to throw a gun away, they still got things
21 to do.

22 A Right.

23 Q If you buy the State's case.

24 A Okay. Right.

25 Q If you buy the alleged confession. Let's look at

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1 the other times. If 60 miles an however is your average,
2 it takes 32 minutes and 27 seconds?

3 A Right.

4 Q 50 miles an hour it takes 38 minutes and 56
5 seconds. That's a credible argument to make to the jury on
6 the alibi, isn't it?

7 A Hey, that's what I was doing.

8 Q Where did you argue that it would have taken 38
9 minutes driving 50 miles an hour?

10 A In closing argument?

11 Q Yes, sir.

12 A I would have to defer to the record. (Reading.)

13 THE COURT: You all right, Brenda?

14 THE COURT REPORTER: Yes, sir. I am.

15 THE WITNESS: All right. 740, testimony is used to
16 get to work at 5:30. That's on time for them on that day.
17 They would have had to have been leaving out of there at
18 five o'clock in order to be at work on time. We know this
19 incident did not take place until after 5:30 and all the
20 way up until 5:58 on the -- what it says. Three minutes
21 before if you want to accept law enforcement. So if they
22 started out to work on time, if that's where they're going
23 according to Mr. Corbett's office -- argument, which I
24 don't know what it's going to be. But if he's going to try
25 that. This incident would have had to have taken place a

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1 lot earlier; and therefore, none of it would make any sense
2 because Mary, you remember Rodney green on the stand,
3 everything has already happened by 5:58 a.m. in the
4 morning. In other words, they were at work.

5 BY MR. HOLLER:

6 Q You did argue they were at work. You did argue?

7 A That's my argument for alibi.

8 Q When you say leaving for work. Mr. Cooper told you
9 that he lived behind McLaughlin Ford. That's North Main,
10 straight north of here?

11 Q All right. You testified earlier that he lived in
12 the park. He didn't live in the park. He didn't live in
13 Cherry Vale?

14 A Well, somebody lived over there because they were
15 picking him up there at that time of day in the morning.

16 Q He told you at all times he lived behind the
17 McLaughlin Ford. The address was --

18 A That incident was involved in the case -- that
19 location was involved in the case because that's where they
20 were when the police caught up with them.

21 Q 905 Suzy Rembert Road?

22 A All right. Yes.

23 Q And that's behind McLaughlin Ford?

24 A As far as I know, yes.

25 Q Which is a good 15 or 20 miles further away from

Arthur Wilder - Direct Examination by Mr. Holler

1 Fire Mountain --

2 A It is.

3 Q -- Grill?

4 Okay. He never told you he lived over there?

5 A Well, they were picking either he or his brother up
6 from that location that morning is my understanding. What
7 did he testify to?

8 Q That he lived behind McLaughlin Ford and he wasn't
9 there he was at Fire Mountain Grill.

10 A I defer to what he said on the record.

11 Q Okay. Let's look again at these numbers. You
12 agree this is stuff that was available back when the case
13 was tried, the math, for the time, speed and distance.

14 A Math is available -- has been available since
15 Archimedes.

16 Q At least these times, the 6:12 time card, the 6:19
17 plausible time from when they went in the parking lot to
18 get from the parking lot to the store to clock in, to the
19 first responder's time and the first call to the police at
20 5:58, those were all in the record?

21 A Yes, sir.

22 Q Okay. So if we take the 6:09, assuming there had
23 to be some time, okay, to get from the parking lot into the
24 store to clock in. And, of course, they had to change
25 clothes, if, in fact, the State's case is accurate?

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1 A Right.

2 Q Again, assuming they didn't change clothes in the
3 car. But if you're diving at a hundred miles an hour, it's
4 hard to change clothes in a car?

5 A All right, sir.

6 Q Okay. And we also have Ms. Green, the aunt, who
7 said, her nephew was shot, she waited five minutes, she
8 knocked on the door and 9-1-1 was called.

9 A I'll defer to her testimony.

10 Q Consistent with that, if we take 5:53 as the time
11 of the shooting, we know that if the State's case is right,
12 Mr. Cooper has to go 28.2 miles to clock in at work. If we
13 used our time, speed, distance calculator, he would have
14 had to have averaged 121.69 miles per hour on his trip to
15 Columbia.

16 A Okay.

17 Q That's reasonable doubt, isn't it?

18 A If you take that time as being the time when this
19 shooting took place, yes.

20 Q That's an argument worth making, that a reasonable
21 criminal defense attorney would make?

22 A You saw the argument I made, that he would have had
23 to have been some place else.

24 Q But we're not talking about credibility. We're
25 talking about numbers that were in the record, assuming

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1 computers are accurate. The 9-1-1 dispatch -- everything
2 is accurate, the time clock at the store was accurate.

3 A Okay. What I'm going to say about that, Mr. Holler
4 is that I did the best I could under the circumstances.

5 Q There's no question, Mr. Wilder, that you did your
6 best and you did for your entire career. The question here
7 in this court is what a reasonable defense attorney could
8 have argued, time, speed, and distance to show it was
9 impossible for Mr. Cooper to be there when the shooting
10 occurred, based upon the testimony at the trial?

11 A Well, maybe they should have. I don't know.

12 Q And that --

13 A I'll let somebody else make that determination.

14 Q And that testimony could have made a difference,
15 could have changed the outcome.

16 A Might have.

17 Q It would have supported Mr. Cooper's testimony that
18 he wasn't there?

19 A Could have.

20 Q And you can tell the jury Mr. Cooper uses drugs, he
21 drinks, he might not be a bright man and he's gullible. He
22 signed something that Tommy Barron put in front of him, but
23 he could not have possibly been there to shoot anybody.

24 A All of those things could have been done, but
25 obviously, I didn't do them. So somebody else will have

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1 the make the determination as to whether or not they would
2 have made a difference, though.

3 Q And a reasonable criminal defense attorney coming
4 out of school would rely upon something as simple as time,
5 speed, and distance to figure out whether he'd been there.
6 You didn't have your investigator measure the distance, you
7 didn't cross-examine Jamie Turner who said it could be done
8 in 22 minutes. You didn't put up anything about the
9 distance and the time it would take to travel?

10 A Mr. Turner testified as to his experience driving
11 the distance on two separate occasions. Mr. Turner was
12 testifying as far as I know, truthfully; and I still
13 believe his testimony right now.

14 Q You believe he traveled 28.2 miles in 22 minutes?
15 Do you really?

16 A If Mr. Turner said he drove it in that amount of
17 time, I believe Mr. Turner drove it in that amount of time.
18 See, I mean, I never found Mr. Turner to have willfully
19 told anything except the truth in 30 some odd years. I
20 wish I could say the same about Mr. Barron, but --

21 Q He said he drove 70 miles an hour.

22 A You see the problem with all of that is
23 establishing the time of the shooting.

24 Q Mr. Wilder, the problem is you have to take the
25 evidence that's before the jury.

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1 Okay. Let's do this: I'm calculating -- I don't
2 know if I can make this bigger for you or not. I'm going
3 the calculate 28.2 miles in 22 minutes and see what
4 Mr. Turner's speed would have had to have been based upon
5 the laws of physics. You say this is a person that you
6 don't believe --

7 A Now what was the speed then?

8 Q He said he drove 70 miles an hour. Based on the
9 laws of physics, he would have had to have averaged,
10 there's no time for slowing down, he has to average 88.5
11 miles per hour.

12 A Well, first of all, he said it was a little more
13 than 27. But, okay.

14 Q No, he said he did it one night in a little over 22
15 minutes, when there was no traffic, he didn't get caught at
16 traffic lights.

17 A Okay.

18 Q But to do that, he would have had to have averaged
19 88 miles an hour, which means he probably would have had to
20 have gone over a hundred at some point in time because you
21 have a start and you got a stop. That's not credible is
22 it?

23 A I kind of doubt he went 88 miles an hour.

24 Q I do too.

25 A Yeah.

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1 Q He should have been cross-examined on that.

2 A If you say so.

3 MR. HOLLER: Court's indulgence, please.

4 THE COURT: Yes, sir.

5 (There was a pause in the proceedings.)

6 BY MR. HOLLER:

7 Q Mr. Wilder, let me follow up with you. Mr. Cooper
8 asked you to get a copy of his cell phone records? Let me
9 put it into context. Did he tell you while he was
10 allegedly confessing, he was, in fact, not even talking to
11 Tommy Barron that he was on his cell phone?

12 A He did tell me that he had a cell phone in his
13 possession and that he made a call.

14 Q And he told you that those phone records would have
15 shown that at the time he was allegedly confessing, that
16 he had a 10 minute conversation with somebody else?

17 A I don't know what his time frame on that would have
18 been.

19 Q Did you or either Mr. Johnson obtain a copy of his
20 phone records for the purpose of showing that he was not
21 confessing, but in fact, was talking to a third party?

22 A I do not believe that we did. Did you?

23 Q I'm asking you that.

24 A Did you?

25 Q No.

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1 A I did not.

2 Q There's a time limit for when they keep phone
3 records.

4 A Okay.

5 Q But you do acknowledge he asked you to do that?

6 A I remember he said he was on the phone. I do not
7 remember if he asked me to get the copy of the cell phone
8 records.

9 Q Mr. Wilder, the de -- the description that was
10 given by Ms. Rogers, and again you say that Ms. Rogers was
11 not, in your opinion a very credible witness?

12 A That's my opinion, that's correct.

13 Q She described the photograph of this car?

14 MR. GOURLEY: Objection, Your Honor, we don't know
15 where that photograph came from. He can't authenticate it.

16 THE COURT: Is it part of the record?

17 MR. HOLLER: No, sir. Let me see what I can do.

18 BY MR. HOLLER:

19 Q Led me hand you what is probably
20 self-authenticating. It appears to be -- I'll show it to
21 opposing counsel.

22 MR. GOURLEY: I object regardless. It's not
23 self-authenticating. There's no pictures or ID number,
24 just some basic description of a car that was probably made
25 that was a same color, same description, there's no

Arthur Wilder - Direct Examination by Mr. Holler

1 foundation laid and he can't authenticate that picture.

2 THE COURT: I would sustain the objection.

3 MR. HOLLER: Okay.

4 BY MR. HOLLER:

5 Q Do you know what a Dodge Intrepid looks like?

6 A You know, there were pictures, I think in the file
7 of a Dodge Intrepid and that sort of thing. And I would
8 have to say I can't tell you what particular brands of cars
9 these are, that the pictures are. But I have some black
10 and white copies that were in the file of various
11 automobiles that were alledgedly involved in the case.

12 Q The 9-1-1 call, the description that was released
13 was an Intrepid?

14 A There were several descriptions of cars released
15 that evening.

16 Q This is true.

17 A In fact, I subpoenaed one of the officers who put
18 out a BULO on a different automobile altogether.

19 Q Right. And he didn't have much of an explanation
20 for that?

21 A Well, I was hoping he would tell me the name of
22 where that information came from so that I could try to
23 divert suspicion away from Mr. Cooper. But he didn't do
24 it.

25 Q The type of vehicle that they were actually -- that

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1 Mr. Cooper and his brother were driving that day, September
2 2nd, 2006, what was that?

3 A I don't know what they were actually driving.

4 Q Well, the police took pictures and put into
5 evidence of what?

6 A Well, there's a picture of this automobile with a
7 license N2208 on the back.

8 Q A Chrysler Concord?

9 A Is that the one you're talking about?

10 Q Yes, sir.

11 A What's the question?

12 Q That Mr. Cooper, the car that they took tests onto
13 see if there was gunpowder residue on was a Chrysler
14 Concord?

15 A I'm going to have to defer to the toxicology
16 reports on that sort of thing or trace reports, wherever
17 they are, to tell you where the gunshot residue came from.
18 And I'm sorry I just don't remember at this point. But...

19 There was a car parked at that residence over back
20 of McLaughlin Ford that they did some testing on.

21 Q The 905 Suzy Rembert Road?

22 A Right.

23 (There was a pause in the proceedings.)

24 THE WITNESS: Mr. Holler, I cannot find the trace
25 report. If you have a copy of one I might be able to pick

Arthur Wilder - Direct Examination by Mr. Holler

1 up --

2 MR. HOLLER: I'm trying to find one as well.

3 BY MR. HOLLER:

4 Q Let me ask a question and then we'll continue the
5 search.

6 A Okay.

7 Q Did Mr. Cooper ask you to find evidence that a
8 Chrysler Concord, the car that he was driving was visually
9 distinctive from a Dodge Intrepid?

10 A I believe we did discuss things like that.

11 Q Okay.

12 A Trying to show the differences between different
13 automobiles.

14 Q And did you produce any testimony at trial that the
15 Dodge Intrepid, the car that the police were looking for
16 was visually distinctive from the Chrysler that he was
17 driving?

18 A I'd have to defer to the record. I do not remember
19 if we did that or not. I recall having some pictures of
20 different automobiles that we were looking at to determine
21 if we could do that. Because just like you went to the
22 internet and found some pictures, I believe I did that as
23 well attempting to prepare for trial.

