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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2008-CP-10-0057

Anthony Mann, 242498,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

VOLUME IV OF IV

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1 get away from his daddy who got on his nerves.

2 What does Michael Crumb tell you? He told you
3 very emotionally yesterday he has a hard time with his
4 responsibility in this. He tells you he knew when they
5 were behind that Piggly Wiggly firing that gun what was
6 up. And he tells you when he got there he went in to
7 help. Why did he go in to help? Because Eric Zack was
8 too big a wuss.

9 And Michael Crumb sees that proffer and said, I
10 need to tell you, all right, I did know, I did know. I
11 also need to tell you that I didn't throw the gun, the
12 Derringer. He's such a big criminal he doesn't even it's
13 called a Derringer. He calls it a Dillinger. That I
14 threw this Dillinger in the river. I didn't throw it in
15 the river, I gave it to my cousin. So now he's got his
16 cousin arrested. Because he knows it's time to tell the
17 truth.

18 He's gotten an attorney, they have come in, set
19 the record straight, both of them.

20 Let's look at the hand of one per Eric Zack and
21 Michael Crumb. Remember, the defendant's given you hand
22 of one right here. Even if you decide to believe that
23 Beverly Blake shot Dante Tobias, you've got to remember
24 under the hand of one, he's still guilty. He's still
25 guilty of the armed robbery and he's still guilty of the

1 murder, because once you join in a felony like armed
2 robbery and someone gets killed in the process, under the
3 law that the judge will give you, you're guilty.

4 Eric Zack, Michael Crumb, Mann asked Peter for a
5 favor and went in his place and borrowed a gun. Why do
6 you need a gun to go pick up a girl?

7 Mann went and helped Brownie and was going to
8 rob him if he didn't act right. What does that mean,
9 didn't act right? His own statement, I didn't really feel
10 like leaving Monck's Corner to go get her until I find out
11 about the drugs, the weed and the coke.

12 Again, Anthony Mann knew about Brownie and he
13 knew about the safe. Again, his own statement, his own
14 statement gives you the murder of Dante Tobias. It gives
15 you the armed robbery of Dante Tobias. The first time she
16 called me I told her no because I was in Moncks Corner and
17 didn't feel like coming to West Ashley. Finally Brownie
18 told me her roommate had two ounces of coke and a pound of
19 weed. Yippee. So wild, wild West. Let me go get my gun
20 from Peter Davies.

21 I grabbed -- now we're inside the house of 36
22 Magnolia. According to him, Dante Tobias started this
23 fight. I grabbed the chrome 357 he dropped and Brownie
24 told me he had another gun on him. Okay. She shoots him
25 and he pats down his pockets and gets the Derringer. He

1 robs a dead guy.

2 Ms. Shealy asked you, Does it make sense that
3 Anthony Mann walks Dante Tobias from the room where the
4 safe is, from the room where the safe is back here to the
5 front porch to shoot him? Does that make sense?

6 No, it doesn't make sense that he walks him from
7 the room where the safe is to the porch. Dante Tobias
8 almost got away. He almost made it. He's three feet from
9 the door. And then the coward shoots him in the back.

10 He couldn't even look him in the face. He
11 didn't walk him out there and say, Let me shoot you, let
12 me murder you in front of Donna Kann and everybody else in
13 the block. Dante Tobias was almost home free from this
14 stuff. Then he gets shot.

15 What a big old coincidence that then Beverly
16 Blake gets found shot in the same cowardly way. He didn't
17 even look her in the eyes.

18 I hope that in all the presentation of the
19 testimony you can use your common sense that you see
20 through the idea that these people who came in to testify
21 are the State's witnesses. They're his friends. His
22 friends, not our friends. Not our cohorts that we choose
23 to spend time away from other cases, our friends and
24 family to talk to. His friends.

25 And what do his friends tell you? Shannon

1 Keyes. She was the young girl that had red hair,
2 straight, about down to there. She testified Amp was like
3 a big brother. And he tells her, me and Brownie -- hand
4 of one -- me and Brownie had to do something that didn't
5 turn out, now I've got to lay low. He's telling his
6 friend, my partner and I had something going on, it went
7 bad and now I got to lay low. His friend.

8 He had just met Krystal Lackey. She was the one
9 who her stepdaddy testified about the phone call he gets
10 from his wife, Krystal knows something, what do we do, I
11 know some cops, let me try to find you all somebody to get
12 in touch with. Hallelujah, somebody calls a responsible
13 adult. Say what you want to say about her. Is it not
14 professing that she talked to her momma and daddy about
15 it? That she went to them to find out what to do? She's
16 talking to her momma on the phone and she says -- it comes
17 on the news and she said, Momma, what would you do if you
18 had this information? Finally out of this string of
19 parade of characters that come in, somebody, somebody who
20 now they want to trash, talks to somebody else with some
21 sense.

22 And you heard her stepdaddy, who is a stevedore,
23 who said he didn't know anything about the case. They
24 come to her -- they come to him and he proceeds to try to
25 call an old cop buddy to see who to hook them up with. He

1 didn't know if it's a county case, city case or what kind
2 of case it was. He Finds out it's a county case. He Gets
3 the name and number and gives it to his stepdaughter.

4 Like it or don't, Krystal Lackey does the right
5 thing. You think about that when you think about her
6 credibility.

7 Where are all those other people at the party?
8 I don't know. You certainly saw they didn't have a
9 problem calling in two guys from the ODC to talk about ODC
10 and what happened during the fight. They didn't have a
11 problem doing that.

12 Notice that Anthony Mann is saying at that point
13 me and Brownie. Not me and Eric Zack, not me and Michael
14 Crumb, me and my partner Brownie.

15 I want to point out a common thread here.
16 Ms. Shealy says, Do you believe he would talk to Mervin
17 Menier? This is why you can believe it. The guy is a
18 yapper. He can't keep his mouth shut. He can't keep it
19 shut. Seven hundred and sixty phone calls in four months.
20 Investigator Burnett testified he couldn't check before
21 that or it was more difficult to check before that because
22 for whoever's responsibility it was at Lieber didn't
23 catalogue the calls so they've got thousands upon
24 thousands upon thousands of calls from all inmates that
25 you have to guess to pull one out and see if you get the

1 right one. That is before August. Just between August
2 and December he's called Kristy Bunch 760 times.

3 Dustin James, he tells him this stuff and Dustin
4 said -- he does the sign language. Dustin says, I don't
5 want to know about that. He can't stop. He keeps on
6 going, tells him what happened.

7 Maria Jacques backs up Dustin James. There's a
8 fight at the ODC, he's yelling it out in this big brawl.

9 The guy who is so confident about his looks
10 cracking people over the head with beer bottles. He is
11 big and bad talk.

12 Mervin Menier, Krystal Lackey, Detective Walker,
13 all of them show you a common thread of him wanting to
14 talk, him being happy to talk.

15 Krystal Lackey thought it was a joke. No, she
16 didn't call the police. She didn't call them at all. She
17 thought he looked like a Back Street boy. She thought, I
18 don't know what that was about. Then she sees it on the
19 news talking to her momma. What do I do? What do I do?
20 You need to get to the police. You think about that when
21 you think about whether or not Anthony Mann would have
22 talked to Merv Menier, whether Anthony Mann would have
23 screamed out to Dustin James, to Maria Jacques. There
24 were 60 other people there. Can you imagine the chaos
25 when the fight breaks out? You think about that.

1 Let's look at Donna Kann once again and what her
2 testimony was.

3 Her testimony is she hears a gunshot and a
4 scream, and then almost immediately she sees what was her
5 impression was a man on the street. And what does she
6 tell Deputy Bedsaul? A 5-10, 180-pound man. Now, we
7 admit that a day or two later she started to rethink it
8 when they come to ask her, Could it have been a girl,
9 could it have been a girl, could it have been a girl?
10 Yes, it could have been a woman, but my first impression
11 was that it was a man. My first impression was it was a
12 white man. That was her first impression.

13 She told you she was scared. She's getting out
14 of the car and she knows there is a spotlight on her. A
15 gun has just gone off and she's heard a scream. She's
16 trying to get her door closed and hide behind a pole
17 that's this big around.

18 Okay. Her heart is beating. But what was her
19 initial impression? White man, 5-10, 180, the gun he had
20 was a handgun. Remember that. Had it down by the side.
21 She said she couldn't say exactly what kind, but he had a
22 hand gun.

23 And she is corroborated by Eric Zack and Michael
24 Crumb. Because what did they tell you? When the gunshot
25 goes off, Crumb and Zack are in his car along with

1 Brownie. Anthony Mann comes out of the house and then
2 gets in the car.

3 You got that?

4 Let's go to what Mr. Mann says about that.

5 Mr. Mann says after the gunshot he and Brownie
6 run out together. Donna Kann doesn't see them together.
7 She sees what she thinks is a white man, 5-10, 180. She
8 doesn't see together.

9 Brownie we know from the autopsy was 5-5 and
10 142. 5-5 and 142. Anthony Mann, State's Exhibit 130, he
11 just happens to be 5-11, 175.

12 He says that Brownie came out to the car and
13 then she remembered dude had a shotgun. She came running
14 out with the shotgun. Donna Kann doesn't say anything
15 about anybody having any big old shotgun. She says a
16 handgun.

17 All of that, coupled with the fact that what he
18 says about what happened that night, is disputed by the
19 two people who were in on it, two people who had every
20 opportunity under the protection of the proffer to say,
21 You got it wrong, it was Brownie. That's not what they
22 put in their statement. That is not what they say because
23 that's not what happened.

24 And why does it fit? We'll get into why it fits
25 in just a minute.

1 I want to talk to you just briefly before we
2 move into even more detail on what happened with Brownie
3 and talk about defense witnesses. I feel comfortable in
4 calling them the defense witnesses because in several
5 situations they were the defendant's friends. At least
6 there's one important one and that would be Mark Akmen and
7 Chuck Jones.

8 Now, Mark Akmen is the victim of the beating in
9 the head with the beer bottle who does not know Anthony
10 Mann. He wasn't real sure at first who he was in the
11 fight with, but he is friends with Chuck Jones, who was a
12 drug dealer and a drug addict. Chuck Jones is friends
13 with, guess who? Anthony Mann. And Chuck Jones -- but
14 even Chuck Jones does not say as Ms. Shealy presented to
15 you, He didn't say it.

16 What does he say? I didn't hear it. What does
17 he also tell you? He's across the bar. He is way across
18 the bar when it starts, and he has to walk over to break
19 it up. And he tells them, You all break it up, you're
20 both my friends, break it up and let's stop this nonsense.
21 That's what he says. And he denies anything more.

22 What does his aunt say? His aunt, who has no
23 prior record, who was not there, but who says the next day
24 Chuck Jones tells her about the fight. She doesn't try to
25 come in here and say, He told me Anthony Mann was in the

1 fight. He just tells her about the fight, the police
2 came, he broke it up, one of the dudes was talking about
3 he's killed two people.

4 Pat Rose or Chuck Jones? Pat Rose, no
5 connection to the defendant. Chuck Jones, his friend, his
6 drug dealing, drug abusing friend.

7 But even Chuck Jones, when they tried to confuse
8 that issue with some fight that happened in October with
9 somebody she wanted to call the police about says, No, she
10 knew the difference between those two things. Think about
11 that when you think about credibility.

12 William Woodson. William Woodson, okay. He
13 testified to you that Michael Crumb I suppose -- at first
14 he says was talking to him about his case. Michael
15 Crumb's talking about his own case and saying that Brownie
16 did it. Then we find out he ain't talking to him, he's
17 overhearing it being yelled out. He's overhearing it
18 being talked to on the phone, yelled across the yard,
19 Brownie did it, Brownie did it, blah, blah, blah. So out
20 of all these hundreds of inmates we get a mentally ill
21 child molester to come in and say that Michael Crumb said
22 all along Brownie did it.

23 I don't even know what else to say about that.
24 You saw the man on the stand. You saw how squirrely he
25 was. What else does he then admit after a little bit of

1 probing, after he's decided he don't need no medication,
2 he's just fine? It made him sort of act kind of funny.
3 What else do we find out? Well, lo and behold, he and Mr.
4 Mann are at Lieber from November to April together. No,
5 they're not in the same cell, but they get chow together
6 every day. Wow.

7 You think about that when you compare Michael
8 Crumb who told you, I didn't talk about my case very much.
9 I may have talked about what he was trying to get me to
10 say. I may have talked about him trying to get me to say
11 that Brownie did it. I never claimed that Brownie shot
12 him because Brownie didn't. You think about that.

13 All those inmates. Why not somebody in there
14 for a DUI? How about somebody in there for driving under
15 suspension? How about someone in there for prostitution?
16 We have got a mentally ill child molester. I suggest that
17 you give that testimony exactly the weight it deserves.

18 Finally, a refreshing witness from New York,
19 Mr. Barnes, first flight here. And what does he say? I
20 mean, it took forever for somebody to articulate it as
21 beautifully as he did for the State. It was like a
22 tunnel. And yes, he said the leaves were down, but what
23 did he say about the pine needles up there? Yeah, there
24 were pine trees up there.

25 And the defense wants it both ways on that as

1 well. Because they want this rigor or rigor to have been
2 setting in for 24 to 36 hours, which under their other
3 theory, that would have put her out there in this
4 hurricane that came through with torrential rains.
5 Although the stipulation that is introduced, if I can find
6 if, and if I can't you'll just have to look at it, and
7 it's one that we both agreed upon, that says that at the
8 Charleston Airport, not in Lincolnville, not where Brownie
9 Blake was at, but at Charleston Airport, that whole week
10 it had not rained until the day, I believe it was the day
11 before or the day that Beverly Blake was found. But when
12 it did rain, it was something like .57 inches of rain and
13 .2 something inches of rain, less than three-quarters of
14 an inch of rain.

15 I can't find the number. You have got the
16 stipulation, you can do the calculation, and you know that
17 rain at Charleston Airport does not mean rain in
18 Lincolnville. And it certainly doesn't mean there was
19 some torrential downpour.

20 And they were trying to have you believe and
21 misunderstand from Mr. Barnes' testimony that they had
22 been four-wheeling the day before and gotten stuck. Where
23 did they go four-wheeling? Do you remember that? Forty
24 minutes away. Forty minutes away somewhere.

25 People, we live on the coast. I mean, there's

1 spotty rain all over the place. Think about that and
2 think about credibility.

3 Think about Rae Wooten, who is the deputy
4 coroner, and Dr. Presnell. They would have you believe
5 that there's no need to do a forensic autopsy. And I'm
6 not going to sit here and try to explain to you once again
7 ad nauseam about these formulas. I am not a doctor. Dr.
8 Presnell is a doctor. Deputy Wooten is a nurse, a
9 forensic nurse. And they tell you those formulas can give
10 you an indication. They cannot pinpoint it, but they can
11 give you an indication. And when you take that into
12 consideration with everything else, the window, the window
13 is around four to six days, which puts us at the Tuesday
14 after Dante was killed.

15 And I asked Dr. Presnell, Could it have happened
16 the Monday? She said, Yes, it could have happened the
17 Monday. That formula just gives you an idea. And I asked
18 Deputy Wooten, I said, Because postmortem interval and
19 time of death are so hard to pinpoint, what would the
20 value of a witness who saw what happened be? I wasn't
21 quite that articulate when I asked the question. But the
22 gist of my question was how important would it be if you
23 had someone who told you when it happened? Would you tell
24 law enforcement to forget about that, let's look at this
25 formula? She said, Oh, no. No, I would want to know

1 that.

2 Anthony Mann tells Mervin Menier when it
3 happened.

4 I don't know how they got back in those woods.
5 I don't know that they took Danielle Batista's car back
6 through the woods. I don't know if they walked her out
7 there. I don't know if they raped her. But what I do
8 know is he told Mervin Menier it happened after the
9 robbery.

10 His attorney got with Lieutenant Brock and said,
11 Check into that postmortem interval. Think about that and
12 think about why it fits, why it all fits.

13 Remember again, he's admitted under the law,
14 under the law, to the murder of Dante Tobias in his
15 statement. I submit to you that all of his statement
16 isn't true, there are some key facts. There is a kernel
17 of truth. And I believe there is some saying about there
18 is a kernel of truth in every lie. Look at that and then
19 start thinking about Beverly Blake.

20 Let's look at the evidence that he -- first of
21 all, we have got the opportunity. We have got the
22 proximity. Remember, they go out to Nicky and Lisa's
23 house which is way out off of Ladson Road. You'll have
24 State's Exhibit 131 and there is a star where Lisa and
25 Nicky's house is. Okay? And then what's right around the

1 scorner, right around the corner off of Von Oshen? Go up
2 Ladson Road, make a left on Lincolnville Road past Von
3 Oshen, the scene, Beverly Blake's body. State's 117, look
4 at Lincolnville Road, past Von Oshen, the scene, Beverly
5 Blake's body right around the corner from Lisa and
6 Nicky's.

7 Is the evidence that Peter Davies was with them
8 there? Sure, it is. There's no evidence in this record
9 about Peter Davies running around to his little friends
10 talking about killing two people and putting a body in the
11 woods. We're not the ones who stood up in opening and
12 said, Listen to what Peter Davies had to say. We didn't
13 tell you that. This is not Peter Davies' day.

14 You heard the testimony that Peter Davies was
15 arrested, and Peter Davies' day will come. Today is
16 Anthony Mann's day.

17 The hand of one is the hand of all. You think
18 about that with regards to Dante and you think about that
19 with regards to Beverly.

20 He had the opportunity. Nicky's house right
21 around the corner, and guess who has a gun? Oh, yes,
22 Peter Davies started off with the gun. He's at the
23 apartment telling Michael Crumb, Eric Zack and Brownie,
24 and Brownie, I'm not just talking about you, I'm talking
25 about your families. He's got the gun.

1 But what happens by the time Terrance gets
2 there? Terrance who has no charges, no nothing. He got
3 on the stand and he told you that by the time he got
4 there, tucked right here in Anthony Mann's pants is what
5 he thought was a gun. And he didn't want to tell you.
6 No, he didn't want to tell you. He did not want to be
7 here. He told you he was here under subpoena. And he
8 tried -- well, it had a brown handle, looked like an
9 old-timey gun. He's got the gun.

10 And then what happens when they get to Lisa and
11 Nicky's house? Lisa and Nicky are there. And what does
12 Nicky say? He's wiping down the guns. He's wiping down a
13 silver revolver that looks like a 38. A silver revolver
14 that looks like a 38.

15 The testimony in this record is a 357 can shoot
16 38 rounds. A 357 caliber handgun can shoot 38 rounds.
17 According to the stipulations that you have, Brownie was
18 killed with a 38 round, a 38 caliber round.

19 She tells you a silver handgun he has. What
20 does he tell you? He stole a chrome 357 from Dante.

21 You also have in the stipulations that Dante and
22 Beverly were not killed with the same gun. You want to
23 bear that in mind.

24 They tell you when they got back to Peter's, Amp
25 and Peter start breaking down the 9-millimeter. So that

1 leaves us the Derringer which they take and give to
2 Michael's cousin. That leaves this gun which is found by
3 some McDonald's on Ashley Phosphate, and that leaves the
4 chrome 357 which Nicky sees him wiping down.

5 You heard this testimony elicited by Ms. Shealy
6 about the defendant, how he wouldn't wear a hat. He would
7 not wear a hat because he looks so good and he was so
8 proud, and doesn't that fit with what Nicky O'Connell
9 tells you. He's standing there knowing someone's been
10 shot and saying, Don't I look good? Don't I look good?
11 Posing for them.

12 But what does he tell the police? He got back
13 to Lisa and Nicky's and he was so nervous and upset he had
14 to get in the shower for 45 minutes.

15 Nicky O'Connell, she's got no reason to lie
16 about that. What does that show you? That shows you
17 malice. That is clear evidence of his malice.

18 He's not concerned about Dante Tobias. Not at
19 all. And when he asked Brownie if she had any regrets,
20 it's not, Are you okay, do you have any regrets? What did
21 Nicky say? He asked in a sarcastic way, You got any
22 regrets? And what was Brownie? Brownie was very quiet.
23 You think that made him a little nervous that she's very
24 quiet back then?

25 We have got the opportunity, we have got the

1 time of death, the time of death window. Can't tell you
2 exactly when it happened. I can only tell you when he
3 said it happened and when the evidence fits with it
4 happening.

5 We have got the clothes that she had on, that he
6 says she had on. We have got Brownie found -- remember,
7 she's leaving Dante's, going away because she's made up
8 this story that he's going to pimp her out.

9 Now, what does Anthony Floyd tell you? They had
10 been in the bed together all day. They had a romantic
11 relationship. You think about that.

12 You think about the fact that yes, there was
13 semen found but not enough left to give a profile. We
14 can't tell you whose it is. You take every man in this
15 world, we're not going to be able to tell you whose it is
16 because there wasn't enough left to get a DNA profile to
17 match it up.

18 You remember she's bringing out all the clothing
19 in bags. Doesn't that fit that she's got a sweatshirt
20 full of CDs in her pockets?

21 She wasn't seen or talked to by anyone. And it
22 might not be much, but she and Star were friends, and she
23 had a big old crush on Star. Star told you about that,
24 she was embarrassed by it. She told you about it, and she
25 said that she was worried about Brownie, and she never

1 heard from her again. Ms. Shealy said to you something
2 about that Ervin Frasier and Steven Wolf who said they had
3 talked to her. I believe, if you will recall the
4 testimony from Detective Walker, the testimony about Ervin
5 Frasier, who had been out with Brownie, that he hadn't
6 seen her ever since New Year's. And Steven Wolf thought
7 that Star said she had heard from Brownie. Well, what
8 does Star tell Detective Walker? What does Star tell you?
9 After that night when I'm waiting on her to get there, I
10 never hear from her ever again.

11 Again, Amp claims in his statement to be all
12 shaken up regarding the shooting, but that is not what
13 Nicky O'Connell told you he was like, and that's not what
14 the guys told you he was like at Peter Davies either. He
15 was counting up the change, he's breaking out the gun,
16 he's taking care of business.

17 Again, the last time anybody saw Brownie she was
18 at Nicky and Lisa's house with them and she was wearing
19 those exact same clothes, the clothes that you saw, the
20 jeans, the sweatshirt, the bandana, Defendant's 7. And
21 the last time Nicky saw her this is what she had on.

22 Amp says in his statement, I dropped her off at
23 Planter's Crossing. Well well, what a coincidence that
24 she gets taken to Planter's Crossing, which I believe is
25 somewhere on Rivers Avenue, and now all of a sudden she

1 ends up dead not far from where he had just been with her,
2 at Lisa's and Nicky's. What a coincidence that Star says
3 she might never have made it up to the apartment. So the
4 inference they want you to draw is, Brownie is dropped off
5 in the apartment and then abducted and taken way back out
6 to Ladson Road. Does that make sense? Not at all.

7 Amp is taken to get samples drawn for this DNA
8 comparison that they aren't able to do, and what does he
9 say? I told you my hair would be on her, I hugged that
10 night. What night? That night. He knows what night.
11 That night. He knows no more hair after that. She ain't
12 around anybody after that. She's lying dead in the woods
13 somewhere. That's why he says, I told you my hair would
14 be on her, I hugged her that night.

15 Time didn't stop that night for anybody but
16 Dante Tobias and Beverly Blake. He knew it. He knew it.

17 The DNA. What does Kristy tell you? She has
18 visitation with the guy, she has a letter from the guy,
19 she has close to a thousand if not more phone calls with
20 the guy that he made, and he tells her regarding the DNA,
21 it must be Tobias'. Think about that. Think about what
22 that shows this defendant knew again.

23 You have seen the parade of people and how they
24 lived, how they were sleeping with people on and off, but
25 he knows, he knows that the semen has to be all from

1 Dante. How would he know that? Because he knows that
2 from that night forward, Beverly Blake didn't have an
3 opportunity to sleep with anybody else. But she says,
4 Whose could it be? Whose could it be? She says, Dante's?
5 You got it. How telling is that that he knows whose it
6 is?

7 Again, Mervin Menier, you know he is a criminal.
8 He's not a child molesting, mentally ill criminal, but he
9 is a criminal. He is trying to get help for himself. The
10 only evidence in this record is that at the time he talked
11 with Anthony Mann, the only statement that Anthony Mann
12 had was Eric Zack's. What does Eric Zack tell about
13 Brownie and her murder? Nothing. He parts ways after
14 Peter Davies, he doesn't know what happened to Brownie.

15 There is no information that Merv Menier has
16 access to it except for what this man tells him, and he
17 tells him they got the autopsy wrong, it didn't happen
18 then, it happened the night, and he is corroborated by Dr.
19 Presnell, and he tells Merv Menier that they killed her
20 after the robbery, that they lured her out of the car and
21 that he killed her. He lured her out of the car and he
22 killed her. That fits with everything else.

23 Merv Menier is not from here, he doesn't know
24 these people, yet he has details about it.

25 It's been two years almost since he talked with

1 Anthony Mann. Does he have every detail straight? No,
2 because he didn't get to watch it happen. He had to hear
3 about it from Anthony Mann when he tells you, That's all
4 he wanted to talk about. He wanted to try to figure out a
5 way to get out of it.

6 And who does that fit with? Kristy Bunch, who's
7 trying to run his errands for him and get him to do, get
8 things done for him, like get a statement to Boston, this
9 guy Boston to say that Brownie came out there to James
10 Island or John's Island or one of those, stayed with him,
11 made some statements to him that Boston went to sleep,
12 woke up the next day and Brownie's gone, nobody's seen or
13 heard from her.

14 Kristy's statement, Kristy's testimony that
15 Anthony Mann was trying to get people to change their
16 statements, to testify certain ways, fits perfectly with
17 what Merv Menier was watching from the other side of the
18 chair.

19 What did Maria Jacques tell you? He writes a
20 letter, Oh, your testimony is crucial to my case. She was
21 the tall, skinny girl, long blond hair. Your testimony is
22 crucial, please send me your statements. You know you
23 were wrong about what you said you heard at ODC. I need
24 you to testify for me.

25 Think about that.

1 We have all of that, all of that evidence, and
2 then we have motive. His motive.

3 And what does Dustin James tell you his motive
4 is? He tells you in the bathroom where they've got this
5 door jammed shut in the men's bathroom, ODC, late at
6 night, we're in a bar late at night, rumors are swirling.
7 Amp's not been seen, Brownie hadn't been seen. Everybody
8 knows Brownie's roommate's dead. He says to Anthony Mann,
9 What's up with Brownie? What does Mann do? Who comes up
10 with this? Dustin James, he had no deal, he had no
11 promises. He did not want to be here. But he told you
12 what this guy did in the bathroom.

13 And then he says, he doesn't try to act like the
14 good Samaritan. He doesn't say, Oh, I didn't want to find
15 out as much as I could to help the police with their
16 investigation. No. He said, I don't want to know about
17 any of that.

18 And then Anthony Mann can't stop and then says,
19 Did a deal with the dude, deal with dude went bad, Brownie
20 saw and had to put her in the woods.

21 How does that fit with what Anthony Mann says?
22 It's just interesting. I know it's colloquial, but how
23 Dustin James is saying he did a deal with dude, things
24 with dude got out of hand, shot him, Brownie saw, I had to
25 put her in the woods. In his statement he talks about

1 dude, dude this, dude that. It's strong, but it's
2 corroboration for Dustin James.

3 Nicky, Mervin Menier, Krystal Lackey, what do
4 they all tell you? Again, if the cops are really trying
5 to shake Krystal Lackey and really trying to shake this
6 testimony, don't they get her to describe with more
7 precision what happened, what she heard at that little
8 pizza party when he's coming to pick somebody up.

9 She says six people were there. She also says
10 that the girl had already talked to the police. You know,
11 if they were really trying so hard to feed her
12 information, don't you think they would have fed it right?

13 She's going by her memory. She's going by what
14 he said at the party. And it fits. It fits with Nicky
15 who says Brownie starting to act quiet. It fits with
16 Menier who says Amp says Brownie started getting nervous
17 about it, started getting nervous about it. Lured her out
18 of car and he shot her. And again it fits with Krystal
19 Lackey.

20 You've got Zack and Crumb. Again, they aren't
21 trying to tell you that he confessed. They tell you that
22 he made a strange statement, that at the time they didn't
23 think that much of it, but afterwards they started
24 thinking about it when he says he's got to get rid of
25 Brownie.

1 You might ask, why not kill them? Brownie was
2 the link. Remember, Eric and Michael didn't know Dante.
3 They met Brownie; they didn't know him. Think about it.
4 When the police are coming to investigate Dante, they
5 aren't going to find anything that links Eric and Michael,
6 but they are going to find things naming Anthony Floyd.

7 This pad that Lisa and Brownie, he knows it's
8 not going to take them 20 minutes to figure out that
9 Brownie is missing from there. Nobody is going to be
10 asking, looking for Michael Crumb and looking for Eric
11 Zack in the investigation. They are going to be asking
12 for Brownie. Brownie, who again had laid in the bed all
13 day with Dante Tobias, who was romantic with Dante Tobias
14 but who also had a crush on Star, the person she calls and
15 says, He wants to pimp me out. She calls the girl that
16 she has a crush on. Maybe she was trying to get some
17 sympathy?

18 Because if you look at the pad that they allege
19 is Dante's writing, I don't know whose writing it is, but
20 if you look at the bottom, it talks about how Beverly is
21 going to get a cut of the gross and a cut of the
22 percentage for all the calls that she makes. I don't know
23 if this is for dancing. I don't know if this is for
24 prostitution. But plainly, Brownie was part of that.

25 Brownie might have gotten cold feet. Brownie

1 what happened.

2 We ask you to give a verdict that is fair. We
3 ask you to give a verdict that speaks the truth. And we
4 ask you to give a verdict that Anthony Mann can't forget.
5 Don't let him forget her.

6 The evidence has shown you he killed Dante
7 Tobias and tried to cover it up by killing Beverly Blake.

8 MS. SHEALY: Your Honor, may we approach just a
9 moment?

10 THE COURT: Yes.

11 (A bench conference was held with the judge and
12 attorneys in the presence of the jury but out of the
13 hearing of the jury.)

14 THE COURT: Sorry, ladies and gentlemen, I'm
15 trying to figure out what to do about lunch. Probably the
16 best thing for me to do is let you go to lunch and bring
17 you back to charge on the law. If we ordered you some
18 kind of lunch, it would probably not get here until around
19 2.

20 Do you have a preference? Would you like to go
21 to lunch and come back and charge you on the law and that
22 way I can give you the law before you deliberate? If
23 that's what you'd like to do, raise your hand.

24 (Jurors raise their hands.)

25 THE COURT: All right. The rest of you, if you

1 don't care, raise your hand. That means I've got about
2 three of you that prefer to keep going. So it looks like
3 our alternates all prefer to keep going.

4 I will do that, ladies and gentlemen, because I
5 know some of you may be hungry and I don't want you to
6 have to wait until 2 to eat.

7 We'll go ahead and let you go. If you'll report
8 back at 2 o'clock we'll proceed with the trial.

9 Do not discuss the case in any way whatsoever.
10 Thank you very much.

11 (The jury left open court at approximately 12:50
12 p.m.)

13 THE COURT: All right. We'll see you all back
14 at 2 o'clock.

15 (A lunch break was taken.)

16 THE COURT: All right. The last juror just
17 arrived and we're ready to proceed.

18 You all have reviewed the verdict form; is that
19 correct? No objection?

20 MS. WILSON: No objection.

21 MS. SHEALY: No objection.

22 THE COURT: All right. We're ready. Bring the
23 jury in.

24 (The jury came into open court at approximately
25 2:09 p.m.)

1 THE BAILIFF: All the jurors are present, your
2 Honor.

3 THE COURT: Thank you. Please be seated.

4 All right. Ladies and gentlemen, now it's
5 necessary for me to instruct you about the law for your
6 consideration in this case. And in this case as you've
7 heard, the State of South Carolina has charged the
8 defendant with the offenses of armed robbery and with two
9 counts of murder.

10 Now, you'll have the indictments with you in the
11 jury room during your deliberations. You should
12 distinctly understand that an indictment just contains
13 allegations on the part of the State and is in no way to
14 be considered as evidence. The only evidence in the case
15 is any testimony from the witness stand, any exhibits or
16 stipulations which have been introduced into evidence
17 during the course of the trial.

18 Please pay close attention because at times I'm
19 asked if I can provide you with written copy of any legal
20 instructions, which I do not provide to you.

21 Can everyone hear me okay?

22 THE JURORS: Yes.

23 THE COURT: If at any point you can't hear me,
24 raise your hand.

25 Now, if you've taken notes, you should remember

1 your notes are only intended to aid or assist your memory.
2 They should not take precedence over your own independent
3 recollection of the evidence. Or for those jurors who
4 have not taken notes should not be influenced by the fact
5 that another juror has taken notes, since as I indicated,
6 the notes are only intended for the notetaker's personal
7 use in refreshing his or her memory or recollection of the
8 evidence.

9 Now, to the indictments the defendant has pled
10 not guilty, which places upon the State the burden of
11 proving the defendant guilty. A person charged with
12 committing a criminal offense in South Carolina is never
13 required to prove innocence. A defendant does not have to
14 produce any evidence or witnesses. The burden is always
15 upon the State.

16 I charge you that it is a vital, important rule
17 of law that a defendant in a criminal trial must always be
18 presumed innocent until the defendant's guilt has been
19 proven beyond a reasonable doubt. This presumption of
20 innocence remains with the defendant at all times
21 throughout the trial and is only removed when and if the
22 State has proven guilt beyond a reasonable doubt. For it
23 is your solemn duty, ladies and gentlemen, if not
24 convinced of guilt beyond a reasonable doubt, to find the
25 defendant not guilty.

1 What is a reasonable doubt in the law? A
2 reasonable doubt is a doubt that would cause a reasonable
3 person to hesitate to act. All reasonable doubts must be
4 resolved in favor of the defendant. Suspicion, however
5 strong, does not suffice to sustain a conviction. The
6 burden of proof is always upon the State.

7 Now, as I indicated, under our Constitution,
8 ladies and gentlemen, as I told you all at qualification,
9 you are the finders of the facts in this case. I do not
10 sit up here and pass upon the facts or express to you what
11 I think about this case, and you should not form any
12 opinion in that regard from anything that I may have done
13 up here or if you've seen me sitting here talking to my
14 law clerk or I might be discussing how I'm preparing my
15 side of the case, and you should not interpret anything
16 that I have done as my indication of what I think about
17 these facts in this case. And if you have, you should
18 disregard any such things.

19 Now, you are the judges and the sole judges of
20 the credibility or believability of the witnesses who have
21 testified in this case. In passing upon their
22 credibility, you may take into consideration many things
23 such as the demeanor or manner of testifying, was the
24 witness forthright or hesitant, whether the witness had
25 reason to be biased or prejudiced, whether a witness's

1 testimony was contradicted on the one hand or supported,
2 corroborated or consistent on the other, whether a witness
3 made any previous statements which are inconsistent with
4 the witness's present testimony.

5 You may consider such statements in your
6 determination of the truth of any statements or testimony
7 as well as your consideration as to the credibility of the
8 witness. And what was the witness's opportunity for
9 observation and knowledge of the matters about which the
10 witness has testified.

11 You may believe a small portion of a witness's
12 testimony and disregard the larger or vice versa. You may
13 believe one witness against many or many against one. You
14 may believe all, some or none of a witness's testimony.
15 It's entirely up to you.

16 Now, evidence of other crimes or misconduct of a
17 witness may be considered by you on the limited issue of
18 credibility or impeachment of a witness.

19 Ladies and gentlemen, the Rules of Evidence
20 ordinarily do not permit witnesses to testify as to
21 opinions or conclusions. An exception to this rule exists
22 as to those we call expert witnesses, witnesses who by
23 education and experience have become expert in some art,
24 science, profession or calling. They state their opinions
25 as to relevant material matter in which they profess to be

1 an expert and may also state their reasons for their
2 opinions.

3 You must consider expert testimony in the same
4 manner as you do any other testimony and give it such
5 weight as you may believe it to be entitled when
6 considered with all the other evidence in the case. Such
7 testimony is given for the purpose of enlightening you and
8 not for the purpose of controlling your judgment.

9 There are two types of evidence which are
10 generally presented at a trial, direct evidence and
11 circumstantial evidence.

12 Direct evidence is the testimony of a person who
13 asserts or claims to have actual knowledge of a fact, such
14 as an eye witness.

15 Circumstantial evidence is the proof of a chain
16 of facts and circumstances indicating the existence of a
17 fact.

18 The law makes absolutely no distinction between
19 the weight or value to be given to either direct or
20 circumstantial evidence. Nor is a greater degree of
21 certainty required of circumstantial evidence than of
22 direct evidence.

23 You should weigh all of the evidence in the
24 case. After weighing all of the evidence, if you are not
25 convinced of the guilt of the defendant beyond a

1 reasonable doubt, you must find the defendant not guilty.

2 The defendant in this case has not testified.

3 This is the defendant's constitutional right, and it is
4 not a circumstance that you can take into your
5 consideration or even allow to enter into your discussion
6 in your jury room. Under the Constitution of this state
7 and of the United States it is the defendant's
8 constitutional right not to testify.

9 The burden of proof is always upon the State of
10 South Carolina to establish the defendant's guilt by
11 competent testimony beyond a reasonable doubt. The fact
12 that a defendant did not take the stand and testify in the
13 defendant's own behalf does not create any inference
14 against a defendant. The jury must not permit that fact
15 to weigh in the slightest degree against this defendant,
16 nor should this fact enter into the discussions or
17 deliberations of the jury in any way or manner whatsoever.

18 Now, by the same constitution that makes you the
19 finders of the facts, I am made the sole and only
20 instructor in the law. You must accept as correct the law
21 which I charge, apply to the law the facts as you find
22 them to be and reach a verdict. Put aside any conceptions
23 you may have had as to the law before coming here today
24 and accept the law as I instruct it to be.

25 For purposes of your duty as jurors today, you

1 should not be concerned about what the law ought to be but
2 rather what I charge you the law is at the present time in
3 this state.

4 Now, one indictment you heard the defendant is
5 charged with the offense of armed robbery. Under South
6 Carolina law, armed robbery includes all the elements of
7 strong armed robbery or common law robbery plus one
8 additional element, so I'm just going to go through the
9 elements of common law robbery and then talk to you about
10 armed robbery.

11 Robbery is the felonious taking away of the
12 goods of another against the owner's will and without his
13 consent by force, intimidation or violence. It's
14 essentially larceny by force.

15 In order to convict a defendant of robbery, the
16 State must prove beyond a reasonable doubt the following
17 elements: First, the State must show that the property
18 belonged to another person, and that either the property
19 was not owned in some way by the defendant or that the
20 defendant did not otherwise have a right to possession.

21 Second, the State must show that defendant took
22 the property and carried it away.

23 Third, the State must show that at the time the
24 defendant took and carried away the property, he did so
25 with an intent to steal that property by permanently

1 depriving the owner of the use of the property.

2 Fourth, the State must show that the property
3 was taken by the defendant from the person or immediate
4 presence of the owner. The property is on another's
5 person if it is in their hand, in their pocket or
6 otherwise attached to their clothing, is within the
7 presence of another if it is close enough and sufficiently
8 within the person's control that had the person not been
9 overcome with violence or prevented by fear, the person
10 could have stopped the taking, and fifth, the State must
11 show that the taking of property was accomplished through
12 actual physical violence or threats of such violation.

13 Now, as I indicated, the defendant is charged
14 with armed robbery. Armed robbery is defined by statute.
15 It includes all the elements I've just read to you of
16 robbery plus an additional element described in the
17 statute, and pursuant to South Carolina Code Section
18 16-11-330(a), a person commits armed robbery if that
19 person commits robbery as I've defined that to you while
20 armed with a pistol, dirk, slingshot, metal knuckles,
21 razor, or other deadly weapon. A deadly weapon is
22 generally defined as any article, instrument or substance
23 which is likely to produce death or great bodily injury.
24 And the jury must determine whether a deadly weapon was
25 used.

1 It is not necessary for the State to prove that
2 the perpetrator be armed throughout the commission of the
3 crime, rather armed robbery may be established by the
4 State by proving beyond a reasonable doubt that the
5 perpetrator arms himself or becomes armed with a deadly
6 weapon at any time during the progress of the taking or
7 while the robbery's being perpetrated.

8 The crime of robbery is not completed the moment
9 the stolen property is in the possession of the robber but
10 may be deemed to continue during any attempt to leave.

11 Now, ladies and gentlemen, within the concept of
12 armed robbery, there is also a lesser-included offense,
13 and that's larceny. As I told you, robbery itself is
14 essentially larceny without the force element. So just to
15 review with you those elements again that would apply for
16 your consideration of the lesser-included offense of
17 larceny would be that there was a taking; second, that the
18 taking was of the personal property of another; third,
19 after being taken the property was carried away; and
20 fourth, that the taking and carrying away of the property
21 was done without the consent or against the will of the
22 owner and it was done with an intent to steal.

23 As I indicated, essentially robbery is
24 essentially larceny by force, so larceny is without that
25 force or violent element, and that is for you -- you can

1 consider that offense also as a lesser-included offense
2 during your deliberations.

3 Now, in two other indictments the defendant has
4 been charged with the offense of murder. And I will talk
5 to you about that offense at this point.

6 Murder is the unlawful killing of any person
7 with malice aforethought, either expressed or inferred;
8 hence, in order to be convicted of murder, the State must
9 not only prove the killing of the victim was caused by
10 defendant, but that it was done with criminal intent as I
11 defined that term to you with malice aforethought.

12 Now, I will just go ahead from the outset and
13 instruct you that motive is that which leads or attempt
14 the mind to indulge in a criminal act. It is the cause or
15 reason that induces a person to act.

16 Motive is not an essential element of the crime
17 of murder and need not be shown. However, the presence or
18 absence of motive may be considered in determining
19 criminal intent in regard to this offense.

20 Now, I tell you, while the law does not require
21 that malice shall exist for any particular length of time
22 before the commission of the act in question, it must be
23 aforethought, which means that malice must have been
24 conceived in the mind of the defendant and must have
25 accompanied the act of killing.

1 Malice is defined in the law of homicide as a
2 term of art, that is, a technical term importing
3 wickedness and excluding just cause or legal excuse. It
4 is something which springs from wickedness, from
5 depravity, from a depraved spirt, from a heart devoid of
6 social duty and fatally bent on mischief.

7 The words expressed or inferred do not mean
8 different kinds of malice but merely the manner or way in
9 which the only kind of malice known to the law may be
10 shown to exist, that is, either by direct evidence or
11 inference.

12 Malice may be expressed as where, for example,
13 previous threats of vengeance or lying in wait or other
14 acts of preparation going to show that the deed was within
15 the defendant's mind.

16 Malice may also be inferred as where though not
17 directly expressed, it is indirectly but necessarily
18 inferred from acts and circumstances which are proved.

19 Malice may be implied or inferred from the
20 willful and deliberate and intentional doing of an
21 unlawful act without just cause or legal excuse. If a
22 person using a deadly weapon deliberately and
23 intentionally without just cause or legal excuse takes the
24 life of another, malice may be inferred. If facts are
25 proven beyond a reasonable doubt sufficient to raise an

1 inference -- take the phone from her, please.

2 Ma'am, give him the phone. That's the second
3 time you've done that.

4 Let me go back a sentence.

5 If facts are proven beyond a reasonable doubt
6 sufficient to raise an inference of malice to your
7 satisfaction, this inference would simply be an
8 evidentiary fact to be taken in consideration by you, the
9 jury, along with other evidence in the case, and you may
10 give it such weight as you may determine it should have.

11 In any event, such an inference in no way
12 lessens the burden on the State to prove malice beyond a
13 reasonable doubt. In other words, evidence of malice from
14 the use of a deadly weapon is simply an evidentiary fact
15 to be considered by you along with all the other evidence
16 in the case and given such weight as you determine it
17 should receive or have, including your right to reject any
18 such inference.

19 Now, as I go through these charges, I'm going to
20 try to separate some of these concepts because we do have
21 different indictments.

22 Now, as to the indictment for the murder of
23 Dante Tobias, just as I defined a lesser-included offense
24 when I was talking about robbery, there is a
25 lesser-included offense of voluntary manslaughter as to

1 that indictment.

2 Now, to prove voluntary manslaughter, the State
3 must prove beyond a reasonable doubt that the defendant
4 took the life of another in the sudden heat of passion
5 based on sufficient legal provocation. Both heat of
6 passion and sufficient legal provocation must be present
7 at the time of the killing to constitute voluntary
8 manslaughter.

9 Sudden heat of passion may for a time affect a
10 person's self-control and temporarily disturb a person's
11 reason. The sudden heat of passion must be the type that
12 would make an ordinary person unable to coolly reflect on
13 his actions and would produce an uncontrollable impulse to
14 do violence.

15 Sufficient legal provocation must be the type
16 that would make a person of ordinary reason and caution
17 become enraged and to lose control temporarily.

18 The provocation needed for voluntary
19 manslaughter must come from some act of or related to the
20 victim. Words alone, however vulgar or insulting, are not
21 enough to be legal provocation.

22 Where death is caused by the use of a deadly
23 weapon, the words must be accompanied by some overt
24 threatening act which could have produced the heat of
25 passion.

1 The exercise of a legal right, no matter how
2 offensive it is to another, is never sufficient legal
3 provocation for voluntary manslaughter.

4 If the heat of passion had cooled or if there
5 was enough time between the provocation, if any, and the
6 killing for the passion of a reasonable person to cool,
7 the killing would not be voluntary manslaughter.

8 In deciding whether a reasonable person would
9 have had enough time to cool off, you should consider all
10 of the circumstances in this case. You may consider the
11 nature of the provocation, if any, the defendant's mental
12 and physical state, any circumstances and relationships
13 between the parties.

14 Now, one cannot be convicted of any crime which
15 is defined in terms of a result, such as murder or
16 manslaughter, unless one's act is the proximate cause of
17 the result, which in murder or manslaughter is the death
18 of the victim. Proximate cause is that cause which in the
19 natural and continuing sequence, unbroken by any efficient
20 intervening cause which produces the death, and without
21 which the result would not have occurred.

22 I further charge you that the law allows the
23 jury to infer malice if you conclude that a homicide was a
24 proximate direct result of the commission of a felony.
25 And in that regard, armed robbery, if proven, would be a

1 felony under the law.

2 Larceny -- excuse me -- larceny would not be a
3 felony.

4 You can infer that malice existed if a person is
5 in the commission of a felony at the time of the fatal
6 act.

7 Now, the law says if one intentionally kills
8 another during the commission of a felony, the implication
9 of malice may arise. If facts are proven beyond a
10 reasonable doubt sufficient to raise an inference of
11 malice to your satisfaction, again this inference would
12 simply be an evidentiary fact to be taken into
13 consideration by you, the jury, along with all the other
14 evidence in the case, and you may give it such weight as
15 you determine it should receive, including your right to
16 reject any such inference.

17 The State has the burden of proving identity
18 beyond a reasonable doubt. You may consider the
19 opportunity a witness had to observe the offender at the
20 time of the offense and to thereafter make an
21 identification. It's for you, the jury, to determine
22 whether the State has proven the identification of the
23 defendant beyond a reasonable doubt, considering the
24 credibility of any witnesses, the opportunity and
25 circumstances of observation, and such direct and

1 circumstantial evidence as you deem appropriate.

2 Now, I will go over with you some additional
3 legal principles.

4 If a crime is committed by two or more persons
5 who are acting together in the commission of that offense,
6 the act of one is the act of all. This is true if there
7 are two persons or more than two persons involved in the
8 act. If two or more persons are acting together assisting
9 each other in the commission of an offense, the law says
10 that under these circumstances the act of one is the act
11 of all, or as it is more commonly referred to, the hand of
12 one is the hand of all.

13 However, a person must personally commit the
14 crime or be present at the scene of the crime and
15 intentionally or through common design aid, abet or assist
16 in the commission of that crime through some overt act.
17 Mere presence at the scene standing alone does not make
18 one guilty of a crime.

19 Similarly, pursuant to this doctrine, if a
20 defense is applicable to one person and that person's
21 actions are attributable to another by virtue of the hand
22 of one hand, hand of all doctrine, then that defense shall
23 also be available to that second person also, and I will
24 explain this a little more momentarily.

25 Now, a person may not be convicted of a criminal

1 offense unless the State proves beyond a reasonable doubt
2 that that person acted with the criminal intent or the
3 appropriate mental state required for a particular offense
4 as I've defined that to you. If more than one offense is
5 involved, the State must prove beyond a reasonable doubt
6 the defendant had the requisite intent as to each offense.

7 Criminal intent generally as I indicated is a
8 necessary element of each crime and must be proved by the
9 State beyond a reasonable doubt. It is a matter that must
10 be determined by you, the jury, from all the circumstances
11 surrounding the situation. There is no way medical
12 science can dissect a person's brain and determine what
13 that person had in mind, so the law states that criminal
14 intent may be inferred from the circumstances shown to
15 have existed. It is a state of mind which operates
16 jointly with an act in the commission of a crime. It's a
17 mental state. It is up to you, the jury, to determine
18 what the defendant intended to do based on the
19 circumstances shown to have existed.

20 Now, also as to the indictment for the murder of
21 Dante Tobias, I'm going to go over two other concepts with
22 you, that being self-defense and defense of others.

23 Self-defense or defense of others for that
24 matter is a complete defense. If you find that
25 self-defense exists or that the defendant acted in defense

1 of others, you must find the defendant not guilty as to
2 this indictment. The State has the burden of disproving
3 self-defense or defense of others by proof beyond a
4 reasonable doubt.

5 Now, there are elements required by law for
6 self-defense to be applicable, and I will go over these.
7 As I discussed with you the concept of hand of one, hand
8 of all in regard to people acting together in the
9 commission of an offense, I also said that if any defenses
10 would be applicable to one of the persons involved, then
11 the other person may avail himself or herself of that
12 defense. So I'm going to try to explain this without it
13 being confusing.

14 Now, insofar as self-defense is concerned, in
15 regard to the indictment pertaining to the murder for
16 Dante Tobias only, if you find that Ms. Blake acted in
17 self-defense, then the defendant in this case can avail
18 himself of the theory of self-defense.

19 Now, to go over those elements, first Ms. Blake
20 must have been without fault in bringing on the
21 difficulty. Second, Ms. Blake must have actually believed
22 she was in a present imminent danger of losing her life or
23 sustaining serious bodily injury or she was actually in
24 such present imminent danger. Third, if her defense would
25 be based upon her belief of present imminent danger, a

1 reasonably prudent man of ordinary firmness and courage
2 would have entertained the same belief. If she actually
3 was in present imminent danger, the circumstances were
4 such as would warrant a man of ordinary prudence, firmness
5 and courage to use or to strike the fatal blow in order to
6 save herself from sustaining serious bodily harm or losing
7 her own life. And fourth, Ms. Blake had no other probable
8 means of avoiding the danger of losing her own life or
9 sustaining serious bodily injury than to act as she did in
10 the particular instance.

11 If you should find that Ms. Blake was entitled
12 to use deadly force and self-defense, then there is no
13 duty to retreat in order to avoid the need for deadly
14 force if it is not possible or did not reasonably appear
15 possible to retreat without danger of being killed or
16 suffering serious bodily injury.

17 The law of self-defense encompasses preventive
18 action taken to protect one's life if such action is taken
19 in anticipation of danger and in response to an immediate
20 threat.

21 In determining whether a person had the right to
22 self-defense, you may consider any threats made if you
23 find any threats were made or any instances of violence
24 that occurred. One may act on appearances. One may be
25 mistaken. The law does not hold someone to a refined

1 assessment of any danger provided, of course, that person
2 acted as a person of ordinary coolness and courage would
3 have acted or should have acted in meeting the appearance
4 of danger. One does not have to wait until an assailant
5 gets the drop on him, for one has the right to act on the
6 law of self-preservation and prevent an assailant from
7 getting the drop on him.

8 In determining a person's right to act in
9 self-defense, you must consider all of the facts and
10 circumstances of the case.

11 In addition, as I discussed in talking about
12 murder and manslaughter, words accompanied by any hostile
13 acts in consideration of all of the circumstances may be
14 considered by you on the issue of self-defense. All of
15 these are for your consideration on this issue.

16 Now, as to that same indictment, I also
17 mentioned to you the concept of defense of others.

18 Now, under the law of self-defense, a defendant
19 may take another's life in the defense of others. The
20 right to intervene to protect another person is subject to
21 the same rights and limitations as the right of
22 self-defense. The defendant may take the life of a person
23 who assaults a friend, relative or bystander if that
24 friend, relative or bystander would have had the right to
25 self-defense. To show that the person being defended had

1 the right to self-defense, it must first be shown that the
2 person being defended and the defendant were both without
3 fault in bringing on the difficulty. If the conduct of
4 the person defended or the defendant was the type which
5 was reasonable calculated to and did provoke a deadly
6 assault, the person would be at fault in bringing on the
7 difficulty and would not have the right of self-defense.
8 A defendant would not have the right to use a deadly
9 weapon in defending that person.

10 The defense of another person is excusable if
11 the defendant had reasonable grounds to believe and in
12 good faith did believe that the person being defended was
13 in imminent danger of death or serious bodily harm.

14 Now, in determining whether the person defended
15 actually was or that the defendant actually believed the
16 person was in imminent danger of death or serious bodily
17 injury, you should consider all the facts and
18 circumstances surrounding this case.

19 Now, for self-defense or the defense of others
20 to be applicable, all of the elements must exist. If any
21 one or more elements have been disproven by the State,
22 self-defense or defense of others would not be applicable.
23 The burden is upon the State to disprove self-defense or
24 defense of others by proof beyond a reasonable doubt.

25 Now, you have been selected as fair and

1 impartial jurors sworn to impartially try and determine
2 the facts of this case. And when you comply with your
3 oath to do so, then no one will have a right to criticize
4 your verdict and you will have fully discharged your duty
5 as jurors.

6 As to each indictment, if you have a reasonable
7 doubt as to whether the defendant is guilty or not guilty,
8 then find the defendant not guilty.

9 I'm going to go over your verdict choices with
10 you.

11 I have a verdict form to remind you in part of
12 just your choices. There is no significance as to the
13 order they appear. Obviously one had to go first.

14 As to the indictment for armed robbery, we the
15 jury unanimously find the defendant, your choices are not
16 guilty, guilty of armed robbery, or guilty of the
17 lesser-included offense of larceny.

18 As to the indictment for murder, Docket No.
19 2002-4414, we the jury unanimously find the defendant not
20 guilty, guilty of murder, and guilty of the
21 lesser-included offense of voluntary manslaughter. That
22 is the indictment pertaining to the death of Dante Tobias.
23 If you'll remember, I said as to that indictment you have
24 some other concepts to consider.

25 Now, as to the indictment for murder pertaining

1 to the death of Beverly Blake, your choices are either not
2 guilty or guilty of murder. Those are your only choices
3 as to that indictment.

4 Now, ladies and gentlemen, each indictment
5 charges a separate and distinct offense. You must decide
6 each indictment on the law and evidence applicable to it.

7 A defendant may be acquitted or convicted on any
8 or all of the offenses charged. You will be asked to
9 write a separate verdict as to each indictment.

10 Now, your verdict, ladies and gentlemen, as to
11 each indictment must be unanimous. Each and every one of
12 you must agree on the verdict. It is a majority verdict.
13 All of you must agree on the decision.

14 Now, at this point I'm going to -- before you
15 begin your deliberations, I have to give Counsel a final
16 opportunity to go over any concluding matters with me to
17 make sure there's not anything else that we made to take
18 care of or there may be some other things I need to go
19 over with you. It's just a double-check to make sure that
20 I've covered everything with you.

21 But at this time I can -- if our alternates --
22 do you have anything in the jury room? The bailiffs will
23 take you.

