

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Courtney Clyburn Pope, Circuit Court Judge
Honorable William P. Keesley, Circuit Court Judge

App. Case No.: 2022-000920

Dexter B. Brown, II, 330278,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX
VOLUME I OF II

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF BARNWELL

CIRCUIT COURT
2011-GS-06-00010, 00011 & 00120

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 DEXTER BERNARD BROWN II,
6 Defendant.

7
8 HEARD ON MONDAY, MAY 11, 2011

9 & TUESDAY, MAY 12, 2011

10
11 BEFORE:

12 THE HONORABLE EDGAR W. DICKSON

13 AND A JURY

14
15 APPEARANCES:

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17 Lauren Maurice, Esq.

18 Counsel on behalf of the Defendant:
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20 De Grant Gibbons, Esq.

21
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SELECTION OF THE JURY

1 ON MONDAY, MAY 11, 2011 AT 10:52 A.M.:

2 THE COURT: Ladies and gentlemen, the case that we're
3 going to try beginning today is the case of the State of
4 South Carolina versus Dexter Brown.

5 Mr. Brown, if you'd stand and face -- the jury panel
6 is on that side of the courtroom. If you'd stand and face
7 the jury panel, I'd appreciate it.

8 THE DEFENDANT: (Complies.)

9 THE COURT: Thank you, sir. You can sit down. All
10 right.

11 Now, ladies and gentlemen, is any member of the jury
12 panel related by blood or marriage or a close personal
13 friend of Mr. Dexter Brown? If you'd please stand at this
14 time. Hold on one second.

15 Your name, please, ma'am?

16 THE JUROR: Sara Simmons.

17 THE COURT: Sara Simmons?

18 THE JUROR: Sara Simmons.

19 THE COURT: Okay.

20 THE CLERK: Juror Number 140.

21 THE COURT: Bear with me one second. One-forty?

22 THE CLERK: Yes, sir.

23 THE COURT: Ms. Simmons, you said you are -- are you
24 related to --

25 THE JUROR: Close friends.

SELECTION OF THE JURY

1 THE COURT: You're close friends with Mr. Brown?

2 THE JUROR: Uh-huh.

3 THE COURT: The fact that you are a close friend of
4 Mr. Dexter Brown, would that influence your ability to
5 listen to the evidence in this case and render a fair and
6 impartial verdict?

7 THE JUROR: Yes.

8 THE COURT: It would?

9 THE JUROR: (Nods head.)

10 THE COURT: Okay. Ms. Simmons, you are excused. I
11 don't know if -- are we going to have another trial this
12 week?

13 THE CLERK: It's very possible.

14 THE COURT: It's possible.

15 MS. MAURICE: Call back after six.

16 THE COURT: Yes, ma'am. You'll need to call back
17 after six today just to find out if we got another trial
18 going on as well. But you're excused today for this
19 trial.

20 Yes, ma'am, your name, please?

21 THE JUROR: Sharon Woods.

22 THE COURT: Ms. Woods, is that what you said?

23 THE JUROR: Yes, sir.

24 THE COURT: Okay. Ms. Sharon Woods, Juror Number
25 172. Ms. Woods, are you related to Mr. Brown?

SELECTION OF THE JURY

1 THE JUROR: Close friend.

2 THE COURT: Close friend of Mr. Brown. Ms. Woods, the
3 fact that you are a close friend of Mr. Brown, would that
4 influence your ability to listen to the evidence in this
5 case and render a fair and impartial verdict?

6 THE JUROR: Yes, sir.

7 THE COURT: Okay. Again, Ms. Woods, I will excuse you
8 for this trial but you'll need to call back at the number
9 the clerk has provided to see whether or not we're going
10 to have another trial later on this week as well. Okay.
11 But you're excused for the day. One seventy-two.

12 Ladies and gentlemen, the reason I'm standing, I have
13 to sit most of this -- just like anybody that gets on the
14 jury, and so every now and then I like to stand just
15 because I get tired of sitting.

16 And I also like to make sure that Ms. McElveen's doing
17 everything appropriately. She's doing a great job.

18 All right. Now, Mr. Brown is represented by
19 Mr. McCarley. Mr. McCarley, if you'd introduce yourself
20 and anybody who will be helping you, please, sir.

21 MR. MCCARLEY: I'm Nick McCarley. I work with the
22 public defender's office here in Barnwell. This is Grant
23 Gibbons. He works out of Aiken.

24 THE COURT: Thank you, sir.

25 Is any member of the jury panel related by blood or

SELECTION OF THE JURY

1 marriage or close friends of Mr. McCarley? Mr. Gibbons?
2 Or has been represented by the public defender's office?
3 Or been on the other side of a case in which the public
4 defender's office has been involved? If so, would you
5 please stand at this time?

6 All right. No one is standing.

7 The State is represented by Ms. Maurice. Ms. Maurice,
8 if you'd introduce yourself and introduce anybody else
9 who's going to be helping you on this.

10 MS. MAURICE: Thank you.

11 I'm Lauren Maurice. I'm one of the assistant
12 solicitors in Barnwell County. Today assisting me will be
13 Jeff Croft. He's the investigator with the Barnwell
14 County Sheriff's Office, and Mr. Kenny Bamberg who is an
15 investigator with our office, the solicitor's office.

16 THE COURT: Okay. Is any member of the jury panel
17 related by blood or marriage or a close personal friend of
18 Ms. Maurice, Investigator Croft, or Investigator Bamberg?
19 If so, please stand. All right.

20 Has any member of the jury panel been on the other
21 side of any cases that the solicitor's office has been
22 involved in? If so, please stand.

23 Yes, ma'am?

24 THE JUROR: You said been on the other side?

25 THE COURT: Yes, ma'am. You've been a defendant in a

SELECTION OF THE JURY

1 case?

2 THE JUROR: Uh-huh.

3 THE COURT: All right. Ms -- hold on. You're
4 Ms. Epps. Is that correct?

5 THE JUROR: Yes, sir.

6 THE COURT: Ms. Epps, the fact that you've been on the
7 other side of a case involving the solicitor's office,
8 would that affect your ability to listen to the evidence
9 in this case and render a fair and impartial verdict?

10 THE JUROR: No, sir.

11 THE COURT: If you'd stay with us, please, ma'am.

12 Now, there are a number of people who may be called as
13 witnesses in this case. If any of these possible
14 witnesses are here, I'm going to ask them to stand as I
15 call their name.

16 First of all, Sheriff Ed Carroll. Is Sheriff Carroll
17 here? If he's not --

18 UNIDENTIFIED SPEAKER: He's out in the hall.

19 (Pause.)

20 THE COURT: He's left the courthouse? Okay. Why
21 don't we do him later.

22 Investigator Jeff Croft. Mr. Croft. I just want to
23 make sure. Is anybody related by blood or marriage or
24 close personal friend of Investigator Croft? If so,
25 please stand.

SELECTION OF THE JURY

1 All right. No one is standing.

2 Investigator Andy Chavis. Is he here?

3 THE OFFICER: He's here.

4 THE COURT: Anybody related by blood or marriage or a
5 close personal friend of Andy Chavis of the Barnwell
6 County Sheriff's Office? If so, please stand.

7 No one is standing.

8 First Sergeant Brian Johnson. Any member of the jury
9 panel related by blood or marriage or a close personal
10 friend of First Sergeant Brian Johnson of the Barnwell
11 County Sheriff's Office? Please, stand.

12 No one is standing.

13 Investigator John Trottie. Any member of the jury
14 panel related by blood or marriage or a close personal
15 friend of Investigator John Trottie of the Barnwell County
16 Sheriff's Office?

17 Oh. Yes, ma'am? Your name, please, ma'am?

18 THE JUROR: I'm related to John Trottie's wife.

19 THE COURT: Hold on one second. Your name again?

20 THE JUROR: Caterina Rudolph.

21 THE COURT: Ms. Rudolph. Hold on.

22 THE JUROR: W. Rudolph.

23 THE COURT: What's your number?

24 THE JUROR: Sixty-something.

25 THE COURT: One sixty-three? I think that's right.

SELECTION OF THE JURY

1 THE CLERK: Yes, 163.

2 THE COURT: Ms. Rudolph?

3 THE CLERK: One sixty-three.

4 THE COURT: One sixty-three. Ms. Rudolph, you said you
5 are related to Investigator John Trottie?

6 THE JUROR: His wife.

7 THE COURT: To his wife?

8 THE JUROR: Yes.

9 THE COURT: Okay. The fact that you're related to
10 Investigator Trottie's wife -- he's going to be a witness
11 in this case. The fact that he will be a witness in this
12 case, would that affect your ability to listen to the
13 evidence in this case and render a fair and impartial
14 verdict?

15 THE JUROR: No, sir.

16 THE COURT: Okay. If you'll stay with me, please,
17 ma'am.

18 Your name, please?

19 THE JUROR: Nicole Williams.

20 THE COURT: Last name again?

21 THE JUROR: Williams.

22 THE CLERK: One sixty-eight.

23 THE COURT: Williams. I'm sorry. Okay. Juror number
24 168.

25 Ms. Williams, are you related by blood or marriage to

SELECTION OF THE JURY

1 Mr. Trottie?

2 THE JUROR: A friend.

3 THE COURT: You're a friend of his?

4 THE JUROR: Yeah.

5 THE COURT: Okay. All right. Investigator Trottie's
6 going to be called as a witness in this case. Do you
7 understand that?

8 The fact that he is a witness in this case, would that
9 affect your ability to listen to the evidence in this case
10 and render a fair and impartial verdict?

11 THE JUROR: No.

12 THE COURT: Ma'am?

13 THE JUROR: No.

14 THE COURT: It would not. Okay. If you'd stay with
15 us, please, ma'am.

16 All right. And your name, please, ma'am?

17 THE JUROR: Debra Washington.

18 THE COURT: Okay. Hold on a second, Ms. Washington.

19 THE CLERK: One-sixty.

20 THE COURT: You're number 160. Ms. Washington, are
21 you related by blood or marriage to Investigator Trottie?

22 THE JUROR: No. Close friend.

23 THE COURT: You're a close friend?

24 THE JUROR: Yeah.

25 THE COURT: Okay. The fact that Investigator

SELECTION OF THE JURY

1 Trottie's going to be testifying in this case, would that
2 affect your ability to listen to the evidence in this
3 case --

4 THE JUROR: No.

5 THE COURT: -- and render a fair and impartial
6 verdict?

7 THE JUROR: No.

8 THE COURT: All right. If you'd stay with us, please,
9 ma'am.

10 THE JUROR: All right.

11 THE COURT: All right. First Sergeant Robbie
12 Sanders. Is there any member of the jury panel related by
13 blood or marriage or a close personal friend of First
14 Sergeant Robbie Sanders of the Barnwell County Sheriff's
15 Office? If so, please stand.

16 THE JUROR: Yes. I'm Barbara --

17 THE COURT: Okay. Your name, please?

18 THE JUROR: Barbara Lee.

19 THE COURT: Hold on a second, Ms. Lee.

20 THE CLERK: Ninety-one.

21 THE COURT: All right. Okay. Ms. Lee, are you
22 related by blood or marriage to Sergeant Sanders?

23 THE JUROR: Yes.

24 THE COURT: All right. Ms. Lee, Sergeant Sanders is
25 going to be testifying in this case. The fact that he's

SELECTION OF THE JURY

1 going to be testifying in this case, would that affect
2 your ability to listen to the evidence in this case and
3 render a fair and impartial verdict?

4 THE JUROR: No, sir.

5 THE COURT: If you'd stay with us, please, ma'am.
6 Anyone else? Okay.

7 All right. Ila Simmons, a SLED forensic scientist,
8 will be testifying in this case. Is any member of the
9 jury panel related by blood or marriage or a close
10 personal friend of Ila Simmons? If so, please stand.

11 All right. No one is standing.

12 Glenda Williams, is she in court? Ms. Williams, would
13 you face the jury?

14 MS. WILLIAMS: (Complying.)

15 THE COURT: Thank you, ma'am. You may be seated.

16 Is any member of the jury panel related by blood or
17 marriage or a close personal friend of Glenda Williams?
18 If so, please stand.

19 Your name, please, ma'am?

20 THE JUROR: My name is Staricia Matthews.

21 THE COURT: Hold on a second, Ms. Matthews.

22 THE CLERK: Number 96.

23 THE COURT: Ms. Matthews, are you related by blood or
24 marriage to Ms. Williams?

25 THE JUROR: No.

SELECTION OF THE JURY

1 THE COURT: Is she a friend of yours?

2 THE JUROR: She's engaged to my cousin.

3 THE COURT: She's engaged to your cousin?

4 THE JUROR: (Nods head.)

5 THE COURT: Ms. Williams is going to be testifying in
6 this case. The fact that she's testifying in this case,
7 would that affect your ability to listen to the evidence
8 in this case and render a fair and impartial verdict?

9 THE JUROR: No, it won't.

10 THE COURT: It will not.

11 THE JUROR: (Shakes head.)

12 THE COURT: Okay. If you'd stay with us, please,
13 ma'am.

14 Anyone else? All right.

15 , Miguel McClain. Miguel McClain may be called as a
16 witness in this case. Is there any member of the jury
17 panel related by blood or marriage or a close personal
18 friend of Miguel McClain? If so, please stand.

19 All right. Okay. Ms. Matthews.

20 THE JUROR: Close personal friend.

21 THE COURT: You're a close personal friend of
22 Mr. McClain?

23 THE JUROR: (Nods head.)

24 THE COURT: The fact that you're a close personal
25 friend of Mr. McClain, would that affect your ability to

SELECTION OF THE JURY

1 listen to the evidence in this case and render a fair and
2 impartial verdict?

3 THE JUROR: No, sir.

4 THE COURT: If you'd stay with us, please, ma'am.

5 Anyone else? Okay. No one else.

6 Adrienne Ingram may be called. Ms. Ingram, if you'd
7 face the jury.

8 MS. INGRAM: (Complies.)

9 THE COURT: Thank you, ma'am. You may be seated.

10 Adrienne Ingram may be called as a witness in this case.

11 Any member of the jury panel related by blood or
12 marriage or a close personal friend of Adrienne Ingram?
13 If so, please stand.

14 All right. No one is standing.

15 Leslie Morrissey.

16 MS. MORRISEY: (Stands.)

17 THE COURT: Thank you, Ms. Morrissey.

18 Any member of the jury panel related by blood or
19 marriage or a close personal friend of Leslie Morrissey?
20 If so, please stand.

21 No one is standing.

22 Alice Thompson.

23 MS. THOMPSON: (Stands.)

24 THE COURT: Thank you, Ms. Thompson.

25 Any member of the jury panel related by blood or

SELECTION OF THE JURY

1 marriage or a close personal friend of Alice Thompson?

2 All right. No one is standing.

3 Roger Benjamin the Second.

4 MR. BENJAMIN: (Stands.)

5 THE COURT: Thank you, Mr. Benjamin. Okay.

6 Anybody -- any member of the jury panel related by
7 blood or marriage or a close personal friend of Mr. Roger
8 Benjamin the Second? All right.

9 No one is standing.

10 And since the sheriff hasn't gotten out here yet, I'll
11 just go through that.

12 Sheriff Ed Carroll may be a witness in this case. Any
13 member of the jury panel related by blood or marriage or a
14 close personal friend of Sheriff Ed Carroll? If so,
15 please stand.

16 Yes, ma'am, your name?

17 THE JUROR: Lynn Hair.

18 THE CLERK: Fifty-eight.

19 THE COURT: Fifty-eight. Okay. Ms. Hair, you're
20 related --

21 THE JUROR: I'm his niece.

22 THE COURT: You're his niece. The fact that you're
23 the niece of Sheriff Carroll and he may be called as a
24 witness in this case, would that affect your ability to
25 listen to the evidence in this case and render a fair and

SELECTION OF THE JURY

1 impartial verdict?

2 THE JUROR: No, sir.

3 THE COURT: Okay. I'll let you stay with me. Thank
4 you, ma'am.

5 Anyone else? All right.

6 Has any member of the jury panel, a member of your
7 immediate family or a close personal friend ever been the
8 victim of a gun-related crime, the victim of a gun-related
9 crime? If so, please stand.

10 Your name, please, ma'am?

11 THE JUROR: Georgia Hammond.

12 THE COURT: Hold on a second, Ms. Hammond. You're
13 Number 60?

14 THE JUROR: Yes, sir.

15 THE COURT: Ms. Hammond, were you the victim of a
16 crime?

17 THE JUROR: No, sir.

18 THE COURT: A member of your family?

19 THE JUROR: Yes, sir.

20 THE COURT: Okay. And, Ms. Hammond, the fact that a
21 member of your family was a victim of a violent crime,
22 would that affect your ability to listen to the evidence
23 in this case and render a fair and impartial verdict?

24 THE JUROR: No, sir.

25 THE COURT: If you'd please stay with me, please,

SELECTION OF THE JURY

1 ma'am.

2 Okay. And Ms. Epps. And, Ms. Epps, you know, that's
3 a bad sign. Okay. Ms. Epps, bear with me one second,
4 please, ma'am.

5 THE CLERK: Number 40.

6 THE COURT: Ms. Epps is number 40. Ms. Epps, were you
7 the victim of a violent crime?

8 THE JUROR: Yes, sir.

9 THE COURT: Now, Ms. Epps, the fact that you were the
10 victim of a violent crime, would that affect your ability
11 to listen to the evidence in this case and render a fair
12 and impartial verdict?

13 THE JUROR: No, sir.

14 THE COURT: If you'd stay with me, please, ma'am, I'd
15 appreciate it.

16 All right. And Ms. Matthews. Ms. Matthews, bear with
17 me.

18 THE CLERK: Juror number 96.

19 THE COURT: Okay. Ms. Matthews, were you the victim
20 of a violent crime?

21 THE JUROR: (Shakes head.)

22 THE COURT: No? A member of your family?

23 THE JUROR: Yes, sir.

24 THE COURT: Ms. Matthews, the fact that a member of
25 your family was a victim of a violent crime, would that

SELECTION OF THE JURY

1 affect your ability to listen to the evidence in this case
2 and render a fair and impartial verdict?

3 THE JUROR: (Shakes head.)

4 THE COURT: It won't affect you?

5 THE JUROR: (Shakes head.)

6 THE COURT: Thank you, ma'am. If you'll stay with us,
7 please, ma'am.

8 Yes, ma'am, your name?

9 THE JUROR: Casandra Mays.

10 THE COURT: Ms. Mays, you're Number 97. Ms. Mays,
11 were you the victim of a violent crime?

12 THE JUROR: No, sir.

13 THE COURT: A member of your family?

14 THE JUROR: Yes.

15 THE COURT: Ms. Mays, the fact that a member of your
16 family was a victim of a violent crime, would that affect
17 your ability to listen to the evidence in this case and
18 render a fair and impartial verdict?

19 THE JUROR: No, sir.

20 THE COURT: Okay. If you'd stay with us, please,
21 ma'am.

22 Anyone else? Yes, ma'am?

23 MS. MAURICE: May we approach for just a moment?

24 THE COURT: Sure. Y'all bear with me one second.
25 I'll let you stand back up in just a second.

SELECTION OF THE JURY

1 (Off-the-record discussion.)

2 THE COURT: And there's a lady in the back who was
3 going to stand up. Yes, ma'am?

4 THE JUROR: Were you referring to just gun related or
5 by all violent crimes?

6 THE COURT: Well, I said violent. So, were you the
7 victim of a violent crime?

8 THE JUROR: A home invasion; yes.

9 THE COURT: You don't need to go into the details.
10 Your name, please, ma'am?

11 THE JUROR: Jeanne Johnson.

12 THE COURT: Hold on a second, Ms. Johnson.

13 THE CLERK: Eighty-two.

14 THE COURT: Ms. Johnson, the fact that you were the
15 victim of a violent crime, would that affect your ability
16 to listen to the evidence in this case and render a fair
17 and impartial verdict?

18 THE JUROR: No.

19 THE COURT: Okay. If you'd stay with us, please,
20 ma'am.

21 Anyone else? All right. No one else.

22 Does any member of the jury panel have a relative that
23 is employed by a law enforcement agency in any capacity?

24 Now, I know Ms -- your name again?

25 THE JUROR: Lynn Hair.

SELECTION OF THE JURY

1 THE COURT: Ms. Hair, is the niece of the sheriff. Is
2 that correct?

3 THE JUROR: Correct.

4 THE COURT: And, Ms. Hair, you've already told me that
5 the fact that you're the niece of sheriff will not affect
6 your ability to listen to the evidence in this case --

7 THE JUROR: Right.

8 THE COURT: -- and render a fair and impartial
9 verdict. Is that correct?

10 THE JUROR: That's correct.

11 THE COURT: Okay. Thank you, ma'am. Your name,
12 please, ma'am?

13 THE JUROR: Shannon Doak.

14 THE CLERK: One twenty-seven.

15 THE COURT: Hold on one second. Shannon Doak. Okay.
16 Ms. Doak, do you have a relative that works for a law
17 enforcement agency?

18 THE JUROR: I do. My uncle. He's a SLED agent.

19 THE COURT: Ms. Doak, the fact that your uncle is a
20 SLED agent, would that affect your ability to listen to
21 the evidence in this case and render a fair and impartial
22 verdict?

23 THE JUROR: No, sir.

24 THE COURT: Thank you, ma'am. If you'll stay with us,
25 please, ma'am.

SELECTION OF THE JURY

1 I'm going to go, ladies first. And then I'll come
2 back to you. Your name again?

3 THE JUROR: Jeanne Johnson.

4 THE COURT: Okay.

5 THE CLERK: Eighty-two.

6 THE JUROR: I think it's 80-something.

7 THE COURT: Okay. Ms. Johnson, you have a relative
8 who works in law enforcement?

9 THE JUROR: A brother.

10 THE COURT: The fact that your brother works in law
11 enforcement, would that affect your ability to listen to
12 the evidence in this case and render a fair and impartial
13 verdict?

14 THE JUROR: No.

15 THE COURT: Thank you, ma'am. Your name, please,
16 sir?

17 THE JUROR: Philip Stanley, Juror 142.

18 THE COURT: Thank you, Mr. Stanley. And Mr. Stanley,
19 you have a relative that works in law enforcement?

20 THE JUROR: Yes, sir.

21 THE COURT: The fact that you have a relative that
22 works in law enforcement, would that affect your ability
23 to listen to the evidence in this case and render a fair
24 and impartial verdict?

25 THE JUROR: No, sir.

SELECTION OF THE JURY

1 THE COURT: If you'd stay with us, please.

2 And your name, please, sir?

3 THE JUROR: Michael Hutto.

4 THE COURT: Okay. Mr. Hutto, bear with me. Juror
5 Number 75.

6 Mr. Hutto, you have a relative that works in law
7 enforcement?

8 THE JUROR: Yes, sir.

9 THE COURT: The fact that you have a relative that
10 works in law enforcement, would that affect your ability
11 to listen to the evidence in this case and render a fair
12 and impartial verdict?

13 THE JUROR: No, sir.

14 THE COURT: If you'd stay with us, please, sir.
15 Anyone else? All right.

16 Now, ladies and gentlemen, Mr. Brown has been charged
17 with two counts of attempted murder and one count of
18 possession of a weapon in a violent crime.

19 Is there any member of the jury panel that does not
20 believe that they could give Mr. Brown a fair and
21 impartial decision as a juror? Okay.

22 No one is standing.

23 Any other questions from the defense?

24 MR. MCCARLEY: No, Your Honor.

25 THE COURT: Any other questions from the State?

SELECTION OF THE JURY

1 MS. MAURICE: No, Your Honor.

2 THE COURT: Okay. All right. Ladies and gentlemen,
3 we're going to get ready to start picking a jury for the
4 trial now.

5 Now, do we spin out a little computer list?

6 THE CLERK: Yeah.

7 THE COURT: Now, what that means is your names are now
8 going to be re-randomized, I guess is the best way, back
9 into the computer and will give a list of y'all in a
10 different order.

11 So -- and then we'll ask y'all to come forward. And
12 what I'd ask you to do, see the gate's right over there on
13 the side? When your name is called, if you will come
14 forward, if you got a pocketbook or anything with you or a
15 coat or something like that, bring all of it with you when
16 you come forward.

17 If you will come up here, turn and face the attorneys
18 and then we'll decide whether or not you're going to sit
19 or not. Okay.

20 Now y'all are going to need a few minutes to look over
21 this? Is the State ready?

22 MS. MAURICE: State's ready, Your Honor.

23 THE COURT: And the defense is ready?

24 MR. McCARLEY: Yes, sir.

25 THE COURT: As soon as the computer kicks out the

SELECTION OF THE JURY

1 names, we'll be ready to go.

2 The good news, ladies and gentlemen, is you got a
3 better chance of winning this than you do the lottery. So
4 I want y'all to get the feel of what it's like to win.
5 That's what we're doing here today.

6 THE CLERK: Juror Number 58, Lynn Hair (White
7 female).

8 THE JUROR: (Comes forward.)

9 THE CLERK: What says the State?

10 MS. MAURICE: Please present Ms. Hair.

11 THE CLERK: What says the defense?

12 MR. MCCARLEY: Please strike Ms. Hair.

13 THE CLERK: Juror Number 119, Betty Ray (Black
14 female).

15 THE JUROR: (Comes forward.)

16 THE CLERK: What says the State?

17 MS. MAURICE: Please present Ms. Ray.

18 THE CLERK: What says the defense?

19 MR. MCCARLEY: Please seat Ms. Ray.

20 THE BAILIFF: Right here, ma'am.

21 THE CLERK: Juror Number Seven, Sharon Bechtold.
22 (White female).

23 THE JUROR: (Comes forward.)

24 THE CLERK: What says the State?

25 MS. MAURICE: Please present Ms. Bechtold.

SELECTION OF THE JURY

1 THE CLERK: What says the defense?
2 MR. MCCARLEY: Please seat.
3 THE CLERK: Juror Number 60, Georgia Hammond (Black
4 female).
5 THE JUROR: (Comes forward.)
6 THE CLERK: What says the State?
7 MS. MAURICE: Please present Ms. Hammond.
8 THE CLERK: What says the defense?
9 MR. MCCARLEY: Please seat Ms. Hammond.
10 THE CLERK: Juror Number 159, Dianne Warren (White
11 female).
12 THE JUROR: (Comes forward.)
13 THE COURT: What says the State?
14 MS. MAURICE: Please present Ms. Warren.
15 THE CLERK: What says the defense?
16 MR. MCCARLEY: Please excuse Ms. Warren.
17 THE CLERK: Juror Number 82, Jeanne Johnson (White
18 female).
19 THE JUROR: (Comes forward.)
20 THE CLERK: What says the State?
21 MS. MAURICE: Please present Ms. Johnson.
22 THE CLERK: What says the defense?
23 MR. MCCARLEY: Please seat Ms. Johnson.
24 THE BAILIFF: Right here, ma'am.
25 THE CLERK: Juror Number 14, Marguerite Brown (Black

SELECTION OF THE JURY

1 female).

2 THE JUROR: (Comes forward.)

3 THE CLERK: What says the State?

4 MS. MAURICE: Please present Ms. Brown.

5 THE CLERK: What says the defense?

6 MR. MCCARLEY: Please seat Ms. Brown.

7 THE CLERK: Juror Number 142, Philip Stanley, Jr.

8 (White male).

9 THE JUROR: (Comes forward.)

10 THE CLERK: What says the State?

11 MS. MAURICE: Please present Mr. Stanley.

12 THE CLERK: What says the defense?

13 MR. MCCARLEY: Please excuse Mr. Stanley.

14 THE CLERK: Juror Number 126, April Sanders (White

15 female).

16 THE JUROR: (Comes forward.)

17 THE CLERK: What says the State?

18 MS. MAURICE: Please present Ms. Sanders.

19 THE CLERK: What says the defense?

20 MR. MCCARLEY: Please seat Ms. Sanders.

21 THE CLERK: Juror Number 125, Ruth Rutland (White

22 female).

23 THE JUROR: (Comes forward.)

24 THE CLERK: What says the State?

25 MS. MAURICE: Please present Ms. Rutland.

SELECTION OF THE JURY

1 THE CLERK: What says the defense?
2 MR. MCCARLEY: Please seat Ms. Rutland.
3 THE CLERK: Juror Number 91, Barbara Lee (Black
4 female).
5 THE JUROR: (Comes forward.)
6 THE CLERK: What says the State?
7 MS. MAURICE: Please present Ms. Lee.
8 THE CLERK: What says the defense?
9 MR. MCCARLEY: Please seat Ms. Lee.
10 THE CLERK: Juror Number 98, Ernest Mays (Black
11 male).
12 THE JUROR: (Comes forward.)
13 THE CLERK: What says the State?
14 MS. MAURICE: Please excuse Mr. Mays from this case.
15 THE CLERK: Juror Number 54, Linda Glover (Black
16 female).
17 THE JUROR: (Comes forward.)
18 THE CLERK: What says the State?
19 MS. MAURICE: Please excuse Ms. Glover from this case.
20 THE CLERK: Juror Number 43, James Fickling the Third
21 (Black male).
22 THE JUROR: (Comes forward.)
23 THE CLERK: What says the State?
24 MS. MAURICE: Please present Mr. Fickling.
25 THE CLERK: What says the defense?

SELECTION OF THE JURY

1 MR. McCARLEY: Please seat Mr. Fickling.

2 THE CLERK: Juror Number 116, Shalana Perry (Black
3 female).

4 THE JUROR: (Comes forward.)

5 THE CLERK: What says the State?

6 MS. MAURICE: Please present Ms. Perry.

7 THE CLERK: What says the defense?

8 MR. McCARLEY: Please seat Ms. Perry.

9 THE CLERK: Juror Number 124, Wesley Robinson (White
10 male).

11 THE JUROR: (Comes forward.)

12 THE CLERK: What says the State?

13 MS. MAURICE: Please excuse Mr. Robinson from this
14 case.

15 THE CLERK: Juror Number 103, Derrick Mixon (Black
16 male).

17 THE JUROR: (Comes forward.)

18 THE CLERK: What says the State?

19 MS. MAURICE: Please present Mr. Mixon.

20 THE CLERK: What says the defense?

21 MR. McCARLEY: Please seat Mr. Mixon.

22 THE CLERK: Juror Number 87, Brittany Kinard (White
23 female).

24 THE JUROR: (Comes forward.)

25 THE CLERK: What says the State?

SELECTION OF THE JURY

1 MS. MAURICE: Please present Ms. Kinard.

2 THE CLERK: What says the defense?

3 MR. MCCARLEY: Please seat Ms. Kinard.

4 THE COURT: Madam Clerk, according to my record that's
5 the jury. Is that correct?

6 THE CLERK: Yes, sir.

7 THE COURT: We're going to pick two alternates.
8 Okay?

9 MR. GIBBONS: Yes, sir.

10 THE COURT: First alternate.

11 THE CLERK: Juror Number 89, Benjamin Kirkland (White
12 male).

13 THE JUROR: (Comes forward.)

14 MS. MAURICE: Please present Mr. Kirkland.

15 THE CLERK: What says the defense?

16 MR. MCCARLEY: Please seat Mr. Kirkland.

17 THE COURT: All right. He will be our first
18 alternate. And we'll pick our second alternate.

19 THE CLERK: Juror Number Two, Ryan Anderson (White
20 male).

21 THE JUROR: (Comes forward.)

22 THE CLERK: What says the State?

23 MS. MAURICE: Please excuse Mr. Anderson.

24 THE CLERK: Juror Number 95, Lakeyta Mack (Black
25 female).

SELECTION OF THE JURY

1 THE JUROR: (Comes forward.)

2 MS. MAURICE: Number what?

3 MR. McCARLEY: Ninety-five.

4 THE CLERK: What says the State?

5 MS. MAURICE: Please present Ms. Mack.

6 THE CLERK: What says the defense?

7 MR. McCARLEY: Please seat Ms. Mack.

8 THE COURT: She'll be our second alternate. All
9 right.

10 Ms. Maurice, anything from the State regarding jury
11 selection?

12 MS. MAURICE: No, Your Honor.

13 THE COURT: Mr. McCarley, anything from the defense
14 regarding jury selection?

15 MR. McCARLEY: No, Your Honor.

16 THE COURT: All right. Ladies and gentlemen,
17 congratulations. Thank y'all. Y'all are going to be
18 serving as the jury panel.

19 The rest of who you were not chosen today, I need for
20 y'all to call back after six -- is that correct -- on the
21 phone number that you were given to see if we're going to
22 be picking another jury tomorrow or later on this week.

23 So you are now excused but you have got to call back
24 at six o'clock to find out whether or not you all need to
25 come back either tomorrow morning, tomorrow afternoon or

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 Friday morning.

2 Thank you all for your willingness to serve. Y'all
3 are now excused.

4 If you need to see me, come up here. Come on up here
5 and talk to the clerk.

6 (Jury panel excused at 11:30 a.m.)

7 THE COURT: Can I see the attorneys up here?

8 (Off-the-record discussion).

9 THE COURT: Ladies and gentlemen, we're going to get
10 ready to begin the trial of this case. And I don't know
11 whether this seat's high or low or something like that,
12 but y'all are going to have to get used to me sitting like
13 this.

14 Before we get started on this, like with everything
15 else that we do in a trial, the first thing we've got to
16 do is swear y'all in as jurors. So I'll get y'all to
17 stand up and raise your right hand and the clerk's going
18 to administer the oath, please.

19 (Jury impaneled.)

20 THE COURT: If you said "I do", you can sit down.
21 Okay. Thank you. Thank you very much.

22 What I'm going to do is give you some indication about
23 -- an introduction into the trial of this case. This is
24 not a charge on the law. At the end of the case, I will
25 charge you on the applicable law.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 This is mainly to give you a little explanation as to
2 the procedure of the trial so that you'll have a better
3 understanding of what's happening and what to expect.

4 Now the Defendant in this case, Mr. Brown, as I told
5 you earlier, has been charged with the crimes of
6 possession of a weapon during a violent crime and two
7 indictments for attempted murder. The elements of these
8 crimes I will explain to you later.

9 But what you need to know now is the indictments are
10 simply the charge by which these cases or this case is
11 brought to court. It is not evidence of any of the
12 allegations it contains.

13 The Defendant has pled not guilty to these
14 indictments. The State has the burden of proving the
15 elements of each of the indictments beyond a reasonable
16 doubt.

17 And it will be your duty, ladies and gentlemen, to
18 decide whether the State has met their burden. Your job,
19 your duty as jurors is to find and determine the facts.
20 You are the sole judges of the facts in this case.

21 If at any time during this trial I make a comment on
22 the facts of this case, I'm asking you now to disregard
23 it. You are to determine the facts from the evidence that
24 you hear and any other evidence that is introduced in
25 court. It is up to you to determine the inferences which

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 you feel may properly be drawn from the evidence.

2 It is especially important that you perform your duty
3 of determining the facts diligently and conscientiously
4 because ordinarily there's no way to correct an erroneous
5 determination of facts by a jury.

6 The same law that makes you the judge of the facts
7 makes me the judge of the law. The law as given by the
8 Court is the only law that you may consider. You must
9 accept and follow it even if you may disagree with it. I
10 cannot tell you what the facts are, and you cannot
11 disagree with me about what the law is or should be.

12 Your job is to take the law as I give it to you and
13 apply it to the facts as you find from the testimony of
14 the witnesses and any other evidence that is introduced.
15 After doing that, you will render your verdict, a true and
16 just verdict under the solemn oath that you just took as
17 jurors.

18 Now, before you can begin your deliberations in this
19 case and before I tell you you can begin your
20 deliberations, you cannot discuss this case with anyone,
21 including your fellow jurors, but especially not to
22 family, friends or anybody who is involved in this case.

23 After the case is submitted to you, you must discuss
24 it only in the jury room with your fellow jurors. The
25 attorneys in this case -- I know Barnwell's a small county

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 like Orangeburg. If you -- if we take breaks and you see
2 the attorneys or some of the people that are involved, and
3 witnesses in this case, if they don't speak to you they're
4 not being rude.

5 But while you're sitting as jurors they are not
6 allowed to talk with you. They're not being rude. It's
7 just that now y'all are in a special place and you cannot
8 talk to anyone about this case.

9 Now, I don't know -- I don't know that there will be
10 anything in the paper about this case. If there is, you
11 cannot read it. I don't think there will be anything on
12 the radio or TV or Internet about it but, again, you do
13 not read it, you do not watch anything about it, read
14 anything about it and, more importantly, you don't
15 investigate anything about this case.

16 Now everybody can Google things and like that. I'm
17 not quite as good at it as my children are, but you're not
18 to do any investigation about this case. You will
19 probably hear some testimony about the scene where the
20 events happened or anything like that. You don't need to
21 ride by the scene and look at it.

22 All the evidence that you need to decide this case
23 you're going to get from this witness stand. That's all
24 you are to consider. It is important that you keep an
25 open mind and not decide any issue in this case until all

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 of the evidence has been presented. That's also the
2 reason we ask you -- when we take breaks, you may have
3 heard part of one witness's testimony. When we will take
4 a break, I will remind you at that time you cannot talk
5 about what you have heard on the witness stand until I
6 tell you that you can begin your deliberations, because
7 you've only heard part of the story.

8 And that's the reason you can't talk about this case
9 until the very end of it.

10 At the end of the case, after all the evidence has
11 been presented, after you've heard the closing arguments
12 of the attorneys, after I have instructed you on the law
13 of the case, that's when I will tell you you can begin
14 your deliberations.

15 It is your solemn responsibility to determine the
16 guilt or innocence of this Defendant. And your verdict
17 must be based solely on the evidence that is presented to
18 you in this trial and on the law as I instruct it, as I
19 instruct you during and at the close of the trial.

20 In a moment the solicitor's going to make an opening
21 statement in which she will explain to you what she
22 believes the issues are in this case. The attorney for
23 the Defendant may also make an opening statement, though
24 he's not required to do so.

25 What the attorneys tell you during their opening

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 statements is not evidence in this case. It is only their
2 contention as to what the issues are. The evidence in
3 this case will be presented to you by sworn testimony from
4 the witness stand or by any exhibits that are introduced
5 into evidence.

6 Now, from time to time during the trial you may see
7 where attorneys have questions of law or matters that I
8 have to discuss at the bench. At that time I may excuse
9 you from the room when we're having, when I'm having
10 discussions with the attorneys.

11 The reason for that is, during my discussions with the
12 attorneys I may make some comment about the facts. And
13 since you are the sole judges of the facts, I don't want
14 you to be influenced by anything that I say about the
15 facts as to what the determination of the facts are in
16 this case.

17 So, you may be excused at certain times in those
18 situations.

19 And, again, I want to remind you that nothing that I
20 say or do during this trial should influence your
21 determination of the facts.

22 In determining what the true facts are in this case,
23 you must decide whether or not the testimony of a witness
24 is believable. It will be my responsibility to rule as a
25 matter of law as to whether certain testimony is

OPENING STATEMENTS BY THE STATE

1 admissible, but once the testimony is admitted whether or
2 not you believe it is solely for you to determine.

3 In deciding whether to believe a witness, you have the
4 right to consider the interest of any witness, the bias of
5 any witness, the prejudice of any witness, the opportunity
6 for the witness to have seen the matters and things about
7 which the witness's testifying and the way the witness
8 acts on the witness stand.

9 You have a right to consider anything that is in the
10 record that will help you to evaluate the testimony of the
11 witnesses. That means that it is your duty to pay close
12 attention to these witnesses, to observe them, to listen
13 to them, and to pay close attention to the attorneys and
14 to the Court.

15 Please give your strict attention to the testimony in
16 this case so that at the end of all the testimony, after
17 the arguments of counsel and the charge on the law by me,
18 you will then be in a position to determine what the true
19 facts are and to apply those facts to the law and thus
20 render a true and just verdict.

21 All right. Ladies and gentlemen, we are now getting
22 ready to begin the trial. Madam Solicitor?

23 MS. MAURICE: Thank you, Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. MAURICE: May it please the Court. Mr. McCarley,

OPENING STATEMENTS BY THE STATE

1 ladies and gentlemen of the jury. And I'm glad I can say
2 gentlemen. We almost didn't have any gentlemen, so that's
3 nice.

4 October 15th, 2010, on Patterson Mill Road, it's in
5 the afternoon, daylight, the victims in this case had
6 driven to the store. On their way back home, they see the
7 Defendant and another individual in a car. They come up
8 behind them. They start shooting.

9 The victims pull in to one of their grandmothers'
10 homes, get out of the car, start running. Grandma's
11 home. The victims spread out.

12 And today the evidence is going to be, I'd like to
13 say, simple. It's not CSI. It's going to be from photos,
14 from testimony of the witnesses. Just like the Judge
15 said, the witnesses will get up here on this stand, swear
16 to tell the truth and describe what happened.

17 We'll have the first responder, as far as the
18 officers, come in and tell you what was going on, tell you
19 about the investigation and what led them to Dexter Brown.

20 You'll probably get a little CSI in, but not much. I
21 expect you to hear from a SLED agent, hopefully this
22 afternoon. And after all the evidence is presented, the
23 defense and I are going to have an opportunity to give
24 closing statements. And when we do that, we'll go back
25 over and argue why we believe the evidence proves our

OPENING STATEMENTS BY THE STATE

1 case.

2 And after I finish that I'm going to ask you to find
3 Mr. Brown guilty of attempted murder and possession of a
4 firearm during a violent crime.

5 As the Judge said earlier, he is the Judge. He is
6 over the law. He will give you instructions on the law
7 after that, and you'll need to listen closely. I'll
8 probably summarize it a little bit, but you're going to
9 have to listen closely to what he's saying because it does
10 get a little bit complicated. Some of the words I expect
11 will be in the instructions are malice and how long it has
12 to be and all of that kind of jargon. And we'll go over
13 it a little bit more at the end of the case, but he'll
14 describe the law or give you the law.

15 And I'm going to present the evidence to show that he
16 committed this crime, that Brown committed this crime.
17 It's not CSI. And I know you make important decisions
18 every day. I mean, it's not -- you use your common sense
19 to make those decisions. Okay.

20 So don't -- when you walk through those doors, just
21 because it's formal in here and it's a little bit
22 different than what you're probably used to, don't think
23 that you're supposed to leave that common sense outside,
24 because you're not. You'll use it to evaluate the
25 evidence that's presented and deliberate and find that we

OPENING STATEMENTS BY THE DEFENSE

1 have presented beyond a reasonable doubt. We have met our
2 burden of beyond a reasonable doubt, which you'll hear a
3 lot about, that Dexter Brown is guilty. He's guilty of
4 attempted murder and he's guilty of possession of a
5 firearm during a violent crime.

6 Thank you.

7 THE COURT: Thank you, ma'am. Mr. McCarley?

8 MR. MCCARLEY: Thank you, Judge.

9 Madam Solicitor, ladies and gentlemen of the jury. How
10 are y'all doing?

11 I'm not going to take too much of your time. I know
12 I'm hungry. I know it's almost lunchtime.

13 And I agree that it's a relatively simple case.
14 You're going to hear about two things. You're going to
15 hear about a shooting and you're going to hear about my
16 client, Dexter Brown.

17 And the solicitor believes that if she continues to
18 say shooting and Dexter Brown, shooting and Dexter Brown,
19 that eventually she can convince you that Dexter Brown was
20 involved somehow in that shooting when he just was not.
21 That's just not the case.

22 You'll hear from this witness stand that there's no
23 physical evidence whatsoever tying Dexter Brown to this
24 crime, to this incident, to the shooting that occurred on
25 Patterson Mill Road. And I'm sorry that that shooting

OPENING STATEMENTS BY THE DEFENSE

1 occurred. I work in this community every day. I'm the
2 public defender here in Barnwell. And I don't want
3 shootings in our community any more than you do, but I
4 also don't want innocent people going to prison, ladies
5 and gentlemen.

6 Now the State is going to try to connect Dexter Brown
7 to this shooting with two people. Okay. Two main
8 people. You're going to hear a parade of law enforcement
9 personnel come up here, but each and every one of them is
10 not going to be able to tell you that Dexter Brown was
11 there. Okay. You're not going to hear anything about
12 Dexter Brown's fingerprints or anything like that being
13 found there in any form or fashion.

14 There's no -- this is attempted murder involving a
15 gun, allegedly. Now, there's no smoking gun. There's no
16 gun at all. Again, that's part of the facts. There's no
17 physical evidence in this case.

18 Again, they're going to try to connect him with two
19 people. Now when those two people come up here, it is
20 your burden here today to examine those people and decide
21 whether or not they're telling you the truth, whether or
22 not you believe them, or do they have a bias, or, is their
23 testimony contradictory? Okay. And not only do you
24 believe them, but do you believe them beyond a reasonable
25 doubt?

OPENING STATEMENTS BY THE DEFENSE

1 Okay. And as Ms. Maurice said, that is a term that we
2 use a lot, we throw around a lot. And I think it's
3 helpful to give a simple explanation that helped me
4 understand it when I was learning it. A reasonable doubt
5 is one that would give an average person, like me or you,
6 hesitation or pause when making a decision. That's a
7 reasonable doubt.

8 So at the end of this trial, if you have pause or
9 hesitation when considering whether or not Dexter Brown
10 was involved in this incident, then Dexter Brown is not
11 guilty. That pause, that hesitation means Dexter Brown is
12 not guilty, ladies and gentlemen.

13 And that's the situation we're in here today.

14 I'd also like you to know that Dexter Brown walks in
15 here today as an innocent man. There's something we like
16 to call the cloak of innocence that each of us wear as
17 American citizens. Okay. And for that cloak to be
18 removed, the State has to prove, again, beyond a
19 reasonable doubt, they have to prove every element of
20 every crime beyond a reasonable doubt.

21 Okay. That cloak is very heavy and that burden is
22 very heavy. And the State's case here today is not strong
23 enough to lift that burden, to lift that heavy cloak off
24 of Dexter Brown.

25 And this is also known -- it's very, very important

JOHN TROTTIE - DIRECT

1 that Dexter and I really need to get across to you. The
2 law says Dexter Brown does not need to prove anything to
3 anybody here today, ladies and gentlemen. The absolute
4 and complete total burden is on the State to prove Dexter
5 Brown's involvement, to prove each and every element, as I
6 said, beyond a reasonable doubt. Dexter Brown need say
7 nothing here today. The State has the absolute and
8 complete burden.

9 And, again, the State thinks that just because a
10 shooting occurred on Patterson Mill Road on October 15th,
11 2010, okay, because that shooting occurred and you're
12 going to see lots of evidence that a shooting occurred,
13 okay, and that they brought Dexter Brown in here today,
14 that they can convince you that he was somehow involved,
15 when that's just not the case, ladies and gentlemen.

16 Thank you.

17 THE COURT: Thank you, Mr. McCarley. Is the State
18 ready to call its first witness?

19 MS. MAURICE: Yes, Your Honor.

20 THE COURT: Okay.

21 MS. MAURICE: John Trottie.

22 JOHN TROTTIE, having been duly sworn, was examined and
23 testified as follows:

24 THE CLERK: Please be seated and state your name for
25 the record.

JOHN TROTTIE - DIRECT

1 THE WITNESS: John Trottie.

2 DIRECT EXAMINATION

3 BY MS. MAURICE:

4 Q. Where are you employed, Mr. Trottie?

5 A. I'm employed with the Barnwell County Sheriff Office.

6 Q. How long have you been with them?

7 A. Approximately 20 years, plus --

8 Q. I'm sorry?

9 A. Approximately 15 years with them.

10 Q. Were you with anybody before them?

11 A. Yes. I was with the Department of Correction and
12 Williston Police Department.

13 Q. So you've been around about how many years total?

14 A. About 20, twelve-plus years.

15 Q. Describe how you got involved in this incident.

16 A. I was actually working the road, worked serving
17 warrants but I happened to be on Patterson Mill Road at
18 that time.

19 Q. How do you get to Patterson Mill Road from here, for
20 those of us who aren't familiar with that area?

21 A. From this point, you'd be going 64 West just past
22 Wal-Mart, taking the first road to your left. And that's
23 turning into Patterson Mill Road there.

24 Q. And you were working that area?

25 A. Yes, ma'am.

JOHN TROTTIE - DIRECT

1 Q. And, you got a call?

2 A. Yes. Central, which is dispatch, received a call from
3 9-1-1 from someone in that neighborhood saying that there
4 was a shooting at that residence and I happened to be the
5 one closest to it at that time.

6 Q. So what did you do when you got to the scene?

7 A. First thing I did was look for any victims because it
8 was a shooting incident. They say it was multiple bullets
9 being fired. And I didn't see any victims. So I secured
10 the scene and then I try to locate to see if anybody
11 coming forward as suspects or anything like that.

12 Q. Who was there when you secured the scene or when you
13 first -- who did you see there when you were there?

14 A. When I first got there, I didn't see anyone and then I
15 looked around to make sure nobody was injured or
16 anything. When I found victim one, which is Brandon
17 Parker, he was at a business next door called Classy
18 Mae's. Then he came over.

19 He started telling me, somebody tried to kill me,
20 somebody tried to kill me. And then I noticed that the
21 car was pulled in the driveway parallel with Patterson
22 Mill Road headed, facing the house.

23 Q. And what car was that?

24 A. That was a Blazer.

25 Q. What color?

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1 A. Burgundy, I think it was.

2 Q. Let me show you what's been marked as State's
3 Exhibit -- the last one -- State's Exhibit 20.

4 Your Honor, we'd like to publish this and enter it
5 into evidence, I believe, without objection from the
6 defense.

7 MR. MCCARLEY: That's correct, Your Honor.

8 THE COURT: Mr. McCarley, did you have an opportunity
9 to see all these pictures?

10 MR. MCCARLEY: Yes, Your Honor, I have.

11 THE COURT: Do you have any objection to any of them
12 that I need to be aware of?

13 MR. MCCARLEY: No, sir. They're the same ones that I
14 reviewed a couple days ago.

15 MS. MAURICE: They are, Your Honor.

16 THE COURT: All right. Thank you. Appreciate it.

17 BY MS. MAURICE:

18 Q. Do you recognize that?

19 A. Yes, ma'am.

20 Q. And what is that?

21 A. That's the vehicle that I saw when I first got to the
22 scene.

23 Q. Okay. And let me show you another picture and answer
24 this, if you know. As far as -- what did you say, it was
25 at what club or what store?

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1 A. It's actually called, I don't know it's a community
2 store slash night club.

3 Q. Alcoholic beverage-type thing?

4 A. Yes, yes.

5 Q. Could you look at that and could you tell me what that
6 is?

7 A. That's Classy Mae's, the one I'm talking about.

8 Q. Okay. And --

9 THE COURT: What exhibit is that?

10 MS. MAURICE: I'm sorry. That is Exhibit Number Five.

11 THE COURT: Okay.

12 MS. MAURICE: And I'd like to move that into evidence
13 without objection, please.

14 THE COURT: Okay. State's Exhibit 20 and Five are in
15 evidence without objection.

16 MR. MCCARLEY: Yes, Your Honor, without objection.

17 (Thereupon, State's Exhibit No. 5 and 20, photographs,
18 were received into evidence.)

19 BY MS. MAURICE:

20 Q. Who else did you see at the scene?

21 A. Okay. Once Mr. Parker walked from the club, I went
22 over and I started talking with him, then I see
23 Benjamin -- Roger Benjamin, Jr.

24 Q. Okay.

25 A. And then after things got calmed down, then you got

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1 the grandmother, the aunt and the little child came out of
2 the house, I think it was.

3 Q. Okay. So, where was grandmother, aunt and child?
4 Where did they come out of?

5 A. The mobile home that was at , where the vehicle
6 was parked at.

7 Q. What county is that?

8 A. That's in Barnwell County.

9 Q. Okay. Let me show you a picture of that home, let you
10 identify it, in State's Exhibit One.

11 A. Yes, ma'am. That's the home.

12 Q. Okay. And that's the home that grand mom and child --

13 A. And the aunt.

14 Q. -- and the aunt came out of?

15 A. Uh-huh.

16 Q. You said you secured the scene. How do you secure a
17 scene?

18 A. Well, when we first arrive we make sure that -- well,
19 when we come to a shooting not knowing if anybody was
20 injured or anything, we make sure we attend to the needy
21 at first as far as injury. There wasn't any, so what I
22 did was kept everybody way off the area.

23 Being that I was there by myself at first and that's a
24 roadway, I couldn't actually stop traffic by myself to do
25 that but I made sure everybody that was there was taken

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1 care of, they was out of the home and danger. And then I
2 waited on officers to arrive.

3 Q. About how long did it take some other officers to
4 arrive and help you?

5 A. With a shooting, maybe two minutes, three minutes,
6 something like that.

7 Q. So we're talking about a very short time span?

8 A. Very short time span.

9 Q. How long did it take you to get to the scene once you
10 were dispatched?

11 A. I don't actually have that time frame right -- on me
12 right now. I know -- yeah, I do. I have -- we got it
13 16:43. I arrived at 16:48 which is 4:43 and 4:48 in the
14 afternoon.

15 Q. And you said -- what time is it in the afternoon?
16 Regular time.

17 A. Oh, regular time. It's 4:43.

18 Q. Uh-huh.

19 A. And 4:48.

20 Q. Okay. And so, was it light outside?

21 A. Yes, ma'am. It was daytime.

22 Q. All right. Would you answer -- hold on. (Pause.)
23 Would you answer any questions that Mr. McCarley has?

24 THE COURT: Mr. McCarley, your witness.

25 MR. MCCARLEY: Thank you, sir.

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CROSS-EXAMINATION

BY MR. MCCARLEY:

Q. Investigator Trottie, how are you doing, sir?

A. I'm fine, sir.

Q. Good, good. You were the first on the scene that day;
is that correct?

A. Yes, sir.

Q. When you arrived on the scene, did you see Dexter
Brown?

A. No, sir.

Q. Did you see Dexter Brown with a gun?

A. No, sir.

Q. Did you see Dexter Brown shooting a gun?

A. No, sir.

Q. Did you find a gun? When you secured the scene for
safety precautions, did you find a gun?

A. No, sir.

Q. Okay. Did you find any physical evidence whatsoever
that -- in regards to Dexter Brown?

A. No, sir.

Q. Thank you. May I have a moment?

THE COURT: Sure.

(Pause.)

MR. MCCARLEY: No more questions. Thank you.

THE COURT: Anything on redirect?

1 MS. MAURICE: No. Thank you. No, sir.

2 THE COURT: Thank you, Investigator. You may step
3 down.

4 THE WITNESS: Thank you.

5 THE COURT: All right. It's noon. We'll take a break
6 for lunch, if that's all right with y'all.

7 MS. MAURICE: Yes, Your Honor.

8 THE BAILIFF: Fine with me.

9 THE COURT: Ladies and gentlemen of the jury, what I'm
10 going to do is ask y'all to come back at 1:30. If you'll
11 follow the bailiff, he will show you how to get to the
12 jury room. And I've got -- yes, ma'am, from the front of
13 the row?

14 THE JUROR: (Shakes head.)

15 THE COURT: Okay. Now, remember, you only heard one
16 witness in this case. Okay. You cannot talk about
17 anything that you -- anything about this case. When y'all
18 get back together, when y'all go back in the jury room,
19 you cannot talk about this case among yourselves or with
20 anybody else. Okay. I don't need y'all riding off to
21 Patterson Mill Road investigating the scene or anything
22 like that.

23 Y'all go and enjoy your lunch, come back, be back in
24 the jury room at 1:30 and we'll get started back on the
25 case.

1 We'll see you at 1:30. Thank you all very much.

2 (Jury exits courtroom at 12:02 p.m.)

3 THE COURT: Anything from the State before we take a
4 break for lunch?

5 MS. MAURICE: No, Your Honor.

6 THE COURT: Anything from the defense before we take a
7 break for lunch?

8 MR. MCCARLEY: No, sir.

9 THE COURT: If y'all be back here at 1:30. Thank you.

10 MS. MAURICE: Thank you, Your Honor.

11 (Thereupon, at 12:03 p.m., the luncheon break was
12 taken. The trial resumed at 1:40 p.m., as follows:)

13 THE COURT. Ms. Maurice, is the State ready?

14 MS. MAURICE: Yes, Your Honor.

15 THE COURT: Mr. McCarley, is the Defendant ready?

16 MR. MCCARLEY: Yes, we are. We got to get Mr. Brown.

17 (Defendant enters courtroom.)

18 THE COURT: It's my understanding that we've got to
19 break about four.

20 MS. MAURICE: If that's okay with Your Honor.

21 THE COURT: That's fine with me. We'll break about
22 four.

23 MS. MAURICE: And do those pleas and then start back
24 tomorrow morning.

25 THE COURT: And then pick back up in the morning.

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1 MS. MAURICE: Yes, sir. I could be wrong. I've been
2 wrong before.

3 THE COURT: All right. Bring the jury back in.

4 (Jury enters courtroom at 1:40 p.m.)

5 THE COURT: All right. Ladies and gentlemen, I hope
6 y'all had a good lunch. I hope nobody went riding all
7 over the community trying to see what was going on.
8 Okay.

9 Now, we're getting ready to get started back into
10 taking testimony in this case. So if y'all will just bear
11 with us, we will get going.

12 Ms. Maurice, call your next witness.

13 MS. MAURICE: Thank you, Your Honor. Investigator
14 Andy Chavis.

15 ANDY CHAVIS, having been duly sworn, was examined and
16 testified as follows:

17 THE CLERK: Please be seated and state your name for
18 the record.

19 THE WITNESS: Andy Chavis.

20 THE COURT: Your witness.

21 DIRECT EXAMINATION

22 BY MS. MAURICE:

23 Q. Investigator Chavis, who do you work for?

24 A. I work for the Barnwell County Sheriff's Office.

25 Q. How long have you worked for them?

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1 A. For the sheriff's office, about four and a half years.

2 Q. Did you work in law enforcement prior to that?

3 A. Yes, I did. I worked for Williston Police Department
4 prior to that.

5 Q. And how long did you work for them?

6 A. Four and a half years.

7 Q. Okay. On October 15th, did you have an opportunity to
8 get involved in this crime that we're here for today?

9 A. Yes, I did.

10 Q. I'm going to -- let's walk through first what you did
11 when you got there and where it was.

12 Where did you go?

13 A. We had a dispatched call from central dispatch about
14 shots being fired on Patterson Mill Road. Myself, I was
15 at the sheriff's office when the call went out.

16 Q. Uh-huh.

17 A. I left the sheriff's office responding out there code,
18 which means blue lights and siren. When I arrived on the
19 scene Officer -- Sergeant John Trottie was already on the
20 scene, a few other officers.

21 At that time the sheriff was on the scene, and the
22 on-call investigator, we have an on-call schedule seven
23 days a week split up between, amongst four investigators.

24 It was Investigator Croft's week to be on call as the
25 crime scene investigator; however, he was told to go and

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1 do something else and the sheriff asked me to work the
2 crime scene.

3 Q. Okay. I'm going to show you what's been marked as
4 State's Exhibits One through 20. If you would look
5 through these, please, and identify that you recognize all
6 of those.

7 A. (Complying). Yes, I do.

8 MS. MAURICE: Your Honor, at this time the State would
9 like to move One through 20. I think we had already moved
10 in 11 (sic) and Five into evidence, but we would like to
11 move One through 20.

12 THE COURT: With no objection from the defense?

13 MR. MCCARLEY: We do not have an objection.

14 THE COURT: They are all moved. One through 20 is
15 into evidence.

16 (Thereupon, State's Exhibit Nos. 1 through 20,
17 photographs, were received into evidence.)

18 BY MS. MAURICE:

19 Q. Okay. When you got to the scene, what was the first
20 thing you did?

21 A. The first thing I did when I got to the scene is I
22 started looking -- or when I stepped out of my vehicle, I
23 noticed in the road there was lots of shell casings.

24 MS. MAURICE: If it's okay with Your Honor, can he
25 step down and show these photos and describe --

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1 THE COURT: You just need to speak up so that the
2 court reporter can hear you.

3 THE WITNESS: (Nods.)

4 BY MS. MAURICE:

5 Q. Can you explain to the jury what these are and how you
6 do this?

7 THE COURT: And what exhibit are you referring to?

8 MS. MAURICE: I'm sorry.

9 THE WITNESS: This is Exhibit Six.

10 THE COURT: Exhibit Six. Okay.

11 MR. MCCARLEY: May I stand off to the side, Your
12 Honor?

13 THE COURT: You may. Let the defense attorney get
14 over there so he can see what you're talking about.

15 BY MS. MAURICE:

16 Q. On State's Exhibit Six.

17 A. State's Exhibit Six. Whenever I arrived on the scene,
18 I started noticing shell casings in the road and also was
19 told from the sheriff and other deputies that got there
20 before me that there were several shell casings found in
21 the roadway. Shell casings being the cartridges from a
22 weapon that was fired, an automatic weapon.

23 We have -- I have these labeled as letters of the
24 alphabet starting with the first shell casing that I
25 found, I go down the alphabet A., B., C., D., you know,

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1 and so on.

2 So I started. I took out my markers and I started
3 marking each shell casing that I found in front of the
4 residence on Patterson Mill Road.

5 Also there was some that were found in the driveway
6 and up by, closer to the house.

7 BY MS. MAURICE:

8 Q. Okay. And State's Exhibit Number Seven, is that just
9 another shot?

10 A. That's just another shot of -- yeah, of all the shell
11 casings, overall picture of them.

12 Q. Okay. How about State's Exhibit Eight and State's
13 Exhibit Nine?

14 A. Yes. Actually each one of these are individual
15 pictures. And what I do is once I take an overall picture
16 of the -- of the scene, I go back and I photograph each
17 individual one.

18 Q. Each, each individual, what?

19 A. Shell casing.

20 Q. Okay.

21 A. Or whatever type evidence it is I find.

22 Q. Okay. And State's Exhibits 14, 15. I guess I need to
23 -- 13, 12, 10 and 11. We'll start with 10. And 10, what,
24 what did you do with that or what is that?

25 A. This is a projectile. What it is, is this -- actually

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1 the bullet that comes out of a shell casing, this bullet
2 was laying in the driveway where it had went into the dirt
3 and obviously didn't hit anything but the dirt.