24 Q To see that the cars were visually distinctive?

25 A Yes, that's true.

Arthur Wilder - Direct Examination by Mr. Holler

1 Q That the description that somebody gave the police
2 was inaccurate --

3 A That's true.

4 Q -- to what car Mr. Cooper was driving?

5 A Yes.

6 Q Do you see -- this is part of the record, but I
7 don't have a copy this was just pulled out. What does the
8 last sentence of that show? I'd asked you earlier --

9 MR. GOURLEY: Your Honor, I would like to see that
10 before Mr. Holler shows it to the Court.

11 THE WITNESS: Well, this would be the search
12 warrant or a search warrant.

13 MR. GOURLEY: Okay, thank you.

14 BY MR. HOLLER:

15 Q I'd asked you earlier about the issue of where
16 Mr. Cooper indicated to you that he lived?

17 A Right.

18 Q And the search warrant, of course, was just a few
19 days after the incident. The last sentence.

20 A Okay. Right. Wayne Cooper advised officers that
21 he currently resides at Suzy Rembert Road.

22 MR. HOLLER: And just for the Court's recollection.
23 That's another 15 or 20 miles away from Fire Mountain.

24 THE WITNESS: When I was looking through the file,
25 I found the tenant payment history from 1435 Cherry Vale

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1 Lot Number 26, which belongs to Derrick Cooper which is why
2 they were at that location that morning was apparently to
3 pick up Derrick. One or the other one of them was at this
4 location that morning. That's why they went there.

5 BY MR. HOLLER:

6 Q Correct.

7 A That's why they were leaving from there to go to
8 work.

9 Q He was riding with his brother, or his brother was
10 riding with him to go to work because they both worked?

11 A Right. Yeah.

12 (There was a pause in the proceedings.)

13 BY MR. HOLLER:

14 Q Okay. At trial, you argued that it was an invalid
15 search warrant, thus the alleged confession should be
16 thrown out because they didn't have probable cause to
17 search the premises and take Mr. Cooper under arrest?

18 A Right. I was making motions to suppress all the
19 way through the trial.

20 Q And Judge King, the trial judge, would ultimately
21 rule that probable cause did exist and that the confession,
22 alleged confession, could be provided to the jury?

23 A He let the confession in.

24 Q And the -- the essence of the argument was that
25 before they had the quote, confession, or they had talked

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1 to Mr. Cooper, they had probable cause?

2 A There was considerable controversy over when they
3 obtained that search warrant.

4 Q Yes, sir.

5 A And there was also controversy over when they
6 obtained an arrest warrant for Mr. Cooper.

7 Q Correct.

8 A And I was trying my best to preserve the record.

9 Q Agree.

10 A And trying to suppress all of it.

11 Q Agreed. But the State's argument, again, go with
12 your recollection, was essentially before they ever
13 interviewed him, before the alleged confession, they had
14 probable cause?

15 A I would have to say that was their argument.

16 Q That was their position?

17 A That's correct.

18 Q Right or wrong. The affidavit that I just showed
19 you is part of the record, clearly provides information
20 that they had already spoken with Mr. Cooper?

21 A I would defer to that, yes.

22 Q Okay. And another grounds to argue that they
23 didn't have the probable cause would have been that they
24 had to rely on Mr. Cooper to get the information to get the
25 warrant?

Arthur Wilder - Cross-Examination by Mr. Gourley

1 A I would defer to the record as to whether or not
2 that, you know, is even -- it might be in there already. I
3 might have said that.

4 Q Thank you, Your Honor. Thank you, Mr. Wilder.

5 THE COURT: Thank you, Mr. Holler.

6 Mr. Gourley?

7 MR. GOURLEY: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. GOURLEY:

10 Q Mr. Wilder, do you have a copy of the transcript?

11 A I do.

12 Q All right. I'm just going to ask you a few basic
13 questions real quick and get to the meat of the argument.

14 You were appointed in this case?

15 A I was appointed. I was chief public defender for
16 Sumter County at the time. I was appointed on September
17 the 18th, 2006. I filed a Rule 5 Brady Motion, a bond
18 request, and went to see Mr. Cooper the very next day. And
19 I visited with him many, many, times at the jail. I've got
20 dates and times and all of the times I went to visit him
21 and spoke with him both in preparation for his bond
22 hearings, for his preliminary hearing, for his appearances
23 in court, our motions for continuance, and -- and
24 preparation for the trial.

25 Q Can you give a rough estimate of how many times? I

Arthur Wilder - Cross-Examination by Mr. Gourley

1 mean you don't have to go through each and every one, just
2 days?

3 A Well, let me just give you the dates.

4 Q I got you.

5 A Not what we talked about but I have notes on each
6 of those occasions that might be able to reconstruct what
7 we were speaking about on each of those occasions.

8 Q Okay.

9 A But September 19th, '06, jail visit; on October
10 25th, '06, January 5th '07, February 22nd, '07, 4/04/07,
11 4/26/07, 12/17/07, 3/26/08, 5/07/08, 5/30/08, 10/31/08. I
12 have written notes from 6/06/08, a jail visit, a long
13 yellow pad worth of notes that I took; 5/12/08 interview
14 with him at the jail, many notes on yellow paper in my
15 file; meeting with him on December 17th, '06 and 8/22/08,
16 we went over the indictment and all of the discovery
17 packets that I'd received from the State by that time.

18 The defendant on that time signed an indictment
19 acknowledging that he understood that he was being charged
20 with murder and the specific allegations of the indictment.
21 I was with him at his bond hearing at 11/17/06. Those are
22 not all the times I talked with the defendant. Those are
23 the times that I have recorded or had access to my computer
24 when I was speaking with him.

25 There were occasions that I met with him with his

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1 brother and also with his brother's attorney, who at that
2 time was Mr. Chip Finney. We went over what might likely
3 be testified to at trial and we did the best we could to
4 prepare for the trial of the case.

5 Q All right. Now, during these discussions and
6 meetings, did the applicant seem to understand your
7 questions and the evidence and everything?

8 A You know, there were times during those years that
9 I represented him that Mr. Cooper had some health problems.

10 Q Okay.

11 A I received a call from his mother on occasion that
12 the jail was not tending appropriately to his medical
13 conditions. I made several calls to the jail myself to try
14 to get him some help, medical help.

15 Q Yes, sir.

16 A But in all the conversations I had with him, he
17 always appeared confident. He appeared to understand what
18 we were discussing. I saw no mental illness type
19 indications that would give rise to me thinking he needed
20 to be reviewed by the mental health people, so we always
21 understood what was going on. I think he was in possession
22 of his faculties.

23 Q And what did the applicant tell you occurred the
24 day of the shooting?

25 A Well, he said that they were on their way to work.

Arthur Wilder - Cross-Examination by Mr. Gourley

1 Q Who is they?

2 A He and his brother.

3 Q Okay.

4 A And his brother testified during the trial.

5 Q Okay.

6 A And he just said that they were going the work that
7 day and that they saw something happen in the park when
8 they were leaving, but it didn't concern them so they went
9 onto work. He denied --

10 Q Okay.

11 A He denied committing the offense.

12 Q Okay. Now, he doesn't live at the Cherry Vale
13 Trailer Park, his brother live there?

14 A As to whether or not he was staying that day --

15 Q Right.

16 A -- there that day, I can't tell you.

17 Q Okay.

18 A But our investigation would indicate from the
19 payment of the rent that that was being covered by Derrick
20 Cooper who was his brother and codefendant.

21 Q Right.

22 A But that -- you know, it was pretty well clear that
23 he'd been living over there behind McLaughlin Ford.

24 Q And you mentioned just briefly that his brother did
25 testify at the trial, correct?

Arthur Wilder - Cross-Examination by Mr. Gourley

1 A That is correct.

2 Q Now, his brother testified, and we're starting on
3 page 548 of the transcript, that the applicant came to his
4 house to help him jump the car that they were going to be
5 driving that day?

6 A Right.

7 Q That they were running late for work that they
8 usually leave -- they usually arrive at work at 5:30. They
9 woke up at approximately 5:15, called his brother to come
10 help him jump his car. The brother comes over there,
11 correct?

12 A I will defer to what's in the record.

13 Q All right. So according to to his brother's
14 testimony, which is in the record. Let me get the page
15 cite, page 552, line 7 through let's say 21, he testified
16 that the applicant came over to his house around 5:35 that
17 morning?

18 A That's what he said.

19 Q In order to help jump his car. At that point in
20 time, they were running late for work so they went to work?

21 A Right.

22 Q They left approximately 10 minutes later around
23 5:45 and headed to work?

24 A Okay.

25 Q Okay. During that point in time, the applicant's

Arthur Wilder - Cross-Examination by Mr. Gourley

1 brother testifies later on that they arrived at work at
2 6:12?

3 A Right.

4 Q That they weren't involved in a shooting, they
5 didn't see a shooting, no shooting took place whatsoever?

6 A Right.

7 Q That was his story and that was the applicant's
8 story, correct?

9 A That's correct.

10 Q And they were nowhere near involved in this
11 shooting. So your defense was an alibi defense, correct?

12 A Correct.

13 Q Based on what you were given?

14 A Correct.

15 Q Now, the defendant in this case, he gave a
16 confession to the police, correct?

17 A Yes.

18 Q Okay. And you moved for a Jackson v Denno hearing
19 to determine the voluntariness of that statement, correct?

20 A I did.

21 Q And you presented a couple of witnesses during that
22 time?

23 A We did. We put on the doctor that had treated him
24 for a head injury who had given him a patch to put on to
25 administer painkiller over time and you know, that's --

Arthur Wilder - Cross-Examination by Mr. Gourley

1 that was the whipsaw that we were in with respect to that
2 portion of the evidence because he was insisting that he
3 had nothing to do with it.

4 Q Uh-huh.

5 A And yet alledgedly confessing to these police
6 officers, we had to put on the evidence that would show
7 that he didn't understand what he was doing when he talked
8 to the law enforcement people. And that was very damaging
9 throughout the case.

10 Q Now, the brother testified at this Jackson v Denno
11 hearing, correct?

12 A I don't --

13 Q Page 78 of the transcript is when his testimony
14 begins. And according to his testimony, they got off work
15 around 3:30 that day that the defendant gave a statement to
16 the police?

17 A Right.

18 Q Went across to the Piggly Wiggly, bought three 24
19 ounce beers, some type of liquor?

20 A Right.

21 Q Rolled a joint, smoked a joint?

22 A True.

23 Q The defendant popped his pain pills. And they
24 headed back to their house. At some point in time he was
25 arrested shortly thereafter ingesting this alcohol, this

Arthur Wilder - Cross-Examination by Mr. Gourley

1 marijuana, and this medication. He was still wearing his
2 pain patch that he was wearing that the doctor testified to
3 that the doctor prescribed for him.

4 A Right.

5 Q And your argument was due to those factors that his
6 statement should be ruled inadmissible, correct?

7 A That's what I argued.

8 Q And the judge ultimately ruled against you, right?

9 A He did.

10 Q Okay. So that statement -- what was the statement
11 that the defendant gave in this case, do you recall?

12 A Well, I think, again, I'd have to defer to the
13 record as to the specifics of it, but it's something to the
14 effect that he was riding in the car and something was
15 thrown at their automobile and he had a gun and he shot at
16 the victim one time.

17 Q Right. In response to the bottle being thrown?

18 A In response to whatever it was that was thrown at
19 the car.

20 Q And that would be a valid self-defense that could
21 have been made if the applicant had gone along with this
22 story that he had originally confessed to the police,
23 correct?

24 A Well, I was in hopes, you know, maybe it would have
25 been a gun that was shot at his car or something like that,

Arthur Wilder - Cross-Examination by Mr. Gourley

1 but, you know, you got to take what you're dealt. You
2 can't make up a defense. You just got to --

3 Q And the applicant adamantly denied that he was ever
4 involved in this shooting, correct?

5 A That was his position.

6 Q And his codefendant did as well?

7 A Well, I didn't have access to the codefendant until
8 much later after he was represented by counsel and
9 Mr. Finney consented to allowing me to talk to him.

10 Q Okay.

11 A But by that time their stories were pretty much the
12 same.

13 Q Now, there was a SLED expert that testified at
14 trial. Do you recall that?

15 A Which one?

16 Q Let's see here?

17 A Ms. Alicia Simmons, starts on page 348.

18 A Yes, I recall Ms. Simmons testifying.

19 Q She was stipulated as an expert. And on page 352,
20 she testified that there was no gunshot residue found on
21 the victim's hand, correct? That's page 352 of the
22 transcript?

23 A I defer to the testimony, but I believe that's
24 correct.

25 Q Okay.

Arthur Wilder - Cross-Examination by Mr. Gourley

1 A 352.

2 Q And then we sort of hit on the fact of the car
3 issue of whether or not there was residue on the car. And
4 on page 358 she testified that this was no gunshot residue
5 found on the door of the 1993 Concord. That's on page 558?