24 I want to thank you for your participation in
25 this case. Now that the jury is ready to deliberate, the

1 law does not allow me to let you participate in
2 deliberations, but I appreciate your willingness to serve
3 these past two weeks. Thank you very much. I hope you
4 enjoyed it. Thank you.

5 (The alternates were excused at 2:42 p.m.)

6 MS. SHEALY: Judge, can we approach one second?

7 THE COURT: Yes, ma'am.

8 (A bench conference was held with the judge and
9 attorneys in the presence of the jury but out of the
10 hearing of the jury.)

11 THE COURT: Ladies and gentlemen, when I asked
12 the alternates if they had anything, no one raised their
13 hand that they had a problem or anything, did they?

14 Okay. I just wanted to be sure.

15 All right. Ladies and gentlemen, I want to go
16 back over one concept with you. I want to go over one
17 further concept with you.

18 I discussed with you that the law allows a jury
19 to infer malice if you conclude that a homicide was the
20 proximate direct result of the commission of a felony.
21 The commission of a felony will allow for the inference of
22 malice if the felony is inherently or foreseeably
23 dangerous to human life. The inherent dangerousness of
24 the felony is to be determined from both the nature of the
25 felony itself and the circumstances of its commission.

1 A felony allows for the inference of malice only
2 if the commission thereof creates a substantial
3 foreseeable human risk and actually results in the loss of
4 life. And again, just to remind you, if facts are proved
5 beyond a reasonable doubt sufficient to raise an inference
6 of malice to your satisfaction under these circumstances.
7 This inference would simply be an evidentiary fact that
8 would be taken into consideration by you, the jury, along
9 with any other evidence in the case, and you may give it
10 such weight as you determine it should receive, including
11 the right to reject any such inference.

12 Will there be any further matters from the
13 State?

14 MS. WILSON: No, sir.

15 THE COURT: From the defense?

16 MS. SHEALY: No, sir.

17 THE COURT: All right. There being no further
18 matters, ladies and gentlemen, I'm going to send you to
19 the jury room. Do not start yet. We need a final
20 opportunity to get all of these exhibits together and make
21 sure we're sending everything back to you.

22 Now, I will say from time to time in trials
23 sometimes exhibits are referred to and they're not back in
24 the jury room with you. You should not speculate or
25 wonder about that in any way whatsoever. You just have to

1 trust me if an exhibit is supposed to be back in the jury
2 room with you, it will be back there with you, and we'll
3 go through them all to make sure you're getting all the
4 exhibits. Whether or not that's been the case, I don't
5 know, but we'll go through them all. I just don't want
6 you to speculate.

7 From time to time I get juries that ask can we
8 see some other document or some other photos, whether it
9 be because they heard a reference to something or they're
10 just thinking on their own. Again, if you're entitled to
11 look at an exhibit during your deliberations, it will be
12 with you in the jury room.

13 Thank you very much.

14 Do not discuss the case yet.

15 (The jury left open court at approximately 2:49
16 p.m.)

17 THE COURT: All right. There being no further
18 matters pertaining to the charge, the verdict form, the
19 indictments, if you all will get all the exhibits together
20 so we can put on the record that you've both each
21 personally reviewed them and nothing's being sent back
22 that's not supposed to go back to the jury room, please.
23 Once you've done that, let me know and I'll put that on
24 the record.

25 (A discussion was held off the record.)

1 THE COURT: All right. On the record, please.
2 Where's the stack? Is everything on this cart?

3 MS. WILSON: Yes, sir.

4 THE COURT: For the record, each side has
5 reviewed the exhibits that are going back to the jury room
6 and nothing's being sent back that was not admitted; is
7 that correct from the State?

8 MS. WILSON: Yes, sir.

9 THE COURT: From defense?

10 MS. SHEALY: Yes, sir.

11 THE COURT: All right. Bring the jury out,
12 please.

13 MS. WILSON: What are you going to tell the
14 jury?

15 THE COURT: That during deliberations if they
16 need to have someone call or anything, to please send out
17 a note.

18 (The jury came into open court at approximately
19 3:07 p.m.)

20 THE BAILIFF: The jury is present, your Honor.

21 THE COURT: Thank you. Please be seated.

22 Ladies and gentlemen, I received a note. I just
23 want to caution you and advise you about a couple of
24 things.

25 First and foremost, you certainly should not be

1 concerned about time constraints in making any decision on
2 a case of this nature. It's serious; that should not come
3 into play.

4 Two, if you have some concern about someone
5 needing to be called for anything, then during your
6 deliberations you are free to send out a note and the
7 Clerk will call whomever you need called to advise them of
8 your status. If necessary we will work late, but please I
9 need to emphasize that no decision in this case should be
10 made because someone is concerned about any time
11 considerations. But we will be happy to contact whomever
12 you need to contact. If you need someone to pick up
13 someone or you need just to let them know you're going to
14 be late or whatever you want us to communicate to them,
15 we'll be happy to do that.

16 All right. With that we'll send you back and
17 momentarily we'll bring all the exhibits in and you can
18 begin your deliberations.

19 Thank you very much.

20 (The jury left open court at approximately 3:09
21 p.m.)

22 (WHEREUPON, The Court's Exhibit No. 13 was
23 marked for identification only.)

24 THE COURT: Anything further on that from the
25 State?

1 MS. WILSON: No, sir.

2 THE COURT: Anything from the defense?

3 MS. SHEALY: No, sir.

4 THE COURT: Mr. Clerk, you may tell them to
5 begin their deliberations.

6 We'll be at ease. Thank you all very much.

7 (Deliberations begin at 3:10 p.m.)

8 THE COURT: Your name for the record?

9 MS. BRUNSON: Patsy Carol Brunson.

10 THE COURT: Now, you understand the Court's
11 policy on cell phones?

12 MS. BRUNSON: Yes, sir.

13 THE COURT: And one time already during this
14 trial your cell phone went off; is that correct?

15 MS. BRUNSON: Yes, sir.

16 THE COURT: And the Court excused that
17 noncompliance with its rules. Now, you again let your
18 cell phone go off during a court proceeding knowing both
19 the Court's rules and knowing that the Court has already
20 excused one failure to comply; is that correct?

21 MS. BRUNSON: Yes.

22 THE COURT: Is there anything you would like to
23 say?

24 MS. BRUNSON: That I was wrong. I needed -- my
25 cell phone should have been checked. Under the

1 circumstances with my son being through this trial, I just
2 neglected when I came back in from lunch to turn it off.
3 I'm sorry.

4 THE COURT: All right. I will think about it.
5 Thank you.

6 MS. BRUNSON: Thank you.

7 THE COURT: I understand they're sending out a
8 note. I will check on the note and see if they've got it
9 yet.

10 They don't have a note. They've changed their
11 mind. Take it easy for now. We're at ease.

12 (A break was taken while the jury continues
13 deliberations.)

14 THE COURT: The jury's sent out a note that
15 they're hung as to one indictment and wanting to know what
16 they can do now. So I presume an Allen charge would be
17 appropriate.

18 MS. WILSON: What would the Court do about the
19 two that they have a verdict on, go ahead and take those?

20 THE COURT: Not at this point. After they've
21 finished on this one.

22 I really don't expect much discussion on that.

23 MR. BUTLER: We don't have a position on it.

24 THE COURT: The law requires an Allen charge if
25 they're hung is my understanding.

1 So bring the jury in, please.

2 (The jury came into open court at approximately
3 9:46 p.m.)

4 THE COURT: Whether or not to receive the
5 verdict will be discretionary. I just prefer to see what
6 they can do after the Allen charge first.

7 THE BAILIFF: The jury is all present, your
8 Honor.

9 THE COURT: Thank you. Please be seated.

10 All right. Ladies and gentlemen, I received
11 your note regarding some guidance as to one of the
12 indictments.

13 Now, in this regard I'm going to give you an
14 additional charge.

15 And while I'm thinking of it, you didn't do it,
16 and it was proper, but at no point should you ever tell me
17 what the breakdown of the jury is so far as numbers or
18 anything. So if you ever communicate with the Court,
19 don't do that, please.

20 But as to your request, I'm going to give you an
21 additional charge. It has to do with trying to reach a
22 verdict. So hopefully you can make another effort and
23 reach a verdict in this case. So I have some brief
24 comments in that regard.

25 As I told you, you're the judges of the facts

1 and the evidence in the case. As the judge, I'm not
2 permitted to give you any hint or suggestion as to how I
3 feel about any factual matter and certainly can give you
4 no hint about what verdict you ought to bring, but I can
5 say this: When a matter is in dispute, it's not always
6 easy for even two persons to agree, and when an entire
7 jury must agree, it becomes obviously correspondingly more
8 difficult.

9 But it is important that this matter be ended if
10 it may be ended without a single one of you doing violence
11 to your own conscience. No juror is expected to give up
12 an opinion based on reason and satisfactory to himself or
13 herself merely for the purpose of being in agreement. I
14 certainly want to be understood on that point.

15 You're not asked to come to court often to sit
16 on the trial of a case. There are 46 circuit judges in
17 this state whose work it is to try cases from day to day
18 throughout the year. I can tell you it's very unusual for
19 a jury to just go out and promptly return a verdict, and
20 at the same time, we usually do get a verdict. And what
21 that means is that it's normal for jurors to disagree at
22 first, but the fact that we normally get a verdict also
23 means that after reasonable persons lay aside all
24 extraneous matters and determine to decide a case on the
25 basis of the law and the evidence, they do come to a

1 common understanding and write a verdict.

2 It has never been intended that a verdict of a
3 juror should be the verdict of any one or more persons.
4 On the other hand, the verdict of the jury is the
5 collective reasoning of all persons put together, and that
6 is why we have a jury, so that we may have the benefit of
7 collective thought, collective reasoning.

8 It becomes your duty to tell the other jurors
9 how you feel about the case and why you think that you do,
10 and I'm sure that you have been doing that. On the other
11 hand, it becomes the other jurors' duty to exchange views
12 with you.. And you should listen to each other and give to
13 the other's thought such meaning as you think it should
14 have, and so to some degree it's said that jury service is
15 a matter of give and take.

16 If you do not agree on a verdict, it just means
17 that at some future time of court before myself or some
18 other judge perhaps that some other jury will sit where
19 you are. The same participants will come and the lawyers
20 will probably ask basically the same questions, and
21 presumably and probably they will give much the same
22 answers and we'll go through this entire process again.
23 And I have no reason now to think that any other citizens
24 of this county will be more capable of solving this
25 controversy than you, and so I'm going to ask at this time

1 that you deliberate further and see if you cannot write a
2 verdict in this case.

3 I do want to close this additional instruction
4 by reminding you again that while it is important that
5 matters be ended, it should be ended in the form of a
6 verdict by no juror's doing violence to his or her own
7 conscience. Again, no one is expected to give up an
8 opinion based on reason and satisfactory to himself or
9 herself for the ultimate purpose of being in agreement.

10 With this additional instruction I'm going to
11 ask you to retire to deliberate further.

12 Thank you very much.

13 (The jury left open court at approximately 9:52
14 p.m. to resume deliberations.)

15 THE COURT: Any matters pertaining to that
16 charge?

17 MS. WILSON: No, sir.

18 MR. BUTLER: No, sir.

19 THE COURT: I would like everyone to be close by
20 in case they come back with something else.

21 (WHEREUPON, The Court's Exhibit No. 14 was
22 marked for identification only.)

23 THE COURT: While we're waiting, Ms. Brunson,
24 come forward, please.

25 Ms. Brunson, as I indicated to you, I would

1 think about the situation of your violation of this
2 Court's rules and procedures. As you realize, those rules
3 and procedures are set forth by the Chief Justice of the
4 Supreme Court.

5 Although indifference to the rules of this Court
6 should not be overlooked, I think that the circumstances
7 by which an individual comes before this case has to be
8 reviewed in each case with an eye towards the peculiar
9 facts and circumstances of that case. Violations of court
10 rules must not be looked at in a vacuum but dealt with
11 case by case.

12 I've thought about your case, and I've thought
13 about the case that was recently before the Court. There
14 are differences. The case that was recently before the
15 Court from my understanding involved an individual that
16 was not apologetic; that the individual took the call in
17 the courtroom and did not display the proper respect for
18 the rules of the Court.

19 You, on the other hand, I've considered your
20 circumstances. This Court realizes that and assumes that
21 you're under a lot of pressure and stress because your son
22 is before this Court in a trial in a serious matter before
23 this Court. And I've noted the fact that you were
24 apologetic to this Court. I'm not as concerned about
25 apologies to me as I am with respect to the institution

1 and the rules of this Court.

2 I do think that you were overwhelmed with the
3 emotion that you are feeling with this case. And although
4 your actions, I do not condone your actions, because the
5 difficulty with your case is that it happened twice, and
6 I'm writing that off to the fact that you are so caught up
7 with the emotions of your son being on trial. Therefore,
8 I've decided that this Court will not take any further
9 action.

10 Thank you, ma'am.

11 (A break was taken while the jury continued
12 deliberations.)

13 THE COURT: Counsel ready?

14 MS. WILSON: Yes, sir.

15 MS. SHEALY: Yes, sir.

16 THE COURT: Bring the jury in, please.

17 (The jury came into open court at approximately
18 11:16 p.m.)

19 THE BAILIFF: The jurors are all present, your
20 Honor.

21 THE COURT: Thank you. Please be seated.

22 Madam forelady, I understand the jury has now
23 reached a unanimous verdict as to each indictment; is that
24 correct?

25 THE FORELADY: Yes, we have, your Honor.

1 THE COURT: Would you please hand it to the
2 bailiff.

3 Mr. Bailiff, if you'd hand it up.

4 Please stand.

5 Mr. Clerk, please publish the verdict.

6 VERDICT

7 (The verdict was read at 11:22 p.m.)

8 THE CLERK: Yes, your Honor.

9 State of South Carolina versus Anthony Lee Mann.
10 As to the indictment for armed robbery, Indictment No.
11 2002-GS-10-4413, we, the jury, unanimously find the
12 defendant guilty of armed robbery.

13 As to the indictment for murder, Indictment No.
14 2002-GS-10-4414, we, the jury, unanimously find for the
15 defendant guilty of murder.

16 As to the indictment to murder, Docket No.
17 2002-GS-10-4415, we, the jury, unanimously find the
18 defendant guilty of murder.

19 Signed the foreperson, Janice Bush, dated
20 September 24th, 2003.

21 Ladies and gentlemen of the jury, if this is
22 your verdict, please reply by raising your right hand.

23 (Jurors raise hands.)

24 THE CLERK: Thank you. You may put them down.

25 THE COURT: Any request to poll?

1 MS. SHEALY: Yes, sir. And could we do so as to
2 each individual charge as well, please?

3 THE COURT: Yes, ma'am.

4 THE CLERK: Ladies and gentlemen of the jury, I
5 will be asking you all two questions: Is this your
6 verdict and is this still your verdict. When I call your
7 name and juror number, if you would please reply verbally.

8 THE COURT: You can call them by juror number.

9 THE CLERK: Okay, your Honor.

10 Number 24, is this your verdict to Indictment
11 2002-GS-10-4413?

12 THE COURT: Please stand. You can call out the
13 charge.

14 THE CLERK: Of armed robbery, is this your
15 verdict?

16 THE JUROR: Yes, it is.

17 THE CLERK: Is this still your verdict?

18 THE JUROR: Yes, it is.

19 THE CLERK: As to Indictment 2002-GS-10-4414,
20 guilty of murder, is this your verdict?

21 THE JUROR: Yes, it is.

22 THE CLERK: Is this still your verdict?

23 THE JUROR: Yes, it is.

24 THE CLERK: As to Indictment 2002-GS-10-4415,
25 guilty of murder, is this your verdict?

1 THE JUROR: Yes, it is.

2 THE CLERK: Is this still your verdict?

3 THE JUROR: Yes, it is.

4 THE CLERK: Thank you. You may be seated.

5 Juror No. 192, is this your verdict to
6 Indictment 2002-GS-10-4413, guilty of armed robbery?

7 THE JUROR: Yes, it is.

8 THE CLERK: Is this still your verdict?

9 THE JUROR: Yes, it is.

10 THE CLERK: As to Indictment 2002-GS-10-4414,
11 guilty of murder, is this your verdict?

12 THE JUROR: Yes, it is.

13 THE CLERK: Is this still your verdict?

14 THE JUROR: Yes, it is.

15 THE CLERK: As to Indictment 2002-GS-10-4415,
16 guilty of murder, is this your verdict?

17 THE JUROR: Yes, it is.

18 THE CLERK: Is this still your verdict?

19 THE JUROR: Yes, it is.

20 THE CLERK: Thank you. You may be seated.

21 Juror No. 36, is this your verdict to Indictment
22 2002-GS-10-4413, guilty of armed robbery?

23 THE JUROR: Yes, it is.

24 THE CLERK: Is this still your verdict?

25 THE JUROR: Yes, it is.

1 THE CLERK: As to Indictment No.
2 2002-GS-10-4414, guilty of murder, is this your verdict?
3 THE JUROR: Yes, it is.
4 THE CLERK: Is this still your verdict?
5 THE JUROR: Yes, it is.
6 THE CLERK: As to Indictment No.
7 2002-GS-10-4415, guilty of murder, is this your verdict?
8 THE JUROR: Yes, it is.
9 THE CLERK: Is this still your verdict?
10 THE JUROR: Yes, it is.
11 THE CLERK: Thank you. You may be seated.
12 Juror No. 53, as to Indictment No.
13 2002-GS-10-4413, guilty of armed robbery, is this your
14 verdict?
15 THE JUROR: Yes, it is.
16 THE CLERK: Is this still your verdict?
17 THE JUROR: Yes, it is.
18 THE CLERK: As to Indictment 2002-GS-10-4414,
19 guilty of murder, is this your verdict?
20 THE JUROR: Yes, it is.
21 THE CLERK: Is this still your verdict?
22 THE JUROR: Yes, it is.
23 THE CLERK: As to Indictment 2002-GS-10-4415,
24 guilty of murder, is this your verdict?
25 THE JUROR: Yes, it is.

1 THE CLERK: Is this still your verdict?

2 THE JUROR: Yes, it is.

3 THE CLERK: Thank you. You may be seated.

4 Juror No. 149, as to Indictment No.

5 2002-GS-10-4413, guilty of armed robbery, is this your
6 verdict?

7 THE JUROR: Yes, sir, it is.

8 THE CLERK: Is this still your verdict?

9 THE JUROR: Yes, sir, it is.

10 THE CLERK: As to Indictment 2002-GS-10-4414,
11 guilty of murder, is this your verdict?

12 THE JUROR: Yes, sir, it is.

13 THE CLERK: Is this still your verdict?

14 THE JUROR: Yes, sir, it is.

15 THE CLERK: As to Indictment 2002-GS-10-4415,
16 guilty of murder, is this your verdict?

17 THE JUROR: Yes, sir, it is.

18 THE CLERK: Is this still your verdict?

19 THE JUROR: Yes, sir, it is.

20 THE CLERK: Thank you. You may be seated.

21 Juror No. 210, as to Indictment 2002-GS-10-4413,
22 guilty of armed robbery, is this your verdict?

23 THE JUROR: Yes, it is.

24 THE CLERK: Is this still your verdict?

25 THE JUROR: Yes, it is.

1 THE CLERK: As to Indictment 2002-GS-10-4414,
2 guilty of murder, is this your verdict?

3 THE JUROR: Yes, it is.

4 THE CLERK: Is this still your verdict?

5 THE JUROR: Yes, it is.

6 THE CLERK: As to Indictment 2002-GS-10-4415,
7 guilty of murder, is this your verdict?

8 THE JUROR: Yes, sir, it is.

9 THE CLERK: Is this still your verdict?

10 THE JUROR: Yes, it is.

11 THE CLERK: Thank you. You may be seated.

12 Juror No. 182, as to Indictment 2002-GS-10-4413,
13 guilty of armed robbery, is this your verdict?

14 THE JUROR: Yes, sir, it is.

15 THE CLERK: Is this still your verdict?

16 THE JUROR: Yes, sir, it is.

17 THE CLERK: As to Indictment 2002-GS-10-4414,
18 guilty of murder, is this your verdict?

19 THE JUROR: Yes, sir, it is.

20 THE CLERK: Is this still your verdict?

21 THE JUROR: Yes, sir, it is.

22 THE CLERK: As to Indictment 2002-GS-10-4415,
23 guilty of murder, is this your verdict?

24 THE JUROR: Yes, sir, it is.

25 THE CLERK: Is this still your verdict?

1 THE JUROR: Yes, sir, it is.

2 THE CLERK: Thank you. You may be seated.

3 Juror No. 44, as to Indictment 2002-GS-10-4413,
4 guilty of armed robbery, is this your verdict?

5 THE JUROR: Yes, sir, it is.

6 THE CLERK: Is this still your verdict?

7 THE JUROR: Yes, sir.

8 THE CLERK: As to Indictment 2002-GS-10-4414,
9 guilty of murder, is this your verdict?

10 THE JUROR: Yes, sir, it is.

11 THE CLERK: Is this still your verdict?

12 THE JUROR: Yes, sir, it is.

13 THE CLERK: As to Indictment 2002-GS-10-4415,
14 guilty of murder, is this your verdict?

15 THE JUROR: Yes, sir, it is.

16 THE CLERK: Is this still your verdict?

17 THE JUROR: Yes, sir, it is.

18 THE CLERK: Thank you. You may be seated.

19 Juror No. 90, as to Indictment 2002-GS-10-4413,
20 guilty of armed robbery, is this your verdict?

21 THE JUROR: Yes, it is.

22 THE CLERK: Is this still your verdict?

23 THE JUROR: Yes, it is.

24 THE CLERK: As to Indictment 2002-GS-10-4414,
25 guilty of murder, is this your verdict?

1 THE JUROR: Yes, it is.

2 THE CLERK: Is this still your verdict?

3 THE JUROR: Yes, it is.

4 THE CLERK: As to Indictment 2002-GS-10-4415,
5 guilty of murder, is this your verdict?

6 THE JUROR: Yes, it is.

7 THE CLERK: Is this still your verdict?

8 THE JUROR: Yes, it is.

9 THE CLERK: Thank you. You may be seated.

10 Juror No. 176, as to Indictment 2002-GS-10-4413,
11 guilty of armed robbery, is this your verdict?

12 THE JUROR: Yes, sir, it is.

13 THE CLERK: Is this still your verdict?

14 THE JUROR: Yes, sir, it is.

15 THE CLERK: As to Indictment 2002-GS-10-4414,
16 guilty of murder, is this your verdict?

17 THE JUROR: Yes, sir, it is.

18 THE CLERK: Is this still your verdict?

19 THE JUROR: Yes, sir, it is.

20 THE CLERK: Thank you. As to 2002-GS-10-4415,
21 guilty of murder, is this your verdict?

22 THE JUROR: Yes, sir, it is.

23 THE CLERK: Is this still your verdict?

24 THE JUROR: Yes, sir, it is.

25 THE CLERK: Thank you. You may be seated.

1 Juror No. 136, as to Indictment 2002-GS-10-4413,
2 guilty of armed robbery, is this your verdict?

3 THE JUROR: Yes, sir, it is.

4 THE CLERK: Is this still your verdict?

5 THE JUROR: Yes, sir, it is.

6 THE CLERK: As to Indictment 2002-GS-10-4414,
7 guilty of murder, is this your verdict?

8 THE JUROR: Yes, sir, it is.

9 THE CLERK: Is this still your verdict?

10 THE JUROR: Yes, sir, it is.

11 THE CLERK: As to Indictment 2002-GS-10-4415,
12 guilty of murder, is this your verdict?

13 THE JUROR: Yes, sir, it is.

14 THE CLERK: Is this still your verdict?

15 THE JUROR: Yes, sir, it is.

16 THE CLERK: Thank you. You may be seated.

17 Juror No. 95, as to Indictment 2002-GS-10-4413,
18 guilty of armed robbery, is this your verdict?

19 THE JUROR: Yes, sir, it is.

20 THE CLERK: Is this still your verdict?

21 THE JUROR: Yes, sir, it is.

22 THE CLERK: Indictment 2002-GS-10-4414, guilty
23 of murder, is this your verdict?

24 THE JUROR: Yes, sir.

25 THE CLERK: Is this still your verdict?

1 THE JUROR: Yes, sir.

2 MS. WILSON: As to Indictment 2002-GS-10-4415,
3 guilty of murder, is this your verdict?

4 THE JUROR: Yes, sir.

5 THE CLERK: Is this still your verdict?

6 THE JUROR: Yes, sir.

7 THE CLERK: Thank you. You may be seated.

8 Is there anyone's name I have missed?

9 (No response.)

10 THE CLERK: Your Honor, the jury has been polled
11 and the verdict stands.

12 THE COURT: All right.

13 Ladies and gentlemen, I want to again thank you
14 for your participation in the case. I know it's been a
15 long trial and a difficult trial. These issues are not
16 easy issues for a jury to have to resolve and that's one
17 of the reasons -- it's not easy for any one person to
18 resolve and that's why we have the jury system, so that a
19 jury collectively and unanimously can decide what they
20 feel the facts are in this case and then apply those facts
21 to the law.

22 I am satisfied that you have given everyone in
23 this case your complete and utmost attention. You have
24 been here every day, been patient with everyone. You've
25 watched the case. I've watched you throughout the trial

1 and I've noticed that you've paid attention and I've
2 noticed you taking notes, and I am satisfied that you have
3 given everyone your complete and utmost attention.

4 And there's nothing really more that this system
5 can expect for the jury other than to do that and give
6 everyone their fair and impartial consideration of the
7 issues that have been presented to the jury. It was your
8 job to decide what you think the facts are, and again I'm
9 satisfied that you have performed that function.

10 At this time you will be excused. A deputy will
11 escort you to the parking garage if you would like. You
12 can all go together and the deputy will be happy, and
13 because it is a late hour, I'd prefer that that be done.

14 You also are welcome to stay if you so desire.
15 But if not, again, thank you for your participation as
16 jurors during this last two weeks.

17 If you will go out into the hallway the bailiff
18 will make arrangements for escorting you to the parking
19 garage due to the late hour.

20 Thank you very much. I hope you all have a good
21 week and a good weekend.

22 (The jury was excused from open court at
23 approximately 11:28 p.m.)

24 THE COURT: All right. Please be seated.

25 Any post-trial motions?

1 MR. BUTLER: Yes, sir. At this time defense
2 moves for a new trial based on all the grounds set forth
3 in our directed verdict motions at the close of the
4 State's case and at the close of our case and based on all
5 the motions for mistrials and all objections.

6 THE COURT: All right. I deny those motions.
7 Anything further?

8 MR. BUTLER: No, sir.

9 THE COURT: All right. Regarding sentencing,
10 anything further from the State as to sentencing?

11 MS. WILSON: Yes, sir, your Honor.

12 THE COURT: Yes, ma'am.

13 MS. WILSON: Do you want us to fill out the
14 sentencing sheets now?

15 THE COURT: Either way it's fine. Go ahead and
16 do that.

17 MS. WILSON: If we could just have a minute.

18 (A short break was taken.)

19 THE COURT: Are you ready?

20 MS. WILSON: Yes, sir, your Honor.

21 Judge, first of all, I want to thank the two
22 jurors that remain. I know this was a hard thing for them
23 to do, and it certainly was a difficult case for us to
24 present for a number of reasons. One of the main reasons
25 that it was a difficult case to present is that Anthony

1 Mann set out to intimidate witnesses from the time he was
2 arrested on. And I thought it was very interesting that
3 at the last minute just before we did closing arguments
4 that he made the allegations against the State that we
5 were the ones intimidating witnesses.

6 Some of his conversations regarding his
7 intimidation of Lisa O'Connell in particular were captured
8 on audiotape. If the Court is interested in me playing
9 those or listening to those, I will be happy to hand those
10 over to the Court.

11 THE COURT: Conversations with whom?

12 MS. WILSON: He has a conversation with Kristy
13 Bunch during which he is trying to get Kristy Bunch to
14 smuggle in a cell phone into the jail, and he in that
15 conversation talks about how Lisa O'Connell is weak, how
16 she's easily scared, and I won't use the language that he
17 used, but he describes how if he can just get that phone
18 and talk to her, he'll make sure that she's right.

19 And as the jury did hear during the case, we did
20 set out to try to find the confession that Kristy Bunch
21 told us that he made. Again as I said in closing, we have
22 no reason to believe that she was not being forthright
23 with us. She knew that the call was recorded. She sent
24 us looking for the calls. She admitted that during that
25 time she was doing drugs. He was calling her at all times

1 of the day and night and that she just wasn't sure about
2 the dates. We didn't find that call. But in the pursuit
3 of finding that call, we listened to a number of phone
4 calls from Anthony Mann where he is discussing procuring
5 witness testimony that would be untruthful, and it was
6 plain to see his manipulation of several of the -- they
7 were women but they acted like girls in his life, how he
8 would manipulate them and pit them against each other, all
9 in hopes of manipulating the court system.

10 I think it's clear based on the testimony that
11 you heard and based on the conversations that we have
12 heard in the jail from Anthony Mann that he has shown
13 absolutely no remorse, no remorse. The only time he has
14 shed a tear has been when he was worried about his own
15 fate.

16 Your Honor, I also would hand up to the Court,
17 and I apologize that this one has markings on it, let me
18 see if I can find my copy, of a letter that was
19 intercepted by Lieber, I believe it was Monday night, that
20 Anthony Mann secreted in a book regarding what we believe
21 is Eric Zack, Michael Crumb, and Peter Davies, and also
22 interesting enough, William Woodson. I would hand this up
23 to the Court for you to look at and read. Some of it I
24 guess is in code. I'm not sure what all it means, but
25 it's clear that he is trying to get something to happen to

1 those inmates once they are in Lieber.

2 We would ask -- I frankly do not know what power
3 the Court has as far as where a person is housed, but
4 obviously this defendant needs to be kept separate from
5 the people who testified against him, and we certainly
6 don't think it's fair that these people who testified who
7 obviously made mistakes but were willing to come forward,
8 admit their guilt and cooperate with the State, that they
9 not be moved to some far away location from their family.
10 Again, I'm just not sure what authority or what power the
11 Court has.

12 Judge, one of the toughest things about this
13 case for me personally was knowing and having to tell the
14 victim's family, Dante Tobias' family and Beverly Blake's
15 family, that their lives and the things they had done good
16 in their lives weren't relevant. In our system the victim
17 sort of gets lost sometimes, and that is a very hard
18 thing.

19 I understand that Mr. Tobias was engaged in some
20 activities that probably he shouldn't have been, but I
21 also had the opportunity to go through some of the items
22 that were seized in the searches of his home and see what
23 he talked about his hopes and his dreams and to see how he
24 felt that he was trying to overcome his learning
25 disability and how he wanted to make his mother and his

1 father proud and wanted to get out from the life that he
2 was leading.

3 To know that and to know that a jury can't know
4 that and to know that any of the people who were present
5 during the trial can't know that is a difficult thing. As
6 a prosecutor, it's very frustrating.

7 Fortunately, both Dante Tobias and Beverly Blake
8 have families who are here.

9 Your Honor, as I mentioned, Dante, although he
10 did have some problems, I think it's clear once you hear
11 from his family that he was a good fellow.

12 Beverly Blake had a hard life. She was molested
13 at the age of two or younger. She was cared for by
14 numerous family members, mostly in New York. She had come
15 back down to South Carolina shortly before this happened
16 and things went downhill for her. It was, you know, she
17 had a rough time.

18 I feel bad that the family has had to listen to
19 her participation in this, and certainly but for Anthony
20 Mann she could have been on trial as well. That said, I
21 don't think she deserved what she got.

22 I appreciate the Court's time and the Court's
23 patience during this trial. You have been a great judge
24 as always. I appreciate the defense attorneys who did a
25 remarkable job for their client. And I would just ask

1 that the Court listen to the victim's families who do want
2 to address the Court.

3 THE COURT: Okay.

4 MS. WILSON: Beg the Court's indulgence.

5 Your Honor, first is Ms. Beverly Frost, the
6 grandmother.

7 THE COURT: You may come up, ma'am.
8 State your name for the record, please.

9 MS. FROST: Yes, sir. My name is Beverly Blake
10 frost.

11 THE COURT: Spell your last name.

12 F-R-O-S-T.

13 Beverly was my granddaughter. And Beverly did
14 have a hard life. She was not raised by me. She was
15 raised by my sister that lives in New York.

16 Beverly went to New York at the age of I think
17 it was two and there was a boy connected to Beverly, her
18 brother, Jerome. They were both born December 1st of
19 different years. Beverly is 18 now and her brother is 19.

20 There was another child that I raised and his
21 name is Jermaine Blake. He's my grandson. I raised him
22 from two days old to 21 years old.

23 I've never had an officer to knock on my door to
24 say one thing. This is my first time in 56 years that I
25 have ever been to a courtroom. I don't know what a jail

1 look like inside, and I have no intention of finding out
2 now.

3 But I would like to say that no matter what
4 Beverly did, how bad she was, she was my grandchild, and
5 the way that she died shouldn't have to be. She was not
6 an animal to be killed that way and thrown in some bushes.
7 I wouldn't want that to happen to anybody's child. And
8 the person that did that is no better than an animal.

9 Thank you so very much.

10 THE COURT: Thank you, ma'am.

11 MS. WILSON: Your Honor, I'm going to hand up to
12 the Court a photograph that the victim's mother, Dante
13 Tobias' mother wanted you to see.

14 DR. TOBIAS: Your Honor, I also want to thank
15 the Solicitor's office for the support that they have
16 given us.

17 THE COURT: Could you state your name for the
18 record? I'm sorry.

19 DR. HOLTZ: I'm Dr. Barbara Tobias Holtz.

20 DR. TOBIAS: I'm Dr. Tobias, Sr., T-O-B-I-A-S.

21 THE COURT: Thank you.

22 DR. HOLTZ: I just want to say that the
23 Solicitor's office has been absolutely wonderful to us.
24 When I found out that my son had been murdered, his dad
25 called me and it was all that I could do to even make my

1 way to my office, and I literally fell apart in my dean's
2 office. It was the most terrible thing that a mother
3 could ever experience. It's unnatural for a mother to
4 bury her child. It is absolutely unnatural.

5 The Solicitor's office provided support for us,
6 answered our questions. I've called Detective Walker and
7 talked to him for an hour because I was so distraught.

8 I wanted to just read something that my daughter
9 wrote. She can't be here. Is that okay?

10 THE COURT: Yes, ma'am.

11 DR. HOLTZ: Okay. And I have something that is
12 from my heart.

13 The past year and a half of my life has been the
14 hardest time for my entire family. In the beginning
15 stages of the case as arrests were made, I felt that all
16 of the young men involved deserved the same degree of
17 punishment. From the moment a shot was fired, each person
18 involved should have heard that voice you hear as a child
19 that tells you even when you know you were in a deep pit
20 of mess, do the right thing.

21 Learning the separate parts these guys played in
22 the crime, I have much different feelings now opposed to
23 them. It is unfortunate four young men will not be able
24 to live out their lives like they dreamed of as children
25 because of the choices they made. They decided they had

1 the power to end the lives of Craig and Beverly.

2 We call our son Craig.

3 Beverly was still a teenager. She may have
4 chosen to live the way she thought adults lived, but she
5 was still a young girl.

6 Craig, my brother, may have grown to become a
7 man much different from the way we were raised, but there
8 were values and ways of our family that even in manhood I
9 still saw in Craig.

10 The fact that he would let someone stay with him
11 as his roommate was much like our household as children.
12 People to this day know they can stay with a Tobias
13 without a second thought.

14 It was hard to listen to all of the bad things
15 that were said about Beverly and Craig. Strippers do not
16 deserve to be killed. Runways do not deserve to be
17 killed. Pot smokers or any other drug user does not
18 deserve to be killed. Gun owners do not deserve to be
19 killed. Beverly and Craig did not deserve to die by the
20 hand of another human.

21 In this case, an eye for an eye would be an easy
22 way out. The punishment of spending all the rest of your
23 days in prison and possibly one day realizing how much
24 pain the survivors still feel, a little girl without a
25 daddy, a sister who cannot call her brother to tell him

1 something funny, a father who cannot drive to see his son
2 and just chat about life over a game of pool, a mother who
3 will never be able to fully enjoy her birthday without
4 remembering her only son will not have his on the next
5 day. And these are just Craig's survivors.

6 I cannot fully describe what Beverly's family
7 feels besides that empty hurting ache that never goes
8 away.

9 I am thankful that my parents have found some
10 way to get through these days. I'm relieved to hear my
11 niece, Craig's child, comfort the rest of us with the idea
12 that her daddy is now an angel.

13 My daughter still will not say her uncle's name.

14 I still keep thinking I see him every now and
15 then here and there riding in a ride he couldn't afford to
16 keep running and wouldn't get rid of. Then I remember
17 Craig took his last ride January 7th, 2002, and so did
18 Beverly.

19 Now I want to read my statement.

20 THE COURT: Yes, ma'am.

21 DR. HOLTZ: It is absolutely unnatural for a
22 parent to bury a child, particularly if that child has
23 been murdered. The pain I felt that day has been
24 revisited as I sat through this trial during the last week
25 and a half. The trial has been emotionally exhausting and

1 the heartache is even more intense.

2 My son's name and his character has been dragged
3 through the mud. In addition to the murder, his character
4 has been assassinated. He was not the man portrayed here.
5 Granted he had his faults, but he also had his dreams,
6 which he will never be able to fulfill because his life
7 was cut short so needlessly.

8 I've sat here, and I love young people. I've
9 taught college students most of my career. And I've
10 looked for a piece of humanity in Anthony Mann, and I've
11 seen none. He has made eye contact with me, prolonged eye
12 contact with me, and he doesn't even have the respect to
13 understand that I gave birth to my son 30 years ago, and
14 he has no right to even look at me. That hurt me, that he
15 has no humanity in him.

16 Listening to the things the defense said about
17 my son revictimized both me and my family. My son is a
18 victim. He was not a criminal and has never been
19 described as one until these hearings by people who never
20 knew him, his friends or his way of life. He was a father
21 of a six-year-old little girl, a son who was educated and
22 loved by his parents, he was a brother to his only sister,
23 he was a friend to a diverse group of people, he was an
24 uncle to his niece, he was a grandson who was adored by
25 his grandmother.

1 He has been portrayed as a pistol wearing pimp
2 criminal, when in actuality he befriended Beverly,
3 providing a roof and food. If as his roommate indicated
4 he became emotionally involved with her, it is unfortunate
5 because she was too young, and neither his dad nor I would
6 have approved of it. However, neither he nor Beverly
7 deserved to be murdered.

8 The last time I saw my son was two weeks before
9 his death when he surprised me on Christmas Eve by taking
10 a risk to drive his raggedy car from Charleston to
11 Atlanta. You see, my son couldn't even afford a car that
12 would take him from here to Atlanta to spend time with his
13 family. And he left Christmas morning because he needed
14 to go to work the next day. He was not a pimp.

15 My son never lived off of his family. He never
16 lived off of women or anyone else.

17 What has the impact of this murder been for me?
18 After I lost my son I became so depressed that I felt like
19 I would never be happy again. While I'm a college
20 professor with a Ph.D. in psychology, I was not prepared
21 for my son to be murdered. I have problems sleeping. I
22 still have to take sleep medication. And during this
23 week, I have been very troubled as I've seen the defense
24 assassinate my son's character.

25 Let me just finish. I can't read this.

1 All I want to say to you, Judge, Anthony Mann
2 does not deserve another chance. He doesn't deserve an
3 opportunity to have a fruitful life.

4 My son came from a family of educated people.
5 My father had a master's in business administration, my
6 mother was a registered nurse, my brother is a licensed
7 clinical social worker. There are no pimps, no thugs, no
8 one is incarcerated in any of our family.

9 Anthony Mann should have to stay in prison for
10 the rest of his life.

11 THE COURT: Yes, sir.

12 DR. TOBIAS: It's very unfortunate these
13 circumstances do exist, but I believe that when people
14 make a conscious decision to commit an act, they have to
15 suffer the consequences. And I would like to see justice,
16 I would like to continue to have faith in the system, and
17 it's unfortunate that this has impacted not only my
18 family, but it's impacted his own family, and the family
19 of Beverly Blake's, Zack's, and all the rest involved.

20 I believe that traveling from Monck's Corner to
21 West Ashley is enough time to make a decision or to change
22 one's mind if they have intentions of doing that which is
23 right.

24 Judge, do what you have to do. You're in a
25 responsible chair, but I know that God in the end will

1 judge us all.

2 THE COURT: Thank you.

3 Anything further from the State?

4 MS. WILSON: No, sir. Thank you.

5 THE COURT: You may be seated.

6 Anything from the defense?

7 MS. SHEALY: Yes, sir, your Honor. Would you
8 like to have our people come forward?

9 THE COURT: Yes.

10 MS. SHEALY: Lois Bowers.

11 MS. BOWERS: My name is Lois Bowers. The last
12 name is spelled B-O-W-E-R-S. I'm Anthony Mann's aunt.

13 I would first like to say to the families of
14 their lost, I am truly sorry.

15 Your Honor, I work for a company called Family
16 Preservation Services. My title of working there is a
17 behavior interventionist. I work with emotional and
18 abused children, behavior children. For example, right
19 now I'm working with a young man that has threatened to
20 kill a teacher, and the judge at Berkeley County with the
21 Department of Juvenile Justice has placed me with this
22 young man because the judge felt he could have another
23 chance. Everybody deserves a chance.

24 I'm a foster parent, a therapeutic foster
25 parent. That child has been placed in my home to give him

1 another chance. And that's what I'm asking for my nephew
2 is for your lenience to be on him, that he would have some
3 hope for another chance. He's 24 years old, and in 30
4 years he will be 54.

5 I'm a licensed minister, and the only reason
6 that I bring that up is to ask for your mercy to give him
7 that hope.

8 Thank you.

9 MS. SHEALY: Dr. Bill Vines.

10 DR. VINES: My name is Bill Vines, V-I-N-E-S.

11 THE COURT: Yes, sir.

12 DR. VINES: I'm Anthony Mann's mother's pastor.

13 I also was afforded the opportunity to get to
14 visit Anthony Mann when he was in Lieber prior to being in
15 this situation here. And I was youth pastor for five
16 years before I came to the church that I'm senior pastor
17 at now. And I've seen that through the process of time it
18 seems like that many people if they have any hope at all
19 can change.

20 We have a system and I believe in my heart that
21 you guys will do the right thing. You will do the right
22 thing in your decision.

23 As a man of the cloth I hurt for this family. I
24 also hurt for the mother that is sitting here with her son
25 that is about to be sentenced.

1 And the Bible says hope deferred makes the heart
2 sweet, that desire fulfills the tree of life. I'm asking
3 also for mercy, whatever that entails.

4 Thank you very much.

5 THE COURT: Thank you, sir.

6 MS. SHEALY: Pat Brunson.

7 MS. BRUNSON: I want to say I'm sorry to the
8 families for their loss, but this is also a loss for me.
9 This is my oldest son and his character also has been tore
10 all to pieces during this because nobody has heard the
11 good things about him.

12 Nobody has heard how joyful he can be in his
13 humor and how playful he can be. Nobody has heard how he
14 could bring his friends home and they were unfortunate in
15 their family life and say, Mom, can they stay with us for
16 a little while until they can get on their feet, and I
17 would say sure.

18 No one has seen how he cried like a baby when
19 our dog almost had to die from a heat stroke. Nobody
20 knows that when he has been locked up how he has helped
21 other inmates get their GED because they couldn't pass and
22 he would work with them until they could. Nobody knows
23 that while he's been locked up waiting on this trial that
24 he risked his life to save the life of another inmate that
25 was threatened and was stabbed seven times. Nobody knows

1 all that.

2 Nobody knows his heart like I do.

3 He's made mistakes, and this is an unfortunate
4 thing that has happened, but I'm begging the judge to have
5 mercy on him, not to lock him up for the rest of his life,
6 because there's always hope. I can never give up hope,
7 and I will ask that you wouldn't give up hope on him
8 either.

9 Thank you.

10 MS. SHEALY: Your Honor, earlier today there
11 were other people that were here on behalf of Mr. Mann who
12 had to leave. His two younger brothers were here and a
13 variety of members of their family and of Ms. Brunson's
14 church and friends of Anthony Mann were here.

15 Your Honor, in considering what would be the
16 appropriate sentence, I do ask that you consider that he
17 is only 24 years old and that in 30 years as has been
18 indicated he will be 54. That is a lifetime for many
19 people. And that a 24-year-old is not the same person as
20 a 54-year-old. And that I hope we all can believe that
21 there is something salvagable in everyone. And given the
22 jury's decision in this case and looking at everything in
23 the worst light, we think that someone can redeem
24 themselves. And we ask you consider in this case
25 regarding the murder charges the minimum sentence of 30

1 years.

2 Thank you.

3 THE COURT: Is there anything your client would
4 like to say?

5 MR. MANN: I just want to say that I've watched
6 in this courtroom and throughout this whole trial, your
7 Honor, the injustice, the corruption, and how I've been
8 railroaded by this court system.

9 The last think I want to say is that I realize
10 today that no good deed goes unpunished.

11 THE COURT: Anything further?

12 MS. SHEALY: No, sir.

13 THE COURT: All right. There's not much this
14 Court can say to the families of the deceased. Nothing
15 that this Court can do will ever bring the deceased
16 individuals back, and I can't underscore that fact enough.
17 I wish I could. I wish I did that have power, but I
18 don't.

19 I certainly understand the pain that you are
20 feeling and that you will feel in the future due to the
21 loss of a loved one.

22 Similarly, I feel the pain of the defendant's
23 mother. Oftentimes when acts are committed, there is no
24 consideration given to the effect that those acts will
25 have on the lives of those around that individual. Time

1 and time again I see people come before this Court and the
2 families are suffering more than the individuals that are
3 here on trial. I think that's a shame.

4 In this case, Mr. Mann, I understand your
5 concern. I understand you're upset. This case was fully
6 and fairly presented. This Court bent over backwards to
7 make sure that you had a fair and impartial trial. At
8 every turn every concern that was raised from your side
9 was addressed. Every benefit of the doubt was given to
10 you when the allegation was made. I gave your side every
11 attempt to explain that or to demonstrate to the Court how
12 that was so or whether that was so.

13 The jury has made its decision. In
14 consideration of that decision, again every benefit of the
15 doubt was given to you. The jury was presented with
16 questions about whether or not you were acting in defense
17 of a person, in self-defense, or whether you had anything
18 to do with it at all. Those factual decisions were
19 resolved by a jury, and this Court has to stand beside
20 that determination that was made.

21 Now, Counsel, I do like to put on the record
22 that you have advised your client that he does have a
23 right to appeal within ten days. Does he understand that?

24 MS. SHEALY: I actually have not discussed that
25 with him.

1 THE COURT: Do you understand, Mr. Mann?

2 MR. MANN: Yes, sir.

3 THE COURT: You have a right to appeal. If you
4 feel you have been aggrieved by the process in any way
5 whatsoever, I would certainly urge you to exercise that
6 right of appeal because that is your recourse and that
7 would be your remedy to redress any errors that you think
8 have occurred throughout these proceedings, and you're
9 certainly free to do so and I would encourage you to do
10 so. I certainly wouldn't want any decision to stand that
11 was not a proper decision, and again I would encourage you
12 to do that.

13 But now having heard everything that has been
14 presented, I've heard each side, the testimony has been
15 presented, the statements of all those involved, the
16 mitigating evidence. I've also considered your prior
17 record, which I understand, and correct me if I'm wrong,
18 Counsel, is assault and battery of a high and aggravated
19 nature, burglary second degree, grand larceny, unlawful
20 carrying of a pistol; is that correct?

21 MS. SHEALY: Yes, sir.

22 THE COURT: All right. Having considered the
23 totality of everything presented, and just for the record,
24 in reaching these sentencing decisions, although I've
25 heard what the State has said about alleged threats to

1 witnesses, this letter that was written while you were in
2 jail, your continued threats throughout the proceedings,
3 your threat to blow up this courthouse, I have not
4 considered that in any way whatsoever. Because that has
5 not been established to me in any way, I choose not to
6 consider that in any sentencing decision, again giving you
7 the benefit of the doubt, sir.

8 Please stand.

9 SENTENCING

10 THE COURT: As to the indictment for armed
11 robbery, 2002-GS-10-4413, the judgment of the Court is
12 that you be committed to the Department of Corrections for
13 a period of 30 years.

14 As to the indictment for murder,
15 2002-GS-10-4414, it's the decision of this Court that you
16 be committed to the Department of Corrections for the
17 remainder of your natural life.

18 As to indictment for murder, 2002-GS-10-4415,
19 it's the judgment of the Court that you be committed to
20 the Department of Corrections for the remainder of your
21 natural life.

22 Good luck to you, sir.

23 Counsel, I appreciate the courtesies you have
24 extended to each other and to the Court throughout the
25 trial. Thank you very much.

(The proceedings were concluded.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 8th 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 Charleston County, South Carolina, on the 24th day of September, 2003.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 6th, 2004



CAROL M. THUEME, RPR, Court Reporter

My Commission Expires: 06-04-2007

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Daniel F. Pieper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY L. MANN,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Attorney

South Carolina Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, S. C. 29211
(803) 734-1343

ATTORNEY FOR APPELLANT

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<i>State v. Tate</i> , 286 S.C. 462, 334 S.E.2d 289 (Ct. App. 1985)	7
<i>State v. Tucker</i> , 324 S.C. 155, 478 S.E.2d 260 (1996)	7

STATEMENT OF ISSUE ON APPEAL

The judge erred in allowing the State to join the two murder charges in a single trial since, contrary to its assertions before the trial started, the State could establish no logical connection between the two cases such as would permit them to be tried together.

STATEMENT OF FACTS

On September 15 through 24, 2003, Anthony Lee Mann stood trial in Charleston County for armed robbery and two counts of murder. Judge Daniel F. Pieper presided at Mann's jury trial. The jury found Mann guilty and the judge sentenced him to two life sentences for the murders and thirty years for armed robbery.

ARGUMENT

The judge erred in allowing the State to join the two murder charges in a single trial since, contrary to its assertions before the trial started, the State could establish no logical connection between the two cases such as would permit them to be tried together.

Mann stood trial for the murders of Dante Tobias and Beverly Blake, as well as the armed robbery of Tobias. Although the evidence concerning the time of Blake's death was speculative, the State believed that the two victims had been killed the same day: Tobias first, then Blake several hours later. ROA p. 294, lines 10-13; ROA p. 297, lines 19-25.

The State's theory was that Mann had murdered Blake because she witnessed him killing Tobias and was talking to the police. ROA p. 3, line 7 – p. 6, line 8. On this basis, the judge granted the State's motion to join these two charges for trial. ROA p. 51, lines 15-19. (The defense objected to joinder at the pretrial hearing where it was proposed [April 2003 transcript], at the time the judge placed his ruling on the record [ROA p. 57, line 16 – p. 58, line 11] and again when the State rested at trial. ROA p. 345, line 8 – p. 375, line 13.)

The principals involved in this case knew each other, mostly from hanging out in bars and strip clubs partying. The State conceded that Blake, seventeen, had asked Mann, twenty-three, to rescue her from Tobias, who was trying to pimp her out. ROA p. 82, lines 15-18; ROA p. 129, lines 17-22; ROA p. 156, lines 16-25; ROA p. 199, line 22 – p. 200, line 8. (The robbery of Tobias, initially suggested by Blake, may have been a concurrent motive. ROA p. 130, lines 12-24; ROA p. 158, lines 7-13.) Mann told an associate that he had shot Tobias because "he was trying to fight him [Mann] and take the gun from him." ROA p. 137, line 11 – p. 138, line 8.

To be fair, the State did introduce some evidence that Mann had killed both Tobias and later Blake. ROA p. 246, lines 10-21; ROA p. 319, lines 4-15; ROA p. 322, line 23 – p. 323, line 5. But this concedes nothing: the issue now before the Court concerns the evidence – more precisely, the lack thereof – connecting the two crimes.

An acquaintance of Mann testified that Mann told him “he was doing a deal with [Tobias] and he had to do him, so he dealt with [Blake] and put her in the woods.” ROA p. 262, line 9 – p. 263, line 5. He told another acquaintance, according to her testimony,

they had gone to do a home invasion, which I took to be they were going to rob the guy, and they ended up shooting him. And then there was a girl who he said ... had given some information and supposedly had told the police, and his words were that he had to kill that “nigger bitch.”

ROA p. 301, line 11 – p. 302, line 2; ROA p. 306, line 23 – p. 307, line 5. Two other witnesses testified that, shortly after Tobias was shot, Mann stated that he was going to “get rid” of Blake. ROA p. 117, line 20 – p. 118, line 3; ROA p. 144, line 14 – p. 145, line 3.

The judge allowed the two murders to be joined in a single trial because the State led him to believe that “the evidence for the murder of victim number one, Dante Tobias, is necessary for a full presentation of the case charging the defendant of murder of victim number 2, Beverly Blake.” ROA p. 54, lines 18-24. Or, as the judge later stated, “Because of the first, he had to do the second.” ROA p. 352, lines 7 and 8. However, closer examination of the evidence shows that, contrary to the State’s pretrial assertions, it established no logical connection between the two murders.

Separate charges can be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. *State v. Tucker*, 324 S.C. 155, 478

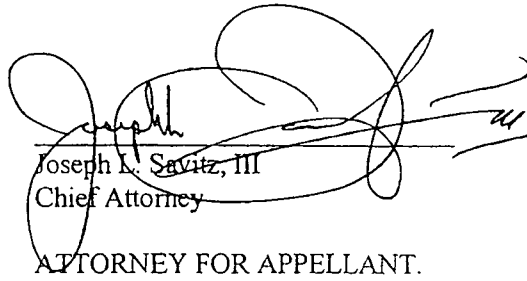
S.E.2d 260 (1996); *State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002). Most importantly, “some connection between the crimes is necessary.” *State v. Cutro (I)*, 332 S.C. 100, 504 S.E.2d 324, 325 (1998); compare *State v. Cutro (II)*, 365 S.C. 366, 618 S.E.2d 890 (2005). Just because two murders occur sequentially within a relatively short span of time does not mean that they can be prosecuted in a single trial. See, for example, *State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986).

The State argued that the murders of Tobias and Blake should be tried together because Blake was an eyewitness to the killing of Tobias and was talking to the police. The evidence presented by the State at trial did not bear out either one of these contentions. Blake did not see Mann shoot Tobias, nor did she talk to the police. Accordingly, the judge erred by allowing the State to proceed on both charges at once.

The error could not have been harmless, particularly in regard to the killing of Tobias. As to that charge, in addition to murder, the judge instructed the jury on voluntary manslaughter, self-defense and defense of others. Evidence that Mann may have been involved in the subsequent murder of Blake was prejudicial because it is likely the jury inferred criminal disposition based on evidence of that offense and on that basis alone found Mann guilty of Tobias’ murder. See *State v. Tate*, 286 S.C. 462, 334 S.E.2d 289 (Ct. App. 1985).

In conclusion, joinder was improper and unduly prejudicial. The Court should reverse Mann’s convictions for both murders and the armed robbery and remand for a new trial.

Respectfully submitted,



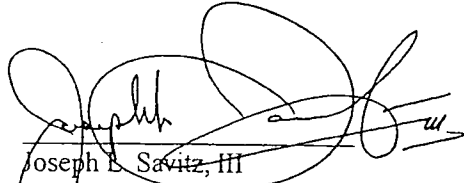
Joseph L. Savitz, III
Chief Attorney
ATTORNEY FOR APPELLANT.

This 5th day of September, 2006.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

September 5, 2006



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Daniel F. Pieper, Circuit Court Judge

THE STATE,

RESPONDENT,

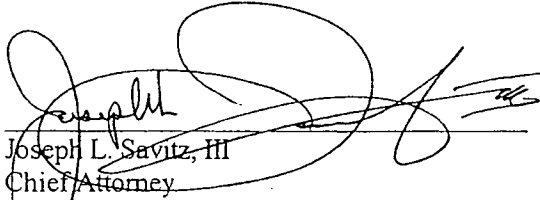
V.

