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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas
Post Conviction Relief

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JUN 28 2019

S.C. SUPREME COURT

Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-000528

David Jamar Benjamin,

Petitioner,

vs.

State of South Carolina

Respondent.

APPENDIX
VOLUME I OF III

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CALHOUN) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 DAVID JAMAR BENJAMIN,) 2013-GS-09-00051
7 DEFENDANT.) 2013-GS-09-00052
8) 2013-GS-09-00053
9) MARCH 4, 2013
10 SAINT MATTHEWS, SOUTH CAROLINA

11 (VOLUME I)

12 B E F O R E:

13 THE HONORABLE DIANE S. GOODSTEIN, JUDGE. ; And a Jury.

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

15 DONALD SORENSON, ASSISTANT SOLICITOR
16 THEODORE LUPTON, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE

18 NICHOLAS THOMAS, ESQUIRE
19 ATTORNEY FOR THE DEFENDANT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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1 (PROCEEDINGS, MARCH 4, 2013)

2 THE COURT: Now, the jury is not in, right?

3 THE CLERK: No, they are in the hallway.

4 THE COURT: Thank you. We'll bring them in in
5 just a minute. Very well.

6 I have had the opportunity to meet with counsel a
7 little bit just for the purpose of finding out what motions
8 we have, and I think that -- I think we have resolved those
9 motions. Counsel may or may not want to put some of that on
10 the record, which is fine.

11 What I was interested, though, in making sure if
12 we did have a record is that I wanted to be sure that Mr.
13 Benjamin knew what the offers were and what the
14 conversations were. It's absolutely one hundred percent
15 within his control what he chooses to do and we are here
16 ready to begin his trial. I just wanted to be sure that
17 there wasn't any question about just what offers were and
18 what the circumstances were, just because I just -- you
19 know, information is a wonderful thing and I just wanted to
20 be sure that he has all the information. What he does with
21 it is one hundred percent up to him. I just want to be sure
22 that that's on the record.

23 So I guess Mr. Lupton and Mr. Sorenson, just if
24 you will put on the record what the State's offer has been.

25 MR. SORENSON: Yes.

1 May it please the court, Your Honor, Mr. Benjamin
2 currently has three pending indictments here in Calhoun
3 County charging him with two counts of attempted murder and
4 one count of murder.

5 We have told Mr. Benjamin, through his lawyer,
6 that we will allow him to plead guilty -- or to plead to one
7 count of voluntary manslaughter, one count of a statutory
8 assault and battery of a high and aggravated nature, and
9 would be dismissing the other attempted murder, and we are
10 recommending a cap of fifteen years.

11 We have had some conversations about whether he
12 could enter a plea under North Carolina v. Alford and I told
13 him that I did not personally care with regards to that.

14 Additionally, Mr. Benjamin currently has pending
15 in Lexington County, it's my understanding is one count of
16 assault and battery with intent to kill and I believe one
17 count of lynching second degree, and maybe Mr. Thomas could
18 address it, but I believe that's what the two charges are
19 pending there. So obviously one of the concerns we had is
20 that if he were to plead guilty to that offer here, that
21 might potentially subject him to them serving him with a
22 life without parole notice in Lexington County. That case
23 is being prosecuted by the Attorney General's Office,
24 Assistant U.S. Attorney -- or Attorney General Curtis
25 Pauling, who is the prosecutor on that case.

1 I have spoken Mr. Pauling a couple of times
2 leading up to today, most recently Saturday morning, and
3 told him kind of where we were at and I thought that there
4 was at least a chance that we could possibly resolve this,
5 but I wanted to try to get a little more information with
6 regards to what they would be willing to do. We did
7 actually talk about them possibly either being able to put
8 something on the record that they would not serve him with
9 an LWOP notice, or that they would allow him to plead to
10 something concurrent. He was going to follow up with his
11 victim's father and get back to me. I haven't heard back
12 from him. I have left him a couple of messages. My
13 understanding is he's over in Lexington this morning on
14 another matter. We do have some messages into him, if need
15 be, to follow up on that further, but that's kind of where
16 we are at I believe at this time.

17 THE COURT: Okay. Okay.

18 And the reason that that becomes important is
19 because in the event -- and no one would know what a jury
20 would do here this week, but --

21 MR. SORENSON: His current charges right now as
22 they lie right now are most-serious offenses. The voluntary
23 manslaughter plea offer is also a most serious, and ABHAN I
24 believe is just a serious.

25 THE COURT: Okay.

1 MR. SORENSON: But if he were to plead, what he
2 would be convicted of either murder, voluntary manslaughter,
3 or attempted murder, the assault and battery with intent to
4 kill in Lexington is also a most-serious, and that would
5 potentially subject him to the two strikes life without
6 parole attachment.

7 THE COURT: The LWOP. And he could be served with
8 a life without the possibility of parole on the charge
9 pending in Lexington.

10 MR. SORENSON: That would be my understanding from
11 the case law, that even though it is an older charge --

12 THE COURT: Yes.

13 MR. SORENSON: -- that that is the time of the
14 conviction, not the time of the offense.

15 THE COURT: Yes.

16 MR. SORENSON: That's my understanding.

17 THE COURT: And it is your intention -- it was --
18 it has been your intention as part of the plea offer to be
19 able to resolve the situation in Lexington so he would not
20 be served with life without the possibility of parole
21 notice?

