

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable H. Steven DeBerry IV, Circuit Court Judge

SHEDRICK A. SAVAGE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001556

APPENDIX

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2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 SHEDRICK ANDRE SAVAGE,) 2015-GS-42-810
8 DEFENDANT.)

9
10 November 28th and 29th, 2016
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge; and a jury.

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

16 DERRICK BULSA
17 DEPUTY SOLICITOR
18 Attorney for the State

19 THEO MITCHELL
20 ESQ.
21 Attorney for the Defendant

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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1 PROCEEDINGS

2
3 THE COURT: All right. Let's come to order.

4 This is the case of the State of South Carolina versus
5 Shedrick Andre Savage. Case Number 15-GS-42-810. Present
6 for the State is Mr. Bulsa. Mr. Savage is present with his
7 attorney, Mr. Mitchell.

8 MR. MITCHELL: Yes, sir.

9 THE COURT: First of all, Mr. Mitchell, has your client
10 been arraigned on this charge?

11 MR. MITCHELL: As well as I know, Your Honor, he has.

12 THE COURT: All right. Is -- did he plead not guilty
13 at that time?

14 MR. MITCHELL: Yes, sir.

15 THE COURT: Is he requesting trial by jury?

16 MR. MITCHELL: Yes, sir.

17 THE COURT: And does that remain his request at this
18 time?

19 MR. MITCHELL: Yes, sir, Your Honor. It is.

20 THE COURT: And he's still pleading not guilty?

21 MR. MITCHELL: That is correct, Your Honor.

22 THE COURT: Mr. Savage, is that correct?

23 MR. MITCHELL: Stand.

24 (WHEREUPON, the defendant complies.)

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Thank you, sir. You can be seated.

2 Now, I have received a list of potential witnesses from
3 the State.

4 Does the defense have a list of potential witnesses?

5 MR. MITCHELL: No, sir, Your Honor.

6 THE COURT: All right. And I intend to ask my standard
7 voir dire of the jury panel.

8 Does the State have any specific requests other than
9 that standard voir dire?

10 SOLICITOR BULSA: No, Your Honor.

11 THE COURT: And does the defense have any requests
12 other than the standard voir dire?

13 MR. MITCHELL: No, sir, Your Honor.

14 THE COURT: All right. Is there any -- is there -- can
15 we begin jury selection as far as the State is concerned?

16 SOLICITOR BULSA: I've asked for the family to be
17 brought down, but once they arrive, then we'll be ready,
18 yes, sir.

19 THE COURT: Okay. As soon as the victims are here?

20 SOLICITOR BULSA: Yes, sir.

21 THE COURT: Is the defense ready to go through jury
22 selection?

23 MR. MITCHELL: Yes, sir, Your Honor.

24 THE COURT: All right. So, as soon as the victims are
25 here, we'll summons the jury panel in.

1 SOLICITOR BULSA: They should be on their way.

2 (WHEREUPON, the victim's family comes into the
3 courtroom at this time.)

4 SOLICITOR BULSA: We're ready.

5 THE COURT: Okay. Let's bring the jury panel around.

6 (WHEREUPON, the following takes place within the
7 presence of the entire jury panel.)

8 THE COURT: All right. Thank you, gentlemen.

9 Ladies and gentlemen of the jury, we're about to begin
10 the trial of the State of South Carolina versus Shedrick
11 Andre Savage. This is Case Number 15-GS-42-810.

12 I have been presented with an indictment in that case.
13 The indictment is for the crime of murder.

14 I'm going to go over the indictment with you at this
15 point in time. The reason I'm doing that is so that you'll
16 know the names of those who are allegedly involved in this
17 matter, when this allegedly occurred, and under some
18 circumstances as stated in the indictment that it is alleged
19 to have occurred.

20 The reason I'm doing that is because, in just a few
21 minutes, I'm going to begin to ask you questions that apply
22 specifically to this case. This information may be helpful
23 to you in helping you answer some of the questions that I'm
24 about to ask you concerning this matter. But I will point
25 out to you the fact that I have received an indictment and

1 that an indictment has been issued in this case is not
2 evidence in this case and can not be used by a jury as
3 evidence in this case.

4 An indictment is simply an informational document. It
5 informs this Court of the charge that has been alleged and
6 is to be tried. It informs the defendant of the charge that
7 has been lodged against him but it can not be used by a
8 jury, in any fashion whatsoever, in determining the guilt or
9 the innocence of someone named in that indictment. So,
10 again, this is simply for your information at this time.

11 The indictment states, in part, that the defendant,
12 Shedrick Andre Savage, did, in Spartanburg County, on or
13 about November the 23rd of 2014, feloniously, willfully,
14 and with malice aforethought, kill one Charlie Jackson,
15 Junior by shooting the victim and the victim died as a
16 proximate result thereof all in violation of Code Section
17 16-3-10 and 20 of the Code of Laws of South Carolina, 1976
18 as amended, against the peace and dignity of the State and
19 contrary to the statute in such case made and provided.

20 Again, I've gone over that indictment so that you'll
21 understand some of the allegations that have been made.
22 That information may assist you in responding to the
23 questions I'm about to ask.

24 Now, before I begin to ask those questions, I am going
25 to ask that the attorneys who are involved in this trial

1 introduce themselves to you, and, in the case of the
2 defendant, that the defendant be introduced to you as well.

3 First of all, for the State.

4 SOLICITOR BULSA: Thank you, Your Honor.

5 My name is Derrick Bulsa and I work with the
6 Solicitor's Office.

7 THE COURT: And for the defense.

8 MR. MITCHELL: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. MITCHELL: My name is Theo Mitchell. I practice
11 law with Theo Mitchell, Attorney at Law, LLC, in Greenville,
12 South Carolina.

13 THE COURT: And if the defendant would please stand and
14 face the jury panel.

15 (WHEREUPON, the defendant complies.)

16 THE COURT: This is Mr. Shedrick Andre Savage.
17 Thank you, sir. You can be seated.

18 (WHEREUPON, the defendant complies.)

19 THE COURT: Now, ladies and gentlemen, we're going to
20 follow a process somewhat similar to the one that we
21 followed in jury qualification. I'm going to ask you a
22 series of questions that pertain to this case. I'll be
23 asking that you stand. If you have a response to the
24 questions that I ask, I'll call on you again individually.
25 Again, I will need your name and number before I discuss any

1 response that you might have to the questions that I'm about
2 to ask.

3 Now, once again, I know you were placed under oath for
4 qualification purposes. Now, in this case, and, again, it
5 is important that the information that you provide is
6 truthful, honest, and complete in this case. For that
7 reason, it's required that you, again, be placed under oath
8 concerning these responses at this time.

9 Madam Clerk, please swear the jury panel.

10 THE CLERK: Yes, sir.

11 (WHEREUPON, the jury panel was placed under oath at
12 this time.)

13 THE COURT: You may be seated.

14 Now, if any member of the potential jury panel either
15 failed or refused to take the oath just administered by the
16 clerk, I'd ask that you now please stand.

17 (No response.)

18 THE COURT: The record reflect that all potential
19 jurors have been placed under oath in this case.

20 We'll again follow the same procedure I discussed with
21 you earlier.

22 My first question is has any member of this jury panel
23 ever been related by marriage or are you related by blood to
24 either the defendant, Shedrick Andre Savage, or the alleged
25 victim, Charlie Jackson, Junior?

1 If that's true, please stand.

2 (No response.)

3 THE COURT: Has any member of this jury panel ever had
4 a close personal, social, or business relationship with
5 either the defendant, Shedrick Andre Savage, or the alleged
6 victim, Charlie Jackson, Junior?

7 If you've had any of those relationships, please stand.

8 (No response.)

9 THE COURT: Now, as to the attorneys that are involved
10 in this case, has any member of this jury panel ever been
11 represented by either of the attorneys involved in this
12 matter or have they ever appeared on the other side of a
13 legal matter from you?

14 If that's true, please stand.

15 (No response.)

16 THE COURT: Now, is there any member of this jury panel
17 who is ever been related by marriage or are you related by
18 blood or have you ever had a close social, personal, or
19 business relationship with either of the attorneys that are
20 involved in this case?

21 If that's true, please stand.

22 (Juror responds.)

23 THE COURT: Name and number, sir.

24 THE JUROR: Steven Smith, 152.

25 THE COURT: Your situation.

1 THE JUROR: I attend church with the prosecutor.

2 THE COURT: With Mr. Mitchell?

3 (WHEREUPON, the juror nods negatively.)

4 THE COURT: Mr. Bulsa?

5 THE JUROR: Yes, sir.

6 THE COURT: All right. Now, let me ask you a question
7 to follow-up on that.

8 Is that relationship such that if you were to be
9 selected on the jury, and, of course, he serves as the
10 prosecutor, would that relationship affect your ability to
11 be fair and impartial to both the state and the defendant in
12 this case?

13 THE JUROR: No, it would not, Your Honor.

14 THE COURT: Thank you, sir. You can be seated.

15 Anyone else?

16 (No response.)

17 THE COURT: I'm going to read a list of people who have
18 been identified to me as possible witnesses in this case.
19 This witness list is 30 names long. So, I'm going to go
20 over this list in two groups of 15. Listen carefully to the
21 names as I call them out. I'm going to ask questions very
22 similar to the questions that I've already asked concerning
23 the attorneys and the parties involved.

24 The first 15 names of those who have been identified as
25 possible witnesses include Mike Brock.

1 Wallace Drummond.

2 Errol Graham.

3 Dwight Geter.

4 Cedrick Jones.

5 Kendrick Land.

6 Ruben Landrum.

7 John Mitchell.

8 Micky Mitchell.

9 Wilbert Smith.

10 Lieutenant Travis Barnett. He works with the
11 Spartanburg County Sheriff's Office.

12 Louis Bazzle. That's B-A-Z-Z-L-E. He also works with
13 the Sheriff's Office.

14 Jason Bryant, who is formerly with the Sheriff's
15 Office.

16 Steven Horton with the Spartanburg County Sheriff's
17 Office.

18 Matt Hutchins, who is formerly with the Sheriff's
19 Office.

20 As to those individuals that I just named, has any
21 member of the jury panel ever been related by marriage or
22 are you related by blood or have you ever had a close
23 social, personal, or business relationship with any of those
24 individuals that I just named?

25 If that is true, please stand.

1 (Juror responds.)

2 THE COURT: Sir, name and number.

3 THE JUROR: Steven Smith, 152.

4 THE COURT: Yes, sir.

5 THE JUROR: I have worked joint criminal cases with
6 some of those deputies including Matt Hutchins.

7 THE COURT: All right. Again, if you were on the jury,
8 he was a witness in this case, would that fact affect your
9 ability to be fair and impartial to both sides in this case?

10 THE JUROR: No, it would not, Your Honor.

11 THE COURT: Thank you, sir. You can be seated.

12 Anyone else?

13 (No response.)

14 THE COURT: All right. The next list of names includes
15 Brad James with the Spartanburg County Sheriff's Office.

16 Anthony Knighten with the Spartanburg County Sheriff's
17 office.

18 Chris Morrow with the Sheriff's -- County Office
19 Sheriff's Office.

20 Sean, S-E-A-N, Nix with the Spartanburg County
21 Sheriff's Office.

22 Daniel Pretlove, formerly with the Sheriff's Office.

23 Robert Rosenberg with the Spartanburg Sheriff's Office.

24 Robert Shaffer with the Spartanburg Sheriff's Office.

25 Lorin Williams, Spartanburg Sheriff's Office.

1 Pete Winetroub with the Spartanburg County Sheriff's
2 office.

3 Tony Woodward with the Spartanburg County Sheriff's
4 office.

5 Tyler Sturkie with the South Carolina Law Enforcement
6 Division.

7 Boyce Peeler with the Blacksburg City Police
8 Department.

9 Taylor Owens with the Duncan Police Department.

10 Doctor David Wren, who's employed by Spartanburg
11 Regional Medical Center.

12 Mr. Keith Lee, who's with Spartanburg Communications.
13 That's the 9-1-1 office.

14 Now, as to the individuals that I just named as
15 potential witnesses in this case, is there any member of the
16 jury panel who is ever been related by marriage or are you
17 related by blood or have you ever had a close social,
18 personal, or business relationship with any of those
19 individuals I identified?

20 If that's true, please stand.

21 (Juror responds.)

22 THE COURT: Ma'am, name and number.

23 THE JUROR: Shannon Hawkins, 76.

24 THE COURT: Yes, ma'am.

25 THE JUROR: Doctor Wren, I've actually worked on his

1 laptop and still currently do --

2 THE COURT: I see.

3 THE JUROR: -- once in a while.

4 THE COURT: So, you work on his machinery?

5 THE JUROR: Yes. Correct.

6 THE COURT: Okay.

7 THE JUROR: Okay.

8 THE COURT: All right. Now, would that fact, if he
9 were serving as a witness in the case, you were on the jury,
10 would that relationship affect your ability to be fair and
11 impartial to both the state and the defendant?

12 THE JUROR: No, sir.

13 THE COURT: Thank you, ma'am. You can be seated.

14 Anyone else?

15 (No response.)

16 THE COURT: Now, has any member of this jury panel
17 received any information about this case or on the issues or
18 matters that might be involved in this case that would have
19 caused you to either form or express an opinion about any
20 issue or matter that might be involved in this case?

21 If you have such -- have received such information,
22 please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 is aware of any bias or prejudice that you might have either

1 for or against either the State or the defendant in this
2 matter?

3 If that's true, please stand.

4 (No response.)

5 THE COURT: The indictment in this case was issued by
6 the Grand Jury on March 12th of 2015.

7 Is there any member of this jury panel who may have
8 been a member of the Grand Jury which issued the indictment
9 in this case?

10 If that's true, please stand.

11 (No response.)

12 THE COURT: Is there any member of this jury panel who
13 is a member of or a contributor to any group which has as
14 its primary concern the promotion of law enforcement and/or
15 victim's rights?

16 These groups could include, but not be limited to, such
17 groups as Mothers Against Drunk Driving, Students Against
18 Drunk Driving, Citizens Against Violent Crime, the South
19 Carolina Sheriffs Association, the South Carolina Troopers
20 Association, or other similarly oriented organizations.

21 So, if you're a member of or a contributor to such a
22 group, please stand.

23 (Jurors respond.)

24 THE COURT: Name and number please, ma'am.

25 THE JUROR: Pamela Dettwiler, Number 41.

1 THE COURT: Your situation.

2 THE JUROR: I am a contributor to MADD, Mothers Against
3 Drunk Driving.

4 THE COURT: All right. Now, would that fact affect
5 your ability to be fair and impartial to both the State and
6 the defense if you were serving on the jury?

7 THE JUROR: I don't believe it would.

8 THE COURT: Thank you.

9 well, I don't believe.

10 would it affect it?

11 THE JUROR: No, it wouldn't.

12 THE COURT: Okay. Thank you, ma'am. I need a positive
13 answer.

14 Name and number, sir.

15 THE JUROR: Steven Smith, 152.

16 THE COURT: So, you are a contributor to such a group
17 or a member of such a group?

18 THE JUROR: Your Honor, I'm a contributor to the
19 Society of Former Special Agents of the FBI.

20 THE COURT: I see.

21 would that affect your impartiality if you were seated
22 on the jury?

23 THE JUROR: No, it would not, Your Honor.

24 THE COURT: Thank you, sir.

25 Name and number, sir.

1 THE JUROR: Brian Kennedy, Number 93.

2 THE COURT: Yes, sir.

3 THE JUROR: Contributor to the South Carolina Troopers
4 Association and Mothers Against Drunk Drivers.

5 THE COURT: All right. Would that fact affect your
6 impartiality to either the State or the defendant if you
7 were serving on the jury?

8 THE JUROR: No, Your Honor.

9 THE COURT: Thank you, sir. You can be seated.
10 Anyone else?

11 (No response.)

12 THE COURT: Now, is there any member of this jury panel
13 who knows of any reason whatsoever why he or she should not
14 serve as a juror in this case with particular emphasis being
15 placed upon your ability to be both fair and impartial to
16 both the State and the defendant?

17 So, if you're aware of any such reason, please stand.

18 (No response.)

19 THE COURT: Does the State wish for me to ask
20 additional questions?

21 SOLICITOR BULSA: No, Your Honor.

22 THE COURT: Any from the defense?

23 MR. MITCHELL: None, Your Honor.

24 THE COURT: All right. I'll declare then that the
25 remaining members of the jury panel are qualified to serve

1 in this case.

2 I'll direct the clerk, at this time, to prepare a list
3 of potential jurors in the matter.

4 What's happening right now is we have a computer
5 program that's in use by the courts in this state that will
6 make a random selection from your group and place that
7 selection in a list on a piece of paper. That list will be
8 provided to me, my law clerk, and to the court reporter. We
9 will begin to call the names on that list in the order in
10 which they appear on the list.

11 Now, when your name is called or if your name is
12 called, we'll ask that you come forward to the bailiff.
13 He'll be standing right here in front of the clerk. And
14 when you get there, if you will face the back-door of the
15 courtroom. At that point in time the parties will be in a
16 position to exercise their strikes.

17 In this case, the State will have five strikes. The
18 defense will have ten strikes. And we'll pick one alternate
19 with the State having one strike, the defense having two
20 strikes on the alternate.

21 Now, when your name is called or if your name is called
22 and you come forward, please bring with you any personal
23 belongings that you might have. Pocketbook, books, jackets,
24 whatever you might have, bring that with you because, if
25 you're selected to sit on the jury, you'll immediately have

1 a seat over in this jury box to my left and you won't be
2 going back to your seat in the courtroom. So, bring with
3 you anything that you might have in your possession when you
4 come forward.

5 All right. I'll direct the clerk to begin the jury
6 selection process.

7 Madam Clerk.

8 THE CLERK: Yes, sir.

9 (WHEREUPON, the jury panel was selected at this time.)

10 THE COURT: We're now selecting the alternate.

11 THE CLERK: Yes, sir.

12 (WHEREUPON, an alternate juror was selected at this
13 time.)

14 THE CLERK: Jury selection has been completed.

15 THE COURT: Thank you, Madam Clerk.

16 THE CLERK: Yes, sir.

17 THE COURT: Any objection to the jury selection process
18 from the State?

19 SOLICITOR BULSA: No, Your Honor.

20 THE COURT: Any from the defense?

21 MR. MITCHELL: None, Your Honor.

22 THE COURT: All right.

23 (Pause.)

24 THE COURT: Ladies and gentlemen, you have now been
25 selected as jurors in this case. It's a little after twelve

1 o'clock. So, at this point in time, I'm going to release
2 you to go get lunch.

3 As you leave the courthouse, I'm going to give you some
4 instructions concerning your behavior and I will explain to
5 you that, upon your return, I'll be inquiring of you, under
6 oath, as to whether or not you've been able to follow these
7 instructions. When you return to the courtroom, you'll find
8 that you'll be taking another oath. I mean we've had you
9 sworn a couple of times this morning. You'll be taking
10 another oath when you come back into the courtroom.

11 This oath will be a little bit different. This has to
12 do with your responsibilities as jurors in this case. And
13 that oath requires, if you take that oath, to -- that you
14 will decide the case placed before you based upon the law
15 and the evidence presented in the case.

16 Now, I'm going to tell you, the only place on this
17 earth that you're going to hear the law and the evidence in
18 this case will be in this courtroom either from this witness
19 stand, from witnesses who've been sworn to tell the truth
20 who will testify in this case, or from this Court concerning
21 the law. So, there is none of that information outside of
22 this courtroom. It would, therefore, be a violation of your
23 oath as a juror for you to attempt to gather any information
24 about this case on your own.

25 Now, I realize that you can, with a few strokes of your

1 fingers on a keyboard, go to Google or Yahoo or any other
2 search engine and gather information about just about
3 anything in the world these days, but I will tell you that
4 information would not constitute evidence in this case, and
5 would not be the law as given to you by this Court, and,
6 therefore, it would be a violation of your oath as jurors
7 for you to try to do that.

8 So, one of my instructions is that you should not try
9 to gather any information about this case from any source
10 outside of this courtroom. Also, I've cautioned you earlier
11 about the fact that it's a crime in this State for someone
12 to try to influence your decision as a juror. For that
13 reason, should anyone attempt to contact you about your
14 service in this case, I want you to report that to the Court
15 as soon as you return. I can assure you we'll take the
16 proper -- the appropriate action should that occur.

17 Now, we've gone to a good bit of trouble this morning
18 to pick a jury that has an open mind concerning the issues
19 in this case. I want you to try to keep that open mind
20 throughout the trial and until such time as I ask you to
21 begin your deliberations for, you see, only at that time
22 will you have heard all of the arguments by the lawyers.
23 You'll have heard all the evidence from the witnesses.
24 You'll have heard my charge concerning the law to be applied
25 to that evidence. Only then will you have the information

1 that you need to begin a discussion about this case.

2 For that reason, I'm going to tell you it would be
3 highly improper for you to discuss anything about this case.
4 That includes the nature of the charge, the people involved,
5 the witnesses who might testify. It would improper for you
6 to discuss any of those things, even among yourselves, until
7 such time as I ask you to begin your deliberations. So, one
8 of my instructions is that you should not discuss this case
9 with anyone.

10 I hope you realize, even the most innocent conversation
11 you might have with a family member or a friend about what
12 the charges are about or who's involved in this case, their
13 discussion with you might begin to color your decision in
14 this case and you haven't heard the first word of evidence
15 in this case. You haven't reviewed the first piece of
16 evidence in this matter. So, again, it's going to be highly
17 improper for you to discuss this case with anyone, even
18 among yourselves, until I ask you to begin your
19 deliberations in this case.

20 So, for that reason during your lunch break, if someone
21 asks what are you doing, it's okay to say well, I'm on the
22 jury. I got picked in a case. That's where the discussion
23 should stop. Talk about sports. Talk about the weather.
24 Talk about holidays, whatever else you want to talk about,
25 but don't talk about this case. Again, it will be improper

1 for you to do that. I'll be asking you about that when you
2 return.

3 So, in a nutshell, my instructions will be, every time
4 you leave the courthouse during this trial, not to attempt
5 to gather any information on your own. Don't discuss the
6 case with anyone. Don't allow anyone to discuss it with you
7 and don't listen to, watch, or read any media reports about
8 the case.

9 I don't know if this case is on television, on the
10 radio, in the newspapers, but I can tell you, again, that
11 would be a source of information that you should not consult
12 during the trial of this case because, you see, the only
13 thing you're under your oath are allowed to consider is the
14 law and the evidence, and the evidence in this case only
15 comes through witnesses who are sworn to tell the truth, who
16 will come into the courtroom and testify from the witness
17 stand, and whatever documents or other pieces of evidence
18 might be allowed into the record through their testimony.

19 So, again, sources in the media, while that, while
20 that's -- you know, they write those things and I can assure
21 you they don't always get it right in the papers or on the
22 radio or on television for that matter. So, it would be
23 improper for you to consider any of that information in
24 trying to reach a verdict in this case.

25 So, that's the end of my instructions. I hope you are

1 able to follow them. I'll be checking on it when you come
2 back to be sure that you have.

3 Now, I'm gonna ask that you be back in jury -- in the
4 jury room at two o'clock. I've got some pretrial matters I
5 need to talk to the lawyers about and we'll try to get all
6 of that taken care of before you get back here and we're
7 ready to go at two o'clock.

8 So, again, I hope you have a great lunch. The bailiffs
9 will show you how to get back to the jury room in use for
10 this. Be there by two o'clock this afternoon.

11 Thank you very much and you're free to go at this point
12 in time.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: Any objections to my instructions from the
16 State?

17 SOLICITOR BULSA: No, Your Honor.

18 THE COURT: Any from the defense?

19 MR. MITCHELL: None, Your Honor.

20 THE COURT: All right. Mr. Bulsa, you indicated there
21 might be a motion you wanted the Court to consider.

22 SOLICITOR BULSA: Yes, sir.

23 THE COURT: Pass it up please.

24 (Pause.)

25 THE COURT: All right. Mr. Bulsa, I'll be happy to

1 hear from you in support of your motion.

2 SOLICITOR BULSA: Thank you, Your Honor.

3 I make this motion on a couple of, couple of reasons.

4 First off, in some conversations I had with

5 Mr. Mitchell, he referenced that he might raise an issue
6 that there was another person in the vehicle. Your Honor,
7 this was shooting from a vehicle into a gentleman who was
8 walking beside the vehicle.

9 He referenced to me that he may try to claim that there
10 was a third party in the vehicle and that shot out of the
11 vehicle. We have no other information about that. No, no
12 evidence whatsoever. I need to know if he intends to try to
13 present something like that in support of any third party
14 guilt type motion.

15 THE COURT: Mr. Mitchell.

16 MR. MITCHELL: Your Honor, they're statements in which
17 the investigation seemingly culled out, that did bring about
18 some inference of a third party might be in the -- have been
19 in the vehicle and unless and until this can be drawn out on
20 cross-examination. I have no further evidence to submit to
21 the Court or to try to get into evidence unless it comes out
22 on direct testimony from a witness, from Mr. Bulsa.

23 THE COURT: So, you don't intend to introduce any of
24 that information yourself but you want to reserve the right
25 to cross-examine witnesses concerning what they may know

1 about those matters?

2 MR. MITCHELL: That is correct, Your Honor.

3 THE COURT: I'll allow him to cross-examine to that
4 extent. Now, if he attempts to introduce evidence on his
5 own, it would have to meet the test in order for it to be
6 allowed to come in---

7 MR. MITCHELL: Yes, sir.

8 THE COURT: ---at that time.

9 MR. MITCHELL: Yes, sir.

10 THE COURT: So, if you'll make a contemporaneous
11 objection if you feel that's occurring, Mr. Bulsa.

12 SOLICITOR BULSA: Yes, sir, I will.

13 THE COURT: All right.

14 SOLICITOR BULSA: Your Honor, the second reason for
15 this motion is, is there was -- we at least know there was
16 one other person in the vehicle. He was actually charged
17 with the crime of murder.

18 Based on the information and evidence collected by the
19 police, when it came to my office for review, all I felt we
20 could show is he was merely present in the truck. We
21 couldn't show any advanced planning and, for that matter, we
22 couldn't even show that he was an accessory after the fact.
23 So, he was questioned by the police, denied being in the car
24 or in the truck. We essentially submitted an indictment for
25 misprision of a felony because he was lying to the police.

1 we believe he's at least a witness to the crime.

2 I don't think that's relevant or pertinent information
3 and it would sort of go to a third party guilt type
4 argument. But I don't know what Mr. Mitchell's intentions
5 are and whether he's gonna try to point the finger at this
6 now uncharged codefendant or not. I think that opens a can
7 of worms because it was my decision based on my review of
8 the evidence. If he tries to get into that and argue it, I
9 think it's gonna be misleading to the jury and it might
10 actually require an explanation from me as to why the
11 indictment was not sought.

12 THE COURT: Mr. Mitchell, I'm not sure that I would let
13 you get into the fact that he was charged and that charge
14 was later dropped. But I'm not -- I don't think I can limit
15 you from cross-examining what their investigation may have
16 shown about that individual.

17 MR. MITCHELL: But, Your Honor, if I may?

18 It appears that there was a test taken in regards to
19 the shooting in that -- in the vehicle compound -- closed --
20 in the closed compartment.

21 THE COURT: Right.

22 MR. MITCHELL: And that there was some GSR found on
23 both the codefendant, who was charged also with murder, as
24 well as some other data as far as --

25 THE COURT: well, what---

1 MR. MITCHELL: -- forensic showing.

2 THE COURT: Does the evidence show that there was one
3 gun firing---

4 SOLICITOR BULSA: Yes, sir.

5 THE COURT: ---and one gun caused the injury?

6 SOLICITOR BULSA: Yes, sir, it was a single shot.

7 THE COURT: I don't know what the case shows.

8 SOLICITOR BULSA: It's a single shot and our
9 argument---

10 THE COURT: One shot.

11 SOLICITOR BULSA: ---is it was fired from the driver's
12 window by the driver. We have direct evidence that it was
13 the driver of that vehicle that shot, and the evidence is
14 gonna be that Mr. Savage was that driver. That's how we
15 intend to present the case.

16 Rashawn Miller is the second party. He was seated in
17 the front passenger seat. We don't believe he had any
18 involvement in the shooting. At least that's what the
19 evidence shows at this point.

20 MR. MITCHELL: Well, Your Honor, if I may?

21 Mr. Bulsa said it would show that the defendant here,
22 my client, was, in fact, the driver but it did not come out
23 until about six or seven weeks later that he may have been
24 the shooter, and that was subsequent to after the so called
25 friend of the deceased and another purported witness or

1 proposed witness was called into the Sheriff's Office and
2 gave statements seven weeks later after the shooting. And
3 that's when my client was implicated.

4 THE COURT: Well, sir, I understand all that. I'm not
5 sure what the fact -- well, I think what he's objecting to,
6 maybe I'm misunderstanding, I think he's objecting to the
7 fact that the other gentleman was charged and those charges
8 were later dropped.. He's objecting to that coming in.

9 MR. MITCHELL: I understand, but one thing about it, I
10 don't know who he's gonna put up as far as the witness is
11 concerned. But I think I have an implicit right to be able
12 to ask officers what it is they found and why---

13 THE COURT: Well, I said in my -- what I said earlier,
14 I would not limit your cross-examination of them concerning
15 the scope of their investigation or what it may have shown.
16 The fact that though a charge was issued and then later
17 withdrawn, I'm not sure what probative value that has.
18 That's a prosecutorial decision---

19 MR. MITCHELL: Well, yes, sir.

20 THE COURT: ---and I'm not sure -- does that---

21 MR. MITCHELL: Well, I agree. I agree with the Court's
22 rulings on that one but I just think as far as
23 opportunity---

24 THE COURT: Of course, I don't know what's gonna come
25 out from the testimony.

1 MR. MITCHELL: Right.

2 THE COURT: If you feel like that there's something
3 that comes out in the testimony that might affect my ruling,
4 you certainly have the right to ask me to revisit that and
5 I'll be glad to revisit it.

6 MR. MITCHELL: All right, sir.

7 THE COURT: None of us know what the testimony is gonna
8 be until it's delivered.

9 MR. MITCHELL: That's correct.

10 THE COURT: So, I'll certainly reconsider it if you
11 think something happens that it justifies me doing so.

12 MR. MITCHELL: All right, sir.

13 THE COURT: So --.

14 MR. MITCHELL: Thank you.

15 THE COURT: At this point in time, I don't know that
16 the fact that a charge was -- might actually go against your
17 client if they did the investigation and thought they had
18 the wrong fellow and that may get into some things that you
19 may not want them to get into. I don't know.

20 MR. MITCHELL: Well, the investigation was -- it was
21 broad based. No question about it. Other people were, in
22 fact, implicated.

23 THE COURT: All right. We'll leave it at that right
24 now, and if you think it changes, you let me know.

25 MR. MITCHELL: Thank you, sir.

1 THE COURT: All right.

2 SOLICITOR BULSA: Thank you, Your Honor.

3 THE COURT: All right. Any other matters;

4 Mr. Mitchell?

5 MR. MITCHELL: No, sir.

6 THE COURT: All right. Then we'll be in recess until

7 two o'clock this afternoon.

8 Thank you very much.

9 (WHEREUPON, Court was in recess for the lunch break.)

10 THE COURT: All right. Bring in the defendant please.

11 Thank you.

12 (WHEREUPON, the defendant enters the courtroom at this
13 time.)

14 THE COURT: All right. The record will reflect that
15 the defendant has returned to the courtroom.

16 Is the State ready to proceed at this time?

17 SOLICITOR BULSA: Yes, sir.

18 THE COURT: Defense ready to proceed?

19 MR. MITCHELL: Yes, Your Honor.

20 THE COURT: All right. Please bring the jury in.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: All right. The record will reflect the
24 jury has returned to the courtroom.

25 As you come and go from the courtroom, let me point out

1 to you that the only juror in the box that has an assigned
2 seat is the gentleman in the back left corner there. He is
3 the alternate and the alternate traditionally sits in that
4 seat. Other than that, you can fill in anywhere you'd like
5 to fill in. There's no assigned seats in the jury box.

6 Hope everyone had a good lunch.

7 If there were any of you who had any difficulty in
8 complying with my instructions during your absence from the
9 courthouse, please stand.

10 (No response.)

11 THE COURT: And it appears that all jurors have been
12 able to follow my instructions thus far.

13 I told you that, upon your return to this courtroom,
14 that you would be taking an oath concerning your
15 responsibilities as jurors in this case. So, at this time,
16 I'm going to ask that the clerk administer that oath to you.

17 Madam Clerk.

18 (WHEREUPON, the jury panel was placed under oath at
19 this time.)

20 THE COURT: Now, if there was any member of the jury
21 panel who either failed or refused to take the oath that was
22 just administered by the clerk, please stand.

23 (No response.)

24 THE COURT: All right. The Court record then will
25 reflect that all jurors have now been sworn concerning your

1 responsibilities in the case.

2 Now, before we begin the trial of the case, there's
3 some things that I would like to go over with you. I'm
4 doing this because it's my belief that most of you have
5 never been in the situation where you were called upon to
6 serve on a jury in the trial of a criminal trial and so
7 there's some things I think I need to go over with you
8 concerning the responsibilities that each of us has in the
9 trial of the case and, of course, in particular, your
10 responsibilities as jurors in this case.

11 I do that because it's my belief that most people don't
12 have the experience of actually sitting in a real trial of a
13 case, and what you see on television or in the movies is
14 anything but real life. I'll point that out. In the case
15 of television, you know, you can have an event occur and
16 have the whole case tried and wrapped up in the space of an
17 hour and they can still stop about five times to show you
18 some commercials as you go through that particular exercise.

19 That might tell you that what they put on television
20 is -- it's a story. It's intended to tell you a plot, an
21 outcome. It's to entertain you. It's designed to keep your
22 attention so you'll watch those commercials. You know, they
23 get paid by the number of people that watch them. So, it's
24 intended to entertain you, to keep your attention, to give
25 you a story as it moves along.

1 what you're engaged in in this trial is any -- is
2 intended for anything but your entertainment. I hope you
3 realize that what you're engaged in is a fundamental part of
4 our governmental structure in this country. You know, if
5 you were to look around the world today at most of the
6 countries that exist in this world, you would find that
7 very, very few of them allow citizens to participate
8 directly in the decision making process that goes on in the
9 Courts of those countries. Our country is somewhat
10 distinctive in that nature.

11 We, we have a Constitution, both in this state and in
12 the United States, that guarantees every citizen the right
13 to a trial by a jury. It's embodied in our State
14 Constitution. It's contained in the Bill of Rights that is
15 the first ten amendments to our United States Constitution.

16 So, what you're engaged in today is a fundamental part
17 of that governmental structure. You know, the right to a
18 trial by jury was first guaranteed to citizens in England in
19 the Year 1215 in a document known as the Magna Carta. You
20 might notice that, since it was signed in 1215, last year,
21 it had its 800th anniversary. And if you were to look
22 around the world today, you wouldn't find too many human
23 institutions that have lasted for 800 years.

24 So, our system of trial by jury is a long one. It's
25 one that we've gone through and tested on many occasions.

1 Many people believe it's the best way to resolve the
2 differences between people in a civilized society.

3 You see, this courtroom is a place of honor. It's
4 dedicated to the preservation of citizen's rights through
5 the Constitution, as I've mentioned, of both this state and
6 the United States and I want to thank you very much for your
7 willingness to participate in this trial as the jury and the
8 judges of the facts in this case.

9 Now, the attorneys that are here in this case are here
10 to represent their client's interest in the case of the
11 State and of the defense. I'm sure they'll do an excellent
12 job in presenting those cases to you during this trial.
13 But, you know, most laymen don't realize that, first and
14 foremost, lawyers are also officers of this Court. At some
15 point in time they appeared in front of some judge in some
16 courtroom and they took what's referred to as the lawyer's
17 oath or attorney's oath. It's prescribed by law in this
18 State. Part of that oath contains an agreement by them that
19 they will assist you in this trial in your search to find
20 the truth and that's what you're involved in here is a
21 search for the truth.

22 And so, for that reason, you can expect that they're
23 going to act in a reasonable, a professional, and an ethical
24 manner in the presentation of their client's cases during
25 this trial, and I'm going to point out to you too that

1 you've now come in front of this Court. You just took an
2 oath. Your oath was to decide, to decide this case solely
3 upon the law and the evidence presented in this trial. You
4 too are now expected to act in a reasonable, a professional,
5 and an ethical manner in the discharge of the duties that
6 are before you as jurors in this trial, and, again, I thank
7 you for your willingness to accept that responsibility.

8 Now, a few minutes ago I went over with you the
9 indictment in this case. I'm not going to go over it again
10 with you. I will tell you that it is for the charge of
11 murder in this case, and that indictment, as I told you, is
12 not evidence in the case. It can't be used by you as
13 evidence in the case. It's the document that informs each
14 of us of the case that's going to be tried in this Court.
15 It informs us of the trial to be conducted. It informs the
16 defendant of the charge that's been lodged against him, and
17 that indictment -- to that indictment, the defendant has
18 pled not guilty and requested or demanded a trial by jury.

19 That plea of not guilty, under our law and under our
20 Constitution, places the burden of proof in this trial
21 solely upon the State. It's the State's obligation to now
22 to prove the allegations contained in the indictment to you
23 by proof beyond a reasonable doubt.

24 Now, at the close of the trial, I'm going to talk to
25 you in more detail about this burden of proof and the

1 standard of proof beyond a reasonable doubt. But suffice it
2 to say, in this case, it will be your responsibility, at the
3 close of this trial, to make a determination as to whether
4 or not the State has met its burden of proving the
5 allegations contained in the indictment.

6 I will tell you that, as a jury, your purpose here is
7 to find and determine the facts in this case. In every case
8 in which a jury participates in this courtroom, the jury is
9 always the sole and exclusive finder of the fact or judge of
10 the facts in this case. You are to determine those facts
11 from the testimony that you hear from the witnesses that
12 testify from this witness stand and from any other evidence
13 that is put into the record of the case through the
14 testimony of those witnesses or evidence that's put into the
15 record of the case by agreement between the parties.

16 It's up to you to determine the inferences that you
17 believe or feel can be properly drawn from the evidence,
18 evidence that you hear and it's especially important that
19 you perform that duty of determining and finding the facts
20 diligently and conscientiously because, ordinarily, under
21 our system of justice, there's no means by which an
22 erroneous determination of facts made by a jury can ever be
23 corrected.

24 Now, on the other hand, the same law that makes you the
25 sole judges of the facts makes me the sole judge of the law

1 in the case. Just as I'm not allowed to have an opinion
2 concerning how you determine the facts in this case, you're
3 not allowed to disagree with me concerning the law to be
4 applied in this case.

5 So, if you walked into that jury box just now with some
6 idea or some opinion as to what the law is or what you think
7 the law ought to be, I'll tell you to leave those opinions
8 and notions outside of the jury room before you begin your
9 deliberations. It is your responsibility, under the oath
10 that you've taken, to find and determine the facts as you
11 decide them to be and then apply the law as I give you,
12 exactly as I give it to you, to the facts as you determine
13 them to be. Just as I can't disagree with you concerning
14 your determination of the facts, you're not allowed to
15 disagree with me concerning the law to be applied to those
16 facts.

17 Now, I will tell you that, if you take the law exactly
18 as I give it to you and apply it to the facts as you
19 conscientiously determine those facts to be, you should be
20 in a position to render a fair and a just verdict at the
21 close of the trial.

22 Now, I'm going to remind you that you're to decide this
23 case based upon the law and the evidence. I give you the
24 law. The evidence comes from this witness stands. It's the
25 testimony of the witnesses who will be testifying during the

1 trial and what goes into the record through that testimony
2 or by agreement of the counsel -- of counsel. That's the
3 evidence that you are to consider in this case.

4 Now, I mentioned to you earlier and I want to again
5 stress to you, it's important that, throughout this trial,
6 you keep an open mind concerning all of the issues that are
7 before you. Again, I'll ask you, every time you walk out of
8 the courtroom, I'll instruct you not to discuss this case
9 with anyone, even among yourselves, until I ask you to begin
10 your deliberations. I'll ask you, if you feel that any of
11 your fellow jurors might be violating that direction during
12 the trial, please let me know because it's my instruction to
13 you not to discuss anything about this case until I ask you
14 to begin your deliberations, and I will not do that until
15 you've heard all the arguments by the lawyers, you've heard
16 all the evidence to be presented, and I've charged you on
17 the law. Then I'll ask you to begin your discussions about
18 this case because, you see, it's your solemn responsibility
19 to determine the guilt or the innocence of the defendant,
20 and your verdict must be based solely upon the evidence as
21 presented to you in the trial and the law as I instruct you
22 to -- at the close of the trial.

23 We're going to start the trial in just a minute, and,
24 when we start the trial, the attorneys will be given an
25 opportunity to make an opening statement or argument to you.

1 I'll point out to you, the lawyers will be allowed to talk
2 directly to you only on two occasions during the trial. At
3 the beginning of the trial they'll make an opening
4 statement. Some call it an opening argument but I call it
5 an opening statement. During that time, they'll tell you a
6 little bit about the case and perhaps what they expect to
7 prove. But then, once all the evidence has been put into
8 the record and both sides have rested their cases, they'll
9 be allowed to come back and, again, talk directly to you in
10 what we call a closing statement or a closing argument.
11 During those statements or argument, they will ask you to
12 draw certain inferences from the evidence that you've heard
13 during the trial, and they will discuss what my charge on
14 the law might be and ask you to draw certain inferences in
15 connection with the evidence in regards to that law.

16 I'm going to point out to you, however, that the
17 statements made by lawyers at the beginning of the trial,
18 and at the end of the trial, those are arguments. They are
19 not evidence and they can't be used directly by you in
20 determining the guilt or the innocence of the defendant.
21 Again, the evidence is the testimony of the witnesses who
22 are sworn to tell the truth and what comes into the record
23 through that testimony or by agreement of counsel. But,
24 again, attorneys will be allowed to, to make statements
25 directly to you twice.

1 Also, during the trial, it will be my job to preside
2 over the, over the proceedings. I'm the presiding officer
3 in the trial. It will be my job -- and sometimes judges are
4 referred to as gatekeepers. We decide what we, what we open
5 the gate to and allow what evidence into the record, and we
6 decide what rules also exclude as evidence. We have Rules
7 of Evidence and Rules of Procedure that govern what come
8 into the record of the case and what doesn't come into the
9 record of the case.

10 Now, at some point in time, the attorneys -- one
11 attorney may be trying to introduce a piece of evidence, the
12 other side objects, and if I believe the discussion
13 concerning those objections is going to go toward some
14 matter that I believe may not be admissible under the law --
15 the evidence, the rules of evidence that govern those
16 things, I may ask you, during that discussion, to leave the
17 courtroom. Don't take from the fact that I ask you to leave
18 the courtroom that I have an opinion one way or the other as
19 to how you determine the facts in this case.

20 I hope you realize it's just me doing my job. My job
21 is to see that you decide this case based solely upon
22 properly admitted evidence under the rules that govern that.

23 So, if I believe that discussion is going to go into a
24 discussion about something that is not admissible under
25 those rules, I'll ask you to leave while we have the

1 discussion. I'll make my ruling. We'll bring you back into
2 the courtroom. I'll announce my ruling. We'll proceed with
3 the trial. But don't take that as an effort on my part to
4 try to influence your decision on the facts. It's just me
5 doing my job as the gatekeeper as to what goes into the
6 record and what does not go into the record in the case.

7 Now, I've mentioned several times that you're the
8 judges of the facts and I'm going to tell you that, as the
9 judge of the facts in this case, it's going to be also your
10 responsibility to determine the credibility or the
11 believability of the evidence that you hear and that's what
12 credibility means. It means believability. You must listen
13 to the evidence. Pay close attention. Try not to let your
14 thoughts wonder as the evidence is being presented. And
15 I'll ask you to use your good common sense in making a
16 determination as to what evidence you find credible and what
17 evidence you find to be not believable.

18 Every single day of your life you make decisions using
19 your good common sense as to what you choose to believe and
20 what you choose not to believe. If you think about it,
21 maybe you do it several times everyday. Today is no
22 different than any other day.

23 I'm going to ask you to listen to the evidence. Pay
24 attention to the evidence. Listen to what's being said, how
25 it's being said. Use your good common sense and make a

1 decision as to what evidence you choose to believe and what
2 you choose not to believe. You have the right, in doing so,
3 to consider such factors as whether or not a witness might
4 have a stake in the outcome of the trial, whether or not a
5 witness might exhibit a bias or a prejudice toward one side
6 or the other. Maybe the witness, you find, doesn't have --
7 didn't have the ability to actually know the facts about
8 which the witness testified. And in -- I've been coming
9 into courtrooms for more years than I care to say at this
10 time. But I will tell you that the jury box is always right
11 in front of the witness stand, and the reason for that is
12 jurors should view the witnesses as they testify. Observe
13 them as they testify. Pay attention to what's going on in
14 the courtroom. Be in a position to make a decision as to
15 what you choose to believe and what you choose not to
16 believe, again, using your good common sense and judgment.

17 You have the right to consider anything that's in the
18 record which might help you evaluate the testimony that you
19 hear because, at the close of the trial, it will be your
20 responsibility to determine what facts are true and what
21 facts are not true in your judgments. So, therefore, you
22 must evaluate, you must weigh, you must analyze the evidence
23 as it's been delivered and during your deliberations as
24 well.

25 Now, ladies and gentlemen, I don't appoint a foreperson

1 of the jury until I charge you on the law. I do that at the
2 close of the trial. I do that for a reason and I want to go
3 over that reason with you now.

4 At the end of the trial, I will instruct you that you
5 have to all 12 agree on a verdict before the jury can reach
6 a verdict. In other words, it must be unanimous. Each and
7 every one of you must agree upon the verdict before it's the
8 verdict of the jury. That means, again, excuse me, that
9 there's no one juror in your group more important than any
10 other.

11 So, I don't want you to think, because I've picked
12 somebody as foreperson, that I believe that person is the
13 smartest one or the one that has the best judgment or
14 anything of that nature. And I don't want any of you to
15 think well, if that person's the foreman, I'm just gonna sit
16 back and not pay much attention and I'll just go along with
17 whatever that person says at the close of the trial.

18 I want each and every one of you to think that you
19 might be the foreperson of the jury. It might be your
20 responsibility to, to lead the discussions in the jury room
21 when deliberations begun -- are begun. So, I'll appoint the
22 foreperson at the close of the trial. I will not do it
23 before that time.

24 So, therefore, if you have any issues on the jury that
25 you think ought to be brought to my attention, again, excuse

1 me, you don't have to go through a foreperson. Mention it
2 to the bailiffs. They'll carry it to me and I'll make a
3 determination as to what is the best thing to do in that
4 situation. So, don't believe that I've forgotten about the
5 foreperson. I haven't forgotten it. I'll make that
6 appointment at the close of the trial and I do it for a
7 person. I want you to know that there's no one juror on
8 this jury, on this jury more important than any other juror.
9 All of you must agree on the verdict before it's the jury's
10 verdict.

11 I want to be sure I haven't violated anyone's rights
12 thus far.

13 Any objections from the State to my opening comments?

14 SOLICITOR BULSA: No, Your Honor.

15 THE COURT: Any from the defense?

16 MR. MITCHELL: None, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, let me
18 point out to you, the State, as I've told you, in this case
19 has the burden of proof. For that reason, the State gets to
20 go first with its opening statement followed by the defense.
21 Then, in the presentation of evidence, the State will,
22 again, be required to go first followed by any evidence that
23 the defense wishes to put in, and then, once the evidence
24 has been completed, we'll do the closing arguments. After
25 the closing arguments, I'll charge you on the law.

1 So, opening statements, presentation of evidence,
2 closing statements, and charge on the law, and then the case
3 will be yours for your deliberations and verdict.

4 So, at this time, the State will begin with its opening
5 statement.

6 Mr. Bulsa.

7 SOLICITOR BULSA: Thank you, Your Honor.

8 Good afternoon, ladies and gentlemen. Thank you for
9 taking the time to be here. I know you've been summoned to
10 be here. This is an important day and an important trial.

11 Seated behind me are the parents of Charles Mardrekus
12 Jackson. That's Charlie Jackson and Nancy Petty. Charlie
13 is a Junior. His friends called him Marty. So, you'll hear
14 him referred to as Marty during this trial.

15 He lost his life on November 23rd, 2014, just over
16 two years ago. He had gone to a club here in Spartanburg.
17 It's called Universal Events. It's on South Port Road on
18 the west side of Spartanburg. It use to be a -- like a mini
19 theme park. It had some go cart tracks and putt putt course
20 but that's not open but they still use the building.

21 Okay. They have parties in the building, dancing, and
22 all things like that.

23 Well, Marty went there with some of his friends.
24 Unfortunately, inside, some issues arose, some altercations
25 happened, and they got put out of the club.

1 okay. They were asked to leave. They left and Charlie
2 or, excuse me, Marty was on his way to his car. He was
3 walking up a long drive to where he parked, and he was just
4 a short ways up that drive when a car, a blue truck, pulled
5 up beside him, some other words were said, and a shot was
6 fired. A single shot, single shot to the chest, through and
7 through, and he dies.

8 okay. This, this case is about who did it and why it
9 happened.

10 okay. I submit to you, at the close of this case,
11 you'll have a clear understanding of who did and your real
12 issue will be is it murder or is it manslaughter. The judge
13 will charge you on those two legal terms. But we tell the
14 story the best we can with witnesses from the scene, with
15 investigators and officers who came and collected evidence,
16 and then some forensic testing.

17 okay. okay. The case will last two, maybe three days.
18 It's an important case for this family and for the friends
19 of Marty.

20 I submit to you, ladies and gentlemen, you will be
21 firmly convinced, at the end of this trial, that the
22 defendant is guilty of murder.

23 Thank you for your service.

24 THE COURT: Mr. Mitchell, for the defense.

25 MR. MITCHELL: Thank you, Your Honor.

1 May it please the Court?

2 THE COURT: Yes, sir.

3 MR. MITCHELL: Members of the jury, the State would
4 have you believe that my client, who's seated there with
5 members of his family sitting behind him, is the perpetrator
6 of what my good friend, Mr. Bulsa, has just articulated to
7 you.

8 Murder is the taking of a life of a human being with
9 someone who has a malignant mind. It's defined all
10 throughout my career in law school as with malice
11 aforethought, which means that, before a person commits
12 murder, commit murder, they have formulated in their mind to
13 do it, ordinarily it's to someone they knew, with malice,
14 hate, a malignancy as the thought process is concerned.
15 Please don't forget that, that short definition.

16 The State is relying on basically circumstantial
17 evidence, innuendos and allegations and investigations that
18 was not defined. No definitive pointing the finger at that
19 man sitting over there until some six or seven weeks later.
20 Some of the friends of the deceased met with investigators
21 and, all of a sudden, this man's name came up after being on
22 television, by the way, and his name running across the
23 screen and, all of a sudden, two drunks who were there came
24 forward.

25 One of them even giving statements that the

1 investigator had to correct. Say woah. Put in your report
2 what you saw, not what you thought, and he had to write
3 another report.

4 One of them pointed the finger but the other one
5 couldn't. Both of them drunk at the scene and after the
6 scene and abandoned the deceased.

7 You'll hear this. You'll also hear that my client was
8 there, and, as such, departed the scene. One's gonna say
9 that he got a call before the shot. At least one of the
10 investigators. And the shot was heard. Then, all of a
11 sudden, a description comes out about a vehicle, one in
12 which my client was driving, and he was apprehended along
13 with a passenger in the vehicle detained until Spartanburg
14 authorities rolled at the scene over in Gaffney.

15 Took him into custody. Impounded the vehicle. Ran the
16 search and tests upon it. Eventually charging this man and
17 the other, the passenger.

18 Please keep in mind what we've said. The State has the
19 burden of proving it. Murder is the longest crime that was
20 basically committed going back to Adam and Eve when Cain
21 killed his brother Abel, and he had a motive to do it. He
22 was jealous. Had a malignant mind, was sick. He killed his
23 brother.

24 The State has to prove that this was the scenario that
25 took place in regards to this incident and, above all, that

Brad James - Direct examination
by Solicitor Bulsa

1 man sitting over there did it.

2 Thank you very much.

3 THE COURT: Mr. Bulsa, the state may call its first
4 witness.

5 SOLICITOR BULSA: Thank you, Your Honor.

6 State calls officer Brad James.

7 THE COURT: Sir, come forward to my left and be sworn
8 please.

9 BRAD JAMES, being first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat in the witness stand please.

12 THE WITNESS: Yes, sir.

13 THE COURT: Once you're seated, state your name.

14 THE WITNESS: Bradford James.

15 THE COURT: Thank you.

16 Mr. Bulsa, your witness.

17 SOLICITOR BULSA: Thank you, Your Honor. I got to
18 repair the podium here.

19 DIRECT EXAMINATION

20 BY SOLICITOR BULSA:

21 Q officer James, if you could, please tell us who you're
22 employed by.

23 A Spartanburg County Sheriff's Office.

24 Q In what capacity?

25 A I am a patrol deputy.

Brad James - Direct examination
by Solicitor Bulsa

1 Q And how long have you been with the Sheriff's Office?

2 A Since 2009.

3 Q Do you have, do you have any other law enforcement
4 experience?

5 A Yes, sir, I started with Spartanburg City Police
6 Department in 2003.

7 Q And you've been a police officer over for about 13
8 years?

9 A Yes, sir.

10 Q And back on November 23rd, 2014, were you on-duty?

11 A Yes, sir, I was.

12 Q Okay. Where were you working at that time?

13 A At 300 South Port Road, which is Universal Events.

14 Q Okay. And describe to the jury what, what kind of club
15 that is.

16 A It's more of like a hip hop type club. After hours
17 type nightclub.

18 Q What were you actually doing there?

19 A Just patrolling the parking lot and making sure that
20 cars didn't get broke into. Just a officer presence.

21 Q Is it a big club?

22 A Oh, yes, sir. Yes, sir.

23 Q About how many people were there?

24 A It can range anywhere from five hundred to a thousand
25 people. It just depends on the weekend.

Brad James - Direct examination
by Solicitor Bulsa

1 Q How often is it opened if you know?

2 If you know, how often it is opened?

3 A I'm pretty sure it's once a week for Saturday nights.

4 (WHEREUPON, two photographs were marked as State's
5 Exhibit Nos. 1 and 2 for identification purposes only at
6 this time.)

7 SOLICITOR BULSA: May I approach the witness?

8 THE COURT: You may.

9 Q Officer, let me show you what's been marked for
10 identification as State's 1 and 2.

11 Do you recognize those?

12 A Yes, sir, this appears to be an aerial view of the
13 location.

14 Q Okay. Is it an accurate depiction of that area?

15 A Yes, sir.

16 SOLICITOR BULSA: Your Honor, I would move these into
17 evidence without objection.

18 THE COURT: Any objection?

19 MR. MITCHELL: No objection, sir.

20 THE COURT: Without objections, they'll be admitted as
21 they've been marked.

22 (WHEREUPON, State's Exhibit Nos. 1 and 2 were received
23 into evidence at this time.)

24 THE COURT: You may publish to the jury.

25 SOLICITOR BULSA: Thank you, Your Honor.

Brad James - Direct examination
by Solicitor Bulsa

1 THE COURT: Yes, sir.

2 Bring the lights down, sir, so we can see that a little
3 clearer.

4 (WHEREUPON, the bailiff complies.)

5 THE COURT: Thank you.

6 Q Okay. If you would, orient the jury to this picture.
7 It's State's Exhibit No. 1.

8 A If you'll look right here to the -- where the laser
9 pointer is at, that's South Port Road, which runs directly
10 in front of the business. This is the driveway down into
11 it. Approximately right here is a gate. It's always
12 opened. If you keep on around, this is the parking lot in
13 front and this is gonna be the actual club building. It's
14 a---

15 Q Okay. And is this in Spartanburg County?

16 A Yes, sir, it is in Spartanburg County.

17 Q About whereabouts on South Port?

18 A It's approximately maybe a half mile to three-quarters
19 of a mile down John B. White Senior Boulevard closer to 221
20 and Roebuck area.

21 Q Okay. Now, about what time of the evening did all this
22 occur?

23 A Approximately 2:30 to 2:35 in the morning.

24 Q Okay. So, this is the evening of November 22nd,
25 early morning hours of November 23rd?

Brad James - Direct examination
by Solicitor Bulsa

1 A Yes, sir.

2 Q All right. If you would, what, what did you observe or
3 did you, did you hear?

4 A I was parked in my vehicle right here, which is right
5 in front of the front door of the building, talking with the
6 owners of the business. While standing there talking or in
7 my patrol car, I heard one gunshot go off. Tried to figure
8 out where the gunshot was. So, I began to go up the
9 driveway cause it appeared that it come from up toward the
10 roadway, a little further up the roadway from where I was
11 at.

12 As I started going up the roadway, there's a lot of
13 people outside from the club going in and coming out of the
14 club, started going up the roadway and several people
15 started yelling they did it, they did it, and observed a
16 blue pickup truck driving out of the driveway towards South
17 Port Road.

18 Q If you would, show the jury where you saw that truck.

19 A As I observed it, the truck was approximately right
20 here and continued on up to South Port Road through that
21 driveway.

22 Q Okay. And what did you do when you got that
23 information?

24 A Upon hearing that it was possibly the vehicle involved,
25 I continued on up the roadway to South Port Road, turned

Brad James - Direct examination
by Solicitor Bulsa

1 left on South Port Road headed back to Spartanburg City
2 towards John B. White Senior Boulevard to see if I could
3 attempt to locate the vehicle. I made it all the way up to
4 John B. White right there at the gas station and Fuddruckers
5 and that intersection, didn't observe the vehicle, and, at
6 that time, dispatch come on the radio and advised that
7 someone had called in and said a victim had been shot at 300
8 South Port Road.

9 Q What did you do at that time?

10 A I turned around to go back to the shooting scene to see
11 what was going on at which time I pulled back into the
12 parking lot or I pulled down the driveway and stopped
13 approximately right here right at the gate and pulled in
14 behind another deputy's patrol vehicle and several people
15 were outside. There was people everywhere at this point.
16 They were yelling he's over here.

17 I approached the side of the fence. There's a fence
18 line, I'm sorry, that's right in here and there were two
19 cars parked just inside the gate. To the left of the second
20 car, if you're facing the front bumper of the vehicles up
21 against the fence, I observed a black male laying face down.

22 Q How long would you say you were away from the club
23 before you came back?

24 A Less than two minutes. Two and a half minutes at most.

25 Q And did you actually see the blue truck turn onto South

Brad James - Direct examination
by Solicitor Balsa

1 Port?

2 A Yes, sir, I observed the blue pickup go up the driveway
3 and make a left-hand turn. That's the reason I turned to
4 the left to head towards Spartanburg City.

5 Q Did you see the truck again on South Port?

6 A No, sir, I was attempting to get through the traffic.
7 Like I said, there's people walking down the driveway and
8 there's cars parked on both sides, you'll see pictures, cars
9 parked on both sides of the road. So, you have to work your
10 way through to get out. So, it took me a second to actually
11 get out to the roadway.

12 Q Okay. So, you had some obstacles you had to get past
13 and then you hit the roadway.

14 How fast did you then drive on South Port?

15 A Sixty-five to seventy-five miles an hour trying to
16 catch up to the vehicle cause it had quite a bit of head
17 start on me by the time I made it through the traffic and
18 people walking up through there.

19 Q Okay. And you were not able to catch it going that
20 fast?

21 A No, sir, I was not.

22 Q What's the normal speed limit on that road?

23 A It's 45-miles per hour.

24 Q Okay. And that's about a half mile trip?

25 A Yes, sir, and it actually does slow down to 35-miles

Brad James - Direct examination
by Solicitor Bulsa

1 per hour approximately two-tenths of a mile where the city
2 limits begins on South Port Road.

3 Q Let me show you State's Exhibit No. 2.

4 Does this show a closer view of where you found
5 Mr. Jackson?

6 A Yes, sir, it does.

7 Q Point out to us.

8 A Approximately right here is the gate that I referred to
9 earlier right around the corner. Just to the side of this
10 gate was two vehicles you'll see later in pictures. It's
11 right here. And the gentleman was laying up against --
12 there's a fence line that runs right along beside this and
13 he was just up against the fence line, the victim.

14 SOLICITOR BULSA: Can I get you to mark these please?

15 (WHEREUPON, seven photographs were marked as State's
16 Exhibit Nos. 3 through 10 for identification purposes only
17 at this time.)

18 Q All right, officer. I'm gonna show you a series of
19 photographs marked State's 3 through 10 and I believe these
20 are entered without objection.

21 THE COURT: Any objection to these, Mr. Mitchell?

22 MR. MITCHELL: None whatsoever, Your Honor.

23 THE COURT: All right. They'll be admitted as they've
24 been marked without objection.

25 (WHEREUPON, State's Exhibit Nos. 3 through 10 were

Brad James - Direct examination
by Solicitor Bulsa

1 received into evidence at this time.)

2 THE COURT: You may proceed.

3 SOLICITOR BULSA: Thank you, Your Honor.

4 Q If you would, glance through those and then we'll show
5 them on the overhead.

6 A (Witness complies.)

7 Q And you didn't take these pictures but you were there
8 that night?

9 A No, sir, I did not take the photos but that's
10 photographs of it from that night.

11 Q And they're accurate pictures of the scene?

12 A Yes, sir, it is.

13 Q Do you recall what the weather was like that night?

14 A For the first approximately about hour we were on scene
15 from the time the incident happened during the investigation
16 in the beginning, it was clear outside. But after
17 approximately an hour of being out on scene, it did start
18 raining.

19 Q Okay.

20 A So, some of the pictures do have a little bit of rain
21 in them but that was because the ID officers, once they
22 arrived on scene, it had been raining.

23 Q Okay. Let's walk the jury through these. Some of them
24 might seem redundant but they kind of walk you through the
25 location.

Brad James - Direct examination
by Solicitor Balsa

1 State's Exhibit No. 3, if you would, describe what
2 we're seeing.

3 A This is the driveway. On the top side up here, it's
4 gonna be South Port Road. So, this is coming down into the
5 club. So, this is the metal fence that I was telling you
6 about, about half-way down the driveway. This is gonna be
7 basically kind of like a landmark when we start talking
8 about stuff in a bigger photo.

9 Q Okay. State's 4.

10 A This is a view from the opposite direction. So, the
11 club is gonna be further down this way. So, you would be
12 coming down from South Port Road this way down toward the
13 club and the gate is just passed. If you'll look right
14 here, the two vehicles that I referred to past the gate on
15 the right-hand side, this is gonna be the two vehicles still
16 in the same spot.

17 Q Okay. And here's State's No. 5.

18 A This is a closer view. This is the second car on the
19 right-hand side that I referred to earlier, and you'll see
20 there's an opening right here to the right-hand side.

21 Q State's No. 6.

22 A This is gonna be a front on view of those two vehicles
23 standing in the middle of the road looking back towards the
24 fence line and the victim was gonna be laying right here.

25 Q And now, let me ask you this, as you drove by this

Brad James - Direct examination
by Solicitor Bulsa

1 location as you were trying to catch the blue truck, did you
2 see anything in this area?

3 A I did not but I was not looking for the victim laying
4 up against the fence like. I was attempting to catch up to
5 the suspect, and, at that time, I didn't know there was a
6 victim. I had only heard one gunshot wound (sic) and nobody
7 had actually told me that somebody was actually hit at the
8 time.

9 Q State's No. 7.

10 A This is gonna be another view from the club side back
11 up the driveway. South Port Road will be up here and this
12 is the two vehicles and there's that small gap that I had
13 referred to in the other views.

14 Q Okay. And this is just another picture of that but a
15 little bit further back, State's 8.

16 A This is gonna be on the same side of the road, and
17 that's gonna be the two vehicles and the opening should be
18 right here in-between the vehicles and those yellow pipes.

19 Q Okay. And State's No. 9.

20 A This is a view from the club side leading back up
21 towards South Port Road and when -- the victim would of been
22 laying right just on the other side of those yellow poles.

23 Q And he was taken to the hospital by this point?

24 A Not -- upon my initial arrival he had not.

25 Q Okay. Cause you got there before EMS, of course?

Brad James - Direct examination
by Solicitor Bulsa

1 A Yes, sir, I got there and he was still laying there.
2 So, I went up and checked, checked for a pulse and EMS
3 pulled up shortly after me. So, they began administering
4 medical treatment and I began containing the crime scene and
5 keeping the people back.

6 Q Okay. And, finally, State's 10.

7 A This is gonna be a shot from -- South Port Road would
8 be to your back on this photo. This is directly in the same
9 spot that the victim would be laying with the club in front
10 of you and just behind the second car of the two cars.

11 Q Okay. Now, at anytime did you try to notify other
12 officers about this shooting and this truck?

13 A Yes, when the dispatch call came out that there was a
14 victim shot, I advised people at -- other officers responded
15 to the scene as I was pulling out, that there was a blue
16 pickup truck had left the scene that I was advised was
17 possibly involved in it. I couldn't confirm that the
18 vehicle was involved. I was just told by people on scene
19 that it had possibly something to do with it for other
20 officers responding to the scene to attempt to locate the
21 vehicle as they were coming to the scene.

22 Q Did that appear to be reliable information to you?

23 A Yes, sir, at the time. I had no reason to believe that
24 it wasn't reliable.

25 Q Okay. Now, how many officers actually arrived?

Brad James - Direct examination
by Solicitor Bulsa

1 A In total, I'd say 12 to 15 officers in total at least
2 arrived on scene between investigators and ID officers
3 taking photographs, processing the scene, other officers
4 trying to contain the scene.

5 Q why so many?

6 A Due to the large number of people on scene. The club
7 was actively going on, people coming in, coming out, and it
8 was a fairly busy night to where they were people parked all
9 the way on the other side of the road on South Port Road.
10 So, you can imagine how many people it takes to fill up this
11 entire parking lot, all the way up the roadway, and the
12 other side of the roadway.

13 Q what was the main focus at that time?

14 A I'm sorry?

15 Q what was the main focus at that time when the other
16 officers arrived?

17 was it to render aid to the victim?