ANTHONY L. MANN,

APPELLANT

CERTIFICATE OF SERVICE

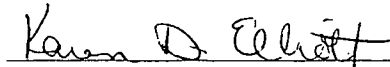
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, this 5th day of September, 2006.



Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of September, 2006.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Daniel F. Pieper, Circuit Court Judge

THE STATE

Respondent

ANTHONY L. MANN

Appellant

FINAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES

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<i>State v. Sullivan</i> , 277 S.C. 35, 282 S.E.2d 838 (1981)	6
<i>State v. Tucker</i> , 324 S.C. 155, 478 S.E.2d 260 (1996)	6

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

The judge erred in allowing the State to join the two murder charges in a single trial since, contrary to its assertions before the trial started, the State could establish no logical connection between the two cases such as would permit them to be tried together.

STATEMENT OF THE CASE

Appellant, Anthony L. Mann was indicted at the July 8th, 2002 term of the Court of General Sessions for Charleston County for two counts of murder and armed robbery. The charges arose from the robbery and shooting of Dante Tobias, and the subsequent shooting of Beverly Blake. The case proceeded to trial on September 15-24, 2003 before the Honorable Daniel F. Pieper, Circuit Court Judge, and a jury. At trial, Appellant was represented by Jennifer Kneece Shealy, Esquire and Beatty Butler, Esquire. The State was represented by Scarlett Wilson, Chief Deputy Solicitor and Jennifer Burney, Assistant Solicitor for the Ninth Judicial Circuit.

On September 24th, the jury found Appellant guilty as charged. Judge Pieper sentenced Appellant to two terms of life imprisonment on the murder counts and thirty (30) years for armed robbery.

A timely Notice of Appeal was served. This appeal follows.

STATEMENT OF FACTS

On January 7th, 2002, Anthony Mann and Eric Zack were riding in Zack's car. Zack received a call from his friend, Michael Crumb. Mann and Zack agreed to pick up Crumb and the three men drove off. Mann was paged by Beverly Blake [Brownie] and called her in the presence of Zack and Crumb. Blake explained to Mann that her roommate, Dante Tobias, wanted to "pimp her out." Therefore, she wanted to pack her belongings and leave Tobias, but she needed a ride. Blake told Mann that Tobias had money and drugs in a safe in the house. Blake and Mann wanted to steal those items from Tobias. Mann, Zack and Crumb then stopped at the home of Peter Davies. After they left Davies residence, the men drove to pick up Blake. However, Mann now had a gun which and they stopped to allow Mann to test fire the weapon. The men then drove to Tobias' house. (R. 127-135, Tr. pp. 345-353).

Mann entered the house first, followed shortly by Crumb. Inside the house, Mann had his gun pointed at Tobias' head, and he and Blake was arguing with Tobias, still insisting he was trying to prostitute her. Mann demanded to know the combination number of the safe, but neither Blake nor Crumb were able to open the safe. Crumb and Blake filled trash bags with items and left the house. As Zack, Crumb and Blake sat in the car, they heard a gun shot and a scream from Tobias. Mann told the others he had to shoot Tobias in the leg. (R. 92-96, Tr. pp. 242-246).

The crew then drove back to Davies residence. There they divvied up the loot. Mann counted change he had taken from Tobias. Mann also had a shotgun taken from Tobias. Zack, Crumb and Blake were warned not to tell anybody about the days events. (R. 97-101, Tr. pp. 247-251). Terrance Hudson then appeared at Davies home. Mann, Blake and Davies were given a ride by Hudson. Eventually, they stopped by Nicole O'Connell's residence. (R. 167-

174, Tr. pp. 424-431). Blake left with Mann and Davies. (R. 179-182, Tr. p. 506-509). She was never heard from or seen again.

Contrary to what Mann (Appellant) told Crumb, Blake and Zack; Tobias lay dead. He was killed by one bullet in his back that came out through his chest. (R. 272-275, Tr. p. 943-946). On January 13th, 2002, the body of Beverly Blake was discovered in a secluded wooded area. (Tr. p. 711-712). She had been shot three times in the head, once in the back, and once in her chest. (R. 281-284, Tr. pp. 952-955). The condition of her body was consistent with death on January 6th or 7th based on the condition of her body and the temperatures in the area. (R. 297-298, Tr. pp. 968-969). She appeared to be wearing the same clothes she wore on January 7th. (R. 333-334, Tr. pp. 1105-1106).

ARGUMENT I

The trial judge properly allowed the State to join the murder indictments for a single trial where all both offenses were of the same general nature or character and spring from the same series of transactions, they were committed by the same offender and require similar proof.

Appellant first claims that the trial judge erred by allowing the State to consolidate the indictments for trial. The State submits that the trial judge properly permitted joinder in the case because all of the offenses (1) were the same general nature or character and spring from the same series of transactions; (2) were committed by the same person; and (3) required the same or similar proof. Moreover, the prejudicial effect of this evidence was not substantially outweighed by its probative value.

In this case, the trial judge held hearings on April 14th, 2003 and May 12th, 2003 on the State's request that it be allowed to consolidate the indictments for Dante Tobias [02-GS-10-4414, (murder); 02-GS-10-4413 (armed robbery)] and Beverly Blake [02-GS-10-4415 (murder)] for one trial. The State argued the evidence was intertwined and that evidence of either murder was necessary to prove the other. Conversely, Appellant argued the two murders did not arise out of the same chain of circumstances and that South Carolina does not allow the joinder of two murder cases. (R. 2-9, April 14 Tr. pp. 4-11).

The trial judge ultimately found:

The allegations are victim number one lived with victim number two. Victim number two and the defendant conspired to rob victim number one. Victim number two heard a shot while the defendant was the only person with victim number two and the defendant shot victim number two. . .

The evidence that the state uses to prove the murder of victim number one, Dante Tobias, will most likely be admissible to show that the defendant's alleged motive for murdering victim number

two, Beverly Blake, that's under the theory the state advances. Of course, in a preliminary determination pretrial if that turns out to not be the case, I will have to take up any appropriate remedies at that time.

(May 12 Tr. p. 6, line 10 - p. 7, line 21).

At the conclusion of the state's case, Appellant moved for a mistrial on the basis the indictments were improperly joined. (R. 345-349, Tr. pp. 1188-1192). After extensive discussions on the issue, the trial judge denied Appellant's motion. (R. 350-375, Tr. pp. 1193-1218).

A. Joinder

When offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character, the trial judge has the discretion to order the indictments tried together, but only so long as the defendant's substantive rights are not prejudiced. *State v. Cutro*, 365 S.C. 366, 618 S.E.2d 890 (2005); *State v. Sullivan*, 277 S.C. 35, 282 S.E.2d 838 (1981). Offenses are considered to be of the same general nature where they are inter-connected. *State v. Henry*, 321 S.C. 273, 468 S.E.2d 76 (Ct. App. 1996). "Further, joinder of offenses in one trial is 'proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) require the same or similar proof.'" *State v. Simmons*, 352 S.C. 342, 351, 573 S.E.2d 856, 861 (Ct. App. 2002). In determining joinder, the trial judge need not find clear and convincing evidence of the charges. *State v. Cutro*, *supra*. Applying this criteria to the case at bar, the State submits that there was no error.

When placed in context of the State's evidence, Blake's knowledge of Dante Tobias' shooting provided a motive for her murder. These offenses were of the same general nature or

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Daniel F. Pieper, Circuit Court Judge

THE STATE,

Respondent,

vs.

ANTHONY L. MANN,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with
SCACR 211(b).

This 17th day of August, 2006.



DERRICK K. McFARLAND
Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Daniel F. Pieper, Circuit Court Judge

THE STATE,

Respondent,

vs.

ANTHONY L. MANN,

Appellant.

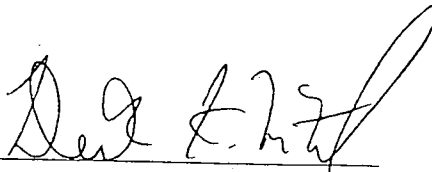
PROOF OF SERVICE

I, Derrick K. McFarland, counsel for the Respondent, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in Interagency Mail, addressed to his attorney of record:

Joseph L. Savitz, III
Chief Attorney
S.C. Office of Appellate Defense
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Columbia, South Carolina 29201

I further certify that all parties required by Rule to be served have been served.

This 17th day of August, 2006.



DERRICK K. McFARLAND

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ATTORNEY FOR RESPONDENT

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State

Respondent,

v.

Anthony L. Mann

Appellant.

Appeal From Charleston County
Daniel F. Pieper, Circuit Court Judge

Unpublished Opinion No. 2007-UP-016
Submitted January 1, 2007 – Filed January 11, 2007

AFFIRMED

Joseph L. Savitz, III, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Derrick K. McFarland, all of Columbia; and Solicitor Ralph Hoisington, of Charleston, for Respondent.

PER CURIAM: Anthony L. Mann appeals his convictions for murder and armed robbery. We affirm.¹

FACTS

On January 7th, 2002, Mann was riding in an automobile with Michael Crumb and Eric Zack, when he was paged by Beverly Blake. Over a cellular phone, Blake explained to Mann that her roommate, Dante Tobias, was trying to "pimp her out" against her will. She wanted to pack her belongings and leave Tobias and requested the men pick her up in their vehicle. Additionally, Blake informed Mann that Tobias kept money and drugs inside a safe in his house, and the two made plans to steal those items from Tobias. Mann, Crumb, and Zack first visited the residence of Peter Davies, where Mann obtained a gun.² Before proceeding to Tobias' home, the three men stopped to allow Mann to test-fire the newly acquired weapon.

Mann entered Tobias' house first, followed shortly thereafter by Crumb, with Zack remaining in the car. Upon entering the living room, Crumb saw Mann had the gun pointed to Tobias' head and was arguing with him as to whether or not he was trying to prostitute Blake. Following Mann's demand, Tobias provided the combination to the safe; however, neither Blake nor Crumb was successful in their attempts to open it. Eventually, Blake and Crumb filled trash bags with items from around the house and left. As Crumb and Blake sat in the car, they heard a gunshot and a scream from Tobias. Mann emerged from the home and informed the others he had shot Tobias in the leg. However, contrary to what Mann told his comrades, Tobias lay dead. He had not been hit in the leg but was struck by a bullet in his back that exited through his chest.

The group then returned to Davies' house, where they divided the loot. Mann warned Zack and Crumb not to tell anyone about the day's events. At Davies' request, Terrance Hudson appeared at the home and provided a ride to Davies, Blake, and Mann. Although Hudson dropped all three of his

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

passengers off at another vehicle in a parking lot some distance away, eventually all four of them ended up at the residence of Nicole O'Connell. Before leaving O'Connell's with Mann and Davies, Blake told her friend, Tiffany Mercado, that Mann would be giving her a ride to Mercado's house. Blake was never heard from or seen alive again.

On January 13th, 2002 the body of Beverly Blake was discovered in a secluded, wooded area. She had been shot three times in the head, once in the back, and once in the chest. Based on the condition of her body, the temperature, and other elements, her death was estimated as having occurred on or around January 7th. She appeared to be wearing the same clothes she was wearing when last seen.

Mann was later arrested and indicted for the armed robbery and murder of Tobias, as well as the murder of Blake. The circuit court judge allowed the two murders to be joined in a single trial because, "the evidence for the murder of victim number one, Dante Tobias, [was] necessary for a full presentation of the case charging the defendant of murder of victim number two, Beverly Blake." The judge later stated, "Because of the first, he had to do the second."

The trial court held two hearings concerning the prosecution's request that it be allowed to consolidate Mann's indictments. The State argued the evidence of crimes was intertwined and that evidence of either murder was necessary to prove the other. Conversely, Mann argued the two murders did not arise out of the same chain of circumstances and that South Carolina does not allow the joinder of two murder cases.

The trial judge ultimately found:

The allegations are victim number one lived with victim number two. Victim number two and the defendant conspired to rob victim number one. Victim number two heard a shot while the defendant was the only person with victim number two and the defendant shot victim number two

The evidence that the State uses to prove the murder of victim number one, Dante Tobias, will most likely be admissible to show that the defendant's alleged motive for murdering victim number two, Beverly Blake, that's under the theory the State advances. Of course, in a preliminary determination pretrial if that turns out to not to be the case, I will have to take up any appropriate remedies at that time.

In addition to testimony establishing the facts as described above, a number of witnesses testified as to Mann's behavior and particular statements made after the death of Tobias. Zack testified Mann told him that he planned to "get rid of" Blake. Shannon Keyes, a friend of Mann's, received a call from Mann following the murders. According to Keyes, Mann indicated, "[he and Blake] went go do something and it didn't turn out the way it was supposed to, and he had to do what he had to and he had to lay low for awhile."

Dustin James testified Mann indicated to him that he killed Blake because she knew Mann killed Tobias. Mann also stated that Blake was "in the woods." Similarly, Krystal Lackey testified Mann said he "found out that [Blake] had given some information and supposedly had told the police, and his words were that he had to kill that n-gg-r bitch."

For a time, Mervin Menier shared a jail cell with Mann. Consistent with the testimony from other witnesses, Menier testified Mann told him that he shot Tobias. He also told Menier he shot and killed Blake in a secluded area that same night because she was getting nervous.

At the conclusion of the State's case, Mann moved for a mistrial on the basis the indictments were improperly joined. After extensive discussions on the issue, the trial judge denied this motion.

DISCUSSION

Mann avers the trial judge erred by allowing the State to consolidate the two murder charges into a single trial and claims the prosecution established no logical connection between the two homicides. He contends

joinder was prejudicial because it is likely the jury inferred a criminal disposition based on evidence he may have been involved in the murder of Blake, and, on that basis alone, found Mann guilty of Tobias' murder. We disagree.

When offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character, the trial court has the discretion to order the indictments tried together, but only so long as the defendant's substantive rights are not prejudiced. State v. Cutro, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005); State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981). "[J]oinder of offenses in one trial is 'proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) require the same or similar proof.'". State v. Simmons, 352 S.C. 342, 351, 573 S.E.2d 856, 861 (Ct. App. 2002) (citations omitted). Offenses are considered to be of the same general nature where they are inter-connected. State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct. App. 1996). In determining joinder, the trial judge need not find clear and convincing evidence of the charges. Cutro, 365 S.C. at 374, 618 S.E.2d at 894. If the trial judge finds there is no substantial evidence to submit any one the joined charges to the jury, the defendant may move for a mistrial on the basis of unfair prejudice resulting from joinder. Cutro, 365 S.C. at 375, 618 S.E.2d at 894; see also State v. Tate, 286 S.C. 462, 334 S.E.2d 289 (1985) (finding prejudice when two forgery charges, not provable by the same evidence, were improperly consolidated).

Applying this criterion to the case at bar, there was no error. Simply having two murders occur sequentially within a short span of time and within a small geographic boundary does not in itself determine that the crimes can be prosecuted in a single trial. See State v. Middleton, 288, S.C. 21, 23-24, 339 S.E.2d 692, 693 (1986). However, in this case the State demonstrated much more than a close proximity in time and place. These offenses were of the same general nature and character and sprung from the same series of transactions. Overwhelming evidence was presented that Mann committed the two murders. See Simmons, 352 S.C. 342, 573 S.E.2d 856; State v. Carter, 324 S.C. 383, 386, 478 S.E.2d 86, 88 (Ct. App. 1996). Evidence of the killing of Tobias was highly relevant in a review of Blake's murder. In a

Lyle context, evidence of one murder has a relevance to the other and is indicative of motive and intent. See State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Thus, similar proof was necessary to find that Mann committed both crimes.

Mann cannot show any prejudice resulting from the trial judge's decision to allow the State to consolidate the charges against him. The trial court charged the jury that "each indictment charges a separate and distinct offense. You must decide each indictment on the law and evidence applicable to it. A defendant may be acquitted or convicted on any or all of the offenses charged. You will be asked to write a separate verdict as to each indictment." Accordingly, there was no prejudice.

When placed in context of the State's evidence, Blake's knowledge of Tobias' shooting provided a motive for her murder. At most, the events formed a seamless chain of actions played out over the span of a few hours, and at the least, the murders are intimately connected as the fallout from the first provided the very necessity for the second. On the basis of the substantial evidence presented in this case, the trial judge properly allowed the charges to be consolidated and correctly denied Mann's motion for a mistrial on the basis of improper joinder.

CONCLUSION

Accordingly, the trial judge did not abuse his discretion by allowing the State to consolidate all the offenses in a single trial, and Mann's convictions are

AFFIRMED.

ANDERSON, HUFF, and BEATTY, JJ., concur.

W-3233



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

ATTORNEY GENERAL'S OFFICE
RECEIVED 2-5-07

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www.sccourts.org

February 2, 2007

REMITTITUR

The Honorable Julie J. Armstrong
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: The State v. Mann, Anthony L.
2002-GS-10-04413
2002-GS-10-04414
2002-GS-10-04415

Dear Ms. Armstrong:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The following exhibit is being returned: Sealed In Camera transcript. Please sign and return the attached copy of this letter acknowledging receipt of this item.

Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

KAR/tf

cc: Chief Attorney Joseph L. Savitz III
Assistant Attorney General Derrick K. McFarland

Receipt Acknowledgment

Name: _____ Date: _____

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

ANTHONY L. MARR #242498

Plaintiff(s))

CIVIL ACTION COVERSHEET

08 - CP 10 - 57

vs.)

State of South Carolina

Defendant(s))

(Please Print)

Submitted By: ANTHONY L. MARR #242498

Address: 366 Redemption Way
McCormick, S.C. 29849

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 one box below)

- ☐ JURY TRIAL demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION
(Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Construction (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Other Malpractice (299)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Wrongful Breach (140)		☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Other (399)	☐ Possession (450)
			☐ Other (499)
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☒ PCR (500)	☐ Death Settlement (700)	☐ Driver License Reinstatement (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
<u>642 (5-70)</u>	☐ Lis Pendens (750)**	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
Special/Complex/Other			☐ Zoning Board (970)
☐ Environmental (600)			☐ Other (999)
☐ Automobile Arb. (610)			
☐ Medical (620)			
☐ Other (699)			

** Check only if Summons & Complaint to follow in 20 days

Submitting Party Signature: Anthony L. Marr

Date: 14 December 2007

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

9 MF

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Charleston)

2008-CP-10-0057

Anthony L. Davis #262149)
 Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
 POST-CONVICTION RELIEF

2008 JAN -7 AM 11:43
 CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Eric S. Fack; Peter J. Davies; Michael W. Counts
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2002-45-10-4412 Armed Robbery

(b) 2002-62-10-4414 - Murder

(c) 2002-62-10-4415 - Murder

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 2002 - 30 Years

(b) 2002 - Natural Life

(c) 2002 - Natural Life

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere N/A

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. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. Conviction Affirmed

ii. N/A

iii. N/A

(c) the date of each such result:

i. February 11, 2004

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2002-UP-0116

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) the court committed

(b) trial counsel committed a multitude of errors, including

(c) the failure to call relevant witnesses

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Actual Innocence

(b) Investigative Assistance

(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? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court?

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. Direct Appeal

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. S.C. Court of Appeals

ii. N/A

iii. N/A

- iv. N/A
- (c) the disposition thereof:
- i. Convictions Affirmed
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. JANUARY 11, 2007
- ii. N/A
- iii. N/A
- iv. N/A

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. 2007-UP-016
- ii. N/A
- iii. N/A
- iv. N/A

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. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A

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) has not received for appellate review
(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? Yes

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. James R. Kasper, Sheriff and Leathie T. Butler
Charleston Co. Pub. Defender, Inc.
ii. Joseph L. Savitz, III
S.C. Atty. of Indigent Defense
iii. _____
(b) the proceedings at which each such attorney represented you:
i. TRIAL
ii. Direct Appeal
iii. _____

A116

19. State clearly the relief you seek in filing this application:

Sentence & conviction entered and removed
for good time

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 McCormick)

VERIFICATION

I, Anthony L. Mann #242498, 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.

Anthony L. Mann
[Signature] for GSA

J.P. Mata 12-18-07
SWORN to and subscribed before me this 20
day of Dec 2007

Jorge Ryomy (L.S.)
Notary Public

My Commission Expires: 8-28-2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
)
Anthony L. Mann, #242498,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2008-CP-10-0057

RETURN

FILED
2009 FEB 17 AM 9:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Respondent, making its Return to the Application for post-conviction relief filed January 7, 2008, 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 Clerk of Court for Charleston County. The Applicant was indicted at the July 2002 term of the Charleston County Grand Jury for armed robbery (2002-GS-10-4413) and two counts of murder (2002-GS-10-4414, 4415). Jennifer K. Shealy, Esquire, and Beattie Butler, Esquire, represented the Applicant. The Applicant proceeded to trial on September 15-24, 2003, after which a jury found him guilty as indicted. On September 24, 2003, the Honorable Daniel F. Pieper sentenced the Applicant to confinement for thirty (30) years for armed robbery and life for each count of murder.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Mann, Op. No. 2007-UP-016 (S.C. Ct. App. filed January 11, 2007). The Remittitur was issued February 2, 2007.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Applicant's trial transcript, the appellate briefs, the Court of Appeals' opinion affirming the conviction and sentence, and the Remittitur dated February 2, 2007.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel committed a multitude of errors, including failure to call relevant witnesses.
2. Actual innocence.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the 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, 286 S.C. 441, 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant alleges actual innocence as a basis for relief. The Court should summarily dismiss this ground for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c).

V.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 10th, 2008-9

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

ANTHONY MANN,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2008-GS-10-00057

NOVEMBER 14, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE KRISTI HARRINGTON, JUDGE

APPEARANCES:

JOSHUA SNOW KENDRICK, ESQUIRE
WESLEY LOCKLAIR, ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

MATTHEW J. FRIEDMAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Matthew Radford Kendrick Friedman	17	20		
Terrell McCoy Kendrick Friedman	23	28		
Jessica Steele Meddaugh Locklair Friedman	32	38		
Jennifer Shealy Locklair Friedman	40	140	150	
Janice Edwards Ross Kendrick Friedman	154	160		
Gail McNarum Davis Locklair Friedman	161	170	171	
Anthony Mann Locklair Friedman	174	247	252	257
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PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	EV
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DEFENDANT'S EXHIBITS

	(NONE)		
COURT'S EXHIBITS			
	(NONE)		

1 November 14, 2011

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: All right. Mr. Friedman.

5 MR. FRIEDMAN: Anthony Mann.

6 THE COURT: Anthony Mann.

7 MR. FRIEDMAN: Your Honor, I'm going to step in
8 the hall and get his attorneys.

9 THE COURT: All right. Thank you.

10 MR. KENDRICK: Good morning, Judge. I have a
11 scheduling issue that I've discussed with Mr. Friedman. If
12 I can just ask you about real quick.

13 THE COURT: All right.

14 MR. KENDRICK: We've got an expert witness
15 testifying in this case, Dr. Ross, from Newberry Pathology
16 in the Upstate. I had originally told her to be here
17 around two because I thought that our witnesses would
18 probably take us at least to the lunch break. Just based
19 on expenses, I don't want her sitting around an unnecessary
20 amount of time. But before we start ---

21 THE COURT: So you'd rather us all sit around?

22 MR. KENDRICK: No. No, ma'am. I just assumed
23 that we would go to lunch at some point. But if that's not
24 the case, I can call her now. We have a few hours of
25 testimony, so ...

1 THE COURT: All right. Well, two o'clock is
2 three hours away, correct?

3 MR. KENDRICK: Yes, ma'am.

4 THE COURT: All right.

5 MR. KENDRICK: And I just wasn't sure if the
6 Court went to lunch or if we were going to go straight
7 through.

8 THE COURT: I'd rather, I'd rather just go
9 straight through.

10 MR. KENDRICK: Okay. I would too. And would
11 Your Honor mind if I step outside and call Dr. Ross ---

12 THE COURT: All right. Thank you.

13 MR. KENDRICK: --- and just tell her to be on the
14 way?

15 THE COURT: Thank you. All right. Counsel, if
16 you would state your name for the record?

17 MR. LOCKLAIR: Wesley Locklair here representing
18 Anthony Mann, Your Honor, along with Joshua Kendrick.

19 THE COURT: All right. Mr. Kendrick just stepped
20 out, is that correct?

21 MR. LOCKLAIR: Yes, ma'am.

22 THE COURT: And you've explained to Mr. Mann what
23 we're doing here today?

24 MR. LOCKLAIR: Yes, ma'am.

25 THE COURT: Mr. Mann was found guilty on all the

1 charges, is that correct?

2 MR. LOCKLAIR: Yes, ma'am.

3 THE COURT: And what was he sentenced to?

4 MR. LOCKLAIR: Life.

5 THE COURT: And you explained what would happen
6 to Mr. Mann, what happens to the charges, should I grant
7 his application for post conviction relief?

8 MR. LOCKLAIR: Yes, Your Honor, I have.

9 THE COURT: Okay. Mr. Mann, you understand that
10 should I grant your application for post conviction relief,
11 it doesn't mean the charges are going away. Do you
12 understand that?

13 MR. MANN: Yes, ma'am. It means I go back for
14 another trial.

15 THE COURT: Correct. And knowing that you still
16 wish to go forward here today?

17 MR. MANN: Absolutely.

18 THE COURT: You may have a seat. Thank you. Mr.
19 Locklair, what grounds are we going forward on here today?

20 MR. LOCKLAIR: I beg the Court's indulgence.
21 Several different grounds. Obviously, the basis of it is
22 ineffective assistance of counsel. We have issues
23 regarding the defense counsel's failure to object to
24 evidence of him coming in being a convicted felon, and the
25 fact that he was in prison, and the fact there were

1 correctional guards sitting back behind him, basically
2 cloaking him in prison clothing during his trial. They
3 were in very close proximity and that was never raised to
4 the court.

5 Obviously, the challenge to his statement, the
6 voluntariness of his statement, whether the defense
7 attorney was ineffective, whether they should have asked
8 for a separate jury instruction on the voluntariness of the
9 statement and the jury being the ultimate decider of
10 whether a statement was voluntary, had last analysis. That
11 they were ineffective for allowing the introduction of a
12 shotgun that was found, I believe, at McDonald's. And why
13 they didn't object to that evidence coming in because it
14 was not alleged that that shotgun was the murder weapon or
15 any weapon of that sort. That they were ineffective for
16 playing the crime scene video that the defense introduced.
17 That they were ineffective for not raising objections under
18 404 and filing a motion *in limine* regarding drug use, prior
19 bad act, and character evidence. That they failed to
20 object to admissible hearsay. That on vitreous eye fluid
21 that was used by their expert to help determine the time of
22 death. That the defense was ineffective for failing to
23 call an expert to refute that testimony and show that that
24 was bad law. Additionally, they failed to have a counsel
25 hearing to find out the scientific validity of that to see

1 if it would be supported to come into evidence. That he
2 was denied the right to a public trial by in-camera
3 hearings and things were not put on the record. That they
4 failed to hire, they failed to hire an expert to analyze
5 the DNA evidence in the case and address the fact that
6 there was none of his DNA found. They were ineffective in
7 cross-examination of a jailhouse snitch, Murph McNair
8 [phonics]. They were ineffective in failing to present an
9 alibi defense for him, especially as far as the second
10 alleged murder that was laid. That they were ineffective
11 in failing to impeach certain witnesses by not going over
12 any prior records, preparing them to testify. That they
13 were ineffective in failing to show how co-Defendants, Zack
14 and Crumm, were able to communicate within the Charleston
15 County Detention Center, because there were some statements
16 that came from some of them that implicated him. They
17 failed to re-raise the joinder issue when the State failed
18 to produce evidence that they originally told the Trial
19 Judge they would produce. That they were ineffective in
20 telling the Defendant he did not need to testify, and that
21 he shouldn't testify, influencing his decision to testify
22 based on trial counsel's belief the State had not met their
23 burden of proof and nothing good could come from it. They
24 were ineffective in failing to object to some comments by
25 the prosecutor on the Defendant's right to a jury trial,

1 and his right to remain silent, and failing to call
2 witnesses. And they were ineffective in failing to object
3 to the government bolstering its witnesses. They failed to
4 object in closing and some cross arguments that raised the
5 passion of the jury, were improper, in our opinion. They
6 failed to request a proper malice instruction, in our
7 opinion. Then obviously, we have the ineffectiveness based
8 on the totality of the circumstances. Ineffectiveness on
9 not further investigating the two co-Defendants, Zack and
10 Crumm, on their plea deals and their sentencing, exactly
11 when they would be sentenced and what they would be
12 getting. The fact they did not investigate the empaneling
13 of the Grand Jury, whether that was done properly, whether
14 it was a proper Grand Jury. Failing to object to color
15 autopsy photos. Not moving for the mistrial. And then
16 appellate issues that would be raised as far as
17 ineffectiveness of appellate counsel was, did not request
18 sealed portions of the transcript, which were subsequently
19 destroyed prior to him filing his PCR. Those no longer
20 exist. No filing of petition for writ of certiorari, and
21 not raising all issues that should have been raised in the
22 Court of Appeals.

23 THE COURT: Mr. Friedman, you're prepared to go
24 forward on all of those grounds?

25 MR. FRIEDMAN: Yes, Your Honor. Some of these

1 new allegations were just raised last week, but I did get
2 an amended application last Thursday, so I'm aware of all
3 these allegations.

4 THE COURT: And you are prepared to go forward?

5 MR. FRIEDMAN: Yes, Your Honor.

6 THE COURT: All right. Thank you. Call your
7 first witness.

8 MR. KENDRICK: Your Honor, we'd call Mr. Beattie
9 Butler.

10 THE COURT: Good morning, Mr. Butler.

11 MR. BUTLER: Good morning, Your Honor.

12 THE CLERK: Do you solemnly swear or affirm the
13 testimony you shall give this Court will be the truth and
14 nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Come around, have a seat. State your
17 full name and spell your last for the record, please.

18 THE WITNESS: Beattie Butler, B-U-T-L-E-R.

19 BEATTIE BUTLER,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. KENDRICK:

23 Q. Good morning, Mr. Butler.

24 A. Good morning.

25 Q. My name's Josh Kendrick. I represent Anthony Mann.

1 I'll just be very brief. I think we all know who you are,
2 but you were Mr. Mann's Public Defender at his murder
3 trial, correct?

4 A. I was the second chair at the trial of the case.

5 Q. Okay. So your involvement -- explain to me what your
6 involvement -- you would have a more limited role, I guess,
7 than ---

8 A. My recollection is that I handled the pre-trial
9 joinder argument. I did a cross. The only lengthy cross
10 that I remember was of a jailhouse informant, and I might
11 have done some other witnesses, but it's been a while.

12 Q. All right. Well, I just have a couple of brief
13 questions on a couple of specific issues. You talked about
14 the pre-trial motion on the joinder?

15 A. Yes.

16 Q. Do you remember specifically why you're challenging
17 the joinder in this case?

18 THE COURT: Hold on one second. Mr. Mann, I will
19 give you an opportunity, but if you want me to listen to
20 your attorney and to the witness, I need you to be quiet.
21 Do you understand, Mr. Mann?

22 MR. MANN: Yes, ma'am.

23 MR. LOCKLAIR: My apologies, Your Honor.

24 THE COURT: I apologize for interrupting you, Mr.
25 Butler. You may continue.

1 A. The joinder would have been important because there
2 were two separate murder charges and that, you know, just,
3 I guess, for sort of obvious reasons, the prejudice, just
4 being charged with murder is bad enough, but compounded
5 when there are two of them tried together. So even though
6 I think that the State probably had a pretty decent
7 argument to join them, our opinion was that it was just
8 going to be too prejudicial, even if the elements of *City*
9 *versus Greenville* [verbatim] were met. So for that reason,
10 I think, sometime out, maybe a month before the trial or
11 so, we had a full hearing on that issue in front of Judge
12 Pieper.

13 Q. Do you remember the State offering some information to
14 Judge Pieper, to, I think, support their theory and why
15 this case was properly joined?

16 A. You know, before our meeting in the hallway, I would
17 have said, and I still think this probably was the theory,
18 is that the two crimes were connected in that the second
19 was motivated by a desire to cover up the first. In other
20 words, the second murder of the girl Brownie was because
21 she was a witness to murder number one. And so to cover up
22 murder number one, Brownie was killed. I don't have a
23 separate independent recollection of that argument being
24 made, but I can't imagine that it wasn't. When we spoke
25 out in the hall today, you reminded me that the prosecutor

1 alluded to testimony of a co-Defendant that was an
2 eyewitness to the second murder and would connect the two,
3 and that that was -- that contemplation of that testimony
4 was a reason to join the two cases.

5 Q. Do you remember if that testimony ever came out at
6 trial?

7 A. I didn't, but you've told me that they did not end up
8 calling -- I believe it was Peter Davis, Davis or Davies.

9 Q. Davies. All right. And then do you also remember the
10 solicitor telling Judge Pieper in the pre-trial motion that
11 the time of death would reveal that these crimes just
12 happened hours apart?

13 A. I do not recall that. But if you tell me that, I
14 don't have any reason to dispute it.

15 Q. Okay. And do you remember -- we'll get into this in a
16 little bit more detail, but do you remember the time of
17 death being an issue at the trial?

18 A. Yes.

19 Q. All right. Let's just talk just about Mr. Davies.
20 The State has informed the trial judge that they'll present
21 an eyewitness and you would agree, they did not present
22 that eyewitness?

23 A. From what you told me and went over with me this
24 morning in the transcript, I agree with that. I don't
25 independently recall it, but that seems familiar to me.

1 Q. Okay. Did you then re-raise the issue of joinder to
2 the judge at any time during the trial?

3 A. I do not recall if we did.

4 Q. Okay.

5 A. But joinder is -- I don't think of joinder as an
6 evidentiary motion that is *in limine* and needs to be
7 renewed. In other words, once the cases are joined,
8 they're joined. However, if the State appeals to certain
9 evidence as a basis for justifying the joinder and that
10 does not come into evidence, then that motion should have
11 been made. A motion for a mistrial should have been made.

12 Q. Okay. Let's talk -- in addition to the joinder, let's
13 talk about at some point before the trial, time of death
14 became an issue. Do you remember this?

15 A. At sometime before the trial?

16 Q. Well, during the course of the trial.

17 A. I remember that time of death was an issue in the case
18 and the only reason I really recall that is that I guess
19 that the second victim had -- she was discovered some time
20 after her death, and that there was some bug activity. And
21 I remember speaking to an expert on bug activity. And I
22 remember the issue of the vitreous eye fluid.

23 Q. Okay. Did you retain any experts regarding the time
24 of death, either bugs, the vitreous eye fluid, or any other
25 things?

1 A. I spoke to -- Ms. Shealy would have been in charge of
2 deciding which experts that we retained. My recollection
3 is I spoke to somebody about the bug issues. I can't
4 recall now who it was.

5 Q. Okay. Did you speak to anyone about the vitreous
6 fluids?

7 A. If I did, I don't recall. What I recall is what I
8 told you earlier, is that in our research we found that
9 there were three different formulas maybe -- or more than
10 one formula which could be used. And that the pathologist,
11 Dr. Presnell, used the formula that was most favorable to
12 the State, but was not the most current and up-to-date
13 formula. And I believe Ms. Shealy crossed her on that.
14 But whether we had a separate expert, I can't recall.

15 Q. Did you at any time request either a counsel hearing
16 or what's called *Daubert* hearing, any type of expert
17 witness hearing on the testimony regarding the vitreous
18 fluid?

19 A. I don't recall whether we did or not.

20 MR. KENDRICK: Your Honor, may I beg the Court's
21 indulgence?

22 THE COURT: Yes, sir.

23 Q. Just a few more short questions, Mr. Butler.

24 A. Sure.

25 Q. Do you remember specifically cross-examining Dustin

1 James and Maria Shock?

2 A. I do not.

3 Q. So you wouldn't remember whether there was hearsay
4 testimony in their direct that wasn't objected to.

5 A. I do not.

6 MR. KENDRICK: That's all I have. Thank you.

7 THE COURT: Mr. Friedman?

8 MR. FRIEDMAN: No questions, Your Honor.

9 THE COURT: All right. Mr. Butler, you may step
10 down. Is Mr. Butler excused?

11 MR. KENDRICK: Yes, ma'am, we move for him to be
12 excused.

13 MR. FRIEDMAN: No objection.

14 THE COURT: All right. Thank you, Mr. Butler.

15 MR. BUTLER: Thank you.

16 THE COURT: Have a good day.

17 MR. KENDRICK: Your Honor, so you'll know, when I
18 called Dr. Ross she said she was getting on the road right
19 then so two hours -- I think, it'll take us about two hours
20 to get through. And I was estimating.

21 THE COURT: All right. Call your next witness.

22 MR. KENDRICK: Your Honor, our next witness would
23 be Matthew Radford. He's in SCDC custody.

24 THE COURT: All right. Did one of y'all
25 transport Mr. Radford?

1 CORRECTIONS OFFICER: Yes, ma'am.

2 THE COURT: All right. Whoever transported him,
3 I want seated next to him, please.

4 CORRECTIONS OFFICER: Okay.

5 THE COURT: Thank you.

6 THE CLERK: Do you solemnly swear or affirm the
7 testimony you shall give this Court will be the truth and
8 nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Come around, have a seat. State your
11 full name and spell your last for the record, please.

12 THE WITNESS: Matthew Radford, R-A-D-F-O-R-D.

13 **MATTHEW RADFORD,**

14 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

15 **DIRECT EXAMINATION**

16 **BY MR. KENDRICK:**

17 Q. Mr. Radford, my name is Josh Kendrick. I represent
18 Anthony Mann. You and I have never met before, correct?

19 A. Correct.

20 Q. I believe you had occasion to speak with an
21 investigator employed by me last week?

22 A. Yes, sir.

23 Q. Mr. Radford, we'll just get some background
24 information out of the way. What are you currently in

1 prison for?

2 A. Murder.

3 Q. And how long are you serving?

4 A. Forty-five years.

5 Q. All right. Tell me how -- we discussed whether you
6 had overheard a conversation between some of Mr. Mann's co-
7 Defendants while you were in custody?

8 A. I didn't overhear it, I had a direct conversation with
9 Michael Crumm.

10 Q. Okay. And tell me about the conversations you had
11 with Michael Crumm?

12 A. We came through Kirkland R&E together in 2003. And we
13 was on lock-up together during R&E period. And being from
14 the same area, we was talking about people we knew or
15 whatever. And just had common conversations throughout the
16 whole time we was in lock-up. And we got to talking about
17 our case and just this and that and different people
18 involved. And a lot of the details I don't remember, I
19 mean, because it was eight years ago. But one thing that
20 really stood out was that during his time incarcerated in
21 the county jail, he was getting a lot of pressure from the
22 police to put a lot of the blame, the main portion of the
23 blame, on Mr. Mann. And he told me he had a kid he had to
24 think about and he had to think about hisself. And they
25 was trying -- and the police was trying to tell him to put

1 hisself first, save hisself, this, that and the third. And
2 he basically told me that he told them Mann shot the victim
3 when in actuality it was the -- he said the female shot the
4 victim.

5 Q. So he admitted lying to the police and admitted lying
6 in court, to you?

7 A. Yes, sir. Him and Eric Zack. They was in the room
8 together.

9 Q. Okay. Mr. Zack was also -- when you say in the room
10 together, do you mean Mr. Zack was there with you? You
11 were talking to him?

12 A. When we was on lock-up it was two inmates per room,
13 and Mr. Crumm and Mr. Zack was in the room together and I
14 was a couple of doors down.

15 Q. So you were also able to discuss the case with Mr.
16 Zack?

17 A. Yeah. I didn't talk to him too much because he was,
18 he real reserved. It was mainly Mr. Crumm because he's a
19 kind of outspoken individual, I would guess you would say.
20 He'd be on the door a lot, talking about different stuff.
21 And that's the main one I was talking to.

22 Q. But both Mr. Crumm and Mr. Zack admitted to you that
23 they lied in the trial to put the blame on Mr. Mann?

24 A. Yes, sir.

25 Q. Did you have any further conversations with them about

1 this case?

2 A. I mean, it might have been a little odds and ends of,
3 but a lot of the details I don't recall because -- the main
4 reason that stood out was, see, in my case in particular,
5 my co-Defendants lied on me the same way. And it really
6 stood out because I'm serving forty-five years for somebody
7 lying on me. And I don't see how somebody can lie to save
8 theirselves.

9 Q. Did you know Mr. Mann at the time you had this
10 conversation?

11 A. Prior to this, no.

12 MR. KENDRICK: I beg the Court's indulgence, Your
13 Honor.

14 THE COURT: Yes, sir.

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

17 Thank you.

18 THE COURT: Mr. Friedman?

19 MR. FRIEDMAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. FRIEDMAN:

22 Q. Mr. Radford, you testified that you're in prison for
23 murder right now. Is that right?

24 A. Yes, sir.

25 Q. You also have a prior conviction for armed robbery?

1 A. Yes, sir. It's all in one case.

2 Q. There's also one for possession of a firearm during a
3 violent crime?

4 A. Yes, sir.

5 Q. Larceny second degree?

6 A. Yes, sir.

7 Q. Was there a burglary first degree?

8 A. Yes, sir.

9 Q. And how much time are you serving now?

10 A. Altogether, forty-five years.

11 Q. Do you know Anthony Mann?

12 A. Yes, sir.

13 Q. How long have you known him?

14 A. Since 2004.

15 Q. I believe you testified that this conversation that
16 you had with Mr. Crumm was in 2003?

17 A. Yes, sir.

18 Q. Was it also your testimony that you were not in the
19 same cell with Mr. Crumm?

20 A. Yes, sir.

21 Q. You weren't overhearing the conversation, you were
22 actually talking with him?

23 A. Yes, sir.

24 Q. Have you ever been housed in the same institution as
25 Mr. Mann?

1 A. Yeah, Beverly.

2 Q. During the week where she was on the news for being
3 wanted by the police?

4 A. Yeah.

5 Q. Do you remember what day that meeting took place?

6 A. The meeting took place, either it was a Tuesday or
7 Wednesday afternoon.

8 Q. And how do you know that it was either a Tuesday or
9 Wednesday?

10 A. Because it was the day of my son's birthday.

11 MR. KENDRICK: Your Honor, I beg the court's
12 indulgence.

13 THE COURT: Yes, sir.

14 Q. Just to be clear, before you met with Ms. Blake, you
15 had already seen her on the news as someone the police were
16 looking for?

17 A. Yeah. Yes, sir.

18 MR. FRIEDMAN: That's all I have.

19 THE COURT: Mr. Friedman.

20 MR. FRIEDMAN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. FRIEDMAN:

23 Q. Mr. McCoy, you testified you're in prison for murder.

24 Is that right?

25 A. Yes, sir.

1 Q. You also have a prior conviction for possession of
2 crack cocaine?

3 A. Yeah. That was like 1998, 1999.

4 Q. Is there also a charge for possession of crack?

5 A. That got dropped down to possession. It was
6 distribution, but it got dropped down to possession. That
7 was 1997 when I was almost a juvenile, yeah.

8 Q. And how much time are you currently serving?

9 A. Forty years.

10 Q. Do you recall the exact date of your meeting with Ms.
11 Blake?

12 A. Yeah. This was the first time that I got caught up
13 with Ms. Blake when I met her, it was in 2001. It had to
14 have been like a little before Halloween. I'd have to say
15 like in September of 2001, met her at the club where she
16 was dancing and we had a -- we met, some things occurred.
17 But I met her, like, it was in 2001.

18 Q. Okay. And what about this meeting that you said you
19 had at Northwoods Mall?

20 A. Yeah. She called me. She called my cell phone. She
21 was like she needed some money to get away. I was like,
22 what for?

23 Q. When's your son's birthday?

24 A. My son's birthday is January the 8th.

25 Q. That was the day that you met up with Ms. Blake?

1 A. Yes, sir.

2 Q. And the first time you mentioned this meeting was a
3 month ago. Is that right?

4 A. What meeting?

5 Q. This meeting you had with Ms. Blake on January of
6 2001? Had you ever mentioned that to anybody until about a
7 month ago?

8 A. During the altercation, the first altercation that me
9 and him had?

10 Q. No, not altercation.

11 A. You mean ---

12 Q. Your testimony is that you met with Ms. Blake, the
13 victim, on January 8th, 2001, your son's birthday. Is that
14 right?

15 A. Yeah.

16 Q. Had you ever told anybody about that meeting?

17 A. Not the cops, no.

18 Q. Did you tell Mr. Mann about that meeting?

19 A. Yeah. We spoke about it. I told him about it. I was
20 like, ain't no way because I saw her. We was together. We
21 was together.

22 Q. Was that about a month ago that you met with Mr. Mann?

23 A. No. This was like -- I ain't seem him -- the last
24 time I saw Anthony Mann -- well, the first time today was,
25 we was in segregation -- well, lock-up. That was like in

1 either -- April of this year, early this year.

2 Q. And that's when you told him about this meeting with

3 Ms. Blake?

4 A. Yeah.

5 Q. Was that the first time you'd told anybody about it?

6 A. That I know of. I mean, yeah, probably so.

7 Q. You testified earlier that you were in lock-up with

8 Mr. Mann?

9 A. Yes, sir.

10 Q. Where was that?

11 A. At Perry Correctional Institution.

12 Q. Was that because of disciplinary reasons that you were

13 in lock-up?

14 A. Yes, sir.

15 MR. FRIEDMAN: I have nothing further.

16 MR. KENDRICK: Nothing further, Your Honor.

17 THE COURT: You may step down, Mr. McCoy. Thank
18 you.

19 MR. LOCKLAIR: We call Jessica Steele, Your
20 Honor.

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

24 THE WITNESS: I do.

25 THE CLERK: Have a seat, please. State your full

1 name and spell your last for the record, please.

2 THE WITNESS: Jessica Steele Meddaugh, M-E-D-D-A-
3 U-G-H.

4 JESSICA STEELE MEDDAUGH,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. LOCKLAIR:

8 Q. I'm sorry about that. I wasn't informed that your
9 name had changed. I apologize. My name is Wesley
10 Locklair. I represent Mr. Mann. We've never met before,
11 have we?

12 A. No.

13 Q. But you have spoken to an investigator that works for
14 me and Mr. Kendrick?

15 A. Yes.

16 Q. Okay. Where do you currently live?

17 A. I live in Columbia.

18 Q. And how long have you lived there?

19 A. About three years.

20 Q. And prior to that, where did you live?

21 A. I lived in Ladson.

22 Q. Okay. And where were you residing back in January
23 2002?

24 A. In Hanahan.

25 Q. Hanahan? Just for the record, all of those, Hanahan

1 and Ladson are in the Greater Charleston area. Is that

2 correct?

3 A. Correct.

4 Q. Do you know Anthony Mann?

5 A. Yes.

6 Q. How do you know him?

7 A. He was a friend of my boyfriend at the time.

8 Q. And who was your boyfriend?

9 A. James Wyndham.

10 Q. Okay. How often would you see Anthony Mann back in

11 January of 2002?

12 A. I don't recall seeing him in January, just one time.

13 Q. Okay. After the incidents that he's been convicted

14 of, when was the first you saw him again after that?

15 A. I don't recall seeing him again.

16 Q. Was there ever an occasion to be at a party that he

17 was at?

18 A. That was where I was at. It wasn't a party.

19 Q. A gathering, I guess, of people?

20 A. Right. That was the first time I'd seen him and I

21 believe the last time I'd seen him.

22 Q. Okay. And when was that?

23 A. I know it was in January. I don't remember what date

24 it was.

25 Q. Okay. Do you know if it was after the murder of Dante

1 Tobias and Beverly Blake?

2 A. I don't remember seeing it on the news. I just
3 remember hearing -- I remember hearing about it about a
4 week later about -- I really don't recall that.

5 Q. Okay. But you were at that gathering the whole time,
6 correct?

7 A. Correct.

8 Q. And you saw Mr. Mann there?

9 A. Yes.

10 Q. There have been allegations he had talked about
11 committing a murder while he was at that gathering. Do you
12 recall him bringing anything up of that nature about being
13 involved in any sort of crimes?

14 A. No. I know he'd come to the door ---

15 THE COURT: Mr. Mann, I've already told you once.

16 MR. MANN: I apologize, Your Honor.

17 A. He'd come to the door ---

18 THE COURT: Hold on, ma'am.

19 THE WITNESS: I'm sorry.

20 THE COURT: The next time I'm going to have Mr.
21 Mann wait in the holding cell if y'all cannot conduct
22 yourselves so that I can pay attention to the witness
23 that's testifying. Am I clear?

24 MR. KENDRICK: Yes, ma'am. I apologize.

25 THE COURT: Am I clear, Mr. Mann?

1 MR. MANN: Yes, ma'am.

2 THE COURT: You may continue. Sorry for the
3 interruption.

4 A. He had come to the door and I believe he was looking
5 for my boyfriend at the time. He had ask him to step
6 outside and they went outside together.

7 Q. Okay. What happened after that that you observed?

8 A. We were all inside. I was inside with my son. I want
9 to say that I went out -- I'd opened the door because I'd
10 heard them being loud and I had ask them to be quiet
11 because my kid was asleep.

12 Q. Who was outside at that time?

13 A. Mr. Mann and James Wyndham.

14 Q. The other people at the gathering were all inside the
15 house at that time?

16 A. Yes.

17 Q. Did any of them ever go outside while Mr. Mann was
18 there?

19 A. No.

20 Q. Did Mr. Mann ever come inside?

21 A. No, he didn't come inside. I know he was on his cell
22 phone and I believe after they had finished talking or
23 whatever, I know he was on his cell phone. And, you know,
24 we'd walked outside. And while he was on his cell phone,
25 he got in his car, probably about five minutes later and he

1 left.

2 Q. Okay. When you were inside, I know you said they were
3 noisy?

4 A. Uh-huh (affirmative).

5 Q. But could you make out, I guess, the exact words they
6 were using or it was just that they were loud and you could
7 just hear noise?

8 A. A muffled sound.

9 Q. Okay. And when you went to open the door to tell them
10 to be quiet, could you make out their words prior to
11 opening the door?

12 A. No.

13 Q. So anybody -- it's fair to say that at the door you
14 were probably the closest to them at that point of anybody
15 who would have been in the house, correct?

16 A. Yeah. We were all in the living room.

17 Q. So you would have been in the best position or at
18 least as good as any position as anybody else to have heard
19 anything he said, other than your boyfriend?

20 A. Right.

21 Q. At any point, did you ever hear him outside or inside
22 confessing to be involved in any sort of crime of any sort
23 during that party?

24 A. No.

25 Q. Specifically, did he ever confess to the murder of

1 either of these two alleged victims in this case?

2 A. No.

3 MR. LOCKLAIR: I beg the Court's indulgence one
4 moment, Your Honor.

5 THE COURT: Yes, sir.

6 Q. Just a few more questions about Anthony Mann's trial.
7 Prior to him going on trial, were you ever contacted by the
8 Charleston County Public Defender's Office?

9 A. No.

10 Q. Any investigator or attorney from their office ever
11 contact you?

12 A. No.

13 Q. Were you living in this area? When did you move from
14 this area?

15 A. I didn't move from this area until the end of 2008.

16 Q. Okay. And I assume that while you were living here
17 you weren't making any concerted effort to hide-out or
18 anything. You were just leading your normal everyday life
19 like an everyday citizen?

20 A. Right.

21 MR. LOCKLAIR: That's all I have.

22 Q. Well let me ask you this. If you had been subpoenaed
23 for trial, would you have been available to come testify?

24 A. Yes.

25 Q. Okay. Thank you.

1 MR. LOCKLAIR: That's all I have, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. FRIEDMAN:

4 Q. Ms. Steele, is it your testimony that you don't
5 remember the date of this gathering?

6 A. Correct.

7 Q. So you also don't recall if it was before or after the
8 two murders?

9 A. Correct.

10 Q. Have you had any communication with Mr. Mann since the
11 trial?

12 A. No.

13 Q. Were you able to hear what Mr. Mann and your boyfriend
14 were speaking about outside?

15 A. No.

16 Q. Did it sound like they were arguing?

17 A. You couldn't really tell if it was an argument or if
18 they were just talking like they usually talk.

19 Q. Were they being loud?

20 A. Loud enough, you know, if you can put your ear to the
21 door, you would hear it, but ...

22 MR. FRIEDMAN: I have nothing further.

23 MR. LOCKLAIR: I have nothing further. We'd ask
24 that this witness be allowed to be excused, Your Honor.

25 THE COURT: Any objection, Mr. Friedman?

1 MR. FRIEDMAN: No objection, Your Honor.

2 THE COURT: You may step down. You are excused.
3 You are free to remain with us, but you are free to leave
4 the courthouse. Thank you so much. Call your next
5 witness.

6 MR. KENDRICK: Your Honor, could I ask -- so that
7 we're respectful of your ruling earlier and I understand we
8 don't want to be talking with Mr. Mann. Could we just have
9 a few seconds in between witnesses? We don't need to go
10 outside. If we could just kind of huddle with him right
11 here.

12 THE COURT: Thank you.

13 MR. KENDRICK: We just want to make sure he's
14 involved and tells us anything we need to know.

15 MR. LOCKLAIR: Your Honor, we'd call Jennifer
16 Shealy to the stand.

17 THE COURT: All right. Ms. Shealy, please come
18 forward.

19 THE CLERK: Do you solemnly swear or affirm the
20 testimony you shall give this Court will be the truth and
21 nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Come around, have a seat. State your
24 full name and spell your last for the record, please.

25 THE WITNESS: Jennifer Shealy, S-H-E-A-L-Y.

1 JENNIFER SHEALY,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 MR. LOCKLAIR: May it please the Court, Your
4 Honor?

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. LOCKLAIR:

8 Q. Good morning, Ms. Shealy. How are you today?

9 A. Good morning. How are you?

10 Q. Good thanks. I'm Wesley Locklair. I actually met you
11 a long time ago.

12 A. Right.

13 Q. I don't know if you remember, but I represent Mr.
14 Mann. I want to go back through some of the stuff that
15 occurred at his trial. The first thing I want to address
16 and ask you about was, do you recall how close the Lieber
17 Correctional guards were sitting to him during the trial
18 where the judge ordered them ---

19 A. I don't.

20 Q. Okay.

21 A. I don't at all.

22 Q. I know at some point it came into testimony that he
23 was a convicted felon and he was in prison at Lieber
24 Correctional Institution. Was there any specific strategy
25 to that, where you didn't object to that coming into

1 evidence?

2 A. Could you show me where that is in the transcript?

3 Q. Well, I'll have him look and we'll go back on and do
4 something else while he's looking. Anthony Mann gave a
5 statement that was admitted into evidence, correct?

6 A. Yes.

7 Q. I believe there's a statement in what they referred to
8 as an excited utterance, that had to do ---

9 A. Are you talking about when they were taking his buccal
10 swabs?

11 Q. Yeah. Where he'd said, I believe, something to the
12 essence of, yeah, they might find her hair on me or
13 something because I helped her or something of that nature,
14 was the wording?

15 A. (No verbal response).

16 Q. How many times did you meet with Mr. Mann prior to his
17 trial?

18 A. I don't know. If you'd like for me to get my
19 memorandum file, I might could count the number of times.
20 But plenty of times. I traveled to Lieber several times to
21 meet with him.

22 MR. LOCKLAIR: Your Honor, I'd request we take a
23 short recess so she can get her file here.

24 THE WITNESS: Well, I've got the file right here.

25 THE COURT: She's aware of the process, counsel.

1 I'm sure she came to court prepared.

2 MR. LOCKLAIR: I apologize, Your Honor. I wasn't
3 aware of that. Sorry.

4 THE WITNESS: May I address the Court just for a
5 moment?

6 THE COURT: You may.

7 THE WITNESS: Judge, usually I have a file that
8 says memoranda. Sometimes when the attorneys for the
9 applicants come and look at the file that's still in the
10 PD's office, they'll take the memo file out. So it's not
11 in order. But if you'll just indulge me for a moment.