4 Q. State's Exhibit 11?

5 A. This is a bullet that I found that had not been
6 fired. It's the whole bullet with the casing and the
7 bullet attached. It has not been fired. It was found on
8 the scene.

9 Q. State's Exhibit 12?

10 A. This would be the same as exhibit -- Exhibit 10.

11 Q. Okay.

12 A. The same projectile that was fired from a bullet --
13 from a shell casing.

14 Q. State's Exhibit 13?

15 A. Again, would be the same bullet.

16 Q. Fourteen?

17 A. That would just be another shell casing that was found
18 in the yard or in front of the residence off of the
19 roadway.

20 Q. Okay. And State's Exhibit 15?

21 A. Another shell casing that was found --

22 Q. Okay.

23 A. -- off the roadway in front of the residence.

24 Q. Okay. And let me hand you what's been marked as
25 State's Exhibits 20 -- 16, 17, and 20. State's Exhibit

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1 20, could you describe what that is?

2 A. This is the vehicle that our victims was being chased
3 in. This is the vehicle they were driving. I
4 photographed the vehicle because it had several bullet
5 holes in it or where a bullet had hit the vehicle. If I
6 recall correctly, it was three.

7 Q. Okay. State's Exhibit 16?

8 A. This is the driver's headrest. This is inside this
9 vehicle right here. This is the right side of the
10 driver's headrest. That is a projectile which is a bullet
11 that came from the shell casing and hit the back of the
12 driver's headrest.

13 I did not pull that bullet out because I was unable
14 and did not have the tools at that time to recover it and
15 pull it out of the headrest. So I photographed it, but if
16 you look at the photograph, you can see the projectile.

17 Q. And State's Exhibit 17?

18 A. It is also another picture of the headrest. If you
19 look at it, you can tell this was the driver's seat,
20 steering wheel, and this is the back of the headrest,
21 right here, where the bullet entered and hit the back --
22 or the projectile hit the back of the headrest, driver's
23 headrest.

24 Q. Okay. Now, after you marked -- you might want to sit
25 back down.

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1 A. (Complying.)

2 Q. After you marked all the cases that you could find,
3 what did you do?

4 A. I'm sorry?

5 Q. After you did your markings and took all the shell
6 casings you were able to see --

7 A. Yes, ma'am.

8 Q. -- and took the photos -- did you take the photos
9 first or did you collect --

10 A. No.

11 Q. -- the casings first?

12 A. Photograph first.

13 Q. I guess so.

14 A. Always photograph before we take anything.

15 Q. All right. State's Exhibits 21, 22, and 23, Your
16 Honor, are being moved into evidence, I believe, without
17 objection.

18 MR. MCCARLEY: Yes, that's correct.

19 (Thereupon, State's Exhibit No. 21, shell casings,
20 State's Exhibit No. 22, bullet, and State's Exhibit No.
21 23, projectile, were received into evidence.)

22 BY MS. MAURICE:

23 Q. Could you describe what these are? Let's do 21
24 first. Do them one by one.

25 A. This is 14 shell casings that was collected from the

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1 crime scene. Some of them being .380 shell casings and
2 some of them being nine millimeter shell casings.

3 Q. And what does that mean?

4 A. That means obviously there was two weapons there that
5 was fired.

6 Q. Okay. Let me show you what's State's Exhibit 22.

7 A. This is a nine millimeter bullet that was found right
8 beside the road in front of the residence.

9 Q. How could it not have been a casing? I mean --

10 A. Because it was not fired.

11 Q. Okay. That one wasn't fired?

12 A. No, ma'am.

13 Q. How -- so that was -- go ahead.

14 A. If I can explain?

15 Q. Yes, please.

16 A. What I -- what my thinking was on my investigation is,
17 when you have a automatic weapon that fired several
18 rounds --

19 MR. MCCARLEY: Objection.

20 MS. MAURICE: Okay. That's okay.

21 Q. That's the unfired --

22 A. Yes.

23 Q. -- bullet?

24 A. Yes, that's the unfired round. I'm sorry.

25 Q. And that's State's Exhibit 22. And how about State's

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1 Exhibit 23?

2 A. This is the projectile that was located in the
3 driveway between the road and the driveway -- between the
4 road and the vehicle. It was in the driveway. And the
5 direction that it was located and photographed is pointed
6 towards the vehicle.

7 Q. Okay. Now, when we're talking about the driveway and
8 the vehicle, on State's Exhibit 20, where is this? Where
9 is the vehicle? Is that the vehicle, the same vehicle?

10 A. Yes, ma'am. This is the vehicle that I'm speaking of
11 that was parked in the driveway at the incident, which is,
12 I think, ... It was parked parallel
13 with the trailer. And if you can see my hand where I'm
14 standing, the roadway is behind me.

15 Q. Okay.

16 A. So the bullet was found between the road and the
17 vehicle in the dirt, pointed in that direction.

18 Q. Okay. And did I hand you earlier the one on the back
19 of the car? I don't think I did; did I?

20 A. No, ma'am.

21 Q. Let me hand you State's Exhibits 18 and 19. If you
22 could step down and explain to the jury what that is, and
23 what you found in the car if you searched it.

24 A. (Complying.)

) 25 THE COURT: Let Mr. McCarley get over there, please.

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1 (Pause.)

2 THE COURT: Thank you, ma'am.

3 THE WITNESS: Yes, sir. Again, this is the vehicle
4 that was on the scene, on the crime scene, that had been
5 shot up.

6 BY MS. MAURICE:

7 Q. That's State's Exhibit 20.

8 A. Okay. If you notice or if you can see in the picture,
9 you have a bullet hole in the rear passenger side of the
10 vehicle in the window there.

11 Again, you have one that was in the back of the
12 driver's headrest.

13 And then there was a bullet in the bumper, or where a
14 bullet had hit in the back of the bumper of the vehicle
15 when the vehicle was being chased.

16 Q. Okay. And was this car drive able after?

17 A. No, it was not. It had two flat tires if I'm not --
18 you can see them. Front passenger tire and the front --
19 rear passenger side tire were both flat.

20 Q. So, you collected all the evidence?

21 A. Yes, ma'am. You want me to sit back down or?

22 Q. Yeah. I know I'm kind of jumping around for photos.

23 A. (Returns to witness stand.)

24 Q. After you collected all the evidence that you found,
25 and took your photos, what did you do next?

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1 A. After retrieving or picking up all the shell casings
2 and the projectiles and collecting my flags, I went to
3 both of the victims who was Brandon Parker and Roger
4 Benjamin to do GSR kits on both of those.

5 Q. Okay. And could you explain how you do a GSR kit?
6 I'm going to hand you what has been marked as State's
7 Exhibit 25 for demonstrative purposes only. Could you
8 just describe to the jury what you did on that day using
9 that?

10 A. That day during my investigation, I wanted to do a GSR
11 kit on both of the victims that were being shot at, just
12 to make sure that they weren't shooting back in return.

13 After I got through with the vehicle, the victim's
14 vehicle, there was no indication of a weapon inside. I
15 did not find any guns inside that vehicle. I did not find
16 any shell casings inside their vehicle which would have
17 led me to believe they also had weapons.

18 And then I wanted to conduct a GSR kit on both of
19 them.

20 What a GSR kit is is a gun residue collection kit.
21 That's a kit that stays sealed until we get ready to use
22 it. Once we get ready to use it, we open it up in front
23 of that person that we're going to do the GSR kit on.
24 That kit has to be done within six hours of the shooting
25 incident on the person that they're doing it on. I did

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1 not --

2 Q. Open the kit. Do you need scissors to open it?

3 A. I can tear it open.

4 Q. Can you get it?

5 A. This is a new kit. It's never been opened. I did not
6 have any kits with me that day in my vehicle. Most of the
7 times we carry one or two in our vehicles.

8 There was a SLED agent on the scene, Teddy Cone, who
9 is a agent with SLED, who I got two kits from him that he
10 had in his vehicle that were this type, same exact type
11 kit in an envelope like this.

12 Once you open this kit up the first thing we do is we
13 pull out the form which is instructions for the collecting
14 of the gunshot residue. And then it explains to you step-
15 by-step on how to do your collecting, front and back.

16 Also we fill out this form. This is the person that
17 you're doing the kit on, it's his information. It asks
18 for his name, is he living or is he deceased, because
19 sometimes we do them on people that commit suicide, make
20 sure it's a suicide and not a homicide.

21 And then it asks you some questions, like date of
22 birth, and that sort of thing, their occupation, their
23 hobbies and which hand did they use.

24 I opened the first kit up. And I did Brandon Parker
25 first. If you pull other things out of it, you have in

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1 here evidence tape which is to seal it back up. You have
2 a pair of gloves in here which is plastic gloves that we
3 put on.

4 Q. And did you do all of that in this case?

5 A. Yes, ma'am.

6 Q. And I'm going to show you what's been marked as
7 State's Exhibit Number 24. Could you tell me what that
8 is?

9 A. This is the GSR kit that's been sent off to SLED that
10 I conducted that day on Brandon Parker.

11 Q. Okay. And how do you know it's the same kit?

12 A. Because I sent it to SLED, sealed, in the evidence --

13 Q. Okay.

14 A. -- sealed bag along with the chain of custody form.

15 Q. Okay.

16 A. And it has been returned from SLED with the chain of
17 custody form. And it has not been opened since it got
18 back from SLED. It's still sealed by SLED.

19 Q. Whose initials is that? Is that SLED or you don't
20 know?

21 A. I don't know.

22 Q. Okay.

23 A. All right. It's not mine.

24 Q. Okay. Did you talk to anyone else besides -- as far
25 as witnesses besides Brandon and Roger?

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1 A. No.

2 Q. As far as interview?

3 A. No, ma'am. Not interviewing them, no.

4 Q. Okay. So your --

5 A. There was --

6 Q. -- job was to collect the evidence?

7 A. Right.

8 MS. MAURICE: Please answer any questions Mr. McCarley
9 has.

10 THE COURT: Your witness, Mr. McCarley.

11 MR. MCCARLEY: Thank you, sir.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. MCCARLEY:

15 Q. Investigator Chavis, how are you doing?

16 A. I'm doing good.

17 Q. The solicitor just said it's your job to gather all
18 the physical evidence at the scene, to process the scene.
19 Is that correct?

20 A. It was that day, yes.

21 Q. So when you go to the scene, you want to gather as
22 much evidence as possible; is that correct?

23 A. That's correct.

24 Q. At this scene, as we've heard, there were a number of
25 bullet casings and some actual bullets?

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1 A. Right.

2 Q. Were any of those bullets tested for anything by your
3 agency or SLED?

4 A. No, they were not.

5 Q. Okay. You had bullets and casings. Were any of those
6 bullets and casings tested by SLED or your agency to see
7 if they matched up?

8 A. Matched up to what?

9 Q. Matched up meaning the actual bullet, the projectile
10 as you said, came from the casing?

11 A. No, they were not.

12 Q. Okay. Were any of those bullets or casings
13 fingerprinted?

14 A. No, they were not.

15 Q. Okay. You mentioned both of the victims. Is that
16 correct?

17 A. That's correct.

18 Q. Okay. There was two victims?

19 A. Correct.

20 Q. Okay. And you took a GSR kit on Brandon Parker?

21 A. That's correct.

22 Q. There's another victim there, Mr. Roger Benjamin?

23 A. That's correct.

24 Q. And do you have his GSR kit?

25 A. No, I do not. I did not do one on him that day.

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1 Q. Okay. So what we've got out of everything we just saw
2 and everything that you testified to evidence-wise, is one
3 GSR kit that says a gentleman did not shoot a gun. He
4 could still have a gun in his hand, but he just has no gun
5 residue on his hand. Is that correct?

6 A. That's correct.

7 MR. MCCARLEY: May I have a moment?

8 THE COURT: Sure.

9 (Pause.)

10 BY MR. MCCARLEY:

11 Q. Is there a reason why no one else on the scene was
12 tested for a GSR kit?

13 A. Yes, it is. I got two GSR kits that day from SLED
14 Agent Teddy Cone. The first kit, like I said, I did on
15 Brandon Parker.

16 Q. Yes, sir.

17 A. The kit was opened. The second kit, when I opened it
18 up, once you use a kit on one person you're through with
19 it, it's sealed back.

20 Q. Understood.

21 A. You cannot use it on multiple people.

22 If I may, and I'll explain exactly why. In this kit
23 you have several tubes of what parts of the hand or what
24 fingers go in what swabs. You also have the little bottle
25 or little valve in here.

ANDY CHAVIS - CROSS

1 This is some type of nitric acid. This is what we put
2 on the Q-tip to -- the directions say you put it on the
3 Q-tip to rub on the person's hand and to put it in the
4 vial. This little bottle inside of the kit of the other
5 GSR kit was empty. These kits after a while, after it was
6 riding along in the agent's car for however long it was,
7 evidently the liquid inside of it had evaporated. The
8 agent was already gone.

9 I was the last one on the scene, me and a deputy. The
10 deputies, regular road deputies do not keep these in their
11 vehicle and I did not have another one.

12 Q. I understand. Does your agency have more than two GSR
13 kits?

14 A. Uh --

15 Q. From what I've heard and from what we're about to see,
16 there's a number of law enforcement folks on the scene and
17 there's only two gunshot kits to go around?

18 A. Yeah. Everyone was gone. I was the last one on the
19 scene along with the one deputy.

20 Q. Understood. So of the two victims, only Brandon
21 Parker had a GSR kit done?

22 A. That's correct.

23 Q. Okay. There was not a GSR kit done on anybody else
24 around?

25 A. There was nobody else there but Brandon Parker and

ANDY CHAVIS - REDIRECT

1 Roger Benjamin.

2 MR. McCARLEY: Understood. No more questions, Your
3 Honor.

4 THE COURT: Thank you, sir. Anything on redirect?

5 MS. MAURICE: Yes, Your Honor.

6 THE COURT: Okay.

7 REDIRECT EXAMINATION

8 BY MS. MAURICE:

9 Q. Did you have anything to compare the shell casings or
10 bullets to?

11 A. No, I did not.

12 Q. So you didn't have a gun?

13 A. No, I did not.

14 Q. And was there any indications that a gun was in or was
15 fired in the victim's vehicle?

16 A. No. There was no indication of a gun being fired out
17 of the victim's vehicle.

18 MS. MAURICE: Thank you.

19 THE COURT: Anything on recross?

20 MR. McCARLEY: Yes, Your Honor. May I have a moment?

21 THE COURT: Sure.

22 (Defense attorneys conferring.)

23 RECROSS-EXAMINATION

24 BY MR. McCARLEY:

25 Q. Are you able to tell what type of gun was used in

ILA SIMMONS - DIRECT

1 this? Were those bullets tested to see what type of gun
2 they came out of?

3 A. I can tell you what caliber gun, but I cannot tell you
4 what type of gun.

5 Q. Okay. So if it was a revolver, it wouldn't leave a
6 casing?

7 A. That's correct.

8 Q. There would be no casing. The casings would stay in
9 the gun and there have been no guns found?

10 A. Correct.

11 MR. MCCARLEY: Thank you. No further questions.

12 THE COURT: Okay. All right. Thank you, sir.

13 THE WITNESS: Yes, sir.

14 THE COURT: I appreciate it. Call your next witness.

15 MS. MAURICE: Ms. Ila Simmons.

16 ILA SIMMONS, having been duly sworn, was examined and
17 testified as follows:

18 THE CLERK: Please be seated and state your name for
19 the record.

20 THE WITNESS: My name is Ila Simmons.

21 DIRECT EXAMINATION

22 BY MS. MAURICE:

23 Q. Ms. Simmons, who are you employed by?

24 A. I work at the South Carolina Law Enforcement Division,
25 also known as SLED, in the forensics laboratory's trace

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1 evidence department.

2 Q. Okay. And what are your job responsibilities?

3 A. Trace evidence encompasses several areas of
4 forensics. We analyze gunshot residue, gun powder
5 residue, we perform fiber comparisons, glass comparisons.
6 We also analyze explosives and arson debris.

7 Q. And what type of education, formal education have you
8 had to prepare you for this?

9 A. I have a bachelor's of science degree in chemistry.
10 After completing that I came to work at SLED.

11 In my first three years at SLED, I worked with a
12 court-qualified, SLED-certified, trace-evidence examiner
13 who taught me how to collect, preserve and analyze trace
14 evidence.

15 And during that time I had to take and complete
16 practical and written examinations with 100 percent
17 efficiency before SLED would certify me as a trace
18 evidence examiner.

19 Q. Did you already say how many years you've been with
20 SLED?

21 A. No, ma'am. I've been with SLED 11 years.

22 Q. And have you ever been qualified as an expert in the
23 South Carolina Court of General Sessions?

24 A. Yes, ma'am. In General Sessions Court, probably over
25 200 times. Also in federal and civil courts in the State

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1 of South Carolina.

2 MS. MAURICE: Your Honor, I'd like to move that
3 Special Agent, SLED Agent, Ms. Simmons, be determined to
4 be an expert witness in the field of trace evidence
5 analysis, specifically in the field of gunshot residue.

6 THE COURT: Any objection?

7 MR. MCCARLEY: No objection, Your Honor.

8 THE COURT: She is so qualified.

9 BY MS. MAURICE:

10 Q. That's difficult. Okay.

11 I'm going to show you what's been marked as State's
12 Exhibit 24.

13 A. Yes, ma'am.

14 Q. Can you identify that for us and walk us through?

15 A. May I open the package?

16 Q. Yes.

17 A. Okay (opening package).

18 Q. How can you identify it? Can you identify the
19 outside?

20 A. I can identify the outside as well, if you would like
21 me to do that.

22 Q. Yes. Let's do that first.

23 A. On the outside, this is marked with a laboratory
24 identification number. Every case that comes into the
25 laboratory has a unique identification number. And each

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1 piece of evidence is given an item number.

2 So this would be our lab number and item one. And it
3 also has my initials on it, and the agency that submitted
4 it.

5 Q. Okay.

6 A. And on the outside, I sealed it to be returned to
7 Barnwell. So I put a piece of evidence tape on it and put
8 my initials and the date, the date that I sealed it.

9 Q. So those are your initials?

10 A. Yes, ma'am.

11 Q. Okay.

12 A. And on the inside, it is the gunshot residue kit that
13 I analyzed. I can tell because it has the identification
14 number as well as the item number, my initials, the date
15 that the kit was opened to be analyzed.

16 And it's also been sealed by myself and my initials
17 and date are there.

18 Q. Okay. Could you tell us what gunshot residue is and
19 how you test for it?

20 A. Uh-huh.

21 Q. Kind of walk us through the testing process --

22 A. Yes, ma'am.

23 Q. -- procedure.

24 A. Gunshot residue is a mixture of microscopic chemicals
25 that come out of the gun when it's fired.

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1 When you pull the trigger of a gun, the hammer falls,
2 the firing pin strikes the primer of a cartridge that's
3 placed in it.

4 The cartridge is made up of three different parts; a
5 primer, a cartridge casing which contains gunpowder, and
6 then the bullet.

7 The primer contains these shot-sensitive chemicals.
8 When the firing pin strikes it, creates a small spark.
9 The spark sets the gun powder on fire, builds up pressure
10 in the gun and pushes the bullet out of the gun and down
11 toward a target.

12 Well, a mixture of all these chemicals also come out
13 of this gun and head down range towards the target and
14 some of them can get on the hands of someone firing the
15 gun or anything that may be in close proximity to the gun
16 when it's discharged.

17 And these are standardized kits that the officer just
18 discussed taking. And they have a portion that is
19 particle lifts, which is just double-sided sticky tape,
20 and then swabs.

21 And they will take these double-sided sticky tape and
22 dab it over the hands of the person from whom they're
23 trying to collect gunshot residue. They'll seal that up
24 and then they'll begin by taking the swabs, put a few
25 drops of the nitric acid he was discussing and take the

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1 swabs from the hands as well.

2 Q. How did you test this? Or, did you test this
3 evidence?

4 A. Yes, ma'am. When they come in we analyze the swabs
5 and these particle lifts to determine the quantities of
6 metals that are found. There are three metals that are
7 primarily found in a cartridge that's placed in a gun to
8 be fired; lead, barium and antimony.

9 And these three elements in certain levels, ratio of
10 levels with one another, can indicate whether or not
11 someone has fired a gun or been near a gun when it was
12 fired.

13 Q. And were you just able to make any conclusions about
14 the items that you tested in this case?

15 A. Yes, ma'am. On the kit that I received from Brandon
16 Walker (sic) --

17 Q. Yes. Your Honor, at this time we'd like to put into
18 evidence State's Exhibit --

19 A. Twenty-four.

20 Q. -- Twenty-four and publish the results.

21 THE COURT: Okay. Any objection?

22 MR. MCCARLEY: No objection, Your Honor.

23 (Thereupon, State's Exhibit No. 24, gunshot residue
24 kit, was received into evidence.)

25 THE WITNESS: I'm sorry. The gunshot residue kit was

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1 from Brandon Parker. I'm sorry. I think I said Walker a
2 moment ago.

3 I found that the quantities of metal that were
4 detected did not indicate the presence of gunshot residue.

5 BY MS. MAURICE:

6 Q. So, it was negative?

7 A. Yes, ma'am.

8 MS. MAURICE: Would you please answer any questions
9 that Mr. McCarley may have?

10 THE COURT: Mr. McCarley, your witness.

11 MR. MCCARLEY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MCCARLEY:

14 Q. I think this is the CSI part that Ms. Maurice was
15 speaking about earlier. I just want to make sure that
16 we're clear.

17 Ms. Simmons, is it possible -- Agent Simmons. I
18 apologize. Is it possible to fire a gun and have a
19 negative GSR kit?

20 A. It is, because gunshot residue has the consistency of
21 salt. So if you get it on your hands and you were to wipe
22 your hands or wash your hands, it would be removed from
23 your hands.

24 Q. Or even if someone were to sweat?

25 A. Yes, that is possible.

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1 Q. How long after a gunshot is fired can one use a GSR
2 kit effectively?

3 A. Approximately six hours. After six hours, we won't
4 even accept a gunshot residue kit that's collected longer
5 than six hours after an incident. And that's because the
6 human body absorbs things through the skin, you're
7 sweating, you're making contact with things with your
8 hands.

9 It's optimum to take a gunshot residue kit as quickly
10 as possible after the shooting incident.

11 Q. So, but it is good -- there's a six-hour window
12 there --

13 A. Yes, sir.

14 Q. -- where if you -- you could go somewhere and get a
15 GSR kit within six hours?

16 A. Yes, sir. As long as it was within six hours.

17 Q. Understood. Did you or your agency to the best of
18 your knowledge analyze a gunshot residue test for a Roger
19 Benjamin?

20 A. No, sir; we did not receive one.

21 Q. Did you all analyze a gunshot residue for any other
22 parties from this incident?

23 A. Not in this case. No, sir.

24 Q. Okay. Do you know if there were any bullets or
25 casings tested for fingerprints or any other type of

ILA SIMMONS - REDIRECT

1 physical evidence from this case by your agency?

2 A. It wasn't on my log-in form. So, no, sir; I don't
3 believe so.

4 Q. Okay.

5 MR. MCCARLEY: May I have a moment, Your Honor?

6 THE COURT: Sure.

7 (Pause. Attorneys conferring.)

8 MR. MCCARLEY: No further questions. Thank you, Agent
9 Simmons.

10 THE COURT: Anything on redirect?

11 MS. MAURICE: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. MAURICE:

14 Q. From the kit that you have there, can you tell what
15 time the kit was used or the test was taken from the
16 person?

17 A. You heard Officer Chavis a moment ago talk to you
18 about the form that is filled out with the person's name
19 from whom you're taking the GSR kit. Well, it also has a
20 slot there for the date and time of the incident, and the
21 date and time of the collection.

22 And I do have a copy of that in my case jacket, if you
23 would like me to check.

24 Q. Yes, please.

25 A. On the collection time was on October 15th of 2010,

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1 and it was approximately 7:41 (verbatim). The incident
2 was 16:41. So, approximately an hour after the shooting
3 the GSR kit was collected.

4 Q. So, you said 17:41?

5 A. Yes, ma'am.

6 MS. MAURICE: Okay. Thank you. No further
7 questions.

8 THE COURT: Anything on recross?

9 MR. MCCARLEY: No, Your Honor.

10 THE COURT: All right. Thank you, Agent Simmons. I
11 appreciate it.

12 MS. MAURICE: May she be excused, Your Honor?

13 THE COURT: Any objection to her being excused?

14 MR. MCCARLEY: None from the defense, Your Honor.

15 THE COURT: Thank you, ma'am, for coming. Appreciate
16 you being here.

17 All right. Ms. Maurice, your next witness.

18 MS. MAURICE: Your Honor, the State calls Roger
19 Benjamin.

20 ROGER BENJAMIN, having been duly sworn, was examined
21 and testified as follows:

22 THE CLERK: Please be seated and state your name for
23 the record.

24 THE WITNESS: Roger Benjamin.

25 THE COURT: Ms. Maurice, your witness.

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DIRECT EXAMINATION

BY MS. MAURICE:

Q. Mr. Benjamin, where do you live?

A. I was staying at -- where I live now?

Q. Where did you live? Where do you live now?

A. I stay at -- now.

Q. Okay. And, where did you live on October the 15th of 2010?

A. --

Q. And who did you live with at that residence?

A. My father.

Q. Okay. And do you know whose residence this is where the incident occurred?

A. My grandmother.

Q. Okay. Do you know what the address is on that?

A.

Q. And that's your grandmother?

A. Yes, ma'am.

Q. Start and kind of go slow, start -- and look at me.

Start and tell me what, what was going on that day. Start from --

A. Right in the beginning.

Q. -- you were in a car.

A. I was in the car. We were coming back from town. We stopped at a store called Harry's. And I seen the blue

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1 Mercury pass by us and it stopped at the club called Two
2 Moon.

3 So my peoples like, do we know, do I know another way
4 toward, to the country.

5 So I was like, yeah, take the four-lane down and go to
6 Snelling. So we went that way and turned on Moores Road
7 to get back on Patterson Mill. The car still was behind
8 us, ~~the~~ blue Mercury.

9 So when we got, we turned off on my grandmother yard,
10 gunshots went off.

11 Q. What did you do?

12 A. I jumped out the truck, ran behind my -- the side of
13 my grandmother house to see who was shooting.

14 Q. Okay. And did you see who was shooting?

15 A. Yes, I saw who was shooting.

16 Q. Who was shooting?

17 A. Kendrick Jacobs and Dexter Brown.

18 Q. Okay. Is Mr. Brown here in the courtroom today?

19 A. He's right there.

20 Q. And can you identify him for us?

21 A. Right there.

22 Q. What is he wearing?

23 A. The white shirt, the yellow tie, brown slacks on.

24 MS. MAURICE: Your Honor, let the record show he's
25 identified Mr. Dexter Brown.

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1 THE COURT: The record so indicates he has identified
2 Mr. Brown, sitting in the courtroom.

3 BY MS. MAURICE:

4 Q. Whose car were you in?

5 A. I was in the burgundy Blazer.

6 Q. Okay. Do you know who owns that car?

7 A. ~~Leslie~~ Morrissey.

8 Q. Okay. And how -- where were you riding in the car?

9 A. I was in the front, the front passenger.

10 Q. Okay. Who was driving?

11 A. Brandon Parker.

12 Q. How did Brandon get the car?

13 A. His mother's -- his mother.

14 Q. So who's his mother?

15 A. Leslie Morrissey.

16 Q. So his mother owned the vehicle?

17 A. Yes, ma'am.

18 Q. Where had you gone before you went to Harry's?

19 A. We went, we went to go over to the barber shop to buy
20 some shoes, went by City Trends to get a outfit, then we
21 turned around and went to Family Dollar to pick up a bag
22 for his mother.

23 Q. Why were you going to Family Dollar?

24 A. We had -- because his mother asked him to ask us to
25 pick up a bag she left there.

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1 Q. So when y'all left his mama's house, where were you
2 headed?

3 A. Where were we headed?

4 Q. Where were you supposed to be heading?

5 A. To Barnwell.

6 Q. Okay. State's Exhibit Number One. Could you tell the
7 jury what this is a photo of? Do you recognize it?

8 A. My grandmother's trailer.

9 Q. Okay. Is this where you pulled in, you said?

10 A. Yeah. We turned in. Yes, ma'am.

11 Q. Okay. I'm going to show you what's been marked as
12 State's Exhibit 20. What is this?

13 A. The Blazer we was in.

14 Q. Okay. Who was in it?

15 A. Me and Brandon Parker.

16 Q. Okay. When you jumped -- when you ran out of the
17 vehicle, did you see anyone else around?

18 A. All I saw was the blue Mercury where Kendrick Jacobs
19 was ~~sitting~~ out the window -- he was sitting out the
20 window ~~shooting~~ across the roof. Dexter was shooting out
21 the ~~driver's~~ side window.

22 And they came and they turned around and they came
23 back. When they were going up the road, the only person
24 ~~shooting~~ was Kendrick.

25 Q. Okay. And you said they went up -- on down the road.

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1 I'm going to show you what --

2 A. They went to the store called Classy Mae's and turned
3 around.

4 Q. Okay. I'm going to show you what's been marked as
5 State's Exhibit Number Five. Can you describe -- what is
6 this?

7 A. That's the store called Classy Mae's.

8 Q. Okay. And if I am facing Classy Mae's, okay, I'm
9 facing it, where is your grandmother's house?

10 A. This. Right up the road there.

11 Q. How far?

12 A. I'm saying, like a house down.

13 Q. Okay. All right. A house down. And what is State's
14 Exhibit Three a photo of?

15 A. My neighbor's yard.

16 Q. Okay. Is that the one house in between the two?

17 A. Yes, ma'am.

18 Q. Okay. And State's Exhibit Two, what is that a photo
19 of?

20 A. My grandmother's driveway.

21 Q. Okay. And if you're facing -- if you're pulling into
22 the driveway, right there, describe which way your
23 grandmother's home is and which way the neighbor's home
24 is.

25 A. The neighbor's home this way, and my grandmother's

ROGER BENJAMIN - CROSS

1 house that way.

2 Q. Your neighbors are on the left of it?

3 A. Yeah.

4 Q. And your grandmother's house on the right?

5 A. Yeah.

6 Q. All right. How do you know Dexter Brown?

7 A. Grew up with him. My grandma helped raise him when
8 his father was in prison.

9 Q. How long have you known him?

10 A. Since we was 12, 11.

11 Q. Okay. How old are you now?

12 A. Twenty-one.

13 Q. Okay. How do you know Kendrick Jacobs?

14 A. My cousin.

15 MS. MAURICE: Would you please answer any questions
16 that Mr. McCarley has?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Mr. McCarley, your witness.

19 MR. MCCARLEY: May I borrow your podium, ma'am?

20 MS. MAURICE: Please.

21 CROSS-EXAMINATION

22 BY MR. MCCARLEY:

23 Q. Roger, how are you doing?

24 A. I'm all right.

25 Q. Did you give a statement to the police, to the police

ROGER BENJAMIN - CROSS

1 on the day of the incident?

2 A. Yeah.

3 Q. You did. Do you remember what you wrote down in that
4 statement?

5 A. Yeah.

6 Q. You do?

7 A. (Nods head.)

8 Q. Okay. In the testimony you just gave, there was no
9 mention whatsoever of a gentleman named T. Is that
10 someone that you remember being --

11 A. He was in the back seat behind Brandon Parker.

12 Q. He was in the back seat?

13 A. Yeah.

14 Q. Behind Brandon Parker?

15 A. Yes.

16 Q. There was no mention of him in your testimony with
17 Ms. Maurice a moment ago.

18 A. She didn't ask about him. The only thing she asked
19 about was Brandon Parker.

20 Q. Because there was another person named T. there?

21 A. Yeah.

22 Q. All right. Now, I have a copy here of your statement
23 if you need to be refreshed to it.

24 But here in your statement you made no mention
25 whatsoever of seeing Dexter Brown.

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1 A. I ain't wrote those statements.

2 Q. I do see here where Mrs. Morrissey wrote it for you.
3 But what happens is it has to be attested to by a police
4 officer sitting right there.

5 A. I ain't wrote one so.

6 Q. Okay. Well, it was signed by you and it's, you know,
7 you give this signature, you're telling the truth and
8 what's in this statement.

9 A. I'm telling the truth.

10 Q. Okay. Do you mind if I refresh his memory with this
11 statement, Your Honor?

12 A. You can.

13 THE COURT: Hand it up to him, give him a chance to
14 read it.

15 MR. MCCARLEY: (Document handed to the witness).

16 MS. MAURICE: Nick.

17 (Off-the-record discussion.)

18 THE COURT: Ladies and gentlemen, what we're going to
19 do is take about a 10-minute break right now and I'll let
20 y'all back in.

21 Remember, you've only heard part of the testimony in
22 this case. You cannot talk about anything you heard so
23 far. You can talk about anything else, the weather, the
24 MBA playoffs which I know you ladies are excited about.

25 Anyway, y'all are excused to go back to the jury room

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1 for about 10 minutes and then we'll bring you all back on
2 out. Okay. Thank you all.

3 (Jury exits courtroom at 2:30 p.m.)

4 THE COURT: Mr. Benjamin, were you able to read that
5 document?

6 THE WITNESS: Yes, sir. I read it.

7 THE COURT: You read it?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. And you understood what it said?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. All right. If you have any
12 questions about any of the words that were written down.

13 THE WITNESS: She wrote down some of the wrong stuff,
14 like, but it's all good.

15 THE COURT: Okay. But you've read it and you remember
16 her writing it down?

17 THE WITNESS: Yeah.

18 THE COURT: Okay. We'll take about a 10-minute
19 break. I told the jury we'll take about a 10-minute
20 break. When we come back, you can complete your cross-
21 examination.

22 MR. MCCARLEY: Thank you.

23 MS. MAURICE: Your Honor, would you just explain he's
24 not supposed to talk to anybody? I don't want any
25 troubles.

ROGER BENJAMIN - CROSS

1 THE COURT: Mr. Benjamin, while we take a 10-minute
2 break you can't talk to anybody about your testimony or
3 anything like that. If you need to go to the restroom or
4 something like that, somebody can get you to go there, but
5 if you don't mind, sit right up here other than that.
6 They'll get you get back on the witness stand in just a
7 minute. All right?

8 THE WITNESS: All right.

9 THE COURT: Thank you, sir. We'll be in recess for
10 about 10 minutes. Okay.

11 (Thereupon, a break was taken at 2:31 p.m. Another
12 matter was heard by the Court and the hearing of this
13 cause resumed as follows at 2:52 p.m.):

14 THE COURT: Ready to get started?

15 MR. MCCARLEY: Yes, Your Honor we are.

16 (Jury enters courtroom at 2:55 p.m.)

17 THE COURT: All right. Ladies and gentlemen, I hope
18 that little break helped everybody. We will begin, go
19 back to cross-examination. Mr. Benjamin, you know you're
20 still under oath.

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Thank you, sir. All right.
23 Mr. McCarley, your witness.

24 CROSS-EXAMINATION

25 BY MR. MCCARLEY:

ROGER BENJAMIN - CROSS

1 Q. Mr. Benjamin, we're going to go through this statement
2 bit by bit here so I can know exactly where you stand on
3 it.

4 Do you admit or deny saying: I rode with Brandon to
5 Barnwell. When we came back and stopped at Harry's store
6 and picked up T.

7 A. I admit that.

8 Q. Okay. We came down Patterson Mill Road and a light
9 blue Mercury followed us. When we turned in at
10 Patterson Mill Road, they started shooting.

11 A. We ain't came all the way down Patterson. We came
12 down 64. We came and turned on Moores Road, then got back
13 on Patterson Mill Road.

14 Q. What I'm asking you is whether that's true.

15 A. Some of it, yes. We got -- we was on Patterson Mill
16 Road, so, yeah.

17 Q. Some of this is true?

18 A. Yeah.

19 Q. Okay. It then says: They started shooting. We
20 jumped out and ran. The guy T. yelled out Dexter,
21 Dexter.

22 Is that true or false?

23 A. No, I yelled out. I yelled out, Dexter.

24 Q. Mr. Benjamin, is that true or false, the guy T. yelled
25 out Dexter, Dexter?

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1 A. That's false.

2 Q. Do you admit or deny that? That's false? His
3 statement is false that you gave to Officer John Trottie
4 on the day of the event?

5 A. Not all of it. I ain't wrote it, you know what I'm
6 saying. I ain't know what she put. I ain't -- I was
7 all -- I was too worried about my life to worry about a
8 statement, you know what I'm saying.

9 Q. I understand what you went through. And I'm not
10 arguing the shooting, what you went through, the stress
11 you were under, sir.

12 I'm just trying to make sure that what's in this
13 statement that you gave to the police officers and that
14 you signed here, what is and is not truth in here. Did
15 you sign? Is that your signature at the bottom?

16 A. Yeah, I signed the bottom.

17 Q. Okay. Now, at the end you say: When we got out and
18 T. ran into the woods, we ran in the house.

19 A. I ran in the house.

20 Q. Okay. So, it was important enough for you to mention
21 where everybody ran, but it was not important enough for
22 you to mention who you thought was shooting at you on this
23 day. Because nowhere in this statement, sir, does it say
24 that you saw Dexter Brown shooting at you.

25 A. Sir, I ain't -- I'll be honest. I ain't even read

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1 this. I ain't even read it.

2 Q. Did you sign it?

3 A. I signed it. That's all I did. I ain't even read it.

4 Q. All right. Now, let's talk a little bit about T.

5 Okay? You picked T. up at Harry's?

6 A. That's all I know is T., picked him up.

7 Q. Okay. Where is T. now?

8 A. You tell me, I'll tell you.

9 Q. I don't know. He was in the car with you. He's never
10 been in my car to the best of my knowledge.

11 A. All he asked for was a ride as far as the Fork.

12 That's the name of a little club down the road from us.

13 Q. Okay.

14 A. So I ain't seen him no more after this incident, so I
15 don't know.

16 Q. Okay. But there was a third gentleman in the car?

17 A. Yes, sir.

18 Q. Named T.?

19 A. Yes, sir.

20 Q. Okay. All right. Did you have a gun on that day,

21 Mr. Benjamin?

22 A. No, sir.

23 Q. You didn't?

24 A. No, sir.

25 Q. Did you have time between this incident -- when this

ROGER BENJAMIN - REDIRECT

1 incident occurred to go back into the house and come back
2 out?

3 A. Yes.

4 Q. Before law enforcement arrived?

5 A. I went in the house. I was standing on the corner and
6 my grandmother and my niece and my great grandmother was
7 in there. I got to protect them.

8 Q. Understood. So, again, just to make sure. This
9 statement that you wrote, that you -- it has your
10 signature on it from the day of the event, parts of this
11 are true and parts of this are false. Is that correct?

12 A. Yes, sir.

13 Q. Okay. May I have a moment, Your Honor?

14 THE COURT: Sure.

15 (Pause.)

16 MR. McCARLEY: No further questions from the defense.
17 Thank you, Mr. Benjamin.

18 THE COURT: Anything on redirect?

19 MS. MAURICE: Yes, please, Your Honor.

20 THE COURT: Okay.

21 REDIRECT EXAMINATION

22 BY MS. MAURICE:

23 Q. Who wrote this statement for you?

24 A. Leslie Morrissey.

25 Q. Okay. Who -- do you know what officer was there when

ROGER BENJAMIN - REDIRECT

1 it was written?

2 A. John Trottie.

3 Q. Okay. Did you have an opportunity to talk to another
4 officer later on?

5 A. Him right there (pointing). When he got ready to do
6 the hand, the hand thing, see if we had gunpowder on our
7 hand.

8 Q. Okay. How about the following day?

9 A. I talked to him (pointing).

10 Q. Mr. Jeff Croft?

11 A. Yes, ma'am.

12 Q. Okay. When -- okay. Did you tell Mr. Croft
13 everything --

14 A. Yes, ma'am.

15 Q. -- when you met with him? Okay. And explain to us,
16 when did you hear the shooting or when did you see the
17 shooting start?

18 A. When I -- when we turned off in my grandmother yard,
19 gunshots went off.

20 Q. Okay. So was that -- you were still in the vehicle?

21 A. Yes, because we was -- we was on a high-speed chase
22 trying to get away from them. But I tried to make it to
23 my father's house but we ain't had -- they was gaining on
24 us so fast as far as we could make it was to my
25 grandmother's. That's the only reason why we turned in

ROGER BENJAMIN - RECROSS

1 there.

2 Q. Okay. And when you pulled in your grandmother's
3 house, did you see -- you saw the vehicle or you saw the
4 --

5 A. Baby blue Mercury.

6 Q. Okay. Who was in the vehicle?

7 A. Dexter and Kendrick.

8 Q. Okay. And what if anything else did you see?

9 A. What else?

10 Q. Uh-huh.

11 A. I saw Kendrick shooting. He was shooting out the
12 window, shooting a Uzi, a Mack, whatever -- a Mack with
13 two -- I heard it had two 80-round clips.

14 Q. Well, what did you see? What could you see?

15 A. I seen a machine gun hanging out the window. I
16 looked -- when I looked back, I hit another gear because I
17 was getting -- I was getting light.

18 MS. MAURICE: No further questions, Your Honor.

19 THE COURT: Anything on recross?

20 MR. MCCARLEY: Yes, please, sir.

21 THE COURT: Okay. Your witness.

22 RECROSS-EXAMINATION

23 BY MR. MCCARLEY:

24 Q. The solicitor just talked about a conversation, some
25 meetings you had with Investigator Croft, is that

ROGER BENJAMIN - RECROSS

1 correct? And you told her you were completely honest with
2 Mr. Croft?

3 A. Yes, sir.

4 Q. Okay. And you cooperated with him fully?

5 A. Yes, sir.

6 Q. And he works for the Barnwell County Sheriff's Office?

7 A. Yes, sir.

8 Q. Okay. And, did you cooperate and were you fully
9 honest with him because you have an outstanding charge
10 with them?

11 A. Outstanding charge?

12 Q. Yes. You have an open charge with the Barnwell County
13 Sheriff's Office. I'm wondering if that's the reason why
14 your statement is true and false yet you were completely
15 honest and cooperative --

16 A. What kind of charge?

17 Q. You have a receiving stolen goods charge that's open
18 with the Barnwell County Sheriff's Office. And my
19 question to you is, because earlier it was true and false
20 and now it's completely honest --

21 A. I paid \$500 for that charge.

22 Q. Sir, all I know is the information I have right here.

23 A. It's still -- what I mean on --

24 Q. These charges are open, sir. Now my question is --

25 MS. MAURICE: Objection, Your Honor. May we approach,

1 please?

2 THE COURT: Sure. Y'all come on up.

3 (Off-the-record discussion.)

4 THE COURT: Mr. McCarley.

5 BY MR. MCCARLEY:

6 Q. So are you hoping -- my question to you is: Are you
7 hoping -- because you have an open charge with Barnwell
8 County Sheriff's Office, are you hoping to get any benefit
9 or advantage by testifying here for the State here today?

10 A. I don't get what you're saying about an open charge.

11 Q. You have a charge that does not yet have --

12 MS. MAURICE: Objection, Your Honor.

13 UNIDENTIFIED SPEAKER: Two and a half years ago.

14 THE WITNESS: I pled guilty to that charge. I paid
15 you \$500. What you talking about, an open charge?

16 THE COURT: I understand the objection --

17 MR. MCCARLEY: No further questions.

18 THE COURT: Okay.

19 THE WITNESS: I paid for that.

20 THE COURT: Thank you, Mr. Benjamin. Okay. Any other
21 questions?

22 MR. MCCARLEY: No, Your Honor.

23 THE COURT: All right. Thank you. Yes, ma'am? Do
24 you have --

25 MS. MAURICE: Not for him, no.

LESLIE MORRISEY - DIRECT

1 THE COURT: Okay. You may step down. Thank you, sir.

2 MS. MAURICE: May I recall Officer Chavis just
3 regarding that last issue of, just the charge?

4 THE COURT: Y'all come on up here.

5 (Off-the-record discussion.)

6 THE COURT: Okay. Are you ready to call your next
7 witness?

8 MS. MAURICE: Yes, Your Honor. Ms. Leslie Morrissey.

9 LESLIE MORRISEY, having been duly sworn, was examined
10 and testified as follows:

11 THE CLERK: If you would, please, ma'am, be seated and
12 state your name for the record.

13 THE WITNESS: Leslie Morrissey.

14 DIRECT EXAMINATION

15 BY MS. MAURICE:

16 Q. Ms. Morrissey, where do you live?

17 A. [REDACTED]

18 Q. How far, about, is that from this incident location?

19 A. Not quite a mile.

20 Q. Okay. And, I'm going to show you what's been marked
21 as State's Exhibit 18, 19 -- I think there's one more --
22 17, and 16. Do you recognize those?

23 A. Yes.

24 Q. Okay. Do you know whose vehicles that is?

25 A. Mine.

LESLIE MORRISEY - DIRECT

1 Q. Okay. And --

2 THE COURT: Which one are you referring to? Number 18
3 or 20?

4 MS. MAURICE: It's 19. State's Exhibit 19 and State's
5 Exhibit 18, Your Honor.

6 THE COURT: Okay. That's your vehicle?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay.

9 BY MS. MAURICE:

10 Q. And, Your Honor, a better, actually, picture of the
11 whole vehicle is State's Exhibit Number 20. Is that your
12 vehicle?

13 A. Yes.

14 Q. It's -- just another thing. Okay. Were you in that
15 vehicle when this occurred?

16 A. Not when this occurred, no.

17 Q. Okay. Who was driving the vehicle?

18 A. My son.

19 Q. Or who did you let drive it?

20 A. My son, Brandon.

21 Q. And tell us how Brandon ended up getting your car.

22 A. I had came to Barnwell, went to the Dollar Store and I
23 left a bag with bleach and stuff in it. And when I got
24 home I realized I left the bag and I asked him to go back
25 to the store, back to Barnwell to pick the bag up from the

LESLIE MORRISEY - DIRECT

1 store.

2 Q. Okay. Was anybody with him when he left your house in
3 your car?

4 A. When he left, I think, yeah, Roger was with him. And
5 my grandson was about to get in the truck but I told him
6 not to.

7 Q. How old is your grandson?

8 A. Ten.

9 Q. Could you tell us what kind of damage was done to your
10 vehicle?

11 A. The back passenger side, back passenger side glass had
12 a bullet hole in it. It shattered the glass. Both my
13 tires on the right side were flattened. There's a bullet
14 hole in the back bumper which is right here.

15 Q. Okay.

16 A. The headrest had a bullet hole in it.

17 And that was it -- oh. And the front end. Whenever
18 they pulled into the -- I guess they kind of went into the
19 driveway fast or whatever, and they ran up on, I don't
20 know, I don't know if it's like a hill or something that
21 goes in the driveway, and they messed up the front end on
22 my truck.

23 Q. Your car was pretty messed up?

24 A. Yeah. Pretty much.

25 Q. Okay. Ms. Morrisey, and I'm not pronouncing that

LESLIE MORRISEY - CROSS

1 right. I'm sorry.

2 A. Morrisey.

3 Q. Morrisey. Do you know where Brandon is today?

4 A. Yes.

5 Q. Could you tell us?

6 A. He's incarcerated in North Carolina.

7 Q. Okay. Would you please answer any questions that
8 Mr. McCarley has?

9 A. Yes.

10 THE COURT: Mr. McCarley, your witness.

11 MR. MCCARLEY: Thank you, sir.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. MCCARLEY:

15 Q. Ms. Morrisey, first of all, I apologize this happened
16 to your vehicle. Okay.

17 Your son's in prison on a weapons charge. Is that
18 correct?

19 A. Violation of probation and I'm not sure what the other
20 charge is.

21 Q. Possession a firearm by a felon.

22 A. Okay.

23 Q. Is that correct?

24 A. I guess. I'm not sure because he lives in North
25 Carolina. He was here visiting, so, okay. So, he's

GLENDIA WILLIAMS - DIRECT

1 grown. I don't know.

2 Q. Okay. On October 15th, the day in question, did you
3 ever see Dexter Brown with a gun?

4 A. No. Huh-uh.

5 Q. Did you ever see Dexter Brown shoot a gun?

6 A. No. Huh-uh.

7 MR. MCCARLEY: No further questions, Your Honor.

8 THE COURT: Anything on redirect?

9 MS. MAURICE: No, Your Honor.

10 THE COURT: Thank you, ma'am. I appreciate it. You
11 may step down. You can push that up if you want to.

12 Thank you, ma'am. All right.

13 Do you want to call your next witness?

14 MS. MAURICE: May she be excused? Did you want to
15 leave?

16 THE WITNESS: Yes.

17 THE COURT: Any objection to her being excused?

18 MR. MCCARLEY: No, sir.

19 THE COURT: You are excused. Thank you, ma'am. I
20 appreciate you coming.

21 MS. MAURICE: Ms. Glenda Williams.

22 GLENDIA WILLIAMS, having been duly sworn, was examined
23 and testified as follows:

24 THE CLERK: If you would, please, ma'am, be seated and
25 state your name for the record. Okay?

GLEND A WILLIAMS - DIRECT

1 THE WITNESS: I'm Glenda Williams.

2 DIRECT EXAMINATION

3 BY MS. MAURICE:

4 Q. Ms. Williams, where do you live?

5 A.

6 Q. About how far from the incident scene is that?

7 A. Probably two blocks.

8 Q. Okay. I'm going to show you what's been marked as
9 State's Exhibit Four. Can you identify what that is?

10 A. Yes.

11 Q. And what is it?

12 A. This is my neighbor's house.

13 Q. Okay. And on State's Exhibit Number Five, what is in
14 that photo?

15 A. This is my family store that -- this is where I was
16 working during, during the time that the incident
17 occurred.

18 Q. Okay. And next to the -- show us which one is the --
19 come up here for a moment if that's okay with the Judge.

20 THE COURT: You may step down.

21 THE WITNESS: (Complying.)

22 BY MS. MAURICE:

23 Q. Okay. Where is the family store?

24 A. It's right here.

25 Q. And where is your home?

GLENDIA WILLIAMS - CROSS

1 A. It's back here behind the store actually.

2 Q. Okay. All right. Have a seat.

3 A. (Complying.)

4 Q. Were you home on the day of this incident?

5 A. I was working at the store.

6 Q. Okay. And, did you hear or see anything?

7 A. I heard a lot of shots being fired.

8 Q. Okay. And what did you do?

9 A. At the time, you know, when I first heard them I
10 didn't, you know, pay them any attention. But then they
11 start coming more and more so and I took a peek out the
12 door. Then I realized that someone was shooting.

13 So I closed the big door and locked it.

14 Q. Okay. Did you see anything?

15 A. No, I did not.

16 Q. You didn't see the vehicle?

17 A. No.

18 Q. And who else was in the store with you?

19 A. No one at the time.

20 MS. MAURICE: Okay. Ms. Williams, will you answer any
21 questions that Mr. McCarley might have?

22 THE COURT: Mr. McCarley, your witness.

23 MR. MCCARLEY: Thank you, sir.

24 CROSS-EXAMINATION

25 BY MR. MCCARLEY:

JEFF CROFT - DIRECT

1 Q. Ms. Williams, how are you doing?

2 A. Fine.

3 Q. Again, I apologize that this occurred in your
4 neighborhood where you live and where you work.

5 Just a couple short questions. This gentleman, Dexter
6 Brown, okay, did you see him --

7 A. No.

8 Q. -- with a gun on October 15th?

9 A. No, I did not.

10 Q. Did you see him shooting a gun on October 15th?

11 A. No, I did not.

12 MR. MCCARLEY: We have no further questions for this
13 witness, Your Honor.

14 THE COURT: Anything on redirect? Wait. I know
15 you're anxious, but let me ask her if she's got any
16 questions on redirect. Okay.

17 MS. MAURICE: No, Your Honor. May she be excused?

18 THE COURT: Any objection to her being excused?

19 MR. MCCARLEY: No, sir.

20 THE COURT: Ms. Williams, you are excused. Thank you,
21 ma'am.

22 THE WITNESS: Uh-huh.

23 MS. MAURICE: Next witness, Your Honor, is Mr. Jeff
24 Croft.

25 JEFF CROFT, having been duly sworn, was examined and

JEFF CROFT - DIRECT

1 testified as follows:

2 THE CLERK: Please state your name for the record.

3 THE WITNESS: Jeff Croft.

4 THE COURT: Your witness, Ms. Maurice.

5 DIRECT EXAMINATION

6 BY MS. MAURICE:

7 Q. Investigator Croft, where do you work?

8 A. I work for the Barnwell County Sheriff's Office.

9 Q. How long have you worked for them?

10 A. Since 2003.

11 Q. Did you work in law enforcement prior to that time?

12 A. No, ma'am.

13 Q. Okay. What did you do prior to that time?

14 A. I owned my own company.

15 Q. I'm being nosey. How did you get involved with the
16 incident on October 15th, 2010?

17 A. The call came out as shots fired in the area of
18 Patterson Mill Road. Several officers were responding to
19 that location. The call was put out as a code three
20 call. I think it was a code three call.

21 Q. What does that mean?

22 A. Which is lights and siren. Emergency call.

23 Q. Okay.

24 A. While en route to the location, I was contacted by
25 some officers who were already on the scene, specifically

JEFF CROFT - DIRECT

1 Sheriff Ed Carroll, and turned around to go back to our
2 office to secure our dog truck.

3 Q. Why? Why would you go to get the dogs?

4 A. Initial information was coming in pretty fast. There
5 was a lot of radio communication. And it was thought that
6 one of the suspects or a suspect may be on foot.

7 And I was turning around to get our dog wagon with our
8 dogs, our tracking dogs to start the track as soon as we
9 got there.

10 Q. Did you ever end up using the dogs?

11 A. Prior to my making it -- well, I made it back to our
12 office. I did secure our dog truck. I secured two
13 bloodhounds in the dog truck.

14 And while en route back to the incident location, I
15 was contacted with the information as to who the suspects
16 were in the incident and the vehicle they possibly were
17 driving in.

18 At that time I staged my -- well, staged the dog truck
19 at the corner of Patterson Mill Road and Highway 64 in
20 order to -- that was the last known direction of travel,
21 was in my direction.

22 Q. So at that time, were you looking for anyone on foot?

23 A. No, we weren't.

24 Q. And what were you looking for? What was the
25 description of the vehicle?

JEFF CROFT - DIRECT

1 A. At that time it was put out as a light blue, baby blue
2 Ford, unknown make or model at that time. We just knew it
3 was an older model, light-blue Ford.

4 Q. Okay. And tell us what happened after that.

5 A. I staged at that location for a period of time which
6 would have allowed -- if the driver of the suspect vehicle
7 would have been coming in my direction, they would have
8 made it to me.

9 The scene was secure. I was notified that the scene
10 was being taken care of by Investigator Chavis as far as
11 the processing of the scene.

12 So I began to patrol in the dog truck in the known
13 areas where the two individuals who I was given their
14 names, where they frequented.

15 Q. So who were you looking for?

16 A. I was looking for Dexter and Kendrick Jacobs.

17 Q. And then what happened? What were you looking for, I
18 mean --

19 A. While patrolling some known locations where the two
20 young men frequent, I was on Clinton Street headed toward
21 Jackson Street. And I met a white-in-color Ford which I
22 do know belongs to Dexter Brown.

23 I could not see who was driving the vehicle. This was
24 a short while after the incident had taken place. I
25 immediately turned around on the white Ford vehicle, was

JEFF CROFT - DIRECT

1 able to get the tag information from the vehicle to verify
2 that it was indeed the vehicle that I thought it was.

3 Called it into central dispatch, advised the other
4 officers that I was behind Dexter Brown's white-in-color
5 vehicle, and would be initiating a traffic stop as soon as
6 I had backup available.

7 I couldn't see into the vehicle as far as who was in
8 the vehicle or who was driving. So I initiated a traffic
9 stop when my backup got closer. It was in the area of the
10 old Shuron Plant on Clinton Street.

11 I activated the blue lights on the dog wagon. The
12 driver immediately pulled over.

13 I approached from the driver's side, clearing the back
14 seat as I approached to make sure that there was no one
15 laying down in the vehicle or trying to hide in the
16 vehicle.

17 When I got to the driver's side, I could see that it
18 was a female driver. I asked for her identification and
19 she did give it to me.

20 Q. Okay. And who was she, according to the
21 identification?

22 A. Ms. Ingram. I apologize. I can't say her first name,
23 but it's Ms. Ingram and it was Dexter Brown's girlfriend.

24 Q. And what if anything happened next?

25 A. I spoke with Ms. Ingram at the traffic stop. I did

JEFF CROFT - DIRECT

1 ask, trying to find, if she had seen or spoken with Dexter
2 or Kendrick. She did.

3 MR. MCCARLEY: Objection.

4 BY MS. MAURICE:

5 Q. Were you able to get a phone number?

6 A. From the investigation on the side of the road with
7 Ms. Ingram, I was able to acquire a phone number for
8 Mr. Brown and Mr. Jacobs.

9 Q. Did you call that number?

10 A. I did call the number that she identified as being the
11 one for Mr. Brown.

12 Q. Okay. And when you called it, what happened?

13 A. When I dialed the number Mr. Kendrick Jacobs answered
14 the telephone. I asked for Mr. Brown and he said he
15 wasn't there.

16 MR. MCCARLEY: Objection.

17 THE COURT: Okay.

18 MR. MCCARLEY: Hearsay. No way to tell who was on the
19 other end of that phone, Your Honor.

20 THE COURT: Okay. I'll sustain the objection. The
21 jury is directed to disregard the testimony about who
22 answered the phone and like that. Okay.

23 Thank you.

24 BY MS. MAURICE:

25 Q. As a part of your investigation, did you learn who

JEFF CROFT - DIRECT

1 owned the vehicle that had been described in the incident?

2 A. Yes, ma'am. As a result of the traffic stop on
3 Mr. Brown's vehicle and speaking with Ms. Ingram, she
4 advised me that she --

5 MR. MCCARLEY: Objection. Hearsay.

6 THE COURT: Sustained.

7 THE WITNESS: Through investigation from the traffic
8 stop, I learned that Mr. Brown was in a light blue Mercury
9 Grand Marquis.

10 BY MS. MAURICE:

11 Q. Whose car was the Grand Marquis?

12 A. Belonging to Mr. John Ingram. I contacted central
13 dispatch, gave them this information and asked them to
14 please scan Mr. Ingram and see if he indeed had a blue
15 Grand Marquis registered to himself.

16 Central dispatch ran Mr. Ingram's information and came
17 back and I think it was a 1992 Ford Grand Marquis which
18 was described, or I learned in the investigation.

19 Q. Okay. As a part of the investigation, did you have an
20 opportunity to interview witnesses?

21 A. Yes, ma'am. I did.

22 Q. And who did you interview?

23 A. I interviewed Mr. Benjamin. I interviewed --

24 Q. And -- okay. You interviewed Mr. Benjamin?

25 A. Mr. Roger Benjamin. I interviewed Ms. Alice Thompson.

JEFF CROFT - DIRECT

1 Q. Now who is Ms. Alice Thompson?

2 A. Ms. Alice Thompson is, she lives at

3 And this is the location where the incident
4 took place.

5 Q. Okay. And I'm going to show you what's been marked as
6 State's Exhibit Number One. Is that the home you're
7 referring to?

8 A. Yes, ma'am. This is the residence located at

9

10 Q. And when you went to interview Ms. Thompson, who else
11 lived there?

12 A. I think Ms. Thompson's mother, elderly mother lives
13 there with her. And there's a young child that stays
14 there a good portion of the time.

15 Q. And you interviewed Ms. Thompson?

16 A. Yes, ma'am. I did.

17 Q. And were -- was -- were you able to -- or, what
18 information were you able to learn from that interview?

19 MR. MCCARLEY: Objection. Hearsay.

20 MS. MAURICE: Tell us who else you spoke to.

21 THE COURT: Rephrase the question. Thank you, ma'am.

22 BY MS. MAURICE:

23 Q. Tell us who you spoke with.

24 A. I spoke with Ms. Alice Thompson.

25 Q. Okay. And did she see anything?

JEFF CROFT - DIRECT

1 MR. MCCARLEY: Objection. Hearsay.

2 THE COURT: Sustained.

3 BY MS. MAURICE:

4 Q. Who else did you speak with?

5 A. At that time at that residence just Ms. Alice
6 Thompson.

7 Q. Okay. Did you talk to any other witnesses?

8 A. I did.

9 Q. Who else?

10 A. Roger Benjamin.

11 Q. Okay. Did you speak with anyone else?

12 A. Not at that time.

13 Q. As a part of the investigation through those days,
14 that was it?

15 A. Initially. Yes, ma'am.

16 Q. Okay. Were you able to locate Mr. Dexter Brown?

17 A. Not the day of the incident, no, ma'am, but I was able
18 to locate Mr. Brown a couple days later.

19 Q. And how did you locate Mr. Brown?

20 A. I continued my investigation into the incident.

21 Doing investigative work you have a lot of street work
22 that has to be done. I began to get anonymous calls,
23 anonymous tips.

24 I did receive call on Sunday, the 18th, I think it is.

25 Q. Of October?

JEFF CROFT - DIRECT

1 A. Yes, ma'am. October the 18th.

2 Q. And --

3 A. And was given some information.

4 MR. MCCARLEY: Objection. Hearsay.

5 THE COURT: Overrule the objection.

6 MR. MCCARLEY: Yes, sir.

7 THE COURT: Thank you.

8 THE WITNESS: I was given some information which led
9 to further investigation and some follow-up corroboration
10 of information that I was given.

11 The information given, the caller described a truck --

12 MR. MCCARLEY: Objection. Hearsay.

13 THE COURT: We'll sustain that.

14 BY MS. MAURICE:

15 Q. Were you able to get a location that you did a
16 stakeout I guess is what it was called?

17 A. With the information I received I had to corroborate
18 the information --

19 Q. Okay.

20 A. -- that I was given. I did go to the location that
21 was given, and I was looking for certain things.

22 Q. And did you see what you were looking for?

23 A. I did see exactly what I was looking for.

24 Q. And what was that?

25 A. I saw a black-in-color Chevrolet truck pull in to

JEFF CROFT - DIRECT

1 apartment complex known as Woodmont Apartments. I
2 observed the vehicle pull into the exact location that was
3 described.