6 A That is correct.

7 Q And now, she alleged that it could have been washed
8 off or just simply driving down the street at a high rate
9 of speed could have had the gunshot residue dissipate and
10 blown off of the car, correct?

11 A She says on 358 that wind can remove gunshot
12 residue.

13 Q And then during your cross-examination, you have,
14 you cross-examined her on the issue of whether or not
15 gunshot residue was found anywhere on the car, correct?

16 A That's correct.

17 Q That's on page 359 specifically on 360 at the
18 bottom of 361?

19 A That's correct.

20 Q No metals found, no gunshot residue whatsoever
21 found on the Chrysler Concord that was alleged to be the
22 car used --

23 A That's correct.

24 Q -- in the shooting?

25 A I did.

Arthur Wilder - Cross-Examination by Mr. Gourley

1 Q That all correlates your alibi defense. That
2 support your alibi?

3 A My position was the car wasn't involved in the
4 shooting.

5 Q All right. Now, Mr. Holler asked you about the
6 alibi defense and tried to assert that that was burden
7 shifting. You recall that question?

8 A That's what he was trying to --

9 Q Now, if you'll look back at 779 of the transcript,
10 specifically line 12, what does the judge charge the jury
11 regarding alibi defense?

12 A The word alibi means elsewhere. There's no burden
13 on the defendant to prove that he was not at the scene.
14 They're's no burden upon the defendant to prove his alibi.
15 The defendant need not prove that he was elsewhere. The
16 burden is on the State to prove beyond a reasonable doubt
17 the defendant was present at the scene of the crime,
18 actually participated in the crime, and was not somewhere
19 else.

20 Q So there was no burden on you to prove his alibi
21 defense?

22 A That's my understanding of the law that there is
23 not a burden on the defendant, but just --

24 Q But to a certain extent, you need to prove he was
25 somewhere else?

Arthur Wilder - Cross-Examination by Mr. Gourley

1 A We were doing our best.

2 Q Absolutely. Now, regarding the State's evidence in
3 this case, can you briefly describe what they had against
4 the defendant?

5 A Well, in addition to his confession, they had the
6 circumstantial evidence of the brother living right down
7 the road, the fact that the general trend of evidence had
8 to do with the car that they were in that morning passing
9 by the location where the shooting had occurred.

10 Q Uh-huh.

11 A They had these, you know, Wanda, who -- Wanda
12 Rogers, who allegedly identified them stopping at the fire
13 department across the street, that was not particularly
14 helpful.

15 Q Right.

16 A Because that was at or about the time that the
17 shooting had taken place and then of course, they had what
18 Ms. Green said about how it actually occurred and --

19 Q Right.

20 A And -- and what their role in it was. You know, at
21 one point, I did serve the State with notice of alibi,
22 which is required under the rules.

23 Q Absolutely.

24 A If you're going to make it to the point of being
25 able to put the alibi on and then have it charged to the

Arthur Wilder - Cross-Examination by Mr. Gourley

1 jury, I would think you would, you know, need to give that
2 notice, so I did give the notice. The notice actually
3 resulted in our being able to get a continuance on one
4 occasion when it was originally called before Judge
5 Cothran. The State had not responded to my alibi notice by
6 notifying us of who they were going to put onto refute our
7 alibi and so Judge Cothran responding to my motion to
8 suppress any evidence to show that my client was at the
9 scene of the crime realized that he was going to have to
10 give us a continuance, so he did.

11 But by the time we came around for the second
12 trial, we'd been given notice of who the State intended to
13 use to prove that Wayne was at the scene of the crime. So
14 they put on that evidence and then, you know, you can argue
15 it both ways about the time it takes to get there because I
16 really don't think there was a lot of incentive on the part
17 of Mary Green to call the police in the first place after
18 the shooting originally took place. I mean she may have
19 said it was only five minutes or whatever, but my sense of
20 the thing was that from the victim's standpoint, the victim
21 had contraband around or about him. The victim was testing
22 positive for alcohol use.

23 I now have the SLED toxicology report in front of
24 me and he tested positive for alcohol Ethynyl .2013 and
25 positive for cannabinoids and so, my guess is that

Arthur Wilder - Cross-Examination by Mr. Gourley

1 Mr. Green probably had some contraband on or about his
2 person that they wanted to make sure law enforcement didn't
3 find when they arrived on the scene.

4 Q Uh-huh.

5 A And had it been that he had a gun, they would have
6 taken that away too before the police got there.

7 Q Okay.

8 A But I just don't know any of that, but...

9 Q Absolutely.

10 A It seems to me logical that they would have delayed
11 calling law enforcement for a little while until they
12 perceived that they didn't have a choice.

13 Q Right.

14 A And then when they did call law enforcement, they
15 went down the street and found a phone number that didn't
16 have anything to do necessarily with, you know, the party
17 previously and all that, so I can't tell you what was going
18 through their mind or how long the delay was, but, you
19 know, it could have been a lot more time than what the
20 evidence in the record reflects.

21 Q Let me just clarify something here. At the time of
22 the shooting, the aunt was present at the time of the
23 shooting then she went to a couple of different houses,
24 correct, to try to find a telephone, knocked on a bunch of
25 doors, waited for somebody to arrive and then went to, I

Arthur Wilder - Cross-Examination by Mr. Gourley

1 believe, a third house?

2 A That's my recollection.

3 Q She tried two houses after the shooting --

4 A That's the general sense.

5 Q -- went yard to yard to yard. And then waited for
6 somebody to wake up because this was the early morning
7 hours to come there and then make a telephone call,
8 correct?

9 A That's my recollection of the general sense of the
10 testimony.

11 Q So there's no way to know exactly, the exact time
12 of the shooting, how long it took for Ms. Green to run from
13 house to house to house?

14 A And she may have said five minutes in the record, I
15 just don't know.

16 Q Now Derrick Cooper testified that -- and I'm
17 starting on page 575, that the applicant arrived at his
18 house around 5:35 that morning. And that's line 16. And
19 they had difficulty starting his car. And that took --

20 A Wait a minute, you're talking about --

21 Q Derrick Cooper's testimony starting on page 575,
22 start at line 16?

23 A And then he says 5:35.

24 Q Yes, sir, is when Mr. Cooper arrived?

25 A All right.

Arthur Wilder - Cross-Examination by Mr. Gourley

1 Q And then later on online 22, 23, it says it took
2 somewhere -- or 24, excuse me, it took between 5 and 10
3 minutes to get the car started.

4 A Right.

5 Q And then they left for Columbia?

6 A Right.

7 Q And according to the records, they arrived at 6:12,
8 which may or may not be truly accurate?

9 A Right.

10 Q If my math, and I'm no math major, but let's leave
11 at 5:45, let's arrive at 6:12, that's approximately 27
12 minutes, correct, so that's according to to --

13 A I'll defer to your math as well.

14 Q Absolutely, absolutely, no dispute about that. So
15 that -- and that again supports your alibi defense,
16 correct?

17 A Well, I mean if you're driving -- you just don't
18 know how fast they were driving either.

19 Q Absolutely. We have no way of knowing what time
20 they left, what route they took, how long -- how fast they
21 drove?

22 A Well, I do believe that there's no shorter way.
23 Other than what Mr. Holler had on the board.

24 Q Right. Absolutely.

25 A So I this if you were going to get this in a

Arthur Wilder - Cross-Examination by Mr. Gourley

1 shorter amount of time, you'd had to go faster or leave
2 earlier.

3 Q And again, that was part of your alibi defense.
4 That's what you wanted to prove, that this time frame was
5 not possible?

6 A I did my best.

7 Q And did you feel that you adequately addressed that
8 at trial?

9 A If I had adequately addressed it, he would have
10 been found not guilty.

11 Q Okay.

12 A But you know, I think that the evidence, you know,
13 in order to reconcile it, you'd have to say well maybe the
14 man was shot a little bit earlier than what the record
15 revealed.

16 Q Right. And we have no way of knowing what time he
17 was shot?

18 A No.

19 Q Okay. All we have is a couple of witnesses that
20 saw the car and the defendant and his brother, correct?

21 A Again --

22 Q Alledgedly.

23 A Alledgedly because --

24 Q According to the record, they saw the defendant and
25 the codefendant in the car, verified the car that

Arthur Wilder - Cross-Examination by Mr. Gourley

1 supposedly shot him, right?

2 A That's what they said.

3 Q Okay. And again, your stuck with the applicant
4 giving a confession to the police that was introduced at
5 trial, claiming that he shot the victim in self-defense?

6 A Very hurtful.

7 Q Very damaging.

8 A And it was not a perfect self-defense, but if you
9 read the record on appeal --

10 Q Absolutely.

11 A -- unfortunately, and what he said to law
12 enforcement didn't make out all the elements of
13 self-defense that one would need to raise if you're going
14 to get a charge to the jury on that subject.

15 Q And you considered for a charge to the jury on
16 self-defense, right?

17 A Tried to get it.

18 Q Right. And the judge denied that?

19 A Right.

20 Q Did the applicant ever give you any type of leads
21 or witnesses to investigate in this case?

22 A We met several times. Chris Porter's name came up
23 and Mr. Holler made reference to that early on. Again, the
24 purpose of getting witnesses from Fire Mountain; some of
25 those people had disappeared by the time I got over there

Arthur Wilder - Cross-Examination by Mr. Gourley

1 with subpoenas and actually had some names in my
2 possession. But the purpose of getting witnesses from Fire
3 Mountain was to try to establish that they had gotten there
4 earlier than the time on the clock, that maybe the time on
5 the clock was wrong.

6 Q Right.

7 A I mean if that time on the clock had been
8 different, it might have given us a better alibi even. It
9 could have been the other direction. But the reason I
10 can't say for sure that that's accurate is because I was
11 never able to put my hands on the people that was necessary
12 to have on the stand to verify the accuracy of the time.

13 Q Uh-huh.

14 A You know, when law enforcement goes out there and
15 they double check a scene, they usually do things like
16 punch in a register receipt and call a dispatcher when
17 they're doing it so that they can verify the times on the
18 -- at the scene match to time at the dispatcher. None of
19 that was done in this case and I had no way to go back and
20 do it ex po facto. So some of what I'd wanted to do at
21 trial, I was prevented from doing because I didn't have the
22 sift supervisor for Fire Mountain. I didn't have some of
23 those -- Chris Porter, you know, we made efforts to find
24 these people. John Johnson, my investigator had tried to
25 locate some of them. I had also other assistants trying to

Arthur Wilder - Cross-Examination by Mr. Gourley

1 locate some of these people, but I was unable to find them,
2 so we couldn't produce them.

3 One of the issues that had come up with respect to
4 witnesses that I was asked to produce, the police
5 confiscated a firearm from that Suzy Rembert Driver
6 residence and they were trying to insinuate that the old
7 firearm had been used to perpetrate the actual shooting.

8 Q Right.

9 A And they had taken it into evidence and I actually
10 procured the services of a firearm expert out of Georgia --

11 Q Uh-huh.

12 A -- to examine the weapon to demonstrate that it was
13 not functional and could not have been used in the
14 shooting. Because as you might reflect, there's no -- they
15 never found the firearm that was actually used to do the
16 shooting. But Mr. Corbett backed off of that at the last
17 moment as a result of our procuring the firearms expert and
18 they did not attempt to introduce that into evidence.

19 So we had run down several witnesses at
20 Mr. Cooper's request trying to get, you know, something
21 that would help his defense.

22 Q Right.

23 A And we did put on, as you say, his brother and do
24 the best we could with some of these other folks.

25 The doctor, and, you know, I think law enforcement

Arthur Wilder - Cross-Examination by Mr. Gourley

1 was obligated to put some of their witnesses on the stand
2 because of the investigation that we did, for instance Rich
3 Boland, he was somebody the police was trying to keep away
4 from us initially because he was the one that put out the
5 BOLO on cars that did not match the description of those
6 being driven by the defendants.

7 So somewhere there at trial, I had the 9-1-1 tapes
8 where he had called in putting the BOLO out on those other
9 automobiles.

10 Q Uh-huh.

11 A And I was able to establish that my client's car
12 was not the only one they were looking for.

13 Q Right. And that was an important part of your --
14 piece of your alibi defense?

15 A It was.

16 Q Along with several other things such as the
17 description of the -- of the defendants given by the
18 witness, correct? She stated they were 250 pounds, 220
19 pounds, correct?

20 A Well, you know, although it's true that the
21 defendant's not carrying a burden of proof to prove he
22 didn't do it, it's always helpful if there's somebody
23 around to blame it on.

24 Q Right. And who were you trying to place the blame
25 on in this case do you recall?

Arthur Wilder - Cross-Examination by Mr. Gourley

1 A Anybody other than Mr. Cooper.

2 Q Okay. What about a Rodney Green?

3 A His name came up.

4 Q Yeah.

5 A My understanding was he'd been recently released
6 from jail before the date of the incident.

7 Q Okay. And there was also, as you stated, so for
8 the alibi defense, we've got no gunshot residue found in
9 the car, the applicant and the codefendant testifying that
10 they weren't there at the time of the scene, weren't
11 involved in the shooting. You've got various descriptions
12 of the weights, variations between the witness, what the
13 statement she gave and the weights of the defendant and the
14 codefendant in this case. You've got various descriptions
15 of the cars given. So that was the basis of your alibi
16 defense in a nutshell, correct?