12 THE COURT: Yes, ma'am.

13 A. I still don't see my memorandum file, which the PDs
14 may have taken out. I don't know if you or your co-counsel
15 came to look at the file or if the several attorneys that
16 he had prior to y'all had done so. But they usually take
17 the memo file out. But I do have a file that says
18 attorney's notes. If you'll just let me look through that
19 for a second to see if that has that information. I do
20 feel like there may be one other file that the Public
21 Defender's Office may have, but there are some notations.
22 But Ashley Pennington had represented him prior to my
23 getting involved with him.

24 Q. Yes, ma'am.

25 A. And these look like they may have been memos generated

1 by Ashley instead of me, just the format of them. So I
2 don't think I can say that that is a visit I had,
3 conclusively, with Mr. Mann.

4 Q. When you are meeting with your clients, don't you take
5 notes?

6 A. Yes, I do. That's what I'm telling you. That I don't
7 think that I've got that file. I think the PDs may have it
8 somewhere when they pulled it out. But I can tell you this
9 and if you want us to try to get in touch with them to see
10 if they could locate that?

11 Q. That would be a good idea.

12 A. But I will tell you this, what I did in this case, I
13 met with Mr. Mann. I think, I think the whole time that I
14 met with him he was already at Lieber, but I'm not positive
15 about that. But I would go to Lieber to see him. I know
16 Mr. Butler and I went to see him at Lieber. I think that
17 Dell Davis, a mitigation investigator that I hired on this
18 case, that she and I went to go see him. The way I handled
19 this case was, my investigator that was employed by the
20 Public Defender's Office, I did not feel like, would have
21 enough time to look into all the matters that were involved
22 in this case, because there were different incidents, there
23 were different locations as to alleged statements. And
24 there was such a large number of potential witnesses. So
25 Dell Davis was a death penalty mitigation investigator. I

1 hired her to work on this case. And I know that maybe
2 y'all have talked to her. She's available to come and
3 testify if necessary. But what we were doing with Anthony
4 was getting a list of everybody that we needed to talk to
5 and sharing with him the discovery in the case. So, if
6 your questions is, did I meet with him an adequate number
7 of times, I certainly believe that I did. I know there
8 were numerous occasions that I went out there.

9 Q. I don't mean any disrespect. It's not -- I guess my
10 question isn't whether you met with him an adequate number
11 of times, because obviously if you went forward with a
12 double-murder trial, you must have thought you met with him
13 an adequate number of times. I prefer to know the number
14 of times so the Court can later ascertain if it was
15 adequate number or not.

16 A. Okay. It would have been helpful had you, perhaps,
17 subpoenaed me and specifically ask for what you thought
18 might have been helpful. But if you would like for Mr.
19 Friedman to call the Public Defender's Office now and see
20 if they can locate that file, that would be great.

21 Q. I would. And I'll just tell you, I don't want to get
22 antagonistic here, but if you would, you know, it's
23 important how many times you met with your client when you
24 get to a PCR. I'm sure this isn't your first PCR, is it?

25 A. I've only had about three in twenty-five years. But I

1 will also say I did request the entire eight boxes and did
2 not realize that they did not include that in there. In
3 addition to that, I don't think any of your allegations
4 address the number of times that Mr. Mann and I met.

5 Q. Well, ma'am ---

6 MR. LOCKLAIR: And Judge, if you'll just ---

7 Q. --- I'll worry about what I'm going to ask and the
8 answers I get and what my allegations address and what I
9 need to get from you. And one of them is, how many times
10 you met with my client prior to proceeding with a trial
11 when he was on trial for his life for a double murder. I
12 think it's important to know how many times his lawyer met
13 with him.

14 A. Okay. Fine. Would you like to stop now? I don't
15 know how the Court would like to handle that. I could have
16 the PDs try to look for the ---

17 THE COURT:

18 MR. LOCKLAIR: I have other questions. Your
19 Honor, we can move forward on this if somebody could, you
20 know, try and get in touch with the PDs office. I mean,
21 she's going to be a while yet.

22 THE COURT: Ms. Shealy, I'm going to email Mr.
23 Pennington.

24 THE WITNESS: Okay.

25 THE COURT: Tell me specifically what ---

1 THE WITNESS: It should be a file labeled
2 memoranda.

3 THE COURT: Memoranda?

4 THE WITNESS: Memoranda.

5 THE COURT: And my question would be, if the
6 response is you have eight boxes here, where else would it
7 be?

8 THE WITNESS: The only thing I think is possible
9 is that they pulled it out when either this set of counsel
10 or Mr. Mann's previous counsel had come to look at the file
11 because they generally take out the memoranda file. And so
12 I don't know where they would possibly have it.

13 THE COURT: All right. Just a second. My clerk
14 will email Mr. Pennington. We will attempt to obtain that
15 file. But as of now, Ms. Shealy's answer to how many times
16 did she meet, is that she felt she met an adequate number
17 of times.

18 MR. LOCKLAIR: Yes, ma'am.

19 THE COURT: Let's move on.

20 MR. LOCKLAIR: Yes, Your Honor. Does the Court
21 have the official transcript?

22 THE COURT: I do.

23 MR. LOCKLAIR: Should I present it to her or
24 should I just give her a copy to ---

25 THE WITNESS: I've got a copy.

1 THE COURT: I have a copy of the transcript.

2 MR. LOCKLAIR: You have a copy of the transcript?

3 Okay.

4 Q. If you could please refer to page 27. I'm moving back
5 to the number of times that it was mentioned that he was in
6 the Department of Corrections and a prisoner.

7 A. And that's in which Volume?

8 Q. Page 27, Volume 1. I believe it's all numerical
9 starting at one and going through the end of the trial.

10 A. Oh, okay.

11 Q. I think it was set by volume. Page 27, Lines 2 and 3.
12 If you could please look at that.

13 A. The juror's statements?

14 Q. Yeah?

15 A. Okay.

16 Q. Okay. So this is jury selection, correct?

17 A. Let's see. It certainly appears to be, yes.

18 Q. Okay. And so all the jurors are in the courtroom,
19 correct, all potential jurors?

20 A. I would assume so, yes.

21 Q. Well, I'm going to have you look at the transcript on
22 Page 21, Lines 5 and 6. The Court says, all right. Madam
23 Solicitor, please call the indictment number and charge.
24 And then the Court goes further, through Lines 12 through
25 25, it says, all right. Ladies and Gentlemen you have a

1 charge that's called out to you.

2 A. Yes.

3 Q. Does that help refresh your recollection ---

4 A. Yes.

5 Q. --- this was, in fact, jury selection and every single
6 potential juror would have been sitting in the courtroom at
7 that time?

8 A. I would think so, yes.

9 Q. In the normal course of you trying cases, you go to
10 jury selection and the Judge is asking the jury questions
11 for qualification, isn't it the rule of the Court that all
12 the potential jurors be seated in the courtroom at that
13 time?

14 A. Yes.

15 Q. Okay. So on Line 27 that juror says in front of all
16 the jurors, I used to work for SCDC where he's at. I've
17 got two questions about that. Number one, how would he
18 know that, if you know? And number two, why did you not
19 object at that point and move for a mistrial for the fact
20 the entire jury panel would have been tainted from the very
21 beginning?

22 A. I don't know how to answer that, other than to say
23 that maybe we made a decision that when the juror responds
24 where he's at, that it wasn't overly clearly who that
25 person was referencing, but I'm not sure about that. And I

1 could not answer how that person would know that that was
2 where Mr. Mann was.

3 Q. Okay. So I guess your other answer is, you're not
4 sure why you didn't object? You said, we could have made
5 this, we could have, but you can't recall?

6 A. I don't recall.

7 Q. Okay. Let's move on to the trial transcript at Page
8 661, please.

9 THE COURT: I'm sorry, counsel, what page?

10 MR. LOCKLAIR: 661, Your Honor.

11 Q. I'm going to refer to Lines 16 -- 16 through 18 would
12 be the pertinent lines.

13 THE COURT: Did you say 6-1 counsel?

14 MR. LOCKLAIR: 661, Your Honor, Lines 16 through
15 18.

16 THE COURT: Okay. Thank you.

17 A. Okay. I see where we are.

18 Q. Okay. And just for your recollection, if you refer
19 back to 658, you can see that this is actually examination
20 done by you.

21 A. And this is of which witness?

22 Q. This would be of Christy Bunch.

23 A. Okay.

24 Q. And your cross starts here and that just reflects that
25 throughout this you're the one asking questions. Isn't it

1 correct that on page 661 starting at line 16 you, Anthony
2 Mann's attorney said, and then he told us that when he was
3 out at Lieber you all had a conversation, you all were
4 arguing. So you brought up Lieber in that situation,
5 correct?

6 A. Yes. I don't know whether or not that had been
7 brought up during direct or not. But, obviously, I brought
8 it up there.

9 Q. Okay. And had it been brought up in direct, should
10 you have objected to it then too?

11 A. I don't remember the context of everything. I don't
12 know whether -- you know, there were those telephone calls
13 that came into question about when Anthony says something
14 to Christy Bunch on the telephones while he was out at the
15 Department of Corrections. I can't tell you right now
16 whether or not that had already been gone through on
17 direct. But if it had then the fact that he was at Lieber
18 would have already come in.

19 Q. Right. Because you didn't object to it?

20 A. I don't know whether I objected to it or not. I know
21 I didn't object to it here when I'm asking the question.

22 Q. I can't go through every page of the transcript with
23 you, but what if I can tell you that nowhere in here did
24 you ever object to it coming out when he was in Lieber,
25 that he was a prisoner serving a sentence as a convicted

1 felon, that he had a prison guard by him, it's nowhere in
2 here. It's almost like proving a negative.

3 A. Well, you could prove to me where it says that it came
4 in that he was a convicted felon.

5 Q. Well, we'll get to that part. I think it's not. If
6 I'm wrong, I'll strike it. But first off, he's at Lieber.
7 Lieber's near Charleston, correct?

8 A. Yes.

9 Q. People in the Charleston community are very familiar,
10 with Lieber as being a State Department of Corrections
11 facility, correct? If they know what is? If they know
12 about Lieber, they know that it is a prison, because that
13 is what it is, correct?

14 A. I would certainly say if they know about it, they know
15 about it.

16 Q. Okay. And it's fair to say why people with
17 misdemeanors could see how he could be a convicted felon,
18 he was a convict. That should be made clear by saying he's
19 at Lieber, right?

20 A. Not ---

21 Q. Convicts stay at Lieber, right?

22 A. Not necessarily. Sometimes they also house people
23 from the detention center there if they're causing problems
24 at the local jail.

25 Q. Okay.

1 A. And, frankly, I don't remember whether he was already
2 convicted for something and that is why he was at Lieber or
3 if he was at Lieber because of some type of safe
4 housekeeping.

5 Q. Okay. Then I'll refer you to page 662, lines 2
6 through 4. You asked him about the telephone conversations
7 at the jail, correct?

8 A. Yes.

9 Q. That's not the prosecutor bringing that out, correct?

10 A. Yes. But I don't know whether or not that the
11 prosecutor had already brought it out.

12 Q. But if she had, it's fair to say you didn't object,
13 did you?

14 A. I can't answer that question.

15 Q. If the transcript, the thousand pages of transcripts
16 reflect -- do not have any objections to you about him
17 being in prison, is it fair to say the transcript is a
18 clear, correct, and accurate copy according to the court
19 reporter when it occurred?

20 A. Certainly.

21 Q. So if it's not in the transcript, then it's fair to
22 say that you did not object?

23 A. That's correct.

24 Q. Okay. Let's move on. If you could, please, look at
25 page 675, lines 16 through 18.

1 A. Yes.

2 Q. Once again you bring up the fact by saying he's still
3 seeing people like Maria Jacks while he was in prison. Is
4 that correct?

5 A. That's correct. And I remember Mr. Mann believing
6 that the reason Christy Bunch had turned on him was because
7 she was jealous that females were seeing him while he was
8 at Lieber. So that probably also went to try to dilute the
9 damage done by Maria James Jacks.

10 Q. Well, don't you think you could have done that without
11 having to mention prison? Saying, aren't you jealous
12 because he talks to other girls? Aren't you jealous
13 because he sees other girls? Not, aren't you jealous
14 because he has other girls come see him in the maximum
15 security Lieber Correctional Institution?

16 A. Well, perhaps I could have. But, again, we're still
17 not sure as to whether or not the State had already gone
18 through that with Christy Bunch on the direct.

19 Q. Right. And if they had, it would be fair to say you
20 should have objected and made an error by not objecting?

21 A. Not necessarily.

22 Q. And if you didn't object, you certainly shouldn't have
23 kept rehashing it for the jury over and over and over,
24 should you have?

25 A. In that you noted that this transcript was very

1 lengthy and I know you're aware that there were numerous
2 witnesses and numerous occasions and numerous times that
3 Mr. Mann said various things to various people, it may have
4 been necessary to direct the witness as to what
5 conversation I was discussing.

6 Q. Okay. Well, let me go back on these. Okay. With
7 Christy Bunch on line [verbatim] 661, line 16 through 22
8 when you said he was out at Lieber and y'all had a
9 conversation, why didn't you first try dates, like in March
10 of 2002, you had a conversation. You didn't even pursue
11 that avenue, did you?

12 A. Again, I don't have the benefit of knowing right now
13 whether or not it had already been established on direct
14 that she was visiting him at Lieber.

15 Q. No, no, no. My question wasn't that. You just told
16 me that you would refer to Lieber to help clear up when the
17 conversation was and help the witness know what
18 conversation you're talking about.

19 A. Oh, well, I can say uniformly that this cast of
20 characters in Mr. Mann's case were not very good at
21 recalling dates, nor would many of us be able to if I were
22 just to have given the date.

23 Q. But you didn't even seek to try and get a general time
24 frame before you reinforced the fact to the jury that your
25 client on trial for double murder was sitting in prison?

1 A. It doesn't appear like I did that there. No, it
2 doesn't.

3 Q. If you could turn to page 676 at lines 6 through 7.

4 A. At line what? I'm sorry.

5 Q. 6 through 7. The last sentence. You said, I think
6 you already prostituted yourself before he went to prison.

7 A. Another example of what you're asking?

8 Q. Was that a trial strategy you had to reinforce that he
9 is in prison to give them another time frame?

10 A. I think it's an unfair characterization to say that I
11 was trying to reinforce it. If anything, I was trying to
12 do my best to help Mr. Mann in this case. So I would
13 object to your -- I mean, I would disagree with the use of
14 the word reinforce. It certainly wasn't a goal of mine to
15 make sure the jury knew that he had been housed at Lieber.
16 So, all I can tell you is that if I phrased it in that way,
17 there must have been some reason that I needed to do so, or
18 it must have already been in the record that he was at
19 Lieber. And, again, I'm not confident -- he could have
20 been. But I'm not confident that he was there because he
21 had been convicted of something.

22 Q. Well, whether he's convicted or not. But you said
23 there must have been some reason. Well, obviously, if
24 there must have been some reason you think with no reason
25 it would have been ineffective. So what was your reason?

1 A. I'm not suggesting that what I did was ineffective and
2 I don't think your phrasing the question that way is going
3 to get the result that you think it is. I certainly don't
4 believe I was ineffective.

5 Q. Right. And because -- right. You said you had a
6 reason for bringing up the prison, right?

7 A. No, I didn't say that necessarily. I said that could
8 have been. I also said that it may have already come out
9 on direct and been in the record, that it was not adding
10 any harm to it.

11 Q. So I guess then in your professional opinion as a
12 trial lawyer, you don't think it adds any harm to
13 repeatedly bring up the fact to the jury that your client's
14 in prison, over and over and over, even though there's tons
15 of case law out there that says you can't have a prisoner
16 in uniform. You can't have him handcuffed. You don't
17 think that prejudiced the jury at all, in your professional
18 opinion?

19 A. Which thing doesn't prejudice it?

20 Q. That he's in prison.

21 A. He wasn't sitting in prison garb in the courtroom.

22 Q. I understand that. I understand that.

23 A. Well, that's the example you just gave.

24 Q. Our Supreme Court has said -- and tell me if this is
25 correct -- the U.S. Supreme Court has said, it's not fair

1 to put a Defendant in trial in prison garb and handcuffs.

2 It can prejudice him if people know he's in prison, right?

3 A. Certainly.

4 Q. So you dress out, correct?

5 A. Yes. And you also are aware that sometimes the

6 location of conversations are relevant for some reason. I

7 cannot tell you right now why that may have been relevant.

8 I cannot answer that question.

9 Q. Then I'll move on. Do you understand the whole point
10 of this hearing is to find out why you did certain things

11 and why it was relevant? That's why I'm trying to ask

12 these questions, is to find out why you did and didn't do

13 things that you should have or shouldn't have done in my

14 opinion. So if you don't have a reason, don't know a

15 reason, you can just tell me and I'll move on.

16 A. That's what I've done.

17 Q. No, no. You said that the State might have brought it

18 out or you had some trial strategy. You don't know -- you

19 have no reason at this point as to why you kept bringing up

20 that he was in prison? You can't recall why you kept

21 bringing it up over and over?

22 A. No. I've given you some examples of what may have

23 lead to that. I don't remember.

24 Q. We're not here for conjecture and speculation. We're

25 here for facts for the Judge. So you can't remember?

1 A. And the answer would then be, I don't remember. And I
2 can tell you that I'm very cautious about making sure that
3 my client is not prejudiced by something. So, I would,
4 therefore, believe there must have been something else
5 going on.

6 Q. But you weren't cautious enough to object when five
7 minutes into the trial, juror number 125 says, I used to
8 work for SCDC where he's at?

9 A. I don't even remember that question being asked. So I
10 can't answer that other than to say that I guess
11 strategically at that point we thought it was such a non-
12 issue that we didn't object.

13 Q. Well, for one thing I would ask you this, because I've
14 tried a lot of cases. I've been PCR'ed a lot more than
15 three times because I try tons of cases. How did you have
16 time between when he says, all right. Thank you. Yes,
17 sir. He stands up and says, I used to work for SCDC where
18 he's at. All right. Approach the bench. When did y'all
19 have time to -- you and your co-counsel, whoever, to have a
20 conversation and decide whether you should object or not?
21 It would seem to me that that should have been an
22 instantaneous objection based -- if somebody had trial
23 experience, don't you think?

24 A. I have quite a bit of trial experience. I'm not sure
25 if you're aware of that or not. And what I'm telling you

1 is, I don't know the answer to that question. If you've
2 tried a lot of cases, you know that sometimes when someone
3 stands up and says something you get the feeling that maybe
4 everybody didn't hear it. Or you feel like for some reason
5 drawing attention to it may exacerbate the situation. Or
6 that we could have had dialogue with Mr. Mann or with Mr.
7 Butler. I can't answer the question. I don't even
8 remember that being asked. So I cannot give you an answer.

9 Q. Okay.

10 A. If you were to ask me whether or not in general I
11 would like for someone to announce in open court that my
12 client was in prison, I would say no.

13 Q. Right. And most trial lawyers would think that that's
14 very prejudicial, correct?

15 A. I would certainly think so.

16 Q. Okay. And you said you're very careful about
17 protecting your client, correct?

18 A. I am. I am careful.

19 Q. But two minutes into the trial you let somebody talk
20 about him being in prison. You can't recall it even
21 occurring, and that's a huge deal in the jury selection
22 because that kind of stuff doesn't happen all the time.
23 You can't recall what conversations you had and you
24 certainly didn't object, and you weren't very careful about
25 protecting him at that point, were you?

1 A. Well, let me answer it this way. We had Judge Pieper
2 as the Judge, who, I'm sure, if you haven't tried a case in
3 front of him, you know him by reputation. That he, too, is
4 very protective of the record. I had very experienced co-
5 counsel, along with myself. And none of us brought any
6 issue up about that. I am not totally confident that that
7 was said in that way, or if it was, that it was heard by
8 everyone in that way. Because I don't remember it
9 happening.

10 Q. So you're saying ---

11 A. Are you going to continue to argue with me or are you
12 going to ask me a new question?

13 Q. I'll ask the questions here. You'll answer the
14 questions, please. So what you're saying is that it might
15 not have been said that way. The court reporter may have
16 taken it down wrong?

17 A. I'm not saying that that happened.

18 Q. Okay.

19 A. I'm saying I don't know. If I did not catch it, Mr.
20 Butler did not catch and Judge Pieper did not catch it. I
21 cannot answer the question. Because Judge Pieper is
22 abundantly cautious, as well. And if it were early enough
23 into the jury selection and there was something problematic
24 then we could have just started over with the jury
25 selection. I don't recall it happening.

1 Q. Okay. There was a bench conference held, just for
2 your information, and that's, once again, going to be on
3 page 27 of the transcript. After that bench conference was
4 held, you failed to put anything on the record that --
5 about what occurred in that bench conference, correct?

6 A. Let me see. What page?

7 Q. Page 27, lines 6 through 8? Because as soon as he
8 says that, the Judge tells him to approach the bench. The
9 Judge certainly heard it.

10 A. I'm sorry. Tell me again. Page 27?

11 Q. 27, line 6 through 8. And just for clarification,
12 when you selected the jury with Judge Pieper, how far were
13 the jurors from y'all and how far were they from the Judge?
14 Are they closer to y'all or to the Judge?

15 A. Closer to us than the Judge.

16 Q. Okay. And the Judge -- for the record, obviously the
17 Judge heard this because he says, All right. Approach the
18 bench, sir; at Line 5, correct?

19 A. He does. But in that there is nothing further on the
20 record, I cannot say exactly what happened.

21 Q. Right. After a bench conference if you want to
22 preserve something for the record as a lawyer, you're
23 supposed to, at some point, put it on the record, correct?
24 Otherwise, it's just as if it didn't happen, correct?

25 A. You certainly should put it on the record if it is of

1 a nature that deals with a ruling of law. Certainly.

2 Q. Okay. What about when it deals with a juror blurting
3 out for the entire jury panel that your client, who's on
4 trial for double murder, is at Lieber Correctional
5 Institution or in this case at SCDC, is how he put it at
6 that point?

7 A. I'm not sure that -- what's your question?

8 Q. You don't think that's something important to note for
9 the record, is ---

10 A. I certainly think it is if that, in fact, is what
11 happened at the bench conference.

12 Q. Right. But y'all didn't note it so the world will
13 never know, correct?

14 A. We may not have noted it because it may have been --
15 it may have been, do we need a restroom break? I have no
16 idea what the bench conference was about.

17 Q. Ma'am. Look at page 27 for me, please?

18 A. I'm looking at it.

19 Q. Are you being honest -- I mean is -- in telling me
20 that you think when juror -- the juror on lines 2 and 3
21 says, I used to work for SCDC where he's at. The Clerk
22 says on line 4, 125 Randleman Rowe. And the Court says on
23 line 5, all right. Approach the bench, sir. And that
24 might have been a restroom break? Are you serious?

25 A. No. I didn't say that it was about a restroom break.

1 I'm telling you that I do not know the answer to that
2 question.

3 Q. Okay.

4 A. I do not remember it. I don't know how I could be
5 more clear than that.

6 Q. And no one will know because it wasn't preserved for
7 the record?

8 A. I don't know that there was something that needed to
9 be preserved for the record. That's where I'm disagreeing
10 with you.

11 Q. But you can't recall what was said, so we won't know,
12 will we?

13 A. We don't know what was said because there was nothing
14 put on the record. I can agree with that.

15 Q. Okay. Well, let's move on. Are you familiar with
16 State's Exhibits ---

17 THE COURT: Counsel, just on page 27, so I'm
18 clear because I have a feeling this is going to get very
19 lengthy, you're indicating that there was something that
20 happened off the record that wasn't placed on the record?

21 MR. LOCKLAIR: Right. On lines 6 through 7,
22 Whereupon, a bench conference was held with Judge and
23 counsel in presence of the jury but out of the hearing of
24 the jury. And I wanted to know if anything else, other
25 than what's on the record, was up there or did it all occur

1 with the juror there, I guess is my point. But she doesn't
2 remember.

3 THE COURT: All right.

4 MR. LOCKLAIR: Because a lot of times before the
5 Court talks to the juror, they'll talk to the attorneys and
6 that's what looks like happened.

7 THE COURT: Well, typically, it's been my
8 experience, just so that I'm clear. It's typically my
9 experience that when an off-the-record or outside the
10 presence of the court reporter record is heard, it will say
11 off-the-record outside the presence or not recorded. Are
12 you indicating that that happened? Is that -- I'm just
13 trying to get ---

14 MR. LOCKLAIR: I was trying to get from her if it
15 did happen.

16 THE COURT: Right.

17 MR. LOCKLAIR: If everything that happened in the
18 bench conference was in the record or not is what I was
19 trying to get to. It's typical for things to be said in
20 side bar and then have the juror, you know, things you
21 don't want the juror hear, the potential juror. And I was
22 making sure -- I was trying to find out if there was any of
23 that because there is stuff on here, obviously, with the
24 juror present.

25 THE COURT: Right.

1 MR. LOCKLAIR: That occurred at the side-bar.

2 And I was ---

3 THE COURT: All right. I was just making sure I
4 understood what you were trying to elicit from Ms. Shealy.
5 All right. Thank you. I'm sorry for the interruption.

6 MR. LOCKLAIR: All right. No problem, Your
7 Honor.

8 Q. State's Exhibit 94 was a shotgun. Do you recall the
9 shotgun being introduced into evidence?

10 A. Is that the one that somebody referenced earlier that
11 had been at Dante's house?

12 Q. No. This is the one that was found in McDonald's
13 parking lot and had no connection to the crime, from what I
14 saw from the transcript. It was introduced on page 1,137.
15 Do you recall that?

16 A. Well, I'll have to look.

17 Q. It was found at McDonald's.

18 A. Tell me the number again?

19 Q. 1,137. Ms. Burney introduced the shotgun, lines 4 and
20 5.

21 THE COURT: 1197, counsel?

22 MR. LOCKLAIR: Yes, ma'am. No, ma'am, Your
23 Honor. I'm sorry. I misspoke with my page. I'm sorry,
24 Your Honor. 1137 is where it comes into evidence. 1126 is
25 on -- would be basically where it was talked about where it

1 was found. But I want to go to 1137 first, lines 4 through
2 5. That's when it came into evidence. I just wanted to
3 refresh your recollection on that.

4 A. I see that that is where it came in and that I had no
5 objection. But I'm not sure which -- where that shotgun
6 came from. You say that's on 1126?

7 Q. I believe. Let me check. That's what my co-counsel
8 told me. The question starts by Ms. Burney at line 10 on
9 1126.

10 A. I see that it says it was recovered behind the
11 McDonald's at the intersection of Ashley Phosphate and
12 Dorchester. I don't have any independent recollection
13 about that. I don't know if there's a witness who
14 testified about that gun being placed there. I just don't
15 remember.

16 Q. Okay. But needless to say that, and let's just make
17 clear from the transcript here, that it was sent off for
18 testing, correct, according to the transcript?

19 A. According to the transcript, uh-huh (affirmative).

20 Q. In lines 28 and 21 it was not consistent with any
21 bullets that were fired from the scene, correct?

22 A. That's correct.

23 Q. Okay. So if there's no other link linking that to the
24 crime scene, would you have objected?

25 A. (No verbal response).

1 Q. It doesn't appear there is a foundation of, you know,
2 or any relevancy why it came into evidence. I'm just kind
3 of curious as to why you didn't object to that shotgun
4 coming in?

5 A. I don't remember anything independently about that.
6 And I don't know if it, like I said, if it had been
7 mentioned by some other witness as to where a certain
8 shotgun had been placed. I just can't answer that
9 question.

10 Q. Okay. But if the only testimony is, is it came from
11 McDonald's and you let it come into evidence, you would
12 just have to admit that was ineffective, correct?

13 A. I don't know that I would admit that it was
14 ineffective without having more information about it.

15 Q. Okay.

16 A. I would certainly think that if there were no
17 relevance to that weapon, that I would have objected.

18 Q. Okay.

19 A. That's a better way to answer that.

20 Q. Okay. Are you familiar with the *Holman v. State*, a
21 2009 case?

22 A. You'll have to ---

23 Q. Court of Appeals, Supreme Court. Basically a pistol
24 was seized from the Defendant's residence that was not
25 connected to the shooting for which the Defendant was being

1 investigated. That came into evidence with the defense
2 counsel failing to object, as you did here, and the Court
3 said, that cannot be trial strategy under any circumstances
4 and undermined the confidence and the trial result. Are
5 you familiar with that case?

6 A. I don't know that I'm familiar with it.

7 Q. Okay.

8 A. I hear what you're saying about it. And I certainly
9 wouldn't disagree. What I cannot answer, however, is what
10 was in the record about that shotgun before it came in.

11 Q. Okay. Well, let's say there's nothing in the record
12 about the shotgun, and judge -- other than it was found at
13 McDonald's. It had no connection to the crime whatsoever
14 because now in the *Holman* case, the pistol was seized from
15 the Defendant's residence, and even if this came from bias,
16 it had no connection to the crime whatsoever, you still
17 think you should have objected?

18 A. I truly cannot answer that and I'll tell you why. For
19 some reason, I was thinking that there had been a shotgun
20 that had been at Dante's house. I may be remembering that
21 incorrectly.

22 Q. Why wouldn't you object to that?

23 A. Well, because what I was -- I don't know. I don't
24 know except that it may be that it heightened the fear that
25 the guys had of going over to Dante's that he would have

1 had a weapon. He had a holster on his waist that we were
2 trying to repeatedly bring into the record. And if, in
3 fact, he also had possessed a shotgun then they may have
4 thought that would have helped my client rather than hurt
5 him if there's no connection with my client and the
6 shotgun. But I really cannot answer that question without
7 knowing when, prior to its admission, it had been
8 previously discussed.

9 Q. So what you're saying is that you may have made a,
10 quote, trial strategy to allow in a gun that was not
11 connected to the shooting in question?

12 A. I am saying that I do not recall what is in the record
13 about that shotgun.

14 Q. Okay. But the one thing you can recall by looking at
15 the transcript is you certainly did not object to the
16 shotgun, correct?

17 A. That's obvious from the transcript.

18 Q. And that shotgun came into evidence against Mr. Mann,
19 correct?

20 A. It came in during his trial. I don't know whether
21 there was any connection with it and Mr. Mann or with it
22 and Mr. Tobias.

23 Q. Now, Mr. Mann was the one on trial, right?

24 A. Obviously so. But that doesn't necessarily mean that
25 everything relevant that came in directly affected Mr.

1 Mann. If, for some reason, it could have been helpful to
2 him. But I don't have a recollection of that.

3 Q. So you're alleging that maybe the State introduced a
4 shotgun to try Mr. Tobias rather than Mr. Mann?

5 A. No. They may have been putting the shotgun in to
6 paint the complete picture. I don't know. I don't know.
7 I mean, if you ---

8 Q. To paint a picture of their victim being a drug dealer
9 with guns who might have killed these people? He could
10 have done it in self-defense. What kind of picture would
11 they be painting that you wouldn't have objected to this?

12 A. I don't -- I've already answered your question. I
13 don't -- I cannot answer your question, okay?

14 Q. Okay.

15 A. I cannot answer your question.

16 Q. All right. Let's move on to this crime scene video.
17 You introduced that, correct?

18 A. Yes, I did.

19 Q. What was that a video of?

20 A. It was law enforcement recovering the body of Brownie.

21 Q. Okay. So would it be fair to say that it probably
22 wasn't the most pleasant thing to look at?

23 A. Oh, and I certainly advised the jury of that. But
24 what it did do, we hoped, was gave us some good information
25 for the jury to have about the condition of her body when

1 they came upon it and when they were filming it. We were
2 trying to show that she had not been killed the evening in
3 question but, in fact, later. And I brought in a guy from
4 out-of-state who had been riding like a -- I don't know --
5 some type of vehicle back in the mud, in that area, so we
6 were trying to show that it had been raining since the date
7 of the killing. When you saw the body of Brownie, you
8 could tell that the folds in her clothes, etcetera, did not
9 look like they had been wet and were mushy, but that they
10 were crisp. When they move her body a little bit, the
11 steam comes out, which shows -- there was some testimony
12 about if the ground is hot and the body is cold the steam
13 could come out. Or if the ground is cold and the body is
14 warmer and that gets trapped underneath it, the steam could
15 come out, which we were hoping would show that Brownie's
16 body had not been put there as early as the State was
17 suggesting. Additionally, you could see some activity in
18 her eyes, I believe, of -- I can't remember what you call
19 it, but some type of insect activity that would have been
20 suggestive of the death occurring more recently than what
21 the State was showing. So there were a variety of reasons
22 that we wanted to show that. And the ground was wet around
23 where her body was, yet she did not appear wet. So we
24 thought that all of that would be helpful in trying to
25 distance the time of death.

1 Q. And all of that came through -- out through other
2 witnesses too, correct? Basically, everything you just
3 cited about the bugs in the eyes, the clothes, the steam,
4 the wet ground, ATV rider, all of that came out through
5 testimony, in addition to the video?

6 A. I don't know that it did. I don't know if law
7 enforcement agreed with all of that or not.

8 Q. Okay. And this was pretty graphic, correct?

9 A. It was certainly somber.

10 Q. Is it not fair to say graphic with bugs crawling in
11 her eyeballs?

12 A. You couldn't see bugs crawling in her eyeballs, but
13 you could just see ---

14 Q. What did you see?

15 A. You could see bug activity, from what I remember.

16 Q. What, did they eat part of her eyeballs? Did that
17 make it less graphic?

18 A. Are you -- I'm not sure if you're asking me a
19 question.

20 Q. I'm asking you what kind of bug activity? Did they
21 gnaw her eyes or something?

22 A. I don't know. I mean, I'm sure you've got the
23 videotape. I don't know.

24 Q. I mean, I'm trying to ask -- I'm trying to figure out
25 why you would play something that almost any defense

1 attorney would do back flips off a twenty foot building to
2 keep from coming in for a jury when what you wanted to show
3 could come from other evidence when this was a really
4 graphic video.

5 A. We had an extremely difficult case where we had a
6 number of witnesses who were going to testify about what
7 Mr. Mann told them, admitting killing Brownie. We knew the
8 jury already knew she was dead. We knew the jury knew that
9 she was found out in a field. And we believed that in
10 order for them to get an appreciation for her not being
11 wet, her appearing dry and the surrounding area, that it
12 would be best done by showing the videotape. We certainly
13 deliberated over it before we did so, but we felt like that
14 was our best shot at getting the jury to understand that
15 this body does not look like it's been here for a number of
16 days.

17 Q. Okay. Who's we?

18 A. Mr. Butler and I?

19 Q. So the two of you talked about it and y'all ---

20 A. And we talked to Mr. Mann about it, as well, too.

21 Q. But you and Beattie, Mr. Butler, made a collective
22 decision to play the tape?

23 A. From what I recall, definitely.

24 Q. Okay.

25 MR. LOCKLAIR: I'm sorry, Your Honor.

1 THE COURT: Take your time.

2 Q. Do you recall a witness by the name of Christy Bunch?

3 A. I do.

4 Q. And do you recall her bringing up, I guess, a bunch of
5 testimony that basically she had testified that Anthony had
6 warrants out for his arrest. He was on probation. He had
7 busted up somebody's house. He was trying to bribe cops
8 and judges. He was organizing drug activity within the
9 prison. Do you recall her testimony about those various
10 things?

11 A. I don't, but I'm sure you can direct me to it.

12 Q. What do you recall about Christie Bunch, if anything?

13 A. I recall her initially being supportive of Mr. Mann.
14 They had had a romantic relationship. She was someone that
15 we expected to testify for us. And then she flipped on us.
16 And I think may have also given the State a copy of a
17 letter Anthony had written.

18 Q. Okay. So eventually she became a State's witness,
19 correct?

20 A. That's correct.

21 Q. And basically a very important State's witness,
22 correct?

23 A. Correct.

24 Q. Turn to 570. That's where her testimony ... Are you
25 there?

1 A. Yes, I'm sorry. Yes.

2 Q. Okay. If you would look at lines 10 -- well,
3 actually, that's the wrong spot. You did object on that
4 part. I apologize. Let me ask you this about that bench
5 conference when you did object. What was the -- why was
6 none of that put on the record? You had an objection. May
7 we approach. But he never says if that objection was
8 sustained or overruled.

9 A. I can't answer that. Because from my recollection
10 Judge Pieper would have his court reporter take down those
11 conferences. So I really cannot answer that.

12 Q. Judge Pieper normally had his court reporter take
13 these down?

14 A. If we approached -- you know, the court reporter would
15 be right here and we would be speaking to him with the
16 court reporter being able to hear us, from what I recall.

17 Q. Okay.

18 A. So I really cannot answer that question.

19 Q. I mean, I don't want to get argumentative, but I mean,
20 in most trials that I've been in in Federal, State Courts,
21 all around the state and other states too, that normally
22 when you go up to the bench the Judge either has to have
23 the court reporter move up so you can talk where the jurors
24 can't hear you; you're sitting right here. Or in Federal
25 Court they have system where they mute all the Mics and

1 they have an overhead system that buzzes in and all.

2 A. Right. We have white noise here. It's by -- I don't
3 know if the Judge has one on her bench.

4 Q. Okay.

5 A. But they can turn that on and then what we typically
6 do here is the attorneys kind of gather in that nook right
7 there so that the court reporter can hear, the judge can
8 hear and the jury can't hear because the white noise button
9 is put on. So I really can't answer why that's not on the
10 record.

11 Q. Okay. So that not being on the record would fall on
12 the court reporter and not on you for not making sure it's
13 on the record.

14 A. Well, I'm not placing blame on anybody. I'm just
15 telling you what I recall of Judge Pieper's practices.

16 Q. Right. He either practices or she takes it down and
17 that's her fault for not taking it down or you didn't make
18 sure it was taken down. It has to be one of the two. I
19 mean, it's not saying anybody did anything bad because
20 they're at fault. But, I mean, somebody -- either she
21 should have taken down or you should have made sure it was
22 on the record, one of the two, correct?

23 A. I would agree with that.

24 Q. You just made the assumption that she was taking it
25 down at that point. You don't have any other control.

1 She's the court reporter and you don't control her, right?

2 A. Well, I don't -- I mean ---

3 Q. She's under order of the court ---

4 THE COURT: Counsel. Please let each other
5 finish. I have not admonished you prior to this, but
6 please make sure so that my court reporter can take down
7 everything that both of you say so that when you appeal
8 this decision, perhaps, that no one will wonder what
9 happened. You may continue. Or actually, Ms. Shealy,
10 please continue.

11 A. The best way I can answer that is this. And I know
12 you say you have a lot of trial experience. I don't know
13 if you'd had the pleasure of doing one in front of Judge
14 Pieper. But he would have us approach. We would, as I
15 indicated, be in that nook and the court reporter would be
16 taking it down. That's the best way I can answer that. If
17 your question to me is if I knew that the court reporter
18 wasn't taking it down, should I have put it on the record,
19 my answer to that question would be yes.

20 Q. If you could look at page 579 of the transcript.

21 A. Okay.

22 Q. And you've got to backtrack, go to a conversation she
23 was having with about Anthony, but the pertinent lines
24 would be lines 12 through 17. They'd gone and done
25 something that they were proud of. They were like busting

1 someone's house up or something, one of Dan's girlfriend's
2 boyfriends, that he's mad at. Why didn't you object to
3 that as being bad acts, when no evidence of that was
4 brought up?

5 A. I don't know the answer to that. I would have said
6 that we had handled prior bad acts somewhere earlier in the
7 process, but I'm not sure of that.

8 Q. Right. But I -- the rule of Court is -- I'm not going
9 to ask you whether you know it or not. I assume you know
10 of it. But the rule of Court is, if I make a motion to
11 exclude bad acts and it comes up through a witness, as a
12 defense attorney, I have to re-object because motions in
13 *limine* are not totally binding in a trial. And should that
14 evidence come out in a trial and I don't re-object, even
15 though the Judge has ruled in a motion in *limine* that bad
16 acts as character -- inadmissible, that still comes in.
17 That still remains in the record. That still is used
18 against the client. So whether or not there was anything
19 beforehand or afterwards or any other time, why, during
20 this part of the trial, when Christy Bunch was on the stand
21 did you not object to her talking about him busting
22 somebody's house?

23 A. I don't know the answer to that. I just don't know
24 the answer to it.

25 Q. Okay.

1 A. I was trying to flip back to see if it was -- if a
2 discussion about that was pretty recent to that testimony
3 or not. But I don't know that I can find that.

4 Q. Okay. Would it help you to know how important you
5 thought it was if you turned to 589 where you moved for a
6 mistrial later on based on it, when you missed the
7 objection? You are aware that objections have to be
8 contemporaneous, correct? You know that, right?

9 A. Yes, I do.

10 Q. Okay. I'm not trying to be smart with you. But you
11 brought it up later for a mistrial, which you obviously
12 heard it because you made a mistrial for it two pages, you
13 know, two findings later, something like that. Actually,
14 you moved for the mistrial -- the specific part about it,
15 is if you flip over to page 590, contact with Daniel Cahee
16 [phonics], that he messed up someone's house.

17 A. I'm sorry. Where are you looking?

18 Q. The actual -- where you bring up that specific
19 statement is on page 590, line 1 and 2, conduct of Daniel
20 Cahee that they messed up someone's house. You reference
21 it back to what I just told you about Christy Bunch.

22 A. (No verbal response.)

23 Q. But you did catch it when they talked about getting
24 drugs, so one of the two that you made for a mistrial ---

25 A. Yeah. I cannot answer why I would not have objected

1 contemporaneously then.

2 Q. It's fair to say you should have objected, correct, in
3 hindsight? You made a motion for a mistrial on it.

4 A. I think probably I should have then.

5 Q. Okay. We got one. Good. Let's move on. All right.

6 Do you recall a witness Dustin James?

7 A. Not just by name, but ...

8 Q. His testimony begins on page -- actually, that's the
9 in-camera part. I'm sorry. Let me get to where he's
10 actually out in Court. His actual testimony in front of
11 the jury begins on 851. Actually, I'm going to move on
12 from that. We can just move on past him. I think there
13 was something in there about what Mr. Butler had raised. I
14 want to go real quick to a guy, Roderick McBride. Do you
15 recall him?

16 A. No, I don't.

17 Q. Do you recall Krystal Lackey?

18 A. Yes. Vaguely, yes.

19 Q. Okay.

20 A. I mean, if you point me in the right direction, it
21 might refresh my memory as to McBride.

22 Q. McBride, I think, is her step-father.

23 A. Oh, I saw that in your allegations.

24 Q. Okay. So you're kind of familiar with what I'm
25 talking about? Roderick McBride, page 1042 is where he

1 starts. That's her -- Krystal Lackey, another State's
2 witness, that's her step-dad, correct?
3 A. I'm sorry. You wanted me to turn to 1042?
4 Q. Yeah. That is where his testimony starts ---
5 A. Okay.
6 Q. --- that you can refresh your recollection with him.
7 A. I see that he testifies ---
8 Q. Okay. On 1043, line 12, this is my step-daughter.
9 A. Right.
10 Q. So that establishes he's her step-dad, correct?
11 A. Right.
12 Q. Now, why did y'all not object to his testimony coming
13 in as purely being bolstering and -- basically, bolstering
14 Krystal Lackey's testimony? And you can read what's in
15 there.
16 A. Okay. Just indulge me just a second then. And you're
17 asking why I didn't object to it being bolstering?
18 Q. Right.
19 A. I guess maybe -- I mean, I hate to say the word maybe,
20 but I don't remember specifically what I was thinking at
21 the time. But in having re-read it just now, or read it
22 just now, I don't know that I would have necessarily
23 thought of that as bolstering. I may have just thought it
24 set out the timing of when Krystal Lackey reports something
25 to the police. He's not echoing what she said at all, but

1 rather how it was he hooked her up with law enforcement to
2 be contacted.

3 Q. Yeah. I guess, how is that relevant to this case?

4 A. I don't know that it's overly relevant nor do I think
5 it was much to it. It was just setting out how it was that
6 Krystal Lackey got in touch with the police. It didn't
7 seem harmful in any way.

8 Q. It doesn't seem -- I mean, he's a cop. He's calling
9 because he's a former cop, calling other cops. You don't
10 think that kind of helps on the credibility issue for the
11 State when it's something that really wasn't that relevant?

12 A. Not necessarily. Not with my experiences with jurors
13 and police officers. I mean, I don't think that it -- the
14 leap would be to necessarily believe what Lackey said
15 because her step-father's a cop.

16 Q. I guess I want to hit on something, which I'm sure
17 you're not going to be able to answer these either because
18 there's no transcripts. But there were several sealed
19 hearings in this case. Do you recall why the defense
20 didn't ask for specific findings from the Court prior to
21 having in-camera hearings?

22 A. I'm sorry. Why I didn't do what now?

23 Q. There were several hearings that were sealed. They
24 were held out of the presence of everybody basically. Do
25 you recall why y'all didn't ask for specific findings from

1 the Court as to why it was necessary to hold those hearings
2 in-camera versus allowing Anthony to have access to a
3 public trial?

4 A. I don't understand how those obviated his having a
5 public trial.

6 Q. Well, it wasn't in public where he's making a finding
7 that it's necessary not to be in public. Did he make that
8 finding?

9 A. I'd have to look at the transcript from the
10 proceedings.

11 Q. Let me see if I can find the pages to ---

12 A. I'm talking about from the sealed -- do you have the
13 sealed ones?

14 Q. No, they've been destroyed. They don't exist. Rather
15 than me going back through and checking all the pieces of
16 the transcript, the Court has the transcript. Is it fair
17 to say that if there's nothing on the record making
18 specific findings then there should be in-camera hearings
19 and the public should be excused from the trial, if that's
20 not in the record, is it fair to say it was not brought up
21 in court?

22 A. I'm sorry. Just ask that again. I just want to make
23 sure I understand what your question is.

24 Q. Is the record a fair and accurate record of what
25 occurred during this trial?

1 A. Not if there were proceedings that took place in-
2 camera that were sealed.

3 Q. Right. But if the Judge made specific findings that
4 something needs to be put in-camera and needs to be sealed
5 within this public forum, that would be transcribed by a
6 court reporter because this is a court of record, correct?

7 A. What I don't know is whether he did that in the in-
8 camera hearing and put it on the record.

9 Q. If he did, why didn't you come back out and object
10 because that's the wrong way to do and the Judge would have
11 made a huge error by doing it that way?

12 A. I don't know how to answer that, other than to say I
13 wish I had the benefit of those transcripts.

14 Q. Well, we do too. So you don't remember what the
15 hearings were about, I assume, too, correct?

16 A. I remember the nature of one of them. How many -- I
17 don't remember how many there were.

18 Q. What's the one you remember. Let's just go with what
19 you remember rather than waste time with things you don't.

20 A. There were some allegations made by Mr. Mann that law
21 enforcement had been putting undue pressure on some of the
22 witnesses that he had hoped would testify for him. And
23 Judge Pieper explored that by calling both the witnesses
24 and the law enforcement officers. And I know we made a
25 record of all of that.

1 Q. And do you recall what was the gist of those hearings,
2 what was found, what was discussed?

3 A. No. I'm sure it would have been in those transcripts.

4 Q. Okay. In this case there was a pathologist, Dr. Susan
5 Presnell, who testified. Do you recall that?

6 A. I do.

7 Q. Do you recall her testifying about the vitreous fluid
8 in the eye?

9 A. I do.

10 Q. Okay. My first question would be, why did y'all not
11 hire an expert to deal with this because it was very
12 critical to the time of death of Ms. Blake?

13 A. Because when we met with Dr. Presnell, she was pretty
14 candid, and I think I crossed her about all of this, that
15 it wasn't an exact science as to the vitreous fluids. That
16 there were a variety of different formulas that could be
17 used to measure the potassium level. And that she chose
18 the one that would make it the greatest distance of time
19 since the death, recognizing there were others that would
20 put it at a lesser amount of days. I think I then, on
21 cross-examination, even asked her to perform one of those
22 equations using yet another recognized formula, which
23 placed it much more recent for the death of Ms. Blake than
24 the formula that she used and that she also testified that
25 one formula was not superior to the other. So we thought

1 we could accomplish all of that with her. She, I think, in
2 her testimony certainly says that timing the death of a
3 person is not exact, that they don't like to go down that
4 road, that there are too many variables. I do know,
5 though, that I retained two different experts regarding
6 entomology and the bugs in the eyes. One that Mr. Butler
7 referenced early, Mr. Butz, who has the body farm in
8 Kentucky or wherever. And then also Lee Goff who is an
9 expert and lived in Hawaii. With both of them, we sent the
10 videotape from the crime scene, the autopsy, all the
11 information, and they both gave us the same response which
12 was, without actually having them eggs themselves to take a
13 look at, they really couldn't testify for us because there
14 was no way they were going to be able to date anything. So
15 we made that effort regarding two different experts and
16 just were unable to, without the eggs themselves, present
17 something.

18 Q. Were the eggs preserved by the medical examiner?

19 A. No.

20 Q. Okay. So they were just destroyed or whatever after
21 the autopsy?

22 A. I believe that's right. I mean, if there's something
23 in the testimony we can certainly look at that, but I
24 believe that's right.

25 Q. Let me correct. There were actually four in-camera

1 hearings that were sealed. And you only recall one of
2 them, correct?

3 A. I do. I don't remember the nature of the other three
4 at all, frankly. But -- does it appear that they were all
5 on different issues or could they have been with different
6 witnesses and different law enforcement people on the same
7 issue?

8 Q. Most of them are on different issues, but we'll
9 revisit that if we need to. Did y'all look at anything
10 about DNA evidence that was taken from Ms. Blake?

11 A. Are you talking about the semen fluids?

12 Q. Uh-huh (affirmative).

13 A. I don't think so.

14 Q. But that DNA didn't match Anthony, correct?

15 A. That's correct. I think there -- now, I could be
16 stating this incorrectly, but I was thinking there wasn't
17 enough to get a profile. I'm not absolutely certain about
18 that. You may be more familiar with it than I am, but
19 there may not have been enough to get a profile.

20 Q. Okay.

21 A. But it was not damning to him.

22 Q. But if they had gotten a profile and it wasn't him, it
23 would be important to bring out, right?

24 A. If they had gotten a profile and it was damning, is
25 that what you're saying?

1 Q. If it was not him. It was not him.

2 A. Oh, yes.

3 Q. Say you got a profile and it says, you know, it can't
4 be him.

5 A. Somebody else. Yeah, obviously.

6 Q. Okay. I guess you don't need your notes for this, but
7 did you and Anthony ever talk about alibi defense as far as
8 where he would have been, especially as it were to go with
9 the murder of Beverly Blake?

10 A. Yes. And I think what he indicated to us was that --
11 and when I say us, I mean Gail Davis and me and probably
12 Mr. Butler, as well -- was that he and Christy Bunch were
13 home sick for several days after the evening at Dante
14 Tobias's. And at first we had hoped that Christy, in fact,
15 would echo that alibi, but as we've already talked about
16 it, she flipped on us.

17 Q. Okay. And when did you give -- because you were
18 looking into it, when did you give the State notice of an
19 alibi defense, if you ever did?

20 A. I don't know. I don't remember when Christy flipped
21 on us. So I don't know if by the time that we had it
22 scheduled for trial we already knew that and she was no
23 longer an alibi witness, or whether I did do that and she
24 flips after it because they contacted her. I don't know.

25 Q. Okay. Do you know if you filed a notice of alibi?

1 A. I don't.

2 Q. You don't know either way?

3 A. I just don't remember.

4 Q. Okay. If you did not and originally he had an alibi,
5 would you consider that to be ineffective for not having
6 filed that?

7 A. I would consider ---

8 Q. Had, I guess, had the alibi before? Just the non-
9 filing because obviously you have to give the State notice
10 of alibi, correct?

11 A. I think the question would be would it be ineffective
12 if he had an alibi and I didn't provide a notice and that
13 person were prohibited from testifying.

14 Q. Right. And if that happened, I mean, obviously it
15 didn't ---

16 A. Obviously.

17 Q. --- in this case. But it's important to serve an
18 alibi notice if there is an alibi?

19 A. Yes. And typically we don't serve them too far in
20 advance because we were concerned as defense attorneys that
21 law enforcement may put some pressure on them. But you
22 would want to do it with adequate time for the State not to
23 be able to make the motion to preclude it.

24 Q. Okay. And going back to the in-camera hearing. You
25 don't recall anything about -- the specifics about who the

- 1 State might -- because weren't there some allegations the
2 State -- that some of the witnesses alleged that they
3 didn't have to talked to y'all?
- 4 A. I'm sorry. Oh, that the State had said that?
- 5 Q. That some of the witnesses -- didn't somebody tell
6 your investigator or one of you that the witnesses said the
7 State's going to want to talk to y'all?
- 8 A. That sounds very familiar.
- 9 Q. Okay. Was that anything that was brought up in a
10 hearing, if you recall?
- 11 A. From what I remember -- I don't know if I'm going to
12 remember exactly what the difficulty was. But I know that
13 there were repeated allegations that the Solicitor's
14 Office's investigators or the detectives in the case were
15 putting pressure on the victim -- I mean, on our potential
16 witnesses to discourage their testifying. And I do
17 remember some allegations that certain witnesses were told
18 they may call you, but you don't have to talk to them.
19 Now, if you're asking me did that specifically come up in
20 those in-camera hearings? To the best of my recollection,
21 they did. But I cannot swear to that, just because I don't
22 have the benefit of the transcript.
- 23 Q. Okay.
- 24 A. I know that Mr. Mann was upset, very upset, that so
25 many people who he believed were going to be helpful to us

1 were backing out on us.

2 Q. Right.

3 A. And it was after they had had contact with either the
4 solicitor's office or the agents in the case.

5 THE COURT: Counsel, I don't mean to rush you,
6 but do you have any idea how much longer you're going to
7 be?

8 MR. LOCKLAIR: I'd hate to under-guess, but I'd
9 say probably an hour.

10 THE COURT: All right. Let's take a break. Is
11 your witnesses here, your other witness here?

12 MR. LOCKLAIR: Your Honor, I know that one of
13 them has walked in. I don't believe the expert's here yet,
14 though.

15 THE COURT: How many other witnesses do you have,
16 counsel, after Ms. Shealy?

17 MR. LOCKLAIR: We have Ms. Shealy, Mr. Mann, Ms.
18 Davis, the investigator, and then our expert. That's it,
19 correct?

20 MR. KENDRICK: Well, we have one other girl
21 that'll be maybe ten minutes.

22 MR. LOCKLAIR: So potentially five.

23 THE COURT: All right. Please quit clicking the
24 pen.

25 MR. LOCKLAIR: I apologize, Your Honor.

1 THE COURT: All right. We're going to take a
2 fifteen minute break. Have you contacted Mr. Pennington.
3 I don't --

4 MS. SHEALY: I saw ---

5 THE COURT: I see him walking around here.
6 During this break if he -- I don't know what his response
7 is going to be. So if you will check with him. He's no
8 longer in the courtroom. So if you'll check with him.

9 MS. SHEALY: Okay.

10 THE COURT: And, again, you know not to discuss
11 your testimony.

12 MS. SHEALY: Would you have any objection with
13 his paralegal, who was my former paralegal, being able to
14 come back here to the boxes with us.

15 THE COURT: I have no objection. Let's get this
16 resolved as quickly as we can. Fifteen minutes. Thank
17 you.

18 MR. LOCKLAIR: Thank you, Your Honor.

19 (WHEREUPON, court stood at recess for a short break.)

20 THE COURT: All right. Ms. Shealy, I remind you,
21 you're still under oath. Were you able to locate the
22 documentation?

23 MS. SHEALY: No, I wasn't, Judge. Ms. Driggers
24 just looked in the box with me. She's going back to the
25 closet where they kept the file to see if the memoranda

1 file is there. I do, however, have the bill from -- that
2 Gail Davis submitted that may reflect some of the
3 visitations when I was with her with Mr. Mann.