4 I did verify that it was being driven by a black
5 male. Once I was able to see which apartment this truck
6 actually went to, I contacted First Sergeant Sanders and
7 advised him of this information and told him that I was
8 going to ride by this location in order to observe for
9 myself from the front of the location.

10 I moved from where I was sitting. I went around the
11 block. And I drive a blue Explorer.

12 I went in front of the apartment located on the corner
13 of Travis and Bomway Street. It's known as the Woodmont
14 Apartment Area. This is the same area that the truck
15 pulled into.

16 When I went by there was several individuals standing
17 on the front porch and one which I believed to be, at that
18 time, Mr. Dexter Brown.

19 Rather than pulling in, for officer safety standpoint,
20 I did go down far enough that I could still see the
21 residence, both doors, and turned my vehicle around while
22 I was on the phone with First Sergeant Sanders and asking
23 him to, you know, come to my location.

24 Q. Okay. And did he come to your location?

25 A. He did.

JEFF CROFT - DIRECT

1 Q. Okay. And what did y'all do then or what did you do?

2 A. Once First Sergeant Sanders was pulling into the yard,
3 I also pulled into the front yard. First Sergeant Sanders
4 pulled in kind of to the side of the apartment to where he
5 could see the back door.

6 I approached the front door and made contact with a
7 black male who said that he lived at that --

8 MR. MCCARLEY: Objection. Hearsay.

9 THE COURT: I'm going to overrule that. Go ahead.

10 MR. MCCARLEY: Yes, sir.

11 THE COURT: Thank you.

12 THE WITNESS: I made contact with a black male who
13 said that he lived at this location. I asked him if
14 Dexter was there. He said he thought he ran out the back
15 door.

16 I advised him that I did see a person who I thought to
17 be Dexter Brown standing on the porch as I went by and he
18 entered the residence. I could see the back door from
19 where I was parked and no one had exited the back door.

20 There was three individuals at the back door but none
21 was Dexter Brown.

22 I did ask the young man to come out and speak with
23 me. I explained to the young man what was going on. And
24 he said, you're welcome to come in and take a look. When
25 I went through the front door, there was several people in

JEFF CROFT - DIRECT

1 the living room area. And I had only asked the young man
2 about Dexter.

3 The young man was escort -- well, we went through the
4 front door. The young man's mother who owned the place
5 also said, you know, you can look. I entered the front
6 door with the young man escorting me through his
7 residence.

8 When I went to go by the kitchen which is to the
9 right, I looked in the kitchen and I saw a person which I
10 identified as Kendrick Jacobs. I was by myself in the
11 house. There was a lot of people in the house. I backed
12 up one step, pointed to the young man to verify that that
13 was who it was because he was sitting with his back to me
14 and he did have a hat on.

15 The young man said, yes, you didn't ask me about
16 Kendrick. I walked into the kitchen. I asked Kendrick to
17 show me his hands, put them behind his back. I handcuffed
18 him and escorted him as I walked backwards out of the
19 residence.

20 BY MS. MAURICE:

21 Q. What did you do with Kendrick?

22 A. Kendrick was given to First Sergeant Sanders who was
23 standing in the yard to take custody of him or control of
24 him.

25 Q. Is it still just the two officers?

JEFF CROFT - DIRECT

1 A. It is still just the two officers and there is a
2 number of people here.

3 Q. Okay.

4 A. I then re-entered the residence, checked the kitchen
5 again. We went down a small hallway. There's a
6 bathroom.

7 The young man reached in, flipped the bathroom light
8 on. I was able to clear the bathroom without actually
9 going in.

10 We got to a bedroom and the young man did not -- he
11 opened the door but he didn't flip the light on. I
12 requested that he turn the light on. He said, well -- so,
13 we ended up turning the light on. As I pushed the bedroom
14 door further open I could see the closet which was cracked
15 a few inches, enough that -- it was cracked a few inches.

16 I did enter cautiously to the bedroom. When I
17 approached the closet door, I reached my hand up in order
18 to get the door or secure the door should it try to fly
19 open.

20 At that time the door did come forward. I allowed the
21 momentum of the door to come on open. Mr. Brown was
22 located in the closet. I advised him to turn around,
23 place his hands behind his back.

24 I only had one set of cuffs which were on Mr. Jacobs.
25 So I was in this residence by myself with Mr. Brown and

JEFF CROFT - DIRECT

1 everybody else that was in there. For officer safety, I
2 did exit the residence rather rapidly.

3 I had Mr. Brown's hands behind his back in an escort
4 position or a way that I could try to control him. When
5 we made it outside, he was not handcuffed.

6 Q. At that time did he know he was under arrest --

7 A. Yes, he did.

8 Q. -- or was he under arrest?

9 A. Yes, he did. He was advised that he was under arrest.

10 Q. Okay. Keep going.

11 A. When we exited into the front yard there was a number
12 of people out there. Mr. Brown made a motion as to try to
13 break away.

14 At that time I advised him that I was going to carry
15 him to the ground, he was under arrest, you know, please
16 don't resist. He no longer resisted. We were able to
17 handcuff him and we placed him in First Sergeant Sanders'
18 car.

19 Q. Okay. During the whole time of this investigation and
20 up till now, have you ever recovered any guns to your
21 knowledge that were involved in this incident?

22 A. We have not recovered the weapons. No, ma'am.

23 MS. MAURICE: Give me just one moment, please, Your
24 Honor.

25 THE COURT: Take your time.

JEFF CROFT - CROSS

1 (Pause.)

2 MS. MAURICE: Would you please answer any questions
3 that Mr. McCarley has?

4 THE COURT: Mr. McCarley, your witness.

5 MR. MCCARLEY: Thank you, sir.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. MCCARLEY:

9 Q. Investigator Croft, how are you doing?

10 A. Doing fine, sir.

11 Q. Good, good.

12 Just to clear up sort of a loose end from earlier.

13 Are there gunshot residue kits at Barnwell County
14 Sheriff's Office?

15 A. Yes, we keep gunshot residue kits at the sheriff's
16 office.

17 Q. And about how far is that from the scene of this
18 incident?

19 A. It's 7.3 miles down Patterson Mill Road and from there
20 it's a couple miles to our office.

21 Q. Understood. Understood. I appreciate it.

22 And when, when did you arrive on the scene? There was
23 a lot of back and forth about going to get dogs and
24 whatnot. I just want to make sure.

25 A. I never went to the scene. I was advised --

JEFF CROFT - CROSS

1 Q. So you never saw Dexter Brown at the scene?

2 A. I never made it to the scene. No, sir.

3 Q. Now, there was also a lot of conversation about a car,
4 a light blue Mercury or Ford of some sort. And I
5 understand that your agency did find that car. Is that
6 correct?

7 A. There was -- there was a lot of communication
8 regarding a light blue Ford or Mercury, in the initial.

9 Q. Yes, sir. And did you all find that? Did law
10 enforcement find that car?

11 A. We were contacted -- I think it was on Sunday morning
12 following the incident. The incident occurred on Friday.
13 Early hours of Sunday morning -- and advised that the car
14 was back in the owner's yard, Mr. John Ingram, I think was
15 his name.

16 Q. And did you all go take a look at that car?

17 A. Officers did go take a look at that car, had --

18 Q. Did they search that vehicle?

19 MS. MAURICE: Objection, Your Honor, I'm not sure of
20 what Mr. Croft actually knows --

21 THE COURT: Well --

22 MS. MAURICE: -- about the vehicle.

23 THE COURT: Do you know whether they searched it or
24 not?

25 THE WITNESS: I can answer it, but I can't answer it

JEFF CROFT - CROSS

1 with a yes or a no.

2 BY MR. MCCARLEY:

3 Q. Okay. Go ahead. Go. Do you want me ask it again?

4 Did they search the car?

5 A. The officers on the scene contacted me immediately
6 upon them saying that the car had been reported back in
7 Mr. John's yard, Mr. John Ingram's yard on Red Oak Road.

8 The officer called me back and stated on the phone
9 that, Jeff, the car has been cleaned out. There's
10 ~~apparent~~ apparently vacuum marks. You can see where it's --
11 it's -- it appears noticeably been cleaned out. There's
12 absolutely no reason for you to come out here.

13 Q. So when you say the car was clean, there's no evidence
14 whatsoever that anything was shot from that vehicle in any
15 form or fashion?

16 A. The only evidence that they could observe which was
17 relayed to me is that it apparently had vacuum marks on
18 the floor and carpet, seats.

19 Q. Vacuuming your car is evidence of shooting out of it?

20 A. That's the -- I said, that's the only evidence that
21 they could relay to me that they saw; that it had been
22 cleaned up and there was no need for me to come out and
23 process the car.

24 Q. Understood. Moving on. I also understand that a
25 search warrant was executed for the house of Dexter

JEFF CROFT - CROSS

1 Brown's father?

2 A. That is correct.

3 Q. And was there any evidence, any physical evidence
4 ~~whatsoever~~ found in that home that would possibly link
5 ~~Dexter~~ Brown to this shooting in any form or fashion?

6 A. The weapons were not recovered if that's what you're
7 asking.

8 Q. Okay. Was anything found at the home that would link
9 this to Dexter where you searched his father's home where
10 you believed that he spent time and was anything
11 recovered?

12 You mentioned guns. There's never been a gun
13 mentioned by anybody. Nobody's seen a gun in this entire
14 thing. Was there anything there?

15 A. There was evidence that Dexter Brown did indeed live
16 there. His identification was recovered there. There was
17 weapons found there but not the weapons that we were
18 looking for involved in the shooting.

19 Q. Understood.

20 A. And ...

21 Q. Okay. Let's talk a little bit about your
22 investigation into the crime as a whole. There's been
23 some back and forth as to, concerning Mr. Benjamin's
24 testimony as to who was in the vehicle.

25 As an investigator, how many people do you believe

JEFF CROFT - REDIRECT

1 were in the vehicle?

2 A. From my investigation, I can only place two people in
3 the vehicle. I have not been able to identify this person
4 who is named T., and no one else has been able to locate
5 or identify other than -- an individual named T.

6 Through my investigation I can only place two victims
7 in the car. I can't place the third one in there.

8 Q. Understood.

9 May I have a moment, sir?

10 THE COURT: Sure.

11 (Pause.)

12 MR. MCCARLEY: No further questions for Investigator
13 Croft. Thank you, sir.

14 THE COURT: Anything on redirect?

15 MS. MAURICE: Yes, Your Honor. Just a few things.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MS. MAURICE:

19 Q. How long after the incident was the search warrant?

20 A. It was quite a few months. I would actually have to
21 look at the date to tell you. It was quite awhile.

22 Q. Okay. And where did you say the vehicle, the blue
23 vehicle was found?

24 A. Mr. Ingram's residence. I think it's located on Red
25 Oak Road.

1 Q. Did you ever have an opportunity to speak with
2 Mr. Ingram?

3 A. I never spoke with Mr. Ingram.

4 Q. All right. You just know that that's the owner of the
5 vehicle?

6 A. Through our central dispatch who ran Mr. Ingram's
7 name, was able to give us the 28 information, which is the
8 tag information, compare it to the VIN on the vehicle. It
9 belongs to Mr. Ingram and his daughter drives the car
10 which is Ms. Ingram, Dexter's girlfriend.

11 Q. Mr. McCarley asked this. You testified that it had
12 been -- you didn't process it and it had been vacuumed
13 out.

14 Did they say anything about it, the outside of the
15 vehicle?

16 A. The entire car appeared clean.

17 Q. Okay.

18 A. As it was -- it was cleaned. It was located two days
19 after the incident location or after the incident occurred
20 and it appeared to the officer --

21 Q. No damage?

22 A. -- no damage. It was clean.

23 MS. MAURICE: Okay. No further questions, Your Honor.

24 THE COURT: Anything on recross?

25 MR. MCCARLEY: No, sir.

1 THE COURT: All right. Thank you, Mr. Croft. You may
2 step down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Yes, sir.

5 MS. MAURICE: May we approach, Your Honor?

6 THE COURT: Sure.

7 (Off-the-record discussion.)

8 THE COURT: Ladies and gentlemen, you remember how at
9 the very first I told you we were going to have these
10 meetings sometimes where we'd talk about things that y'all
11 didn't need to know about because we'd be talking about
12 the facts?

13 The fact I was talking about was we might stop early
14 today. Hope y'all don't mind. We're going to let y'all
15 go home. Be back here at -- what time do you want them to
16 be back?

17 THE CLERK: 9:30 suit you?

18 THE COURT: Y'all be back at 9:30 in the morning.

19 Okay. Now, you haven't heard all the evidence in this
20 case. Okay.

21 What have I been saying over and over? You can't talk
22 about it among yourselves. When you go home tonight you
23 can't talk to your family and friends about, guess what
24 they said today, guess what I heard, all of that kind of
25 stuff.

1 You cannot talk about this case at all. If somebody
2 asks, say you're a juror on a trial and you can talk about
3 it all tomorrow when you get back home but you can't talk
4 about it today.

5 Okay. Now, again, I don't think there's going to
6 anything on the TV about it. I don't think there's going
7 to be anything on the news. I don't think there's going
8 to be anything on the Internet.

9 If you see or hear somebody talking about this case,
10 don't listen to it, don't watch it, don't read it. Okay?

11 Don't do any investigation. All the evidence you need
12 to decide this case you're going to hear right here from
13 this witness stand.

14 Now you get to go home a little early. Have a good
15 evening. Get a good supper, get a good rest because
16 tomorrow will probably be the end of the case. Y'all need
17 to be fresh. Okay. All right.

18 Go home. Have a good evening. Okay.

19 (Jury exits courtroom at 4:57 p.m.)

20 END OF DAY'S PROCEEDINGS: 4:58 P.M.

21 * * * * *

22

23

24

25

ALICE THOMPSON - DIRECT

1 ON THURSDAY, MAY 12, 2011 AT 10:10 A.M.:

2 THE COURT: Anything from the State before we get
3 started?

4 MS. MAURICE: No, Your Honor.

5 THE COURT: Okay. Anything from the defense before we
6 get started?

7 MR. MCCARLEY: No, sir.

8 THE COURT: Go ahead and bring the jury on in. Thank
9 you.

10 (Jury enters courtroom at 10:10 a.m.)

11 THE COURT: Good morning, ladies and gentlemen. I
12 hope y'all had a good evening and you got some rest and
13 ready to get started this morning.

14 I want to make sure that nobody read anything in
15 newspaper, saw anything on TV, went on the Internet,
16 Googled anything, rode by the scene, had anybody contact
17 you or anything like that. Nothing's happened? All
18 right.

19 Then we're ready to get started again. Thank you.
20 All right.

21 Ms. Maurice, call your next witness.

22 MS. MAURICE: Thank you, Your Honor. The State calls
23 Ms. Alice Thompson.

24 THE COURT: Okay.

25 ALICE THOMPSON, having been duly sworn, was examined

ALICE THOMPSON - DIRECT

1 and testified as follows:

2 THE CLERK: Please be seated. State your name for the
3 record.

4 THE WITNESS: Alice Thompson.

5 DIRECT EXAMINATION

6 BY MS. MAURICE:

7 Q. Good morning.

8 A. Good morning.

9 Q. Could you tell us where you live?

10 A. Barnwell.

11 Q. Who lives with you?

12 A. My mother. My --

13 Q. How old is your mama?

14 A. Eighty-seven.

15 Q. Okay.

16 A. My little great-granddaughter, she's seven years old,
17 and my grandson, he's 21.

18 Q. And who's your grandson?

19 A. Roger Benjamin.

20 Q. Okay. And please describe to the jury what happened
21 on October 15th. And start from the beginning and walk us
22 through.

23 A. Me and my little granddaughter was watching TV, she
24 loves to look at cartoons. And I heard something, I
25 thought it was firecrackers, coming down the road. So I

ALICE THOMPSON - DIRECT

1 got up and went to the door and walked out on the porch
2 and the car come by shooting. Kendrick was sitting on, in
3 the window shooting over the top of the car all the way
4 down to Classy Mae's Store, and they turned around and
5 come back and they stopped right in my mother's driveway,
6 the side of the road and they just shot, they just shot.

7 And I come, I come on out on the porch and I said,
8 Dexter, I said, man, what y'all doing? And they just
9 shot.

10 If my little granddaughter -- she love to play right
11 there, if she'd a been out there that day, she wouldn't be
12 here.

13 Q. What did you do then?

14 A. Run back in the house and laid on top of ...

15 Q. How do you know Dexter Brown?

16 A. I used to keep him when his father was in prison.

17 That's how I know Dexter.

18 Q. And how well do you know him?

19 A. I know him good.

20 Q. And how --

21 A. Just like a son or a grandson.

22 Q. How close were you when you walked out on the porch to
23 where Dexter was shooting?

24 A. This is the door, I'd say about three feets --

25 Q. Okay.

ALICE THOMPSON - DIRECT

1 A. -- out on the porch, because my banister is not that
2 far.

3 MS. MAURICE: Is it okay if she steps down from the
4 witness stand?

5 THE COURT: Oh, yeah.

6 MS. MAURICE: This is State's Exhibit One.

7 THE COURT: Wait one second. Let the defense counsel
8 get over there so he can watch, if you don't mind.

9 MS. MAURICE: Okay.

10 THE COURT: Thank you, ma'am.

11 BY MS. MAURICE:

12 Q. Okay. Is this your home?

13 A. Yes, ma'am.

14 THE COURT: And that's exhibit? I'm sorry.

15 MS. MAURICE: One.

16 THE COURT: One. All right.

17 BY MS. MAURICE:

18 Q. Can you see where you were standing?

19 A. I was standing right here.

20 Q. Okay.

21 A. Come right here. On the side right here. When I come
22 out the door, when I came out, like, this is my porch
23 here. I come out just like this. And I'm looking right
24 at them, both of them.

25 Q. Okay. And how about this road?

ALICE THOMPSON - DIRECT

1 A. That's the road. That's the highway.

2 Q. Uh-huh.

3 A. And they stopped, when they turn in the driveway, they
4 stopped right in my driveway and shot the van up.

5 Q. Let me show you State's Exhibit Two. What is that?

6 A. That's the road.

7 Q. Yeah. Where is your home when you're facing that?

8 A. Right here.

9 Q. Okay. All right. And what is this?

10 A. That's the driveway.

11 Q. Okay. Is that the driveway you were just talking
12 about?

13 A. Yes, ma'am.

14 Q. Okay. All right.

15 A. That's it.

16 Q. Won't you sit back down, please?

17 A. (Complying.)

18 Q. Ms. Alice, could you see what they had in their hands?

19 A. Yes, ma'am. I saw the guns. They looked like, I'd
20 say, machine guns. Both of them had one.

21 Dexter was driving and he was shooting. And Kendrick
22 was sitting in the window over the roof shooting over the
23 top.

24 Q. Okay.

25 A. Both of them. Just like I'm looking at y'all, I'm

ALICE THOMPSON - DIRECT

1 looking at them.

2 Q. And is Dexter in the courtroom today?

3 A. Yes, ma'am. Right there.

4 Q. Can you identify him?

5 A. Right there, with the blue shirt on.

6 Q. Please let the record show that the witness did
7 identify Mr. Brown.

8 THE COURT: The record will note that Mr. Brown was
9 identified.

10 MS. MAURICE: Thank you.

11 BY MS. MAURICE:

12 Q. Could you describe the car?

13 A. It was light blue. I don't know the model of the car,
14 but it was light blue.

15 Q. Okay. All right. And after all of this happened,
16 what did you do?

17 A. It scared me. I ain't never seen nothing like that
18 before in real life, not like that.

19 Q. Who did you call?

20 A. I called the police, 9-1-1, because there's kids be
21 next door to me, my next-door neighbor. Only, the Lord
22 just put them where they wasn't there that day because
23 they'd be all out in the yard playing.

24 If they did, there'd a been a lot of dead peoples out
25 there. I put it that way.

ALICE THOMPSON - DIRECT

1 Q. Okay. Have you listened to the 9-1-1 tape?

2 A. Yes, ma'am.

3 Q. Did I play it for you?

4 A. Yes, ma'am.

5 Q. And can you say that was you that was on the 9-1-1
6 tape?

7 A. Yes, ma'am. That was me.

8 Q. And was it accurate?

9 A. Yes, ma'am.

10 Q. Okay. Your Honor?

11 THE COURT: Yes, ma'am.

12 MS. MAURICE: This is State's Exhibit Number 26. We
13 would like to introduce this into evidence, the 9-1-1
14 tape, and publish it to the jury.

15 THE COURT: Okay. All right.

16 MR. MCCARLEY: No objection from the defense, Your
17 Honor.

18 MS. MAURICE: All right.

19 THE COURT: Happy to do that. You've made
20 arrangements to do that?

21 MS. MAURICE: Yes, sir. It's -- actually we put it on
22 his hard drive so it wouldn't -- or would you rather have
23 it right from here?

24 MR. MCCARLEY: I've only listened to the CD. I
25 haven't listened to anything off the hard drive. May I

ALICE THOMPSON - DIRECT

1 object? I don't think it's the same one.

2 MR. BAMBERG: I just made a copy.

3 THE COURT: We can play -- you can play the disk.

4 You're capable of playing the disk?

5 MR. BAMBERG: Yes, sir.

6 THE COURT: You can do that?

7 MR. BAMBERG: Yes, sir.

8 MR. MCCARLEY: I apologize.

9 THE COURT: Better safe than sorry.

10 MS. MAURICE: That's right.

11 (Thereupon, the CD, State's Exhibit No. 26, was played
12 for the jury.)

13 BY MS. MAURICE:

14 Q. Ms. Alice, on the 9-1-1 tape in your testimony, you
15 say it's a burgundy van in your yard.

16 A. I tell you, I was so upset then I thought it was
17 burgundy or red. It was one of them.

18 Q. I'm going to show you a photo.

19 A. That's it.

20 Q. State's Exhibit 20.

21 A. That's the van.

22 Q. That's what you're calling the van?

23 A. Yes, ma'am.

24 Q. Okay. All right. Who did you see in the vehicle you
25 called the van?

ALICE THOMPSON - CROSS

1 A. All I saw was my grandson and Brandon. I didn't know
2 a third person was in the car. I didn't know that.

3 Q. Okay. And, you said they both came back to your
4 house?

5 A. Yes, ma'am. But Brandon come back a little before the
6 police come. He come and knocked on the door.

7 Q. How long did it take the police to get there?

8 A. Not long. They was there before I knowed it. I was
9 glad of that because I thought they might have come back.
10 I didn't know.

11 MS. MAURICE: Ms. Alice, will you please answer any
12 questions that Mr. McCarley has?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Mr. McCarley, your witness.

15 MR. MCCARLEY: Thank you, sir.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. MCCARLEY:

19 Q. Ms. Alice, how are you doing, ma'am?

20 A. Okay.

21 MR. MCCARLEY: May I borrow this, ma'am?

22 MS. MAURICE: Yes. Uh-huh.

23 BY MR. MCCARLEY:

24 Q. Do you need a moment or anything? Are you okay?

25 A. No, I'm okay.

ALICE THOMPSON - CROSS

1 Q. Ms. Thompson, you said that you helped raise Dexter;
2 is that correct?

3 A. Yes.

4 Q. Okay. Then why at the 30-second mark in the 9-1-1
5 tape did you have to ask what his last name was?

6 A. Because he went in Dexter Brown and it was another
7 name that he was using, so --

8 Q. Okay.

9 A. -- I really didn't, you know.

10 Q. I understand.

11 A. But he was a friend of my grandson and his father went
12 to prison, and he just took up with my grandson so I kept
13 him to my house.

14 Q. Okay. Also you said that you saw the car?

15 A. Uh-huh.

16 Q. It's your testimony with Ms. Maurice that you said
17 that you saw the car. But then at the one-minute mark in
18 the 9-1-1 tape you ask Roger Benjamin in the background
19 what type of car and what color the car was.

20 A. I don't know the make of all cars, you know. So I
21 didn't know so that's why I asked him that.

22 Q. Understood. But you asked the color as well?

23 A. I know what color it was. It was blue.

24 Q. In the 9-1-1 tape though you say that it's gray and
25 then you ask Roger Benjamin in the background.

ALICE THOMPSON - CROSS

1 A. It was blue.

2 Q. Okay. And the gentleman in the background who
3 answered when you asked what Dexter's last name was, was
4 that Roger Benjamin as well?

5 A. Uh-huh. My grandson.

6 Q. Okay. Now, let's talk a little bit about when you saw
7 the car driving by from your porch.

8 A. Uh-huh.

9 Q. If you were standing right there on your porch, it
10 would have been moving from this way towards --

11 A. It was coming from Barnwell way.

12 Q. Right.

13 A. Coming from Barnwell way.

14 Q. Okay.

15 A. And went to the store, did go around to the store and
16 they come back. They started shooting. They never
17 stopped shooting.

18 Q. Okay.

19 A. They was, started shooting and they stopped right
20 there in the driveway right to the highway. Right there
21 at my mama's driveway.

22 You turn in. If a car was coming, you couldn't have
23 turned in because they was there and they was shooting.

24 Q. And you testified that you, naturally, you were very,
25 very scared and very frightened; is that correct?

ALICE THOMPSON - CROSS

1 A. Yeah. I was scared, but wasn't scared enough not to
2 know that was Dexter and Kendrick.

3 Q. But you stayed on the porch the entire time the car
4 drove by, went two blocks --

5 A. To the store --

6 Q. -- U-turned --

7 A. -- and come back. It ain't took them long to go turn
8 around. As fast as they was driving, it ain't took them
9 long to turn around and come back.

10 Q. So they were driving very, very fast?

11 A. And I'm right there looking at them when they stopped
12 right there. And I come out and said, Dexter, what y'all
13 doing? I said, man, what is you doing? I'm standing on
14 the porch.

15 Q. When the car drove by you the very first time, you
16 were on your porch, that's as close you were to the
17 vehicle?

18 A. Yeah.

19 Q. Is that correct?

20 A. That's right.

21 Q. Okay. And if I'm driving a car, I'm on the left-hand
22 side. You're standing right there on the porch and
23 there's a passenger right here in the car?

24 A. Uh-huh. Uh-huh.

25 Q. And your porch, I think, is obviously not --

ALICE THOMPSON - CROSS

1 A. Not too close.

2 Q. So, the passenger in that car was shooting a gun as
3 well?

4 A. Yes.

5 Q. Is that correct?

6 A. Dexter was driving. And Kendrick was sitting up on
7 the, in the door on the glass with his gun over the top of
8 car.

9 Q. The passenger was doing that?

10 A. Yes.

11 Q. The person closest to you?

12 A. Yes.

13 Q. Okay. And you saw --

14 A. And the car turned around and come back, Dexter had
15 the same kind of gun that he had, and he was shooting.
16 They shot all the way.

17 Q. Okay. And you saw through the gentleman that was
18 standing up, sitting on the glass (verbatim)?

19 A. Yes, I saw him.

20 Q. That's what you saw? The gentleman on the passenger
21 side, you saw through that gentleman that was shooting the
22 gun to who was driving the car?

23 A. Yeah. Dexter was shooting, too. Both of them was
24 shooting.

25 Q. From the --

ALICE THOMPSON - CROSS

1 shooting.

2 Q. From the --

3 A. Both of them had the same gun.

4 Q. From the driver's side?

5 A. I'm looking at them. The same gun. I can't change
6 that. That's what I saw.

7 Q. Okay.

8 A. I saw it.

9 Q. All right. And you gave a statement to the police the
10 day after this occurred. Is that correct?

11 A. Uh-huh.

12 Q. You wrote a statement out?

13 A. Yes.

14 Q. Okay. And in that statement you talk about a number
15 of things but one of the things you talk about is how many
16 people were in the car with Roger Benjamin?

17 A. I didn't know but two.

18 Q. The red car?

19 A. That was my grandson and Brandon. Them are the only
20 two that I know was in the car.

21 Q. You didn't see --

22 A. I didn't know no third person. Because when you come
23 out there that day and he said, the third person, that's
24 when I know then about the third person. I didn't know a
25 third person was in car.

ALICE THOMPSON - REDIRECT

1 Q. You've never heard or seen T.?

2 A. I don't know nothing about no T.

3 Q. You say the name T. in the 9-1-1 tape, ma'am.

4 A. I didn't know nothing about T.

5 Q. You asked Roger Benjamin who the gentleman in the yard
6 is and he answers back that it's T.

7 A. Well, I didn't pay no attention to that.

8 Q. You didn't --

9 A. Because I was thinking about my grandson could have
10 got killed.

11 Q. I understand. And I'm sorry --

12 A. And my grand baby.

13 MR. MCCARLEY: I have no further questions at this
14 time.

15 THE COURT: Anything on redirect?

16 MR. MCCARLEY: Thank you, Ms. Thompson.

17 MS. MAURICE: Just something short, Your Honor.

18 THE COURT: Okay.

19 REDIRECT EXAMINATION

20 BY MS. MAURICE:

21 Q. The first time you saw the car, was it going towards
22 the store?

23 A. Yes, ma'am.

24 Q. Okay. And I believe you said it -- so it was that
25 way. What side was closest of the car to you? Who did

ALICE THOMPSON - REDIRECT

1 you see closest to you in the car?

2 A. When the car was going down?

3 Q. Uh-huh.

4 A. I saw Dexter and then I saw Kendrick.

5 Q. Okay.

6 A. Kendrick was on, he was sitting up on top, shooting up
7 there over the top of the car.

8 Q. Okay.

9 A. And Dexter was the driver.

10 Q. And then the car turns around?

11 A. Little Dexter, he had a gun, just like both of them
12 had the same gun, shooting. The same kind of gun both of
13 them had it, shooting out the window.

14 Q. And when the car turns around where's it --

15 A. It stopped right there at my mother driveway.

16 Q. Okay. All right. What color do you have on today?

17 A. Purple.

18 Q. And what other color?

19 A. White.

20 Q. Is it -- do you have some gray?

21 A. There's gray in there; gray, white.

22 Q. Is it kind of purple? Or is it kind of blue? Or you
23 say purple.

24 A. Purple.

25 MS. MAURICE: No further questions, Your Honor.

ALICE THOMPSON - RECROSS

1 THE COURT: Anything on recross?

2 MR. MCCARLEY: Please sir.

3 THE COURT: Yes, sir.

4 RECROSS-EXAMINATION

5 BY MR. MCCARLEY:

6 Q. Ms. Thompson, did you ever see them pointing the gun
7 at anyone while they were shooting?

8 A. The gun was pointing. I didn't see them pointing at
9 nobody but they was shooting, the gun was pointed so, hey,
10 I could've got hit when I was out there.

11 Q. Were they just shooting --

12 A. And when I said, Dexter, what y'all doing, that's when
13 they went on -- that's when I said, I'm going to call the
14 police. And I called the police. They took off and went
15 back up that way.

16 Q. Ma'am, once the red truck or van stopped --

17 A. It had turned --

18 Q. -- and everybody had --

19 A. It had turned --

20 THE COURT: Ms. Thompson, Ms. Thompson, you're
21 doing -- what I need to do is, let him finish the
22 question.

23 THE WITNESS: Okay.

24 THE COURT: And then once he finishes the question you
25 can answer it. Okay?

1 THE WITNESS: Okay.

2 THE COURT: It's hard for the court reporter to get
3 everything down when y'all are talking over each other.

4 THE WITNESS: All right.

5 THE COURT: So if you'll let him finish his questions.

6 MR. MCCARLEY: I apologize.

7 THE COURT: And then he'll give you time to finish
8 your answer and it will work out better for us all.

9 THE WITNESS: All right.

10 THE COURT: Thank you, ma'am.

11 BY MR. MCCARLEY:

12 Q. The van -- the red vehicle stopped in your yard --

13 A. Uh-huh.

14 Q. -- and both, two or three gentlemen exited the vehicle
15 and ran. At that point, the people that were in the blue
16 car stopped and shot at just the red truck?

17 A. That's right.

18 Q. Okay. No further questions.

19 THE COURT: Thank you, sir. All right. Thank you,
20 ma'am.

21 THE WITNESS: Thank you.

22 THE COURT: Ms. Maurice, call your next witness.

23 MS. MAURICE: Your Honor, at this time the State
24 rests.

25 THE COURT: Okay. All right.

1 Ladies and gentlemen, you have heard the State's case
2 now. We're going to take a break. We've got some matters
3 I've got to take up with the lawyers. Then we'll bring
4 you back out and we'll begin the defense part of the
5 case. Okay?

6 Now, what have I told you from the very beginning?
7 Okay. You haven't heard all the case yet. I haven't told
8 you to begin deliberations and until I tell you you can
9 begin deliberating in this case, you cannot talk about the
10 evidence that you've heard so far, anything about this
11 case.

12 Okay? Y'all take a short break and hopefully we'll be
13 back in here in a few minutes and we can continue with the
14 rest of the case. Okay. Thank y'all.

15 (Thereupon, the jury exits the courtroom at
16 10:40 a.m.)

17 THE COURT: Ms. Holling? Ms. Holling, if you'd come
18 here a moment.

19 (Thereupon, a matter concerning a juror was heard off-
20 the-record.)

21 THE COURT: All right. Anything from the defense?

22 MR. MCCARLEY: We do have a motion at this time.

23 THE COURT: Yes, sir.

24 MR. MCCARLEY: A motion for directed verdict. In
25 regards to the attempted murder, even in the light most

1 favorable to the State, Your Honor, the State has not
2 proven -- has not put on evidence in regards to the
3 Defendant committing a violent injury to another person.

4 The only testimony is what we've just heard. There
5 were shots fired at a car. There were 14 shell casings.
6 The only thing that there's been evidence that was put on
7 that was hit was a vehicle without people in it.

8 In regards to the charge of, the weapons charge,
9 possession of a weapon during a violent crime, there's no
10 gun. There's been no evidence linking Mr. Brown to the
11 bullets or the casings found at the scene, nor has there
12 been any evidence put on as to when those bullets and
13 casings would have been fired.

14 THE COURT: All right.

15 MR. MCCARLEY: Just a moment, please, sir.

16 (Defense counsel conferring.)

17 MR. MCCARLEY: Your Honor --

18 THE CLERK: I'm sorry.

19 (Thereupon, the Clerk of Court discusses a matter with
20 the Court.)

21 THE COURT: I'm sorry, Mr. McCarley. I didn't mean to
22 break your chain of thought.

23 MR. MCCARLEY: Your Honor, the State's witness just
24 testified, and that's the only testimony on point, that
25 the only thing the gun was ever pointed at was the vehicle

1 and there were no people in the vehicle and there's been
2 no charge in regards to discharging a firearm or injuring
3 personal property.

4 THE COURT: Thank you.

5 MR. MCCARLEY: And as such, we would ask for a
6 directed verdict, Your Honor.

7 THE COURT: Thank you, sir. Any arguments from the
8 State?

9 MS. MAURICE: Your Honor, there has been substantial
10 evidence to show that there were at least two individuals
11 in the car, and then running from the car as it was being
12 shot at and that one bullet ended up in the headrest where
13 the driver would have been sitting.

14 There are shell casings. I believe there were 17
15 shell casings we put in which is consistent with an
16 automatic weapon.

17 I have the victim and witness, eyewitness, testifying
18 as to the gun and the fact that Dexter Brown was one of
19 the shooters.

20 And, Your Honor, attempted murder is a violent crime
21 and I have evidence that they had a gun in their
22 possession during the attempt of murder.

23 THE COURT: Okay. Thank you. All right.

24 Mr. McCarley, in regard to the possession of a weapon
25 in a violent crime, we got at least two witnesses that

1 place the automatic weapon in Mr. Brown's hands.

2 There is testimony in the record that they were
3 shooting. All the evidence points that they were shooting
4 at a van perhaps, but there were people in the van at one
5 time.

6 And I think it's up to the jury to decide. So I'm
7 going to deny your motion for a directed verdict.

8 I'll note your objection to my decision for the record
9 so it can be preserved.

10 MR. MCCARLEY: Understood. Thank you, sir.

11 THE COURT: Thank you, sir. Appreciate it.

12 Is the State prepared -- I mean, is the defense
13 prepared to go forward? I'll let y'all talk about it,
14 talk with your witnesses.

15 We'll take about a five-minute break and then I'll
16 question him.

17 MR. MCCARLEY: Thank you, sir.

18 THE COURT: Thank you. Appreciate it.

19 We'll take about a five-minute break.

20 (Thereupon, at 10:45 a.m., a break was taken until
21 11:10 a.m., when the hearing of this matter resumed as
22 follows:)

23 THE COURT: Anything from the State?

24 MS. MAURICE: No, Your Honor.

25 THE COURT: Anything from the defense?

1 MR. MCCARLEY: No, sir.

2 THE COURT: All right. Let's see.

3 Mr. Brown, will you please stand, please, sir?

4 THE DEFENDANT: (Complying.)

5 THE COURT: Raise your right hand, please, sir,

6 (Defendant placed under oath.)

7 THE COURT: You can sit down if you'd like to.

8 THE DEFENDANT: (Complying.)

9 THE COURT: Mr. Brown, it is -- it's my

10 understanding -- and I guess, Mr. McCarley, I'm going to
11 let you tell me. What is he intending, the Defendant, at
12 this time regarding putting up a defense?

13 MR. MCCARLEY: There is none at this time.

14 THE COURT: He's not going to do that. Okay.

15 Now, Mr. Brown, I'm going to explain some of your
16 rights to you to make sure that you understand what I'm
17 telling you. And if there's something I say that you
18 don't understand, I want you to please ask me, you know, a
19 question so I can explain it, because this is very
20 important to you.

21 THE DEFENDANT: Uh-huh.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, we've reached a part of the trial
25 where you may present your defense and your attorney has

1 told me that you do not intend to put any defense up. Do
2 you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. And you've talked with him about
5 that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. You have the right to claim the
8 protections given to you by the Fifth Amendment of the
9 Constitution which says that no person shall be compelled
10 in a criminal case to be a witness against himself.

11 This means that you cannot be required to testify in
12 this case. You have the right to testify on your own
13 behalf, however, no one can make you testify.

14 This is a personal right and no one can waive that
15 right except you. If you decide to testify you'll be
16 subject to the same rules that govern other witnesses and
17 you may be examined and cross-examined on any relevant
18 issue in this case.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You've watched the witnesses on the stand
22 be cross-examined?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. In addition, if you have any
25 convictions involving dishonesty or false statements or

1 other crimes punishable by imprisonment for more than one
2 year and this Court determines that the probative value of
3 admitting this evidence outweighs its prejudicial effect
4 to you, the solicitor will be able to introduce your
5 record to attack your credibility. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. If you decide to testify, this
9 decision on your part must be freely, voluntarily and
10 intelligently made with the knowledge of the protections
11 given to you by the Fifth Amendment and the consequences
12 of your decision to testify.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. And, Mr. Brown, how old are you?

16 THE DEFENDANT: Twenty.

17 THE COURT: And how far did you go in school?

18 THE DEFENDANT: Twelfth grade.

19 THE COURT: Did you graduate?

20 THE DEFENDANT: No.

21 THE COURT: Okay. Have you gotten any job skills or
22 job training?

23 THE DEFENDANT: I had a job before I got locked up.

24 THE COURT: What kind of job?

25 THE DEFENDANT: Augusta Fiberglass.

1 THE COURT: Your attorney has gone over this with
2 you. I'm asking you again about whether or not you're
3 going to testify.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Now, if you decide not to testify I
6 will instruct the jurors that they cannot give the fact
7 that you did not testify any consideration whatsoever and
8 that there is to be absolutely no prejudice to you because
9 you did not testify.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. It is left entirely up to you
13 whether or not to testify. I know you've talked with your
14 attorneys but you may talk with them again, your family,
15 your friends, or anyone else, but the final decision is
16 left entirely up to you.

17 Do you understand everything that I've explained to
18 you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you talked it over with your
21 attorneys?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand what they've told you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions about what I've

1 told you?

2 THE DEFENDANT: No, sir.

3 THE COURT: Okay. Now, do you need any more time to
4 talk with your lawyers about this?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. Do you wish to testify in this
7 matter?

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay. All right, sir. Has anybody
10 threatened you to get you to not testify?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has anybody promised you anything to get
13 you to not testify?

14 THE DEFENDANT: No, sir.

15 THE COURT: You're doing it freely and voluntarily?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Sir?

18 THE DEFENDANT: Yeah.

19 THE COURT: And you understand what you're giving up?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. All right, sir. All right.

22 I will so advise the jury and that will be part of my
23 charge to the jury.

24 Anything else we need to take up before I bring the
25 jury back in?

1 MS. MAURICE: Not from the State, Your Honor.

2 THE COURT: Okay.

3 MR. MCCARLEY: Not from the defense, Your Honor.

4 THE COURT: Now, when the jury comes back you're going
5 to rest on the record?

6 MR. MCCARLEY: Yes.

7 THE COURT: Are y'all prepared to go forward --

8 MS. MAURICE: Yes, Your Honor.

9 THE COURT: -- with closings at this time?

10 MR. MCCARLEY: Yes, Your Honor.

11 THE COURT: Are you prepared to go forward?

12 MR. MCCARLEY: Yes, Your Honor.

13 THE COURT: It's my understanding that since the
14 defense didn't put up any testimony, put up any witnesses
15 that you're going to get to close last?

16 MR. MCCARLEY: Yes, sir.

17 THE COURT: Is that your understanding?

18 MS. MAURICE: Yes, Your Honor.

19 THE COURT: Okay. Just making sure we got all of that
20 straight.

21 MS. MAURICE: Unfortunately.

22 THE COURT: Okay. So you're going to have to open in
23 full.

24 MS. MAURICE: That's correct.

25 THE COURT: All right. Y'all bear with me. I got to

1 get this - do you have the indictments?

2 THE CLERK: I do.

3 THE COURT: Y'all bear with me for a second.

4 (Pause.)

5 THE COURT: Since I'm out of circuit I'm causing a
6 little more problems than I usually would. I'm reprinting
7 the verdict form.

8 MS. MAURICE: Thank you, Your Honor.

9 THE COURT: Okay.

10 (Pause.)

11 THE COURT: All right. Bring the jury -- are y'all
12 ready?

13 MR. McCARLEY: Yes, sir.

14 THE COURT: Bring the jury back in.

15 (Jury enters courtroom at 11:22 a.m.)

16 THE COURT: Ladies and gentlemen of the jury, have
17 y'all discussed having a foreman yet? Have y'all voted on
18 a foreman?

19 THE JUROR: Yes.

20 THE COURT: Who's the foreman?

21 THE JUROR: (Raises hand.)

22 THE COURT: And your name, please, ma'am?

23 THE JUROR: Sharon W. Bechtold.

24 THE COURT: Ms. Bechtold, congratulations. You need
25 to switch seats. You got to be closest to me because when

1 I go over the verdict form with you, I'm going to come
2 down there and show you what I'm going to do.

3 Congratulations.

4 THE FOREPERSON OF THE JURY: Thank you.

5 THE COURT: Thank you.

6 Ladies and gentlemen, we're getting ready to continue
7 with the trial of this case.

8 Mr. McCarley?

9 MR. MCCARLEY: Yes, sir.

10 THE COURT: Yes, sir. The Defendant's case?

11 MR. MCCARLEY: The defense rests, Your Honor.

12 THE COURT: Okay. All right.

13 Ladies and gentlemen, what the Defendant has done, he
14 has -- the Defendant has rested without putting up any
15 testimony in this case.

16 I want to make sure that you understand that when the
17 Defendant decides not to testify, that you cannot give the
18 fact that he did not testify any consideration whatsoever
19 and that there is to be absolutely no prejudice to the
20 Defendant because he did not testify.

21 And I will go over that in more detail when I charge
22 you.

23 Now, you have now heard all of the evidence in this
24 case. And what we're going to do now is we're going to
25 begin listening to the closing arguments of the

1 attorneys.

2 And after they do their closing arguments, I will
3 charge you on the law.

4 Now, after I charge you on the law, I will go over the
5 verdict form with you.

6 After I go over the verdict form with you, I will then
7 excuse y'all to go back to the jury room. While y'all are
8 out, I will go over my charges on the law with the
9 attorneys to make sure that I have charged everything they
10 wanted me to charge. If my charges are complete to their
11 satisfaction, I will then send the bailiff back there and
12 tell you -- with the verdict form and the exhibits, and
13 tell you you can begin your deliberations.

14 So until I tell you you can begin your deliberations
15 in this case, you may not talk about it. Make sure
16 everybody understands that.

17 Listen to the closings from both attorneys. I'll then
18 charge you on the law, but until the verdict form comes
19 back to you with the evidence, with the exhibits, you may
20 not begin discussing this case.

21 Now, once it comes back there and I tell you you can
22 begin your deliberation, then, Madam Forelady, it will be
23 your duty to organize the jury and make sure everybody has
24 input into this decision-making process, because the
25 decision of the jury must be unanimous. Okay? All 12 of

CLOSING STATEMENTS BY THE STATE

1 you have got to agree on this decision. Okay? All
2 right.

3 Ms. Maurice?

4 CLOSING STATEMENTS BY THE STATE

5 MS. MAURICE: May it please the Court.

6 THE COURT: Yes, ma'am.

7 MS. MAURICE: Mr. McCarley. Ladies and gentlemen of
8 the jury.

9 Last night I was lying in bed thinking about what I
10 was going to say to y'all in this closing this morning.

11 Kept going, photos, photos, photos. And I was
12 thinking about, I guess it was, like, 20 photos. I always
13 felt like I was pulling the wrong photo and I thought, you
14 know, I really don't feel like I have given a full picture
15 of everything.

16 And then I started thinking, out of all these photos,
17 guess what I don't have? I don't have a photo of Dexter
18 Brown holding a big old gun and firing it. I wish I did.

19 This is the real world.

20 Then I thought, wouldn't it even be better if I had
21 one of those global satellite things that just happened to
22 be coming over the house right at that exact moment and I
23 got it on video? And it would be like James Bond or
24 Bourne Identity -- I like Bourne Identity -- CSI. And it
25 would be right there.

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1 But again, ladies and gentlemen, this is the real
2 world. And I don't have any of that.

3 And the only reason I'm going over those things and to
4 tell you I don't have them, because I was also thinking
5 last night, it's not fun for me to stand up here and go
6 first because as soon as I sit down and Mr. McCarley
7 starts talking, he's going to say something and I'm going
8 to go, (snaps fingers), I forgot it. I forgot to explain
9 it.

10 So this is my only chance. So just bear with me. I
11 actually even brought my notes up here today. And let's
12 go through, through everything.

13 And I just thought of something else when I looked
14 over here. Wouldn't it have been terrific if we had the
15 guns? If, when Investigator Croft went and made the
16 arrest, that they had those guns on them and we could have
17 have them tested with the shell casings? That was three
18 days later. It would have been great for us, stupid for
19 them, but it would have been great.

20 But we don't have that. Again, this is the real
21 world.

22 So let's look at what we do have. And let's stay
23 focused on what we do have and what's been presented to
24 y'all.

25 And that's why there's so many different little

CLOSING STATEMENTS BY THE STATE

1 things, little details that are important. And that's why
2 there's 12 of you, because when you go back to the jury
3 room to deliberate, one of you might remember one small
4 detail. And it's like, oh, yeah, or you might disagree on
5 some details. I don't know.

6 But that's why this process is so wonderful. This
7 process of 12 jurors that have to make a unanimous
8 decision and collectively get together and deliberate on
9 what was seen.

10 You know, the evidence will go back in the courtroom
11 (sic) with you. So, you'll be able to hold it a little
12 bit better. And those photos that I just glimpsed
13 through, you'll have them. So just keep that in mind.

14 And let's go through what evidence the State did
15 present. And what evidence the State did have and does
16 have.

17 Investigator Trottie got on the stand and he
18 testified. He was in the area. He was at the crime scene
19 within five minutes. It might have been five minutes, I
20 can't remember, but it was quick after he got dispatched.

21 You heard Ms. Alice say it didn't take long for the
22 police to get there. You heard her on the 9-1-1 and then
23 when the officers arrived. So he's close by. He gets
24 there first. He secures the scene.

25 Okay. That's important. It's real important because

CLOSING STATEMENTS BY THE STATE

1 of all those shell casings that were found.

2 Investigator Chavis arrives and he's appointed the fun
3 duty of looking for all of them. Okay. Y'all, this isn't
4 any high tech thing. He looked. He saw one. He put his
5 yellow marker on it. A., B., C., D., E., F., G., H., I.,
6 J. I think it was, what, 17? Y'all can count them back
7 there. Okay?

8 My point being -- and you got photos of where they
9 were on the road and how that is consistent with what
10 Ms. Alice said happened, how that's consistent with being
11 right there in front of her home on that road.

12 Next, Investigator Chavis takes those photos that
13 you'll have. He also goes through the vehicles the
14 victims were in.

15 There's testimony Brandon was driving. Roger Benjamin
16 was in the passenger seat. There's a little confusion
17 about if there was a third person or not. I think it's
18 very possible that Roger knows who was in the car and
19 Ms. Alice just didn't see it, but it's really not
20 important.

21 What Investigator Chavis found and what he didn't find
22 is important. He found a bullet in the driver's
23 headrest. A bullet in the driver's headrest. There's
24 also a bullet hole in the back glass, a bullet hole in the
25 bumper.

CLOSING STATEMENTS BY THE STATE

1 But, a bullet hole in the headrest.

2 And you'll have those photos. He took photos -- he
3 took pictures of all of that.

4 Then he went back and collected each one that he had
5 found. Picked them up. And he testified that there were
6 two types. I'm not an expert in that kind of thing and
7 wouldn't plan on being it, but apparently people who shoot
8 guns know that. But there were two different kinds which
9 is consistent with two different shooters.

10 Again, another consistency or corroboration of what
11 Roger and Ms. Alice say happened that day.

12 What he didn't find in the vehicle, in the victim's
13 vehicle. He did not find any shell casings in that
14 vehicle. Okay. Didn't find any bullets in the victim's
15 vehicle. He didn't find any guns in the victim's vehicle.

16 Now, this has been secured right after. Remember how
17 fast Officer Trottie got there? Okay. He takes the GSR
18 kit. He borrows two kits. It's always easy to second --
19 what did he call it? Quarterback, second quarterback from
20 the stand and all of that. Wished he had had 20 of them
21 and done two, but he did one. And he did it on Brandon
22 Parker.

23 And SLED came in here and told you how they checked
24 for gunshot residue and went through that process, and
25 that it was negative.

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1 So that's consistent with what he's already found as
2 far as no bullets in the car, no gun in the car, no
3 testimony that the victims were shooting.

4 It's just little details after little details.

5 The other evidence. The victim, Roger Benjamin, he
6 gets up there and he testifies. He's got identification,
7 he IDs, tells you who he saw shooting the weapons; Dexter
8 Brown, Kendrick Jacobs.

9 Ms. Alice gets there, you'll see. You'll have the
10 photo, too, close where her home is and where the porch
11 is. You can see the roads relate, and how close it is.

12 Gets up there. Sees the shooter. Not only testifies
13 today that it's Dexter Brown, in the 9-1-1 call she's
14 saying "Little Dexter." I mean, this is a minute after
15 this is going on. You can hear it in her voice.

16 Roger testified, through -- that he and Brandon Parker
17 were in Brandon's mama's car. That's why I called
18 Brandon's mom up yesterday. That's just another
19 corroboration. She had sent him to the store to get the
20 bag from Family Dollar that she had left.

21 You might have done that before. I usually do it at
22 Wal-Mart because they have those things that go around and
23 I'll get home and I know I put it in there but it's not in
24 the house.

25 But anyway, they go back. Obviously they went a few

CLOSING STATEMENTS BY THE STATE

1 other places.

2 He testifies when he's on his way back towards his
3 home is when he sees Dexter and Kendrick in this blue car.
4 Then he says they start shooting. They start shooting at
5 them.

6 Brandon pulls in that driveway, trying to get away.
7 Dexter and Kendrick are right behind them. It's when
8 they're shooting up.

9 Ms. Alice says it was like firecrackers.

10 That's all consistent.

11 You heard Roger say machine gun. I don't know.
12 Automatic. There were a lot of casings out there, okay.
13 So that's some quick firing. I'm not a scientist but
14 that's quick. That's just the ones we found.

15 You can hear Roger in the background from the 9-1-1,
16 and y'all can listen to the 9-1-1 tape again. You just
17 have to ask the Judge and we'll bring you out here and you
18 can listen to that over again.

19 Because the truth is in the details. The details that
20 can't be planned out. Details that, you know, aren't even
21 thought of. This is happening at that moment and she is
22 telling you what she saw.

23 Again, we don't have that global positioning satellite
24 video thing. But I submit to you what we do have is these
25 little details. These pieces that all corroborate exactly

CLOSING STATEMENTS BY THE STATE

1 what Ms. Alice said happened and exactly what Roger said
2 happened.

3 Investigator Croft's testimony. I thought he did an
4 excellent job unfolding the investigation. And there was
5 another thing I thought about last night and it was
6 actually the first time I thought about it. Probably
7 shouldn't admit that.

8 He is looking -- he's going to get the dogs, okay,
9 because they think at first when she's calling on the
10 9-1-1 tape, she said somebody ran into the woods. So
11 first thought, dogs. But then, no, he gets the call,
12 Dexter Brown and Kendrick Jacobs, they're in a blue car.

13 Well, he doesn't see a blue car. He's still in his
14 dog truck or whatever, you know, he's got the dogs back
15 there. But, what does he see? A car that he recognizes
16 as being Dexter Brown's. It's white.

17 So, out of an abundance of caution, making sure he
18 knows what he thinks he knows, he calls it in and gets
19 dispatch to identify that that's Dexter Brown's car. It
20 makes sense that he'd pull it. Can't see who's driving
21 it.

22 Who's driving it? Dexter's girlfriend, Ms. Ingram.
23 Ms. Ingram is driving Dexter's car. White Ford, not blue
24 Mercury. Huh.

25 If for some crazy reason Roger or Ms. Alice decided,

CLOSING STATEMENTS BY THE STATE

1 we're going to blame this on Dexter Brown, wouldn't they
2 have described his car as the shooters being in it?

3 We don't know why Dexter was driving his girlfriend's
4 car or girlfriend's daddy's car, and that's Ingram, and
5 she was driving Dexter's car, but we know for some reason
6 they had switched. Details.

7 And I was just thinking about that last night how
8 important something so simple can be. You know, when you
9 start, you know, the TV, little things like that, probably
10 they don't have to mess with that because they have global
11 positioning systems, satellite system.

12 But for us in real life, those small things are so
13 important. The truth. The truth is in the details. And
14 those details, I believe, come back to credibility of
15 witnesses. Those details support what Roger Benjamin said
16 happened and what Ms. Alice said happened.

17 There may be gray versus blue car. You can hear how
18 scared, how nervous she was that -- I'm sure there's going
19 to be a big deal about, oh, she knows Dexter so much but
20 she can't remember his last name.

21 Listen to her voice. Listen. Come out here and
22 listen to her again. She is scared. But she's saying
23 what happened. She didn't say white car. She said blue.
24 And she might have said Ford versus Mercury. She calls
25 the victim's car -- that's in the thing, I think it's a

CLOSING STATEMENTS BY THE STATE

1 Ford Explorer, but she calls it a van.

2 And at first that's a little confusing. And that's
3 why I went back to her and I said, Ms. Alice, is this what
4 you're calling a van. Oh, yeah.

5 The truth is in the details. She might not know or be
6 an expert on, like, models of car or whatever, but she
7 knows those colors. The colors that she's saying is in
8 her driveway is the color that's in her driveway;
9 burgundy.

10 And the color of the car, she says, Dexter was driving
11 and shooting out of, that's his girlfriend's car; light
12 blue. We don't know why when that car was returned to the
13 owner, Mr. Ingram's home, that it was clean as a whistle.
14 We just know it was.

15 Ms. Alice. She's standing there. She hears pa-pa-pa-
16 pa-pa. Thinks it's fireworks at first. Goes out. She
17 sees her grandson being shot at. She sees Roger being
18 shot at. She sees another guy running from the car. She
19 doesn't know who that guy is right now.

20 As soon as -- the 9-1-1, she's not saying that's
21 Brandon. She doesn't know. She sees another guy.

22 So Brandon comes back over to the house in just a
23 little bit while she's still on the phone with dispatch
24 and you can hear the confusion. There's always -- there's
25 normally a lot of confusion with, between the 9-1-1

CLOSING STATEMENTS BY THE STATE

1 operator and the excitement and the nervousness that's
2 going on.

3 But just listen, you know. She said, no, that's
4 Brandon. His mama lives down the street which is what
5 Ms. Morrissey, Leslie, said. Brandon's mom, owner of the
6 car, living down the street.

7 She's telling you about her granddaughter living in
8 the house and going inside and laying over her to protect
9 her.

10 She tells you about yelling at Dexter from the porch,
11 calling him Little Dexter. She's given him a home to live
12 in in the past.

13 And I'm not accusing and he's not being prosecuted for
14 attempting to murder her. I don't think he was aiming for
15 her. He was aiming for the men that were in that car.
16 But when you're shooting an automatic weapon coming down
17 the road, there is no telling who or what you're going to
18 hit.

19 What else supports what Ms. Alice was saying about the
20 automatic weapon and what Roger was saying? Seventeen, or
21 something like that, shell casings.

22 Ms. -- I think it was Glenda Williams, the lady that
23 was in the store. She heard multiple gunshots, too. She
24 didn't see anything but she heard the shots. Scared her
25 enough she went and locked the door to the store.

CLOSING STATEMENTS BY THE STATE

1 That 9-1-1 tape gives a snapshot of exactly what was,
2 just happened. It's not a photo of -- that we wish we
3 would have of the crime going on right then, but it's as
4 close to that as you can get.

5 Based on Ms. Alice, Roger, car descriptions, ID of the
6 shooters, the shell casings, the bullets and the headrest
7 of the car, and then the -- the tires were flat on the
8 car, too. I don't know how many bullets was in there, but
9 both tires were flat on the car, if you look at that
10 closely. And there's one shot into the window, and
11 there's one shot into the bumper, and there's one shot
12 into the headrest. So there, that says two tires, one
13 bumper. Hit the car five times.

14 And those men were in that car when that gunshot,
15 those gunshots started. They got out and ran. Thank
16 goodness.

17 The Judge will be giving you charges on the law in
18 just a little bit. I just want to give you a summary. If
19 I say something different than the Judge, he is over the
20 law so I would be wrong and he would be right.

21 And the only thing I want to try to do is bring a few
22 details for y'all to listen to because those charges, you
23 need to listen closely, but I'm going to ask that you
24 listen closely to some of the things I mention, too.

25 There's -- I anticipate there will be a lot of talk by

CLOSING STATEMENTS BY THE STATE

1 the defense about beyond a reasonable doubt and going back
2 to what I don't have, what the State doesn't have as far
3 as evidence.

4 Listen to the Judge. Beyond a reasonable doubt. If
5 you're firmly convinced, because nothing's absolute for
6 certain. If you're firmly convinced that Dexter Brown was
7 shooting that gun at that car, and those two men were in
8 that car, then you find him guilty of attempted murder.

9 And if you find him guilty of attempted murder, you
10 can go on to possession of a weapon during a violent
11 crime. This is a violent crime, Your Honor, -- I mean,
12 ladies and gentlemen.

13 He's going to go over and charge you on what attempted
14 murder is. I believe there'll be words like malice
15 aforethought, intent, criminal intent; those type things.

16 Keep in mind that there is no way a person can get
17 inside another person's mind and dissect what they're
18 thinking. Okay.

19 So how else can you determine what their intent is?
20 You have to look at the facts. You have to look at what
21 was going on. When Dexter put that gun in his hand,
22 pulled that trigger I don't know how many times, aimed it
23 at that car, which he even hit five times, and those boys
24 were in it or close to it, that can be shown as to what
25 his intent was.

CLOSING STATEMENTS BY THE STATE

1 Again, we can't get in and dissect his mind. So you
2 have to look at what the facts are.

3 Malice is a word, I guess it really comes back to more
4 of a reckless disregard for human life.

5 But listen to the Judge. Some of these things -- it's
6 easier for me to think of in a different way, but, when he
7 was shooting that gun, he didn't care who it hit. He
8 didn't think about who it hit. If that's not a reckless
9 disregard for human life, I don't know what is.

10 He'll get into circumstantial evidence, direct
11 evidence. And just listen to him, but, you know, some is
12 direct, like, the witnesses saw something or the casings
13 were picked up and those little tiny details that you kind
14 of fit together that corroborate the other. In this case
15 we have both, a little -- a good bit of each actually
16 except for those high tech things I wish we had.

17 The evidence we do have. You'll have all of this back
18 there. These are crime scene photos. Found shell casings
19 and their pictures. You can go through that. It says 16,
20 I think. One bullet that didn't fire, and one little
21 thing. And then all these shell casings.

22 Remember, this was happening fast. They didn't have
23 30 minutes to shoot all of that. The vehicle, you'll
24 have -- you'll be able to see how it hit the tires, the
25 glass, the bumper, headrest. Bullet still in there.

CLOSING STATEMENTS BY THE DEFENSE

1 GSR kit, which is just consistent. Those things are
2 just consistent with what Ms. Alice and Roger said
3 happened.

4 My favorite. The 9-1-1 tape. If there's any doubt in
5 your mind that that man did not take an automatic weapon
6 and shoot it down that road at that car that those two men
7 were in, listen to that 9-1-1 tape again. Please, listen
8 to that 9-1-1 tape again.

9 Then please find him guilty of attempted murder and
10 possession of a weapon during a violent crime.

11 Thank y'all for your time these last few days.

12 THE COURT: Thank you, Ms. Maurice. Mr. McCarley?

13 CLOSING STATEMENTS BY THE DEFENSE

14 MR. MCCARLEY: Thank you, sir.

15 THE COURT: Yes, sir.

16 MR. MCCARLEY: Madam Solicitor. Ladies and gentlemen
17 of the jury.

18 Make no mistake about it. Law enforcement's worked in
19 this case for six months, not just last night. And the
20 solicitor's right; they still just don't have it.

21 There's a number of things they don't have and we're
22 going to work our way through that entire thing. I
23 apologize for using my notes but this is just far, far too
24 important to Mr. Brown and you all's community for me to
25 leave anything out.