17 A Those are all part of it.

18 Q And you argued all of that to the jury?

19 A I did.

20 Q Okay. So this time frame of 22 minutes and 27
21 minutes isn't the essential key piece of evidence in this
22 alibi defense, is it? There was other evidence to support
23 your alibi?

24 A Well, all I got the say about that is that you
25 know, if the case is not one, then obviously, the defendant

Arthur Wilder - Cross-Examination by Mr. Gourley

1 should have done something different if the case was going
2 to be one. The question is, what can you do.

3 Q Right.

4 A And the speed here -- I mean, reasonable people can
5 differ about how much of that you could put on, but it was
6 just my thought at the time that a reasonable person would
7 realize that if you were all the way over at Fire Mountain,
8 you couldn't have done it in the time frame that the police
9 were suggesting.

10 Q Right.

11 A That's what I argued to the jury.

12 Q All right.

13 MR. GOURLEY: Court's indulgence, Your Honor.

14 THE COURT: Yes, sir.

15 (There was a pause in the proceedings.)

16 BY MR. GOURLEY:

17 Q Mr. Wilder, did you have ample time to prepare for
18 this trial?

19 A Yes.

20 Q Okay. What would you say -- how would you
21 characterize the State's evidence in this case?

22 A The eyewitness testimony was lousy. Frankly, I
23 still don't believe Wanda Rogers, you know. And Mary
24 Green, she may have been covering for some things that, you
25 know, a family member might have been involved in. The

Arthur Wilder - Cross-Examination by Mr. Gourley

1 reel problem with this case was that Mr. Cooper gave that
2 statement to the police officers.

3 Q Confession?

4 A That's the problem.

5 Q And wouldn't you say that evidence would be
6 overwhelming evidence of guilt? The fact that he went in
7 voluntarily, or not voluntarily, excuse me; but went in and
8 gave a statement and stated that yes, he did shoot the
9 victim with a 22 caliber bullet, that he dropped the gun
10 off, him and his brother took off and threw the gun away.
11 The police went and searched for the gun, couldn't find it.

12 A Well, it's pretty detailed for a confession that
13 was just made up on the spot. So I -- but I can't say
14 whether or not, you know. It just ought to be believed
15 under every circumstance, but you know, we did the best we
16 could to show he was intoxicated when he gave the
17 statement. And there again, you had another problem
18 because once you start showing that the defendant was
19 intoxicated, smoking drugs, and whatever, that doesn't help
20 you in front of the jury either.

21 Q Right.

22 MR. GOURLEY: No further questions. Thank you.

23 Thank you Mr. Wilder.

24 ///

25 ///

Arthur Wilder - Redirect Examination by Mr. Holler

REDIRECT EXAMINATION

1
2 BY MR. HOLLER:

3 Q Mr. Wilder very briefly. Mr. Cooper had been
4 charged for murder?

5 A Correct.

6 Q He had no prior record?

7 A I believe that's true. In fact, he was working for
8 the correctional office at one time. He was a correctional
9 officer and he had other kinds of employment that would
10 indicate that he was probably a pretty good worker.

11 Q He and his brother both testified at trial and they
12 said about five to ten minutes too fast the far off when
13 he stopped to pick up his brother, get there about 5:30,
14 5:35. You just looked at that?

15 A Whatever that testimony was, I'll --

16 Q So if we look at -- if we look at the time speed
17 and distances as we calculated earlier, if they left about
18 5:40 then that would have put them there at the time
19 driving an average of 60 miles an hour, it's early in the
20 morning, to get -- in time to clock in the Fire Mountain
21 restaurant.

22 A Yeah. Well, that's what he said right when we got
23 to trial.

24 Q Exactly and the time speed and distances all work
25 out to support that?

Arthur Wilder - Redirect Examination by Mr. Holler

1 A Well, that doesn't mean that's what actually
2 happened.

3 Q I understand and you talked a lot on
4 cross-examination about your theory of what happened. But
5 the testimony at the trial was, I went about five minutes
6 after the shooting and knocked on the door and they called
7 9-1-1.

8 A Well, those -- as far as the times that Mr. Cooper
9 testified too, that's what we worked out with Mr. Finney.
10 You know, we had gone over all of that in conference with
11 your client.

12 Q Certainly.

13 A As to what they were going to say. And when you
14 start out, you say well, I can't remember, it was sometime
15 around five. Well, can you give us a little more than
16 that? Maybe it was 5:15. Well, maybe it's 5:30.

17 Q Well, there are things that happen in life that
18 document time; right?

19 A That's right. There are.

20 Q You said the police officer called it in and
21 getting a time for the dispatch?

22 A That's indisputable. That's what my notes say too.

23 Q And likewise, it may not be accurate, but that's
24 clocking in at work?

25 A That's true.

Arthur Wilder - Redirect Examination by Mr. Holler

1 Q Documents what the mind can't follow because we're
2 not computers?

3 A That's right.

4 Q You've got a man on trial for murder. There's no
5 physical evidence tying him to the scene. There's an
6 eyewitness that you said had obvious credibility issues.

7 A She does. Everybody was friends of, with, or
8 related to, everybody put him at the scene, the victim.

9 A Probably so, but I can't say that.

10 Q Well, for Wanda Rogers they'd just left their
11 house?

12 A Right.

13 Q And at least the victim was having a good time?

14 A Yeah. Seems to be. You know somebody there might
15 have wanted to shoot him. I can't say they were having a
16 good time.

17 Q Then there's a plausible argument if you believe
18 the aunt, Ms. Green that she knocked on the door and had
19 someone call 5 minutes after the shooting, they would have
20 had only 16 minutes to travel 28.2 miles?

21 A Well, I don't know how long it took, but if she
22 testified five minutes that's what the testimony says.

23 But...

24 Q That is her testimony.

25 A I can't tell you how long it actually --

Arthur Wilder - Redirect Examination by Mr. Holler

1 Q And from that testimony, the argument would be that
2 Mr. Cooper and her brother -- his brother would have to
3 average 121 miles an hour to get to Fire Mountain Grill in
4 time.

5 A If that's what the math shows, I defer to your
6 calculations.

7 Q You agree with me that's literally impossible that
8 someone could do that?

9 A Well, nobody's going 121 miles an hour down that
10 road. I'll give you that.

11 Q That's an average?

12 A Okay. But they might have been going 88 miles an
13 hour. My uncle used to do it at 90.

14 Q I've heard the stories of the drag strip.

15 A I mean across the swamp people do all kind of
16 things in the middle of the night.

17 MR. HOLLER: Court's indulgence, please.

18 THE COURT: Yes, sir, certainly.

19 MR. HOLLER: No further questions.

20 Judge, may I have just a moment to speak with my
21 client?

22 THE COURT: Give me just a minute.

23 (There was a pause in the proceedings.)

24 THE COURT: Recross?

25 MR. GOURLEY: Just briefly.

A Now, Mr. Holler may have a point. Maybe I should have put the math up there, maybe that would have helped. I don't know if that would have made a difference in the result is what I'm saying about that.

Arthur Wilder - Recross-Examination by Mr. Gourley

1 Q Correct.

2 A And, you know, in so far as what his brother
3 testified though, he was doing the best he could to help
4 his brother out.

5 Q Absolutely.

6 A And I respected that. But none of these guys were
7 checking their watch.

8 Q Uh-huh.

9 A The kind of thing you have to rely on is whether
10 the dispatcher's time, you know, we can pretty well rely on
11 that. I think probably the clock-in time was accurate, but
12 I can't say that it was exactly because the supervisor
13 wasn't available.

14 Q Correct.

15 A Who was working there at that time to verify
16 whether or not it was accurate. I'm not even sure that the
17 video has a date stamp on it, but if it does, I'm not sure
18 that it matches up with what they did. And that's why I
19 keep coming back to anybody wants to put it into evidence,
20 go ahead and do it because, you know, we'll -- we elected
21 not to do it at the trial.

22 Q Right.

23 A I'm saying if somebody's got a problem with it, you
24 know, go ahead and look at it and say so.

25 Q Now, Mr. Wilder, the only person that testified

Arthur Wilder - Recross-Examination by Mr. Gourley

1 that it took 22 minutes to get there, was Detective Turner,
2 correct?

3 A Right. And once again, I come back to 30 something
4 years of practicing in this community, if Jamie told me
5 something, I'd stake my life on it.

6 Q Okay. And then his brother testified it took 27
7 minutes, correct? Or approximately 27 minutes, left at
8 5:45 arrived approximately at 6:12?

9 A If your math is correct.

10 Q If my math -- we don't want to rely on my math.

11 A And, again, I think you'll find this they were,
12 Mr. Finney was pushing that as far as he could.

13 Q This was all presented to the jury?

14 A Yes, it was.

15 Q And the jury came back with a guilty verdict?

16 A That's correct.

17 Q Thank you.

18 MR. GOURLEY: No further questions. Your Honor.

19 MR. HOLLER: Judge, if I could, can we offer that
20 video? I believe it is time stamped and I'll make
21 accommodations, Judge, if you can watch it or if you want
22 to do it on your own.

23 THE WITNESS: Make sure that's the video,
24 Mr. Holler.

25 MR. HOLLER: May I speak to my client just a

1 moment?

2 THE COURT: Certainly.

3 (There was a pause in the proceedings.)

4 MR. HOLLER: Judge, Mr. Cooper would like to speak
5 very briefly with his mother about an issue about a
6 decision he's got to make. If we could have 45 seconds to
7 a minute.

8 THE COURT: All right. Well, I think now would be
9 an appropriate time for us to take our luncheon recess. So
10 we'll start back at 2:30.

11 MR. GOURLEY: Thank you, Your Honor.

12 THE COURT: That will give you adequate time if the
13 officers will allow it.

14 MR. HOLLER: That's fine.

15 THE COURT: Thank you. Thank you very much, court
16 will be in recess until 2:30.

17 MR. HOLLER: Yes, sir.

18 (A recess for lunch was observed.)

19 THE COURT: Mr. Cooper, all right. Mr. Holler.

20 MR. HOLLER: Judge, on behalf of the petitioner,
21 Mr. Cooper, we would call no further witnesses. I would
22 however would have -- Mr. Cooper would like to proffer a
23 statement on his behalf for whatever purposes, of course,
24 you would consider it.

25 He says, Thank you, Your Honor, in respect to the

1 Court, I would like to state for the record that I was not
2 fully prepared -- fully and properly prepared for court
3 today due to the lack of access to the South Carolina
4 Department of Corrections Broad River Road Correctional
5 facility law library in order to present my case in full.
6 I know that there are other issues to be raised, but due to
7 insufficient time with my attorney and limited studying I
8 was unable to bring the issues at hand forward to Your
9 Honor. I humbly ask the Court to consider my circumstances
10 and thank you and bless you, Your Honor.

11 THE COURT: Well, you know, I'm not the type that
12 doesn't allow people to be heard in court if they want to
13 be heard in court. If there's additional evidence and
14 testimony he wants to present, Mr. Holler, when do you want
15 me to hear it?

16 MR. HOLLER: Judge, I think Mr. Cooper's position
17 would be that these legal proceedings are difficult for him
18 to fully understand and to be able to identify and address
19 on the merits of what is relevant and what is important and
20 his insufficient time in the law library does not allow him
21 to bring himself to that level of understanding. That is
22 what my interpretation of our discussions has been is his
23 concern, that he lacks the full awareness of what is or
24 might be able to assist you as the trier of facts in this
25 case and he does not wish to offer any further testimony.

1 THE COURT: All right. And, of course, as you
2 know, Mr. Holler, and perhaps if Mr. Cooper knows also, or
3 if he doesn't, I would advise him, I don't have authority
4 to control his access to the library at Broad River
5 Correctional Institute.

6 MR. HOLLER: Yes, sir.

7 THE COURT: You know, the department of corrections
8 is an executive agency and they have their rules and
9 regulations which they are bound to follow and the
10 judiciary is a separate and distinct branch of government
11 and, of course, then the legislative branch, as a friend of
12 mine said one day, for those of you that are Clemson
13 graduates, those are the three branches of government. But
14 as we all know, the department of corrections is controlled
15 administratively within and I certainly would not and could
16 not impose my judicial authority over an agency such as
17 that and I have no authority to do so.

18 But if he does not wish to present any further
19 evidence and testimony, then I will consider the record
20 that has been presented to this point by his very able
21 counsel and on his behalf.

22 MR. HOLLER: Thank you, Judge.

23 And then, Judge, again, we would not ask you to
24 make a ruling affecting the department of corrections but
25 rather more of an explanation as to why when we started

1 this proceeding he asked for more time.