22 MR. SORENSON: That is correct.

23 THE COURT: And I gather you wouldn't have had
24 that conversation if you didn't believe that that was a
25 strong possibility?

1 MR. SORENSON: I think from talking to them that
2 it's probably -- I mean, obviously he has got this that we
3 have got this week we have got to deal with. I think it's a
4 very real possibility if he is convicted here of either
5 murder, manslaughter, or attempted murder, that that may be
6 what they turn around and do.

7 THE COURT: I understand.

8 And, again, it was your intention as part of your
9 negotiations to be sure that that notice was not served?

10 MR. SORENSON: Yes, Your Honor. It would be my
11 intentions hopefully to resolve all those issues.

12 THE COURT: I understand.

13 MR. SORENSON: The initial -- the initial kind of,
14 but --

15 THE COURT: But the back --

16 MR. SORENSON: At the very least to avoid that..

17 THE COURT: I understand.

18 Now, Mr. Thomas, obviously the fact that I wanted
19 these matters to be clear is not in any way intended to put
20 any kind of pressure on your client at all. It's just to be
21 sure that the record is clear what the offer is, because it
22 can be -- you know, it could be confusing. It's -- I know
23 that negotiations are always, if you will, moving and
24 changing a little bit, and I wanted to just be able to put
25 on the record, if you will, what was the end game and what

1 was the end result, just for the benefit of your client, to
2 be honest with you. It's not to put any sort of pressure on
3 him at all. I hope you understand that and I hope he
4 understands that.

5 MR. THOMAS: I believe he does understand that,
6 Your Honor. Thank you.

7 THE COURT: Very well. All right.

8 And it is my understanding that he's had benefit
9 of that information, benefit of your good counsel in making
10 his determinations and decisions and that his decision is to
11 reject that offer? Yes?

12 MR. THOMAS: That's correct, Your Honor.

13 THE COURT: Very well.

14 And just so I'm absolutely clear, and really I
15 want your client to be absolutely clear, I'm going to ask
16 the question, because I don't know the answer to it, when
17 that offer would be withdrawn, if I will ask that question
18 with your permission?

19 MR. THOMAS: Please, Your Honor.

20 THE COURT: All right.

21 Yes?

22 MR. SORENSON: I think at this point in time I
23 probably would withdraw it. I have told Mr. Thomas that we
24 are ready to go forward now, Your Honor.

25 THE COURT: Okay.

1 MR. SORENSON: He's had an opportunity to meet
2 with his client, with family members this morning, so I
3 think at this point in time we are ready to move forward.

4 THE COURT: Okay. What I would tell you is that I
5 would push him up until the time the jury is selected, to
6 leave it open to that point, but I think once the jury is
7 selected, it would be time for us to proceed, but I would
8 ask that you just leave it open until we finish the jury
9 selection.

10 And he would do that, wouldn't you?

11 MR. SORENSON: Yes, ma'am.

12 THE COURT: That's fair. Thank you, Mr. Sorenson
13 so much.

14 MR. THOMAS: Thank you, Your Honor.

15 THE COURT: Okay. Very well. All right.

16 All right. Now -- and I would just anticipate,
17 Mr. Thomas, that --

18 And, again, please don't take this, Mr. Benjamin,
19 as any pressure, but I just want to tell y'all if you needed
20 some time, I didn't want him -- I wanted him to know that I
21 got a little -- just because we got jurors, I got a little
22 bit of flexibility and if he needed to talk to you a little
23 bit, I would want him to know he could do that. You know,
24 it's very serious matters and if y'all needed time, please
25 don't hesitate to let me know that.

1 MR. THOMAS: Well, thank you, judge. We had the
2 opportunity -- I had the opportunity to discuss it with Mr.
3 Benjamin and his mother and his long time girlfriend and the
4 mother of his children prior to this.

5 THE COURT: Wonderful.

6 MR. THOMAS: Where we are right now.

7 THE COURT: Well, if that changes, please feel
8 free to let me know.

9 MR. THOMAS: Okay. Thank you.

10 THE COURT: Okay. Very well. Very well. All
11 right.

12 Okay. Now, I think we are ready to bring our jury
13 in.

14 Yes? No? No?

15 MR. SORENSON: Just one matter just real
16 briefly --

17 THE COURT: Sure.

18 MR. SORENSON: -- that would affect dealing with
19 the jury.

20 THE COURT: Yes?

21 MR. SORENSON: Mr. Thomas has provided us with his
22 requested voir dire.

23 THE COURT: Uh-huh.

24 MR. SORENSON: I'm not sure if Your Honor has a
25 copy of that up there or not.

1 THE COURT: I got the State's witness list. I
2 don't think I do.

3 MR. SORENSON: May I approach, judge?

4 THE COURT: Sure.

5 (Off the record)

6 (Back on the record)

7 THE COURT: You have concerns about what?

8 MR. SORENSON: The ones that I have an issue with,
9 Your Honor, is No. 10 and No. 20. I think the two of them
10 are both inappropriate questions for voir dire.