CLOSING STATEMENTS BY THE DEFENSE

1 The solicitor's office continues to talk about CSI,
2 how this is not CSI. Well, CSI, as you all probably know,
3 stands for crime scene investigation. Okay. And there
4 was one.

5 And the solicitor's office continues to talk about how
6 they don't have the high-tech gadgets. We're not asking
7 for -- as citizens of the community, we're not asking for
8 high-tech gadgets. They have fingerprints. They can
9 fingerprint bullets and casings. They have GSR kits.
10 They have one right here. And they had a store of them
11 back at the sheriff's office, seven miles away, and they
12 had five hours to go get them.

13 We're not asking for CSI-Miami or CSI-New York. We're
14 asking for CSI-Barnwell so that we can have a safe
15 community and we can have people in jail that need to be
16 in jail.

17 Dexter Brown does not need to be in jail.

18 A number of other things to go through, to talk
19 about. Reasonable doubt. And how the State's case does
20 not stand up to the burden of beyond a reasonable doubt.
21 A reasonable doubt, again, is anything that would give a
22 person pause or make them hesitate before acting.

23 So I go back to the GSR kit. That could give you
24 pause, ladies and gentlemen. The fact that only one
25 person out of everybody at the scene was tested for a GSR

CLOSING STATEMENTS BY THE DEFENSE

1 kit. And speaking specifically about GSR kits, you heard
2 Agent Simmons from SLED tell us that you can shoot a gun
3 and still test negative on a GSR.

4 Now that might seem like a detail, like something
5 small that doesn't matter, but when the gentleman who
6 tested negative on his GSR is now in prison for possession
7 of a firearm by a convicted felon, that matters, ladies
8 and gentlemen.

9 It is a very big deal that a GSR can be tested
10 negative on someone who shot a gun.

11 That can give you pause. That can make you hesitate.

12 The fact that the police searched the car that they
13 believed was used in this crime, found the car, searched
14 the car, tested the car and found nothing. It's not a
15 crime, ladies and gentlemen, to have a clean car. It's
16 just not.

17 The fact that they searched the house in this case,
18 okay. They searched it months after, okay. They admitted
19 that on the stand. They searched it months after. And
20 then they tried to use that as an excuse for why they
21 didn't find anything. Okay.

22 And it was mentioned that there were some guns in the
23 house but especially not in South Carolina, it's not a
24 crime to have a gun in your home. We all know that.
25 Okay.

CLOSING STATEMENTS BY THE DEFENSE

1 So they searched the house and they found nothing
2 linking Dexter Brown to the shooting.

3 The solicitor's office continues to try to convince
4 you by saying, shooting and Dexter Brown, shooting and
5 Dexter Brown that they're somehow linked, and they're just
6 not.

7 We've all seen the pictures of all the bullets and all
8 the casings and everything that happened at the scene.
9 Okay. And none of those items were tested. None of those
10 items in any form or fashion linked Dexter Brown to that
11 incident.

12 That, ladies and gentlemen, is a very, very good
13 reason to hesitate or to have pause.

14 The simple fact that Mr. Brown is charged here with
15 possession of a weapon and doing something you can only do
16 with a weapon, okay, and there just is no weapon. The
17 weapon's been looked for for six months and there is no
18 weapon.

19 Not only is there no smoking gun, okay, there's no gun
20 at all.

21 As a matter of fact, thinking about this thing, it
22 just keeps coming back that there's no physical evidence
23 whatsoever at the scene. There's nothing physical that
24 exists that links Dexter Brown. What is it? What is it?
25 What is the jury going to see?

CLOSING STATEMENTS BY THE DEFENSE

1 He knows the only thing that the jury sees that could
2 link Dexter Brown to the case physically is Dexter Brown
3 being here in this courtroom. Okay. And the reason
4 Dexter Brown is here in this courtroom is because of these
5 arrest warrants. Okay.

6 And these arrest warrants don't mean anything at all.
7 They are no evidence whatsoever. The fact that Dexter
8 Brown sits here today is no evidence whatsoever that he
9 was involved.

10 And talking about the witnesses. Okay. Talking about
11 Roger Benjamin and talking about Alice Thompson. Imagine
12 if this case -- for a moment, imagine if this case was
13 about who was in the car that was being shot at. Okay.
14 Was -- were there two people or were there three people?
15 And in which direction did they run?

16 As the 9-1-1, you know, Ms. Alice Thompson said she's
17 never heard of T., but then in the 9-1-1 tape she says
18 T.'s in her yard.

19 Roger Benjamin says there's three people. She's
20 always said that there's two people. Could you find
21 beyond a reasonable doubt how many people were even in
22 that vehicle? And then answer that question for yourself
23 in your own heart and in your own mind and then ask
24 yourself if you can trust those same people beyond a
25 reasonable doubt as to who was driving by in a car,

CLOSING STATEMENTS BY THE DEFENSE

1 looking through another person who's shooting a gun and
2 identify them while they're admittedly scared.

3 I've listened to that 9-1-1 tape a number of times and
4 Ms. Thompson, what occurred to Ms. Thompson is wrong.
5 Okay. But two wrongs don't make a right. And sending
6 Dexter Brown to jail would be another wrong.

7 Roger Benjamin made a statement on the day of the
8 incident, on the very day that it occurred. It's his
9 version of the 9-1-1 tape. He said it on that very day.
10 He signed it. Okay.

11 And he admitted on the stand it's just not the truth.
12 It's not fully true. And when you put that together with
13 the 9-1-1 tape and you hear Ms. Thompson asking Roger
14 Benjamin in the background, "Who's Dexter?" And "What
15 color is the car?" You have a witness who testified to
16 not telling the truth telling another witness what
17 happened.

18 That's just a lot of pause and hesitation. That's a
19 lot of reasonable doubt. And a lot of reasonable doubt
20 means Dexter Brown is not guilty.

21 Now what can't give you pause, ladies and gentlemen.
22 And this is very, very important, is the fact that Dexter
23 Brown did not take the stand. The Judge has already told
24 you and he'll tell you again, that is his absolute and
25 complete constitutional right.

CLOSING STATEMENTS BY THE DEFENSE

1 And you can't hold him against that at all (sic).

2 Okay.

3 We all -- just like the cloak of innocence, that
4 Dexter Brown has been wearing this entire trial. Okay.
5 We all have that right. He's chosen to exercise that
6 right.

7 Speaking to the cloak of innocence. Dexter Brown is
8 still wearing that cloak here today, ladies and
9 gentlemen. He walked in here with it yesterday morning
10 just like you all did. And he's still wearing it.

11 The reason he's still wearing it is the same thing I
12 said in the beginning; the State's case, the police's case
13 they've been trying to make for six months, is not strong
14 enough to take the cloak of innocence off Dexter Brown.
15 We all wear that cloak and it's heavy for a reason. And
16 it's been heavy for a reason since the start of the
17 country; so they couldn't arrest people and put people in
18 jail for no reasons.

19 All right. And the evidence is not strong enough.
20 Like the solicitor said, it's just not there. They just
21 don't have it. The evidence is not strong enough to take
22 the cloak of innocence off Dexter Brown.

23 And that's why I ask you to return a verdict of not
24 guilty.

25 Thank you very much.

JURY CHARGE

1 THE COURT: Thank you, Mr. McCarley.

2 MR. MCCARLEY: Yes, sir.

3 JUDGE'S CHARGE TO THE JURY

4 THE COURT: All right. Ladies and gentlemen, you have
5 now heard the closing arguments of the attorneys. It's my
6 duty now to charge you on the law of this case.

7 Mr. Bernard -- I mean, Mr. Dexter Bernard Brown is
8 charged with the attempted murder of Brandon Parker by one
9 indictment. By another indictment he is charged with the
10 attempted murder of Roger Benjamin. And by the final
11 indictment he is charged with possession of a weapon
12 during a violent crime.

13 Now, I remind you that the fact that the Defendant was
14 arrested, charged, and indicted in this case is not
15 evidence in this case and not -- and may not be considered
16 by you as evidence of guilt in this case, nor does it
17 create any presumption or inference of guilt.

18 These indictments are simply the formal written
19 instruments which contain the charges made against the
20 Defendant. They are the formal documents by which this
21 case is brought into court.

22 The Defendant has pled not guilty to these indictments
23 and that plea puts the burden on the State to prove the
24 Defendant guilty. A person charged with committing a
25 criminal offense in South Carolina is never required to

JURY CHARGE

1 prove himself innocent.

2 I charge you that it is an important rule of law that
3 the defendant in a criminal trial, no matter how serious
4 the charges may be, will always be presumed to be innocent
5 of the crime for which the indictments were issued unless
6 the guilt has been proven by evidence satisfying you, the
7 jury, of that guilt beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations but it accompanies the Defendant
10 throughout the trial until you reach a verdict of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 The presumption of innocence is like a robe of
14 righteousness placed about the shoulders of the Defendant
15 which remains with the Defendant until it has been
16 stripped from the Defendant by evidence satisfying you of
17 the Defendant's guilt beyond a reasonable doubt.

18 The presumption of innocence is not mere legal
19 theory. It is not just a legal phrase. It is a
20 substantial right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence of
22 the Defendant's guilt beyond a reasonable doubt.

23 The Defendant is entitled to every inference in his
24 favor which can reasonably be drawn from the evidence.
25 When two inferences may be drawn from the same set of

JURY CHARGE

1 facts, one consistent with a verdict of guilty and one
2 inference consistent with a verdict of not guilty, the
3 Defendant is entitled to the inference which is consistent
4 with a verdict of not guilty.

5 You cannot find the Defendant guilty based upon
6 suspicion, conjecture or speculation, no matter how
7 strong. A conviction can only be based upon proof of
8 guilt beyond a reasonable doubt.

9 If the proof does not meet that standard, you must
10 find the Defendant not guilty.

11 What is reasonable doubt in the law? A reasonable
12 doubt is the kind of doubt that would cause a reasonable
13 person to hesitate to act. The State has the burden of
14 proving the Defendant guilty beyond a reasonable doubt.

15 Some of you may have served as jurors in civil cases
16 where you were told that it is only necessary to prove
17 that a fact is more likely true than not true, such as by
18 the greater weight or preponderance of the evidence.

19 In criminal cases the State's proof must be more
20 powerful. It must be beyond a reasonable doubt. Proof
21 beyond a reasonable doubt is proof that leaves you firmly
22 convinced of the Defendant's guilt.

23 There are very few things in this world that we know
24 with absolute certainty. And in criminal cases, the law
25 does not require proof that overcomes every possible

JURY CHARGE

1 doubt.

2 Based on your consideration of the evidence, if you
3 are firmly convinced that the Defendant is guilty of the
4 crime charged, you must find the Defendant guilty.

5 If you think there's a real possibility that the
6 Defendant is not guilty, you must give the Defendant the
7 benefit of the doubt and find him not guilty.

8 During this trial you and I have certain duties to
9 perform. As the Trial Judge it is my responsibility to
10 preside over the trial in this case, and I also had the
11 duty to rule on the admissibility of the evidence offered
12 during this trial.

13 You are to consider only the competent evidence before
14 you. If there was any testimony ordered stricken from the
15 record in this case during this trial, you must disregard
16 that testimony.

17 You are to consider only the testimony which has been
18 presented from this witness stand and any exhibits which
19 have been made part of the record in this case.

20 I have the duty to charge you with the law applicable
21 in this case. As the Presiding Judge, I am the sole judge
22 of the law. And it is your duty as jurors to accept the
23 law and apply the law as I now state it to you.

24 If you already have any idea as to what the law is or
25 what the law ought to be and it does not agree with what I

JURY CHARGE

1 now tell you the law is, you must abandon those ideas
2 because you are sworn to accept the law and apply the law
3 exactly as I state it to you.

4 In every case tried before a jury, the jury is the
5 sole and exclusive judge of the facts.

6 A trial judge cannot intimate, state, comment on, or
7 make any statement to the jury about the facts of a case.
8 Since you, the jury, are the sole judge of the facts in a
9 case, you are not to infer from what I have said during
10 the progress of this trial, in ruling upon the
11 admissibility of evidence, or otherwise, or anything that
12 I say now during the course of this instruction to you,
13 that I have an opinion about the facts in this case.

14 The law does not allow me to have an opinion about the
15 facts in this case. It is a matter solely for you, the
16 jury, to determine.

17 As jurors, it is your duty to determine the effect,
18 value, weight, and truth of the evidence presented during
19 this trial.

20 There are two types of evidence which are generally
21 presented during a trial; direct evidence and
22 circumstantial evidence.

23 Direct evidence is the testimony of a person who
24 claims to have actual knowledge of a fact, such as an
25 eyewitness. It is evidence which immediately establishes

JURY CHARGE

1 the main fact to be proved. Circumstantial evidence is
2 proof of a chain of facts and circumstances indicating the
3 existence of a fact.

4 It is evidence which immediately establishes
5 collateral facts from which the main fact may be
6 inferred. Circumstantial evidence is based on inference
7 and not on personal knowledge or observation.

8 The law makes absolutely no distinction between the
9 weight or value to be given to either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than of
12 direct evidence.

13 You should weigh all of the evidence in this case.
14 After weighing all of the evidence, if you are not
15 convinced of the guilt of the Defendant beyond a
16 reasonable doubt, you must find the Defendant not guilty.

17 Necessarily, you must determine the credibility of
18 witnesses who have testified in this case. Credibility
19 simply means believability.

20 It becomes your duty as jurors to analyze and to
21 evaluate the evidence and determine which evidence
22 convinces you of its truth. In determining the
23 believability of witnesses who have testified in this
24 case, you may believe one witness over several witnesses,
25 or several witnesses over one witness.

JURY CHARGE

1 ~~----- You may believe a part of the testimony of a witness~~
2 and reject the remaining part of the testimony of that
3 same witness.

4 You may believe the testimony of a witness in its
5 entirety or reject the testimony of a witness in its
6 entirety.

7 You may consider whether any witness has exhibited to
8 you any interest, bias, prejudice, or other motive in this
9 case.

10 You may also consider the appearance and manner of a
11 witness while on the witness stand.

12 The rules of evidence ordinarily do not permit
13 witnesses to testify to opinions or conclusions. An
14 exception to this rule exists for witnesses we call expert
15 witnesses. A witness who by education and experience has
16 become expert in some art, science, profession, or calling
17 may state an opinion as to relevant and material matters
18 in which the witness claims to be an expert and may also
19 state the reasons for the opinion.

20 You should consider any expert opinion received in
21 evidence in this case and, like any other evidence, give
22 it the weight you think it deserves. If you decide that
23 the opinion of an expert witness is not based on
24 sufficient education or experience, or if you conclude
25 that the reasons given in support -- my papers stuck

JURY CHARGE

1 together.

2 If you conclude that the reasons given in support of
3 the opinion are not sound or that the opinion is
4 outweighed by other evidence, you may disregard the
5 opinion entirely.

6 An expert witness's testimony is to be given no
7 greater weight than that of other witnesses simply because
8 the witness is an expert. Further, you are not required
9 to accept an expert's opinion even though it is not
10 contradicted.

11 I instruct you and emphasize to you that the fact that
12 the Defendant did not testify is not a fact -- not a
13 factor to be considered by you in any way in your
14 deliberation and in your consideration on the question of
15 the guilt or innocence of the Defendant.

16 It must not be considered by you in any manner
17 whatsoever.

18 A defendant has the constitutional right to remain
19 silent and the assertion of this right must not be
20 considered by you in your deliberations.

21 I repeat. Under your oath you are to draw no
22 conclusions whatsoever from the fact that the Defendant in
23 this case did not testify. The fact that this Defendant
24 did not testify should not even be discussed in the jury
25 room.

JURY CHARGE

1 ~~The burden of proof, as I have told you, is on the~~
2 State. The Defendant is not required to prove his
3 innocence. The burden of proof remains on the State to
4 prove guilt beyond a reasonable doubt.

5 In order to establish criminal liability, criminal
6 intent is required. For example, the mental state
7 required to be proven by the State for a particular crime
8 might be purpose, intent, knowledge, recklessness or
9 criminal negligence.

10 Criminal intent must be proven by the State beyond a
11 reasonable doubt. Criminal intent is always a matter that
12 must be determined by the jury from the circumstances
13 surrounding the situation. There is no way to prove
14 intent to a mathematical certainty. There is no way
15 medical science can dissect a person's brain and determine
16 what the person had in mind, so the law says that criminal
17 intent may be inferred from the circumstances shown to
18 have existed.

19 This is how you make a determination of whether or not
20 the element requiring intent was present. It is not
21 necessary to establish intent by direct and positive
22 evidence. But intent may be established by inference in
23 the same way as any other fact; by taking into considering
24 the acts of the parties and all the facts and
25 circumstances of the case.

JURY CHARGE

1 Criminal intent is a mental state, a conscious
2 wrongdoing. It is up to you to determine what the
3 Defendant intended to do based on the circumstances shown
4 to have existed.

5 Criminal intent can arise from action or failure to
6 act. It may arise from negligence, recklessness or
7 indifference to duty, or to consequences that is
8 considered by the law to be the equivalent of criminal
9 intent.

10 The Defendant is charged with attempted murder.
11 Attempted murder is when a person who with intent to kill,
12 attempts to kill another person with malice aforethought,
13 either express or implied.

14 Malice is hatred, ill will or hostility toward another
15 person. It is the intentional doing of a wrongful act
16 without just cause or excuse and with the intent to
17 inflict an injury or under circumstances that the law will
18 infer an evil intent.

19 Malice aforethought does not require that malice exist
20 for any particular time before the act is committed, but
21 malice must exist in the mind of the Defendant just before
22 and at the time the act is committed.

23 Therefore, there must be a combination of the previous
24 evil intent and the act.

25 Malice aforethought may be express or inferred. These

JURY CHARGE

1 ~~terms, express and inferred, do not mean different kinds~~
2 of malice but merely the manner in which malice may be
3 shown to exist. That is, either by direct evidence or by
4 inference from the facts and circumstances which are
5 proved.

6 Express malice is shown when a person speaks words
7 which express hatred or ill will for another or when the
8 person prepared beforehand to do the act which was later
9 accomplished.

10 For example, lying in wait for a person or any other
11 act in preparation of going to show that the deed was
12 within the Defendant's mind would be express malice.
13 Malice may be inferred from conduct showing a total
14 disregard for human life.

15 Inferred malice may also arise when the deed is done
16 with a deadly weapon. A deadly weapon is any article,
17 instrument, or substance which is likely to cause death or
18 great bodily harm. Whether an instrument has been used as
19 a deadly weapon depends on the facts and circumstances of
20 each case.

21 An attempt is an effort to accomplish a crime which
22 does not succeed. An attempt includes a specific intent
23 to do a particular criminal act along with an act falling
24 short of the act intended.

25 The State must show more than mere preparation and

JURY CHARGE

1 ~~intent. There must be some overt act committed in the~~
2 ~~effort to commit the crime.~~

3 Intent means intending the result which actually
4 occurs, not accidentally or involuntarily. Intent may be
5 shown by acts and conduct of the Defendant and other
6 circumstances from which you may naturally and reasonably
7 infer intent.

8 Once again, ladies and gentlemen, to prove attempted
9 murder, the State must prove beyond a reasonable doubt
10 that the Defendant attempted to kill another person with
11 malice aforethought.

12 The Defendant is also charged with possession of a
13 weapon during the commission of or attempt to commit a
14 violent crime. The State must prove beyond a reasonable
15 doubt that the Defendant was in possession of a firearm or
16 visibly displayed what appeared to be a firearm during the
17 commission of a violent crime.

18 A firearm means any machine gun, automatic weapon,
19 revolver, pistol, or any weapon which will, or is designed
20 to, or may be readily converted to expel a projectile.

21 In order to find the Defendant guilty of possession of
22 a weapon during the commission of a violent crime, you
23 must first find the Defendant guilty of either committing
24 a violent crime or attempting to commit a violent crime.

25 And I will tell you that attempted murder is a violent

JURY CHARGE

1 crime.

2 I have declared the law to you through these
3 instructions to help guide you to a just and lawful
4 verdict. Whether some of these instructions apply will
5 depend upon what you find to be the facts.

6 The fact that I have instructed you on various
7 subjects in this case must not be taken by you as
8 indicating an opinion of this Court as to what you should
9 find to be the facts or to what your verdict should be.
10 Your verdict must represent the considered judgment of
11 each juror.

12 In order to return a verdict, it is necessary that
13 each one of you jurors agree on that verdict. Your
14 verdict must be unanimous. All 12 of you must agree on
15 the verdict.

16 Your verdict cannot be based on sympathy, passion,
17 prejudice, emotion, or any other consideration not in
18 evidence in this case.

19 Remember at all times, you are not partisans favoring
20 one party over another. You are the judges of the facts.
21 Your sole interest is to seek the truth from the evidence
22 in this case, and render a fair and just verdict.

23 Now, Madam Forelady, I am going to go over this
24 verdict form with you. Now, again, I told you that I'm
25 going to go over it with you. I'm not going to let you

JURY CHARGE

1 have it yet, okay, but I want to go over it with you.

2 This verdict form lists the indictments. There are
3 two, possibly three questions that you're going to be in
4 charge of answering when you preside over the jury.

5 Okay.

6 It says that you're to circle the appropriate verdict
7 below and follow the accompanying instructions carefully.

8 The first question is: We, the jury, unanimously find
9 the Defendant as to the first charge of attempted murder
10 of Brandon Parker; either guilty or not guilty.

11 Question number two: We, the jury, unanimously find
12 the Defendant as to the second charge of attempted murder
13 of Roger Benjamin; guilty or not guilty.

14 Now, if you find the Defendant guilty of either one or
15 two or both, you are to continue to number three.

16 If you find the Defendant not guilty as to both of
17 these, you stop your deliberations at that point. Okay.

18 Question number three: We, the jury, unanimously find
19 the Defendant as to the charge of possession of a weapon
20 during the commission of a violent crime; guilty or not
21 guilty.

22 Now, you're presiding over the jury. Everybody is
23 supposed to take part in the deliberations.

24 After you make a unanimous decision, you will sign
25 your name and date it and let the bailiff know you've

JURY CHARGE

1 reached a verdict. Okay?

2 Now, as I have told you before, I'm going to let you
3 go back into the jury room. When you go back into the
4 jury room, you cannot begin your deliberations.

5 I will be out here. I will go over my charges with
6 the attorneys. If I have misstated the law, they will ask
7 me to come back and recharge you on some elements of the
8 law and I will come back and I will charge you on those
9 elements of the law.

10 If they tell me that I've said everything I was
11 supposed to say, we'll gather up the evidence, the
12 bailiffs will come back and bring the evidence into the
13 court with you -- into the jury room with you and give you
14 the verdict form and you will be told to begin your
15 deliberations at that time.

16 But until you are told to begin your deliberations,
17 you may not begin talking about this case. Okay?

18 Now, I'm going to excuse you to go back into the jury
19 room at this time. And I'll let you know where we go from
20 there. Okay?

21 Thank you for your attention.

22 (Thereupon, the jury exits the courtroom at
23 12:25 p.m.)

24 THE COURT: Anything from the State regarding the
25 charges?

1 MS. MAURICE: No, Your Honor.

2 THE COURT: Anything from the Defendant?

3 MR. GIBBONS: May we approach?

4 MR. MCCARLEY: May we approach, Your Honor?

5 THE COURT: Sure.

6 (Off-the-record discussion.)

7 THE COURT: Any correction about the charges?

8 MR. MCCARLEY: None from the defense, Your Honor.

9 THE COURT: All right. What I would ask y'all to do
10 is if y'all would go through the evidence, Mr. McCarley
11 and Ms. Maurice, if you would go through the evidence,
12 make sure all of the evidence is together. And then we'll
13 send that back to the jury room along with the verdict
14 form. Okay?

15 (Attorneys comply.)

16 THE COURT: Y'all were chosen as alternates in the
17 case. The case is now ready to go to the jury and since,
18 you know, we don't need you as alternates, y'all are free
19 to go.

20 I know y'all have made excellent jurors, but you are
21 free to go.

22 THE JUROR: Thank you.

23 THE COURT: You are free to go. You are welcome to
24 stay if you want to, but otherwise you are now free to go.

25 THE JUROR: No, sir. I'm hungry.

1 THE COURT: Thank you.

2 (Thereafter, the alternate jurors were excused at
3 12:30 p.m. Deliberations commenced. At 1:15 p.m., there
4 was a question from the jury. Thereafter, the trial
5 resumed as follows:)

6 THE COURT: All right. Back on the record in the
7 State versus Dexter Brown.

8 I've got a question from the jury. The jury would
9 like to listen to the 9-1-1 call again.

10 Bring them back? I don't have any problems with
11 that. I just want to make sure. Bring them back out here
12 and play it in the courtroom? Mr. McCarley?

13 MR. MCCARLEY: Yes, sir.

14 MS. MAURICE: Yes, Your Honor. If we -- Mr. Bamberg
15 said he can set it up, if you give me just a minute, to
16 make it a little bit closer. We've got the volume up as
17 loud as it can go.

18 THE COURT: Okay.

19 MS. MAURICE: I don't know if that's a problem or not.

20 THE COURT: What we're going to need to do is -- Madam
21 Bailiff, do you mind going in the jury room and getting
22 that disk, that 9-1-1 disk? I don't know what exhibit it
23 was.

24 THE COURT REPORTER: Twenty-six.

25 THE COURT: Then once we get it out, if you'll go

1 ahead. Is there anything else we need to take up before I
2 bring the jury back out, Mr. McCarley?

3 MR. MCCARLEY: No, sir.

4 THE COURT: Anything else, Ms. Maurice?

5 MS. MAURICE: No, Your Honor.

6 (Thereupon, a note from the jury was marked and
7 received into evidence as Court's Exhibit No. 1.
8 Thereafter, the jury enters the courtroom at 1:18 p.m.,
9 and the trial continued:)

10 THE COURT: All right. Ladies and gentlemen, I've
11 received a note that y'all would like to listen to the
12 9-1-1 call again.

13 So we are preparing that. As you know, we went back
14 in the jury room and got the disk back out and as soon as
15 I am told it's ready to be played, we'll play it again for
16 you.

17 (Pause.)

18 THE COURT: Are we ready?

19 MR. BAMBERG: (Nods head.)

20 THE COURT: Play the tape, please, sir.

21 (Thereupon, the 9-1-1 call, State's Exhibit No. 26,
22 was played for the jury.)

23 THE COURT: All right. Ladies and gentlemen, y'all
24 have now heard the 9-1-1 tape again. I'm going to let
25 y'all go back into the jury room to begin your

1 deliberations, to continue your deliberations. Okay?

2 Thank you all.

3 (Thereupon, the jury exits the courtroom at 1:25 p.m.)

4 THE COURT: All right. Anything from the State?

5 MS. MAURICE: No, Your Honor.

6 THE COURT: Anything from the defense?

7 MR. MCCARLEY: No, Your Honor.

8 THE COURT: Okay. Then we'll be in recess until you
9 find out what's going to go on.

10 MS. MAURICE: I'm ready right now if you want to.

11 (Thereafter, another matter was heard by the Court.

12 At 3:24 p.m., the Court received a note from the jury and
13 the trial resumed as follows:)

14 THE COURT: Back on the record in the case of State
15 versus Brown.

16 I've got two questions from the jury. The first
17 question is: In the State of South Carolina, if there is
18 a drive-by shooting and there are people at the residence,
19 is that considered attempted murder?

20 Any response from the State?

21 I'll come back to you.

22 MS. MAURICE: Yeah. I really don't know what to say.

23 THE COURT: Yeah.

24 MS. MAURICE: I don't know if -- I'm kind of

25 confused. I don't know if they're suggesting I should

1 have put that Alice Thompson maybe was a victim or -- I
2 don't really understand it.

3 THE COURT: I don't -- well, I'll read the next
4 question.

5 The next question is: If the driver wasn't shooting,
6 is it also the charge of attempted murder?

7 MS. MAURICE: Well, we didn't do hand of one hand of
8 all.

9 THE COURT: No, we didn't.

10 MR. GIBBONS: Your Honor, and I think as to the first
11 question, I think they have to find the name in the
12 indictments, the victim, not bystanders.

13 THE COURT: Oh, no. I understand. My suggestion --

14 MS. MAURICE: Right.

15 THE COURT: -- and y'all tell me what you want me to
16 do, but my suggestion is that they need to just consider
17 the evidence and they consider exactly what was charged
18 and who was charged and that's all they -- that's all that
19 they can consider in this case.

20 MS. MAURICE: Okay.

21 THE COURT: And just tell them that. Is there
22 anything else that you want me to tell them?

23 MR. GIBBONS: Just as long as your charge says they
24 have to find the elements against the victims named in the
25 indictment.

1 THE COURT: I just think, you know, I just think I
2 need to -- they need to consider the testimony and the
3 evidence that they had, and consider the charges against
4 the Defendant that's here, and that's what they're
5 supposed to decide.

6 (Cell phone goes off.)

7 MS. MAURICE: I think he needs to be held in contempt
8 of Court.

9 THE COURT: That's an easy thing to do.

10 (Laughter.)

11 MS. MAURICE: I agree with Your Honor, with what
12 you're --

13 THE COURT: Anything else, Mr. Gibbons?

14 MR. GIBBONS: That's all right.

15 THE COURT: I'm going to keep it very basic. I'll
16 bring them back in here. Okay.

17 Would you bring the jury back in here?

18 (Thereupon, the jury enters the courtroom at
19 3:25 p.m., and the trial continued:)

20 THE COURT: All right. Ladies and gentlemen, I
21 appreciate y'all's deliberation and I've gotten the new
22 questions that y'all had.

23 And what I'm going to tell you is not going to sound
24 like an answer to you, but let me just remind you of a
25 couple of things more than anything else.

1 Okay. Y'all have heard all the evidence in this case
2 that you're going to hear. Okay? And that is the
3 evidence that you have got to consider in determining the
4 facts of this case. Okay.

5 Now, with regard to the charges or the indictment, you
6 can only deal with those indictments that we have, not any
7 of the other factual situations that you have asked any
8 questions about.

9 So you've got the evidence that we have. And we've
10 got the indictments against Mr. Brown. And y'all have got
11 to determine that. Y'all have got to determine his guilt
12 or innocence from that. Okay.

13 And I'm sorry I can't give you any more direction than
14 that, but that's where we are. Okay.

15 So, I'm going to let you go back into the jury room
16 and continue your deliberations.

17 FOREPERSON OF THE JURY: Thank you.

18 THE COURT: Thank you.

19 (Thereupon, the jury exits the courtroom at 3:27 p.m.)

20 THE COURT: Anything from the State?

21 MS. MAURICE: No, Your Honor.

22 THE COURT: Anything from the Defendant?

23 MR. MCCARLEY: No, sir.

24 THE COURT: Okay. I'll mark this set of questions a
25 Court's Exhibit.

1. (Thereupon, the note from the jury was marked and
2 received into evidence as Court's Exhibit No. 2. The jury
3 deliberations continued. At 4:32 p.m., there was another
4 note received from the jury and the trial continued:)

5 THE COURT: I've got a question by the jury.

6 We're back on the record in the case versus State
7 versus Dexter Brown. I have another question from the
8 jury.

9 The question from the jury is: What do we do if the
10 vote is not unanimous?

11 Okay. Now, I thought I was fairly specific when I was
12 telling them they had to be unanimous. Okay. And I don't
13 want to give them an Allen Charge at this stage of the
14 game.

15 So, what I was just going to do is bring them back out
16 here and say, you know, it's got to be unanimous and send
17 them back to deliberate.

18 Unless y'all have some other suggestions. I
19 appreciate pearls of wisdom.

20 Anything from the defense?

21 MR. MCCARLEY: No pearls of wisdom from the defense,
22 Your Honor.

23 THE COURT: Anything from the State?

24 MS. MAURICE: What would be the problem -- I guess,
25 what's your concern with giving an Allen Charge? I

1 haven't looked at an Allen Charge in awhile, to be honest
2 with you.

3 THE COURT: The Allen Charge, I just didn't want to
4 give it now. About eight o'clock tonight I'm inclined to
5 give it, you know. But right now, you know, I just -- I
6 don't like to give it right now because they've been
7 deliberating for about, well, about three hours.

8 MS. MAURICE: Okay.

9 THE COURT: So I want them to have to --

10 MS. MAURICE: Thank you, Your Honor.

11 THE COURT: Before I give an Allen Charge, I just want
12 to tell them it's got to be unanimous. They've got to
13 work that out. Okay.

14 Anything, Mr. Gibbons?

15 MR. GIBBONS: Do you just want to write back on their
16 note, Judge, or do you want to bring them out?

17 THE COURT: I don't mind writing back on the note or I
18 can just step in there and just tell them that.

19 I'll write back on the note, it must be unanimous.
20 Okay?

21 MR. GIBBONS: Okay.

22 THE COURT: I'll just write on here: Your decision
23 must be unanimous.

24 MR. GIBBONS: Okay. It's pretty basic.

25 THE COURT: Actually I'm going to say: The decision

1 of the jury must be unanimous. The verdict of the jury
2 has to be unanimous. Okay?

3 MS. MAURICE: That sounds better.

4 THE COURT: Thank you. On the bottom of the Court's
5 Exhibit, I'm going to get you to take it back there,
6 Mr. Jenkins, and I'm going to get you to let the Forelady
7 see it. She can read it to them.

8 Essentially it just says the verdict of the jury must
9 be unanimous and put the time and you need to bring it
10 back.

11 THE BAILIFF: All right. Bring that back?

12 THE COURT: Bring it back to me.

13 THE BAILIFF: Okay.

14 THE COURT: Thank you, sir.

15 (Thereupon, the bailiff complied. Afterward, the jury
16 note was marked and received into evidence as Court's
17 Exhibit No. 3. Deliberations continued at 4:35 p.m.,
18 until 5:01 p.m., when the trial again resumed as follows:)

19 THE COURT: State ready?

20 MS. MAURICE: Yes, Your Honor.

21 THE COURT: Is the Defendant ready?

22 MR. MCCARLEY: Yes, we are, Your Honor.

23 THE COURT: I understand they've got a verdict so
24 bring them in. Okay. Thank you.

25 (Thereupon, the jury enters the courtroom at

JURY VERDICT

1 5:02 p.m.)

2 THE COURT: All right. Madam Forelady, has the jury
3 reached a verdict?

4 FOREPERSON OF THE JURY: Yes, sir. We have.

5 THE COURT: Is that verdict unanimous?

6 FOREPERSON OF THE JURY: Yes, sir. It is.

7 THE COURT: Okay. Would you please give the bailiff
8 the verdict form?

9 FOREPERSON OF THE JURY: (Complying.)

10 THE COURT: Thank you, sir. All right.

11 Madam Clerk, would you publish the verdict?

12 THE CLERK: Okay. In the State of South Carolina
13 versus Dexter Brown, in the Court of General Sessions of
14 the Second Judicial Circuit, Indictment Number 2011-GS-
15 06-00010, Indictment Number 2011-GS-06-00011, Indictment
16 Number 2011-GS-06-00120, we, the jury, unanimously find
17 the Defendant as to the first charge of attempted murder
18 of Brandon Parker, guilty.

19 We, the jury, unanimously find the Defendant as to the
20 second charge of attempted murder of Roger Benjamin,
21 guilty.

22 If you find the Defendant guilty of one or two or
23 both, continue to number three.

24 We, the jury, unanimously find the Defendant as to the
25 charge of possession of a weapon during the commission of

JURY VERDICT

1 a violent crime, guilty.

2 THE COURT: Thank you, ma'am. Anything from the
3 Defendant?

4 MR. MCCARLEY: Yes, Your Honor.

5 THE COURT: Yes, sir.

6 MR. MCCARLEY: We do have a motion.

7 THE COURT: Okay. I'll take up the motions in a
8 minute. That's all. Okay. All right.

9 Ladies and gentlemen of the jury. I know y'all
10 listened and I appreciate your attention and listening and
11 all the time you took to render -- decide, make your
12 decision. I appreciate what you did. The State
13 appreciates what you did.

14 And I've got to tell you that your service is real
15 important. And so, I -- the good news is you get paid for
16 this, this huge amount of money on a daily basis and the
17 other good news is you don't have to serve on any juries
18 for the remainder of the year in circuit court.

19 But thank you for the good job you did. I appreciate
20 your service.

21 Now let me tell you, you are now free to talk about
22 the case with anybody you want to. But you also don't
23 have to talk to anybody if you don't want to. So if
24 anybody contacts you and they want to talk about the case
25 and you don't feel like talking with them, you can let me

1 know, you can contact the clerk's office, you can give me
2 the name of anybody that's talking to you that you don't
3 want to talk to and I'll talk to them about it.

4 But if somebody wants to talk to you about it and you
5 feel like talking to them about it, you're free to do
6 that. Okay? All right.

7 I want to thank you again for your service. I
8 appreciate everything you did. We are not having any more
9 trials this week so y'all are free. Okay.

10 Thank you again. Appreciate it.

11 THE CLERK: I need Madam Foreperson to sign it.

12 THE COURT: Okay. Madam Forelady, you need to hang
13 around and sign some things. The rest of you are free to
14 go. Thank you all, again. Appreciate your service.

15 (Thereupon, the jury exits the courtroom at 5:10 p.m.)

16 THE COURT: Mr. McCarley, you indicated you had some
17 motions?

18 MR. MCCARLEY: Yes, Your Honor.

19 THE COURT: Yes, sir.

20 MR. MCCARLEY: The defense moves at this time for a
21 new trial based on the objections made during the trial.

22 We also renew the grounds set forth in the directed
23 verdict stage whereby the defense did not meet the
24 elements of commission of a violent injury to another
25 person. As to the attempted murder charge as well as

1 having never placed the firearm in the hands of the
2 Defendant in regards to the possession of a firearm during
3 a violent crime.

4 THE COURT: And any specific objections with regard to
5 the new trial? Just general?

6 MR. MCCARLEY: Yes, sir.

7 THE COURT: All right, sir.

8 I'm going to deny your motion for a new trial. And I
9 believe that there was testimony by eyewitnesses regarding
10 Mr. Brown and the commission of the acts involved.

11 I understand the argument that you're making with
12 regard to your interpretation of attempted murder, but
13 attempted murder is also his conduct. And firing a gun at
14 a van, I think falls easily within the definition of the
15 attempted murder statute.

16 But I will note your request. I will deny your motion
17 but I'll note your objection so that can be preserved on
18 the record should you wish to go forward with this.

19 MR. MCCARLEY: Thank you, Your Honor.

20 THE COURT: Anything further?

21 MR. MCCARLEY: No, sir.

22 THE COURT: All right. Thank you, sir. Do y'all need
23 a minute before we go to the sentencing?

24 MR. MCCARLEY: Please, sir.

25 MS. MAURICE: Yes, sir. We do.

SENTENCING

1 THE COURT: How long do you need to take? Ten
2 minutes?

3 MS. MAURICE: Well, here comes the sentencing sheet
4 now.

5 THE COURT: I'm going to give y'all about 10 minutes.

6 MS. MAURICE: Okay.

7 (Thereupon, a break was taken from 5:10 p.m., until
8 5:19 p.m., when the trial continued as follows:)

9 THE COURT: Back on the record in the State versus
10 Dexter Brown in the sentencing phase. Mr. McCarley?

11 MR. MCCARLEY: Yes, sir. Although we disagree with
12 the verdict, we'd like --

13 THE COURT: Y'all can come up.

14 MS. MAURICE: Have the sentence sheets been handed
15 up?

16 THE COURT: Yeah. I got the sentencing sheets.
17 Uh-huh.

18 MR. MCCARLEY: Again, even though we disagree with the
19 verdict, we'd like the Court to consider the fact that
20 Dexter's been working.

21 He has family. His father would like to speak when
22 the Court sees fit. We'd also like the Court to consider
23 that no one was hurt in any form or fashion in this.

24 The defense strongly requests the Court to run the
25 sentences concurrent as well as to consider the fact that

SENTENCING

1 Mr. Brown is a young man and give a reasonable sentence in
2 the hopes that he can become a productive part of the
3 community again at some point, Your Honor.

4 THE COURT: I'll be glad to hear from his father.

5 Yes, sir. Your name, please, sir?

6 MR. BROWN: Dexter Brown.

7 THE COURT: Mr. Brown, let me hear from you, please,
8 sir.

9 MR. BROWN: Well, the verdict -- a lot of things in
10 the testimony was not so. And, like, they got on the
11 stand and said that I was -- they took care and raised
12 him. I took care of him all my life, ever since his mama
13 got killed in '97.

14 And he's been working, going to school. He had got a
15 grant to go to school in Mississippi with my uncle. And
16 he's working and everything.

17 THE COURT: Yes, sir.

18 MR. BROWN: I raised him and took care of my father in
19 the home.

20 THE COURT: Anything else you want to tell me?

21 MR. BROWN: That's it, sir.

22 THE COURT: Okay. Thank you, Mr. Brown. Appreciate
23 it. All right.

24 Mr. McCarley, anything else?

25 MR. MCCARLEY: No, sir.

SENTENCING

1 THE COURT: Anything from the State?

2 MS. MAURICE: You want the previous convictions, Your
3 Honor?

4 THE COURT: Yes. Yes, ma'am.

5 MS. MAURICE: 2004, burglary second degree; 2008,
6 possession of crack cocaine. It looks like, Your Honor,
7 that there's another possession. It looks like it was
8 probably a probation revocation.

9 THE COURT: Anything else?

10 MS. MAURICE: No, Your Honor.

11 THE COURT: All right. Mr. Brown, the jury in
12 Barnwell County, having heard the testimony in this case,
13 has found you guilty. And, it is my duty to sentence you.

14 WITH REGARD TO INDICTMENT NUMBER 2011-GS-06-10 AND 11,
15 WHICH ARE BOTH THE ATTEMPTED MURDER CHARGES, THE SENTENCE
16 OF THIS COURT IS THAT YOU ARE COMMITTED TO THE STATE
17 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 YEARS. THESE
18 SENTENCES ARE CONCURRENT. I WILL GIVE YOU CREDIT FOR ANY
19 TIME THAT YOU HAVE SERVED.

20 WITH REGARD TO INDICTMENT NUMBER 2011-GS-6-120,
21 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
22 CRIME, THE SENTENCE OF THIS COURT IS YOU ARE COMMITTED TO
23 THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF FIVE
24 YEARS. THAT SENTENCE IS CONSECUTIVE TO THESE.

25 Good luck to you. Thank you.

SENTENCING

1 THE DEFENDANT: Fuck you. Y'all crackers got what
2 y'all wanted, ain't you? Your grandson will get it, too,
3 you old bitch.

4 THE OFFICER: Whoa.

5 THE COURT: I can re-sentence him, Mr. McCarley.

6 MR. MCCARLEY: Would you like to?

7 THE COURT: I might. I'll think about it for a
8 minute.

9 MR. MCCARLEY: Yes, sir.

10 (Thereupon, the Defendant exits the courtroom at
11 5:25 p.m.)

12 THE COURT: All right. While I'm considering that, I
13 will take one more plea if you got it, and then we're
14 through for the week.

15 (Thereupon, Court stood in recess from 5:25 p.m.,
16 until 5:27 p.m., when the hearing of this matter continued
17 as follows:)

18 THE COURT: Mr. McCarley, we're going to go back on
19 the record for a minute --

20 MR. MCCARLEY: Yes, sir.

21 THE COURT: -- in the State versus Dexter Brown. Is
22 everybody present in the courtroom?

23 MR. MCCARLEY: Does Mr. Brown need to return?

24 THE OFFICER: He's gone to the jail, your Honor.

25 THE COURT: He's already gone to the jail? All I want

SENTENCING

1 to do is have the Sheriff tell me on the record what he
2 has told -- what he was told or what his staff was told.
3 Sheriff?

4 THE SHERIFF: Your Honor, as the Defendant was leaving
5 the courthouse he verbally made a threat against the
6 witness in this case. And on the way to the elevator no
7 words were said, but he made a verbal threat to myself and
8 the investigator about myself and Investigator John
9 Trottie.

10 The statement was: I didn't get life. I'll -- you
11 will get life.

12 Like I say, 30 (verbatim) years, 85 percent, I'm
13 afraid the Good Master will take me before he will, but I
14 just wanted it on the record.

15 THE COURT: Okay. Thank you, sir.

16 I also want to note on the record that we were
17 concerned at one point during the trial about perhaps
18 intimidation or threats to witnesses.

19 I'm just going to have that noted on the record in
20 case anything comes up on appeal or anything like that.
21 There was some concern about that before the trial. It
22 proved to be a concern during the trial.

23 And, so that's on the record.

24 Mr. McCarley, anything else you want to put on the
25 record?

SENTENCING

1 MR. MCCARLEY: No, sir.

2 THE COURT: Anything from the State?

3 MS. MAURICE: No, Your Honor.

4 THE COURT: Okay. All right. Thank you all.

5 Appreciate it. Thank you, Sheriff.

6 (Thereafter, the Court stood in recess from 5:29 until
7 5:37 p.m., and the following ensued:)

8 THE COURT: Bring Mr. Brown back in.

9 (Thereupon at 5:38 p.m., the Defendant returned to the
10 courtroom, and the following transpired:)

11 THE COURT: We're back on the record in the State of
12 South Carolina versus Dexter Bernard Brown. Mr. Brown?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: As you were leaving the courtroom you made
15 some comments?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Then I understand you made some threats to
18 the sheriff's department?

19 THE DEFENDANT: No, sir.

20 THE COURT: You didn't make any threats at all?

21 THE DEFENDANT: No, sir.

22 THE COURT: What did you tell them?

23 THE DEFENDANT: What I tell them?

24 THE COURT: Uh-huh.

25 THE DEFENDANT: I will be back. Ain't like I got

SENTENCING

1 life.

2 THE COURT: You didn't say anything to them? You did
3 not make any threats to them?

4 THE DEFENDANT: No, sir.

5 THE COURT: What were the comments that you made
6 leaving the courtroom?

7 THE DEFENDANT: I just told you what I said.

8 THE COURT: And that was it?

9 THE DEFENDANT: That was it.

10 THE COURT: The sheriff's office indicated to me that
11 you made threats to the deputies.

12 THE DEFENDANT: If that's how you feel, that's how you
13 feel.

14 THE COURT: Okay. All right, sir. Did you want to
15 apologize for anything you said?

16 THE DEFENDANT: Apologize for saying? I ain't got
17 life and I'll be back. That's it.

18 THE COURT: So you don't feel like any apologies are
19 necessary?

20 THE DEFENDANT: Not for saying -- ain't like I got
21 life. I don't see no need for apologizing.

22 THE COURT: Okay. All right, sir.

23 THE DEFENDANT: (Inaudible.)

24 THE COURT: I couldn't hear you.

25 THE DEFENDANT: Oh, I say you give me time like I done

SENTENCING

1 murdered somebody or something-- Nothing linking me to
2 nothing, but you give me 35 years.

3 THE COURT: What?

4 THE DEFENDANT: I said, nothing linking me to nothing
5 and you give me 35 years. You got people who kill people
6 who get less time than that. That ain't right.

7 THE COURT: Mr. Brown, you've been convicted. There
8 was eyewitness testimony in here. And you don't act at
9 all appropriately, I don't think. You understand what I'm
10 saying?

11 THE DEFENDANT: What you trying to say?

12 THE COURT: Well, if you don't understand there's no
13 reason for me to go into it any further. Okay.

14 Mr. Brown, so that I won't do anything -- what I'm
15 going to do, and I've told -- I've sentenced you, but on
16 my own I'm going to consider whether I'm going to
17 re-sentence you or not. Okay.

18 And re-sentencing isn't going to be better. Do you
19 understand what I'm saying?

20 THE DEFENDANT: (Nods head.)

21 THE COURT: Sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. All right, sir. All right. I'm
24 modifying the sentences. Same years, everything's
25 consecutive. Thank you, sir.

SENTENCING

1 THE DEFENDANT: ~~Y'all happy now?~~

2 (Thereupon, the Defendant exits the courtroom at
3 5:42 p.m. Court stood in recess until 5:46 p.m., when the
4 trial resumed as follows:)

5 THE COURT: One more time. We're going to back on the
6 record in the State of South Carolina versus Dexter
7 Brown. All right.

8 Mr. McCarley, I believe you said there was something
9 you wanted to tell me?

10 MR. MCCARLEY: The defense would like to make a motion
11 to reconsider and for you to retain jurisdiction, Your
12 Honor.

13 THE COURT: All right. Mr. McCarley, I'm not going to
14 rule on that at this time, but I will take your motion
15 under advisement, consider it, and we'll get back to it.

16 MR. MCCARLEY: Thank you, sir.

17 THE COURT: We're now off the record. Thank you, sir.

18 END OF PROCEEDINGS: 5:45 p.m.

19 * * * *

20 CERTIFICATE OF REPORTER

21 I, Cheri L. Young, Registered Professional Reporter,
22 and Official Court Reporter for the State of South
23 Carolina, do hereby certify that the foregoing transcript
24 of proceedings heard on Monday, May 11, 2011, and Tuesday,
25 May 12, 2011, in Barnwell, South Carolina, was reported by

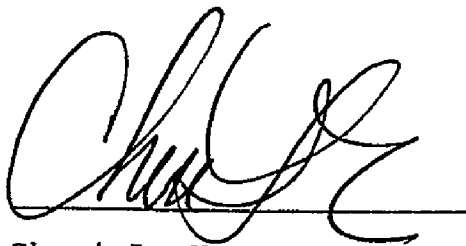
SENTENCING

1 me using machine shorthand and realtime computer-aided
2 translation and is a true, accurate and complete
3 transcript of the proceedings had and evidence introduced
4 in the hearing of the matter.

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

7 I have hereunto set my hand this Thursday, the 3rd day
8 of May, 2012.

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A handwritten signature in black ink, appearing to read 'Cheri L. Young', is written over a horizontal line.

Cheri L. Young, RPR
Official Court Reporter.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

CASE NO. 2011-GS-06-0010,
0011, 0120

STATE OF SOUTH CAROLINA)

versus)

DEXTER BERNARD BROWN,)

DEFENDANT)

MOTION FOR RECONSIDERATION
TRANSCRIPT OF RECORD

DATE:

SEPTEMBER 22, 2011

BEFORE:

HONORABLE EDGAR DICKSON PRESIDING JUDGE

APPEARANCES:

KIP McALISTER, ESQUIRE

ASSISTANT SOLICITOR

FOR THE STATE

NICHOLAS McCARLEY, ESQUIRE

PUBLIC DEFENDER

FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

1 DATE:

2 SEPTEMBER 22, 2011

3 THE COURT: Mr. McCarley, this your motion?

4 MR. MCCARLEY: Yes, Your Honor, it is. This the Defense
5 moving for reconsideration of the sentence in the case of
6 Dexter Brown, a trial you heard in May in Barnwell County,
7 sir. First off I'd like to thank the Court for granting
8 this motion. We're aware it's discretionary and we
9 appreciate being heard.

10 We would like the Court to reconsider the sentence in
11 three parts, Your Honor: First, to reconsider the original
12 sentence where Dexter was given the maximum possible
13 penalty; also, the resentencing after what occurred in the
14 courtroom; as well as to reconsider the sentence based on
15 some personal family background that counsel has only been
16 made aware of since the trial.

17 I'm aware that you're going to want to speak to Dexter,
18 himself. His family, a couple of family members are also
19 here, I also have a couple of letters from the community on
20 his behalf.

21 THE COURT: Okay.

22 MR. MCCARLEY: If I may first, Your Honor.

23 THE COURT: Yes, sir.

24 MR. MCCARLEY: Thank you. As to the original sentence
25 where he was given the maximum sentence possible for the

1 crimes he was convicted of, the Defense doesn't believe
2 Dexter has the kind of violent criminal history that would
3 warrant a maximum penalty. Also of note, Dexter's co-
4 defendant was sentenced to Fifteen years in the next term of
5 Court after Mr. Brown's trial.

6 THE COURT: Was it, did the co-defendant go to trial?

7 MR. MCCARLEY: The co-defendant did not, he pled
8 guilty, Your Honor.

9 THE COURT: But he was sentenced to Fifteen years?

10 MR. MCCARLEY: Yes, sir.

11 THE COURT: Okay. Alright.

12 MR. MCCARLEY: Also, from an equitable standpoint, the
13 victims in this case, as the testimony of the State's
14 witnesses at trial showed, did not come with clean hands.
15 One victim, it came out at trial, has outstanding charges.
16 The other victim was not available for trial because he is
17 currently incarcerated in North Carolina for possession of a
18 firearm by a convicted felon.

19 Finally, speaking to the original sentence, no one was
20 injured in this incident. We are aware of how serious and
21 how severe what occurred on that roadside that day was, but
22 the fact remains that no one was injured.

23 THE COURT: And Mr. Brown pointed that out to me at
24 trial.

25 MR. MCCARLEY: Yes, sir.

1 THE COURT: Okay.

2 MR. MCCARLEY: We'd also like the Court to reconsider
3 the resentencing. Dexter had high hopes in taking this to
4 trial. Those hopes were even higher when the jury was out
5 as long as it was. He was then convicted and sentenced, and
6 he lost his cool. In the multiple conversations he and I
7 have had via phone and in person since then he has told me
8 that he is sorry that, as he told me on multiple occasions,
9 he allowed his pride to get out in front of him, and he's
10 sorry, but he will, he will himself speak to that, Your
11 Honor.

12 THE COURT: Okay.

13 MR. MCCARLEY: And then, by way of possibly explaining
14 what occurred in the courtroom at the end, Dexter's -- a
15 little bit about his family and personal background that I
16 was not aware of at trial and at the sentencing phase, if I
17 may, - - -

18 THE COURT: Yes, sir.

19 MR. MCCARLEY: --- Dexter was raised initially by his
20 mother and step father. I have come to find that that step
21 father was abusive towards Dexter and his mother. His
22 little brother actually lived in the home as well and
23 suffered from seizures, his step father was not physically
24 abusive toward the younger brother because I'm told in a
25 number of instances Dexter would step in so that that would

1 not occur for his -- that would not occur to his younger
2 brother, sir. His mother passed away in a car wreck. His
3 younger brother was in the car. His step father was, either
4 pled to or was found guilty of manslaughter in that
5 incident. The car was tampered with, and Dexter's mother
6 passed away. After that incident, -- Dexter was eight years
7 old and his younger brother was six at that time, Your
8 Honor. After that incident he did go to counseling to deal
9 with the passing of his mother. As a part of that
10 counseling he was diagnosed severely ADHD. He took
11 medicine, including Adarol and I believe as well, Butrin,
12 during that treatment. Coming up then in school Dexter was
13 on the honor roll and played sports. His, he then dropped
14 out and started making poor, poor decisions due to peer
15 group and the like, and he takes ownership of those. And
16 he's told me that it all started to go wrong, you know, in
17 the late teenage years. And before that, I mean, we're just
18 now talking about the fact that he was in the newspaper for
19 playing sports and for being on the honor roll. He
20 actually, I spoke to a lady whose child he tutored in late
21 middle school and she couldn't, you know she just couldn't
22 believe the situation that he had gotten himself into. And
23 he admits to getting himself into that situation. So, those
24 are kind of the three bases we would like the Court to
25 reconsider the sentence for Mr. Brown. Again, I think his

1 aunt, Ms. Carter, may like to speak on his behalf, and I'm
2 not sure whether or not his father would, Your Honor.

3 THE COURT: You're welcome to come up.

4 SOLICITOR McALISTER: Your Honor, I did have a couple
5 of things from the State just for the record at the
6 appropriate time.

7 THE COURT: Okay. Yeah, I'm going to let you respond
8 after I hear from them.

9 SOLICITOR McALISTER: Yes, sir.

10 THE COURT: Yes, ma'am, if you'd come on up.

11 COURT REPORTER: I need your name.

12 SOLICITOR McALISTER: Yes, ma'am, I'm Kip, K-I-P,
13 McAlister, M-C-A-L-I-S-T-E-R.

14 THE COURT: Come on up, please, ma'am. Okay, would you
15 tell me your name, please, ma'am?

16 MS. CARTER: I'm Karen Carter. I'm his aunt.

17 THE COURT: Okay. Now, Ms. Carter, what do you want to
18 tell me, please, ma'am?

19 MS. CARTER: I would like to first thank you for this
20 opportunity to have my nephew come to get a resentence of
21 his sentence. This is very emotional for me because Dexter
22 is like a son to me. When his mother passed our mother
23 helped raise him, and then she passed, and so the primary
24 family that he had that we raised him, that was myself and
25 my brother. And again, I, this is a very emotional

1 experience for me because I just can't believe how this
2 could have occurred, really, because of our upbringing and
3 nurturing him and raising him. I understand that he has
4 probably made some mistakes in his life, but at this point
5 in time I understand that my nephew, this is something that
6 he is regretful, and he definitely realizes that, you know,
7 it was the behavior that he rendered before the Court was
8 not necessary. And he really wants to be forgiven for that.
9 My nephew is a very intelligent young man. Also, he's a
10 very kind and giving young man. We had to take care of our
11 father for many, many years after our mother passed. My
12 nephew stepped in as a young child helping to do whatever he
13 could for his grandfather, even bathing him, feeding him,
14 making sure he had his medicine on time. He also was a
15 caring young man towards his other relatives, his friends,
16 looking after young ones. His whole demeanor doesn't even
17 fit this character, and I realize over the years he did go
18 through a lot of traumatic experiences, and I tried to cover
19 him in a lot of that. However, when you don't have your
20 mother, you don't have your grandmother, you know, I was the
21 only woman that was there for him, and I tried my best, but
22 you know, as they get older, you know, teenage years, but
23 again, my nephew really, really is very remorseful, and very
24 apologetic about the things he done. He's really recognized
25 a lot of the behavioral issues, and a lot of behavioral

1 issues could have come from the things that he went through
2 when he was a young child. And that's something that, you
3 know, I always kept in mind when, you know, talking to him
4 and trying to give him guidance. So, I'm asking you, the
5 Court, to please think about and give him a lesser sentence,
6 if not time served, because he can do so much better. He
7 was working, he had his own car, he was living in his own
8 place, he was doing well. He would call me every other day
9 to let me know how much he enjoyed his job. We had that
10 connection and I just know that I can help him because I am
11 a public servant, I work with Community Development, and
12 that's what I do. And I can assist my nephew in many ways.
13 So, I'm asking you and I'm begging your forgiveness for my
14 nephew to give him a lesser sentence or time served. Thank
15 you.

16 THE COURT: Okay. Thank you, ma'am.

17 MR. MCCARLEY: I don't believe his father is going to
18 speak today.

19 THE COURT: Alright.

20 COURT REPORTER: Sir, I need your full name.

21 MR. MCCARLEY: Nick, N-I-C-K, MCCARLEY, M-C-C-A-R-L-E-
22 Y.

23 THE COURT: Alright, what else, Mr. MCCARLEY?

24 MR. MCCARLEY: I believe Mr. Brown would like to speak
25 to you, sir.

1 THE COURT: Okay, Mr. Brown, I'd like to hear from you,
2 please, sir.

3 DEFENDANT BROWN: I want to say I'm sorry for the
4 outburst and the curse words I used that day in your
5 courtroom. I had let my pride get the best of me that day
6 when you told me I had all that time. And I felt like my
7 life was over with. So, I had let my pride get the best of
8 me, and I just wanted to let you know I'm sorry.

9 THE COURT: Alright, sir. Okay. Now, you've already
10 been, you're already up -- where have they placed you?

11 DEFENDANT BROWN: At Lee County.

12 THE COURT: Lee County?

13 DEFENDANT BROWN: Yes, sir.

14 THE COURT: Okay. Alright, sir. Have you signed up
15 for any training or anything?

16 DEFENDANT BROWN: Training, I go to Arnold School, I've
17 got a trade.

18 THE COURT: Okay. But what did you go for?

19 DEFENDANT BROWN: Electricity.

20 THE COURT: Electricity?

21 DEFENDANT BROWN: Yes, sir.

22 THE COURT: Have you started any classes yet?

23 DEFENDANT BROWN: Not yet, I'm still on the waiting
24 list.

25 THE COURT: Oh, you're still on the waiting list.

1 Okay. How long did they tell you the waiting list would be?

2 DEFENDANT BROWN: I ain't know, probably like a month
3 or three months, somewhere in there.

4 THE COURT: Okay. Alright, sir. Anything else you
5 want to tell me?

6 DEFENDANT BROWN: No, sir.

7 THE COURT: Okay. Thank you, sir.

8 Alright, Mr. McAlister.

9 SOLICITOR McALISTER: Your Honor, just a couple of
10 things just for the record. This was out of Barnwell
11 County, Indictments 2001-GS-06-10, 2011-GS-06-11 for
12 attempted murder, and also an indictment for 2011-GS-06-120
13 for possession of a weapon during a violent crime. Just
14 going back to the sentencing, the State, it feels that your
15 sentence that you imposed that day was appropriate due to
16 the nature of the circumstances with the crime. We also
17 felt these things that transpired after the initial
18 sentencing that the modified sentence was appropriate, Your
19 Honor. The victims could not be here, and did not wish to
20 be here today but they will be made aware of whatever
21 outcome we have here today, and Investigator Jeff Croft, who
22 was the lead investigator on this case from the Sheriff's
23 Department could not be here as well. He wanted me to let
24 you know that he is in training in Columbia and just
25 couldn't get down here.

1 THE COURT: Okay. And Mr. McAlister, he was convicted
2 by a jury of two counts of attempted murder, is that
3 correct?

4 SOLICITOR McALISTER: Correct, Your Honor, and if I
5 remember correctly, the initial sentences were on those two
6 counts concurrent for Thirty years, and then you added the
7 consecutive count of five years for possession of a weapon
8 during a violent crime.

9 THE COURT: Alright. And then I modified it to
10 everything consecutive?

11 SOLICITOR McALISTER: Yes, sir.

12 THE COURT: Okay.

13 SOLICITOR McALISTER: And the co-defendant Mr. McCarley
14 spoke of did plea at a recent term of Court in Barnwell
15 County, Two to Fifteen years, and that was what he was
16 initially offered. At the time of this trial he was under
17 mental -- that was one reason for that plea to Fifteen
18 years.