2 THE COURT: All right. Thank you. Thank you very
3 much.

4 All right. Mr. Gourley, anything on behalf of the
5 State?

6 MR. GOURLEY: Your Honor, if we may just do some
7 brief closings. And initially at the start of this
8 proceeding, I asked Mr. Holler to place the allegations on
9 record and I would just simply ask Mr. Holler for clarity's
10 sake to state his specific allegations of ineffective
11 assistance of counsel on the record.

12 THE COURT: Sure and one further thing too -- and
13 thank you very much Mr. Gourley.

14 We did break about 1:20 for lunch. Mr. Holler had
15 asked for a few minutes to talk with his client. We
16 started back about 2:30 to give him the opportunity for him
17 and his client's mother and Mr. Holler to speak with each
18 other. Did you have the opportunity to do that Mr. Holler?

19 MR. HOLLER: I did, Your Honor thank you very much.

20 THE COURT: And did he have the opportunity to
21 speak with his mother?

22 MR. HOLLER: He did have the opportunity to speak
23 with his mother.

24 THE COURT: And does he need any more time to talk
25 with you and/or to his mother?

1 MR. HOLLER: No, sir. Thank you very much.

2 THE COURT: All right. Yes, sir, and if you would
3 state the grounds on the record and then you may make a
4 closing argument.

5 MR. HOLLER: Judge I'll do my very best to be
6 brief. Judge, it's our position that the evidence that was
7 presented at trial was not fully developed for the benefit
8 of the jury as to the alibi. Again, the information that
9 we elicited from Mr. Wilder came from the record itself.
10 The vast majority of facts in which we made our arguments
11 on were not in dispute. Obviously, the fact that the
12 witnesses may not have testified truthfully is something we
13 don't have control over, but the bottom line is physically,
14 if you accept the time that the witnesses that testified at
15 trial, it was impossible for Mr. Cooper to be at the scene
16 of the shooting when the witnesses said it occurred.

17 Plain and simple, a reasonable -- Mr. Wilder is a
18 talented, long serving PD. He is a wonderful example of
19 someone who has committed himself to his profession. In
20 this case, however, he fell below the standard. And we
21 submit that that falling below the standard and arguing the
22 simple time, speed and distance calculation reasonably
23 would have led to a different result. Reasonably would
24 have led to the different result had it been put out there.

25 Instead of arguing about the credibility of a

1 police officer that someone confessed, we should have have
2 been talking about at the trial, the impossibility of
3 Mr. Cooper traveling 122 miles an hour to Columbia. It
4 just simply didn't happen.

5 THE COURT: Thank you. Thank you very much. Yes,
6 sir?

7 MR. HOLLER: And then we didn't amend the
8 petition, Judge, because the allegation of ineffective
9 assistance of counsel is contained within the record
10 itself. In other words, we didn't have to go out and bring
11 witnesses that should have testified at the first trial,
12 thus the record itself contained and we would take notice
13 that this is a civil trial. The rules of notice pleading
14 apply and we need -- and discovery's available if either
15 party were to request the Court to take discovery
16 depositions and so forth that we need only put the State on
17 notice of what our claims are. Thank you.

18 THE COURT: Thank you, Mr. Holler.

19 MR. GOURLEY: And, Your Honor, the State's position
20 is that Mr. Wilder adequately argued the alibi. The time
21 frame's alleged in the record are stated in the record.
22 However, Your Honor, just for reference sake, I would point
23 you to page 237, line 21. This is the aunt, Mary Green who
24 was with the victim at the time he was shot. She stated
25 she spent approximately five minutes with the victim after

1 he was shot trying to see what was wrong with him.

2 At that point in time, she then left the victim,
3 went to a house, knocked on the door. Again, Your Honor,
4 this is early morning hours. There's no telling how long
5 it took for somebody to get up to get up to make a phone
6 call to call the police according to the record that
7 Mr. Holler stated, the phone call was made at 5:58. Mary
8 Green is now testifying again it took approximately 10
9 minutes for the police to arrive after the phone call was
10 made to 9-1-1.

11 So, again, Your Honor, that's a 15 minute time
12 period there that this victim was shot and the police
13 arrived.

14 Your Honor, under that, we would stipulate that
15 that's enough time for the defendants to get from the crime
16 scene to work.

17 Furthermore Your Honor, the issue with the
18 cross-examination of the investigator in this case, it's a
19 credibility issue, that's an issue for the jury to decide
20 on as to whether or not the officer testified credibly.
21 Your Honor, we would submit to you that that was a
22 credibility issue. Furthermore, Your Honor, again this was
23 an alibi defense case. Mr. Wilder argued alibi. Time
24 frame was not the only argument he made with regards to his
25 alibi. There was weight issues between the witnesses ID of

1 the victims, 30 to 50 pound variations on the ID and the
2 actual defendants in this case. There was discrepancies in
3 the car. There was the time frame issues and there was the
4 fact that he clocked in at 6:12.

5 Again, you have the codefendant giving a statement
6 confessing to the crime stating that he shot him with a.22
7 caliber pistol, a.22 caliber was used in the crime. He
8 also stated that there was a beer bottle thrown. If you
9 look at Mary Green's testimony, she testified that the
10 victim had a beer bottle in his hand and threw it at the
11 car. There's correlating facts between the statement of
12 the defendant and the victim -- the victim's aunt in this
13 case and Your Honor, for those reasons we would
14 respectfully ask that you deny the applicant's post
15 conviction relief application. Thank you.

16 THE COURT: Thank you, thank you, Mr. Gourley.

17 Yes, sir, Mr. Holler.

18 MR. HOLLER: Brief reply on page 237 and 238 of
19 the transcript, Mr. Wilder's opening line of questions was,
20 How long was it after the shooting did you knock on the
21 door and someone called 9-1-1; and at that point in time,
22 Ms. Green acknowledged it was 5 minutes. Thank you, Judge.

23 THE COURT: Thank you y'all. Thank you y'all very
24 much.

25 MR. GOURLEY: Thank you, Your Honor.

1 THE COURT REPORTER: Mr. Gourley, what about
2 this --

3 MR. HOLLER: Oh, Judge, one matter of
4 housekeeping. I apologize, and this should be on the
5 record.

6 After we broke for lunch, it came to our attention
7 that what we marked into evidence may not be what we marked
8 into evidence. In other words, it may not be a copy of the
9 video from inside the store. And since it was an exhibit,
10 we wanted your permission before we confirm whether it was
11 what we represented it to be and if it was not we would
12 withdraw it.

13 MR. GOURLEY: Your Honor, I have no problem with it
14 staying into evidence.

15 MR. HOLLER: Well, it can certainly stay. It's
16 just not what we said it was, which was the video from the
17 work.

18 We think it may be an audio recording.

19 THE COURT: I don't want to see it if I don't have
20 to. All I'm saying is if it's not what y'all wanted me to
21 see --

22 MR. GOURLEY: Yes, Your Honor.

23 THE COURT: -- then there's no need for me to look
24 at it. So just confirm that it is or isn't. Y'all can do
25 that on a laptop now.

1 MR. GOURLEY: Your Honor, according to Mr. Wilder
2 it's the dispatching recording of the 9-1-1 calls, the
3 calls that were made to 9-1-1. So it's not the actual
4 video that shows the defendant coming into the Fire
5 Mountain Restaurant.

6 THE COURT: Does that exist?

7 MR. GOURLEY: Sir?

8 THE COURT: Does the video exist?

9 MR. GOURLEY: I don't believe it was introduced at
10 trial, was it.

11 MR. WILDER: It was not introduced at trial. It's
12 on a computer at my house.

13 MR. GOURLEY: Okay.

14 MR. WILDER: It's just something I had in my
15 possession.

16 MR. HOLLER: Judge, I believe that it existed at
17 one time I think is what we -- and maybe still exists.
18 Judge, in the abundance of what we represented, if we can
19 present that to you in the next 7 days, can we supplement
20 that for the record?

21 (The exhibit was withdrawn.)

22 THE COURT: Do you object to that if Mr. Wilder can
23 make a copy of it wild wild if I can find it.

24 MR. GOURLEY: If it's coming from Mr. Wilder, I
25 have no problem with that.

1 THE COURT: And 30 days for proposed orders. Thank
2 you thank you very much.

3

4 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of Common Pleas in and for
12 the State of South Carolina on the 1st day of October 2013.

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

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal at Aiken County, this 8th day of February 2019.

17
18
19
20
21 Brenda J. Sigwald

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

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
RECORDED CASE NUMBER 2012CP4301286

Wayne Darnell Cooper

2013 DEC 10 South Carolina State of

JAMES O. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2145

Judge Code

12/11/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Wayne Darnell #331763 Cooper ,
David Cornwell Holler PO Box 580 Sumter, SC 29151

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

James C. Campbell - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

See attached Order.

STATE OF SOUTH CAROLINA **RECORDED** IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER 2013 DEC -9 PM 12:29 FOR THE THIRD JUDICIAL CIRCUIT

Wayne Darnell Cooper, #331763

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2012-CP-43-1286

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief application filed on June 25, 2013. Respondent made its Return on January 24, 2013. An evidentiary hearing into the matter was convened on October 1, 2013 at the Sumter County Courthouse. Applicant was present at the hearing and was represented by David Holler, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the April 2007 term of the Sumter County Grand Jury for Murder (2007-GS-43-277). Arthur Wilder, Esquire, represented him. On November 10-13, 2008, Applicant proceeded to a jury trial before the Honorable Howard P. King. On November 13, 2008, Applicant was found guilty of Murder. Judge King sentenced Applicant to forty years imprisonment.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the

lower court's conviction. State v. Wayne Darnell Cooper, No. 2011-UP-544 (Ct. App. filed December 6, 2011). The Remittitur was sent on December 22, 2011.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel.

During the evidentiary hearing, Applicant alleged Counsel was ineffective for failing to fully develop the defense of alibi.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant called Arthur H. Wilder, Jr. (Counsel), Esquire to testify. This Court also had before it a copy of Applicant's trial transcript, appellate records, the records of the Sumter County Clerk of Court, and records from the South Carolina Department of Corrections.

Counsel testified he was with the public defender's office for thirty years. Counsel testified he was court appointed to Applicant's case on September 18, 2006. Counsel testified he filed for and reviewed discovery with Applicant. Counsel testified the investigation took place over the course of two years. Counsel testified he hired a private investigator, John Johnson to investigate leads and witnesses in Applicant's case. Counsel testified the murder took place on September 2, 2006 in the early morning hours at the Cherry Hill mobile home park. Counsel testified Applicant was picked up for questioning and ultimately admitted to shooting Brandon Green (Victim) in self-defense. Counsel testified Applicant's statement gave specific details about admitting to shooting the Victim and discarding the weapon along a highway. Counsel testified he made a motion for a Jackson v. Denno, 378 U.S. 368 (1964) hearing in order to suppress the Applicant's statement. Counsel testified despite his argument during the Jackson v.



Denno hearing, Applicant's statement was ruled admissible. Counsel testified there was additional evidence in the form of eye witnesses, car description, and various circumstantial evidence linking Applicant to the crime.

Counsel testified he attempted to argue the defense of alibi and self-defense. Counsel testified he attempted to argue self-defense due to Applicant's confession. Counsel explained in his opinion a self-defense argument would have been a better defense because it would have been Applicant's word against the eye witnesses. However, due to Applicant's assertion that he was not present at the scene, Counsel testified that he had no other option but to argue the defense of alibi. Counsel testified as a result he now had to attempt to discredit the officers testimony regarding the voluntariness of Applicant's confession.

Counsel testified Applicant clocked in for work at 6:11 a.m. the morning of the incident. Counsel testified he subpoenaed the video of Applicant entering Fire Mountain Restaurant and his time card. Counsel further testified he interviewed other co-workers who may have known or seen Applicant arrive at Fire Mountain Restaurant. Counsel further testified there was a video of the parking lot that was viewed by Investigator Jamie Tuner (Investigator Turner); however that video was destroyed prior to Investigator Turner obtaining a copy of it. Counsel testified he attempted to subpoena the people in charge of the records, but was ultimately unsuccessful.

Counsel testified his ultimate trial strategy was to argue there was an insufficient amount of time for Applicant to commit the crime, change clothes, and arrive at work at 6:11 a.m. Counsel further testified he argued the factual discrepancies of the eye witnesses, including the description of the car, description of the suspects clothing, weight and hair style. Counsel further testified one eye witness stated there were three black males in the car.

Counsel testified he did not cross examine Jamie Tuner (Investigator Turner) on whether



it was physically possible for him to travel from Cherry Hill mobile home park to Fire Mountain Restaurant in twenty-two minutes given a rate of speed of seventy miles per hour. Counsel testified in hindsight it would have been a good point to show through mathematical equations that it was not physically possible to travel that distance given the rate of speed. However, Counsel testified he argued during closing argument that there was simply not enough evidence to prove Applicant's guilt beyond a reasonable doubt given the time frame presented at trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test 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, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Below are this Court's findings in regards to the Applicant's allegation of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel failed to fully develop the defense of alibi.