18 A At the time when all the other officers started
19 arriving on scene, our main focus was to keep a perimeter
20 around the medical personnel and contain our crime scene to
21 let them go what they can do as far as medical treatment
22 because that's what they're trained to do and for us to
23 contain any kind of evidence or anything we could do and
24 keep anybody from contaminating the scene.

25 Q And then is that area then turned over to forensic

Brad James - Direct examination
by Solicitor Bulsa

1 officers?

2 A Yes, sir, we contain the scene until the forensic
3 officers get there. We put up crime scene tape, keep
4 everybody out as much as possible with this large number of
5 people, and then allow them to do their job as far as
6 processing the scene once they arrive on scene.

7 Q And whose job is it to try to determine who did this?

8 A The investigators, our violent crimes investigators,
9 once they arrive on scene, they begin the investigation past
10 our initial appearance.

11 Q Okay. Did you obtain anything from anyone at the club
12 to give to the, to an investigator?

13 A Yes, sir, I did go and speak with the owners of the
14 club and received the pictures that had been taken that
15 night. Every night they have what they call a picture man.
16 Everybody pays to takes pictures and he keeps copies of the
17 pictures. So, those pictures, I was advised, that they did
18 have. I called and asked the club did they have copies of
19 those pictures. So, I did respond to the club, get the
20 copies of the pictures on a jump drive, and take them to our
21 investigators and turn them over to the investigators so
22 they can attempt to use that during the investigation.

23 Q Okay. Thank you. Answer any questions Mr. Mitchell
24 may have.

25 A Yes, sir.

Brad James - Cross-examination
by Mr. Mitchell

1 THE COURT: Mr. Mitchell, you need the lights down or
2 up?

3 MR. MITCHELL: No, sir, I'm all right, Your Honor.

4 THE COURT: Okay.

5 MR. MITCHELL: Yeah, I'm fine. Thank you, sir.

6 THE COURT: All right.

7 CROSS-EXAMINATION

8 BY MR. MITCHELL:

9 Q Officer James, did you have any conversation with one
10 of the -- any of the investigators?

11 A Yes, sir, I did, when I arrived -- when they began
12 arriving on scene. I give them the little information that
13 I knew at the time.

14 Q Did you give information to Investigator Williams?

15 A I'm -- it's been a little while. So, I'm not sure
16 which investigator I spoke with. But yes, sir, I did speak
17 to an investigator. I'm not sure which one it was.

18 Q Okay. Do you recall giving a name of a Derrick Tate to
19 an investigator?

20 A No, sir.

21 SOLICITOR BULSA: Objection, Your Honor.

22 THE COURT: The objection is?

23 SOLICITOR BULSA: It goes to my previous motion.

24 THE COURT: Ladies and gentlemen of the jury, I'm gonna
25 have to ask you to step out to the jury room. I'll have to

Brad James - Cross-examination
by Mr. Mitchell

1 discuss something with the attorneys. while you're out of
2 the courtroom, don't discuss anything about the case.

3 Thank you very much.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Mr. Mitchell, if you'd bring the lights up
7 please.

8 (WHEREUPON, the bailiff compiles.)

9 THE COURT: All right. Mr. Bulsa, state your
10 objection.

11 SOLICITOR BULSA: Yes, sir, Your Honor.

12 My motion was regarding third party guilt, whether Mr.
13 Mitchell was gonna try to bring anybody else into this case
14 as potential culprits, and this line of questioning is
15 directly in that mold, Your Honor.

16 Derrick Tate was the name that was suggested to Brad
17 James. Mr. James told the investigators and the
18 investigators ruled Mr. Tate out as being involved in this
19 case. So, now my argument is Mr. Mitchell, Mr. Mitchell now
20 is trying to infer to the jury that maybe Mr. Tate could of
21 been the one to do this.

22 MR. MITCHELL: Your Honor?

23 THE COURT: I think the question was did he -- what was
24 the -- is that a question?

25 MR. MITCHELL: I asked him if he remembered talking to

Brad James - Cross-examination
by Mr. Mitchell

1 the investigators and he recalled that he did---

2 THE COURT: Yes, sir.

3 MR. MITCHELL: ---now in conversation with him, and
4 then I just asked him does he recall giving the name of a
5 Derrick Tate to the investigator.

6 THE COURT: well, where are we going with that,
7 Mr. Mitchell?

8 MR. MITCHELL: well, because the gentleman, in his own
9 statement, said that he heard gunshots. He went to see
10 where they were. Then his testimony on the stand is that he
11 only heard one shot.

12 THE COURT: well, that's -- well, you can ask him about
13 that. I've got no problem with that.

14 MR. MITCHELL: But as far as his statement to
15 Investigator Williams, he -- I was given the name of one
16 Derrick Tate and I just asked him if he had given that name
17 and then came back with another name. I'm not trying to---

18 THE COURT: well, see, I haven't read his statement.
19 what does it say, Mr. Bulsa?

20 SOLICITOR BULSA: This is actually in an investigative
21 writing by Lorin Williams where they're trying to determine
22 who did this. So, the name of -- actually was the nickname
23 Black. There's a Derrick Tate that goes by the nickname
24 Black and -- but also it's our position that the defendant
25 goes by the nickname of Black. So, they ruled out the

Brad James - Cross-examination
by Mr. Mitchell

1 Derrick Tate Black and they got Mr. Savage.

2 MR. MITCHELL: But that goes to show you that---

3 THE COURT: Was Derrick Tate the other occupant in the
4 vehicle?

5 SOLICITOR BULSA: No, sir, he was not.

6 MR. MITCHELL: He was not. But it was a name that was
7 given to the gentleman and, as such, I just --.

8 THE COURT: Well, is there any evidence that Derrick
9 Tate was even at the scene?

10 MR. MITCHELL: No, sir, that's the whole point and
11 also, Your Honor, there's also the gentleman, he was, he was
12 out of his automobile, but he saw supposedly this individual
13 driving his truck and I was gonna ask him if he also, when
14 speeding up the driveway, whether or not you saw a white car
15 following and speeding up the driveway also before the,
16 before the jury comes back in.

17 THE COURT: Well, I'm not gonna stop -- well, I'm gonna
18 let you cross-examine the witness, but this Mr. Tate, unless
19 there's some connection, other than a common nickname that
20 these two might have, I don't know that we get in -- you're
21 asking him if somebody gave him the name of Derrick Tate?

22 MR. MITCHELL: Yes, sir.

23 THE COURT: Asking for hearsay about somebody that
24 wasn't there?

25 MR. MITCHELL: Yes, sir.

Brad James - Cross-examination
by Mr. Mitchell

1 THE COURT: I'm gonna sustain the objection---

2 MR. MITCHELL: All right.

3 SOLICITOR BULSA: Thank you, Your Honor.

4 THE COURT: ---about Mr. Tate.

5 All right. Let's bring the jury back.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: All right. The jury's returned to the
9 courtroom. I have sustained an objection.

10 You may proceed, Mr. Mitchell.

11 MR. MITCHELL: Thank you, Your Honor.

12 CONTINUED CROSS-EXAMINATION

13 BY MR. MITCHELL:

14 Q Mr. James, in regards to a statement that you gave, you
15 even gave a supplemental report, didn't you?

16 A Yes, sir, I did.

17 Q Okay. I mean you gave one after the major one.

18 Now, I believe you testified---

19 A I'm sorry?

20 Q ---to Mr. Bulsa that you heard one shot?

21 A Yes, sir.

22 Q Okay. But your supplemental report that you gave said
23 that you heard gunshots?

24 A I'm---

25 Q Is that true?

John Mitchell - Direct examination
by Solicitor Bulsa

1 A That may of been a grammatical error. I apologize if
2 it---

3 Q It sounded like they came---

4 A ---was---

5 Q ---up closer to the roadway. They --.

6 A That's how I typed the report. I mean I didn't hear
7 but one shot.

8 Q But that's not what your statement says.

9 A Yes, sir, I advised you that I'm pretty sure that's a
10 grammatical error.

11 Q Okay. I also asked you, since you were trying to catch
12 the blue truck, did you not see a white vehicle following
13 closely behind the blue truck and sped along with it?

14 A No, sir, the only one I observed was the blue vehicle
15 coming out of the driveway headed up towards South Port
16 Road.

17 Q You didn't see the white one?

18 A No, sir, I did not.

19 Q Okay. Thank you.

20 THE COURT: Mr. Bulsa.

21 SOLICITOR BULSA: Nothing further.

22 THE COURT: All right, sir. You may step down.
23 Do you wish for him to be excused?

24 SOLICITOR BULSA: Not just yet.

25 THE COURT: Okay. Thank you.

John Mitchell - Direct examination
by Solicitor Bulsa

1 You may proceed, Mr. Bulsa, with your next witness.

2 SOLICITOR BULSA: State calls John Mitchell.

3 THE COURT: Sir, if you'll come forward please and be
4 sworn to my left.

5 JOHN MITCHELL, being first duly
6 sworn, testified as follows:

7 THE COURT: Once you're seated, sir, if you would,
8 state your name please.

9 THE WITNESS: Jonathan Mitchell.

10 THE COURT: Thank you.

11 Mr. Bulsa, your witness, sir.

12 SOLICITOR BULSA: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY SOLICITOR BULSA:

15 Q Mr. Mitchell, do you run the Universal Events, the club
16 there?

17 A Yes, sir.

18 Q Okay. Tell us -- tell the jury how that works.

19 A We're open on Saturday nights. It's a hip hop club.
20 We open around ten o'clock. We get, average, five hundred
21 to a thousand, sometimes 1,200 people.

22 Q Do you actually own the property?

23 A I do not own the property.

24 Q You just lease the building?

25 A Yes.

John Mitchell - Direct examination
by Solicitor Bulsa

1 Q Okay. We've seen pictures of that area, State's
2 Exhibit No. 1.

3 Is the parking lot big enough to hold all the crowd?

4 A No, sir, it's not even close.

5 Q Okay. So, where does everybody else park?

6 A We park all the way up the driveway. That would be a
7 little better.

8 How do you use it?

9 Q Just push this red button here.

10 A Okay. Oh, okay. We, we use all this parking. We use
11 down along the woods here and we use all this parking here
12 in the woods. We use both sides of the driveway all the way
13 up. We use the parking lot. We use across the road. We
14 use on this side of the street. We use this entire parking
15 lot, and then, off to the right, there's another parking lot
16 for a storage facility and we use all of that also.

17 Q How long have you been operating this club?

18 A We've had Universal since 2011.

19 Q And how many nights a week is it open?

20 A One night a week.

21 Q Just one night. Just Saturday night.

22 A Just Saturday nights.

23 Q Where does your crowd come from?

24 A They come from everywhere. We've had people from
25 Columbia, Greenville, Rutherfordton, Charlotte, Asheville.

John Mitchell - Direct examination
by Solicitor Bulsa

1 They, they just come from everywhere.

2 Q Okay. Do you have a good size crowd from Spartanburg?

3 A Yes.

4 Q How about Gaffney?

5 A Yes, Gaffney and Spartanburg are our main people that
6 come.

7 Q Okay. Do you get to know the people that frequent your
8 club?

9 A Yes. Not---

10 Q How is that?

11 A Not on a personal basis as far as we invite each other
12 to supper but we get to know each other and we become
13 friendly.

14 Q Okay. So, my -- it sounds like people frequent there
15 over and over and over.

16 Is that right?

17 A Yes, we've had people coming since we ran the club up
18 the street, which was Club Sidelines. In 2006, we've had
19 people coming from that club till now even.

20 Q Were you familiar with Marty Jackson?

21 A Yes, he was a regular.

22 Q Did you know his name?

23 A I did not know his name.

24 Q But you knew him by sight, that he was a regular?

25 A Yes, sir.

John Mitchell - Direct examination
by Solicitor Bulsa

1 Q Okay. How about Mr. Savage?

2 Did you know him?

3 A Yes.

4 Q How did you know him?

5 A As a regular. He came all the time.

6 Q Did you know where he was from?

7 A Yes, he's, he's from Gaffney.

8 Q He's from Gaffney?

9 A Yes.

10 Q Okay. And where was Marty from?

11 A I did not know at the time. I know now he was from
12 Spartanburg.

13 Q Okay. All right. Did you know Mr. Savage's name?

14 A No, I did not. Well, I knew his nickname.

15 Q What was his nickname?

16 A Black.

17 Q Okay.

18 A I did not know his real name.

19 Q Okay. Now, the night this happened, let me ask you --
20 let me back up and ask you this question.

21 Is there someone there that takes photographs of people
22 at the club?

23 A Yes, we have a picture man. That's what we refer to
24 him as.

25 Q Okay. Now, do you recall some pictures being taken

John Mitchell - Direct examination
by Solicitor Bulsa

1 that night?

2 A Yes, he takes pictures every night.

3 Q Every night.

4 A Yes.

5 Q Okay. And did you provide some of those pictures to
6 Officer James?

7 A Yes.

8 Q Did you select which pictures to give him?

9 A Yes.

10 Q How did you select those pictures?

11 A Because I knew what had happened that night and what
12 transpired and I knew what pictures he was looking for.

13 (WHEREUPON, a photograph was marked as State's Exhibit
14 No. 11 for identification purposes only at this time.)

15 Q Okay. Let me show you what's been marked as State's
16 Exhibit No. 11.

17 I believe this is entered without objection, Your
18 Honor?

19 THE COURT: Any objection to No. 11, Mr. Mitchell?

20 MR. MITCHELL: I have no objection, Your Honor.

21 THE COURT: All right. It will be admitted as it's
22 been marked.

23 (WHEREUPON, State's Exhibit No. 11 was received into
24 evidence at this time.)

25 THE COURT: You may proceed.

John Mitchell - Direct examination
by Solicitor Bulsa

- 1 SOLICITOR BULSA: Thank you, Your Honor.
- 2 Q Do you recognize that?
- 3 A Yes, I do.
- 4 Q Is that one of the pictures you gave to Officer James?
- 5 A Yes, it is.
- 6 Q Why is it that you chose that picture to give to
7 Officer James?
- 8 A He wanted proof that they were at the club that night.
- 9 Q Okay. The boys from Gaffney?
- 10 A Physical proof.
- 11 Q Okay. The boys from Gaffney?
- 12 A Yes.
- 13 Q Okay. And you knew these boys were from Gaffney?
- 14 A Yes.
- 15 Q Is one of those the defendant?
- 16 A Yes.
- 17 Q Which one?
- 18 A The one on the left. He's just put on a lot of weight
19 since.
- 20 Q Okay. The one on the left.
- 21 What color clothes is he wearing?
- 22 A Red and camouflaged.
- 23 Q Okay. Showing on the overhead State's No. 11.
- 24 Okay. Do you know the person that was with him?
- 25 A Yes, just by sight.

John Mitchell - Direct examination
by Solicitor Bulsa

1 Q Okay. Do you know if they were there together in the
2 club?

3 A Yes.

4 Q Okay. It appears that they probably were because they
5 took their picture together, right?

6 A Yes.

7 Q Okay. All right. Now---

8 MR. MITCHELL: I didn't object to that one but I think
9 Mr. Bulsa is leading him a little bit.

10 THE COURT: It's been admitted.

11 Is that right?

12 SOLICITOR BULSA: Yes, sir, it has.

13 THE COURT: You may proceed.

14 Q Now, Mr. Mitchell, did anything occur in the club that
15 caused you to put some people out?

16 A Yes, there was a fight.

17 Q Okay. And did you observe that fight?

18 A I observed the end of the fight, yes.

19 Q Okay. Could you tell which parties were involved?

20 A Yes.

21 Q Okay. Could you -- was, was Marty Jackson one of those
22 parties?

23 A I'm sorry?

24 Q Was, was the victim, Marty Jackson, was he one of the
25 persons involved in the fight?

John Mitchell - Direct examination
by Solicitor Bulsa

1 A Yes. Yes, security had said they're coming out. I was
2 outside security. I work outside with my outside security.
3 Inside security, the bouncers, said they're coming out.
4 When they opened the doors, Marty was fighting with several
5 guys and winning actually but we, we grabbed Marty, the
6 outside security. One of the outside security grabbed
7 Marty. We got him moving. We held the other guys inside
8 for a few minutes. We told Marty to leave. He said no
9 problem. He started walking down the driveway to leave. We
10 thought he had gotten to his car and had left. Security
11 outside the door, the main door, we thought he had left.

12 Q Yes, sir.

13 A We instructed to let the other guys out. As they're
14 coming out, they're mad. Black, Mr. Savage, was extremely
15 mad and he said the words I'm gonna kill that nigga and it,
16 and it -- N-I-G-G-A and him and I thought -- I know one
17 other got into the truck with him. He got into the driver's
18 seat. I thought there was a third person. He might of went
19 around behind the truck, I wasn't sure, and they took off
20 out of the driveway.

21 They weren't in a particular hurry and we hear these
22 kind of comments all the time when fights break out. You
23 get 800 people drinking, fights are gonna happen.

24 We got on the radio. We warned security what was said
25 and keep an eye out for the blue truck. As they were

John Mitchell - Direct examination
by Solicitor Bulsa

1 leaving, I was sitting there at the front. Brad James was
2 there checking on us at the time. We were out front talking
3 with Officer James and I was watching the truck as it was
4 leaving and I took my eyes away just for a split second, and
5 I saw, out of the corner of my eye, a flash from that
6 truck's window. That's when we knew there was a gunshot.

7 Q Did you see the flash or hear the shot?

8 A I heard the shot and saw the flash out of the corner of
9 my eye.

10 Q Okay.

11 A I jumped on the golf cart to ride down through there.
12 It's not an overly fast one but it's faster than I can run.
13 As we -- Brad James had already took off to go after the
14 truck. We radioed up to either stop the truck, cause we
15 have security at the top of the hill, either stop the truck
16 or get a description or the tag. They radioed back that it
17 was a used car tag on it. I believe it was Morgan's Used
18 Cars they radioed back.

19 We, we did what we could as far as going down there and
20 then we had to come back down the driveway a little bit, and
21 that's when I was there with Marty at the time and I could
22 see that he was deceased.

23 Q Okay. So, at first, you didn't realize somebody had
24 actually been hit?

25 A Not at first I did not.

John Mitchell - Cross-examination
by Mr. Mitchell

1 Q Okay.

2 A When I came back down the driveway, that's when the
3 people that were there were screaming he's been shot, he's
4 been shot.

5 Q What did you do at that point?

6 A Jumped off the golf, the golf cart and told everybody
7 to back up so I could check him real quick but it was
8 obvious he was already gone.

9 Q Okay. And then what happened?

10 A Then the police started -- I called 9-1-1 but they had
11 already gotten calls on it and all the police cars started
12 showing up. So, I walked on inside at that moment. They --
13 it took me by surprise.

14 Q Okay. All right. And did you pretty much stay inside
15 during the -- when the police were there?

16 A When the police were there, yes. I came back out
17 towards the end.

18 Q Okay. All right. Thank you, Mr. Mitchell. Answer any
19 questions Mr. -- that Mr. Mitchell may have for you.

20 THE COURT: Your witness, Mr. Mitchell.

21 MR. MITCHELL: Thank you, Your Honor.

22 THE COURT: You want the lights up or down?

23 MR. MITCHELL: No, I'm fine, sir.

24 THE COURT: You want them up?

25 MR. MITCHELL: No, sir.

John Mitchell - Cross-examination
by Mr. Mitchell

1 THE COURT: You're fine.

2 Okay. Very good. Go ahead.

3 CROSS-EXAMINATION

4 BY MR. MITCHELL:

5 Q Mr. Mitchell, why did Mr. James select this particular
6 picture?

7 Do you know?

8 A He did not select the picture.

9 Q Who did?

10 A I did.

11 Q Why?

12 A Because I knew he was the one that was involved in the
13 fight and he was the one in the truck, him and his friend.
14 That's why I selected the picture.

15 Q And possibly a third person?

16 A The third person, yes, possibly.

17 Q Okay. How many doors does the vehicle have to your
18 knowledge?

19 A I don't recall exactly. I don't know. I believe it
20 was a two door truck but I'm not sure.

21 Q Would you be surprised to know it was a four door?

22 A It could have been a six door. I don't know.

23 Q No, I just asked you would you be surprised if it was a
24 four door.

25 A No, it wouldn't surprise me.

John Mitchell - Cross-examination
by Mr. Mitchell

1 Q It wouldn't surprise you.

2 All right. And if it were a four door, that third
3 person could of been in the back seat, couldn't he?

4 A Possibly.

5 Q Okay. And you said you saw a flash, heard the noise,
6 and saw the flash come from the vehicle, the truck?

7 A Yes, sir.

8 Q Don't know whether it came from the driver's seat or
9 the back seat, do you?

10 A It was towards the front of the truck. It was not
11 towards the bed of the truck.

12 Q But you still don't know whether it came from the front
13 seat or the back seat, do you?

14 A Yes, it came from the front seat.

15 Q Do you know who fired it?

16 A No, sir, I do not.

17 Q Thank you.

18 SOLICITOR BULSA: Nothing further.

19 THE COURT: All right, sir. You may step down. Thank
20 you very much.

21 SOLICITOR BULSA: State calls Micky Mitchell.

22 THE COURT: Come forward please. Right over here to my
23 left.

24 MICKY MITCHELL, being first duly
25 sworn, testified as follows:

Micky Mitchell - Direct examination
by Solicitor Bulsa

1 THE COURT: Have a seat please, ma'am.

2 (Witness complies.)

3 THE COURT: State your name please.

4 THE WITNESS: Micky Mitchell.

5 THE COURT: Thank you.

6 Mr. Bulsa.

7 SOLICITOR BULSA: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR BULSA:

10 Q Mrs. Mitchell, are you married to John Mitchell?

11 A Yes.

12 Q How long have y'all been married?

13 A Thirty-three years.

14 Q Do you help him run the club?

15 A I do.

16 Q What do you do there?

17 A Pretty well take care of everything.

18 Q Okay. All right. Were you there the night of this
19 shooting?

20 A I was.

21 Q Did you actually hear the shot?

22 A I just seen a flash. All -- I can only -- I don't know
23 if I seen a shot or heard the shot or not. I just seen a
24 flash.

25 Q Okay.

Micky Mitchell - Direct examination
by Solicitor Bulsa

- 1 A That's what sticks in my mind.
- 2 Q Well, where were you when you saw that flash?
- 3 A I was by the front door.
- 4 Q Okay. And did you see where that flash came from?
- 5 A It came from a dark colored truck.
- 6 Q Could you tell what part of the truck it came from?
- 7 A No, I couldn't.
- 8 Q Okay.
- 9 A Like I wasn't really looking for it.
- 10 Q Right.
- 11 A So --.
- 12 Q Do you know who drove that truck?
- 13 A No.
- 14 Q So, you couldn't tell if it was from the front part of
- 15 the truck or the back part?
- 16 A I could not.
- 17 Q Okay. Did you -- were you near your husband or was
- 18 he---
- 19 A I don't really remember him being around me.
- 20 Q Okay.
- 21 A But he was probably behind me because I was just
- 22 looking out after the fight. I just came out and was
- 23 smoking a cigarette and I was just standing there. I was
- 24 talking to Brad James and Ivan Lewis and---
- 25 Q Okay.

Micky Mitchell - Direct examination
by Solicitor Bulsa

1 A ---I seen the flash and---

2 Q The flash caught your eye and made you look.

3 A Yeah.

4 Q And what did you see?

5 A I just seen the flash and John took off on the golf
6 cart wherever he was and Brad, he, he left.

7 Q Okay. What did -- well, what did you see the truck do?

8 A Oh, it took off up the driveway. It---

9 Q Yeah.

10 A ---gunned it up the driveway.

11 Q Okay. All right. Thank you, ma'am.

12 A You welcome.

13 THE COURT: Wait a second, ma'am.

14 THE WITNESS: I'm sorry.

15 THE COURT: Mr. Mitchell, your witness.

16 MR. MITCHELL: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. MITCHELL:

19 Q Mrs. Mitchell, in regards to seeing the flash -- but
20 you, you don't remember hearing the gunshot?

21 A I don't remember hearing the gunshot. I've never
22 really seen anything like that before.

23 Q Okay. And approximately how many feet was the deceased
24 from, from where you were?

25 A I didn't even go down there.

Micky Mitchell - Cross-examination
by Mr. Mitchell

1 Q You didn't go down there.

2 Did you know the deceased?

3 A I've known him just to say hey and stuff. I didn't
4 talk to him much or anything.

5 Q Did you see him outside?

6 A I couldn't tell you.

7 Q And, of course, do you know this gentleman?

8 A Just to say hey but I don't know him, no.

9 Q Did you see him there?

10 A I didn't know he was there. I don't pay attention to
11 who's there and stuff. I try to watch my bouncers and make
12 sure everything is calm and bartenders and stuff.

13 Q So, you really don't know how many doors the vehicle it
14 had?

15 A No.

16 Q Thank you, ma'am.

17 THE COURT: Anything further, Mr. Bulsa?

18 SOLICITOR BULSA: No, sir.

19 THE COURT: Ma'am, you step down.

20 SOLICITOR BULSA: Your Honor, we ask that she and her
21 husband be excused.

22 THE COURT: Any objections?

23 MR. MITCHELL: None at all.

24 THE COURT: Ma'am, you and your husband are free to go
25 at this time. Thank you very much.

William Shell - Direct examination
by Solicitor Bulsa

1 THE WITNESS: Thank you.

2 SOLICITOR BULSA: Ma'am, thank you.

3 State calls William Shell.

4 THE COURT: Come forward, sir. Be sworn to my left.

5 WILLIAM SHELL, being first duly
6 sworn, testified as follows:

7 THE COURT: Have a seat please. Once you're seated,
8 state your name.

9 THE WITNESS: I'm William Shell.

10 THE COURT: Thank you.

11 Mr. Bulsa, your witness.

12 SOLICITOR BULSA: Thank you.

13 DIRECT EXAMINATION

14 BY SOLICITOR BULSA:

15 Q Mr. Shell, what's your occupation?

16 A I'm photographer for Universal Events.

17 Q Okay. Is that the only thing you do?

18 A I'm also a barber.

19 Q Okay. And where's your shop?

20 A It's located on Church Street.

21 Q Okay. So, that's your main job and then, on Saturday
22 nights, you go take pictures?

23 A Yes.

24 Q Okay. What do you do with those pictures?

25 A I pretty much just upload them to Facebook for the

William Shell - Direct examination
by Solicitor Bulsa

1 club, and the ones that didn't get to make it, they can see
2 who was at the club and how it was that night. So, just
3 run -- just put them on the website for them.

4 Q Okay. Were you there the night that Marty Jackson got
5 killed?

6 A I was there, yeah.

7 Q Did you know him?

8 A Not personally but I seen him a lot, yeah.

9 Q Okay. And where were you when the shot actually
10 occurred?

11 A I was at my photo booth.

12 Q Okay.

13 A I was on the inside.

14 Q Did you even know anything happened?

15 A I knew they had -- a fight broke out but I didn't know
16 anything was going on outside.

17 Q Okay. And this picture on the overhead, State's
18 Exhibit No. 11, is that one of your pictures?

19 A Yes, it is.

20 Q Would that be a picture you took the night of this
21 incident?

22 A Yes.

23 Q Okay. And did you -- would, would Mr. Mitchell have
24 had access to that?

25 A The physical picture?

William Shell - Direct examination
by Solicitor Bulsa

1 Q No, in order to give it to Deputy James on a flash
2 drive.

3 A Yeah, I mean he got access to anything I take. He just
4 ask me, yeah.

5 Q Okay. Okay. Do you recall if he asked you for
6 pictures that night?

7 A Pretty much if somebody take pictures and leave them at
8 the booth, they don't want to pick them up till the end of
9 the night, they'll leave them with me till they, till the
10 end of the night unless they get throwed out. If they get
11 throwed out the club, they might request they pictures on
12 the outside. John will come in and get the pictures for
13 him.

14 Q Okay. But this is one of your pictures that night of
15 Marty's death?

16 A Yes.

17 Q Okay. Thank you, sir.

18 THE COURT: Mr. Mitchell, your witness.

19 MR. MITCHELL: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. MITCHELL:

22 Q All right. Mr. Shell, do you know why Mr. Mitchell
23 asked for this particular photo?

24 A Pretty much that, you know, they got put out the club
25 for fighting or whatever. I don't know if he requested it

1 hisself that he wanted his pictures or I don't know the
2 reason he came back in for them. But I know he usually come
3 back in when people get tossed out if they have pictures
4 waiting. So, he'll come in and get the pictures.

5 Q Isn't it a fact there were two or three other fights
6 that broke out in that club that night too, wasn't there?

7 A I wasn't aware, but it's possible.

8 Q Thank you.

9 SOLICITOR BULSA: Nothing further.

10 THE COURT: All right. You may step down, sir.

11 Wish to excuse the witness?

12 SOLICITOR BULSA: Yes, sir.

13 THE COURT: Any objections?

14 MR. MITCHELL: No, sir.

15 THE COURT: Sir, you're free to go if you'd like.

16 Mr. Bulsa, let's take a short break at this point in
17 time.

18 SOLICITOR BULSA: Yes, sir.

19 THE COURT: Ladies and gentlemen of the jury, I'm gonna
20 let you step back to the jury room and take a break. During
21 the break, I'll ask you not to discuss anything about the
22 case. Every time you leave the courtroom I'll be saying
23 that.

24 Thank you. Thank you very much.

25 You may retire to the jury room.

1 THE OFFICER: Keep your seat please. Keep your seats.

2 THE COURT: Everyone remain seated while the jury
3 retires.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. We'll be in recess for about
7 five to ten minutes.

8 Thank you.

9 (WHEREUPON, a short recess was taken at this time.)

10 THE COURT: All right. Mr. Bulsa, is the State ready
11 to proceed?

12 SOLICITOR BULSA: Yes, sir.

13 THE COURT: Defense ready?

14 MR. MITCHELL: Yes, sir, Your Honor.

15 THE COURT: Let's bring the jury in.

16 (WHEREUPON, the following takes place within the
17 presence of the jury.)

18 THE COURT: All right. The record will reflect the
19 jury's returned to the courtroom.

20 State may call its next witness, Mr. Bulsa.

21 SOLICITOR BULSA: State calls Errol Graham.

22 THE COURT: Come forward, sir. Come over here to my
23 left and be sworn please.

24 ERROL GRAHAM, being first duly
25 sworn, testified as follows:

Errol Graham - Direct examination
by Solicitor Bulsa

1 THE COURT: Please be seated, sir. Once you're seated,
2 state your name please.

3 THE WITNESS: Errol Graham.

4 THE COURT: Thank you.

5 Mr. Bulsa, your witness.

6 DIRECT EXAMINATION

7 BY SOLICITOR BULSA:

8 Q Mr. Graham, you appear to be wearing a uniform.

9 Where are you employed?

10 A I'm employed with the Jonesville Police Department.

11 Q When did you start working with them?

12 A October of this year.

13 Q Okay. And what did you do before that?

14 A I was a forklift driver at Dollar General and I was the
15 doorman at Universal Events.

16 Q Do you still work at Universal Events?

17 A Yes.

18 Q Okay. So, is that one night a week?

19 A On Saturday nights, yes, sir.

20 Q And how long have you been there?

21 A Been there approximately two years.

22 Q Okay. So, this happened about two years ago.

23 A Yes.

24 Q Did you get started there?

25 A A few months prior to that, yes, sir.

Errol Graham - Direct examination
by Solicitor Bulsa

1 Q Okay. Do you remember -- did you know the victim?

2 A I did not know him. I didn't know his name or what he
3 looked like until after this had happened.

4 Q Okay. Did you know the defendant?

5 A I know the defendant from -- I'm originally from
6 Gaffney. I know the defendant and several of his family
7 members. I do.

8 Q Okay. Do you know his nickname?

9 A Black.

10 Q Now, were you working the night of this shooting?

11 A Yes.

12 Q Where were you working when it happened?

13 A I was a doorman.

14 Q What is a doorman?

15 A The doorman controls the crowd of people that goes into
16 the club, and once they enter the club, we let two people in
17 at a time so they IDs can be seen and they get patted down.

18 Q Do you recall how busy it was that night?

19 A It was very busy that night. Approximately anywhere
20 from 500 to 1200 people.

21 Q So, you pat people down.

22 What do you mean?

23 A They check for weapons on the inside, a bouncer. They
24 have an inside bouncer that checks for weapons.

25 Q Okay. And that's why it takes some time to get people

Errol Graham - Direct examination
by Solicitor Bulsa

1 in?

2 A Yes, sir.

3 Q Okay. Do you recall a fight happening inside that led
4 to people being removed from the club?

5 A Yes, sir, that was -- since I been working there, it
6 was probably the biggest fight ever. It's approximately 20
7 to 30 people fighting.

8 Q Okay. Was the defendant one of those people?

9 A The defendant came out at the time of the fight once
10 everybody was put out of the club, yes, sir.

11 Q So, you didn't see what happened inside?

12 You just know he got put out --

13 A Correct.

14 Q -- as a result of it?

15 Did you see him do anything outside?

16 A Outside the club, once the two parties were separated,
17 knowing that the defendant, Mr. Savage, was from Gaffney,
18 and a few other people were from Gaffney, I went to that
19 crowd, tried to talk to -- the situation down. Mr. Savage
20 was, at the time, he was a little irate. He was standing by
21 the, the blue truck and he start walking around the back of
22 the truck with his hands in his pants. And once everything
23 settled down, he got into the truck, in the driver's seat.
24 He pointed down toward the hill where the victim apparently
25 got shot at. He pointed in that direction before driving

Errol Graham - Direct examination
by Solicitor Bulsa

1 off.

2 Q Is there a pointer there on the bar?

3 A Yes, sir.

4 Q Do you recall the general area where he was parked?

5 A This is the front entrance here. Mr. Savage truck and
6 a gold Nissan was parked in this area here. Half of the
7 crowd was in the gold Nissan. Mr. Savage and the gentleman
8 that was on the picture with him were in the truck parked
9 two spaces down.

10 Q Okay. And where did he point to?

11 A He pointed down to this area down here.

12 Q Okay. And then what happened?

13 A Once he pointed in that area, he decided to pull off in
14 the truck. It wasn't in a hurry to leave or anything. He
15 drove off. By the time Mr. Savage vehicle got about in this
16 area here, that's when the shot was fired but I could not
17 see who shot or if it, in fact, came from that truck. But,
18 the truck was in that area. Because I was on this side of
19 the building, I could not see around the building.

20 Q Okay. Did the truck have a paper tag?

21 A It had a Morgan's Used Cars off of Asheville Highway
22 tag was from.

23 SOLICITOR BULSA: Have this marked.

24 (WHEREUPON, two photographs were marked as State's
25 Exhibit Nos. 12 and 13 for identification purposes only at

Errol Graham - Direct examination
by Solicitor Bulsa

1 this time.)

2 Q Let me show you what's been marked State's Exhibits 12
3 and 13.

4 I believe these are entered without objection.

5 THE COURT: Any objection --

6 MR. MITCHELL: None, Your Honor.

7 THE COURT: -- to this witness -- to this exhibit?

8 MR. MITCHELL: None.

9 THE COURT: All right. They'll be admitted as marked.

10 (WHEREUPON, State's Exhibit Nos. 12 and 13 were
11 received into evidence at this time.)

12 THE COURT: You may proceed.

13 Q Do you recognize that?

14 A Yes, sir.

15 Q Is that the truck?

16 A That is the truck that I saw Mr. Savage and Mr. Miller
17 in.

18 Q Okay. Publishing for the jury State's 12.

19 That's a Chevrolet model?

20 A Yes, sir, Chevrolet. I believe it's an LT but it says
21 Z71 on it but I believe it was an LT.

22 Q Okay. And then this is the tail end showing the
23 Morgan's tag?

24 A Yes, sir.

25 Q Okay. Now, you were not in a position to see the shot

Errol Graham - Direct examination
by Solicitor Bulsa

1 but you did hear the shot?

2 A Yes, sir.

3 Q What did you do once you heard it?

4 A Once I, once I heard the shot, I decide to take cover
5 because I'm not one of the armed security guards. I'm just
6 a doorman. So, I decide to take cover and that was gonna be
7 further back behind the building.

8 Q Okay. Did you hear anything other than the shot?

9 A No, sir.

10 Q Okay. And how long did you remain in cover?

11 A Once I saw Officer James pull off to go after the
12 truck, I presumed that everything was taken care of then and
13 then I started walking down the hill, down the parking lot
14 towards the curb.

15 Q Okay. And who was it that found Marty on the side?

16 A I believe it was one of the other security guards.

17 Q Okay. Did you go to where he was?

18 A I went in that direction but then I did not go
19 completely down there.

20 Q Okay. Now, you -- did you identify Mr. Savage for
21 police?

22 A Yes, sir, I did. They gave me a series of photos and I
23 identified Mr. Savage.

24 Q Did you have any trouble identifying him?

25 A No, sir.

Errol Graham - Cross-examination
by Mr. Mitchell

1 Q Okay. That's cause you know him?

2 A Yes, sir.

3 Q Okay. Thank you, sir. Answer any questions Mr.
4 Mitchell may have.

5 THE COURT: Mr. Mitchell, your witness.

6 MR. MITCHELL: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MITCHELL:

9 Q Mr. Graham, you were interrogated, I believe, by the
10 investigators?

11 A I was asked questions, yes, sir.

12 Q You were asked questions.

13 Okay. You gave a voluntary statement---

14 A Yes, sir.

15 Q ---I believe?

16 Now, this was literally given on the evening or the
17 morning of the occasion?

18 A I couldn't -- I'm sorry. I couldn't hear you.

19 Q 11:23.

20 A Yes, sir.

21 Q Okay. Now, you indicated there was a fight in the
22 club. Several people were put out. Several.

23 When you say several, what do you mean several?

24 A It was several people. Like I mentioned before, there
25 was probably 20, 30 people put out of the club at that time,

Errol Graham - Cross-examination
by Mr. Mitchell

1 sir.

2 Q Okay. You gave a statement indicating that you said
3 half of them got into the blue truck. Half.

4 A Yes, sir.

5 Q Then you say half got into the goldfish colored Toyota
6 or Nissan.

7 A Yes, sir.

8 Q When you say half, about how many people did you say
9 got put out of the club?

10 A There was twenty to thirty people put out.

11 Q Twenty to thirty people.

12 A But that particular half of the people that were on, on
13 my side, yes, sir, that's the ones I seen get into the car.

14 Q Okay. And then you indicated that it looked like the
15 driver of the truck was parked down at the lower part of the
16 lot as if he was saying there they are?

17 A Yes, sir, that's, that's the motion he was making.

18 Q So, you were talking about more than one person
19 obviously?

20 A Say again.

21 Q There they are.

22 A It's general speaking, there they are. You know, there
23 they are. That's just pointing in that direction like there
24 they are.

25 Q Okay. Then drove off.

Errol Graham - Cross-examination
by Mr. Mitchell

- 1 A Yes, sir.
- 2 Q And then halfway up, that's when you heard the shot.
- 3 A Yes, sir.
- 4 Q Okay. Do you know where the shot came from?
- 5 A As I mentioned before, I was -- I can't see around
- 6 the -- it's like me trying to look around this podium, sir.
- 7 Q Okay. It's a curve, wasn't it?
- 8 A It's a building, sir.
- 9 Q A building.
- 10 So, it's a circular drive or roadway too also?
- 11 A Yes, sir.
- 12 Q Okay. Right in the area where allegedly the shot
- 13 occurred?
- 14 A Correct.
- 15 Q Okay.
- 16 A If I was in a position I could see around that curve
- 17 but not that building.
- 18 Q Okay. But you didn't see Mr. Savage do anything, shoot
- 19 anybody, did you?
- 20 A I identified Mr. Savage as the driver of the vehicle---
- 21 Q But you didn't see him shoot anybody?
- 22 A ---and that's the one that pointed in that direction.
- 23 Q But you didn't see him shoot?
- 24 A I identified Mr. Savage as the driver of that vehicle.
- 25 MR. MITCHELL: I don't believe you answered my

Errol Graham - Redirect examination
By Solicitor Bulsa

1 question, Your Honor.

2 You didn't see Mr. Savage shoot, did you?

3 A No, sir.

4 Q Thank you.

5 REDIRECT EXAMINATION

6 BY SOLICITOR BULSA:

7 Q And you testified you didn't see him shoot because you
8 couldn't, the building was in the way?

9 A Correct.

10 Q Now, how many people did you see get into the truck?

11 A I saw Mr. Savage and one other gentleman, which was the
12 one in the picture, Mr. Miller.

13 Q Okay. Anybody else?

14 A No, sir, the rest of the party got into the gold Nissan
15 or Toyota.

16 Q Okay. Was there a building in your way to see who was
17 getting in the truck?

18 A No, sir.

19 Q Okay.

20 A I was standing beside the truck when they got into the
21 truck.

22 Q Okay. Thank you.

23 MR. MITCHELL: Just one second.

24 THE COURT: You may recross, Mr. Mitchell.

25 MR. MITCHELL: Thank you, Your Honor.

Errol Graham - Recross examination
by Mr. Mitchell

1 RECROSS EXAMINATION

2 BY MR. MITCHELL:

3 Q Now, you said about 30 people got put out of the place,
4 didn't you?

5 A Yes, sir, 30 people can't fit in one vehicle, sir.

6 Q But half of them got into two vehicles is what you
7 said. Half in the truck and half in the Nissan---

8 A The half---

9 Q ---or Toyota.

10 A The half that was standing near me, sir. Apparently
11 both parties of the fight did not get in the same vehicles.

12 Q Okay. Just half of them. Thank you.

13 SOLICITOR BULSA: Thank you, Your Honor.

14 THE COURT: All right. You may step down, sir.

15 SOLICITOR BULSA: We ask that he be excused.

16 THE COURT: Any objection to him being excused?

17 MR. MITCHELL: None, Your Honor.

18 THE COURT: You're free to go, sir, if you'd like.

19 Thank you.

20 THE WITNESS: Thank you, Your Honor.

21 SOLICITOR BULSA: State calls---

22 THE COURT: Mr. Bulsa, you may call your next witness.

23 SOLICITOR BULSA: Cedrick Jones.

24 THE COURT: Mr. Jones, if you'll come forward.

25 THE WITNESS: Yes, sir.

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 THE COURT: Step over to my left and you'll be sworn.

2 CEDRICK JONES, being first duly
3 sworn, testified as follows:

4 THE COURT: Have a seat in the witness stand please.
5 Once you're seated, state your name please, sir.

6 THE WITNESS: My name is Cedrick Jones.

7 THE COURT: Thank you.

8 Mr. Bulsa, your witness.

9 DIRECT EXAMINATION

10 BY SOLICITOR BULSA:

11 Q Mr. Jones, how old are you?

12 A Thirty-three.

13 Q And you work?

14 A Yes, sir.

15 Q Where?

16 A At Syncreon. It's a plant in Greer that deal with BMW
17 material.

18 Q What do you do for them?

19 A I drive a forklift.

20 Q How did you learn to drive a forklift?

21 A Practice made perfect and reading a little bit.

22 Q Okay. All right. Now, were you a friend of Marty
23 Jackson's?

24 A Associate to the family. I talk to his sister.

25 Q Okay. So, you talk to his sister and you know him

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 through his sister?

2 A Yes, sir.

3 Q Okay. Now, were you at the club the night he got
4 killed?

5 A Yes, sir.

6 Q Were y'all there together?

7 A No, sir, this had -- we came separate. I just walked
8 in and I seen him in there.

9 Q Okay. Did you see anything take place inside?

10 A At first we were just at the bar. I was just at the
11 bar. I ain't been in there a whole hour. I seen him at the
12 picture booth. So, I went over there where they was at,
13 took a picture with them, shook hands with them, went back
14 to the bar.

15 Q Okay.

16 A It was Mr. Drummond birthday. So, they was celebrating
17 and they was going through the crowd and an individual, I
18 guess, an individual reached down there and put his hands on
19 Mr. Drummond and Mr. -- I mean Marty had just reacted and he
20 got escorted out the club.

21 Q Okay. So, Marty got into a fight?

22 A Yes, sir.

23 Q Were you involved in that fight?

24 A No, sir.

25 Q Okay. Did -- so, did you get put out the club?

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 A No, sir, I volunteered and walked out---

2 Q Okay? Why did you---

3 A ---cause I seen---

4 Q Why did you do that?

5 A Because when I seen it happen it was kind of disturbed.

6 He ain't even know I was behind him when he walked out.

7 He -- when he seen me, he greeted me. But we was -- as we

8 continued to walking, as we was outside the club, we was

9 like he ready to go and he just ain't had no transportation

10 to leave. So, we just stayed out there and then individuals

11 came out there like they gonna try to get them back in the

12 club. As soon as we approached the door to get back in the

13 club, it just like expanded and like a ride. People just

14 coming on out of the -- bottle thrown around. So, me and

15 Mr. Jackson, we kind of separated. So, I stood off to the

16 distance and really observed as far as in like you had up

17 there where the fence was.

18 Q Yes, sir.

19 A And I stood up on the hill and just watched everything

20 just move while I just stood in one place, and it just so

21 happened I seen Mr. Jackson going back past me. So, I came

22 right beside him and we were walking up to the -- towards to

23 the car and Mr. Savage pulled up while we were walking and

24 he stated what's up and Marty like what's up. And he like

25 meet at the store. As they was going on, I ain't said

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 nothing. I'm just observing. So, they kept exchanging
2 words. Savage continuously saying meet me at the store,
3 meet me at the store. His face is---

4 Q Let me, let me stop you right there. Let -- make sure
5 the jury understands this.

6 Where is Mr. Savage?

7 A In the car. The driver's side.

8 Q What car?

9 A That blue four door truck.

10 Q The blue truck we saw in the picture?

11 A Yes, sir.

12 Q Okay. So, did he drive the car up to where y'all were
13 walking?

14 A Yeah, while we was walking, he pulled up beside us and
15 stopped.

16 Q Okay.

17 A So, we voluntarily stopped.

18 Q Okay.

19 A And he started -- they started talking to one another.

20 He like meet me at the store. Marty like nah, get out now.

21 He was like nah, meet me at the store. Marty like nah, get

22 out now. He approached us while we was walking toward the

23 vehicle. So, Marty got upset. He had a beer bottle and

24 somebody had gave it to him I guess when they was coming out

25 the club and he threw it at, at Savage car and that when he

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 just -- his upper body ain't even move like you know some
2 people, when you reach for something, you reach under the
3 seat or, you know, your upper body moved but he ain't moved.

4 The window down. He talking to us like them right
5 there talking, and he just -- when he threw the bottle, his
6 reaction pulled and we seen the flash. We both took a run
7 but Mr. -- Marty was like -- we both ran. Marty called my
8 name like to let me know he shot. I turned back around, I
9 grabbed him, and just like he said, he seen him on the
10 fence. I had laid him right there on the fence and I
11 kind -- I panicked. You know, I panicked. I ain't never
12 been in the situation like that.

13 Q Let me show you State's Exhibit No. 8 and I'm not sure
14 that's gonna work with this lighting, but we see the green,
15 the grass, and then the road next to it.

16 Were y'all in the road or on the grass?

17 A We was on grass.

18 Q You were in the grass?

19 A Yes, sir.

20 Q The edge of the grass?

21 A No, we was like, like going toward the car. We went at
22 the edge cause, you know---

23 Q Hold on. There's a pointer right here.

24 See that red button on it?

25 Point it, if you would.

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 A We was in that area right there.

2 Q Okay. All right. And then which side of the road was
3 the truck?

4 Was it in the normal side of the road or it pulled over
5 near you?

6 A It like they pulled up cause you coming down this way,
7 you got to go down that way. Coming up, you got to go back
8 that way.

9 Q State's Exhibit No. 4.

10 The road is laned, right?

11 A Uh-huh. (Affirmative).

12 Q Okay. Would, would he have been in the normal lane?

13 A No, he wouldn't have. Nope. He wouldn't have been in
14 the normal lane cause we was on this side right here.

15 Q Okay. But his driver's side was, of course, next to
16 y'all?

17 A Yes, face out.

18 Q How close was he to you while, while y'all were --
19 while he was talking?

20 A About right there into the end of that---

21 Q Right here?

22 A That right there, yeah.

23 Q Okay. So, approximately 15-feet?

24 A Yeah, we -- cause that was -- we was in the grass. He
25 pulled up right there. So, we, we wasn't that far distance

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 from each other.

2 Q Okay. Did you know this person?

3 A Which one?

4 Q Did you know Mr. Savage?

5 A No, I don't know him.

6 Q Okay. You're talking -- you're calling his name.

7 How is it that you know his name?

8 A From the last two years.

9 Q Okay. And you identify him as the shooter?

10 A Oh, yeah.

11 Q How?

12 A He was talking to us. Well, he was talking to Marty.

13 I was just standing there and he had his face out the window

14 rolled down. He was just conversating. Well, he was calm,

15 meet me at the store, and he -- ain't nobody going to no

16 store. That's how it was. And they was doing that for I

17 say about a good three minutes going back and forth. So, I

18 can see. I can identify.

19 Q Okay. Were you participating in the conversation?

20 A No.

21 Q No.

22 Could you tell what kind of gun it was?

23 A No.

24 Q Did he stick his hand out the window or was it still

25 inside the car did it appear?

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 A It was out of the car. I seen the fire. When he had
2 it like -- demonstrate?

3 I ain't going---

4 Q Yes, please.

5 A This the window. I'm talking. It wouldn't be like his
6 hand extended. No, his hand wasn't extended.

7 Q Okay.

8 A It was like kind of cocked like that.

9 Q Okay. So, your hand -- but you got your arm across
10 your body as if he was shooting with his right-hand?

11 A Yeah, something like that. Yeah, I don't know if he
12 left or right-handed. I couldn't tell you. I just know he
13 had his hand out like that with his gun in his hand.

14 Q Okay. And you say you and Marty ran and then what
15 happened?

16 A Oh, we both turned and run after the flash cause we
17 both seen the flash but he ain't know he was hit at the
18 time. So, he called my name and told me he was shot. I
19 turned back around and I grabbed him off the ground cause he
20 was crawling and I grabbed him and I pulled him up there to
21 the gate and I panicked. At first I forgot I had a phone
22 until I remembered. I called 9-1-1.

23 Q Did you stay with him?

24 A Until about -- it was -- like I say, I kind of
25 panicked. I ain't never been that type of situation. Until

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 other people started coming, that when I kind of separated
2 myself cause that happened so fast. They was -- it was kind
3 of crazy.

4 Q Did you stay and talk to the police that night?

5 A Oh, ain't no police wanted to talk at the moment. It
6 was too much chaos out there. I mean they were really just
7 trying to calm down the crown. Like he say, they got about
8 five hundred to a thousand people and the majority of them
9 was outside at the time.

10 Q Did you seek out an officer to tell them what you saw?

11 A They was too busy macing them. They was macing people
12 and I ain't, after the situation occurring, I ain't try to
13 get maced.

14 Q Okay. So, when did you come forward to tell what you
15 know?

16 A After the family had notified me that the situation,
17 they had apprehended him, and they needed me to stand up if
18 I was there and testify.

19 Q Did you look at anything on the news?

20 A No, I ain't see nothing on the news. I don't watch too
21 much TV.

22 Q Okay. All right. Now, why should we believe you were
23 there?

24 A Well, that's a good question. Ain't no other way. I
25 can't describe it no different. I don't know how to

Cedrick Jones - Direct examination
by Solicitor Bulsa

1 actually convince you to believe that I was there and said I
2 was there. I don't know how you gonna determine that.

3 Q Do you have any reason to lie?

4 A No, no, no, no, no, no. No reason at all.

5 Q Okay. All right. Answer any questions Mr. Mitchell
6 has of you.

7 THE COURT: Mr. Mitchell, your witness.

8 MR. MITCHELL: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MITCHELL:

11 Q You are Cedrick Dwayne Jones?

12 A Yes, sir.

13 Q I can't remember what you say you did.
14 What kind of work do you do?

15 A Forklift, sir.

16 Q Forklift.

17 Okay. You served some time too, haven't you?

18 A When I was 16, yes, sir, I was---

19 Q Burglary?

20 A Sir?

21 Q Burglary?

22 A Yes, sir.

23 Q Leaving the scene of an accident?
24 Manufacturing drugs?

25 A Yes, sir.

Cedrick Jones - Cross-examination
by Mr. Mitchell

1 Q Possession of drugs.

2 When is the last time you served time?

3 When did you get out?

4 A Oh, I got out in 2010. Matter of fact, December 31st,
5 '09.

6 Q You were drinking that night, weren't you?

7 A Sir, I ain't been in the club no more than an hour when
8 that incident took place. So, I had two Bud Lights in my
9 hand but I ain't get to consume them.

10 Q You were drinking though, weren't you?

11 A Not when I was in the club, sir, no, sir.

12 Q Okay. You were drinking outside the club?

13 A Before I came to the club?

14 Q Yeah.

15 A Is that what you asking me?

16 Q Yeah.

17 A Yes.

18 Q Okay. But you had two lights, two Bud Lights in the
19 club?

20 A Yeah, and I had -- you want to know what I had before
21 the club?

22 Q If you don't mind telling me, yeah.

23 A No, I don't mind telling you. I had about two more Bud
24 Lights. I don't really consume alcohol like that, sir.

25 Q Okay. Now, the club that you went in and you were

Cedrick Jones - Cross-examination
by Mr. Mitchell

1 gonna perusing and hanging at the bar, you were there
2 drinking two Bud Lights?

3 A I just walked in and went straight to the bar, sir,
4 yes, sir, and I was just holding them two Bud Lights, sir,
5 observing my surroundings.

6 Q Okay. Checking out your surroundings --

7 A Yes, sir.

8 Q -- having a good time?

9 A No, I ain't even there to even hit the floor yet, sir.
10 I went straight directly to the bar and then stood there,
11 sir.

12 Q Okay. But you have a relationship with Marty's family,
13 don't you?

14 A Yes, sir.

15 Q And Marty was your friend?

16 A I can't really say he was my friend because we never
17 sat down to have a converse -- deep conversation. We ain't
18 never went on no outings. We ain't never really intervened
19 (sic) like that, interact with each other like that.

20 You understand?

21 Q But you contacted EMS through 9-11, didn't you?

22 A Yeah, EMS?

23 You talking about 9-1-1, ain't you?

24 Q Yeah, 9-1-1.

25 A Yeah.

Cedrick Jones - Cross-examination
by Mr. Mitchell

1 Q Okay.

2 A Yes, sir.

3 Q And you ain't give them a description of who it was who
4 shot Marty, did you?

5 A Sir?

6 Q You told them you didn't know, didn't you?

7 A No, sir, I probably did, sir. At the time it was so
8 much chaos. That's the first -- if you can -- like I say, I
9 think they got the audio tape beforehand and the incident
10 and you can tell by the -- my voice that I was discouraged.
11 You could tell that I wasn't even really focused because---

12 Q But you, but you panicked at the time---

13 A Yes, sir.

14 Q ---enough composure to call 9-1-1, didn't you?

15 A Like I say, I had forgot I had a phone at first to call
16 9-1-1.

17 Q But you---

18 A Then I had to recollect to get back to get my
19 understanding and collect myself a little bit.

20 Q And then you gave them a false name who was calling,
21 didn't you?

22 A Because I was nervous, yes, sir. I show did, sir.

23 Q You had enough moxie to call 9-1-1 and report the
24 shooting, didn't know who it was, but yet you saw the truck,
25 didn't you?

Cedrick Jones - Cross-examination
by Mr. Mitchell

1 A It was right there in front of me.

2 Q It was right in front of you.

3 You never give a description of the truck, did you?

4 A They ain't asked for no description. They asked -- I
5 really had a hard time describing South Port Road, sir,
6 because I actually didn't know directly where Universal was
7 and she kept repeating the same thing over and over and I
8 got this individual blood on my hands, my shoes, and I was,
9 I was hu huh, sir, I couldn't really cope.

10 Q Until you gave them a false name, your name, right?

11 A It was a false name, sir. It wasn't my exact name,
12 sir, but it was a name.

13 Q But you had moxie enough to call them but you didn't
14 give them anything that they could work with or work on?

15 A Yes, sir.

16 Q And then you -- about six weeks later, after talking to
17 someone in the family, you went down to the law enforcement
18 center with Mr. Drummond, didn't you?

19 A Sir, nobody really came to see -- when the situation
20 happened, police, nobody really took initiative to look at
21 the situation. When somebody came and contacted me, I stood
22 up. I took initiative participation to go ahead and stand
23 up and do the right thing.

24 Q Okay. Now, you took that initiative to participate
25 January 2nd, 2015, and the incident occurred

Cedrick Jones - Cross-examination
by Mr. Mitchell

1 November 23rd, 2014, didn't you?

2 A I have no idea about the situation until they came to
3 me, sir.

4 Q And then you---

5 A Nobody notified me.

6 Q ---and Mr. Drummond went down there and that's when you
7 put in the statement that you saw Savage pull a gun and
8 shoot?

9 A Sir, like I said, nobody really notified me. As soon
10 as they notified me, sir, I stood up. I went and addressed
11 the issue.

12 Q Why did you wait six weeks?

13 A Like I say, nobody really came to me as far as in to
14 address the issues, sir. I mean, like I say, when they was
15 out there, law enforcement took initiative to ask questions
16 about the situation was going because they was too busy
17 trying to calm down the situation.

18 Q But yet you saw your buddy laying on the ground. You
19 pulled him over. You were dragging him up the hill---

20 A I ain't drag him.

21 Q ---and you were battling them till somebody get in
22 touch with you?

23 A I'm saying, sir---

24 Q A man dying in front of you?

25 A He was already dead in my arms, sir.

Cedrick Jones - Cross-examination
by Mr. Mitchell

1 Q And you didn't feel like you had an obligation to
2 report it to law enforcement at that time?

3 A Sir, nobody, like I say, nobody came to me, sir. I
4 ain't know nothing about the situation as far as the
5 aftermath.

6 Q Didn't know nothing about it, but you intervened in it
7 by using the -- calling 9-1-1?

8 A I was intervened before the, before 9-1-1, sir. I was
9 there on the scene.

10 Q You were drunk too, weren't you?

11 A No, sir, I promise you I wasn't drunk, sir. I just
12 swore an oath, sir. I wasn't drunk.

13 Q You weren't drunk?

14 A No, sir.

15 Q But you gave the wrong -- your false name and you told
16 them you didn't know who shot the man. Yet, you were right
17 next to his automobile.

18 A Sir, you address the issue before as in my background,
19 didn't you?

20 So, you should already know I was skeptical about
21 giving them my name but, at the same time, I was skeptical
22 of calling them period to let them know that this man needed
23 help. I wasn't skeptical about that. I was skeptical about
24 my name because you already went through my profile. So,
25 you should already know the type individual they already

Cedrick Jones - Cross-examination
by Mr. Mitchell

1 classified me as yourself. So, you should expect -- what,
2 what should I expect?

3 Q You should expect the law enforcement to respond to the
4 truth.

5 A They didn't respond immediately.

6 Q That's what you might expect.

7 A They might respond to the truth but they didn't do it
8 immediately, sir.

9 Q Thank you.

10 THE COURT: Mr. Bulsa, your witness. Redirect.

11 REDIRECT EXAMINATION

12 BY SOLICITOR BULSA:

13 Q Mr. Jones, you did go to the police though, right?

14 A Yes, sir.

15 Q Okay.

16 A Voluntarily.

17 Q And you told them what you knew?

18 A Yes, sir.

19 Q And you identified the defendant to them?

20 A Yes, sir.

21 Q Thank you.

22 That's all I have.

23 THE COURT: Recross.

24 RECROSS EXAMINATION

25 BY MR. MITCHELL:

Cedrick Jones - Recross examination
by Mr. Mitchell

1 Q You went with Mr., Mr. Drummond, didn't you?

2 A No, sir, I went up there before Mr. Drummond, sir.

3 Q But you and Mr. Drummond went also together, didn't
4 you?

5 A Sir, yeah, we did.

6 Q And both of you gave statements, didn't you?

7 A I think I came by myself. He did not ride in the car
8 with me, sir.

9 Q But you-all were there at the same time?

10 A And then, when they did take our statements, sir, they
11 separated us, sir.

12 Q But y'all---

13 A They had us separated in -- as soon as we went in, sir,
14 and they didn't have us close-knit or in a room together,
15 sir.

16 Q But y'all went together?

17 Y'all went there together?

18 A We didn't ride in a car together. We didn't walk on
19 the road together, sir. We were just in the building
20 together, sir, and they separated us once we was in the
21 building, sir.

22 Q Who contacted you in law enforcement to come down?

23 A It was a detective. I don't recall his name but they
24 did call me, sir. Yes, sir, they reached out, sir.

25 Q Six weeks later?

Cedrick Jones - Recross examination
by Mr. Mitchell

1 A They reached out, sir.

2 Q Six weeks later?

3 A They reached out.

4 Q Thank you.

5 SOLICITOR BULSA: Nothing further.

6 THE COURT: You may step down. Thank you.

7 SOLICITOR BULSA: State calls---

8 THE COURT: You wish to excuse the witness?

9 SOLICITOR BULSA: No, sir.

10 You can just have a seat.

11 THE COURT: Okay. You may call your next witness.

12 SOLICITOR BULSA: State calls Sean Nix.

13 THE COURT: Bring the lights up please.

14 SEAN NIX, being first duly sworn,

15 testified as follows:

16 THE COURT: Have a seat and state your name once you're
17 seated, sir.

18 THE WITNESS: Yes, sir. Michael Sean Nix, Spartanburg
19 County Sheriff's Office.

20 THE COURT: Thank you.

21 Mr. Bulsa, your witness.

22 DIRECT EXAMINATION

23 BY SOLICITOR BULSA:

24 Q Officer Nix, who are you employed with?

25 A Spartanburg County Sheriff's Office.

Sean Nix - Direct examination
by Solicitor Bulsa

1 Q Okay. And how long?

2 A Over 15 years.

3 Q What are your duties there?

4 A My duties currently there is to work in the forensics
5 unit.

6 Q Okay. And how long have been at the forensics unit?

7 A Fifteen years this month.

8 Q Okay. Did you respond to this crime scene?

9 A Yes, sir, I did.

10 Q What was taking place?

11 A As far as --?

12 Q When you got there?

13 A Oh, when I got there. I'd received a call from

14 Investigator Horton in reference to this on

15 November 23rd of 2014. He advised that they had a

16 shooting at 300 South Port Road, which is Universal Events,

17 excuse me, and that the victim had already been transported

18 from the scene and he had expired or passed away rather at

19 the hospital. I reported to the crime scene and met with

20 Investigator Knighton who had advised me what he had kind of

21 done up to that point and then we went about trying to sort

22 of finish the rest of the crime scene out.

23 Q Were you the lead forensics officer?

24 A Yes, sir.

25 Q Why didn't Officer Knighton just handle it?

Sean Nix - Direct examination
by Solicitor Bulsa

1 A That's just the way we do things at the Sheriff's
2 Office. When we have homicides, we have certain people who
3 are responsible for the overall investigation. It's, it's
4 more of an administrative thing to make sure all the
5 paperwork and everything gets done.

6 Q So, the crime scene was already taped off?

7 A Yes, sir.

8 Q When I say taped off, it had been marked by yellow
9 tape?

10 A Yes, sir, if I remember correctly it did.

11 Q Was it already, already raining when you got there?

12 A Yes, it was already raining by the time I got there.

13 Q Okay. Were you able to locate where the victim had
14 been?

15 A I was informed in the general area where the victim had
16 been and I was able to determine a spot where he may have
17 been laying when he was transported from the scene.

18 Q How could you determine that spot?

19 A There was a large area of what appeared to be blood
20 behind one of the vehicles that was parked on the side of
21 the driveway.

22 Q Show you State's Exhibit No. 9. I don't know if you
23 can tell it in this lighting. Let me show you a picture.

24 A Yes, sir.

25 Q Okay. Point out to the jury, if you would, where

Sean Nix - Direct examination
by Solicitor Bulsa

1 that -- where he was.

2 A The large area of blood, I don't know if they can see
3 it real well.

4 Q There's a pointer right there.

5 A Okay. I'm sorry. There's a large area of blood, if
6 I'm looking at it correctly, it's right there next to the
7 fence in behind this -- the corner of this vehicle.

8 Q Okay. So, it appears that he'd been laying there a
9 while?

10 A He would of had to have been laying there for some time
11 in order for that size of blood to get that way, yes, sir.

12 Q Okay. But it was in behind the vehicle?

13 A I'm sorry?

14 Q It was in behind the vehicle?

15 A Yes, sir, it's behind a -- I believe it's a blue Toyota
16 if I have it correctly in my report.

17 Q Okay. What were you looking for around that scene?

18 A Any evidence that was -- could be used to help further
19 the investigation.

20 Q Did you look for any weapons?

21 A Yes, sir.

22 Q Did you find anything?

23 A No, sir.

24 Q Look for any shell casings?

25 A Yes, sir.

Sean Nix - Direct examination
by Solicitor Bulsa

1 Q Did you find anything?

2 A No, sir.

3 Q How many rounds were you told were fired?

4 A If I recollect correctly, I was told probably one.

5 Q Okay. And what did you do to try to locate a shell
6 casing?

7 A A visual looking on the ground, myself and Investigator
8 Knighton, matter of fact.

9 Q Okay. And how much time would of been spent to look
10 for a shell casing?

11 A It was a pretty significant amount of time.

12 Q The fact that you didn't find anything, what does that
13 tell you?

14 A There's a couple of things it could be. It could be
15 that the weapon involved could of been a revolver type
16 weapon. Since I was informed that the shot was fired from
17 the vehicle, it could of told me that a cartridge case could
18 have ejected back into the vehicle and been inside that
19 vehicle. That's the two most common things we usually find.