19 THE COURT: Okay. Alright. Alright, McCarley,
20 anything else?

21 MR. MCCARLEY: Just in closing to remind the Court of
22 something it already knows, the penalty for this crime, zero
23 to Thirty years does allow for a great deal of latitude.
24 And Dexter, in light of the, a number of the facts and
25 circumstances and situations that hopefully I've brought to

1 light here today would appreciate as much mercy in your
2 reconsideration of this sentence as possible, Your Honor.
3 That's all from the Defense.

4 THE COURT: Okay. Alright.

5 Mr. Brown, what I'm going to do is, I've saved all of
6 my trial notes. I'm going to go back, I'm going to review
7 my trial notes, - - -

8 DEFENDANT BROWN: Yes, sir.

9 THE COURT: --- and then I'll get back with your
10 attorney and make my decision. Okay?

11 DEFENDANT BROWN: Yes, sir. Okay.

12 THE COURT: Alright. Good luck to you.

13 MR. MCCARLEY: Thank you, for the time, sir.

14 DEFENDANT BROWN: Thank you.

15 SOLICITOR McALISTER: Thank you, Your Honor.

16 (END OF TRANSCRIPT)

CERTIFICATE

I, the undersigned, Mrs. Harry A. Walker, of
Rowesville, South Carolina, Official Court Reporter for the
First Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete transcript of record of all the proceedings had and
evidence introduced in the captioned cause, relative to
appeal, in the Court of General Sessions for Barnwell
County, held in Orangeburg County, South Carolina, on the
22nd day of SEPTEMBER, 2012.

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

DATE: JANUARY 29, 2013

Harry A. Walker
(MRS.) HARRY A. WALKER

000238

STATE OF SOUTH CAROLINA	) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BARNWELL	) SECOND JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	) ORDER GRANTING MOTION
	) TO RECONSIDER SENTENCE
VS.	) 2011-GS-06-0010
	) 2011-GS-06-0011
DEXTER BENARD BROWN II,	) 2011-GS-06-0120
DEFENDANT.	)

This matter came before the Court on the September 29, 2011 on Defendant's motions to reconsider the sentences imposed by this Court on the above referenced indictments. Present were: Allen Keith 'Kip' McAlister, Assistant Solicitor; Nicholas Randolph McCarley, Attorney for the Defense; and Dexter Benard Brown II, Defendant.

After hearing arguments, this Court hereby restores the original sentence of May 12, 2011, which was 30 years for each conviction for attempted murder, terms to be run CONCURRENT, and a five year sentence for the conviction of possession of a deadly weapon during a violent crime, which is to be run consecutive. The total sentence is 35 years.

Based on the foregoing, the Defendant's motions to reconsider the sentences previously imposed by this Court are hereby granted, and the attempted murder sentences are to be run CONCURRENT, the weapon sentence is consecutive.

IT IS SO ORDERED.


 Edgar Dickson
 Resident Judge
 First Judicial Circuit

September 9
 October 9, 2011
 Orangeburg, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF BARNWELL
 I, *[Signature]*, Clerk of Court for Barnwell County,
 do hereby certify that the foregoing
 is a true and correct copy of the original
 filed in my office.

NOV 15 2011

[Signature]
 Clerk of Court, Barnwell County, SC

FILED FOR DEPOSITION
 2011 NOV 15 AM 11:10
 RHONDA D. McELVEEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

15/18

WITNESSES

Barnwell Sheriffs Office

11-16-2011

Jeff Croft

11-16-2011

Law Enforcement Case #: C10-10-7431

06:43:15 p.m.

LM

ARREST WARRANT NUMBER

11-DI06-0034

ACTION OF GRAND JURY

True Bill

Mark D. ...

Foreperson of Grand Jury

Date: 4/28/2011

VERDICT

Guilty

Wm W. Beckford

Foreperson of Petit Jury

Date: 5-12-11

Barnwell Public Defense

803 541 7046

0000000000

DOCKET NO. 2011GS0600120

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

MAY TERM 2011

THE STATE

vs.

DEXTER BENARD BROWN II

CDR #: 0549

Indictment for

POSSESSION OF WEAPON DURING A
VIOLENT CRIME

§ 16-23-0490

J. STROM THURMOND, SOLICITOR

238

STATE OF SOUTH CAROLINA
COUNTY OF Barnwell
STATE

VS.

Dexter Benard Brown II

AKA:

Race: 2 Sex: M Age: 20

DOB: SS#: _____

Address: _____

City, State, Zip: BARNWELL, SC 29812

DL# SID# _____

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0600120A/W#: 11-DI06-0034Date of Offense: 4/28/2011S.C. Code #: 16-23-0490CDR Code #: 0549

SENTENCE SHEET

NMT 5413

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Donna Marie 69590
Solicitor SC Bar # _____

Defendant

AD M 72930
Attorney for Defendant SC Bar # _____WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 5/12/11☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on 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 16-25-85 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient:

*Fine:	\$	_____
§14-1-208 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def. Prob)	\$500	\$ _____
§14-1-212 (Law Enforce Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>

TOTAL \$ 133.90Printed Name of Deputy Clerk Shirley H. HinderPrinted Name of Defendant Charles BrownObtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other ADV : 111☐ Appointed PD or appointed other counsel; --
\$47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge EdwardJudge Code: 2153Sentencing Date May 12, 2011

12/18
WITNESSES

Barnwell Sheriffs Office

11-16-2011 Jeff Croft

Law Enforcement Case #: C10-10-7431

06:42:14 p.m. LM
ARREST WARRANT NUMBER
K338560

ACTION OF GRAND JURY

James Bill

Mark Brubaker
Foreperson of Grand Jury
Date: 1/6/2011

INDICT
Guilty

William W. Beckwith
Foreperson of Petit Jury
Date: 5-12-11

DOCKET NO. 2011GS0600010

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE
vs.

DEXTER BENARD BROWN II

CDR #: 3410

Indictment for

ATTEMPTED MURDER

§ 16-03-0029(A)

J. STROM THURMOND, SOLICITOR

240

1803 541 7046
000241

000242

STATE OF SOUTH CAROLINA)

INDICTMENT FOR
ATTEMPTED MURDER

COUNTY OF BARNWELL)

§ 16-03-0029(A)

At a Court of General Sessions, convened on January 2011, the Grand Jurors of Barnwell County present upon their oath:

That **DEXTER BENARD BROWN II** did in Barnwell on or about October 15, 2010, feloniously, willfully and with malice aforethought, attempt to murder Brandon Parker by means of discharging a firearm numerous times at Brandon Parker. All in violation of Section 16-3-29 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF Barnwell
STATE

VS.
Dexter Benard Brown II

AKA:
Race: 2 Sex: M Age: 20
DOB: SS#:
Address:
City, State, Zip: BARNWELL, SC 29812
DL# 7 SID#

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

TO: Murder: Attempted Murder

In violation of 16-03-0029(A) of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ Recommendation by the State.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John M. M... 69590 SC Bar # Defendant Attorney for Defendant 78930 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011 GS 06 00011

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§14-1-206 (Assessments 107.5%) \$

§14-1-211 (A)(1)(Conv Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§14-1-212 (Law Enforce Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.40

TOTAL \$ 133.40

Amount Received by Clerk \$

Amount Paid by \$

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0600010

A/W#: K338560

Date of Offense: 10/15/2010

S.C. Code §: 16-03-0029(A)

CDR Code #: 3410

SENTENCE SHEET
NMT 30YRS.

☒ CONVICTED OF or ☐ PLEADS

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

parts of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel.
§47-12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Clerk 2153

Sentence Date May 12, 2011

000244

WITNESSES

Barnwell Sheriffs Office

Jeff Croft

Law Enforcement Case #: C10-10-7431

06-11-13 p.m.

LM

ARREST WARRANT NUMBER

K338563

ACTION OF GRAND JURY

Ernie Bill

Mark Mulliken

Foreperson of Grand Jury

Date: 1/16/2011

VERDICT

Guilty

Thomas W. Beckford

Foreperson of Petit Jury

Date: 5-12-11

DOCKET NO. 2011GS0600011

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE

vs.

DEXTER BENARD BROWN II

CDR #: 3410

Indictment for

ATTEMPTED MURDER

§ 16-03-0029(A)

J. STROM THURMOND, SOLICITOR

243

Barnwell Public Defender

803 541 7046

000245

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

INDICTMENT FOR
ATTEMPTED MURDER

§ 16-03-0029(A)

At a Court of General Sessions, convened on January 2011, the Grand Jurors of Barnwell County present upon their oath:

That **DEXTER BENARD BROWN II** did in Barnwell on or about October 15, 2010, feloniously, willfully and with malice aforethought, attempt to murder Roger Benjamin by means of discharging a firearm numerous times at Roger Benjamin. All in violation of Section 16-3-29 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF Barnwell
STATE

IN THE COURT OF GENERAL SESSIONS

VS.
Dexter Benard Brown II

INDICTMENT/CASE#: 2011GS0600011

AKA:
Race: 2 Sex: M Age: 20
DOB: SS#:
Address:
City, State, Zip: BARNWELL SC 29812
DL# SID#

A/W#: K338563
Date of Offense: 10/15/2010
S.C. Code #: 16-03-0029(A)
CDR Code #: 3410

SENTENCE SHEET

NMT 30415

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder / Attempted Murder

In violation of § 16-03-0029(A) of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Munio 69590
Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar # 78930

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011 GS 06 00010

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on 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 16-25-85 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCODPPPS

Recipient:

*Fine:	\$	
§14-1-206 (Assessment 107.5%)	\$	
§14-1-211 (A)(1)(Conv Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-236 (DUI Breath Test)	\$25	\$
§56-1-236 (Public Def Prob)	\$500	\$
§14-1-212 (Law Enforce Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$15.00	\$
§50-21-114 (SUI Breath Test Fee)	\$50	\$
§56-5-2942(J)(Vehicle Assessment)	\$40/lea	\$
§56-5-2942(J)(SOCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>2.40</u>
TOTAL	\$	\$ <u>132.40</u>

Defendant's Attorney:

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve WE beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pts of \$ Beginning

\$ Paid to Public Defender Fund

Other

☐ Appointed PD or appointed other counsel.
§47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2153

Signature Date: 2/12/2011

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BARNWELL COUNTY

Court of General Sessions
The Honorable Edgar Dickson

Appellate Case No.: 2011-202947

State of South Carolina,

Respondent,

vs.

Dexter Bernard Brown, II,

Appellant.

FINAL BRIEF OF APPELLANT

TOMMY A. THOMAS
Bar No.: 005536
Post Office Box 88
Irmo, SC 29063
(803) 732-5507

ATTORNEY FOR
APPELLANT

Christina J. Catoe, Esq.
ATTORNEY FOR RESPONDENT
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

RECEIVED

JAN 17 2014

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE CIRCUIT COURT IMPROPERLY DENIED COUNSEL'S MOTION FOR DIRECTED VERDICT WHERE THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE ELEMENTS OF ATTEMPTED MURDER AND POSSESSION OF A FIREARM DURING THE ATTEMPT TO COMMIT A VIOLENT CRIME.
- II. WHETHER THE CIRCUIT COURT'S JURY CHARGE THAT MALICE CAN BE IMPLIED FROM THE USE OF A DEADLY WEAPON VIOLATES THE SOUTH CAROLINA AND UNITED STATES CONSTITUTION AND CONTRAVENES STATE V. BELCHER, WHICH FOUND IT IMPROPER FOR THE COURT TO MAKE SUCH AN IMPLIED MALICE CHARGE TO THE JURY UNDER CIRCUMSTANCES WHICH WOULD REDUCE, MITIGATE, EXCUSE OR JUSTIFY HOMICIDE CAUSED BY A DEADLY WEAPON.

STATEMENT OF THE CASE

On April 12, 2011 Mr. Brown was indicted on two counts of attempted murder under §16-3-29 (Indictments 2011-GS-06-0010 and 2011-GS-06-0011) and one count of possession of a weapon during a violent crime under §16-23-490 (Indictment 2011-GS-06-0120)(R pp. 239-246). He was subsequently tried by jury on May 11 and 12, 2011. Upon the close of the State's case, Mr. Brown's counsel made a motion for a directed verdict on the attempted murder charges and the charge for possession of a weapon during a violent crime. (R. pp. 151-154). As to the attempted murder charges, defense counsel asserted that the State had failed to present any evidence that the Defendant had committed a violent injury to another person. As to the possession of a weapon during a violent crime charge, counsel argued that no gun and no other evidence was presented linking Mr. Brown to the scene. (R. p. 152)

Judge Dickson denied defense counsel's motion for a directed verdict, noting that there was sufficient evidence presented to allow the case to go to the jury. (R. p. 154). Upon the close of all the evidence, Judge Dickson charged the jury stating Mr. Brown was found guilty of all three charges on May 12, 2011. Judge Dickson initially sentenced Mr. Brown to two concurrent thirty (30) year sentences, one for each of the two attempted murder offenses, and one consecutive five (5) year sentence for possession of a weapon during a violent crime (a total of thirty-five (35) years).

Following his initial sentencing, Mr. Brown had an outburst in the courtroom, and Judge Dickson re-sentenced Mr. Brown to two consecutive thirty (30) year terms for attempted murder along with a five (5) year consecutive sentence for possession of a weapon during a violent crime (a total of sixty-five (65) years) (R. pp.240-246). Mr. Brown's trial counsel entered a motion for reconsideration of the sentence, which Judge Dickson agreed to hear on September 22, 2011. (R.

p. 238). Following the motion hearing, on November 15, 2011 Judge Dickson reinstated Mr. Brown's original sentence of two concurrent thirty (30) year terms for attempted murder and one consecutive five (5) year term for possession of a weapon during a violent crime (a total of thirty-five (35) years). He is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court.

Mr. Brown filed a timely Notice of Appeal on November 15, 2011. This initial brief follows.

STATEMENT OF FACTS

On October 15th, 2010, shots were fired outside of a mobile home, the residence of Ms. Alice Thompson, located at Patterson Mill Road in Barnwell County, South Carolina. (R pp. 41, 134). Mr. Roger Benjamin testified that he and an unknown gentleman named "T" were riding with fellow alleged victim Brandon Parker in Ms. Lesley Morrissey's (Brandon's mother, not present at time of incident) burgundy Blazer. (R. p p. 87, 91)

Mr. Benjamin said Brandon pulled into the yard after having been followed by Mr. Dexter Brown and his co-defendant Mr. Kendrick Jacobs. (R. p. 86) Mr. Benjamin then said he heard shots fired after Brandon pulled into the yard, and that he, T, and Brandon exited the vehicle. (R p. 95) He identified the shooters as Mr. Brown and Mr. Jacobs and said that he could tell what type of gun Mr. Jacobs was shooting because he could hear that it had two eighty-round clips by its sound. (R. pp. 86, 100) Ms. Lesley Morrissey later testified that her vehicle's back passenger glass was shattered, both tires on the right-hand side of the vehicle were flattened, and that there was a bullet in a headrest. (R. p. 105)

Ms. Alice Thompson, who is Mr. Benjamin's grandmother, testified that she saw Mr. Brown and Mr. Jacobs drive by her home two times and that they "shot, they just shot" and "shot the van up." (R. pp. 135, 137). She said that the progression of events was as follows: 1) the Blazer stopped in her yard; 2) the victims exited the vehicle and ran; and 3) that at that point the alleged shooters stopped their car and shot only at the Blazer. (R. p. 150). Further, she said that she "didn't see them pointing at [anybody] but they [were] shooting..." (R. p. 149).

Mr. Brown was subsequently arrested and indicted on two counts of attempted murder and one count of possession of a weapon during the attempted commission of a violent crime. (See Indictments 2011-GS-06-0010, -0011, and -0120). Upon the close of the State's evidence, defense counsel made a motion for a directed verdict. (R. pp. 151-153). Judge Dickson denied the motion, pointing out that two witnesses placed a gun in Mr. Brown's hands and that while "[a]ll the evidence points that they were shooting at a van perhaps,...there were people in the van at one time." (R. p. 154) Thereafter the case was allowed to go to the jury. Judge Dickson charged the jury as follows on the implied malice requirement of attempted murder:

Inferred malice may...arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. (R. p. 195).

The jury found Mr. Brown guilty on two charges of attempted murder and one of possession of a weapon during the attempted commission of a violent crime. (R. pp. 210-211) Mr. Brown filed a timely notice of appeal on November 15, 2011, and this brief follows.

STANDARD OF REVIEW

On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001). However, if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury. State v. Harris, 351 S.C. 643, 572 S.E.2d 267 (2002).

Erroneous jury instructions are subject to the harmless error standard. See Lowry v. State, 376 S.C. 499, 510-11, 657 S.E.2d 760, 766 (2008). To find harmless error, “the Court must ‘find that error unimportant...in relation to everything else the jury considered...’ [For] an unconstitutional presumption in a jury instruction,...the Court must [(1)] ask what evidence the jury actually considered in reaching its verdict, and (2)...weigh the probative force of the evidence...against [that] of the presumption...alone.” Id. at 508. (quoting Yates v. Evatt, 500 U.S. 391, 403-404, 111 S. Ct. 1884 (1991).)

ARGUMENT

III. THE CIRCUIT COURT IMPROPERLY DENIED COUNSEL'S MOTION FOR DIRECTED VERDICT BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE ELEMENTS OF ATTEMPTED MURDER AND POSSESSION OF A FIREARM DURING THE ATTEMPT TO COMMIT A VIOLENT CRIME.

Section 16-3-29 says “[a] person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. Code Ann. (2010). Defense counsel’s Motion for a Directed Verdict was proper because the State failed to present enough evidence to place Defendant’s actions within the purview of this statute. While the State presented testimony that Mr. Brown was shooting a gun, none of the State’s proffered evidence shows that Mr. Brown aimed and fired a gun at either of the alleged victims.

Mr. Roger Benjamin, one of the alleged victims, testified that after pulling into his grandmother’s yard, “gunshots went off” and “they started shooting” (R. p p. 86, 96). However, at no point did he state that either Mr. Brown or his co-defendant Mr. Kendrick Jacobs was pointing and shooting a firearm at either of the alleged victims. Also, Ms. Leslie Morrissey, the owner of the burgundy Blazer (R. p. 87) which Mr. Benjamin and Brandon Parker (the other alleged victim) rode in the day in question, testified that the back passenger glass was shattered, both tires on the right-hand side of the vehicle were flattened, and that there was a bullet in a headrest. (R. p. 105) Mr. Benjamin testified that he could tell the gun Mr. Jacobs was shooting had two eighty-round clips by its sound. (R. p. 100) However, he did not testify that he heard any bullets hit the vehicle while inside the Blazer or while exiting.

Further, Ms. Thompson testified that she saw Mr. Brown and Mr. Jacobs drive by her home two times and that they “shot, they just shot” and “shot the van up.” (R.p p. 135, 137). She

testified that the Blazer stopped in her yard, the victims exited the vehicle and ran, and that at that point the alleged shooters stopped their car and shot only at the Blazer. (R. p. 150). Further, she said that she “didn’t see them pointing at [anybody] but they [were] shooting...” (R. p. 149)

Therefore, even in the light most favorable to the State, the evidence at most showed that Mr. Brown discharged a firearm, but that while doing so he did not aim the firearm at any individual. As such, the State did not present sufficient evidence to establish an intent to kill, and the Motion for a Directed Verdict should have been granted.

As to the possession of a weapon during a violent crime, Judge Dickson denied defense counsel’s motion on the grounds that two witnesses placed a gun in Mr. Brown’s hands and that while “[a]ll the evidence points that they were shooting at a van perhaps, ... there were people in the van at one time.” (R. p. 154) However, the evidence clearly showed that there was nobody in the Blazer at the time the alleged shooters shot at the vehicle, and that neither of the alleged shooters had pointed a gun at any individual. Having only established that Mr. Brown and Mr. Jacobs shot at the van (in the light most favorable to the state), this was not enough to establish that a violent crime had been committed.

Section 16-23-490 defines the crime of possessing a firearm during the attempt to commit a violent crime, and “violent crime” is defined under § 16-1-60. This section includes a list of offenses and says “[o]nly those offenses specifically enumerated in this section are considered violent offenses.” (2012). The closest related enumerated offense to this case is assault and battery of a high and aggravated nature under § 16-3-600(B). However, that offense requires a preliminary showing of an attempt to injure, and no evidence shows that Mr. Brown aimed a gun at any person in an attempt to harm. At most, shooting an unoccupied vehicle amounted to the

unlawful discharge of a firearm into a vehicle under § 16-23-440, a crime which was not charged in this case.

Further, Judge Dickson, by making the statement that there were people in the Blazer at some point, alluded that there was a possibility the alleged victims were inside the vehicle while it was being shot at, which was not supported by the State's evidence. As such this statement was improper in that "[j]udges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21. Therefore Judge Dickson's statement, as inadvertent as it may have been, could conceivably have influenced the jury's ultimate finding of fact regarding whether the alleged victims were in the vehicle at the time of shooting.

In sum, in the light most favorable to the State, the evidence presented at trial showed that Mr. Brown discharged a firearm into an empty vehicle and did not point a gun at any individual. Therefore, based on the evidence, the elements of attempted murder and possession of a weapon during the attempt to commit a violent crime were not satisfied, and the defense counsel's motion for a directed verdict should have been granted.

IV. THE CIRCUIT COURT'S JURY CHARGE THAT MALICE CAN BE IMPLIED FROM THE USE OF A DEADLY WEAPON VIOLATES THE SOUTH CAROLINA AND UNITED STATES CONSTITUTION AND CONTRAVENES STATE V. BELCHER, WHICH FOUND IT IMPROPER FOR THE COURT TO MAKE SUCH AN IMPLIED MALICE CHARGE TO THE JURY UNDER CIRCUMSTANCES WHICH WOULD REDUCE, MITIGATE, EXCUSE OR JUSTIFY HOMICIDE CAUSED BY A DEADLY WEAPON.

In *State v. Belcher* the Court held "where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon." 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009). Further, "the prisoner is

entitled to the benefit of any doubt that may arise, and cannot be deprived of such benefit by any presumption of guilt arising by operation of law from the naked fact of homicide.” Id. at 603, 805. (citing *State v. Hopkins*, 15 S.C. 153 (1881))(quoting *State v. Coleman*, 6 S.C. 185 (1875)). Where a jury charge creates a “mandatory presumption” and “impermissibly shifts the burden of proof to the defendant,” there is a violation of the Due Process Clause of the Fourteenth Amendment. Id. at @ 608, 808 (citing *Sandstrom v. Montana*, 442 U.S. 510, 524, 99 S.Ct. 2450 (1979)).

An implied malice charge for “the use of a deadly weapon” is confusing and prejudicial where evidence is presented that would reduce, mitigate, excuse or justify... A jury charge is no place for purposeful ambiguity.” (R.pp. 611, 809) Attempted murder requires a showing of an intent to kill and malice aforethought, whether express or implied. S.C. Code Ann. § 16-3-29 (2010). In the case at bar Judge Dickson made the following charge to the jury:

Inferred malice may...arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. (Transcript, pg. 195).

While Belcher dealt with a homicide charge, its rationale can and should reasonably be applied to an attempted murder charge. As explained above, there was no evidence presented that Mr. Brown pointed a gun and fired it at any person. As such, even in the light most favorable to the State, there was at the very least a doubt as to whether Mr. Brown had an intent to kill with malice at the time of the shooting. Therefore, Judge Dickson’s charge impermissibly put the burden on Mr. Brown to disprove malice, which violated Mr. Brown’s rights under the Due Process Clause of the South Carolina and United States’ Constitution. Further, the State’s eye witness testimony indicating Mr. Brown did not aim a gun at any person is evidence which would excuse a charge of attempted murder.

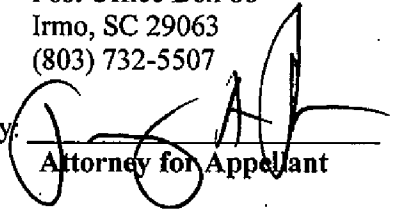
As a final matter, this claim is properly brought on direct appeal as Belcher stated that “[o]ur ruling...will not apply to convictions challenged on post-conviction relief.” (R.pp. 613, 810) (citing *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060 (1989)). For the foregoing reasons, Mr. Brown respectfully requests that his convictions be reversed for attempted murder and possession of a firearm during the attempt to commit a violent crime.

CONCLUSION

For the above stated reasons, Appellant respectfully requests that this Court reverse his convictions.

Respectfully submitted,

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January 16, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of General Sessions

Honorable Edgar Dickson, Circuit Court Judge

Appellate Case No.: 2011-202947

THE STATE,

RESPONDENT,

V.

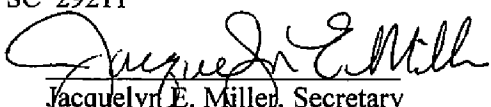
Dexter Bernard Brown, II

APPELLANT.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for Appellant in the above action, hereby certify that I placed in the United States Mail, a copy of a Final Brief with postage prepaid, and the return address clearly shown on said envelope to Christina J. Catoe, Esq. at:

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JAN 17 2014

SC Court of Appeals

January 17, 2014

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BARNWELL COUNTY
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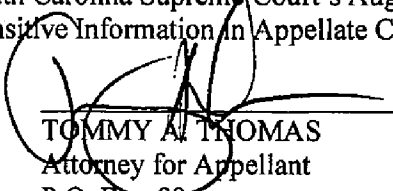
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Dexter Bernard Brown, II

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211 (b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.



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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County
The Honorable Edgar W. Dickson, Circuit Court Judge
Appellate Case No. 2011-202947

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

DEXTER BERNARD BROWN, II,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial judge properly denied Appellant's directed verdict motion on charges of attempted murder and possession of a firearm during commission of a violent crime where the evidence reflected that Appellant repeatedly shot an automatic weapon described as a "machine gun" into a vehicle occupied by the victims.
- II. Appellant's jury charge issue is not preserved for appellate review because Appellant did not raise any objection to the charge below. In any event, the trial judge's implied malice charge was proper under Belcher because there were no circumstances that would have reduced, mitigated, excused, or justified Appellant's actions, and even assuming error with respect to the jury charge, it was harmless where the evidence of malice was overwhelming.

STATEMENT OF THE CASE

Appellant was indicted in Barnwell County in April 2011 for two counts of attempted murder and one count of possession of a firearm during commission of a violent crime. On May 11-12, 2011, Appellant proceeded to trial before the Honorable Edgar W. Dickson and a jury. The jury found Appellant guilty as indicted, and following trial Judge Dickson sentenced Appellant to thirty years on each attempted murder charge, with the sentences to run concurrently, and five years, consecutive, for the firearm charge. However, following the pronouncement of sentence, Appellant had an outburst in the courtroom wherein he used a curse word and issued a threat to one of the victims, and he subsequently made comments to the sheriff that were interpreted as a threat. (See R. p. 216-221). Judge Dickson then modified the sentence by making all of the sentences consecutive. (R. p. 221-22). However, after defense counsel filed a motion for reconsideration, Judge Dickson reinstated the original sentence by order filed November 15, 2011. (R. p. 238). A timely notice of appeal was served and filed.

ARGUMENT

- I. The trial judge properly denied Appellant's directed verdict motion on charges of attempted murder and possession of a firearm during commission of a violent crime where the evidence reflected that Appellant repeatedly shot an automatic weapon described as a "machine gun" into a vehicle occupied by the victims.**

Relevant Facts

On October 15, 2010, Appellant and his cohort, Kendrick Jacobs, began following victims Brandon Parker and Roger Benjamin after they stopped at a store called Harry's in Barnwell County. (See R. p. 85-86). Appellant was driving a blue Mercury Grand Marquis that belonged to his girlfriend's father, and the victims were in a burgundy Blazer that belonged to Parker's mother. (R. p. 87; p. 104; p. 116; p. 130). The victims noticed the blue Mercury behind them and tried to take an alternate route home to avoid it. (R. p. 86, lines 3-8). However, Appellant and Jacobs were able to follow the victims, and a "high-speed chase" ensued. (R. p. 86; p. 99, lines 21-22). Appellant and Jacobs began shooting at the victims as soon as the Blazer turned off into Benjamin's grandmother's driveway.¹ (R. p. 86, lines 9-10). Benjamin and the other occupants jumped out of the Blazer, and Benjamin ran and hid behind the house and then turned around to see who was shooting at them.² (R. p. 86, lines 12-13). At that point Benjamin saw that the shooters were Appellant and Kendrick Jacobs, who were both shooting automatic weapons that witnesses described as "machine guns." (R. p. 59, lines 59-64; p. 86, lines 15-17; p. 99-100; p. 135-37). Benjamin had known Appellant since he was eleven or twelve years old, and Kendrick Jacobs was Benjamin's cousin. (R. p. 90).

¹ Parker turned into the driveway so fast that he struck something and damaged the front end of the vehicle. (R. p. 105, lines 17-22).

² Roger Benjamin testified that a man he knew only as "T" was a backseat passenger. (R. p. 91, lines 8-15). "T" had asked Brandon Parker to give him ride to a "little club" down the road from the victims. (R. p. 97, lines 4-12).

Benjamin observed that Jacobs was sitting in the passenger-side window, shooting across the roof of the car, while Appellant was shooting out of the driver's side window. (R. p. 88). Appellant and Jacobs went up the road past Benjamin's grandmother's house but then turned around, came back, and stopped in the driveway. (R. p. 88-89; p. 135-38; p. 143-44). At that point, although the occupants of the Blazer had already fled, Appellant and Jacobs continued to shoot at the Blazer. (R. p. 135-37; p. 150).

Meanwhile, Alice Thompson, Benjamin's grandmother, observed part of the incident from her front porch. (See R. p. 134-47). She came out onto the porch as Appellant and Jacobs were heading up to the store to turn around and come back.³ (R. p. 147, lines 21-23). She immediately recognized Appellant and Jacobs as the shooters and she cried out, asking what they were doing. Appellant and Jacobs continued shooting at the Blazer and then left when Ms. Thompson told them she was calling the police. (R. p. 134-35; p. 144, lines 13-15; p. 149, lines 12-15). Ms. Thompson subsequently called 911 and told the dispatcher what was happening and specifically mentioned Appellant as one of the shooters. (R. p. 138-43). Ms. Thompson was relieved that none of the neighborhood children, including her granddaughter, had been playing outside that day, because if they had been, "there'd a been a lot of dead peoples out there." (R. p. 138, lines 20-25).

Officer Trottie arrived on the scene within a few minutes, and he encountered Brandon Parker, who kept repeating that "somebody tried to kill me." (R. p. 47-48). Investigator Chavis arrived shortly thereafter and collected the numerous shell casings located on the property. (R. p. 57-66). Investigator Chavis determined where the bullets

³ Because Ms. Thompson came out onto the porch after the victims had already exited the Blazer, she never saw Appellant's gun being pointed at anyone. (See R. p. 134-50).

hit the Blazer and noted that one bullet hit the driver's side headrest. (R. p. 62-66). Investigator Chavis also determined that automatic weapons were used by the shooters. (See R. p. 59-64). Investigator Chavis found no indication that a gun had been fired out of the victims' Blazer.⁴ (R. p. 74).

Appellant was not located on the day of the incident, but was apprehended later following further investigation and after the police received anonymous tips. (R. p. 119-20). After receiving one particular tip about Appellant's location, police arrived at that location and were permitted entry to search for Appellant. (R. p. 119-23). Police found Kendrick Jacobs in one of the rooms and found Appellant hiding in the closet of another room. (R. p. 122-23). At some point police also located the blue Mercury Appellant had been driving on the day of the incident, but the car had obviously been cleaned out. (R. p. 126-27). Police were never able to locate the weapons involved in the shooting. (R. p. 128, lines 6-7).

Discussion

Appellant asserts that the trial judge erred in denying his directed verdict motion. Specifically, as to the charge of attempted murder, Appellant argues that there was no evidence presented that he aimed or fired a gun at either of the alleged victims and that the evidence established only that he "discharged a firearm into an empty vehicle."⁵ (Brief of Appellant, p. 9-11). As to the possession of a firearm during the commission of a violent crime charge, Appellant argues that there was no evidence that a "violent crime"

⁴ In fact, a gunshot residue test was performed on Brandon Parker and the results were negative. (R. p. 69; p. 77-81). Investigator Chavis explained that he was not able to perform a gunshot residue test on Roger Benjamin because the only test he had left was unusable because the necessary fluid had evaporated. (R. p. 72-73). However, Benjamin testified that he did not have a gun on the day of the incident. (R. p. 97, lines 20-24).

⁵ Notably, although on appeal Appellant asserts that because there was no evidence he aimed the gun at any individual, the State failed to present sufficient evidence of intent to kill (see Brief of Appellant, p. 10), Appellant never made this specific argument below. (See R. p. 151, line 24 – p. 154, line 10).

was committed since Appellant was only shooting at a vehicle. (Brief of Appellant, p. 10-11). Appellant's arguments are without merit. As discussed above, there was evidence presented that Appellant and Jacobs followed the victims home and, after a high-speed chase, *repeatedly* fired automatic weapons described as a "machine guns" into the victims' vehicle while they were inside of it. (See R. p. 48, lines 19-20; p. 59, lines 21-22; p. 86; p. 95; p. 99-100; p. 137, lines 19-20). See In re Walter M., 386 S.C. 387, 391-92, 688 S.E.2d 133, 135 (Ct. App. 2009) (in a murder case, the evidence was sufficient to overcome the directed verdict motion where the finder of fact could infer malice from minor's use of a deadly weapon or from evidence that the discharge of the weapon was likely not accidental); State v. Wilds, 355 S.C. 269, 584 S.E.2d 138 (Ct. App. 2003) (directed verdict was properly denied in ABWIK case where the jury could infer malice from the circumstances); State v. Glenn, 328 S.C. 300, 310-12, 492 S.E.2d 393, 398-99 (Ct. App. 1997) (upholding the denial of the defendant's directed verdict motion and pointing out that intent to kill can be inferred from the surrounding circumstances, including acts of gross recklessness); cf. In re Tracy B., 391 S.C. 51, 69, 704 S.E.2d 71, 80 (Ct. App. 2010) (the family court properly adjudicated the minor delinquent for murder where the minor ran toward an occupied vehicle and shot a gun one time in the direction of the vehicle, killing one of the passengers; this Court stated that "this was sufficient evidence of reckless conduct and wanton disregard for human life from which the family court could infer malice"). While it is true that Appellant and Jacobs continued to shoot even after the victims fled from the vehicle, this does not mitigate the fact that Appellant and Jacobs tried to murder the victims while they were still inside the vehicle.

Accordingly, since there was evidence presented to sustain the attempted murder charge - and therefore evidence to sustain the possession of a firearm during commission of a violent crime charge - the trial judge properly denied Appellant's motion for directed verdict.⁶ (R. p. 151, line 24 – p. 154, line 11). See S.C. Code § 16-3-29 (“A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.”); S.C. Code § 16-23-490 (prohibiting possession of a firearm during the attempt to commit a violent crime); S.C. Code § 16-1-60 (listing “attempted murder” as a “violent crime”); see State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) (“If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.”).

- II. Appellant's jury charge issue is not preserved for appellate review because Appellant did not raise any objection to the charge below. In any event, the trial judge's implied malice charge was proper under Belcher because there were no circumstances that would have reduced, mitigated, excused, or justified Appellant's actions, and even assuming error with respect to the jury charge, it was harmless where the evidence of malice was overwhelming.**

Issue Preservation

Appellant argues that the trial judge erred in charging the jury that malice could be inferred from the use of a deadly weapon. (See R. p. 195, lines 15-16). However, at trial, Appellant raised no objection to this charge in any form or fashion. (See R. p. 151-64; p. 185-200; see specifically p. 200, lines 7-8). See State v. Stone, 285 S.C. 386, 387, 330 S.E.2d 286, 287 (1985) (in order to preserve an objection to a jury charge, a

⁶ Appellant argues that the trial judge's comment, made while ruling on the directed verdict motion, that “there were people in the van at one time” could “conceivably have influenced the jury's ultimate finding of fact regarding whether the alleged victims were in the vehicle at the time of shooting.” (Brief of Appellant, p. 11). However, this argument is without merit because the judge's statement was made outside the presence of the jury. (See R. p. 151, line 15 – p. 161, line 15).

defendant must object to the charge as given or request an additional charge when afforded the opportunity to do so); State v. Williams, 266 S.C. 325, 335, 223 S.E.2d 38, 43 (1976) ("The rule in this State is firmly established that failure to object to a charge, or failure to request an additional charge when the opportunity is afforded, constitutes a waiver of any right to complain on appeal of an alleged error in the charge."); State v. Todd, 264 S.C. 136, 139, 213 S.E.2d 99, 100 (1975) ("In cases too numerous to cite, . . . it has been held that the failure of a defendant to object to the charge as made or to request additional instructions, when the opportunity to do so is afforded, constitutes a waiver of any right to complain of errors in the charge.") (citations omitted); see also Rule 20(b), SCRCrimP ("Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a waiver of objection."). Because Appellant failed to object, the issue is not preserved for appellate review.

Even if the issue had been preserved, the judge's implied malice charge was proper. In State v. Belcher, the South Carolina Supreme Court held as follows:

Today we return to the rationale underlying Hopkins, Levelle and Jackson and hold that where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon. The permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill).

State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009). The State agrees with Appellant's contention that the rationale of Belcher should apply in attempted murder

cases, especially since the Belcher court specifically made reference to assault and battery with intent to kill, the predecessor of attempted murder. See S.C. Code § 16-3-29 (creating the offense of attempted murder effective June 2, 2010).

However, initially, it appears that Appellant's Belcher argument - which is premised upon his assertion that there was a dearth of evidence that he "pointed a gun and fired it at any person" - is misplaced because this argument focuses on the *actus reus* element of the offense rather than the *mens rea* element. In other words, Appellant asserts he did not commit the act required by the attempted murder statute, but his argument does not actually dispute the *mens rea* element. In that vein, it is incorrect to say that a failure of the State to prove the *actus reus* would "excuse" a charge of attempted murder; instead, this would render Appellant not guilty of the offense. See Belcher, 385 S.C. 597, 685 S.E.2d 802 (evidence of justification and/or reduction of the offense because it appeared the defendant may have been acting in self-defense or in the heat of passion); State v. Miller, 397 S.C. 630, 725 S.E.2d 724 (Ct. App. 2012) (evidence of mitigation existed because it appeared the gun may have discharged accidentally or that the shooting may have constituted involuntary manslaughter); State v. Stanko, 402 S.C. 252, 741 S.E.2d 708 (2013) (there was evidence that the offense might be excused under the insanity defense); cf. State v. Price, 400 S.C. 110, 114-15, 732 S.E.2d 652, 654 (Ct. App. 2012) (testimony indicating that the victim and his brother were drug-dealing gang members and that victim's shooting may have been part of a drug deal gone wrong was not evidence that would "reduce, mitigate, excuse, or justify the crime"). The common theme of Belcher and its progeny is that, if there is evidence that would negate the "malice" element despite the fact that a deadly weapon is used, the charge regarding inferring malice from use of a deadly weapon is inappropriate. Since Appellant does not

point to any evidence that would negate the malice element - other than his assertion that *he did not commit the crime at all* - his Belcher argument is misplaced.

In any event, the State disagrees with Appellant's contention that the judge's implied malice charge impermissibly shifted the burden of proof on the element of malice and therefore violated his rights under the Due Process Clause,⁷ and also disagrees with Appellant's contention that there was evidence indicating he did not aim a gun at any person. (See Brief of Appellant, p. 12). To the contrary, as discussed above, the evidence reflected that Appellant and Jacobs began repeatedly shooting at the victims while they were inside the vehicle, well before the victims fled from the vehicle on foot. (See R. p. 48, lines 19-20; p. 59, lines 21-22; p. 86; p. 95; p. 99-100; p. 137, lines 19-20). There was no evidence that would "reduce, mitigate, excuse, or justify" Appellant's conduct. Significantly, no lesser-included offense charges were requested by Appellant or charged to the jury. (See R. p. 151-222). Furthermore, Appellant did not argue self-defense, accident, insanity, or that the offense constituted a lesser offense; instead he argued there was no physical or forensic evidence linking him to the crime. (See R. p. 178-85; see also p. 220, line 25 – p. 221, line 6). Accordingly, Appellant's argument that the implied malice charge was improper under Belcher is without merit. See Belcher at 612, 685 S.E.2d at 810 ("The permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill)."); see also State v. Price, 400 S.C. at 115, 732 S.E.2d at 654 ("Belcher does not prohibit the trial court from instructing the jury that it may infer malice from the use of a

⁷ The trial judge did not charge a "mandatory presumption" (see Brief of Appellant, p. 12); instead, the judge told the jury that "inferred malice may also arise when the deed is done with a deadly weapon." (R. p. 195, lines 15-16).

deadly weapon where the only jury question created by the evidence is whether the defendant is the person who committed [the crime]”).

Furthermore, notwithstanding any alleged error in the jury instructions, the evidence of malice was so overwhelming that any error with respect to the implied malice charge was harmless. Again, the evidence reflected that Appellant and Jacobs followed the victims home and, after a high-speed chase, *repeatedly* fired automatic weapons described as a “machine guns” into the victims’ vehicle while they were inside of it. (See R. p. 48, lines 19-20; p. 59, lines 21-22; p. 86; p. 95; p. 99-100; p. 137, lines 19-20). Then, even *after* the victims fled from the vehicle, Appellant and Jacobs turned back around and continued to shoot the victim’s vehicle until Ms. Thompson told them she was calling the police. (R. p. 134-35; p. 144, lines 13-15; p. 149, lines 12-15). The only conclusion to be drawn from these facts was that Appellant acted with malice. See State v. Kinard, 373 S.C. 500, 503-504, 646 S.E.2d 168, 169 (Ct. App. 2007) (“‘Malice aforethought’ is defined as ‘the requisite mental state for common-law murder’ and it utilizes four possible mental states to encompass both specific and general intent to commit the crime. These four possibilities are intent to kill, intent to inflict grievous bodily harm, extremely reckless indifference to the value of human life (abandoned and malignant heart), and intent to commit a felony (felony murder rule).”) (citations omitted); State v. Stanko, 402 S.C. 252, 264-65, 741 S.E.2d 708, 714 (2013) (error in giving the implied malice charge was harmless where evidence of malice was overwhelming and the evidence of malice was not limited to Appellant’s use of a deadly weapon). Therefore, even if the trial judge erred by instructing the jury that an inference of malice may arise from use of a deadly weapon, this error was harmless beyond a reasonable doubt. See State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991)

(appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result); State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008) (error is harmless beyond a reasonable doubt if it does not contribute to the verdict).

CONCLUSION

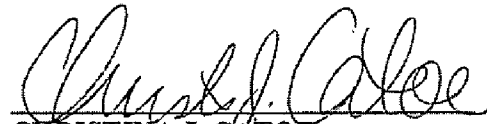
For the reasons discussed above, Respondent requests that this Court affirm Appellant's convictions and sentences.

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December 16, 2013

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IN THE COURT OF APPEALS

Appeal from Barnwell County
The Honorable Edgar W. Dickson, Circuit Court Judge
Appellate Case No. 2011-202947

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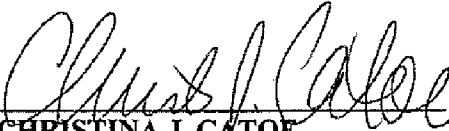
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


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IN THE COURT OF APPEALS

Appeal from Barnwell County
The Honorable Edgar W. Dickson, Circuit Court Judge
Appellate Case No. 2011-202947

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

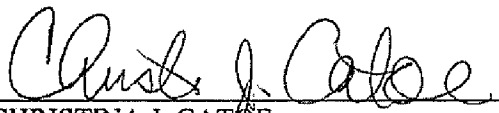
v.

DEXTER BERNARD BROWN, II,

APPELLANT.

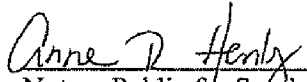
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **Tommy A. Thomas**, Post Office Box 88, Irmo, South Carolina 29063, this 16th day of **December, 2013**.


CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 16th day of December, 2013.


Notary Public for South Carolina
My Commission Expires: 7/18/2017



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS,
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 30, 2014

Mr. Tommy Arthur Thomas, Esquire
PO Box 88
Irmo SC 29063

Re: The State v. Dexter B. Brown II
Appellate Case No. 2011-202947

FILED FOR RECORD
2014 AUG 18 PM 4:20
RHONDA D. McELYEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
Christina J. Catoe, Esquire
James Strom Thurmond, Jr., Esquire
The Honorable Edgar W. Dickson



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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TELEPHONE: (803) 734-1880
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August 15, 2014

The Honorable Rhonda Dale McElveen
PO Box 723
Barnwell SC 29812-0723

FILED FOR RECORD
2014 AUG 18 PM 4:20
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

REMITTITUR

Re: The State v. Dexter B. Brown II
Lower Court Case No. ~~2010GS0600010~~ 2010GS0600010, 2010GS0600011, 2010GS0600120
Appellate Case No. 2011-202947

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: Tommy Arthur Thomas, Esquire
Alan McCrory Wilson, Esquire
Christina J. Catoe, Esquire
James Strom Thurmond, Jr., Esquire
The Honorable Edgar W. Dickson

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Dexter Bernard Brown, II, Appellant.

Appellate Case No. 2011-202947

Appeal From Barnwell County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2014-UP-303
Submitted July 1, 2014 – Filed July 30, 2014

AFFIRMED

Tommy Arthur Thomas, of Irmo, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Christina J. Catoe, both of Columbia;
and Solicitor James Strom Thurmond, Jr., of Aiken, for
Respondent.

PER CURIAM: Dexter Bernard Brown, II, appeals his convictions for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime, arguing the trial court erred in (1) denying his

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2014 AUG 18 PM 4:20
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

motion for directed verdict and (2) charging the jury on "inferred malice" from the use of a deadly weapon. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in denying counsel's motion for directed verdict: S.C. Code Ann. § 16-1-60 (Supp. 2013) (showing attempted murder is listed as a "violent crime" per statute); S.C. Code Ann. § 16-23-490(A) (2003) ("If a person is in possession of a firearm . . . during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in [s]ection 16-1-60, he must be imprisoned five years . . ."); *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *id.* at 292-93, 625 S.E.2d at 648 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [an appellate court] must find the case was properly submitted to the jury."); *State v. Dennis*, 402 S.C. 627, 638, 742 S.E.2d 21, 27 (Ct. App. 2013) (noting the jury may infer an intent to kill from the use of a dangerous or deadly weapon in a manner reasonably calculated to cause death or great bodily harm).

2. As to whether the trial court erred in charging that malice may be inferred from the use of a deadly weapon: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court.] Issues not raised and ruled upon in the trial court will not be considered on appeal.").

AFFIRMED.¹

HUFF, THOMAS, and MCDONALD, JJ., concur.

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

motion for directed verdict and (2) charging the jury on "inferred malice" from the use of a deadly weapon. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in denying counsel's motion for directed verdict: S.C. Code Ann. § 16-1-60 (Supp. 2013) (showing attempted murder is listed as a "violent crime" per statute); S.C. Code Ann. § 16-23-490(A) (2003) ("If a person is in possession of a firearm . . . during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in [s]ection 16-1-60, he must be imprisoned five years . . ."); *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *id.* at 292-93, 625 S.E.2d at 648 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [an appellate court] must find the case was properly submitted to the jury."); *State v. Dennis*, 402 S.C. 627, 638, 742 S.E.2d 21, 27 (Ct. App. 2013) (noting the jury may infer an intent to kill from the use of a dangerous or deadly weapon in a manner reasonably calculated to cause death or great bodily harm).
2. As to whether the trial court erred in charging that malice may be inferred from the use of a deadly weapon: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court.] Issues not raised and ruled upon in the trial court will not be considered on appeal.").

AFFIRMED.¹

HUFF, THOMAS, and MCDONALD, JJ., concur.

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

STATE OF SOUTH CAROLINA

County of Barnwell

In the Court of Common Pleas

Dexter B. Brown II

Full name and prison number (if any) of Applicant.

vs.

The State of South Carolina

Name of Respondent.

2014-CP-06-00369

APPLICATION FOR
POST-CONVICTION RELIEF

RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

2014 OCT -2 PM 3:16

FILED FOR RECORD

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 it clear to which question any such continued answer refers.

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

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

1. Place of detention McCormick Correctional Institution
386 Redemption way McCormick, S.C 29899
2. Name and location of Court which imposed sentence Barnwell county Court of
General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2011-65-06-00010, 00011 & 00120
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 12, 2011 20 years
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. AFFirmed July 30 2014

ii. _____

iii. _____

(c) the date of each such result:

i. July 30th 2014

ii. _____

iii. _____

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

i. direct appeal AFFirmed

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? ✓
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Direct Appeal
- ii. _____
- iii. _____
- iv. _____

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

- i. South Carolina Supreme Court
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Affirmed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. July 30, 2014
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Direct Appeal
- ii. unpublished opinion no. 2014-up-303
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

(a) which grounds have been presented:

i. NO

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. NO

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) NO

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? YES

(c) your sentencing? _____

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. trial Nicholas R. Mccarley / DE Grant Gibbons

ii. appeal Tommy Arthur Thomas post office box
Armo. S.C 29063

iii. _____

(b) the proceedings at which each such attorney represented you:

i. appeal Tommy Arthur Thomas

ii. trial Nicholas R. Mccarley / DE Grant Gibbons

iii. _____

18. State clearly the relief you seek in filing this application.

Court reverse the convictions

19. Are you now under sentence from any other court that you have not challenged?

NO

County of Barnwell County

I, Dante R. [Signature], 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.

Dante R. [Signature]

SWORN to and subscribed before me this 01
day of October, 192014
J. C. Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

FILED FOR RECORD
2014 OCT -2 PM 3:16
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Dante R. [Signature], hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Dante R. [Signature]
Applicant

SWORN or affirmed to and subscribed before me this

01 day of October, 192014
J. C. Frankler
Notary Public

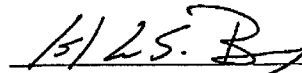
My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	)	C/A NO: 2014-CP-06-369
	)	
Dexter B. Brown, II, #330278,	)	
	)	
Applicant,	)	
	)	FIRST AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed October 2, 2014:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (i) Counsel failed to object to improper jury instructions;
 - (ii) Counsel failed to move to quash improper indictment.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

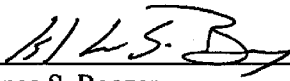
Columbia, South Carolina
 June 17, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	)	C/A NO: 2014-CP-06-369
	)	
Dexter B. Brown, II, #330278,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
June 17, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Dexter B. Brown, II, #330278,	)	2014-CP-06-00369
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A MORE
	)	DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 2, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was true bill indicted at the January 2011 term of the Barnwell County Grand Jury for two counts of attempted murder (2011-GS-06-00010; -00011) and possession of a weapon during a violent crime (2011-GS-06-00120). Nicholas R. McCarley, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable Edgar W. Dickson. Applicant was found guilty as indicted. On May 12, 2011, Judge Dickson sentenced Applicant to a thirty year term of imprisonment for attempted murder to run consecutively to an additional thirty year term of imprisonment for attempted murder. Additionally, Judge Dickson sentenced Applicant to a five year term of imprisonment for possession of a weapon during a violent crime running consecutively to the first count of attempted murder. On November 9, 2011, Judge Dickson resentenced Applicant to serve the thirty year terms of imprisonment for attempted murder

concurrently, with the weapon sentence to run consecutively, for a total of thirty-five years imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. Brown, Un. Op. 2014-UP-303 (S.C. Ct. App. filed July 30, 2014). The Remittitur was issued on August 15, 2014.

Attached herewith and incorporated herein are the records of the Barnwell County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he or she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

In his application, Applicant alleges that he is being held in custody unlawfully based on ineffective assistance of counsel. However, Applicant has wholly failed to set forth any "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of trial counsel's supposed errors. The Respondent and trial counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices the Respondent and trial counsel. The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRPC.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

[Signature block on following page]

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

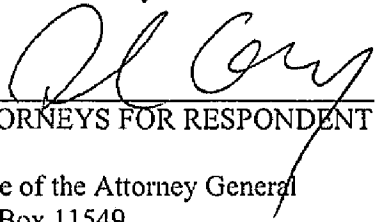
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 15, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

DEXTER B. BROWN, II, #330278,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

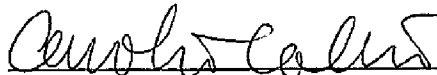
2014-CP-06-369

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 15th day of January, 2015.


Caroline Collins, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	2014-CP-06-369
	)	
	)	
	)	
	)	
DEXTER B. BROWN,	)	
Petitioner,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
	)	

January 25, 2018
Barnwell, South Carolina

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

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

THURMOND BOOKER, ESQ.
Attorney for the Petitioner

JULIE A. COLEMAN, ESQ.
Attorney for the Respondent

Brenda Sigwald, Court Reporter
Transcribed by Penny M. Johnson

I N D E X

(PW) - Denotes Petitioner's Witness

(RW) - Denotes Respondent's Witness

Page No.(PW) NICHOLAS MCCARLEY:

Direct Examination by Mr. Booker.....	5
Cross-Examination by Ms. Coleman.....	51
Redirect Examination by Mr. Booker.....	67

(PW) DEXTER BROWN:

Direct Examination by Mr. Booker.....	78

(RW) DE GRANT GIBBONS:

Direct Examination by Ms. Coleman.....	88
Cross-Examination by Mr. Booker.....	92

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Petitioner's Exhibits)		
1	Trottie's Incident Report		17
2	Statement of Brandon Parker		19
3	Deposition		22
4	Statement of Roger Benjamin		35

All Exhibits were retained by the Clerk of Court for Barnwell County.

P R O C E E D I N G S

MS. COLEMAN: This is Dexter D. Brown, II, vs. The State of South Carolina, docket number 2014-CP-06-369. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. Applicant was true bill indicted at the January 2011 term of the Barnwell County Grand Jury for two counts of attempted murder and possession of a weapon during a violent crime. Nicholas McCarley, Esquire, and De Grant Gibbons, Esquire, represented the Applicant.

Applicant proceeded to a jury trial before the Honorable Edgar W. Dickson. Applicant was found guilty as indicted. On May 12th, 2011, Judge Dickson sentenced Applicant to a 30-year term of imprisonment for attempted murder to run consecutively to an additional 30-year of imprisonment for the second charge of attempted murder. Additionally, Judge Dickson sentenced Applicant to a five-year term of imprisonment for possession of a weapon during a violent crime running consecutively to the first count of attempted murder for a total of 65 years.

On November 9th, 2011, Judge Dickson resentenced Applicant to serve a 30-year term of imprisonment for attempt murder concurrently with the weapons sentence to run consecutively for a total of 35 years imprisonment.

1 A timely notice of appeal was filed on Applicant's
2 behalf and the South Carolina Court of Appeals affirmed the
3 convictions in an order dated July 30th, 2014. The
4 remittitur was issued August 15th, 2014.

5 Applicant filed a timely application for
6 post-conviction relief on October 2, 2014, alleging that he
7 was being held in custody unlawfully based on ineffective
8 assistance of counsel. The State filed it's return and
9 motion for more definite statement on January 15th, 2019,
10 and Applicant filed an amendment to his application on June
11 17th, 2015, through previous counsel Lance Boozer.

12 He is present today and represented by Mr. Thurmond
13 Booker, who I believe has some oral amendments to make to
14 his application which the State does not oppose.

15 THE COURT: Yes, sir.

16 MR. BOOKER: Thank you, Your Honor. Your Honor, we
17 move to supplement the application and add a couple more
18 issues of ineffective assistance of counsel. And, of
19 course, those issues are -- and I've spoken with the State
20 in reference to this -- his failure to impeach Roger
21 Benjamin by the testimony of Officer Trotter and Alice
22 Thompson.

23 The next one would as to failure to request a charge of
24 lesser-included offenses of assault and battery of a high
25 and aggravated nature and, of course, assault and battery

1 second degree to first degree. And, of course, the second
2 would be as to the failure to properly investigate and
3 specifically to interview potential witnesses in which the
4 Appellant had advised his counsel of their existence.

5 THE COURT: What was the last one again?

6 MR. BOOKER: Failure to properly investigate by
7 interviewing potential witnesses at trial that was provided
8 to counsel by the defendant or Appellant.

9 THE COURT: All right. Are you ready to present your
10 case?

11 MR. BOOKER: Yes, Your Honor.

12 THE COURT: Call your witness.

13 MR. BOOKER: Thank you, Your Honor. Your Honor, for
14 the first witness, we would call, Your Honor, Nicholas
15 McCarley.

16 THE COURT: Come around, please.

17 NICHOLAS MCCARLEY, after being duly
18 sworn, testified as follows:

19 THE CLERK: Please have a seat and state your name for
20 the Court.

21 THE WITNESS: Nicholas Randolph McCarley.

22 DIRECT EXAMINATION

23 BY MR. BOOKER:

24 Q Mr. McCarley, were you the trial counselor for Dexter
25 Brown during his trial back in, I think, May 11th of 2011?

1 A Yes, sir.

2 Q And, of course, if my memory serves me correctly,
3 Dexter Brown, was being charged with two counts of attempted
4 murder and, of course, one count of possession of a weapon
5 during the commission of a violent crime; is that correct?

6 A Yes, sir.

7 Q Now, prior to the trial -- I think the trial date for
8 this trial, I think we indicated began on May 11th of 2011.
9 I'm assuming you had the opportunity to see and talk with
10 Mr. Brown prior to the trial date?

11 A That's correct. According to my records that I
12 reviewed, I visited with him 20 times. I think two of
13 those, though, were at the courthouse. One in regards to a
14 motion of his and one in regards to a bond hearing, so those
15 might not have been substantive. But 18 times at the
16 Barnwell County Detention Center after having first received
17 the case November 2nd of the previous year, so I think in
18 the course of approximately six months of representation.

19 Q So you saw him, roughly, 18 to 20 times over the course
20 of, roughly, six months?

21 A That's correct.

22 Q I'm assuming that you acquired his discovery; is that
23 correct?

24 A Yes, sir.

25 Q Okay. And I'm assuming that you met with him and went

1 over that discovery; is that correct?

2 A Yes, sir.

3 Q Did y'all talk about any potential defenses?

4 A On multiple occasions, Mr. Brown and I discussed the
5 possibility of alibi defense involving, I believe, it was
6 his girlfriend. I'd have to look in my notes to get her
7 name. A phone number was given to me. I cannot recollect
8 if she and I ever actually spoke, but an alibi defense never
9 came to fruition.

10 Q I just want to follow up on that. I didn't mean to
11 interrupt you. Were you finished with your answer?

12 A We discussed multiple other possible defenses, but
13 nothing extensive.

14 Q With respect to his girlfriend, I think you said that
15 he provided to you a number for his girlfriend?

16 A We got a name and a phone number.

17 Q And specifically, do you know whether or not you ever
18 called her?

19 A Yes.

20 Q You did call her?

21 A I did.

22 Q Do you know whether or not specifically you ever talked
23 with her?

24 A May I refer to my notes?

25 Q Yes, sir.

1 A I have down here that at our second meeting, we spoke
2 about his girlfriend, possibility that he was at her house.
3 Her name was Adrian Ingram, per my notes, and was working at
4 Taco Bell at the time. That is important because I do have
5 a note that I went to Taco Bell. I'm looking for the phone
6 number, though. I have a note where I asked his father for
7 information about Ms. Ingram. His father is Dexter Brown, I
8 guess, Sr.

9 On 5/7/2011, I called Adrian Ingram, 3 -- I don't think
10 I'm supposed to say the phone number -- again and left
11 another message, having met with Dexter the day prior in
12 regards to possible alibi witnesses. On 5/5, I called
13 Adrian Ingram and left a message to return my call as soon
14 as possible.

15 So I don't have any indication that I ever actually
16 made contact. So I would have gone to her place of
17 employment that I would have learned from my client and then
18 called her twice on the number I was provided by either my
19 client or his father. I do not know who provided me that
20 phone number, sir. If you want me to read the phone number,
21 I don't know if that's necessary.

22 Q No, that's not necessary. So my understanding is that
23 your attempt to contact her was to make two calls to her
24 and, of course, both of those calls, she didn't answer. I'm
25 assuming you left her a message?

1 A That's correct.

2 Q And you said you would assume that you went to her
3 place of employment, Taco Bell?

4 A No, I know that I went to Taco Bell.

5 Q You know you went to Taco Bell?

6 A Yes.

7 Q But, of course, she was not there?

8 A She was not. And I left my card with the manager
9 asking her to return my phone call and she did not.

10 Q And I'm assuming, I think at this particular period of
11 time, you were employed with the public defender's office;
12 is that correct?

13 A That's correct.

14 Q Did the public defender's office obtain investigators
15 or have investigators during that period of time?

16 A Yes.

17 Q Did you turn that information over to your investigator
18 and ask your investigator to try and identify Ms. Ingram?

19 A I did.

20 Q Okay.

21 A His name is Benny Williams. I don't have any of his
22 notes here.

23 Q And my next question is, you don't know what efforts
24 that he took in order to obtain Ms. Ingram?

25 A I apologize, I do not. I just know that he never did.

1 Q Did you go out and try to go to her restaurant a second
2 time?

3 A Not on my notes.

4 Q Sir?

5 A Not from my notes.

6 Q So what you're saying is, you left two messages and
7 went out to the job once? As far as you know, that's the
8 efforts that you took in order to contact her?

9 A And notified my investigator that I was attempting to
10 contact her, yes, sir.

11 Q And notified your investigator, which you don't know
12 what efforts that he took to try to contact her?

13 A Yes, sir.

14 Q Were you able to get in contact with her?

15 A Not per my memory or my notes.

16 Q And I'm going to ask you this about your memory, isn't
17 it true that she actually presented at the trial and she was
18 present on the day of the trial?

19 A Do not recollect anything about that or have any notes
20 about that.

21 Q You don't recollect that she was present in the
22 courtroom on the date of the trial?

23 A I apologize, I do not.

24 Q If you and Mr. Benjamin -- I think you've already
25 testified to this, but I want to be absolutely certain. Mr.

1 Benjamin -- excuse me, not Mr. Benjamin, but Mr. Brown did
2 tell you why he thought that it was important that you talk
3 with Ms. Ingram, that he said Ms. Ingram could potentially
4 provide him with an alibi?