This Court finds Applicant's allegation that he was denied effective assistance of counsel due to a failure to fully develop the defense of alibi is without merit. Counsel testified he conducted a multi-year investigation into the case. Counsel testified he filed for and reviewed discovery with Applicant. Counsel testified this was a difficult case to present an alibi defense because Applicant confessed to shooting the Victim in self-defense prior to his representation. Counsel testified Applicant ultimately changed his story and stated he was not present at the scene. Therefore, Counsel had no other option but to pursue an alibi defense. Counsel testified his trial strategy was to argue to the jury that Applicant could not have committed the crime. Counsel further testified he argued to the jury that the descriptions given by the two witnesses did not match either Applicant or his co-defendant. Counsel further argued there were various descriptions of the car used to commit the crime. Counsel testified that the evidence presented



showed Applicant clocked in for work at Fire Mountain Restaurant at 6:11 a.m. Counsel further testified that a call to 911 was made at 5:58 a.m. Counsel therefore argued that Applicant could not have committed this crime given the time frame presented at trial. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). "Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 417 S.E.2d, 529 (1992).

Further, a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. State v. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985), citing Strickland v. Washington, 104 S.Ct. 2052, 890 L.E.2d 674(1984). Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the range of reasonable professional assistance. Id. This Court finds Applicant has not shown that Counsel was deficient in his choice of tactics. This Court finds that Counsel demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law.

Assuming arguendo, Counsel was deficient in failing to fully develop the defense alibi; Applicant has failed to prove any resulting prejudice. An alibi charge is required where the defendant claims to be elsewhere at the time the crime was committed. State v. Robbins, 275 S.C. 373, 374-75, 271 S.E.2d 319, 319-20 (1980). Generally, the failure to give an alibi charge under these circumstances constitutes reversible error. Id. "An alibi charge places no burden on



the defendant, but emphasizes that it is the State's burden to prove the defendant was present at and participated in the crime." Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1994). In the instant case, Counsel requested and the trial judge charged the jury on the defense of alibi. (Tr. p. 779). This Court finds Applicant has failed to present any evidence showing how he was prejudice as a result of Counsel's alleged deficiencies.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

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

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an

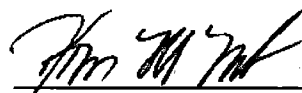


Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

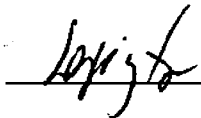
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26 day of Nov, 2013.



R. KNOX MCMAHON
Presiding Judge
Third Judicial Circuit

_____, South Carolina

RECORDED

2014 DEC -8 AM 10: 52

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2014-CP-43

2626

STATE OF SOUTH CAROLINA

County of Sumter

In the Court of Common Pleas

Wayne Darnell Cooper

Full name and prison number (if any) of Applicant.

vs.

~~Wayne Darnell Cooper~~

Name of Respondent.

State of South CarolinaAPPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Broad River Corr. Inst.
2. Name and location of Court which imposed sentence Sumter County Court of General Sessions, Sumter, South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-04-GS-0277 - murder
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 13, 2008 - 40 years at 85%
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty ~~30/00/00~~

(b) after a plea of not guilty ✓ Jury Trial

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?
yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Sentence Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of PC Counsel

(b) Austin Appeal - Austin v. State 409 SE2d 395

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) PC Counsel Failed to File an appeal on A 59(E)

(b) Austin Appeal - Austin v. State 409 SE2d 395

(c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:
- which grounds have been presented:
 -
 -
 -
 - the proceedings in which each ground was raised:
 -
 -
 -
15. If any ground set forth in (9) 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:
- WAS NOT AVAILABLE
 -
 -
16. Were you represented by an attorney at any time during the course of:
- your arraignment and plea? _____
 - your trial, if any? yes
 - your sentencing? yes
 - your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 - preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
17. If you answered "yes" to one or more parts of (16), list:
- the name and address of each attorney who represented you
 - Arthur Wilder
 - Joseph Savitz
P.O. Box 11589 - Columbia, S.C.
 - David Holler
P.O. Box 580 - Sumter, SC
 - the proceedings at which each such attorney represented you:
 - Trial
 - Direct Appeal
 - Per Hearing
18. State clearly the relief you seek in filing this application
To be allowed to appeal the denial of my Per Application
Because Per Counsel did not file the appeal
19. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA.

County of Sunbelt

VERIFICATION

I, Wayne D. Cooper, 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.

Wayne D. Cooper

SWORN to and subscribed before me this 5thday of December, 2014

[Signature] (L.S.)
Notary Public

My Commission Expires: 10/24 2024

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Wayne D. Cooper, 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 therefor.

Wayne D. Cooper
Applicant

SWORN or affirmed to and subscribed before me this

25 day of Nov, 19 14

[Signature]
Notary Public
Expires 10/24 2024

My Commission Expires:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	2014-CP-43-2626
	)	
Wayne Darnell Cooper,	)	
S.C.D.C. No. 331763,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief filed by Wayne Darnell Cooper (Applicant) on December 8, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the April 2007 term of the Sumter County Grand Jury for Murder (2007-GS-43-277). Arthur Wilder, Esquire, represented him. On November 10-13, 2008, Applicant proceeded to a jury trial before the Honorable Howard P. King. On November 13, 2008, Applicant was found guilty of Murder. Judge King sentenced Applicant to forty years imprisonment.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Wayne Darnell Cooper, No. 2011-UP-544 (Ct. App. filed December 6, 2011). The Remittitur was sent on December 22, 2011.

2012-CP-43-1286

On June 25, 2013, Applicant filed his first application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

Respondent made its Return on January 24, 2013. An evidentiary hearing into the matter was convened on October 1, 2013, at the Sumter County Courthouse before the Honorable R. Knox McMahon. Applicant was present at the hearing and represented by David Holler, Esquire. Applicant's trial counsel testified. By Order filed December 9, 2013, Applicant's PCR application was denied and dismissed with prejudice.

II.

In Applicant's second and current PCR application, he alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel

- a. PCR Counsel failed to file an appeal or 59(e)
- b. Austin Appeal – *Austin v. State*, 409 S.E.2d 395

For the purposes of this Return, Respondent incorporates the Sumter County Clerk of Court records, Applicant's direct appeal records, Applicant's prior PCR records, and the South Carolina Department of Corrections' records. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent interprets Applicant's allegations as claims that the Applicant seeks a belated appeal of the denial of his prior PCR application. Respondent submits that this is a successive application. Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991); *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981). However, Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the

South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.; Austin, Id.

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of whether Applicant was denied a right to appeal his previous PCR action. Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the State requests that a hearing be held and counsel be appointed to represent Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

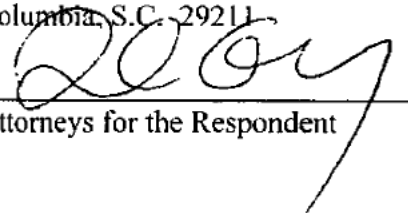
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

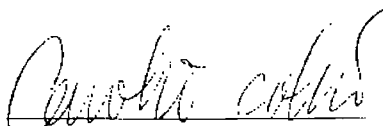
Columbia, South Carolina
August 27, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2014-CP-43-2626
	)	
WAYNE DARNELL COOPER, #331763.	)	
	)	
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:

Fulton Casey Dale Cornwell, Esquire
448 Deerwood Street, Unit 9A
Columbia, South Carolina 29205

DATED this 27th day of March, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	Case No. 2014-CP-43-02626
	)	
Wayne Darnell Cooper,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 15, 2015
Sumter, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

F. Casey Dale Cornwell, Esquire
Attorney for the Plaintiff

Daniel Gourley, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER

Motion and Consent to Appeal.....	4

Ruling.....	5

Court Reporter Certification.....	7

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption
 or change in thought

ellipses . . . trailing off

[ph] phonetically written

[sic] written as said

1 JULY 15, 2015

2 (WHEREUPON, the proceedings began at 12:03 p.m.)

3 THE COURT: Yes, sir, Mr. Attorney General?

4 MR. GOURLEY: Yes, Your Honor. This is Wayne Cooper
5 versus the State of South Carolina, Docket Number 2014-CP-43-
6 2626.

7 He's presently confined in the South Carolina Department
8 of Corrections pursuant to orders of commitment of the Sumter
9 County Clerk of Court. He was true-bill indicted the April
10 of 2012 -- 2007 term of the Sumter County Grand Jury for
11 murder. Mr. Wilder represented him on his charges.

12 He proceeded to a jury trial and was found guilty. The
13 Honorable Howard P. King sentenced him to a 40-year term of
14 imprisonment. He filed an appeal. The appeal was dismissed,
15 and the remittitur was issued on December 22nd, 2011.

16 He subsequently filed his first PCR application on June
17 25th, 2013, alleging various claims of ineffective assistance
18 of counsel. Your Honor, that was -- a hearing was held on
19 January -- on October 1st, 2013, before the Honorable R. Knox
20 McMahon. The applicant was present at the hearing,
21 represented by Mr. Holler, who is here today.

22 By order filed December 9th, 2013, the applicant's PCR
23 application was denied and dismissed with prejudice. He
24 filed a second application under Docket Number 2014-CP-43-
25 2626, alleging that he did not knowingly and intelligently

1 waive his right to appeal the denial of his first PCR
2 application.

3 Your Honor, just for the record, the applicant submitted
4 a Rule 59(e) motion. He filed it, I think, December 20th,
5 2013. Your Honor, I've had some discussions with Mr. Holler.
6 Under Rule 11, the applicant's motion -- the applicant's
7 59(e) motion was filed by himself. It was never adopted by
8 Mr. Holler. Mr. Holler did not file it or write it.

9 So, Your Honor, under Rule 11, that's actually not
10 properly before the Court and, as such, Mr. Cooper's time
11 limits to file a notice of appeal had expired. And based off
12 of that, Your Honor, we would certainly submit that Mr.
13 Cooper is entitled to an appeal pursuant to Austin, and we
14 consent to that.

15 THE COURT: All right. Yes, sir, Mr. Cornwell?

16 MR. CORNWELL: Your Honor, we don't have a problem with
17 that because he'd have to obviously settle his matter with
18 the appeal before we could get to the PCR against, you know,
19 his attorney. So I think there's an issue of ripeness with
20 that anyway.

21 THE COURT: All right, sir. Very good.

22 So based upon the record before the Court, the Court
23 does find that in Austin the appeal is proper and, therefore,
24 that is so ordered. All right.

25 MR. GOURLEY: Thank you, Judge.

1 THE COURT: Thank y'all very much.

2 MR. HOLLER: Judge John, can I -- and I apologize.

3 David Holler. I'm trying to understand. We still have
4 a 59(e) motion with --

5 MR. GOURLEY: Under Rule 11, it's my position that it's
6 not properly before the Court, period. It's done, and the
7 time limits to file a 59(e) properly have expired.

8 THE COURT: But he's granted the Austin appeal --

9 MR. GOURLEY: He's granted the Austin.

10 MR. HOLLER: He's granted the right to appeal?

11 THE COURT: -- is what he --

12 MR. GOURLEY: He's granted the --

13 THE COURT: He's granted --

14 MR. GOURLEY: -- right to appeal.

15 THE COURT: Right. He's granted an Austin appeal under
16 -- under that particular decision of the South Carolina
17 Supreme Court.

18 MR. HOLLER: Okay. Thank you, Judge.

19 THE COURT: Austin v. State. All right? Thank you very
20 much.

21 (WHEREUPON, the proceedings ended at 12:08 p.m.)

22

23 --- END REQUESTED TRANSCRIPT ---

24

25

1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 6, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 15th day of July, 2015.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16

17 s/Krystal J. Smith

18	Court Reporter

19

20	Florence, South Carolina

21 | November 6, 2018

22

23

24

25

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

Wayne Darnell Cooper

RECORDED

2015 JUL 16 PM 1:28

JAMES C. PARNELL
CLERK OF COURT
SUMTER COUNTY, S.C.

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP4302626

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: See attached Order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2129

Judge Code

7/16/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Wayne Darnell #331763 Cooper Broad River Rd
 Correctional Inst/Mur 150 4460 Broadriver Road Columbia,
 SC 29210
Fulton Casey Dale Cornwell 448 Deerwood Street Unit 9A
 Columbia, SC 29205

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-
 1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

WAYNE DARNELL COOPER, #331763

Plaintiff,

v.

STATE OF SOUTH CAROLINA

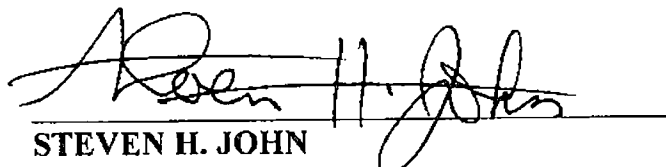
Defendant.

) THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
) 2014-CP-43-02626
)
) 2015 JUL 16 PM 12:26
)
) JAMES S. GIBBELL
) CLERK OF COURT
) SUMTER COUNTY, S.C.

ORDER

Applicant is granted an Austin Appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395.

IT IS SO ORDERED.