4 THE COURT: Okay.

5 MS. SHEALY: But I haven't had a chance to look
6 at it yet.

7 THE COURT: And is Mr. Friedman here?

8 MR. FRIEDMAN: Yes, ma'am.

9 THE COURT: I'm sorry. I couldn't see through
10 counsel. We had an off-the-record discussion and there is
11 a -- I have scheduled an appointment unrelated to this case
12 based upon my review of the docket this morning. So we are
13 going to work as long as we can, but I will be leaving the
14 bench at three thirty. I have checked with everyone and we
15 will -- everyone, counsel and my court reporter are in
16 agreement to work through lunch and that will be our lunch
17 hour. So plan accordingly. I had indicated -- Ms. Shealy,
18 you're in the building and so we could take a witness out
19 of order if we needed to do that to accommodate your
20 traveling witnesses. So please keep me informed and please
21 keep an eye on the clock. Thank you.

22 MR. LOCKLAIR: Judge, just seeing that Dr. Ross
23 told me that she was pulling into downtown. She said
24 depending on the traffic on Meeting Street ---

25 THE COURT: All right. Well, then we'll keep Ms.

1 Shealy on the stand until she's here or however y'all wish
2 to do it.

3 MR. LOCKLAIR: Well, we can keep her on the stand
4 for now, Your Honor. I'll try and speed it up obviously to
5 cover the issues but I'll try. Some of those we're going
6 to go into a little more.

7 THE COURT: I understand.

8 MR. LOCKLAIR: So I'll try and speed up to
9 accommodate the Court.

10 THE COURT: I understand counsel. And certainly
11 you have all the time and if we needed to continue this to
12 a later time this week or later, I'll be more than happy to
13 accommodate you with that. However, as I indicated, based
14 upon my review of the allegations and the docket this
15 morning, I made -- as you know, I'm Chief Admin, so I made
16 some other arrangements this afternoon. Is he coming?

17 MR. LOCKLAIR: They sent him downstairs. We're
18 trying to retrieve him.

19 THE COURT: All right. You may continue,
20 counsel.

21 MR. LOCKLAIR: Thank you, Your Honor. May it
22 please the Court.

23 Q. Going back to some of the stuff we started out with in
24 the beginning, I understand you couldn't find the
25 memorandum file?

1 A. No. And Joanie Driggers from the Public Defender's
2 Office, who was my paralegal at the time, and is Ashley
3 Pennington's now, thumbed through all the boxes with me too
4 just to see if it had been mis-filed back. We couldn't
5 find it. She's going back to the closet at the public
6 defender's office to see if it had gotten pulled out and
7 put -- she indicated that there had been several times the
8 whole file had been copied -- not that that should mean
9 that's why it's gone, but she just was going to go back and
10 look one more time.

11 Q. I know you don't have any say over this now, but you
12 were the Chief Public Defender, correct ---

13 A. Yes.

14 Q. --- for this Circuit? Why would that have been taken
15 out of the file when the file was turned over to us as his
16 PCR attorneys considering there's no more attorney/client
17 privilege and we're defending him. Why weren't -- why
18 wouldn't that -- was that a policy of y'all's office when
19 you were there?

20 A. I don't recall whether it was a policy when I was
21 there or not, but -- let me think about that just for a
22 second, whether it was a policy. I don't recall whether it
23 was a policy or not. I know that there are differing
24 opinions about that, but that it was that individual
25 lawyer's work product and sometimes that would not be

1 provided to the new applicant's counsel, if I remember
2 correctly. Ms. Driggers could probably better answer that
3 for you.

4 Q. Okay. But obviously you're -- when did you leave the
5 PD's office, I guess, would be the ---

6 A. I left the PD's office in, I think, 2006.

7 Q. All right. So you had nothing to do with this when it
8 came to PCR. You had already ---

9 A. I was already gone, yeah.

10 Q. Okay.

11 A. And I was thinking that Ms. Driggers had said that she
12 was going to pull out work product, I think. But I'm not
13 totally positive about that.

14 Q. Okay. And so you can't say how many times you met
15 with him prior to trial, but it was an adequate amount,
16 correct?

17 A. I can't say. Again, and I know that you plan on
18 calling Gail Davis, but one thing that we were very
19 interested in doing was talking to everybody that Mr. Mann
20 had indicated might be helpful to us and to the State's
21 witnesses. So that took a lot of conversation and we
22 wanted to make sure he hadn't thought of someone else, you
23 know, so I know that we saw him often. Not like you might
24 see someone who was down at the jail frequently, because it
25 would take a little more effort to get down there. But I

1 never had a sense that I had not met with him enough before
2 I went to trial.

3 Q. How would you -- you say often, and I really don't
4 mean any offense by this, but I know public defenders have
5 a huge workload. One of the biggest complaints I get from
6 private clients who hire me is that my public defender
7 comes to see me in the jail. They come to see me twice a
8 year. What do you characterize as often?

9 A. Oh, I don't have a number for you.

10 Q. Okay.

11 A. I guess the better way to answer that would be I would
12 see a client as often as I felt like either they needed
13 hand-holding or I needed information from them.

14 Q. So you're like me. You might have to see a client
15 once, you might have to see a client twenty times. It just
16 depends on the case and the client?

17 A. It does. I can't imagine once, but ---

18 Q. Well, some cases you ---

19 A. Right.

20 Q. Okay. What did you and Anthony discuss about his
21 statement to law enforcement?

22 A. Oh, I have no recollection.

23 Q. No recollection? You don't recall him bringing up
24 that he was threatened with racial violence and sexual
25 assault?

1 A. No. Actually, something about what Mr. Walker had
2 said to him about -- was there some allegation about
3 Detective Walker and oral sex or something?

4 Q. I believe it was something along those lines. But he
5 brought up something about that kind of stuff?

6 A. That seems familiar to me.

7 Q. Did he bring up anything about being handcuffed to the
8 chair and had a gun held to his head and being told he
9 would be shot. Did he bring that up to you?

10 A. I don't remember.

11 Q. Did he bring up to you any of the stuff about them
12 making threats towards females that he had been with?

13 A. Say that again to me?

14 Q. Making threats about a female that he was with?

15 A. Like a specific one, you mean?

16 Q. The girl he was arrested with? His girlfriend. I
17 can't remember her name right now. I'll get my client to
18 write it down for me. Do you recall any sort of threats
19 like that being made about anybody, including him?

20 A. In other words, are you saying that when they went to
21 arrest him, they threatened whoever was with him?

22 Q. No. They arrest them both and then tell him, you
23 know, if you don't help us out, you know ---

24 A. Talking about her children or something?

25 Q. Christy Bunch, at the time, do you recall threats with

1 her children ---

2 A. Yeah. I do.

3 Q. --- and things of that nature?

4 A. I do remember that.

5 Q. Did you bring that up to the Judge in your motion?

6 A. In the in- ---

7 Q. *Jackson v. Denno* hearing?

8 A. What I'm questioning is if that was one of the in-
9 camera matters. I don't remember. But regarding the
10 *Jackson v. Denno*, I guess the transcript will speak for
11 itself. I'm not sure whether I went into that litany of
12 questions or not.

13 Q. Why did y'all decide not to put Anthony up at the
14 *Jackson v. Denno* hearing?

15 A. I don't remember.

16 Q. What would have been the negative of putting him up at
17 the *Jackson v. Denno* hearing, outside of the presence of
18 the jury?

19 A. I really just don't remember.

20 Q. Wouldn't it be fair to say that without his testimony
21 it's highly unlikely that his statement would be excluded,
22 since there would be no evidence in the record for it to be
23 excluded, other than what you could possibly elicit from
24 the cops on cross-examination?

25 MS. SHEALY: I think Ms. Driggers just walked in,

1 maybe, with that file.

2 THE COURT: Hold up one second. Ms. Driggers, do
3 you have the file?

4 MS. DRIGGERS: Yes, I do.

5 THE COURT: All right. Thank you.

6 MS. SHEALY: May I step down to get it?

7 THE COURT: Mr. Friedman can just bring it to
8 you. Thank you, Mr. Friedman. Thank you, Ms. Driggers.

9 A. To answer your question regarding the statement. I
10 don't know how to answer it because I don't specifically
11 remember why we made the decision not to put him up for
12 purposes of *Jackson v. Denno*, because sometimes you would
13 put a client up to see how -- kind of for a trial run, to
14 see how they would do if they were to testify in front of a
15 jury. And then secondly, obviously, if you felt like they
16 had any complaints that needed to be brought to the Court's
17 attention during the hearing itself. And I don't remember
18 why we did not put him up. I don't remember.

19 Q. So absent practice, I guess, for the jury or a
20 complaint that they have, you don't think it's important to
21 put them up to deny their statement was freely and
22 voluntarily, knowingly and intelligently given, explain the
23 facts and circumstances from their perspective that would
24 contradict the police officers?

25 A. Yes, if that's the situation that we were in. What I

1 can't tell you, though, was whether Mr. Mann refused to
2 testify, wanted to testify, whether there was something
3 that we were worried about in having him testify. I just
4 can't answer that question.

5 Q. Okay. Can you answer any questions regarding the
6 alleged excited utterance where one of the detectives was
7 doing a swab and he basically said, you know, that
8 Brownie's hair -- just that Brownie's hair would be on him
9 because I hugged her before. I hugged her recently. Do
10 you recall that statement?

11 A. I recall that statement in that I looked at some of
12 the materials today. But I don't remember why we did not
13 have him address that in the *Jackson v. Denno*.

14 Q. Okay. And did you -- y'all didn't even challenge it
15 as not being an excited utterance either when it came in,
16 correct?

17 A. I don't know if that's accurate or not.

18 Q. Okay. In hindsight, if somebody was getting basically
19 physical evidence taken from their person, they say, you
20 know, you might find hair on me. In your opinion, does
21 that fall under the excited utterance exception to the
22 hearsay rule or would you think that's something that
23 should have been objected to as an excited utterance?

24 A. I guess the best way to answer it is if I thought it
25 should have been objected to, I would have objected to it.

1 Q. Well, and I don't want to get argumentative, but
2 sometimes as you said, you miss things. Earlier you missed
3 the objection about busting up the house and said it should
4 have been objected to. Is it possible that this is
5 something that you could have missed? An excited
6 utterance?

7 A. It's certainly possible.

8 Q. Okay.

9 A. But I also don't know whether it had been addressed
10 earlier. You may be more familiar with the transcript,
11 obviously, but I don't know whether that was discussed in
12 argument fashion or not.

13 Q. And just back to the experts on the vitreous fluid,
14 you said you talked to Dr. Presnell about all her findings
15 and her reports, correct?

16 A. About all her findings and her reports?

17 Q. Right. Basically that you didn't call an expert
18 because you had talked to her and you figured you could get
19 what you needed on cross?

20 A. I thought that the way that she was going to present
21 the vitreous fluid information was inadequate and that we
22 could handle what we needed to on cross.

23 Q. Okay. And did it play out that way at trial when she
24 presented it, as you expected?

25 A. I think she did. And I asked her to do -- use a

1 different formula and she came up with a different amount
2 of days.

3 Q. And as far as the alibi, once again, you just said if
4 y'all had one you would have put it in time, in time enough
5 to have the witness be available to the State?

6 A. As to the notice of alibi?

7 Q. Right?

8 A. Yes. And from what I remember -- you could ask Ms.
9 Davis this as well, but I think it was Christy Bunch and
10 she had children and they were obviously too young to have
11 been witnesses, but that his position had been that he and
12 Christy both were sick with like either a stomach situation
13 or something. And it just didn't bear out once Christy
14 decided to be a State's witness.

15 Q. Okay. Some of the witnesses that were called, were
16 y'all -- did y'all -- I mean, I guess the State provides
17 you with NCIC reports, rap sheets on them?

18 A. I don't remember.

19 Q. So are you aware that three witnesses Nicole
20 O'Connell, Tiffany Marcato, and Krystal Lackey had prior
21 criminal convictions involving dishonesty and they weren't
22 brought up during their cross-examinations?

23 A. I'd have to look in their individual folders, assuming
24 that's where those rap sheets would have gotten filed, to
25 conclude that. Now, I don't know -- what were the nature

1 of the crimes? Like shopliftings or something or ...

2 Q. I don't have those notes. Just described as

3 dishonesty. Is there anyway you could get their files ---

4 A. Yeah.

5 Q. --- to look to see if you did have that information at

6 the time of trial?

7 A. Yes. Tell me the names again?

8 Q. Nicole O'Connell, Tiffany Marcato, Krystal Lackey.

9 MR. KENDRICK: Your Honor, I was just going to
10 walk outside to check on Dr. Ross. I just don't want to be
11 rude walking in and out of your courtroom.

12 THE COURT: Thank you, counsel.

13 A. Marcato and Lackey; and who was the third one?

14 Q. O'Connell, Nicole O'Connell.

15 A. I don't see one in Ms. O'Connell's file. The only
16 reservation I have in saying I did not have one would be if
17 they provided it during trial, and it got placed somewhere
18 other than in her individual folder. But I don't see one
19 for Ms. O'Connell.

20 Q. Okay.

21 A. Krystal Lackey, I do have one. And it looks like she
22 had a fraudulent check. It looks like she had -- from what
23 I have, she had a fraudulent check.

24 MR. LOCKLAIR: Your Honor, at this time, I would
25 like to offer that as Defendant's 1 or Plaintiff's 1 into

1 evidence.

2 THE COURT: What is that?

3 MR. LOCKLAIR: It's the NCIC of Krystal Lackey.

4 THE COURT: All right.

5 MS. SHEALY: And it's unstapled. If we can
6 staple it.

7 THE COURT: We can staple it.

8 MR. LOCKLAIR: Thank you, Your Honor.

9 THE COURT: Is there any objection, Mr. Friedman?

10 MR. FRIEDMAN: No objection, Your Honor.

11 THE COURT: Okay. Are you requesting to move
12 that into evidence, counsel?

13 MR. LOCKLAIR: Yes, ma'am. I'm requesting to
14 move it into evidence.

15 THE COURT: Plaintiff's 1 into evidence without
16 objection.

17 (WHEREUPON, Plaintiff Exhibit Number 1 was marked and
18 admitted into evidence.)

19 Q. So is it fair to say that a fraudulent check charge is
20 a charge that could be brought up under the rules of
21 impeachment if it was in the time frame?

22 A. It could. And I'm looking in Marcato's if you'll give
23 me just a second.

24 Q. Okay.

25 Q. I have one for her as well. I don't see a conviction

1 for her, but I have her rap sheet.

2 Q. Okay. We don't have access to those. That's why I
3 was asking. So I knew at least one of them did. I want to
4 move on to -- Defendants Zack and Crumm were co-Defendants
5 of Mr. Mann's, correct?

6 A. That's correct.

7 Q. And they were housed at the Charleston County
8 Detention Center, correct?

9 A. I believe that's correct. Yes, I would assume so.

10 Q. Did Anthony bring up to y'all the fact that they were
11 housed in ways they were able to communicate back and
12 forth?

13 A. I don't remember that. He may have. I don't remember
14 that.

15 Q. Okay. Basically, there was another, I guess, detainee
16 at the jail named William Woodson who was called, correct?
17 That y'all called as a witness?

18 A. I hate to keep going back to my files.

19 Q. He's the one that Scarlet Wilson referred to as,
20 quote, as a squirrely looking, mentally ill child
21 molester. Does that help refresh your recollection?

22 A. I saw that in your allegations. I don't specifically
23 remember that. But do I need to get my file or were you
24 going to ---

25 Q. Oh, no, no, no. I was going to ask you if you recall

1 him as a witness?

2 A. I really don't. Tell me what he testified to?

3 Q. Basically, he was testifying to, and this is what I
4 wanted to see if Anthony discussed with you, was the
5 ability of inmates to communicate with cell blocks that are
6 above each other, back and forth, and down through the
7 yard.

8 A. That's what he testified to?

9 Q. Right.

10 A. I don't remember that, but certainly, obviously, that
11 could have happened.

12 Q. And Anthony also -- did Anthony talk to y'all about
13 that because there were some allegations about Anthony
14 yelling some stuff in the yard?

15 A. I remember some allegations about Anthony yelling
16 something.

17 Q. Okay.

18 A. But I don't remember Woodson's connection with that,
19 exactly.

20 Q. Well, do you recall as Woodson was testifying -- I
21 believe he was testifying about Michael Crumm and Eric Zack
22 yelling. But it was basically Michael Crumm telling people
23 that Beverly Blake was the killer of Dante Tobias and he
24 was yelling it out on the rec field in front of everybody.
25 Do you recall that?

1 A. I don't actually recall it, but was that elicited from
2 him in Court?

3 Q. Yes, ma'am?

4 A. Okay. I just don't remember that.

5 Q. Okay. And y'all called Mr. Woodson as a witness
6 yourself, correct, the defense?

7 A. I mean, if you're looking at the transcript and we
8 did, we did. I just don't remember.

9 Q. It is your witness. Do you not think that it was
10 important for y'all to object -- I guess there's a litany
11 of objections to it, for calling a witness a squirrely
12 looking, mentally ill child molester? Did y'all not think
13 that was an important objection when the Solicitor attacks
14 a witness that way?

15 A. Did she say that to his face or she said that in
16 closing or what?

17 Q. I forgot exactly where. I think she called him a
18 child molester during the cross. But the squirrely
19 looking part was in closing.

20 A. I don't know that I would have thought to object to
21 that, frankly. I mean, it's not nice. I don't know that
22 it's inappropriate.

23 Q. Well, if a person was mentally ill, that means he
24 would not be competent to testify under the rules. So
25 number one, right there, she's making a legal conclusion

1 that your witness that you put up is not competent to
2 testify. You don't think that would be important to object
3 to.

4 A. I don't remember. If you could refresh my memory or
5 just direct me as to what he testified about. I mean, did
6 he testify about some type of mental health history or
7 something?

8 Q. His testimony starts about -- I'm trying to see if I
9 can find the spot where he does -- but he starts out on
10 page 1332.

11 A. I'm sorry. I don't know why I can't find that one
12 volume. Are yours in volumes? Like, is that in Volume 7?
13 1332?

14 Q. Volume 7, yes, ma'am. 1333 get to the gist of his
15 testimony where he talks about Michael Crumm talking about
16 it, if that'll refresh your recollection.

17 A. Okay. I've got so many files here. Somehow I've
18 misplaced that one volume. Or if Mr. Friedman has one I
19 could look at, that would be great.

20 Q. Well, if it would help you. He entered a plea of
21 guilty but mentally ill on ---

22 A. Oh, okay. And that came into the record?

23 Q. Right.

24 A. I mean, that doesn't excuse her referring to him that
25 way as far as politeness goes. I don't know that it was

1 inappropriate.

2 Q. Okay.

3 A. I mean, you know, I guess that's a judgment call.

4 Q. Squirrely looking ---

5 A. I mean, that's not a nice way to ---

6 THE COURT: Counsel. Please do not talk over
7 each other.

8 MR. LOCKLAIR: Sorry. I apologize, Your Honor.
9 That was my fault.

10 Q. Squirrely looking, can we say, is a personal attack
11 on somebody. It's completely irrelevant to a trial and
12 just one thing completely unprofessional and uncivilized
13 for a lawyer to do to somebody. But you've got to be fair
14 to say somebody called your client squirrely looking, you
15 would object, correct?

16 A. I would have objected if it were my client.

17 Q. Yeah. Because it's inappropriate for a courtroom,
18 correct?

19 A. I would agree that that was not a good way to refer to
20 him. At the time, whether or not I thought it was worthy
21 of an objection, obviously, I didn't.

22 Q. It's fair to characterize it as very unprofessional,
23 correct, to say something ---

24 A. Well, I don't want to characterize her as being
25 unprofessional.

1 Q. That comment. Let's say that comment, not her. I'm
2 not saying Ms. Wilson ---

3 A. It was indelicate.

4 Q. Okay. I'm not impugning anything to Ms. Wilson.
5 She's a fine solicitor. She was a great U.S. Attorney.

6 But the comment itself was not very -- not professional ---

7 A. No. But I think I've probably made some like that
8 myself, so I guess that's why I hesitate to be too
9 critical.

10 Q. Okay. And y'all never re-challenged the joinder issue
11 until the directed verdict motion, correct?

12 A. Now, let me tell you what I thought had happened. And
13 I don't know if I can find it in the transcript. I
14 remember during one argument Ms. Wilson indicating that she
15 did not intend to call Peter Davies. And I remember our
16 questioning the -- I mean, we were in disbelief because we
17 certainly thought she was going to call Peter Davies. And
18 I remember a motion regarding that, that Mr. Butler was
19 arguing, and I thought that at that time he renewed the
20 joinder issue because it had been based on the belief that
21 Peter Davies was going to testify. I don't know if Mr.
22 Friedman has found that in the transcript or not, but
23 that's what I would tell you from the best of my
24 recollection because I can remember that happening way into
25 the trial, because we were surprised that she was not going

1 to call him.

2 Q. Okay.

3 A. So I don't know how to answer your question other than
4 to say that I thought at some point when she articulated to
5 the Court that she was not going to call him, that we then
6 had another motion regarding the previous motion, during
7 which she indicated there was an eyewitness.

8 Q. Okay. It would be fair to say that if she indicated
9 she was not going to call him, he was the alleged
10 eyewitness to the Beverly Blake murder, correct?

11 A. That's correct.

12 Q. And he was linked back to the Dante Tobias murder,
13 correct?

14 A. He wasn't present at the Dante one from what I
15 remember, but he provided the gun and it was his house they
16 went to.

17 Q. Right.

18 A. Yes.

19 Q. Yeah. He was linked into it, and they were linking
20 him saying he was the eyewitness to Beverly Blake, correct?

21 A. Right.

22 Q. When they indicated that he wouldn't be called,
23 wouldn't that have been the appropriate time, if it wasn't
24 made -- I can't -- I'm not sure right now without -- but
25 shouldn't a motion have been made at that time to revisit

1 the joinder issues, which y'all might have done?

2 A. I think it would have been an appropriate time and I
3 really thought that we did do that.

4 Q. Okay. And it would have been at that point that it
5 should have been brought up and not waiting until the
6 directed verdict motion, correct?

7 A. Well, I think it should have been brought up at that
8 point. Now, what I'm questioning, though, is whether she
9 was through with her case. And I mean, it may be that that
10 issue didn't become ripe until she had rested her case and
11 we knew in fact she was not going to call him.

12 Q. Okay.

13 A. Do you see what I'm saying?

14 Q. Right. But you've got to be solid sure. I understand
15 where you're going with that.

16 A. Right.

17 Q. But needless to say if it was not in the transcript,
18 it wasn't done until the directed verdict motion ---

19 A. And it's not in the transcript.

20 Q. --- when Mr. Butler moved for a mistrial at that point
21 based on that?

22 A. That's correct.

23 Q. And that mistrial was obviously denied, correct?

24 A. Correct.

25 Q. What discussions did you have with Anthony about his

1 right to testify?

2 A. Okay. Can you give me a moment to look in this
3 memorandum file. I'm not sure I have it in there. But
4 that's the one she just brought me. I don't remember. I
5 don't remember whether -- unless I have something noted.--
6 whether he was completely opposed to testifying or whether
7 he wanted to testify. I don't remember. But I can
8 honestly say this, that I have never forced someone not to
9 testify if that's what they wanted to do.

10 Q. Yes, ma'am. Could you look at your notes and see if
11 you can kind of recall what the conversations y'all had
12 were.

13 A. Yeah. Let me just see if I -- and I'm not sure that's
14 necessarily going to be in here, but let's see. Well, you
15 know what, actually, I guess I should be looking at the
16 trial notes for that instead of this because we would have
17 talked to him about it during the trial. Would you like
18 for me to go get my trial notes? But I don't know that I
19 recorded it. I mean, I just don't know that I would have
20 necessarily taken a note on that.

21 Q. I guess it's not that important to get. Because
22 obviously if he'd told you -- and I'm not saying he did
23 this. But if he had told you that he wanted to testify and
24 you adamantly persuaded him not to, you wouldn't have put
25 that in your notes, right?

1 A. Well, I've never had that happen.

2 Q. Right. That's what I'm saying. Because you're not
3 supposed to do that. So if it had happened, you wouldn't
4 have put it in your notes, right? It's his decision to
5 testify or not testify?

6 A. It is his decision.

7 Q. Right. And I guess ---

8 A. But I don't have any, any recollection of whether --
9 you know how you have some clients who God knows they want
10 to testify and you're praying they don't. And then you
11 have some who don't want to and you wish they would. I
12 don't have any recollection with that regarding Mr. Mann.

13 Q. Okay. So you don't remember him time and time again
14 saying he wanted to testify?

15 A. I don't. I do not.

16 Q. You don't recall that after the State rested, y'all
17 had a conversation -- let me ask this. Do you recall
18 having a conversation with him after the State had rested
19 prior to the Judge asking him if he wanted to testify or
20 not?

21 A. I would assume that I did have a conversation. I
22 don't recall the conversation, though. Because, you know,
23 before the Judge asks them the litany of questions
24 regarding whether they want to, I always turn to the
25 Defendant and say, now do you want to or do you not want

1 to, et cetera. So, I mean, that's my practice. Do I have
2 a recollection as to what was said at that point, no.

3 Q. So it would be fair to say you don't recall telling
4 him that in your opinion the State had failed to meet their
5 burden of proof and there wasn't any need for him testify?

6 A. Oh, I can confidently say I didn't say that.

7 Q. Both parts? The State hadn't met ---

8 A. I know I would not have said that the State had not
9 met their burden of proof. I have never said that to a
10 client.

11 Q. You've never said that even in your opinion?

12 A. Never.

13 Q. If they've asked you?

14 A. I have never said that.

15 Q. Okay. And so you also wouldn't have said that he
16 shouldn't testify, I assume, correct?

17 A. I don't know the answer to that question. It wouldn't
18 have been because I said the State had not met their
19 burden. If there had been other things that I was
20 concerned about his ability to testify, I may have given
21 him my opinion that I didn't think he should, but I would
22 not have disallowed it. But I don't even remember that. I
23 don't remember making that decision that I didn't think he
24 should. I could have, however.

25 Q. Basically, you don't recall what occurred but you

1 would not have told him not to testify. However, you might
2 have given him legal advice on what to consider in making
3 his decision whether or not to testify?

4 A. Right.

5 Q. As to your analysis of the case?

6 A. And a client's ability to be -- to come across well in
7 front of a jury.

8 Q. Okay. If you could turn to page 1604 of the
9 transcript, please. That might be Volume 8, but it might
10 still be in 7.

11 A. What is the page number again?

12 Q. 1604.

13 A. Okay.

14 Q. Lines 3 and 4, Ms. Wilson in her closing, correct me
15 if I'm wrong, doesn't she say one that -- talking about the
16 crimes -- one that Eric Zack and Michael Crumm have taken
17 responsibility.

18 THE COURT: I'm sorry, counsel. What page are
19 you one?

20 MR. LOCKLAIR: Page 1,604, at lines 3 and 4.

21 THE COURT: Thank you.

22 Q. Starting with the line when he says, this Defendant
23 went to rob Dante Tobias. He went to pick up Beverly
24 Blake. It was a mixed motive, no doubt, but one he felt
25 like he needed a gun for, one that Eric Zack and Michael

1 Crumm have taken responsibility for. Did you at any point
2 in time consider that as an indirect comment on Mr. Mann's
3 right to go to a jury trial and consider objecting?

4 A. I'm sorry. For what reason again?

5 Q. For the fact that she's alleging that Eric Zack and
6 Michael Crumm have taken responsibility for their actions,
7 but Mr. Mann's not so, you know, that's what she's trying
8 to get the jury to infer. Did you ever consider objecting
9 to that as being an improper comment on Mr. Mann exercising
10 his right under the U.S. Constitution to be presumed
11 innocent until proven guilty ---

12 A. No, I didn't think -- I'm sorry.

13 Q. --- that would be part of his trial right -- to have a
14 jury trial basically?

15 A. I don't think I did because I don't know that that's
16 the way I heard it. I think it was -- I think the way I
17 took that statement was they've come in here and told you
18 what they did. They've taken responsibility for it. I
19 don't think I looked at it the way that you're asking. I
20 don't think I looked at it that way.

21 Q. Okay. I'm sorry. I guess it's open to
22 interpretation. I just wanted to ask if you heard it and
23 how you felt. Now, if you'll turn to page 1569? This is
24 all from this closing, just kind of take it as a whole.

25 A. Okay.

1 Q. And, once again, this can be taken obviously many
2 different ways, too, but I'm trying to get to it as a
3 whole. On line 9 and 10, Eric Zack and Michael Crumm
4 pleaded guilty. The hand of one is the hand of all. At
5 any point, did you think that that had anything to do as
6 far as -- obviously, that's the law when the Judge charges
7 them. But at any point, did you consider that an improper
8 comment?

9 A. I don't think I did.

10 Q. Okay. What about on page 1571, lines 1 through 3,
11 she's talking about the cops and the pathologist. They're
12 going to stake their careers and their reputations in order
13 to frame some innocent man. And then further down, line 18
14 and 19, so much for admitting that all these professionals
15 are going to stake their careers on changing the evidence.
16 Did you ever consider objecting to that as potentially
17 being improperly bolstering or vouching for witnesses?

18 A. I don't think so because in my closing, which went
19 before, obviously, the State's in this case, I had attacked
20 the officers as having encouraged witnesses to adopt a
21 story that I thought they were presenting. So, I guess I
22 thought that was fair game on her part to say, are you
23 kidding me? Do you think these people are going to come in
24 here and risk their reputation to make these people change
25 their statement. So, no, I didn't.

1 Q. And then, I mean, she makes the same comment kind of
2 down at the bottom, line 20 and 21, putting the weight of
3 the government behind the case. And then they bring it up
4 to the solicitor's office and, oh, we jump on board to save
5 them.

6 A. Hold on one second. Let me just kind of get that in
7 context. I didn't really take that as bolstering. I
8 thought that was in response to my assertions during my
9 closing. So I didn't take it the way that you're
10 suggesting.

11 Q. Right. Then on page 1580, basically starting at line
12 4, going through line 11. Like it or don't, Krystal Lackey
13 does the right thing. You think about that when you think
14 about her credibility. Where are all those other people at
15 the party? I don't know. You certainly saw they didn't
16 have a problem calling in two guys from the ODC to talk
17 about ODC, and what happened during the fight. They didn't
18 have a problem doing that.

19 A. If you're asking whether that is potentially burden-
20 shifting -- is that what you're ---

21 Q. Right.

22 A. Yeah. I mean, I certainly think that that got close
23 to the line, but I did not think she had crossed it.

24 Q. Okay.

25 A. But certainly it raised a flag as to, whoa, she's

1 getting ready to go too far.

2 Q. Is it fair to say that's one of those where you kind
3 of get up in your seat ---

4 A. Yeah, I was like -- yeah.

5 Q. Okay. Did you ever look into anything about Krystal
6 Lackey and her changing her testimony as far as potential
7 perjury?

8 A. I'm sorry. I don't know if I know what you mean by
9 that?

10 Q. Basically, she was trying to say that there were, you
11 know, eleven people at this party, that allegedly he blurts
12 out that he had murdered somebody. You heard from one of
13 them today that said that never occurred. There were
14 obviously ten other people out there. I don't know who
15 y'all interviewed and who y'all didn't. But how much did
16 y'all look into that trying to basically prove that Krystal
17 Lackey was lying about him confessing to a murder in front
18 of a dozen people?

19 A. I know that we looked into it.

20 Q. Right.

21 A. I'd have to kind of figure out who all we were
22 successful in finding. We would have only been able to
23 identify the people at the party based on either what Mr.
24 Mann told us or based on what other people at the party
25 tell us as to who else was there. The young woman who

1 testified today, I looked back to see if we had her name as
2 being a person at the party, and we did not. So if your
3 question is, did we try to find the people who had been at
4 the party to see if we could refute it? Yes. Did we have
5 the name of the young woman that you presented today? No.
6 I don't know if that answers your question or not.

7 Q. Well, I mean, do your notes reflect it or does your
8 memory -- can you recall how many people y'all were able to
9 talk to from the party or how many names y'all did have.
10 You obviously have a list of who was at the party, because
11 she wasn't on it. So how many names on the list do y'all
12 have?

13 A. Well, when I say we had a list, I'm going to have to
14 look for that. What I meant was, the people that we
15 identified that we spoke with, I have a folder for, okay?
16 That we either looked for and couldn't find or found. So I
17 did not have one for her as being a potential person at the
18 party that we could not find.

19 Q. Okay.

20 A. Do you see what I'm saying. Now, probably Ms. Davis
21 -- and I don't know if she brought her file or not -- but
22 she was sort of tasked with running everyone down. And
23 there probably is a list of people from that party that we
24 had. Do you want me to ---

25 Q. I mean, if you have it, I'd like to know, you know,

1 who all y'all were aware of that was at the party that
2 could have refuted Ms. Lackey's assertion that he confessed
3 to a murder, a double murder, in front of a dozen people,
4 part of whom he didn't know. So who y'all talked to and
5 who y'all were given the names of and unable to talk to, I
6 guess, would be ...

7 A. Well, I don't know whether this would be time saving
8 or if this is the way you'd like to do this. But if I
9 could give my file to Ms. Davis, she could be thumbing
10 through it because it's her list of the witnesses. Or I
11 can take the time to do it right now while I'm testifying.
12 Whichever ---

13 Q. That's something you might can ask the Court
14 permission how she would prefer to have it done.

15 MR. LOCKLAIR: Your Honor, whichever.

16 THE COURT: What's your preference?

17 MS. SHEALY: Well, I think he could finish up
18 with me and I could give Ms. Davis, who's in the courtroom,
19 our file with our list of witnesses and stuff and she
20 probably can get freshened up about that.

21 MR. LOCKLAIR: If Your Honor wants to go ahead
22 and do that, our expert is here. So if we need a witness
23 in between this one.

24 THE COURT: I'm assuming you're almost done with
25 Ms. Shealy.

1 MR. LOCKLAIR: I'm getting there, Your Honor,
2 yes, ma'am. It shouldn't be that much longer, but it might
3 be easier, if the Court wouldn't mind, if we go ahead and
4 call our expert and let her look through it.

5 THE COURT: I would rather, if we're close to
6 getting done with the witness, ---

7 MR. LOCKLAIR: Yes, ma'am.

8 THE COURT: --- I'd like to at least get done
9 with direct of Ms. Shealy.

10 MR. LOCKLAIR: Yes, ma'am.

11 MS. SHEALY: Your Honor, would it be okay with
12 you and counsel if Ms. Davis came back here and had access
13 to the whole file.

14 THE COURT: If it's okay with you, Ms. Shealy.

15 MS. SHEALY: Okay.

16 MR. LOCKLAIR: We have no objection to that, Your
17 Honor.

18 MS. SHEALY: That way she can kind of be looking
19 through all that.

20 Q. All right. Let's go to page ---

21 A. I'm sorry to interrupt you ---

22 Q. Okay.

23 A. --- just for one second. But you're talking about the
24 pizza party incident.

25 Q. Right, at the pizza ---

1 A. Not the ODC or whatever at the other -- the thing that
2 Kristen [verbatim] Lackey was involved in. Krystal Lackey.
3 Here's her file.

4 Q. It would have been at Jessica Steele's house.

5 THE COURT: Please quit clicking the pen.

6 MR. LOCKLAIR: I apologize, Your Honor.

7 MS. SHEALY: May I hand this to Ms. Davis real
8 quick?

9 THE COURT: You may.

10 MR. LOCKLAIR: It's a nervous habit, Your Honor.
11 I'm sorry. I wasn't trying to annoy the Court.

12 THE COURT: I understand that, counsel.

13 Q. Are you ready?

14 A. Yeah. I'm sorry.

15 Q. Okay. If you would turn to page 1321 in the trial
16 transcript.

17 A. Okay.

18 Q. I'm just going to move past that. I apologize.

19 MR. KENDRICK: Your Honor, just a second. I
20 believe Ms. Davis told me that they handed her the wrong
21 file.

22 MS. DAVIS: This is Nicole O'Connell. It's the
23 wrong one.

24 MS. SHEALY: I'm sorry.

25 THE COURT: You may get the file. Thank you.

1 Q. Going back to this statement real quick, do you recall
2 y'all requesting a specific jury charge on the
3 voluntariness of his statement, saying that the jury
4 ultimately determines voluntariness? And basically while
5 the Judge can admit, you know, find something under *Jackson*
6 v. *Denno* can come in, it's up to the jury to determine
7 whether the statement was actually voluntary or not?

8 A. I don't remember whether we did or not.

9 Q. Okay. Was it you or Mr. Butler who was in charge of
10 y'all's jury, requests for charges to the jury?

11 A. I don't recall.

12 Q. Do you recall going over the malice charge together?

13 A. I don't know that I specifically recall that.

14 Q. As far as Mr. Zack and Mr. Crumm, what all did y'all
15 know about the circumstances surrounding the plea
16 agreements that they had had with the Ninth Circuit
17 Solicitor's Office?

18 A. Well, I'm not sure if this fully answers your question
19 or not, but we would have been provided copies of their
20 plea agreements, assuming they were recorded and they were
21 written. I don't recall whether or not they were. But if,
22 in fact, there was a written plea agreement or proffer, I
23 would have had a copy of it.

24 Q. Did y'all ever contact their defense attorneys to
25 discuss with them any conversations the prosecutor may have

1 had?

2 A. I don't recall.

3 Q. And just to point out, let me correct myself. Ms.

4 Wilson said, you saw how squirrely he was, was the

5 comment. That was on 1585 of the -- not squirrely

6 looking. So you don't recall whether you would have talked

7 to their attorneys or not?

8 A. I don't recall.

9 Q. In the normal course of your criminal defense practice
10 when you have cooperating co-Defendants that are going to

11 be testifying against your client, do you normally try to

12 speak to their attorneys ahead of time, because you

13 obviously can't talk with them, to find out what they're

14 going to testify to.

15 A. I generally do. That's not very often been successful

16 because obviously you're trying to please, I guess, the

17 State at that point. I don't even remember who their

18 attorneys were.

19 Q. In this case, the State did the kind of deal where

20 they don't give a sentence because they think it'll

21 prejudice them in front of the jury, correct? They haven't

22 been sentenced?

23 A. They've not been sentenced yet.

24 Q. Yeah. And that's pretty much standard for the

25 solicitor's office to do, correct?

1 A. Yes.

2 Q. Did you ever look into the Grand Jury in this case
3 when and where it was convened?

4 A. I don't recall doing that. Was it -- I don't know if
5 there was an issue about that, but I don't recall looking
6 into it. I know that indictments were true billed.

7 Q. Did you -- I mean, so you saw -- you actually saw
8 signed true bill copies?

9 A. I believe I did.

10 Q. But as far as the malice charge, when the Judge talked
11 about that for malice to be inferred from use of deadly
12 weapon. That's in the transcript. So, I mean, that was
13 his charge, if you don't recall. But did y'all ever submit
14 any other charges to him that dealt with malice?

15 A. I would assume that would be in the record if we did.

16 Q. Okay. Because basically that -- currently, it would
17 be an incorrect statement, but back at the time it wasn't
18 clarified that basically -- it's been decided since then
19 that that's obviously not a true statement of law because
20 somebody acting in self-defense has no malice, but can be
21 armed with a deadly weapon, right?

22 A. I mean, the law on that has changed.

23 Q. Right. That's what I'm saying. It wasn't at the
24 time.

25 A. Right.

1 Q. But did y'all ever consider at the time that basically
2 it took a lawyer who had a case where somebody could have
3 acted in self-defense, which is what was alleged here that
4 Anthony did when Tobias tried to shoot him first, you know,
5 according to some witnesses. Whatever could have played
6 out. Did y'all ever consider asking the judge for such
7 charges ---

8 A. I don't think so unless it's in the record.

9 Q. And, obviously, that wasn't stated law at the time.
10 Did y'all ever talk to Anthony about the possibility of the
11 jurors going to see the crime scene itself?

12 A. I don't think so. I know we went to see the crime
13 scene, both of them, the one in Lincolnville and the one at
14 the home. But, no, I don't remember thinking that would be
15 of value.

16 Q. Wasn't the decomposition of the body, the nature of
17 the weather patterns in that area, I guess, not whether it
18 was weather patterns but the ability -- from what I
19 understand from the testimony, there was kind of like --
20 somebody testified there was a tunnel of trees and somebody
21 said she was found out in an open space. So it seems
22 unclear from the testimony. Don't you think it would have
23 been important for the jury to actually see the scene,
24 where she was found?

25 A. Well, obviously, they saw it in the crime scene video

1 that night. By the time it went to trial, it would likely
2 not have been representative of how it was on that evening.
3 So they had the benefit of seeing it on the crime scene
4 video. But otherwise, no, I did not think that was of
5 value.

6 Q. The crime scene video was in the evening, correct, or
7 at night?

8 A. It was.

9 Q. And this was ---

10 A. I think -- I'm sorry.

11 Q. You go ahead.

12 A. I was just going to say I think the guy that I got
13 from out-of-state that came in described that area and we
14 asked him to describe how it looked like somebody had
15 freshly, you know, kind of plowed through the brush in that
16 area, hoping that the jury would believe that someone had
17 recently deposited the body there. But I know what you're
18 talking about, somebody kind of describes it as a canopy of
19 trees and then someone else says it's out in the open.

20 Q. But it's a wooded area, correct?

21 A. Yes, from what I -- I mean, not so wooded that they
22 couldn't go mudding back there, you know. But, yes,
23 certainly undeveloped.

24 Q. I mean, it's fair to say that other than the changing
25 of the seasons, the stated condition and existence of most

1 everything around there really wouldn't have changed that
2 much. It's not like they built a Walmart on it?

3 A. No, they hadn't built any type of ---

4 Q. Didn't build a house?

5 A. No structure had been built there.

6 Q. I guess somebody could have ran and chopped down a
7 tree, but most likely the tree canopy, whatever else was
8 described, would have still been there at the time of
9 trial, correct?

10 A. Perhaps. I mean, obviously, unless something had --
11 it had been cut down. And if it had grown, it may appear
12 differently.

13 Q. They introduced some color autopsy photos. Did y'all
14 not think you needed to object to those coming in?

15 A. Do you have those? I mean, copies of them? I don't
16 remember which ones came in.

17 Q. I don't have them.

18 A. Without knowing which ones came in, I can't remember
19 whether there was something objectionable. If I didn't
20 object, I obviously did not think they were objectionable.

21 Q. And obviously the record reflects when you did and
22 didn't object during the closing. But at one point -- I'm
23 going to have to find the page on this, but basically the
24 prosecutor said you need to look at these people right
25 here, Dante Tobias' parents and tell them, look at them who

1 shot him, Anthony Mann. Do you not think at that point --
2 you did say objection, but you didn't put anything on the
3 grounds for the objection.

4 A. Did the judge sustain the objection or overrule it?

5 Q. I give you a 50/50 chance. Sustained. You know what
6 the rules are. But, I mean, you obviously, even though you
7 didn't put the grounds, were you objecting because that was
8 to incite the prejudice ---

9 A. Inflammatory, yeah.

10 Q. --- of the jury and things of that nature. And,
11 obviously, if the judge is ruling against all of us,
12 correct? I mean, all you can do is object. But if your
13 grounds weren't on the record to preserve it for appeal,
14 then the transcript would properly reflect that, correct?

15 A. Say that again?

16 Q. If the grounds -- if you just said objection ---

17 A. And the grounds aren't on there.

18 Q. --- weren't on there for appeal, the record would
19 reflect that, correct?

20 A. In other words, the record should reflect if I put the
21 grounds on it.

22 Q. Right.

23 A. Is that what you're asking?

24 Q. Right.

25 A. It should.

1 Q. I just can't find the cite right now, the page. And
2 if it doesn't reflect it, in hindsight, you probably should
3 have put the grounds to help properly preserve it?

4 A. Probably so.

5 Q. Okay.

6 MR. LOCKLAIR: I beg the Court's indulgence,
7 please.

8 THE COURT: Yes, sir.

9 Q. And obviously this is a question most lawyers don't
10 like to answer, but in hindsight, honestly, which obviously
11 you're being honest, is there anything that you think you
12 could have or should have done differently in this trial
13 that could have affected the outcome?

14 A. Not ---

15 Q. I'm sorry to interrupt you. Not have affected the
16 outcome because, obviously, that's kind of a subjective
17 test of the -- is there anything that you think you should
18 have done differently in this trial, obviously having
19 hindsight of what you did do?

20 A. Well, I certainly think that there are some objections
21 that were not preserved well on the record that you pointed
22 out today that in hindsight I wish I had made. I don't
23 know that that in any way would have affected the outcome,
24 however. But if any lawyer tries a case and say they do it
25 flawlessly, I'd be somewhat suspect.

1 Q. That's kind of a like the three closings? The one you
2 planned to give, the one you give, and the one you should
3 have given?

4 A. Right.

5 Q. Right. Just a couple of more questions real quick.

6 On page 1248, y'all called the witness Mark Ackerman.

7 A. Okay. 1248?

8 Q. Right. That's where it starts. 1250 basically talks
9 about, lines 23 and 24, Is he the gentleman you got in a
10 fight with that evening? Talking about Anthony.

11 A. Are you waiting for an answer from me or ---

12 Q. I was waiting for you to get there.

13 A. I'm sorry. I'm there.

14 Q. I was going to ask you, what was y'all's purpose in
15 even calling this guy?

16 A. Now, from reading this it appears that it was to
17 refute that Anthony Mann could have made the statements
18 that the State asserted he did since this guy was engaged
19 in the fight with him and near the bathroom and didn't hear
20 the same statements.

21 Q. Okay.

22 A. I think that's right.

23 Q. --- your client committed an act of violence, it was
24 to refute testimony he confessed?

25 A. Right.

1 Q. In that general vicinity?

2 A. In the store.

3 Q. If he had ---

4 A. In the club.

5 Q. If he had confessed, this guy would have heard it?

6 A. Right.

7 Q. This guy didn't hear it? Okay.

8 A. No, that's to the best of my recollection from reading
9 that.

10 Q. Okay. I just want to go back to the joinder issue
11 real quick. I know the Judge -- this goes throughout the
12 pre-trial transcript -- it's about, you know, joinder
13 404(b), Lyle, et cetera, et cetera. But y'all had the
14 joinder issue. Why did y'all never bring up another 404(b)
15 issue as far as the prejudice and stuff and ---

16 A. I'm sorry. As to other issues or as to the joinder
17 issue?

18 Q. Yeah. When you had the joinder issue you also said
19 something might be 404(b), there might be some issues on
20 that. But looking through this again, that's something
21 that'll be clear in the record. We don't need to go back
22 through that. There were several -- on page 1178 ---

23 MR. LOCKLAIR: And I'm about done, Your Honor.

24 Q. --- you tried to introduce a picture from the
25 newspaper.

1 A. I did, is that what you said?

2 Q. Yes, ma'am?

3 A. Uh-huh (affirmative).

4 Q. And you go to introduce it. They ask if there's any
5 objection. Ms. Wilson says yes. They ask to approach.

6 Y'all approach. A bench conference is held with the Judge
7 and attorneys in the presence of the jury, but out of the
8 hearing of the jury. And then Defendant's Exhibit Number
9 30 was marked for I.D. only. And you say, I have no
10 further questions.

11 A. Oh, really. I mean -- go ahead. I'm sorry to have
12 interrupted you.

13 Q. My question would be, number one, why introduce it --
14 well, it's a three-part question. Why would you introduce
15 it? And I go back through them. Why not keep the record
16 clear as to what was said in the bench conference. And if
17 you have a reason for entering it, why wouldn't you
18 preserve the record and let that reason be known?

19 A. Right. Okay. Regarding that issue, those last two
20 points. Again, I would just have to tell you what Judge
21 Pieper's practice was with the court reporter
22 participating, so I cannot answer that. I certainly
23 thought a record was being made. As to why we wanted to
24 present it, I believe that what it showed -- part of our
25 theory was that the police were catching some heat because

1 Dante Tobias was killed and they put out in the public,
2 they were looking for Brownie. And I believe that that --
3 was it a photo or it was a newspaper article?

4 Q. I think it was a picture from the newspaper with her
5 photo in it. I think that ---

6 A. I think the whole article came in because there was
7 some talk, you know, amongst those who had read the paper
8 that, did the police in some indirect way cause the killing
9 of Brownie by posting that she had been with Dante that
10 night? And I think that was the reason for attempting to
11 introduce it. Do you understand what I'm saying?

12 Q. Right.

13 MR. LOCKLAIR: I beg the Court's indulgence one
14 more time.

15 Q. Just a couple more questions. Going back to the
16 vitreous fluid, y'all never requested a counsel hearing,
17 correct?

18 A. I don't think we did.

19 Q. And y'all did require a complete and full chain of
20 custody for the vitreous fluid prior -- to show where it
21 was from the time it was taken from the body until it was
22 tested, either, correct?

23 A. I don't recall doing that, so we must have been
24 satisfied that they could have presented it. You
25 understand what I mean? If we knew that they could

1 establish it, we may then not have required them to do so.

2 Q. Okay. So basically it's been y'all's decision that
3 y'all think it would have been established and, therefore,
4 you weren't going to require the State to meet the burden
5 of proof?

6 A. No, we would have looked into it. You know, if we
7 knew that every available witness was available -- I mean,
8 every person in the chain was available and they would not
9 fail in the chain, then we may not have required that each
10 of them come and testify.

11 Q. Okay. But even though this is -- after talking with
12 Dr. Presnell, y'all know it's kind of an inexact science, I
13 guess, would be the best way to put it?

14 A. I think it is.

15 Q. And wasn't that the impression you got from their
16 expert?

17 A. Yes.

18 Q. Okay. So you didn't think because it was an inexact
19 science it'd be important to question everybody in the
20 chain just to see exactly how it was handled, how it was
21 stored, who had access?

22 A. That was not what I thought contributed to the
23 inexactness of it. The reason we believed that it was
24 inexact was Dr. Presnell herself said there's no one
25 recognized formula to use. It's not overly telling as to

1 when a person died based on the levels. So it didn't have
2 to do with whether or not person A did something with it
3 before person B, but instead the math of it and the science
4 of it.

5 Q. Right. Right. I mean, I understand. It's basically
6 that the reason you talked to Dr. Presnell is basically --
7 I'm not saying this, you know, but just for lack of a
8 better word, junk science. But don't you think it's
9 important because of what they're using to establish a time
10 of death, it is basically junk science that you should
11 challenge it in every possible way, including assuring that
12 the product being tested had been properly handled and
13 making the State meet that burden in open court?

14 A. I would say this, and I still have this practice, if
15 you know that the chain can be established, then allowing
16 the State to bring in each member of the chain doesn't
17 necessarily further your cause. I mean, if they're able to
18 do it. If there were a gap and there were an issue that
19 would be worthy of exploring, then I would have done so.
20 But if they had each of the individual people in the chain
21 available, then my allowing that litany to come in may, in
22 some way, buttress what they're presenting instead of in
23 any way refuting it.

24 Q. And did you speak to everybody involved in the chain
25 of custody in this case?

1 A. I don't remember if I did. I don't remember if I --
2 well, I'll tell you. I also hired Donald Colby who is a
3 forensic analyst and he worked on this case a lot with us.
4 And I also had him double-checking chain of custody
5 procedures, et cetera. So not only were Mr. Butler and I
6 interested in that, we also had a person who had been
7 involved in investigations with the Navy, I believe was his
8 background, double-checking everything for us. Because if
9 there was anything we could make some progress with, we
10 wanted to do so.

11 MR. LOCKLAIR: That's all I have, Your Honor, of
12 this witness.

13 THE COURT: Thank you. Mr. Friedman, do you have
14 questions for this witness?

15 MR. FRIEDMAN: I do, Your Honor.

16 THE COURT: How long do you anticipate?

17 MR. FRIEDMAN: Probably fifteen minutes.

18 THE COURT: All right. Let's get that done.

19 CROSS-EXAMINATION

20 BY MR. FRIEDMAN:

21 Q. Ms. Shealy, I believe you testified that you cannot
22 recall the exact number of times that you met with the
23 Applicant, but you believe that it was plenty of times
24 before trial?

25 A. I do. Not only was I seeing him, but Gail Davis was

1 also seeing him.

2 Q. Do you remember any reference about the Applicant
3 being convicted of anything. I know there's a reference as
4 to him being at Lieber. Do you remember any reference to
5 any ---

6 A. I don't.

7 Q. Was he in prison clothing during the trial?

8 A. No.

9 Q. Was he in handcuffs?

10 A. No. In fact, I recall Judge Pieper allowing the jail
11 to give him some hair gel to fix his hair before Court.

12 Q. Mr. Locklair asked you about a juror that used to work
13 at SCDC.

14 A. Uh-huh (affirmative).

15 Q. May I turn your attention to page 28 in the
16 transcript. Starting on line 1. I believe this is after a
17 bench conference. It's not on the record. Starting on line
18 1 and going down to line 11.

19 A. Oh page 28?

20 Q. Yes, ma'am. Does it look like on line 9 that you say
21 that I don't want to bring it to the attention of the jury.

22 A. Wait, I'm sorry. I must not be on the right page.

23 Q. Page 28 in Volume 1.

24 A. Oh. Hold on, I'm looking at the -- okay. I'm sorry.

25 Q. Page 28, lines 1 through 10.

1 A. It states that I said, of course, just in front of
2 everybody he said he knows him when he was at SCDC. And
3 Ms. Wilson testified, I just heard him say I work at SCDC.
4 And then I said, he said, I know him from when he was
5 there. And the Court said, I know. I'd be happy to say
6 that someone might be detained if you want me to. And I
7 said, I know, but I don't want to bring it to the attention
8 of the jurors. And the Court said, okay.

9 Q. Does that look like you're talking about the juror
10 that used to work at SCDC?

11 A. Yes, it does.

12 Q. Mr. Locklair also asked you about a shotgun that was
13 found in McDonald's parking lot?

14 A. Uh-huh (affirmative).

15 Q. If I could turn your attention to page 1131. It's in
16 Volume 6. And I'm going to ask you to start at 1128. Does
17 that look like it's Mr. Mann's statement?

18 A. Uh-huh (affirmative). Yes, it is.

19 Q. Okay. And then turn your attention to page 1131.

20 A. Okay.

21 Q. Starting at line 3. Does it look like there's some
22 discussion about Brownie taking the shotgun from Tobias'
23 house?

24 A. Yes. It states, we were about to pull off. Brownie
25 said, hold up. That dude has a sawed-off shotgun in the

1 house. Brownie ran back in the house and came out with the
2 sawed-off. She got in the car and Peter pulled off.

3 Q. So would that indicate to you that there was a shotgun
4 taken from the first victim's house?

5 A. It certainly appears that way from that.

6 Q. Mr. Locklair also asked you about you introducing the
7 crime scene video for victim number two. Do you recall
8 mentioning that in your closing statement?

9 A. Yes. Kind of extensively.

10 Q. Can I turn your attention to page 1533, from line 13
11 down? Does that -- you give reasons that you pointed that
12 video in into evidence?

13 A. Yes.

14 Q. What were they?

15 A. Beverly Blake died some time later. We don't know
16 when. Recall the testimony, it had rained. It had rained.
17 But remember the guys that were four-wheeling, Ellsworth
18 and Barnes? Why did they go four-wheeling? Because it's
19 fun in the mud. It was wet. It was wet for two days right
20 before she was found, that being one day the day before.