5 A That's correct.

6 Q So she would -- for purposes of his defense, for Mr.
7 Brown's defense, she would be an important witness, would
8 she not?

9 A That's correct.

10 Q Okay. But the jury never got a chance to hear from
11 her?

12 A That's correct.

13 Q Did Mr. Brown tell you about any other witnesses?

14 A Not to the best of my knowledge.

15 Q Do you remember him ever talking with you about Brandon
16 Parker as to the second alleged victim in connection with
17 this?

18 A I don't know if I remember Dexter talking to me, Mr.
19 Brown talking to me about Mr. Parker, but we definitely
20 talked about Mr. Parker. He was a victim in the case. He
21 was -- you know where he was at the time.

22 Q And did Mr. Brown tell you that, potentially, he had
23 had conversations with Mr. Parker, I think, after this
24 alleged incident and that Mr. Parker's recollection of him
25 being present or recollection or having any information in

1 reference to who was shooting at him might be of some
2 assistance to him in his defense?

3 A I have no recollection, no notes whatsoever that Mr.
4 Brown ever told me that Brandon Parker would be anything but
5 an adversarial witness.

6 Q Now, you did tell him that you knew where Brandon was;
7 is that correct?

8 A That's correct.

9 Q And where was Brandon?

10 A Either in prison or in jail in North Carolina on a
11 possession of a weapon, I think, by a felon or someone
12 convicted of a violent crime, possibly.

13 Q Now, I think you indicated that to your understanding,
14 Brandon would be nothing but a hostile witness?

15 A That's correct. That information having been gathered
16 from the solicitor's office from Deputy Trottie. I think
17 that's who you referred to earlier, Trottie and not Trotter.
18 And the solicitor's office having allowed me to sit in a
19 meeting with the mother of Mr. Parker.

20 Q So what you're saying is, is that based upon -- and I
21 apologize, it's Trottie, you said?

22 A Trottie. I think it's T-R-O-T-T-I-E.

23 Q Okay. Trottie. And you're saying that based upon
24 Officer Trottie's incident report that that's also one, I
25 guess, piece of information that leads you to believe that

1 Brandon Parker would be a hostile witness; is that correct?

2 A That's correct, and the fact that he's a victim in an
3 attempted murder case.

4 Q Okay. Now, I have a copy of Detective Trottie's
5 incident report. Do you have a copy of it?

6 A I believe I do, sir. Handwritten, I believe.

7 Q That's correct.

8 A I believe I'm looking at it.

9 MR. BOOKER: If you could indulge me just a second,
10 Your Honor.

11 THE COURT: Yes, sir.

12 (Pause.)

13 BY MR. BOOKER:

14 Q I'm just going to, at least -- I'm looking at Page 2,
15 the second page of Officer Trottie's report.

16 A Beginning with victim one, two, three?

17 Q That's correct.

18 A Yes, sir.

19 Q And, of course, I'm going to read that and, of course,
20 if I read it incorrectly, you correct me because it is
21 handwritten. I think it says: Victim one, two and three
22 noticed a blue -- noticed a blue victim [sic] behind them.
23 Victim one and two stated so that when they turned into the
24 yard, the two black males behind -- excuse me, the two black
25 males begin to shoot at them. Victim one and two stated

1 they did not know who they were, but victim three told them
2 and yelled out while the incident happened that it was
3 someone named Dexter.

4 So according to Officer Trottie's report, Officer
5 Trottie indicated that he talked to victim one and two and
6 victim one and two from that incident report, and you
7 correct me if I'm wrong, was Roger Benjamin and Brandon
8 Parker; is that correct?

9 A Yes, and three is T, yes, sir.

10 Q It says unknown individual named T. Okay. So victim
11 one is Brandon Parker, victim two is Roger Benjamin?

12 A Yes, sir.

13 Q Okay. So Roger Benjamin and Brandon Parker is, at
14 least, stating to Officer Trottie and, of course,
15 immediately after the accident that they didn't see who was
16 shooting at them; is that correct?

17 A That's the literal interpretation of what you're
18 reading here. What I came to understand in the course of
19 representing Dexter and preparing for the trial is that
20 while the shooting was occurring in the vehicle, they didn't
21 know who it was.

22 Mr. Benjamin then gets out of the car, retreats, I
23 think either into the woods or the beside Ms. Thompson's
24 home and then turns and sees and that's when he, Roger
25 Benjamin, identifies Dexter. T, I don't think, ever does

1 that. So what I believe Deputy Trottie was saying here is
2 that while it was happening on the road, they didn't see who
3 it was.

4 Q Now, are you believing or are you speculating?

5 A That's what I learned in the course of representing
6 Dexter, that the people in the car, Roger Benjamin and
7 Brandon Parker, didn't know who it was immediately and
8 learned it later.

9 Q But based upon the incident -- the incident report
10 doesn't provide that additional information. The incident
11 report just simply says victim one and victim two state they
12 didn't know who they were, but victim three told them and
13 yelled out, Dexter, Dexter. That's what the statement says,
14 right?

15 A That's correct.

16 Q It doesn't say anything further, does it?

17 A It does not.

18 Q So Officer Trottie's report says that victim one and
19 two, Roger Benjamin and Brandon Parker, told him that we
20 don't know who the shooters were; that we heard the name
21 Dexter from the unknown individual named T. Is that
22 correct?

23 A You read this correctly.

24 Q I read that correctly, right?

25 A Yes, sir.

1 Q Nothing else; is that correct?

2 A Yes.

3 Q He also has him write a statement. And, of course,
4 Brandon also wrote a statement; is that correct?

5 A It is.

6 Q Do you have a copy of Brandon's statement?

7 A I do, sir.

8 Q Okay. And in Brandon's statement, did Brandon confess
9 -- or stated that he ever saw who the shooters were?

10 A You're asking me if in Brandon Parker's statement, did
11 he ever say he saw the shooters?

12 Q Yes.

13 A May I take a moment and read it?

14 Q Certainly.

15 A That's fair. He says the gentleman, T, the person, T,
16 said, Dexter, Dexter. He does not say anything about
17 identifying Dexter.

18 MR. BOOKER: And for purposes of the record, Your
19 Honor, in order to keep a clean record, can I go ahead and
20 mark Detective Trottie's incident report as Appellant's
21 Exhibit 1?

22 THE COURT: Is there any objection to this?

23 MS. COLEMAN: I have no objection to that coming in
24 under the -- if it comes in as it was part of the defense
25 file.

1 THE COURT: Mark it, please.

2 (WHEREUPON, Petitioner's Exhibit No. 1 admitted into
3 evidence.)

4 BY MR. BOOKER:

5 Q I think you said you've had a chance to examine Brandon
6 Parker's statement?

7 A Yes, sir.

8 Q And I think I asked you, so in Brandon Parker's
9 statement -- and I'm going to read it aloud to you. You
10 correct me if I'm reading incorrectly. It says: I went to
11 Barnwell to get something for my mom from the store. When I
12 was coming back, we stopped at Henry's store and gave T a
13 ride. While coming back, a blue, light in color -- looks
14 like a light in color, I'm not quite sure, followed us down
15 Patterson Mill Road Martin -- Patterson Road Martin. When
16 we turned into Patterson Mill Road, the guys -- looks
17 like the guys in the car started to shoot. While shooting,
18 they hung out the window. The car was a Mercury light blue.
19 The guy, T, that caught a ride kept yelling, Dexter, Dexter.
20 When we got out to run, he ran through the woods. Is that
21 correct?

22 A There's a paragraph at the end.

23 Q Yes, I apologize. It says: I, Lessie Morsey, wrote
24 this statement for my son. He asked me to write this
25 statement due to the fact he don't write well. Is that a

1 complete statement?

2 A It is. And it's signed by Ms. Morsey and Mr. Parker
3 and dated, yes, sir.

4 Q So in addition to -- and you correct me if I'm wrong.
5 In addition to Mr. Parker telling Officer Trottie that he
6 did not know who the shooter was, he also made no indication
7 in his subsequent statement that he did not know who the
8 shooter was. Again --

9 A He doesn't say he didn't know who the shooter was, he
10 just says the guy, T, yelled, Dexter, Dexter.

11 Q Yeah. And I think my question was, isn't it true that
12 he made no indication in his statement --

13 A That's correct.

14 Q -- that he did know who the shooter was?

15 A Yes, sir.

16 Q And, of course, in fact, he also indicated again that
17 it was the unknown individual by the name of T who yelled,
18 Dexter, Dexter; is that correct?

19 A Yes, sir.

20 Q So as far as we know, is that Brandon Parker was not a
21 hostile witness. And, of course, Brandon Parker, at least,
22 based upon Petitioner's Exhibit 1 and, of course,
23 Petitioner's statement --

24 MR. BOOKER: In which I'm going to move into the record
25 as Petitioner's 2, Your Honor.

1 THE COURT: Any objection?

2 MS. COLEMAN: I have no objection for the purposes of
3 it was in the file. He could have used this at trial.

4 THE COURT: Mark it into evidence, please.

5 (WHEREUPON, Petitioner's Exhibit No. 2 admitted into
6 evidence.)

7 BY MR. BOOKER:

8 Q So based upon, at least, those two statements, the
9 statement that was given by Officer Trottie and, of course,
10 Brandon Parker's own statement, based on those two exhibits,
11 1 and 2 that's just been entered into the record, those two
12 exhibits suggest that he didn't know who the shooter was; is
13 that correct?

14 A He doesn't say he did or didn't in those two exhibits
15 that you read.

16 Q Okay. Was that not enough for you then to say well,
17 maybe I need to talk with Brandon Parker and to see whether
18 or not Brandon Parker would be helpful with the defense or
19 whether or not he would be a hostile witness instead of
20 making an assumption?

21 A In making the decision not to pursue Brandon Parker as
22 a hostile witness for the defense, I would have discussed
23 that, at least, at some juncture with Laura McCann, who was
24 representing the codefendants. The State didn't plan on
25 trying them together.

1 At the point where the trials were bifurcated, I would
2 have discussed that with Grant Gibbons, who was my
3 supervisor and second chair at the trial. I also met with
4 the solicitor while she was, I believe, on the phone with
5 Ms. Morsey, the mother of Mr. Parker, who indicated that he
6 would -- I think I would use the word adversarial, not
7 hostile, but he would have been an adverse witness to us.

8 So in making that decision and, also, I learned that
9 the State was going to call Ms. Morsey, I was hopeful that I
10 would be able to somewhat impeach Mr. Parker without him
11 even being present. And I believe I was able to do that in
12 my cross-examination of Ms. Morsey.

13 Q So the answer to the question is that no --

14 A The answer to the question is no, I did not believe he
15 would have been a witness that would have benefited the
16 defense of Dexter Brown.

17 Q Despite the two exhibits, Petitioner's 1 and
18 Petitioner's 2, the statements he gave in Petitioner's 1 and
19 Petitioner's despite that --

20 A Yes, sir, despite that.

21 Q I'm sorry, I didn't mean to interrupt you. Despite
22 that, you didn't think that he could potentially be a
23 helpful witness to Mr. Brown?

24 A That's correct.

25 Q Okay.

1 A And Mr. Brown and I -- we had one -- and I have notes
2 on it here from my defender data file. We had one very
3 frank conversation in the course of my representation,
4 otherwise, Mr. Brown was relatively tight-lipped with me
5 about what did or did not happen that day and things he did
6 or did not know.

7 He indicated to me that Roger Benjamin was someone in
8 the car that he had no problem with whatsoever, but one of
9 the other two gentleman had been involved in illegal
10 activity with him against Mr. Brown, leading me to further
11 analyze the fact that Mr. Parker would not have been an
12 advantageous witness for us to call.

13 MR. BOOKER: Your Honor, I'm -- and this might an
14 appropriate time and I'll let you decide. But we have
15 actually the deposition of Brandon Parker. I think he made
16 a previous motion before a previous judge in connection with
17 this and, of course, obtained permission for discovery. I,
18 of course, obtained his deposition from a jail in North
19 Carolina. And I don't believe that the State has an
20 objection to this being entered into evidence.

21 MS. COLEMAN: No objection.

22 MR. BOOKER: I move to have this marked as Petitioner's
23 3, Your Honor.

24 THE COURT: Without objection.

25 (WHEREUPON, Petitioner's Exhibit No. 3 admitted into

1 evidence.)

2 MR. BOOKER: With your permission, Your Honor, I want
3 to, at least, publish some of this. Of course, I would like
4 to ask the witness some questions in reference to some
5 excerpts from the deposition.

6 May I approach, Your Honor, and hand him a copy of it?

7 BY MR. BOOKER:

8 Q Oh, you have a copy of it?

9 A I believe I do, sir. October 19th, 2017?

10 Q That's correct, sir. If you could indulge me just a
11 second. I want you to go to Page 9, I think, Line 23, I
12 guess we'll start there.

13 A Beginning with "Now"?

14 Q Yes. And I'm going to read it. And, of course, if I
15 read anything incorrectly, you correct me.

16 The question was asked: Now, the people that you saw
17 that was in the car that was pursuing you all, did you ever
18 see who those individuals were?

19 And then, of course, his response was, his answer was:
20 No, I didn't ever see who was in the car. Basically, I
21 couldn't have been. Nobody could really see who was in the
22 car. They couldn't because the truck that was -- that we
23 were in, my mother's truck and it was tinted windows. So
24 ain't no way possible nobody could have seen who was in the
25 car behind us at that time.

1 So he is still indicating -- isn't it true that in his
2 deposition, he is still indicating that the statement that
3 he gave to Officer Trottie was accurate, that he never saw
4 who the shooter was; is that correct?

5 A That's correct.

6 Q On Page 10, Line 7, he goes on to say: What I want --
7 and, of course, the question is asked: What I want to do
8 is, is that do you remember when police arrived, do you
9 remember talking with an officer by the name of Trottie
10 with, I think this was Barnwell County Sheriff's Office?

11 I remember someone, but I don't ever -- I didn't ever
12 give no -- I didn't never. He asked me a question, but my
13 mom had wrote a statement instead. I didn't know who, who
14 was really the one that was shooting or whatever.

15 So he is still indicating that he don't know who the
16 shooter was; is that correct?

17 A It is.

18 Q Have you had a chance to review this entire deposition
19 that was given by Brandon Parker?

20 A Yes, sir. It was a couple months ago, so I might need
21 to reference something.

22 Q Would you agree with me that there is no place within
23 this deposition that he ever said that he knew who the
24 shooter was and that he consistently said that he did not
25 know who the shooter was; is that correct?

1 A To the best of my recollection, there is nowhere in
2 where that he identifies the shooter.

3 Q Okay. So I'll ask you again, would that testimony,
4 would that testimony have been helpful to Dexter Brown at
5 trial?

6 A It could have been. Dexter having told me what he told
7 me and my investigation turning up what it had turned up, I
8 did not believe that Brandon Parker would have been an
9 advantageous witness for us to call in any kind of fashion.

10 Q But again, you never spoke with him?

11 A That's correct.

12 Q And you knew where he was?

13 A I did.

14 Q Okay. And would it have been possible for you to give
15 his testimony to the Court?

16 A The Court would have had to domestic a subpoena likely
17 and have him brought back, so yes, possible, I believe.

18 Q It would have been possible?

19 A I believe so.

20 Q Or could it have also been accomplished through
21 deposition?

22 A Yes, sir.

23 Q With a motion to the Court for leave to take his
24 deposition because of his unavailability, that's another
25 possibility as well, too?

1 A Yes, sir.

2 Q So you would agree me that it's not like he was not
3 available or could not have been made available or his
4 testimony could not have been made available?

5 A I don't think availability was the issue. The issue
6 was that, first and foremost, he was a victim in attempted
7 murder, essentially, a drive-by and every indication I got
8 from every other source is that he would not have helped Mr.
9 Brown at trial.

10 Q Okay.

11 A To include Mr. Brown.

12 Q And I'm sorry, you said Mr. Brown told you he didn't
13 think Mr. Parker would help him at trial?

14 A That's correct. My notes are unclear on the point
15 about whether or not it was T, the unknown person T, or
16 Brandon Parker with whom Mr. Brown had --

17 Q And that -- I apologize, I didn't mean to interrupt
18 you. Go ahead, please.

19 A Had had dealings that were adversarial and illegal.

20 Q Okay. Now, the next alleged victim in this case was
21 Roger Benjamin; is that correct?

22 A Yes, sir.

23 Q And Mr. Benjamin did testify at trial?

24 A Yes, sir.

25 Q Is that correct?

1 A It is.

2 Q And, of course, have you had a chance to review the
3 trial transcript and, specifically, the testimony of Roger
4 Benjamin?

5 A I have, sir.

6 Q Okay. Do you have the transcript in front of you?

7 A I do, sir.

8 Q Assuming we have the same one, but I'm going to direct
9 your attention to, I think this is Page 86, I believe. This
10 is the direct testimony of Roger Benjamin.

11 A I do have Roger Benjamin direct on Page 86. I don't
12 think that's where it begins, though. You might have a
13 different version.

14 Q No, it doesn't begin.

15 A Yes, sir.

16 Q I'm going to a specific excerpt. And I want you to
17 take a look at starting with Line 11. And, of course, I'm
18 going to read it and ask you some questions in reference to
19 it. If I read it incorrectly, please correct me.

20 The question is asked: What did you do?

21 And, of course, the answer by Mr. Benjamin -- this is
22 during trial; is that correct? This is Mr. Benjamin's trial
23 testimony before the jury; is that correct?

24 A Yes, sir, this is the trial transcript.

25 Q Mr. Benjamin's answer is: I jumped out of the truck.

1 I ran behind the side of my grandmother's house to see who
2 was shot.

3 Then, of course, he was then asked: Okay. And --

4 THE COURT: You didn't read that right.

5 THE WITNESS: It says shooting.

6 MR. BOOKER: I'm sorry, who was shooting. I apologize,
7 Your Honor.

8 BY MR. BOOKER:

9 Q Then, of course, the question then asked is: Okay.
10 And did you see who was shooting?

11 And, of course, Mr. Benjamin responds: Yes, I saw who
12 was shooting.

13 Then, of course, the question is asked: Who was
14 shooting?

15 Mr. Benjamin's answer is: Kendrick Jacobs and Dexter
16 Brown.

17 Is that correct?

18 A Yes.

19 Q Okay. And isn't it true that throughout the course of
20 the trial in Mr. Benjamin's testimony, Mr. Benjamin
21 consistently testifies that he saw who the shooter was and
22 that the shooter, at least, in this particular case was
23 Dexter Brown; is that correct? Along with Mr. Jacobs; is
24 that correct?

25 A That's correct.

1 Q Now, what's been marked as Petitioner's Exhibit 1, and
2 I want to ask you this question, and I think we've already
3 covered this. And that is, when Mr. Parker -- Mr. Benjamin,
4 Roger Benjamin testified at trial that he saw who the
5 shooter was, that statement would be inconsistent with the
6 statement that he gave Officer Trottie and Officer Trottie
7 identifies in his incident report where, again, Officer
8 Trottie wrote: Victim one and two stated that when they
9 turned into the yard, the two black males began to shoot at
10 them. Victim one and two stated they did not know who they
11 were.

12 That would be an inconsistent statement; is that
13 correct?

14 A What Trottie -- what Deputy Trottie wrote down is
15 inconsistent with what Roger Benjamin testified to?

16 Q Yes.

17 A Yes.

18 Q That's accurate, right?

19 A Yes.

20 Q Because Benjamin told Trottie, Detective Trottie,
21 didn't see who the shooter was, but he told the jury I saw
22 who the shooter was; is that correct?

23 A I'm going back to my point from earlier, which is
24 having investigated the case and dealt with the case and
25 having spoken with Roger Benjamin before trial, I met with

1 Roger Benjamin, one of the victims, before the trial at the
2 incident location. They did not know -- they told me they
3 did not know who it was initially while the cars were still
4 going. Mr. Benjamin told me at the incident location during
5 the course of my investigation of the incident that -- he
6 told me exactly what he testified to.

7 So what Deputy Trottie wrote down -- and this is
8 probably where I got what I told you earlier. They didn't
9 know who it was while everybody was in cars. Roger Benjamin
10 then turns around later after he's gotten out of the car and
11 identifies him. Alice Thompson having identified him,
12 obviously, from her front porch as well.

13 Q Okay. So --

14 A You're asking me about an inconsistency between Deputy
15 Trottie's interpretation of what he was told there in his
16 incident report and what Roger Benjamin testified to. I
17 anticipated the testimony of Roger Benjamin here having met
18 with him.

19 Q And I understand that, but would you agree with me that
20 the language of those two statements as I just read them are
21 inconsistent? Just the language of those two statements?

22 A They can be.

23 Q They can be?

24 A They can be interpreted like that or they can be
25 interpreted to be consistent if you understand that one's

1 referring to after the cars are stopped, the car was stopped
2 and one's referring to when the cars were both in motion.

3 Q Let me ask you another question. I think you just said
4 that you just had a -- that you went to Roger Benjamin and
5 you had this conversation with Roger Benjamin?

6 A That's correct. The parties present were myself,
7 Lauren Maurice, the solicitor on the case, Keith Bamberg,
8 investigator with the solicitor's office, Ms. Alice Thompson
9 and Roger Benjamin. I had attempted to contact both Roger
10 Benjamin and Alice Thompson, they would not meet with me, as
11 is their right.

12 The solicitor's office did allow me to go with them and
13 meet with them. I thought that would be, obviously,
14 advantageous in my representation of Dexter to speak with
15 them, hear them, regardless of who was present. So I went
16 there to the incident location and met with those people.

17 Q So what you're telling me is that when you had that
18 conversation with Roger Benjamin and, of course, you accept
19 Roger Benjamin's explanation as being factual, the truth and
20 the gospel --

21 A That's not correct in any form or fashion. I just know
22 what the gentleman told me and I knew what he was going to
23 testify to.

24 Q Certainly, okay. Certainly, okay. You know what he
25 told you, okay. But isn't it true that the fact finders are

1 the jury; isn't that correct?

2 A Absolutely correct.

3 Q Isn't it true that the jury makes the determination as
4 to whether or not a witness is telling the whole truth, some
5 of the truth or none of the truth at all; isn't that
6 correct?

7 A That's correct.

8 Q Isn't it also true, do you agree with me, you know, as
9 a practitioner that in order for the jury to make an
10 intelligent decision between two inconsistent statements
11 that it is important for the jury to have all the
12 information so they can evaluate it and make a determination
13 as to whether or not one statement is true versus another;
14 is that correct?

15 A That's correct.

16 Q Okay. So when Roger Benjamin testified twice, and I
17 think you've already stated this, throughout the course of
18 his deposition, throughout the course of his trial testimony
19 that he seen who the shooter was, he seen who the shooter
20 was, he consistently testified to that. And, of course, I
21 think you did admit that's inconsistent with what Detective
22 Trottie said that Roger Benjamin told him. Why did you not
23 present that inconsistency or use that inconsistency to
24 impeach him and present it to the jury?

25 A I did impeach him based on his statement. I did not

1 impeach him based on his -- Deputy Trottie's interpretation
2 of anything he might have said. I'm not sure I quite
3 understand your question. I apologize.

4 Q I'll rephrase it.

5 A What are you asking me that I didn't use?

6 Q I'll rephrase it.

7 A Yes, sir.

8 Q I'll rephrase the question. It was a little bit
9 long-winded. What I'm asking is, is that if we agree, and I
10 think we do, that Roger Benjamin's testimony at trial, that
11 he never saw -- excuse me, that he saw who the shooters
12 were, that the basis of that testimony is inconsistent with
13 the simple statement that's contained within Detective
14 Trottie's incident report, you know, for purposes of the
15 record, which is Petitioner's 1, where he told Detective
16 Trottie that he did not see who the shooter was. No
17 qualification of it, that he just simply didn't see who the
18 shooter was. That that can be inconsistent?

19 A That can be interpreted to be inconsistent, yes, sir.

20 Q And --

21 A Had I not known Roger Benjamin's answer to that
22 question -- seven years later, having never thought about
23 what you're proposing to me, had I not known Roger
24 Benjamin's answer to that, I probably would have asked the
25 question. But I knew his answer and his answer was, I

1 didn't see him while we were shooting in the car, I did see
2 him later.

3 Q So what you're saying to me is that you agree with me
4 -- and I'm about to move on because I don't want to belabor
5 this too much. So what you're saying is that you agree with
6 me that those two statements, what he testified to at trial
7 and what he told Trottie, can be inconsistent, but you made
8 the determination not to present it to the jury because you
9 felt as if the off-the-record -- the statement that he gave
10 you that was not under oath, that you felt that that
11 statement was consistent and accurate and provided
12 sufficient explanation as to the inconsistencies between
13 what he had testified to at trial and what he had told
14 Trottie?

15 A I did not ask the question not based on feeling, based
16 on the fact that I had interviewed the witness and he had
17 explained it to me.

18 Q And you accepted that explanation?

19 A I knew what his answer was going to be to that question
20 and it was going to be another opportunity for him to
21 identify Dexter and to talk about the shooting and I didn't
22 find that advantageous to my client.

23 Q Did you accept the explanation as being true?

24 A I accepted the explanation for what he was going to say
25 were I to ask that question at trial. Truth is not -- I'm

1 sorry.

2 Q Go ahead.

3 A That's in the purview of the jury.

4 Q Absolutely, the truth is in the purview of the jury?

5 A Correct. Believe it or not, I knew what Mr. Benjamin
6 was going to say to the question.

7 Q So the jury should have heard the inconsistency, right,
8 and let them make the decision as to whether he was --
9 whether or not he was telling the truth to Trottie or
10 telling the truth -- wouldn't you agree with me that should
11 have been presented to the jury and the jury make that
12 determination as the fact finder?

13 A In my opinion, there was no inconsistency.

14 Q Okay. In your opinion, there was no inconsistency?

15 A That's correct.

16 THE COURT: We need to stop. We're going to take a
17 ten-minute break.

18 Don't discuss your testimony with anyone. You can step
19 down during the break.

20 THE WITNESS: Yes, sir.

21 THE COURT: We're at ease for ten minutes. Thank you.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Mr. Booker, you may continue.

24 MR. BOOKER: Thank you, Your Honor.

25 THE COURT: Yes, sir.

CONTINUED DIRECT EXAMINATION

BY MR. BOOKER:

Q Mr. McCarley, in addition to Roger Benjamin telling Officer Trottie that he didn't see who the shooters were, Roger Benjamin also wrote a statement; isn't that correct?

A It is.

Q Okay. Do you have a copy of that statement?

A I do, sir.

MR. BOOKER: Your Honor, I move to enter --

THE WITNESS: I apologize. When you say Roger Benjamin wrote a statement, he didn't really write it, but it is attributed to him via his signature.

BY MR. BOOKER:

Q Okay. There is a statement that he signed?

A Yes, sir.

MR. BOOKER: Your Honor, we move to enter that statement into evidence. I think this would be Petitioner's 4.

MS. COLEMAN: No objection.

THE COURT: Mark it into evidence, please.

(WHEREUPON, Petitioner's Exhibit No. 4 admitted into evidence.)

BY MR. BOOKER:

Q You have a copy of Roger Benjamin's statement; is that correct?

1 A I do, sir.

2 Q And I'm going to attempt to read it and then I'm going
3 to ask you some questions in reference to it. If I read it
4 incorrectly, you just correct me, okay?

5 It says: I rode with Brandon to B-well -- and that's
6 the abbreviation for Barnwell -- and when we came back, we
7 stopped at Harry's store. Had picked up T. We came down
8 Patterson Mill Road and a little blue Mercury followed us.
9 When we turned in at Patterson Mill Road, they started
10 shooting. We jumped out and ran. The guy, T, yelled out,
11 Dexter, Dexter. And when we got out, T ran in the woods and
12 we ran in the house.

13 And, of course, the next paragraph, the last paragraph
14 says: I, Lessie Morsey, wrote this statement for Roger
15 Benjamin. He asked me to write it for him.

16 Did I read that correctly?

17 A I believe so. I don't if it says before it picked up
18 T, I don't know if that's an and or an had, but your guess
19 is absolutely as good as mine.

20 Q Okay. Okay. Now, what's been marked as Petitioner's
21 4, I think -- if my memory is correct, that in Petitioner's
22 1, which would have been Trottie's incident report, Trottie
23 referenced the fact they wrote a statement. And it's my
24 understanding, and you correct me if I'm wrong -- or is it
25 your understanding that this is the statement that Trottie

1 was referencing when he said that they wrote a statement?

2 A That is my understanding, sir.

3 Q Okay. Okay. So after Benjamin told Trottie that he
4 didn't see anything, he had a second opportunity to give a
5 more detailed statement, written statement; is that correct?

6 A He did.

7 Q And in this second statement, which is marked as
8 Petitioner's Exhibit 4, there is nothing within this
9 statement that would suggest that he saw who the shooter
10 was, nothing to change the statement that he had given to
11 Trottie; is that correct?

12 A That's correct.

13 Q Nothing in here that's inconsistent with the statement
14 that he gave to Trottie; is that correct?

15 A I believe that's correct.

16 Q Because in the statement with Trottie, he also said
17 that it was a guy named T, who was unknown, that yelled
18 Dexter; is that correct?

19 A When you say in the statement with Trottie, is that
20 Trottie's incident report or this?

21 Q I'm sorry --

22 A Brandon Parker's mom wrote this.

23 Q Yes, sir. In Trottie's incident report -- Trottie's
24 incident report and what has been adopted as Roger
25 Benjamin's statement is that Roger Benjamin in his adopted

1 statement and, also, in Officer Trottie's account of his
2 verbal statement to him, both of these statements, Roger
3 Benjamin indicated that it was some guy named T that yelled
4 Dexter; is that correct?

5 A That's correct.

6 Q With no last name; is that correct?

7 A That's correct.

8 Q So, again, after having the opportunity to give a more
9 detailed statement and to say that hey, I didn't see who the
10 shooter was when I was in the car, but once I got out --
11 and, of course, in this statement, he talks about getting
12 out and running, he never makes a clarification or provide
13 additional information saying that he then identified who
14 the shooter was once he got out; is that correct?

15 A Per Trottie's incident report and this statement
16 written by the other victim's mother, he does not say that,
17 you're right.

18 Q So you would agree with me that not only is there
19 inconsistency -- or may appear to be inconsistency in his
20 trial testimony with Trottie's incident report, which is
21 Petitioner's 1? You also might say is that there's also
22 some inconsistency from his trial testimony in his adopted
23 statement that's identified as Petitioner's 4; is that
24 correct?

25 A I think it could be construed as such or it could be an

1 understanding of the timeline and the fact that he didn't
2 write this and at trial, Mr. Benjamin got pretty far away
3 from this statement, which I know you're well aware of in
4 the fact that he didn't write it and it's not consistent
5 with what he said at the time.

6 Q And, again, I'll ask you, coupled with this statement,
7 with his adopted statement and what he told Sergeant Trottie
8 that's identified in Trottie's incident statement, coupled
9 with these two pieces of information, it is still your
10 testimony that you thought at that particular period of time
11 that it was not important enough for the jury to hear that
12 he had provided an alternative version of what he's
13 testifying to at trial?

14 A That's correct.

15 Q And isn't it also true --

16 MR. BOOKER: If you can indulge me just a second, Your
17 Honor, and let me identify my page.

18 THE COURT: Yes, sir.

19 MR. BOOKER: I apologize, Your Honor. I had these
20 pages marked, but you never can seem to find them as fast as
21 you want to even though you marked them.

22 THE COURT: No problem.

23 MR. BOOKER: Thank you, sir.

24 BY MR. BOOKER:

25 Q Isn't it also true that during the trial that when

1 Roger Benjamin was cross-examined on this statement that he
2 even indicated that this statement was not entirely true and
3 alleged that Ms. Morsey, who is Lessie Morsey, who is the
4 individual that wrote this statement for him, is it also
5 true that he alleged that she recorded his statement
6 inaccurately?

7 A That's correct. I think there was some fleshing out
8 that went on in my cross-examination of him. I think it
9 ended up being, the final analysis was that parts were true
10 and parts were not. So taken as a whole, some of it would
11 have been untrue. I'm just trying to clarify it.

12 Q Yeah. And I think when he said that, did you not ask
13 him whether or not Officer Trottie was there and was a
14 witness to this statement?

15 A I do not recollect that. Do you need me to refer to
16 this? If his name's on there, I would imagine he is. I
17 just don't know if Roger Benjamin told me that Trottie was
18 there.

19 Q Okay.

20 A Is there a page you can point me to, sir?

21 Q When he contradicted this statement and said this
22 statement -- no, I don't want to --

23 A Okay.

24 Q I don't think it's important enough for us to take up
25 the time. When he contradicted himself and said this

1 statement was not accurate and that maybe Ms. Morsey did not
2 record it right, did you call Ms. Morsey as a rebuttal
3 witness to rebut on the accuracy -- or rebut his testimony
4 at trial that this statement was not accurate and was not an
5 account of what he told her to write?

6 A I did not nor did I question her on that when she took
7 the stand for the State.

8 Q But she wrote the statement for him, right?

9 A That's what it says. I wasn't there.

10 Q She would be able to testify as to whether or not hey,
11 this is what Roger Benjamin told me and I wrote down exactly
12 what he told me. She would be able to testify to that,
13 right?

14 A That's correct, sir.

15 Q But you didn't call her to impeach Roger Benjamin's
16 allegation -- and you correct me if I'm wrong, I think what
17 he was refuting is, he was refuting it was not T who said
18 Dexter, but that it was actually Roger Benjamin who
19 identified Dexter or said Dexter; is that correct?

20 A I don't remember what exactly he refuted, but the first
21 of the question that I didn't call her and she could have
22 testified to what she heard and wrote would be correct.

23 Q Okay. Could you go to page 95 of the transcript?

24 A Yes, sir.

25 Q Let's see if we can try to refresh your memory.

1 A I am there, sir.

2 Q Line 19.

3 A Beginning with "okay"?

4 Q And this is on cross-examination by you; is that
5 correct?

6 A Yes, sir.

7 Q And you asked Roger Benjamin: Okay. It then says:
8 They started shooting, we jumped out and ran. The guy, T,
9 yelled out, Dexter, Dexter. Is that true or false?

10 No, I yelled out, Dexter.

11 So he was refuting the fact that actually the statement
12 he had signed was entirely accurate; is that correct?

13 A That's correct.

14 Q It goes on to say, your next question was: Mr.
15 Benjamin, is that true or false, the guy, T, yelled out,
16 Dexter, Dexter?

17 Mr. Benjamin answered: That's false.

18 And you go on to say: Do you admit or deny that?

19 That's false.

20 His statement is false that you gave to Officer John
21 Trottie on the day of the event?

22 Not all of it. I ain't wrote it. You know what I'm
23 saying. I ain't know what she put. I ain't -- I was too
24 worried about my life to worry about a statement. You know
25 what I'm saying.

1 So you even indicated to him or asked him that question
2 -- you asked him that question as to, Did you lie to Officer
3 Trottie when you gave Officer Trottie the statement? And,
4 of course, he still says the statement is not accurate.

5 Did you call Officer Trottie to again say, Officer
6 Trottie, were you present when Lessie Morsey wrote this
7 statement for Roger Benjamin and did Lessie Morsey write
8 down what Roger Benjamin said? Did you call Detective
9 Trottie for purposes of impeaching the portions of his
10 statement that he is now contradicting at trial?

11 A I did not. I believe he had impeached himself enough
12 already and he hadn't written the statement. I think what
13 muddled it was the fact that he hadn't written the
14 statement. But I did not call Deputy Trottie and I did not
15 cross him on that subject when he took the stand for the
16 State.

17 Q And, again, I think you've also testified, too, that
18 you did not call Lessie Morsey or did not cross-examine her
19 on that portion of his statement when she took the stand; is
20 that correct?

21 A That's correct, sir.

22 Q As a trial lawyer -- I'm going to ask you something as
23 a trial lawyer with your experience. In my experience as a
24 trial lawyer, it may be the same as yours, is that usually
25 law enforcement officers carry a greater degree of

1 credibility than a defendant would; is that correct, or
2 either sometimes witnesses would? Is that your perception?

3 A I believe it depends on the witness, it depends on the
4 officer, it depends on the defendant.

5 Q And the reason why I'm asking --

6 A In general, absolutely. I understand what you're
7 saying, that a law enforcement officer carries more weight
8 with the jury, but I think it also depends on who that
9 officer is, who that witness is, who that defendant is,
10 whether on the balance who would be more believable to a
11 jury.

12 Q Was Officer Trottie believable?

13 A I wouldn't really say one way or another.

14 Q You don't know?

15 A I mean, I did a lot of work against him, so I just
16 can't say whether or not he was believable to a jury.

17 Q On that day, was he believable?

18 A I have no idea, I didn't question the jury as to
19 whether or not they believed what Deputy Trottie testified
20 to or not.

21 Q That's fine, that's an acceptable answer. But you
22 still -- you agree with me that not presenting this evidence
23 to a jury so the jury can make a determination with respect
24 to whether or not Detective Trottie was accurate or either
25 whether or not Roger Benjamin was accurate, you still did

1 not give the jury that opportunity, did you?

2 A I did not call Ms. Morsey and I did not call Deputy
3 Trottie or question them on those subjects.

4 Q Now, I'm going to ask you now about the charge. I
5 think you've already told me that Mr. Brown was charged with
6 two counts of attempted murder and, of course, one count of
7 possession of a weapon during the commission of a violent
8 crime, I believe; is that correct?

9 A Yes, sir.

10 Q And it's my understanding, and you correct me if I'm
11 wrong, that the allegations were -- you made a motion -- and
12 I apologize, let me rephrase that. You made a motion at the
13 close of the State's case for a directed verdict on the
14 grounds that there was insufficient evidence of attempted
15 murder; is that correct?

16 A Yes, sir.

17 Q If my understanding is correct, and you correct me if
18 I'm wrong, I believe that the basis of your motion for
19 directed verdict is, is that you testified -- I think your
20 argument was that there was no evidence that the gunfire was
21 aimed directly at the alleged victim and that no one could
22 testify to that, not even the victims because they were
23 running in the opposite direction. Is that kind of the
24 basis of what your argument was?

25 A Without rereading it right now, yes, sir.

1 Q I know it's not --

2 A That's the way I remember it.

3 Q I know it's not verbatim.

4 A Yes, sir, absolutely correct.

5 Q And that was an issue for the jury, is that not
6 correct?

7 A The directed verdict is an issue for the judge.

8 Q No, no, not the directed verdict. It was an issue for
9 the jury that in this particular case, you know, as to one,
10 you know, whether or not the identity of the shooters; and
11 two, if you do have the identity of the shooters, whether or
12 not the shooters were attempting to kill or whether or not
13 there was evidence of attempt to kill?

14 A The trial strategy was that Dexter wasn't there, Dexter
15 wasn't the shooter, so not wanting to necessarily speak out
16 of both sides of our mouths and argue even if you do believe
17 Dexter was there, he wasn't trying to kill anybody was a
18 strategic decision made by myself and Mr. Gibbons that Mr.
19 Brown would have been involved in to not pursue as a trial
20 strategy.

21 Q Okay.

22 A Not to argue any alternative plan I think is probably
23 the best way to say it.

24 Q I'm a little bit confused because if it was your
25 argument that he wasn't there, then why was your motion for

1 directed verdict based upon the fact that there was no
2 evidence of the existence of Mr. Brown at the scene as
3 opposed to there's no evidence, you know, that the guns were
4 aimed at the alleged victims for purposes of attempting to
5 kill them?

6 A Correct. And I think that can be explained by the fact
7 that arguing the directed verdict motion to the judge
8 understands, obviously, the nuance of arguing in the
9 alternative, whereas a jury doesn't necessarily understand
10 that. I never wanted to give any ground whatsoever or admit
11 the possibility that Dexter was there.

12 Q Did you talk with Dexter Brown about potentially
13 offering or, at least, requesting a charge of a lesser
14 included offense of assault and battery of a high and
15 aggravated nature or either assault and battery first
16 degree?

17 A I did.

18 Q Okay.

19 A I also talked with Mr. Gibbons. We also had an
20 in-chambers discussion where the solicitor and Judge Dickson
21 were present.

22 Q Now, attempted murder carried zero to 30 at that time,
23 right?

24 A That's correct.

25 Q Assault and battery of a high and aggravated nature

1 carries zero to 20; is that correct?

2 A To the best of my knowledge without looking at the
3 statute book, yes, sir.

4 Q Now, of course, to my understanding, you correct me if
5 I'm wrong, is it your understanding that assault and battery
6 first degree carries zero to ten?

7 A Yes, sir.

8 Q Okay. And underneath 16 -- I think underneath 16-3-600
9 is that assault and battery of a high and aggravated and
10 assault and battery first degree that the legislature wrote
11 into the statute and says statutorily, these are
12 lesser-included offenses to attempted murder?

13 A Those are all lesser-includeds of each other.

14 Q Now, you said you discussed lesser-included offenses
15 with Dexter?

16 A That's correct.

17 Q And tell me about that discussion. What did you tell
18 him about a lesser-included offense?

19 A He and I would have discussed whether or not to request
20 a jury charge on lesser-included, what that could mean for
21 the possibility of compromised verdict from the jury, what
22 that would have meant in regards to possible sentences he
23 could receive. The decision was made, I would say probably
24 the best way to say it is in consult with Dexter, he knew
25 what we were doing and why.

1 I don't have it in my notes specifically. If he had
2 had any very serious objection to it, I would imagine I
3 would have had him put that on the record. But, regardless
4 of that, I would have discussed it with Mr. Gibbons. As I
5 said, there was also in-chambers discussion putting it
6 shortly and curtly and all or nothing decision that was
7 made.

8 Q My understanding --

9 A And consult with Mr. Brown.

10 Q Yeah. My understanding is that -- and you correct me
11 if I'm wrong, as to whether or not a client is going to
12 accept a compromise on a lesser-included offense, isn't that
13 a decision to be made by the client?

14 A It is. And it was discussed with him. It's his life
15 and I would discuss it with him absolutely and completely.

16 Q I understand that you discussed it with him.

17 A Yes.

18 Q But there's a difference between discussing it with him
19 and him making the decision?

20 A There is.

21 Q You never gave him the option to make that decision?

22 A That's not correct. Had he objected to that decision,
23 at least, it would have gone on the record with the judge.
24 Dexter Brown was fully apprised of every decision that was
25 made in that trial.

1 Q Let me ask it this way and I'll move on. Did you say
2 to Mr. Brown, Mr. Brown, you have the option, it's your
3 opinion as a client, it's your life, as to whether or not
4 you want us to push a charge for a lesser-included offense,
5 i.e. assault and battery of a high and aggravated nature or
6 either assault and battery first degree?

7 A Yes. I remember the room we were sitting in when we
8 had that conversation. I remember him asking what happens
9 if we get the lesser-included. And he elected to not ask
10 for a lesser-included offense.

11 Q So you're saying that you ask him and he said no, he
12 didn't want it?

13 A Correct.

14 Q Now -- and the reason I'm asking this is that you would
15 agree with me -- I read the transcript over and you would
16 agree with me that there was nothing within the transcript
17 of when the judge asked whether or not you had an objection
18 to the charge that completely left out the lesser-included
19 offenses, that your response to the judge is you have no
20 objection to the charge?

21 A Without looking back at it, that's what I remember,
22 correct. Yes, sir.

23 Q So on the record, you never asked for the
24 lesser-included offenses?

25 A Not on the record from the judge, no, sir.

1 Q Now --

2 MR. BOOKER: If you could indulge me for just a second,
3 Your Honor.

4 THE COURT: Yes, sir.

5 (Pause.)

6 MR. BOOKER: Your Honor, I have no further questions.

7 THE COURT: Any questions of this witness?

8 THE SOLICITOR: Yes, sir.

9 CROSS-EXAMINATION

10 BY MS. COLEMAN:

11 Q Mr. McCarley, how long have you been practicing law?

12 A Approximately seven years.

13 Q And how long had you been practicing law when you
14 handled this trial?

15 A I was hired at the public defender's office in August
16 and so it would have been -- I wasn't sworn in until I think
17 October, late October, so I would have been working there
18 since August.

19 Q Was this one of your first trials?

20 A It was.

21 Q And --

22 A One of my first, it was not my first.

23 Q Okay. Is that one of the reasons why you remember it
24 so well?

25 A That's definitely part of it and then having reviewed

1 it over the years when these hearings came up.

2 Q And Mr. Grant Gibbons, public defender, was second
3 chair to this trial with you; is that right?

4 A That's correct.

5 Q Did you consult with him on many of the decisions you
6 made?

7 A Every decision I made of any import would have been run
8 by Mr. Gibbons.

9 Q Did the applicant cooperate with you during the course
10 of your representation?

11 A Yes, in general, but not -- I wouldn't say
12 specifically. I believe there's a lot that I don't know
13 about what exactly did occur there that day. There was one
14 meeting I referenced earlier in my testimony where I believe
15 he was very, very honest with me about what happened, but
16 then at the very next meeting, he was no longer willing to
17 talk with me. At the same time, when you say cooperate, he
18 and I spoke and he and I had -- he wasn't -- he would talk
19 to me. We had discussions and he's a very intelligent young
20 man, asked smart questions. So long answer to a simple
21 question, I apologize.

22 Q That's all right. We've talked about a lot of details
23 of the trial here, but I don't think we've gone over the
24 facts of the case or what the State was alleging happened.
25 If I can briefly go through these and please correct me if

1 I'm wrong. But the trial transcript indicates that the
2 State was alleging that the -- there were three victims in
3 the vehicle; is that correct?

4 A Yes.

5 Q And who were they?

6 A Brandon Parker, Roger Benjamin and T.

7 Q Right. And Brandon Parker was driving the car, right?

8 A To the best of my recollection.

9 Q And they pulled out of the store and started driving
10 down the road and a blue Mercury began to follow them,
11 correct?

12 A That's correct. A blue Mercury was attributed to the
13 girlfriend of Mr. Brown.

14 Q Then all of a sudden, the people in the blue Mercury
15 started shooting, hanging out the window and shooting at the
16 victims, correct?

17 A I think initially one person is shooting out the window
18 and as soon as the lead car stopped, both shot at that point
19 or after they had U-turned and come back, both shot. But,
20 yes, Kendrick Jeggins was alleged to be sitting on the
21 window sill shooting up across the car and Mr. Brown was
22 shooting from the window.

23 Q And there were two people shooting from the car?

24 A Yes, that was the testimony.

25 Q Right. Yes. As they're being shot at, the victims

1 then turned into the driveway, I guess, of the trailer where
2 Roger Benjamin's grandmother lived, correct?

3 A That's correct.

4 Q And then they got out of the car, started running and
5 ran into the woods at that point; is that right?

6 A That was the testimony, yes, ma'am.

7 Q What other evidence was presented? Were there shell
8 casings found at the scene?

9 A Multiple shell casings were found at the scene. Most
10 importantly to the entire case was a lady named Alice
11 Thompson, who is related to Roger Benjamin, his grandmother,
12 I believe, who was inside the trailer that you referred to
13 when all this began. When the noise began, the shooting,
14 she came out and from her front porch saw what was happening
15 and identified Dexter Brown.

16 The reason she was such an important witness for the
17 State, if not the most important witness by far is that she
18 had a long-term relationship with Dexter. She had -- he had
19 allegedly lived with her at times. She had cared for him at
20 different times, almost a grandmother figure. So the most
21 important testimony, the most important evidence in the case
22 was her testifying that Dexter was shooting -- she testified
23 from her front porch that Dexter was shooting.

24 Importantly, when I went to the incident location and
25 met with her and Mr. Benjamin, I was able to stand in the

1 same place she stood and get a line of sight. Because if
2 you just pull it up on Google maps or just drive by, there's
3 a possibility -- there's a big shrub there. It's a
4 possibility that it could -- so being able to meet with her
5 and gauge the type of witness that she was going to be and
6 the kind of testimony that she was going to give and could
7 see the incident location, the lines of sight that she would
8 have seen was important and her testimony was obviously very
9 important to the State and thus, obviously, important to us.

10 Q And based on your consultation with her and your
11 investigation of the scene and your statements that were
12 part of the discovery, did you believe that she was going to
13 be a credible witness?

14 A I believed she was going to be a very credible witness
15 and I believe that she was.

16 Q Okay. You testified that Alice Thompson had a long
17 relationship with the applicant, knew who he was and was
18 able to identify him, correct?

19 A That was the testimony.

20 Q And did the State introduce the 911 phone call that she
21 made immediately following the shooting?

22 A They did.

23 Q And in that 911 phone call, did she identify to the
24 police on the phone that Dexter Brown was shooting?

25 A Yes, she did. That's an interesting question because

1 at trial, there is some -- what I would think some
2 inconsistencies in her 911 call where I believe it could be
3 interpreted that she was asking Roger Benjamin who it was
4 and I tried to make some headway in that arena, that her
5 identification was not as good because it was coming via
6 Roger Benjamin. But she did say on the 911 call it was him,
7 but I also think there was some area in the 911 call to
8 interpret she was getting that information from Roger
9 Benjamin. And the jury, I believe, asked to listen to the
10 911 call again after close of evidence.

11 Q And in that 911 call, before she consulted with Roger
12 Benjamin, didn't she say Will Dexter was driving the car,
13 Will Dexter?

14 A I'm so sorry, I have not listened to the disc in six
15 years, so I cannot say -- the transcript of the disc, I'm
16 sorry.

17 Q But you did cross-examine her on whether she knew the
18 name before she --

19 A Absolutely.

20 Q Or whether Roger Benjamin told her the name?

21 A Yes. Without looking back, absolutely, I questioned
22 her on that.

23 Q Okay. And she testified at trial that she saw who it
24 was shooting and it was Dexter Brown, correct?

25 A Yes, that is how she testified.

1 Q As far as the other evidence in the case goes, you
2 testified there were shell casings found at the scene. Were
3 there also bullets found in the headrest of the victim's
4 car?

5 A There was a bullet found in the headrest of the
6 victim's car. There were pictures of the victim car
7 introduced. To the best of my knowledge, Ms. Morsey
8 testified that it was her car. There were -- I don't
9 remember the amount of shell casings, but there were a
10 number of shell casings.

11 Q And the bullet in the headrest, was that the State's
12 basis for the attempted murder charge?

13 A That was one of them, yes.

14 Q What were the other bases?

15 A I would say just the inference of intent from the
16 actions taken by the defendants.

17 Q So, basically -- and you're -- well, what was your
18 trial strategy?

19 A Trial strategy was to bifurcate -- to separate Dexter
20 from the event. So this event happened, this event
21 absolutely completely happened. We weren't going to be able
22 to -- in my professional legal opinion, we were not going to
23 be able to prove that this event did not happen. We did try
24 to disprove their case, that Dexter was there and through
25 cross, prove that he was not there.

1 Q So your argument to the jury at trial was that there's
2 no physical evidence tying Dexter Brown to the scene and he
3 wasn't there, the State wasn't proving that he was there?

4 A That's correct.

5 Q Based on the other evidence, how would you characterize
6 the State's evidence against him? Would you describe it as
7 strong or weak?

8 A In whole?

9 Q Yes.

10 A But for Alice Thompson -- is it Thompson or Thomas?

11 Q Alice Thompson.

12 A She was a very, very good, very, very credible witness
13 for the State. But for her, I do not think their case was
14 very good. If that answers your question.

15 Q It does, thank you. With Ms. Thompson, you believe it
16 was strong evidence, overwhelming evidence?

17 A It was strong evidence.

18 Q And, of course, that's not a determination for you to
19 make, but in your opinion, you believe it was strong
20 evidence?

21 A I believe she was a very, very good witness.

22 Q Now, as you testified, there were three victims in the
23 car. There was Brandon Parker, who was driving, and Roger
24 Benjamin was in the passenger seat and a gentlemen named T
25 was in the back seat, correct?

1 A That's correct.

2 Q And no one really knew who T was and they couldn't find
3 him for the trial; is that right?

4 A I know that my investigation turned up nothing -- our
5 office's investigation turned up nothing whatsoever into T.
6 Mr. Brown did not have any information for me, at least, as
7 to who T was. I understood from the State that they
8 couldn't find him at all.

9 Q The statements of the other two witnesses, which are in
10 evidence today, we've already taken a look at those. In
11 those statements, they say that T, who's sitting in the back
12 seat, while the shooters are following them shooting at
13 them, he yells out, Dexter, it's Dexter; is that correct?

14 A That's correct in those statements, yes, ma'am.

15 Q But neither of the other shooters know who it was, but
16 they admit that T was yelling it's Dexter, right?

17 A That's correct.

18 Q Of course, he wasn't there to testify at trial. But
19 then, after they pull into the driveway, everyone gets out
20 of the car and runs behind the house, at that point, Roger
21 Benjamin testified he looked and saw Dexter shooting at him,
22 correct?

23 A Yes, ma'am, and he told me that in the days and weeks
24 leading up to -- told me that in front of multiple people in
25 the days and weeks leading up to trial when I was able to

1 meet with him.

2 Q And based on your investigation and on the evidence
3 presented, were they -- did they know Dexter? Were they
4 aware of who he was?

5 A Yes.

6 Q So --

7 A I think it came out on cross how they know him or
8 direct how they know him, just from the neighborhood from a
9 smaller town or county.

10 Q Now, Mr. Booker has been over his obligations with you
11 today, Mr. Brown's allegations, and one of them is that you
12 should have impeached Roger Benjamin, the victim, with his
13 -- first, with the statement, the report of Investigator
14 Trottie; is that right?

15 A Yes, ma'am.

16 Q Could you have introduced Investigator Trottie's report
17 to impeach Roger Benjamin?

18 A Without calling, I think he's now an investigator, I
19 think he was a deputy at the time. Without calling Trottie
20 to the stand and having -- doing prior inconsistent
21 statement with him to get it in, I don't believe so. But
22 could I have called Deputy Trottie, yes, ma'am.

23 Q Okay. And do the rules of evidence or do the statutes
24 allow the investigators report to be introduced?

25 A It's, first and foremost, hearsay, then you have to get

1 around it.

2 Q Okay. And Roger Benjamin gave a statement. Could you
3 have introduced this to impeach Roger Benjamin?

4 A Brandon Parker's statement or Roger Benjamin's?

5 Q Roger Benjamin's statement.

6 A Yes, I could have.

7 Q You could have?

8 A Yes.

9 Q Would you please turn to Page 91 of the trial
10 transcript?

11 A (Witness complies.)

12 Q And, actually, starting on Page 90 at Line 25 at the
13 bottom there, this is on your cross-examination of Roger
14 Benjamin at the trial.

15 You say, question: Did you give a statement to the
16 police on the day of this incident?

17 He answers, Yeah.

18 A little further down at the bottom of Page 91, you're
19 still talking about this statement.

20 On Line 24, you say: But here in your statement, you
21 made no mention whatsoever of seeing Dexter Brown.

22 Top of the next page, he answers: I ain't wrote no
23 statements.

24 Then you go into the inconsistencies of his statement?

25 A Correct.

1 Q So you did impeach him on his statement, correct?

2 A I believe I did.

3 Q You just didn't physically introduce a copy of the
4 statement?

5 A I did not. Introducing that would have lost the
6 ability to close last and having impeached him -- I believe
7 having impeached him on the statement already, the fact he
8 didn't write the statement, I didn't believe it was worth
9 introducing it. I did not believe it was to Dexter's
10 advantage to introduce it.

11 Q Okay. So did you get the last closing argument at
12 trial?

13 A I did.

14 Q Do you believe that was favorable?

15 A I do.

16 Q And why is that?

17 A It's just the last thing the jury hears. I get to
18 respond to what the State has said. It's just an advantage
19 in my professional legal opinion.

20 Q And is that a common strategy that most defense
21 attorneys choose to use at trial?

22 A Yes.

23 Q Okay.

24 A To the best of my knowledge.

25 Q Right. Brandon Parker was the other victim in this

1 case. He was -- as we've already discussed quite a bit
2 today, he was not present at the trial because he was
3 incarcerated in North Carolina, correct?

4 A Yes.

5 Q Okay. You testified earlier that you could have
6 domesticated a subpoena against him and have him appear at
7 the trial and testify. Why didn't you want to do that or
8 why did you choose not to do that?

9 A I, in analyzing this case, saw no benefit to calling
10 him as a witness. He was the alleged victim in the
11 attempted murder. Mr. Brown had told me some of the reasons
12 that he would be -- that I believed he would be adversarial.
13 In conversations with Ms. Morsey, Brandon Parker's mother,
14 that the solicitor had in my presence, I understood that he
15 would not be an advantageous witness to us. It's normally a
16 relatively basic defense strategy to not have the victim
17 there.

18 Additionally, interestingly in this case, I was
19 somewhat able, I believe, to impeach him through his mother
20 through the fact that he was incarcerated and the charge for
21 which he was incarcerated in North Carolina. I'm pretty
22 sure I also asked questions of Detective Trottie about GSR
23 on Mr. Parker trying to link together the lack of GSR on Mr.
24 Parker and his reason for incarceration in North Carolina as
25 possibly he was shooting the gun.

1 Q Now, you testified that you have reviewed the
2 transcript of the deposition of Brandon Parker that we took
3 in this case; is that correct?

4 A Yes, ma'am.

5 Q And, essentially, correct me if I'm wrong or if this
6 competes with your understanding of the transcript, but in a
7 nutshell, in his deposition, Brandon Parker testifies that
8 he was a victim in this shooting, the car was driving behind
9 him and people were shooting at him; is that right?

10 A That's correct.

11 Q Although he does -- now, in the deposition, he says the
12 windows were so tinted, we couldn't see who it was shooting
13 at us and he doesn't know how anyone could have seen them.
14 But he still testifies people were driving behind him
15 shooting at him, right?

16 A That's correct.

17 Q Is that helpful testimony in your opinion?

18 A In my professional legal opinion, that would not help
19 my client to have another person saying that this had
20 occurred in the exact manner that the State was saying it
21 occurred.

22 Q Okay. Do you believe that Brandon Parker's testimony
23 in his deposition, if it had been presented at trial, do you
24 believe it would have changed the jury's verdict?

25 A I do not believe it would have changed the jury's

1 verdict. I do not believe it would have benefited my
2 client.

3 Q Why not?

4 A I do not believe Brandon Parker would have been a
5 credible witness for the State or for myself, especially
6 based on what Mr. Brown had told me in that one frank
7 meeting we had about the reason, possible reasons for this
8 incident occurring.

9 MS. COLEMAN: Beg the Court's indulgence one moment.

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 BY MS. COLEMAN:

13 Q What other investigation did you do for this case?

14 A When you say other, besides --

15 Q You testified earlier that you investigated an alibi
16 witness, you tried to find his girlfriend, Mr. Brown's
17 girlfriend?

18 A Those are one in the same. Mr. Brown's girlfriend was
19 going to be the alibi witness. He and I had a discussion --
20 to that point, he and I had a discussion about how her car
21 being involved in this allegedly at the time, the light blue
22 Mercury was attributed by multiple people to her, could be
23 an issue with her possibly being an alibi.

24 But yes, ma'am, I went to her place of business on, at
25 least, one occasion and tried to contact her via phone and

1 notified my investigator. I went to the incident location
2 and met with Ms. Thompson, met with Mr. Benjamin, obviously,
3 met with my client. Not necessarily an investigation, but
4 the fact that he wasn't as forthcoming as I believe he could
5 have been with me to assist in his -- to just help me with
6 the context of the situation. Does that answer your
7 question in reference to investigation?

8 Q Yes, it does. Thank you. Did you have enough time to
9 prepare --

10 A Oh, also, talked to a GSR expert. I didn't know much
11 about GSR before this and was able to talk to somebody about
12 GSR and how long it last on people's hands in preparation
13 for cross-examination of one of the law enforcement officers
14 who did one GSR and neglected to do another.

15 Q Okay. That's right. And was GSR evidence presented at
16 this trial?

17 A I don't know if they introduced the actual gunshot
18 residue kit, but it was absolutely discussed because they
19 had done a kit on one person in the car, but not on the
20 other. And their explanation was they didn't have any more
21 kits and the sheriff's office is right down -- I say right
22 down the road, I'd say eight miles away putting them in the
23 timeframe window that they could have gone and gotten a kit,
24 which tied in with my belief that, possibly, Brandon Parker
25 had been armed and was shooting.

1 Q And you cross-examined the expert on how they only had
2 one kit, right?

3 A Yes. Well, it wasn't an expert. It was a law
4 enforcement officer who administered the kit and I crossed
5 him on just having one kit.

6 Q Thank you. And to your recollection, does the
7 transcript show that they did a GSR kit on Brandon Parker,
8 the victim?

9 A I believe it shows they didn't do one on Brandon
10 Parker, but did do one on Roger Benjamin or I have that
11 switched. I apologize. If you want me to look back --

12 Q Whichever one they did perform the kit on or analyze,
13 search for gunshot residue, it showed up that there were no
14 results of gunshot residue, correct?

15 A That's correct.

16 Q Was that helpful or hurtful to your case?

17 A With the gentleman that they -- I would say it was
18 indifferent.

19 MS. COLEMAN: No further questions.

20 Thank you.

21 MR. BOOKER: Just briefly, Your Honor.

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. BOOKER:

25 Q On your cross-examination, you talked about Alice

1 Thompson and, of course, in the transcript -- and I think I
2 agree with you. Would you agree that you did a fairly good
3 job impeaching her testimony based upon the 911 tape?

4 A Whether I did a good job or not, I don't know. I do
5 know that I tried and I do know that I think I was able to
6 somewhat impeach her based on the 911 tape.

7 Q And I think, specifically, you mentioned on
8 cross-examination of Alice Thompson, actually, in the
9 background of the 911 tape that you can actually hear Roger
10 Benjamin whispering some of the answers that she was giving
11 to the 911 operator; isn't that correct?

12 A Yes, sir, you hear who I think -- I think I got out it
13 was Roger Benjamin. I don't know if he was whispering or
14 not. I think it was just faint because maybe he wasn't
15 sitting close or whatever. But yes, that is definitely what
16 I was trying to get to the jury, that Roger Benjamin was the
17 one -- was the only possible identification.

18 Q And that Roger Benjamin actually -- or that -- and I
19 think your strategy was to show to the jury, based upon the
20 911 tape, that there was someone feeding answers to her?