 STEVEN H. JOHN
 Presiding Judge
 Third Judicial Circuit

July 16, 2015
 Sumter, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Wayne D. Cooper, #331763,)

2014-CP-43-2626

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

**ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE**

RECORDED
2015 SEP 17 PM 1:42
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated December 8, 2014. The Respondent made its return and motion to dismiss all claims except for failure to file an appeal from the denial of his PCR action on March 27, 2015. An evidentiary hearing on the matter was convened on July 15, 2015 at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Casey Cornwell, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the Sumter County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and the prior PCR records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the April 2007 term of the Sumter County Grand Jury for Murder (2007-GS-43-277). Arthur Wilder, Esquire, represented him. On November 10-13, 2008, Applicant proceeded to a jury trial

before the Honorable Howard P. King. On November 13, 2008, Applicant was found guilty of Murder. Judge King sentenced Applicant to forty years imprisonment.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Wayne Darnell Cooper, No. 2011-UP-544 (Ct. App. filed December 6, 2011). The Remittitur was sent on December 22, 2011.

2012-CP-43-1286

On June 25, 2013, Applicant filed his first application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

Respondent made its Return on January 24, 2013. An evidentiary hearing into the matter was convened on October 1, 2013, at the Sumter County Courthouse before the Honorable R. Knox McMahon. Applicant was present at the hearing and represented by David Holler, Esquire. Applicant's trial counsel testified. By Order filed December 9, 2013, Applicant's PCR application was denied and dismissed with prejudice.

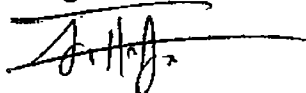
ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel
 - a. PCR Counsel failed to file an appeal or 59(e)
 - b. Austin Appeal – Austin v. State, 409 S.E.2d 395

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.



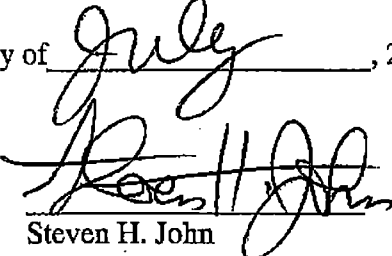
After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2012-CP-43-1286). The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief. Prior PCR Counsel, David Holler, indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the application.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2012-CP-43-1286) pursuant to Austin v. State is warranted.

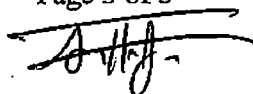
IT IS THEREFORE ORDERED:

1. That the Applicant remain in the custody of the South Carolina Department of Corrections; and
2. That the Applicant be granted an appeal of case 2012-CP-43-1286 pursuant to Austin v. State.

AND IT IS SO ORDERED this 27th day of July, 2015.


Steven H. John
Presiding Judge
Third Judicial Circuit

At Chambers, South Carolina.



COUNTY OF Sumter

IN THE COURT OF COMMON PLEAS

RECORDED

2018 JAN 29 PM 12:00 CIVIL ACTION COVERSHEET

Wayne D. Cooper

Plaintiff(s)
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

-CP-

vs.

State of South Carolina

Defendant(s)

2018-CP-43-114

(Please Print)

Submitted By:

Address:

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet 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 cover sheet 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) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ 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)	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) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)			
☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Sexual Predator (510)			

Submitting Party Signature: _____

Date: _____

FORM 5

STATE OF SOUTH CAROLINA

RECORDED

IN THE COURT OF COMMON PLEAS

County of Sumter

2018 JAN 29 PM 12:09

WAYNE D. Cooper 331763

Full name and prison number (if any) of Applicant

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2018-CP-43-114

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institutional
2. Name and location of Court which imposed sentence Sumter County Court
141 North Main Street, Sumter, SC 29150
3. Name(s) of co-defendant(s) (if any) Mr Derrick Cooper
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2006-GS-43-0277; Murder

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) November 13, 2008, 40 years
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty None
(b) after a plea of not guilty YES
(c) after a plea of nolo contendere None
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered Ayes@ to (7), list:
(a) the name of each Court to which you appealed:
i. Court of Appeals
ii. U.S. District Court
iii. U.S. Court of Appeals
(b) the result in each such Court to which you appealed:
i. Denied
ii. Denied
iii. Denied
(c) the date of each such result:
i. _____
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. Affirmed
ii. _____
iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
(a) N/A

- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment: Memorandum of Law
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment: Memorandum of Law
- (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? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ 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 _____

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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. See Attachment: Memorandum of Law _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Arthur H. Wilder
Public Defender Office Courthouse Rm #101, Sumter, SC 29150
 ii. David C. Holler, Esq.
P.O. Box 580, Sumter, S.C. 29151
 iii. Fulton Casey Dale Cornwell
448 Deeward Street Unit #9A, Columbia, SC 29205

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing
 ii. Post Conviction Relief
 iii. Related Appeal

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

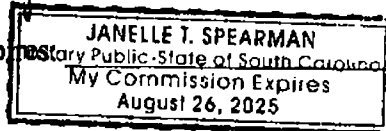
I, Wayne D. Cooper, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Wayne D. Cooper

SWORN to and subscribed before me this 8th day of January 2018.

Janelle T. Spearman (L.S.)
Notary Public

My Commission Expires



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Wayne D. Cooper, 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.

Wayne D. Cooper
Applicant

SWORN or affirmed to and subscribed before me this
day of January, 2011.

Janelle T. Spearman
Notary Public

My Commission Expires



James C. Campbell
Clerk of Court
141 North Main Street
Sumter, S.C. 29150

RECORDED

2018 APR -9 AM 9:17

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

April 3, 2018

Dear Clerk,

Enclosed herewith My Motion to be amended to my
Post Conviction Relief (P.C.R.) application that was recently
filed.

Thank You for your time and effort.

With Regards

Wayne D. Cooper

State of South Carolina
County of Sumter

In The Court of General Sessions
3RD Judicial Circuit

Wayne D. Cooper #331763
Petitioner,

v.

State of South Carolina
Respondent.

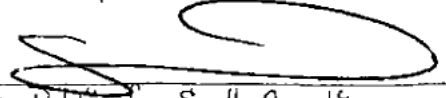
Certificate of Service

RECORDED
2018 APR -9 AM 9:17
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, SC

I, Wayne D. Cooper, does hereby certify that a true copy of Petitioner's
" Motion for Leave to file MOTION FOR MODIFICATION OR CORRECT SENTENCE
NUNC PRO TUNC, MEMORANDUM OF LAW, AFFIDAVIT IN SUPPORT OF MOTION
FOR LEAVE TO FILE MOTION FOR MODIFICATION OR CORRECT SENTENCE
NUNC PRO TUNC" has been delivered up The Court of General Sessions, by
mailing a copy of said document in the U.S. Mail, postage pre-paid, via
S.C. Dept of Correction mailroom personnel on December 20, 2017 address to:

James C. Campbell
Clerk of Court
141 N. Main Street
Sumter, SC. 29150

SWORN and SUBSCRIBED before me
this 20 day of December 2017


Notary Public for South Carolina
My Commission Expires:
9/16/2026

Wayne D. Cooper
Wayne D. Cooper 331763
4460 Broad River Rd.
Columbia, S.C. 29210

State of South Carolina
County of Sumter

WAYNE D. Cooper 331763
Petitioner,

v.

State of South Carolina
Defendant.

In The Court of General Sessions
3RD Judicial Circuit

Motion for Leave to file
MOTION FOR MODIFICATION OR
CORRECT SENTENCE

NUNC PRO TUNC

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2018 APR - 9 AM 9:17

RECORDED

COMES NOW Petitioner, Wayne Cooper, pro-se, Respectfully requesting this court to make a specified ruling or order entry permitting him to file a Motion for leave to file Motion for MODIFICATION or CORRECT SENTENCE NUNC PRO TUNC as if made at the time when it should have been made. In Support of this Motion, Petitioner would show the following:

1. On September 5, 2006 petitioner was arrested and charged with Murder § 16-3-10 and § 16-3-20.
2. On November 10, 2008 a trial was had on the aforementioned Murder charge and the jury returned verdict of guilty, as charged.
3. Following the guilty verdict the Judge, pursuant to § 16-3-20, imposed a sentence of 40 years to the Department of Corrections.
4. Upon information and belief Petitioner contends that the sentenced imposed on him, notwithstanding § 16-3-20, constitute an illegal sentence.
5. The legal sanction for this belief can be found in the Supporting Memorandum of Law.

6. To the extent it would not be out of order or in conflict with any rule of court, please do not hesitate to contact me if upon close examination of the Motion for leave to file Motion for MODIFICATION or CORRECT SENTENCE is discovered it is temporarily infected with remediable procedural or jurisdictional flaws, before pondering the fate of its merits and making a decision that bind Petitioner and defeat the Motion for leave Motion for MODIFICATION or CORRECT SENTENCE on grounds it is not handled nor prepared in a manner that conform to standards of good practice as outlined in South Carolina Jurisprudence.
7. A Hearing would help clarify this issue.

Date December 19, 2017

Wayne D. Cooper

Wayne D. Cooper

988

State of South Carolina
County of Sumter

In The Court of General Sessions
3RD Judicial Circuit

WAYNE D. COOPER 331763
Petitioner,

Memorandum of Law

v.
State of South Carolina
Defendant.

RECORDED
2018 APR -9 AM 9:18
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, SC

The primary function of the court in interpreting a statute is to ascertain and effectuate the intent of the Legislature. Delaney v. Financial of Charleston Inc., 791 S.E.2d 546 (Ct. App. 2016); State v. Hackett, 609 S.E.2d 553 (Ct. App. 2005); Write v. Colleton County School District, 391 S.E.2d 564 (1990). A sensible literal meaning of a statute must always be followed if there is no other meaning that the words can reasonably bear. First Baptist Church of Moultrie, 417 S.E.2d 542 (1992). Given occasions to affirm and apply it, words should be read as saying what they say. Under the plain meaning rule; it is the Court's place to change the meaning of a clear and unambiguous statute. All things considered, the best interpretation is made from what proceeds and what follows in clause and context.

If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has not right to impose another meaning. See Rischel v. State Election Comm., 454 S.E.2d 890 (1995). In construing a statute, the court must give clear and unambiguous terms their plain and ordinary meaning without resorting to subtle forced construction to limit or expand statute's operation. Gilstrap v. South Carolina Budget and Control Bd., 423 S.E.2d 101 (1992). "[W]here the language of an enactment is clear, and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended." U.S. v. Mo. Pac. R.R., 278 U.S. 269, 278

(1929).

Furthermore, "The surplusage canon holds that it is no more the court's function to revise by subtraction than by addition. A provision that seems to the court unjust or unfortunate (creating the so-called *casus male inclusus* [case wrongly intended]) must nonetheless be given effect." Antonin Scalia + Bryan A. Garner, Reading Law: The Interpretation of legal text 174 (2012).

That being so, it is well settled that statutes as a whole must receive practical, reasonable and fair interpretation consonant with the purpose, design, and policy of Lawmakers. See Whiteside v. Cherokee Co. School Dist. No. 1, 428 S.E.2d 884 (1993). Having prefaced my point. Relevant to the case *Sub judice*, some features of legislation enactment should be noted. In the instant case, two points must be borne in mind. First S.C. Code Ann. §16-3-20, which was in full force and effect at such time the crime had occurred and conviction and sentence met out under the statute's language communicated the spirit of the legislators desires, in pertinent part, Read:

"A person who is convicted or pleads guilty to murder must be punished by death, by imprisonment for life, **or** by a mandatory minimum term of imprisonment for thirty years Id.

The General Assembly provided guidance wherein the statute are articulated the standards established to effectuate the legislative intent, for deciding what constitutes following the mandatory minimum term of imprisonment rule; objectively ascertainable by looking to the meticulously worded assessment of the statute itself.

Second, Well after Petitioner's crime had occurred in September 5, 2006, and he was convicted and sentenced in November 13, 2008 under §16-3-20 as

the Law was then, the General Assembly significantly amended § 16.3.20, effective June 11, 2010.

In pertinent part to the immediate pending question and what Petitioner argues, **RES NOVA**, in proper basis in fact and in Law, the amended statute provides:

"... by a mandatory minimum term of imprisonment for thirty years to Life." (emphasis mine)

It is a nuisance, but an important one.

It is highly probable and reasonably certain the amendatory wording of section of § 16.3.20 was made so as to only now, not previously, confer power and privilege on the discretionary authority of courts to sentence one convicted the edicts of § 16.3.20 to, *inter alia*, "Thirty years to Life" And not be out of order, in conflicts with prevailing Linguistic meanings and interpretive principles, in sentencing a convicted defendant to what, previously under the rules governing restrictive reading and interpretation in construing penal statutes, would have been tantamount to a radical or unique departure of Law. A breach of Statutory duty in sentencing one to a greater numerical term of mandatory imprisonment, say, 40 years, where the lawmaking organ of the General Assembly had set the precise limit and boundary of numerical sentencing at 30 years, as the law was previously written before it was amended in 2010.