20 Q Okay. During your part of the investigation, were you
21 informed that a vehicle had been stopped?

22 A I don't recall it being stopped. I recall that they
23 had located a vehicle in Gaffney.

24 Q Okay.

25 A Yeah.

Sean Nix - Direct examination
by Solicitor Bulsa

1 Q Okay. I asked the question badly.

2 Were you asked to look into a -- look at the vehicle,
3 process a vehicle?

4 A Yes, sir.

5 Q Okay. And what vehicle was that?

6 A It was a blue in color Chevy truck with a Morgan's Used
7 Cars paper tag with VIN Number [REDACTED].

8 Q Okay. And where did you first see that vehicle?

9 A It was located at [REDACTED] Indiana Circle in Gaffney.

10 Q Okay. So, you actually went to Gaffney?

11 A I did, sir.

12 Q Did you take State's No. 12 in this picture?

13 A Yes, sir, I did.

14 Q Okay. All right. What did you do to try to locate
15 anything in that vehicle?

16 A A visual searching, search of the vehicle was done.

17 Q Were you able to find any shell casings there?

18 A No, sir.

19 Q Did you ever find any weapons?

20 A No, sir.

21 Q Were you aware of who was taken out of that, out of
22 that truck?

23 A I was not aware of their names but I was aware that two
24 individuals had been removed from the vehicle.

25 Q Did you see those two individuals?

Sean Nix - Direct examination
by Solicitor Bulsa

1 A I did not.

2 Q Okay. So, they had already been---

3 A They were already being transported to the Sheriff's
4 Department before I got there.

5 Q Did you know it was just two people?

6 A If I remember correctly, they told me two people.

7 Q Okay. All right. Now, the fact that you didn't find
8 shell casings in, in the truck, what does that tell you?

9 A The most common thing it could tell me is that the
10 truck could have been gone through prior to our arrival and
11 finding it and any evidence there could of possibly been
12 removed.

13 Q Do you have in your notes what time you would of
14 responded to look at the vehicle?

15 A Let's see. I want to make sure -- I arrived at Indiana
16 Circle at 7:30 in the morning and the vehicle was gone
17 through at the shop sometime after 9:43.

18 Q Okay. Do you know when that would of been stopped?

19 A No, I don't know that---

20 Q Okay.

21 A ---information, sir.

22 Q Okay. But you, you took pictures at 7:00 what time?

23 A Seven -- sometime after 7:30. My arrival time was
24 7:30. So, pictures would of been after that.

25 Q Okay. So, that was done in a controlled environment?

Sean Nix - Direct examination
by Solicitor Bulsa

- 1 A At [REDACTED] Indiana circle?
- 2 Q No, when you processed it.
- 3 A Oh, oh, at the shop. No, those pictures would of been
4 after 9:43 and yes, sir.
- 5 Q Okay. All right. So, you documented at the location
6 and then took it back to the shop and searched it.
- 7 A Yes, sir..
- 8 Q Okay. All right. Now, did you also attend the autopsy
9 of Mr. Jackson?
- 10 A Yes, sir.
- 11 Q And do you recall what kind of wound he had?
- 12 A Let me see. The victim had a wound to the front of his
13 chest and another out of his back, which is consistent with
14 a through and through gunshot wound.
- 15 Q Okay. So, you were not given a slug?
- 16 A No, sir, there was no fired bullet recovered from the
17 victim's body.
- 18 Q If there had been, it would of been given to you?
- 19 A Yes, sir, it would of been.
- 20 Q Okay. So, did you go back and look for a slug at the
21 scene?
- 22 A I had intended to but I think, after the vehicle was
23 processed, the investigators that were handling the
24 investigation had already done a walk through. They had
25 already released the scene.

Sean Nix - Direct examination
by Solicitor Bulsa

1 Q Okay. Okay. So, what other involvement in this case
2 did you have?

3 A Other than the autopsy and the processing the vehicle
4 and a little bit of the scene, that's about it as far as
5 individual processing of some smaller items.

6 Q Now, would another officer have been asked to go check
7 the two men that had been taken out of the truck?

8 A Yes, sir.

9 Q Okay. For what purpose?

10 A Whatever the investigators would need him to do, which,
11 in this case, they wanted the clothing collected and gunshot
12 residue kits performed on them.

13 Q Okay. All right. And you didn't participate in
14 that---

15 A No, sir.

16 Q ---process?

17 A That was at the office.

18 Q Okay. Thank you. That's all I have. Answer anything
19 Mr. Mitchell may have.

20 THE COURT: Bring the lights up please.

21 MR. MITCHELL: Thank you, Your Honor.

22 THE COURT: All right. Mr. Mitchell, your witness.

23 MR. MITCHELL: Thank you, Your Honor. Thank you, Your
24 Honor.

25 CROSS-EXAMINATION

Sean Nix - Cross-examination
by Mr. Mitchell

1 BY MR. MITCHELL:

2 Q Mr. Nix, in regards to a search warrant that was
3 obtained, your statement indicated that, of course, you
4 didn't search the car until you had received search warrants
5 for the vehicle?

6 A Oh, if I understand you correctly, you're asking me if
7 the car had been touched prior to the search warrant
8 arriving?

9 Is that what you're asking me?

10 Q That's correct.

11 A No, the vehicle hadn't been -- the doors had been
12 opened up because the vehicle had to be loaded onto the
13 rollback. There was some money sitting on the driver's seat
14 and we didn't want the driver of the rollback sitting on
15 that. So, that money was moved over to the passenger side
16 but---

17 Q Okay.

18 A ---the vehicle was not searched.

19 Q Okay.

20 A Yeah.

21 Q But in the search that you did conduct, it's a fact you
22 did not find any contraband in there, did you?

23 A What would be your definition of contraband, sir?

24 Q Any illegal, illegal materials.

25 A No, I didn't find any drugs if that's what you're

Sean Nix - Cross-examination
by Mr. Mitchell

1 asking me.

2 Q And how was it that you knew to -- that there were just
3 two of them in the, in the truck?

4 A I was advised by investigators that there was only two
5 people in the truck.

6 Q The investigators from Spartanburg County?

7 A Yes, sir.

8 Q Did you ask them if there possibly could of been
9 others?

10 A No, sir.

11 Q It depends on what you heard?

12 A Yes, sir.

13 Q They gave you a description of the color of the truck.
14 So, that's how you knew basically how -- I withdraw that.

15 Do you know who gave the description out of the truck?

16 A I do not recall who told me what the truck looked like.
17 I didn't even know what it looked like until I arrived on
18 scene.

19 Q Okay. And it has four doors to it, doesn't it?

20 A Yes, sir.

21 MR. MITCHELL: I don't have any further questions.

22 SOLICITOR BULSA: Just briefly.

23 THE COURT: Mr. Bulsa, your witness.

24 SOLICITOR BULSA: Just briefly.

25 REDIRECT EXAMINATION

Sean Nix - Redirect examination
by Solicitor Bulsa

1 BY SOLICITOR BULSA:

2 Q Mr. Mitchell asked you about contraband in the truck.

3 Did you find any beer bottles?

4 A I did find one beer bottle.

5 Q Okay. But nothing else other than contraband that he
6 could of---

7 A No, no, nothing like that, no, sir.

8 Q Okay. Thank you. That's all I have.

9 THE COURT: You may recross, Mr. Mitchell.

10 MR. MITCHELL: Nothing further, Your Honor.

11 THE COURT: All right, sir. You may step down.

12 SOLICITOR BULSA: State calls Taylor Owens.

13 THE COURT: Come forward please.

14 SOLICITOR BULSA: Your Honor, may we excuse Officer
15 Nix?

16 THE COURT: Any objections?

17 MR. MITCHELL: No, sir.

18 THE COURT: Sir, you're free to go. Thank you.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Come forward, sir, and be sworn.

21 TAYLOR OWENS, being first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please, sir. State your name
24 once you're seated.

25 THE WITNESS: Taylor Owens.

Taylor Owens - Direct examination
by Solicitor Bulsa

1 THE COURT: Mr. Bulsa, your witness.

2 SOLICITOR BULSA: Okay.

3 DIRECT EXAMINATION

4 BY SOLICITOR BULSA:

5 Q Mr. Owens, where are you employed?

6 A Duncan Police Department.

7 Q How long have you been with them?

8 A About four months.

9 Q Where were you employed prior to that?

10 A Gaffney City Police Department.

11 Q For how long?

12 A Three years.

13 Q Do you have any other previous law enforcement
14 experience?

15 A Reserve with them for two.

16 Q You look kind of young.

17 How old are you?

18 A Twenty-six.

19 Q Okay. You're younger than I thought.

20 Okay. All right. Were you working the morning of
21 November 23rd, 2014?

22 A Yes, sir, I was.

23 Q What were your duties at that time?

24 A Just regular patrol, routine patrol.

25 Q Were you by yourself?

Taylor Owens - Direct examination
by Solicitor Bulsa

- 1 A No, sir, I had a reserve officer in the passenger seat.
- 2 Q Okay. And is that customary to have two officers?
- 3 A Just as far as when you have a research, they are
- 4 required, until they reach their hours, to ride by
- 5 themselves.
- 6 Q So, were you training him sort of?
- 7 A Somewhat, yes, sir.
- 8 Q Okay. Did you receive information to be on the lookout
- 9 for any sort of vehicle?
- 10 A Yes, I did.
- 11 Q What kind information did you receive?
- 12 A Received to be on the look out for a dark in color blue
- 13 Chevy four door truck with a Morgan's Used Cars paper tag on
- 14 it.
- 15 Q So, you had specific information you were looking for?
- 16 A Yes, sir.
- 17 Q What did you do to search for that vehicle?
- 18 A I basically just did what I usually do. Rode around
- 19 the city, check spots, you know, the areas throughout our
- 20 city, and ended up locating the vehicle at a McClooney's
- 21 Trailer Park right off of 150, Highway 150.
- 22 Q It's just by chance you came upon it?
- 23 A Yes, sir.
- 24 Q Okay. You were, you were specifically looking for it
- 25 but it was by chance that you actually found it?

Taylor Owens - Direct examination
by Solicitor Bulsa

1 A Right. Yes, I was actually shocked, you know.

2 Q Why is that?

3 A Just to -- I don't know. It's here, and when they gave
4 it out, we just happened to roll up on it.

5 Q And do you recall when you would of gotten the BOLO?

6 A About 5:30ish,, 5:32.

7 Q And when did you find it?

8 A I don't, I don't recall, I don't believe, exactly when
9 I found it. Let's see if I have it here. All I can say is
10 I think it was around -- it was close to shift change. So,
11 6:00ish, maybe 6:30AM.

12 Q So, how long did you actually look for it?

13 A Oh, we looked for it since the BOLO came out around
14 5:30 till six o'clock.

15 Q Okay. Basically for the rest of your shift?

16 A Yes, sir.

17 Q Okay. And you actually found the vehicle that's been
18 shown in the picture?

19 A Yes, sir.

20 Q Okay. And was it parked there when you found it?

21 A No, sir.

22 Q Describe what happened when you actually came upon it.

23 A It was actually backing off of Providence Creek Road
24 and had tried -- I never actually initiated -- activated my
25 blue lights due to us being in the county. I did notify our

Taylor Owens - Direct examination
by Solicitor Bulsa

1 dispatch that I was behind the BOLO'ed vehicle. And due to
2 being in the county, I was waiting for extra backup to get
3 there. I can't remember, remember actually which road we
4 took but it traveled to Indiana Circle. And once we stopped
5 there, you know, we got out with them and just due to the
6 circumstances of the BOLO.

7 Q So, you can't say whether they saw you back there or
8 not?

9 A No, sir.

10 Q Okay. What kind of vehicle were you in?

11 A Dodge Charger, 2010.

12 Q Was it marked?

13 A Yes, sir.

14 Q Okay. Did it have the light bar on top?

15 A Yes, sir.

16 Q Okay. So, if you're looking at it, would you know it's
17 a police car?

18 A Yes, sir, if you, if you saw it. I don't know if they
19 were paying attention or not.

20 Q Okay. Well, it stopped and then what happened when
21 it -- did it pull to this location where it is now?

22 A Yes, sir.

23 Q Okay. And what happened when it stopped?

24 A Two subjects exited the vehicle. At that time, we
25 asked them who they were due to the vehicle given out was

Taylor Owens - Direct examination
by Solicitor Bulsa

1 involved in a shooting in Spartanburg, and Mr. Savage was
2 identified as the driver and the passenger was Rashawn
3 Miller.

4 Q Okay. Now, let me show you State's Exhibit No. 11, a
5 picture of two men.

6 A Yes, sir.

7 Q Were those the two men in the vehicle?

8 A Yes, sir.

9 Q Mr. Savage was which one?

10 A The one wearing the red and black.

11 Q Okay. So, he was still dressed like this?

12 A Yes, sir.

13 Q And it's your testimony, when you got him -- when you
14 saw him exit the car, he exited out of the driver's side?

15 A Yes, sir.

16 Q How about Mr. Miller?

17 which side did he exit out of?

18 A He got off the passenger's side.

19 Q Okay. All right. What did you do when they got out of
20 the truck?

21 A We actually somewhat made a felony stop just due to
22 the -- it wasn't really a stop, but, you know, due to the
23 information given, we wanted to, at least, identify who they
24 were to notify Spartanburg County.

25 Q So, did you -- I mean does that mean you detained them?

Taylor Owens - Direct examination
by Solicitor Bulsa

1 A Yes, sir.

2 Q Did you put them in handcuffs?

3 A Yes, sir.

4 Q So -- and how long did it take Spartanburg to get
5 there?

6 A Anywhere from 30 -- 20, 30 minutes.

7 Q So, what happened during that time period?

8 A Once they were actually identified and who they were,
9 they -- we, we detained them and they were placed in the --
10 one was placed in the back of my patrol unit. Another, I
11 believe, a Cherokee County deputy's car. We really didn't
12 talk to them that much until Spartanburg County got there.
13 I mean I think the residents outside the, where they were
14 stopped, someone knew them there and they wanted to ask
15 questions but we kind of kept everybody away until
16 Spartanburg County got there cause we didn't -- we had
17 limited information.

18 Q Okay. And you turned them over to Spartanburg?

19 A Yes, sir.

20 Q And that's -- and then Spartanburg took custody of the
21 truck?

22 A Yes, sir.

23 Q Okay. Thank you, officer. That's all I have.

24 A Thank you.

25 THE COURT: Mr. Mitchell, your witness.

Taylor Owens - Cross-examination
by Mr. Mitchell

1 MR. MITCHELL: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MITCHELL:

4 Q Mr. Owens, in regards to the apprehension, to use that
5 term, Mr. Savage and Mr. Miller, did you conduct a search on
6 them?

7 A On -- of their person?

8 Q Yes.

9 A Yes.

10 Q Did you find anything illegal?
11 Find a gun or anything?

12 A No, sir, I didn't.

13 Q Okay. Did they try to flee from you?

14 A No, sir, they did not.

15 Q Cooperated with you until Spartanburg arrived?

16 A Yes, sir, they did.

17 Q Thank you.

18 THE COURT: Any other questions, Mr. Bulsa?

19 SOLICITOR BULSA: No, sir.

20 THE COURT: Sir, you may step down.

21 Do you wish to excuse the witness?

22 SOLICITOR BULSA: Yes, sir, please.

23 THE COURT: Any objections?

24 MR. MITCHELL: No objection, Your Honor.

25 THE COURT: You're free to go, sir. Thank you very

Robert Shaffer - Direct examination
by Solicitor Bulsa

1 much.

2 Mr. Bulsa, you may call your next witness.

3 SOLICITOR BULSA: State would call Robert Shaffer.

4 THE COURT: Sir, come forward and be sworn.

5 ROBERT SHAFFER, being first duly
6 sworn, testified as follows:

7 THE COURT: Have a seat please, sir. Once you're
8 seated, state your name please.

9 THE WITNESS: Robert Shaffer.

10 THE COURT: Thank you.

11 Mr. Bulsa, your witness.

12 SOLICITOR BULSA: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY SOLICITOR BULSA:

15 Q Deputy, who are you employed with?

16 A I'm employed with the Spartanburg County Sheriff's
17 Office.

18 Q In what capacity?

19 A Currently now I'm a school resource officer.

20 Q What did you use to do?

21 A Before that I was a crime scene or forensics officer.

22 Q And how long were you a forensic officer?

23 A For approximately a little over nine years.

24 Q Did you respond to this scene on November 23rd, 2014,
25 at Universal Events?

Robert Shaffer - Direct examination
by Solicitor Bulsa

1 A No, I did not.

2 Q So, you weren't involved in that investigation?

3 A No, I was not.

4 Q Were you asked to do anything with Mr. Savage?

5 A Yes, I was.

6 Q All right. How were you asked to participate in this
7 investigation?

8 A On November 23rd of 2014, I received a phone call
9 from Deputy Sean Nix. It was approximately 07:45 hours.
10 That's four -- about 7:43 in the morning to go respond to
11 CID to do GSRs, the gunshot residues.

12 Q All right. And why is that?

13 A It's a collection to see if there's gun powder primer
14 on the hands or clothing.

15 SOLICITOR BULSA: Let me get this marked.

16 (WHEREUPON, a GSR kit was marked as State's Exhibit No.
17 14 for identification purposes only at this time.)

18 Q Okay. Let me show you what's been marked State's
19 Exhibit 14, entered without objection.

20 THE COURT: Any objection, Mr. Mitchell?

21 MR. MITCHELL: Sir?

22 THE COURT: The Exhibit 14, any objection?

23 MR. MITCHELL: No objection, Your Honor.

24 THE COURT: All right. It will be admitted as marked.

25 (WHEREUPON, State's Exhibit No. 14 was received into

Robert Shaffer - Direct examination
by Solicitor Bulsa

1 evidence at this time.)

2 THE COURT: You may proceed.

3 SOLICITOR BULSA: Thank you.

4 Q Officer, do you recognize that form?

5 A Yes, I do.

6 Q What is it?

7 A It's a copy of my gunshot residue analysis form.

8 Q Okay. And when do you fill out that form?

9 A Immediately after collecting the gunshot residue.

10 Q Well, do you know the time that you do it?

11 A Yes, I do.

12 Q When would that have been?

13 A It was 8:05AM.

14 Q Okay. And where would you have taken that?

15 A That there?

16 Q Yes, sir.

17 A Where I collect it.

18 Is that what you're asking me?

19 Q Yes, sir.

20 A At the Sheriff's Office in investigations. I believe
21 it was in one of the major interview rooms.

22 Q Okay. And the information that's contained within that
23 form, where did you -- where do you get that information?

24 A It's information I get like the name and the date of
25 birth and I verify the photograph through a driver's license

Robert Shaffer - Direct examination
by Solicitor Balsa

1 or some kind of form of ID, and I ask the suspect if he's
2 right-handed or left-handed, if they've done anything,
3 washed their hands or not, and the brief synopsis, what I
4 get from investigations.

5 Q Okay. And how do you actually conduct a swab for a GSR
6 kit?

7 A The GSR kit, first we verify that the package is
8 sealed, no damage to it. We open it up and lay out each
9 little container. It says back of hand, palm, and we have
10 these little Q-tips. Make sure the package is sealed and
11 another thing called, I'm probably saying it wrong, but it's
12 like Nicorat it's called. Like a little liquid thing. We
13 verify all that is there and we go ahead and do the palm and
14 then the back of each hand. We do that first and then I go
15 ahead and take the cap and make sure it was sealed, squirt
16 into the Q-tip, and we collect that and then I fill this
17 paperwork out and I seal it in front of the individual we
18 collect it from.

19 (WHEREUPON, the GSR kit was marked as State's Exhibit
20 No. 15 for identification purposes only at this time.)

21 Q Let me show you State's Exhibit 15, an evidence
22 envelope that's entered without objection.

23 THE COURT: Any objection, Mr. Mitchell?

24 MR. MITCHELL: No, sir.

25 THE COURT: Without objection, it will be entered as

Robert Shaffer - Direct examination
by Solicitor Bulsa

1 marked.

2 (WHEREUPON, State's Exhibit No. 15 was received into
3 evidence at this time.)

4 THE COURT: You may proceed.

5 Q What is that, sir?

6 A It's my evidence bag that I filled out for GSR.

7 Q And what does it contain?

8 A It's a -- has case number, inventory. Has one Item 1,
9 GSR, Savage, Shedrick, I might be saying it wrong, date and
10 time I collected, the address, who collected it, suspect,
11 and---

12 Q And look inside it.

13 Take it out please.

14 A (Witness complies.)

15 Q What is that?

16 What is that package inside?

17 A It's actually the gunshot residue kit that we take and
18 verify.

19 Q Okay.

20 A And this is my handwriting.

21 Q Okay. And you seal it?

22 A Yes, my seal is broken but it's my signature and SLED
23 resealed it.

24 Q Okay. And do you -- why do you seal it?

25 A This way it don't get cross-contaminated and, from

Robert Shaffer - Direct examination
by Solicitor Bulsa

1 that, this way, we don't get nothing mixed up with anything
2 else.

3 Q Okay. Did you also do a gunshot residue on Mr. Miller?

4 A Yes, I did.

5 Q Okay. And were they in the same area when you did
6 this?

7 A When I collected them, they're in the same room but
8 they were separated. I did one person at a different time.

9 Q How do you ensure that there's no cross-contamination?

10 A What I'm doing is I went in the bathroom, washed my
11 hands and stuff, make sure I did not have anything on me and
12 it's just kind of you dab and you can't really
13 cross-contaminate yourself when you switch gloves. There's
14 a -- gloves that we have to use that are in here.

15 Q Do you have, in your records, who you would of done
16 first?

17 A Yes, in my records I'm showing Savage was done at
18 8:05AM or---

19 Q Okay.

20 A ---and then approximately 15 minutes later I did the
21 other, Mr. Miller.

22 Q Okay. So, Mr. Savage would of been first?

23 A Yes, sir.

24 Q So, you would of taken the swabs from him, sealed them,
25 and then went and washed your hands before you dealt with

Robert Shaffer - Direct examination
by Solicitor Bulsa

1 Mr. Miller?

2 A Yes.

3 Q Okay. So, if there was any contamination, it would of
4 been from you to Mr. Miller versus Mr. Savage?

5 A Yeah, I did Savage first.

6 Q Okay. All right. Now, you sealed that up and that --
7 do you actually conduct the testing on it?

8 A No, I do not.

9 Q And where is it sent for testing?

10 A It's sent down to SLED I'm assuming cause it has a
11 SLED---

12 Q Okay.

13 A ---number on it.

14 Q Tell this jury what SLED is.

15 A That's South Carolina Law Enforcement Division.

16 Q Okay. Do you recall how these men were dressed when
17 you came in there?

18 A I have it documented in my evidence sheet, the clothing
19 I collected.

20 Q Okay. And where would you have collected the clothing?

21 A I was called to go to the detention center.

22 Q Okay. Now, that would of been after you'd taken the
23 gunshot residue, right?

24 A Yes.

25 Q Okay.

Robert Shaffer - Direct examination
by Solicitor Bulsa

1 A I was called to go back there at 10:42 and I got up to
2 that scene at the Sheriff's office at 7:57, almost eight
3 o'clock.

4 Q Okay. And collected the clothing from the jail?

5 A Yes.

6 Q All right.

7 (WHEREUPON, three photographs were marked as State's
8 Exhibit Nos. 16 through 18 for identification purposes only
9 at this time.)

10 MR. MITCHELL: No objection, Your Honor.

11 THE COURT: Those are marked as what numbers?

12 SOLICITOR BULSA: 16, 17, and 18.

13 THE COURT: I think you indicated there was no
14 objection, Mr. Mitchell?

15 MR. MITCHELL: That's correct, Your Honor.

16 THE COURT: All right. They'll be put into the record
17 as, as marked.

18 (WHEREUPON, State's Exhibit Nos. 16 through 18 were
19 received into evidence at this time.)

20 THE COURT: You may proceed.

21 Q Okay. Do you recognize those pictures, officer?

22 A Yes, I do.

23 Q Did you take those?

24 A Yes, I did.

25 Q Were those of clothing you recovered from the jail from

Robert Shaffer - Direct examination
by Solicitor Bulsa

1 Mr. Savage?

2 A Yes, I got from -- it was Deputy Brock, yeah.

3 Q Okay. So, were those the clothes he was wearing when
4 you took the swabs?

5 A Yes.

6 Q Okay. All right. And you put those in evidence?

7 A Yes, I photographed them and---

8 Q Okay. All right. Did you have any further involvement
9 in this case?

10 A No, I did not.

11 Q Okay. Thank you. Answer any questions Mr. Mitchell
12 has of you.

13 THE COURT: Mr. Mitchell, your witness.

14 MR. MITCHELL: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MITCHELL:

17 Q Mr. Shaffer, in regards to the testing that was
18 conducted, is it fair to say that you found residue on
19 Miller's clothing?

20 A Yes, I did. It's documented, yes.

21 Q Okay. The evidence---

22 SOLICITOR BULSA: I didn't hear the question.

23 Q Those -- that was a question.

24 SOLICITOR BULSA: I didn't hear it.

25 Q Did you find residue on Mr. Miller's clothing?

Robert Shaffer - Cross-examination
by Mr. Mitchell

- 1 A Yes, and what kind of residue?
- 2 You said a color, didn't you?
- 3 Q Yeah.
- 4 A Yeah, I found some brownish, yeah.
- 5 Q All right. Was it tested?
- 6 A Yes, I did a field test. That's preliminary.
- 7 Q And what did it turn out to be?
- 8 A It tested back. Come positive for blood.
- 9 Q Did you also conduct a test on Mr. Savage's clothes?
- 10 A Yes, I did.
- 11 Q With the same type residue?
- 12 A The same test?
- 13 Q Yes.
- 14 A Yes, and color, yeah.
- 15 Q How did the results come out?
- 16 A It just came back negative for blood.
- 17 Q Thank you.
- 18 Nothing further.
- 19 THE COURT: Redirect.
- 20 SOLICITOR BULSA: Okay.
- 21 REDIRECT EXAMINATION
- 22 BY SOLICITOR BULSA:
- 23 Q Why were you looking for blood?
- 24 A It's just part of our -- when we collect the clothes,
- 25 we look through it and make sure it's photographed and

Robert Shaffer - Redirect examination
by Solicitor Bulsa

1 documented.

2 Q Okay. Were you shared any information about what
3 happened at the club?

4 A No, not really.

5 Q Okay. All right.

6 A I was just working regular duty that day and just
7 needed me to get in there and do that test.

8 Q Okay. Thank you. That's all I have.

9 THE COURT: Anything further, Mr. Mitchell?

10 MR. MITCHELL: No, sir, Your Honor.

11 THE COURT: All right. You may step down, sir.
12 Wish to excuse the witness?

13 SOLICITOR BULSA: Yes, sir, please.

14 THE COURT: Any objections?

15 MR. MITCHELL: No objection.

16 THE COURT: All right. Thank you.

17 Mr. Bulsa, Mr. Mitchell, please approach.

18 MR. MITCHELL: Yes, sir.

19 (WHEREUPON, a bench conference was held out of hearing
20 of the jury at this time.)

21 THE COURT: All right. Ladies and gentlemen of the
22 jury, the next witness is gonna take a little longer than
23 the time we have left till we get past five o'clock. So
24 we're inside of a quarter of 5:00. So we're gonna break for
25 the evening at this point in time.

1 You know my instructions about when you leave the
2 courthouse. Don't attempt to gather any information about
3 the case on your own. Don't listen to, watch, or read media
4 reports. Don't discuss the case with anyone. Don't allow
5 anyone to discuss it with you. If anybody tries to contact
6 you about your service on this jury, please report that at
7 the earliest possible moment.

8 I'll ask you to be back in the jury room at nine
9 o'clock in the morning. We should be in a position to start
10 shortly thereafter. I hope you have a good evening and
11 you're free to go at this time.

12 Thank you very much.

13 Remain seated while the jury retires please.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right. Court is in recess until nine
17 o'clock in the morning.

18 Thank you very much.

19
20 (WHEREUPON, Court was in recess for the evening.)
21
22
23
24
25

1 Tuesday, November 29th, 2016

2
3 THE COURT: All right. Good morning.

4 Mr. Bulsa, is the State ready to proceed?

5 SOLICITOR BULSA: Yes, sir, Your Honor.

6 THE COURT: Mr. Mitchell, I know we got to get your
7 client in here. So, as soon as he's here, are you ready?

8 MR. MITCHELL: Yes, sir, Your Honor.

9 THE COURT: Okay.

10 (WHEREUPON, the defendant comes into the courtroom at
11 this time.)

12 THE COURT: All right. Let's bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect the
16 jury has returned to the courtroom.

17 I hope everyone had a, everyone had a good evening.
18 Nice to see some rain out this morning.

19 Did anyone have any difficulty in complying with my
20 instructions concerning your behavior?

21 If you did have some problems in conforming to my
22 instructions, please stand.

23 (No response.)

24 THE COURT: It appears that all jurors have continued
25 to be able to follow my directions thus far.

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 When we stopped yesterday, the State was in the process
2 of calling its witnesses.

3 At this time, Mr. Bulsa, you may call your next
4 witness.

5 SOLICITOR BULSA: Thank you, Your Honor.

6 State calls Tyler Sturkie.

7 THE COURT: Sir, come forward please. Just step to my
8 left and be sworn right here please.

9 TYLER STURKIE, being first duly
10 sworn, testified as follows:

11 THE COURT: Sir, once you're seated, please state your
12 name.

13 THE WITNESS: Tyler Sturkie.

14 THE COURT: Thank you.

15 THE WITNESS: S-T-U-R-K-I-E.

16 THE COURT: Thank you.

17 Mr. Bulsa, it's your witness.

18 DIRECT EXAMINATION

19 BY SOLICITOR BULSA:

20 Q Mr. Sturkie, who are you employed with?

21 A I'm employed by the South Carolina Law Enforcement
22 Division commonly known as SLED.

23 Q In what capacity?

24 A I am a forensic scientist in the trace evidence
25 section.

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 Q And what is trace evidence?

2 A Trace evidence is a type of microscopic physical
3 evidence that needs some sort of magnification in order to
4 characterize that evidence. In the trace lab at SLED, we
5 analyze evidence such as gunshot residue, fire debris,
6 glass, fibers, paints, explosives, and several other unknown
7 chemicals.

8 Q Do you have special training?

9 A Yes. When I was hired, I began a year long training
10 program in the analysis of gunshot residue. This consisted
11 of physical and practical examinations on the practice and
12 theory of gunshot residue. I was assigned a training
13 officer and learned to work a case from receiving evidence
14 to generating a final report. Upon completion of this, I
15 was deemed competent in the analysis of gunshot residue.

16 I also trained at outside training courses at Coker
17 College of Applied Sciences where I successfully completed
18 courses titled Gunshot Residue Identification, Scanning
19 Electron Microscopy, and Advanced X-ray Microanalysis.

20 Q Do you have a college degree?

21 A I have a Bachelor of Science Degree in Chemistry from
22 Newberry College.

23 Q Have you ever testified in Court as an expert before?

24 A Yes, sir, I have.

25 Q Been qualified as an expert?

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 A Yes, sir, I have.

2 SOLICITOR BULSA: Your Honor, the State offers
3 Mr. Sturkie as an expert in gunshot residue analysis.

4 THE COURT: Any objection to him being designated as an
5 expert within that field?

6 MR. MITCHELL: None, Your Honor.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, let me take a short break here and explain the process
9 that we're going through. We're gonna do this again with
10 other witnesses. So, I want to be sure you understand what
11 we're doing.

12 Under -- I've talked to you earlier about the rules of
13 evidence that govern how evidence comes into the courtroom.
14 Generally those rules require that witnesses testify to
15 facts that are within their knowledge. They're not allowed
16 to state their opinions about those facts or to state their
17 conclusions that they drew from those facts.

18 An exception to that general rule is made for any
19 witness who is designated by the Court to be an expert
20 within some profession, science, field, or, or calling, and
21 for a witness who is declared to be an expert within a
22 field, that witness is allowed to testify concerning his or
23 her opinions within that field of expertise and state the
24 reasons why they hold those opinions.

25 So, that allows this witness to testify concerning his

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 opinions within his field of expertise. He's being
2 qualified as an expert without objection. I'll designate
3 him as an expert within the field of the analysis of gunshot
4 residue, and so he will be allowed now to state his opinions
5 and the reasons why he holds those opinions.

6 There will be other witnesses who will testify who will
7 also be offered as experts within the field, and when we go
8 through this process, that's why we're doing that, to
9 qualify them to be able to state those opinions.

10 Now, later on when I charge you on the law, I'll go
11 over this in more detail with you and give you some other
12 instructions at that time about expert testimony. But at
13 this point in time, I'm going to qualify him as an expert
14 within the field. That will allow him to testify as I've
15 stated.

16 So, Mr. Bulsa, you may proceed with the witness.

17 SOLICITOR BULSA: Thank you, Your Honor.

18 CONTINUED DIRECT EXAMINATION

19 BY SOLICITOR BULSA:

20 Q Mr. Sturkie, did you receive evidence from the
21 Spartanburg County Sheriff's Office related to the decedent,
22 Charlie Jackson?

23 A May I refer to my notes please?

24 Q Yes, sir.

25 A For our Lab Number L14-15020, I did receive one GSR kit

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 submitted as Charlie Jackson.

2 Q And accompanying that, did you receive other gunshot
3 residue kits?

4 A I also received two other gunshot residue kits. One
5 from Shedrick Savage and one from Rashawn Miller.

6 Q And, in your position, did you conduct testing on those
7 kits?

8 A I performed analysis on our Items 3 and 4, which were
9 one GSR kit from Shedrick Andrew Savage and one GSR kit from
10 Rashawn Alexander Miller.

11 Q Okay. And did you put those results into a report
12 format?

13 A Yes, sir, I did.

14 (WHEREUPON, a SLED report was marked as State's Exhibit
15 No. 19 for identification purposes only at this time.)

16 Q Let me show you what's been marked as State's Exhibit
17 No. 19.

18 I think this is entered without objection, Your Honor.

19 MR. MITCHELL: Is there any objection to this,
20 Mr. Mitchell?

21 MR. MITCHELL: I have none, Your Honor. I've reviewed
22 it?

23 THE COURT: Okay. All right. Without objection then,
24 it will be admitted as it's been marked into evidence.

25 (WHEREUPON, State's Exhibit No. 19 was received into

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 evidence at this time.)

2 THE COURT: You may proceed, Mr. Bulsa.

3 SOLICITOR BULSA: Thank you.

4 Q Okay. And these are -- the results you put in your
5 report, is that what you're gonna be testifying to?

6 A Yes, sir.

7 Q Okay. Now, let's focus specifically on Mr. Savage.
8 What were your results?

9 A For my results for Mr. Savage, my Item 3.1 is labeled
10 as particle lifts collected from right-hand of Shedrick
11 Andre Savage. The results were particles of gunshot
12 residue, one particle consistent with gunshot residue and
13 one particle associated with gunshot residue were found.

14 For Item 3.2, which was labeled as particle lifts
15 collected from the left-hand of Shedrick Andre Savage, is
16 particles of gunshot residue, particles consistent with
17 gunshot residue, and one particle associated with gunshot
18 residue was found.

19 Q Okay. So, on each hand, he had some, some sort of
20 particle related to gunshot residue?

21 A Correct, yes, sir.

22 Q And how -- tell this jury how gunshot residue can be
23 deposited on one's hands.

24 A Gunshot residue is composed of the burned and unburned
25 particles from the primer and propellant in, in the

Tyler Sturkie - Direct examination
by Solicitor Balsa

1 projectile of a discharged firearm. When this occurs, a
2 miniature explosion occurs throughout the cartridge and
3 gunshot residue is expelled from any opening in that
4 firearm. The vapors -- the molecules will then vaporize and
5 then adhere to any objects that are in the vicinity to that
6 discharge of the firearm.

7 Q Is it expelled in different ways depending upon the
8 type of weapon?

9 A Usually larger caliber weapons will generally produce
10 more gunshot residue. That is theoretical. So, I can not
11 say for certain whether higher caliber produces more given a
12 certain case. Depending on the type of firearm, whether
13 it's a handgun versus a shotgun, shotguns will generally
14 produce more gunshot residue than handguns. If you have a
15 semiautomatic versus a revolver, each weapon will have a
16 muzzle and the most gunshot residue will be expelled from
17 the muzzle itself.

18 The difference between a revolver and a semiautomatic
19 is the revolver has a cylinder, which encases however many
20 cartridges it may, and it has openings on the front and back
21 end of that cylinder. That leaves more openings for gunshot
22 residue to be expelled as opposed to semiautomatic where it
23 has an ejection port. When the slide cocks back, that
24 opening is where gunshot residue can also be expelled.

25 Q So, if you had the type of weapon, could you have

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 testified more specifically?

2 A With gunshot residue, I can not definitively say what
3 type of firearm that specific gunshot residue came from.

4 Q But if you knew it was a semiautomatic versus a
5 revolver, would that help guide your results?

6 A Generally the number of particles is very hard to
7 determine from my analysis. My analysis states whether or
8 not gunshot residue was found. When I find gunshot residue,
9 I can tell one of three things from that subject. One is
10 that subject did fire -- did discharge a firearm. Two is
11 that subject was in the vicinity to the discharge of a
12 firearm, or three, that subject touched an object which
13 previously had gunshot residue on it. Unfortunately, I can
14 not definitively say one of those three things.

15 Q Okay. Now, does a revolver expel more gases than a
16 semiautomatic?

17 A Generally, yes.

18 Q Okay. Now, you also did an examination on a gunshot
19 residue kit for Mr. Miller.

20 Is that correct?

21 A Yes, sir, it is.

22 Q And tell us what the results of that examination were.

23 A My Item 4, one GSR kit from Rashawn Alexander Miller,
24 Item 4.1 were particle lifts collected from the right-hand.
25 The results were no gunshot residue found. And for Item

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 4.2, which were the particle lifts collected from the
2 left-hand, the results were one particle of gunshot residue
3 was found.

4 Q Now, you receive information as to when the supposed
5 shot was fired and when the gunshot kit was collected.

6 Is that correct?

7 A Yes, sir, when we receive a gunshot residue kit, inside
8 the kit is a information form that the collecting officer
9 fills out. On that form it will have information such as
10 the time of the shooting and the time of collection.

11 These are important to us because, where a living
12 person, our protocol states that within a six hour timeframe
13 we are allowed to analyze gunshot residue for the presence
14 of gunshot residue. If it is beyond the six hour timeframe,
15 we will not analyze it due to circumstances of a living
16 person. Gunshot residue is a very fragile type of evidence.
17 and can be easily removed if deposited.

18 Q Okay. Let me show you what's been marked State's
19 Exhibit No. 14.

20 Is that a copy of the information form regarding Mr.
21 Savage?

22 A Yes, sir, this appears to be a copy.

23 Q Okay.

24 MR. MITCHELL: Pardon me?

25 May it please the Court?

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 Is that Savage or---

2 SOLICITOR BULSA: That was Mr. Savage's. That was the
3 form we introduced yesterday. Now we're gonna introduce Mr.
4 Miller's.

5 THE COURT: Okay. This is Mr. Miller's report, yes,
6 sir.

7 MR. MITCHELL: Yes, sir.

8 THE COURT: Okay. Are you offering that into evidence,
9 Mr. Bulsa?

10 SOLICITOR BULSA: I am. Yes, sir, make sure he
11 understands.

12 (WHEREUPON, a SLED report was marked as State's Exhibit
13 No. 20 for identification purposes only at this time.)

14 THE COURT: Okay. Any objection to that, Mr. Mitchell?

15 MR. MITCHELL: Not on Miller.

16 THE COURT: Okay.

17 MR. MITCHELL: No, sir.

18 THE COURT: Thank you, sir. It will -- you are
19 offering it into evidence?

20 SOLICITOR BULSA: Yes, sir.

21 THE COURT: All right. It will be admitted as it's
22 been marked without objection.

23 (WHEREUPON, State's Exhibit No. 20 was received into
24 evidence at this time.)

25 THE COURT: You may proceed.

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by Solicitor Bulsa

1 SOLICITOR BULSA: Thank you, Your Honor.

2 This is State's Exhibit No. 20.

3 Is that a copy of the information form regarding
4 Mr. Miller?

5 A Yes, sir, it appears to be a copy.

6 Q Okay. And the information is pretty much the same
7 regarding the actual facts of the shooting.

8 Is that correct?

9 A For the shooting information, as far as the date and
10 time of the shooting, the information forms for both Savage
11 and Miller are exact.

12 Q Okay. And how about the collection times?

13 A For the collection times, they are -- vary within five
14 minutes of one another.

15 Q And whose was first?

16 A For Shedrick Savage, the shooting information, date of
17 the shooting was November 23rd, 2014, at 2:35AM, and the
18 collection time was November 23rd, 2014, at 8:05AM.

19 Q What was the collection time of Mr. Miller's?

20 A Collection time of Mr. Miller, it was November 23rd,
21 2014, at 8:10AM.

22 Q Now, did you consider that within the window?

23 A Yes, sir, these two collections occurred within the six
24 hour timeframe.

25 Q Okay. Why is there a six hour timeframe?

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 A On a living person, between the six hours, that person
2 is more than likely moving. The person is sweating.
3 They're a lot of environmental factors that, that can occur
4 within these six hours.

5 As I stated earlier, gunshot residue is very fragile
6 and these outside circumstances can potentially cause the
7 removal of any GSR that may be present. Beyond the six
8 hours, we will not test for gunshot residue. On a deceased
9 person, there is no timeframe because all actions have
10 ceased within that person.

11 Q Okay. Are security measures taken to ensure the lack
12 of contamination of these tests?

13 A Yes, sir, for the -- inside a gunshot residue kit, for
14 the collecting officer, there are instructions and a pair of
15 gloves in order to reduce any amount of contamination that
16 may be possible.

17 Q Okay. And were these -- both of these kits sealed in
18 the appropriate fashion?

19 A Yes, sir, when I received, when I received these items
20 of evidence, they were sealed and initialed and dated from
21 the collecting officer.

22 Q So, there was no, no alteration or that actually
23 basically trying contamination of the two?

24 A No signs of contamination.

25 Q Okay. All right. So, the results of your test are

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 both men actually had residue but who had more?

2 A According to my results, Shedrick Andre Savage,
3 compared to Rashawn Alexander Miller, had more gunshot
4 residue found.

5 Q Can you give the jury an explanation as to how it could
6 of gotten on either one of them?

7 A As stated earlier---

8 MR. MITCHELL: Your Honor, I'm going to object to that
9 particular question based on the disparate time in regards
10 to Mr. Savage's test and also Mr. Miller's test. Six hours
11 difference.

12 SOLICITOR BULSA: I don't think---

13 MR. MITCHELL: Speculation.

14 SOLICITOR BULSA: There isn't six hours difference.
15 The test were taken within five minutes of each other.

16 THE COURT: I didn't hear, I didn't hear the testimony
17 to indicate that there was a six hour difference.

18 MR. MITCHELL: Your Honor, from my understanding, I
19 understand Mr. Miller's was taken at 8:10, the sample at
20 8:10, which was approximately six hours from the time
21 allegedly the victim was found.

22 THE COURT: I'll let you---

23 SOLICITOR BULSA: That's correct.

24 THE COURT: I'll let you cross-examine him on that,
25 Mr. Mitchell. That doesn't affect the admissibility.

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by Solicitor Bulsa

1 MR. MITCHELL: All right, sir.

2 THE COURT: I'll deny the motion.

3 You may proceed.

4 SOLICITOR BULSA: Thank you.

5 Just -- let's clear that up.

6 Mr. Savage's kit was collected at 8:05 I believe.

7 Is that correct?

8 A Yes, sir.

9 Q And then Mr. Miller's kit was collected at 8:10.

10 Is that correct?

11 A Yes, sir.

12 Q within five minutes of each other?

13 A Between those two collections, yes.

14 Q Now, you have no understanding of how this incident
15 occurred, do you?

16 A No, sir, the only thing I'm aware of of this case is
17 these items of evidence that were brought to me.

18 Q Okay. And if these men were inside a closed cab of a
19 pickup truck, can you explain how gunshot residue could of
20 landed on any of their hands?

21 A When gunshot residue is discharged from a firearm, it
22 will expel in the vicinity to that discharge. If it is in a
23 enclosed space, the more -- it's the likelihood of gunshot
24 residue being deposited is higher than in a very large open
25 space depending on the distance of that vicinity. In a

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 vehicle, I would expect to see more gunshot residue being
2 deposited everywhere in that vehicle as opposed to a large
3 room such as this room.

4 Q Would you expect there to be more on the gunshot
5 residue on either person?

6 A I can not say definitively who should have more gunshot
7 residue depending on the results of my analysis.

8 Q Is your proximity -- does a person's proximity to a
9 weapon indicate the possibility of gunshot residue?

10 MR. MITCHELL: Your Honor, I object. That calls for
11 speculation in regards to---

12 THE COURT: Well, he has been qualified as an expert
13 and is within his area of expertise. I'll allow him to
14 state his opinions if he has one.

15 You may proceed.

16 A Theoretically, within the discharge of a firearm,
17 depending on the amount of gunshot residue produced, that
18 gunshot residue cloud, so to speak, that comes from the
19 firearm can be expelled into the vicinity generally within
20 five to eight feet of the weapon. That is the -- dependent
21 upon that weapon. The larger caliber, the higher the amount
22 of gunshot residue, the further that cloud will be disbursed
23 and vice versa for a smaller caliber weapon.

24 In an enclosed area, there aren't as many factors such
25 as wind or rain that could occur. So, gunshot residue will

Tyler Sturkie - Direct examination
by Solicitor Bulsa

1 be deposited more within that area, whereas outside, you
2 have environmental factors, wind, rain, that can limit the
3 amount of gunshot residue that is collected. Neither will
4 prohibit gunshot residue to be formed. They will both
5 produce the same amount given the certain scenario. It's
6 the amount that's collected that will be determined from the
7 environmental and other factors.

8 Q Okay. Just so we can get a picture of this, when a gun
9 is fired, gas is expelled from the openings---

10 A Correct.

11 Q ---in a cloud type form?

12 A Yes.

13 Q And as it -- that cloud expands, it -- the particles
14 lessen the further away from the weapon.

15 Is that correct?

16 A Theoretically that is correct, yes.

17 Q Thank you.

18 All right. That's all I have. Answer any questions

19 Mr. Mitchell may have.

20 THE COURT: Mr. Mitchell, your witness.

21 MR. MITCHELL: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. MITCHELL:

24 Q Mr. Sturkie, did you receive any type of sample from
25 the left-hand of Mr. Savage?

Tyler Sturkie - Cross-examination
by Mr. Mitchell

1 A When we receive gunshot residue kits, they are composed
2 of four particle lifts. These particle lifts contain the
3 right palm, the right back, the left palm, and left back of
4 that subject's hand. When I report my results, I will
5 include the combination of the right palm and right back for
6 the right-hand of that subject and the left palm and left
7 back for the left-hand of that subject.

8 For Mr. Savage, is that correct that you were asking
9 for---

10 Q Yes.

11 A I did receive particle lifts from all four areas.

12 Q As far as those four areas were concerned, you found,
13 from the right-hand, what?

14 A For the right-hand, I found particles of gunshot
15 residue, one particle consistent with gunshot residue, and
16 one particle associated with gunshot residue.

17 Q And from Mr. Miller's right-hand?

18 A I found no gunshot residue.

19 Q From Mr. Savage's left-hand?

20 A Particles of gunshot residue, particles consistent with
21 gunshot residue, and one particle associated with gunshot
22 residue.

23 Q And Mr. Miller's left-hand?

24 A One particle of gunshot residue was found.

25 Q Okay. Now, you indicated that, as far as a cloud being

Tyler Sturkie - Cross-examination
by Mr. Mitchell

1 formed is concerned, between five and eight feet.

2 You talking about an enclosed environmental type
3 situation?

4 A That will be in any environment. Just as a general
5 number for the deposition of gunshot residue, five to
6 eight feet is a general distance.

7 Q Would that basically be about the circumference or the
8 dimension as far as the cab of a truck is, for your truck is
9 concerned to your --?

10 A I'm unaware of the vehicle that was involved in this
11 case. Within average cars and trucks, I would assume that
12 eight feet is reasonable to say.

13 Q Okay. But in regards to a fire that came from an
14 enclosed environmental situation, you really can't tell
15 whether it came from the left side or the right side of the
16 vehicle, can you?

17 A Correct. I can not. I can not say who fired the
18 weapon. I can not say which side of the car or truck the
19 weapon was fired. I can say that, with a weapon being
20 discharged in that closed vicinity, I expect to find gunshot
21 residue.

22 Q And it was found on both occupants of the vehicle at
23 the time?

24 A It was found on both Shedrick Savage and Rashawn
25 Miller, yes, sir.

Tyler Sturkie - Cross-examination
by Mr. Mitchell

1 Q All right. Those were the only two obviously that you
2 had to sample?

3 A Correct.

4 Q Not knowing whether or not others had been in the
5 vehicle?

6 A I also received a GSR kit submitted as Charlie Jackson.
7 I did not analyze that kit and am unaware if this person was
8 in the vehicle as well.

9 Q But whether they were in there or not, you received the
10 kit but you didn't analyze it?

11 A Correct. I did not.

12 Q Why not?

13 A Charlie Jackson was submitted as a victim of a shooting
14 incident. With victim kits, we expect to find gunshot
15 residue. It does not have as much probative value as a
16 suspect or a witness does. So, therefore, we did not
17 analyze Charlie Jackson in this case.

18 Q But did you not also find that there had been gloves
19 placed on Mr. Jackson's hands to preserve any possible
20 residue that may have come from a GSR?

21 A I am unaware of that scenario. However, we still would
22 not have analyzed this kit. We all -- I also have a
23 narrative from this case and a narrative is, whenever we
24 speak with somebody regarding this case, we have an
25 electronic system in which we can write notes on, and this

Tyler Sturkie - Cross-examination
by Mr. Mitchell

1 narrative that I have in my notes is from another analyst in
2 the trace department and the comments states that Tom Smith,
3 with the Spartanburg County Solicitor's Office, called in
4 reference to this case. He said that he would like the case
5 to be placed on the rush list. There are two suspect GSR
6 kits and a victim GSR kit. Mr. Smith said that the victim
7 kit did not need to be analyzed at this time. I did caution
8 Mr. Smith that, due to the circumstances of this case,
9 shooting from a vehicle, that it was possible for both
10 subjects to be positive. He stated that he understood this.
11 The subject, Miller, was the driver of the vehicle and
12 possible shooter in this incident and that was signed and
13 dated at March 26th, 2015.

14 Q So, that was from the investigator who submitted the
15 kit to you?

16 A This was from -- stated from Tom Smith.

17 Q Did you find out who Tom Smith was?

18 A I do not have any knowledge as to who Tom Smith is. I
19 have this narrative and went off of this.

20 Q Okay. So, you speculated, in fact, that Mr. Miller may
21 have been the driver of the vehicle?

22 A From this comment, that appears so.

23 Q Thank you.

24 REDIRECT EXAMINATION

25 BY SOLICITOR BULSA:

Tyler Sturkie - Redirect examination
by Solicitor Balsa

1 Q Now, why would -- why do you expect gunshot residue to
2 be on the victim's hands?

3 A When a person gets shot, we expect to find gunshot
4 residue on them. Gunshot residue can follow the bullets up
5 to a certain amount of feet. I do not know -- there's no
6 research on as far or as short as it can be -- possibly go.
7 The closer the shooting is, the more likelihood of gunshot
8 residue being found.

9 Q So, that's because residue expels from the end of the
10 weapon?

11 A Correct. The majority of gunshot residue will expel
12 from the muzzle of the firearm.

13 Q So, if the firearm is being fired out of a car window,
14 a cloud of gunshot residue would clearly go forward?

15 A It would go out of the muzzle, yes, sir.

16 Q Okay. How much is expelled back?

17 A It's dependent on the firearm. That general rule, five
18 to eight feet, is more of a radius as opposed to just
19 forward or backwards.

20 Q Okay. But it starts out the firearm and goes forward
21 and backwards. So, if you're closer to it, it's logical to
22 say you're gonna have more on you.

23 Is that correct?

24 A That is correct.

25 Q Okay.

Tyler Sturkie - Recross examination
by Mr. Mitchell

1 THE COURT: Mr. Mitchell.

2 MR. MITCHELL: Yes, sir, just one other question, Your
3 Honor.

4 RECROSS EXAMINATION

5 BY MR. MITCHELL:

6 Q Mr. Sturkie, in regards to the third party being in the
7 vehicle, if someone had, other than the two that -- samples
8 you took were in that vehicle, would the residue have
9 remained in that compartment, all over that compartment?

10 A In the vehicle?

11 Q In the vehicle, yes.

12 A I would expect to find gunshot residue in the vehicle
13 as well.

14 Q Doors, windows, dashboard, back seat, front seat, side
15 seat, all of the upholstered part?

16 A Yes, sir, any inanimate objects clearly within the
17 vicinity I would expect to find gunshot residue within
18 inanimate objects similar to deceased victims. We can't
19 place a timeframe as to when that gunshot residue was
20 deposited.

21 Q Thank you, sir.

22 THE COURT: All right, sir. You may step down.

23 THE WITNESS: Thank you.

24 SOLICITOR BULSA: May he be excused?

25 THE COURT: Any objection to his being excused?

David Wren - Direct examination
by Solicitor Bulsa

1 MR. MITCHELL: No, Your Honor.

2 THE COURT: Sir, you're free to go if you'd like.

3 Thank you very much. Be, be sure you leave any exhibits you
4 were handed.

5 THE WITNESS: Yes, sir.

6 THE COURT: You may call your next witness, Mr. Bulsa.

7 SOLICITOR BULSA: State calls Doctor Wren.

8 THE COURT: Sir, come forward to my left and be sworn
9 please.

10 DOCTOR DAVID WREN, being first duly
11 sworn, testified as follows:

12 THE COURT: Sir, once you're seated, state your name
13 please.

14 THE WITNESS: John David Wren.

15 THE COURT: Thank you.

16 Mr. Bulsa, your witness.

17 DIRECT EXAMINATION

18 BY SOLICITOR BULSA:

19 Q what is your profession, sir?

20 A I'm a medical doctor with a speciality in pathology.

21 Q And how long have you been a medical doctor?

22 A I got my degree -- finished my work in February, last
23 of January, 1979. I got my degree on June, 1979, when I
24 graduated my class.

25 Q How long have you been a forensic pathologist?

David Wren - Direct examination
by Solicitor Bulsa

1 A I've been practicing forensic pathology since September
2 of 1979.

3 Q Okay. And have you testified in Court as an expert
4 before?

5 Have you testified in Court as an expert before?

6 A Oh, I thought you -- yes, I've testified all over the
7 State. Initially I testified in the lower part of the State
8 but, since then, I've testified in -- some of the counties
9 are Georgetown, Dorchester, Charleston, Horry, Orangeburg,
10 Dillon, Fairfield, Chester, Cherokee, Spartanburg,
11 Greenville, Anderson, Greenwood, Laurens. I think I said
12 Fairfield. If I didn't, there. Newberry. And I think I
13 testified once over in Abbeville.

14 SOLICITOR BULSA: Okay. Your Honor, we would offer
15 Doctor Wren as an expert in the area of forensic pathology.

16 THE COURT: Any objections?

17 MR. MITCHELL: Your Honor, I just ask the gentleman
18 just a couple of questions if I may?

19 THE COURT: You certainly may.

20 CROSS-EXAMINATION

21 BY MR. MITCHELL:

22 Q Doctor Wren, in regards to your giving testimony in
23 various communities around the State, have you given
24 testimony based on cause of deaths of victims?

25 A Yes, sir.

David Wren - Cross-examination
by Mr. Mitchell

1 Q Performing autopsies on victims?

2 A Yes, sir, I've performed over 6,000 autopsies in my
3 life, in my career rather. Not life.

4 Q Okay. So, I assume that you performed the autopsy on
5 Mr. Jackson?

6 A Yes, I did.

7 Q All right. Thank you.

8 No objection.

9 THE COURT: Without objection, the -- he'll be
10 qualified as an expert in forensic pathology. He may give
11 his opinions within that area.

12 You may proceed, Mr. Bulsa.

13 SOLICITOR BULSA: Thank you, Your Honor.

14 CONTINUED DIRECT EXAMINATION

15 BY SOLICITOR BULSA:

16 Q Doctor Wren, when did you perform an autopsy on Charlie
17 Mardrekus Jackson, Junior?

18 A I performed a autopsy on Mr. Jackson at Spartanburg
19 Regional Hospital Autopsy Room on November the 23rd, 2014.
20 I began that autopsy at 1:20PM.

21 Q What wound did you find on Mr. Jackson?

22 A Pardon?

23 Q What wound did you find on Mr. Jackson?

24 A He had two wounds. He had an entrance gunshot wound in
25 his chest. It appeared between -- in the right upper medial

David Wren - Direct examination
by Solicitor Bulsa

1 chest near the sternum, 13 and a half inches from the top of
2 his head, and three-quarters of an inch to the right of
3 midline. This wound measured .37 or 37 hundredths inches in
4 diameter and had a concentric abrasion border around that
5 wound. It measured .05 centimeters. I'm sorry. Well, I
6 put centimeters.

7 The path of the bullet is through the intercostal
8 space, which is the space between the ribs, between ribs one
9 and two. It went through the pericardial sack. It grazed
10 the inferior -- the superior vena cava. Excuse me. It went
11 through the right atrial appendage, which is a little
12 appendage on the atrium of the heart, the receiving chamber
13 of the right side of the heart. It went through the hilum
14 of the lung, which is where the lung joins into the trachea
15 at the -- in the midchest, and then it went through the
16 right lower lobe posteriorly and passed between ribs six and
17 seven and came out the back medial to the shoulder blade,
18 which is called the scapula, and that wound was irregular in
19 shape.

20 It had tissue protruding from it indicating that it was
21 an exit wound. It appeared 15-inches from the top of his
22 head and three and a quarter inches to the right of midline.
23 There were no bullet fragments and no bullet recovered
24 because it was a through and through gunshot wound. It
25 didn't hit anything to actually break up the bullet, and I

David Wren - Direct examination
by Solicitor Bulsa

1 considered the path of this bullet from front to back. It
2 went downward at approximately 20-degrees and it went left
3 to right at approximately 20-degrees on his body as you
4 will -- anatomically on his body. Not as you're looking at
5 it.

6 Q Is this wound -- are these wounds consistent with the
7 victim facing his assailant?

8 A Yes, he was facing the assailant and, more than likely,
9 he was leaned forward or the assailant was higher than he
10 was.

11 Q Okay. Because of the slight downward --?

12 A Yes, the bullet was going downward to his right and
13 from front to back.

14 Q What was the cause of death?

15 A He had a considerable amount of blood in his pleural
16 cavities. One of them was from a thoracotomy tube, which
17 they put on the left-side because it's pretty standard, when
18 you have wounds from the tip of the chin down to the naval
19 of the umbilicus, they put in chest tubes to make sure that
20 there's no hemithorax or pneumothorax, which is accumulation
21 of air is pneumothorax, and sometimes you get a little bit
22 of blood.

23 He had about a hundred CCs in his right pleural cavity
24 but he had 750 CCs, which is about two units of blood and
25 it's about 25-ounces of blood, 750 CCs is. And he also had

David Wren - Direct examination
by Solicitor Bulsa

1 125 CCs of blood, which is about 5-ounces of blood, within
2 his pericardial sac from bleeding into the sac itself, the
3 enclosure around the heart.

4 So, I attributed his cause of death as, I'll read it as
5 I wrote it, internal hemorrhage secondary to gunshot wound
6 to the chest.

7 Q So, that means he bled out inside?

8 A Yes, and possibly some outside.

9 Q Yes, sir. Thank you, Doctor Wren. Answer any
10 questions Mr. Mitchell may have.

11 THE COURT: Mr. Mitchell, your witness.

12 MR. MITCHELL: No questions, Your Honor.

13 THE COURT: All right, sir. You may step down.

14 Do you wish to excuse the witness, Mr. Bulsa?

15 SOLICITOR BULSA: Yes, sir, Your Honor.

16 THE COURT: Any objection?

17 MR. MITCHELL: None.

18 THE COURT: Doctor Wren, you're free to go at this
19 time. Thank you very much.

20 THE WITNESS: Thank you.

21 THE COURT: Mr. Bulsa, you may call your next witness.

22 SOLICITOR BULSA: State calls Lorin Williams.

23 THE COURT: Come forward, sir, and be sworn please.

24 LORIN WILLIAMS, being first duly
25 sworn, testified as follows:

Lorin Williams - Direct examination
by Solicitor Bulsa

1 THE COURT: Once you're seated, sir, state your name
2 please.

3 THE WITNESS: My name is Lorin Williams.

4 THE COURT: Thank you.

5 Mr. Bulsa, your witness.

6 DIRECT EXAMINATION

7 BY SOLICITOR BULSA:

8 Q Mr. Williams, who are you employed with?

9 A Employed for Spartanburg County Sheriff's Office.

10 Q And were you the investigator in this case?

11 A I was.

12 Q When did you -- where did you first report?

13 Where did you first go to when you got this case?

14 A If I may refer to my notes?

15 Q Yes, you may.

16 A On the night of the incident, once I had been contacted
17 that we had had a shooting, I proceeded to Spartanburg
18 Regional where I knew the victim had been taken at this
19 point.

20 Q Okay. And once you assist -- assessed his condition --
21 okay?

22 A Okay.

23 Q Once you assessed his condition, where did you go?

24 A I believe, at this point, I went back to, to the crime
25 scene.

Lorin Williams - Direct examination
by Solicitor Bulsa

1 Q Okay. And were you able to interview anybody at the
2 crime scene?

3 A At the time I got back there I believe everyone had
4 already left. Some of the other investigators had made some
5 contacts at the scene at that point.

6 Q Did Investigator Bryant assist you in this case?

7 A He did.

8 Q Did he speak with Mr. Graham?

9 A Yes, sir, I believe that's correct.

10 Q Okay. And he got the information from Mr. Graham about
11 the identity of Mr. Savage?

12 A Yes, sir.

13 Q All right. Now, did you have an occasion to speak to
14 Mr. Savage once he was caught?

15 A I did.

16 Q All right. And where did you speak with him?

17 A Initially, just as far as an introduction, telling him
18 that I needed to speak with him, I was in Cherokee County.
19 He was brought back to the Sheriff's Office where he was
20 taken into an interview room at the office. That would be
21 where I conducted the interview with Mr. Savage.

22 Q Did you have him -- his hands swabbed for gunshot
23 residue prior to speaking with him?

24 A I'm not sure if it was prior to or just after but it
25 would of been done all at the same time.

Lorin Williams - Direct examination
by Solicitor Bulsa

1 Q Okay. All right. And prior to speaking to him, did
2 you read him his rights?

3 A Yes, sir, I did.

4 (WHEREUPON, the rights form was marked as State's
5 Exhibit No. 21 for identification purposes only at this
6 time.)

7 Q I'd like to show you what's been marked State's Exhibit
8 No. 21 I believe entered without objection.

9 MR. MITCHELL: I have no objection to it.

10 THE COURT: All right. Without objection, it will be
11 admitted as it's been marked.

12 (WHEREUPON, State's Exhibit No. 21 was received into
13 evidence at this time.)

14 THE COURT: You may proceed.

15 Q Investigator Williams, what is that document?

16 A This, this is a document that is used by the Sheriff's
17 Office. It is called a pre-interrogation waiver form.
18 Basically what it does is it outlines each and every one of
19 your rights.

20 You want me to---

21 Q No.

22 A Okay.

23 Q Did he understand his rights?

24 A Yes, he did.

25 Q And did he sign acknowledging that he did understand

Lorin Williams - Direct examination
by Solicitor Bulsa

1 them?

2 A He did.

3 Q And did he agree to speak with you?

4 A He did.

5 Q Okay. How long did you speak with him?

6 A I don't remember exactly how long we were in the
7 interview but Mr. Savage did, did make a couple statements
8 to me. I -- after the interview was concluded, I always,
9 after we've gone through everything, I give everyone an
10 opportunity to give a written statement and he indicated
11 that he did not want to give a statement and that pretty
12 much ended the interview.

13 Q Okay. Did you document your conversation with him?

14 A I did.

15 Q Okay. And in your questioning of him, did -- what did
16 he say about whether he was at the scene or not?

17 A If I may refer to my notes on that particular part?

18 Q (Nods affirmatively.)

19 A He originally said that, that he was not there.

20 Q So he denied being there?

21 A Yes, sir.

22 Q And did that change while you interviewed him?

23 A It did.

24 Q How so?

25 A When I told him that we had a witness that had placed

Lorin Williams - Direct examination
by Solicitor Balsa

1 him there in the vehicle that he was stopped in, I asked him
2 how, you know, how, how would that person be able to
3 describe the truck, describe him if he weren't there.

4 Q what did he say?

5 A He said he didn't know. Then I asked him if he had any
6 knowledge or if he remembered being in a fight inside of the
7 club. He didn't answer.

8 Q Did he admit to being in a truck?

9 A He stated that he could of been but he was not driving
10 it.

11 Q Okay. Now, that was the final conclusion he gave you
12 but did he earlier say whether he was inside that truck?

13 Did he deny, deny even being in the truck?

14 A He denied being there at all. He stated that he was
15 not even in a truck.

16 Q Okay. And then when you pressed him some more, he
17 finally admitted being there and said, if he was in the
18 truck, he wasn't driving?

19 A Correct.

20 Q And that was, in essence, the substance of the
21 conversation?

22 A That was, yes, sir, that was the extent of it.

23 Q And he refused to put that in writing?

24 A That's correct.

25 Q Okay. was he then taken to the jail?

Lorin Williams - Direct examination
by Solicitor Bulsa

1 A Yes, sir.

2 Q And his clothing was collected?

3 A It was.

4 Q All right. Okay. Thank you. Answer anything Mr.
5 Mitchell may have.

6 THE COURT: Mr. Mitchell, your witness.

7 MR. MITCHELL: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MITCHELL:

10 Q Mr. Williams, when you spoke to Mr. Savage, Mr. Savage,
11 did he emphatically deny having any involvement with the
12 shooting of Mr. Jackson?

13 A Did he deny having any --?

14 Q Involvement with the shooting of the victim.

15 A He did.

16 Q I'm sorry?

17 A He did.

18 Q Okay. And if I'm not mistaken, you indicated that that
19 was -- someone had placed him at the scene?

20 A That's correct.

21 Q Could you tell me who that was?

22 Does Cedrick Jones sound familiar to you?

23 A It would of been the security guard at Universal
24 Events.

25 Q Okay. And can you tell me which one?

Lorin Williams - Cross-examination
by Mr. Mitchell

1 How many -- there were several security guards there if
2 I'm not mistaken.

3 A I believe his name would be in Investigator Bryant's---

4 Q Bryant.

5 A ---report cause he was the one that had actually spoken
6 to him at that point in time.

7 Q All right. Now, you also were given several names for
8 investigating this incident, were you not?

9 A Yes, sir.

10 Q The name of Derrick Tate?

11 SOLICITOR BULSA: Objection, Your Honor.

12 THE COURT: The objection is?

13 SOLICITOR BULSA: We've addressed that previously.

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, I'm gonna ask you to step back to the jury room.
16 Don't begin any discussions about this case until I ask you
17 to do so. I need to take up a matter with the attorneys.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. Mr. Bulsa, you may fully state
21 your objection.