21 A Correct, yes, sir.

22 Q And, of course, you could hear that on the 911 tape,
23 someone in the background giving answers to her as she is
24 giving descriptions of the car and that sort of thing?

25 A To the best of my recollection, yes, sir, having not

1 listened to that tape in a considerable amount of time.

2 Q And the reason why I asked that is, is that would tend
3 to then weaken her credibility as the strongest witness in
4 the case?

5 A That's correct, and I attempted to do that.

6 Q Okay. And then, of course, you said something on
7 cross-examination that is also true, is that, in fact,
8 during jury deliberations that the jury -- one of the
9 questions that the jury -- one of the questions that the
10 jury requested is that they wanted to hear that 911 tape
11 again during deliberations; is that correct?

12 A Yes, sir, to the best of my knowledge. I didn't look
13 back and see it, but I do -- that's the way I remember it,
14 yes, sir.

15 Q Okay. And, of course, is it fair to say that one of
16 the reasons why they wanted to hear back the 911 tape is is
17 to examine the credibility of her testimony because the only
18 benefit of the 911 tape, I think the reason why and I think
19 you did a good job in doing it is, is to use the 911 tape to
20 show that she was not -- the information she was giving, she
21 was not the originator of that information?

22 A I don't know why they asked to listen to it again. I
23 really do hope that it was because they wanted to look into
24 the credibility and believability of Ms. Thompson.

25 Q Okay. The State didn't introduce the 911 -- I can't

1 remember. Do you remember whether or not the State
2 introduced --

3 A I closed last, so I don't think I introduced it.

4 Q I'm sorry?

5 A I closed last, so I don't think I introduced the 911
6 tape.

7 Q You're right. You're right. Was there any other
8 benefit of that 911 tape to you other than showing that Ms.
9 Alice was, actually -- Alice Thompson was being funneled the
10 information or fed information to provide to 911?

11 A Not to the best of my knowledge.

12 Q And the reason why I asked that is, is that this case
13 was pretty much based upon no physical evidence to identify
14 Dexter Brown as one of the shooters; is that correct?

15 A That was definitely my strategy and I don't think there
16 is in all honestly, no physical evidence.

17 Q And that's what I'm asking, during the course of the
18 trial -- I read the transcript. In the transcript, is there
19 any evidence produced in the transcript, physical evidence
20 that is that identified Dexter Brown as the shooter? Was
21 there any fingerprints, any guns that was found in his
22 possession that ballistically matched the shells, the shell
23 casings found at the scene? Anything that draws him to the
24 scene?

25 A No, sir, and I think that's part of my closing

1 argument.

2 Q So this case was primarily based upon witnesses, right?

3 A Roger Benjamin and Alice Thompson.

4 Q And their credibility?

5 A Yes, sir.

6 Q Okay. So if we assume -- and I think you did a good
7 job on impeaching the credibility. Of course, I can go back
8 and read to you where you indicated -- if you want to
9 refresh your memory where you indicated in the transcript,
10 you know, I think multiple times where, basically, she gave
11 inconsistent information or, at least, she was receiving
12 information from someone in the background?

13 A Yes, sir.

14 Q And that is good impeaching evidence, is it not?

15 A I believe it was.

16 Q That could cause a jury to say hey, is this lady really
17 -- and I'm asking your opinion. That could cause a jury to
18 say well, hey, is this lady really an independent objective
19 witness of what happened or is she simply parroting what her
20 son is telling her? That's possible that the jury could
21 reach that conclusion based upon your cross-examination of
22 her with that 911 tape?

23 A That is possible.

24 Q And, of course, if that happens, then, of course, the
25 prime witness, the main witness, the star witness would be

1 Roger Benjamin; is that correct?

2 A If the jury believed my impeachment -- if the jury did
3 not believe Alice Thompson, to find Mr. Brown guilty, they
4 would have had to have believed Roger Benjamin.

5 Q Or, at least, thought that there was some reason to
6 question or doubt her veracity; is that correct?

7 A Yes, sir.

8 Q And that's what I want to get back to you, is that the
9 impeachment of Roger Benjamin -- because I want to make sure
10 I understand your definition of impeachment. I know that
11 you testified on direct examination that you impeached Roger
12 Benjamin. And I think you said you impeached Roger Benjamin
13 based upon his own statement; is that correct?

14 A Yes, I questioned him on his own statement -- well, the
15 statement that was written for him.

16 Q Okay, the statement that was written for him?

17 A Yes, sir.

18 Q And, of course, you did not impeach him -- well, let me
19 ask you this question. What my answer would be is that do
20 you not believe that probably the most powerful piece of
21 impeaching evidence would have been him telling the officer
22 something -- Officer Trottie something inconsistent with
23 what he is telling the jury because Officer Trottie would be
24 a verifying impeaching witness? But in this case, you
25 didn't have a verifying impeaching witness, did you not?

1 A I did not.

2 Q You did have one, which would have been Officer
3 Trottie, but you didn't use him; is that correct?

4 A I did not call Officer Trottie.

5 Q For whatever reasons, and I know you have your reasons,
6 but he was an impeaching witness, a physical impeaching
7 witness that you could have used to impeach, at least, the
8 testimony of Roger Benjamin when Roger Benjamin said I saw
9 who did it after -- on the day of the incident, telling
10 Officer Trottie I didn't see who did it; is that correct?

11 A I could have called Deputy Trottie.

12 Q Okay, but you didn't.

13 A And discussed with him his presence at the statement
14 that was written for Roger Benjamin. I understand what
15 you're saying and why. I think what muddies it is the fact
16 that Roger Benjamin didn't write that statement and that, in
17 my professional legal opinion, allowed him to distance
18 himself from it a little bit and lessen the blow of the
19 impeachment of it, thus, making the decision for us not to
20 enter that into evidence, do the prior inconsistent
21 statement, call Deputy Trottie, lose the last close. That
22 cost benefit analysis, we did not call Deputy Trottie.

23 Q You're saying that Roger Benjamin didn't write his own
24 statement?

25 A He did not.

1 Q Okay.

2 A That played into my questioning of him is what I was
3 trying to say.

4 Q And, of course, you're saying that because he didn't
5 write his own statement that, of course, you couldn't hold
6 him to what was said within his statement?

7 A That is not true. I could have called Ms. Morsey, I
8 could have called Deputy Trottie and I did not.

9 Q And hold them to what was said in his statement because
10 they were potentially witnesses that he understood his
11 statement as it was written, signed it and adopted it when
12 he put his signature on it; is that correct?

13 A You are correct. What I believe you're missing in the
14 grand scheme of this is that his explanation when I met with
15 him previous to trial explains what he's saying here, At the
16 end, I turned around, looked, it was Dexter.

17 So that was not in his statement. I don't know if his
18 statement can be construed to be mutually exclusive of that
19 or not. I did know previous to trial that he had an answer
20 for that line of questioning that would have him
21 reidentifying Dexter Brown as shooting a gun at him in his
22 car.

23 Q And I'll say this and I'll move on. I know that you
24 said that you had talked with him and he had an answer to
25 that question, but isn't it also true that that answer would

1 have been in conflict with Officer Trottie's statement?

2 A I don't see that the same way you do because I believe
3 I understand the timing of when the identification was made.

4 Q Okay. And, of course -- and I think we've already
5 covered this. I know there was an issue with respect to how
6 to get Officer Trottie's statement in, but, of course, you
7 didn't need to put the incident report in; is that correct?

8 A I did not.

9 Q You could have just simply called Trottie to testify to
10 his conversations with Roger Benjamin; is that correct?

11 A That's correct, sir.

12 Q And, of course, if Detective Trottie did not remember
13 his conversation, he could have then used the incident
14 report to refresh his memory; is that correct?

15 A Yes, sir.

16 MR. BOOKER: If you can indulge me for just a second,
17 Your Honor, I think I'm about done.

18 THE COURT: Yes, sir.

19 (Pause.)

20 BY MR. BOOKER:

21 Q I think you also made mention about the attempted
22 murder and I think you said the reason why you thought there
23 was -- there might be -- and I don't want to mischaracterize
24 what you said, but there might be, you know, at least, a
25 case for the attempted murder because there was a bullet

1 found in one of the headrest within the vehicle?

2 A That's correct.

3 Q Okay. Now, isn't it also true that Roger Benjamin and
4 also Alice Thompson testified that the vehicle that was
5 pursuing them was shooting as they turned in the yard, that
6 they jumped out the vehicle and ran, that the shooting
7 vehicle then went down the street and turned around, came
8 back and continued to shoot; is that correct?

9 A Yes, sir.

10 Q Now, did anyone testify with respect to whether or not
11 -- when the bullets struck the headrest whether or not it
12 struck the headrest while someone was in the vehicle or
13 whether or not it struck the headrest when the vehicle was
14 empty and when they came around -- the shooters came around
15 the second time?

16 A Did anybody testify to the exact time at which the
17 bullet hit the headrest?

18 Q Yes, did anybody testify to whether or not anybody was
19 in the vehicle at the time which the bullet hit the
20 headrest?

21 A Do not remember whether anybody testified to that exact
22 point.

23 Q But, of course, my understanding is that was also part
24 of the reason why you testified -- at least, why you made
25 the motion for a directed verdict based upon the fact that

1 there was no evidence that there was a direct shooting at
2 the victims; is that correct?

3 A To the best of my recollection. Do you want me to look
4 back at my directed verdict motion?

5 Q No, just from your recollection.

6 A I think I argued that at directed verdict, kind of
7 arguing in the alternative like we discussed earlier.

8 Q And the reason why I argue that is that, you know, if
9 there was no direct evidence that the vehicle was occupied
10 at the time the bullet struck the headrest, which was the
11 basis for the attempted murder, then, of course, that would
12 then create grounds for lesser-included offenses of assault
13 and battery of a high and aggravated nature and, of course,
14 also, assault and battery first degree; is that correct?

15 A Assuming the car was unoccupied at the time that bullet
16 hit that headrest, would that be evidence for ABHAN, yes,
17 sir. If I've restated that correctly.

18 Q You did. That would be evidence for ABHAN, that's
19 correct; is it not?

20 A Yes.

21 Q Okay. And then, of course, which then would make it an
22 appropriate charge for the jury to consider whether or not
23 it was attempted murder versus assault and battery of a high
24 and aggravated versus assault and battery first; is that
25 correct?

1 A I could have argued that. It would have been up to
2 Judge Dickson whether or not it was appropriate to charge.

3 Q Yes, yes, I understand that.

4 MR. BOOKER: I don't have any further questions, Your
5 Honor.

6 THE COURT: Anything else for the witness?

7 MS. COLEMAN: Nothing further.

8 THE COURT: Thank you, sir. You may step down.

9 Who's your next witness?

10 MR. BOOKER: Just Dexter Brown, Your Honor, the
11 Petitioner.

12 THE COURT: Come around, please.

13 DEXTER BROWN, after being duly
14 sworn, testified as follows:

15 THE CLERK: State your name for the record.

16 THE WITNESS: Dexter Brown.

17 DIRECT EXAMINATION

18 BY MR. BOOKER:

19 Q Mr. Brown, you were represented by Mr. McCarley; is
20 that correct --

21 A Yes, sir.

22 Q Just wait until I finish because I want to make sure
23 the court reporter can record both of us. You were
24 represented by Mr. McCarley, is that correct, during the
25 trial of your case?

1 A Yes, sir.

2 Q And I think Mr. McCarley testified that he was on your
3 case for roughly six months?

4 A Yes, sir.

5 Q Okay. And I think he testified that he visited with
6 you, you know, roughly, 18, 20 times?

7 A Yes, sir.

8 Q Is that accurate to your recollection?

9 A Yes, sir.

10 Q Okay. And what did y'all discuss during those visits
11 -- well, let me ask you a more specific question. Let me
12 rephrase that and ask a more specific question. Did y'all
13 discuss defenses?

14 A What you mean, like trial procedures?

15 Q Yes, sir, trial defenses.

16 A No, we never discussed anything about trial till the
17 day before I went to trial. That's why the day before
18 trial, I filed for a motion to, I don't know how to say it,
19 but fire him, like, I didn't want him to represent me
20 anymore. But the judge told me that if I fired him that I
21 would have to represent myself or get a paid attorney or
22 still go along with Nicholas McCarley. So that motion that
23 I put in was denied.

24 So after that, he asked for a motion for a continuance
25 because he felt as though he wasn't ready and also stated

1 that he had not contacted my alibi witness at the time, that
2 he needed more time, but that was denied as well.

3 Q Okay. Okay. But you said the first time that y'all
4 talked trial strategy was on the day of the trial?

5 A Yeah, it was the day of the trial because, like, you
6 mentioned earlier, he gave my Rule 5, but I never knew that
7 I had a disc with a 911 tape on it till the day before
8 trial. We listened to that and that was -- the day that we
9 discussed any trial issue was the night before trial.

10 Q Okay. Now, if he went and saw you 18 to 20 times, then
11 what did y'all during those 18 to 20 times that he went to
12 visit with you?

13 A Those visits was more like what the solicitor was
14 saying, what kind of plea offer they got. One, like I said,
15 we went over the motion, just the paperwork, not the disc
16 and that's pretty much it. But he didn't really just sit
17 down and talk to me every time he came, but every time he
18 came, he took the initiation [sic] to see me once he seen
19 some of his other clients.

20 Q Okay. Now, I want to ask you, at least, about trial
21 preparation, specifically, about -- I think -- did you
22 identify potential witnesses to him that you thought that
23 might be beneficial to you?

24 A Yes, sir.

25 Q Who were the witnesses that you identified?

1 A Adrian Ingram.

2 Q Adrian Ingram. Is that the person who's been
3 referenced -- Ms. Ingram, that's been referenced as your
4 girlfriend at the time?

5 A Yes, sir.

6 Q Did you talk to him about why you thought Ms. Ingram
7 might be of some benefit to you?

8 A Yes, sir.

9 Q Okay. What did you tell him as to why you believed Ms.
10 Ingram would be beneficial?

11 A I told him that, basically, she would have placed me
12 elsewhere than what the situation was, that I was with her
13 at the time this incident that took place.

14 Q Okay. Did you provide her contact information -- I'm
15 sorry, provide Mr. McCarley the contact information for Ms.
16 Ingram?

17 A Yes, sir.

18 Q And what contact information did you provide?

19 A I gave him her cell phone number and I think I told him
20 where she worked at.

21 Q Okay. Now, do you know what town she lived in at that
22 time, Ms. Ingram?

23 A Barnwell.

24 Q She lived in Barnwell, okay. And do you know whether
25 or not -- and I'm talking about your understanding. To your

1 understanding, do you know whether or not he ever contacted
2 Ms. Ingram?

3 A To my understanding, do I know that he ever contacted
4 her? Yes, because the -- this is what I was told from her
5 years later after my trial because she was present at my
6 trial as a witness. I don't know how. I guess because her
7 car was so-called in the situation, but she was a witness in
8 my trial. And that day, she said she spoke to Mr. Nicholas
9 McCarley and he told her that I would -- I know that you're
10 going to be Dexter Brown alibi witness and I may call you on
11 the stand to ask you a couple of questions. But he never
12 used her, but she was there.

13 Q Certainly. And you're certain that she was there on
14 the day of trial?

15 A Yes, sir, she was there.

16 Q Did you see her?

17 A Yes, sir, I seen her.

18 Q Okay. All right. Now, did you tell him about any
19 other potential witness?

20 A As far as Brandon Parker, yes.

21 Q What did you tell him about Brandon Parker?

22 A Would he be there? But he informed me that Brandon
23 Parker was locked up for violating probation and possession
24 of a weapon -- something like that, a gun charge. And then
25 he, basically, told me that you wouldn't want to have him

1 there because his testimony is not going to -- basically,
2 not going to help me.

3 Q And I'll ask this question, and I'm pretty sure that
4 everybody's thinking is, is that if Brandon Parker is one of
5 the alleged victims in the case, or one of the victims in
6 the case, why did you suggest to Mr. McCarley that Brandon
7 Parker may be a potential witness to you? Why did you think
8 he might be a potential witness?

9 A Because like Mr. McCarley told me when me and him
10 discussed on different things when he came to see me that
11 this dude said that I am not the person that did this to
12 him, that me and him don't have no dealings like that, like,
13 I didn't do this to him.

14 Q Okay. So Mr. McCarley told you, at least, during one
15 of your visits that Brandon -- indicated -- what Brandon
16 Parker indicated is that you didn't do that to him or some
17 -- I don't want to mischaracterize you, but something to the
18 effect that he had no evidence that was injurious or harmful
19 to you?

20 A Yes, sir.

21 Q Okay. Do you know whether or not Mr. McCarley tried to
22 get in touch with Brandon Parker. Did he talk with you
23 about attempts that he made to get in touch with Brandon
24 Parker?

25 A No, he never told me he contacted him, but he knew

1 where he was at because he told me he was locked up for a
2 gun charge, violated his probation and locked up for a gun
3 charge.

4 Q Okay. Did y'all discuss any other potential witness or
5 any other evidence?

6 A No, sir.

7 Q So those are the two witnesses that you identified to
8 him?

9 A Yes, sir.

10 Q And did either one of those witnesses testify at your
11 trial?

12 A No, sir.

13 Q Now, when you saw Ms. Ingram in the courtroom and you
14 saw that your attorney, Mr. McCarley, rested your case
15 without calling her as a witness, did you say anything to
16 him or talk with him?

17 A No, sir -- did I say anything why didn't he use her?

18 Q Yes. Obviously, during the course of the trial when it
19 became apparent that he was not going to call her as a
20 witness and she was right there in the courtroom, did you
21 say anything to her?

22 A No, sir.

23 Q Is there a reason why you didn't say anything to him?

24 A Basically, I didn't at the time, but I thought --
25 because I never been to a trial, but if she was a witness,

1 every witness that was there got called to the stand except
2 for her. But it didn't really register in my mind that he
3 didn't use her and that would have been beneficial to me. I
4 didn't know that at the time.

5 Q Now, during the course of the trial, I think there was
6 some testimony in reference to -- obviously, you were
7 charged with two counts of attempted murder; is that
8 correct?

9 A Yes, sir.

10 Q And I think Mr. McCarley testified, I think, on direct
11 examination that y'all did discuss potential lesser-included
12 offenses, assault and battery of a high and aggravated
13 nature and, of course, assault and battery first degree; is
14 that correct?

15 A Yes, sir, we spoke about that. In the back, like,
16 basically, before my trial started, me and him had a
17 conversation about lesser-includeds and I was like, What do
18 that mean? And he broke it down to me, let me know assault
19 and battery of a high aggravated nature was a lesser offense
20 to attempted murder and so long and so long. It was a
21 couple pieces of paper. Then he was like, I'm going to give
22 you some time to think about it.

23 So when he left out, probably about ten or 15 minutes,
24 by the time I decided, like, yeah, he came back and he was
25 like the judge or whoever said you wasn't there at the

1 scene, you wasn't there. So they was just like forget about
2 the lesser-includeds and that was it.

3 Q Okay. So you never got a chance to make a
4 determination as to whether or not you wanted to present
5 lesser-included offenses to the judge?

6 A No, sir.

7 Q Okay. He, basically, told you that that's how --

8 A Whatever he went and discussed in that ten minutes of
9 me looking at the paper, he came back and said that it's off
10 the table. You wasn't there at the scene. Somebody told
11 him that I couldn't use it, basically, that's what I took it
12 as.

13 Q Okay. Did he tell you how much assault and battery of
14 a high and aggravated nature, what was the penalty for
15 assault and battery of a high and aggravated nature at the
16 time?

17 A Yes, sir.

18 Q What was it?

19 A Zero to 20.

20 Q Okay. And I'm assuming zero to 20 is less than zero to
21 30, right?

22 A Yes, sir.

23 Q Did he tell you what the potential penalty for assault
24 and battery first was?

25 A Zero to ten. And then he went to assault and battery

1 -- he had the second and third, but the third was like a
2 30-day charge. He told me don't really worry about it.

3 Q Okay. The assault and battery first was zero to ten;
4 is that correct?

5 A Yes, sir.

6 Q I assume zero to ten is less than zero to 30, right?

7 A Yes, sir.

8 Q Okay. Now, you were given 30 years, right?

9 A For the attempted murder, yes, sir.

10 Q If you had the opportunity -- and I know that you've
11 already testified to the fact that you don't believe you
12 were given the opportunity, but if you had had the
13 opportunity and not been told by Mr. McCarley that it was
14 off the table, would you have chose to present the jury
15 lesser-included offenses?

16 A Yes, sir.

17 MR. BOOKER: If you can indulge me for just a second,
18 Your Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 MR. BOOKER: I don't have any further questions for
22 this witness, Your Honor.

23 THE COURT: Thank you.

24 Do you have any questions of the witness?

25 MS. COLEMAN: No questions. Thank you.

1 THE COURT: Thank you, sir. You may step down.

2 Is any other evidence from the Applicant?

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

4 THE COURT: Is the State going to present any evidence?

5 MS. COLEMAN: I've got about a five-minute witness and
6 maybe a three-minute closing argument.

7 The State calls De Grant Gibbons.

8 DE GRANT GIBBONS, after being
9 duly sworn, testified as follows:

10 THE CLERK: State your name for the record, please.

11 THE WITNESS: My full name is De Grant Gibbons, last
12 name G-I-B-B-O-N-S.

13 DIRECT EXAMINATION

14 BY MS. COLEMAN:

15 Q Mr. Gibbons, where are you currently employed?

16 A I am currently the circuit public defender for the
17 second circuit.

18 Q And how long have you been in that position?

19 A Since 2008.

20 Q Okay. How long have you practiced law in total?

21 A I was admitted in 1991.

22 Q How were you involved in the trial of Dexter Brown?

23 A I was second chair during the trial and I was also
24 consulted along the whole course of the case by Mr. McCarley
25 being that he was newer in the office. Any questions he

1 had, he would call me and we met and talked about the case
2 on several occasions.

3 Q Do you have specific recollections of any discussions
4 about this case?

5 A I do. I'm sure I don't remember everything. It wasn't
6 my first case.

7 Q It was certainly years ago at this point. The victim,
8 Roger Benjamin -- have you been in the courtroom for today's
9 testimony?

10 A I have.

11 Q So you've heard the allegation that trial counsel
12 should have impeached Roger Benjamin with his prior
13 statement to law enforcement?

14 A I have.

15 Q Do you recall any discussions about this with trial
16 counsel?

17 A I do. We talked about it. Basically, during the
18 course of the questioning, the statement was, more or less,
19 in evidence, what it contained and what he said was not
20 correct, what he said was not correct. The gist of what was
21 on paper was already in at that point and we discussed it
22 and we both felt it was more important to have final
23 argument than to have another officer get up on the stand
24 and testify again of what was in the statement.

25 Q And are you referring to the possibility of calling

1 Investigator Trottie to the stand?

2 A Correct.

3 Q Did you discuss before the trial or during the trial
4 Brandon Parker, the second victim in this case?

5 A The one that was out of state?

6 Q Right, the one who was incarcerated in North Carolina,
7 did you discuss maybe calling him as a witness?

8 A We did. And Mr. McCarley told me he had spoken with
9 the client's mother and indications were that he was going
10 to be hostile to our client at worst and neutral at best.
11 He also indicated to me that a conversation he had had with
12 Mr. Brown about some prior drug run-ins with Mr. Parker and
13 that was going to be what was the motive that the State
14 would use for this whole thing if that ever came out.

15 And we decided that that was more of a risk than a
16 benefit given the fact that there were other witnesses that
17 -- the statement was going to come in any way. We could
18 attribute things to Mr. Parker without him being there that
19 we couldn't do if he was there. So it was a decision we
20 made that there was no benefit in bringing him.

21 Q Did you discuss with Mr. McCarley the possibility of
22 requesting lesser-included offenses?

23 A We did talk about that. It was my recollection that
24 most of the trial had been a "we weren't there" argument and
25 it would completely change from the whole course of the

1 trial to the closing arguments if there was going to be a
2 lesser-included offense mentioned.

3 We did have an in-chambers discussion with the judge
4 and the judge indicated that he did not see how he would be
5 willing to charge a lesser-included. Based on what he had
6 heard from the evidence, he didn't see a factual basis to
7 establish any lesser-included and he would hesitate to allow
8 that.

9 At that point, we went back and talked to Mr. Brown,
10 kind of told him what we were up against and that given the
11 fact that the judge was not going to do it anyway, it made
12 more sense to continue with a "we weren't there" closing and
13 "we weren't there" kind of a charge.

14 Q Those are all my specific questions. Is there anything
15 specific that you recall about this case that you feel is
16 important to share?

17 A I just remember that the woman that testified, the
18 older woman that made the 911 call, the thing that struck me
19 about her testimony that I thought hurt our case the worst
20 was that she had really no motive to make up a name, that
21 she was, more or less, a friend or, almost, family the way
22 that she explained her looking after Mr. Brown when he was
23 little. I thought the jury was going to find a hard time
24 finding a reason for her to make up a story. And she
25 presented very well on the stand, although we tried to throw

1 some mud on her. It was pretty damaging testimony for our
2 client.

3 Q Anything else?

4 A No.

5 MS. COLEMAN: No further questions. Thank you.

6 THE COURT: Cross?

7 MR. BOOKER: Just very briefly, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BOOKER:

10 Q With respect to Detective Trottie's statement, I think
11 you testified on direct examination that there was no reason
12 to call Detective Trottie because his statement was in
13 evidence anyway. That's not accurate, is it not? Detective
14 Trottie's -- I won't say Detective Trottie's statement, but
15 the inconsistent statement that Roger Benjamin gave to
16 Detective Trottie where Roger Benjamin said to Detective
17 Trottie that is reflected in Petitioner's 1, the incident
18 report, I did not see who the shooters were, that it was
19 some guy named T that called the name Brandon.

20 A I don't recall those exact words being in any incident
21 report. I think he said they said they didn't know who it
22 was is what I remember. Maybe I'm remembering it wrong.

23 Q Well, the incident report is in the record, but I think
24 you testified to the fact that that statement was presented
25 to the jury. Can you find anywhere within that transcript

1 where it was presented to the jury that Roger Benjamin told
2 Detective Trottie that he did not see who the shooters were?

3 A I don't think that's in the transcript. I also don't
4 think that's in the incident report in those exact words.

5 Q It's not in the transcript, is it?

6 A It's not in the incident report in those exact words
7 either, I don't believe, sir.

8 Q And we won't have to argue about it because Your Honor
9 will have the incident --

10 A Yes, sir.

11 Q Will have the incident report. And, of course, I think
12 you've been to read, but the incident report reads, and I'll
13 just do this very briefly. Victim one and two stated when
14 they turned into the yard -- so Officer Trottie is saying
15 victim one and two stated, told him that two black males
16 began to shoot at them. Victim one and two stated they did
17 not know who they were.

18 A Right.

19 Q Is that correct?

20 A That's what I think is correct.

21 Q That's correct. So it's not in the evidence, it's not
22 in the trial transcript and was never presented to the jury
23 that Roger Benjamin told Detective Trottie that on the night
24 of the shooting we do not know who the shooters were --

25 A Actually, that information is in the transcript. It

1 may not be those exact words, but I think that information
2 was presented in cross-examination by Mr. McCarley.

3 Q It's not in the transcript. Of course, if you can find
4 it in the transcript, I'd be happy to see it.

5 A I think that information, maybe not the exact words,
6 but I think that information was part of the transcript
7 record.

8 Q Do you think you could identify it in the transcript?

9 A I don't have the page or number, sir.

10 Q So right now, you're saying that you cannot pinpoint to
11 any place within the transcript --

12 A I think I've answered that. I cannot.

13 Q You cannot, okay. Now, with respect to a
14 lesser-included offense, I think you testified to the fact
15 that the lesser-included offense obviously is that Mr. Brown
16 was not given that option. I think you said you had a
17 conference with the judge and based upon that conference
18 that you felt as if the judge might not be inclined to
19 charge it; is that correct?

20 A The judge said he was not inclined to charge it.

21 Q Of course, when the judge tells you that he's not
22 inclined to charge something, that is not official until
23 it's on the record; is that correct?

24 A That's correct.

25 Q Okay. Now, if the judge tells you he's not inclined to

1 charge something, you still have an obligation to preserve
2 the record for appeal; is that correct?

3 A If I think that that's the best course to take.

4 Q Okay. Now, do you think it is a debatable issue under
5 -- or is it a debatable issue under the circumstance of this
6 particular case as to whether or not this was an attempted
7 murder, whether or not this was an assault and battery of a
8 high and aggravated nature? Because it's my understanding,
9 and you tell me if I'm wrong, from the testimony in the
10 case, from the testimony in the case is that the individuals
11 indicated that they were being -- I'm sorry, let me rephrase
12 that. I think you were in here when Mr. McCarley testified,
13 I think he testified to the fact that one of the strongest
14 basis for attempted murder was that they found a spent shell
15 casing had struck the headrest, I think it was the driver's
16 side seat; is that correct?

17 A Well, that's what Mr. McCarley said. I don't know that
18 anyone ever identified what they would use exactly to
19 justify the charge of attempted murder. That was Mr.
20 McCarley's opinion.

21 Q Okay.

22 A The weapons, the whole circumstances could be used by
23 the judge or the jury in the decision whether or not there
24 was a lesser-included.

25 Q Absolutely. Absolutely. It was a factual decision; is

1 that correct?

2 A That's correct.

3 Q So factual issues, basically, would be left to a jury
4 to decide whether or not it was attempted murder or whether
5 or not assault and battery of a high and aggravated --

6 A If they're given that option.

7 Q If they're given that opinion. But, of course, even if
8 the judge says I'm inclined not to give that option, then,
9 of course, as legal counsel, when we are trying a case and
10 when we are representing clients, do it all the time, we
11 have an obligation to preserve the record because I tell
12 you, most of the judges I go before get it right, but every
13 now and then we have cases that get overturned on appeal
14 because everyone is human and they might make a mistake. So
15 you didn't preserve that issue for appeal; is that correct?

16 A We chose not to.

17 Q You chose not to?

18 A Our reason for doing that was that our whole argument
19 had been he wasn't there. Our whole plan of the closing
20 argument had been that he wasn't there. We consulted with
21 him and he was in agreement with that plan. He had even
22 talked about an alibi at one point, which is consistent with
23 I wasn't there. And to get up and say I wasn't there, but
24 even if I was, it wasn't attempted murder, that went
25 completely against where you're heading all the way through

1 the trial. So it was a strategical decision not to request
2 the lesser-included once we had that from the judge.

3 Q But isn't that a flawed strategical decision --

4 A No.

5 Q Let me -- and I'll tell you why --

6 A Well, I said no.

7 Q I know, but you haven't heard the question yet. Just
8 for the record, it would be a flawed strategic decision
9 because in order to -- asking the judge to charge these
10 lesser-included offenses, specifically in light of the fact
11 that he's going to be charged with murder anyway does not
12 change --

13 A Attempted murder.

14 Q Yeah, attempted murder, I apologize. Does not change
15 your argument that he was not there?

16 A Yeah, I don't think you can say I wasn't there and even
17 if I was, it wasn't attempted murder. I don't think that's
18 a logical argument to make to a jury. That's just my
19 experience over 25 years of practice.

20 Q I can understand that, but you don't have to make that
21 argument at all. You don't have to suggest to the jury that
22 it's one or the other. You're just simply saying to the
23 judge, if you are going to allege a crime, give the jury
24 options of lesser crimes. You can't control that. The jury
25 is going to be charged with crimes; is that correct?

1 A That's right.

2 Q But you can give the jury options; is that correct?

3 A You can. I don't think it's a wise move to give them
4 two different conflicting options. That's just a strategic
5 move that I think would be wrong.

6 Q Well, wouldn't that be --

7 A He was talked to about it and he agreed that he had
8 said he wasn't there all the way through.

9 Q Okay. And I think I got your answer, but I just want
10 it for purposes of the record. Wouldn't whether or not he
11 is willing to accept a lesser-included charge to the jury
12 that could potentially give him 20 years or less,
13 potentially give him 20 or less than what he's got, isn't
14 that a decision for the Defendant to make?

15 A And it was.

16 MR. BOOKER: I'm almost finished, Your Honor.

17 THE COURT: All right.

18 MR. BOOKER: Just give me another minute or two.

19 THE COURT: That's fine.

20 BY MR. BOOKER:

21 Q Now, I think you said the older lady that testified, I
22 believe you were referring to Alice Thompson --

23 A Thompson.

24 Q And, of course, you said Alice Thompson didn't have any
25 motive to be dishonest. But that's not necessarily true, is

1 it?

2 A Based on the testimony she gave and her relationship
3 with the client, I didn't think that there was anything
4 there that looked like she would have a reason to get this
5 particular defendant involved if she didn't actually see
6 him.

7 Q Isn't passion and love one of the greatest motivations
8 sometimes of being dishonest?

9 A Passion and love?

10 Q Yeah, because you favor one person over the other.
11 This is her son. Roger Benjamin is her son; is that
12 correct?

13 A Well, she said the Defendant was like her grandson.

14 Q Yeah, but Roger Benjamin is her son, is he not?

15 A I don't know that, sir.

16 Q You don't know whether or not Roger Benjamin is Ms.
17 Thompson's son?

18 A I don't recall.

19 Q Okay. Now, isn't it also true that Ms. Thompson's
20 testimony was somewhat impeached on the grounds that the 911
21 tape caught in the background someone feeding information to
22 her as she was giving it to the 911 operator?

23 A Right, and we tried to exploit that the best we could,
24 correct.

25 Q Yes, sir. And would you say that y'all did the best

1 job possible with respect to that?

2 A I thought we did a good job trying to get that
3 inconsistency shown out, but she was pretty powerful.

4 Q I thought you did an excellent job because I --

5 A We did something right?

6 Q Yes.

7 A Wow. I need to get a transcript.

8 Q It's also true that the jury wanted to hear that 911
9 tape again; is that correct?

10 A Correct.

11 Q And it's also true that the only testimony that was
12 solicited during the trial from that 911 testimony -- from
13 that 911 tape came from Mr. McCarley on the
14 cross-examination when Mr. McCarley pointed out to the jury
15 that someone was -- someone in the background was feeding
16 Ms. Thompson information as she was responding to the 911
17 operator?

18 A That's right. If I remember, there were other voices,
19 there were gunshots in the background. There was a lot of
20 noise going on in the background during that tape.

21 MR. BOOKER: Your Honor, I don't think that I have any
22 further questions for this witness.

23 THE COURT: Redirect?

24 MS. COLEMAN: No redirect.

25 THE COURT: Thank you, sir. You may step down.

1 Any other evidence from the State?

2 MS. COLEMAN: Nothing from the State, Your Honor.

3 THE COURT: Any reply from the Applicant?

4 MR. BOOKER: No reply, Your Honor.

5 THE COURT: Any argument that you all wish to make?

6 MS. COLEMAN: Very briefly. I'll just say very
7 quickly, I won't rehash everything, Your Honor has heard the
8 testimony. I think trial counsel and Public Defender
9 Gibbons have offered strategic reasons for every choice that
10 they made. Every allegation against them, there's a
11 strategy for why they didn't do that. I think the record is
12 clear that they're not deficient on these grounds.

13 And furthermore, there is no prejudice because, most
14 importantly, Alice Thompson, who both testified as the
15 State's best witness and most important piece of evidence
16 testified that she saw Dexter shooting from the car from the
17 front of her house. She was not in the car with the tinted
18 windows.

19 It doesn't matter if the victims saw who it was or not
20 because she knew Dexter, she helped raise him and she saw
21 him shooting from the car. So we would argue there's no
22 deficiency, there's no prejudice and we ask you to deny the
23 post-conviction relief. Thank you.

24 THE COURT: Yes, sir.

25 MR. BOOKER: Thank you, Your Honor. Your Honor,

1 post-conviction relief is some sort of deficiency in
2 assistance and, of course, is followed by prejudice. Of
3 course, we think that both of those elements are present
4 here. Specifically, in reference to the failure to impeach,
5 of course, is, I think if Your Honor is inclined -- I mean,
6 if Your Honor would take this under advisement to look at
7 State vs. Middleton, 407 S.C. 212. I think there's also
8 another case that provides some reference to the Court, too,
9 and that is Green vs. Hewett, and, of course, that is 305
10 S.C. 238.

11 And, of course, the reason why I cite those cases, Your
12 Honor, both of those cases deals with a situation in which
13 the trial counsel -- and, specifically, I think the first
14 one, Middleton, deals with the situation in which trial
15 counsel failed to impeach a witness with prior inconsistent
16 statement.

17 In Middleton, what the court, basically, says is
18 because Middleton involved the situation where the defendant
19 was being charged with a shooting, the defendant was charged
20 with shooting a victim after an altercation. There was a
21 third witness that immediately after the altercation gave a
22 statement to law enforcement saying to law enforcement that
23 defendant was justified in shooting because victim had a
24 weapon. And, of course, when the case went to trial and
25 that witness got on the stand, that witness testified to

1 something completely different. That witness did not
2 testify to the fact that the victim had a weapon at the time
3 in which the defendant shot.

4 And, of course, in that particular case, because we're
5 dealing with nonphysical evidence cases, we're dealing with
6 cases in which the jury is making a determination based upon
7 the credibility of testimony of witnesses who were
8 testifying, then, of course, the credibility of those
9 witnesses, and, specifically, important witnesses, are
10 extremely important and they have a significant effect on
11 the jury's verdict.

12 And in that particular case, the court found that it
13 was ineffective assistance of counsel in that the defendant
14 was prejudiced or the applicant was prejudiced because the
15 attorney had a prior inconsistent statement where the
16 witness had testified to the jury that he did not see the
17 victim with a gun, which was inconsistent with what the
18 victim had told law enforcement right after the shooting
19 that she did see the victim with a gun.

20 And, of course, that inconsistency is tremendously
21 important. The jury has the right to hear that information
22 because the jury is the only body who can make a
23 determination with respect to whether or not that witness's
24 testimony is accurate or not. And that is more important in
25 a situation where you're dealing with simply eyewitness

1 testimony and that eyewitness testimony is not supported by
2 any physical evidence. And that's what makes it so
3 critical.

4 That is the same situation in this particular case
5 where you have, basically, two witnesses. And that is that
6 you have Roger Benjamin, who I would say was the star
7 witness, and you have Roger Benjamin's mother, Ms. Thompson,
8 who was a witness to the shooting. What I would submit to
9 the Court is they did an excellent job in impeaching her
10 credibility.

11 They pointed out -- they played the 911 tape to the
12 jury and in the background of the 911 tape, Mr. McCarley, I
13 questioned her about hearing information being fed to her,
14 about the color of the car, last name of the shooter and
15 other information. He was effective in suggesting that she
16 was not a direct fact witness, but, actually, she had been
17 fed information and was simply repeating the information she
18 heard. I think that was effective to the jury because that
19 911 tape was only issued for that purpose.

20 And during the deliberation, I think it was effective
21 because the jury wanted to hear it again. And I think they
22 wanted to hear it again because they wanted to try to
23 determine whether or not someone was, in fact, actually
24 feeding information to Ms. Thompson.

25 So I think there was -- the jury had a question or

1 issue with respect to the strength of her testimony and the
2 accuracy of her testimony, the veracity of it.

3 And that leaves us with Roger Benjamin, who was the
4 star witness. Because Roger Benjamin's testimony is the
5 only testimony that was not contradicted by other
6 independent evidence. Ms. Thompson's testimony was
7 contradicted by the 911 tape. Roger Benjamin's testimony
8 was the only testimony that did not have an independent
9 source of contradiction.

10 However, there was an independent source of
11 contradiction. It was Officer Trottie. I think that it was
12 -- and I think the Middleton court would conclude that it
13 was important for the jury in trying to decide whether or
14 not Roger Benjamin was truthful in all of his testimony to
15 hear that Roger Benjamin had made not just a slightly
16 inconsistent statement, but a direct inconsistent statement
17 to Officer Trottie when he said to Officer Trottie that he
18 did not see who the shooters were that night.

19 He also testified to the jury that it was he who
20 suggested or raised the name Dexter, Dexter. And, of
21 course, that also contradicted the statement that he gave to
22 Officer Trottie. In that statement he gave to Officer
23 Trottie, he told Officer Trottie that it was this unknown,
24 unidentified witness who rode with them, passenger who rode
25 with them named T that suggested Dexter, Dexter.

1 And the reason why that's critical, Your Honor, the
2 reason why it's important that they needed Roger Benjamin or
3 either Brandon Parker or someone to identify Roger Benjamin
4 because if the only identifying person who could identify --
5 potentially identify Dexter Brown as the shooter was T and T
6 was this absent witness that they could not find, they would
7 have no testimony whatsoever. They would have no testimony
8 whatsoever. It was flat out important that the jury hear
9 that he told an officer I didn't see who the shooters were
10 right after the shooting took place. The jury had to hear
11 that in a credibility case and there was no way to get
12 around it.

13 And any argument to say that we're willing to deny such
14 important information simply for the purpose of having the
15 last argument is that you can't equate the value of that.
16 The value of having last argument is no way near as valuable
17 of being able to have a law enforcement officer that could
18 provide a direct contradiction as to what the star witness
19 is testifying on the stand.

20 Now, with respect to the lesser-included offenses.
21 There is a case out there that deals with lesser-included
22 offenses, Your Honor. I don't know if I have it with me,
23 Your Honor. Let me look and see, if you can indulge me just
24 a second. I think I've left it, Your Honor, I apologize.
25 Basically, it is -- and I'll be happy to research that case

1 and e-mail it to Your Honor if Your Honor would suggest me
2 to do that later on. But there is a case out there that,
3 basically, says that whenever, whenever there is a
4 lesser-included offense out there that can be charged and
5 that lends itself to the fact that it is ineffective
6 assistance not to ask a jury to charge.

7 Now, that case went on to say that although it may be
8 ineffective assistance to ask -- to not ask the judge to
9 charge that, it is not always prejudicial to the petitioner.
10 Whether or not it is prejudicial to the petitioner is based
11 upon particular facts. I think, basically, it says is that
12 if it's the type of case in which the facts does not lend
13 itself, does not lend itself to the elements of the
14 lesser-included offense, that even though the
15 lesser-included offense was not presented and even though it
16 was a mistake not to ask for it is that -- the defendant
17 still may not be sufficiently prejudiced in order to grant
18 the application.

19 What I would argue in this particular case is that the
20 facts of this particular case were sufficient in which a
21 jury could have reached the conclusion that assault and
22 battery of a high and aggravated nature or either assault
23 and battery first degree would apply.

24 I think there was four times in which the jury came
25 back with questions. And I think one of the last questions

1 the jury came back with was what if we don't agree, what if
2 we can't reach an agreement, which means that the jury was
3 struggling on the unanimous verdict as to whether or not he
4 was guilty. They were struggling whether or not attempted
5 murder, whether or not he was guilty. I think by that very
6 nature that they sent back that question saying that we
7 can't agree suggest to them is that there was room for an
8 alternative theory, a potential lesser-included offense that
9 they should have been charged with.

10 And I know the attorneys said well, we went and talked
11 to the judge informally and the judge says he was not
12 inclined to do it. I've done quite a bit of trials. I've
13 been doing it for a long time. And, of course, I know that
14 you have to put that on the record. You have to put that on
15 the record to protect the defendant. Of course, even if the
16 judge says he's not inclined to do it, you don't have a
17 decision, you don't have a denial until it's on the record.
18 And judges sometimes are informed and change their minds
19 after they have heard arguments on the record. But I think
20 the facts are clear, the facts lend themselves to those
21 lesser-included offenses.

22 Of course, finally, Your Honor is with respect to the
23 witnesses, a failure to properly investigate. And I'll be
24 very brief on this, Your Honor. With respect to the
25 girlfriend, Ms. Ingram, I think what Mr. McCarley testified

1 to is that it was his opinion, it was his knowledge that Ms.
2 Ingram would be an alibi witness. Of course, he indicated
3 that he made -- I think he made two telephone calls and he
4 went to her job once and that was the basis of his efforts
5 to try and contact her even though she is from Barnwell.
6 I'm from Barnwell, or from Blackville, anyway, it's not a
7 big place. You can find somebody if you go to see the
8 parties a second time or simply ask the manager when is the
9 next time this person is going to be on the schedule. They
10 will tell you. I know for certain it is not difficult to
11 find Ms. Ingram.

12 And, of course, Mr. Brown testified that on the day of
13 the trial, Ms. Ingram, his girlfriend, and he would know
14 her, showed up in anticipation that she might be called and
15 was not called. And was not called at all. And that sort
16 of information is valuable information the jury needs to
17 know because this is a credibility case. There's no
18 independent evidence. The jury needs to know whether or not
19 there is other contradicting evidence out there as to
20 whether or not Dexter Brown was one of the shooters.

21 I understand trial strategy and I understand when
22 counsel says well, this was our trial strategy. Trial
23 strategy, regardless of how well meaning it might be, can
24 still constitute ineffective assistance of counsel if that
25 trial strategy results in prejudice to the defendant. The

1 whole purpose of ineffective assistance of counsel
2 underneath the Sixth Amendment, it's all based upon the
3 fairness of the trial process.

4 Of course, underneath Middleton -- and I'll say this,
5 Your Honor, and I'm going to shut up. I'm often told that I
6 talk too much. I'll give you another cite, Your Honor, to
7 take a look at, and that is Rutland vs. State, 415 S.C. 570.
8 In Rutland, they give us a definition of what prejudice is.
9 It says that regarding the prejudice prong, the defendant
10 must show that there is a reasonable probability that but
11 for counsel's unprofessional errors results of the
12 proceeding would have been different. And it goes on to
13 say, a reasonable probability is a probability sufficient to
14 undermine the confidence in the outcome of the trial.

15 Now, is there enough to undermine the confidence of the
16 outcome of the trial? I think based upon the fact that the
17 jury struggled with this verdict, based upon the fact that
18 the jury sends out a note to the judge at one point in time
19 saying that they could not agree, I think based upon those
20 factors, it suggested this was not a slam dunk case and the
21 jury was having some difficulty with it.

22 And I think the jury was having difficulty reaching a
23 decision and I think it may have made a difference if the
24 jury would have known that the star witness gave a direct
25 contradictory statement and says he never saw who the

1 shooters were, who the people were shooting. I think it
2 would have made a tremendous difference. And so I think he
3 was prejudiced by those facts. Thank you, Your Honor.

4 THE COURT: Do you have your transcript in front of
5 you?

6 MR. BOOKER: Yes, Your Honor, I do.

7 THE COURT: Would you turn to Page 96?

8 MR. BOOKER: Yes, sir.

9 THE COURT: I realize it's not gone into in any
10 particular depth, but on Line 20, the question reads: Okay.
11 He's cross-examining -- Mr. McCarley is cross-examining Mr.
12 Benjamin. Okay, it was important enough for you to mention
13 where everybody ran -- this is in the statement he gave to
14 the officer -- but it was not important enough for you to
15 mention who you thought was shooting at you on this day
16 because nowhere in this statement, sir, does it say that you
17 saw Dexter Brown shooting at you.

18 And then the witness, Mr. Benjamin, he's constantly
19 through this whole series taking issue with the fact that he
20 didn't write this statement and he didn't really look at it,
21 his mother wrote it for him.

22 But there is some mention in it, again, it's not gone
23 into in any great detail, but is that not some mention of
24 the fact that the statement to Trottie was one in which he
25 did not identify the shooter?

1 MR. BOOKER: I agree, Your Honor. I think there's a
2 difference between him failing to identify the shooter -- I
3 think there's a difference between him saying that you
4 didn't identify who the shooter was in your statement versus
5 you told the law enforcement you didn't know who the shooter
6 was.

7 THE COURT: I understand your position.

8 MR. BOOKER: I think it's much more powerful.

9 THE COURT: Anything else?

10 MS. COLEMAN: Would you mind if I took 30 seconds to
11 respond to two things he said in closing?

12 THE COURT: Go right ahead.

13 MS. COLEMAN: Adrian Ingram, the girlfriend that they
14 testified about today who he alleges should have been used
15 as an alibi witness --

16 THE COURT: She didn't testify, so I don't know what
17 she would have said.

18 MS. COLEMAN: Right. She was not here today. We can't
19 speculate as to what her testimony would be. Under
20 Bannister and Glover, we can't speculate, so they can't meet
21 the prejudice prong.

22 And finally, he mentioned trial strategy. Even if
23 there is a trial strategy, if there's a prejudice, then it's
24 ineffective assistance of counsel. That's incorrect. Under
25 Strickland, as long as they present a valid trial strategy,

1 then it's not deficient. I mean, even when they look back
2 with definitive hindsight, if they have a strategy at the
3 time that was valid, then it cannot be ineffective
4 assistance of counsel. Thank you.

5 THE COURT: Did you need to say anything else?

6 MR. BOOKER: I would just like to say, Your Honor, that
7 if you accept that proposition, then, of course, if my trial
8 strategy -- you know, it doesn't matter how much the trial
9 strategy prejudices the defendant, as long as I have a trial
10 strategy, then, of course, it's not ineffective assistance.
11 Then, of course, what that would then do is that it would
12 just simply wipe out -- we would have no reason to have
13 these hearings as long as someone gets up and says we had a
14 strategy.

15 The question is, and I think the standard is, is that
16 was there an error and then was the defendant prejudiced by
17 that error? Yeah, trial strategies can be reasonable and
18 then, of course, trial strategies can be sometimes not
19 reasonable. The question is did it prejudice him? Because
20 the whole issue is due process. You know, did he have due
21 process? Due process, basically, says that he has a right
22 to effective representation underneath the Sixth Amendment.
23 Thank you.

24 THE COURT: Thank you very much.

25 I will notify you of my decision in writing.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second 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 the
evidence introduced in the trial of the captioned case,
relative to appeal, in Court of Common Pleas for Aiken
County, South Carolina, on the 25th day of January, 2018.

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

March 28, 2021

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

Barnwell County Sheriff's Office

INCIDENT REPORT

NGIC

☒ INFO. INFO

C10-10-7431

PETITIONER'S
 EXHIBIT
 01-25-18
 Brown v. State

AGENCY I.D.
SCQ060000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

610-10-7431

NCIC

INO. ENDO.

☒ ORIGINAL REPORT

☐ MODIFIED ORIGINAL

☐ SUPPLEMENTAL REPORT

☐ CASE STATUS CHANGE

☐ ADDITIONAL VICTIMS

☐ ADDITIONAL OFFENDERS

☐ ADDITIONAL STOLEN PROPERTY

☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 4 PAGES

VICT/SUBJ. I.D. OVERFLOW	☒ COMPLAINTANT	NAME (LAST FIRST MIDDLE)									
	☒ VICTIM # 2	Benjamin-Rosen Denhrick									
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR SCARS TATTOOS GLASSES CLOTHING PHYSICAL PECUuliarITIES, ETC					
	☐ RUNAWAY	5'06	180	Bld	Brd						
	☐ WANTED	ADDRESS									
	☐ WARRANT	CITY									
	☐ ARREST	STATE									
	☐ JAIL	ZIP CODE									
	☐ SUMMONS	LOCATION NO									
	☐	DAY PHONE									
VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINTANT	NAME (LAST FIRST MIDDLE)									
	☐ VICTIM # 3	T									
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR SCARS TATTOOS GLASSES CLOTHING PHYSICAL PECUuliarITIES, ETC					
	☐ RUNAWAY										
	☐ WANTED	ADDRESS									
	☐ WARRANT	CITY									
	☐ ARREST	STATE									
	☐ JAIL	ZIP CODE									
	☐ SUMMONS	LOCATION NO									
	☐	DAY PHONE									

Victim 1, 2, 3 notice a Blue victim behind them. Victim 1 + 2 stated when they turned into the yard, the two Black males begin to shoot at them. Victim one + two stated they did not know who they were, but Victim three told them and yelled out while the incident happen they it was someone name "Dexter". Victim one and two also stated they don't know anything about Victim three, only by the name "T".

JURISDICTION OF THEFT
LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY
LAW ENFORCEMENT AGENCY

VEH. GUN, ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO	BOAT HULL NO AND/OR REG NO
	☐ STOLEN	☐ VEHICLE		
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO	
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION	STATE
	☐ POWED	☐ LICENSE PLATE	YEAR OF EXPIRATION	YEAR
	☐ SUSPECT	☐ SECURITIES/BONDS STOCKS	MODEL	MAKE
	☐ VICTIM	☐ ARTICLE	STYLE	TYPE
			COLOR	BRAND NAME
			ISSUER	CAL. REP
			MISCELLANEOUS	SEC. INTEREST DATE
PROPERTY TEST	TYPE GROUP			
	STOLEN			
	DAMAGED			
	BURNED			
	RECOVERED			
	SEIZED			
	SHAWDO IDENTIFIED			
	SUBJECT LOCATED			
	REASON FOR EXCEPTIONAL CLEARANCE			
	OFFENDER DEATH			
DATE				
UNIT NUMBER				
413				
APPROVING OFFICER				
DATE				
UNIT NUMBER				

AGENCY I.D.
SC060000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

C. I. O. - 10-7431

NCIC

INQ. ENTQ

☒ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 34 PAGES

VICT/SUBJ. I.D. OVERFLOW	☒ COMPLAINANT	NAME (LAST FIRST MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	DOB	ETH
	☒ VICTIM # 4	Morrisey-Leslie		#1	#2	#3						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR SCARS TATOOS GLASSES CLOTHING PHYSICAL PECULIARITIES, ETC						
	☐ RUNAWAY	505	230	Blk	B. d							
☐ WANTED	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO	DAY PHONE		EVENING PHONE		
☐ WARRANT			Martin		SC	298						
☐ ARREST	☐ VICTIM NO 4 VISIBLE INJURY ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT ☐ ALONE					
☐ JAIL	EXPLAIN				☐ DRUGS ☐ NO ☐ YES TYPE		☐ UNK		☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED	
☐ SUMMONS	☐ SUBJECT NO		USING ALCOHOL ☐ NO ☐ YES									
☐			USING DRUGS ☐ NO ☐ YES ☐ TYPE									

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST FIRST MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	DOB	ETH
	☒ VICTIM # 2	Jacobs Kendrick LORINZO		#1	#2	#3						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR SCARS TATOOS GLASSES CLOTHING PHYSICAL PECULIARITIES, ETC						
	☐ RUNAWAY	505	160	Blk	B. d							
☐ WANTED	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO	DAY PHONE		EVENING PHONE		
☐ WARRANT			Barnwell		SC	29812						
☐ ARREST	☐ VICTIM NO		VISIBLE INJURY ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT ☐ ALONE			
☐ JAIL	EXPLAIN				☐ DRUGS ☐ NO ☐ YES TYPE		☐ UNK		☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED	
☐ SUMMONS	☐ SUBJECT NO		USING ALCOHOL ☐ NO ☐ YES									
☐			USING DRUGS ☐ NO ☐ YES ☐ TYPE									

Victim one stated Victim three left the scene with someone passing by.
Victim one + two did give a written statement that both were wrote by victim four. Victim four is the owner of the vehicle that was damaged. Victim four 2000 Chev Blazer Tag # F24 853 (sc) damaged with passenger side Rear side window shot out, Two flat tires and some damage on the inside. Photo's were taken by Investigative Andy Charis.

VEH. GUN, ETC.	STATUS	TYPE	VIN AND/OR LICENSE NO	BOAT HULL NO. AND/OR REG. NO
	☐ STOLEN	☐ VEHICLE		
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO	
	☐ FOUND	☐ BOAT	STATE	
☐ TOWED	☐ LICENSE PLATE	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR
☐ SUSPECT	☐ SECURITIES/BUNDS STOCKS	MODEL	STYLE	COLOR
☐ VICTIM	☐ ARTICLE	NIC NO	DENOMINATION	ISSUER
		MISCELLANEOUS		BRAND NAME
				REC. DATE

MINISTRATIVE PROPERTY EST.	TYPE GROUP	SUBJECT IDENTIFIED		SUBJECT LOCATED		VICTIM		ADM. CLOSED		ARRESTED UNDER 18		EX. CLEAR UNDER 18	
	STOLEN	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
	DAMAGED												
	BURNED												
RECOVERED													
SEIZED													
REASON FOR ADDITIONAL CLEARANCE		1. OFFENDER DEATH		2. NO PROSECUTION		3. EXTRADITION DENIED		4. VICTIM DECLINES COOPERATION		5. JUVENILE NON-COMPLIANT		6. OTHER	
REPORT NO. (FILE NO.)		J. Trottie		DATE		INITIALS		414		APPROVING OFFICER		DATE	

AGENCY I.D.
SC0660000

SUPPLEMENTARY REPORT

CASE NUMBER

CID 10 7431

NCIC

INQ. ENTD.

ORIGINAL
REPORT

SUPPLEMENTAL
REPORT

ADDITIONAL
VICTIMS

ADDITIONAL
STOLEN PROPERTY

PAGE 4 of 4 PAGES

MODIFIES
ORIGINAL

CASE STATUS
CHANGE

ADDITIONAL
OFFENDERS

ADDITIONAL
RECOVERED PROPERTY

A Bald was put out at this time on a Blue Mercury vehicle with two Black male in it.

There was several speed camera on the roadway on front of incident location. All were placed for evidence.

Victims 1 + 2 stated they have no idea why the subjects in this case wanted to shoot at them or wanted them dead.

NARRATIVE

1. DATE RECEIVED YES NO	2. DATE REPORTED YES NO	3. ACTIVE YES NO	4. ATM CLOSED YES NO	5. ARRESTED UNDER 18 ARRESTED BRAND VER	6. EX-CLEAR UNDER 18 EX-CLEAR BRAND VER
7. REASON FOR REPORT REASON FOR REPORT	8. REASON FOR REPORT REASON FOR REPORT	9. REASON FOR REPORT REASON FOR REPORT	10. REASON FOR REPORT REASON FOR REPORT	11. REASON FOR REPORT REASON FOR REPORT	12. REASON FOR REPORT REASON FOR REPORT
415					

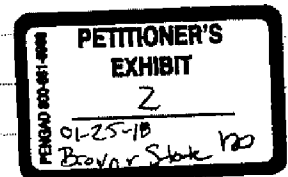
BARNWELL COUNTY SHERIFF'S OFFICE
VOLUNTARY STATEMENT
(NOT UNDER ARREST)

Case # C10-10-7431

I, Roger Benjamin, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to INV. TROMIE. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve.

I am _____ years of age, and I live at _____
I rode with Brandon to Buell and when we came back we stopped at Harris store and picked up "T". We came down Patterson Mill Rd and a lite blue Mercury followed us. When we turned in at 7390 Patterson Mill Rd they started shooting. We jumped out and ran. The guy "T" yelled out Dexter, Dexter. And when we got out T ran in the woods we ran in the house.

I Justin Morrissey wrote this statement for Roger Benjamin he asked me to write it for him.



I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections. If any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at 10/15/10, this _____ day of _____ 20_____.

WITNESS: Justin Morrissey

416 Justin Morrissey

SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BARNWELL

SECOND JUDICIAL CIRCUIT

DEXTER B. BROWN, II,

Applicant/Petitioner,

Vs.

STATE OF SOUTH CAROLINA,

Respondent.

ORIGINAL

CASE NO.

2014-CP-06-369

Deposition of:

Brandon Parker

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SCHEDULED TO BE TAKEN ON:

October 19, 2017

Beginning at 11:00 a.m.

* * * * *

TAKEN AT:

Duplin County Detention Center

208 Duplin St

Kenansville, North Carolina

Starkings Court Reporting & Video Services

916A Hay Street, P.O. Box 1345

Fayetteville, North Carolina 28302

(910) 323-4232 or (800) 328-3747

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

2 ON BEHALF OF THE PETITIONER:

3
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1 (Whereupon,

2 Brandon Parker

3 was called as a witness, duly sworn to tell the
4 truth, and testified under oath as follows:)

5 EXAMINATION

6 BY MR. BROOKER:

11:17 A.M.

7 Q. You're Brandon Parker; right?

8 A. Yes, sir.

9 Q. Okay, before we get into this deposition, I
10 am just going to ask you a couple of questions. And
11 also give you a little bit of information so you know
12 fully what is going on. Obviously, this is a
13 deposition. Have you ever had your deposition taken
14 before?

15 A. I am not sure what you're talking about.

16 Q. Have you ever had your deposition taken like
17 this before?

18 A. No.

19 Q. In a setting like this. What it basically is
20 -- basically what a deposition is, it is just simply an
21 out-of-court statement that is done under oath. And
22 sometimes when we have a witness that may not be able
23 to appear for court and testify live before the judge,
24 sometimes we can have that testimony brought before the
25 judge or the jury to be used for the deposition. So

1 you're under oath and of course -- I represent Dexter
2 Brown. And then of course, Julie has already
3 introduced herself, and of course she is with the South
4 Carolina Attorney General's office. And of course,
5 Dexter Brown has filed a PCR action, Post Conviction
6 Relief action, in reference to his conviction, I think
7 in connection with an incident that happened, I think,
8 on October 15, 2010.

9 A. Yes, sir.

10 Q. Do you -- you're aware of that incident?

11 A. Yes, sir.

12 Q. I think that was an incident in which you
13 were listed as a victim?

14 A. Yes.

15 Q. Now, before I go any further, I am going to
16 talk with you and ask you any questions about that is,
17 is about, you know -- about at least, I am attorney,
18 talk with you about certain constitutional rights that
19 you might have. Now, I have no intentions of asking
20 you any questions in reference to your case that is the
21 reason why you're in detention here today.

22 A. Yeah.

23 Q. But of course, you're going to be asked
24 questions in reference to this incident that happened
25 back in 2010.

1 A. Yes, I'm familiar with it.

2 Q. And of course is, is that -- that is is that
3 as far as I am aware of, I don't know any potential
4 charges that you might confront as a result of this
5 incident that happened back in 2010. But of course is,
6 is if you know anything, you know, that occurred back
7 in 2010 that might subject you to any sort of criminal
8 liability, then of course is, is that you have the
9 right to exercise the Fifth Amendment, which means is
10 you have the right to remain silent, not answer any
11 questions that I have -- that I have or either that
12 Julie might have for you, you have the right to have a
13 counsel. And then of course at any point in time, if
14 you believe that you have any exposure whatsoever to
15 any sort of criminal liability that's related to any of
16 the questions that we are asking, is that please allow
17 us -- please let us know that. And because at that
18 particular period of time, you have the right to say,
19 you know, I don't want to answer that question. I am
20 -- exercise your Fifth Amendment right to remain silent
21 on the grounds that it might incriminate you, and have
22 the right to have an attorney present. So I don't know
23 of anything that exposes you to criminal liability, but
24 I don't know all the facts. If there's anything that
25 you think exposes you to criminal liability in

1 connection with any questions that we are going to ask
2 about that case, then what you need to do is is to
3 bring it to our attention.