21 It's unpleasant for us to put that videotape in. I'll tell
22 you that now. To know the jury has to see the scene of a
23 young girl where she was found dead. But it's purposeful
24 because you need to look at the scene. Why did we fly
25 David Barnes all the way here, because he told you it

1 looked like somebody had just come through there. Her
2 clothes are dry. Her clothes are dry. She hasn't been out
3 there since January 7th. Look at the folds on the shirt.
4 We have all seen wet sweat clothes. These clothes aren't
5 wet. She hasn't been laying out in the rain. And recall
6 that when she is found -- and I'll tell you what I want you
7 to do. When you go back and you have the opportunity to
8 listen to the videotape, it's somewhat annoying to listen
9 to because the lighting they had -- that they use out there
10 is buzzing, so you're not going to want to turn it up. But
11 turn it up. Turn it up and hear what people are saying.
12 And they will tell you that when they find marijuana in her
13 pocket it looks like freshly bought marijuana. Listen to
14 what is being said as they see her on the scene. If we
15 could go back to what happens initially -- okay. Then it
16 goes to another topic matter, I think. I'd forgotten about
17 the marijuana, but they had said that on the tape, that it
18 looked like it had been freshly bought. So, again, I was
19 trying to show that she had not been out there long enough
20 to have been rained upon.
21 Q. You testified that I think you originally thought
22 Christy Bunch was going to be a favorable witness and then
23 she flipped on you. Is that right?
24 A. That's correct.
25 Q. If I could turn your attention to page 616.

1 THE COURT: What page, counsel?

2 MR. FRIEDMAN: Page 616. I believe that's in
3 Volume 3.

4 A. Okay.

5 Q. Lines 5 through 11. Does that look like a letter from
6 Mr. Durant to Christy Bunch?

7 A. Yes. My main point in writing you this letter is to
8 say I know that you no longer want anything to do with me
9 and you probably hate me right now and don't really give a
10 ---

11 MS. SHEALY: Excuse my language, Judge.

12 A. --- fuck what happens to me at trial, but I'm writing
13 to ask that you would at least come to my trial and testify
14 that I was with you from nine o'clock Monday, January 7th
15 2002, until Thursday night, January 10th, 2002. And I want
16 to know if you will be willing to testify on Peter's
17 reputation. You've known him for years and know more than
18 most people know about him. If you'll do this, it would
19 greatly enhance my chances of beating this shit. Christy,
20 if you have any amount of love or care for me left in you,
21 please do this for me. You don't have to write me or talk
22 to me about this. I know that. I know that. I know that
23 it's out of the question, but at least call my mom and let
24 her know what you will or will not do. Thank you for your
25 help and your time. For everything that you've already

1 done for me, thank you. And I will always love you for it.

2 Q. Is that the only potential alibi witness that Mr. Mann
3 communicated to you?

4 A. Yes.

5 Q. They also asked you about Roderick McBride. That was
6 Krystal Lackey's stepfather. It looks like his testimony
7 is on 1042. It's in Volume 5.

8 A. Okay.

9 Q. Do you recall that he was a former police officer?

10 A. I see that, yes.

11 Q. And would you agree that his testimony was mainly
12 discussing how he called a former co-worker of his, got the
13 name of an investigator that his stepdaughter should call?

14 A. Yes.

15 Q. Did you think you had a basis to object to that
16 testimony?

17 A. No.

18 Q. All right. I turn your attention to page 1031. This
19 was Krystal Lackey's testimony.

20 A. 1031?

21 Q. 1031. I believe this is your cross-examination of
22 her. Starting at line 15 does it look like you asked her
23 about a charge that she was facing?

24 A. Now, you were involved in an incident in Hanahan that
25 took place right before this. Is that correct? At the

1 Hanahan self-storage container? Yes. And you and these
2 buddies of yours got charged with burglary. Is that
3 correct? I got charged with accessory, yes. And these are
4 the people that you were hanging out with that evening. Is
5 that correct? Yes. Do you want me to continue?

6 Q. No. If I could get you to turn to page 1188. That's
7 in Volume 6.

8 A. Okay.

9 Q. Starting at line 18, does it look like Mr. Butler's
10 renewing his pre-trial motion for a severance, and a motion
11 in opposition of joinder.

12 A. Yes. At this time we'd move for a mistrial based on
13 all motions and all objections, including our pre-trial
14 motion for a severance and our motion in opposition of
15 joinder. Do you want me to continue with that?

16 Q. No.

17 A. Okay.

18 Q. They asked you about the Applicant's statement and
19 whether or not you requested a jury charge about the
20 voluntariness of his statement. If I could turn your
21 attention to page 1609. Volume 8.

22 A. Now, which volume is that?

23 Q. Volume 8, page 1609.

24 A. Okay.

25 Q. Starting at line 19 on 1609 continuing on to the next

1 page. Does that look like the Judge is charging the jury
2 on the credibility of the witnesses and the witnesses'
3 statements?

4 A. Yes.

5 Q. If I could turn your attention to page 1616. I
6 believe this is the jury charge on malice. Is that right?

7 A. Yes.

8 Q. Do you see anything objectionable about that charge?

9 A. Is that the extent of the malice charge? I think it
10 continues on the next page.

11 Q. I believe it continues.

12 A. Not at the time that he charged it, no.

13 Q. Did Mr. Mann ever argue any self-defense in this case?

14 A. No.

15 Q. I believe Mr. Locklair asked you about the co-
16 Defendants, Zack and Crumm, about discussions about their
17 guilty pleas. If I could turn your attention to page 277,
18 line 10.

19 A. Okay.

20 Q. I believe this is your cross-examination of Mr. Zack.
21 It looks like it begins on 268.

22 A. 268?

23 Q. 268 is where it begins. Does that look correct, that
24 that's your cross-examination of Mr. Zack?

25 A. Yes, uh-huh (affirmative).

1 Q. Going back to 277, starting at line 20, does it look
2 like you asked him about his plea agreement?

3 A. That's right. And his proffer agreement.

4 Q. Okay. And I refer you to page 374. I believe this is
5 your cross-examination of Mr. Crumm. Does that look
6 correct?

7 A. Actually, it may be in reversal.

8 Q. I'm sorry. This is your cross-examination of Mr.
9 Zack?

10 A. Uh-huh (affirmative).

11 Q. I'm sorry. I'm trying to find where you asked him.
12 On 374, line 10, does that look like you're asking about
13 his proffer agreement and his plea agreement?

14 A. Yes.

15 Q. Mr. Locklair also asked you about why you brought a
16 particular witness, Mark Ackerman. If I can turn your
17 attention to page 1254. I believe that's Volume 6.

18 A. Did you say 1254?

19 Q. 1254. Looking at line 12.

20 A. Okay. Hold on. I'm sorry. I just haven't got the
21 right volume. Is it in 6?

22 Q. Volume 6, page 1254.

23 A. Okay. And which line?

24 Q. Line 12. Do you mind reading that?

25 A. Question: Tell the jury if you would, did Mr. Mann

1 ever say to you that he's got two murder charges and that
2 he wasn't afraid of another? No. Did he ever say anything
3 to you like, I'm wanted for two murders. I'll kill you,
4 too. No. And it was you that he was having the fight
5 with. Is that correct? Yes.

6 Q. Do you think that was your purpose in calling him?

7 A. Yes. And now I remember that whoever testified for
8 the State testified that he had made those comments to the
9 person he was fighting. So that's why we called him
10 because he was the person he was fighting.

11 Q. I believe you testified that you consulted with two
12 expert witnesses. Is that right?

13 A. I did, regarding the insect activity in her eyes.

14 Q. Is it correct that their testimony would have been
15 that without the eggs, that they would have been able to
16 determine time of death?

17 A. That's right. That was Dr. John Butz and Dr. Lee
18 Goff.

19 MR. FRIEDMAN: I have nothing further.

20 THE COURT: Do you have redirect?

21 MR. LOCKLAIR: Just briefly, Your Honor.

22 THE COURT: All right. Thank you.

23 **REDIRECT EXAMINATION**

24 **BY MR. LOCKLAIR:**

25 Q. Just a couple of questions to follow up on the things

1 he brought up on cross. The note where -- he brought up on
2 page 616, the letter to Christy from Anthony.

3 A. Do you need for me to find it?

4 Q. No, no. I'm just going to ask you real quick.

5 Obviously, he asked her for an alibi. He asked her to give
6 a character reputation for Peter, correct?

7 A. Right.

8 Q. And while in her testimony she says he wasn't there;
9 previously, she'd lead y'all to believe he was there,
10 correct?

11 A. That's correct.

12 Q. Okay. Just going back. And he asked something about
13 the eggs in the eyes and stuff. Actually, with that stuff,
14 Dr. Presnell didn't actually do the testing. She was
15 interpreting them, right? So she wouldn't have even been
16 involved with the eggs or anything with the eyes, right?

17 A. Well, when you said she wouldn't have been involved
18 with them, what do you mean?

19 Q. I mean, she didn't actually do the actual testing,
20 another doctor did it and she read from his reports, right?

21 A. If I remember correctly, I don't know that anybody
22 looked into the egg thing. I think they extracted fluid
23 from the eyes.

24 Q. So the fluid, another doctor did those tests?

25 A. Right.

1 Q. So if anybody -- whoever -- basically, Dr. Presnell
2 wasn't the person doing the actual extracting and testing?

3 A. Actual examination. She may have done the extracting.

4 Q. Okay. So she may have been involved if there were
5 eggs there too. We just don't know, okay? Okay. That's
6 fine. He brought in the jury instructions where basically
7 the Court goes into credibility of witnesses. But -- and
8 the Court of Appeals looked into it and maybe I missed it
9 is why I'm asking you, but could you please show me where
10 they talk about voluntariness of the statement?

11 A. I think the part that he referenced deals with
12 credibility of the witness, not with voluntariness of the
13 statements.

14 Q. Okay. Do you know if there's anything -- unless I
15 missed it, it appears there's nothing in the jury charges
16 on voluntariness of a statement?

17 A. I don't know. I haven't looked at -- back at them. I
18 don't know that there is.

19 Q. If your client gave a statement that was submitted
20 after the *Jackson v. Denno* hearing, don't you think it
21 would be appropriate to ask for a jury charge that would
22 instruct the jury on the law regarding voluntariness of a
23 statement. They're the finders of fact on that issue?

24 A. I would say that most often Judges do that, and that
25 it would be incumbent upon me, probably, to do so if he did

1 not do it.

2 Q. And so it would be fair to that if he didn't give a
3 voluntariness charge and you didn't object, you should have
4 objected, in hindsight? Or should have requested the
5 charge. I guess objection wouldn't be the ---

6 A. I think the better practice would have been for me to
7 have asked for that charge to the jury.

8 Q. Right.

9 A. Is that what you're asking?

10 Q. Yeah. If he didn't do it ---

11 A. The reason I'm showing some hesitancy is I haven't
12 thumbed through every part of this transcript.

13 Q. Right. And that's what I'm talking about.

14 A. Okay.

15 Q. But if there is nothing in the transcript in the
16 closing argument [verbatim] about voluntariness, and the
17 jury finding the statement was voluntary, then you should
18 have asked for that charge, correct?

19 A. I think I probably should have.

20 Q. Okay.

21 MR. LOCKLAIR: That's all I have. Thank you,
22 Your Honor. Thank you, Ms. Shealy.

23 THE COURT: Mr. Friedman?

24 MR. FRIEDMAN: Nothing further, Your Honor.

25 THE COURT: You may step down. Thank you. Ms.

1 Shealy, just out of abundance of caution if you would stay
2 around.

3 MS. SHEALY: Oh, I am.

4 THE COURT: I know there's been some confusion
5 about what may or may not be in a file so if you'll just
6 stay.

7 MS. SHEALY: Okay. I plan on staying.

8 THE COURT: Thank you. Call your next witness.

9 MR. KENDRICK: Thank you, Judge. We'd call Dr.
10 Janice Ross.

11 THE CLERK: Do you solemnly swear or affirm the
12 testimony you shall give this Court will be the truth and
13 nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Come around, have a seat. State your
16 full name and spell your last for the record, please.

17 THE WITNESS: Janice Edwards Ross, R-O-S-S.

18 JANICE EDWARDS ROSS,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. KENDRICK:

22 Q. Good afternoon, Dr. Ross.

23 A. Good afternoon.

24 Q. Dr. Ross, I'm going to run through a little bit of
25 your background. If you could briefly tell the Court,

1 first of all, your educational background?

2 A. Yes. I received a B.S. from University of South
3 Carolina and then started my work here in Charleston at
4 MUSC, transferred for family reasons to Upstate Medical
5 Center in Syracuse, New York, where I received my M.D. I
6 did four years of training in pathology there, anatomic and
7 clinical pathology. And then I pursued forensic pathology,
8 working with the medical examiner in Onondaga County in
9 Syracuse, New York. I am Board Certified in anatomic,
10 clinical and forensic pathology.

11 Q. Okay. Just briefly, how long have you been involved
12 in forensic pathology?

13 A. Thirty-five years.

14 Q. How many times do you think you've testified in Court?

15 A. In the State of South Carolina over seventy times.

16 Q. Okay. And you normally testify for the State or the
17 defense, right? You're not one or the other?

18 A. Correct.

19 MR. KENDRICK: Your Honor, I think at this time
20 -- I've spoken with the attorney general -- that we've done
21 enough to qualify Dr. Ross as an expert. She's probably
22 one of the leading pathologists in the state.

23 THE COURT: Any objection?

24 MR. FRIEDMAN: No objection.

25 THE COURT: All right. She'll be qualified as an

1 expert in what area, counsel?

2 MR. KENDRICK: Forensic pathology, Your Honor.

3 THE COURT: Thank you. You may continue.

4 Q. Dr. Ross, I'm going to try to be brief with you. I
5 sent you both trial testimony from the trial that we've
6 been talking about today and an autopsy report. Did you
7 receive those?

8 A. Yes.

9 Q. Have you had a chance to review those documents?

10 A. Yes.

11 Q. Specifically, we're going to concentrate on the
12 vitreous fluid. Were you able to determine in the
13 testimony that I sent you that the doctor is using vitreous
14 fluid to make a guess at the time of death?

15 A. Yes.

16 Q. All right. If you could very briefly give us just a
17 little bit of background of how you would do that? In
18 other words, what is the doctor doing when she's making
19 that guess?

20 A. Well, first of all the question of vitreous -- we do
21 eight hundred autopsies a year and we collect vitreous in
22 every case. But I've never used it for time -- postmortem
23 time interval. We look at the results, including glucose
24 and sodium chloride and potassium. I'm not sure exactly
25 what you were asking me.

1 Q. I guess briefly, just so the Court kind of understands
2 what we're talking about is why anyone would use vitreous
3 -- and I understand we're going to get to the fact that it
4 may not be reliable, but this particular doctor was using
5 the vitreous to try to come up -- and I think I said the
6 wrong -- you're using a better word -- postmortem interval?

7 A. Correct.

8 Q. What do you think the doctor was attempting to do? We
9 just need kind of a layman's explanation of how vitreous
10 fluid would have anything to do with that postmortem
11 interval and then we'll get into its reliability.

12 A. Okay. There have been several studies of potassium in
13 vitreous fluid. Vitreous fluid is kind of isolated from
14 the rest of the body and it's very good to use for diabetic
15 situations and sodium and chloride, et cetera. And several
16 people have put together some formulas to identify
17 postmortem time interval considering the level of potassium
18 in the vitreous, because they do seem to increase as time
19 goes on, after death. But there are so many variables that
20 the major players in pathology, forensic pathology, do not
21 use it. Some of the formulas have been found to be
22 incorrect. There's such variables as the condition of the
23 body before death, the way that the fluid is drawn. In
24 other words, and I've found this myself, because I do draw
25 most of my own vitreouses. Sometimes when you draw the

1 fluid out, you get actual pieces of tissue from the inside
2 of the eye. And the potassium leaks out from cells from
3 that tissue. So if you have a lot of cells, you're going
4 to obviously get more leakage of potassium and vice versa.
5 If you don't have any cells, you're not going to get as
6 much potassium. So there are too many variables to really
7 identify a time interval.

8 Q. And I'm going to ask you a silly question, but since
9 you've testified as an expert, you're probably used to this
10 from lawyers. Do you know enough about vitreous fluid and
11 forensic pathology to give us an opinion on whether
12 vitreous fluid is reliable in determining a postmortem
13 interval?

14 A. Yes. After over seven thousand autopsies, and looking
15 at vitreouses, there's too many inconsistencies, you cannot
16 tell the time -- the postmortem time interval from the
17 potassium level in the vitreous.

18 Q. So it's your expert opinion that this is an unreliable
19 way to determine a postmortem interval?

20 A. Yes.

21 Q. Okay. Has that been the case for a number of years
22 now?

23 A. Yes.

24 Q. How long do you think that's been the case that this
25 has been considered an unreliable way to determine that?

1 A. It's an estimate. The original work by John Coe was
2 back in the early seventies, I believe. And a lot of my
3 training occurred in the early eighties. And at that time,
4 it was not used for a time interval.

5 Q. Okay. Did you have the opportunity while you were
6 preparing to testify to look at some of the -- I guess we'd
7 call them leading forensic resources to, I guess,
8 refreshing on this subject?

9 A. Yes. Particularly two text books, one by Vincent
10 DiMaio Forensic Pathology. And Knight's Forensic Pathology
11 and neither one of them support the use of any of these
12 formulas for potassium in vitreous as pertains to
13 postmortem time interval.

14 Q. Okay. So at the time of this trial, which was
15 approximately ten years ago, you've told us that at that
16 point this was not a reliable way to determine postmortem
17 interval.

18 A. Correct.

19 Q. And that would have been an opinion that could have
20 been offered by just about anybody in your field at that
21 time, correct?

22 A. Yes.

23 MR. KENDRICK: I beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 Q. One last question, Doctor. In your expert opinion to

1 a reasonable degree of certainty, looking at the testimony
2 you reviewed by Dr. Presnell, was Dr. Presnell's testimony
3 based on this vitreous fluid reliable?

4 A. Well, she did say that there is a range and it's not
5 reliable, but she did put a time on it, but I wouldn't put
6 any time on it as far as days go.

7 Q. Thank you, Doctor.

8 MR. KENDRICK: That's all I would have.

9 MR. FRIEDMAN: Just briefly, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. FRIEDMAN:**

12 Q. Dr. Ross, do you know Dr. Presnell?

13 A. I've talked to her on the phone.

14 Q. Does she have a good reputation in the medical
15 community?

16 A. Yes.

17 Q. Have you read the transcript of her testimony?

18 A. I've only read pages 957 to 1014 pertaining to
19 postmortem time interval.

20 MR. FRIEDMAN: I have nothing further.

21 THE COURT: Redirect?

22 MR. KENDRICK: No, Your Honor. We'd ask that Dr.
23 Ross be excused.

24 THE COURT: Any objection?

25 MR. FRIEDMAN: No objection, Your Honor.

1 THE COURT: Dr. Ross, thank you. You may step
2 down. You're excused, but you're free to remain with us if
3 you wish. Thank you.

4 DR. ROSS: Thank you.

5 THE COURT: Call your next witness.

6 MR. LOCKLAIR: We'd call Gail Davis, Your Honor.

7 THE CLERK: Do you solemnly swear or affirm the
8 testimony you shall give this Court will be the truth and
9 nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Come around, have a seat. State your
12 full name and spell your last for the record, please.

13 THE WITNESS: My name is Gail McNarum Davis, D-A-
14 V-I-S.

15 GAIL MCNARUM DAVIS,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 MR. LOCKLAIR: May it please the Court, Your
18 Honor.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. LOCKLAIR:

22 Q. Ms. Davis, I'm going to try and get you through this
23 quickly. Just please tell the court what was your
24 involvement with the Anthony Mann case?

25 A. I was -- worked as a fact investigator to assist the

1 public defender's office because of the complexity and the
2 number of witnesses and the different crime scenes. I
3 worked with their -- alongside their investigator for -- I
4 shouldn't say alongside. In addition to their
5 investigator.

6 Q. Okay. And basically you were doing investigation at
7 -- was it at the direction of the public defender's office
8 or did they -- I guess, let me put it this way. Did they
9 give you names of witnesses and say go talk to these people
10 or did they say go out and investigate on your own and try
11 and figure out what happened?

12 A. No. I was taking my directions directly from Ms.
13 Shealy.

14 Q. Okay. So basically they would give you a scene to go
15 view, a witness to talk to, something of that nature, then
16 you'd go complete that, you'd do it for them, and you would
17 then report back to them?

18 A. I did that separately. I did a chronology of all the
19 police reports, so I was pulling names out of that, as
20 well. So sort of working as a team in that effort.

21 Q. So in addition to what they would tell you, you would
22 look at other witnesses on your own. You would help them
23 determine who potential witnesses could be, kind of?

24 A. Yes, if I saw some.

25 Q. Okay. Do you recall talking to witnesses about the --

1 what's been referred to as a pizza party?

2 A. I had a list of witnesses that I had compiled. I
3 talked to a couple of them. Several of them, I could not
4 locate. At the end we must -- apparently we'd pulled NCIC
5 reports from SLED because a number of them I was able to
6 locate at that point because they were in prison.

7 MR. LOCKLAIR: May I approach, Your Honor?

8 THE COURT: You may.

9 Q. I'm going to show you this. I think it's what you
10 created, but ask if you recognize that document there?

11 A. Yes, I created it.

12 Q. And what is that?

13 A. It says Defense Witness List. But my guess is it
14 probably was a potential defense witness list.

15 Q. Okay. And the handwriting on there, that's not yours,
16 correct?

17 A. No, it isn't.

18 Q. Okay. But this list of witnesses that you would have
19 -- were these the notes you had taken about people you
20 talked to?

21 A. Well, some of it is quoting statements where the
22 police took them. It's really sort of a synopsis of
23 everything we had on that person.

24 Q. So basically, this is a little synopsis of what y'all
25 know about them. If you happened to talk to them, it would

1 be in there. But some of these could be people that you
2 never talked to?

3 A. Right. Because ---

4 Q. For ---

5 A. --- like the second one says that she talked to Art.

6 So that was the other investigator. Some of it's about
7 police reports.

8 Q. Okay. And to your knowledge, were all of these
9 witnesses called at trial?

10 A. I honestly don't know.

11 Q. Okay.

12 MR. LOCKLAIR: Your Honor, at this time, I'd
13 offer this in as Plaintiff's Exhibit 2.

14 THE COURT: Any objection?

15 MR. FRIEDMAN: No, Your Honor. There's no
16 objection.

17 THE COURT: Plaintiff's 2 into evidence without
18 objection.

19 (WHEREUPON, Plaintiff Exhibit Number 2 was marked and
20 admitted into evidence.)

21 Q. I just kind of want to highlight through some of the
22 witnesses -- I'm sorry. Let me give that back for her to
23 look at. Just real briefly, some of the witnesses that you
24 had spoken to. On the second page it says, ODCD. Just for
25 the record, what's ODCD?

1 A. That was the Old Dorchester Club fight.

2 Q. Okay. Out of the witnesses listed under section, who
3 did you speak to, if any?

4 A. I talked to Bobby Russell.

5 Q. Bobby Russell was not called to trial, correct?

6 A. I honestly can't say who was or wasn't.

7 Q. Okay. In your notes it says that Mann never said
8 anything about killing anyone. Would that have been what,
9 you know, he had told you?

10 A. Yes. Although I don't see it here, I think I talked
11 to a Frazier. I'm not sure if it was him or another
12 Frazier, whose mother wouldn't let us continue.

13 Q. Was the gist of their testimony that they'd gotten
14 telephone call messages from Brownie after January 7th?

15 A. Yes. There were several people that had said they had
16 contact with her.

17 Q. And, in addition, y'all have her name on here. You
18 mentioned the grandmother. Didn't he also mention to you
19 something about the grandmother not allowing the contact,
20 too?

21 A. I believe that's the house where the -- a call had
22 come into the house, but the person wasn't there. I'm not,
23 I'm not sure about that.

24 Q. Okay.

25 A. I'm not sure if it's him or not. Someone had gotten a

1 call because I had a phone number, but the person wasn't
2 there that she had -- they said was her and that she asked
3 for.

4 Q. Well, if you look back on the third page under Lieber,
5 there's a Herbert Frazier. Maybe if you review those notes
6 it might help refresh your recollection about who was
7 calling for who.

8 A. That's what I'm talking about there.

9 Q. Okay. Can you kind of tell us what the gist of that
10 is?

11 A. That Herbert said -- Herbert is Irvin Frazier's
12 cousin. Herbert said that he answered a call from a female
13 who asked for Irvin. And Herbert told her he was not
14 there. The girl said it was Brownie and to tell Irvin that
15 she called.

16 Q. Okay. And when you spoke to these witnesses, this was
17 basically eight and half, nine years ago, roughly?

18 A. It was probably in 2003.

19 Q. Yeah. I see some are dated April 13th, April 21st.
20 Would that have kind of been where the gist of your
21 investigation was?

22 A. Yes.

23 Q. And then there's several other people on here that you
24 talked to that were at that ODC club too, correct?

25 A. Yes. Well, do you want me to go back through and say

1 or ---

2 Q. Well, that you or another investigator talked to, just
3 to be fair.

4 A. Right. Right. And I was the one that actually -- I
5 went to the club and talked to the people at the club.

6 Q. Okay. How many times did you meet with Anthony? And
7 if you could, tell me how many times that was with a lawyer
8 or whether it was just by yourselves?

9 A. Ms. Shealy had my bills. That's the only way I could
10 tell you that directly.

11 MR. LOCKLAIR: May I approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 Q. I think just for the record if you can identify what
15 you're looking at?

16 A. These are bills that I sent to the public defender's
17 office over time. Here's one on July 14th.

18 Q. Was that in '02 or '03?

19 A. I think they're all in '03.

20 Q. All in '03?

21 A. Yeah. I went to -- on April the 4th, I went to Lieber
22 and met with him. On April 5th, I met with him again.

23 Q. Do those meetings reflect whether it was just you or
24 whether one of the defense attorneys would have been
25 present with you?

1 A. It doesn't say. On April 23rd, I saw him at Lieber.

2 On May 3rd, I saw him at Lieber. I thought there was one
3 more bill, but that's -- there's only three bills here, so
4 I think there was another bill that was started a little
5 earlier, but I'm not sure about that.

6 Q. It may have been an additional visit or two?

7 A. May have been.

8 Q. Well, out of those visits, because obviously you were
9 out there a lot, can you recall how many times either Ms.
10 Shealy or Mr. Butler would have been present with you?

11 A. I don't. I'm sorry. And the times that I met with
12 him, it was Ms. Shealy, I think that was primarily with me.
13 If she had been -- if someone had been with me, it would
14 have been her.

15 Q. And it would be fair to say that your role in the case
16 and the attorneys' role are kind of a little different, so
17 it's not essential that y'all are both there at the same
18 time, right?

19 A. Right.

20 Q. Okay. Do you recall, if you can, I know it's a long
21 time ago, any discussions that might have occurred with you
22 there about Anthony's statement and his right to testify,
23 anything of that nature?

24 A. Other than, I mean, he had always denied it to me.
25 But other than that, I mean, I probably would not have had

1 that discussion with him.

2 Q. Okay. So when you were there you were probably more
3 focused on the investigatory part rather than the legal
4 part that Ms. Shealy would have been handling?

5 A. Right.

6 Q. So you don't recall any conversations that would have
7 come up about his statement or the cops threatening him,
8 anything he wanted you to investigate as far as that goes?

9 A. Now, I do remember that. I believe they had
10 threatened to take the girl's children or something, if I'm
11 not mistaken.

12 Q. Do you recall anything else about that?

13 A. Not with that girl, no.

14 Q. Were you present -- do you recall him saying anything
15 about him being physically threatened, like handcuffed him
16 to a chair, threatened to shoot him, assault him, anything
17 of that nature that you can recall?

18 A. I'm sorry. I don't. If he said it, he probably told
19 me, but I just don't ---

20 Q. Oh, yeah. Don't apologize. I mean, it's a long time
21 ago to remember this stuff.

22 MR. LOCKLAIR: I beg the Court's indulgence one
23 moment.

24 THE COURT: Take your time.

25 MR. LOCKLAIR: That's all the questions we have

1 for this witness, Your Honor.

2 Thank you very much, Ms. Davis.

3 THE WITNESS: You're welcome.

4 THE COURT: Mr. Friedman.

5 MR. FRIEDMAN: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. FRIEDMAN:

8 Q. Ms. Davis, how many death penalty cases have you done
9 investigative work on?

10 A. Somewhere between thirty and thirty-five.

11 Q. In this case did you try to talk to everyone involved?

12 A. All the witnesses I could contact, yes.

13 Q. And where did you get the information from?

14 A. From Ms. Shealy, from police reports, from -- but
15 primarily from her.

16 Q. Did you get any information from Mr. Mann?

17 A. Yes. That was when we got the people that were at the
18 parties, the people that would not have appeared in police
19 reports. That was how we knew about the storage thing and
20 to go get that police report, those kinds of things.

21 Q. Do you recall how many hours of investigation you
22 worked on in this case?

23 A. Something over four hundred.

24 Q. Isn't it true that prior to the trial several
25 witnesses were no longer willing to cooperate?

1 A. Some witnesses' testimony changed dramatically between
2 when I spoke to them and when we got to trial.

3 Q. Were you familiar with Donald Colby who was also
4 retained by Ms. Shealy to explore all the forensic
5 evidence?

6 A. I'm sorry?

7 Q. Were you familiar with Donald Colby?

8 A. Yes.

9 Q. Who was also retained by Ms. Shealy, I believe, to
10 explore all forensic evidence?

11 A. Yes.

12 Q. Did you look at any potential alibi witnesses?

13 A. Originally. And for quite some time, it was that
14 Anthony and Christy had both been very sick at her house
15 and that was -- that he was with her that night and for a
16 couple of days after, I guess, that they both had some kind
17 of stomach thing, I believe.

18 Q. Were there any other potential alibi witnesses that
19 you were aware of?

20 A. I don't recall any.

21 MR. FRIEDMAN: I have nothing further.

22 MR. LOCKLAIR: I beg the Court's indulgence.

23 THE COURT: Take your time.

24 **REDIRECT EXAMINATION**

25 **BY MR. LOCKLAIR:**

1 Q. Bobby Russell is one of the witnesses you interviewed,
2 correct?

3 A. Yes, sir.

4 Q. Do you recall trying to serve him with a subpoena at
5 some point?

6 A. Typically, Art was the one that served the subpoenas,
7 but I don't recall that specifically, but I may have. I've
8 got the file here if you want me to look.

9 Q. This might help you out. Do you recall talking to him
10 at some point and his mom being there and his mom started
11 crying?

12 A. Yes.

13 Q. Can you please tell the Court about the circumstances
14 surrounding that?

15 A. I really -- I just got the subpoena on a Saturday and
16 when I went back and looked at some things, I remember her
17 -- and, again, I don't remember this. I just read it where
18 I had written it, from seeing it before. But that she was
19 very concerned that he was being threatened, that he was
20 afraid to testify. There were a lot of drug affiliations
21 on the outskirts of this case, which sort of complicated
22 some of those things. But she was just very afraid for
23 him. He was afraid that they were going to attack him and
24 his family.

25 Q. Do you know if he was afraid -- did he say what he was

1 afraid of? Was he afraid of drug dealers or was he afraid
2 of threats from the police and/or somebody in a position
3 of, I guess, state authority, would be the nicest way to
4 put it?

5 A. I'm sorry. I don't remember.

6 Q. You don't remember. That's fine.

7 A. But I mean, it should be noted if -- I mean, I did the
8 interview. It would be noted in there, I'm sure.

9 Q. Yes, ma'am. Okay. Thank you.

10 MR. LOCKLAIR: That's all I have, Your Honor.

11 Thank you, Ms. Davis.

12 THE COURT: Mr. Friedman?

13 MR. FRIEDMAN: Nothing further, Your Honor.

14 THE COURT: You may step down. Thank you. May
15 she be excused?

16 MR. LOCKLAIR: Yes, ma'am.

17 THE COURT: You may be excused. Thank you. Call
18 your next witness.

19 MR. LOCKLAIR: Your Honor, could we have one
20 second to speak with our client?

21 THE COURT: You may.

22 MR. LOCKLAIR: Your Honor, if we could clarify, I
23 think it looks like we just have Mr. Mann left, but he's
24 going to be a very lengthy witness. Does the Court need to
25 adjourn at three or three-thirty.

1 THE COURT: Three-thirty.

2 MR. LOCKLAIR: I don't know that it makes a
3 difference. I'm not sure we'll be done by three thirty.

4 THE COURT: Well, we're going until three-thirty.

5 MR. LOCKLAIR: Okay. All right. Thank you, Your
6 Honor. We would call Anthony Mann to the stand, Your
7 Honor.

8 THE COURT: Mr. Mann, please come forward and be
9 sworn.

10 MS. SHEALY: Judge, may I step down the hall just
11 for a second?

12 THE COURT: You may.

13 THE CLERK: Do you solemnly swear or affirm the
14 testimony you shall give this Court will be the truth and
15 nothing but the truth, so help you God?

16 THE WITNESS: Yes, I do.

17 THE CLERK: Come around, have a seat. State your
18 full name and spell your last for the record, please.

19 THE WITNESS: My name is Anthony D. Mann, spelled
20 M-A-N-N.

21 ANTHONY D. MANN,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE COURT: All right, Counsel.

24 MR. LOCKLAIR: May it please the Court, Your
25 Honor.

1 DIRECT EXAMINATION

2 BY MR. LOCKLAIR:

3 Q. Good afternoon, Mr. Mann. I'm just going to kind of
4 take you back and start from the beginning. When were you
5 first arrested on these charges?

6 A. I was arrested January 15th, 2002.

7 Q. And when did you first appear in court as far as like
8 a bail hearing, detention hearing?

9 A. January 17th, 2002.

10 Q. Okay. And did you have an attorney at that time?

11 A. No.

12 Q. Okay. When did you first get legal counsel?

13 A. I did not receive legal counsel until after I had
14 already been arrested and placed in jail, put through the
15 bond hearing. And Ashley Pennington came to see me on
16 January 22nd, after Detective Walker and Detective Watson
17 took me out of the county jail to go get blood and hair
18 samples and took me to the, what do you call it, the
19 precinct, back to the interrogation room to interrogate me
20 once counsel had already attached. I refused to speak to
21 them at that time. They called Ashley Pennington over and
22 he took -- he made them take me back to the jail.

23 Q. Okay. So they knew you had an attorney at the time?

24 A. Yes. They knew I had an attorney because they -- I
25 mean, they had already served the warrants on me. I'd

1 already, at the bond hearing, asked for an attorney at that
2 time. So counsel had already attached.

3 Q. Okay. Did they take hair samples from you at that
4 time of any bodily samples ---

5 A. Yes. They took hair samples, pubic hair samples and
6 blood samples and saliva samples.

7 Q. Did they show you a court order they had to get that?

8 A. No, they never showed me a court order. They just
9 told me that that's what I had to do.

10 Q. At the time they had requested, when they did this,
11 had you already requested the services of the public
12 defender's office?

13 A. Yes, I had. I requested it at the bond hearing.

14 Q. Okay. You basically -- did they have you fill out a
15 form or something?

16 A. Yes. They had me fill out a form.

17 Q. Okay. But you didn't have an attorney appointed at
18 the bond hearing? The judge didn't say at the bond
19 hearing, I'm going to appoint so and so, I'm going to
20 appoint the public defender?

21 A. Not a specific attorney, but counsel had attached by
22 way of s former charge.

23 Q. Right. I'm going to get to the facts. The judge will
24 take care of the law part of it, we'll let her focus on the
25 law part. As far as the facts though, did the judge at

1 that point appoint you an attorney or say the public
2 defender's office will be taking your case?

3 A. They told me that the public defender's office would
4 be taking -- that I would get an attorney from the public
5 defender's office, but they did not say which attorney.

6 Q. Okay. And so obviously when you went to the bail
7 hearing and when they took you over to the precinct, you
8 were alone without an attorney present, correct?

9 A. Yes, sir.

10 Q. When was the first time you met Ashley Pennington?

11 A. That January 22nd, 2002, when Detective Walker and
12 Detective Watson, instead of taking me back to the jail
13 like they were supposed to, took me to the precinct and
14 tried to coerce a confession out of me in regards to
15 Beverly Blake.

16 Q. Okay. Is that when you met him? Did he come down to
17 the precinct?

18 A. When they realized they weren't going to get any
19 confession out of me, they tried to take me back to the
20 jail and I refused to go. I told them I wanted to see a
21 lawyer. I wanted to see a lawyer right then and I was not
22 going to go back to the jail without making a scene. So
23 they called the public defender's officer and Ashley
24 Pennington came over and told them that I was not going to
25 make a statement to them, to take me back to the jail.

1 Q. Okay. After you got back to the jail, when was the
2 next time you saw an attorney?

3 A. Ashley Pennington came to see me once after that. I
4 don't recall the dates. It was some time between January
5 and April, when I was shipped up to SCDC.

6 Q. What got you shipped to SCDC?

7 A. I was already on YOA parole. So they violated my
8 parole and sent me back to SCDC under the Department of
9 Correction's care.

10 Q. Okay. So you were up at SCDC as part of the
11 Department of Corrections, not because of some problems you
12 had caused in Charleston or threatening anybody, none of
13 that stuff?

14 A. No. I had no problems at the jail whatsoever. It was
15 just due to a previous charge.

16 Q. Okay. And then after Ashley came to see you one time
17 between January and April, who was the next attorney that
18 you saw?

19 A. The next attorney I saw was Jennifer Shealy. She came
20 to Lieber Correctional Institution by herself, which I met
21 her the first time.

22 Q. Do you recall when that was? If not, approximately
23 when it was?

24 A. This was probably around September, maybe -- no, it
25 was before then. This was probably the summertime, June,

1 July of 2002.

2 Q. Okay. And what conversations did y'all have at that
3 initial meeting?

4 A. The first meeting we had, she asked me basically to
5 tell her what occurred at Dante Tobias' house. And I told
6 her what occurred at Dante Tobias' house.

7 Q. Okay. Is that basically all y'all talked about that
8 first initial meeting?

9 A. That first -- that's all she wanted to talk about the
10 first meeting, what occurred at Dante Tobias' house?

11 Q. Okay. When was the next time you saw her?

12 A. The next time I saw her was a couple of months later.
13 She came to see me with a lady by the name of -- I forget
14 her name now. It was another lady from the Public
15 Defender's office.

16 Q. Kelly Kassis?

17 A. Kelly Kassis, that was her name. She came to see me
18 with Ms. Kassis and we met in the visitation room. And
19 another prisoner by the name of Charles Sullivan came up
20 there. At the time, I did not understand very much about
21 the law. So he came up there and met with us, Ms. Kassis
22 and Ms. Shealy, and helped me understand what they were
23 talking about as far as the law and how it applied to me
24 and my case.

25 Q. Okay. And what did y'all discuss at that meeting?

1 A. We discussed my statement. We discussed the
2 involuntariness of my statement. We discussed Detective
3 Walker sexually assaulting me. Me just having had a gun
4 put to my head. We discussed that I gave a statement in
5 exchange that they let Christy and her children -- not
6 charge her children as an adult.
7 Q. Wait, back up. Let's back up. Just kind of tell the
8 court what you told Ms. Shealy when it first started. Kind
9 of go through what happened when the cops started to
10 interrogate you and threaten you and go through step-by-
11 step what they did to you.
12 A. To begin with, I wasn't even aware that I was being
13 arrested by the police. Christy and I woke up around six-
14 thirty in the evening so I could take her to work. We went
15 to a gas station or a Pantry Station where we were
16 arrested. When I went into the gas station, I came back
17 out. Two guys ran up on me in plain clothes and put a gun
18 to my head and said, freeze. I mean, they didn't say
19 freeze. They said, get the fuck out the car before I blow
20 your fucking head off. With that exact language.

21 MR. MANN: Excuse me, Your Honor.

22 A. That's the exact language that they used. And they
23 did the same to Christy. They threw her in the front of
24 the car and they threw me in the back of the car and held a
25 gun to my head and told me if I moved they were going to

1 blow -- excuse me, again -- that they were going to blow my
2 fucking brains out.

3 Q. And as far as that, you can say f'ing, or something
4 like that it would be better word.

5 A. Okay.

6 THE COURT: He needs to tell fully the truth.
7 I've heard it all before.

8 MR. LOCKLAIR: Okay. That's fine, Your Honor.

9 THE COURT: So I would prefer him to use the
10 exact language that was used.

11 MR. LOCKLAIR: Okay.

12 THE COURT: Thank you.

13 MR. MANN: Thank you, Your Honor.

14 A. But they held me at the back of the car. They did not
15 identify themselves at all. They were, like I said, they
16 were in plain clothes. There was no police car in the
17 parking lot, there was no police vehicles in the parking
18 lot. It was just -- the only thing that was there was a
19 truck, it was a F150, sitting by the gas pumps. At that
20 point, he put handcuffs on me and asked me, where are the
21 drugs at? I said, drugs? I don't know anything about any
22 drugs. I don't have any drugs. He went through my
23 pockets. He found nothing. He put me in that truck. He
24 made me sit up in that truck, put shackles on my legs, and
25 then turned around and waited until a Goose Creek police

1 cruiser pulled into the parking lot. When that Goose Creek
2 police cruiser pulled into the parking lot, he put me in
3 that cruiser where I sat until North Charleston came over.
4 Because they arrested me in Berkeley County. So they
5 waited until North Charleston came over and Detective
6 Walker and all the other detectives involved in the case
7 and sat -- watched me in the car for a few minutes and then
8 transported me -- transferred me to a Charleston Police
9 cruiser car. And then transported me to Charleston
10 headquarters or Charleston precinct, excuse me, whatever
11 they call it. Charleston County Sheriff's Office on
12 Pinehaven Drive. Took me into the interrogation room,
13 shackled and handcuffed me to a chair and started
14 interrogating me about armed robberies. I told them I
15 didn't know anything about armed robberies. The whole time
16 that I was in this interrogation, I was shackled and
17 handcuffed to this chair. And the shackles and chains were
18 extremely tight. I kept telling them that they were
19 extremely tight. They wouldn't loosen them. They said,
20 we'll loosen them once you give us a statement. I kept
21 telling them I want an attorney. They told me the only
22 attorney that you will get is a public defender. And the
23 public defender works for the same people that we work for,
24 which is the county. And they get paid by the county and
25 they're going to do the same thing we're going to do for

1 you. So you might as well talk to us. You might as well
2 give us a statement. I continuously persisted that I was
3 not going to give them a statement. And it finally came to
4 the point where they started letting me know -- I thought
5 that they had let Christy go. They let me know that they
6 had her in the precinct, as well. They came and showed me
7 a picture of her standing beside Detective Garland. And
8 said, you know, your girl's going to jail, too. Your
9 girl's going to jail, too, and we're going to take her
10 kids. We're going to take her children. So ---

11 Q. Let me stop you right there. They showed you a
12 picture of her next to the investigator, a detective?

13 A. On a digital camera.

14 Q. So they had to have taken that at the precinct after
15 she was arrested?

16 A. It was at the precinct with him standing -- with her
17 standing next to one of the detectives. He left the room
18 and they took it while he was out of the room with her to
19 show her, yes, -- I mean, to show me, yes, we have her
20 here.

21 Q. So by them taking a picture and showing that to you,
22 how did that make you feel about what potentially could
23 happen to Christy?

24 A. It made me feel that she was about to go to jail for
25 something she had absolutely nothing to do with, for

1 something that she, you know, she was a completely innocent
2 bystander, you know.

3 Q. And what happened next with the cops as far as their
4 intimidation and threats of you?

5 A. I mean, there was a lot. Detective Walker told me
6 that he used to work in the jail as a jailer and that with
7 him working in the jail, he knew a lot of the inmates there
8 and he knew a lot of the officers there and that here I am
9 locked up for killing two African Americans and he was
10 going to make sure that all the people in the jail know
11 that I was up -- he was going to make -- basically, he said
12 he was going to make it out that I was locked up for a race
13 crime, that it was racially motivated. That I was killing
14 black people just to be killing black people because I
15 didn't like black people. And he was going to let ---

16 Q. In your opinion, why was he going to do that?

17 A. Why he was going to do that to make my stay in jail
18 very rough. Everybody knows that the penitentiary and jail
19 is predominately housed and filled with African Americans.
20 And by making me out a racist killer of their race, that's
21 going to put me in harm's way. That's going to make my
22 stay there very dangerous. It's going to make my stay --
23 possibly even get me killed.

24 Q. All right. So basically in jail and prison, there's a
25 significant chance of physical harm or even death occurring

1 to you if people think that you're some huge racist and
2 bigot and kill people just because they're black?

3 A. Especially a white person for that.

4 Q. Okay.

5 A. You know, it's already hard enough for a white person
6 to survive in jail and prison.

7 Q. All right. What happened next? What did they do next
8 as far as their treats and intimidation?

9 A. He went on to tell me that if I would cooperate with
10 them that he wouldn't do that, that he wouldn't, you know,
11 let that be known. At one point -- when I wouldn't give
12 them a statement, he stood up, unzipped his pants, put his
13 hand in his pants, grabbed himself, and told me that he was
14 going to ---

15 MR. MANN: Excuse me, Your Honor, but I'm going
16 to say this.

17 A. He told me he was going to beat me with his big black
18 dick. That he was tired of white people destroying the
19 black community and -- the way that had been going on since
20 the inception of America. And he went on with this for a
21 while as far as this racial issue, and then came back to
22 Christy again and let me know that she was going to jail,
23 and this, that and the third. If I didn't give them a
24 statement that she was going to jail, her children would be
25 taken. At some point, they finally convinced me that if I

1 gave them a -- agreed to give them a statement that they
2 would let her go, they would not charge her children and
3 they would give me a visit with her inside the
4 interrogation room. And to initiate the process, they
5 brought her into the interrogation room to let her sit with
6 me and talk with me for several minutes, for probably ten
7 or fifteen minutes, before they let her go.

8 Q. Okay. And did you subsequently give them a statement?

9 A. I did. It wasn't a statement that I wrote, though,
10 and it wasn't a true statement.

11 Q. Was that statement audio or videotaped?

12 A. No. There was a video camera in the room at the top
13 right-hand corner of the room, but they did not use it.
14 Detective Walker wrote my statement.

15 Q. So they never turned that video camera on, did they?

16 A. No, they didn't, because they didn't want to show what
17 they were really doing in there.

18 Q. The video camera, was it built into the room?

19 A. Yes. It was installed in the top right-hand corner of
20 the room. It was a little small room, probably not much
21 bigger than this cubicle I'm sitting in now. And at the
22 top right-hand corner, behind my head, where I was
23 handcuffed and shackles to the chair, it pointed directly
24 down at the table where I guess they do routine
25 interrogations.

1 Q. So from your opinion, that camera was there to film
2 interrogations in the interrogation room. You thought that
3 was the purpose of it being there?

4 A. Yeah. Yeah, exactly.

5 Q. I mean, there weren't any safes in there or anything
6 worth value they might have to protect from stealing?

7 A. No. There was nothing but a table -- there was a
8 table and three chairs and one of them I was shackled and
9 handcuffed to the whole time.

10 Q. Okay. And they didn't bother to put a tape recorder,
11 like an audio recorded, out either or anything of that
12 nature, did they?

13 A. Absolutely not.

14 Q. And, obviously, that would be because from what you
15 allege happened, they don't want that to be ---

16 A. Exactly. They did not want that to be shown.

17 Q. Yeah.

18 A. They wanted to hide what they really did.

19 Q. And so did you tell Ms. Shealy about all this?

20 A. I informed Ms. Shealy of all this.

21 Q. Was that at your second visit when she came?

22 A. This was at -- yes, sir.

23 Q. And what did she tell you that might -- if she told
24 you anything, what did she tell you about trial strategy,
25 how that could affect your case, what the next steps might

1 be as far as that statement?

2 A. Well, she told me that she felt that if all that stuff
3 occurred that my statement would be involuntary and that
4 that should not come in. But she also told me that the
5 State had filed some type of motion, I believe it was a
6 Terry motion, to try to bar my statement, as well. But she
7 -- we never went any further with it.

8 Q. Did she talk to you about your right to testify in
9 what's known as a *Jackson v. Denno* hearing, but still not
10 testify at a trial?

11 A. That's the real -- you talking about when we talked at
12 the prison ---

13 Q. Right.

14 A. --- or when the *Jackson v. Denno* hearing ---

15 Q. Well, first, I'm saying the prison. Did she ever talk
16 to you about that at the prison?

17 A. No. I didn't know what a *Jackson versus Denno* hearing
18 was.

19 Q. I just want to get this time frame. What else did
20 y'all talk about that second visit?

21 A. That was it. We talked about the statement.

22 Q. Okay. She came out a third time, correct?

23 A. The third time she came back with a young white female
24 named Karen something and Beattie Butler, and I met with

1 all four of them. I mean, all three of them, excuse me.

2 Q. And what did y'all discuss at that one?

3 A. Basically, she wanted -- she said she had just brought
4 Beattie Butler into the case, that she wasn't going to use
5 Kelly Kassis, for whatever reasons, I don't know. She was
6 bringing Beattie Butler into the case and she said that he
7 was a very good litigator and he was going to be her
8 director of litigation. Therefore, she wanted to bring him
9 in on our case or my case to help her with the case. So, I
10 mean, he was very experienced with such matters as mine and
11 she wanted me to meet him and to reiterate -- wanted me to
12 reiterate to him what I'd already told her.

13 Q. Okay. Is that what you did? You basically just
14 retold him everything?

15 A. Yes, sir. We went back over what took place at Dante
16 Tobias' residence on the night of January 7th and my
17 statement and interrogation.

18 Q. Okay. And after that visit, did she come out and see
19 you again at the jail at all?

20 A. No. That was the last time I saw Ms. Shealy. I only
21 saw her three times prior to trial. Or prior -- excuse me
22 -- to the *Jackson versus Denno* hearing. I'm sorry.

23 Q. Okay. What did y'all talk about at the *Jackson v.*
24 *Denno* hearing as far as your statement and your right to

1 testify at that hearing?

2 A. We didn't. We did not. Ms. Shealy had a medical
3 emergency and had to leave. She was going to do the
4 Jackson versus Denno hearing and she had a medical
5 emergency, which I was told later on that she had ---

6 Q. Well, let's not go into whatever it was. That's
7 personal and would not need to be discussed in court.

8 A. Well, she left, and Beattie Butler took over on the
9 whim for Ms. Shealy, because Ms. Shealy had a medical
10 emergency, and did the Jackson versus Denno hearing. I
11 didn't know what it was. I had no clue. He told me that
12 he could handle it, that it was just a preliminary hearing
13 and don't even worry about it. Just sit back and let him
14 do his thing.

15 Q. Okay. At the meeting when Jennifer Shealy, Beattie
16 Butler, and Karen, whose last name you're unaware of, met
17 with you, did you just talk about what happened at Dante
18 Tobias' house or did you rehash everything about the
19 alleged statement you gave the police?

20 A. Yes. We went over everything.

21 Q. Okay. So he was aware of the different threats that
22 had occurred and things of that nature?

23 A. Yes. Yes, he was. As a matter of fact, he was very
24 disturbed by it.

1 Q. Now, when she left, had the hearing actually started
2 or was it prior to the hearing?

3 A. It was -- the hearing, we had picked a jury for the
4 first trial. We'd already picked a jury but the jury was
5 not sworn. And they wanted to go -- Judge Pieper wanted to
6 go ahead and do the *Jackson versus Denno* hearing and brush
7 up some other pre-trial matters before swearing the jury.
8 And that's when Ms. Shealy became sick and had to leave.
9 So they didn't never -- they never swear the -- or swore
10 the jury, and we moved on to -- or they did a -- we moved
11 on with the *Jackson versus Denno* hearing and some other
12 pre-trial matters that Mr. Butler took care of and then
13 they postponed the trial until late September.

14 Q. Okay. Did Mr. Butler ever talk to you about your
15 right to testify or whether you shouldn't testify at a
16 *Jackson v. Denno* hearing?

17 A. No.

18 Q. The differences between that and the actual trial and
19 testifying?

20 A. No. We had no discussion about that whatsoever.

21 Q. You didn't have any from Ms. Shealy either?

22 A. No. Like I said, I didn't know what a *Jackson versus*
23 *Denno* hearing was until later on after my trial and I began
24 to learn more about this whole process.

25 Q. Had you known that you could testify at that hearing

1 and what you say might not be admissible in court, that you
2 could -- it would be limited as to what you could testify
3 to at that hearing, would you have wanted to testify?

4 A. Absolutely.

5 Q. But you weren't given that chance, were you?

6 A. No. I was not even given the chance. I wasn't told
7 that I could testify. I was told that it was just a
8 preliminary matter and to sit back and watch.

9 Q. Okay. After the *Jackson v. Denno* hearing, did you
10 have occasion to talk to Ms. Shealy or Mr. Butler again
11 prior to trial?

12 A. I did not see Ms. Shealy again until our trial. And I
13 saw Mr. Butler one time. Right before the trial, he came
14 to see -- they had moved me to the Broad River Correctional
15 Institution and he came to see me up there just prior to
16 the trial.

17 Q. What did y'all talk about at that particular meeting?

18 A. He just informed me that Ms. Shealy was well and that
19 she was ready to get back on the case and that we were
20 going to trial in another week or two. That was it. We
21 didn't even talk about the case itself.

22 Q. Okay. And how far in front of the trial would that
23 have been, you think?

24 A. You talking about when Mr. Butler came?

25 Q. Yeah?

1 A. That was like a week or two.

2 Q. A week or two before trial?

3 A. Yes.

4 Q. Okay. Where were you being housed during the trial?

5 A. I was at the -- Ms. Shealy filed a motion to have me
6 moved -- Judge Pieper ordered me moved to the Lieber
7 Correctional Institution from the Broad River Correctional
8 Institution because Ms. Shealy felt that it would be
9 impractical for me to be all the way up there and if she
10 had to see me during the course of the trial, having to
11 drive all the way to Columbia to see me.

12 Q. Okay. So did you stay at Lieber throughout the course
13 of the trial?

14 A. I stayed at Lieber. Each day, they transported me
15 back and forth each day.

16 Q. Who transported you back each day?

17 A. SCDC's transport officers for the Lieber Correctional
18 Institution.

19 Q. Okay. Did they wear -- the ones in the courtroom,
20 just for the record, did they wear uniforms that marked
21 them as being with the Department of Corrections?

22 A. They were wearing the exact same uniform that you see
23 the four SCDC officers sitting in this courtroom wearing
24 right now.

25 Q. Okay. So they had SCDC emblazoned across their

1 chests?

2 A. Yes. Yes.

3 Q. So it was obvious that they were with the Department
4 of Corrections, correct?

5 A. It was clearly obvious.

6 Q. Where were they sitting during your trial in relation
7 to where you were sitting?

8 A. Directly behind me.

9 Q. This piece of wood here's called the bar. Were they
10 in front of the bar or behind the bar?

11 A. They were behind the bar.

12 Q. And so basically where you would be seated now, they
13 would be sitting in a similar position?

14 A. They were seated pretty much the same as they are now.

15 Q. Okay. Now, prior to the trial starting did Ms. Shealy
16 or Mr. Butler ever discuss with you your right to testify
17 at your trial or your right not to testify at your trial?

18 A. I had always insisted to Ms. Shealy that I wanted to
19 testify from the first day we ever met.

20 Q. Okay. So prior to trial, when did Ms. Shealy or Mr.
21 Butler or anybody else from their office come out and
22 prepare you for your testimony and the cross-examination
23 you might be subjected to?

24 A. That never occurred.

25 Q. So y'all went to trial without them ever having

1 prepped you for the potential of you testifying at all?

2 A. No. They gave me no preparation for getting on the
3 stand whatsoever.

4 Q. They didn't say if you testify they're going to ask
5 you about this prior convictions, they're going to ask you
6 about drugs?

7 A. No.

8 Q. None of that?

9 A. No, nothing.

10 Q. They didn't go over it and say they're going to be
11 able to be point-blank. Isn't it true you killed him?
12 Isn't it true you killed her? Isn't it true this? They
13 never went over any of that with you?

14 A. It never came up until Judge Pieper finally -- Pieper,
15 Pieper, I pronounce that wrong sometimes. Judge Pieper
16 asked me in the course of the trial if I wanted to testify
17 and Ms. Shealy told him that we'd not made that decision
18 yet.