22 SOLICITOR BULSA: Thank you, Your Honor.

23 He's trying to go into the same information that he
24 asked Officer Brad James regarding the names of other
25 persons. We addressed that at the pretrial hearing

Lorin Williams - Cross-examination
by Mr. Mitchell

1 regarding third party guilt. Just the mere fact that a name
2 was given does not suggest that those persons were involved.
3 That's not consistent with the defendant's own guilt.

4 MR. MITCHELL: May it please the Court.

5 Your Honor, my good friend is making a conclusion in
6 regard to my client who is standing trial contesting these
7 charges as being guilty. This gentleman has a written
8 report that he has given and supplemented in regards to
9 investigating other individuals, other names. That's merely
10 all I was asking in regards to his investigation as far as
11 all the people whose names he was given. Not withstanding
12 the fact that my client is on trial, he can't be concluded
13 as being guilty, as being the one who did it since he
14 admitted that he denied that he was involved.

15 I think I have a right to ask this gentleman whether or
16 not, as far as his investigations were concerned, if other
17 names were given.

18 THE COURT: Well, just to say that, are you asking if
19 there are other names given as to the perpetrator --

20 MR. MITCHELL: Yes, sir.

21 THE COURT: -- or other names given as witnesses who
22 should be talked to?

23 MR. MITCHELL: No, sir, other names given as far as
24 suspects were concerned.

25 THE COURT: Okay. So, you are trying to raise the

Lorin Williams - Cross-examination
by Mr. Mitchell

1 issue of a third party guilt?

2 MR. MITCHELL: No, sir.

3 THE COURT: Maybe I misunderstood.

4 MR. MITCHELL: Investigating. Not a third party guilt.
5 But someone who actually that this gentleman put into his
6 report that he investigated before centering in on my client
7 or focusing on my client. Rather this has nothing to point
8 to as far as investigating someone else's guilt, Your Honor,
9 but the one that's standing trial that or the solicitor has
10 already basically concluded he's guilty.

11 THE COURT: Well, I'm sure the solicitor has concluded
12 that's who should be charged cause that's where we are.

13 MR. MITCHELL: That's right. That's why we're here.

14 THE COURT: Yes, sir, exactly. So that -- I understand
15 that. But, again, the question of the evidence of some
16 third party doing it, my understanding is that I'm suppose
17 to view that evidence, not from the prospective of the
18 State's case, but from your case. And so I am trying to do
19 that.

20 I'm trying to find out is there any evidence to support
21 that someone else did the crime that would exclude your
22 client from doing the crime?

23 MR. MITCHELL: Under the circumstances, I think we
24 already have the name of Mr. Miller.

25 THE COURT: Well, just a name being given is

Lorin Williams - Cross-examination
by Mr. Mitchell

1 interesting. I'm trying to find out the strength of your
2 case.

3 You see, my understanding of how I'm suppose to analyze
4 this is to determine whether there is substantial evidence
5 that would indicate a third party committed the crime and
6 that evidence would exclude your client from being guilty of
7 that crime.

8 MR. MITCHELL: I understand but, Your Honor---

9 THE COURT: And so, just a name being given to a police
10 officer as someone they should investigate, is that the
11 strength of your case?

12 MR. MITCHELL: Well, not necessarily.

13 THE COURT: Okay. That's what I'm asking. I want to
14 know---

15 MR. MITCHELL: Several names were given.

16 THE COURT: I want to know what the strength of your
17 case is on that particular point.

18 MR. MITCHELL: I want to know why it is Mr. Bryant gave
19 this information and focused in on my client when he was out
20 here investigating him.

21 THE COURT: Well, I'm gonna let you make a proffer.
22 You can ask him about these third parties and see if there's
23 any evidence that would exclude your client from being
24 guilty and would point to the guilt of a third party.

25 MR. MITCHELL: That will be fine.

Lorin Williams - Cross-examination
by Mr. Mitchell

1 THE COURT: He's your witness. Question him.

2 MR. MITCHELL: Okay.

3 THE COURT: I'll let you make a proffer.

4 MR. MITCHELL: Thank you.

5 CONTINUED CROSS-EXAMINATION

6 BY MR. MITCHELL:

7 Q Your statement indicated that you responded to the
8 Sheriff's office and then you were given the name of a
9 Derrick Tate, were you not?

10 A Yes, sir.

11 Q You were also given the name of another party?

12 A I'm sorry?

13 Q Another party, Broderick Deon Tate, were you not, and I
14 believe your records say -- the records say that this
15 individual was closer to the, to the description of the
16 suspect.

17 A You're correct. Broderick Deon Tate.

18 Q Uh-huh. (Affirmative).

19 So, in other words, what made you focus in on Mr.
20 Savage?

21 A We got photo lineups done of the other two and it was
22 confirmed, through the witnesses, that he was -- they were
23 not the person that he had seen.

24 Q Who culled out the photo lineups?

25 A Who did them?

Lorin Williams - Cross-examination
by Mr. Mitchell

1 Q Yes.

2 who isolated the photo lineups?

3 A They were generated by the State Law Enforcement
4 Division.

5 Q well, how did the State Law Enforcement get the six
6 names that you-all looked at?

7 A They were given his name and then a random computer
8 generated the six person lineup based on common
9 characteristics.

10 Q Based on electronics?

11 A Based on the way it's designed, yes.

12 Q And that's why he's here?

13 A He was identified.

14 Q By whom?

15 A Can I see the lineups?

16 SOLICITOR BULSA: Do you have a copy in your---

17 THE WITNESS: I don't know where it is.

18 (Pause.)

19 THE WITNESS: No, sir.

20 SOLICITOR BULSA: Do you have the lineup please?

21 Q Did Mr. Bryant identify Mr. Savage?

22 A Sir?

23 Q Mr. Bryant, did he identify---

24 A He's an investigator.

25 Q ---my client?

Lorin Williams - Cross-examination
by Mr. Mitchell

- 1 So he---
- 2 SOLICITOR BULSA: I think you need to show him the
3 lineup if you want him to look at it.
- 4 A Errol Graham.
- 5 Q Errol Graham.
- 6 Was me a bouncer at the club?
- 7 A I think he was a security officer at the club.
- 8 Q Okay. Did you ask him how it is that he isolated
9 Shedrick Savage?
- 10 A Yes, sir, it's my understanding that he was familiar
11 with Mr. Savage from being a resident over in Gaffney. Knew
12 who he was.
- 13 Q Did you ask him also how he identified Miller?
- 14 A No, sir, I did not interview him. He was presented the
15 lineups by Sergeant Bryant and then I was given the
16 information during the interview.
- 17 Q And did he tell you that he saw Mr. Savage shoot
18 Mr. Jackson for him to be isolating in that lineup?
- 19 A He indicated he was involved in the altercation inside
20 the club and he also indicated that he had seen them get
21 into the truck.
- 22 Q Well, you needed---
- 23 A And Mr. Savage was driving.
- 24 Q He did indicate that he saw him shoot him, this
25 Mr. Jackson, did he?

Lorin Williams - Redirect examination
by Solicitor Bulsa

1 A No, sir.

2 Q Thank you. Thank you, sir.

3 That's it, Your Honor. That's what---

4 THE COURT: Do you wish to examine the witness on any
5 of that information?

6 REDIRECT EXAMINATION

7 BY SOLICITOR BULSA:

8 Q The two names that Mr. Mitchell asked you about,
9 Derrick Tate and Broderick Deon Tate, were they excluded as
10 suspects---

11 A They were.

12 Q ---during your investigation?

13 A Yes, sir.

14 Q Okay. And so their names, could they come up at any
15 other time in this investigation?

16 A Not that I recall, no, sir.

17 Q Thank you.

18 THE COURT: Anything else?

19 MR. MITCHELL: One other thing, Your Honor.

20 RE CROSS-EXAMINATION

21 BY MR. MITCHELL:

22 Q Your reports say you were also told that three people
23 were in the cab in that truck?

24 A Correct.

25 Q Thank you.

Lorin Williams - Recross examination
by Mr. Mitchell

1 THE COURT: All right. Now, I'll hear from you, Mr.
2 Mitchell.

3 MR. MITCHELL: Your Honor, that basically is -- that
4 basic proffer is why I was going to basically ask him in
5 regards to the report that he submitted and he supplemented
6 it in regards to it with putting the third person in that
7 car, that truck.

8 THE COURT: Mr. Bulsa.

9 SOLICITOR BULSA: Well, Your Honor, I think that's
10 actually hearsay as to whether he was told by someone that
11 there's a third person in the car.

12 MR. MITCHELL: Well, it---

13 THE COURT: Is that evidence that can be introduced,
14 Mr. Mitchell, if it's hearsay?

15 MR. MITCHELL: Well, I think it's basically hearsay. I
16 think this is in a report---

17 THE COURT: Well, didn't he say somebody told him that
18 that's what happened?

19 MR. MITCHELL: His investigation supposedly revealed
20 that there were three people in that truck. This is based
21 on his investigation and his report.

22 THE COURT: How did he get that information, Mr. Bulsa?

23 SOLICITOR BULSA: That's what -- I'm trying to find it
24 in his report.

25 Where do you see that, Mr. Mitchell?

Lorin Williams - Recross examination
by Mr. Mitchell

1 (Pause.)

2 SOLICITOR BULSA: That came from a witness interviewed
3 in January of 2015, Your Honor.

4 THE COURT: I'm sorry?
5 what did you say?

6 SOLICITOR BULSA: That came from a witness that was
7 interviewed by Mr. Williams in January of 2015.

8 MR. MITCHELL: And if I'm not mistaken, Mr. Jones was
9 interviewed---

10 THE COURT: Now, are you asking questions of the
11 witness again?

12 MR. MITCHELL: No. No, sir, if I'm understanding, I'm
13 just saying a witness -- Mr. Bulsa just indicated that this
14 information came from a witness in 2015 and that's when Mr.
15 Drummond and Mr. Jones had made contact with this gentleman
16 and went down and did the statements.

17 SOLICITOR BULSA: Well, that, that witness was Ruben
18 Landrum, Your Honor.

19 MR. MITCHELL: Mr. Landrum.

20 SOLICITOR BULSA: And that's stated in Mr. Williams
21 report.

22 MR. MITCHELL: And he was a security guard at the club
23 at the time.

24 SOLICITOR BULSA: Mr. Landrum was not a security guard.
25 Mr. Landrum was someone at the club.

Lorin Williams - Recross examination
by Mr. Mitchell

1 MR. MITCHELL: Well, he was there.

2 THE COURT: Mr. Mitchell, the rule that we have in our
3 state, and I think this correctly states it, evidence
4 offered -- Mr. Bulsa gave me this yesterday. Evidence
5 offered by an accused in the commission of the crime by
6 another person must be limited to such facts as to raise a
7 reasonable inference or presumption as to his own innocence.
8 That being your client's innocence.

9 MR. MITCHELL: That's correct.

10 THE COURT: Evidence which can have no other effect
11 than to cast a bare suspicion upon another or to raise a
12 conjectural inference as to the commission of a crime by
13 another is not admissible. Therefore, such testimony can be
14 received -- before such testimony can be received, there
15 must be such proof of connection with it, such a train of
16 facts or circumstances, as tends to point out that the
17 other -- point out the other person as the guilty party.

18 Now, that rule was interpreted by the U.S. Supreme
19 Court in the case of Holmes versus South Carolina in 2006
20 and I have that case in front of me at this time. They
21 didn't exclude the rule.

22 What they said was that, up until that time, you could
23 analyze the case and the issue from the prospective of the
24 State's case only, and if the State had such a good case
25 against the defendant, then a defendant, unless they had

Lorin Williams - Recross examination
by Mr. Mitchell

1 something that totally showed someone else doing it,
2 couldn't go into third party guilt, and what the U.S.
3 Supreme Court said was that I have to analyze this issue
4 from a review of what the State has and from what you have.

5 So, I've got to look at the strength of your case on
6 this point.

7 MR. MITCHELL: I understand but, Your Honor---

8 THE COURT: So, that's where I'm -- right now we have
9 people who have given him names, that he followed up on, and
10 for one reason or another, has excluded those people as
11 possible suspects in the case.

12 MR. MITCHELL: That would be---

13 THE COURT: And so I'm looking for evidence as stated
14 in the rule.

15 MR. MITCHELL: I understand that but, Your Honor---

16 THE COURT: Let me finish what I'm saying---

17 MR. MITCHELL: All right.

18 THE COURT: ---Mr. Mitchell.

19 MR. MITCHELL: Yes, sir, go ahead.

20 THE COURT: I'm looking for evidence that says, before
21 such testimony can be received, there must be such proof of
22 a connection with it, such a train of facts or
23 circumstances, as tend to, tends to point out such other
24 party as the guilty person.

25 what evidence do you have these other people actually

Lorin Williams - Recross examination
by Mr. Mitchell

1 committed the crime?

2 MR. MITCHELL: There is no evidence that these two
3 individuals that Mr. Williams investigated committed the
4 crime. What we're basically saying is that Mr. Williams has
5 information that was given to him that there were three
6 people in that truck and he continued to---

7 THE COURT: And how does that make your client innocent
8 if he was the driver and the shot came from the driver's
9 side?

10 MR. MITCHELL: But it doesn't show that he shot him.

11 THE COURT: I didn't say it showed he shot him.

12 I said how does that show that your client is innocent
13 if there had been five people in the truck?

14 MR. MITCHELL: Then if he basically was in that posture
15 and then, Your Honor, he wouldn't be sitting here. It would
16 show that he was, in essence, innocent. He's presumed to
17 have done or perpetrated the act but then there were two
18 other people in that truck that could have perpetrated this
19 act also.

20 THE COURT: Again, before such testimony can be
21 received, there must be such proof of connection with it,
22 such a train of facts, a train of facts or circumstances, as
23 tends to point out such other persons as the guilty party.

24 Now, your client doesn't have a duty to prove anything
25 in this courtroom.

Lorin Williams - Recross examination
by Mr. Mitchell

1 MR. MITCHELL: That's correct.

2 THE COURT: I'm not shifting the burden to him by doing
3 this. What I am doing is trying to follow the Holmes case,
4 which says that I have to analyze this from the strength of
5 both cases, the information available to both sides, and,
6 right now, you have such information that might show, might
7 show, that a third party was in the, in the cab.

8 MR. MITCHELL: But---

9 THE COURT: I'm not sure how that bears on the guilt or
10 innocence of any of them.

11 MR. MITCHELL: I understand, Your Honor, and I'll
12 conclude by saying Mr. Williams investigation showed that
13 there were three people in that, in that cab, in that truck.

14 THE COURT: All right. Mr. Bulsa, anything else?

15 SOLICITOR BULSA: No, sir.

16 THE COURT: All right. Well, I'm gonna find that,
17 Mr., Mr. Mitchell, that that's not sufficient to meet the
18 test and I'm reviewing it from both sides. If there were
19 additional evidence that shows that a third party actually
20 committed the event, some witness who said the shot came
21 from the other side of the cab, some, something of that
22 nature, then I would consider the, the situation to be
23 different.

24 MR. MITCHELL: Yes, sir.

25 THE COURT: But here, the only evidence you have is

Lorin Williams - Recross examination
by Mr. Mitchell

1 that there might have been a third person in the cab.

2 MR. MITCHELL: Yes, sir.

3 THE COURT: Now, I'm not -- and it's a fine line we
4 walk here, Mr. Mitchell. So, I'm not gonna prevent you,
5 however, from asking him who he interviewed or who he -- the
6 thoroughness of his investigation. You've got a right to go
7 into that, I think, to a certain degree.

8 MR. MITCHELL: All right.

9 THE COURT: But to point to those people as the
10 possible perpetrators in the case, third party defense
11 evidence requires that there be a -- more than what you have
12 in my estimation.

13 MR. MITCHELL: All right, sir.

14 THE COURT: So, then I'm not gonna let you go there as
15 far as third party guilt.

16 MR. MITCHELL: All right, sir.

17 THE COURT: Do you understand my ruling, Mr. Bulsa?

18 SOLICITOR BULSA: Yes, sir. Thank you.

19 THE COURT: So, I will let him go into who he
20 interviewed, who he talked to, what he did as far as his
21 investigation but we're not going to go any further than
22 that.

23 SOLICITOR BULSA: Yes, sir.

24 THE COURT: All right. Let's bring the jury in.

25 (WHEREUPON, the following takes place within the

Lorin Williams - Cross-examination
By Mr. Mitchell

1 presence of the jury.)

2 THE COURT: All right. The record will reflect the
3 jury has returned to the courtroom.

4 I've gone over some matters with the attorneys involved
5 in this case and I have made a ruling. I won't say -- I
6 guess I affirmed the objection in part and I've explained to
7 the attorneys how I will allow them to proceed.

8 Mr. Mitchell.

9 MR. MITCHELL: Thank you, Your Honor.

10 THE COURT: You may proceed.

11 MR. MITCHELL: May it please the Court, Your Honor?

12 THE COURT: Yes, sir.

13 CONTINUED CROSS-EXAMINATION

14 BY MR. MITCHELL:

15 Q Mr. Williams, just a few more questions in regards to
16 it.

17 You did the investigation in this case obviously?

18 A Yes, sir.

19 Q All right. You came up with some other names that were
20 given to you, did you not?

21 A There were some other names that were given early on,
22 yes, sir.

23 Q They were investigated and they were what, cleared?

24 A Yes, sir, they were found not to be involved in this,
25 in this case.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 Q Okay. And you were also given information from the Mr.
2 -- you said Landrum or Gresham about the occupancy in that
3 truck, were you not?

4 SOLICITOR BULSA: Objection, Your Honor. That's gonna
5 get into hearsay.

6 THE COURT: I'll instruct the witness that he can not
7 testify as to hearsay matters. He can testify that -- what
8 he learned as a result of his investigation, what his state
9 of mind was once we completed his investigation.

10 MR. MITCHELL: Thank you, Your Honor.

11 THE COURT: So, I will not let him, however, quote
12 third parties, what they said.

13 MR. MITCHELL: Yes, sir.

14 THE COURT: Okay. You may proceed.

15 Q Did your investigation also reveal that there were
16 three people in that truck?

17 A The only indication that we had that there would, would
18 have been someone else in the truck would have been from
19 someone that we talked to.

20 Q But you were told that there were three people in the
21 truck, weren't you?

22 A It was indicated---

23 SOLICITOR BULSA: That's asking, that's asking for
24 hearsay.

25 THE COURT: Again, I'm not gonna let him testify as to

Lorin Williams - Cross-examination
By Mr. Mitchell

1 what somebody told him. But you can ask him, as a result of
2 his investigation, did he consider that issue and what
3 conclusions he came to.

4 MR. MITCHELL: Thank you, Your Honor.

5 After the investigation, did you make a conclusion?

6 A I had no reason, based on any evidence that we had,
7 about any other person being in the truck other than what
8 was said.

9 Q But did you find that there were three?

10 A No.

11 Q But you were told there were three?

12 SOLICITOR BULSA: Objection, Your Honor.

13 THE COURT: Again, I'm gonna sustain that objection as
14 to hearsay.

15 Q You put it in your report, didn't you?

16 SOLICITOR BULSA: Objection, Your Honor.

17 THE COURT: Mr. Mitchell, you can ask him if -- what
18 conclusions and what matters he considered, but, again, as
19 far as what somebody said to him, that -- you know the rule
20 on hearsay.

21 MR. MITCHELL: Yes, sir, but he's out here seeking to
22 avoid his own statement that he gave in regard to---

23 THE COURT: Well, if he made a statements, show him his
24 statement and let him review it. There's a way to handle
25 prior inconsistent statements, Mr. Mitchell.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 Q Do you remember making this statement?

2 A I have it right here.

3 Q You have it right there.

4 SOLICITOR BULSA: Your Honor, that's a report. That's
5 not a statement.

6 THE WITNESS: It's not a statement. It's a---

7 Q Well, this is a report, isn't it?

8 A It is.

9 Q You wrote it, didn't you?

10 A Yes, sir.

11 Q That's your name up there, isn't it?

12 A Okay.

13 Q It's a supplemental on there to the initial report,
14 isn't it?

15 A I'm very well aware of what it is.

16 Q Okay. Now---

17 SOLICITOR BULSA: What it contains, Your Honor, is---

18 Q I'm gonna ask you this.

19 THE COURT: Just one second. I have an objection.

20 Mr. Bulsa, what's the objection?

21 SOLICITOR BULSA: It contains hearsay information he
22 obtained from other persons and that's what Mr. Mitchell is
23 trying to get him to---

24 THE COURT: Well, I'm gonna let him state whether or
25 not that -- what -- the result of his investigation or not.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 I haven't read it. I don't know what it says. Nobody has
2 shown it to me.

3 MR. MITCHELL: Well---

4 THE COURT: But go ahead.

5 MR. MITCHELL: I just want to -- I'm just trying to get
6 the gentleman to acknowledge that he wrote this report, and
7 he's avoiding it in regards to it.

8 A No, sir, I'm not, I'm not avoiding that I wrote the
9 report.

10 Q Yeah, you are---

11 A I certainly wrote the report.

12 Q Okay. This is January 14---

13 THE COURT: Now, Mr. Mitchell, I'm gonna let him answer
14 the questions. You're not gonna cut him off. Let's not
15 argue.

16 MR. MITCHELL: Fine.

17 THE COURT: You can ask questions. I'll see that he
18 answers your questions.

19 MR. MITCHELL: Thank you, Your Honor.

20 Q Now, I'm gonna ask you this, sir. I have this
21 underlined right here.

22 SOLICITOR BULSA: Objection, Your Honor. He's going --
23 asking him a specific hearsay question.

24 MR. MITCHELL: I'm asking---

25 THE COURT: All right. wait a second.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 Ladies and gentlemen of the jury, step back to the jury
2 room. I've got some matters I need to take up with the
3 lawyers. Please don't discuss the case during your absence.

4 MR. MITCHELL: This is what he---

5 THE COURT: Mr. Mitchell, if you'll be quiet while the
6 jury leaves.

7 Thank you.

8 MR. MITCHELL: I apologize.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Now, Mr. Mitchell, there is a way, in the
12 rules, that allows you to go into any prior inconsistent
13 statement that's made.

14 Are you aware of that?

15 MR. MITCHELL: I'm aware of it.

16 THE COURT: That you have to inform him for whatever
17 statement you think he made. You have to show him the
18 statement, when it was made, and give him an answer -- an
19 opportunity to say whether or not he made a particular
20 statement.

21 MR. MITCHELL: Your Honor, only then---

22 THE COURT: And then if he disagrees, disagrees with
23 that, making that statement, if he denies it, then he has --
24 you have the right then to go into extrinsic evidence to
25 prove he said something otherwise.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 MR. MITCHELL: Thank you, Your Honor.

2 Your Honor, the reason---

3 THE COURT: So, if you're trying to impeach his
4 position, that's how you go about doing that.

5 MR. MITCHELL: I understand. I'm just trying to get a
6 clarification on it because my client is written on this
7 document. That's one of the biggest problems I have as far
8 as some comments that he has placed on it and I was---

9 THE COURT: Who has placed comments on it?

10 MR. MITCHELL: My client has.

11 THE COURT: Well, we can get you a -- you got a clean
12 copy?

13 We'll make you a clean copy.

14 Is there one in evidence?

15 SOLICITOR BULSA: I think the investigator has got one
16 right up there with him.

17 THE COURT: All right.

18 THE WITNESS: Your Honor, I just marked on mine.

19 THE COURT: Well, can you read it?

20 THE WITNESS: Yes, sir.

21 THE COURT: Mr. Bulsa, retrieve it. Let's make a copy
22 for Mr. Mitchell please.

23 SOLICITOR BULSA: I've got -- I can make a copy of
24 mine.

25 THE COURT: All right.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 SOLICITOR BULSA: Your Honor, while she's doing that,
2 may I---

3 THE COURT: Yes, sir, I'll be happy to hear from you.

4 SOLICITOR BULSA: This report is a collection of
5 information he obtained. In the place that Mr. Mitchell is
6 referring to is a summation of an interview Mr. Williams had
7 with a Ruben Landrum. Mr. Ruben Landrum is on the witness
8 list. He was subpoenaed by our office.

9 When I spoke with Mr. Landrum, I learned that what he
10 told us was essentially hearsay. He's -- everything he was
11 saying he overheard he was told. So, therefore, I chose not
12 to call him as a witness. If Mr. Mitchell wants to call him
13 as a witness, we can get him here.

14 THE COURT: Mr. Landrum is on the list. Mr. Landrum,
15 if Mr. Landrum told Mr. Williams this, he gave him this
16 information, Your Honor, I certainly think that he would be
17 indispensable. I believe he---

18 THE COURT: Well, you have a right to subpoena anybody
19 you'd like to subpoena.

20 MR. MITCHELL: Well, I had no idea I'd be going through
21 this where the gentleman is seemingly backing out of his own
22 statement.

23 THE COURT: Well, I'll sign a subpoena right now.

24 SOLICITOR BULSA: Do you want Mr. Landrum here?

25 MR. MITCHELL: Yes, sir, if you, if you can call him.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 SOLICITOR BULSA: I'll have somebody call him and get
2 him here.

3 MR. MITCHELL: Thank you.

4 THE COURT: Now, let's go through Rule 613(b). Rule
5 613(b) says extrinsic evidence of a prior inconsistent
6 statement by a witness is not admissible unless the witness
7 is advised of the substance of the statement, the time and
8 place it was allegedly made, and the person to whom it was
9 made, and given the opportunity to explain the statement.

10 MR. MITCHELL: Yes, sir.

11 THE COURT: So, if you say that there's a statement in
12 his report that you feel that he is not being consistent
13 with in his prior testimony, you must advise him of what you
14 think is the inconsistent statement, when and where it was
15 made. Show it to him, if necessary. It goes on to say then
16 that, if a witness does not admit that he made the prior
17 statement, extrinsic evidence of such statement is
18 admissible.

19 So, I'm not going to allow you to prove what's in his
20 report---

21 MR. MITCHELL: I understand.

22 THE COURT: ---unless he denies what's in his report.

23 MR. MITCHELL: I understand.

24 THE COURT: We haven't gone through that step at this
25 point in time.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 MR. MITCHELL: Not yet, no, sir.

2 THE COURT: And I'm going to insist that we follow the
3 rule.

4 MR. MITCHELL: That's the rule, Your Honor.

5 THE COURT: It is the rule.

6 MR. MITCHELL: And we will stick to it.

7 THE COURT: Yes, sir.

8 So, if you want to get into what's in his statement,
9 you're gonna first have to say didn't you write a report,
10 and, in that report, didn't you say whatever you said he
11 says, and then you got to stop and give him a chance to
12 explain his -- whether or not he made the statement---

13 MR. MITCHELL: Yes, sir.

14 THE COURT: ---or explain the statement.

15 SOLICITOR BULSA: Can we have him do it here before the
16 jury comes in?

17 THE COURT: Sure. Let's make a proffer.

18 MR. MITCHELL: All right. My proffer is this.

19 CONTINUED CROSS-EXAMINATION

20 BY MR. MITCHELL:

21 Q Mr. Williams, did you write a report?

22 A Yes, sir, I did.

23 Q Did you compile the report into writing?

24 A Yes, sir, I did.

25 Q Okay. Did you submit this report to law enforcement,

Lorin Williams - Cross-examination
By Mr. Mitchell

1 the solicitor's office?

2 A I did.

3 Q In that report, did you have an entry about three
4 people being in the cab of the truck?

5 A Absolutely.

6 Q He did.

7 Okay. And he's admitted that he did.

8 THE COURT: well, that's the end of the inquiry---

9 MR. MITCHELL: See.

10 THE COURT: ---unless he wants to get back into it on
11 direct to further explain it. He may think that that's not
12 the complete story and he has the right, in the interest of
13 completeness, to go back into it.

14 Yes, sir.

15 SOLICITOR BULSA: well, that -- it goes into the
16 hearsay, Your Honor, because the actual statement that
17 Mr. Mitchell is referring to is -- it says he told us they
18 were three people in the truck, and that is a documentation
19 of the hearsay that Mr. Ruben Landrum told Mr. Williams.
20 Not a fact that Mr. Williams determined.

21 MR. MITCHELL: That's why we need---

22 THE COURT: Is that in his conclusions?

23 why doesn't somebody provide me with a copy of the
24 statement.

25 I've got it. Here we go.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 THE WITNESS: I've underlined the exact---

2 THE COURT: That's okay.

3 (Pause.)

4 THE COURT: All right. Now, I've read it.

5 What this is is not a conclusion by this investigator
6 but he is paraphrasing a statement given by a witness that
7 was interviewed, a Mr. Landrum interviewed.

8 MR. MITCHELL: That's why I think it's good -- it's
9 best to have Mr. Landrum come, Your Honor.

10 THE COURT: I think that's where I'm going. You are --
11 I think if Mr. Landrum will come testify about that, this is
12 fine, but he -- this is not a conclusion made by this
13 investigator.

14 MR. MITCHELL: No, it's, it's an entry into the report
15 I must admit.

16 THE COURT: Yes, sir.

17 MR. MITCHELL: I understand that.

18 THE COURT: All right.

19 MR. MITCHELL: Thank you, sir.

20 THE COURT: So, you want to wait and talk to Mr.
21 Landrum?

22 MR. MITCHELL: Yes, sir.

23 THE COURT: Okay. Bring the jury -- well, let's take a
24 short break while the jury's out.

25 I'm gonna instruct you not to discuss your testimony

Lorin Williams - Cross-examination
By Mr. Mitchell

1 while we take this short break. We'll be in recess for
2 about five to ten minutes.

3 SOLICITOR BULSA: Yes, sir.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: All right. Is the State ready to proceed?

6 SOLICITOR BULSA: Yes, sir.

7 THE COURT: Defense ready?

8 MR. MITCHELL: Yes, sir, Your Honor.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: All right. The jury has returned to the
13 courtroom.

14 I have sustained an objection.

15 You may continue, Mr. Mitchell, with cross-examining,
16 examination of the witness.

17 MR. MITCHELL: Thank you very much, Your Honor.

18 THE COURT: Yes, sir.

19 CONTINUED CROSS-EXAMINATION

20 BY MR. MITCHELL:

21 Q Mr. Williams, just a couple more questions in regards
22 to where we're headed.

23 You wrote out a report, did you not?

24 A Yes, sir, I did.

25 Q Based on information that was given to you?

Lorin Williams - Cross-examination
By Mr. Mitchell

1 A That's correct.

2 Q And this report was turned over to law enforcement. I
3 assume -- law enforcement, the Solicitor's Office, what have
4 you?

5 A Yes, sir, it was eventually given to the Solicitor's
6 Office.

7 Q Okay. And, in the report, did you, in anyway, include
8 information regarding the occupancy of the truck?

9 SOLICITOR BULSA: Your Honor, that's the same thing we
10 just went over.

11 THE COURT: Are you objecting?

12 SOLICITOR BULSA: Yes, sir, I am.

13 THE COURT: All right.

14 Q Did---

15 THE COURT: I'll sustain the objection.

16 Q Did your report indicate that there were three
17 people---

18 SOLICITOR BULSA: Objection, Your Honor.

19 THE COURT: Mr. Mitchell, I've, I've ruled on this
20 already.

21 SOLICITOR BULSA: Your Honor, I thought we had gotten
22 through with this.

23 THE COURT: Well, let's send the jury back out.

24 Ladies and gentlemen of the jury, if you'll return to
25 the jury room. Don't discuss anything about this case until

Lorin Williams - Cross-examination
By Mr. Mitchell

1 I ask you to do so.

2 (WHEREUPON, the following takes place outside the
3 presence of the jury.)

4 THE COURT: Mr. Mitchell, how does that differ from
5 what we talked about earlier?

6 MR. MITCHELL: If I'm not mistaken, Your Honor, I just
7 was gonna ask the gentleman if he read his report. I think
8 it's---

9 THE COURT: No, that's not what you asked him. You
10 asked him if there -- if he included anything in his report
11 that might of indicated that there were three parties, three
12 people in the cab of the truck.

13 Now, I've told you that you certainly have a right to,
14 to cross-examine him and impeach him on any statements that
15 he made. You have a right to ask him the thoroughness of
16 his investigation.

17 Now, as to what one particular witness may have said in
18 an interview, the State's making the objection that that
19 statement is hearsay. I read the report and what's included
20 in the report is a synopsis or a summary of a -- other -- of
21 witnesses statements. Mr. -- what was his name, Mr. Bulsa?

22 SOLICITOR BULSA: Ruben Landrum.

23 MR. MITCHELL: Landrum.

24 THE COURT: Mr. Landrum. I'm sorry.

25 Now, that's not a conclusion by this investigator.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 It's not something -- a statement that he made in anyway.

2 You're asking him about some third party statement in
3 that, in that, which may or may not be hearsay as well.

4 Now, when we finished our discussion about that
5 earlier, you said you would wait and ask Mr. Landrum about
6 that. Mr. Bulsa agreed to try to get him present.

7 So, why are we back on this again?

8 MR. MITCHELL: well, that being the case, as long as
9 Mr. Landrum is gonna come and give some testimony that he
10 gave to Mr.---

11 THE COURT: well, I can't guarantee that he will be
12 here. I told you that, if you wished for the Court to issue
13 a subpoena to him, I would see that one was issued.

14 MR. MITCHELL: Your Honor, I wish for the Court to
15 issue a subpoena.

16 THE COURT: Then you need to get with the clerk and
17 have a subpoena prepared and certainly the clerk can issue
18 that subpoena.

19 MR. MITCHELL: Thank you, Your Honor, because I thought
20 Mr. Bulsa said that he would get him here but I'll get the
21 subpoena.

22 SOLICITOR BULSA: We had -- I had an investigator call
23 the number we had. It was his mother's. Mr. Smith leads me
24 to believe that the mother is not that cooperative. So, I'm
25 not sure if she's gonna get the information to him. I did

Lorin Williams - Cross-examination
By Mr. Mitchell

1 have a record of where he works. We're gonna check his work
2 site at Belk Distribution in Union.

3 THE COURT: All right. Well, you did not subpoena him
4 apparently?

5 MR. MITCHELL: No, I would take Mr. Bulsa's word on it.
6 I've always taken his word.

7 THE COURT: Well, you know, you have the right to issue
8 subpoenas as well.

9 MR. MITCHELL: I understand but I had no idea I would
10 need to.

11 THE COURT: And the State doesn't have to call
12 everybody on their witness list.

13 MR. MITCHELL: Well, I understand. I understand,
14 especially if he had been here before but I -- Mr. Bulsa and
15 I, we have a mutual respect for each other and I've taken
16 him at his word.

17 THE COURT: Well, I'll let you---

18 MR. MITCHELL: I'd like to issue---

19 THE COURT: I've let you, Mr. Mitchell, make a complete
20 record on this issue. We've done two proffers on this
21 matter and my ruling is not going to change on it.

22 MR. MITCHELL: I understand.

23 THE COURT: So, if you continue to try to offer it, I
24 assume that you're not respecting my ruling.

25 MR. MITCHELL: Oh, I respect it very much, Your Honor.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 You know that.

2 THE COURT: Well, I'm -- why are we back on this again?

3 MR. MITCHELL: Well, at this point in time, I'm -- I
4 have no further questions of this witness. We can get
5 Mr. Landrum here.

6 THE COURT: Well, I'm not -- it's not my responsibility
7 to get him here.

8 MR. MITCHELL: I understand. I'd like---

9 THE COURT: Well, now, if he's been, if he's been
10 served with a subpoena, he fails to appear, I certainly can
11 make efforts to secure his presence through the police
12 officer.

13 MR. MITCHELL: Your Honor, I would like to go to the
14 Clerk's Office to have a subpoena issued to get Mr. Landrum
15 here.

16 THE COURT: All right, sir. We'll take a short break.
17 I'll stay on the bench. Go get it issued if you would.

18 MR. MITCHELL: Thank you.

19 (Pause.)

20 MR. MITCHELL: May I indulge the Court a minute?

21 THE COURT: Yes, sir.

22 (Pause.)

23 THE COURT: Mr. Bulsa, if you would give him the
24 address that you have for that witness?

25 SOLICITOR BULSA: Yes, sir.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 (Pause.)

2 THE COURT: Mr. Bulsa, is he in Spartanburg County?

3 SOLICITOR BULSA: His work site is actually Union
4 County. He lives in Spartanburg.

5 THE COURT: He lives in Spartanburg County?

6 SOLICITOR BULSA: Yes, sir, he was served in -- through
7 his mother at his residence and we've contacted her. She
8 said she's gonna try to get him.

9 THE COURT: Can you tell me where that is?

10 SOLICITOR BULSA: [REDACTED] is where we served
11 him. That's in Spartanburg County.

12 THE COURT: Okay.

13 SOLICITOR BULSA: But he works at Belk Distribution,
14 which is the old Disney distribution. Service is good in
15 another county. So --.

16 THE COURT: The question is whether or not the sheriff
17 can carry it across the county line or not.

18 SOLICITOR BULSA: We might have to get an officer to
19 help with that.

20 THE COURT: Now, Mr. Mitchell, it's going to be up to
21 you to get this served.

22 MR. MITCHELL: Well, now---

23 THE COURT: I'll be happy, I'll be happy to turn it
24 over to the Sheriff's office to tell them---

25 MR. MITCHELL: That's all right.

Lorin Williams - Cross-examination
By Mr. Mitchell

1 THE COURT: ---to tell them to serve it.

2 Now, there's a problem I've been told. The gentleman
3 works at the Belk Distribution Center, which might be in
4 Union County. Spartanburg County sheriff's deputies are not
5 gonna go to Union County to serve it.

6 Now, if a sheriff -- if a Union sheriff will meet them,
7 they can pass it off to him.

8 MR. MITCHELL: All right. I understand.

9 THE COURT: That's, that's -- I don't control that.

10 MR. MITCHELL: I understand, Your Honor.

11 SOLICITOR BULSA: I was just told that they think he
12 works on third shift at this location.

13 THE COURT: Okay. So, maybe he's at the Jenkins Street
14 address.

15 SOLICITOR BULSA: So, try his address first.

16 (Pause.)

17 THE COURT: All right. Thank you.

18 MR. MITCHELL: Thank you.

19 THE COURT: All right. Mr. Mitchell, I've turned the
20 subpoena that you had issued over to the Sheriff's Office
21 and ask that they serve it.

22 MR. MITCHELL: Thank you very much, Your Honor.
23 Certainly appreciate---

24 THE COURT: Beg your pardon?

25 MR. MITCHELL: I certainly appreciate your

1 accommodation.

2 THE COURT: Oh, yes, sir.

3 MR. MITCHELL: Thank you.

4 THE COURT: Are we ready to proceed?

5 MR. MITCHELL: Well, I have---

6 THE COURT: Do you understand my ruling now?

7 MR. MITCHELL: I understand. I have no further
8 questions of this witness.

9 THE COURT: Because if we go back into that, it's not
10 gonna be good.

11 MR. MITCHELL: I understand that. I have no further
12 questions of this witness at this time.

13 THE COURT: All right. Do you wish to go back into
14 some matters on redirect?

15 SOLICITOR BULSA: No, sir.

16 THE COURT: All right. You can step down then.
17 Are you ready to call your next witness?

18 SOLICITOR BULSA: The State's gonna---

19 THE COURT: As soon as I bring the jury in.

20 SOLICITOR BULSA: The State's gonna rest, Your Honor.

21 THE COURT: Okay. Well, let's go ahead and put that on
22 the record. We don't need the jury for that.

23 The State does rest at this time?

24 SOLICITOR BULSA: Yes, sir.

25 THE COURT: All right. The State has rested, Mr.

1 Mitchell.

2 Any motions you'd like to make?

3 MR. MITCHELL: Your Honor, I would move, at this time,
4 that the, the -- for a directed verdict of acquittal based
5 on the strength of the state's case, that they haven't met
6 their prima facie case, which is something that would go --
7 shouldn't go to the jury.

8 THE COURT: All right. Well, then I'll hear from Mr.
9 Bulsa about that motion.

10 SOLICITOR BULSA: Your Honor, we have eye witness
11 testimony as well as circumstantial evidence placing the
12 defendant in the truck and as being the, being the shooter
13 of the single shot that killed Mr. Landrum. It's clearly a
14 jury question.

15 THE COURT: All right. I find that there is sufficient
16 evidence for the case to go to the jury. So, motion for
17 directed verdict is denied at this time.

18 MR. MITCHELL: Your Honor, we would ask the Court, at
19 this time to, if it would, stand in recess until Mr. Landrum
20 can get here to be able to give some kind of testimony in
21 regards to the occupancy of the truck prior to the matter
22 being turned over to the jury.

23 THE COURT: Well, I don't know that I'm gonna stop the
24 trial until we find Mr. Landrum.

25 You want me to stop -- for how long do you want me to

1 stop for?

2 MR. MITCHELL: Well, until we can get him here.

3 THE COURT: Well, that might be next month.

4 MR. MITCHELL: No, sir, it won't take that long I don't
5 believe, Your Honor. But if, under the circumstances, he
6 can actually put some, what I would think is reasonable
7 doubt in regards to the occupancy of the truck, of that
8 truck, and certainly that is the reason we issued the --
9 had, had the subpoena issued.

10 THE COURT: Well, you just had the subpoena issued,
11 but, at any rate, I've got some matters I want to take up
12 with your client first. So, I want to do that.

13 MR. MITCHELL: All right, sir.

14 THE COURT: And then we'll discuss the -- Mr. Landrum's
15 status after that.

16 MR. MITCHELL: That will be fine.

17 THE COURT: All right. If you would, sir, Mr. Savage,
18 if you'd stand and be sworn please.

19 (WHEREUPON, the defendant was placed under oath at this
20 time.)

21 THE COURT: All right. Mr. Savage, you can be seated.

22 (WHEREUPON, the defendant complies.)

23 THE COURT: Mr. Savage, we have reached the point in
24 this trial where you have the right to present a defense.
25 I'm going to go over certain of your rights at this point in

1 time. Once I've finished my explanation, I will ask you if
2 you understand or if you need additional explanation, and,
3 and, if you do, I'm certain that I'll be glad to talk to you
4 about it and Mr. Mitchell will be glad to talk to you about
5 this.

6 Now, since we've reached this stage of the trial where
7 you have the right to present your defense, I need to make
8 you aware of certain protections that are afforded to you
9 under the Fifth Amendment to the United States Constitution.
10 That amendment reads, in part, that no person shall be
11 compelled, in a criminal case, to be a witness against
12 himself.

13 Now, what that means is, that while you have the right
14 to testify in your defense, you also have the right not to
15 testify and no one can make you testify in this case. The
16 right to remain silent is a personal right. It belongs only
17 to you and no one can waive or give up that right to remain
18 silent except yourself.

19 I will tell you that, if you decide to testify, your
20 testimony would be subject to the same rules that govern any
21 other witness who testifies in the case. That means you'd
22 be examined by your lawyer and you'd be cross-examined by
23 the State's attorney.

24 Now, Mr. Bulsa, could you tell me whether or not the
25 State has any convictions which the State believes would go

1 toward the issue of credibility?

2 SOLICITOR BULSA: Yes, sir, we do believe there are
3 several.

4 THE COURT: All right. If you'll tell me about those,
5 those cases or those issues.

6 SOLICITOR BULSA: There's a drug conviction from, from
7 the early 2000s but I think it may wind up being outside the
8 ten year. He has a drug conviction from 2009. So it --
9 we've got some -- there's some other charges out-of-state
10 that I'm not sure is actually Mr. Savage. So, it will be
11 the drug conviction from 2009 that we would, we believe
12 would be, would be impeachable material.

13 THE COURT: All right. Now, I will tell you that,
14 should you have convictions which involve dishonesty or
15 false statements or for crimes which were punishable by
16 imprisonment for more than one year, and this Court
17 determines that the probative value of admitting the
18 evidence of those convictions outweighs its prejudicial
19 effect to you, if I made that ruling, then the solicitor
20 would, in that case, be able to introduce that record to
21 attack your credibility.

22 Now, if you decide to testify, the decision on your
23 part must be made freely, voluntarily, and intelligently
24 made. That means with knowledge of the protections given to
25 you by the Fifth Amendment to the Constitution and any

1 consequences that might result should you decide to testify.

2 I will inform you that, if you decide not to testify in
3 this case, that I, in that case, would instruct the jurors
4 that they can give the fact that you did not testify no
5 consideration whatsoever in reaching a verdict. In other
6 words, there would be absolutely no prejudice to you because
7 you did not testify. I, in fact, would instruct them that
8 the fact you did not testify could not even be discussed by
9 them in their deliberations.

10 Now, the decision as to whether or not to testify is
11 yours and yours alone. You have the right to consult with
12 your lawyer, family, friends, or anyone else you'd like to
13 talk to about making the decision but the final decision is
14 left entirely up to you. In other words, you're the one who
15 decides whether or not you testify in the case.

16 Now, I'll have to ask you, Mr. Savage, did you
17 understand what I just explained?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions about my
20 explanation?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you want me to explain it any further?

23 THE DEFENDANT: No, sir.

24 THE COURT: Now, have you had an opportunity to discuss
25 this decision with your lawyer?

1 THE DEFENDANT: I need a little bit more time.

2 THE COURT: All right. And I will advise you that I
3 will give you that time and I will also give you the
4 opportunity, if you feel it necessary, to discuss that
5 decision with others if you feel that that's necessary in
6 making the decision.

7 Now, Mr. Bulsa, I know it's just eleven o'clock at this
8 point in time. But what I'm probably gonna do is take a
9 break for about two hours, give the police opportunity to
10 let us know whether they were able to locate Mr. Landrum or
11 not. Then we'll make a decision as to how we'll proceed
12 once that occurs.

13 Now, Mr. Mitchell, do you anticipate calling any other
14 witnesses?

15 MR. MITCHELL: No, sir, Your Honor.

16 THE COURT: So, Mr. Landrum would be the only witness
17 if he appears?

18 MR. MITCHELL: Yes, sir.

19 THE COURT: Or perhaps your client. You're gonna
20 discuss that with him.

21 MR. MITCHELL: Yes, Your Honor.

22 THE COURT: All right. Now, if you would, please bring
23 the jury back.

24 I'm going to ask you, Mr. Bulsa, on the record, whether
25 or not you have other witnesses. I'll let you rest on the

1 record in front of the jury.

2 SOLICITOR BULSA: Yes, sir, thank you.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. The record will reflect that
6 the jury has returned to the courtroom.

7 Ladies and gentlemen of the jury, I made rulings
8 concerning objections that were made, and as result of my
9 rulings, the last witness has completed his testimony at
10 this time.

11 So, at this time, Mr. Bulsa, you have the right to call
12 additional witnesses.

13 SOLICITOR BULSA: Your Honor, the State, at this time,
14 rests.

15 THE COURT: All right. Ladies and gentlemen, that
16 means the State has completed the presentation of its
17 evidence in this matter. I told you, when the State had
18 completed its evidence, the defense would be given the
19 opportunity to present any evidence they choose to do so.
20 However, there are some other issues I have to take up with
21 the attorneys at this stage of the trial. So, I'm going to
22 excuse you now. It's an early lunch but I will carry it
23 over until one o'clock.

24 I'll ask you to be back in the jury room at that time.
25 I should of completed those matters I need to take up with

1 the lawyers. That will give you a chance to get lunch and
2 we'll be in a position to proceed at one o'clock.

3 Now, you know my instructions when you leave the
4 courthouse. Don't attempt to gather any information on your
5 own. Don't listen to or watch media reports. Please don't
6 discuss the case with anyone. Don't allow anyone to discuss
7 it with you and report to us anybody who might contact you
8 about your service on the jury.

9 So, be back in the jury room at one o'clock. We should
10 be in a position to proceed in this trial at that time.
11 Thank you for your patience. You're free to go.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Mr. Mitchell, during the break,
15 if you would give the clerk your cell phone number or a way
16 to reach you. If we get a report from the deputy, we'll let
17 you know what's going on with that.

18 Mr. Bulsa, if you'll stay in contact with the clerk.

19 SOLICITOR BULSA: Yes, sir.

20 THE COURT: They'll let you know whether or not it's
21 been served.

22 So, we're in recess now until one o'clock.

23 Thank you very much.

24 MR. MITCHELL: Thank you, Your Honor.

25 (WHEREUPON, Court was in recess for the lunch hour.)

1 THE COURT: All right. We're on the record in the case
2 of the State versus Shedrick Savage.

3 Let's see. The witness has appeared I hear.

4 MR. MITCHELL: Yes, sir, Your Honor.

5 THE COURT: Have you had an opportunity to talk to him?

6 MR. MITCHELL: Yes, sir, I have.

7 THE COURT: All right. Do you intend to call him as a
8 witness in the case?

9 MR. MITCHELL: Yes, sir, Your Honor.

10 THE COURT: All right. Are you ready to proceed?

11 MR. MITCHELL: I am.

12 THE COURT: Well, let me ask your client then.

13 Mr. Savage, if you would, stand up please.

14 (WHEREUPON, the defendant complies.)

15 THE COURT: Before we took our break I had gone over
16 some matters with you about your right to remain silent and
17 your decision as to whether or not to testify in this case.

18 Do you recall that conversation?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you had an opportunity to consult with
21 your lawyer about that question?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you had an opportunity to talk to
24 anyone else you wish to talk to about that issue?

25 THE DEFENDANT: No, I'm good.

1 THE COURT: All right. Now, do you intend to testify
2 in the case?

3 THE DEFENDANT: No, sir.

4 THE COURT: Okay. Thank you very much. You can be
5 seated.

6 (WHEREUPON, the defendant complies.)

7 THE COURT: All right. Are you ready for the jury,
8 State?

9 SOLICITOR BULSA: Yes, sir.

10 THE COURT: Defense ready?

11 MR. MITCHELL: Yes, sir, Your Honor.

12 THE COURT: All right. Bring in the jury.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect the
16 jury has returned to the courtroom.

17 During your absence from the courtroom, did any of you
18 have any difficulty in complying with my instructions?

19 (No response.)

20 THE COURT: If any of you did, please stand.

21 (No response.)

22 THE COURT: It appears that all jurors have been able
23 to comply with my instructions thus far.

24 When we took our break, the State had completed the
25 presentation of its evidence. At this time the defense has

Ruben Landrum - Direct examination
by Mr. Mitchell

1 the right to call witnesses.

2 Mr. Mitchell, do you wish to call any witnesses?

3 MR. MITCHELL: Yes, sir, Your Honor, if I may.

4 THE COURT: Yes, sir.

5 MR. MITCHELL: If it please the Court, we would call
6 Ruben Landrum.

7 THE COURT: All right. Mr. Landrum, come forward
8 please. Step over here to my left to be sworn in please.

9 THE CLERK: Come on up.

10 THE COURT: Right over here.

11 RUBEN LANDRUM, being first duly
12 sworn, testified as follows:

13 THE COURT: Thank you. Have a seat please.

14 (Witness complies.)

15 THE COURT: State your name please.

16 THE WITNESS: Ruben Landrum.

17 THE COURT: Thank you.

18 Mr. Mitchell, your witness.

19 MR. MITCHELL: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. MITCHELL:

22 Q Sir, would you state your name for the Court?

23 A Ruben Landrum.

24 Q Mr. Landrum, would you tell us where you live?

25 A [REDACTED] Jenkins, Spartanburg.

Ruben Landrum - Direct examination
by Mr. Mitchell

1 THE COURT: Sir, you're gonna have to either get closer
2 to the microphone or speak up so everybody can hear you.

3 THE WITNESS: Spartanburg.

4 Q Okay. And how old are you?

5 A Twenty-nine.

6 Q Are you employed?

7 A Yes, sir.

8 Q would you tell us where?

9 A Belk's.

10 Q All right. Been there a while?

11 A About two and a half months.

12 Q Okay. Mr. Landrum, were you at the club or the
13 facility called Universal, Universal Events?

14 A Yes, sir.

15 Q On November 23rd of 2014?

16 A Yes, sir.

17 Q Okay. Do you recall anything occurring there?

18 A Um, I was---

19 Q Beg your pardon?

20 A I was out there.

21 Q Okay.

22 A But I wasn't---

23 Q Did you witness a fight?

24 A No, sir.

25 Q You didn't?

Ruben Landrum - Direct examination
by Mr. Mitchell

- 1 A No, sir.
- 2 Q Did you, did you witness a shooting?
- 3 A No, sir, but I heard it.
- 4 Q Okay. And were you one of those who were ejected from
5 the facility?
- 6 A No, sir.
- 7 Q Okay. Did you stay after you heard the shooting?
- 8 A Yes, sir.
- 9 Q Okay. Approximately how long did you stay?
- 10 A Till they took the tape down and let us go.
- 11 Q All right. Now, did you talk, at any point in time, to
12 an investigator by the name of Investigator Williams?
- 13 A Yes, sir.
- 14 Q Okay. When did you talk to Investigator Williams?
- 15 A About four, about four or five days later.
- 16 Q Four or five days later.
- 17 He asked you to -- did he ask you to recall where you
18 had been the night of the shooting?
- 19 A He asked me was I there.
- 20 Q Okay. And you told him what?
- 21 A Yeah.
- 22 Q All right. Did he ask you anything about a blue pickup
23 truck?
- 24 A Yes, sir.
- 25 Q And do you recall what you told him?

Ruben Landrum - Direct examination
by Mr. Mitchell

1 A Yes, sir.

2 Q Did you tell him you saw one?

3 A Yes, sir.

4 Q Did he ask you to describe it?

5 A He just asked me did I see a blue truck.

6 Q Okay. Did he ask you how many doors it had on it?

7 A No, sir.

8 Q Did he ask you how many people you saw in it?

9 A Yes, sir.

10 Q And how many did you tell him you saw in it?

11 A Three.

12 Q Three people.

13 Okay. Do you -- did you tell him where you saw these
14 people?

15 A At the gas station.

16 Q And the gas station is how far from Universal Events?

17 A About five minutes.

18 Q Five minutes away.

19 Okay. Thank you very much. No further questions.

20 THE COURT: Mr. Bulsa, your witness.

21 CROSS-EXAMINATION

22 BY SOLICITOR BULSA:

23 Q Mr. Landrum, you said you saw a blue truck at the gas
24 station?

25 A Yes, sir.

Ruben Landrum - Cross-examination
by Solicitor Bulsa

- 1 Q Was this before or after the incident?
- 2 A Before.
- 3 Q Before the incident?
- 4 A Yes, sir.
- 5 Q Okay. What time did you get to the, to that -- to the
- 6 Universal Events?
- 7 A Around about 12:30 to one o'clock.
- 8 Q Okay. So, sometime after midnight?
- 9 A Yes, sir.
- 10 Q All right. How did you get there?
- 11 A I was in a car with someone. I was in a car with a
- 12 friend.
- 13 Q So, you rode over with a friend?
- 14 A Yes, sir.
- 15 Q And, on the way, you stopped at a gas station?
- 16 A Yes, sir.
- 17 Q And you happened to see a blue truck with three guys in
- 18 it?
- 19 A I was parked beside it.
- 20 Q Okay. So, you parked beside a blue truck.
- 21 Did you know these people?
- 22 A No, sir.
- 23 Q Did you know the truck?
- 24 A No, sir.
- 25 Q Did you see the truck again?

Ruben Landrum - Cross-examination
by Solicitor Bulsa

1 A I saw it at the club.

2 Q You saw it at the club.

3 Okay. Did the officer show you any pictures to see if
4 it was the same truck in question?

5 A Not at the time.

6 Q Okay. Did you see that truck leaving that club?

7 A I seen when it sped off. I seen the back of it when it
8 sped off.

9 Q Okay. And did you see anything prior to it speeding
10 off?

11 A No, sir.

12 Q So, did you see how many people got back in the truck
13 to leave?

14 A No, sir.

15 Q Okay. So, you know that three people must of ridden
16 over in the truck but you have no idea how many people left
17 in it?

18 A Yes, sir.

19 Q Is that what I'm hearing?

20 A Yeah, I stated that I saw them at the store but I
21 didn't see them at the club.

22 Q Okay. All right. Now, you weren't involved in the
23 fight inside?

24 A No, sir.

25 Q Did you witness the fight inside?

Ruben Landrum - Cross-examination
by Solicitor Bulsa

- 1 A No, sir, I didn't see it.
- 2 Q You didn't see it.
- 3 where would you -- where were you in the club?
- 4 A In the back.
- 5 Q Okay. So, is this a pretty big club inside?
- 6 A I was like -- actually I was in the other building.
- 7 Somebody came and got me.
- 8 Q Okay. So, there were -- they're two buildings to this
- 9 club and you---
- 10 A At the time it was.
- 11 Q Excuse me?
- 12 A At the time it was.
- 13 Q At the time.
- 14 Do you still attend that club?
- 15 A No, sir.
- 16 Q All right. Now, do you know Artie?
- 17 A Yes, sir.
- 18 Q How do you know him?
- 19 A A friend of the family.
- 20 Q Okay. Where were you when the shooting happened?
- 21 A Outside.
- 22 Q Okay. Where was your attention directed?
- 23 A I was standing in the crowd talking, getting some water
- 24 poured on me for being maced.
- 25 Q You'd been maced?

Ruben Landrum - Cross-examination
by Solicitor Bulsa

1 A Yes, sir.

2 Q why did you get maced?

3 A I got maced at the door when another fight broke out.
4 I was leaving out the club.

5 Q And you just happened to be in the vicinity and got
6 maced?

7 A I was on the way out the door.

8 Q Okay. So, where were you maced at?
9 what part of your body?

10 A In, in the head.

11 Q In the head.

12 Did that affect your ability to see things?

13 A Like it was in my dreads, like in my face, you know.

14 Q So, you had dreads at that time?

15 A Yes, sir.

16 Q All right. Did you see where that blue truck parked at
17 the club?

18 A Yeah, I pulled up behind the truck.

19 Q Okay. Where were you parked at?

20 A I was parked on the side in the front.

21 Q Okay. The guys that were in the truck, do you know
22 where they were from?

23 A I didn't know till afterwards.

24 Q Okay. So, you didn't -- at that time you didn't know.

25 All right. Can you identify the defendant as being one

Ruben Landrum - Cross-examination
by Solicitor Balsa

1 of the guys in the truck?

2 A Yes, sir.

3 Q Okay. Do you know whether he was driving or was he a
4 passenger?

5 A No, sir, I didn't see him leave. I didn't see him get
6 in the truck.

7 Q I'm talking about at the store.

8 A No, we -- I was -- we was all standing outside of the
9 truck, outside of the cars at the gas station. I wasn't
10 paying them no attention. I was doing what I was doing.

11 Q So, how do you know that three people got in the truck?

12 A Cause I was right there when three people got out of
13 the truck.

14 Q Okay. So, you -- are you telling this jury you can't
15 tell if he was the driver of that truck at that time?

16 A No, but I know there was three guys that walked from
17 the truck.

18 Q Okay. But all this was before and you have no idea how
19 many people left?

20 A It was before.

21 Q Right.

22 Okay. And when you spoke to Investigator Williams, it
23 was more like four or five weeks later instead of days
24 later.

25 Is that more accurate?

Ruben Landrum - Cross-examination
by Solicitor Bulsa

1 A I don't -- it was about four or five days after I
2 recall.

3 Q okay. All right.

4 THE COURT: Redirect.

5 MR. MITCHELL: None, Your Honor.

6 THE COURT: Sir, you may step down, sir.

7 The defense may call its next witness.

8 MR. MITCHELL: Yes, sir, Your Honor. The defense
9 rests.

10 THE COURT: All right. The State wish to call any
11 witnesses in reply?

12 SOLICITOR BULSA: No, Your Honor.

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, that, that concludes the presentation of evidence in
15 the case. Again, there's some matters I have to take up
16 with the lawyers before we enter the next step in the case.
17 That is the closing arguments and my charge on the law.

18 So, at this time, I'm gonna ask you to step back to the
19 jury room. Again, don't discuss the case until I ask you to
20 do so and that's when you begin your deliberations.

21 You may step back to the jury room.

22 Thank you.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Any motions?

1 MR. MITCHELL: May it please the Court, Your Honor.

2 I would renew my motion for directed verdict of
3 acquittal based on the resting of our case. We feel, at
4 this time still, that the State has not made out a prima
5 facie case that is cognizable for the jury.

6 THE COURT: All right. The same argument, Mr. Bulsa---

7 SOLICITOR BULSA: Yes, sir.

8 THE COURT: ---that was before?

9 SOLICITOR BULSA: Yes, sir.

10 THE COURT: All right. The Court will make the same
11 ruling. I do find that there is sufficient evidence to
12 justify the case going to the jury. Therefore, the motion
13 is denied.

14 Mr. Bulsa, any specific requests for charge at this
15 time?

16 SOLICITOR BULSA: Your Honor, I think the lesser
17 included of the charge of voluntary manslaughter will be a
18 proper charge at this time.

19 THE COURT: I am planning on charging that unless the
20 defense requests that I not do so but I do think there was
21 evidence that might support that particular charge.

22 SOLICITOR BULSA: Yes, sir.

23 THE COURT: Mr. Mitchell, concerning the issue of
24 whether or not I should present to the jury the lesser
25 included offense of voluntary manslaughter, I'll be happy to

1 hear from you on that.

2 MR. MITCHELL: If I may indulge the Court just a
3 moment?

4 THE COURT: Yes, sir.

5 (Pause.)

6 MR. MITCHELL: No opposition to the, the voluntary
7 manslaughter charge.

8 THE COURT: You do request that?

9 MR. MITCHELL: I would not oppose it.

10 THE COURT: Okay.

11 MR. MITCHELL: Yes, sir.

12 THE COURT: Well, I intend to charge it unless you ask
13 me not to.

14 MR. MITCHELL: No, sir, I'm not gonna ask you not to.

15 THE COURT: Okay. Well, I do think there's evidence
16 that would justify the charge.

17 Any specific request for charge from the State
18 otherwise?

19 SOLICITOR BULSA: No, sir.

20 THE COURT: Any defense specific requests for charge?

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

22 THE COURT: All right. Now, I believe the defense has
23 introduced evidence into the case. So, you'll be going
24 first, Mr. Mitchell.

25 MR. MITCHELL: Yes, sir.

1 THE COURT: Is that correct?

2 MR. MITCHELL: Yes, sir, Your Honor.

3 THE COURT: Is that your understanding?

4 MR. MITCHELL: Yes, sir.

5 THE COURT: Mr. Bulsa.

6 SOLICITOR BULSA: Yes, sir.

7 THE COURT: Are you ready, Mr. Mitchell, or do you need
8 a couple of moments?

9 MR. MITCHELL: Your Honor, I would -- if the Court
10 would indulge me a few minutes?

11 THE COURT: All right. I'll take about a five minute
12 break. I'll stay on the bench and then we'll get ready to
13 start the, the closing arguments.

14 MR. MITCHELL: Thank you, Your Honor.

15 THE COURT: All right. Let me know when you're ready,
16 Mr. Mitchell.

17 MR. MITCHELL: Certainly, Your Honor.

18 (WHEREUPON, a short recess was taken at this time.)

19 MR. MITCHELL: May it please the Court?

20 THE COURT: Yes, sir.

21 You ready?

22 MR. MITCHELL: I am, yes, sir.

23 THE COURT: All right. Now, what we'll do is I'm gonna
24 let -- allow the arguments to go forward and then I will
25 charge on the law.

1 It's my normal practice, Mr. Mitchell, that once I've
2 completed my initial charge, I send the jury out. I'll give
3 you an opportunity to object to any of the charges that I've
4 given.

5 MR. MITCHELL: Yes, sir.

6 THE COURT: We'll agree on some other facts, the
7 exhibits to go back, and things of that nature. Then I'll
8 bring the jury back for my final charge and submit the case
9 to them. So, they'll be a break between it -- between my
10 charge and our submitting it to the jury---

11 MR. MITCHELL: Yes, sir.

12 THE COURT: ---and we'll be talking about some things.

13 MR. MITCHELL: Yes, sir.

14 THE COURT: Okay?

15 MR. MITCHELL: Yes, sir.

16 THE COURT: All right. Let's bring the jury in.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: All right. The record will reflect the
20 jury has returned to the courtroom.

21 We have completed the presentation of evidence in the
22 case. I told you, at this time, the attorneys would have
23 the opportunity, on the second opportunity, to talk directly
24 to you during their closing argument or their summation.

25 In this case, the defense will be going first.

1 Mr. Mitchell, you may proceed.

2 MR. MITCHELL: Thank you very much, Your Honor.

3 THE COURT: Yes, sir.

4 MR. MITCHELL: Members of the jury, we certainly want
5 to first say thank you for sitting through this trial,
6 paying attention to it as I know and noted that you have
7 certainly given the Constitution of South Carolina and the
8 United States its recognition and due by sitting in judgment
9 over one of your own citizens and mine.

10 The one thing that we want to remind you of is that
11 reasonable people sometimes differ. Reasonable people
12 sometimes have different approaches to how they see and view
13 things and how they perceive things to be.

14 Now, in this instance, we have a situation to where my
15 client was charged with murder. Murder, the unlawful taking
16 of a human life.

17 On yesterday, I talked about the original sin that Cain
18 committed against his brother, Abel. I guess, to utilize
19 the term, he invented murder. A better word, he created it.
20 And then denied, in essence, his responsibility of being his
21 brother's keeper when asked by the Father, our Father, where
22 are thou brother. When asked that, I'm not my brother's
23 keeper. We all are our brother's keeper whether we accept
24 it or not.

25 You must believe that malice aforethought was alive and

1 well during the commission of this offense, and as I
2 indicated, malice is someone with a malignant thought, a
3 malignant mind, a sick mind. It's the planning, follow
4 through with the execution of it, in a deliberate fashion.

5 But, of course, if you have problems, it must be
6 reasonable people with a reasonable doubt. This being a
7 criminal case, the burden shifts from that with people suing
8 for money because we're trying a person literally for that
9 person's future life.