4 A. All right. No problem.

5 Q. Now, I will ask you this right now, for
6 purpose of giving a deposition today on this -- these
7 events that happened or this incident that happened
8 back in October 10 -- October 15, 2010, do you think
9 you need an attorney in order to talk with us today in
10 reference to this?

11 A. No, huh-uh.

12 Q. First of all, what I am going to do is, is
13 that I am going to ask you at least a few questions.
14 Let me start off by asking you this; are you under any
15 medications, or drugs, or alcohol, or anything that
16 might impair your ability to be able to understand my
17 questions or understand Ms. Coleman's questions?

18 A. No, sir.

19 Q. Are you suffering from any sort of mental
20 illness or any sort of physical condition that would
21 impair your ability to be able to understand our
22 questions and answer our questions today?

23 A. No, sir.

24 Q. Is there any other reason that you can think
25 of that I haven't ask, you know, that you believe would

1 impair your ability to be able to understand the
2 questions that we are about to ask you, and of course,
3 give truthful answers to them?

4 A. No, sir. I am fully aware of what is going
5 on.

6 Q. Okay, I wanted to make sure. I don't want to
7 take you through at least all of the events that
8 happened back in 2010, but I want to at least for you
9 to explain to me what happened at least during the
10 shooting portions. My understanding is that there was
11 a vehicle that chased the vehicle that you were in and
12 of course is, that you all ended up at -- I think the
13 address is

14 A. Yes, sir.

15 Q. Take it from there and tell me what happen to
16 the best of your recollection.

17 A. Well, as far as I can remember -- you want me
18 to start from where we was riding or...

19 Q. I guess you can start from the point at least
20 for the purpose of my questions, start from the point
21 at which you realized you were being chased.

22 A. I picked up this guy from the store, which is
23 probably like two miles from [REDACTED]
24 I knew the guy from Allendale County so I gave him a
25 ride. So we was on the way to -- back toward Martin,

1 South Carolina, which is in the area.

2 He said there is a car chasing up behind us,
3 coming up real close behind us. So I looked in the
4 rearview mirror and I seen the car speeding up. So he
5 was like, go, you know what I'm saying? He's like, I
6 got some problems with the guys. I don't know what
7 they going to do. So I hit the gas because I don't
8 know what is going on and I know how guys is, you know.
9 So as I hit the gas, seemed like they get -- they go --
10 they coming fast -- they coming up on me faster. So I
11 am riding, and riding, I'm really getting scared
12 because I don't know what is going on. So as I turn in
13 to which is which is Roger Benjamin's
14 grandmother's house, I turn in, I hops out of the car,
15 that's when -- I hops out of the car, I see -- I see
16 everybody hopping out of the car with me, or whatever.
17 And that's when I am running. I am running. I hear
18 gunshots. I hear a bunch of gunshots. I am in the
19 woods at the time, but like as far as next door to the
20 house. That's basically all -- from that point
21 from where I picked him up, I mean, that was what
22 basically happened.

23 Q. Now, the people that you saw that was in the
24 car that was pursuing you all, did you ever see who
25 those individuals were?

1 A. No, I didn't never see who was in the car.
2 Basically, it couldn't have been -- nobody could really
3 see who was in the car. They couldn't because the
4 truck that we was in, my mother's truck, it was tinted
5 windows. So ain't no way possible nobody could have
6 seen who was in the car behind us at the time.

7 Q. What I want to do is, is that, do you
8 remember -- when police arrived, do you remember
9 talking with an officer by the name of Trottie, with
10 the -- I think this was either Barnwell County
11 Sheriff's office?

12 A. I remember somewhat, but I didn't ever give
13 no -- I didn't never -- he asked me a question, but my
14 mom had wrote a statement instead. I didn't know who
15 -- who was really the one that was shooting or
16 whatever.

17 Q. Okay. And that is what I was going to ask
18 you about is because he wrote a statement, and in his
19 statement, of course, he said that he spoke with -- and
20 I'll read the relevant portion of his statement. And
21 of course is, is that this is the statement dated -- it
22 is actually dated 10/16/10 by J. Trottie --

23 MS. COLEMAN: I am going to go ahead and
24 object for the record, preserve my objection
25 to hearsay.

1 MR. BROOKER: Sure.

2 Q. And of course is, is that in that statement
3 it says, and I'll read this. It says, "On Friday,
4 December 15, 2010 at approximately 1643 hours, Barnwell
5 EMS -- Barnwell E911 Center received a call from the
6 above incident location due to a shooting. Deputy John
7 Trottie arrived first to this location to find no one
8 in sight. Victim one", and I think he has victim one
9 listed as Brandon Parker, "were located at a business
10 called Classy Mae next door. His statement stated that
11 he went to Barnwell to get some things for his mother.
12 On his way back home he stopped at a store called
13 Harry's to" give -- and of course he has "gave victim
14 three a ride." And of course is, is that victim three
15 is listed as T. Is that the individual that you were
16 referencing in your earlier statement?

17 A. Yes, sir.

18 Q. From Allendale that you were giving a ride?

19 A. Yes, sir.

20 Q. What I'll do is, to ask you, let me finish my
21 statement first, because the court reporter is trying
22 to write down everything that we -- so if both of us
23 are talking, she can't record both of our statements at
24 the same time.

25 A. Sorry.

1 Q. No, that's fine. That's fine. Is that the
2 person, the T person you were making reference to in
3 your earlier statement?

4 A. Yes.

5 Q. And I think you said T is from Allendale?

6 A. Yes.

7 Q. How long have you known T? Before this
8 incident, how long had you known T?

9 A. Maybe a few years off and on. I mean I just
10 -- I don't know his real name, but I knew of him. So I
11 weren't really familiar with him, but I just knew they
12 called him T.

13 Q. Okay. And the statement goes on to say,
14 "While on Patterson Mill Road, I headed to victim two
15 grandmother home. Victim one, two, and three noticed a
16 blue" -- and they have victim. I'm assuming that
17 should be vehicle behind them. I think that's a
18 scribe's error. It says "noticed a blue victim behind
19 him. Victim one and two", I think victim one and two
20 in this statement is yourself and Roger Benjamin.
21 "Victim one and two stated when they turned into the
22 yard, the two black males began to shoot at them.
23 Victim one and two stated they did not know who they
24 were, but victim three told them and yelled out while
25 the incident happened", and he has "they it was someone

1 named Dexter." And I'm assuming he means that it was
2 someone named Dexter. But the report reads, "they it
3 was someone named Dexter."?

4 Do you remember whether or not you told the
5 law enforcement officer I think what you just told me
6 today, Investigator Trottie or Officer Trottie, that
7 you didn't see who the victims -- see who the shooters
8 were?

9 A. Exactly, I didn't never see who they were.

10 Q. Now, I know this is a long time. When you
11 talked with the officer or Officer Trottie, did you all
12 talk in a group, which means did Officer Trottie talk
13 with yourself and Roger Benjamin at the same time or
14 did he talk with you all separately?

15 A. Basically like I say, I don't really remember
16 him really too much talking to me that long, but I
17 think it was -- we standing together. Like I said, I
18 didn't feel like writing no statement, so my mother had
19 wrote the statement at the time.

20 Q. Okay.

21 A. And I don't remember him talking individually
22 with us. I think we were standing together.

23 MR. BROOKER: At this time I would like
24 to move to enter into the record as an
25 exhibit, I think the incident report of

1 Investigator Trottie.

2 MS. COLEMAN: No objection.

3 (Petitioner's Exhibit No. 1 was marked
4 for identification.)

5 Q. I have a copy of at least your statement,
6 that you're referring to. I'll pull it out. I am
7 going to hand to you at least your statement. Let you
8 take a look at it.

9 A. (Peruses document.)

10 Q. If you look down at the bottom where it says
11 signature, is that your signature at the bottom?

12 A. I think my mom signed -- my mom signed this.
13 Yeah, had to be.

14 Q. I am going to read this. I'm simply going to
15 read at least the, you know, the statement portion. It
16 says, and I am going to read -- it says, "I am 26 years
17 of age and I live at 1133 S. 1st St., Martin, I think
18 that's "Martin, South Carolina"?

19 A. Yes, uh-huh.

20 Q. It says, "I went to Barnwell to get something
21 for my mother from the store. When I was coming back
22 we stopped at Harry's store and gave T a ride -- a
23 ride. While coming back, a blue, light in color", I
24 think that's what it is, followed us -- "followed us
25 down Patterson Mill Road, Martin. When we turned into

1 1/2 : Patterson Mill Road, the guys in the car started
2 to shoot, while shooting they hung out the window. The
3 car was a Mercury, light blue. The guy T that caught a
4 ride kept yelling, 'Dexter, Dexter.' When we got out
5 to run, he ran through the woods." And of course the
6 second paragraph says, "I, Leslie Morrissey, wrote this
7 statement for my son. He asked me to write this
8 statement due to the fact he don't write well."

9 So did this mother write this statement for
10 you?

11 A. Yeah, but on this statement right there, when
12 he said the guy T that caught a ride, he didn't say --
13 he just said that looked like Dexter and them.

14 Q. Okay.

15 A. He never said that was Dexter. I remember
16 him saying that looked like Dexter, you know.

17 Q. Okay. But this is the statement --

18 A. Yes, this is the statement.

19 Q. Were you telling your mom what to write when
20 she was writing that statement? And what I am trying
21 to ask is, is that did your mom make this up or --

22 A. No, this is what I told her to write.

23 Q. You pretty much told her that this is what
24 happened?

25 A. Yeah.

1 MR. BROOKER: I would like to move and
2 have this marked as Defense Exhibit --
3 Petitioner's Exhibit No. 2.

4 MS. COLEMAN: No objection.
5 (Petitioner's Exhibit No. 2 was marked
6 for identification.)

7 Q. Now, are you aware of the fact that Roger
8 Benjamin also wrote a statement?

9 A. Yes, I was -- I was aware he had wrote one,
10 but I wasn't too familiar what he had wrote though.

11 Q. Do you know who wrote his statement for him?

12 A. No, sir.

13 Q. I am going to hand you a copy of this
14 statement and take a look at it, and see if you ever
15 seen that statement before? And what I -- have you
16 ever seen that statement before, or heard that
17 statement before?

18 MS. COLEMAN: I object to this as
19 hearsay.

20 A. (Peruses document.) Yeah, I think I remember
21 -- I think I remember my mom telling me that she had
22 wrote this for him.

23 Q. What I want to know is, were you there when
24 your mom wrote that statement for Benjamin? To the
25 best of your recollection --

1 A. Yeah, I would think I was because I was -- I
2 had went in the house where they did -- to see if --
3 they did some kind of gun kit, residue kit, on us at
4 the time. So I guess they would figure that we were --
5 just to make sure that we wasn't shooting back or
6 nothing. So I guess this must have went on when I was
7 outside. I didn't see her write it though actually.

8 Q. Okay. That is all I want to ask about that
9 is, is that. Now, did you and Roger Benjamin ever
10 discuss these events after it took place?

11 A. No. No, sir.

12 Q. Did you all ever see each other after these
13 events took place?

14 A. No, because I came directly back to North
15 Carolina like the next morning. I didn't never run
16 across him no more.

17 Q. Now, and just to be certain, because I don't
18 know; if it is something -- you give me an answer yes
19 or no, because I don't know what happened. Is that
20 when law enforcement arrived, who was outside that you
21 could see that talked with law enforcement? Do you
22 know who was there after the incident was over when law
23 enforcement arrived?

24 A. When the law enforcement arrived I was next
25 door to a little daytime club, store basically. And I

1 remember Roger standing out there, and his grandmother
2 standing out there. And that is when my mother had
3 pulled up where I was at asking like what happened to
4 it, she heard the truck got shot up or whatever. So
5 that's when she walked over there to look at her truck.
6 But as far as like standing in the yard, that's all I
7 saw was Roger, the officers, and his grandmother.

8 Q. Were you present when the officers talked
9 with Roger or either his grandmother?

10 A. No, sir.

11 Q. I am almost finished if you can indulge me
12 for just a second.

13 When did you go back to North Carolina after
14 that shooting incident?

15 A. It was the next morning. It was directly
16 like the next morning. I know exactly the next morning
17 I caught the bus back to North Carolina.

18 Q. How long did you stay there at the scene when
19 law enforcement got there; how long did they keep you
20 all there at the scene before you all were allowed to
21 leave?

22 A. It was maybe -- I want to say 30 minutes,
23 maybe 30 minutes, the most. It wasn't no longer than
24 45 minutes, between 30 to 45 minutes.

25 Q. Were you around when Benjamin talked to law

1 enforcement, because the reason why I ask you that
2 question is, is I know the law enforcement officers
3 having spoke with both of you, and both of you told
4 them the same thing. Were you present when Roger
5 Benjamin had his conversation with law enforcement,
6 specifically with Trottie?

7 A. Yeah, when he was asking us, you know, what
8 was going down. And then he asked us did we want to
9 write a stat -- or would we give a statement. And we
10 both said yeah, we would give a statement. That was
11 the only time I remember him talking to the police
12 officer.

13 Q. Do you know whether or not he ever told the
14 police officer on that day or specifically Trottie,
15 whether or not he saw who the shooters were?

16 A. Naw, naw, he couldn't have told, not as I
17 know of.

18 MS. COLEMAN: Objection, hearsay.

19 Q. Sure. Now, when your mom wrote your
20 statement, did she write it exactly as you told her to?

21 A. Like I say, the only part that -- I don't --
22 I said that the guy that caught a ride kept yelling --
23 he didn't kept yelling "Dexter". He said that looked
24 like Dexter. He didn't directly say that was Dexter,
25 but that's what she put right there, which wasn't

1 right.

2 Q. Are you sure it was T that was yelling
3 "Dexter"?

4 A. Yeah.

5 Q. Did you ever hear Roger Benjamin yell
6 "Dexter"?

7 A. No. No, sir.

8 Q. Are you certain about that?

9 A. Positive.

10 Q. I mean at any point in time did you ever hear
11 him yell "Dexter"? This would have been in the car
12 during the chase, or either after?

13 A. No, I never heard him mention nothing about
14 Dexter, saying that was Dexter.

15 MR. BROOKER: No further questions.

16 EXAMINATION

17 BY MS. COLEMAN: 11:42 a.m.

18 Q. Good morning, Mr. Parker. Again, my name is
19 Julie Coleman and I'm here from the South Carolina
20 Attorney General's office and I represent the State.
21 And this is kind of an interesting situation because
22 you were actually the victim in this case. I represent
23 the State, meaning I am trying to uphold this
24 conviction of whoever it was that shot at you.

25 So we've already talked a little bit about

1 the crime itself and the incident, and you've told your
2 story. I just want to go back over that a little bit.

3 You testified earlier that as you were
4 driving down the road, you said the car came up behind
5 you and started speeding up and getting closer; is that
6 right?

7 A. Yes, sir -- ma'am.

8 Q. Who was it in the car that said, I know these
9 guys. I've had trouble with them. We need to speed
10 up?

11 A. He -- he just basically like -- the dude got
12 -- the dude T --

13 Q. T?

14 A. Yeah, he was like, that looks like Dexter and
15 them. That's basically all he kept saying, it looked
16 like them. He was like, I've got some problem with
17 some guys from Barnwell County. And basically it was
18 like a blur after that until I turned off in the yard
19 and jumped out and ran.

20 Q. So T was the one in the car telling you to
21 speed up, I've got some problem with these guys?

22 A. Yeah.

23 Q. Where was he sitting in the car?

24 A. He was behind the passenger seat.

25 Q. And you were driving?

1 A. Yeah, I was driving.

2 Q. Who was in the passenger seat?

3 A. Roger.

4 Q. Was there anyone else in the car?

5 A. No.

6 Q. Now you stated earlier that the windows of
7 the car that you were in were really tinted so it was
8 impossible to see who was behind you?

9 A. Right.

10 Q. How did T know who it was?

11 A. I don't -- basically, I don't know.

12 Q. Could you see out the side windows to see who
13 it was?

14 A. No, you couldn't really -- naw, you couldn't
15 really. Ain't no way you could have seen who was --
16 because basically I mean the windows was jet black on
17 the truck that we was in.

18 Q. Could you tell that there was a car driving
19 behind you?

20 A. Yeah, you could tell there was car behind but
21 seeing directly who was in the car, you couldn't see
22 who was in the car.

23 Q. Were their windows tinted or just yours?

24 A. I know just ours was tinted. I don't
25 remember theirs. I didn't get a good familiar look at

1 the car or whatever, at their car to see if it was
2 tinted or not.

3 Q. Could you see if they were hanging out the
4 windows of their car shooting at you?

5 A. Only when I got out, only when I got out I
6 seen -- that's when I seen them -- I seen somebody hang
7 out the window. But I was running for my life, so I
8 didn't really....

9 Q. Okay, so you all were driving down the road.
10 You got to Roger's grandmother's house and pulled in
11 the driveway; is that right?

12 A. Yes, ma'am.

13 Q. Where was the other car at this point? Were
14 they parked, were they still driving?

15 A. Basically I think it was parked like in the
16 middle of the road, from what I can remember, it was
17 parked in the middle of the road.

18 Q. And shooting at you?

19 A. Yeah.

20 Q. Where did you run?

21 A. The house that is next door to Roger
22 Benjamin's grandmother's house, there is some woods
23 behind there, so that is where I remember running at.

24 Q. You didn't turn around to see who was
25 shooting?

1 A. No. No.

2 Q. Do you know where Roger ran?

3 A. He ran in his grandmother's house.

4 Q. Do you know Dexter Brown?

5 A. Yeah, I knew of him, yeah.

6 Q. Let me repeat this again. We've already said
7 it, but if at any point I ask a question and you think
8 the answer might incriminate you -- I mean, I don't
9 know what you're going to say, but if you think the
10 answer might incriminate you, then please tell me, I
11 don't want to answer that. I'd like to remain silent,
12 and I'll ask you about something else.

13 A. Okay.

14 Q. So you know Dexter Brown?

15 A. Yeah.

16 Q. How do you know him?

17 A. Just from that neighborhood. I mean, I'm not
18 -- we're not on no chill-out basis, but I know him, you
19 know. From the same neighborhood, plus he be in the
20 same areas I be in down there or whatever.

21 Q. Are you from that area?

22 A. Not exactly. I grew up around there though.

23 Q. Where did you grow up?

24 A. Allendale County.

25 Q. And that's how you knew T?

1 A. Yeah.

2 Q. He was from the same area?

3 A. Yeah, well...

4 Q. Did you know -- you say you weren't on a
5 chill-out basis with Dexter Brown?

6 A. Yeah, we never chilled out, like as far as
7 like hang out or nothing, but I knew him though, knew
8 of him.

9 Q. Do you know how -- did Roger know Dexter
10 Brown?

11 A. Yeah, he knew him. He was more familiar with
12 him than I was.

13 Q. Why is that, to your knowledge?

14 A. I think they grew up -- they went to school
15 together or grew up together, something like that.

16 Q. And do you know how T knew Dexter Brown?

17 A. That I don't know.

18 Q. The statement that your mother wrote down for
19 you that we have discussed, you say you told your mom
20 exactly what to write; is that right?

21 A. Yes, ma'am.

22 Q. Except for this part about him yelling
23 Dexter?

24 A. Yes.

25 Q. What did he actually say in the car?

1 A. That looked like Dexter and them. I don't
2 remember him saying that's Dexter -- Dexter. He said,
3 that looked like Dexter and them.

4 Q. And is that why he wanted you to speed up the
5 car, he said this guy looks like Dexter?

6 A. Yeah, and I seen how the car was running up
7 on me, so I'm like -- and he talking like he got
8 problems with somebody, I weren't trying to take no
9 chance to really see what was truth or not. I just
10 sped up, you know.

11 Q. Did you tell your mom this day when it
12 happened that he said it looked like Dexter?

13 A. Yes, I told -- yeah.

14 Q. She just wrote that down wrong?

15 A. Yeah, she had to have.

16 Q. Did you read this after she wrote it down?
17 Or did she read it back to you?

18 A. I don't even remember her reading this back
19 to me or me reading it to tell you the truth. I don't
20 even remember looking over it.

21 Q. I have just got a couple more questions. And
22 I don't ask you this to embarrass you or anything, but
23 obviously we are here visiting you in prison today;
24 right?

25 A. Yes.

1 Q. In North Carolina. Okay, what are you
2 serving time for at the moment?

3 A. Involved in a murder right now.

4 Q. Have you been convicted of that?

5 A. No.

6 Q. Do you have any other convictions on your
7 record?

8 A. Yeah, I got other -- just drug charges.

9 Q. Is that cocaine?

10 A. Yes.

11 Q. There were three cocaine charges I believe,
12 conspiracy, possession, and delivering; is that right?

13 A. Yes.

14 Q. Those are all from 2008?

15 A. Yes. I got a shooting charge, firearm by
16 felon charge.

17 Q. Do you also have a -- did you plead guilty to
18 a false bomb report in 2001 in North Carolina?

19 A. Yeah, I was a juvenile then.

20 Q. You also pled guilty to forgery of an
21 instrument in 2006 in North Carolina; is that right?

22 A. Uh-huh.

23 Q. I think that's -- one last question, I'm
24 sorry. You testified that you left the next day after
25 this happened to go back to North Carolina.

1 A. (Nods head up and down.)

2 Q. Why did you leave so soon?

3 A. Basically I was -- I was already planning on
4 leaving anyway, but I just left. I mean there weren't
5 really -- it weren't necessarily behind this incident,
6 but I just ended up leaving or whatever.

7 Q. Did you live in North Carolina at the time?

8 A. Yes.

9 Q. So you were just going back home?

10 A. Yes, ma'am.

11 MS. COLEMAN: I think that is it for me.

12 EXAMINATION.

13 BY MR. BROOKER: 11:51 a.m.

14 Q. Just one more question I'd like to ask you
15 is, is that I know that you said you left for North
16 Carolina that next day, and I know on the day of the
17 incident you talked with law enforcement. Were you
18 ever contacted at least after that date by anyone,
19 Dexter Brown's attorney or anyone else in reference to
20 your recollection of what took place that day?

21 A. No. No, nothing but the time that I heard
22 from you or whatever, but I ain't never heard nothing.

23 Q. So the first attorney you would have spoken
24 with for Dexter Brown would have been his PCR
25 attorneys?

1 A. Um-hum.

2 Q. But no one else attempted to contact you, his
3 trial attorney or anything like that?

4 A. No, not in -- my mother never told me that.
5 I didn't even know it was a trial. I don't even know
6 it was a trial behind it until you -- the P -- what you
7 call it, the PSR?

8 Q. Yeah.

9 A. Yeah, I never new it was a trial.

10 Q. PCR, Post Conviction Relief.

11 A. Yeah, I never knew it was a trial. I never
12 heard nothing about the case after that.

13 MR. BROOKER: Okay.

14 EXAMINATION

15 BY MS. COLEMAN:

16 Q. Did anyone from the State get in contact with
17 you to try to get you to testify at trial?

18 A. Huh-uh.

19 Q. Were you incarcerated -- when were you
20 arrested in North Carolina after this?

21 A. 2010, I got arrested 2010.

22 Q. Do you remember what month?

23 A. Middle of November. I went to prison
24 December 23, 2010.

25 Q. And you've been in prison ever since?

1 A. No, I got out 2014.

2 MS. COLEMAN: Okay, thank you. That's
3 all.

4 MR. BROOKER: No further questions.

5 (Off the record.) 11:52 a.m.

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1 State of North Carolina

2 County of Hoke

3

4 C E R T I F I C A T E

5

6 I, Sandra DeGarmo Wise, Certified Verbatim

7 Court Reporter - Master, do hereby certify that said

8 witness was duly sworn prior to the examination

9 beginning, and that said examination was taken and

10 transcribed by me or under my direction; and the

11 foregoing pages constitute a true and correct

12 transcription of the testimony of the witness; and that

13 I am not a relative or employee of any counsel or the

14 parties in this cause and have no interest in the

15 outcome of same.

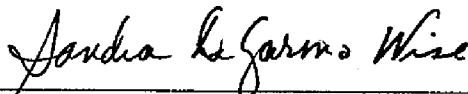
16 In witness whereof, I have hereunto set my

17 hand this 8th day of November 2017.

18

19

20



21

Sandra DeGarmo Wise, CVR-M

22

Notary Public ID #19941040025

23

Nationally Certified Verbatim Reporter (by test)

24

Member: NCRA, NVRA, NCVRA

25

My commission expires: April 29, 2019

Starkings Court Reporting & Video Services

910 323 4232 or 800 328 3747

starkingscortreporting@gmail.com

AGENCY I.D.
SC0060000

Barnwell County Sheriff's Office
INCIDENT REPORT

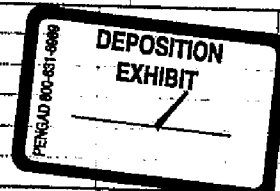
CASE NUMBER

NCIC

INO. ENSD.

C10-10-7431

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. <u>Assault (Aggravated) 1301</u>	☒ YES ☐ NO	☐ YES ☒ NO	<u>Residence</u>		☐ Individual	
2. <u>Vandalism (Damage property) 2901</u>	☐ YES ☐ NO	☐ YES ☐ NO			☐ Business	
3.	☐ YES ☐ NO	☐ YES ☐ NO			☐ Financial Inst	
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						WEAPON TYPE
<u>7350 Patterson Mill Road - Barnwell, SC</u>						<u>29812</u>
INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	DISPATCH DATE/TIME	
<u>10/15/10</u>	<u>1643</u>				<u>10/15/10 1643</u>	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	
<u>Same as Victim(s)</u>				<u>J S O U</u>	<u>B M</u>	
ADDRESS		CITY		STATE	ZIP CODE	
				<u>SC</u>	<u>29812</u>	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	
<u>Parker - Brandon</u>				<u>J S O U</u>	<u>B M</u>	
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
<u>603</u>	<u>250</u>	<u>Blk</u>	<u>Brn</u>			
ADDRESS		CITY		STATE	ZIP CODE	
				<u>SC</u>	<u>29812</u>	
VISIBLE INJURY (VICT. II) ☐ YES ☐ NO ☐ EXPLAIN —						
<u>Martin</u>						
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:						
COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO						
TWO-MAN VEH ☐ ONE-MAN VEH ☐ DETECTIVE/SPLASMT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ *J — This Jurisdiction. S — State. O — Out of State. U — Unknown						
SUSPECT NAME (LAST, FIRST, MIDDLE)		RACE		SEX	AGE	
<u>Brown - Vernon Bernard II</u>		<u>B M</u>		<u>N</u>	<u>6/12/90</u>	
FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		HEIGHT		WEIGHT	HAIR	
<u>5'10"</u>		<u>507</u>		<u>145</u>	<u>Blk</u>	
ADDRESS		CITY		STATE	ZIP CODE	
		<u>Barnwell</u>		<u>SC</u>	<u>29812</u>	
SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS ☐ YES ☐ NO ☐ UNK ☐ TYPE		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE		
				<u>10/15/10 1643</u>		
TOTAL # ARRESTED		DATE/TIME OF ARREST				
<u>1</u>		<u>10/15/10 1643</u>				
NARRATIVE						
On Friday, October 15, 2010 at approximately 1643 hours, Barnwell E 911 Center received a call from the above incident location due to a shooting. Deputy John Trotter arrived first to this location to find no one in sight. Victim one were located at a business called Classy Mac next door. His statement stated he went to Barnwell to get some thing for his mother. On his way back home he stop at a store called Harry's to gave Victim 3 a ride. While on Patterson Mill Road headed to Victim two grandmother house.						
PROPERTY EST.		TOTAL VALUE				
TYPE (GROUP)		TOTAL VALUE				
<u>Automobile</u>						
STOLEN						
DAMAGED		<u>600</u>				
BURNED						
RECOVERED						
SEIZED						
SUBJECT IDENTIFIED		SUBJECT LOCATED		ARRESTED UNDER 18		
☒ YES ☐ NO		☒ YES ☐ NO		☒ YES ☐ NO		
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE NO		DATE		UNIT NUMBER		
		<u>10/15/10</u>		<u>448</u>		
REPORTING OFFICER(S)		DATE		APPROVING OFFICER		
<u>J. Trotter</u>		<u>10/15/10</u>		<u>448</u>		



AGENCY I.D.
SCQ060000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

NCIC

ING. ENTD.

C10-10-7431

☒ ORIGINAL REPORT
☐ MODIFIED ORIGINAL

☐ SUPPLEMENTAL REPORT
☐ CASE STATUS CHANGE

☐ ADDITIONAL VICTIMS
☐ ADDITIONAL OFFENDERS

☐ ADDITIONAL STOLEN PROPERTY
☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 4 PAGES

VICT/SUBJ. I.D. OVERFLOW	☒ COMPLAINTANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	DOB	ETH	
	☒ VICTIM # 2	Benjamin-Royce Dextrick		#1	#2	#3	400 U	B	M	20		N	
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	5'6	180	Blk	Brn								
☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE		EVENING PHONE				
☐ WARRANT			Barrowell	SL	29812								
☐ ARREST	☐ VICTIM NO		☐ VISIBLE INJURY		☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES		☐ NO ☐ YES		☐ VICTIM USING ALCOHOL		
☐ JAIL	☐ EXPLAIN		☐ NO ☐ YES		☐ NO ☐ YES		☐ TYPE		☐ UNK		☐ TWO-MAN VEHICLE		
☐ SUMMONS	☐ SUBJECT NO		☐ USING ALCOHOL		☐ NO ☐ YES		☐ TYPE		☐ UNK		☐ ONE-MAN VEHICLE		
☐	☐ USING DRUGS		☐ NO ☐ YES		☐ TYPE		☐ UNK		☐ DETECTIVE/SPLASMT		☐ ALONE		
☐	☐		☐		☐		☐		☐		☐		

Victim 1, 2, 3 notice a Blue Victim behind them. Victim 1 + 2 stated when they turned into the yard, the two Black males begin to shoot at them. Victim one + two stated they did not know who they were, But Victim three told them and yelled out while the incident happen they it was someone name "Dexter". Victim one and two also stated they don't know anything about Victim three, only by the name "Dexter".

NARRATIVE	STATUS	TYPE	VIN AND/OR LICENSE NO	BOAT HULL NO AND/OR REG NO
	☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO	STATE
	☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION
	☐ FOUND	☐ BOAT	MODEL	STYLE
☐ TOWED	☐ LICENSE PLATE	NIC NO	DENOMINATION	COLOR
☐ SUSPECT	☐ SECURITIES/BONDS STOCKS	MISCELLANEOUS	ISSUER	BRAND NAME
☐ VICTIM	☐ ARTICLE		SECURITIES DATE	CALIBER

VEH. / GUN / ETC. 1	TYPE (GROUP)	TOTAL VALUE	
	STOLEN		
	DAMAGED		
	BURNED		
☐ RECOVERED			
☐ SEIZED			
SUBJECT IDENTIFIED		SUBJECT LOCATED	
☒ YES ☐ NO		☒ YES ☐ NO	
☐ ACTIVE ☐ ADM CLOSED		☐ UNFOUNDED	
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION		3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION	
REPORTING OFFICER(S)		DATE	
J. Tiethe		10/10/10	
UNIT NUMBER		449	
FOLLOW-UP		OFFICER	

AGENCY I.D.
SC9060000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

NCIC

NO. ENTD.

C. I. Q. - 10-7431

☒ ORIGINAL REPORT ☐ MODIFIED ORIGINAL	☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE	☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY	PAGE <u>3</u> of <u>4</u> PAGES

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	DOB	ETH	
	☒ VICTIM # <u>4</u>	<u>Morrissey-Leslie</u>		#1	#2	#3	<u>100 U</u>	<u>B</u>	<u>F</u>	<u>42</u>		<u>68</u>	
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	<u>505</u>	<u>230</u>	<u>Blk</u>	<u>Brn</u>								
	☐ WANTED	ADDRESS											
☐ WARRANT	CITY												
☐ ARREST	STATE												
☐ JAIL	ZIP CODE												
☐ SUMMONS	LOCATION NO												
☐	DAY PHONE												
☐	EVENING PHONE												
☐	EXPLAIN: ☐ VISIBLE INJURY ☐ NO ☐ YES												
☐	COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES												
☐	VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK												
☐	DRUGS: ☐ NO ☐ YES TYPE												
☐	TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT ☐ ALONE												
☐	ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED												

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	DOB	ETH	
	☒ VICTIM # <u>2</u>	<u>Jacobs Kendrick LORINZO</u>		#1	#2	#3	<u>080 U</u>	<u>B</u>	<u>M</u>			<u>1</u>	
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	<u>505</u>	<u>160</u>	<u>Blk</u>	<u>Brn</u>								
	☐ WANTED	ADDRESS											
☐ WARRANT	CITY												
☐ ARREST	STATE												
☐ JAIL	ZIP CODE												
☐ SUMMONS	LOCATION NO												
☐	DAY PHONE												
☐	EVENING PHONE												
☐	EXPLAIN: ☐ VISIBLE INJURY ☐ NO ☐ YES												
☐	COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES												
☐	VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK												
☐	DRUGS: ☐ NO ☐ YES TYPE												
☐	TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT ☐ ALONE												
☐	ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED												

Victim one stated Victim three left the scene with someone passing by.
Victim one & two did give a written statement they both wrote by victim four. Victim four is the owner of the vehicle that was damaged. Victim four 2000 Chev Blazer Tag # F2U 853 (cc) damaged with passenger side Rear side window shot out, Two flat tires and some damage on the inside. Photo's were taken by Investigative Andy Chavez.

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO	BOAT HULL NO. AND/OR REG NO
	☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO	STATE
	☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION
	☐ FOUND	☐ BOAT	MODEL	STYLE
	☐ TOWED	☐ LICENSE PLATE	NIC NO	DENOMINATION
☐ SUSPECT	☐ SECURITIES/BONDS STOCKS	MISCELLANEOUS	COLOR	MAKE
☐ VICTIM	☐ ARTICLE		ISSUER	BRAND NAME
				SECURITIES DATE

ADMINISTRATIVE PROPERTY EST.	TYPE (GROUP)	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ADM CLOSED		ARRESTED UNDER 18		EX-CLEAR UNDER 18	
	STOLEN	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
	DAMAGED												
	BURNED												
	RECOVERED												
SEIZED													
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRAADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE NO CUSTODY													
REPORTING OFFICER(S)													
DATE													
UNIT NUMBER													
APPROVING OFFICER													
DATE													
UNIT NUMBER													

AGENCY I.D.
SC0660000

SUPPLEMENTARY REPORT

CASE NUMBER

C10 10 7431

NCIC

INQ. ENTD.

☒ ORIGINAL
REPORT

☐ SUPPLEMENTAL
REPORT

☐ ADDITIONAL
VICTIMS

☐ ADDITIONAL
STOLEN PROPERTY

PAGE 4 of 4 PAGES

☐ MODIFIES
ORIGINAL

☐ CASE STATUS
CHANGE

☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
RECOVERED PROPERTY

A Bald was put out at this time on a Blue
Mercury vehicle with two Black male in it.

There was several spend round on the roadway
in front of incident location. All were placed in
evidence.

Victims 1 + 2 stated they have no idea why the
subjects in this case wanted to shoot at them
OR wanted them dead.

NARRATIVE

ADMINISTRATIVE

SUBJECT IDENTIFIED
YES NO ☒

SUBJECT LOCATED
YES NO ☒

ACTIVE ☒ ADM CLOSED
☐ UNFOUNDED

ARRESTED UNDER 18
ARRESTED 18 AND OVER

EX-CLEAR UNDER 18
EX-CLEAR 18 AND OVER

REASON FOR EX-CLERIAL CLEARANCE

INTERFERED DEATH

2 ☐ NO PROSECUTION

3 ☐ EXTRADITION DENIED

4 ☐ VICTIM DECLINES COOPERATION

5 ☐ JUVENILE NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT
NUMBER

451

APPROVING OFFICER

DATE

NUMBER

J. Tottle

10/14/12

FOLLOW-UP

OFFICER

BARNWELL COUNTY SHERIFF'S OFFICE
VOLUNTARY STATEMENT
(NOT UNDER ARREST)

Case # C10-10-7431

I, Brandon Parker

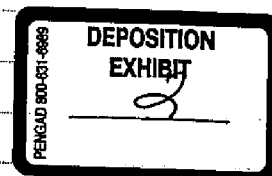
, am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to Investigator John Tattle SCSD.
Without being accused of or questioned about any criminal offenses regarding the facts I am about to state. I volunteer the
following information of my own free will, for whatever purpose it may serve.

I am 26 years of age, and I live at martin sc

I went to B'well to get something for my mom from the store. When I was coming back we stop at Harry Store and gave T a ride. While coming back a blue (light in color) followed us down Patterson mill Rd. Martin. When we turned in to 7700 Patterson Mill Rd. The guys in the car started to shoot while shooting they hung out the window. The car was a Mercury, lite blue. The guy "T" that caught a ride kept yelling "Dexter, Dexter." When we got out to run he ran thru the woods.

L. Leslie Morrissey wrote this statement for my son. He ask me to write this statement due to the fact he dont write well.



I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections. If any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at 10/15/10, this 15 day of Oct 2010.

WITNESS: Leslie Morrissey

Brandon Parker

WITNESS:

452

Signature of person giving voluntary statement

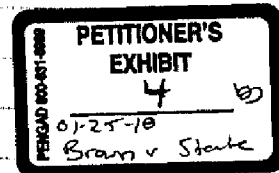
BARNWELL COUNTY SHERIFF'S OFFICE
VOLUNTARY STATEMENT
(NOT UNDER ARREST)

Case # C10-10-7431

I, Roger Benjamin, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to INV. TROTTE. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve.

I am _____ years of age, and I live at _____
I rode with Brandon to B'well and when we came back we stopped at Harris's store and picked up "T". We came down Patterson Mill Rd and a lite blue Mercury followed us. When we turned in at _____ Patterson Mill Rd they started shooting. We jumped out and ran. The guy "T" yelled out Dexter, Dexter. And when we got out T ran in the woods we ran in the house.

I Hubin Morrissey wrote this statement for Roger Benjamin. He asked me to write it for him.



I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections. If any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at 10/15/10, this _____ day of _____, 20____.

WITNESS: Hubin Morrissey

WITNESS: 453 Roger Benjamin

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP0600369

Dexter B. Brown II

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/William P. Heasley
Circuit Court Judge

2050

Judge Code

6/12/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on June 1, 2018, and a copy mailed first class or placed in the appropriate attorney's box on June 12, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 2/17)

Dexter B Brown II
Thurmond Brooker PO Box 1450 Florence, SC 29503-1450

Julie Amanda Coleman PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Constance B. Carter

Court Reporter

Constance B. Carter - Deputy Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

Dexter B. Brown, II, #330278,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2014-CP-06-00369

ORDER OF DISMISSAL

RONDA D. McLENN
CLERK OF COURT
BARNWELL COUNTY
JAN 17 2018

2018 JAN -4 PM 4:29

FILED FOR RECORD

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 2, 2014. Respondent submitted its Return and Motion for a More Definite Statement on January 15, 2015. An evidentiary hearing into the matter was convened on January 25, 2018, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Thurmond Brooker, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. The parties also presented testimony from Nicholas R. McCarley, Esquire ("Trial Counsel"), and Public Defender De Grant Gibbons, Esquire. This Court had before it the records of the Barnwell County Clerk of Court regarding the subject convictions, Applicant's records for the Department of Corrections, appellate records, the trial transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. Applicant was true bill indicted at the January 2011 term of the Barnwell County Grand Jury for two counts of attempted murder (2011-GS-06-00010; -00011) and possession of a

weapon during a violent crime (2011-GS-06-00120). Nicholas R. McCarley, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable Edgar W. Dickson. Applicant was found guilty as indicted. On May 12, 2011, Judge Dickson sentenced Applicant to a thirty year term of imprisonment for attempted murder to run consecutively to an additional thirty year term of imprisonment for attempted murder. Additionally, Judge Dickson sentenced Applicant to a five year term of imprisonment for possession of a weapon during a violent crime running consecutively to the first count of attempted murder. Applicant filed a motion to reconsider his sentence. On November 9, 2011, Judge Dickson resentedenced Applicant to serve the thirty year terms of imprisonment for attempted murder concurrently, with the weapon sentence to run consecutively, for a total of thirty-five years' imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the convictions. State v. Brown, Un. Op. 2014-UP-303 (S.C. Ct. App. filed July 30, 2014). The Remittitur was issued on August 15, 2014.

WPC
#2

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel

Applicant filed an amended application on June 17, 2015, adding the following allegations:

1. Counsel failed to object to improper jury instructions;
2. Counsel failed to move to quash improper indictment.

At the evidentiary hearing, Applicant orally amended his application and informed this Court he was only proceeding on the following allegations:

1. Ineffective assistance of counsel for failure to impeach Roger Benjamin with his statement to Officer Trottie

2. Ineffective assistance of counsel for failure to request the lesser included offense of Assault and Battery of a High and Aggravated Nature and First Degree Assault and Battery
3. Ineffective assistance of counsel for failure to investigate witness Brandon Parker and other potential witnesses at trial.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Trial Counsel's testimony

At the evidentiary hearing, Trial Counsel testified he met with Applicant twenty times prior to his trial. He stated he got the case on November 2nd of the previous year and had the case about six months before trial. He testified that at their meetings, he and Applicant reviewed the discovery and discussed multiple potential defenses, but none of them worked or would have been successful enough for them to present. Trial Counsel testified he discussed a possible alibi defense that would involve having Applicant's girlfriend, Adrian Ingram, testify, but the defense never came to fruition. He stated he called Ingram multiple times and left messages, and she never returned his calls. He also went to Taco Bell, where Ingram worked, to try to find her but was unable to do so, but he left his card with the Taco Bell manager. He stated he also asked his investigator to find Ingram, and he was unable to. He testified that Ingram appeared at the trial but did not testify.

Trial Counsel testified Brandon Parker was one of the three victims in this case, but he did not testify at trial for the State because he was incarcerated in North Carolina. Trial Counsel stated he had no recollection and no notes that Applicant told him Brandon Parker would be anything other than an adversarial witness, so he never considered calling Parker as a witness for the defense. He stated he was allowed to sit in on a meeting with Brandon Parker's mother, who testified at trial as a witness for the State, and her testimony was not helpful to Applicant. Trial Counsel stated the Solicitor's Office and Officer Trottie, who investigated the case, both told him

Parker would be a hostile witness toward the defense. Parker was also the victim in the attempted murder case, so Trial Counsel believed it would not be a good idea to call him as his witness. He further stated he believed it was a good strategy to make the State present their case without one of their victims to testify about getting shot at by Applicant.

WPC
#4

Trial Counsel testified that he believed Brandon Parker would not be a good witness for him to use because he was engaged in illegal activity with or against Applicant. He stated Applicant told him Brandon Parker would not have been a good witness for them to use at trial. Trial Counsel stated he had read and was familiar with the deposition of Brandon Parker that was taken for this PCR action. He stated that, based on the transcript of the deposition, Parker's testimony would not have been beneficial to them at trial. He stated he did not find Parker's testimony credible, and he did not believe it would have changed the jury's verdict. Trial Counsel testified that presenting Parker as a witness or presenting his statement as an exhibit would not be worth losing the strategic opportunity to have the last closing argument at trial.

Trial Counsel testified he was familiar with Officer Trottie's report from his interview of Brandon Parker after the shooting which indicated that Parker did not see who was shooting at them during the shooting. He stated that he could have used the statement to show that Parker did not see who was shooting at him from inside the car, but he chose not to because the victims were able to identify Applicant as the shooter after they got out of the car. He testified that Parker's statement also contained hurtful information that the third victim sitting in the backseat of the car yelled out "Dexter! Dexter!" while Applicant was shooting at them. He stated he was also able to impeach Parker through his mother's testimony by asking about his criminal record and the reason why he was currently incarcerated in North Carolina.

Trial Counsel testified that he did not use Roger Benjamin's prior statement to Officer Trottie to impeach him at trial because he did not believe it was a prior inconsistent statement. Although Benjamin's statement said he could not see who was shooting at him while he was inside the car, Trial Counsel stated he learned ^{WFF} ~~this~~ during the course of his investigation that once Benjamin got out of the car, ~~ran around the side of the trailer, and~~ ^{HE WFF} saw Applicant shooting at them. Trial Counsel stated that Benjamin's trial testimony was consistent with this statement, and although he did not use the actual written statement to impeach Benjamin, he did cross-examine him at trial about the content of the statement. Trial Counsel testified that he believed Roger Benjamin had impeached himself enough already at trial, so he did not need to introduce the statement or the testimony of Officer Trottie or Leslie Morrissey, who wrote the statement, to impeach him.

WFF #5
Trial Counsel testified that he discussed all his strategic decisions with Public Defender De Grant Gibbons, who sat second chair on this trial with him. He stated they discussed the possibility of requesting a lesser-included offense with Applicant and in chambers with the trial judge. Trial Counsel stated he strategically chose not to request the lesser-included offense because he never wanted to admit to the jury that Applicant was at the crime scene; his strategy was to convince the jury Applicant was not at the scene of the crime. He stated he also discussed with Applicant the possible sentencing outcomes and the decision to make it an "all or nothing" choice for the jury. He stated they did not want to give the jury the ability to compromise by finding him guilty of a lesser-included offense rather than finding him not guilty. Trial Counsel testified Applicant made the decision not to request the lesser-included offense, and if Applicant had objected, he would have at least put it on the record.

Trial Counsel testified that he believed the most important evidence against Applicant was the testimony of Alice Thompson, who was a witness for the State. He stated he met with her at the scene of the crime as part of his investigation. Trial Counsel testified that Ms. Thompson's 9-1-1 call was introduced at trial, and he cross-examined her on the flaws in her statements on the recording. He stated that Thompson was a very good witness for the State, and without her testimony the case against Applicant was very weak.

Trial Counsel testified one of his trial strategies was to bifurcate the trial from the other co-defendant to separate Applicant from the event. He stated he could not prove the shooting did not happen, but there was no physical evidence tying Applicant to the crime, so his strategy was to convince the jury that Applicant was not there and did not take part in it. He stated the State's evidence included 14 shell casings on the road that came from two different guns, as well as bullets found in the headrest of the victim's vehicle, which was one of the factors forming the basis of the attempted murder charge.

Applicant's testimony

WAL #6

Applicant testified he met with Trial Counsel twenty times, but they did not discuss anything about the trial until the day before he went to court. He stated the other nineteen meetings were about plea offers and motions. He stated he filed a motion to relieve counsel, but it was denied. He testified that he did not know about the 9-1-1 tape until the night before trial. Applicant testified he told Trial Counsel to investigate his girlfriend, Adrian Ingram, as an alibi witness, and he gave him her cell phone number and told him where she worked. He stated that he learned years after the trial that Ingram had spoken with Trial Counsel but he did not use her as a witness. Applicant testified Ingram came to the trial, but he did not say anything to Trial Counsel about her. Applicant stated Trial Counsel told him Brandon Parker's testimony would

not be beneficial to his case. Applicant testified that Trial Counsel did not discuss requesting the lesser-included offense with him, but if he had, he would have chosen to request it.

De Grant Gibbons' testimony

De Grant Gibbons testified that he has been the Second Circuit Public Defender since 2008, and has been practicing law since 1991. He stated he sat second chair in this case and discussed strategic decisions with Trial Counsel before and during the trial. Gibbons testified that the statement of Roger Benjamin was basically in evidence already through the witnesses' testimony, and it was more important for them to have the last closing argument than to introduce his statement into evidence. He opined that Brandon Parker was not a good witness because he had prior drug run-ins with Applicant. He stated that requesting the lesser-included offense would have changed their defense that Applicant was not at the scene of the crime. He testified that they discussed the lesser-included offense in chambers before the trial, and the trial judge indicated that he would not have allowed it even if they had requested it. Gibbons stated Alice Thompson was a very strong witness for the State and she was very believable because she was a friend, almost family, of Applicant, so she had no motive to make up a name to blame the shooting on.

WAL
#7

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. ~~With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).~~ ^{WAL}

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

WAC
NOT As a matter of general impression, this Court finds Applicant's testimony and assertions to be ~~not~~ credible. In contrast, this Court finds Trial Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden of proof. Accordingly, post-conviction relief is denied. Each individual allegation is addressed below.

Failure to impeach Roger Benjamin with prior statement

WAC
#9 Applicant alleges Trial Counsel was ineffective for failing to impeach victim Roger Benjamin with his prior written statement given to Officer Trottie on the day of the shooting. This allegation is meritless. Applicant has failed to prove Trial Counsel failed to explore inconsistencies between the written statement given to law enforcement and his trial testimony, and he has further failed to prove ineffective assistance in regard to any of the cross-examination or trial presentation. Trial Counsel thoroughly cross-examined Benjamin at trial on the inconsistencies of his statements and the fact that he did not tell the officer that he saw Applicant shooting at him:

Trial Counsel: Did you give a statement to the police, to the police on the day of the incident?

Benjamin: Yeah.

Q: You did. Do you remember what you wrote down in that statement?

A: Yeah.

Q: You do?

A: (Nods head.)

- ...
- Q: But here in your statement you made no mention whatsoever of seeing Dexter Brown.
- A: I ain't wrote those statements.
- Q: I do see here where Mrs. Morrissey wrote it for you. But what happens is it has to be attested to by a police officer sitting right there.
- A: I ain't wrote one so.
- Q: Okay. Well, it was signed by you and it's, you know, you give this signature, you're telling the truth and what's in this statement.

Tr. 90, line 25 – 92, line 9.

WAL #10

The transcript clearly shows Trial Counsel impeached Benjamin with the content of the statement in the exact manner Applicant now alleges he should have. This Court finds Trial Counsel's impeachment of the witnesses was proper and reasonable under the circumstances, and therefore not deficient. This Court further finds Trial Counsel offered a valid strategical reason for choosing not to introduce the prior statement or any testimony regarding the statement so that he would not lose the chance to argue the last closing argument, so he cannot be deficient for failing to do so. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Applicant has failed to prove Trial Counsel was deficient in this manner, or that any deficiency changed the outcome of the trial. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to request lesser included offense

Applicant's allegation that Trial Counsel was ineffective for failing to request the lesser-included offenses is meritless. Trial Counsel credibly testified that he discussed this decision with Applicant and Applicant made the choice not to request lesser-included offenses. He credibly testified their decision was strategically based on the presentation of their defense at

trial, that Applicant was not present at the scene of the crime. Public Defender Gibbons credibly testified he believed it was not a good strategy to argue to the jury that "I wasn't there and even if I was, it wasn't attempted murder." Gibbons and Trial Counsel further testified that they wanted "all or nothing," and they did not wish to give the jury an opportunity to compromise by finding Applicant guilty of a lesser-included offense rather than finding him not guilty.

WAL
#11
Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

This Court finds Trial Counsel articulated a valid trial strategy in choosing not to request the lesser-included offense, and the decision was discussed with and agreed upon by Applicant. Accordingly, because Trial Counsel offered a valid strategic reason for his choice, and Applicant did not prove the outcome of the trial would have been different, Applicant has failed to prove either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to investigate Brandon Parker and other potential witnesses

Applicant's assertion that Trial Counsel was ineffective for failing to investigate Brandon Parker and other potential witnesses is meritless, and this Court must deny and dismiss the allegation.

Brandon Parker

Brandon Parker was one of the three victims in this shooting incident. Parker was driving the vehicle that Applicant rode behind and at which he was shooting, and bullets were found in the headrest behind Parker's head. He did not testify for the State at trial because he was incarcerated in North Carolina. Trial Counsel indicated that Parker knew Applicant because they had been involved in illegal drug activity together. Applicant now alleges Trial Counsel should have called Brandon Parker as a witness for the defense at trial to testify that he did not see who was shooting at him from inside his car, and he does not think any of the other victims would be able to see who was shooting because the windows of the car they were in were so darkly tinted they were impossible to see out of.

WPK
#12

Applicant introduced the transcript of the deposition of Brandon Parker, taken on October 19, 2017 at the Duplin County Detention Center in Kenansville, North Carolina. This Court has reviewed the transcript of this deposition and finds many of the statements made by Parker to be not credible. In Parker's written statement to law enforcement immediately after the shooting, he told Officer Trottie about how he was driving the vehicle and an unknown man named "T" was riding in the backseat. As Applicant began shooting at their car, Brandon told Officer Trottie, "The guy 'T' that caught a ride kept yelling 'Dexter, Dexter.'" However, when asked about this at the deposition, Parker recanted this statement and said his mother, who wrote it for him, wrote it down incorrectly:

Q: Sure. Now, when your mom wrote your statement, did she write it exactly as you told her to?

A: Like I say, the only part that – I don't – I said that the guy that caught a ride kept yelling – he didn't kept [sic] yelling "Dexter". He said that looked like Dexter. He didn't directly say that was Dexter, but that's what she put right there, which wasn't right.

Depo. Tr. 19, line 19 – 20, line 1. This Court finds this section of Parker's deposition testimony to be not credible, as he is recanting his prior statement to law enforcement. "Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (quoting State v. Mayfield, 235 S.C. 11, 34–35, 109 S.E.2d 716, 729 (1959)). This Court further finds Parker's testimony that it was impossible to see who was in the car behind them because of the tint of his vehicle's windows to be not credible. See Depo Tr. 22-23.

WPK
#13
This Court finds that failing to call Brandon Parker as a witness for the defense was not deficient because it was reasonable under the circumstances. This Court further finds that the decision not to call him as a witness cannot be deficient because Trial Counsel articulated a reasonable, valid trial strategy in choosing not to call him. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Trial Counsel credibly testified that Applicant, the Solicitor's Office, and Officer Trottie all told him that Brandon Parker would be a hostile witness against the defense and would not help his case. He testified that he sat in on a meeting with Parker's mother, who testified at trial, and gathered from that meeting that Parker's testimony would not be helpful.

Trial Counsel and Public Defender Gibbons further explained that making the State present their case without one of their victims present to testify was a good strategy, rather than

calling the victim himself to tell the jury that he was being shot at. Finally, Parker was actively incarcerated in North Carolina and had a criminal record. Trial Counsel credibly testified that, based on Parker's previous drug run-ins with Applicant, Parker would not be a good witness. In Edwards v. State, this Court held that "[a] witness's credibility and demeanor is crucial to an attorney's trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions." Edwards v. State, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011). This Court finds these strategies articulated by Trial Counsel to be valid, and his decision was not deficient.

Secondly, this Court finds there is no prejudice from Trial Counsel's failure to call Brandon Parker as a witness because the State's strongest witness, Alice Thompson, observed the shooting from the front porch of her trailer and independently identified Applicant as the shooter. This Court agrees with Trial Counsel and Gibbons' opinion that Thompson's testimony was very credible because she was very closely connected to Applicant and had no motive to make up his identity. Thompson testified at trial that she had known Applicant for years and had helped raise him. The jury heard the 9-1-1 recording of Thompson identifying "Little Dexter" as the shooter to law enforcement immediately after the shooting occurred. She later picked Applicant out of a photo lineup and made an in-court identification of Applicant as the shooter. Accordingly, because Alice Thompson was such a strong witness that identified Applicant as the shooter independently of Parker or Benjamin's testimony, this Court finds Trial Counsel's choice not to call Brandon Parker as a witness would have no effect on the outcome of the trial.

Adrian Ingram

Finally, this Court finds Applicant's allegation that Trial Counsel was ineffective for failing to investigate and call Adrian Ingram as an alibi witness is meritless. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

WPA
#15

Trial Counsel testified that he investigated Ingram and was unable to find her. He stated he called her cell phone and left multiple messages, he went to her place of work and left his card with the manager, and he asked his investigator to find her. After he was unsuccessful, he and Applicant abandoned their potential alibi defense. This Court finds Trial Counsel was not deficient in failing to find Ingram because he employed reasonable efforts to find her.

Most importantly, Applicant can show no prejudice from his failure to call Ingram as a witness because he did not present her testimony at the evidentiary hearing. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a

claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

Because Applicant failed to present the testimony of Ingram that he alleges Trial Counsel should have used at trial, this Court cannot speculate as to what the testimony would have been or the effect it would have had on the outcome of the trial. Accordingly, because Applicant failed to prove deficiency or prejudice, this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

WML
#16
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1st day of June, 2018.


WILLIAM P. KEESLEY
Presiding Judge
Second Judicial Circuit

 South Carolina

#17

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District: South Carolina	
Name (under which you were convicted): Dexter Brown		Docket or Case No.: 2:19-cv-01613-RMG-MGB	
Place of Confinement : Lieber Correctional Institution, 136 Wilber Ave., Ridgeville, SC 29472		Prisoner No.: 00330278	
Petitioner (include the name under which you were convicted) Dexter Brown		Respondent (authorized person having custody of petitioner) Bryan P. Stirling, Director, SC Dept. of Corrections	
v.			
The Attorney General of the State of: South Carolina, Alen Wilson			

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
Barnwell County Court of General Sessions, Barnwell, SC

- (b) Criminal docket or case number (if you know): 2011GS0600010; 2011GS0600011; 2011GS0600120
2. (a) Date of the judgment of conviction (if you know): 05/12/2011
- (b) Date of sentencing: 05/12/2011
3. Length of sentence: 30 years, 30 years & 5 years
4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No
5. Identify all crimes of which you were convicted and sentenced in this case: Attempted murder, 30 years;
attempted murder, 30 years; and possession of weapon during violent crime, 5 years

6. (a) What was your plea? (Check one)

☒ (1) Not guilty	☐ (3) Nolo contendere (no contest)
☐ (2) Guilty	☐ (4) Insanity plea

AO 241 (Rev. 09/17)

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☐ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: South Carolina Court of Appeals

(b) Docket or case number (if you know): 2011-202947

(c) Result: court confirmed the verdict

(d) Date of result (if you know): 07/30/2014

(e) Citation to the case (if you know): Unpublished

(f) Grounds raised: Trial court error in denying petitioner's motion for directed verdict; and trial court errored in charging that malice can be inferred from the used of a deadly weapon.

(g) Did you seek further review by a higher state court? ☐ Yes ☒ No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Barnwell County Court of Common Pleas

(2) Docket or case number (if you know): 2014CP0600369

(3) Date of filing (if you know): 10/02/2014

(4) Nature of the proceeding: Post Conviction Relief

(5) Grounds raised: (1) Trial counsel's was constitutionally ineffective for failing to impeach the victim's testimony at trial that he saw petitioner shooting at him with an inconsistent made to law enforcement immediately after the shoot, which victim stated he didn't see the shooter(s) nor could he identify them. (2) Trial counsel ineffective for failing to object to improper jury instructions; (3) Trial counsel ineffective for failing to move to squash improper indictment; (4) trial counsel ineffective for failing to request lesser included offense of assault and battery of a high and aggravated nature; (5) trial counsel ineffective for failing to investigate witness Brandon Parker and other potential witnesses.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No

(7) Result: Petition for post conviction relief was denied.

(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No

(7) Result: Petition for relief denied.

(8) Date of result (if you know): 06/04/2018

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: None.

GROUND TWO: Trial counsel was constitutionally ineffective for failing to object to the courts charge to the jury on the element of malice

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The trial court charged the jury that the malice element for purpose of proving attempted murder could be inferred from the use of a deadly weapon.

(b) If you did not exhaust your state remedies on Ground Two, explain why: This issue was raised on direct appeal and post conviction relief application.

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Petition for post conviction relief application

Name and location of the court where the motion or petition was filed: Barnwell County Court of Common

Please, Barnwell, SC

Docket or case number (if you know): 2014CP0600369

Date of the court's decision: 06/04/2018

Result (attach a copy of the court's opinion or order, if available): Petition for relief denied

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Petitioner's failure to appeal was the result of error and mistake.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : _____

GROUND THREE: Trial counsel was ineffective for failing to impeach the testimony of the victim, Roger Benjamin, with the testimony of Leslie Morrissey.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The victim testify that his the statement he signed the day of the shooting, which failed to mention petitioner as the shooter, was in accurate because Leslie Morrissey, whom had wrote the statement for him, failed to recorded his statement accurate. Ms. Morrissey was called as a witness however trial counsel failed to question her as to whether she recorded Benjamin Roger's statements accurately before he read and sign it.

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Direct appeals are reserved for errors of law and insufficiency of evidence. This issue was an error of counsel for review by post conviction relief.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Petition for post conviction relief

Name and location of the court where the motion or petition was filed: Barnwell County Court of Common

Pleas

Docket or case number (if you know): 2014CP0600369

Date of the court's decision: 06/04/2018

Result (attach a copy of the court's opinion or order, if available): Petition for relief denied.

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Petitioner's failure to appeal the denial of his petition for post conviction relief was due to error and mistake.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

(a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: These ground were not present t the hight state court because they were not
appealed by appellee counsel and one issue was not preserve for review. The post
conviction relief application was not appeal due to mistake and accident.

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: Nicholas McCarley

(d) At sentencing: Nicholas McCarley

(e) On appeal: Tommy A. Thomas

(f) In any post-conviction proceeding: Thurmond Brooker

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Reverse the verdict and order new trial.

or any other relief to which petitioner may be entitled.

/s/ Thurmond Brooker

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

Petitioner hire counsel within a day of the 1 year statute of limitation and not time to get his signature.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Dexter Brown, #330278	)	C/A No. 2:19-cv-01613-RMG-MGB
	)	
Petitioner,	)	
	)	
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	
	)	
Brian Stirling,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, above-named, by and through the undersigned attorneys, would respectfully move this Court, pursuant to Rule 56(b) F.R.C.P., for judgment on the pleadings, or in the alternative, for summary judgment based on the pleadings.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General
ID No. 2091



By: s/J. Anthony Mabry
ATTORNEYS FOR RESPONDENTS

July 31, 2019.