19 Q. Okay. So the judge asked in trial if you're going to
20 testify? Is that at the close of the State's case or did
21 he do that prior?

22 A. That was somewhere in between -- in the course of the
23 State's case, he asked Ms. Shealy if she had discussed my
24 right to testify with me in the course of the State's
25 presenting its case, in one of the breaks. And Ms. Shealy

1 told him that we had not discussed that yet and that we
2 would discuss it and she would let the Court know.

3 Q. Okay. And you -- the judge didn't actually question
4 you until the State had rested, prior to the defense
5 putting up a case, correct?

6 A. Yeah. The judge did not question me until after the
7 State rested.

8 Q. What conversation did you have with Ms. Shealy prior
9 to the judge questioning you about whether or not you were
10 going to testify or not?

11 A. There's a small room that the prisoners meet with
12 their attorneys outside these courtrooms and we went in one
13 of those courtrooms and Ms. Shealy and Mr. Butler was
14 sitting in there. And they said, well, we have to make a
15 decision around whether you want to testify or not. I told
16 her that I wanted to testify all along, and I've told her
17 that from the get-go. She told me that she did not feel
18 that I should get up there and testify. Her and Mr.
19 Butler, Mr. Butler, said that they didn't feel that the
20 state got what it wanted from its witnesses and that the
21 state had not met its burden, the state had a weak case and
22 that I did not need to get up there and testify.

23 Q. And what was your ultimate decision as far as
24 testifying in the end, after speaking with them?

25 A. After talking with Ms. Shealy, I decided not to

1 testify, based on her advice.

2 Q. Okay. But for her telling you that they didn't feel
3 -- the state had a weak case and hadn't met their burden,
4 which obviously you knew at that point if the state fails
5 to meet their burden of proof then you're not convicted.
6 The jury has to find you guilty beyond a reasonable doubt,
7 correct?

8 A. Exactly.

9 Q. So if the jury found they hadn't done that, you could
10 have been acquitted, correct?

11 A. Exactly.

12 Q. So the fact that she said that in her opinion,
13 according to you, that they had a weak case and hadn't met
14 their burden, which would mean that, if she's correct, you
15 would be acquitted, you then decided not to testify?

16 A. Believing that I would already be acquitted, I went
17 ahead and took Ms. Shealy's advice and Mr. Butler's advice
18 and decided not to testify, based on their advice.

19 Q. Up until the point when y'all met in one of the
20 attorney/client conference rooms or the room that they have
21 for you guys when you're in custody, what was your
22 intention as far as testifying up until that point?

23 A. I had every intention of testifying. I told Mr.
24 Shealy and Mr. Butler that all along.

25 MR. LOCKLAIR: I beg the Court's indulgence one

1 moment, Your Honor.

2 THE COURT: Yes, sir.

3 Q. Okay. So assuming that Ms. Shealy had not advised you
4 that way and you'd gone forward with your original
5 intention of testifying, I want to go back through for the
6 Court's purpose of knowing for this hearing what your
7 testimony would have been about what occurred. So if you
8 could, please, tell the Court what occurred when you went
9 to Dante Tobias' house?

10 A. Do you want me to tell you why I went to Dante Tobias'
11 house and everything?

12 Q. Yeah. You can start with about why you went and give
13 the Court a little background about involvement with
14 Brownie.

15 A. Okay. I was driving around with some friends on the
16 date of January 7, 2002, and I was called by Beverly or
17 Brownie -- Beverly Blake a/k/a Brownie -- and she told me,
18 and lead me to believe that she was in a very horrible
19 situation, in which her roommate she had been staying with
20 was -- to begin, she was a runaway. She stayed from place-
21 to-place. Where she told me the guy that she was staying
22 with had initiated -- he was working -- running an escort
23 service and had been forcing her into prostituting herself
24 for him. And she didn't want to do it anymore. And she
25 wanted to leave. She asked me, you know, if I would come

1 and get her. I told her I was way out at the time. She
2 was in West Ashley. I was way out in Bonneau at the time.
3 And I told her -- I gave her some other numbers to call,
4 seeing I was so far away -- to call the numbers. If you
5 cannot get in touch with anybody to come get you that's
6 closer, then I will come get you. So I went and got her.
7 When I got there, a fight broke out between me and Mr.
8 Tobias, who kept continuously trying to pull a gun on me,
9 which they found a holster on him to prove that, but he
10 continuously tried to pull a gun on me in the course of the
11 fight. We struggled, and in the course of the struggle, I
12 don't remember exactly how Beverly ended up with the gun,
13 but she ended up shooting him. And scared to death, I
14 jumped up and I ran. I left. I ran and jumped in the car.
15 She did, as well. Michael Crumm and Eric Zack were already
16 in the car. And we left.

17 Q. All right. Where did y'all go after that?

18 A. We went to Peter Davies' house. We went to Peter
19 Davies' house. We sat there for a little while. I asked
20 Eric and Zack or Eric and Michael where they were going to
21 go. I asked Brownie where she wanted to go. She told me
22 she wanted to go to North Charleston to an apartment
23 complex called Planter's Crossing and that's where I took
24 her.

25 Q. Okay. The State did allege at trial that y'all had

1 gone over there to allegedly rob this big time drug dealer.
2 When you went over there, did you have any intention of
3 committing the crime of armed robbery or robbery of any
4 sort?

5 A. I had absolutely no intention of committing any crime
6 whatsoever. I went there to help a friend out of a bad
7 situation. Someone who I already know or knew was living
8 in a bad situation and I went to help her out of the
9 situation that she'd got in, which I felt was beyond her
10 control with what she was telling me that was going on with
11 her.

12 Q. This might sound corny, but you were going to try and
13 help a damsel in distress?

14 A. Pretty much.

15 Q. A woman who needed help from a man who's obviously
16 bigger than her, has firearms, things of that nature?

17 A. Pretty much, yes.

18 Q. Okay.

19 A. And that is exactly what happened. I had no criminal
20 intent. I had -- there was no talk of armed robbery. I
21 never robbed anybody. I didn't have any intention to rob
22 anybody and I didn't rob anybody and I didn't carry
23 anything away from his residence to be a robbery.

24 Q. Okay. There was some allegations made that when y'all
25 got in the car, I think that Brownie ran back in and got a

1 shotgun or something. Do you recall her coming out with a
2 shotgun?

3 A. Detective Walker wrote my statement. I did not write
4 that statement. That statement is in Detective Walker's
5 handwriting and he wrote what he wanted in that statement.
6 In the course of trying to free Christy and let her go and
7 not have her children taken away from her, I just agreed
8 with whatever Detective Walker said and let him write what
9 he wanted.

10 Q. Okay. So it's fair to say that she did not come out
11 of the house with a shotgun and get in the car?

12 A. No. There was never a shotgun present.

13 Q. Okay. What happened after y'all left? Y'all got in
14 the car, you left. What kind of discussions, if any, did
15 y'all have about what had occurred? Just kind of what you
16 had said in your position?

17 THE COURT: Counsel, are we going to rehash all
18 of the facts? I'm concerned about what his perception,
19 what he relayed to his counsel and how that performance may
20 or may not have been deficient and how that would have
21 changed the outcome of the trial. Hearing the testimony
22 again, I don't need to hear all of the facts all over
23 again, counsel.

24 MR. LOCKLAIR: Well, Your Honor, I thought for
25 purposes of PCR if I didn't put up what he would have

1 testified to at trial, then I don't preserve it. In a PCR,
2 I have to show you what the evidence would have been.

3 THE COURT: You need to establish whether or not
4 -- he can sit here and testify as to his relation --
5 narration of the events, but if he didn't tell Ms. Shealy
6 any of that, it's moot. That's the issue.

7 MR. LOCKLAIR: He testified earlier that he told
8 Ms. Shealy everything that occurred and went through it
9 step-by-step. I thought I had to preserve this to be able
10 to ---

11 THE COURT: So you want me to listen to every
12 detail of everything that he said he told Ms. Shealy?

13 MR. LOCKLAIR: About what he would have testified
14 to at trial, had he chose -- had he not been convinced not
15 to testify. I have to do that under the law. But if Your
16 Honor says I don't ...

17 THE COURT: Counsel, just to make sure that we're
18 clear. I don't need to hear all of the testimony. He
19 needs to testify as to what he would have testified, had he
20 testified.

21 MR. LOCKLAIR: Yes, ma'am.

22 THE COURT: All right.

23 Q. All right. That's what I'm trying to say, don't say
24 what other people said. Just go straight to what you said
25 and just get -- okay. I'll just get to the point. What

1 else would you have testified to had Ms. Shealy told you --
2 had you testified, just to be short?

3 A. As far as the various other witnesses that testified,
4 I would have provided testimony that would have
5 contradicted a number of witnesses that testified.

6 Q. And only tell me stuff you told Ms. Shealy. If you
7 didn't tell Ms. Shealy or Mr. Butler, forget it ever
8 occurred.

9 A. I told Ms. Shealy everything I'm telling you now.

10 Q. Okay. What witnesses did you tell her you could give
11 contradictory or impeachment testimony to or testimony that
12 would have affected their credibility?

13 A. Nicole O'Connell, Christy Bunch.

14 Q. Wait. Tell me -- what did you tell her about that you
15 could testify to about each of them.

16 A. That when Nicole O'Connell gave a statement stating
17 that Peter, myself and Beverly went over to her house or
18 her mother's house, and that in the course of being over
19 there I said something to Brownie about having regrets.

20 Did she have regrets? And that wasn't what I said. What I
21 asked her was did she regret what she just did. But Nicole
22 paraphrased what I said and it was presented to the jury as
23 if, okay, I'm in -- or you having regrets that we just did
24 something. No, it wasn't we just did something. It was
25 what you did, what she did.

1 Q. Okay. Now, go to the next witness, what you told Ms.
2 Shealy you could testify to, if you had testified at trial?

3 A. Christy Bunch. Christy Bunch testified that in a
4 phone call, a recorded phone call from the Lieber
5 Correctional Institution, that I confessed the murder of
6 Beverly Blake to her. This call does not exist. And they
7 never found this call. Ms. Shealy and Mr. Butler, the
8 state, the investigator, they spent hundreds of hours
9 listening to these calls to try to figure out if this call
10 existed. I would have testified that, no, this call did
11 not exist and why it did not exist was because Christy
12 Bunch was on so many drugs at the time that she just made
13 up whatever she wanted to say, whatever she could to try to
14 hurt me in the course of the trial, to keep me from coming
15 home because she was jealous of other women that I talked
16 to and the people that were in my life trying to help me.
17 Q. I mean, in fact, that's something that Ms. Shealy did
18 bring up on cross-examination ---

19 A. Yes.

20 Q. --- when she talked about Lieber and other women
21 coming to see you?

22 A. Right. And that phone call never existed. And my
23 testimony would have provided weight behind the fact that
24 that call never existed because it never -- it didn't exist
25 because it never happened.

1 Q. Okay. Did you discuss with Ms. Shealy and would you
2 have testified to Christy's extensive drug use of a litany
3 of drugs?

4 A. Absolutely, because that was the reason her and I had
5 so many problems, because of her drug use, because she was
6 addicted to crystal meth, because she was addicted to what
7 they call Special K or -- how do you say it?

8 Q. Ketamine.

9 A. Ketamine, exactly. She was addicted to both of those
10 drugs, as well as marijuana and on psychotropic
11 medications. I would have let the court know and the jury
12 know that that was one of the primary problems in our
13 relationship.

14 Q. Okay. Were there any other witnesses that you told
15 Ms. Shealy stuff about and had you been able to testify,
16 you would have been able to testify ---

17 A. Dustin James. Dustin James stated that in the
18 bathroom at the ODC before the fight broke out between me
19 and Mark Ackman [phonics], that I confessed both murders to
20 him in that bathroom with four other people in there. Not
21 only did I tell Ms. Shealy that there was three other --
22 four other witnesses in there that she could have gone and
23 talked to -- in fact, they did go to one. I'm sorry.

24 Bobby Russell. But not only did I inform her of that, I
25 informed her that that conversation never existed. Dustin

1 James got put in the Berkeley County Detention -- jailhouse
2 interrogation room on unrelated charges and made up that
3 statement. And I would have let the jury know that I did
4 not make those statements, absolutely. And there was other
5 witnesses that would have corroborated that I did not make
6 that statement. But they never -- Ms. Shealy and them
7 never called them. The only one that they attempted to
8 call was Bobby Russell, as Ms. Davis has testified, that
9 she went to serve a subpoena on Bobby Russell and his
10 mother. And Ms. Davis told me at trial when I asked her,
11 why is Bobby Russell not here to testify, Ms. Davis told
12 me, I went to serve the subpoena and his mother and him
13 stood in the doorway crying and would not accept the
14 subpoena. I said, what? Ms. Davis told me that Bobby
15 Russell and his mother said that they had been threatened
16 by officers of law enforcement and they would not come in
17 there and testify. It wouldn't be safe for them. I asked
18 her what are they going to do about it? She told me to
19 talk to Ms. Shealy. I talked to Ms. Shealy about it. I
20 said, what are you going to do? Her words, she told me to
21 save it for appeal.

22 Q. Okay. Did you subsequently find out that you couldn't
23 save it for appeal?

24 A. Yeah. Exactly.

25 Q. Okay.

1 A. I mean, I pretty much knew then that I was in trouble
2 when she told me to save it for appeal.

3 Q. Were there any other witnesses that you spoke with Ms.
4 Shealy about that had you testified you would have offered
5 testimony against?

6 A. Mervin Menier, the jailhouse snitch, the guy that said
7 he was my roommate for twelve days and said I confessed the
8 murders to him. He was my roommate for twelve days and as
9 I would go out for attorney visits and visits with my
10 friends that would come and visit me at the jail, I would
11 come back to the room and my papers would be disarrayed,
12 they would be disorganized. You know, I had statements of
13 Eric Zack and I had other stuff that Mr. Pennington was
14 giving me from the case, my statement that Detective Walker
15 wrote, a summary that Mr. Pennington had asked me to write
16 of all the events during this time so I could give it to
17 him to be able to get it to the investigator; all of this
18 stuff was in the room. And I kept coming back in the cell
19 and these paperwork, these papers were strewn. And I could
20 tell that my paperwork was missing. I'm a very neat and
21 organized individual, and I could tell that this stuff had
22 been looked through. So when I realized what was going on,
23 him and I got into an altercation. And I forced the
24 guards, the jailers, to move me to another cell because I
25 knew what he was doing. I could see that he was trying to

1 set me up so he could testify against me because he was a
2 federal inmate. They had me in the federal unit in the
3 jail and he was trying to get a downward departure on me.

4 Q. So as you testified, would you have had the knowledge
5 to testify about how -- because you've been in jail enough,
6 your lawyer brought it out that you were in Lieber, to
7 testify about how the jail works with snitches trying to
8 dig up information anyway possible, ---

9 A. Exactly.

10 Q. --- particularly if they're feds?

11 A. I would have testified to everything I could have to
12 have shown that this guy was trying to use me to get a
13 downward departure on his own sentence, which the feds,
14 they get time cut off their sentence for substantial
15 assistance, cooperation or whatever. And I did know enough
16 then to know that that's what he was trying to do with me
17 and that's exactly what -- I communicated that to Ms.
18 Shealy. And I would have got on the stand and articulated
19 to the court, as well.

20 Q. Okay. Were there any other witnesses that you spoke
21 with Ms. Shealy about that had you been called to testify
22 that you would have been able to contradict or provide
23 impeachment evidence on?

24 A. If I could see my transcript right there, it's leaning
25 up against that leg, it's all tagged, I could review

1 through it quick and see.

2 Q. Well, rather than doing that because I know the
3 Court's in a hurry, I'll just go ahead and move on and we
4 can get back to that one later.

5 THE COURT: Counsel, this is an appropriate time
6 for us to stop. It's evident that we're not going to get
7 through this hearing today. Mr. Friedman, Friday
8 afternoon's an appropriate time to transfer this for
9 continuation.

10 MR. FRIEDMAN: Your Honor, I do think we'll be
11 done by about eleven with the morning cases.

12 THE COURT: All right. Let's start this -- let's
13 resume this at one thirty. Is this your final witness,
14 counsel?

15 MR. LOCKLAIR: Yes, ma'am. Yes, ma'am.

16 THE COURT: All right. We're going to pass this
17 to one thirty on Friday. All right.

18 MR. LOCKLAIR: Thank you, Your Honor.

19 THE COURT: Mr. Mann, you need to step down. And
20 we're going to transport you back Friday afternoon to
21 continue your testimony.

22 MR. MANN: Thank you, ma'am.

23 THE COURT: Counsel, just because we're
24 continuing it doesn't mean that I want you to go through
25 and write out your questions, do you understand? I want

1 you to keep on track.

2 MR. LOCKLAIR: Your Honor, I don't ever write any
3 questions out, ever, ever, ever, for court. Never have in
4 thirteen years.

5 THE COURT: All right. Counsel, let me ask, this
6 is your only witness? This is your last witness?

7 MR. LOCKLAIR: Yes, ma'am. That's our last
8 witness.

9 THE COURT: And, Mr. Friedman, do you have
10 additional witnesses?

11 MR. FRIEDMAN: Probably not many. I'll recall
12 Ms. Shealy. That will be the only one.

13 THE COURT: All right. We'll see you Friday, Mr.
14 Mann. Good luck to you.

15 MR. MANN: Thank you, ma'am. Thank you.

16 THE COURT: Mr. Friedman, do we need to have
17 anyone on call perhaps? Ms. Shealy, will you be back at
18 one-thirty on Friday?

19 MS. SHEALY: Yes, I can be here.

20 THE COURT: All right. Let's, just out of
21 abundance of caution, let's do that and I'll see you all
22 back at one thirty. And counsel, if you want to go ahead
23 and begin proposed orders or I'll give you additional time
24 to submit those after the conclusion of the hearing.

25 MR. LOCKLAIR: Yes, ma'am.

1 THE COURT: So we're dealing with -- I'll accept
2 proposed orders. This has been very lengthy, lots of
3 witnesses. I think that would just be the best way to
4 handle this, with proposed orders. All right. Is there
5 anything further? We're at ease in this case.

6 (WHEREUPON, court stood at recess in this case until
7 Friday, November 18, 2011 at 1:30 p.m.)

8 **November 18, 2011**

9 (WHEREUPON, Court convened with all parties present
10 and the following proceedings were had.)

11 THE COURT: Mr. Mann, go ahead -- if I recall
12 correctly you were on the stand.

13 MR. MANN: Yes, ma'am.

14 THE COURT: And let's go ahead and have a seat
15 on the stand, sir.

16 MR. LOCKLAIR: And, Your Honor, if I could just
17 explain to him. He probably doesn't know that we're not
18 supposed to talk to him while he's in the middle of his
19 testimony.

20 THE COURT: That's right. Come on, Mr. Mann,
21 have a seat.

22 MR. MANN: Okay. I wasn't aware of that, Your
23 Honor.

24 MR. LOCKLAIR: That's my fault. I forgot to
25 explain that, Your Honor.

1 THE COURT: That's all right. Let's get you up
2 on your feet, Mr. Mann. You need to follow my
3 instructions.

4 MR. LOCKLAIR: I'm sorry, Your Honor ---

5 THE COURT: Counsel. Counsel, I appreciate you
6 commenting, but I'm trying to get Mr. Mann on the stand and
7 laying his fears that he has to talk to y'all in this
8 hearing. I'll give you an opportunity. Let's try not to
9 talk over each other, all right.

10 Mr. Mann, I need you to have a seat. We swore you in
11 on Monday. Do you remember that, sir?

12 MR. MANN: Yes, ma'am.

13 THE COURT: All right. You're still under oath.
14 Any questions about that?

15 MR. MANN: No, ma'am. Not about that.

16 THE COURT: All right. Now, Mr. Mann, I told you
17 that -- have a seat. Now, I told you you couldn't talk
18 about your case with anyone and your attorneys couldn't
19 discuss your testimony. So that's why they haven't been
20 talking to you. Mr. Friedman couldn't talk to you. But
21 we're going to continue your testimony as if you had given
22 the same continuous testimony on Monday. All right?

23 MR. MANN: Yes, ma'am, Your Honor.

24 THE COURT: All right. Mr. Locklair. It seems
25 like an eternity since Monday for me, but I recall that you

1 were in the -- you were questioning Mr. Mann. Is that
2 correct?

3 MR. LOCKLAIR: Yes, ma'am, Your Honor.

4 THE COURT: All right. Any other -- any matters
5 that have arisen since Monday?

6 MR. LOCKLAIR: No, ma'am.

7 THE COURT: All right. And if I recall
8 correctly, this is your last witness?

9 MR. LOCKLAIR: Yes, ma'am. May it please the
10 Court?

11 THE COURT: Yes, sir.

12 MR. LOCKLAIR: All right. Thank you.

13 **DIRECT EXAMINATION CONTINUED**

14 **BY MR. LOCKLAIR:**

15 Q. Good afternoon, Mr. Mann.

16 A. Good afternoon.

17 Q. Just for the record, you have not spoken with me or
18 Mr. Kendrick or anybody else involved in our offices about
19 your testimony since last Monday when you got off the
20 stand, correct?

21 A. No, I have not.

22 Q. Okay. And we've not sent you any communications
23 regarding your testimony or anything of that nature?

24 A. No.

25 Q. When last we met, I was going through some of the

1 witnesses that testified at your trial that you would have
2 had information potentially about. I think we left off
3 with Mr. Menier. Had you testified at trial, what would
4 your testimony have been regarding Ms. Jobs. I believe she
5 was Dustin James' girlfriend, Maria Jobs.

6 A. Well, actually her name is Jakes.

7 Q. Jakes. Okay. Maria Jakes. Had you testified at
8 trial, what testimony would you have offered concerning Ms.
9 Jakes and her testimony?

10 A. Maria testified that the night that the fight broke
11 out at ODC Club, that I just made -- screamed a comment in
12 the course of the fight. Maria stated that I screamed out,
13 I already have a murder charge and I'm not scared to catch
14 another one. And that comment was never made. Dustin
15 James testified to a similar comment, but he stated it as I
16 said to the guy I was fighting, I already have two murders
17 and I'll kill you too. Those statements were never made.

18 Q. So if you'd testified, you would have testified that
19 those statements -- you did not, in fact, make those
20 statements?

21 A. No, I did not make those statements.

22 Q. Okay. Is there anything else you would have been able
23 to testify to about Ms. Jakes?

24 A. Other than her explaining to me when she came to visit
25 me at the jail that she had given false statements. She

1 also gave me a copy of her statements in which she made a
2 number of notations on those statements, saying that
3 certain things were not true. And I have those -- copies
4 of those statements here. I don't know if y'all can turn
5 them over to the court as exhibits or whatnot.

6 Q. Well, we wouldn't be able to because there are certain
7 evidentiary rules. But did you give those to your
8 attorney?

9 A. I gave them to Ms. Shealy. That's where I got them
10 back was out of her file when I got the file from Ashley
11 Pennington in 2007. I also have letters from Ashley
12 Pennington explaining that he was sending my file to me.
13 He sent me the entire file and I got those out of that box.

14 Q. And were those ever used by your attorney at trial?

15 A. No, they were not.

16 THE COURT: All right. Just so I'm clear.
17 There's a couple of different dates. When did you give
18 those to Ms. Shealy?

19 MR. MANN: I gave those to Ms. Shealy prior to
20 trial.

21 THE COURT: All right. Thank you.

22 Q. Okay. And those were never brought up at trial,
23 correct?

24 A. No, they were not. They were not used to cross-
25 examine her or impeach her.

1 Q. Okay. Had you been called to testify, would you have
2 been able to testify about the ability of inmates in the
3 Charleston County Detention Center, specifically Michael
4 Crumm and Eric Zack, the ability of them to communicate
5 through notes, through yellings and other ways, because you
6 were obviously in the detention center for a while. How
7 inmates can communicate even though they're in different
8 pods or dorms. Would you have knowledge of that?

9 A. Michael Crumm was housed in 3-E unit, which is
10 directly above the 1-A unit, which is the segregation unit,
11 and where they had me and Eric Crumm [verbatim] housed at
12 the time of trial. At the time of the first trial, excuse
13 me. And the rec fields, the way that they're situated, you
14 could yell back and forth between the rec fields to
15 communicate with one another. And with that rec being
16 directly -- or Michael Crumm being directly above Eric
17 Zack, they were able to communicate. When they brought me
18 back for trial, for the first trial, in which Ms. Shealy
19 got sick and had to leave, they had -- the cell that I was
20 in was directly on the window facing the rec field. And I
21 could literally see him out there talking to Michael back
22 and forth. And I knocked on the window and asked him who
23 he was taking to and he told me he was talking to Michael
24 up there. And that's how I found out that Michael was in
25 3-E. And then William Woodson came along later and stated

1 he was in 3-E with Michael Crumm and hearing him yell back
2 and forth on the rec field.

3 Q. Okay. Now, describe for the Court how the rec fields
4 are situated to the jail and whether they're enclosed
5 structures with solid walls or whether they have fences and
6 openings?

7 A. No. When you come out onto the rec field, the left
8 side of it is a solid wall with cell windows on it. The
9 right side of it is open. It's like mesh, hard mesh wire.
10 It's thicker than fence, but it's still like mesh and you
11 could see out of it. You can communicate out of it. You
12 can talk things out of it or whatever.

13 Q. Okay. But it's fair to say that you can hear
14 somebody's voice through the mesh? It's not like a solid
15 cinder block or steel wall?

16 A. No. You can easily communicate. The prisoners
17 regularly communicate back and forth through that by either
18 talking, yelling, or dropping kites down on mules. And I
19 don't know if the Court knows what a mule is, where inmates
20 tie something to a string and throw it to each other to get
21 whatever they're trying to get.

22 Q. Okay. I want to move on to when they had the in-
23 camera hearings. Do you recall them having some in-camera
24 hearings during the trial?

25 A. Yes. There was -- actually there was numerous in-

1 camera hearings, but there was four outside of the
2 courtroom.

3 Q. Okay. So there were numerous that were held outside
4 -- that were in-camera, four that actually left the
5 courtroom?

6 A. There was several that were held in the course of the
7 trial in the courtroom, but there were four that were held
8 outside the courtroom.

9 Q. Okay. Were you present for those hearings?

10 A. I was only present for one.

11 Q. So there were three hearings in your case that were
12 held outside the presence of the courtroom and they were
13 also held outside of your presence?

14 A. Yes. There was -- the first one was a detective came
15 over from Berkeley County. Ms. Shealy had subpoenaed a
16 file on Peter Davies from Berkeley County and they said
17 that they had reopened that case so they didn't want to
18 turn over that file to Ms. Shealy. So the judge held an
19 in-camera hearing or ex-parte hearing with the detective
20 and her -- the detective out and held the file to see if
21 Ms. Shealy would have been able to use it. The second
22 hearing was ex-parte between Ms. Shealy and the judge. I
23 don't know what the content of their conversation or the
24 reason for having that, but she went back into wherever,
25 the judge's chambers or whatever, and had an ex-parte

1 hearing with Judge Pieper. The third one was with Ms. --

2 Solicitor Wilson had an ex-parte hearing with the judge.

3 Q. At the second hearing that you called an ex-parte

4 hearing with Ms. Shealy, I assume you weren't present for

5 that, right?

6 A. No, I was not present, so I don't know what was

7 discussed. I just know that Ms. Shealy and the judge went

8 in chambers and they had whatever conversation they had. I

9 think that it had something to do with the file.

10 Q. Okay. And do you know if Ms. Wilson was present, was

11 also present, or was it just Ms. Shealy and the judge?

12 A. I think it was just Ms. Shealy.

13 Q. But you weren't there so you don't know for sure?

14 A. I wasn't there so I don't know.

15 Q. The same one with Ms. Wilson, do you know if Ms.

16 Shealy was able to be present?

17 A. I don't know. No. Actually, I do know because Ms.

18 Shealy was in the courtroom with me and she told me that

19 what we were waiting on at the time was Ms. Wilson to get

20 through with the judge. Ms. Shealy was at the desk with

21 me.

22 Q. Did she tell you what that was about?

23 A. No, she didn't.

24 Q. Were you even able to subsequently find out about what

25 that was about?

1 A. No.

2 Q. Okay. And what was the fourth one, was the one you
3 were present for?

4 A. The fourth one I was present for. It was a witness
5 intimidation hearing. When earlier I testified that Ms.
6 Gail Davis informed me that Bobby Russell, his mother shook
7 and cried as she tried to serve the subpoena on them to
8 come to trial, and refused to come and testify on my behalf
9 because they had been threatened, so when Ms. Davis brought
10 it to my attention, I brought it to Ms. Shealy's attention
11 and asked Ms. Shealy what she was going to do about it.
12 She told me to save it for appeal. But I got very
13 frustrated with Ms. Shealy and told her that if she didn't
14 bring it to the judge's attention, then I would. So she
15 got up and she tried to bring it to the judge's attention,
16 not in the way that I saw it, but in the way she
17 articulated that I felt that witnesses weren't saying what
18 I wanted them to say or felt that they would have said.
19 She didn't say anything about intimidation, which is what I
20 was trying to get her to present to the judge. So the
21 judge held -- asked us to move to the conference room. We
22 went to the conference room with only Ms. Shealy, the
23 lawyers for the state, Judge Pieper, myself and they called
24 witnesses. They called several witnesses to come in and
25 testify as to whether they had been threatened or

1 intimidated or tampered with in any form. I know that
2 Christy Bunch testified at that hearing. My mother
3 testified at that hearing. Lisa O'Connell testified at
4 that hearing. Nikki O'Connell testified at that hearing.
5 Amy Elliott testified at that hearing. And several
6 officers testified at that hearing.

7 Q. Okay. And you never saw the transcripts on that
8 because your appellate lawyer didn't order those portions
9 of transcripts?

10 A. No. I wrote letters to Mr. Savitz who was my
11 appellate attorney. Actually, I have copies of those
12 letters here now. I don't know if I'll be able to submit
13 those to the Court as exhibits or not, but I wrote to Mr.
14 Savitz asking him to motion the court to have those
15 transcripts unsealed and turned over to us.

16 Q. Have you got those with you now?

17 A. Yes, I do.

18 Q. Could you pull them out, please? And just while
19 you're looking, on appeal he didn't raise anything from
20 those hearings, did he?

21 A. No.

22 Q. He just raised just the joinder issue, correct?

23 A. The only thing he raised was the joinder even after I
24 wrote him specifically outlining cases that coincided with
25 the issues that Ms. Shealy did preserve and he didn't raise

1 any of those issues. In fact, I had a very troublesome
2 time with Mr. Savitz. For the first two and a half years
3 of my appeal, I could not get in touch with him. I had to
4 finally write Mr. Ristat [phonics] of the Court of Appeals
5 in order to get him to even tell me who my attorney was.
6 They never would correspond to me or respond to my letters.
7 But I also have the letters to Mr. Ristat and the South
8 Carolina Court Administration that I went through, the
9 battle I went through, just to find out who my direct
10 appeal attorney was.

11 Q. Okay. Did he eventually contact you after you made
12 those other steps?

13 A. No. He never contacted me. The first thing I ever
14 heard from him was when I got his brief to the Court of
15 Appeals.

16 Q. No letters, no visits or anything?

17 A. No. I never got any correspondence from him
18 whatsoever.

19 Q. And while you're looking, once your appeal was
20 decided, did he send you a copy of the opinion issued by
21 the Court of Appeals?

22 A. Yes. They did that.

23 Q. And did he advise you of what steps could be taken at
24 that point to further your appeal?

25 A. He sent me a PCR application when they denied my

1 direct appeal. And I sent it in to the Charleston County
2 Clerk and they sent it back to me saying it was not even a
3 valid application.

4 Q. Okay. Did he ever discuss with you what's called a
5 petition for a writ of certiorari to the South Carolina
6 Supreme Court?

7 A. I've never had any communications with him whatsoever.

8 Q. Okay. So I'm assuming he also didn't discuss with you
9 the fact of exhausting the state remedies before you'd be
10 able to file what's called at 2255 or a federal habeas
11 corpus petition?

12 A. I thought it was a 2254?

13 Q. A 2254. I'm sorry. 2254 federal habeas petition. He
14 didn't explain to you that you have to exhaust all your
15 state remedies prior to receiving that?

16 A. No. He gave me no explanation of anything whatsoever.

17 Q. So I'm assuming he never told you that it can be
18 defective in a federal 2254 habeas motion when you, as a
19 state convicted felon, do not file a petition for a writ of
20 certiorari through the State Supreme Court?

21 A. Say that again.

22 Q. He never told you that if you don't file a petition
23 for a writ of certiorari to the Supreme Court, the federal
24 government can throw your case out on habeas saying you
25 failed to exhaust your state remedies. He never told you

1 that, did he?

2 A. No. I learned that through my own research.

3 Q. Okay.

4 A. I have several letters here that I wrote to Mr.
5 Savitz.

6 MR. LOCKLAIR: May I approach, Your Honor?

7 THE COURT: You may.

8 A. This letter is after he had filed my appeal about the
9 factual default. This is the letter I wrote about my
10 issues. This letter here -- actually, I've got the
11 original. I have a copy of that one.

12 Q. And you didn't get a response to any of these?

13 A. No. I got no response to any of those letters. I
14 don't know if you want me to give the letters to Mr. Ristat
15 and the Court Administration where I wrote complaining that
16 I'd heard nothing from him.

17 Q. I'll use the ones to Mr. Savitz.

18 A. I also have the one -- hold on. I have the one that I
19 wrote him asking to file a writ of certiorari on my behalf.
20 I have the one asking him to turn over my file. I can't
21 find the one about the hearings.

22 Q. So in this letter from February 17th of 2007, you
23 actually requested him to file a petition for rehearing,
24 and if that was denied, to file a petition for writ of
25 certiorari to the South Carolina Supreme Court, correct?

1 A. Yes, sir, I did.

2 Q. And neither one of those were ever done on your
3 behalf, correct?

4 A. No, neither one was done on my behalf.

5 Q. Did you ever receive any explanation from Mr. Savitz
6 or from the Office of Appellate Defense as to why that was
7 not done?

8 A. No. I never got any correspondence from Mr. Savitz
9 whatsoever.

10 Q. And he never made any arguments on your direct appeal
11 about any potential Grand Jury defects, did he?

12 A. No, he did not.

13 Q. Did he appeal anything regarding the vitreous fluid
14 and the lack of a counsel hearing on that?

15 A. No, he did not. One of my letters in there that Mr.
16 Friedman has now is asking him to do so.

17 Q. Okay. And he never argued about any other evidence
18 that came in, such as the autopsy photos?

19 A. No, that's in that letter, as well.

20 Q. And he didn't bring up anything about the court, the
21 trial court, erring in denying motions for mistrial based
22 on inadmissible character evidence and prior bad acts?

23 A. That was in the letter, as well. No, he did not.

24 Q. And he also didn't bring up anything about him
25 requesting the sealed transcripts for your appeal, correct?

1 A. No, he did not. That was something -- as a matter of
2 fact, that is in that -- I did have that letter. You have
3 that letter, the one where I wrote him asking him to file
4 various issues, it is in that letter that I asked him to --
5 for a motion to the court to unseal the transcripts and
6 turn them over to us.

7 MR. LOCKLAIR: Your Honor, I'd ask that these be
8 marked, I believe it's Defendant's [verbatim] 3. I'm not
9 sure if I should have them marked as a group or
10 individually.

11 THE COURT: As a group is fine.

12 MR. LOCKLAIR: Okay.

13 MADAM COURT REPORTER: It should be Plaintiff's
14 3.

15 MR. LOCKLAIR: I'm sorry. Plaintiff's. Old
16 habits. And we'd also move to have these admitted.

17 THE COURT: I'm assuming there was no objection.

18 MR. FRIEDMAN: No objection, Your Honor.

19 THE COURT: Good.

20 A. In fact, the only letter I ever got from that office

21 ---

22 Q. Hold on a second.

23 THE COURT: Hold on one second. She's got to

24 mark ---

25 MR. MANN: I'm apologize, Your Honor.

1 THE COURT: Thank you.

2 MADAM COURT REPORTER: You just want to make them
3 one exhibit, right?

4 MR. LOCKLAIR: Yes, ma'am.

5 (WHEREUPON, Plaintiff Exhibit Number 3 was marked and
6 admitted into evidence.)

7 Q. Okay, Mr. Mann, I believe you were going to say
8 something else about something else you talked to your
9 appellate defense counsel about something else you wanted
10 to raise?

11 A. The only letter I ever got from the appellate defense
12 office was from Daniel Stacey before he retired. And it
13 was actually because Eric Zack's attorneys had contacted
14 him and wanted me to come waive my right to cross-examine
15 them on the sentences that they were receiving. And they
16 were insinuating that they would go lighter on Eric Zack's
17 sentence if I would waive that right.

18 Q. And that was from Mr. Stacey?

19 A. That was from Daniel T. Stacey in November 13th, 2003.

20 Q. Okay. I want to go back to some of the evidence in
21 the case. Earlier you heard some questioning about a
22 shotgun that was admitted in your trial. Do you recall
23 that shotgun being admitted?

24 A. Oh, yes.

25 Q. And do you recall if you and your attorney ever

1 discussed that shotgun ahead of time?

2 A. Oh, we had plenty of discussion about that shotgun.

3 Q. Okay.

4 A. We had a big conflict behind that shotgun.

5 Q. At any point in the trial, do you recall, was there
6 any direct testimony that linked that shotgun to the crime?

7 A. No. There was no -- there's nothing to link that
8 shotgun to me, nothing that linked it to the victim,
9 nothing at all. I also have exhibits in reference to that
10 shotgun.

11 Q. Well, that's not going to be in the record for the
12 Judge to decide on. But as far as the shotgun is
13 concerned, did you ever -- or I guess you didn't testify.
14 Did anybody else ever testify to the fact that that was the
15 shotgun that was allegedly taken from Dante Tobias' home?

16 A. You had the witnesses that said that I had a shotgun
17 similar to that at that time, but nothing ever directly
18 linked that shotgun to me or Dante Tobias. I'm sorry.

19 Q. All right. So at trial, nobody ever ID'd that as the
20 shotgun that came out of Dante Tobias' house or that that
21 was the shotgun that you had at some time in the commission
22 of this alleged crime?

23 A. It would not have been possible. That shotgun was
24 found in an entirely different county, in Dorchester
25 County, two days after I was arrested. And Charleston

1 County somehow went and got that shotgun and put it in
2 evidence in my case. That's why I was referring to the
3 exhibits I mentioned, because I have all the records here.

4 Q. And did your attorney object to that shotgun coming
5 into evidence?

6 A. No, she did not. And I was highly upset with her
7 about that. And her and I had discussion about that
8 shotgun.

9 Q. Okay. Going back to the alibi defense that you had
10 asserted originally. Did you talk to your attorney about
11 the alibi defense?

12 A. Yes, I did.

13 Q. And that wasn't presented at trial, was it?

14 A. No, it was not.

15 Q. Had you testified, what would your testimony have been
16 about your alibi?

17 A. It would have been that after the incident happened at
18 Dante Tobias' home and we left and Brownie separated from
19 me later that night, I was sick and in bed with Christy
20 most all the week that following -- that whole week. I was
21 constantly with her, except for maybe two hours of all that
22 time. And that two hours was Tuesday night, January the
23 8th. I left and went home, took a shower and came back.

24 But the rest of the week, I was with her. And Christy
25 testified to that all throughout the trial, even with her

1 being a state witness and doing everything she could to

2 hurt me, she still alibied me.

3 Q. Okay. And was an alibi jury instruction requested by

4 your attorneys?

5 A. No, there was no alibi instruction requested.

6 Q. But had you testified, you definitely would have

7 testified about the fact that you had an alibi?

8 A. Yes.

9 Q. And Christy Bunch, even though she was a state's

10 witness throughout the investigation that your attorneys

11 did on the case, she had before that consistently stated

12 that you had an alibi with her, correct?

13 A. Yes.

14 MR. LOCKLAIR: I beg the Court's indulgence for

15 one moment.

16 THE COURT: Yes, sir.

17 Q. Mr. Mann, is there anything that I've left out and

18 haven't questioned you about that you feel your attorney

19 was ineffective in doing during your trial?

20 A. I have numerous exhibits in reference to letters that

21 I wrote to Ms. Shealy prior to my trial, in reference to my

22 statement. I have numerous letters right here informing

23 her of the circumstances of my interrogation and what took

24 place in my interrogation and their using Christy to get a

25 statement out of me. She was well-informed of that and I

1 have those letters here, as well, that I would like to turn
2 over to the Court.

3 MR. LOCKLAIR: May I approach, Your Honor?

4 THE COURT: You may.

5 A. Actually, I have phone transcripts, as well.

6 Q. Okay. Were these all created by you?

7 A. Yes. These were -- well, actually, this was created
8 by Ms. Shealy's office, but these letters, the ones from
9 October 16th, 2002, right here at the bottom, I think the
10 second page where I wrote Ms. Shealy about my statement. I
11 sent her this on January 4th, 2003, and included a
12 suppression of statement checklist. This letter on January
13 15th, 2003, I also included another more in-depth checklist
14 of suppression. I also have my own notes from trial ---

15 Q. Okay.

16 A. --- I would like to turn over to the court, as well.

17 Q. And all of these were sent over to Ms. Shealy?

18 A. Yes. This was notes that I took in the course of the
19 trial as I had to with Mr. -- with the attorney now,
20 writing notes back and forth. And you'll see each one has
21 references to my involuntary statement. Right here, a
22 motion to suppress my statement. And these two here are
23 actually in reference to her preparing me for the stand.
24 Q. Okay. In these notes, were these notes that you had
25 shown to, shown to her or Beattie Butler during trial?

1 A. Yeah, exactly. Where we sat and wrote notes back and
2 forth and I took notes and showed her. I also have the
3 transcripts. They took transcripts of my phone calls from
4 Lieber, in which Christy and I discussed the fact that I
5 gave a statement to free her, in exchange to free her, that
6 I got from Ms. Shealy's office.

7 Q. All right. And that's talking about your original
8 statement?

9 A. That's talking about my original statement here where
10 her and I talked about her alibiing me. Right here.

11 Q. And these were phone calls -- when you say to let her
12 go, you're talking about when y'all were initially
13 arrested?

14 A. Yes. When we were initially arrested and they were
15 threatening to lock her up and take away her children.

16 Q. Okay. And so you confirmed to her at that point that
17 occurred?

18 A. She knew from the beginning. I consistently told Ms.
19 Shealy from day one, and I consistently pushed it to her,
20 that my statement should have been suppressed because of
21 that. That my statement was involuntary and it was not
22 true.

23 Q. Okay.

24 A. Some parts were true but many -- much of it wasn't.

25 Q. Yes, sir. Other than that was there anything else

1 that you had asked your attorney to do that she or Mr.

2 Butler failed to do?

3 A. The excited utterance that was entered where Detective
4 Walker testified that I made a statement when we went to
5 the Charleston County Hospital to take hair and saliva
6 samples.

7 Q. Let me interrupt real quick. Was this prior to you
8 having an attorney or did you have an attorney?

9 A. I had already gone to my bond hearing and told that I
10 would be given a lawyer from the public defender's office,
11 but I had not met with Mr. Pennington yet.

12 Q. Okay. Was this the incident you testified about
13 earlier where you went to the precinct and then y'all
14 called Mr. Pennington and that sort of thing?

15 A. Yes.

16 Q. Okay. Tell the Court about what happened with that
17 statement and what you would have testified to in concerns
18 of that statement had you been called to testify?

19 A. Okay. When they chained me up and to take me down to
20 get hair and saliva samples, Detective Walker continuously
21 told me, we got your hair on her. We got your hair on her.
22 He told me that in interrogation, as well. We got your
23 hair on her. We found a piece of black hair on her. You
24 got your hair on her and that's going to kill you. That's
25 what going to get you in this crime is going to put you

1 away, so you might as well confess. You might as well
2 confess. He kept telling me that repeatedly in the course
3 of going to get the hair and saliva samples. I had told,
4 in response to his interrogation or attempted
5 interrogation, I told him, just like I told him in the
6 interrogation room, that it's very well possible that he
7 could have my hair on her because I rode in the back seat
8 of the car with her that night and helped her the last time
9 I seen her. Hair clings to fabric and could very easily --
10 very well be on her. However, Detective Walker, he twisted
11 it and said that I told him that her hair would be on me.
12 And that was not the case. And it doesn't make sense
13 because the whole time they were trying to interrogate me,
14 I kept saying, my hair's on her, my hair's on her. But he
15 didn't want to expose what he was really doing -- what he
16 had really done. And even my statement to him, I already
17 told you, that was a reflective thought that I was thinking
18 back on the interrogation. I told you, I told you.

19 Q. Okay.

20 MR. LOCKLAIR: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. I'm going to show you this stack of letters you gave
23 me for Ms. Shealy and ask you if those are fair and
24 accurate copies of the letters that you sent to Ms. Shealy?

25 A. I'm missing pages to one of these. Those papers.

1 Q. Those go with it?

2 A. Yes, this goes with these. Yes. Yes, they are. In
3 fact, I got these letters from Ms. Shealy's file. I got
4 them from her file when Ashley Pennington sent me the case
5 file when I was in McCormick in 2007.

6 Q. This analysis of strengths and weaknesses, was that
7 sent to Ms. Shealy, too, as part of that letter?

8 A. Yes, that was a part of this letter right here.

9 Q. Okay. And those are fair and accurate copies of what
10 you sent to her?

11 A. Absolutely.

12 Q. Okay.

13 MR. LOCKLAIR: Your Honor, at this time, I would
14 offer this as Plaintiff's Exhibit Number 4.

15 THE COURT: Any objection?

16 MR. FRIEDMAN: No objection, Your Honor.

17 THE COURT: It will be entered.

18 (WHEREUPON, Plaintiff Exhibit Number 4 was marked and
19 admitted into evidence.)

20 A. I also have ---

21 Q. No.

22 A. I'm sorry.

23 Q. Before we move forward, let me ask you this. This is
24 a copy of the transcription given to you by Ms. Shealy's
25 office. Is that correct?

1 A. Yes.

2 Q. Is that the paper that was given to you?

3 A. That is the transcript that was given me of my phone
4 calls from Lieber between Christy and I.

5 Q. All right.

6 MR. LOCKLAIR: Your Honor, we'd offer this as
7 Plaintiff's 5.

8 MR. FRIEDMAN: No objection, Your Honor.

9 THE COURT: Plaintiff's 5 into evidence without
10 objection.

11 (WHEREUPON, Plaintiff Exhibit Number 5 was marked and
12 admitted into evidence.)

13 Q. All right. Finally, let me show you these and ask you
14 just to identify those documents, as well, please.

15 A. Yes, these are my notes between the time of trial
16 informing Ms. Shealy of my involuntary statement and
17 preparing me to testify on the stand.

18 Q. And are those notes that you took personally?

19 A. Yes. These are my handwriting.

20 Q. Are they still in the same condition as they were at
21 the time of trial?

22 A. Well, actually, they're a lot older and ---

23 Q. But I mean, the notes, are those all notes from trial

24 ---

25 A. Yes.

1 Q. --- or has there been any additions ---

2 A. No.

3 Q. --- or subtractions thereto since trial?

4 A. There's -- everything is from trial.

5 MR. LOCKLAIR: All right. Your Honor, at this
6 time we'd offer this in as Plaintiff's Exhibit 6.

7 THE COURT: Any objection?

8 MR. FRIEDMAN: No objection, Your Honor.

9 THE COURT: Plaintiff's 6 into evidence without
10 objection.

11 (WHEREUPON, Plaintiff Exhibit Number 6 was marked and
12 admitted into evidence.)

13 THE BAILIFF: Take it outside and turn it off.
14 You need to take it outside and turn it off.

15 THE COURT: All right. Sir, do you have matters
16 -- sir, sir, do you have matters before the Court?

17 MALE: Ma'am?

18 THE COURT: What are you doing in the courtroom?

19 MALE: This is my son up here.

20 THE COURT: All right, sir. Please remove your
21 phone.

22 MALE: Yes, ma'am. That's what I'm trying to do.

23 THE COURT: All right. Thank you.

24 MALE: I'm sorry.

25 Q. I believe when I was showing you some of those letters

1 you wanted to say something else about them?

2 A. I was going to say -- I think we were still talking
3 about the excited utterance.

4 Q. Okay. Yeah. What else did you need to add on that?

5 A. I also have notes in which I informed Ms. Shealy of
6 the circumstances of the excited utterance and also has
7 Gail Davis' handwriting on it where her and I were writing
8 back and forth in the course of the trial. And also the
9 Edwards notice filed by Mr. Pennington two days after the
10 incident because he didn't want them to try and interrogate
11 me anytime further.

12 MR. LOCKLAIR: May I approach, Your Honor.

13 THE COURT: You may.

14 Q. All right. Is there anything else that you can think
15 of that you requested that your attorney do for you at
16 trial or before trial and she failed to do that we have not
17 already been over?

18 A. Say that again.

19 Q. Anything that you had requested your attorney to do or
20 not do that she did not do that we've not yet been over
21 already in court?

22 A. I asked her to have the SCDC officers removed from the
23 courtroom who were sitting directly behind me throughout
24 the course of my trial and had bullet proof vests, on with
25 SCDC, big letters, wrote across the back.

1 Q. Did she ever raise that to the Judge?

2 A. No, she did not.

3 Q. And how far away from you were they?

4 A. They were directly behind me where I was sitting in,
5 like, the first row. I asked her about having them

6 removed. She told me that the jurors would have -- they
7 wouldn't know the difference between jail and prison or
8 SCDC, so it wouldn't matter.

9 Q. But they did take you out of your jail/prison garb for
10 trial, correct, put you in civilian clothes?

11 A. Yes. The only -- I was concerned because of the -- as
12 soon as the jury selection was beginning, an officer that
13 worked at Lieber, he kept saying that he worked at Lieber
14 in the South Carolina Department of Corrections where I am
15 currently at. And I asked Ms. Shealy, I said, look, these
16 officers are sitting in here. You know, they're behind me
17 throughout the trial and the continued references to me as
18 a Lieber Correctional Institution inmate in prison
19 throughout the trial, I kept bringing up to her that they
20 were sitting directly behind me. But she said there was
21 nothing that she could do.

22 Q. Okay.

23 MR. LOCKLAIR: Your Honor, I'm going to offer at
24 this time the notes that Mr. Mann referenced, along with
25 the *Edwards Notice*, as Plaintiff's 7 and 8.

1 THE COURT: All right. I'm assuming there's no
2 objection?

3 MR. FRIEDMAN: No objection, Your Honor.

4 (WHEREUPON, Plaintiff Exhibit Numbers 7 and 8 were
5 marked and admitted into evidence.)

6 Q. Now, going back to Ms. Shealy telling you that it
7 wouldn't matter because people wouldn't know if they're
8 guards from a prison or a jail, unless your jumpsuits are
9 labeled and people know the colors, is it possible for
10 somebody to tell whether a jump suit came from a prison or
11 a jail, if they know -- if they haven't been there and they
12 don't know -- they can't see the label?

13 A. I don't understand what you're asking me.

14 Q. Basically, if somebody's never been to a prison or
15 jail and a juror had never seen anybody in a jumpsuit like
16 that, without a label, it's not possible to know whether
17 that's a prison jumpsuit or a jail jumpsuit, is it, if you
18 don't know the system?

19 A. I mean, not unless you've been to the prison or been
20 to a jail and know what those inmates are wearing or what
21 they clothe their inmates in.

22 Q. Okay. And if they had you in shackles and handcuffs
23 and leg irons here, is there any way to tell from those
24 shackles and leg irons and handcuffs whether they belong to
25 a county jail or a state prison?

1 A. No, they're all the same.

2 Q. Okay. So basically all those, basically have, I
3 guess, to show the juror that you're in some sort of
4 custody, you're locked up, whether it be the uniforms of
5 the officers, the jail uniforms or the handcuffs, they all
6 have the same effect in your opinion, correct?

7 A. Yes. That's most certainly because the way I felt
8 about it, the continued references to me as a SCDC inmate
9 and you had several officers sitting behind me with bullet
10 proof vests on and SCDC emblazoned across the front and the
11 back, it was clearly obvious.

12 Q. Okay. And ---

13 THE COURT: Mr. Locklair, is there any indication
14 that he was dressed in a prison jumpsuit?

15 MR. LOCKLAIR: No, ma'am. I'm just trying to
16 point out that Ms. Shealy's logic of it doesn't -- nobody
17 knows whether they're from the county or the Department of
18 Corrections is faulty logic because if he's going to be
19 housed with those, that would be the same as if he's in a
20 jumper or in handcuffs. You know, you don't -- just
21 because they don't know if it's from a jail or prison is
22 irrelevant to the decision to let him be cloaked in
23 jailhouse garb basically by having them there. He wasn't
24 in that stuff, but basically her argument that it's okay
25 for the jurors to see because they don't know whether he's

1 from Charleston County or from Lieber. Well, then it would
2 be okay for them to see him in a prison uniform, too,
3 because they don't know where it's from. It would be okay
4 for them to see him in handcuffs because they don't know
5 where they're from.

6 THE COURT: But we're talking about the guards,
7 correct?

8 MR. LOCKLAIR: Correct.

9 THE COURT: I just wanted to make sure I'm
10 following the argument. I understand this is an open
11 courtroom and you have the very absolute right to be here.
12 However, this constant up and down and cell phones going
13 off, is so distracting. I'm really trying to pay attention
14 as to what's going on. So if you need to stay, please
15 stay. If you need to go, I need you to go.

16 MALE: I was just trying to get him to turn his
17 phone off, too. We're just coming in here from North
18 Carolina.

19 THE COURT: All right. So y'all are here and
20 your phones are off?

21 MALE: Yes, ma'am.

22 THE COURT: All right.

23 MALE: Thank you.

24 THE COURT: Barring some unforeseen emergency,
25 please remain seated. Thank you.

1 MALE: Okay. Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Locklair.

3 MR. LOCKLAIR: All right. Thank you, Your Honor.

4 Q. Other than what we just finished discussing, is there
5 anything else you wanted to add that your attorney failed
6 to do that we have not already gone over, or has not
7 already been brought up through other witnesses?

8 A. Her and I had a big conflict over the crime scene
9 video coming in.

10 Q. Okay. And basically she told you that was her trial
11 strategy, correct?

12 A. I mean, she didn't articulate it as -- I mean, at the
13 time, I really didn't understand the concept of trial
14 strategy, but she was telling me that she had her own
15 purposes in wanting to introduce it. But I kept telling
16 her that I felt like that's crazy because you got this girl
17 that they found in the woods, plastered across the screen.
18 I mean, they cut the lights out in the courtroom, projected
19 it on the wall like a big movie. It was like watching a
20 horror movie with them finding somebody dead.

21 Q. Okay. So it's fair to say that you and your attorney
22 disagreed on the admission on the color crime scene video
23 for Beverly Blake on whether it should come into evidence,
24 but she made the decision to go ahead and enter it into
25 evidence?

1 A. She made that decision on her own, even over my
2 objection.

3 Q. Okay. Is there anything else you want to tell the
4 Court at this time?

5 A. Other -- as far as that video?

6 Q. No. As far as any other issues that your attorney
7 failed to do on your behalf or did in spite of your
8 objections?

9 A. We had another conflict behind Dustin James and Maria
10 Jakes we spoke about earlier, that when she let them
11 testify to hearsay evidence and did not object. I was very
12 upset with her at the time and she told me that it was
13 admissible, so she wasn't going to object.

14 Q. Okay. So the testimony that came in where they said
15 they heard you say that you had committed murder?

16 A. No, not that.

17 Q. Which part?

18 A. Where they testified that they had heard from other
19 people that I had ---

20 Q. Basically, they had said they had heard from other
21 people and they were testifying to what other people had
22 told them?