10 You must find, beyond a reasonable doubt, to find
11 murder preposing Shedrick Savage, a reasonable doubt.

12 What's that?

13 A doubt which reasonable people can have. Reasonable
14 people. Not unreasonable people. Reasonable people.

15 Now, let's recapitulate a few things as to what we all
16 heard here, what we sought to elicit here. You obviously
17 heard, as I, that there was a shooting at the Universal Club
18 and that a young man was killed.

19 Now, I'm going to be reminded that I believe our first
20 witness, Mr. Jones (sic), indicated that there was -- it was
21 out of a car. Couldn't see around the building or the
22 driveway where you heard the shots. He said, maybe
23 grammatical, shots. They. Whether it was one or more than
24 one, whether it was grammatical or whatever, he heard
25 something enough to get his attention.

1 He sought to investigate but he indicated that he only
2 saw one vehicle leaving the scene. He did not see a white,
3 I believe, Toyota or copper colored Toyota following right
4 behind the blue truck and that it left and made a right turn
5 or left turn. I'm sorry. Didn't see who was in it, didn't
6 know who was in it, and, as a result, he returned to the
7 scene, found the victim and, of course, sought to render
8 aid.

9 Now, you also heard from Mr. Cedrick Jones, a gentleman
10 who actually was there in the club with a friend who had
11 been brought in and six or so weeks later by an investigator
12 or the investigator in the case who gave testimony, and it
13 was then that he implicated my client by saying he saw a
14 gun. He saw the flashing of the shot.

15 Now, he didn't tell that to the 9-1-1 operator when he
16 called and reported that there had been a shooting and that
17 there had been a victim. He didn't know who did the
18 shooting.

19 Now, this was of his friends. Not withstanding the
20 fact he gave false information as to who he was in making
21 the call. He cared enough to report it but then he didn't
22 tell who he was because he said he didn't know who had done
23 the shooting. Six, seven weeks later, after having been on
24 television, in the newspaper, pictures, and what have you,
25 he walked in and he points the finger on Shedrick Savage.

1 He saw a gun. He saw the flash but yet, at the scene,
2 he didn't take the time, even though he pulled him up the
3 knoll on the grass, got him out of the, I assume, driveway,
4 but yet he didn't tell the whole story until several weeks
5 later. Granted, they'd been there drinking, and partying,
6 having a good time, laid all back. But at the inkling from
7 a family member or what have you, all of a sudden his mind
8 came back. Oh, yeah, Savage shot him. I saw the gun. I
9 saw the flash. Went there with another gentleman who, of
10 course, we didn't hear from him, but be that as it may, at
11 the same time, interrogated at the same time. But be that
12 as it may, pointed the finger at Shedrick Savage.

13 Now, we're not gonna belabor you-all. Just wanted to
14 point out a few things here that we had Mr. Landrum, you
15 just heard, who gives some testimony that he saw three
16 people in that truck. Three. Whether before, during, or
17 after, or after, three people got out of it.

18 Y'all have the prerogative to believe what you want to
19 believe. You have that power. Absent the Judge's charge,
20 you-all got the power to believe what you want to,
21 disbelieve what you want to, don't believe anything you
22 heard or whatever the situation is. That is your
23 prerogative and that is the purview of the jury and the
24 authority of it and power.

25 You got to remember one thing also. You must be

1 together on the verdict. Beyond a reasonable doubt is the
2 standard. If you have a doubt, you must have a reason for
3 it. You believe, you didn't believe, you believe one
4 against all, you believed all of them, you didn't believe
5 any of it. It's in your hands. Beyond a reasonable doubt,
6 a doubt in which reasonable people can give a justification
7 for their decision.

8 Now, you also heard where, after the club had literally
9 vacated, people had gotten out, you heard testimony where I
10 believe one of the witnesses said half of them got in the
11 truck, half of them got into a copper colored Toyota or
12 Nissan. Then, of course, further inquiry, they made it come
13 forward, well, they were two or three or whatever who's
14 there. This is from one of the bouncers.

15 Then I believe Mr. Miller or Mitchell indicated that he
16 believed that it's about three people in the car or truck.
17 He heard the shot. He went to the door. He recognized Mr.
18 Savage. Didn't know his name except knew him as Black, a
19 regular attendee.

20 Mrs. Mitchell, who worked the door, didn't know him,
21 hadn't really seen him, couldn't recall, but she saw a
22 flash. Didn't hear the shot.

23 Then, of course, you heard the report from the State
24 Law Enforcement Department's expert in regards to the GSR,
25 gunshot residue. Test it, found residue in the compartment

1 of the truck, found residue on both occupants in the truck
2 who was there supposedly. He didn't say anything about the
3 clothing. Nothing about testing or finding anything on the
4 clothing. Just on the hands.

5 You wonder sometimes whether or not the follow through
6 in regards to testing isn't completely thorough. They
7 didn't test the clothing, either one. Just the hands.

8 Before I sit down, I'm going to remind each and every
9 one of you that you have the power and you have the right to
10 make the decision following the charge that His Honor is
11 going to give to you. Of course, I'm going to be followed
12 by my very able friend, Mr. Bulsa. Seek to rebut some of
13 what we attempted to convey to you but each of you have your
14 own mind, your own independence, your own individual
15 perception as to what you recall, if anything, did occur,
16 didn't occur, testified, evidence.

17 What did, in fact, happen?

18 Murder, malice aforethought, malignancy of thought
19 process of an individual against another person, individual,
20 human being, you have to find that before you can convict
21 anyone of murder, malice aforethought.

22 But before you can even find that, you must find,
23 beyond a reasonable doubt, that it was done and you got a
24 reason for the decision that you make and that you can walk
25 out of here and you can live without any consequences for

1 the decision that you make.

2 I want to thank you again for the diligence and the
3 patience that you've shown us and certainly the
4 understanding that I'm sure you-all are seeking to have that
5 everything else exhibited. We have no gun. We have no
6 cartridge casings. We have no caliber or caliber bullet as
7 far as the gun was concerned.

8 Circumstantial evidence is what the State has sought to
9 convict my client of murder. You only have one person who
10 said he saw a gun and that was after consulting with some
11 family members some seven weeks later after this incident
12 occurred. If I'm not mistaken, it was November the
13 23rd of 2014 when this person went in January 2nd, 2015.

14 Thank you very much.

15 THE COURT: Mr. Bulsa, you may proceed for the State.

16 SOLICITOR BULSA: An unlawful killing with malice
17 aforethought, that's murder as Mr. Mitchell tried to define
18 it for you. The judge will define those terms specifically
19 for you.

20 You don't have to plan to kill somebody for it to be
21 murder. You don't have to lay in wait for them. You just
22 have to have malice in your heart at the moment you pull the
23 trigger. Malice can form as you're pointing the trigger.

24 I submit to you that pointing a loaded gun at a person
25 about 15-feet away and pulling the trigger is malice. I

1 submit to you you can find that.

2 In this instance, we have a situation where we have a
3 club in Spartanburg open on Saturday nights. Apparently
4 it's a popular club. A lot of people go.

5 Unfortunately an incident happened inside. There's a
6 fight inside. It's clear that the victim and the defendant
7 were involved in a fight.

8 Now, we don't have to prove motive for murder but you
9 can look at motive to help identify who did it, and I submit
10 to you the motive carried out from that inside, it spilled
11 out into the parking lot, and as the defendant was leaving.
12 He couldn't let it go.

13 The victim was walking up the street towards his car.
14 The defendant, all he had to do was drive on by but he
15 stopped, reinitiated the argument. In fact, invited him to
16 the store, wanted to continue the fight, and the victim got
17 upset and threw a beer bottle at him. Beer bottle hitting
18 the car. Maybe that makes a sound. Maybe it makes a loud
19 enough pop that somebody thinks it's another gunshot. I
20 don't know.

21 But we know the reaction of the defendant. He
22 apparently was ready because he fired an immediate shot. We
23 don't know what caliber weapon. We don't know if it's an
24 automatic or a revolver. He was smart enough to get rid of
25 the weapon. But we clearly know, from the autopsy, that

1 Marty was still facing him. After he threw the bottle, he
2 was shot and then tried to run and dropped because he was
3 hit. Front to back. That corroborates Mr. Jones's
4 description to you.

5 I submit to you, ladies and gentlemen, this case is
6 straightforward. An incident happened in the club between
7 parties. Mr. Mitchell told you about that. He knew the
8 defendant as Black. He saw him outside. Mr. Mitchell said
9 he even made a threatening gesture and comment aimed at
10 Marty. You can consider that as part of your malice.

11 The doorman, Errol Graham, he wasn't a bouncer. He was
12 a doorman. He saw the defendant and the other gentleman get
13 in the car, just the two of them, and they drove away.

14 I submit to you, ladies and gentlemen, it's an act of
15 providence that that car, that truck was found the same day,
16 just hours later, that enabled us to bring to you a much
17 stronger case showing that the defendant was at the club
18 that night. He was wearing the same clothes still. He got
19 rid of the gun. He didn't go home and change nor did he
20 wash his hands but he did get rid of the gun.

21 But what did he tell Detective Williams?

22 First he denied being there. Then he denied being in
23 the truck. Then he said well, if I was in the truck, I
24 wasn't driving.

25 Now, why in the world would he make that statement?

1 Because he knows the shot came from the driver and he's
2 got to try to convince the detective that, even if I was in
3 the truck, I wasn't the shooter.

4 You'll have the GSR report with you in evidence.
5 You'll have the information forms. Both of the men that
6 were in the truck were right-handed. Their tests were taken
7 within five minutes of each other. Mr. Savage was first.
8 So, there's no contamination on -- the report is
9 self-explanatory. It sets out the results. Clearly
10 evidence on both of Mr. Savage's hands. A single particle
11 on the left-hand of Mr. Miller.

12 You can use your common sense and imagine and picture
13 in your mind how the cloud would expand from the front of
14 the gun and then blow back. Well, it's gonna be -- more is
15 gonna be on the person shooting the gun than anyone else
16 within close proximity. It's circumstantial evidence that
17 links together the fact that this man couldn't let it go.

18 The judge is gonna charge you of the law of murder and
19 manslaughter. I told you, at the beginning of my case, that
20 I submit that we got the right guy. The evidence clearly
21 supports that. The issue is is it murder or is it
22 manslaughter and I tell you that because sometimes, if
23 people get involved in a situation, you can, you can argue
24 that Marty sort of provoked this. He struck a blow inside.
25 He was involved in a fight. And you can argue that the

1 defendant, that made him mad, that raised his heat of
2 passion and he acted in that heat of passion. If you find
3 that, which you are entitled to do based on the Judge's
4 charge, you can find the defendant guilty of a lesser
5 offense of manslaughter.

6 But the judge will also charge you that there's a
7 cooling off period. The incident inside ceased. If the
8 shot had happened inside, it probably would of been a clear
9 manslaughter case because it was right in time with the
10 fight. But they separated and Marty was walking away and
11 the defendant reinitiated it.

12 I submit to you, he had sufficient time to cool off, he
13 didn't, and he acted with malice at that time. And I submit
14 to you you can find that these actions are murder at that
15 point. But, as a collective group, if you find that maybe
16 he didn't have enough time to cool off, maybe Marty arguing
17 with him at the side of the road, maybe Marty's throwing the
18 beer bottle enraged him again, and he acted in the heat of
19 passion, then you can find, in your prerogative,
20 manslaughter.

21 That's how you need to analyze this case, ladies and
22 gentlemen. The evidence is clear that it was this man. It
23 was his truck. He was driving the truck. Two people in it.
24 The other man, away from the shot, had one smart particle on
25 him. Clearly he pulled the trigger.

1 So, please do your duty. Review the evidence and come
2 back with a verdict that speaks the truth. And I submit to
3 you there's sufficient evidence to leave you firmly
4 convinced that he's guilty of murder. But if you think it's
5 merely the lesser, we respect that but I submit to you the
6 correct charge is murder.

7 Thank you.

8 THE COURT: Ladies and gentlemen of the jury, that
9 completes the closing arguments or summations by the
10 attorneys. I told you that, when we reached this stage of
11 the proceedings, it would be my responsibility to charge you
12 on the law to be applied in this case. Excuse me.

13 You may recall, when we started the trial yesterday, I
14 went over with you the indictment in the case and, again, I
15 will go over the indictment with you. You will be allowed
16 to have the indictment with you during your deliberations
17 for your review.

18 The indictment, again, is in Case Number
19 2015-GS-42-810. Again, this is the document that brings the
20 case into this Court. It informs us of the charge to be
21 tried. It informs the defendant of the charge that was
22 lodged against him. The indictment is for the offense of
23 murder.

24 The indictment states that the defendant, Shedrick
25 Andre Savage, did, in Spartanburg County, on or about

1 November the 23rd of 2014, feloniously, willfully, and
2 with malice aforethought, kill one Charles Jackson, Junior
3 by shooting the victim and the victim died as a proximate
4 result thereof all in violation of Section 16-3-10 and 20 of
5 the Code of Laws of South Carolina, 1976 as amended, against
6 the peace and dignity of the State and contrary to the
7 statute in such case made and provided.

8 Now, again, I remind you, the fact that a defendant has
9 been arrested, charged, and even indicted in a case is not
10 evidence in the case. That indictment can not be used by
11 you as evidence in this case nor does the indictment create
12 any presumption or inference of guilt. Again, it's simply
13 the document that brings the case into the Court and informs
14 us of the charge involved in this matter as it does the
15 defendant.

16 Now, the defendant has pled not guilty to that
17 indictment and I told you earlier, during my opening
18 comments, that plea places the burden of proof upon the
19 State to prove the defendant guilty of the charge crimed --
20 alleged in the indictment by proof beyond a reasonable
21 doubt. A person charged with the commission of a crime in
22 this State is never required to prove himself innocent. I
23 charge you that it's an important rule of law that a
24 defendant, in a criminal trial, no matter how serious the
25 crime might be, will always be presumed to be innocent of

1 that charge for which the indictment has been issued until
2 and unless guilt has been proven to you by evidence
3 satisfying you of that guilt beyond a reasonable doubt.

4 Now, the presumption of innocence doesn't end when you
5 begin those deliberations. I will tell you the presumption
6 of innocence has been described somewhat like a robe that a
7 judge wears into the courtroom. I'll explain what I mean by
8 that.

9 The presumption of innocence, if you look at it as that
10 robe, it's around the defendant's shoulders at the beginning
11 of the trial. It remains around the defendant's shoulders
12 throughout the trial. It accompanies him into your
13 deliberations and remains about his shoulders until such
14 time as it might be stripped from him by evidence that
15 satisfies you of the defendant's guilt beyond a reasonable
16 doubt.

17 Now, the presumption of innocence is not just a legal
18 phrase. It's not just a legal theory. It's a substantial
19 right that every defendant is entitled to until such time as
20 you, the jury, are convinced from the evidence, by proof
21 beyond a reasonable doubt, of the defendant's guilt in the
22 case.

23 Now, you've heard me talk about proof beyond a
24 reasonable doubt. I mentioned it at the beginning of the
25 trial and I've mentioned it already several times in my

1 discussions with you concerning the proof in this case and
2 you may ask yourself well, what is meant -- what does the
3 law mean by a reasonable doubt?

4 what does that, what does that mean?

5 And if you're asking yourself that question, I will
6 tell you that the cases that have defined what a reasonable
7 doubt is define that doubt as that kind of doubt that would
8 cause a reasonable person to hesitate to act and the State
9 has the burden of proving the defendant guilty beyond a
10 reasonable doubt.

11 Now, there's one thing I want to be clear about and be
12 sure you understand and we -- I talked about the two sides
13 of the Court when we started our qualification yesterday.
14 We have a civil side of the Court and we have a criminal
15 side of the Court.

16 Now, in civil cases where people are seeking monetary
17 damages, the standard of proof required for someone to get a
18 verdict is different than the standard of proof required in
19 a criminal case such as this one. In -- if you've ever been
20 involved in a civil case, the standard of proof in those
21 cases is by the greater weight or what's been referred to as
22 the preponderance of the evidence, and what that means is,
23 if you can view the scales of justice, that means if they
24 tilted ever so slightly in favor of the plaintiff, the
25 plaintiff is entitled to a verdict.

1 On the other hand, if those scales tilt ever so
2 slightly in favor of a defendant in a civil case, the
3 defendant would be entitled to a verdict. So, the standard
4 of proof in a criminal case though is proof beyond a
5 reasonable doubt. It's a standard of proof more powerful
6 than the standard of proof in a civil case. I don't want
7 you to be confused by those two types of, of proof and
8 what's necessary to prove a case in civil court as opposed
9 to criminal court. Again, in this case -- Court, the
10 standard of proof is proof beyond a reasonable doubt.

11 Now, proof beyond a reasonable doubt would be that kind
12 of proof that leaves you firmly convinced of the defendant's
13 guilt, and I will tell you that there's very few things that
14 go on in this world that can be proven beyond any doubt
15 whatsoever, and the State does not have the burden of
16 proving the defendant guilty beyond any possible doubt.
17 Again, the standard of proof is proof beyond a reasonable
18 doubt.

19 What I will tell you, if, after consideration of all of
20 the evidence in the case, if you are firmly convinced of the
21 defendant's guilt beyond a reasonable doubt, you must find
22 the defendant guilty. On the other hand, if you think
23 there's a real possibility that the defendant is not guilty,
24 then you must give the defendant the benefit of that doubt
25 and find the defendant not guilty.

1 I'll remind you that, during the trial, you and I have
2 had certain duties to perform and they're different and
3 separate duties, and, as a trial judge, it's been my
4 responsibility to preside over the trial. I've had to make
5 rulings on some issues that came up during the trial and I
6 will caution you now, don't take from anything that I say or
7 do or have already said or done in this case to indicate to
8 you that I have some opinion as to how I believe you should
9 find the facts in this case. I'm not allowed an opinion
10 concerning the facts. I can assure you, I have no opinion
11 as to how you should determine the facts in this case.

12 Again, the law doesn't allow me such an opinion. So,
13 don't take from anything that I have said or done during the
14 trial or even during this charge on the law to indicate
15 somehow that you think I have an opinion on that subject. I
16 do not have an opinion on that subject.

17 Now, it's your duty to consider the evidence that's
18 been presented in the case, the competent evidence that went
19 into the record. So, if I ruled anything out of order, if
20 I, if I ruled a question out of order, anything that I did
21 not allow to come into the record, you should disregard,
22 disregard those matters in their entirety. You're only to
23 take the evidence that went into the record during the trial
24 in consideration of your verdict. So, you must disregard
25 anything that has been ruled inadmissible or not allowed.

1 into the record.

2 Now, I have the additional duty, as I told you, of
3 charging you on the applicable law, and I told you earlier
4 that, while I'm not allowed to disagree with you concerning
5 your determination of the facts, it's your duty, as jurors,
6 to accept and apply the law as I give it to you, exactly as
7 I give it to you. So, you're not allowed to disagree with
8 me concerning the law to be applied in this case.

9 The law that I give you is the only law that you should
10 use in reaching a verdict, and, again, you should abandon or
11 disregard any notion that you might have as to what the law
12 is or what the law ought to be that might disagree with the
13 law as I state it to you during this charge.

14 As I mentioned, you are the sole and exclusive judges
15 of the facts, and, again, you don't take from anything that
16 I've done that I have an opinion as to how you should
17 determine those facts because it's your duty, as jurors, to
18 determine the effect, the value, and the weight that you
19 think the evidence should have that's been presented during
20 this trial. It's your responsibility to analyze that
21 evidence and determine, again, the effect, the value, and
22 the weight of that testimony.

23 Now, in doing so, you have the right to consider two
24 types of evidence in this case, and you may say well, what
25 do you mean by two types of evidence?

1 well, what I'm talking about is the law divides
2 evidence that comes from the witness stand into either
3 direct evidence or circumstantial evidence. The difference
4 between the two is, in direct evidence, the witness is
5 testifying directly on the fact that's sought to be proven.
6 That's testimony by someone who claims to have actually
7 experienced the event they're testifying about, an eye
8 witness, a participant in the event, someone who testifies
9 directly on the facts sought to be proven. That evidence is
10 considered direct evidence.

11 Now, circumstantial evidence is different from that.
12 Circumstantial evidence is proof of a chain of facts or
13 circumstances that might indicate the existence of some
14 other fact. It's been described as proof of collateral
15 facts from which a main fact might be reasonably inferred.

16 Now, that's a lot of fancy lawyer talk. I like to use
17 a very simple example as to what we mean by proving a fact
18 by circumstantial evidence.

19 Let's say last night, before you went to bed, you went
20 to your bedroom. You walked over to the window, looked out
21 the window, and, when you looked out, you saw the stars
22 shining, the moon out there, beautiful night. You went to
23 bed. You slept well all night. Didn't wake up at all
24 during the evening.

25 So, the next morning, the sun's coming in the window.

1 You wake up. You walk over to that same window that you
2 were at the night before and you look outside, and while the
3 sun's shining, you look a little closer and you notice
4 there's water dripping out of all the trees. There's
5 puddles in the driveway or the road that weren't there the
6 night before. The grass in front of your house is soaking
7 wet.

8 Now, you slept all night. You didn't see it rain. You
9 didn't hear it rain. But from certain collateral facts that
10 you know to be true, you could reasonably infer that, in
11 fact, during the night it did rain. So, that's what we mean
12 by proof of collateral facts from which someone might
13 reasonably infer some other fact. Circumstantial evidence
14 is proof of a chain of facts or circumstances that indicate
15 the existence of a fact.

16 Now, the law doesn't make a distinction between the
17 weight or the value that you, the jury, can give to either
18 direct or circumstantial evidence, and the law doesn't
19 require a greater degree of certainty for circumstantial
20 evidence than that of the direct. I will tell you that, as
21 jurors and the finders of the facts, you have the right to
22 weigh all of the evidence in the case, both direct and
23 circumstantial. And after weighing all of the evidence, if
24 you're not convinced of the defendant's guilt beyond a
25 reasonable doubt, you must find the defendant not guilty.

1 However, on the other hand, if you are firmly convinced of
2 the defendant's guilt beyond a reasonable doubt, you must
3 find the defendant guilty.

4 Now, I told you, at the beginning of the trial, and I'm
5 going to stress to you again, in order for you to do your
6 job as the finders of fact, it's going to be necessary that
7 you determine the credibility or believability of the
8 testimony you've heard and credibility simply means
9 believability and I told you to use your good common sense
10 in making that decision. I pointed out to you that everyday
11 of your life you use your good common sense to decide what
12 you choose to believe and what you choose not to believe,
13 and work -- and being on a jury, we don't ask you to leave
14 your common sense at the door. We urge you to use that
15 common sense in making those determinations.

16 In determining the believability of witnesses who've
17 testified in this case, as the sole judges of the facts, you
18 can believe all of, part of, or none of what a witness may
19 have said. You have the right to believe one against
20 others. You have the right to believe others against one.
21 You're the sole judges of the facts in this case. That
22 makes you the sole judges of the credibility or the
23 believability of the witnesses that you've heard in this
24 case.

25 You can consider, using that common sense, whether or

1 not a witness had an interest or a bias in the case, whether
2 or not the witness exhibited a prejudice of some kind or had
3 some other motive in testifying. And I told you also we put
4 the witness stand in front of the jury box so that you could
5 observe the witnesses as they've testified.

6 Again, use your good common sense. Make a decision as
7 to the credibility or the believability of the testimony
8 that you, that you've heard. And I've told you that you are
9 to analyze and weigh that evidence.

10 And we talk about weight of evidence. That's the
11 weight that you assign to it. Weight's not determined by
12 the number of witnesses or how long they've testified. It's
13 the -- it's a thing that you assign to the testimony that
14 you've heard. You give the testimony the weight you think
15 it deserves based, again, using that good common sense.

16 Now, during the trial, we have some witnesses who were
17 qualified as expert witnesses, and I told you, when that
18 happened, I explained why we did that and I also told you
19 that I'd talk to you more about that during my charge on the
20 law. And I explained at that time the order -- the rules of
21 evidence that we go by in this courtroom ordinarily don't
22 allow a witness to testify about opinions or conclusions.
23 That's lay witnesses. We make an exception to that rule and
24 that's for witnesses who are qualified as experts within
25 some field or calling, art, science, or profession. And for

1 those witnesses who are so qualified, they are allowed to
2 state an opinion within those fields and state the reasons
3 why they have it.

4 I will tell you that, as the finders of fact, you
5 should consider any expert's opinion received into evidence
6 just like any other testimony you've heard. You give it the
7 weight you think it deserves. Should you determine that the
8 reasons given in support of the opinion aren't sound or
9 should you decide that the expert didn't have sufficient
10 education or experience or if you conclude that the reasons
11 given to support the opinions were not sound, you have the
12 right to disregard an opinion in its entirety if you choose
13 to do so even though it's not contradicted by other
14 evidence.

15 Again, you're the sole judges of the facts. You're the
16 sole judges of the credibility of the witnesses. That
17 includes the testimony of lay witnesses as well as expert
18 witnesses. You give it the, the weight, again, you think it
19 deserves in the case.

20 Now, I'm going to instruct and emphasize to you that
21 the fact that the defendant did not testify in this case is
22 not a factor to be considered by you in anyway in your
23 deliberations and you should not give that fact any
24 consideration concerning the question of guilt or innocence
25 of the defendant. The fact that the defendant did not

1 testify must not be considered by you in any manner
2 whatsoever.

3 You see, a defendant has a Constitutional right to
4 remain silent and the assertion of that right, the exercise
5 of that right, must not be considered by you during your
6 deliberations. I repeat that, under your oath as jurors,
7 you are to draw no conclusions whatsoever from the fact that
8 the defendant did not testify in the case. I will instruct
9 you that the fact that the defendant did not testify in this
10 case should not even be discussed by you in the jury room
11 during your deliberations.

12 As I told you earlier, the burden of proof in this case
13 is solely upon the State. The defendant is not required to
14 prove his innocence in this matter. The burden of proof
15 remains about -- on the State to prove the defendant's guilt
16 beyond a reasonable doubt and it's upon the State throughout
17 the trial.

18 Now, in some cases, in order to establish criminal
19 liability, criminal intent is an element of the crime, and
20 in a minute I'm gonna describe two crimes to you. That is
21 the crime of murder and the crime of voluntary manslaughter.
22 I'll talk to you about those two crimes in just a minute
23 and, in those crimes, you will hear me talking about the
24 things that the State might have to prove in order for
25 someone to be found guilty of those crimes. Those are what

1 we refer to as the elements of the crimes.

2 Now, criminal liability is something that is required
3 to be proven -- criminal, excuse me, intent is normally
4 required to be proved in order for there to be criminal
5 liability. For example, it's the mental state that the
6 State is required to proven for a particular crime.

7 Criminal intent must be prove by the State beyond a
8 reasonable doubt. Criminal intent, however, is always a
9 matter that has to be determined by the jury from the facts
10 and circumstances surrounding the situation because there's
11 no way that we can be present at the moment an incident is
12 occurring and open up someone's head and look inside and be
13 able to scientifically determine what they intended or did
14 not intend to do in any circumstance. That's not
15 scientifically possible.

16 So, the question of intent is one that has to be
17 inferred from the circumstances that are shown to have
18 existed. That's how you make a determination as to whether
19 or not the element required -- requiring intent was present.
20 It's not necessary to establish intent by direct evidence or
21 positive evidence but intent may be established by
22 inference, the same way as any other fact, by taking into
23 consideration the acts of the parties and all the facts and
24 circumstances that surrounded the incident that occurred.

25 I will tell you that criminal intent is a mental state,

1 it's a conscious wrongdoing, and it's up to you to determine
2 what the defendant intended to do based on the circumstances
3 that were shown to have existed at that time.

4 Now, I will point out to you two other things. There
5 were some -- there was evidence of prior inconsistent
6 statements perhaps being made, and I will tell you that you
7 can consider those in determining whether or not to believe
8 a witness that may of made a prior inconsistent statement.
9 You also may use evidence of early -- earlier contradictory
10 statements to determine the truth of those statements. It's
11 up to you, as the sole judges of the facts, to decide
12 whether you believe the earlier statements or the statements
13 made at trial.

14 If a witness is shown to have knowingly testified
15 untruthfully on any material matter, you can consider that
16 in determining whether to trust the witnesses testimony as
17 to other matters. Again, you're the sole judges of the
18 facts. You can direct -- reject any, all, or none of what
19 any witness may have testified to you and you can give it
20 the weight you think it deserves.

21 Also, a person testified who had a prior criminal
22 record and I'll tell you, someone who has a prior criminal
23 record, is competent to testify during the trial. The past
24 record does not affect the ability of that witness to
25 testify, and the prior criminal record may only be

1 considered by you, if at all, in determining the witnesses
2 believability. Remember, you're the sole judges of the
3 facts and the believability of all witnesses in this case.

4 Now, I'm getting to the, to the charged crime and, in
5 the indictment, the charge is for the offense of murder.
6 The defendant is charged with murder and the State must
7 prove in this case, beyond a reasonable doubt, that the
8 defendant killed another person with malice aforethought.

9 Now, malice, under the law, is defined as a hatred, an
10 ill will, or hostility toward another person. It is the
11 intentional doing of a wrongful act without a just cause or
12 excuse and with the intent to inflict injury or death or
13 under circumstances that the law would infer an evil intent.

14 Now, malice aforethought doesn't require that the
15 malice exist for any particular length of time before the
16 act is committed. However, malice must exist in the mind of
17 the defendant just before and at the time the act is
18 committed. Therefore, there has to be a combination of the
19 previous evil intent and the commission of the act.

20 Now, malice aforethought can be either expressed or it
21 can be inferred. Now, that doesn't refer to different kinds
22 of malice. It defines -- it defines different ways that
23 malice can be shown to exist. That is either by direct
24 evidence in the case of expressed malice or by inference in
25 the case of inferred malice or by circumstantial evidence.

1 Now, express malice is shown when a person speaks words
2 which express hatred or ill will for another person or when
3 the person prepared beforehand to do the act which was later
4 accomplished. For example, someone lying in wait for a
5 person or other acts of preparation would go to show that
6 the deed was within the defendant's mind and would be
7 evidence of expressed malice, and malice can be inferred
8 from conduct which shows a total disregard for human life.

9 Now, under the law, there are certain what we call
10 lesser included offenses, and, in this case, if you find
11 that the State did not prove the crime of murder, then you
12 have the right to consider whether or not the defendant
13 would be guilty of a lesser included offense. That lesser
14 included offense is the offense of voluntary manslaughter.
15 So, if you find that the State failed to prove, beyond a
16 reasonable doubt, that the defendant committed murder, then
17 you may consider whether the State proved, beyond a
18 reasonable doubt, that the defendant committed voluntary
19 manslaughter.

20 To prove voluntary manslaughter, the State must prove,
21 beyond a reasonable doubt, that the defendant took the life
22 of another in the sudden heat of passion based on sufficient
23 legal provocation, provocation. Both heat of passion and
24 sufficient legal provocation must be present at the time of
25 the killing to constitute voluntary manslaughter.

1 Sudden heat of passion may, for a time, affect a
2 person's self-control and temporarily disturb a person's
3 reason. The sudden heat of passion must be of the type that
4 would make an ordinary person unable to coolly reflect on
5 his actions and would produce an uncontrollable impulse to
6 do violence.

7 Sufficient legal provocation must be the type that
8 would make a person of ordinary reason and caution become
9 enraged and to lose control temporarily. The provocation
10 needed for voluntary manslaughter must come from some act of
11 or related to the victim. Words alone, however vulgar or
12 insulting, are not enough to be legal provocation. Where
13 death is caused by the use of a weapon, the words must be
14 accompanied by some overt threatening act which would have
15 produced the heat of passion. The exercise of a legal
16 right, no matter how offensive it might be to another, is
17 not sufficient to provocation for, for voluntary
18 manslaughter.

19 Now, I will tell you that if you were to find that the
20 heat of passion had cooled or if there had been enough time
21 between the provocation, if any, and the killing for the
22 passion of a reasonable person to cool, the killing would
23 not be voluntary manslaughter. In deciding whether a
24 reasonable person would have had enough time to cool off,
25 then you should consider all the circumstances that surround

1 the killing. You can consider the nature of the
2 provocation, if any, the defendant's mental and physical
3 state, and the circumstances and relationships between the
4 parties that then and there existed.

5 Now, ladies and gentlemen of the jury, I've told you,
6 at the beginning of the trial, that your verdict will have
7 to be unanimous. Each and every one of you must agree upon
8 the verdict before it becomes the verdict of the jury.

9 I'm going to ask Mrs. Leeder to raise her hand please.
10 (WHEREUPON, the juror complies.)

11 THE COURT: You're going to be the foreperson of the
12 jury. That means that you will be the person who will be
13 responsible to conduct the discussions of the jury. Should
14 the jury have a question that you'd like to ask of me during
15 your deliberations, I'll ask that you get the jury to agree
16 on the form of the question, write it on a piece of paper,
17 hand it to the bailiff outside the jury room, and that
18 bailiff will see that I get it. I then will consider what
19 my response should be.

20 Now, you know, I can't answer every question you, you
21 may have during your deliberations because, I'll tell you, I
22 can't get involved in your decisions on the facts. You're
23 the sole judges of the facts. I can answer questions about
24 the procedure that we followed, my charge on the law, some
25 limited questions about the evidence that have been

1 presented.

2 But Mrs. Leeder, I'm gonna ask you not to edit any
3 question the jury has. Whatever question they have, if they
4 all agree on it, pass it to me. I'll decide what the
5 appropriate response ought to be.

6 I'm going to go over with you the verdict form in just
7 a few minutes. I'll explain to you how that will be filled
8 out, and, again, it will be your responsibility, once a
9 unanimous verdict is reached on the questions I've presented
10 to you, to record that verdict on the verdict form. Once
11 the verdict form is completed, we'll ask that you knock on
12 the door, tell the bailiff that it's been completed. We'll
13 bring you back into the courtroom to receive the verdict.

14 Again, it must be unanimous and all of you must agree
15 upon it and I will tell you, just because I've asked Mrs.
16 Leeder to be the foreperson of the jury, as I pointed out to
17 you at the beginning of the trial, none of you is more
18 important than any other juror. You must all agree on the
19 verdict before it is the verdict of the jury. So, the fact
20 that I've appointed her does not mean that her opinion is
21 any more important than anyone else's opinion on the jury.

22 Now, I've gone over a good bit with you. I -- what I
23 have to do now is discuss my charge with the attorneys.
24 We've got to get the evidence together because you get to
25 take that with you back into the jury room, and I want to be

1 sure only what we've admitted into the record goes back
2 there with you.

3 So, there's some housekeeping matters that I need to
4 take care of before I ask you to begin your deliberations.
5 This may be the last time I'll tell you to leave the
6 courtroom and not begin any discussion until I bring you
7 back for your final discussions, final instructions.

8 So, at this time, if you would, please retire to the
9 jury room.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Any objections to my charge from the State?

13 SOLICITOR BULSA: No, Your Honor.

14 THE COURT: Any from the defense?

15 MR. MITCHELL: No, Your Honor.

16 THE COURT: All right. I'll ask you to come forward
17 and get with the court reporter and be sure we've segregated
18 the exhibits that will go back to the jury from the ones
19 that did not come in.

20 (Pause.)

21 THE COURT: Are those the exhibits?

22 Mr. Mitchell, do you agree that those are the exhibits
23 to be given to the jury?

24 MR. MITCHELL: Yes, Your Honor, I do.

25 THE COURT: Mr. Bulsa, do you agree that those are the

1 exhibits to go to the jury?

2 SOLICITOR BULSA: Yes, sir.

3 THE COURT: All right. If you'll set them aside on
4 that sidebar over there. Right here beside her. There we
5 go.

6 I'll ask you to step up and take a look at the verdict
7 form.

8 (Pause.)

9 THE COURT: Any objection to the verdict form?

10 SOLICITOR BULSA: No, sir.

11 MR. MITCHELL: No, sir.

12 THE COURT: Okay. Very good.

13 We're gonna send you -- put the case number on the
14 verdict form and put his middle name in there.

15 THE CLERK: Yes, sir.

16 THE COURT: If you can print it for me.

17 THE CLERK: Okay.

18 (Pause.)

19 THE COURT: All right. Let's bring the jury back
20 please. Thank you.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: Sir, the, the forelady is gonna sit in that
24 seat. If you'll sit up on the back please.

25 (WHEREUPON, the juror complies.)

1 THE COURT: Thank you.

2 All right. Would you pass this over to the forelady
3 please?

4 THE BAILIFF: Sure.

5 THE COURT: All right. Mrs. Leeder, I'm having the
6 bailiff hand you two documents. One of the documents is the
7 indictment in this case. That's allowed -- that's going to
8 be sent back for you to have so you can review the, the
9 indictment yourselves as you consider it -- the charge.

10 The other is the verdict form and let's talk about that
11 verdict form. At the top of the form it has the State and
12 county that we're in and in the Court that we're operating
13 in. Over to the far left it will have the State versus the
14 defendant in this case, Mr. Savage. Below that there are
15 two questions.

16 The first question pertains to the charge that's
17 contained in the indictment of murder, and, as to that
18 charge, below that first question is -- are two choices.
19 One is not guilty and one is guilt. There's a blank line
20 beside those.

21 Once the jury has reached a unanimous verdict on the
22 charge, you will put a check or an X in the black line next
23 to the appropriate verdict that's been reached. Don't take
24 from the fact, ladies and gentlemen, that I've put those
25 choices in any particular order on that form to indicate

1 that I've got a preference. I've been doing these forms for
2 about 14 years now and I always put them in the same order
3 in every case. I don't change it ever.

4 So, that's no preference on my part. That's just the
5 way I do the form.

6 Now, below that it states that should you find the --
7 should the jury unanimously find the defendant not guilty of
8 the charge of murder, then you must decide whether or not
9 the State did, however, prove the lesser included offense of
10 in -- of, of voluntary manslaughter. So, that would be the
11 lesser included charge, and, again, that will only be
12 considered if the jury finds the defendant not guilty on the
13 charge of murder. If the defendant were found guilty of the
14 charge of murder, there's no need considering the lesser
15 included.

16 Do you understand how that works?

17 THE FORELADY: Yes, sir.

18 THE COURT: All right. Now, once the form has been
19 completed in full, I'll ask that you sign it on the line
20 that's provided for the foreperson, foreperson to sign,
21 knock on the door, let the bailiff know a verdict's been
22 reached and we'll bring you back to the courtroom for us to
23 get the verdict from you.

24 Now, if, for any reason, it becomes necessary for a
25 bailiff or someone from the Clerk's Office to enter the jury

1 room while you're deliberating, I will instruct you to stop
2 discussions on the case totally until that person has
3 completed whatever their errand is and has left the jury
4 room. So, you should only discuss the case among
5 yourselves. Not with anyone else present.

6 Now, that might -- we're at 2:30 in the afternoon. I
7 don't know how long you're going to deliberate. Take as
8 much time as you feel that you need. But if we go into the
9 dinner hour and we need to order dinner for you, then we can
10 do that and have it delivered. But someone would have to
11 come and get your order and then someone would have to bring
12 the food back to you later on.

13 So, we'll try to work with you on those particular
14 questions when the time comes. But if someone does enter
15 the jury room, again, stop your deliberations until that
16 person has completed their business and has left and then
17 you can start, start your discussions again once that person
18 has left.

19 Do you understand me?

20 THE FORELADY: Yes, sir.

21 THE COURT: Now, I'm going to have the exhibits
22 delivered back to the jury room with you so that you can
23 consider those during your deliberations.

24 Now, at this time, I'm going to ask that the 12 members
25 of the jury retire to the jury room to begin deliberations.

1 Sir, I'm gonna ask that you remain seated as the
2 alternate.

3 At this time you may retire and begin your
4 deliberations.

5 Thank you very much.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 (WHEREUPON, the alternate juror was dismissed at this
9 time.)

10 THE COURT: Any exceptions to my final instructions
11 from the State?

12 SOLICITOR BULSA: No, Your Honor.

13 THE COURT: And from the defense?

14 MR. MITCHELL: No, Your Honor.

15 THE COURT: All right. We'll be in recess in this case
16 until a verdict's reached.

17 Thank you very much.

18 (WHEREUPON, the jury began deliberations at 2:33PM and
19 returned with a question at 3:40PM.)

20 THE COURT: All right. I'm back on the record in the
21 case of the State versus Savage.

22 I've received one sheet of paper from the jury, two
23 questions. They're asking for written copies of certain
24 testimony and obviously we're not in a position to provide
25 written copies of the testimony. So, I'll make them aware

1 of that and perhaps they'll then let me know how they wish
2 to handle this.

3 Bring the jury in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. I have received an inquiry from
7 the jury.

8 The first question is can we get a written copy of the
9 eye witnesses testimony and then the second one is can we
10 get the written testimony, a copy of the owner and wife of
11 the club.

12 Madam Forelady, let me explain to you. The court
13 reporter is taking down the testimony on the stenotype
14 machine. So, that's not a written -- it's not a typewritten
15 transcript.

16 Later on, court reporters will take that stenotype
17 along with the tape recordings made of the proceedings and
18 produce a written transcript. So, at this point in time,
19 there are -- there is no written transcript of the testimony
20 that's available.

21 Now, the audio recordings of what went on in the
22 courtroom are available but, of course, if we -- if you do
23 want me to, to play those for you again, we would have to
24 play the entire testimony of any witness you request. In
25 other words, in the interest of completeness, it would be

1 necessary for us to play the, the testimony of the full
2 witness, both direct examination and any cross-examinations.

3 So, I don't know if that changes your request or how
4 you want us to approach that. So, my response is, right
5 now, there are no written transcripts available.

6 I'll ask you to step back to the jury room. If you
7 have additional requests, if you would submit those to me in
8 writing as well.

9 All right. You may return to the jury room.

10 Thank you very much.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Any objections to my responses from the
14 State?

15 SOLICITOR BULSA: No, Your Honor.

16 THE COURT: Any from the defense?

17 MR. MITCHELL: No, Your Honor.

18 THE COURT: All right. The question from the jury will
19 be made a Court's Exhibit and part of the record.

20 (WHEREUPON, the note from the jury was marked as
21 Court's Exhibit No. 1 and received into evidence at this
22 time.)

23 THE COURT: We'll be adjourned until we hear from the
24 jury again.

25 Thank you very much.

1 (WHEREUPON, the jury began deliberations again at
2 3:42PM and returned with a verdict at 4:15PM.)

3 THE COURT: All right. I've been informed by the
4 bailiffs that a verdict has been reached.

5 Is the State ready to receive the verdict?

6 SOLICITOR BULSA: Yes, sir.

7 THE COURT: Defense ready to receive the verdict?

8 MR. MITCHELL: Yes, Your Honor.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: Madam Forelady, I've been informed that a
13 verdict has been reached.

14 Is that true?

15 THE FORELADY: Yes, sir.

16 THE COURT: Pass the verdict to the bailiff please.

17 (WHEREUPON, the forelady complies.)

18 THE COURT: Before the verdict is announced, I will
19 ask, if there's anyone in the courtroom who has any
20 difficulty in controlling their emotions at a time like
21 this, I would urge you, at this time, to step outside the
22 courtroom. The court will not tolerate any outbursts or any
23 demonstrations. If that occurs, then you would be taken
24 into custody.

25 So, if there's anyone here who has any difficulty in

1 controlling your emotions during a time like this, please
2 step outside the courtroom at this time.

3 (No response.)

4 THE COURT: Madam Clerk, you may publish the verdict.

5 THE CLERK: Yes, sir.

6 As to the Indictment Number 2015-GS-42-810, for murder,
7 we, the jury, unanimously find the defendant, Shedrick Andre
8 Savage, guilty. Signed by the foreperson dated 11/29 of
9 2016.

10 Ladies and gentlemen of the jury, is this your verdict
11 and still your verdict, if so, please raise your
12 right-hands.

13 (WHEREUPON, all jurors raise their hands at this time.)

14 THE CLERK: So say you all.

15 THE COURT: Anything further from the State before I
16 release the jury?

17 SOLICITOR BULSA: No, Your Honor.

18 THE COURT: Anything further from the defense before I
19 release the jury?

20 MR. MITCHELL: No, Your Honor.

21 THE COURT: All right.

22 (WHEREUPON, the jury panel was dismissed at this time.)

23 THE COURT: Thank you very much, ma'am.

24 Mr. Ruth, let me know if there's any of them who wish
25 to step in. I'm talking about the jury. Check on them and

1 see if they wish to step in.

2 (Pause.)

3 THE BAILIFF: Negative, Your Honor.

4 THE COURT: Thank you.

5 You may approach the bar please.

6 (WHEREUPON, the parties comply.)

7 THE COURT: All right. I've received the sentencing
8 sheet in the matter. It appears the defendant has not
9 signed that sheet.

10 Mr. Mitchell, is your client refusing to sign the
11 sheet?

12 MR. MITCHELL: Your Honor, I put it to him. I think
13 he's just stunned by the, of course, the verdict and it may
14 well be that I can ask him again.

15 THE COURT: Well, sir, I'll be glad to pass it back
16 down if you'd like for him to reconsider.

17 (Pause.)

18 THE COURT: Mr. Savage, having been found guilty by a
19 jury of your peers of the offense of murder, the Court will
20 now consider the appropriate sentence in this case. I'm
21 going to hear from your lawyer. If there are any, anyone
22 here who'd like to speak on your behalf, I'll be happy to
23 hear from them and then I'll give you an opportunity to
24 speak to me if you would like to do so.

25 Mr. Mitchell.

1 MR. MITCHELL: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. MITCHELL: Your Honor, under the circumstances, the
4 Court take into consideration that there seemingly were some
5 aggravating circumstances that provoked my client. So, the
6 jury say that he did commit murder, that provoked him to do
7 what he did, we certainly feel that there should be some
8 mitigation given in regards to that provocation by virtue of
9 his automobile implicitly -- he being attacked through his
10 automobile. We certainly feel that it was out of heat of
11 passion rather than out of any intent and have the Court
12 take that, that into consideration in imposing sentencing.

13 THE COURT: All right. Anything further, Mr. Mitchell?

14 MR. MITCHELL: Not at this time, sir.

15 THE COURT: All right. Do you know if there's anyone
16 who would like to speak on his behalf at this time?

17 MR. MITCHELL: Yes, sir, there's one person out here.

18 THE COURT: All right. What's that name?

19 UNIDENTIFIED PERSON: Tiffany.

20 THE COURT: I'm sorry?

21 UNIDENTIFIED PERSON: Tiffany.

22 THE COURT: I can't hear what she's saying.

23 MR. MITCHELL: Tiffany.

24 THE COURT: Tiffany?

25 UNIDENTIFIED PERSON: Tiffany Dowel.

1 THE COURT: Last name?

2 UNIDENTIFIED PERSON: Michaels.

3 THE COURT: Michaels.

4 Sir, Mr. Ruth, check and see if there's a Tiffany
5 Michaels outside.

6 THE BAILIFF: All right, sir.

7 THE COURT: I'll be glad to let her speak.

8 (Pause.)

9 THE COURT: Ma'am, if you'll step around over to the
10 far right side. For my prospective, left side.

11 State your name please, ma'am.

12 MRS. MICHAELS: Tiffany Michaels.

13 THE COURT: Yes, ma'am, your relationship to this
14 situation is?

15 MRS. MICHAELS: He's my son---

16 THE COURT: Ma'am, if you can't---

17 MRS. MICHAELS: I'm sorry. It's my son's father and
18 that's all he have. Ever since it's been going on, my son
19 ain't been able to participate and do nothing. He is (sic)
20 dream is to play basketball. He can't even do that and I
21 know -- it's why I taught him a lot and that's not -- this
22 is not his father I know. I been knowing him since I was --
23 we was little and that's something that---

24 THE COURT: Ma'am, I'm having a hard time understanding
25 what you're saying.

1 MRS. MICHAELS: I know cause it's hard on me and it's
2 hard on my son---

3 THE COURT: I understand that.

4 MR. MICHAELS: ---and I been raising my son and I need
5 help and he need his father. He have seven kids. He
6 need -- they need they father and I'm sorry for what
7 happened but that was not Shedrick. He was totally against
8 this and he taught my boy never to even have a water gun.
9 Never. He didn't, he didn't -- he lost friends to this and
10 he, he didn't even -- ain't want my boy playing with a water
11 gun.

12 I just don't see that. That's nothing -- I know that's
13 nothing in his heart he would do and I don't know, I don't
14 know how I'm gonna make it with just me. I don't have
15 nobody to help me. That was my only help. That's my only
16 help.

17 A man that get up and walk to work two hours early, two
18 hours early, just to provide for his mom, his kids, and
19 wouldn't even -- wouldn't -- look at his son and his son
20 knew what to do and he ain't even wanted to touch a gun.

21 So, I'm just saying it's not -- I'm sorry but it's not
22 Shedrick. It's not. It's not him. It's not him.

23 THE COURT: Thank you, ma'am.

24 MRS. MICHAELS: Thank you.

25 THE COURT: Any other family members wish to speak?

1 (No response.)

2 THE COURT: All right. Mr. Savage, at this time, you
3 have the right to address the Court if you wish to do so.

4 THE DEFENDANT: Yeah, I want to ask you how do I go
5 about coming back for this like appeals and stuff?

6 THE COURT: Well, sir, you have the right to appeal the
7 decision in this matter. That appeal would have to be filed
8 within a certain number of days. Your lawyer can advise you
9 about that and, of course, it would be up to you then
10 whether or not to file the appeal or not. So -- but that's
11 not the issue in front of me right now.

12 THE DEFENDANT: Uh-huh. (Affirmative).

13 THE COURT: The issue in front of me right now is what
14 the appropriate sentence is.

15 THE DEFENDANT: Oh.

16 THE COURT: In this particular case, that sentence for
17 murder is a minimum of 30 years up to life. And so I'm
18 trying to determine what the appropriate sentence will be in
19 this case. You certainly have a right to address me on that
20 issue if you want to. If you don't care to, you're not
21 required to do so. I'm giving you an opportunity to speak
22 if you'd like to on that point.

23 THE DEFENDANT: Yeah, on that, I really don't think I
24 deserve that cause I mean I didn't do it. I mean I'm sorry
25 for his family but I wasn't the one that did it. And I mean

1 30 years of my life, I got three year old babies. They -- I
2 mean they be grown women. I mean you know. I just ask for
3 some leniency, Your Honor. I just ask the Court to be
4 lenient on me and, you know, at this time right now.

5 THE COURT: Thank you, sir.

6 THE DEFENDANT: And I got a mama that's sick. She --
7 no telling what's going on with her out in the hallway. She
8 can't take the type of stuff. She can't -- I'm just the
9 sole provider for everybody, you know, my babies, my mother.
10 Me being gone, it's just -- I just ask that you be lenient
11 on me, you know.

12 THE COURT: Thank you, sir.

13 MR. MITCHELL: Your Honor, in other words, he's asking
14 for mercy.

15 THE COURT: I understand. I appreciate that.

16 Now, Mr. Bulsa, prior record for the individual.

17 SOLICITOR BULSA: Yes, sir.

18 In 2000, disorderly conduct and possession of
19 marijuana.

20 2001, disorderly conduct.

21 2002, felony drug offense. Received a ten year
22 sentence suspended to time served and probation.

23 2003, a possession of marijuana. 2003, driving under
24 the influence and driving under suspension. Also another
25 drug conviction. Received a one year sentence on that.

1 Then, in 2005, he had a federal conviction for felon in
2 possession of a firearm.

3 From 2009, possession with intent to distribute in
4 order to distribute drugs near a school, a half mile of a
5 school.

6 Then, in 2012, disorderly conduct.

7 THE COURT: Does your client dispute something in this
8 record, Mr. Mitchell?

9 MR. MITCHELL: Yes, sir, Your Honor. He was serving
10 time in 2009. He was in federal prison at that time.

11 THE COURT: Well, that would of been the time of the
12 conviction. Not necessarily when the event occurred.

13 THE DEFENDANT: I was in prison from 2004 to '10. I
14 got out and got a job and been working since then.

15 THE COURT: You have any information on that,
16 Mr. Bulsa?

17 SOLICITOR BULSA: No, it's just showing---

18 THE COURT: I'll disregard that conviction.

19 SOLICITOR BULSA: Yes, sir.

20 MR. MITCHELL: Your Honor, also, I point out that the
21 charges seemingly Mr. Bulsa has read off are beyond that ten
22 year limitation or statute that could be raised in regards
23 to sentence being imposed and the Court taking into
24 consideration.

25 THE COURT: All right. Now, the victims have the right

1 to address the Court if they wish to.

2 Do the victims wish to address the Court on this issue?

3 SOLICITOR BULSA: I don't believe so, Your Honor. No,
4 sir.

5 THE COURT: How long has he been incarcerated?

6 SOLICITOR BULSA: Just over two years.

7 THE COURT: All right. So, from what date?

8 SOLICITOR BULSA: From November 23rd, 2014. Two
9 years and six days.

10 THE COURT: The jury having found Mr. Savage guilty,
11 it's obvious the jury felt, beyond a reasonable doubt, that
12 this killing was not justified. They found that it was done
13 with malice aforethought. However, the Court listened to
14 all of the evidence and was present during the trial.

15 There obviously were extenuating circumstances that
16 existed at the time this event occurred. A fight had
17 occurred apparently between various people in the club. It
18 appears that that fight spilled over into the parking lot.
19 Unfortunately, it resulted in the death of a person who
20 didn't deserve to die for what I hear happened out there
21 that night --

22 MR. MITCHELL: Yes, sir.

23 THE COURT: -- so taking at its worst.

24 However, there was some -- there was some wrongdoing, I
25 guess you could say, on the part of the victim in that while

1 he was walking away, he did stop and engage in a verbal
2 altercation and, in fact, according to the witness, threw a
3 bottle at the -- and hit the vehicle of the defendant in
4 this case.

5 So, there's extenuating circumstances here. I don't
6 find this to be a situation where someone plotted or planned
7 to kill someone for a long period of time or somehow was
8 lying in wait for someone. I find this to be more of the
9 evil intent coming into existence immediately before the
10 act -- the incident occurred in this situation.

11 For that reason, I've taken that into consideration in
12 the sentence that I'm imposing. I do note that, that, for
13 this offense, this is a no parole offense. Therefore, the
14 defendant will be required to serve the sentence that I
15 give.

16 He is a man of 34-years of age. He does have small
17 children. I've taken that into consideration as well as his
18 prior record in reaching a verdict.

19 Nothing I do here today will bring back the victim
20 unfortunately. That -- that's done. Unfortunately, that's
21 over. The -- your, your experience in life with him is been
22 lost as a result of this and the Court has sympathy for the
23 family in that regard.

24 SOLICITOR BULSA: Yes, sir.

25 THE COURT: My sentence in this matter is that the

1 defendant be confined in the State Department of Corrections
2 for a period of 30 years. He's been given credit for two
3 years and six days.

4 Good luck to you, sir.

5 SOLICITOR BULSA: Thank you, Your Honor.

6 THE COURT: Yes, sir, thank you.

7 MR. MITCHELL: Thank you, judge.

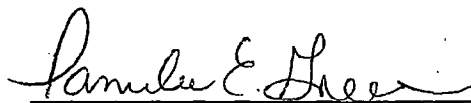
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10 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 Spartanburg County, South Carolina, on the 28th and 29th days of November, 2016.

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

March 27th, 2018

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable Roger L. Couch
Seventh Judicial Circuit Court Judge

RECEIVED

DEC 12 2016

Case Nos.
2014A4210203728 (Indictment No.: 2015-GS-42-00810)

SC Court of Appeals

The State of South Carolina.....Respondent
v.
Shedrick Andre Savage.....Appellant

NOTICE OF INTENT TO APPEAL

Shedrick Andre Savage appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Roger L. Couch on November 29, 2016. Appellant received notice of the same on that date.

December 8, 2016

Candice Lapham
Candice K. Lapham
Attorney for Appellant

CANDICE K. LAPHAM, LLC
184 North Daniel Morgan Avenue
Spartanburg, South Carolina 29306
Office: (864) 591-0411
Fax: (864) 585-0068
Email: Candice@upstatecriminalattorney.com

Other Counsel of record:

Derrick Bulsa, Deputy Solicitor
Seventh Circuit Solicitor's Office
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, SC 29306

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 DEC -8 PM 3:00
M. HOPE BLACKLEY

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions**

The Honorable Roger L. Couch
Seventh Judicial Circuit Court Judge

Case Nos.
2014A4210203728 (Indictment No.: 2015-GS-42-00810)

The State of South Carolina.....Respondent

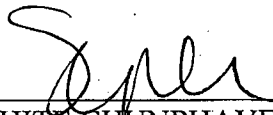
v.

Shedrick Andre Savage.....Appellant

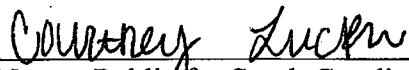
PROOF OF SERVICE

The undersigned, Somchite Chunphaven, hereby certifies that she is employed in the office of Candice K. Lapham, Attorney at Law, and is a person of such age and discretion as to be competent to serve papers and that a copy of the **NOTICE OF INTENT TO APPEAL**, was served upon the following person(s) on the State, by depositing copies of same in the United States Mail, with sufficient postage affixed thereto, on December 8, 2016 addressed as follows:

Derrick Balsa, Deputy Solicitor
Seventh Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, SC 29306


SOMCHITE CHUNPHAVERN

Subscribed and sworn to before me
on 8 day of December, 2016


Notary Public for South Carolina

My commission expires: April 22, 2020

RECEIVED
DEC 12 2016
SC Court of Appeals

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 DEC -8 PM 3:00
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The South Carolina Court of Appeals

The State, Respondent,

v.

Shedrick Andre Savage, Appellant.

Appellate Case No. 2016-002479

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2015GS4200810

ORDER

Appellant has failed to update the Court with the status of the transcript, as required by Rule 207 of the South Carolina Appellate Court Rules, and this Court's letters dated March 24, 2017, and April 14, 2017. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Candice Koopman Lapham, Esquire
Donald J. Zelenka, Esquire

FILED
May 15, 2017



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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www.sccourts.org

June 02, 2017

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Shedrick A. Savage
Lower Court Case No. 2015GS4200810
Appellate Case No. 2016-002479

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Candice Koopman Lapham, Esquire
Donald J. Zelenka, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Shedrick Andre Savage, # 294223,
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018CP4200995

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee CI
2. Name and location of Court which imposed sentence Spartanburg County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-42-810: murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11/29/2016: 30 years
 - (b) _____

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 SPARTANBURG COUNTY
 2018 MAR 20 PM 3:29
 M. HOPE BLANKLEY

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty x
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. failure to update court order transcript
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 5/15/17
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) ineffective assistance of trial counsel
 - (b) ineffective assistance of appellate counsel
 - (c) due process violations
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) failed to investigate, make proper motions and objections to preserve the record
 - (b) failed to order transcript, allowed dismissal of appeal
 - (c) unfair trial
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 - (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. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

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 SPARTANBURG COUNTY
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- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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SPARTANBURG COUNTY
2018 MAR 20 PM 3:29
M. HOPE BLACKLEY

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Theo W. Mitchell, LLC 9 Bradshaw Street Greenville SC 29601-3515
- ii. CANDICE K. LAPHAM, LLC 184 NORTH DANIEL MORGAN AVE. SPARTANBURG
SC. 29306
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. trial
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
remand
20. Are you now under sentence from any other court that you have not challenged?
no

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SPARTANBURG COUNTY
2018 MAR 20 PM 3:29
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STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, Shedrick Savage, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 15th
day of MARCH, 2018.

Liniqua Greene (L.S.)
Notary Public

My Commission Expires: 9-29-2027

CLERK OF COURT
SPARTANBURG COUNTY
2018 MAR 20 PM 3:29
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**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Shedrick Savage
Applicant

SWORN or affirmed to and subscribed before me this
15th day of MARCH, 2018.

Uniquia Greene
Notary Public

My Commission Expires: 9-29-2027

CLERK OF COURT
 SPARTANBURG COUNTY
 2018 MAR 20 PM 3:29
 M. HOPE BLACKLEY

Mr. Shedrick Savage # 294223
Lee C. I. F5-140-B
990 Wisacky Highway
Bishopville, SC 29010

OF 04/04/14 SC 29010
15 MAR 2014 PM 3:11

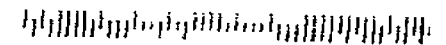
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Ms. Hope Blackley
Spartanburg Clerk of Court
PO Box 3483
Spartanburg, SC 29304

CONFIDENTIAL LEGAL MAIL

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29304-348362



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Shedrick Andre Savage, #294223

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-42-0095

RETURN

FILED
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SPARTANBURG COUNTY
2018 AUG -3 AM 8:48
M. HOPE BLACKLEY

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on March 20, 2018, would respectfully show this Court:

I. Procedural History

Shedrick Andre Savage (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In March 2015, the Spartanburg County Grand Jury indicted Applicant for murder (2015-GS-42-0810). Theo Walker Mitchell, Esquire represented Applicant. Assistant Solicitor Derrick Balsa, Esquire prosecuted the case. On November 28-29, 2016, Applicant proceeded to trial before the Honorable Roger L. Couch. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for thirty years along with credit for time served for two years and six days.

Applicant filed a timely notice of appeal. Candice K. Lapham, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to update Court with the status of the transcript. The remittitur was returned to the circuit court on June 2, 2017.

Attached to this Return and incorporated by reference are the records of the Spartanburg

County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Summary of Facts Adduced at Trial

On November 23, 2014, an altercation arose between Shedrick Savage and Charles Jackson, Jr., along with other patrons, at Universal Events, a club. Security asked both parties to leave and while Jackson was walking to his car, a blue truck pulled up beside him and a shot was fired. Jackson was shot to the chest, resulting in his death. (Tr. 82-83) A doorman of the club, Errol Graham, was a witness to the altercation and stated that it was probably "the biggest fight ever". (Tr. 98) Graham walked outside with the parties involved in order to talk the situation down. (Id.) Graham testified that he noticed Savage was a little "irate" and once everything settled down, he saw him get into the driver's seat of a blue truck that had a paper Morgan's used car tag. (Id.) He also witnessed Savage point down toward the hill where the victim was shot at and drive off towards that direction. (Id.)

Another witness, John Mitchell, testified that Savage was extremely mad with Jackson after the altercation and stated that Savage made a comment that he was going to kill him. (Tr. 82) Multiple witnesses then saw Savage get into a blue truck with two other people and one witness identified Savage as the shooter. (Tr. 99, 110) After the shooting, a witness took off after the truck and was able to get a description of the truck as well as a Morgan's used car tag on it. (Tr. 83) Police located the blue truck involved in the shooting and the driver and passenger were apprehended. (Tr. 140) The driver was identified as Shedrick Savage and the passenger was Rashawn Miller. (Tr. 141) A search of the vehicle was conducted but no weapons or anything

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illegal were found. (Tr. 143) Gunshot residue was found on Savage's hands and Miller's left hand. (Tr. 162-165) Blood was also found on Miller's clothing. (Tr. 152-153)

III. Allegations Raised and Relief Sought

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

1. "Ineffective Assistance of Counsel"
 - a. "failure to investigate, make proper motions and objections to preserve the record"
2. "Ineffective Assistance of Appellate Counsel"
 - a. "failed to order transcript, allowed dismissal of appeal"
3. "Due Process Violations"
 - a. "unfair trial"

As requested relief, Applicant states he is seeking for "remand".

III. Response to the Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at

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625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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.

Respondent submits Applicant can satisfy neither 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, 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. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any

amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

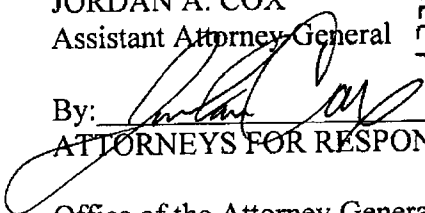
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JORDAN A. COX
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

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M. HOPES
ACKLEY

August 1, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

2018-CP-42-0995

SHEDRICK ANDRE SAVAGE, #294223)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

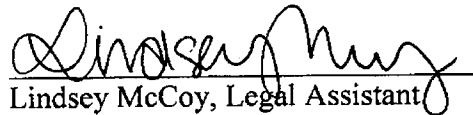
1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601**

DATED this 1st day of August, 2018.


Lindsey McCoy, Legal Assistant

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SPARTANBURG COUNTY
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M. HOPE BLACKBERRY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
SHEDRICK SAVAGE,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE # 2018-CP-42-0995
RESPONDENT.	)	

This matter comes before the Court by way of application of post conviction relief filed March 20, 2018, alleging ineffective assistance of trial and appellate counsel and due process violations. A Return was made on August 1, 2018. This application is intended to incorporate the allegations of the original application and add the following allegations:

1. Ineffective assistance of trial counsel for

- (a) failing to appeal
- (b) failing to move for immunity under § 16-11-450 S.C. Code Ann.
- (c) failure to make objections or adequate responses to State objections
 - (1) no obj. bolstering Tr. p. 66, l. 23
 - (2) State objected to reference to third party guilt counsel failed to argue it was supported by evidence in the case and went to the adequacy of the State's investigation. Tr. pp.30-37, 69-72, 82,192, 201-17
- (d) failed to introduce 911 recording to impeach witness Cedric Jones. Tr. p. 119
- (e) failed to effectively cross examine forensics officer Sean Nix. Tr. pp. 134-6
 - (1) discovery showed beer bottle in cup holder in rear seat area of Applicant's truck was swabbed for DNA but State never introduced SLED report. Tr. p. 157-62.

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 SPARTANBURG COUNTY
 ALY W. COX

(2) discovery showed blood and prints on and in rear driver's side door which was swabbed for DNA but State did not introduced SLED report or make any reference to the blood. Tr. p.161.

(3) no gun or casing were found in truck

(f) failure to make effective arguments in closing -

(1) heat of passion after witness John Mitchell said V. and D. fought at club and that he told V. to leave before D. and counsel never argues that the fact V. was still there and at D. truck would create a perceived threat for D. Tr. p. 82

(2) heat of passion or standing your ground law when witnesses admitted there had been a fight and the victim threw a bottle at the Applicant's truck which at night could have been perceived as a shot.