Purposefully omitted any degree of suggestiveness in the dictum expressed, so as to leave no room or warrant for interpolation, or nothing else to otherwise be inferred or legally imputed in the rhadamantive wording of § 16.3.20. Even where this line of reasoning being advanced here may not be sufficient to free the mind wholly from all reasonable doubt, it is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

This impression confirmed by, and the legal sanction for this belief is, under the old wording of §16-3-20, had the original intent of the General Assembly been to permit Sentencing Courts to impose a mandatory term of imprisonment numerically greater than thirty years articulated under the provision of §16-3-20 before it was amended and became effective in 2010, there would have been no reason to add words in amending to achieve a reasoned interpretation that only now, not previously, courts are permitted in sentencing under the statute to impose numerically a mandatory term of imprisonment beyond what had been 30 years limiting factor.

Moreover detailing the statute's wording to clearly, decisively, unequivocally reflect the punitive consequences and effect of being convicted and sentenced under §16-3-20, added words so the provision now read "thirty years to Life", instead of 30 years perse, discloses that previously no numerical alternative beyond the 30 years term of imprisonment, was ever discussed or intended, until the newly considered and enacted provision of §16-3-20 came in the finish, in the force, of Law effective June 11, 2010.

The prohibition of vagueness in criminal statutes "is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rule of law", and a statute that flouts it "violates the first essential of due process." Connally v. General Const. Co., 269 U.S. 385, 391 (1926). These principles apply not only to statutes defining elements of crime, but also to statutes fixing sentences. United States v. Batchelder, 442 U.S. 14 (1979).

Generally, the imposition of sentence the result of a criminal conviction rest in the sound discretion of the sentencing court, and the exercise of this discretion is not reviewable except for manifest abuse for example, see State v. Barton, 481 SE.2d 439 (1979). And yet it is also well settled that the court has the inherent power to correct an illegal sentence even though there is no rule expressly authorizing. And the passage of time should not preclude meaningful opportunity to have corrected

and illegal sentence manifestly contrary to what the law had intended and allowed when the sentence had been imposed.

Weighing the merits and pondering his fate, Petitioner believes that, if restructure of his sentence or resentence, he would be subject to a markedly lower term of imprisonment than his current sentence of 40 years, straight sentence. And also believes with undeviating certainty that his current sentence should not be allowed to remain, which makes more burdensome the punishment for a crime than was intended by the General Assembly. It raises concerns the Ex Post Facto clauses of the Federal and State Constitutions are being violated, in having retroactively applied punitive Law to offenses committed well before the effective date of the current law, as amended.

Date December 19, 2017

Wayne D. Cooper

WAYNE D. COOPER #331763

State of South Carolina
County of Sumter

Wayne D. Cooper 331763
Petitioner,

v.
State of South Carolina
Defendant.

In The Court of General Sessions
3rd Judicial Circuit RECORDED

AFFIDAVIT IN SUPPORT ~~2018~~ APR -9 AM 9:18

Motion for Leave to file JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

MOTION FOR MODIFICATION OR

CORRECT SENTENCE

NUNC PRO TUNC

I, Wayne D. Cooper, being duly sworn upon my oath, depose and say that I have subscribed to the following AFFIDAVIT; that I know the contents thereof; that it include every ground known to me for requesting Leave to file Motion for Modification or Correct Sentence, NUNC PRO TUNC; and that the matter and allegations therein set forth are true:

1. Affiant was arrested and charged with Murder on the 5th of September 2006.
2. Affiant went to trial on the aforementioned charge on November 10-13, 2008 and the Jury returned a verdict of guilty, as charged.
3. Following the guilty verdict the Judge was informed by Affiant counsel about the sentencing requirement, see exhibit #Tr. p. 809 LL. 3, 4 before the Judge pursuant §16-3-20, imposed a sentence of 40 years to the Department of Corrections.
4. After the sentencing, Affiant is confined and housed at Broad River Correctional where he contends that the sentence imposed on him §16-3-20 (2008) constitute an illegal sentence.
5. A hearing would help clarify this issue.

994

SWORN and SUBSCRIBED before me:
this 20 day of December 2017.



Notary Public for South Carolina
My Commission Expires: 9/19/2026

Wayne D. Cooper
WAYNE D. COOPER #331763
BRCI/4460 Broad River Rd.
Columbia, S.C. 29210

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) IN THE COURT OF COMMON PLEAS
RECORDED 3RD JUDICIAL CIRCUIT

2018 JAN 29 PM 12:09

Wayne D. Cooper #331763

Applicant,

v.

STATE OF SOUTH CAROLINA)

Respondent.)

MEMORANDUM OF LAW
JAMES C. DANN, III
CLERK OF COURT IN SUPPORT OF SUBSEQUENT PCR
SUMTER COUNTY, S.C.
APPLICATION

2018 CP-43-114

COMES NOW, the above named Applicant, Wayne Cooper, respectfully moves this court to grant an evidentiary hearing on this matter expeditiously based on this PCR application, the PCR "MEMORANDUM OF LAW IN SUPPORT OF SUBSEQUENT PCR APPLICATION" and all other material available to this court. In the alternative, the Applicant moves this court to convene an evidentiary hearing to, at a bare minimum, Judicially determine and adjudicate whether or not the Applicant Wayne Cooper adequately received his Statutory and Constitutional 'bite' at the apple in the presentation and adjudication of these issues at his original PCR evidentiary hearing before the PCR Judge Hon. Knox McMahon on October 1, 2013 in the PCR case #2012-CP-43-1286.

In this case the Applicant filed an original PCR application on the unconstitutionality of his sentence and conviction on June 25, 2012. The PCR application was assigned case number #2012-CP-43-1286, and an evidentiary hearing was convened on October 1, 2013. The attorney David C. Holler was appointed as PCR counsel.

The SCRCiv. Proc. Rule 71.1 "Post Conviction Relief Action" creates the obligation for the PCR counsel that he "shall insure that all available grounds for relief are included in the application and shall amend the application if necessary". The PCR counsel Holler violated this statutory rule in that he neither included all available grounds for relief in the PCR application nor did he amend the PCR application to include all the available grounds for relief.

The S.C. Code of Law §17-27-50 "Form and Content of application" created procedural guidelines for the PCR counsel to follow the obligation of submitting personal knowledge of the applicant to

set forth personal knowledge of the applicant separately from other allegations of facts on the application. The Applicant has suffered from procedural irregularities that occurred numerous times during the course of Applicant's judicial process that deprived applicant of due process which led to serious breakdowns in the adversarial process and infringements upon Constitutional rights to due process.

Applicant suffers from violation of his due process and procedural irregularities when Applicant PCR counsel failed to file applicant motion Rule 59(e) after the evidentiary hearing October 1, 2013 that applicant specifically requested to counsel to file an appeal. Applicant counsel received the 'Order of Dismissal' on December 13, 2013 and counsel did not comply with filing the appeal 59(e) motion Austin v. State violation. This absent communication from counsel led the applicant to file his Rule 59(e) motion per se on December 19, 2013 and forwarded copies to the respectful parties the Clerk of Court, Hon. Judge Knox McMahon, and counsel Mr. Holler. After applicant received a clock stamped file copy back from the Clerk of Court applicant did not hear anything else from the courts. Thereafter Applicant wrote the Clerk of Court inquiring about if there was any ruling and the Clerk responded that there was not any ruling on November 18, 2014. (see exhibit)

Applicant then filed another PCR application pertaining to counsel failure of filing a Rule 59(e) motion Austin v. State on December 8, 2014. The Attorney General office assigned applicant another counsel for the Austin review Mr. Cornwell. Counsel Cornwell never communicated with applicant nor did he responded to any communications via mail from the applicant. Applicant appeared before Hon. Judge John on July 15, 2015 with counsel Mr. C. Cornwell. The Attorney General office consented to granting applicant the Austin reveiw hearing based on PCR counsel failed to file applicant Rule 59(e) motion. The Attorney General motion to reschedule a evidentiary hearing which applicant counsel failed to file an appeal for the Clerk of Court to schedule a day to be heard. From that applicant was under the impression that counsel would contact through mail and inform Applicant of a court date for a hearing. Applicant believed the case to be still pending.

Now Applicant asserts that he suffers from procedural default

and procedural irregularities created by both counsels that rendered applicant inadequate representation and denied a full and fair 'bite' at the apple. In Re Vora 582 S.E.2d 413,416. by both counsels not following procedural due process, by not filing an appeal and adequate notice after a decision has been adjudicated puts Applicant at an disadvantage of a full and fair view of contested conviction. If finality were our only or even the most important institutional goal, we would not permit any post conviction relief at all. Hawkins v. United States, 724 F.3d 915,923 (7th Cir. 2013)(Rovner, J., dissenting from denied of rehearing). It is not finality, but rather fairness [that] is the life blood of our system of justice and Justice requires the ability to rectify substantial uncontroverted judicial errors that cause significant injury. This is why in our anthropomorphization of justice, she is wearing a blindfold and not running shoes.Id.

ONE YEAR STATUTE OF LIMITATION- INAPPLICABLE

The Applicant is solely attacking the procedural and Structural inadequancies at the October 1, 2013 evidentiary hearing which deprived the applicant of his due process right to the One bite of the apple to fully, fairly and adequately develop and present his Constitutional claims on the original PCR #2012-CP-43-1286, this being so, the one year statute of limitation S.C. Code Ann. §17-27-45(a) is not applicable. In this present PCR application, Applicant claims he was denied his right to adequately make preparation to raise material testimony and material evidence to his Constitutional claim of a 4th amendment right violation created a procedural and constitutional errors preventing applicant a fair and adequate 'bite' at the apple with the lack of presentation, development of applicant specific issues. See Odom v. State, 523 S.E.2d 753.

With regards to PCR counsel inadequate preparation to file Rule 59(e) appeal and abandon applicant at a crucial stage on case #2012-CP-43-1286, applicant had to file Rule 59(e) motion pro-se to the Clerk of Court which was not resolved by the courts and Applicant had to file another PCR Austin v. State, 409 S.E.2d 395, thus the appointed appellant counsel also denied applicant a full and fairly, adequate 'bite' of the apple. Applicant suffered due

process violation by counsel failure to file applicant appeal for evidentiary hearing on case #2012-CP-43-2626 that applicant did not freely and voluntarily waive his right to appeal in cases #2012-CP-43-1286 and #2012-CP-43-2626. These inadequacies are a direct attribute of procedural and structural under pinning of PCR counsels deficiencies to applicant full and fair 'bite' of the apple. Therefore the Statute of Limitation outlined in S.C. Code of Law §17-27-45(a) and (b) are inapplicable to applicant's current procedure.

SUCCESSIVE PCR APPLICATION- INAPPLICABLE

The current PCR application has filed is not "successive" with in the meaning of the Uniform Post Conviction Procedure Act of South Carolina and the respective case laws developed regarding "successive" PCR's. The applicant institutes this subsequent PCR application in order to get his one bite at the apple which was not granted to him by the inadequate performance of both appellate counsels during his procedural due process stage.

This applicant is not seeking more than he is entitled to have as a right. The applicant simply seeks to fully and fairly and adequately present his meritorious constitutional claims to the South Carolina state courts, and have the South Carolina state courts adequately hear, adequately determine and adequately adjudicate the merits of the original PCR application and another evidentiary hearing for a PCR review. The statute S.C. Code of law §17-27-90 does not bar this subsequent PCR application. See State v. Odom, 523 S.E.2d 753, William v. State, 583 S.E.2d 52.

The Applicant is entitled to an evidentiary hearing on this present PCR application as a matter of fact and as a matter of law, as a matter of Statutory right and Constitutional right.

Date: 1/8/2018

Wayne D. Cooper
Wayne D. Cooper

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER

RECORDED

2018 JUN 25 PM 4:17

CASE NO.: 2018-CP-43-0114

Wayne Cooper, #331763

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.

State of South Carolina

Defendant.

Plaintiff's Attorney:

Timothy L. Griffith, Esquire, Bar No. _____

Address:

360 West Wesmark Blvd. Sumter SC 29150

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Julie A. Coleman, Bar No. 102214

Address:

PO Box 11549 Columbia, SC 29211-1549

Phone: 803-734-3737 Fax 803-734-4113

E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☒ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

June 22, 2018

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
 OF THE THIRD JUDICIAL CIRCUIT

Wayne D. Cooper, #331763,

2018-CP-43-114

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

RECORDED
 2018 JUN 25 PM 4: 17
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

Respondent, making its Return to the application for post-conviction relief filed by Wayne Darnell Cooper (Applicant) on January 29, 2018, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the April 2007 term of the Sumter County Grand Jury for murder (2007-GS-43-277). Arthur Wilder, Esquire, represented him. On November 10-13, 2008, Applicant proceeded to a jury trial before the Honorable Howard P. King. On November 13, 2008, Applicant was found guilty as indicted. Judge King sentenced Applicant to forty years imprisonment.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Wayne Darnell Cooper, No. 2011-UP-544 (Ct. App. filed December 6, 2011). The Remittitur was sent on December 22, 2011.