23 A. Dustin James said I heard that -- the state asked him
24 had he heard anything about the incident going on. He
25 stated that he had heard that Beverly Blake's roommate was

1 dead and that her and I were responsible and on the run.

2 He never, you know, stated where he heard this. And Maria
3 Jakes came right behind him and testified to the same thing
4 and actually went into more depth about what they heard
5 from whoever.

6 Q. And Maria Jakes actually testified that Dustin had
7 told her that in the bathroom before the fight that you'd
8 killed both those people ---

9 A. Said that, too.

10 Q. Okay. And you told your attorney that she should
11 object on that and she didn't?

12 A. Yeah. I was -- yes, we had a big disagreement over
13 it. She told me that that was admissible.

14 Q. Okay. Is there anything else your attorney failed to
15 do that you want to inform the court about that we've not
16 been over?

17 A. Krystal Lackey. That is something that we did not --
18 I didn't get to when we were talking about my testimony.

19 Q. Okay. What would you have testified to had you been
20 called to testify about Krystal Lackey?

21 A. I didn't know Krystal Lackey. I'd never seen Krystal
22 Lackey before in my life. I went to the house in Hanahan,
23 which I later found out was hers, through my discovery. In
24 reference to squashing a beef between Travis Windham and
25 Peter Davies. Apparently, Travis had -- or like I say, he

1 was referred as James earlier -- he was Jessica Steele's
2 boyfriend. But Travis had broken into Peter's wife's car
3 and stole things out of her car. And Peter wanted some
4 retribution behind that. And me knowing Travis as long as
5 I did, I went there to alleviate the situation, I guess
6 you'd say, to squash the beef between them. And I never --
7 this girl testified that I went in there and confessed to
8 both of these crimes in front of a room full of people that
9 I'd never seen before, never met. I only knew two people
10 there and that was Travis Windham and Jessica Steele. And
11 I wasn't even inside the house. This girl got in trouble
12 for burglary and saw me on the news and my misfortune was
13 her benediction.

14 Q. And she got a deal in the end on her case, didn't she?

15 A. Yeah. She got PTI for her charges.

16 Q. Okay.

17 A. For using me as her stool pigeon.

18 Q. All right. Other than that is there anything else you
19 can think of?

20 A. In reference to Ms. Shealy, not at the moment, that I
21 can actually think of.

22 Q. I think we've been over most all the issues at this
23 point. At this point, if you'd please answer any questions
24 the Attorney General may have for you.

25 THE COURT: Mr. Friedman.

1 MR. FRIEDMAN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. FRIEDMAN:

4 Q. Good afternoon, Mr. Mann.

5 A. Good afternoon, Mr. Friedman.

6 Q. You testified that you had an alibi witness in this
7 case?

8 A. Yes.

9 Q. Was that Christy Bunch?

10 A. Yes, that was.

11 Q. Did she end up testifying about your alibi at trial?

12 A. Yes, she did.

13 Q. She said that you all were sick and lived together?

14 A. Yes. She stated that I left her for an hour on
15 Tuesday night and came back. My hair was wet and I was
16 clean shaven, showered and changed clothes. But the rest
17 of the week, all the way up to Thursday, she stated that I
18 was with her, in bed sick.

19 Q. And how are you -- what's your argument that Ms.
20 Shealy was ineffective with regard to the alibi defense?

21 A. Because she didn't -- she was well-informed long
22 before trial that I had Christy to alibi me from Monday
23 night all the way until late Thursday night. And Christy,
24 even as a State's witness trying to put me in prison for
25 the rest of my life, she still alibied me through her

1 testimony, except for that hour.

2 Q. Now, is Ms. Bunch here today to testify about your
3 alibi?

4 A. No. She testified at trial.

5 Q. And is it also your testimony that if you had
6 testified at trial, then you would have referenced an
7 alibi?

8 A. Yes, I would have referenced Christy.

9 Q. Did you give the names of all the witnesses that you
10 had for Ms. Shealy or Ms. Davis?

11 A. Yes, I did.

12 Q. Was there anyone that they failed to contact?

13 A. Jessica Steele was one of them. And I had --
14 actually, she had notice of that because she had Krystal
15 Lackey's statement, which was obviously false, but it had
16 Jessica Steele's name at the bottom of it with Jessica
17 Steele's phone number on it.

18 Q. And I believe you testified that Mr. Butler
19 represented you in your *Jackson v. Denno* hearing. Is that
20 right?

21 A. Ms. Shealy was representing me to begin with and she
22 had got sick and had to leave due to a medical emergency
23 and Mr. Butler had to take over on the fly.

24 Q. Did you tell Mr. Butler about everything that you
25 testified on Monday as far as the voluntariness of your

1 statement and what happened when you made your statement?

2 A. I told all that to Ms. Shealy. She was the one
3 supposed to be handling that hearing.

4 Q. Okay. Do you remember testifying on Monday that when
5 you first met with Mr. Butler, you went back through
6 everything with him?

7 A. I went through it -- him and Ms. Shealy came together
8 and I went back over everything with her and him there
9 both.

10 Q. So he was aware of that when he represented you at
11 your *Jackson v. Denno*?

12 A. I don't know if I went quite as in detail at that
13 second meeting when I met with him as I did with Ms. Shealy
14 when I first met with her, but he was aware of those
15 circumstances, yes. How much in detail, I don't know.

16 Q. And I believe you testified that you don't know
17 anything about the shotgun?

18 A. Absolutely not. That shotgun was found in Dorchester
19 County at a Rock and Roll McDonald's by a maintenance man.
20 He turned it over to his manager and his manager turned it
21 over to Dorchester County. They ran it through dispatch,
22 it was found to be not stolen. It was fingerprinted. No
23 fingerprints came up. And it was also found two days after
24 I was arrested and already in jail.

25 Q. Do you remember in your statement saying that Brownie

1 took the shotgun from Mr. Tobias' ---

2 A. Detective Walker wrote that statement.

3 Q. Is there anything else in that statement that's not
4 true?

5 A. Yes. The reference to drugs, things being taken from
6 Dante Tobias' house. There was no drugs, there was nothing
7 taken. I walked in the house with nothing and I came out
8 with nothing. As to all the clubs that he said that he
9 went in and sold drugs, I've never even -- I don't even
10 know where half of those clubs are or bars or whatever they
11 are. Detective Walker just wanted a statement out of me
12 and he wrote what he wanted. And at the time, fearing for
13 Christy and her children's safety, I just went along with
14 whatever he said.

15 Q. And I believe you testified that you were convinced if
16 you gave a statement, they would let Christy go?

17 A. Repeat that, sir?

18 Q. I believe you testified that you were convinced if you
19 gave a statement, they would let Christy go?

20 A. That was the deal. We made an agreement that if I
21 gave a statement, they would let her visit with me in the
22 interrogation room before letting her go and they would let
23 her go and not bother her children.

24 Q. And at that time were you giving a statement about the
25 unrelated armed robberies or about ---

1 A. I did give an unrelated statement, which I wrote on my
2 own, wrote in my own handwriting.

3 Q. You gave a statement on that?

4 A. Yes.

5 Q. Well, when you say you were convinced to give a
6 statement so they would let Christy go, was it that
7 statement or was it a statement about the murder?

8 A. It was both. It wasn't only just to let Christy go.
9 It was also to get out of the chains and Detective Walker
10 not to spread my name as a race murderer in the jail and
11 have me subject to whatever harm or violence may come to me
12 for that.

13 Q. You also testified the other day about a phone call
14 from Christy, in which she said you confessed to Brownie's
15 murder. Do you remember testifying to that?

16 A. Yes.

17 Q. Do you remember the state's investigator, John
18 Burnett, testified for the state at trial that he could not
19 find that call?

20 A. Nobody could find that call. Ms. Shealy sent
21 investigators out there to Lieber to listen to calls.
22 Those calls were never produced. Mr. Burnett went out
23 there and whoever else from the solicitor's office, I don't
24 know, but those calls were never produced.

25 Q. Okay. You testified earlier today that -- about the

1 communication between Mr. Zack and Mr. Crumm in prison.

2 A. Yes.

3 Q. I believe you testified that Eric admitted to you that
4 he was talking to Mr. Crumm?

5 A. Yes. He told me at the window that he was talking to
6 Michael.

7 Q. Did he tell you what they were talking about?

8 A. No. He didn't tell me what they were talking about,
9 but he let me know that they were talking and they had the
10 ability to communicate and I witnessed that with my own
11 eyes.

12 Q. Did he tell you -- I'm sorry.

13 A. And I told Ms. Shealy about it at trial.

14 Q. Did he tell you they were talking about you?

15 A. No. He just told me that they were talking. I could
16 see them. I could see Eric yelling up -- looking up and
17 yelling, but I couldn't -- as far as their conversation, I
18 couldn't tell you.

19 MR. FRIEDMAN: I beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. FRIEDMAN: I have nothing further.

22 MR. LOCKLAIR: Just a few questions.

23 **REDIRECT EXAMINATION**

24 **BY MR. LOCKLAIR:**

25 Q. When you met with Jennifer and Beattie Butler, at that

1 point can you recall whether your focus was on reiterating
2 to Beattie what happened at the actual alleged crime scene,
3 or whether it was on-going over the details of your
4 statement?

5 A. It was going over what had happened.

6 Q. Okay. So at the time you met with him, who was your
7 impression -- what was your impression of who would be
8 handling your statement?

9 A. It was always my impression that Ms. Shealy would and
10 she was the one that was going to do it until she got sick
11 and Mr. Butler had to take over on the fly.

12 Q. Okay. After that initial meeting with Jennifer Shealy
13 and Beattie Butler where you reiterated your story, did you
14 ever meet with Mr. Butler again to go over the facts and
15 circumstances surrounding your two statements?

16 A. I never saw Mr. Butler again until a week before
17 trial, as far as coming to visit with me. And the only
18 thing he came to do, he stopped by Broad River Correctional
19 Institution and said Ms. Shealy is fine now and we're going
20 to trial next week.

21 Q. Okay. When Ms. Shealy had to leave for that Jackson
22 v. Denno hearing, how long between the time that she left
23 and the time that Beattie Butler had to start the actual
24 motion before the judge? Was it a matter of minutes,
25 hours, days, weeks?

1 A. Say that again.

2 Q. When Ms. Shealy had to leave for her medical
3 emergency, how long between the time that she left and --
4 between that time and when the hearing started?

5 A. She left like when the hearing was starting.

6 Q. So y'all were actually in the courtroom for the
7 hearing?

8 A. We were already in the courtroom. We had already,
9 like I said the other day, we had already picked the jury.
10 Ms. Shealy had just finished picking the jury. The jury
11 just wasn't sworn yet.

12 Q. Okay. And I shouldn't assume, but did Mr. Butler ask
13 for a recess? Did the court give him one to talk to you or
14 did he ask for one?

15 A. He -- the court asked him if we were ready to proceed?
16 He leaned over and asked me, you ready to go? I said, I
17 don't even know what's going on. He just told me -- I
18 said, what is this? He says, it's a preliminary matter.
19 He said, I can handle it. You know what I'm saying, go
20 ahead.

21 Q. Okay. And at that point did you rely on his advice
22 and just said, go ahead?

23 A. Absolutely. I mean, I didn't know what a Jackson
24 versus Denno hearing was and I knew very little about the
25 law at that point.

1 Q. Okay. Mr. Friedman brought out the point about the
2 shotgun. When that shotgun came into evidence, was there
3 any testimony at your trial about the chain of custody of
4 that shotgun?

5 A. None whatsoever.

6 Q. Did they have the person who found the shotgun come
7 testify?

8 A. No. The only thing I've ever seen on that shotgun is
9 the reports that I mentioned earlier that I have here.

10 Q. So other than hearsay, from your recollection, there's
11 no testimony in your trial transcript about -- from the
12 person who found the shotgun describing the shotgun, the
13 condition it was found in and where it was found in?

14 A. No.

15 Q. So according to the evidence at your trial, there's no
16 way to know that that shotgun that was admitted into trial
17 was the same shotgun that was found at McDonald's, correct?
18 Other than the cop saying he heard it was?

19 A. Say that again now?

20 Q. Basically, the only way that we know that shotgun was
21 the one found at McDonald's is the cop said he heard it was
22 found at McDonald's, correct?

23 A. Yes.

24 Q. The cop didn't find it, right?

25 A. Detective Walker testified that they had found a

1 shotgun at a McDonald's on Ashley Phosphate. That was the
2 only testimony they gave to the state where the shotgun
3 materialized from.

4 Q. And when you say they, Detective Walker didn't find
5 the gun, did he?

6 A. No. The gun was ---

7 Q. A civilian found it, didn't they?

8 A. Yes.

9 Q. Okay. And going back briefly, Mr. Friedman brought up
10 the thing about your statement with Detective Walker and
11 why you gave a statement and you talked about race. Would
12 you please explain to the court how, I guess, racial
13 boundaries are a little different in prison than on the
14 street?

15 A. Much different.

16 Q. How is race in prison? How do people collect, how do
17 they gather?

18 A. Whites are a big minority in prison. The prison
19 system is majority black, and most of which are very angry
20 at whites because they feel like the justice system is all
21 white and let them settle -- the white man did this and the
22 white man did that. It's the white man's fault that
23 they're in prison, so they take it out on the white
24 inmates.

25 Q. Would that be what people -- when African American

1 people a lot of times say, you're blaming the man. Are
2 they talking about the white man?

3 A. Yeah. They're talking about the white man.

4 MR. FRIEDMAN: Your Honor, I would object. That
5 is outside the scope of redirect.

6 THE COURT: Well, I just want to know what this
7 has to do with Ms. Shealy.

8 MR. LOCKLAIR: It just goes back to his statement
9 about why he was scared and why he would have written stuff
10 down. He tried to bring out why would you write stuff down
11 for Detective Walker that wasn't true. I was just trying
12 to reiterate just one more point about why he would have
13 written down something that wasn't true, because he was
14 afraid for his life if he went to jail on a race crime.

15 THE COURT: Sustained. Move on.

16 MR. LOCKLAIR: Okay. That's all I have. Thank
17 you, Your Honor.

18 THE COURT: Thank you. Mr. Friedman?

19 MR. FRIEDMAN: Just briefly, Your Honor.

20 **RECROSS EXAMINATION**

21 **BY MR. FRIEDMAN:**

22 Q. Mr. Mann, do you remember on Monday testifying that
23 Mr. Butler was disturbed about the circumstances
24 surrounding your confession?

25 A. Say that again.

1 Q. Do you remember testifying on Monday that Mr. Butler
2 was disturbed when he found out about the circumstances of
3 your confession?

4 A. Yes. He was disturbed by the fact that Detective
5 Walker sexually assaulted me.

6 Q. So he was aware of that?

7 A. He was aware of me being sexually assaulted, yes.

8 Q. Do you also remember Judge Pieper asking for your
9 permission to go forward with the *Jackson v. Denno* hearing
10 without Ms. Shealy being present?

11 A. Yes, he did. And I went off of Mr. Butler's advice
12 telling me that that was a preliminary matter and he could
13 handle it. Like I said, I didn't understand what was going
14 on at the time. I didn't even know what a *Jackson versus*
15 *Denno* hearing was.

16 Q. Okay.

17 MR. FRIEDMAN: I have nothing further.

18 THE COURT: All right. Mr. Mann, you may step
19 down. Thank you. Do you have any additional witnesses?

20 MR. LOCKLAIR: No, ma'am. At this time, the
21 Plaintiff would rest.

22 THE COURT: All right. Thank you.

23 MR. LOCKLAIR: Thank you, Your Honor.

24 MR. FRIEDMAN: No witnesses from the State, Your
25 Honor.

1 THE COURT: Was an investigation ever filed from
2 that officer by Mr. Mann's allegations of a sexual assault?
3 Do we know?

4 MR. FRIEDMAN: I have no idea.

5 MR. LOCKLAIR: Not to my knowledge, Your Honor.

6 THE COURT: And you have no witnesses?

7 MR. FRIEDMAN: No, Your Honor.

8 THE COURT: Counsel, I'll allow you to do a
9 little bit of an argument, but we've had extensive
10 testimony. I think the best way to proceed is to allow you
11 to submit a proposed order.

12 MR. LOCKLAIR: I think that would be best, Your
13 Honor. We agree with the Court. And, obviously, at this
14 point we wouldn't have any additional argument. I think
15 Your Honor's heard everything. We can put it all in an
16 order. There's no need in wasting the Court's time with
17 that.

18 THE COURT: We have all afternoon for you.

19 MR. LOCKLAIR: Well, there's no need to rehash
20 what's already been gone over and the Court's aware of.

21 THE COURT: All right. Thank you.

22 MR. LOCKLAIR: Yes, ma'am.

23 THE COURT: Mr. Friedman, do you want an
24 argument?

25 MR. FRIEDMAN: No, ma'am. Would it be possibly

1 to submit a short brief or would you just prefer a proposed
2 order?

3 THE COURT: I'm going to give Mr. Mann just a few
4 moments to get collected and then we'll finish talking
5 about this. Look at your calendar, Mr. Friedman, and tell
6 me how long you think you need.

7 MR. FRIEDMAN: Probably three weeks, Your Honor.

8 THE COURT: I'll give you until December 9th at
9 five p.m. Is that sufficient, Mr. Friedman?

10 MR. FRIEDMAN: Yes, Your Honor.

11 MR. LOCKLAIR: Yes, ma'am.

12 THE COURT: Is that sufficient?

13 MR. LOCKLAIR: Yes, ma'am. We'll have it done,
14 Your Honor.

15 THE COURT: And Mr. Friedman, do you wish to
16 submit a ---

17 MR. FRIEDMAN: Possibly just a short brief, Your
18 Honor, because I just received some of these items just
19 last week.

20 THE COURT: And you will attach a proposed order
21 to that, Mr. Friedman. Is that correct?

22 MR. FRIEDMAN: Yes, ma'am.

23 THE COURT: All right. Please make sure that --
24 do you need any additional time? Is that going to be
25 sufficient time? That's three weeks from today.

1 MR. LOCKLAIR: We can have it done by then, Your
2 Honor, yes, ma'am.

3 THE COURT: All right. And because I know we
4 have a holiday in between. So I just want to make sure you
5 have enough time.

6 MR. LOCKLAIR: Yes, ma'am.

7 THE COURT: And Mr. Locklair, feel free if you
8 wish to submit a brief and a proposed order, all right?

9 MR. LOCKLAIR: Yes, ma'am. Thank you, Your
10 Honor.

11 THE COURT: Anything further?

12 MR. LOCKLAIR: No, ma'am, not from the Plaintiff.

13 THE COURT: All right. And I'm going to put it
14 upon you also -- and it doesn't have to be in the brief, it
15 can be a supplemental email, you can just email me and let
16 me know, and let my clerk know and he will forward it to
17 me, what the outcome -- there's been very serious
18 allegations that were made under oath in the courtroom
19 today -- if there was any follow-up investigation in
20 internal affairs, all right?

21 MR. LOCKLAIR: Yes, ma'am. I'll look into that,
22 Your Honor.

23 THE COURT: Thank you. Mr. Friedman, anything
24 further?

25 MR. FRIEDMAN: No, Your Honor. Thank you.

1 THE COURT: All right. Well, we're at ease. Mr.
2 Mann, I'm taking this matter under advisement. Your
3 attorneys are going to submit some additional information
4 to me and you'll have my decision, hopefully, before the
5 Christmas Holidays. Good luck to you, sir.

6 MR. MANN: Thank you, ma'am.

7 THE COURT: Thank you.

8 MR. MANN: Thank you for your patience and your
9 time.

10 THE COURT: Thank you, gentlemen.

11

12 [END OF REQUESTED TRANSCRIPT OF RECORD]

13

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal, in
9 the Circuit Court for Charleston County, South Carolina, on
10 the 14th day of November, 2011 and the 18th day of
11 November, 2011.

12 This transcript may contain quoted material. Such
13 material is reproduced as read by the speaker.

14 I do further certify that I am neither of kin,
15 counsel, nor interest to any party hereto.

16 October 31, 2012

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19

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Susan Danette Hanks

Circuit Court Reporter

CC
AG
AT
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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Anthony Mann, #242498,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2008-CP-10-0057

AMENDED
ORDER OF DISMISSAL

FILED
2012 JAN 26 AM 11:38
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 7, 2008. The Respondent made its Return on February 10, 2009. An evidentiary hearing into the matter was convened on November 14 and 18, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Wesley Locklair, Esquire and Joshua Kendrick, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Jennifer Shealy, Esquire, co-counsel Beattie Butler, Esquire, investigator Dale Davis, Dr. Janice Ross, Matthew Radford, Terrell McCoy, and Jessica Still also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the direct appeal records, the current PCR application, the amended application, the State's Return, Krystal Lackey's NCIC report, Dale Davis' witness list, letters from Applicant to appellate counsel, letters from trial counsel to Applicant, and notes from Applicant to trial counsel.

del

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the July 2002 term of the Charleston County Grand Jury for armed robbery (2002-GS-10-4413) and two counts of murder (2002-GS-10-4414, 4415). Jennifer K. Shealy, Esquire, and Beattie Butler, Esquire, represented the Applicant. The Applicant proceeded to trial on September 15-24, 2003, after which a jury found him guilty as indicted. On September 24, 2003, the Honorable Daniel F. Pieper sentenced the Applicant to confinement for thirty (30) years for armed robbery and life for each count of murder.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph Savitz, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. Following full briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Mann, Op. No. 2007-UP-016 (S.C. Ct. App. filed January 11, 2007). The Remittitur was issued February 2, 2007.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel committed a multitude of errors, including failure to call relevant witnesses.
2. Actual innocence.

In his amended application, he alleges the following grounds for relief:

1. That trial counsel was ineffective for failing to object to testimony regarding Applicant being a convicted felon and being housed at Lieber Correctional Institution and for allowing prison guards to sit in such close proximity to Applicant that Applicant was effectively in prison garb.
2. That trial counsel was ineffective for failing to properly challenge the voluntariness and admission of Applicant's statements to law

enforcement, including, but not limited to, his post-arrest statement and alleged "Excited Utterance" to Detective Robert Walker.

3. That trial counsel was ineffective for failing to request a finding by the Court that Applicant's statement was taken in compliance with Miranda and for failing to request a jury instruction outlining the jury's duty to determine the voluntariness of Applicant's statement.
4. That trial counsel was ineffective for failing to object to the admission of the shotgun in this case when there was no link to the gun and the alleged crime.
5. That trial counsel was ineffective for playing the "crime scene" video for the jury and introducing it into evidence.
6. That trial counsel was ineffective for failing to object to evidence of drug use and other drug activity, other prior bad acts and other impermissible character evidence.
7. That trial counsel was ineffective for failing to object to hearsay testimony offered by State's witnesses Dustin James and Maria Jacques.
8. That trial counsel was ineffective for failing to object to improper character evidence, bolstering and collaboration offered through State's witness Rodderick MacBride, and for failing to properly cross-examine MacBride for impeachment of Krystal Lackey.
9. That trial counsel was ineffective for failing to object to the admission of the vitreous humor sample without a complete chain of custody, nor did counsel interview or call the actual examiner as a witness.
10. That trial counsel was ineffective for failing to protect Applicant's right to a public trial by not objecting to four in camera hearings and requiring the Court to make specific findings on the record.
11. That trial counsel was ineffective for failing to investigate the DNA evidence in this case as potentially exculpatory to Applicant.
12. That trial counsel was ineffective for failing to properly cross-examine and impeach State's witness Mervin Menair.
13. That trial counsel was ineffective for failing to present an alibi defense and request an alibi jury charge from the Court.
14. That trial counsel was ineffective for failing to impeach State's witnesses

Nicole O'Connell, Tiffany Mercado and Krystal Lackey with their prior convictions and other potential evidence.

15. That trial counsel was ineffective for failing to properly show the jury the ability of State's witnesses Eric Zack and Michael Crumb to communicate in the Charleston County Detention Center and for failing to object to impermissible comments by the prosecutor for referring to Defense witness William Woodson as a "squirrely looking, mentally ill child molester."
16. That trial counsel was ineffective for failing to re-challenge the trial court's pretrial rulings on joinder at the start of the trial and after the State failed to produce an eyewitness as alleged to the Court.
17. That trial counsel was ineffective for convincing Applicant not to testify when he originally wanted to testify; however, Applicant asserts but for the advice of counsel, he would have testified.
18. That trial counsel was ineffective for failing to object to the Solicitor's arguments that two co-defendant's had pled guilty and taken responsibility for their actions and that the hand of one is the hand of all, thus impermissibly commenting on Applicant exercising his constitutional rights to a jury trial and to remain silent.
19. That trial counsel was ineffective for failing to object to the State improperly bolstering, vouching for and attempting to place the prestige of the government behind the State's case.
20. That trial counsel was ineffective for failing to object to the State commenting on Applicant exercising his constitutional rights to a jury trial and to remain silent, including but not limited to comments about why the Defense did not call certain witnesses.
21. That trial counsel was ineffective for failing to object to the State invoking the passion of the jury by making impermissible comments in closing regarding the victims' families, and when objections were made and sustained for failing to request that the questions and answers be stricken and a curative instruction given.
22. That trial counsel was ineffective for failing to object to the malice instruction and seek an instruction that in cases of self-defense, a weapon can be possessed without malice.
23. That trial counsel was ineffective for failing to object to improper arguments during Solicitor's closing.

24. That trial counsel was ineffective based on the totality of the circumstances.
25. That trial counsel was ineffective for failing to properly cross examine State's witnesses Eric Zack and Michael Crumb regarding their potential plea deals and sentencing; in that the State intentionally withheld sentencing until after trial.
26. That trial counsel was ineffective for failing to object to there not being a properly impaneled, recorded and conducted grand jury that convened in this case.
27. That Appellate Counsel was ineffective for failing to argue that the trial court erred in admitting the vitrous humor analysis.
28. That Appellate Counsel was ineffective for failing to argue that the trial court erred in admitting color autopsy photos of the victims.
29. That Appellate Counsel was ineffective for failing to argue that the trial court erred in denying Applicant's motion for a mistrial based on in admissible character evidence and prior bad acts.
30. That Appellate Counsel was ineffective for failing to argue that the trial court erred in failing to request the sealed portions of the transcript and utilize them in an appeal.
31. That Appellate Counsel was ineffective for failing to file a petition for writ of certiorari to the South Carolina Supreme Court.

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 and arguments presented at the hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Beattie Butler, Esquire, testified that he sat second chair with Jennifer Shealy and had a limited role during the trial. He testified that he handled the pre-trial joinder argument and cross-

examined a jailhouse informant who testified at trial. He testified that he did not recall raising the joinder issue later in trial, and he did not think the issue needed to be renewed.

Matthew Radford testified that he is currently serving 45 years in prison for murder. He testified that he heard Michael Crumb and Eric Zack talking in lockup in 2003, and Mr. Crumb said that he felt pressured by the police to put the blame on Applicant. He testified that he was a few cells down from Mr. Crumb and Mr. Zack. Mr. Radford testified that he did not know Applicant at the time, but he has known Applicant since 2004 and he told Applicant what Crumb had said. He testified that he is incarcerated at the same institution as Applicant, but they do not have any way to communicate with each other. In addition to murder, Mr. Radford acknowledged that he has prior convictions for armed robbery, arson 2nd degree, possession of a weapon during a violent crime, burglary 1st degree, and criminal conspiracy.

Terrell McCoy testified that he is currently serving 40 years for murder. He testified that he met Applicant in lockup a few months ago. Mr. McCoy testified that he and Applicant both knew one of the victims, Beverly Blake. He asserted that he met Ms. Blake at Northwoods Mall on January 8, 2001, which was his son's birthday. This date was also between the time when Dante Tobias was murdered and when Ms. Blake's body was found.

Jessica Still testified that he knows the Applicant through her boyfriend at the time of the incident, James Wyndham. She testified that she was at a party in January 2002, and she does not recall the exact date or if the party was before or after the murder occurred. She testified that she heard about the murders a week after the party. Ms. Still testified that Applicant came to the door and was looking for her boyfriend. She asserted that her boyfriend and Applicant then spoke outside, and Applicant never came inside the house. She testified that she did not know what Applicant and her boyfriend were speaking about, and she has not

communicated with Applicant since the trial.

Trial counsel, Jennifer Shealy, Esquire, testified that she did not recall how close the Lieber guards were sitting to Applicant during the trial. She asserted that there was no mention of Applicant being convicted of anything, and he was not in prison garb or handcuffs. She testified that she met with Applicant an adequate number of times, including several times with her investigator Dale Davis. She testified that Applicant was at Lieber during the entire time that she represented him. Counsel testified that she reviewed the Rule 5 with Applicant and made a list of everyone that they needed to speak with before trial. She testified that she did not object when a potential juror stated "I used to work for SCDC where he's at" because she did not want to draw attention to it. Counsel testified that she did not recall why she did not object to the introduction of the shotgun, although she recalled that there was some reference in Applicant's statement that a shotgun was taken from the first victim's residence. She testified that she introduced the crime scene video of the second victim because it gave the jury information about the condition of the victim's body. She testified that she was trying to show the jury that the victim was killed later than January 7. Counsel testified that she tried to show that the victim's body was dry even though it had been raining that week and the surrounding area was wet. She asserted that she wanted to distance the second victim's time of death from the first victim's time of death.

Counsel testified that Kristy Bunch was initially supportive of Applicant, but then she flipped and testified against Applicant. She testified that Ms. Bunch was the only potential alibi witness that Applicant told her about. She testified that Applicant wrote Ms. Bunch a letter in which he asked her to testify that they were together from 9:00 Monday, January 7, 2002 until Thursday night, January 10, 2002. Counsel testified that she did not object to Rodderick

MacBride's testimony because she did not think his testimony was bolstering his stepdaughter Krystal Lackey's testimony. Counsel asserted that Mr. MacBride, a former police officer, was merely setting out the timing of when Krystal called the police, and she did not think she had any basis to object to that testimony. She did not believe the testimony was overly relevant or harmful to Applicant.

Counsel testified that she retained two experts, one from Kentucky and one from Hawaii, and both experts indicated that they could not give an opinion on time of death without looking at the fly eggs so she could not call either expert as a witness at trial. She asserted that she was able to cross-examine the State's expert, Dr. Presnell, and she got Dr. Presnell to admit that there were other formulas that could produce a different time of death and that the vitreous fluid was not an exact science. Counsel testified that she did not object to the solicitor's closing when she called William Woodson "squirrely" and a "child molester" because at the time she did not think it was objectionable. She testified that she also did not object to the State's closing argument when the solicitor referenced Crumb and Zack taking responsibility because she did not believe it was a constitutional violation. She was able to cross-examine Zack and Crumb about pleading guilty. Counsel testified that she did not believe the solicitor improperly bolstered the testimony of law enforcement or the expert witness, and she was able to attack law enforcement in her closing argument. She asserted that the solicitor's comment on Applicant not calling any witnesses came close to burden shifting, but she did not believe it crossed the line of shifting the burden to the Applicant. Counsel testified that she believed that the joinder issue was renewed after the State rested.

Counsel testified that there were a few objections she could have made to preserve certain issues, but she does not know if any objections would have made a difference in the outcome of

the trial. She testified that she probably should have requested a jury charge on the voluntariness of the statement.

Dr. Janice Ross testified that she is board certified in forensic pathology and has testified as an expert in court more than 70 times. She testified that she reviewed the autopsy report. Dr. Ross asserted that she conducts 800 autopsies a year and always collects vitreous fluid, but she has never used vitreous fluid to determine time of death. She testified that there are too many variables to determine a time interval, and it was her opinion that the test is unreliable.

Dale Davis testified that she was retained by the Public Defenders office as an investigator. She testified that she did a chronology of all the police reports and made a list of witnesses. Ms. Davis testified that she met with Applicant several times at Lieber Correctional Institution. She testified that she received her information from Applicant, Ms. Shealy, and the police reports. She testified that some witnesses changed their testimony and were no longer willing to cooperate. Ms. Davis asserted that Kristy Bunch was originally an alibi witness, but she flipped on them. She testified that she was not aware of any other potential alibi witnesses. Ms. Davis testified that she spent over 400 hours investigating this case. She testified that she has done investigative work on 30-35 death penalty cases.

Applicant testified that Ashley Pennington was the first attorney to see him and then he next saw Jennifer Shealy. He testified that Ms. Shealy asked him what happened at the first victim's house. He testified that a few months later Ms. Shealy came to see him with another public defender, Kelly Kassis. Applicant asserted that law enforcement tried to coerce a confession from him, and Detective Walker sexually assaulted him. He testified that he was handcuffed to a chair and asked about some armed robberies, and he asserted that law enforcement said they had Kristy Bunch in precinct and they were going to take her child.

Applicant testified that law enforcement convinced him that if he gave a statement about the armed robberies and the murder that they would let Ms. Bunch go. He asserted that his statement was not true. Applicant testified that he met with Ms. Shealy along with Beattie Butler and Karen Barker and went over everything. He asserted that Mr. Butler was disturbed about the circumstances surrounding Applicant's statement. Applicant testified that Ms. Shealy had a medical emergency so Mr. Butler handled the Jackson v. Denno hearing. He testified that Mr. Butler did not discuss the possibility of Applicant testifying at the Jackson v. Denno hearing, and if he had known that he could testify then he would have wanted to testify at the Jackson v. Denno hearing. Applicant contended that he was not aware of his right to testify at trial until Judge Picper asked him during the trial if he wanted to testify. He testified that he then went into a room with Ms. Shealy and Mr. Butler and told them that he wanted to testify, but they told him that they did not want him to testify because the State did not get what it wanted from its witnesses and did not meet its burden. Applicant asserted that he did not testify based on counsel's advice.

Applicant contended that he would have testified that the second victim, Beverly Blake, called him to come get her because the first victim, Dante Tobias, was trying to prostitute her out. He indicated that he would have testified that when he arrived Mr. Tobias pulled a gun on him, a struggle ensued, and in the course of the struggle Ms. Blake shot and killed Mr. Tobias. He asserted that Ms. Blake did not leave Mr. Tobias' residence with a shotgun, as is referenced in Applicant's statement. Applicant asserted that if he had testified at trial he could have contradicted several witnesses who testified against him. He testified that he also could have testified about his alibi defense. Applicant testified that he discussed the alibi defense with counsel, but the defense was not presented at trial. He contended that he was sick in bed with

Kristy Bunch all week following Mr. Tobias' murder. Applicant testified that he did not understand trial counsel's strategy with respect to the crime scene video.

Applicant testified that he wrote letters to appellate counsel, Joseph Savitz, asking him to get the sealed in-camera hearing transcripts unsealed. He asserted that he did not receive any correspondence from appellate counsel until counsel filed the brief, in which he only raised the joinder issue. He testified that appellate counsel sent him the opinion of the Court of Appeals, but counsel did not inform him of his right to file a petition for writ of certiorari to the South Carolina Supreme Court.

Ineffective Assistance of Trial Counsel

The Applicant alleges that he received ineffective assistance of trial counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong,

attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that Applicant's testimony is not credible while also finding that trial counsel's testimony is credible. This Court finds that the testimony of Matthew Radford and Terrell McCoy is not credible.

This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of trial counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, reviewed the discovery with Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that trial counsel was not ineffective for failing to object to references to Applicant being housed at Lieber and for allowing prison guards to sit in close proximity to Applicant during trial. Counsel testified that Applicant was not in handcuffs or prison garb, and there were no references to Applicant being convicted of anything. In addition, counsel testified that she did not object to the potential juror's comment "I used to work for SCDC where he's at" because she did not want to draw attention to it. This Court finds that counsel properly noted her reasoning on the record. (Trans. p. 27, line 2 – p. 28, line 11).

This Court finds that trial counsel properly challenged the voluntariness of Applicant's statements. Mr. Butler represented Applicant during his Jackson v. Denno hearing, after which the trial court found that the statements were made freely and voluntarily. Trial counsel also objected to the State reading Applicant's statement into the record during trial. This Court finds that Applicant was not prejudiced by counsel's failure to request a jury instruction regarding the jury's duty to determine the voluntariness of Applicant's statement. Applicant did not confess to either murder in his statement. Rather, he asserted that there was a struggle and Ms. Blake killed Mr. Tobias, and then he never saw Ms. Blake again. Applicant's admissions to those other than law enforcement was more damaging to his defense than his statement to law enforcement. Applicant has failed to show that the outcome of the trial would have been different if counsel had requested such a jury charge.

This Court finds that Applicant was not prejudiced by counsel's failure to object to the admission of the shotgun. In his written statement, Applicant admitted that Ms. Blake had taken a shotgun from Mr. Tobias' home. Because there was no link between the gun and the two murders, the admission of the gun did not prejudice Applicant.

This Court finds that trial counsel articulated a reasonable trial strategy for introducing

the "crime scene" video at trial. There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Counsel's strategy will be reviewed under "an objective standard of reasonableness." Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Here, counsel testified that she introduced the crime scene video to show that the victim's body was dry even though it had been raining that week and the surrounding area was wet. She wanted to show that the body had not been there as long as the State claimed it had. This Court finds that counsel's strategy was reasonable.

This Court finds that counsel properly moved to exclude prior bad acts under Lyle and Rule 404(b), SCRE, and properly objected when prior bad acts were referenced. Counsel objected during Kristy Bunch's testimony when Ms. Bunch mentioned Applicant's warrants and probation officer. (Trans. p. 570, lines 10-20). Counsel later made a motion for a mistrial when Ms. Bunch testified that Applicant wanted to call a friend to arrange to get drugs together. (Trans. p. 588, line 13 – p. 603, line 11). The trial court also found that the reference to drug use in the bathroom of the bar would not come in during Dustin James' testimony. (Trans. p. 849, line 25 – p. 850, line 12).

This Court finds that counsel properly cross-examined Rodderick MacBride and had no basis to object to his testimony. Counsel testified that she did not object to Rodderick MacBride's testimony because she did not think his testimony was bolstering his stepdaughter Krystal Lackey's testimony. Counsel asserted that Mr. MacBride, a former police officer, was

merely setting out the timing of when Krystal called the police, and she did not think she had any basis to object to that testimony. She did not believe the testimony was overly relevant or harmful to Applicant. This Court denies this allegation.

This Court finds that counsel was not ineffective for failing to object to the admission of the vitreous humor sample without a complete chain of custody. Counsel testified that she must have known that the State could establish the chain of custody. She asserted that Dr. Presnell admitted that it was an inexact formula, but it was not inexact because of the chain.

This Court finds that Applicant was not denied the right to a public trial. The in-camera hearings were on the record in the sealed transcripts.

This Court finds that counsel properly investigated the DNA evidence in the case. There were several stipulations in the record, each of which referenced DNA evidence that did not inculcate Applicant. (Trans p. 501, line 19 – p. 502, line 7; p. 1014, line 21 – p. 1015, line 16; p. 1119, line 16 – p. 1120, line 21).

This Court finds that Mr. Butler properly cross-examined and impeached State's witness Mervin Menair. (Trans. p. 1074, line 21 – p. 1092, line 13). Mr. Butler got Mr. Menair to admit that he had used several different aliases and had several prior convictions.

This Court finds that counsel effectively investigated the alibi defense. Counsel testified that Kristy Bunch was originally an alibi witness for Applicant, but then she flipped and refused to cooperate. Counsel and investigator Dale Davis both testified that Ms. Bunch was the only alibi witness that Applicant provided to them. Counsel testified that Applicant wrote Ms. Bunch a letter in which he asked her to testify that they were together from 9:00 Monday, January 7, 2002 until Thursday night, January 10, 2002. This Court finds that counsel did not request an alibi jury charge because the purported alibi did not pan out.

This Court finds that counsel was not ineffective for failing to impeach State's witnesses Nicole O'Connell, Tiffany Mercado, and Krystal Lackey with their prior convictions. First, only Ms. Lackey has a prior conviction. Ms. O'Connell does not have any prior conviction. Ms. Mercado has a rap sheet, but she does not have any convictions. Counsel cross-examined Ms. Lackey about her charge for accessory to burglary. (Trans. p. 1031, lines 15-21). This Court finds that counsel properly cross-examined Ms. Lackey, Ms. O'Connell, and Ms. Mercado.

This Court finds that counsel was not ineffective for failing to show the jury that Eric Zack and Michael Crumb had the ability to communicate in the Charleston County Detention Center. Applicant testified that Mr. Zack admitted to Applicant that he was talking to Mr. Crumb at the jail. However, Applicant testified that he did not know what Mr. Zack and Mr. Crumb were discussing. Counsel properly cross-examined Mr. Zack and Mr. Crumb regarding their respective proffers and plea agreements. (Trans. p. 277, line 20 – p. 289, line 1; p. 374, lines 10-20).

This Court finds that counsel was not ineffective for failing to object to the Solicitor's comment referring to defense witness William Woodson as a "squirrely looking, mentally ill child molester." The Solicitor stated that Mr. Woodson was a "mentally ill child molester" and that he looked "squirrely" on the witness stand. (Trans. p. 1585, line 12 – p. 1586, line 6). Counsel testified that at the time she did not think the comment was objectionable. This Court finds that Applicant has failed to show that the outcome of the trial would have been different if counsel had objected. Mr. Woodson testified at trial that he was incarcerated for criminal sexual conduct with a minor under age 11. (Trans. p. 1277, lines 8-13; p. 1339, lines 6-8). Mr. Woodson testified that he pled guilty and then the judge changed the plea to guilty but mentally ill. (Trans. p. 1340, line 4 – p. 1341, line 15). He also testified that he had received treatment for

depression. This Court finds that the Solicitor's comment was not overly inflammatory or prejudicial.

This Court finds that counsel properly renewed its joinder motion at the conclusion of the State's case. Counsel testified that she might not have known until the State rested that Peter Davies was not going to testify. This Court finds that the issue was properly preserved for appeal.

This Court finds that counsel properly advised Applicant of his right to testify at trial. Counsel testified that she did not tell Applicant that he did not need to testify because the State had not met its burden of proof. She asserted that she did not recall why Applicant did not testify. This Court finds that Applicant's testimony that he did not know about his right to testify until Judge Pieper asked him about it is not credible. Nonetheless, after Judge Pieper's inquiry, Applicant was given time to discuss his right to testify with counsel. This Court finds that it was Applicant's decision not to testify.

This Court finds that counsel was not ineffective for failing to object to the Solicitor's comment that the two co-defendants had pled guilty and taken responsibility for their actions and that the hand of one is the hand of all. Counsel testified that she did not think the comment was a violation of Applicant's right to a jury trial. Rather, counsel testified that she believed the Solicitor was pointing out that Mr. Zack and Mr. Crumb have taken responsibility for their actions. Likewise, this Court finds that counsel was not ineffective for failing to object to the State's purported improper bolstering, vouching for, and placing the prestige of the government behind the State's case. Counsel testified that she did not believe it was improper bolstering. Moreover, counsel fully attacked law enforcement in her closing argument. Counsel testified that the State's comment on Applicant not calling witnesses got close to the line of burden

shifting but did not cross the line. This Court finds that counsel was not ineffective for failing to object to this comment.

This Court finds that counsel was not ineffective for failing to object to the court's malice instruction and seek an instruction that in cases of self-defense, a weapon can be possessed without malice. In this case, the Applicant's defense was not self-defense. Applicant's position was that Ms. Blake shot Mr. Tobias and he did not know who killed Ms. Blake. This Court finds that the trial court gave a standard jury charge on malice.

In addition, the Court of Appeals found that "[o]verwhelming evidence was presented that Mann committed the two murders." "No prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of guilt." Smith v. State, 386 S.C. 562, 565, 689 S.E.2d 629, 631 (2010) (citing Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009)). Accordingly, this Court finds the Applicant has failed to satisfy both prongs of Strickland. Applicant's complaints concerning trial counsel's performance are hereby denied and dismissed.

Ineffective Assistance of Appellate Counsel

Applicant alleges that he received ineffective assistance of appellate counsel in that appellate counsel failed to brief certain issues and failed to file a petition for writ of certiorari to the South Carolina Supreme Court. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal

is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

This Court finds that appellate counsel is an experienced appellate attorney. This Court finds that appellate counsel properly chose to brief the issue that he believed was the most meritorious. This Court finds that Applicant has failed to show that appellate counsel's representation was deficient.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing

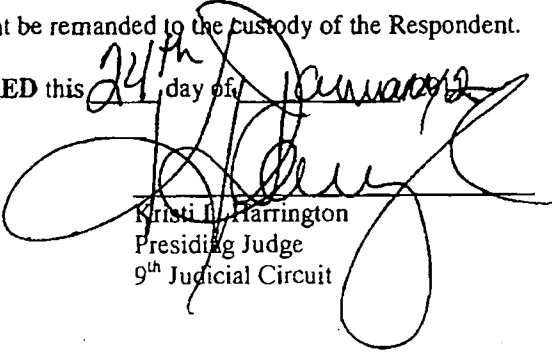
proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

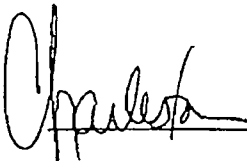
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24th day of January


Kristi L. Harrington
Presiding Judge
9th Judicial Circuit

 South Carolina.

2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ANTHONY MANN

Plaintiff,

vs.

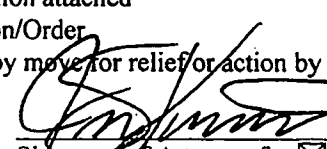
STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-0057

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Joshua Snow Kendrick, Bar No. 70453 Address: PO Box 886 Columbia, SC 29202 Phone: 803.667.3186 Fax 803.667.3187 E-mail: josh@jkendricklaw.com Other: _____		Defendant's Attorney: Matt Friedman, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: 803.734.4037 Fax _____ 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 2/10/12 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 ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ 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: _____ ☐ State Agency v. Indigent Party ☒ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
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 CHARLESTON

ANTHONY MANN, 242498,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2008-CP-10-0057

MOTION TO AMEND JUDGMENT

The Applicant, through his undersigned counsel, respectfully requests the Court amend its judgment, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The Applicant respectfully requests this Honorable Court grant the post-conviction relief action on the following grounds, which were not addressed in the Court's order of dismissal.

Counsel received a copy of the filed order of dismissal from opposing counsel on February 1, 2012. Therefore, this motion is timely pursuant to the rule.

Ex parte meeting or hearing between State and trial judge

The Court's order of dismissal did not address this issue, which was raised by Applicant at the PCR hearing. Because evidence was presented regarding this matter, Applicant respectfully requests the Court rule on this argument.

Applicant presented testimony there was at least one *ex parte* hearing between the State and the trial judge. Because there is no transcript of this hearing and no witnesses testified as to the subject of the hearing, it is impossible for the Court to determine what was said at this hearing. South Carolina law is clear this *ex parte* hearing, without a transcript, constitutes prejudice to Mann's rights.

In *Locklear v. Harvey*, the South Carolina Supreme Court considered a case in which an off the record meeting took place between the trial judge, the solicitor and State's witnesses. *Locklear v. Harvey*, 273 S.C. 58 (1979). The Supreme Court was concerned that the lack of a record and defense counsel's exclusion from the record left the Court with no way to determine if the appellant's rights were prejudiced. *Id.* at 59. While the Court noted it was unlikely anything improper was said, it was the possibility of prejudice the Court was concerned with. *Id.* Because the *ex parte* hearing was held

after the trial, at sentencing, the Court found a new sentencing hearing was warranted. *Id.*

The same theory applies to the trial of the case. The hearings at which the defense was excluded constitute prejudicial error based on the lack of a transcript or any reflection in the record as to the subject matter of the hearing. Mann is entitled to a new trial on this issue.

Failure to call an expert witness

At Mann's trial, the time of death of the second victim, Beverly Blake, was critical to the State's theory of the case related to her murder. There was testimony from the State's own witnesses that Mann had an alibi from approximately Tuesday of the week of the murders through his arrest. In order for the State to make a credible argument Mann murdered Blake, her murder needed to have occurred on the Monday of the week in question. Any later, and it would have been almost impossible for Mann to have committed the murder.

Dr. Susan Presnell testified as to the time of death of Blake. According to her testimony, her first opinion on the time of death, based on the condition of the body, was that Blake had only been dead for a few days when her body was found. This would have put the time of death squarely within the time period for which Mann had an alibi. Presnell admitted in her trial testimony she received pressure from law enforcement to give an opinion on the time of death more compatible with law enforcement's theory of the murder.

According to her trial testimony, Presnell used an alternative theory to determine a time of death on Blake. She used a measurement derived from the potassium levels in Blake's vitreous fluid. This vitreous fluid, located in the eyes, is measured with several different formulas. Presnell testified she was using the latest formula in order to opine a time of death more compatible with law enforcement's theory of the murder.

Though trial counsel was able to make limited points with cross-examination, Presnell was still able to offer the opinion the time of death was consistent with the murder taking place on Monday night, as requested by law enforcement.

At the PCR hearing, Dr. Janice Ross of Newberry Pathology Associates testified on behalf of Mann. Dr. Ross is a forensic pathologist with board certifications in anatomic, clinical and forensic pathology. She has been a pathologist for over thirty

years and has testified numerous times regarding causes and times of death. She has testified and performed autopsies for various state agencies. Dr. Ross was qualified to offer expert testimony in the field of forensic pathology.

Dr. Ross testified regarding the use of potassium levels in vitreous fluids to determine the time of death. She testified she was aware of the process, but that it was no longer taught and had fallen out of favor as a way to determine time of death. According to Dr. Ross, this technique had not been seriously accepted in her field since the 1960's and had not been accepted at all since the early 1980's. Dr. Ross testified, in her expert opinion, vitreous fluid was not an acceptable way to determine time of death and should not be used to estimate time of death. She further testified this was the commonly accepted opinion in her field and most pathologists would have testified to this at the time of Mann's trial.

Trial counsel testified she consulted with several experts and retained two experts in entomology, the study of insects. However, trial counsel made no mention of discussing the vitreous fluid issue with any experts. In addition the entomology experts were retained to testify regarding the condition of the body and insect activity in the body. But neither expert actually testified at trial. It appears the defense had numerous expert testimony available to refute the State's theory regarding time of death, but neglected to call any experts.

This issue was particularly critical to the defense based on the State's theory as it related to the time of death. The State's own witness, Kristy Bunch provided an alibi for Mann almost the entire week in question. If the time of death were estimated to fall in this time period, the State would have provided the defense with reasonable doubt as to Mann's opportunity to murder Blake. Based on the State's characterization of the two murders as inextricably intertwined, this would have been critical to the defense.

The Supreme Court has considered a similar issue and found the failure to properly investigate and call an expert witness to be deficient performance. When expert testimony is critical to the prosecution's case, the defendant is clearly prejudiced by defense counsel's failure to appropriately use expert witnesses. *Ard v. Catoe*, 372 S.C. 318 (2007).

The failure to call readily available experts was deficient. Because the testimony was fundamentally related to a basic theory of the State's case, the prejudice is clear. Based on this issue, Mann is entitled to a new trial.

Failure to object to various hearsay testimony of State's witnesses

Throughout the trial, there were a number of instances of hearsay testimony by State's witnesses to which trial counsel failed to object. In particular, the State elicited hearsay testimony from witness Maria Jacques regarding a "warning" given to her by witness Dustin James. The statement was clearly hearsay, as it was a statement from the witness stand by Maria Jacques relaying what she had been told by Dustin James.

Trial counsel offered no reason for failing to object to this hearsay testimony. The testimony involved an incriminating statement made against Mann by James. The rule against hearsay bars the admission of an out-of-court statement to prove the truth of the matter asserted. *Rhodes v. State*, 348 S.C. 25, 31 (2002).

Because trial counsel failed to offer any valid strategy for failing to make this objection, the Court should find this constitutes ineffective assistance of counsel.

Failure to locate and call witnesses regarding statements made at party

There was testimony at Mann's trial that he made incriminating statements regarding the murder in front of a number of people at a gathering. A witness at trial testified she heard Mann admit to both murders in front of several people.

At the PCR hearing, Mann called witness Jessica Still, who owned the house where the gathering took place. Ms. Still testified that while Mann showed up at the house the night in question, she did not hear him make any statements regarding the murder. More importantly, she testified he did not ever enter the house. If Mann never entered the house, it would have been impossible for the witness to hear him make any statements. This testimony would have called the witness' credibility into doubt and the Court believes could have led to a different result at trial.

The Court should find the failure to call this witness was ineffective assistance of counsel.

Failure of appellate counsel to consult with client

Mann testified at his PCR hearing that his appellate counsel never met with him during the course of his appeal. In addition to never meeting with Mann, appellate counsel never communicated with Mann in any way. Mann was unable to communicate with his appellate attorney regarding his case and his attorney clearly failed in his representation.

There was only one issue raised in Mann's appeal, despite numerous issues preserved on the record. At the very least, appellate counsel should have discussed these issues with Mann. In addition, Mann requested a petition for a writ of certiorari

be filed and his attorney neglected to file this petition. The Court finds Mann's appellate attorney was ineffective.

Failure of appellate counsel to request certain transcripts

The Court heard testimony from Mann his appellate attorney failed to consult with him at all on his appeal. The Court also heard testimony there are no transcripts of any sealed or *ex parte* hearings. Because these transcripts were not ordered by the appellate attorney, the court reporter destroyed them. The Court is particularly concerned these transcripts were not ordered, as the appellate attorney could not have reviewed these sealed transcripts for any error without ordering them. This constitutes ineffective assistance of counsel and warrants a new trial for Mann.

The Court found appellate counsel was experienced and properly handled the appeal. However, there was no testimony or evidence to support this and the Court did not address the specific issues raised at the hearing. Mann respectfully asserts these specific issues warrant the granting of the PCR.

CONCLUSION

Based on all of the above-referenced specific reasons, the Court should amend its order of dismissal and find trial and appellate counsel were ineffective and grant the Applicant, Anthony Mann, a new trial.

Respectfully submitted,



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February 10, 2012
Columbia, South Carolina



ALAN WILSON
ATTORNEY GENERAL

February 27, 2012

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad St. Ste 106.
Charleston, SC 29401

Re: Anthony Mann, #242498 v. State of South Carolina
2008-CP-10-0057

Dear Ms. Brown:

Enclosed please find the original Return and Motion to Dismiss Motion to Alter or Amend Pursuant to 59(e) SCRCF of the Respondent in the above-captioned case for filing in your office.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/ah

cc: Joshua Snow Kendrick, Esquire

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2008-CP-10-0057
Anthony Mann, #242498,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	MOTION TO ALTER OR AMEND
State of South Carolina,	)	PURSUANT TO 59(e) SCRPC
	)	
Respondent.	)	

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRPC, dated February 10, 2012, in which he asks the Court to alter or amend its Order dismissing his application for post-conviction relief (PCR). The Respondent would submit the following:

I.

This Court's Order of Dismissal filed on January 11, 2012 and the Amended Order of Dismissal filed on January 26, 2012 contain the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

Applicant asks the Court to amend its Order of Dismissal and Amended Order of Dismissal and find that Applicant is entitled to a new trial. Applicant is not requesting an alteration or amendment to the Order. Rather, Applicant is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by

the trial court). Applicant has failed to show that an allegation was properly raised but not ruled upon by the PCR Court.

III.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the motion be denied.

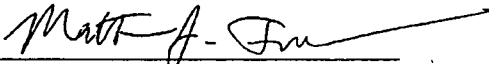
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

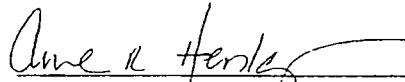
February 27, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2008-CP-10-0057
	)	
ANTHONY MANN, #242498	)	
	)	
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 and Motion to Dismiss Motion to Alter or Amend Pursuant to 59(e) SCRPC** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Joshua Snow Kendrick
 1924 Barnwell Street
 Columbia, SC 29201

DATED this 27th day of February, 2012


 Anne R. Henley, Legal Assistant
 For Respondent

Cc
AG
AT

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-10-0057

Anthony Mann, # 242498

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **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: The Applicant's Motion to Amend Judgment is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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)
N/A	N/A	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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

2151

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A