(3) witness Cedric Jones who was a close friend of the decedent and the only witness to identify the Applicant as the shooter said he called 911 but admitted he gave a false name, said he did not know who shot his friend and did not mention a blue truck. Tr. 110-12

(4) evidence supports third party in back drivers side seat was shooter.

2. Ineffective assistance of appellate counsel for

(a) failing to perfect the appeal

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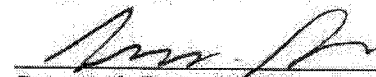
3. Due Process violations guaranteed in the Fifth, and Fourteenth Amendments of the Constitution of the United States & Art. I Sec.3 of the South Carolina Constitution due to

1) Solicitor said that there was no evidence to support an argument of third party in the truck guilt when forensic evidence showed there was evidence that he failed to present. Tr. p. 30, 111.

3) "Total breakdown of the adversarial process" regarding issue of third party guilt, calling Ruben Landrum but failing to speak to him first and establish he was an unhelpful witness, failing to impeach witness Cedric Jones with the 911 call, failing to argue "stand your ground" or voluntary manslaughter. Tr. pp. 211- 223, 237, 116, 251.

See State v. Nance, 393 S.C. 289, 712 S.E.2d 446 (S.C., 2011)

Respectfully submitted,



Susannah Ross #11205
Attorney for the Applicant
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029

Spartanburg, South Carolina
This 22 day of July, 2021

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

SHEDRICK SAVAGE,
APPLICANT.

AFFIDAVIT OF SERVICE
BY MAIL

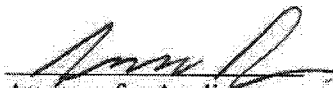
v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE #2018-CP-42-0995

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Application** in the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney
PCR Division
P.O. Box 11549
Columbia, SC 29211


Attorney for Applicant

This 22 day of July, 2021

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 SHEDRICK SAVAGE,) TRANSCRIPT
 5 APPLICANT,) OF
 6 vs.) RECORD
 7 THE STATE OF SOUTH CAROLINA,)
 8 RESPONDENT.) 2018-CP-42-95

9
 10 August 4th, 2021
 11 Spartanburg, South Carolina

12 B E F O R E:

13 THE HONORABLE H. STEVEN DeBERRY, JUDGE.

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

15 SUSANNAH ROSS
 16 ESQ.
 17 Attorney for the Applicant

18 WILLIAM RAY
 19 ASSISTANT ATTORNEY GENERAL
 20 Attorney for the State

21 PAMELA E. GREEN
 22 Circuit Court Reporter
 23
 24
 25

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DERRICK BULSA

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
<u>Applicant's Exhibits</u>			
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P R O C E E D I N G S

THE COURT: All right. Mr. Ray.

MR. RAY: Thank you, Your Honor.

May it please the Court.

This is the matter of Mr. Shedrick Andre Savage versus the State of South Carolina. This is Case Number 2018-CP-42-0095.

Mr. Savage is currently confined in the Department of Corrections. He was indicted by the Spartanburg County Grand Jury in March, 2015 for murder. He was represented at trial by Attorney Theo W. Mitchell and Assistant Solicitor Derrick Bulsa prosecuted the case.

On November 28th, 2016, he proceeded to trial before Judge Couch. He was -- a jury found him guilty the next day as indicted. Judge Couch sentenced Mr. Savage to imprisonment for a term of 30 years with credit received for time served. Applicant did file a timely notice of appeal and Attorney Candice Lapham perfected the appeal.

The appeal was dismissed by the Court of Appeals on June 2nd, 2017, for failure to update the Court with the status of the transcript. Mr. Savage then filed an Application for Post-Conviction Relief on March 20th, 2018.

In his initial Petition for Post-Conviction Relief he

1 raised allegations of ineffective assistance of counsel,
2 ineffective assistance of appellate counsel, and due process
3 violations. The State made its return and we made a return
4 on, I'm sorry, August 1st, 2018.

5 we then did receive some amended allegations on
6 July 22nd, 2021, where Mr. Savage alleges ineffective
7 assistance of trial counsel for failing to file a notice of
8 appeal, failing to move for a immunity under 16-11-450,
9 which is Stand Your Ground, failing to make objections or
10 adequate responses to the State's objections at trial,
11 namely not objecting to some bolstering and not making
12 proper arguments in response to a State's objection to a
13 reference regarding third party guilt.

14 He also alleged ineffective assistance of trial counsel
15 for failing to introduce a 9-1-1 tape to impeach witness
16 Cedric Jones, failing to effectively cross-examine a
17 forensics officer regarding evidence of a beer bottle that
18 was obtained in the backseat of the truck, as well as
19 evidence that blood and prints were in the rear driver's
20 side door of the, of the vehicle, and the fact that no gun
21 or casings were found in the vehicle, and then, finally,
22 ineffective assistance of counsel for failure, or trial
23 counsel, for failing to make effective closing arguments
24 regarding the heat of passion, self-defense, or Stand Your
25 Ground relating to a fight that was alleged to have

1 occurred, and failure to make effective closing arguments
2 regarding witness Cedric Jones' 9-1-1 call, and then failing
3 to point out the evidence supports third party guilt in, in
4 the form of a individual in the backseat of the truck, and
5 then, finally, ineffective assistance of appellate counsel
6 for failing to perfect the appeal.

7 My understanding is that we are proceeding forward on
8 the allegations in the amended complaint, and, with that,
9 the State is ready to proceed.

10 THE COURT: All right. Do you have a package for
11 today?

12 MR. RAY: I do, Your Honor.

13 THE COURT: All right. All right. If y'all are ready,
14 call your first witness.

15 MS. ROSS: Thank you, Your Honor.

16 Do you have the -- my amended application in that
17 package because that sort of is -- it's sort of an outline
18 of the way I'll progress through the hearing?

19 I just wanted to make sure you have it.

20 THE COURT: Well, do you have a copy?

21 MS. ROSS: I do.

22 MR. RAY: I believe it's, it's about the fourth or
23 fifth page in there.

24 MS. ROSS: All right.

25 MR. RAY: I believe there's a copy.

1 MS. ROSS: That's a spare copy.

2 THE COURT: Well, I was just handed this back to --
3 I'll go with your copy if that's fine.

4 MS. ROSS: Okay. Thank you, Your Honor.

5 In the interest of the -- of time, I'd call Candice
6 Lapham --

7 THE COURT: Okay.

8 MS. ROSS: -- first and the, and the -- question her
9 from over here.

10 THE COURT: If I can, Mr., Mr. Savage, are you Shedrick
11 Savage, Savage?

12 Is that right?

13 MR. SAVAGE: Yes, sir.

14 THE COURT: Okay. Has your attorney talked to you
15 about the appearance of the witness?

16 What's her last name?

17 MS. ROSS: Lapham.

18 THE COURT: Lapham.

19 Via WebEx or, or --.

20 MR. SAVAGE: Oh, yeah, she -- we spoke on it.

21 THE COURT: All right. Do you have any -- and it looks
22 as though we're not gonna be able to have her visual, just
23 only her audio.

24 MR. SAVAGE: Uh-huh. (Affirmative).

25 THE COURT: Do you, do you agree with going forward

Candice Lapham - Direct examination
By Ms. ROSS

1 that way?

2 MR. SAVAGE: Yeah, I'm fine, sir.

3 THE COURT: Okay. Thank you very much.

4 DIRECT EXAMINATION

5 BY MS. ROSS:

6 Q Ms. Lapham, this is Susannah Ross.

7 Can you hear me?

8 A Yes, I can hear you.

9 Q Hi there. Good to talk to you.

10 A Hello.

11 Q Okay. We've got Mr. Shedrick Savage here.

12 Do you recall his appeal on -- in this case?

13 A Yes, I do.

14 Q Now, you were not retained for his trial. That was
15 Theo Mitchell.

16 But weren't you retained to appeal his case?

17 A Yes, I was retained to file the paperwork with a notice
18 of intent to appeal and it was an issue with Mr. Mitchell
19 was unavailable to file the paperwork within the 10 days.
20 And so they reached out to me for direct appeal filing kind
21 of late in the process. But I did file the paperwork for
22 Mr. Savage and on behalf of Mr. Mitchell.

23 Q And was that appeal perfected?

24 A Yes. Well, yes and no. The issue was the transcript
25 with the appeal. The ballpark cost from the transcript was

Candice Lapham - Direct examination
By Ms. Ross

1 around a thousand to \$1,200 was the estimate that we needed
2 and his family was having trouble coming up with the money
3 for the transcript.

4 I contacted the Appellate Court and I asked for an
5 extension on the transcript. It -- his mother was very kind
6 and I could tell that they were having financial issues.
7 And so when she had paid me all but around \$200.00 towards
8 the transcript, I offered to front the cost for the
9 remaining 200.

10 By that point, when I contacted the Appellate Court,
11 the time had run on the direct appeal and Mr. Savage would
12 randomly call in through, you know, how they do from SCDC,
13 either three way calling, things of that nature. You know,
14 some people have cellphones in there and he had called right
15 after that fact, and, every time I'd spoken with him, the
16 issues that he had were pertaining to trial counsel and
17 ineffective assistance of counsel.

18 Q All right.

19 A And obviously which I was not involved with at that
20 point. And so I was explaining the difference between the
21 direct appeal and PCR and that I would come see him in SCDC
22 prior to filing any PCR paperwork, and I would move any of
23 the money to, you know, towards payment of a PCR cause that
24 was what he was really asking for.

25 And so, at that point, I came down with -- I think,

Candice Lapham - Direct examination
By Ms. Ross

1 during that time period, I came down with pneumonia. And
2 when I went to go file the PCR paperwork, obviously I was
3 going to meet with him where he was located in SCDC. And
4 when I went to go call, and when I pulled the paperwork from
5 the public index that was going to the Clerk's Office,
6 that's when I saw that your name was next to Mr. Savage's
7 name, that you had just filed the PCR.

8 And so no one let me know that evidently you had been
9 retained or somehow appointed at that point. And so, at
10 that point, my contact with Mr. Savage ended and I called
11 your office and so I, my recollection, while I was ill and
12 spoke with you about the case because I had no knowledge
13 they hired somebody else when I was still planning on filing
14 the PCR.

15 Q Okay.

16 THE COURT: All right. Can you hang on one second?

17 A And I just recall that -- our conversation and then I
18 had asked you, you know, you would take some of my cases
19 potentially depending upon my health issue and then---

20 Q That's correct.

21 A ---we really didn't speak much about his case.

22 Q Okay. We're having issues with the court reporter.
23 One second.

24 THE COURT: Well, we, we failed to swear this witness.

25 A Okay. I'm sorry.

Candice Lapham - Direct examination
By Ms. Ross

1 THE COURT: So just need to -- and I don't know if she
2 can hear me. Can---

3 Q We failed to swear you in as a witness.

4 A Okay. Sure.

5 Q Can you hear the judge?

6 Can you hear the judge from the bench from here?

7 A I can barely hear him here. I can barely hear him but yes.

8 THE COURT: All right. Ms. Lapham, if, if you can hear
9 me, do you swear or affirm that the testimony you've given
10 here has been the truth, the whole truth, and nothing but
11 the truth?

12 THE WITNESS: I do, Your Honor.

13 THE COURT: Okay. And any testimony that you give
14 moving forward, do you swear or affirm that to be the truth,
15 the whole truth, and nothing but the truth?

16 THE WITNESS: Yes, I do, Your Honor.

17 THE COURT: Okay. Are there, are there any objections
18 from the State and the defense from --?

19 MR. RAY: No, Your Honor.

20 THE COURT: All right.

21 MS. ROSS: No, Your Honor.

22 THE COURT: Okay. Thank you.

23 MS. ROSS: I apologize for that.

24 All right.

25 A Sure.

Candice Lapham - Direct examination
By Ms. ROSS

1 Q And, and I do confirm that you did call my office
2 regarding the PCR and, and the handling cases and -- but,
3 but just -- but just as to the appeal, that appeal was not,
4 in fact, perfected.

5 Is that correct?

6 A Correct. Due to the issue of the transcript.

7 Q Thank you.

8 No further questions.

9 A Thank you.

10 CROSS-EXAMINATION

11 BY MR. RAY:

12 Q Ms. Lapham, can you hear me all right?

13 A I can hear you.

14 Q Okay. So when did you first come in contact with this
15 case?

16 A It was after his conviction and trial with
17 Mr. Mitchell. I want to say it was early on in 2017. I
18 want to say around March potentially. I don't have that
19 information with me here at my home. I would have to pull
20 that. But it was within the 10 day period posttrial.

21 Q Okay. And did you speak with Mr. Savage personally at
22 that time?

23 A At that time I spoke with his mother and I sent
24 paperwork because I needed information from Mr. Savage with
25 regard to what actions he felt were appropriate for a direct

Candice Lapham - Cross-examination
By Mr. Ray

1 appeal and that I needed his information regarding
2 allegations as to why direct appeal should be filed.

3 Q And did you receive a response to that paperwork?

4 A To my recollection I did.

5 Q Okay. And do you recall what his, his purported reason
6 for wanting the direct appeal was?

7 A I do not.

8 Q Okay. And so, at some point, you were going to have to
9 provide a transcript to the Appellate Court.

10 Is that correct?

11 A Yes, that's correct. And the ballpark figure was
12 around a thousand dollars to 1,200 because of the length of,
13 of the trial. It was my understanding the trial lasted only
14 about a day and a half. But that was the cost of what the
15 transcript would of been and the family was trying to put
16 together money for the transcript.

17 Q Okay. So they had not paid you for the transcripts at
18 that point?

19 A Not fully, no. Not -- no. Not, not up -- not upon
20 being retained, no.

21 Q Okay.

22 A And then when we -- and then, at that point, I agreed
23 to just move what they had paid partially towards a PCR
24 action, which is what he was really looking for, ineffective
25 assistance of counsel, which was not a direct appealable

Candice Lapham - Cross-examination
By Mr. Ray

1 issue in my opinion of, you know, at that point.

2 Q Okay. So, even if you had the transcript, would you
3 have filed ineffective assistance of counsel allegations on
4 direct appeal like he wanted?

5 A I would of filed it through a PCR because of the issues
6 that he was trying to raise with Mr. Mitchell.

7 Q Okay. So---

8 A In other words, all of his issues dealt with
9 Mr. Mitchell and his failure to investigate, failure to
10 communicate, things of that nature that were PCR material.

11 Q Okay. And did you discuss that with him that these
12 allegations were not proper for a direct appeal?

13 A Yes, I did, by telephone. He called in on a three way
14 call. I could usually talk to the family members. He had
15 random females, you know, whether they were cousins,
16 friends, girlfriends, whatnot, that would, you know, call me
17 at that point because they weren't understanding that the
18 direct appeal time tolled the PCR. And so I was telling
19 multiple family members, you know, that it tolled the PCR.
20 We also had to go over everything with him. But I couldn't
21 go at that time because of my health issue.

22 when it cleared up, that's when I was getting ready to
23 go visit with him when we still had time to file and that's
24 when I saw that Ms. Ross had, had either been appointed that
25 point or retained and that's when I called her office.

Candice Lapham - Cross-examination
By Mr. Ray

1 Q Okay. And so do you believe that he understood what
2 was going on with his case at that time?

3 A Yes. Yes, he was very frustrated with Mr. Mitchell and
4 what happened at the trial.

5 Q Okay. And, in fact, he took it upon himself to hire a
6 PCR attorney other than you to go forward with these
7 allegations today?

8 A Yes, either him or a family member and I guess that I
9 did not realize that until I went to go pull the sentencing
10 sheets and the information off the public index and I saw
11 Ms. Ross' name listed next to him before I was getting ready
12 to travel to visit with him. I think at that point he was
13 in Columbia at Broad River I'm thinking if I remember, if I
14 remember correctly. But I know that it was approximately a
15 two hour drive I was gonna have.

16 And so I went to go pull the paperwork to take to him
17 to speak with him in person and that's when I saw her name.

18 Q Okay. No further questions.

19 A Thank you.

20 THE COURT: Anything further, Ms. Ross?

21 MR. RAY: No, Your Honor.

22 THE COURT: Okay. No reason to leave her on the line,
23 is there?

24 MR. RAY: No, Your Honor. I don't believe so.

25 THE COURT: Ms. Ross.

1 MS. ROSS: I think she's a witness in the next hearing
2 but not on this hearing.

3 THE COURT: Okay. Well, you want to explain that to
4 her?

5 MR. RAY: Yeah, I will.

6 All right. Ms. Lapham, there's no further questions
7 for you at this time on this case. So we're gonna put you
8 back on mute and bring you back for the next one.

9 THE WITNESS: All right. Thank you so much.

10 MR. RAY: Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: All right.

13 MS. ROSS: All right. At this time we'd call the
14 Applicant, Shedrick Savage.

15 THE COURT: Mr. Savage, if you will, are you
16 Mr. Savage -- Shedrick Savage?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Please raise your right-hand.

19 SHEDRICK SAVAGE, being first duly
20 sworn, testified as follows:

21 THE COURT: Okay. Thank you.

22 DIRECT EXAMINATION

23 BY MS. ROSS:

24 Q Okay. Do you recall getting a letter from me when I
25 was retained?

Shedrick Savage - Direct examination
By Ms. Ross

- 1 A Yes, ma'am.
- 2 Q Do you recall around when that was?
- 3 A March. I think it was in March.
- 4 Q Do you remember which year?
- 5 A '18. 2018.
- 6 Q Okay. And I'll just approach. I'm handing you -- let
- 7 me show you. I'm handing you your retainer agreement.
- 8 Does that reflect -- refresh your recollection of the
- 9 date?
- 10 A Yes, ma'am.
- 11 Q And what date was it?
- 12 A March 7th, 2018.
- 13 Q All right. And when was your trial?
- 14 A November 2016.
- 15 Q So, your appeal would of been right after that in 2016.
- 16 Is that correct?
- 17 A Yes, ma'am.
- 18 Q Now, let's talk about your trial attorney, Theo
- 19 Mitchell.
- 20 Was he appointed or did you retain him?
- 21 A I re -- well, my father retained him.
- 22 Q Do you know how much he was paid for the case?
- 23 A I don't know. Not exactly, ma'am.
- 24 Q Now, Mr. Theo didn't -- how did you feel he did
- 25 representing you?

Shedrick Savage - Direct examination
By Ms. ROSS

1 A Ineffective.

2 Q And why do you say that?

3 A He -- we never, we never really discussed my defense.
4 Like he, he never -- he didn't, he didn't do when I asked
5 him to bring the 9-1-1 tape to my trial. He didn't, he
6 didn't file no motions for me. He put a motion in to be
7 relieved but he didn't --.

8 MS. ROSS: All right. If I may approach?

9 A He didn't do nothing to help me.

10 MS. ROSS: Can we mark this as Applicant's Exhibit 1
11 please?

12 (WHEREUPON, a document regarding a motion to be
13 relieved as counsel was marked as Applicant's Exhibit No. 1
14 for identification purposes only at this time.)

15 Q Do you recognize this paper?

16 A I don't guess. I never got it.

17 Q All right. What's the -- what is it titled?
18 Can you read that?

19 A Oh, yeah. Motion to be relieved as counsel.

20 Q All right. And do you see the date on there?

21 A June. Yes, ma'am, June 6th, 2016.

22 Q Now, was that filed by your attorney, Theo Mitchell?

23 A Yes, ma'am.

24 MS. ROSS: I'd offer this as Applicant's, Applicant's
25 Exhibit 1 at this time.

Shedrick Savage - Direct examination
By MS. ROSS

1 MR. RAY: No objection, Your Honor.

2 THE COURT: All right. Applicant's Exhibit 1, 1 is in
3 evidence.

4 (WHEREUPON, Applicant's Exhibit No. 1 was received into
5 evidence at this time.)

6 MS. ROSS: All right. Just let me put -- okay. Now --
7 so after he moved to be relieved, was he ever, in fact --
8 was there a hearing on that?

9 Do you recall?

10 A Yes, ma'am.

11 Q And what happened with that?

12 A The judge asked me did I want to fire him and I
13 spoke -- I told the judge that I didn't know that he was
14 even filing this motion.

15 Q Okay.

16 A He kind of filed it after I declined a guilty plea and
17 that's when the motion came about, and I told the judge, you
18 know, I wasn't -- I didn't know. I wasn't firing him and I
19 really didn't -- I say if he wanted to be relieved, would he
20 give me the money back so I can hire somebody else. He said
21 he wouldn't give the money back. So I told the judge well,
22 I had to keep him.

23 Q Okay.

24 A I ain't had no more money.

25 Q How many times did he meet with you?

Shedrick Savage - Direct examination
By Ms. ROSS

1 Do you recall?

2 A Maybe three. Like every time -- I think my, my family
3 would make a payment, that's the only time I would see him.
4 whenever he would receive a payment from my family, he would
5 come and ask he how I'm doing but that would be it.

6 Q All right. Did he review the discovery with you?

7 A No, ma'am.

8 Q Did he give you a copy of that discovery?

9 A Yes, ma'am, he had my -- sent it to me.

10 Q Did you ask him to contact any witnesses in your case?

11 A Yes, ma'am.

12 Q Did he do that?

13 A No, ma'am.

14 Q Did he put up any witnesses in your case, in your
15 trial?

16 A He, he brought a -- Reuben at the end like I think the
17 last, the last day of my trial. Right before the verdict he
18 brought him in. He never spoke to him though. He just put
19 him on the stand and asked him some questions out the, out
20 the blue.

21 Q Did you think his -- Reuben's testify -- testimony
22 helped your case?

23 A No, ma'am. I mean he -- well, he, he spoke on seeing
24 multiple peoples in the vehicle but that was about it.

25 Q And do you think Mr. Mitchell spoke to Reuben, the

Shedrick Savage - Direct examination
By MS. ROSS

1 witness, before he testified?

2 A No, ma'am. He didn't cause they couldn't, they
3 couldn't, they couldn't like get in touch with him at first.
4 They couldn't get in touch with him. And finally, when they
5 did track him down at work, he just came straight to the
6 courtroom and testified.

7 MS. ROSS: One second.

8 THE COURT: Ma'am, step out and let's be sure that's
9 off.

10 THE OFFICER: It's off.

11 Q All right. And, and while we're on there, let's just
12 talk about Mr. Reuben's testimony. I would refer you --
13 well, let's start about the issue.

14 Was there an, an issue of third party guilt in your
15 trial?

16 Do you recall?

17 A I, I mean the prosecutor filed a motion saying that I
18 couldn't use it. That's about all I know about it.

19 Q And in doing so, the prosecutor stated there was no
20 evidence whatsoever of third -- of anyone else in the car?

21 A Yes, ma'am.

22 Q Is that correct?

23 And then Mr. Mitchell called in Reuben, correct?

24 A Yes, ma'am.

25 Q And that's on Page 237 of your transcript.

Shedrick Savage - Direct examination
By Ms. Ross

1 A Page 237.

2 Q All right. All right. And Reuben testified on Page
3 238 that there was -- there was a four door blue truck.

4 Is that correct?

5 A Yes, ma'am.

6 Q And what did he say about three or a third or fourth
7 person being in the truck?

8 Do you recall?

9 A I know he, he spoke of seeing us. I think he said
10 about he seen three people get in, and then he seen us at
11 the store, and there was three to four peoples in there or
12 something of that nature.

13 Q Okay. Do you expect that Mr. Mitchell, when he put him
14 up, expected Reuben to say that more than three people were
15 in the truck as it was leaving the scene when the shooting
16 occurred?

17 A I'm, I'm, I'm guessing that's what he -- his
18 intentions.

19 Q And that's why he would of put him up as the only
20 witness in your case?

21 A Yes, ma'am.

22 Q But, in fact, do you recall what happened?

23 what did he say under cross-examination to the
24 solicitor?

25 A Reuben?

Shedrick Savage - Direct examination
By Ms. Ross

- 1 Q Uh-huh. (Affirmative).
- 2 A I mean he, he, he spoke on seeing multiple people in
- 3 the vehicle. He did say that.
- 4 Q And I'm going off track here.
- 5 But isn't it true that he said he had spoken to the
- 6 solicitor just prior --
- 7 A Yes. Yes, ma'am.
- 8 Q -- to getting on the stand?
- 9 A Yes, ma'am.
- 10 Q And that he now recalled that he saw three people in
- 11 the truck before the shooting but not after the shooting?
- 12 A Yes, ma'am.
- 13 Q And---
- 14 A That's so---
- 15 Q And what do you think that did to that testimony of his
- 16 to say he didn't see after the shooting, only before?
- 17 A It didn't do nothing for me. It didn't help me.
- 18 Q It just made it sort of useless?
- 19 A Yeah. Basically.
- 20 Q And Mr. Mitchell never interviewed or talked to Reuben
- 21 before he put him on the stand?
- 22 A No, ma'am.
- 23 Q All right. Now, just getting back to getting prepared
- 24 for trial.
- 25 Did y'all discuss defenses?

Shedrick Savage - Direct examination
By Ms. Ross

- 1 A No, ma'am.
- 2 Q Did y'all talk about -- have you ever heard of Stand
3 Your Ground or immunity defense?
- 4 A I mean during the -- during my time in the county I got
5 into it a little bit and learned a little bit of it. But me
6 and, me and Theo never discussed it.
- 7 Q Did he ever mention to you that you might have a
8 defense under Section 16-11-450 for Stand Your Ground?
- 9 A No, ma'am.
- 10 Q Have you had a chance to look at that statute?
- 11 A Yes, ma'am, I have it. I have it right here.
- 12 Q And what does it say about what you can do when you're
13 in a place where you have a right to be like your own car?
- 14 A It speaks on I have a right to protect me or anyone
15 that's with me. It -- I mean I can protect myself in my own
16 place, person, and property.
- 17 Q And that was your blue truck that you were in.
18 Is that correct?
- 19 A Yes, ma'am.
- 20 Q And what was your perception that night?
- 21 A I mean -- meaning?
- 22 Q Well, wasn't something thrown at your truck?
- 23 A Yes, ma'am.
- 24 Q And was it---
- 25 A I mean I didn't know what it was. It was just

Shedrick Savage - Direct examination
By Ms. Ross

1 something that banged against the vehicle. I don't know. I
2 later learned that it was a bottle. But, at night, I
3 couldn't -- I mean it's no way to tell what it was.

4 Q All right. And, and the gunshot -- the testimony was
5 the gunshots came from your car and you were in your car,
6 which is a place you had a right to be?

7 A Yes, ma'am.

8 Q Now, were there other parties in the backseat of your
9 car?

10 A Yes, ma'am.

11 Q Okay. We'll get back to that in just a moment. I want
12 to get back on my outline.

13 So, Mr. Mitchell never did a motion at the beginning of
14 trial for immunity under 16-11-450?

15 A No, ma'am, Mr. Mitchell didn't file no motion on my
16 behalf.

17 Q Now, did, did you mention that you felt threatened or
18 anything to him?

19 what did he say about that?

20 A He spoke about a gun and a bottle like saying the
21 gun -- being the -- had later find out it was a bottle. He
22 basically said being that it was a bottle and a gun used,
23 there was no way to get Stand Your Ground or, or
24 self-defense or anything. That's how he put it --

25 Q All right.

Shedrick Savage - Direct examination
By Ms. Ross

- 1 A -- like.
- 2 Q And he didn't ever argue even for manslaughter---
- 3 A No.
- 4 Q ---at your trial?
- 5 A No, ma'am.
- 6 Q Despite the fact that all the evidence was that the --
- 7 that a fight had been going on?
- 8 A Yes, ma'am.
- 9 Q Now we get back to that.
- 10 out he -- he also failed to appeal your case, right?
- 11 A Yes, ma'am.
- 12 Q And that's why you hired Candice to do the appeal?
- 13 A Yes, ma'am.
- 14 Q Now, I'm just gonna go to some specific parts in the
- 15 transcript and ask you about it since Mr. Mitchell's not
- 16 here to testify. I turn you to Page 66, Line 1 -- Line 23.
- 17 A Page 66 you say?
- 18 Q 66. Line 23. Solicitor Bulsa asked the investigator
- 19 did that appear to be reliable information to you commenting
- 20 on something a witness had told them.
- 21 A Yeah, I see it.
- 22 Q And then what's the response of the investigator on
- 23 Line 23?
- 24 A It wasn't reliable. That's what it says his answer is.
- 25 Q well, doesn't he say yes, sir, at the time I had no

Shedrick Savage - Direct examination
By Ms. Ross

1 reason to believe that it wasn't reliable?

2 A Yes. Yes, ma'am. Yes, ma'am.

3 Q And there was no objection to bolstering there, was
4 there by Mr. Mitchell?

5 A No, ma'am.

6 Q Now, just moving on to the transcript. This goes to
7 the third party guilt issue. Now, I refer you to Page 30 of
8 the transcript. Page 33 through 37 he addresses third party
9 guilt.

10 Do you recall anything from -- of that from the trial?

11 A Yeah, I remember the judge -- the solicitor saying that
12 we couldn't use third party. Like saying that there was no
13 way for me to say it was somebody else in the vehicle or
14 somebody else could of did it or nothing like that.

15 Q And isn't it true he said there was no relevant or
16 pertinent evidencing showing there was a third party in the
17 vehicle?

18 A Yes, ma'am.

19 Q Now, that goes on into Page 69 to 72. The Court also
20 addressed third, third party guilt and this is he
21 solicitor's objection to Mr. Mitchell trying to say anything
22 about a third party being in the vehicle, correct?

23 A Yes, ma'am.

24 Q And the solicitor again says there's no evidence of the
25 third party in the vehicle. This is just throwing smoke.

Shedrick Savage - Direct examination
By Ms. ROSS

1 A Yes, ma'am.

2 Q And, again, this happens on Page 82, Line 18. This is
3 where a witness, John Mitchell, is testifying.

4 Do you recall who he was?

5 A Yes, ma'am, the, the owner. I think he was the owner
6 of the club --

7 Q All right.

8 A -- where we was at.

9 Q And do you recall what he said -- what his testimony
10 was generally?

11 A Pertaining to?

12 Q Let's just -- pertaining to third party guilt.

13 A Yeah, he, he---

14 Q What did he say on Line 18 of Page 82?

15 A I thought there was a third person. He might of went
16 around behind the truck. I wasn't sure. They took off out
17 the driveway.

18 Q All right. And that's the State's witness talking
19 about a third party?

20 A Yes, ma'am.

21 Q All right. And on Page 192 there's more of the third
22 party guilt issue where again Mr. Mitchell is talking about
23 a third party and the State objects, correct?

24 A Yes, ma'am.

25 Q And then finally on Page 201, Line 17, the Court rules

Shedrick Savage - Direct examination
By Ms. Ross

1 that he can't talk about a third party, right --

2 A Yes, ma'am.

3 Q -- saying there's no other evidence?

4 Now, let's see. These are some pictures that are
5 terrible in black and white that, that I printed off my
6 computer but I also have them on a CD that I can show you.
7 If you can see them, I'd ask you to, to look through them
8 and see if you recognize them.

9 A They look like the, like the door, the step way to the
10 inside of my truck.

11 Q Do you recognize it or I can come back to it at the end
12 when I try to get my DVD to work?

13 A Yes, I can see the, the beer bottle that look like the
14 inside of my door. That look like a step.

15 Is that the step part?

16 Q Uh-huh. (Affirmative).

17 A Uh-huh. (Affirmative).

18 Q And what is---

19 A That's the backseat.

20 Q what did some of them have next to them?

21 what are those things or those big numbers?

22 A I guess they -- yeah, like they put at scenes.

23 Q Okay.

24 A That -- I don't know what you call them. I don't know
25 what to call them.

Shedrick Savage - Direct examination
By Ms. Ross

1 MS. ROSS: Okay. I'd have this -- I'd ask this to be
2 marked as Applicant's Exhibit 2.

3 THE COURT: You're moving them---

4 MS. ROSS: Marked---

5 THE COURT: ---into, into evidence?

6 MS. ROSS: And, and I'd move them into evidence at this
7 time.

8 THE COURT: Any objection?

9 MR. RAY: No objection to those coming in, Your Honor.
10 I don't think there's any probative value to those. You
11 can't tell what's in those photos and I don't know if
12 they've been properly authenticated at this point.

13 THE COURT: Yeah, I mean --.

14 MS. ROSS: That's fine.

15 THE COURT: Okay.

16 MS. ROSS: Thank you. Later on I'm gonna attempt to
17 offer just the entire --

18 THE COURT: Okay.

19 MS. ROSS: -- DVD with all this stuff on it.

20 But just getting back to that, was -- wasn't there a
21 bottle in the backseat of your car, a beer bottle?

22 A Yes, ma'am.

23 Q And there were also blood drops in the back of your
24 vehicle?

25 A Yes, ma'am.

Shedrick Savage - Direct examination
By MS. ROSS

1 Q So there was the testimony of the witness, evidence of
2 blood drops and a bottle on the back of your car. Yet the
3 State's saying there's no evidence of, of third party in the
4 car.

5 A Yes, ma'am.

6 Q And did Mr. Mitchell point any of this out to the, the
7 Court?

8 A No, ma'am.

9 MS. ROSS: Court's indulgence.

10 (Pause.)

11 Q Now, this is a, this is a P&E -- an evidence sheet. I
12 don't know if you recognize this.

13 Do you know what this is?

14 A It was in my -- it was in my discovery. I guess it's
15 evidence -- all the evidence and everything they took.

16 Q Does it say anything about a beer bottle, having swabs
17 taken from a beer bottle in evidence?

18 A Yes, ma'am.

19 Q All right. And it's tiny print but does it say
20 anything about swabs taken -- about blood evidence from your
21 car?

22 A Yes, ma'am.

23 Q Now, did Mr. Mitchell ask anybody about that during
24 your trial?

25 A No, ma'am.

Shedrick Savage - Direct examination
By Ms. Ross

1 Q Do you think that might have helped you argue that
2 there was a third party in your car if there was forensic
3 evidence?

4 A Yes, ma'am, it would of proved that it was a third
5 party in the truck.

6 Q Now, let's talk about Cedric Jones.
7 Do you recall him testifying at your trial?

8 A Yes, ma'am.

9 Q And his testimony's on Page 107 of your transcript.
10 Is that correct?

11 A Yes, ma'am.

12 Q Now, witness John Mitchell who was the bouncer at the
13 club?

14 A No, he's the owner.

15 Q The owner of the club.

16 He did testify that he thought he saw a flash come from
17 near your car?

18 A Yes, ma'am.

19 Q But the only eye witness who says he saw you was who?

20 A Cedric Jones. He testified that he seen me do the
21 shooting.

22 Q Now, do you recall the circumstances of him testifying?
23 Did he come forward immediately when all the police
24 were around there asking questions?

25 A Nah, he -- when the police -- from my understanding,

Shedrick Savage - Direct examination
By Ms. Ross

1 when the police got to the scene, he wasn't there, and then,
2 after I was arrested, I think I'd been arrested about three
3 months now, that's when he came forward and give a
4 statement. Him and another person did a statement and the
5 investigator allowed them to talk together to do the
6 statement, and I spoke to Theo about that, but he never said
7 nothing about it. He just let it go.

8 Q And, in the end, they didn't have the other guy
9 testify?

10 Just, just---

11 A No, ma'am, cause he did like two different statements.
12 Even -- the, the investigator put in his supplement that he
13 knew one of the witnesses was telling us -- you know, I
14 guess he put a fib or whatever. So, he went and spoke to
15 Mr. Jones and told him that Mr. Drummond was lying in his
16 statement. So then Mr. Jones said well, let me speak to
17 Mr. Drummond and then that's when they did another
18 statement. That's the one that was presented in my trial.

19 Q So, the -- in the end, they went with Mr. Jones, right?

20 A Yes, ma'am, after they spoke---

21 Q And then---

22 A After they spoke. After he allowed the witnesses to
23 speak with each other.

24 Q Right.

25 And now Mr. Mitchell did cross-examine Mr., Mr. Jones

Shedrick Savage - Direct examination
By MS. ROSS

1 about that, didn't he?

2 A Yes, ma'am.

3 Q But he never brought in the 9-1-1 call?

4 A No, ma'am.

5 Q All right.

6 A I asked him to play it, to play the tape of Mr. Jones
7 saying that he don't know who the person was or where they
8 went but he didn't never play it.

9 Q Did you ask him to play it?

10 A Yes, ma'am, multiple times.

11 Q Why did you want him to play it?

12 A Cause it would of proved that, that Mr. Jones couldn't
13 of seen what he said, what -- I mean he couldn't of saw what
14 he said or if he -- I don't -- he just -- he told the story
15 of saying he seen me shooting the person but, in the 9-1-1,
16 he testified -- he said that I don't know who it is. I
17 don't know where they went. All I -- I think he say my
18 friend shot or when the police got to the scene to his
19 friend -- so, it's suppose to be he was no where around.

20 MS. ROSS: Okay. I'd beg the Court's indulgence. I'm
21 gonna attempt to play this 9-1-1 tape.

22 (WHEREUPON, a portion of the 9-1-1 call was played at
23 this time.)

24 THE COURT: Can you start over please?

25 (WHEREUPON, the 9-1-1 call was played at this time.)

Shedrick Savage - Direct examination
By Ms. Ross

1 Q All right. Did you -- do you recognize that?

2 A Yes, ma'am.

3 Q What is it?

4 A That's the 9-1-1 tape --

5 Q Now---

6 A -- and I asked Mr. Mitchell to play at my trial.

7 Q All right. Now, the name the person gave on 9-1-1 was
8 not Derrick Jones.

9 who -- do you know if it was Derrick Jones who called
10 in?

11 A I didn't know. I didn't know.

12 MS. ROSS: One second.

13 (Pause.)

14 MS. ROSS: I'm sorry. Cedric Jones.

15 On Page 119, Cedric Jones -- beg the Court's
16 indulgence.

17 (Pause.)

18 Q Cedric Jones started to testify on Page 107, correct?

19 A Yes, ma'am.

20 Q Do you recall?

21 And in there he testified that he was the one who made
22 the 9-1-1 call, correct?

23 A Yes, ma'am.

24 Q And the State believed it because it was his phone
25 number?

Shedrick Savage - Direct examination
By MS. ROSS

1 A I guess.

2 Q All right. Now, is that what he said on the 9-1-1
3 call?

4 What did he say about the identity of the shooter?

5 A He said he didn't know. He didn't know who it was,
6 where they went, but he testified that he was there and seen
7 everything.

8 Q All right. And this was what you were wanting Mr.
9 Mitchell --

10 A Yes, ma'am.

11 Q -- to play?

12 Okay. I want to go and show you some pictures also
13 that I brought up earlier.

14 A Okay.

15 MS. ROSS: Court's indulgence.

16 (Pause.)

17 Q Did I leave the pictures up there with you?

18 THE COURT: I think they're just in front of your
19 computer.

20 THE WITNESS: Yeah.

21 MS. ROSS: Thank you.

22 THE COURT: No problem.

23 MS. ROSS: Beg the Court's indulgence.

24 (Pause.)

25 Q Okay. This is the same photos.

Shedrick Savage - Direct examination
By MS. ROSS

- 1 (Pause.)
- 2 Q Okay. Just so you can see.
- 3 what are -- what is that a picture of?
- 4 Can you, can you tell?
- 5 A The inside of the door.
- 6 Q what does that appear to be?
- 7 A Oh, that's the, the door handle.
- 8 THE COURT: You're gonna have to speak where the court
- 9 reporter can hear you.
- 10 THE WITNESS: Oh, excuse me. Excuse me, sir.
- 11 That's the door handle.
- 12 Q Okay. How about this?
- 13 what does that look like?
- 14 A That's the -- I think that's the inside of it right
- 15 there, the thing that connects the door.
- 16 Q All right. Do you see red?
- 17 A Yes, ma'am.
- 18 Q Okay. It's frozen up.
- 19 (Pause.)
- 20 Q Okay. How about that?
- 21 what's that?
- 22 A Okay. That's the backseat. That's the cup holder.
- 23 That's in the backseat with a beer bottle in it.
- 24 Q Okay. what does that appear to be in the car?
- 25 A That's the -- like the step hand where you step into

Shedrick Savage - Direct examination
By MS. ROSS

1 the vehicle.

2 Q And what's on it?

3 A Looks, looks like something red on it. Blood I guess.

4 Q All right. And those are pictures of whose car?

5 A That's pictures of my truck.

6 Q And, and what seat is that?

7 A That's the -- I guess the rear driver's seat like
8 behind the driver.

9 MS. ROSS: Judge, at this time I've got two DVDs. One
10 has the pictures and it's just the full discovery file.
11 It's extensive.

12 So, I, I believe I'm just gonna put in this separate
13 one that has just the 9-1-1 call and offer this into
14 evidence, and I'd be happy to allow the State to fully
15 examine it.

16 MR. RAY: Your Honor, I have no objection to the 9-1-1
17 call. Everything else I don't think there's been any
18 authentication of who took these photos or where they came
19 from and, frankly, it's 177 pages. We haven't seen it
20 before today. So I would object to the -- everything other
21 than the 9-1-1 call.

22 THE COURT: I understand and, and I mean -- so, the
23 9-1-1 call, is that Applicant's Exhibit No. 2?

24 MS. ROSS: Yes.

25 THE COURT: And that will be admitted into evidence.

Shedrick Savage - Direct examination
By MS. ROSS

1 (WHEREUPON, the 9-1-1 call was marked as Applicant's
2 Exhibit No. 2 and received into evidence at this time.)

3 THE COURT: As far as the, the, you know, everything
4 else, certainly everything that's on the other disk hasn't
5 been properly authenticated or brought up for, you know, it
6 being included in evidence at this time. So I don't know.
7 If there's specific photographs that you want to try to lay
8 a foundation for and get in, then --.

9 MS. ROSS: Well, Judge, I only have these, these
10 printouts which I should of had made into color photos but I
11 did not, and they're just printouts showing the evidence
12 placards in the, in the car. You really can't see the
13 blood. We heard testimony about it and the bottle in the
14 backseat. So, I would, I would ask to offer those into
15 evidence as Applicant's Exhibit 3.

16 MR. RAY: And, Your Honor, the same objections as the
17 last time. These aren't relevant. I mean they're not --
18 you can't tell what's in them.

19 THE COURT: All right.

20 MR. RAY: I don't think they're probative at all.

21 THE COURT: And are those the same pictures that you
22 questioned the defendant about, about when he was looking at
23 the computer?

24 MS. ROSS: Yes, with the placards, yes.

25 THE COURT: All right. All right. Do you agree with

Shedrick Savage - Direct examination
By Ms. Ross

1 that?

2 MR. RAY: They appear to be but, like I say, Your
3 Honor, they're very dark, very grainy. They're not in
4 color. They're certainly not in the form they would of been
5 when they were shown to him earlier today or presented at
6 trial.

7 THE COURT: All right.

8 MR. RAY: So I would object on that basis and, again,
9 we don't know who took these photos or where they came from.

10 THE COURT: All right.

11 MS. ROSS: Judge, that -- that's true. I should of
12 done color. I can present more testimony regarding or will
13 regarding Witness Nix, who was the photographer and who took
14 the evidence in from the beer bottle. So I can wait for
15 that testimony for these pictures into evidence at this time
16 but -- then I would just go ahead and offer---

17 THE COURT: So you're planning to call the witness that
18 took the pictures?

19 MS. ROSS: No, Your Honor. I'm planning to
20 cross-examine or, or direct examine my client about the
21 questions that weren't asked of Mr. Nix. I don't intend to
22 call Mr. Nix himself.

23 THE COURT: I understand. I mean I'm inclined -- I'll,
24 I'll allow those pictures into evidence at this point based
25 on what the defendant's testified to about that being his

Shedrick Savage - Direct examination
By MS. ROSS

1 vehicle, and, and he's familiar with the, with the case,
2 and, and what it shows for what it's worth.

3 MS. ROSS: Thank you, Your Honor.

4 MR. RAY: Thank you, Your Honor.

5 (WHEREUPON, the photographs were marked as Applicant's
6 Exhibit No. 3 and received into evidence at this time.)

7 MS. ROSS: And, Judge, I just ask -- I confirmed that
8 it was correctly transferred on that DVD but I want to
9 double confirm before we send it back but --?

10 THE COURT: Are you talking about the audio?

11 MS. ROSS: Yeah.

12 THE COURT: Okay.

13 Q Let's talk about an allegation that, that Mr. Mitchell
14 failed to effectively cross-examine Forensics Officer Sean
15 Nix and that's on Page 134 through 136 is the, the
16 cross-examination.

17 Now, referring you to Page 136, Line 2 --

18 A Yes, ma'am.

19 Q -- on redirect, Mr. -- Solicitor Bulsa asked --
20 questioned witness Nix -- Mr. Mitchell asked you about a
21 contraband in the truck.

22 Did you find any beer bottles and the reply was what?

23 A I did find one beer bottle.

24 Q And then the, the solicitor states but nothing else of
25 contraband?

Shedrick Savage - Direct examination
By Ms. ROSS

1 A Yes, ma'am.

2 Q Now, did Mr. Mitchell ever come back and, and question
3 Mr. Nix at all to suggest the one beer bottle was in the
4 back of the car?

5 A No, ma'am.

6 Q Did Mr. Mitchell ask Mr. Nix whether he swabbed that
7 beer bottle for DNA?

8 A No, ma'am.

9 Q Did he ask Mr. Nix about blood evidence in the back of
10 your car?

11 A No, ma'am.

12 Q Did he ask Mr. Nix whether he had swabbed blood
13 evidence and taken swabs and put them into evidence?

14 A No, ma'am.

15 Q Okay. And none of that came in at your trial?

16 A No, ma'am.

17 Q I'll refer you to Page 157 through 162. Line 20 on
18 Page 157.

19 A I got it.

20 Q You got it?

21 A Yes, ma'am.

22 Q Do you know -- this is Solicitor Bulsa questioning a
23 witness.

24 On Line 21, who is that witness?

25 A Mr. Sturkey.

Shedrick Savage - Direct examination
By Ms. Ross

- 1 Q All right.
- 2 A SLED -- I guess SLED agent.
- 3 Q All right. Now, did Mr. Mitchell ever question the
- 4 SLED agent about tests made on beer bottle swabs or blood
- 5 swabs?
- 6 A No, ma'am.
- 7 Q And on Page 161 a SLED report was put into evidence at
- 8 Line 14.
- 9 Is that correct?
- 10 A Yes, ma'am.
- 11 Q Now, did Mr. Mitchell ask specifically about any of
- 12 its -- about gunshot residue, GSR, gunshot residue tests put
- 13 into evidence, correct?
- 14 A Yes, ma'am.
- 15 Q Now, did Mr. Mitchell ever question why no gunshot
- 16 residue tests were done on, on the victim?
- 17 A No, ma'am.
- 18 Q Okay. I'm showing you the SLED GSR report.
- 19 Do you know what GSR is?
- 20 A Yes, ma'am.
- 21 Q And do you recall at this incident a GSR test was done?
- 22 A On me?
- 23 Q Yes.
- 24 A Yes, ma'am.
- 25 Q Do you recall the results?

Shedrick Savage - Direct examination
By Ms. ROSS

1 A One, one particle on my left-hand, one particle on my
2 right-hand.

3 Q All right. And do you recall the results from Rashawn
4 Miller?

5 A One particle on the left-hand.

6 Q All right. How about the GSR on Charlie Jackson?

7 A I don't know if they did it. No results.

8 Q All right. Does it say why on the SLED report?

9 A Let me see. No, ma'am.

10 Q All right.

11 A Unless I'm reading it wrong.

12 Q So, what does it say about an analysis?

13 A No gunshot residue analysis performed.

14 Q All right. Now, did -- so, they did no, no GSR --

15 A No, ma'am.

16 Q -- on Charlie Jackson?

17 Did Mr. Mitchell ever ask the SLED agent why they
18 collected GSR and -- but failed to test it?

19 A No, ma'am.

20 Q And did he ask about why blood samples were collected
21 but never tested?

22 A No, ma'am.

23 Q Now, did he ever ask any of the investigators about no
24 gun or casing found in your car at all --

25 A No, ma'am.

Shedrick Savage - Direct examination
By Ms. Ross

1 Q -- or on you or with you or anything?

2 A No, ma'am.

3 Q Now, do you recall where you were -- you were pulled
4 over with Mr. Miller.

5 Is that correct?

6 A Yes, ma'am.

7 Q How, how much later was that or where was that?

8 A We was in Gaffney I'd say about six, seven o'clock in
9 the morning. 6:00 something in the morning.

10 Q All right. And on Page 130, Line 9, [REDACTED] Indiana Circle
11 in Gaffney?

12 A Yes, ma'am.

13 Q Okay. Now, you wanted -- we wanted to talk about or
14 address -- oh, one last thing.

15 Okay. I've shown this to you before. This is the
16 evidence collection report. This is an incident report that
17 was part of your discovery.

18 Do you know the name -- can you read the name on it?

19 A Supplement from Nix.

20 Q Okay. Now, this is a supplemental report about the
21 evidence he collected. It goes to Items 7, 8, and 10.

22 Can you read what those items were?

23 A Where we at?

24 Q Item 10.

25 A Located -- it say a beer bottle -- a beer bottle

Shedrick Savage - Direct examination
By MS. ROSS

1 located in the rear cup holder, an envelope with photos that
2 was previously as -- located in the driver's seat, money.

3 Q How about going down to there for me?

4 A Okay. ID -- I then conducted swabs for touch DNA on
5 the following areas, interior front driver door handgrip,
6 steering wheel, gearshift, interior front passenger door
7 handgrip, interior rear door handgrip.

8 Q And did Mr. Mitchell ask Witness Nix about any of those
9 swabs or the results of any of those?

10 A No, ma'am.

11 MS. ROSS: I offer these as Applicant's Exhibits 4 and
12 5.

13 MR. RAY: Your Honor, just the same objection as the
14 last time. I think Officer Nix would need to be here to --.

15 THE COURT: Yeah, I mean I think, I think that is --
16 the reports are gonna be hearsay, are they not?

17 MS. ROSS: They would likely be. I -- this is going to
18 just things that were in discovery that trial counsel
19 could -- had availability to it -- to and could of
20 cross-examined that witness about.

21 THE COURT: And I understand that completely but I
22 don't, I don't think they're, they're -- I don't think they
23 should be admitted into evidence.

24 MS. ROSS: All right. Thank you.

25 THE COURT: Thank you.

Shedrick Savage - Direct examination
By Ms. Ross

1 Q Now, just referring you to Page 229 of your trial
2 transcript, you had pointed this out to me, but what
3 would -- what did the trial judge comment when he was---

4 A You mean at 299?

5 Q 299. Sorry.

6 A Page 299 in my transcript. Well, the Court, Judge, he
7 spoke about there was obviously extenuating circumstances
8 that existed at the time that this event occurred. A fight
9 had occurred apparently between various people in a club.
10 It appeared that the fight spewed over into the parking lot.
11 Unfortunately it result in the death of a person who didn't
12 deserve to die from what I hear happened out there, and he
13 also spoke of however, there was some wrongdoing I guess you
14 could say on the part of the victim, and that why he was
15 walking away. He did stop, engage in a verbal altercation.
16 In fact, according to the witnesses, threw a bottle and hit
17 the vehicle of the defendant in the case.

18 So, therefore, extenuating circumstances here. I don't
19 find this to be a situation where someone plotted or planned
20 to kill someone for a long period of time. However, was
21 lying and waiting for someone. I find this to be more of an
22 evil intent coming into existence immediately before the
23 act.

24 Q Okay. All right. Now, did your trial attorney argue
25 to the jury at all about voluntary manslaughter or heat of

Shedrick Savage - Direct examination
By Ms. Ross

1 passion --

2 A No, ma'am.

3 Q -- in his closing?

4 Just never put that forward?

5 A No, ma'am.

6 Q Did he ever effectively put forward any third party
7 guilt argument?

8 A No, ma'am.

9 Q And the only eye witness in your case was who?

10 A Cedric Jones also stated that he don't know who it was
11 in the 9-1-1 tape.

12 Q So, he never played that 9-1-1 tape. Just said, when
13 asked, he said he didn't see who -- didn't know who was the
14 shooter?

15 A Yes, ma'am.

16 Q And didn't see where they went?

17 A Yes, ma'am.

18 Q Now, as far as John Mitchell, the only other
19 occupant -- was he the only other eye witness that testified
20 that you know of?

21 A Yes, ma'am. Well, he say he seen a flash but --.

22 Q Okay.

23 A He never, he never stated he saw me. He just said he
24 seen a flash.

25 Q Did he testify about a flight at the club?

Shedrick Savage - Direct examination
By Ms. Ross

1 A Yes, ma'am.

2 Q And what did he say that he did to prevent any
3 altercation happening afterwards?

4 A He told me to -- well, he told him to leave first and
5 then he told me to leave.

6 Q All right. And that's his testimony -- that was his
7 testimony at trial?

8 A Yeah, something basically like that.

9 Q And, and why did he say he separated the, the parties?

10 A Just cause the fight spilled outside. A bunch of
11 people was still arguing and fussing, you know, outside in
12 the parking lot.

13 Q And didn't he say he had thought they already left
14 before he even let y'all out of the club?

15 A Yes, ma'am.

16 Q Okay. But they hadn't left?

17 They, they came and threw a beer bottle at your car?

18 A Nah, they was still there.

19 Q And Mr. Mitchell never argued any of that to the jury?

20 A No, ma'am.

21 Q Did you perceive that as a threat?

22 A At the time, yeah, I, I didn't know what it was. All I
23 know it's just a banging somewhere or banging where it hit
24 the vehicle as we was leaving.

25 Q And also witness Cedric Jones was a good friend of the

Shedrick Savage - Direct examination
By Ms. Ross

1 victim and his family?

2 A Yeah. Yes, ma'am, I guess. I didn't know. I don't
3 know him. I think he testified that he went with his sister
4 or something. That's what -- why he decided to come on to
5 my trial or something like that.

6 Q Okay. Decided to come forward with the---

7 A I think---

8 Q ---one eye witness account?

9 A Yeah, he said something about the family said he had to
10 do something cause he was dating his sister or something of
11 that nature or something like that. Sister, cousin, one of
12 them. He was connected with the family. That's why he
13 came.

14 Q And by the time he'd come forward, hadn't you been
15 arrested and all over TV and everything?

16 A Yeah, I, I had been arrested probably about three
17 months, two months. Two to three months.

18 Q Now, I just refer you to page -- cause there's some
19 last minute things in my notes or last things. Page 30,
20 Line 11. This says Solicitor Bulsa's argument on third
21 party guilt and whether that can be argued.

22 A Page 30, Line 11?

23 Q The end of Line 11 and into Line 12.

24 what does he say about information of third party
25 guilt?

Shedrick Savage - Direct examination
By MS. ROSS

1 A No, no, no evidence whatsoever.

2 Q All right. But that was untrue, wasn't it?

3 A Yes, ma'am.

4 Q Now, I've alleged that -- let me see.

5 Beg the Court's indulgence.

6 (Pause.)

7 MS. ROSS: On 211 to 223 is the closing argument of
8 Mr. Mitchell. I'm sorry. That's not that -- that's more
9 about third party guilt and this is the whole argument where
10 they're not allowing that in.

11 would you agree that that hurt your case that they
12 couldn't argue -- that you couldn't argue third party guilt
13 at all?

14 A Yes, ma'am.

15 Q All right. I'd refer on to Page 237 and this is Reuben
16 Landrum, right?

17 We talked about this a little before.

18 A Yes, ma'am.

19 Q But he testified and then, on cross, Mr. Bulsa was able
20 to say no, I, I didn't see a third party afterwards. It was
21 just before.

22 Correct?

23 A Yes, ma'am.

24 Q All right. Just going down -- I also had -- did you
25 have any other witnesses that, that you felt had -- I had

Shedrick Savage - Direct examination
By Ms. Ross

1 put down that you suggested there were witnesses who were
2 intimidated or threatened by law enforcement who tried to
3 come forward on your behalf.

4 Do you---

5 A I put that down?

6 Q I just -- I thought that you had said that at some
7 point.

8 Did, did -- was there any testimony you had about that?

9 A (Witness nods negatively.)

10 Q No?

11 A No, ma'am.

12 Q All right. I have no further questions at this time.

13 Is there anything else you'd like to say before you can
14 answer any questions the State has?

15 A No.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY MR. RAY:

19 Q Mr. Savage, I'm a little bit confused.

20 Are you saying this is a case of self-defense or a case
21 where somebody else shot the victim?

22 A I'm just saying my lawyer was ineffective assistance of
23 counsel.

24 Q Okay. So what happened in this case that gave rise to
25 these charges?

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 A what you -- meaning?
- 2 Q Just describe what took place.
- 3 A It was a fight. It was a gunshot.
- 4 Q A fight where?
- 5 A At the Club Universal.
- 6 Q Between who?
- 7 A A group that -- I wasn't even part of the fighting with
- 8 it. Just some, some other people fighting but we was all
- 9 together.
- 10 Q okay. would---
- 11 A The fight lead outside and that's when me and the other
- 12 people got in -- into -- involved into the fight.
- 13 Q who were you fighting or who was the group of people
- 14 fighting with?
- 15 A From my understanding, Mr. Jackson was fighting
- 16 somebody else that was with me but he wasn't fighting me per
- 17 se.
- 18 Q okay. So you were present?
- 19 A Yes, I was present.
- 20 Q okay. And you were driving a blue truck that night?
- 21 A Yes, sir.
- 22 Q So, after the fight, did you get kicked out?
- 23 A Not right after the fight. He made them leave first
- 24 and told us to wait and then he put us out. So --.
- 25 Q okay. And so then you went and got in your truck?

Shedrick Savage - Cross-examination
By Mr. Ray

1 A Yeah.

2 Q Who else was in your truck with you?

3 A Lee, Sean Miller, and another person that was in the
4 backseat, but, you know, that's -- I don't know.

5 Q Who's the other person?

6 A Is that, is that, is that pertaining to this right
7 here?

8 Q Yeah.

9 Who was in the backseat?

10 A I mean he was never investigated. So --.

11 Q So you don't know?

12 A Yeah, I know but the police never investigated it.

13 Q Okay. Well, if your allegation is that Mr. Mitchell
14 should of presented evidence of a person in the backseat,
15 did you tell him who was in the backseat?

16 A Yeah, I told him.

17 Q You did?

18 A Yeah, I informed my attorney --

19 Q Okay.

20 A -- of everything.

21 Q So, what happened then?

22 Y'all got in the truck and what happened?

23 A We got in the truck to leave and that's when words --
24 they were still there as we got -- like going when you
25 leave, you have to go down the driveway and go around. As

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 we going around, we in traffic. It's more cars leaving.
2 I'm not the only car leaving.
3 So, as we stuck there, that's when me and Mr. Jackson
4 started having words. That's when he did what he did.
5 Q Okay. So---
6 A A shot was fired.
7 Q ---you pulled up beside him?
8 A No.
9 Q Where was he?
10 A I mean I guess he was on the hill and I'm in his
11 driveway like.
12 Q Was he on foot?
13 A Huh?
14 Q Was he walking?
15 A Yeah, he still -- he was -- like he was on feet, yeah.
16 Q Was he -- he wasn't in a car?
17 A No.
18 Q Okay. So you were in the truck?
19 A Yes.
20 Q And you were leaving?
21 A Yes, sir.
22 Q And you pulled up beside him?
23 A No, sir, I pulled up---
24 Q How did you get to---
25 A ---outside---

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 Q ---be near him?
- 2 A Huh?
- 3 Q How did you come in contact with him?
- 4 A Cause it's a two way road and it's the hill right there
- 5 on the side of it. So, as I'm leaving, the traffic -- they,
- 6 they got more cars in front of me.
- 7 Q Uh-huh. (Affirmative).
- 8 A So they -- the traffic stopped and I'm stuck in
- 9 traffic.
- 10 Q Okay.
- 11 A That's when we started having words.
- 12 Q So you were trying to leave?
- 13 A Yes.
- 14 Q And he was walking?
- 15 A Yes, I guess.
- 16 Q And you pulled up next to him?
- 17 A No, I didn't pull up next to him.
- 18 Q Then how did you---
- 19 A I was stuck in traffic.
- 20 Q ---get up---
- 21 A Cause I'm in traffic. I just explained to you.
- 22 Q Okay.
- 23 A It's two ways. One coming in and one, one -- one way
- 24 in, one way out.
- 25 Q Okay. Did you shoot him then at that point?

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 A No, sir.
- 2 Q Okay. So, Stand Your Ground -- you're saying it wasn't
3 self-defense cause you didn't shoot him?
- 4 A I ain't say -- I didn't argue Stand Your Ground. My
5 lawyer didn't argue nothing.
- 6 Q Okay. Well, why would you want him to argue it?
7 why would you want to get up in front of the Court and
8 say he---
- 9 A I want him to use---
- 10 Q ---shot you in self-defense?
- 11 A ---whatever he can use in my case. He suppose to use
12 everything.
- 13 That's why he was my attorney, right?
- 14 He suppose to --
- 15 Q Okay.
- 16 A -- present all the evidence.
- 17 Q So, you wanted a Stand Your Ground hearing prior to
18 trial?
- 19 A Nah, I didn't ask, I didn't ask him for no Stand Your
20 Ground hearing.
- 21 Q So you didn't want the hearing?
- 22 A I gave him all the evidence. I told him---
- 23 Q Okay.
- 24 A ---what happened. He got the evidence. All that was
25 left up to him --

Shedrick Savage - Cross-examination
By Mr. Ray

1 Q Okay. So if---

2 A -- to tell me what to do. I don't know the law like
3 that.

4 Q It -- do you think it would of helped your case if he
5 put you on the witness stand before trial and asked you if
6 you shot this man in self-defense?

7 A If we would of discussed that during the time with me
8 being in the county jail for the two years he was my
9 attorney, if we would of discussed that, and he'd of said,
10 you know, we should try this, then maybe but he never did.

11 Q So that---

12 A That was never brought up to Stand Your Ground---

13 Q So---

14 A ---self-defense or none of that.

15 Q If he had done that, would you have taken the stand and
16 said you shot him in self-defense?

17 A If that's what he'd of asked me to do --

18 Q Okay.

19 A -- remember cause I don't, I don't know the law like
20 that. I'm following his lead.

21 Q So, depending on whatever he told you to do, you would
22 of said in Court---

23 A That's what we hire him for. I hire a lawyer to
24 present me.

25 Q Okay.

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 A All right.
- 2 Q And so you would of just came in Court, lied, and said
- 3 you shot him --
- 4 A No.
- 5 Q -- if your attorney told you to?
- 6 A No, I would not.
- 7 Q All right.
- 8 A I did what my attorney asked me to do in, in his
- 9 defense for me. whatever he'd of said I needed to do, then
- 10 that's what would of been done. That's why I hired an
- 11 attorney and didn't represent myself.
- 12 Q Okay. So you said he threw a beer bottle at your
- 13 truck?
- 14 A The evidence says that.
- 15 Q The evidence says that he threw a beer bottle at your
- 16 truck.
- 17 was it nighttime when this happened?
- 18 A Yes, sir.
- 19 Q And you said you didn't know what he threw at your
- 20 truck, right?
- 21 A Yes, sir.
- 22 Q And then you or somebody else at that point shot him,
- 23 right?
- 24 A Yes.
- 25 Q Okay. With no clue what he had thrown at the truck?

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 A No, don't know what it was.
- 2 Q Okay.
- 3 A We just knew it was a bang against the truck when it
- 4 shouldn't of been, when nobody shot.
- 5 Q Okay. You, you heard a loud noise?
- 6 A No, something hit the vehicle. Not just I heard it.
- 7 Q Heard something hit the vehicle, shot somebody?
- 8 A I ain't shot nobody.
- 9 Q Somebody did?
- 10 A Yeah, somebody shot somebody, yeah.
- 11 Q Okay. Did you believe you were in fear of losing your
- 12 life at that moment?
- 13 A Could of been. It was nighttime. I don't know what he
- 14 had. I don't know what, what it was. I don't know.
- 15 Q You don't know what he had?
- 16 A I don't.
- 17 Q Don't know if he had a gun, right?
- 18 A I don't.
- 19 Q Okay. And did Mr. Mitchell talk with you?
- 20 I know you said y'all met about three times.
- 21 A Yes, sir, only when he received payments --
- 22 Q Okay.
- 23 A -- he would come by.
- 24 Q So, how many times did you pay him?
- 25 A Like three payments but I think my family made like

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 three or four payments maybe.
- 2 Q Repeatedly?
- 3 A No, like in --.
- 4 Q You kept paying him?
- 5 A Yeah, I did.
- 6 Q Did you get---
- 7 A Down payment. First was a down payment. He came to
- 8 see me. That's when he assigned me -- said he was my
- 9 attorney.
- 10 Q Did you ever or your family ever stop paying him?
- 11 A I, I mean I don't know. I, I didn't. I was in jail.
- 12 Q And were you satisfied with what he was providing for
- 13 you---
- 14 A No.
- 15 Q ---as your legal counsel?
- 16 No?
- 17 A No, sir.
- 18 Q But he kept getting paid.
- 19 A He got paid, yeah. I mean cause what else we were
- 20 gonna do?
- 21 we -- once he filed the relief of counsel, now there
- 22 was no more payments.
- 23 Q Okay. Did y'all attempt to get another attorney to
- 24 represent you?
- 25 A Nah, we ain't had no money. My family's not fortunate

Shedrick Savage - Cross-examination
By Mr. Ray

1 to give him thousands of dollars and then go hire somebody
2 else.

3 Q Okay. And so you said that you didn't know that he was
4 gonna file a motion to relieve counsel?

5 A No, sir.

6 Q You didn't know that was coming?

7 A No, sir.

8 Q But you were dissatisfied with him?

9 A At that time I had wrote him a letter asking him to
10 file some motions that he hadn't filed for me. But it
11 wasn't to the point where we was fixing to be separated.
12 Like I didn't know he was trying to get off my case or none
13 of that.

14 Q Okay. I mean he didn't get relieved as counsel, did
15 he?

16 A No, cause the judge asked me did I want to fire him and
17 I explained to the judge that I don't have the money to hire
18 anyone else. If he would give the money back, then maybe I
19 could hire somebody else. He said no. So, the judge kept
20 him as my lawyer.

21 Q Okay. Now, when he met with y'all or with you
22 specifically those three or four times, what did y'all
23 discuss?

24 A He was -- he would come in, tell me my family made a
25 payment, asked me how I'm doing. That would be it. Like he

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 wouldn't even have my file. He didn't even have the
2 discovery or nothing when he came to see me.
- 3 Q Now, did you not say that he gave you a copy of your
4 discovery?
- 5 A Yeah, he sent it to me.
- 6 Q He did send it to you?
- 7 A Yeah.
- 8 Q Did you look at it?
- 9 A Yeah.
- 10 Q All of it?
- 11 A Yes, sir. Yeah.
- 12 Q Did you ask him questions about it?
- 13 A I mean we didn't get to, get to that cause, like I say,
14 he would, would always be like a five minute meeting. He
15 just like saying he checking on me basically.
- 16 Q Okay. And did you have his phone number?
- 17 A No, I mean, I mean my family did.
- 18 Q They did?
- 19 A I'm in, I'm in the county jail.
- 20 Q Did y'all reach out to him to ask him questions or
21 arrange meetings?
- 22 A I don't know what my family and him talked about.
- 23 Q Okay.
- 24 A I know he never discussed nothing with me with no
25 defense or nothing like that. We never sat down and tried

Shedrick Savage - Cross-examination
By Mr. Ray

1 to figure out how we was gonna do this or what needed to be
2 done. I know that.

3 Q Okay. So let me ask you about Mr. Landrum.

4 A Uh-huh. (Affirmative).

5 Q Did you know Mr. Landrum?

6 A No, sir.

7 Q You didn't?

8 When did you first come to be aware that Mr. Landrum
9 might be involved in your case?

10 A I mean he's one of the witness in the supplements I
11 read in the discovery but he was -- he wasn't on the -- like
12 when we started the trial, they had a witness sheet. He
13 wasn't on there --

14 Q Okay.

15 A -- initially.

16 Q Do you have your transcript in front of you?

17 A Yes, sir.

18 Q Okay. So Mr. Landrum was on the witness sheet prior to
19 trial?

20 A Nah, I don't, I don't, I don't recall him being on
21 there cause my lawyers asked for him. Like he was -- we had
22 to -- if you read the transcript you can see that he was at
23 work.

24 Q Right.

25 A He wasn't even at the court.

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 Q Right.
- 2 A So he couldn't of been on the witness sheet or he would
3 of already been there.
- 4 Q Okay. And you have your transcript with you?
- 5 A Yes.
- 6 Q would you turn to Page 235 please?
- 7 A I got it right here. I'm there.
- 8 Q Okay.
- 9 A I got it.
- 10 Q All right. So, do you see on Line 5 it says have you
11 had an opportunity to talk to him?
- 12 A Yeah, I see that.
- 13 Q Okay. Now do you know who he's talking about there?
- 14 A who, who, who is talking about who?
15 what you asking me?
- 16 Q The Court, the Court's talking to your attorney, the
17 judge---
- 18 A Yes, he's asking---
- 19 Q ---Mr. Mitchell.
- 20 A Is he asking Mr. Mitchell did he have time to talk to
21 Reuben?
- 22 Q Uh-huh. (Affirmative).
- 23 That's correct.
- 24 A Yeah, he said yeah.
- 25 Q Okay.

Shedrick Savage - Cross-examination
By Mr. Ray

1 A He said yes, sir, I have.

2 Q So, he did say that he had talked to Mr. Landrum before
3 he testified?

4 A How could he if he wasn't there?

5 He didn't contact no witness. I mean -- well, I guess
6 he talked to him when he first got to the courthouse and
7 they spoke briefly --

8 Q Uh-huh. (Affirmative).

9 A -- like two, three minutes but he can't -- to say that
10 him and Reuben had sat down and discussed what was gonna be
11 said on his testifying, no.

12 Q Okay.

13 A He didn't.

14 Q Now, this had been an issue from the beginning of your
15 trial, right?

16 It was kind of a surprise that Mr. Landrum wasn't gonna
17 be there already, right?

18 A A surprise to who, me?

19 Q To Mr. Mitchell. He thought he was gonna---

20 A I couldn't speak---

21 Q ---be there, right?

22 A I can't speak for Mr. Mitchell.

23 Q Okay. Well, he's not here.

24 A Oh. So, what you want me to speak for him?

25 Q So you were there at trial. You were able to do that.

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 A Yeah.
- 2 Q Do you recall that at all being an issue, an issue with
3 him getting subpoenaed to appear and on short notice?
- 4 A I mean you asking me -- what did you ask me right now?
- 5 Q Do you recall Mr. Landrum being subpoenaed to appear on
6 short notice during---
- 7 A Yes. Yes.
- 8 Q ---your trial?
9 He did?
- 10 A That's right. Yeah.
- 11 Q Okay. But everyone was aware of Mr. Landrum prior to
12 trial?
- 13 A Yeah, he was in the discovery. He was, he was never --
14 he never did a statement but he was in a supplement of the
15 discovery, yes, sir.
- 16 Q Okay. And your attorney just hadn't spoke with him?
- 17 A Two minutes before he took the stand I guess.
- 18 Q All right. Okay.
- 19 A As you see in the transcript, we had to locate him. He
20 was at work. I think we had to go into a break to give him
21 time to get there, all kind of -- so, he definitely didn't
22 have him down as a witness to help me at first.
- 23 Q Okay. Would you please turn to Page 240 of your
24 transcript?
- 25 A Uh-huh. (Affirmative).

Shedrick Savage - Cross-examination
By Mr. Ray

1 Q We began reading on page -- or I'm sorry. Page 240,
2 Line 5.

3 A 240, Line 5.

4 You want me to read that?

5 Q Read it aloud.

6 A He just asked me did I see a blue truck.

7 Q Okay. And what is -- what's the next question that
8 Mr. Landrum was asked?

9 A Did he ask you how many people you saw in it.

10 Q And what does he say?

11 A No, no. He -- did you -- did he ask you how many doors
12 it had on it.

13 Q Okay. And then he says?

14 A Then he asked how many people did he saw in it.

15 Q How many people did he see in the truck?

16 A Three.

17 Q Three.

18 Do you think that hurts your, your case?

19 You're saying there's a third person in the truck.

20 A Yeah.

21 Q That something -- might be helpful.

22 A Yeah. But he testified that he seen three people in
23 the truck before, not after---

24 Q Right.

25 A ---or during the shooting.

Shedrick Savage - Cross-examination
By Mr. Ray

1 Q Okay.

2 A So, it's somewhat helpful but not a full testimony from
3 my -- in my benefit.

4 Q Now, the reason you testified about it cause he didn't
5 see the truck after.

6 A Yes, he was there. If you read his supplements he was
7 there during the fight and everything. Yes, he was.

8 Q No, he says he didn't see the shooting.

9 Is that correct?

10 A I can't remember the whole trial just right off the cap
11 just---

12 Q It's on Page 2---

13 A You want me to read that somewhere?

14 Q Beginning on Page 238.

15 A Okay. Where?

16 Q Down at Line 23.

17 A Okay. Yeah, he say did you witness the fight. He said
18 no, sir.

19 Q And continuing on to Page 239 on Line 2.

20 A Did you witness the shooting. No, sir. That's what he
21 said.

22 Q Okay. So, he didn't know how many people were in the
23 truck at the time.

24 A But he testified before that.

25 Q Because that was the only thing he could testify to.

Shedrick Savage - Cross-examination
By Mr. Ray

1 A Yeah, but if you go back and read the supplements of
2 Mr. Landrum he was there during the fight. He speaks about
3 it in his supplements.

4 Q Okay. And did your attorney -- he never talked about
5 Reuben Landrum to you?

6 A Not until that day of the trial.

7 Q And what did y'all talk about on that day?

8 A He just said he was gonna call him up to get him to
9 testify that there was three people in the vehicle.

10 Q And he didn't?

11 A Yes, he did.

12 Q Okay.

13 A As far in the beginning. Not the end.

14 Q Right. Right.

15 Now, let me ask you. You did mention on being
16 questioned by Ms. Ross here that your counsel might of said
17 you had no way to claim Stand Your Ground?

18 A Yes.

19 Q That the evidence didn't support it?

20 A Yes.

21 Q So, he did at least discuss that with you, right?

22 A No, I brought it to him and he said no.

23 Q when he talked with you about it?

24 A He just said that the beer bottle and the gun wouldn't
25 help.

Shedrick Savage - Cross-examination
By Mr. Ray

1 Q Okay. Now, let me ask you on Page 66 this question
2 about bolstering. I believe that's referring to the
3 testimony of the police officer.

4 Is that correct?

5 A What page you said, sir?

6 Q 66 and you're looking down near the bottom I believe.
7 Starting on Line 22.

8 A I gots -- I got it.

9 Q And he's asked if it appeared to be reliable.

10 A Did it appear to be reliable information to you.

11 Q Right.

12 Now just above that he -- is what he's talking about
13 beginning on Line 13.

14 If you would read that for us please?

15 A Yes. When the dispatch call came out that there was a
16 victim shot, I advised people at the -- I'd advised people
17 that other officers responded to the scene. As I was
18 pulling out, there was a blue pickup truck had left the
19 scene that I was advised was possibly involved in it. I
20 couldn't confirm that the vehicle was involved. I was just
21 told by people on the scene that it was possible they had
22 something to do with it.

23 Q Okay. And you were driving the blue pickup truck?

24 A Yes.

25 Q Okay. And you were leaving what Ultimate, Club

Shedrick Savage - Cross-examination
By Mr. Ray

1 Ultimate or Ultimate then?

2 A Universal at the time.

3 Q Universal. I'm sorry about that.

4 You were leaving Universal around that time?

5 A Yes.

6 Q So was that reliable information?

7 A For who?

8 Q For the officer to know. There was a blue pickup truck
9 that you were driving that was leaving the scene.

10 MS. ROSS: I'd object. It's argumentative and
11 bolstering. It's simply bolstering.

12 MR. RAY: I'll withdraw that, Your Honor.

13 MS. ROSS: We got Mr.---

14 MR. RAY: I apologize.

15 Q Was this the officer that arrested you?

16 A No, I got arrested in Gaffney --

17 Q Okay.

18 A -- by Gaffney Police.

19 Q Did he stop you?

20 A Who?

21 Q This Brad James -- Officer Brad James.

22 A No, he didn't stop me. I never spoke to Brad James.

23 Q Okay. Now let me ask you about Mr. Cedric Jones.

24 A Uh-huh. (Affirmative).

25 Q Did you know Cedric Jones?

Shedrick Savage - Cross-examination
By Mr. Ray

1 A No, sir.

2 Q He knew the victim.

3 Is that right?

4 A I guess, yeah.

5 Q And he was walking with the victim at the time?

6 A I suppose.

7 Q Okay. I mean did you see him?

8 A No, sir.

9 Q You did not.

10 Did you see the victim?

11 A Yes, I seen the victim.

12 Q You did see the victim.

13 A And I think if you go back and read it, he don't -- he
14 says that he stopped or something. He wasn't directly
15 beside him. He said that hisself.

16 Q Okay.

17 A You can read the testimony.

18 Q Now, he called 9-1-1, correct?

19 A I guess. I mean Andrew Johnson is on the tape.

20 Q Okay. He claimed at trial he called 9-1-1?

21 A Yes.

22 Q You would agree with that?

23 A Yes.

24 Q Did you discuss the 9-1-1 tape with your attorney?

25 A I, I had a -- okay. There was an attorney before

Shedrick Savage - Cross-examination
By Mr. Ray

1 Mr. Mitchell who informed me that I had Attorney Bill Rhoden
2 out of Gaffney. He informed me that he had heard the 9-1-1
3 tape of Mr. Jones. So, when he informed me of that, once
4 Mr. Mitchell became my attorney, I informed him of the 9-1-1
5 tape and asked him to make, you know, present that during my
6 trial.

7 Q What did he say to you about that?

8 A He didn't. He just like I -- he always just say I got
9 it.

10 Q Okay. So, he was aware of it?

11 A Yes.

12 Q Okay.

13 A He, he was aware of the tape, yes.

14 Q Okay. Did you hear it yourself before trial?

15 A No, sir.

16 Q You heard it just now?

17 A (Witness nods affirmatively.)

18 Q Is that the first time you've heard it?

19 A No.

20 Q It wasn't included in your discovery?

21 A Not -- like I said, my first attorney, he just, you
22 know, he informed me of it but he didn't play it for me
23 cause we didn't have no CDs to play it on in the county
24 jail.

25 Q Okay. Is it fair to say that Mr. Jones sounded a

Shedrick Savage - Cross-examination
By Mr. Ray

1 little bit upset during that phonecall?

2 A I can't speak for Mr. Jones.

3 Q well, just based upon your impression of what it sounds
4 like?

5 A It sounds to me like if, if, if, if we gonna say
6 Mr. Jones is the person who made the call, and Mr. Jones was
7 aware of everything for him to give a fake name.

8 Q Okay. well, did he sound panicked?

9 A I can't speak for him.

10 Q You don't think he---

11 A I don't know how he was feeling.

12 Q Do you think he did?

13 A He wasn't too panicked. He was smart enough to give a
14 fake name. That don't sound like a person that panicked to
15 me.

16 Q Okay. Now, on Page 116, I'm looking at Line 17, you
17 got that?

18 A One second.

19 116 Line 17?

20 Q Uh-huh. (Affirmative).

21 A I have it.

22 Q what does Mr. Mitchell ask Mr. Jones there?

23 A You served time too, haven't you.

24 Q what does he say?

25 A When I was 16.

Shedrick Savage - Cross-examination
By Mr. Ray

1 Q Okay. Going on to the next page, 117, Line 6, what
2 does Mr. Mitchell ask there?

3 A You were drinking that night, weren't you.

4 Q What does he say?

5 A Sir, I ain't been in the club no more than an hour when
6 the incident took place. So, I had two Bud Lights in my
7 hand but I ain't get to consume them.

8 Q And then on the next page, 118, Line 12.

9 A Uh-huh. (Affirmative).

10 Q What's that question?

11 A Okay. But you have a relationship with Marty's family,
12 don't you? Yes, sir. That's what he say.

13 Q And down on Line 21 is where we get into the 9-1-1
14 call.

15 Do you see that?

16 A Yes, sir.

17 Q Over on Page 119, starting on Line 3, what does he say
18 there?

19 A And you ain't give them a description of who it was who
20 shot Martin, did you.

21 Q What does he say?

22 A Sir?

23 Q And continuing on down on Line 7.

24 A No, sir. Okay. The question is you told them you
25 didn't know, didn't you. That's Mitchell. He said no, sir.

Shedrick Savage - Cross-examination
By Mr. Ray

1 I probably did, sir. At the time it was so much chaos that
2 the first -- if you can -- like I say, I think they got the
3 audiotape beforehand and the incident and you can tell by my
4 voice that I'm discouraged.

5 Q And he goes on to say -- your attorney asked him but
6 you panicked at the time. Would you agree. He says yes,
7 sir.

8 A That's what he say.

9 Q And then on Line 15 he says I forgot I had a phone at
10 first.

11 A That's what -- yes. Yes, sir.

12 Q Okay. And then going down on Line 20, what does your
13 attorney ask him there?

14 A And then you gave them a false name who was calling,
15 didn't you. Because of nerves, yes, sir, I show did.

16 Q So, every issue with this 9-1-1 call was brought out in
17 testimony and Mr. Jones admitted it?

18 A No, not every issue.

19 Q What other issues exist?

20 A Cause he clearly doesn't tell that he testified that he
21 don't know who the person was or where they went.

22 Q Well, he said---

23 A He doesn't say that clearly.

24 Q He said that he didn't tell them it was you.

25 A Where he say that at?

Shedrick Savage - Cross-examination
By Mr. Ray

1 Q He doesn't know you, right?

2 A Where it, where it say that at?

3 Q Line 6. You told him you didn't know, didn't you,
4 referring to did, did you give them a description of who it
5 was.

6 A And he say no, sir---

7 Q He said he did not.

8 A ---I probably did.

9 Q So, he didn't know it was you.

10 A He say probably. He don't know.

11 Q Well, he didn't know you before this, right?

12 A No.

13 Q Okay. So, what would introducing the 9-1-1 tape for
14 the jury to hear, in your opinion, have done that his
15 testimony did not do?

16 A I mean it's clear if you -- how can you state to 9-1-1
17 that you don't know who -- she asked him is the shooter
18 still there, where did he go, and he testified in the, in
19 the -- on the 9-1-1 tape and clearly I don't know who it is,
20 I don't know where he went. But during my trial he
21 testified that he seen me take the shot. That's why it
22 would of helped me. It would of impeach his whole story.

23 Q Well, I believe he testified at trial that he saw you
24 take the shot, did he not?

25 A Yeah, he said in trial he seen me. But, in the 9-1-1

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 tape, he testified he says that he don't know who the person
2 is or where he went.
- 3 Q And he admitted that at trial.
- 4 A I, I mean yeah, but somewhere, not clear.
- 5 Q Okay.
- 6 A Not clear like I, like -- not like that tape would
7 where you just heard.
- 8 Q Okay.
- 9 A The jury would of heard that tape clear, don't you
10 think, sir?
- 11 Q well --.
- 12 A well what?
- 13 Q It's for the judge to determine.
- 14 A Oh, okay.
- 15 Q It's not up to me.
- 16 A Oh.
- 17 Q Let me ask you about Officer Sean Nix.
18 Do you recall his testimony at your trial?
- 19 A Not clearly. Yeah, I mean I got the -- I got it right
20 here. whatever you want to ask me I got it --
- 21 Q who was---
- 22 A -- the transcript.
- 23 Q who was Mr. Nix?
- 24 A It's one of the investigators.
- 25 Q Do you remember what role he played in the

Shedrick Savage - Cross-examination
By Mr. Ray

1 investigation?

2 A Due to his -- my transcript, he was an, an evidence
3 collector.

4 Q Okay.

5 A I don't know what you would -- I don't know his
6 professional name for it.

7 Q And he was at the scene, correct, looking at evidence?

8 A Yeah, I guess he came to the scene afterwards, yeah.

9 Q Okay. And he -- I believe the testimony here is that
10 he found a beer bottle in the backseat?

11 A Yes.

12 Q Was that beer bottle empty?

13 A I, I don't know, sir.

14 Q You don't know?

15 A I don't.

16 Q Did you just see those photos of it?

17 A Yes.

18 Q What did it look like to you?

19 A Black and white photos. I could tell there's a beer
20 bottle in the cup holder.

21 Q Couldn't tell much about it though?

22 A No.

23 Q Okay. And you wanted your attorney to bring that out
24 at trial that there was a---

25 A I wanted my attorney to present all the evidence,

Shedrick Savage - Cross-examination
By Mr. Ray

- 1 everything.
- 2 Q So, you wanted him to tell the jury that you see---
- 3 A I wanted him to present all the evidence.
- 4 Q Right.
- 5 A Yes.
- 6 Q Including the beer bottle?
- 7 A Including the beer bottle, including the DNA, including
- 8 the swab, including the---
- 9 Q All of it.
- 10 A ---fingerprints, everything.
- 11 Q Do you ever drink in your truck?
- 12 A Yeah, I --.
- 13 Q Okay.
- 14 A Yes, sir.
- 15 Q Do you think him bringing out there's an empty open
- 16 beer bottle in your truck would of helped you?
- 17 A Yes, cause it was in the backseat.
- 18 Q Okay.
- 19 A We was trying to pre -- present to the, you know, the
- 20 jury that there's three people in this vehicle.
- 21 Q Okay.
- 22 A The prosecutors wouldn't let that happen.
- 23 Q Well, whose to say that beer bottle was there or
- 24 whoever was in your vehicle at the time because they---
- 25 A Who could say it wasn't?

Shedrick Savage - Cross-examination
By Mr. Ray

1 Q I'm just asking.

2 A I'm -- you asking me for an answer that I can't give
3 you. I mean I don't understand the questioning.

4 Q Well, do you think just the presence of the beer
5 bottle---

6 A I think the presence of the---

7 Q ---would of---

8 A ---beer bottle, the blood swab, and all the DNA that
9 was taken from the backseat of my vehicle would have, yes,
10 it would have. It would have.

11 Q It would determine that somebody was there in the
12 backseat at that time?

13 A I wasn't bleeding in the backseat. I was the driver.

14 Q Well, if somebody was in the backseat earlier---

15 A They wasn't bleeding. There was no fight earlier.

16 Q Well, I'm asking about the beer bottle.

17 A Okay. Let's get back to that then.

18 Q They could, they could of been drinking the beer bottle
19 at the gas station before the fight?

20 A Uh-huh. (Affirmative).

21 And---

22 Q Doesn't necessarily mean---

23 MS. ROSS: Object to speculation.

24 Q ---they're---

25 THE COURT: Yeah, I mean I understand. I mean just

Shedrick Savage - Cross-examination
By Mr. Ray

1 move forward please.

2 MR. RAY: Yes, Your Honor.

3 Q where was the blood in the backseat?

4 A On the doorhandle.

5 Q Inside or outside?

6 A Inside.

7 Q Okay.

8 A And some in the door hinges.

9 Q On the hinges?

10 A I don't know what you call it. The thing that keep the
11 doors connected when you close the door, open the door.

12 Q And do you recall seeing it?

13 A At night?

14 Q At any time.

15 A Yeah, just now, yeah.

16 Q At any time the day of the incident.

17 A No.

18 Q You don't remember it?

19 A Hu huh. (Negative).

20 I wasn't thinking of a substance in the back of my
21 truck for no blood or nothing like that.

22 Q Okay. Did your attorney talk with you about voluntary
23 manslaughter?

24 A My attorney didn't speak to me about nothing of that
25 nature.

Shedrick Savage -- Cross-examination
By Mr. Ray

- 1 Q Not at all?
- 2 A Not at all.
- 3 Q Did he talk to you about murder?
- 4 A He didn't talk really to -- I mean the first time we --
- 5 he -- the down payment, he came. We spoke about it. He
- 6 asked me everything that happened. I told him everything
- 7 that happened and he said okay, I got it from here.
- 8 Q Okay.
- 9 A That was his words.
- 10 Q Okay. You understood you were facing a murder charge?
- 11 A Yes, that was, that was my charge.
- 12 Q Okay. And you understood the sentence you were facing?
- 13 A What you mean, like time?
- 14 Q Yes.
- 15 A Yeah, I knew that. I know what it carry, yes.
- 16 Q Okay.
- 17 A That's why when I turned down the guilty plea he put in
- 18 the motion to be relieved. He didn't want to take me to
- 19 trial obviously.
- 20 Q Okay. Now, let me ask you, if the jury didn't believe
- 21 that the murder charge would fit your case, do you believe
- 22 you would of been acquitted?
- 23 A I, I -- you asking me to speak for a jury right now?
- 24 Q Just in your opinion.
- 25 A Yes, sir.

Shedrick Savage - Cross-examination
By Mr. Ray

1 MS. ROSS: Speculation, Your Honor.

2 A If they would of found me not guilty, yes, I would of
3 went home.

4 MR. RAY: Okay. Court's indulgence for just one
5 moment, Your Honor.

6 (Pause.)

7 Q would you please, Mr. Savage, turn to Page 157?

8 A (Witness complies.)

9 I have it.

10 Q And that is the beginning of the testimony of Mr. Tyler
11 Sturkey, correct?

12 A Yes, sir.

13 Q And he was the SLED agent.

14 Is that correct?

15 A Yes, sir.

16 Q Now, you testified previously that he said no gunshot
17 residue test was performed on the victim, correct?

18 A That's what the evidence show.

19 Q would you please turn to Page 175?

20 A I have it.

21 Q would you begin on Line 6 please?

22 A I also received a GSR kit submitted as Charles Jackson.

23 Q Keep going.

24 A I did not analyze the kit and am unaware if this person
25 was in the vehicle as well.

Shedrick Savage - Cross-examination
By Mr. Ray

1 Q And then down on Line 13, would you please read there?

2 A A Charles -- Charlie Jackson was submitted as the
3 victim of a shooting incident. With the victim's kit, we
4 expected to find gunshot residue.

5 Is that where you want me to keep going?

6 Q Yeah, keep going.

7 A I just -- it does not have as much -- what's that word,
8 probated?

9 Q Probative.

10 A Probative value as a suspect or a witness does.

11 Q Thank you.

12 Now, Mr. Savage, let me ask you about when you were
13 arrested.

14 When did -- when were you arrested and brought into
15 custody for this?

16 A I was arrested -- well, I can't say the same night but
17 over in the morning, the next morning.

18 Q Early the next morning?

19 A Yes. Yes, sir.

20 Q Okay.

21 A At like 6:00 something in the morning.

22 Q Okay. On Page 140, if you would?

23 A I have it.

24 Q You got it?

25 A Uh-huh. (Affirmative).

Shedrick Savage - Cross-examination
By Mr. Ray

1 Q On Page 140, would you read on Line 24 please?

2 A Two subjects exited -- two subjects exit the vehicle.
3 At that time we asked them who they were due to the vehicle
4 given out, given out was involved in a shooting in
5 Spartanburg and Mr. Savage and it was identified as the
6 driver and the passenger was Rashawn Miller.

7 Q Thank you.

8 So, when you were arrested, is it fair to say there
9 were two people in your truck?

10 A Yes, I was arrested four or five hours after the
11 incident also.

12 Q Okay. So somebody could of gotten out---

13 A Ain't no---

14 Q ---is what you're saying today?

15 But at no point in time has anybody ever been
16 identified as the third person in that vehicle?

17 A That's cause the investigators didn't investigate.

18 Q Did you tell---

19 A Once they -- once I was arrested, and Mr. Jones
20 identified me, the case stopped there.

21 Q Did anybody tell them who was in the vehicle?

22 A I told my lawyer.

23 Q Did you tell the investigator?

24 A I didn't speak to the investigator. I didn't give no
25 statement to the investigator. You have the right to remain

Shedrick Savage - Redirect examination
By Ms. Ross

1 silent. That's what I did.

2 MR. RAY: Court's indulgence, Your Honor, just one
3 moment.

4 (Pause.)

5 MR. RAY: No further questions, Your Honor.

6 THE COURT: All right. Any --?

7 MS. ROSS: Briefly.

8 REDIRECT EXAMINATION

9 BY MS. ROSS:

10 Q Okay. Mr. Savage, I'm just going back to this Reuben
11 Landrum witness. He was the last witness the jury heard
12 from before closing arguments.

13 Is that correct?

14 A Yes, ma'am.

15 Q And on Page 242 -- so Theo Mitchell calls him, gets him
16 up there, and says three people in the truck, correct?

17 That's what you saw, right?

18 A Yes, ma'am.

19 Q And then, and then the solicitor stands up and says
20 well, on Page 242, Line 12, so did you see how many people
21 got in the truck to leave. No, sir.

22 And then he asked okay. So you know that three people
23 must have ridden over in the truck but you have no idea of
24 how many people left in it. Yes, sir.

25 And then the solicitor says is that what I'm hearing.

Shedrick Savage - Redirect examination
By MS. ROSS

1 Yeah, I stated I saw them at the store but I didn't see them
2 leave the club.

3 wouldn't you agree that takes the sting out of that
4 argument that there was a third party leaving after the
5 fight?

6 A Yes, ma'am.

7 Q And the bottle and the blood would of shown that this
8 was after the fight---

9 A Yes, ma'am.

10 Q ---into the -- all right.

11 Nothing further.

12 THE COURT: All right. Thank you, sir.

13 THE WITNESS: I can step down?

14 THE COURT: Yes, sir.

15 Ms. Ross, do you have any other witnesses?

16 MS. ROSS: No, Your Honor.

17 THE COURT: Okay. Well, we'll hear brief closing from
18 the State and then---

19 MR. RAY: Your Honor, State has one more witness.

20 THE COURT: Oh, you do?

21 MR. RAY: We do.

22 THE COURT: Oh, okay. How -- who is that?

23 MR. RAY: It's Solicitor Derrick Bulsa.

24 THE COURT: All right. How long do you anticipate that
25 would take?

1 MR. RAY: A decent amount of time. I don't think it
2 would be as long as Mr. Savage's testimony but---

3 THE COURT: Okay.

4 MR. RAY: If you'd like to take a break?

5 THE COURT: Yeah.

6 MR. RAY: Five minutes?

7 THE COURT: Yeah, I'm gonna -- and we'll come back at
8 about twelve o'clock.

9 MR. RAY: Okay.

10 THE COURT: All right.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: All right.

13 MR. RAY: Your Honor, State calls Solicitor Derrick
14 Bulsa.

15 THE COURT: All right. You're Mr. Bulsa?

16 THE WITNESS: Yes, sir.

17 DERRICK BULSA, being first duly
18 sworn, testified as follows:

19 THE COURT: All right. Thank you.

20 DIRECT EXAMINATION

21 BY MR. RAY:

22 Q Mr. Bulsa, how are you?

23 A I'm good. Thank you.

24 Q And you prosecuted this case.

25 Is that correct?

Derrick Bulsa - Direct examination
By Mr. Ray

- 1 A I did. I did.
- 2 Q Okay.
- 3 A Yes.
- 4 Q And you remember about -- when, when did the State's
5 case against Mr. Savage begin taking place?
- 6 A We started this case on November 28th, 2016, the trial
7 date.
- 8 Q Okay.
- 9 A We finished on the 29th.
- 10 Q Okay. And did you have an opportunity to speak with
11 Mr. Theo Mitchell during the course of this case?
- 12 A Yes, multiple times.
- 13 Q Multiple times.
- 14 Did y'all discuss the discovery in this case?
- 15 A I'm sure we did. I don't remember the specifics.
- 16 Q Okay. Did you---
- 17 A Theo and I tried a few cases together. I always, I
18 always try to go over the discovery with the defense
19 attorneys to make sure they have everything.
- 20 Q Okay. Do you, do you recall providing it to him?
- 21 A Yes, sir, I did.
- 22 Q Okay. Do you recall any plea negotiations that might
23 have taken place?
- 24 A I heard some of that testimony. I do not -- and I
25 didn't look specifically for that in my file. I don't have

Derrick Bulsa - Direct examination
By Mr. Ray

1 any specific note about plea offers---

2 Q Okay.

3 A ---with Mr. Mitchell.

4 Q You don't recall any either?

5 A No. If I did, it probably would of been a manslaughter
6 plea offer.

7 Q Okay. And you'd worked with Mr. Mitchell previously?

8 A I have.

9 Q Okay. Based upon your communications with him, did he
10 seem to be discussing things with his client?

11 A Yes, I, I did not even remember the, the, the motion
12 made to be removed or relieved. I don't have any specific
13 memory of that but I have no reason not to believe that he
14 wasn't discussing it cause, if we held a hearing, which I'm
15 sure we did, it would of -- I think -- I did note that the
16 hearing was maybe in May or June and this was tried in
17 November. So there were multiple months following that and
18 he was not removed. And, as the defendant stated, he had
19 Bill Rhoden to begin with. So, Mr. Mitchell was his second
20 attorney.

21 Q Okay.

22 A I think that may have caused part of the delay in
23 reaching this case cause it took two years to, to try it.

24 Q Okay. Do you recall discussing things with his
25 previous attorney?

Derrick Balsa - Direct examination
By Mr. Ray

1 A I, I do recall vaguely Mr. Rhoden being in the case. I
2 don't know how much we discussed about it.

3 Q Okay. Now, let me ask you, at any point prior to
4 trial, did the issue of Stand Your Ground come up?

5 A It did not.

6 Q If you would please just describe the evidence against
7 Mr. Savage in this case.

8 A Okay. I've reviewed this file somewhat. I, I can not
9 sit here and say I recall all the evidence and multiple
10 cases since.

11 If I recall, there was a fight inside. The parties got
12 dispatched from the, from the premises and they left in
13 different groups. The victim was walking up, up the drive
14 toward the roadway. This -- Your Honor, this is a, this is
15 called Universal Events. It's a, it's a fun park type
16 atmosphere. They had some go cart tracks, a Putt-Putt
17 course, and then a building on the backside of the property.
18 So, there's a long drive coming into the property with a
19 parking area behind the building, and a lot of people were
20 also parking up on the roadway and along, and along the
21 drive.

22 So, it would of been a lengthy walk from the, the
23 building to the roadway, and the victim had, had left and
24 was walking up that, up that driveway, lack of a better
25 word, with some friends. And as he was walking, the truck

Derrick Bulsa - Direct examination
By Mr. Ray

1 drove by.

2 MS. ROSS: Just one, one -- Judge, I believe he's
3 saying what his position on the case was. Clearly he wasn't
4 there. So, I'd object to him sort of telling this as a
5 means of what happened. I guess he can tell it as to what
6 he would argue or present happened at the case but really he
7 wasn't there.

8 THE COURT: And that's the way I'm taking it. So, I
9 mean I'll, I'll allow the testimony.

10 Thank you.

11 A Okay. And the victim was walking up this, this long
12 roadway presumably towards his vehicle. The truck drove by,
13 words were exchanged, a bottle was thrown, a shot rang out.
14 The parties were no where close to each other.

15 The victim was found up on an embankment in the grass I
16 believe near a fence and the truck sped off. And it was
17 clear that the truck was leaving at a high rate of speed
18 based on the information we had from the security guards.

19 An officer gave chase. An off-duty officer was working
20 security. He actually gave chase on that vehicle. He could
21 not catch it. A good description was obtained. And based
22 on some of the conversations with witnesses inside, they
23 learned that the group was from Cherokee County. So,
24 Cherokee County was alerted to be looking out for that
25 vehicle.

Derrick Balsa - Direct examination
By Mr. Ray

1 That vehicle was found some time later that morning.
2 It was stopped and two people were taken from the vehicle.
3 Mr. Savage was driving it. I don't recall if he was the
4 registered owner but he was driving it and then Rashawn
5 Miller was a passenger.

6 Both of those men were interviewed. They both
7 basically claimed alibi initially. Then Mr. Savage made a
8 comment well, I might of been there but I wasn't driving.
9 So, they led the police to believe that -- they tried to
10 lead them to believe that they weren't involved in the crime
11 at all. Never mentioned a third party in the vehicle.

12 The vehicle would of been processed. No weapon was
13 ever found. I can't recall if a shell casing was found at
14 the scene, but we know only one shot was fired, and then the
15 car fled.

16 Witnesses were interviewed. Security personnel
17 identified fire coming from the driver's side of that
18 vehicle, which is why the charges were brought initially,
19 and then some time later Mr. Jones came forward and, and
20 stated he was the 9-1-1 caller explaining why he, he lied
21 about his, his identity as most people don't want to be
22 involved in cases.

23 So, we struggle with that all the time but he did seem
24 credible to us and we put him up as a witness and he was
25 properly cross-examined. So, so there was direct and

Derrick Balsa - Direct examination
By Mr. Ray

1 circumstantial evidence identifying the defendant to the
2 crime.

3 Q So, Mr. Jones, you, you stated he gave a false name.
4 Is that correct?

5 A The---

6 Q The Cedric Jones---

7 A Yes.

8 Q ---9-1-1 call?

9 A One of the 9-1-1, yes, sir. We, we knew that, that he
10 had given a false name. We questioned him about it and we
11 had to put him up to the jury and---

12 Q Okay.

13 A ---he was properly cross-examined.

14 Q And do you recall the cross-examination of Mr. Jones?

15 A Not specifically, no, sir.

16 Q Okay. But would you say it's unusual for someone to
17 give a false name on a 9-1-1 call in a case like this?

18 A No. Nope.

19 Q Okay. And do you think introducing the 9-1-1 call
20 itself would have helped the defense at all?

21 MS. ROSS: I object to the speculation.

22 THE COURT: Yeah, I mean that's---

23 MR. RAY: I apologize, Your Honor.

24 THE COURT: Overruled or sustained. I'm sorry.

25 Q So, did this meet the elements of self-defense?

Derrick Balsa - Direct examination
By Mr. Ray

1 A No, sir, not---

2 Q Okay.

3 A Not even close.

4 Q Have you ever seen self-defense for a driveby shooting?

5 A No, not unless shots were being fired at the truck.

6 MS. ROSS: Judge?

7 Judge, again, that's really all for the jury to decide
8 whether it's self-defense.

9 THE COURT: And I, I certainly understand that. I mean
10 I, I don't know. I mean this is a PCR hearing too.

11 MR. RAY: Well, I think it goes directly to the
12 reasonableness of Mr. Mitchell's strategy at trial.

13 THE COURT: I understand.

14 MS. ROSS: But, again, that's not for the solicitor to
15 determine. It's for the judge -- the jury.

16 MR. RAY: Well, Your Honor, Mr. Mitchell's not here.
17 So we can't ask him.

18 THE COURT: I understand. I'll allow it but, but just,
19 you know, in a very -- I mean I don't think we need to go
20 into much more detail about that.

21 MR. RAY: Okay.

22 THE COURT: All right.

23 MR. RAY: Thank you, Your Honor.

24 Were you aware of any third party who might have been
25 involved in this case?

Derrick Bulsa - Direct examination
By Mr. Ray

1 A No, no. And, as I stated, the two def -- the two
2 suspects never named a third person in the vehicle.

3 Q Okay.

4 A I believe there was testimony about Mr. Landrum.

5 Q And did you file a pretrial motion regarding that
6 issue?

7 A I did. I did.

8 Q And what was the extent of your argument?

9 A I actually filled a written motion that should be in
10 the record. It was a short motion referencing some case
11 law, State v. Gregory. We were, we were asking for the --
12 any evidence of third party guilt be excluded without a
13 proper showing that it was inconsistent with the defendant's
14 own guilt, and that's what we asked the Court, and there was
15 a pretrial hearing, and the Court agreed that no evidence
16 would be admitted until there was a proper showing that it
17 was inconsistent with his own guilt.

18 Q And who was Derrick Tate?

19 A Derrick Tate?

20 Q I believe on Page 192 of the transcript.

21 A I don't, I don't have the transcript.

22 Q Oh, you don't?

23 A No.

24 Q Okay. I can give you my copy.

25 A Page 192?

Derrick Balsa - Direct examination
By Mr. Ray

1 Q Yes, sir.

2 A Where on 192 is Derrick Tate?

3 Q Without the transcript in front of me, my notes say
4 around Line 1 through 3. It may have begun on Page 191.

5 A 191 is about Brad James.

6 Q All right. I apologize. On Page 69. 69 through 72 I
7 believe. The State made an objection.

8 A I see the comment. Mr. Mitchell was asking Brad James
9 about giving the name of Derrick Tate to an investigator. I
10 objected, yes.

11 Q Why did you object to that?

12 A I don't recall exactly other than based on what I'm
13 reading. Looks like I felt they were trying to back-door
14 the third party guilt with no evidence.

15 Q Okay.

16 A There was no -- there's no record.

17 Q Do you recall---

18 A There's no comment as to where Mr. Tate's name came
19 from other than Mr. James getting it from somewhere.

20 Q Okay. Do you recall a beer bottle being found at the
21 scene?

22 A I don't. I don't remember.

23 Q Okay. Would you believe me if I told you a beer
24 bottle---

25 A Yeah, I would.

Derrick Bulsa - Direct examination
By Mr. Ray

1 Q Okay.

2 A I mean yeah.

3 Q Did the -- did you have any reason to believe the beer
4 bottle belonged to anybody in particular?

5 A Where was the beer bottle found that you're
6 referencing?

7 Q My understanding is the beer bottle was found in the
8 backseat on -- I believe on Page 134 over into 135.

9 A Okay. Well, the vehicle wasn't found at the scene. It
10 was found hours later. So, there's no way to date or put a
11 time on when an object was put in a vehicle, how long it had
12 been there. So, no, I didn't have -- I didn't feel it was
13 relevant to the case --

14 Q Okay.

15 A -- especially when nobody was named as even being with
16 the two suspects and they were both trying to claim they
17 weren't even there.

18 Q Were you aware of blood in the vehicle?

19 A I didn't recall that until you called me and I started
20 reviewing the file. I did see the comment. I did see
21 reference to blood. But, once again, it's the same. You
22 don't know when or how long it had been there.

23 Q And did -- you don't recall either one of these,
24 whether they were tested for DNA?

25 A No, there was -- I don't believe there was any DNA

Derrick Bulsa - Direct examination
By Mr. Ray

1 testing done in this case.

2 Q Okay. Did the State request an instruction on
3 voluntary manslaughter?

4 A I don't, I don't know what the transcript -- I don't
5 remember.

6 Q Okay. I believe on Page 258 in your -- it's your
7 closing remarks and really on to Page 261. Looks like Lines
8 8 through 11.

9 would you read that aloud for us please?

10 A Wait a minute. What's the -- where, where are you?

11 Q Starting on page -- Line 7. Page 261.

12 A 261. Let's see. If the shot had happened inside, it
13 would probably have been a clear manslaughter case because
14 that was in the time of the fight. So, I was referencing
15 inside the club. But when they separated and Marty was
16 walking away, the defendant reinitiated.

17 So, if they'd been fighting inside the club and the
18 shooting had happened, there might of been sufficient
19 provocation. But once the parties separated, the victim was
20 just walking down the roadway and the defendant reinitiated
21 it by yelling at him verbally, arguing with him. There was
22 no -- beer bottle's not sufficient provocation for a
23 manslaughter.

24 Q Okay. Do you recall Reuben Landrum as a -- who was a
25 witness in this case?

Derrick Bulsa - Direct examination
By Mr. Ray

1 A One minute. So, I guess the judge did charge murder
2 and manslaughter. Yeah, I see it right here. So,
3 manslaughter was presented to the jury.

4 Q What page are you on there?

5 A I'm on 260, Line 18. The judge is gonna charge you the
6 law of murder and manslaughter. So, as I told you at the
7 beginning of my case, this -- I submit we got the right guy.
8 Yeah, this is murder or was it manslaughter. So, the jury
9 did have that choice.

10 Q Do you recall who requested that?

11 A I don't.

12 Q Okay.

13 A Let me see. Looks like I did. Page 247.

14 Q You requested the voluntary manslaughter?

15 A Yeah, I think the lesser included charge of voluntary
16 manslaughter would be proper --

17 Q Okay.

18 A -- in case the jury thought a beer bottle might of been
19 provocation.

20 Q All right.

21 A Of course, I argued against it at trial because I
22 didn't think so but to make sure the record was clean. We
23 gave the jury the choice, manslaughter or murder.

24 Q Okay. And do you recall Mr. Reuben Landrum, a witness
25 who testified in this case?

Derrick Balsa - Direct examination
By Mr. Ray

1 A Not specifically.

2 Q Okay. Do you remember any issues with witnesses that
3 came up the day of trial?

4 A An issue that came up the day of trial?

5 Q Not being available or --?

6 A No, I don't remember that.

7 Q No.

8 Okay. Starting on Page 235 going into Page 236 is
9 where his testimony begins and really on Page 240, Lines 2
10 through 10.

11 Okay. Does that refresh your memory at all about --?

12 A What are you -- I'm not sure what you're asking me.

13 Q Just who he might of been in relation to in this case.

14 A I flipped back earlier in the transcript here. It
15 looks like Mr. Landrum, they were having trouble locating
16 him for the trial but he did show up.

17 Q And I believe on Page 213 around Line 7.

18 A Yeah. So I basically had him available for the defense
19 if they needed him. But as, as you've highlighted, what I
20 felt he was telling us was hearsay. So we didn't consider
21 him reliable.

22 Q Okay. So you didn't intend to call him.

23 Is that correct?

24 A No. But because what he said, we thought the defense
25 might feel they needed to use him.

Derrick Bulsa - Direct examination
By Mr. Ray

1 Q Okay.

2 A But just---

3 Q Do you recall what he said?

4 A Not without going through my notes.

5 Q Okay. No worries.

6 Court's indulgence for just one moment, Your Honor.

7 THE COURT: All right.

8 (Pause.)

9 Q And did your involvement with this case cease after the
10 jury -- the verdict, the verdict was reached by the jury?

11 A No, we had the codefendant's case to, to handle.

12 Q Okay. You didn't have any involvement with the appeal?

13 A No, not -- no, I did not.

14 MR. RAY: Okay. No further questions, Your Honor.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MS. ROSS:

18 Q Hey there.

19 A Hello.

20 Q So you provided me with a -- the full copy of
21 discovery, right, in the case?

22 Do you recall?

23 A I don't recall.

24 Q Okay.

25 A Did you, did you contact our office because you

Derrick Bulsa - Cross-examination
By Ms. Ross

1 couldn't get Mr. Mitchell?

2 Q Yes.

3 A Okay. So we probably provided you with what we
4 provided to him.

5 Q And you might know some of them.

6 Do you know some of the circumstances of that with Mr.
7 Mitchell?

8 A I think he's deceased.

9 Q Uh-huh. (Affirmative).

10 A Yeah.

11 Q And, and the Alzheimer prior to that or some kind of
12 dementia was going on?

13 Are you aware of that?

14 A I did not know that, no.

15 Q And, and he'd been suspended as well---

16 A I did know he got suspended.

17 Q ---some time ago?

18 But clearly wasn't at the time of this trial but it was
19 not too long after that although I don't have the exact
20 date.

21 A Don't remember.

22 Q Okay. But you, you testified about the case and that
23 was your position on the case but clearly you weren't there,
24 right?

25 A Right.

Derrick Bulsa - Cross-examination
By MS. ROSS

1 Q So when you say that my client approached the victim
2 you don't know that. You're not there.

3 But who are you basing it on?

4 A Cause the witness---

5 Q The investigation.

6 Okay. would you say -- now, I'm just going back to --
7 witness Mitchell was the owner of the club who testified
8 first.

9 Do you recall who I'm talking about?

10 A I, I do.

11 Q Now, isn't it true that he referred to a potential
12 third person in the car in his testimony?

13 A Ms. Ross, I don't, I don't remember.

14 Q Okay. would it surprise you if he did on Page 32?

15 I apologize. That's not Page 32. Let me find
16 Mr. Mitchell's testimony.

17 (Pause.)

18 Q 82. Actually I'll withdraw the question and let the
19 record reflect whether that was said or not.

20 A Well, I found it.

21 You want me to answer it?

22 Q Okay. He said he thought he saw three in the car.

23 Is that correct?

24 A He said he might of -- he might of went around the car,
25 around behind the truck but wasn't sure.

Derrick Bulsa - Cross-examination
By Ms. Ross

1 Q All right.

2 A He said he thought there was a third person who might
3 of went around behind the truck. He wasn't sure. They took
4 off out the driveway.

5 Q Okay.

6 A Yeah.

7 Q And so they were leaving the driveway, took off out of
8 the driveway?

9 A Yes.

10 Q And he also mentioned there were two groups and he let
11 the first group, which included the victim, leave first,
12 correct?

13 A I do recall them separating them, yes, ma'am.

14 Q And he said he thought he saw him completely leave
15 before he let the second group out of the club?

16 A Well, I don't know if you've seen -- I think I actually
17 presented some aerial photographs in the trial---

18 Q Right.

19 A ---so the jury could see. You walk down the building
20 and you turn the corner and there's a long drive. So, I
21 believe what he was saying is he, he left his sight.

22 Q Right.

23 A I mean going---

24 Q And the shooting, according to that testimony, was in
25 his sight though it was distant and then all he saw was the

Derrick Bulsa - Cross-examination
By MS. ROSS

1 flash?

2 A Yeah.

3 Q Right?

4 Correct.

5 Okay. Now, that was the only witness to the flash or
6 seeing the flash. There were witnesses about hearing
7 gunshots aside from witness Cedric Jones.

8 Is that correct?

9 A I would have to rely on the transcript whether anybody
10 else testified---

11 Q Okay.

12 A ---to the flash. I don't recall.

13 Q But the -- okay. Let the record reflect what that
14 testimony was.

15 But the witness -- the only witness who identified
16 Mr. Savage or seeing Mr. Savage was Cedric Jones, the one
17 with the 9-1-1 call that we just heard?

18 A I believe that's correct, yes.

19 Q And, at the trial, the jury didn't hear the 9-1-1 call
20 where he said, when asked, I did not see who the shooter was
21 over a truck or gave no descriptions or anything, correct?

22 A They -- it was not pled to the jury, no.

23 Q All right. Now, I have terrible pictures that were in
24 the discovery package but, if you look through, they show or
25 attempt to show there was blood in the backseat of the car

Derrick Bulsa - Cross-examination
By Ms. Ross

1 as well as a beer bottle.

2 A Okay.

3 Q Now, do you recall whether any of that was presented at
4 trial?

5 A I don't remember if Officer Nix testified to that or
6 not.

7 Q would you just allow the record to reflect whether or
8 not that occurred?

9 A Yeah, I'll have to do that, yeah.

10 Q And then on, on this, evidence was taken from the beer
11 bottle. This is a P&E sheet I believe or an evidence sheet.

12 A This is an evidence -- yes, this is a property sheet
13 that's kept with the evidence.

14 Q Okay. And it refers to evidence from swabs taken from
15 suspected blood in a beer bottle?

16 You need your readers?

17 A Actually I brought them. I did bring them. I've got
18 that old -- it dates back to 2016. Let's see. It looks
19 like they swabbed a lot of places in the car. Whether they
20 swabbed the blood I can't -- probably did. At that time
21 they were trying to determine who all might of been there.

22 Q And clearly, you know, under -- Stand Your Ground is
23 sort of strange and different. But, but there -- even if a,
24 a jury or a judge decides to Stand Your Ground, if there is
25 a Stand Your Ground hearing pretrial, you could still argue

Derrick Bulsa - Cross-examination
By Ms. Ross

1 to a jury that if you're in a place where you have a right
2 to be, you have a right to -- you have no duty to retreat
3 from a place you have a right to be when attacked?

4 A I think, I think---

5 Q I'll let---

6 A I think we---

7 Q ---the law speak for itself cause---

8 A We, we, we probably would of argued against a
9 self-defense claim---

10 Q ---if I misstate it---

11 A ---because the -- we don't believe there was any
12 self-defense but I don't, I don't---

13 Q Right.

14 A ---think that was raised. I think their position was
15 it wasn't them.

16 Q Correct.

17 But does it have to be the -- raised as a defense to
18 just be argued to a jury that these facts could exist or
19 not?

20 A I do have jury -- I do have defense attorneys arguing
21 inconsistent defenses. Yes, I've seen that.

22 Q And that didn't, it didn't -- that, that didn't happen
23 here and, in fact, Mr. Mitchell didn't argue any kind of
24 manslaughter argument about the fight or anything in his
25 closing?

Derrick Bulsa - Cross-examination
By MS. ROSS

1 A That's correct. It -- because he was arguing they --
2 it wasn't them at all and I was, and I was -- I guess I was
3 the one to argue to the jury or allowing the jury to decide
4 if they believed Mr. Jones or not. They could.

5 MS. ROSS: All right. Beg the Court's indulgence.

6 (Pause.)

7 MS. ROSS: Okay. No further questions.

8 THE COURT: All right.

9 REDIRECT EXAMINATION

10 BY MR. RAY:

11 Q Mr. Bulsa, you had worked with Mr. Mitchell, correct,
12 previously on other cases?

13 A Yes, Mr. Mitchell was a---

14 Q And---

15 A ---was an excellent lawyer.

16 Q And you stated that you had no idea he had Alzheimer's?

17 A I did not know. He practices in Greenville. He only
18 took a few cases in Spartanburg.

19 Q All right.

20 A But I had been up against him in trial before.

21 Q And you stated that you did not know he was suspended?

22 A I remember seeing a -- something come across the
23 E-Blast but I don't remember what it was.

24 Q Do you recall when that might of been?

25 A No, sir, I don't.

Derrick Bulsa - Redirect examination
By Mr. Ray

1 Q Okay.

2 A I mean he was clearly lucid and competent in this
3 cases.

4 Q Okay. Do you believe that the State had a strong case
5 against Mr. Savage?

6 A I, I do.

7 MS. ROSS: That's not the issue here. It really is
8 the -- whether Mr. Mitchell was effective or not.

9 MR. RAY: Well, Your Honor, I believe the strength of
10 the State's case is directly relevant to the issue of third
11 party guilt. In order for a defendant to present evidence
12 of third party guilt, when the State presents a strong case,
13 the Court has to weigh the strength of the relative cases
14 against each other. I believe that's the Holmes case and it
15 also goes to directly to prejudice as to whether or not
16 Mr. Mitchell's performance prejudiced Applicant in lieu
17 of -- in view of all the evidence.

18 MS. ROSS: Judge, I thought Holmes said that you
19 couldn't weigh the -- that was the problem in Holmes was you
20 couldn't weigh the strength of the State's case in
21 determining third party -- whether third party evidence
22 could go in or not. I could be mistaken.

23 THE COURT: So, I sub -- what is the question again?

24 MR. RAY: Do you believe that the State presented a
25 strong case.

Derrick Bulsa - Redirect examination
By Mr. Ray

1 THE COURT: All right. I'm gonna go ahead and, and
2 allow, allow the question and, you know, we'll, we'll take
3 it as it's worth.

4 MR. RAY: Thank you.

5 A Yes, we did. The defense was I wasn't there. We were
6 able to substantially show that they were there. We had
7 pictures that were taken the night of the incident putting
8 the defendants in the club, and they were wearing the same
9 clothing from those pictures when they were arrested in the
10 vehicle later that morning some hours later. And then we
11 had the eye witness testimony about the shooting.

12 We had the evidence of the fire being seen from the
13 driver's side. We had the gunshot residue on the hands of
14 the defendant.

15 So, we, as I stated earlier, we had direct and
16 circumstantial evidence. The jury -- I was looking back. I
17 always make notes as to how long the jury's out. The jury
18 was out less than two hours and we felt comfortable and
19 strong about this case.

20 Q Okay. Anything else you'd like to say about this case?

21 A I, I hear Mr. Mitchell being attacked for being
22 ineffective. Mr. Mitchell was a fine lawyer and some of the
23 arguments I believe would probably be strategy. He did
24 cross-examine Mr. Jones.

25 MS. ROSS: Your Honor, I'd object to his supposition at

Derrick Bulsa - Recross examination
By MS. ROSS

1 this. He doesn't know whether it was strategic or not. So,
2 I don't think he can testify as to whether a decision was
3 strategic or not.

4 THE COURT: Okay. And I, and I, and I'll agree. I
5 mean -- and it's not in, in relation to a direct question.
6 So---

7 MR. RAY: I'll withdraw that question, Your Honor.

8 THE COURT: All right. Thank you.

9 MR. RAY: No further questions.

10 MS. ROSS: Judge, just one.

11 THE COURT: Okay. One.

12 THE WITNESS: Okay.

13 RE CROSS EXAMINATION

14 BY MS. ROSS:

15 Q Just as far as -- you said the defense was that he
16 wasn't there.

17 Did, did you -- you didn't receive an alibi statement,
18 did you?

19 A No, I was -- that's based on the interview with the
20 defense.

21 Q So, if you---

22 A I mean with, with the---

23 Q ---go to trial---

24 A ---investigator that the defendant gave.

25 Q ---and just present an alibi defense, you have to

Derrick Balsa - Recross examination
By Ms. Ross

1 present an alibi defense. You have a letter ahead of time
2 saying this is my alibi, these are the people.

3 You, you did not receive that, did you?

4 A No.

5 Q And Mr. Wright -- Mr. Savage didn't testify, did he?

6 A He did not but his statement---

7 Q But his statement wasn't---

8 A The investigator came in.

9 Q Well, correct, but he, he remained silent, correct?

10 In the end he decided to assert his right to remain,
11 remain silent.

12 So, he did not present an alibi defense or a defense
13 stating that he wasn't there?

14 A I, I respectfully disagree, ma'am. When he's
15 interviewed by the officers and he's telling that he's not
16 there, that is -- he does not give a specific location where
17 he would of been otherwise but he is denying being there and
18 I think that's the way I said it. He argued it. They were
19 trying to argue that he wasn't even there. It's not him.
20 He wasn't involved in it at all.

21 Q Well, he didn't testify at trial.

22 So, that was not his testimony at trial and he didn't
23 present an alibi defense, did he?

24 A No, he did not present witnesses---

25 Q All right. Thank you.

Derrick Bulsa - Recross examination

By MS. ROSS

1 A ---no, ma'am.

2 MR. RAY: All right. Thank you for being here.

3 THE WITNESS: Yes, sir.

4 MR. RAY: Brief closing remarks, Your Honor?

5 THE COURT: All right.

6 MR. RAY: I think it's important to keep in mind that
7 typically a trial counsel must articulate their reasonable
8 trial strategy, but in cases where counsel's unavailable,
9 it's certainly proper to infer that strategic or tactical
10 decision from the record and the testimony presented.

11 On the issue with the appeal, Ms. Lapham presented I
12 would say very credible, credible testimony that Mr. Savage
13 chose to abandon his appeal because he could not procure the
14 transcript in time, and she informed him of the PCR process,
15 and that was ultimately what he wanted to pursue anyways. I
16 don't think he's met the burden on him of showing prejudice
17 or deficiency in that regard.

18 The issue of the Stand Your Ground hearing, that's
19 contrary to the entire defense put forth by Mr. Mitchell.
20 It, it seems to me that, while he could of put forward --
21 disprove defenses, they're certainly not deficient to refuse
22 to do so. It would make no sense to put Mr. Savage on the
23 stand before trial and say I shot this victim if your
24 defense was that you didn't shoot the victim.

25 I don't think he's met the, the standard of deficiency

1 or prejudice because, specifically with prejudice, it was a
2 driveby shooting and I don't think that a Stand Your Ground
3 defense, even properly raised, would have resulted in a
4 different trial -- different outcome at trial.

5 As far as the failure to object regarding bolstering,
6 the officer in question provided the testimony. His
7 credibility was not what led to a conviction in this case.
8 There are numerous witnesses who provided credible testimony
9 against him who described the vehicle who placed Applicant
10 in the driver's seat and one who specifically saw them pull
11 the trigger.

12 The, the issue of bolstering, there's no prejudice that
13 resulted from that in the State's opinion regarding the
14 third party guilt. There's not enough evidence. There's
15 not sufficient evidence to that exists whether it was put in
16 or not put in, argued or not argued. It couldn't be argued
17 because it doesn't exist. He showed that someone was in the
18 backseat.

19 The beer bottle, there's no way to place that with a
20 specific person according to the testimony and especially no
21 way to place that with a specific person at a specific time
22 the night of the incident in question.

23 The 9-1-1 call, Mr. Mitchell admittedly did not
24 introduce it. However, he cross-examined Mr. Jones pretty
25 extensively on his prior record, whether he'd been drinking

1 the night, whether he had a biased relationship with the
2 family, and on the specific instances that Mr. Savage is
3 wishing were raised regarding him giving a false name,
4 regarding him failing to identify the shooter to the 9-1-1
5 operator, there's no prejudice that's been shown from that
6 and, frankly, there's no deficiency either in light of the
7 cross-examination.

8 Regarding Mr. Nix, again it relates to the beer bottle
9 which we've already covered.

10 The blood and prints on the rear driver side door is --
11 faced the same issue. We don't know where it came from. We
12 don't know how it got there. Simply introducing it or how
13 it had to get tested doesn't place a third party in the
14 backseat at the time of the shooting, and it would have not
15 affected the outcome at trial in any sense as far as
16 prejudice is concerned.

17 And then, ultimately, the closing argument relating to
18 voluntary manslaughter, whether Mr. Mitchell requested it,
19 whether Mr. Bulsa requested it, the jury was instructed on
20 voluntary manslaughter.

21 The -- Mr., Mr. Mitchell did, in closing, touch on the
22 credibility of Mr. Jones and he, he did argue that there's
23 evidence that supports the, the third party in the backseat.
24 Specifically said that multiple people got in the truck.
25 Referred to the owner of the club's testimony in his closing

1 statement and referred to the testimony of Mr. Landrum.

2 Speaking with Mr. Landrum, he stated on the record at
3 trial that he'd spoken with Mr. Landrum before he gave his
4 testimony. And, frankly, in light of the fact that there's
5 very little evidence of a third party in the backseat, that
6 it, it was all that they had.

7 And so, he called him to the stand. He got testimony
8 that there was at least a third party in the backseat prior
9 to the shooting at some point that night.

10 And with that, Your Honor, the State's position is that
11 Mr. Savage has failed to prove deficiency. He's failed to
12 prove prejudice and, therefore, we would request that this
13 Court deny the Application for Post-Conviction Relief.

14 THE COURT: All right. Ms. Ross.

15 MS. ROSS: Thank you, Your Honor.

16 May it please the Court.

17 I would start with this -- the transcript itself. I, I
18 think it speaks for itself in a lot of ways. I did
19 reference Nance because I, I saw the transcript as a
20 breakdown in the adversarial process especially as to
21 calling as your one and only witness, the last witness they
22 hear from, a person who has very little to offer aside that
23 he saw a third party in the car, and then in -- failed to
24 ask him when did he see that third party in the car, and
25 then the solicitor was able to blow up that testimony in the

1 face of the defense argument, which he did, due to Reuben
2 Landrum and just a classic -- while he says he spoke to that
3 witness, a classic thing one must do as a defense attorney,
4 is fully interview a witness before putting them on the
5 stand and that clearly didn't occur here because of that
6 surprise of oh, that was before, not after the fight.

7 Going back to the appeal, I respect Ms. Landrum (sic)
8 and what she said about possibly abandoning the, the appeal.
9 There were limited arguments there. Simply that goes to the
10 failure to make good objections during the trial.

11 There was not much to argue on an appeal. The only
12 thing I could see potentially was that the judge might have
13 directed a verdict of the -- not guilty on the murder in
14 favor of manslaughter given what he said at the end, and I,
15 I can't remember exactly in the transcript. I don't know
16 if -- I assume Mr. Mitchell made that motion for directed
17 verdict but I'm not even sure he did looking at that.

18 It's -- as far as immunity under 16-11-450, this is,
19 this is one that you would discuss with your client and it
20 goes to he was in a place where he had a right to be, and
21 whether he's possibly protecting someone else or something,
22 if someone is in a place where they have a right to be, and
23 they're attacked and feel threatened, they have a right to
24 respond with deadly force and then be -- have complete
25 immunity.

1 Here, we have witness Mitchell. There were two parties
2 who reported witnesses here. One was the bar owner,
3 Mitchell, who said that he saw the first group, who included
4 the victim, fully leave this club before he released
5 Mr. Savage from the club to leave. That is inconsistent
6 with the stories that we're hearing that somehow Mr. Savage
7 was driving around looking for the victim. I think it's
8 completely inconsistent with that for me to argue that
9 because that's not what, what happened.

10 As to -- and then that too is, is the argument that can
11 be made, made to the jury, which it wasn't, that the duty to
12 retreat applies less or does not apply if someone's being
13 threatened or attacked in a place they have a right to be.

14 So, we'd argue that is relevant to this certainly and
15 would go to prejudice because here is a jury's working
16 with -- the trial is clearly finding reasonable, reasonable
17 doubt and that would go to reasonable doubt of guilt of
18 murder but it was not even brought up.

19 As the objection to arguments, they speak for
20 themselves.

21 The 9-1-1 recording, again, speaks for itself. It is
22 strong impeachment of evidence against what the only eye
23 witness said and the only eye witness who had a bias, his
24 friendship, a motive, being friends with the family, coming
25 late to the party after he knew all the, the State's case

1 because Mr. Savage had been all over the news at this point.
2 So, they knew the situation and just plugging in the damning
3 testimony without being impeached with the fact that, right
4 after the incident, that's not what he said at all and he
5 said just the opposite, that he hadn't seen anything.

6 The SLED report, all that about blood, and the beer
7 bottle, and DNA evidence, and fingerprints in the back of
8 Mr. Savage's car is clearly relevant. I know it was after
9 the fact but it is illogical that someone would go and put
10 evidence in the back of their car before they're arrested.
11 It wasn't even looked into.

12 If this was retried, the first thing I've advised
13 Mr. Savage and the family to do is to get that blood and DNA
14 tested from the bottle because it's strong evidence of third
15 party guilt, which, under State v. Gregory, evidence offered
16 by the accused as to the commission of the crime by another
17 person must be limited to facts which are inconsistent with
18 his own guilt and raise in -- reasonable inference or
19 presumption as to his innocence, which this would do.

20 It's much more than just casting mere suspicion of
21 someone else, and also the, the only testimony, aside from
22 Cedric Jones, was a flash coming out of the car. He could
23 not say it was the driver's side window or where.

24 Failing to argue any kind of manslaughter was clearly a
25 problem especially in light of what evidence there was did

1 talk about a fight and the throwing of the beer bottle,
2 which certainly could create a situation with heat of
3 passion.

4 Make sure I miss something but that's my position. I
5 believe Mr. Savage has shown ineffective assistance of
6 counsel and his case, case was clearly prejudiced by that.
7 You even have Judge Cole at the end it's -- I mean Couch.
8 At the end at sentencing talking about wow, this really
9 seems like they've proven manslaughter as much and he
10 received the minimum sentence for murder.

11 Thank you.

12 THE COURT: All right. Were there any -- obviously
13 y'all are more familiar with this record than I am at this
14 point.

15 But do you know of any objections or issues of third
16 party guilt that were preserved for appeal?

17 MS. ROSS: Judge, that's, that's a, a good point. I
18 would say Mr. Bulsa did file a, a written motion to prevent
19 that. A hearing was held in the beginning.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. ROSS: I did not see strong -- you know,
22 Mr. Mitchell attempted to bring in the third party arguments
23 but I did not see strong responses to the continued
24 objections by the State for those to come in. He did not
25 come back and argue the case law on third party guilt, guilt

1 or mention any of the forensic evidence about stuff being in
2 the back of the car. So, I do not think that was
3 effectively preserved but I'd have to look at the record.

4 THE COURT: Yeah, I mean that's what I'll look at is
5 the record.

6 Do you know?

7 MR. RAY: Well, Your Honor, I know there was the, the
8 pretrial motion that was filed. Mr. Mitchell did then, at
9 least twice, attempt to bring in names of third party guilt.
10 On Page 69 to around Page 191. Both of which were objected
11 to by the State and were conclusively ruled upon according
12 to a proffer, a proffer. I believe Mr. Lorin Williams
13 testimony at one point, and he stated -- the judge stated on
14 the record the analysis he was doing under the, the Holmes
15 case, which is a United States Supreme Court case.

16 So, I do believe it was very clearly preserved for
17 appeal.

18 THE COURT: And there was a motion for directed verdict
19 made?

20 MR. RAY: Your Honor, we've got that on Page 227.

21 THE COURT: All right.

22 MS. ROSS: Judge, in the short reply to the third party
23 guilt because Mr. Mitchell didn't bring any of the evidence
24 of third party guilt, beer bottle or any of that, was never
25 mentioned at trial. The judge did not have that to work

1 with in making his ruling. So, he was of the opinion it's
2 just mere suspicion. There's no other evidence of it and
3 there was.

4 MR. RAY: Your Honor, or -- I would assert that what
5 they presented today is more a mere suspicion. Just because
6 a beer bottle was in the truck or there was blood from who
7 knows where, who knows when, how it got there, none of that
8 places a third party in the backseat of the vehicle
9 especially in light of the strong testimony that there were
10 only two witnesses, only two individuals in the vehicle from
11 the numerous eye witnesses.

12 THE COURT: I understand. I mean the Court's line of
13 thinking is that if, if there were, and obviously there
14 were, the transcript, the transcript you gave me is hard to
15 follow but it's not put together quite right. But that's
16 okay. I'll figure that out.

17 But what, what the Court's thinking is, is that they're
18 certainly issues brought up and ruled upon regarding third
19 party's guilt throughout this trial. And if they were
20 preserved properly for an appeal, then, then those issues
21 would of been answered had the appeal been perfected. And
22 so that reverts us back to understanding whether or not the
23 appellate counsel was ineffective.

24 And, and then -- so, so I'm not sure -- I mean do you
25 disagree, Ms. Ross, that that is the correct line of

1 thinking?

2 MS. ROSS: Yes, to, to some degree you'd be right. I,
3 I agree. I think anytime someone's retained to, to appeal,
4 they need to do an appeal. But yes, I guess my position on
5 that would not -- I'm sure that the Courts would have, you
6 know, the full evidence to work with.

7 THE COURT: Well they never got the transcript --

8 MS. ROSS: Plus -- right.

9 THE COURT: -- for, for issues that I -- that this
10 Court needs to determine whether or not they arise to
11 ineffective assistance of appellate counsel is, is my
12 understanding.

13 Am I right with that?

14 Does everybody agree or --?

15 MR. RAY: Your Honor, I do agree. I would -- I believe
16 that it was clear that Mr. Savage waived his right to his
17 appeal because his entire discussions with Ms. Lapham were
18 regarding allegations of ineffective assistance of counsel
19 that he wanted to bring against Mr. Mitchell and she
20 discussed with him.

21 And he didn't pay her for the transcript at which point
22 they had those discussions and then he voluntarily hired a
23 new attorney to pursue a PCR. So, I think that's a, a clear
24 waiver of his right to, to further pursue the appeal.

25 THE COURT: Well, that's an issue in, in today's

1 hearing.

2 MR. RAY: Right.

3 MS. ROSS: Yes, sir, and, and he contends that, that
4 no, he did -- he didn't -- and I wasn't hired until about
5 two years later. I think that was my first exhibit.

6 THE COURT: Oh, I'm sorry. He contends that he didn't
7 what?

8 MS. ROSS: That he didn't intend to---

9 THE COURT: You're talking about your---

10 MS. ROSS: Yeah.

11 THE COURT: ---your client?

12 MS. ROSS: Yeah, that he didn't intend to waive his
13 appeal and I, I may of mishandled that but I believe that's
14 why I put in my retainer agreement, which was from March of
15 2018 which was, you know, over a year and a half or more
16 later. So, it really was far too late to perfect appeal and
17 we also argued, when there's a money issue with a transcript
18 or anything, you can always get an, an affidavit of
19 indigency and just go ahead and pursue that line and not
20 just waive that entire right to review.

21 THE COURT: All right. Anything further?

22 MR. RAY: Well, I, I think as far as the affidavit of
23 indigency, he had retained counsel and I don't know the
24 intricacies of that but he was not indigent.

25 THE COURT: I understand.

1 well, I'm gonna take time to read through this
2 transcript and try to understand and identify the issues
3 and, and see how they apply to Post-Conviction Relief.
4 Standards. So, I'll let you know and I appreciate
5 everybody.

6 MR. RAY: Thank you, Your Honor.

7 MS. ROSS: Thank you, Your Honor.

8 THE APPLICANT: Thank you, Your Honor.

9 THE COURT: Thank you.

10
11 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Please Nonjury for Spartanburg County, South Carolina, on the 4th day of August, 2021.

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

March 3rd, 2022

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

The State of South Carolina,
Plaintiff,)

vs.)

Shedrick Andre Savage,
Defendant.)IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT**MOTION ~~AND~~ TO BE RELIEVED
AS COUNSEL**

Warrant Numbers: 2014A4210203728

THE UNDERSIGNED, Defendant's attorney, is desirous of being relieved as counsel to Defendant, Shedrick Andre Savage, as the basis being that the attorney/client relationship is irreparably broken, misrepresentation of payment of his agreed upon fees, and too, counsel feels that he cannot provide effective representation due to the demeanor of the client, his brother, and other interferences by unknown callers.

Further, counsel believes Defendant is able to secure other representation and would not be harmed by the granting of this Motion.

NOW THEREFORE, based upon the foregoing, Defendant's counsel, Theo W. Mitchell, Esquire, moves before this Honorable Court to be relieved as counsel for the Defendant in this matter.

Respectfully submitted,

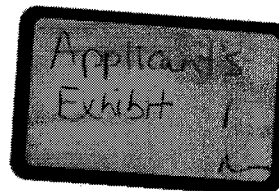
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THEO W. MITCHELL, L.L.C.By Theo W. Mitchell
ATTORNEY FOR DEFENDANT

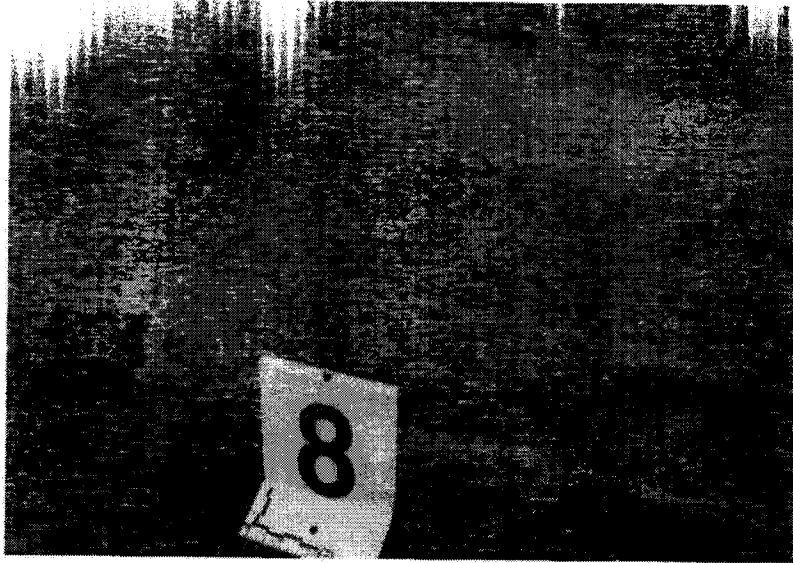
Theo W. Mitchell (SC Bar #: 06292)
9 Bradshaw Street
Greenville, South Carolina 29601
(864) 235-6361/Office

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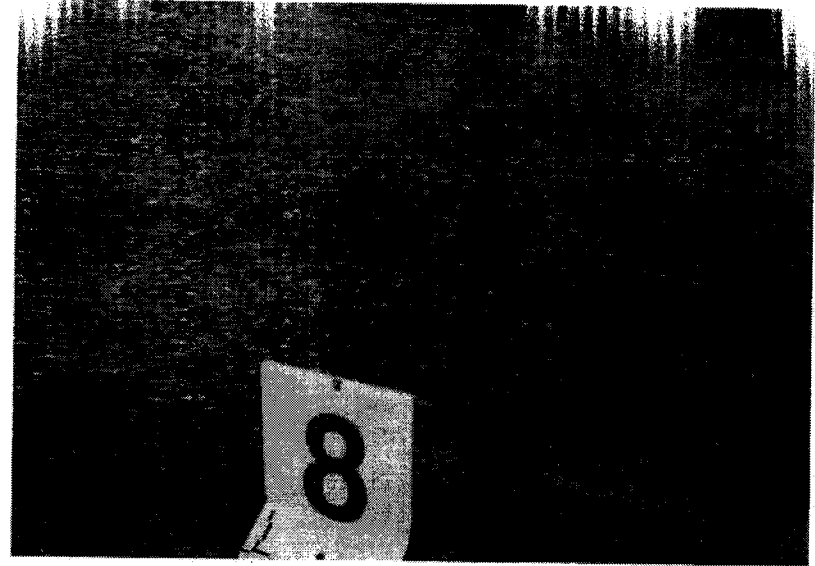
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At: Greenville, South Carolina
Dated: June 06th, 2016

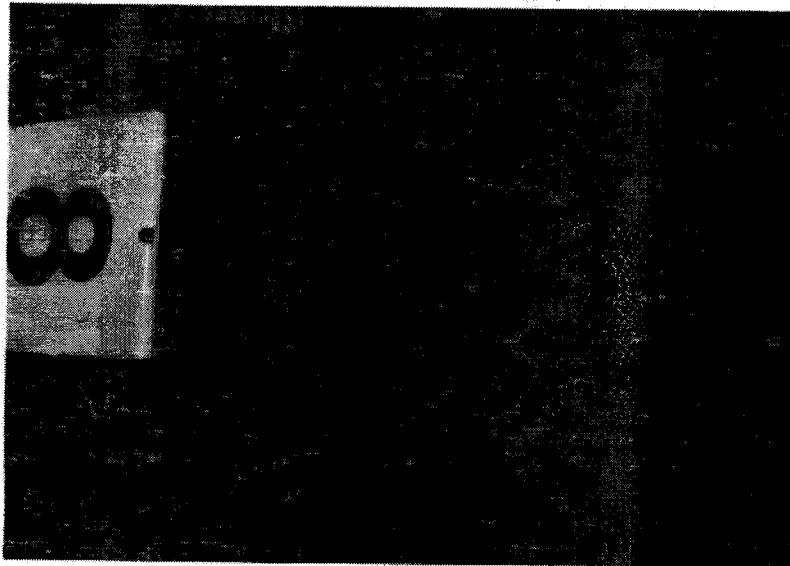




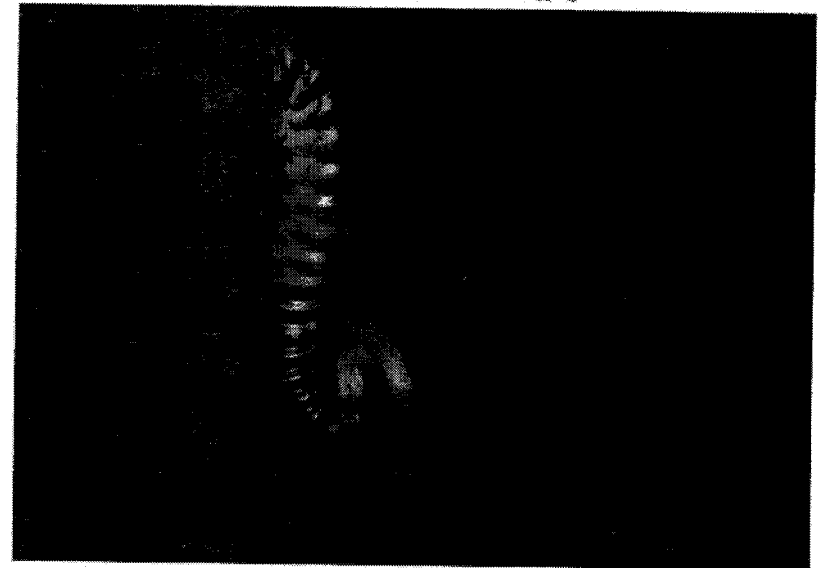
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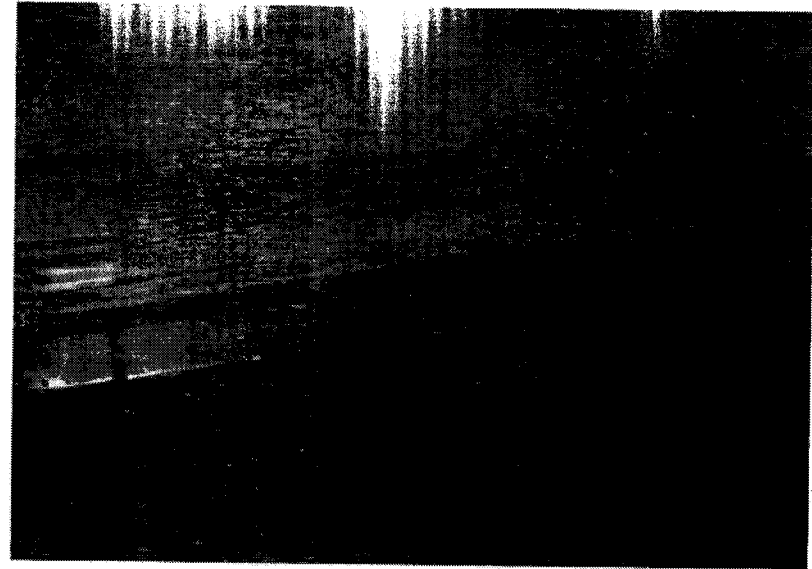


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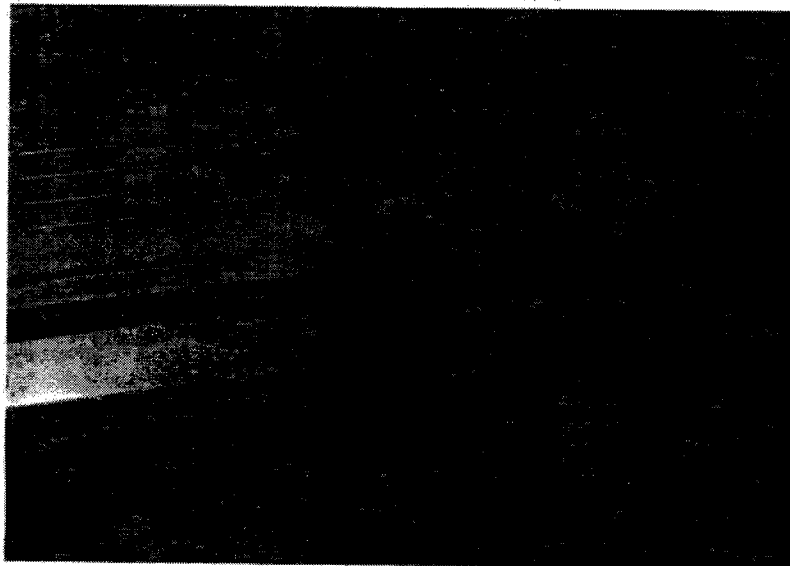
Applicant's
Exhibit 3
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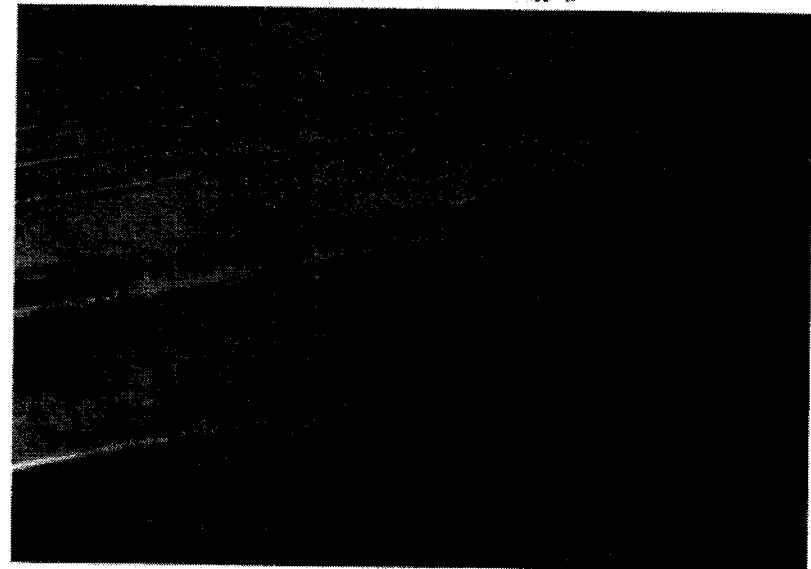
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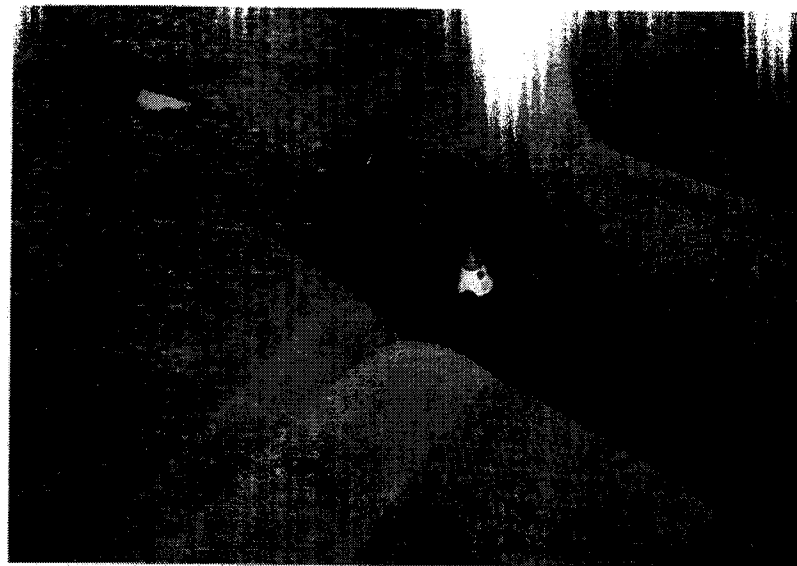
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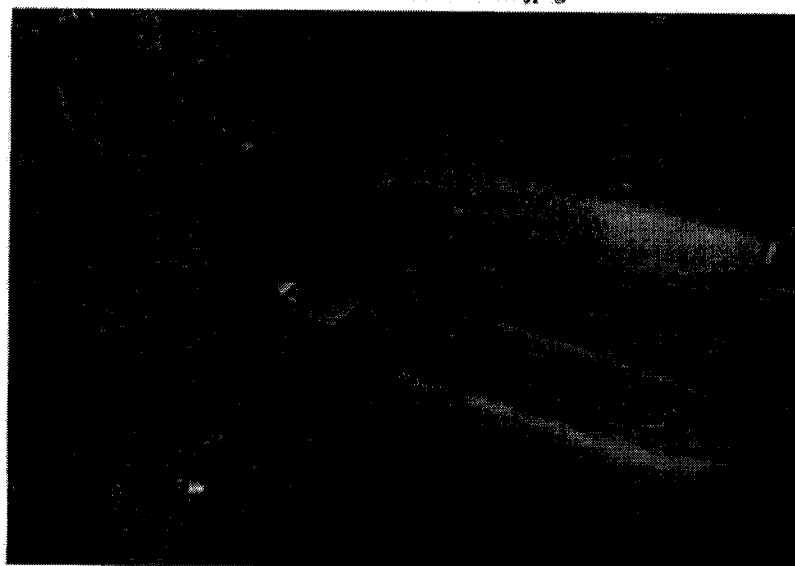
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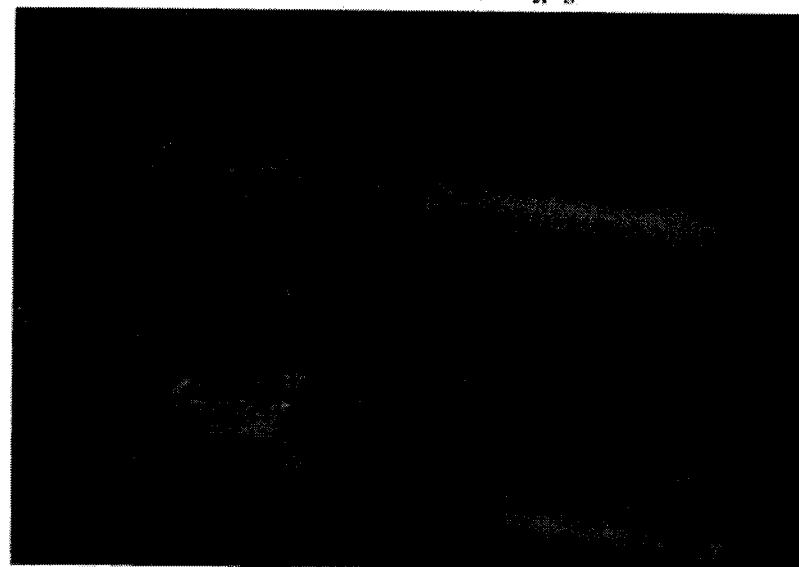
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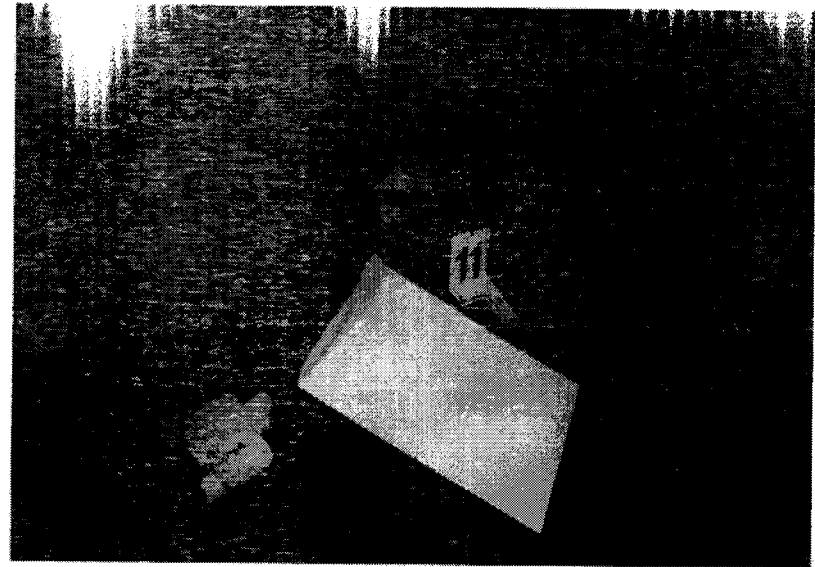
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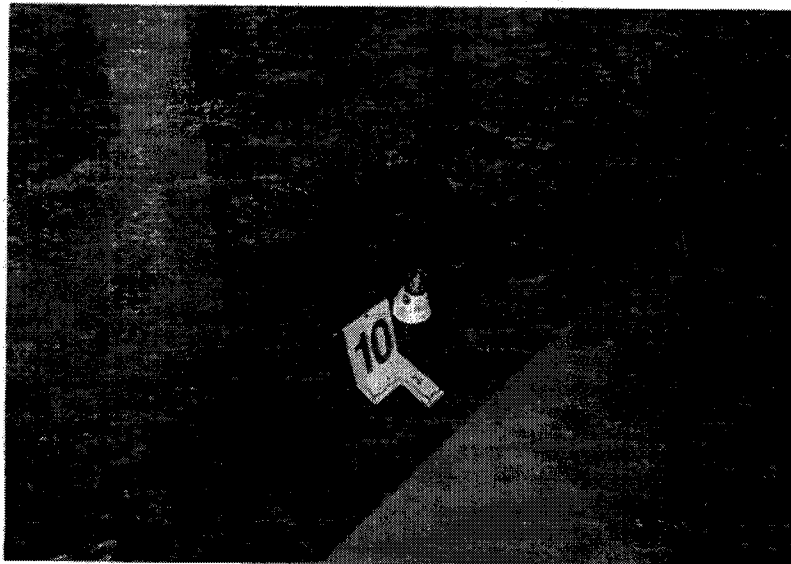
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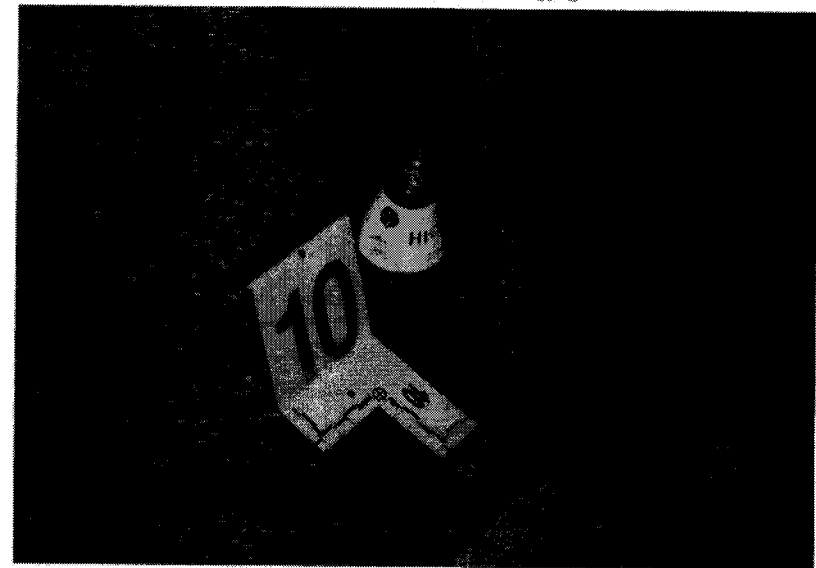
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Shedrick A. Savage, SCDC No. 294223	)	Case No. 2018-CP-42-0095
	)	
Applicant,	)	ORDER GRANTING APPLICANT'S
v.	)	REQUEST FOR A BELATED
	)	APPEAL PURSUANT TO <i>WHITE</i>
State of South Carolina	)	<i>V. STATE</i> AND DISMISSING ALL
	)	OTHER PCR ALLEGATIONS
Respondent.	)	

This matter comes before the Court by way of Applicant Shedrick Savage's March 20, 2018, application for post-conviction relief. Respondent made its return on August 1, 2018 and requested an evidentiary hearing. An evidentiary hearing was convened on August 4, 2021 at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Attorney Susannah Ross. Assistant Attorney General William H Ray, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Deputy Solicitor Derrick Bulsa of the Seventh Circuit Solicitor's Office also testified.¹ The Court had before it Applicant's records from the South Carolina Department of Corrections, the records from the Spartanburg County Clerk of Court, the trial transcript, Applicant's appellate records, and the pleadings in the current action. This Court has reviewed the record, the pleadings, observed the witnesses, and heard their testimony, and finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections. During its March 2015 term, the Spartanburg County Grand Jury indicted Applicant for murder

¹ Applicant's trial counsel, Attorney Theo W. Mitchell, was unavailable and not present at the hearing.

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(2015-GS-42-0810). Applicant was represented by Attorney Theo W. Mitchell and Deputy Solicitor Derrick Bulsa of the Seventh Circuit Solicitor's Office prosecuted the case. On November 28, 2016, Applicant proceeded to a jury trial before the Honorable Roger L. Couch, circuit court judge. The jury found Applicant guilty as indicted. Judge Couch then sentenced Applicant to imprisonment for thirty years.

Applicant filed a notice of appeal and the appeal was perfected by Attorney Candice K. Lapham. The South Carolina Court of Appeals dismissed the appeal for failure to update the Court with the status of the transcript. The remittitur was sent on June 2, 2017.

II. FACTUAL HISTORY

Applicant's conviction arises out of the November 23, 2014 shooting death of Charles Jackson, Jr. ("victim") at the Universal Events nightclub in Spartanburg, South Carolina. Security ejected both parties after a fight broke out, and while the victim was walking away from the scene Applicant drove his truck alongside the victim and fatally shot him in the chest. (Tr. 82, 1 – Tr. 83, 22). A doorman at the club, Error Graham, witnessed the fight and walked the parties outside in order to calm the situation. (Tr. 98, 3 - 19). He testified that Applicant was "a little irate" and had his hand in his pants before he got in the driver's seat of his truck, pointed towards the victim, and drove in his direction. (Tr. 98, 16 – Tr. 99, 14). He stated that Applicant was not in a hurry to leave. (Tr. 99, 14). Graham then heard a gunshot coming from the area of the truck, but could not see it from around the side of the building. (Tr. 99, 15-19). He stated that about "half" of the people who were put out of the club got in a gold Nissan, and the other half got in the truck. (Tr. 101, 13). On redirect he clarified that he saw two people in the truck. (Tr. 105, 10-15).

Spartanburg County Sheriff's Deputy Brad James testified that he was patrolling the Universal Events parking lot that night when he heard one gunshot, tried to figure out where it

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came from, and saw a blue truck leaving the scene. (Tr. 56, 10 – Tr. 59, 17). He pursued the vehicle but lost it after it left the parking lot and entered the roadway. (Tr. 59, 24 – Tr. 60, 8). He then returned to the scene to tend to the victim. (Tr. 60, 10-21).

The owner of the club, John Mitchell, testified that the victim was fighting with several guys, was told to leave, and walked down the driveway while the other participants in the fight were held inside for a few minutes. (Tr. 82, 1-11). Applicant was angry at the victim after the fight and commented that he was going to kill him. (Tr. 82, 13-20). Applicant then got in his truck with at least one other person, while another may have gotten in the vehicle or gone “around behind the truck.” (Tr. 82, 18-20). Mitchell then saw a flash out of the corner of his eye, heard a gunshot, and discovered that the victim had been shot and killed. (Tr. 83, 2-22). He stated with certainty that the shot came from the front seat of the vehicle. (Tr. 86, 8-17).

Cedrick Jones testified that he was an associate of the victim’s family and was with him at the club that night when the fight broke out. (Tr. 107, 22-20). He stated that someone put their hands on the victim, a fight ensued, and the victim was escorted from the club. (Tr. 108, 16-20). The victim did not have a ride, so he unsuccessfully attempted to get back in the club with other people at the scene. (Tr. 109, 5-13). Jones stated that he left with the victim and the two were walking towards his vehicle when Applicant drove up alongside them in his truck. (Tr. 109, 1-24). Words were exchanged, the victim threw a beer bottle at the truck, and Applicant immediately shot the victim in the chest. (Tr. 110, 19 – Tr. 111, 12). Jones panicked and called 9-1-1. (Tr. 114, 16-23). He did not talk to police at the scene, but did come forward and give a statement several weeks later after being asked to give a statement by the victim’s family. (Tr. 115, 4-11).

Police located the truck early the next morning after a BOLO was issued for a blue truck with paper tags. (Tr. 136, 8 – Tr. 137, 14). Two subjects were inside the vehicle, Applicant and

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Rashawn Miller, and Applicant was driving. (Tr. 140, 24 – Tr. 141, 18). No weapons or contraband were found in the vehicle at the scene. (Tr. 143, 4-18). Applicant's hands tested positive for gunshot residue, indicating that he likely had recently fired a gun. (Tr. 162, 9 – Tr. 164, 17). Less gunshot residue was found on Miller. (Tr. 164, 18 – Tr. 165, 17). Gunshot residue was also found on the victim, which was said to be common for gunshot victims. (Tr. 176, 1-15).

Ruben Landrum testified as a defense witness. He stated that he was at the scene that night and heard a shooting. (Tr. 238, 12 – Tr. 239, 3). He stated that he had seen Applicant's truck earlier in the night at a gas station and stated that there were three passengers. (Tr. 239, 17 – Tr. 240, 18). On cross-examination he stated that this was well before the incident. (Tr. 241, 1-9). He did not know the people in the truck, but saw it again when it was speeding away from the scene. (Tr. 241, 21 – Tr. 241, 11). He did not see how many people were in the vehicle as it was leaving. (Tr. 242, 12-18).

III. CURRENT APPLICATION

In his initial *pro se* application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate, make proper motions and objections to preserve the record
2. Ineffective Assistance of Appellate Counsel
 - a. Failed to order transcript, allowed dismissal of appeal
3. Due Process Violations
 - a. unfair trial

Applicant, through counsel, amended his application on July 26, 2021. Those allegations read as follows:

1. Ineffective assistance of trial counsel
 - a. failing to appeal
 - b. failing to move for immunity under §16-11-450 S.C. Code Ann.
 - c. failure to make objections or adequate responses to State objections

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1. no obj. bolstering Tr. p: 66, 1.23
2. State objected to reference to third party guilt counsel failed to argue it was supported by evidence in the case and went to the adequacy of the State's investigation. Tr. pp. 30-37, 69-72, 82, 192, 201-17
- d. failed to introduce 911 recording to impeach witness Cedric Jones. Tr. p. 119
- e. failed to effectively cross examine forensics officer Sean Nix. Tr. pp 134-6
 1. discovery showed beer bottle in cup holder in rear seat area of Applicant's truck was swabbed for DNA but State never introduced SLED report. Tr. p. 157-62.
 2. discovery showed blood and prints on and in rear driver's side door which was swabbed for DNA but State did not introduce SLED report or make any reference to the blood. Tr. p.161.
 3. no gun or casing were found in truck
- f. failure to make effective arguments in closing—
 1. heat of passion after witness John Mitchell said V. and D. fought at club and that he told V. to leave before D. and counsel never argues that the fact V. was still there and at D. truck would create a perceived threat for D. Tr. p. 82
 2. heat of passion or standing your ground law when witnesses admitted there had been a fight and the victim threw a bottle at the Applicant's truck which at night could have been perceived as a shot.
 3. witness Cedric Jones who was a close friend of the decedent and the only witness to identify the Applicant as the shooter said he called 911 but admitted he gave a false name, said he did not know who shot his friend and did not mention a blue truck. Tr. 110-12
 4. evidence supports third party in back drivers side seat was shooter.
2. Ineffective assistance of appellate counsel for
 - a. failing to perfect the appeal.

At the evidentiary hearing Applicant indicated that he was proceeding forward with the allegations contained in the amended application.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

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accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. §17-27-80, this Court makes the following findings based upon all the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than

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through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

A strategic or tactical decision does not have to be articulated by counsel on the record; counsel doesn’t have to personally identify his or her thinking. It is enough that the record shows a basis for strategy, not that counsel announce that strategy on the record. *See Wood v. Allen*, 58 U.S. 290 (2010) (finding the PCR court was reasonable in inferring from evidence in the record

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that trial counsel's failure to pursue or present evidence of defendant's mental deficiencies was a strategic decision); *Koon v. Rushton*, 364 Fed.Appx. 22, 29 (4th Cir. 2010) (upholding PCR court finding that applicant failed to carry his burden where trial counsel had an articulable strategy behind his method of impeaching a witness); *McNair v. Campbell*, 307 F.Supp.2d 1277, 1312 (M.D.Ala 2004) ("Generally, courts have found that where counsel had an *articulable* strategy at sentencing, and where mitigation evidence at issue contradicted or weakened that strategy, counsel's decision not to enter the mitigation evidence was reasonable.") (emphasis added); *Geralds v. State*, 111 So.3d 778, 794 (Fl. 2010) (finding trial strategy from the record where trial counsel was deceased, and therefore not able to testify).

Request for Belated Appellate Review of Direct Appeal Issues

Applicant alleges both ineffective assistance of trial counsel and ineffective assistance of appellate counsel for failing to properly file and perfect his appeal. He asserts that he was deprived of his right to direct appellate review of his conviction without making a free, knowing, and voluntary waiver. This Court agrees, and finds that Applicant is entitled to relief on this narrow issue in the form of belated appellate review of his conviction due to the failure of appellate counsel to properly perfect the appeal.

Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. *Turner v. State*, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738 (1967). *Id.*

South Carolina's Appellate Courts have no jurisdiction to entertain appeals when the notice of appeal is not timely given and served. *White v. State*, 263 S.C. 110, 119, 208 S.E.2d 330, 340 (1974). Nevertheless, if a PCR court finds that an applicant has been denied his right to direct

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appeal from trial due to counsel's errors, his request for post-conviction relief may be denied, but he may be permitted to seek belated review of trial errors in conjunction with his appeal of the order dismissing his PCR application. *Id.*

Appellate counsel testified that she had been retained by Applicant to represent him on his appeal. The notice of appeal was filed, and she assumed representation. She stated that the trial transcript was lengthy, and Applicant's family, who was paying his legal fees, had trouble paying. She stated that by the time they were able to work out funding the time had lapsed to procure the transcript. She stated that she discussed the case with Applicant and informed him of his options, including the PCR process. She told him that she would handle the PCR instead of a direct appeal, given that she had already been paid some of the money she was owed. She stated that she then fell ill. By the time she began the process of filing the PCR application, applicant's current counsel had already filed one on his behalf and had taken over the case. She did not recall what issues, if any, Applicant wanted to be raised on appeal.

This Court finds that Applicant did not freely, knowingly, and voluntarily waive his right to pursue appellate review of his conviction. Counsel's testimony indicates that the appeal was abandoned because of Applicant's inability to pay his legal fees, not because he did not wish to continue with an appeal. Therefore, the Court finds that Applicant is entitled to relief on this narrow issue. Applicant shall be entitled to pursue belated appellate review of his conviction pursuant to *White*, 263 S.C. 110, 208 S.E.2d 35.

Failure to Move for Stand Your Ground Immunity

Applicant alleges that his counsel was ineffective for failing to make a pretrial motion for immunity from prosecution under South Carolina's Protection of Persons and Property Act,

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commonly known as “Stand Your Ground.” S.C. Code Ann. §16-11-450. This allegation is without merit.

South Carolina law grants a person charged with using deadly force immunity from criminal and civil prosecution if the person is justified in using deadly force. S.C. Code Ann. §16-11-450(A). A defendant’s entitlement to immunity from prosecution under this provision must be decided pretrial using a preponderance of the evidence standard. *State v. Duncan*, 392 S.C. 404, 410-11, 709 S.E.2d 662, 665 (2011). A defendant may seek immunity from prosecution by demonstrating the common law elements of self-defense. *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013). There are four elements a defendant must establish to justify the use of deadly force under the common law of self-defense:

- (1) The defendant must be without fault in bringing on the difficulty;
- (2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life;
- (4) The defendant had no other probable means of avoiding the danger to his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

Applicant testified that the fatal gunshots came from his car, where he had a right to be. He also stated that the law allows one to protect themselves in their vehicle. He stated that his counsel did not move for immunity under the stand your ground law, and did not discuss self-defense with him. He stated that he felt threatened by the victim prior to the shooting. He stated that he was present at the fight prior to the shooting, but was not directly involved. He stated that he was

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When questioned, Applicant failed to explain whether his theory of the case was self-defense or third party guilt. He stated that he did not ask for a stand your ground hearing. He stated that he would not have testified that he shot the victim at the hearing, but instead would have done whatever his attorney told him to do. He asserted that he did not shoot the victim, but stated that he could have feared for his life because of a beer bottle that was thrown at his truck.

This Court find's Applicant's testimony to be inconsistent and lacking credibility. He indicated that he wanted a hearing to show he acted in self-defense, then refused to admit that he shot the victim, and refused to provide any information about the person who did. His assertion that he would have nevertheless taken the stand at a pretrial hearing and say whatever his attorney told him to say is especially damaging to his credibility. The record clearly shows that the defense counsel put forth was not self-defense, but rather was that someone else had shot the victim. A stand your ground hearing therefore would have made little sense, as it would have required Applicant to admit that he was the shooter. Therefore, this Court finds that counsel was not deficient for failing to move for immunity on this basis.

Furthermore, there is no likelihood that a pretrial motion for immunity would have succeeded. The record shows that Applicant was in an altercation with the victim, went to his car as the victim was leaving on foot, approached him, shot him, and then drove away. Self-defense does not apply to drive by shootings. Any assertion that a bottle thrown at his truck caused him to fear for his life is rendered moot because he was at fault for bringing on the difficulty, and he could

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have avoided the confrontation entirely by driving off, or by waiting for the victim to leave the scene. Instead he drove alongside him, rolled down his window, exchanged words, and shot him. Because a stand your ground motion would have failed, Applicant has not proven he was prejudiced by his counsel's performance. Therefore, this allegation must be denied and dismissed with prejudice.

Failure to Object to Bolstering

Applicant alleges that counsel was ineffective for failing to object to a comment made by Officer Brad James on direct examination. Officer James testified that he had "no reason to believe that [information indicating a blue pickup truck involved in the shooting had left the scene] wasn't reliable." This allegation is without merit.

To prove trial counsel's performance was deficient a PCR applicant alleging that counsel failed to object to bolstering testimony must show that counsel's representation fell below an objective standard of reasonableness. *Chappell v. State* 429 S.C. 68, 75, 837 S.E.2d 496, 500 (Ct. App. 2019). Assessment of witness credibility is within the province of the jury. *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). Trial counsel's deficient failure to object to improper bolstering testimony does not remove a PCR Applicant's burden of proving prejudice. *Thompson v. State*, 423 S.C. 235, 814 S.E.2d 487 (2018). Failure to object to bolstering comments may be prejudicial where the case hinges on the credibility of the bolstered testimony. *State v. Chavis*, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). This will be the case when the State presents no physical evidence, or relies solely upon the testimony to establish the details of the crime. *Thompson*, 423 S.C. at 248, 814 S.E.2d at 494.

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Applicant stated that his counsel did not object to the comment made by Officer James. He acknowledged that Officer James was not the officer who arrested him, and confirmed that he was driving a blue truck away from the scene of the crime.

Deputy Solicitor Balsa testified that the State presented strong evidence of Applicant's guilt, including eye witness testimony and forensic evidence showing gunshot residue on Applicant's hands.

Counsel's unavailability prevented him from articulating his reasoning for failing to object to the comment made by Officer James. The record does not show whether this failure was a strategic decision, or a deficient omission. The Court notes that the witness's comment in question reads as a comment on the investigation, rather than an attempt to bolster the credibility of the information conveyed to him. Therefore the statement was likely not objectionable, thereby eliminating the possibility of deficiency.

In any event, this Court finds that Applicant could not have been prejudiced from counsel's failure to object to any bolstering comments made by Officer James, because the outcome of the trial did not hinge on his testimony. The information that he supposedly bolstered did not implicate Applicant whatsoever. He stated that he was told by people on the scene that a blue truck may have been involved in the shooting, and that officers responding to the scene were attempting to locate it. Numerous witnesses, including Applicant himself, confirmed that the blue truck was involved. Applicant would have been convicted of this crime, even if the entirety of Officer James's testimony were excluded from trial. Officer James was not the arresting officer, and therefore his testimony was largely immaterial to the determination of guilt. Therefore, Applicant has failed to prove that he was prejudiced by counsel's performance. As such, the allegation must be denied and dismissed with prejudice.

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Failure to Adequately Respond to State's Objections

Applicant alleges that counsel was ineffective in failing to properly respond to the State's objections to testimony alluding to a guilty third-party being present in the backseat of the truck by asserting that it was supported by the evidence, and went to the adequacy of the State's investigation. Specifically, Applicant finds fault with counsel's arguments at the pretrial motion hearing, his argument in response to an objection raised during the testimony of Officer Brad James, and his argument in response to an objection made during the testimony of Investigator Lorin Williams. These allegations are without merit.

A criminal defendant may present evidence of a third-party's guilt if the evidence raises a reasonable inference or presumption as to the defendant's own innocence, but not if it merely casts a bare suspicion upon another or raises a conjectural inference as to the commission of the crime by another. *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941). Exclusion of such evidence is permissible because it may be of marginal relevance, or pose an undue risk of harassment, prejudice, or confusion of the issues. *Holmes v. South Carolina*, 547 U.S. 319, 326-27, 126 S.Ct. 1727, 1732 (2006). To determine whether such evidence is admissible the trial court must consider the strength of the State's case alongside the strength of contrary evidence offered by the defense to rebut or cast doubt. *Id.* 547 U.S. at 331, 126 S.Ct. at 1735.

The State moved to exclude evidence of third-party guilt prior to trial, asserting that there was "no evidence whatsoever" of a person in the backseat being guilty of the shooting. (Tr. 30). The Deputy Solicitor explained that there was evidence of only one other person in the vehicle, Miller, who was merely present at the scene and was not charged. (Tr. 31-32). Counsel argued that the police investigation revealed some inference of a third party in the backseat, but that he would only be able to present it on cross-examination because the defense had no evidence to submit on

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the issue. *Id.* He did point out that Miller did have gunshot residue on his person. (Tr. 32). He also argued that the State's evidence indicating Applicant was the shooter "did not come out until about six or seven weeks later" from a friend of the deceased. (Tr. 33). The court allowed counsel to cross-examine witnesses on third-party guilt, but stated that he would have to "meet the [*Holmes*] test" for evidence he wished to introduce. (Tr. 31). The court specifically stated that counsel could cross-examine officers "concerning the scope of their investigation." (Tr. 34).

On cross-examination of Officer James, counsel asked if he recalled providing an investigator with the name "Derrick Tate." (Tr. 69). The State objected, and argued that Tate was an individual who had initially been implicated but ultimately ruled out by investigators. (Tr. 69-70). The Deputy Solicitor stated that Tate was implicated because he shared the same nickname, "Black," with Applicant. (Tr. 71-72). Counsel stated that the question was to determine if Officer James was "given that name and then came back with another name." (Tr. 71). Counsel admitted that there was no evidence that Tate was at the scene, let alone in the vehicle. (Tr. 72). The court permitted cross-examination, but limited the questions regarding Tate unless there was some greater connection than a common nickname. (Tr. 72). Ultimately the court determined that asking the witness if someone gave him the name was hearsay and sustained the objection. (Tr. 72-73).

The State again objected during the cross-examination of Investigator Lorin Williams, when he was asked if he was given Derrick Tate's name during the course of his investigation. (Tr. 191). The State asserted that counsel was again trying to go into third-party guilt based solely on a name being given. (Tr. 191-192). Counsel responded by stating that he was merely asking about the investigation of other individuals who may have perpetrated the crime, and expressed concern that Applicant's presumption of innocence was being violated. (Tr. 192-193). The court stated that it was attempting to view the issue from the perspective of Applicant's case and asked

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if there was any evidence support a third-party's guilt such that it would exclude Applicant's culpability. (Tr. 193). Counsel offered Miller as a possible suspect, but the court stated that alone was not substantial evidence indicating a third party was the perpetrator. (Tr. 193-194). The court allowed counsel to make a proffer to determine if evidence excluding applicant's guilty existed. (Tr. 194).

Investigator Williams then testified that he had been given the name of two other individuals, but focused on Applicant based on witness identification that excluded those two suspects. (Tr. 195). He stated that Applicant had been identified by Graham, who knew him previously but did not specifically witness the shooting. (Tr. 197). He also noted that the two other names given to him did not come up in any other context after they were excluded from the investigation. (Tr. 198). He acknowledged that he had been told three people were in the cab of the truck. *Id.*

Deputy Solicitor Balsa asserted that the evidence of a third party in the truck was hearsay, because it was told to investigators by a witness at the scene. (Tr. 199-200). Counsel correctly agreed. (Tr. 199). The court specifically referenced the *Holmes* case, and stated that it was looking for evidence indicating that another party was guilty of the crime. (Tr. 201-203). Counsel stated that there was no evidence that the two individuals named in the report were guilty, but that there may have been a third person in the back of the truck, based on Investigator Williams's report. (Tr. 203). The court stated that this alone does not indicate Applicant was not guilty, because he was driving the truck and the shot came from the driver's side. *Id.* The number of people in the vehicle did not change this fact. (Tr. 202-203). The court rejected counsel's arguments, stating that he needed to show that the shot came from another side of the cab or that some other person actually committed the crime, rather than showing that "there might have been a third person in the cab."

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(Tr. 204-205). The court specifically allowed counsel to continue questioning witnesses about the thoroughness of their investigations, but did not allow anything further. (Tr. 205).

As discussed above, Applicant refused to explain who was in the backseat of the truck. He simply asserted that someone was there but it was not properly investigated. Deputy Solicitor Bulsa testified that the evidence at trial showed that the victim was walking away from the scene, Applicant drove up, they exchanged words, a bottle was thrown, and a shot rang out. When Applicant was arrested he initially had an alibi, then admitted he was there but claimed he was not driving the truck, but never asserted that a third person was in the backseat. He stated that he never became aware of anyone who may have been in the backseat, and that Derrick Tate was only mentioned to Officer James before being ruled out. He believed that the State presented a strong case, with eye witnesses and forensic gunshot residue evidence. He noted that the jury deliberated for less than two hours before returning with a guilty verdict.

This Court finds that counsel's performance was reasonable under the circumstances, given the facts and evidence in this case. The record clearly shows that counsel sought to present evidence that a third party was in the back of the truck and had committed the murder. He offered several suspects, including a passenger in the vehicle and another individual whose name had been given to officers during their investigation. However, the court properly excluded the testimony because it was not substantial enough to raise a reasonable inference that someone else had committed the crime. Applicant submitted photos of the vehicle containing a bottle and what appears to be blood in the rear of the vehicle. Applicant also relies on the testimony of John Miller, who stated that a third person may have gotten in the vehicle to show what counsel should have argued. (Tr. 92). The court explicitly rejected this argument, explaining that a third person simply being in the vehicle did not show that Applicant was not guilty. (Tr. 205). The court properly

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weighed the case counsel presented against the State's case and concluded that the evidence of third-party guilt was insufficient to put before the jury. Counsel's performance in this regard was objectively reasonable, and he was able to get the court to permit cross-examination on the investigation. Therefore, Applicant has failed to prove that counsel's performance was deficient.

Furthermore, Applicant has failed to prove counsel's performance prejudiced him. He refused to state who was in the backseat of the vehicle. His testimony at the evidentiary hearing blurred the lines between self-defense and third-party guilt, and casts serious doubt upon his credibility. Even assuming he testified truthfully, his allegations regarding his counsel's failure to make arguments in support of third-party guilt are unpersuasive. Counsel did precisely what he is alleging was omitted. Counsel pointed to the scant evidence that existed showing that someone other than Applicant may have been involved. The court ruled that his arguments were insufficient. Had counsel gone further and highlighted John Miller's testimony that there may have been a third person in the truck, there is still no probability that the outcome of the trial would have been different because the court's ruling explicitly addressed that slight probability and found it was not enough. Given that the court's ruling would have been the same had counsel shown that a third party was in the truck, there is no likelihood that the outcome of trial would have been different. Therefore, Applicant has failed to meet his burden of proving prejudice from counsel's performance. As such, the allegation must be denied and dismissed with prejudice.

Failure to Impeach Witness Cedric Jones with the 911 Call

Applicant alleges that his counsel was ineffective for failing to impeach witness Cedric Jones by introducing the 911 call he made on the night of the shooting. This allegation is without merit.

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AMY W. COX

The 911 trial was played aloud at the evidentiary hearing. The recording showed a distressed male voice requesting assistance for a fatal shooting. The man indicated that he could not tell if the victim was breathing, but did not provide information about the perpetrator of the shooting. He indicated that his last name was Johnson, and requested that emergency personnel rush to the scene. Applicant stated that he recognized the tape, as he had repeatedly requested counsel to play it at trial. He stated that he did not know Cedric Jones. He testified that the tape would have shown that Jones could not have seen what he claimed at trial.

At trial, counsel asked Jones questions about prior convictions, whether he was drinking the night of the shooting, and his relationship with the victim. (Tr. 116-118). He was then asked if he called 911 at the scene, which Jones admitted. (Tr. 118). He acknowledged that he gave a false name, and that he told the dispatcher he did not know who the perpetrator was. (Tr. 119). He also acknowledged that he did not give a description of the truck. (Tr. 120). He was then questioned about why he waited to contact police until six weeks after the shooting. Deputy Solicitor Balsa stated at the PCR hearing that he was aware of Jones giving a false name on the 911 call, but stated that it was not particularly uncommon in cases like this.

This Court finds that counsel's decision to not introduce the audio recording of the 911 call was a strategic decision based upon the record and upon listening to the recording. The recording features a man in distress, calling for help after witnessing a murder. The emotion is apparent in his voice and very possibly would have needlessly prejudiced the jury against Applicant. Counsel did, however, cross-examine Jones at length about the contents of the recording. Jones testified truthfully that he did not provide his true name, or describe Applicant to the first responders. Counsel's decision, therefore, was very likely a reasonably strategic choice made specifically to get in crucial challenges to the most important witness's credibility without inflaming the passions

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ALAN W. COX

of the jury. Every bit of information that could have been shown from the call itself was brought out on cross-examination, without the risk of harming Applicant's chances of prevailing at trial. Therefore, counsel's failure to introduce the 911 call was not deficient. And because counsel chose a safer route to impeach Jones, Applicant could not have been prejudiced by counsel's performance in this regard. Therefore, the allegation must be denied and dismissed with prejudice.

Failure to Effectively Cross Examine Officer Nix

Applicant alleges that counsel was ineffective for failing to effectively cross examine forensics officer Sean Nix. Specifically, Applicant states that counsel should have questioned him about a beer bottle in the backseat of the truck that was swabbed for DNA but no results were introduced, blood and prints on the rear driver's side door which were also swabbed for DNA that was not introduced, and the fact that no gun or casings were found in the truck. These allegations are without merit.

Officer Sean Nix testified at trial that he was the forensics officer who examined the crime scene. (Tr. 125, 24 – Tr. 127, 5). He testified on direct examination that he did not find weapons or shell casings at the scene, despite spending a significant amount of time searching. (Tr. 128, 20 – Tr. 129, 11). He explained that this could have meant that the weapon used was a revolver that did not eject spent casings, or that the casing had been ejected into the vehicle. (Tr. 129, 14-19). He testified that he conducted a visual search of the vehicle after it had been stopped, and again did not find any casings or weapons. (Tr. 130, 2-20). He explained that this could have meant that someone had gone through the truck and removed the casings or weapon prior to law enforcement's arrival. (Tr. 131, 7-12). Officer Nix stated that his involvement in the case was limited to processing the vehicle, a little bit of the scene, and attending the autopsy.

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JIMMY H. COX

Counsel cross-examined Officer Nix on whether he obtained a warrant to search the vehicle, whether he found contraband in the vehicle, how he knew of the passengers, and who gave him his information. (Tr. 134, 1 – Tr. 135, 24). On redirect Officer Nix stated that there was a beer bottle in the backseat of the truck, but nothing that would be considered “contraband.” (Tr. 136, 2-20). Counsel did cross-examine Officer Robert Shaffer about blood found on Mr. Miller’s clothing. (Tr. 151, 4-16).

At the evidentiary hearing Applicant stated that he told his attorney about the beer bottle in the backseat of the car. Applicant introduced photos that were included in discovery showing the vehicle as well as the bottle in the backseat. Applicant stated that his attorney did not ask Officer Nix about the bottle, or whether it was swabbed for DNA. Applicant acknowledged that a beer bottle had been thrown at his truck, and refused to identify anyone who was in the backseat of the truck. He stated that he would have wanted his attorney to present this evidence of the bottle and blood in the backseat because it could have shown that a third party was responsible.

Deputy Solicitor Balsa testified that the vehicle had been found after the shooting and Applicant was driving. He stated that Applicant was interviewed and initially offered varying stories about his involvement, but never mentioned a third person in the backseat. He stated that a third person was never named and he was not aware of who the supposed third person could have been. He stated that he did not remember a bottle being found in the vehicle, and did not think that it was relevant. He stated that there was no DNA testing done in this case.

This Court finds that Applicant’s claims are without merit. Applicant has failed to meet his burden of proving counsel provided deficient representation by failing to cross-examine Officer Nix on these specific points because it is unclear what purpose it would have served. The presence of a beer bottle in the backseat of the vehicle does not, by itself, indicate that there is a

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SPRINGFIELD COUNTY

third person in the backseat at the time of the shooting. Neither does the presence of blood. Even if these pieces of evidence had been tested for DNA, they would not place a third party at the scene of the crime at the time of the shooting. They would merely show that some other person had been in the backseat of the vehicle at some point, which was nevertheless presented to the jury through the testimony of Ruben Landrum. Nevertheless the record shows that Applicant's counsel did cross-examine Officer Nix on his involvement in the case, and did ask him if there was any contraband in the vehicle. This was objectively reasonable under the circumstances.

Furthermore, Applicant has failed to show that the outcome of his trial would have been different but for counsel's failure to adequately cross-examine Officer Nix. Officer Nix's testimony was hardly central to the State's case, and there is no probability that asking three additional questions about the presence of blood or a beer bottle in the vehicle would have altered the jury's findings. He stated that he did not find a weapon, shell casings, or contraband in the vehicle. He acknowledged on redirect that there was a beer bottle in the vehicle. The jury also heard that the passenger, Rashawn Miller, had blood on his clothing during counsel's cross-examination of another witness. Even if the jury believed that the mere presence of blood or the beer bottle meant that someone was in the backseat, it does not indicate that they were the person who shot and killed the victim. Nor does it indicate that this was a justifiable homicide under the circumstances. As such, there is no likelihood that counsel's cross-examination of Officer Nix changed the outcome of the trial. Therefore, Applicant has failed to meet his burden of proving prejudice. The allegation must be denied and dismissed with prejudice.

Failure to Make Effective Closing Arguments

Applicant alleges that counsel was ineffective for failing to make effective closing arguments. Specifically, Applicant asserts that counsel should have argued that the killing was

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done in the heat of passion in light of John Mitchell's testimony, should have argued self-defense because the evidence showed that a beer bottle had been thrown at Applicant's truck, should have argued that Cedric Jones lacked credibility because of his 9-1-1 call, and should have argued that the evidence supports a finding that a third party in the backseat was the shooter. These allegations are without merit.

The right to effective assistance of counsel extends to closing arguments. *Yarborough v. Gentry*, 540 U.S. 1, 5, 124 S.Ct. 1, 4 (2003). Nonetheless, counsel has wide latitude in deciding how best to represent a client, and deference to counsel's tactical decisions in closing presentation is particularly important because of the broad range of legitimate defense strategy at that stage. *Id.* 540 U.S. at 6, 124 S.Ct. at 4. Closing arguments should "sharpen and clarify the issues for resolution by the trier of fact," but which issues to sharpen and how best to clarify them are questions with many reasonable answers. *Id.* (citing *Herring v. New York*, 422 U.S. 853, 95 S.Ct. 2550 (1975)).

The record shows that counsel gave a lengthy closing argument. (Tr. 251 – Tr. 257). He began by reminding the jury of the elements of the offense and the State's burden of proof and the elements of the offense. (Tr. 251, 10 – Tr. 252, 14). He acknowledged that there was a deadly shooting at the Universal Club. (Tr. 252, 15-18).

Counsel argued Cedric Jones's testimony was not credible because he had not given a statement to investigators until well after the shooting took place, did not truthfully disclose all information to the 9-1-1 operator, was biased in favor of the victim, and had been drinking at the time of the shooting. (Tr. 253, 9 – Tr. 254, 25).

Counsel argued that Ruben Landrum stated he saw three people in the truck. (Tr. 254, 14-15). "Whether before, during, or after, or after, three people got out of it" he explained, "an

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obvious attempt to minimize the fact that Landrum had not placed a person in the backseat at the time of the shooting. (Tr. 254, 16-17). He stated that there was testimony that half of the people who vacated the club entered the truck and the other half entered another vehicle. (Tr. 255, 8-14).

This Court finds that counsel presented a reasonable closing argument in light of the facts of this case. Applicant's assertion that he should have argued for heat of passion in light of Mr. Miller's testimony is in stark contrast with his clear strategy of presenting the shooter to be someone other than Applicant. He did, contrary to Applicant's allegation, support this theory in closing by citing the testimony of witnesses who stated that there may have been three people in the vehicle at various points on the night of the crime. He also criticized Cedric Jones's testimony, the witness who saw Applicant shoot the victim, because of issues with the 9-1-1 call. Therefore counsel's closing argument was objectively reasonable under the circumstances and Applicant has failed to meet his burden of proving deficiency.

Furthermore, Applicant has not proven he was prejudiced by the closing argument. Given that several of Applicant's concerns were addressed in closing and he was nevertheless convicted, it is inconceivable that he could have been acquitted but for counsel's closing argument. The only issue Applicant raises that was not addressed in closing, the heat of passion defense, would not have changed the outcome of the case given the fact that this was a drive by shooting that took place after the fight had been broken up and the parties involved were leaving the scene. The Court recognized that there were extenuating circumstances because of the fight, and stated that this was likely a case where Applicant's evil intent formed immediately before the shooting. (Tr. 299, 15 – Tr. 300, 10). The Court did so without counsel making a heat of passion argument in closing. The Court treated this as mitigation, but did not attempt justify Applicant's actions by stating that the victim did not deserve to die for what happened that night. (Tr. 299, 19-21). Therefore, Applicant

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AMY W. COX

has failed to meet his burden of proving prejudice and the allegation must be denied and dismissed with prejudice.

Due Process Violations

Applicant alleges that he was deprived of due process when the Deputy Solicitor stated that there was no evidence to support a guilty third party when he failed to present forensic evidence indicating otherwise, and because counsel's representation amounted to a "total breakdown of the adversarial process." These allegations are without merit, largely for the reasons already explained above. The record clearly shows that counsel developed a reasonable defense strategy of arguing for third party guilt. The State objected to various references to unrelated third parties because there was no evidence that those specific persons had been involved in the commission of the crime. Applicant's counsel argued against the objections at length, and the court gave his arguments proper consideration before rejecting them. The record shows that there was little evidence indicating that a third party was in the backseat of the vehicle at the time of the crime, and this is made clear by Applicant's direct refusal to identify such a person at the post-conviction relief hearing. This Court can therefore find no violation of due process in the proceedings giving rise to Applicant's convictions, and the application for post-conviction relief must be denied and dismissed with prejudice.

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III. CONCLUSION

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

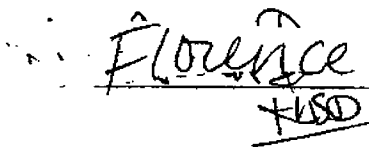
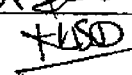
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991),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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 15 day of December, 2021.


H. STEVEN DEBERRY, IV
Presiding Judge
Seventh Judicial Circuit


Florence, South Carolina


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SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	CASE NO. 2018-CP-42-0995
SHDRICK A. SAVAGE,	)	
APPLICANT,	)	
	)	MOTION TO ALTER OR AMEND
VS.	)	THE JUDGMENT
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	

COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRPC, to alter or amend the judgment of this Court filed on December 23, 2021. The Applicant takes issue with findings of fact and conclusions of law regarding allegations of ineffective assistance of counsel in the Court's Order Granting Applicant's Request for a Belated Appeal Pursuant to *White v. State* and Dismissing All Other PCR Allegations. He further argues that while each allegation may not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 386 S.E.2d 624, 625 (1989).

Regarding the allegation of ineffective assistance of counsel for failing to move for stand your ground immunity at pages nine through twelve of the Order, the Applicant asserts that the facts of the case are misrepresented and the law does not require a duty to retreat as suggested in the order. At trial, witness John Mitchell testified that the victim was fighting with several guys so security grabbed him and told him to leave. Mitchell said he did not let the Applicant out of the club until he thought the victim had left after

seeing him walking down the drive to his car. (Tr. 82, 4-11). Witness Cedrick Jones said someone put his hands on the victim in the club and the victim just reacted and got escorted from club. (Tr. 108, 18). He then said the victim had no ride so instead of leaving, he tried to get back in club. (Tr. 109, 9-14). Jones said the Applicant approached while we were walking toward the car and started talking to the victim who then got upset and threw a beer bottle at the Applicant's car. (Tr. 110, 14-25). He said he did not see the Applicant move but there was a flash when the bottle was thrown and the victim was shot. (Tr. 111, 1-9). The trial testimony does not support the factual findings that the Applicant brought on the difficulty, approached the victim as he was leaving, or that this case could be characterized as a drive by shooting. Whether the Applicant could have avoided the confrontation by driving off is immaterial. "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, *save the duty to retreat* [emphasis added]." State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (S.C. 2013).

Respectfully submitted,


 Susannah Ross #11205
 Attorney for the Applicant
 333 E. Coffee Street,
 Greenville, SC 29601
 (864) 242-0029

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 SPARTANBURG COUNTY
 MY W. COX

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FILED

Greenville, South Carolina
 This 31 day of December 2021.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Shedrick A. Savage,

Plaintiff,

vs.

State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

ORDER
Case No.: 2018-CP-42-0995

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COOPER

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The Plaintiff, Shedrick A. Savage, requests the Court to reconsider the Order dated December 23, 2021 and filed in the Spartanburg County Clerk of Court's office.

Having duly considered the motion of the Plaintiff, this Court has determined that its original ruling of December 23, 2021 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion is therefore DENIED.

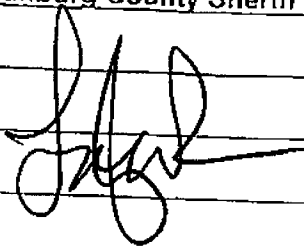
AND IT IS SO ORDERED.

Dated: 1-7-2021


H. Steven DeBerry, IV
Judge, Twelfth Judicial Circuit

WITNESSES

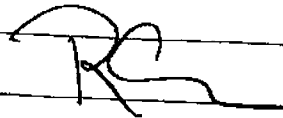
Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

2014A4210203728

ACTION OF GRAND JURY

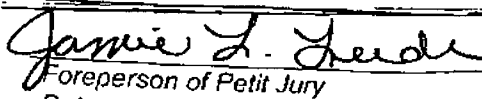
 True Bill

Foreperson of Grand Jury
Date:

MAR 12 2015

VERDICT

Guilty


Foreperson of Petit Jury
Date:

11/29/2016

DOCKET NO.

15-GS-42-0810

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 16 2015

TERM

THE STATE

vs.

Shedrick Andre Savage

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

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CLERK OF COURT

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAR 12 2015

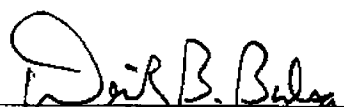
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Shedrick Andre Savage, did in Spartanburg County on or about ~~November 23, 2014, feloniously, willfully, and with malice aforethought, kill one~~ [REDACTED] by shooting the victim and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Deputy Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Shedrick Andre Savage

AKA:

Race: BLACK

Sex: M

Age: 34

DOB: [REDACTED]

SS#: [REDACTED]

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murderin violation of § 16-3-10

of the S.C. Code of Laws, bearing CDR Code #

0116☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

B. B. Bulsa
BULSA, DERRICK15264
SC Bar#Shedrick Savage
DefendantTher G. M. Bulsa
Attorney for Defendant06282
SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

30days/months/years or☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$

; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. November 23, 2014 (9 yrs + 6 days)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 61.6 (Public Def/Probation)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ca

\$

3% to County (if paid in installments)

\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4200810

A/W#: 2014A4210203728

Date of Offense: 11/23/2014

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code: 2135

Sentence Date: 11/29/16