11 THE COURT: Yes, I agree with that.

12 MR. SORENSON: I think the rest I think is
13 probably from your standard voir dire questions.

14 THE COURT: Yeah. Yup. Yup. Yup.

15 What I would ask -- instead of 16, what I would
16 ask is whether or not any members of our jury panel have
17 either been the victim of or charged with a crime. And I
18 will ask that with some other things together, like I do.
19 And I don't say violent crime, because Mr. Sorenson, you may
20 have been involved in that case. I was trying an armed
21 robbery case in Dorchester County. And as the jury was
22 deliberating, one of the -- one of presiding jurors said "we
23 have a -- "you need to know, judge, we have a juror who was
24 the victim of an armed robbery," at which point I got real
25 concerned about that. I called the person in and I said "I

1 asked if you had been convicted of a violent crime -- "I
2 mean the victim of a violent crime. Why didn't you tell me
3 that?" And she was adorable and she said "well, it wasn't
4 violent. I mean, he pulled a gun on me, but he didn't hit
5 me. And, you know, it was in Brooklyn and it wasn't any big
6 deal. I mean, they gave him my pocketbook and that was the
7 end of it. I didn't consider it to be violent."

8 So since then I just say crime, because you have
9 got to deal with people's interpretations of what that
10 means, so I just say crime. And that would clearly
11 encompass what you have in 16 and give you the benefit, I
12 think, of more information which may be of help to you.

13 MR. THOMAS: Thank you.

14 THE COURT: Okay. Great. Very well.

15 All right, anything further? Nope? Nope? Nope?
16 Nope? Great.

17 Hold on.

18 Mr. Thomas, I'm embarrassed. What's the name of
19 your firm?

20 MR. THOMAS: Coastal Law.

21 THE COURT: I should have known that.

22 MR. THOMAS: LLC.

23 THE COURT: And I'll just get you to introduce the
24 lawyers in your firm, okay?

25 MR. THOMAS: Yes.

1 THE COURT: Wonderful. Thank you.

2 Okay. That's it. Done. Great.

3 If you want to bring them?

4 (Whereupon, the Jury Venire Panel entered the
5 courtroom)

6 (Whereupon, the following was an off-the-record
7 discussion where the Jury Venire Panel was qualified)

8 (Off the record)

9 (Back on the record)

10 THE COURT: Mr. Solicitor, would you please call
11 your first case for trial this week.

12 MR. SORENSON: Thank you. May it please the
13 court, Your Honor?

14 THE COURT: Yes.

15 MR. SORENSON: At this time the State calls the
16 case of the state versus David Jamar Benjamin.

17 There are three indictments, Your Honor.
18 2013-GS-09-51, 52, and 53, charging Mr. Benjamin with one
19 count of murder, two counts of attempted murder.

20 He's present with his lawyer Nick Thomas.

21 THE COURT: Very well. Thank you so much.

22 All right, ladies and gentlemen, let me tell you
23 what's just occurred and then I'm going to explain some
24 things to you and then I'll -- and then we will get right
25 into the qualification for a jury for this particular case.

1 Ladies and gentlemen, what has just happened is
2 that I have just called upon the solicitor, Mr. Sorenson.
3 And in South Carolina, unlike any other state in the
4 country, our prosecuting attorneys are called solicitors.
5 It is a holdover, no doubt, from English jurisprudence. And
6 in other states, particularly if you watch CNN or Court TV
7 you hear about district attorneys or the State's attorney.
8 Well, in South Carolina the prosecuting attorney is called
9 the solicitor. And Mr. Sorenson is an assistant solicitor
10 and he has just called the first case for trial.

11 What he's just read to me is he's read to me the
12 numbers of three indictments. Three indictments.

13 And I want to tell you what an indictment is and I
14 want to tell you what an indictment is not.

15 First of all, an indictment is a piece of paper.

16 Secondly, what the piece of paper is is it's a
17 formal charging document. What does that mean? Well, what
18 it means is it is formal notice to a citizen that the State
19 alleges that that citizen has violated one, or more, of the
20 criminal laws of the State of South Carolina.

21 Now, what I want to hasten to tell you is that to
22 each and every allegation of each and every one of these
23 indictments that Mr. Benjamin has pled not guilty. And that
24 places on the State the burden of proving each and every
25 allegation of each of these three indictments beyond a

1 reasonable doubt. The proof is, of course, and will remain
2 upon the State to prove each and every allegation of each of
3 these indictments.

4 Now, ladies and gentlemen, the reason that I
5 mentioned these matters to you is that in a little bit, in
6 just a few moments, I am going to be reading to you some of
7 the allegations of these indictments. And the reason that
8 I'm going to be reading to you some of these allegations is
9 that -- and I'm going to follow the reading of some of these
10 allegations with this question: Do any of you know or think
11 that you may know, or have you heard or think you may have
12 heard anything about these allegations? Because I'm trying
13 to, first of all, find out if anybody thinks they know or
14 thinks they have heard anything about these allegations. So
15 that's why I will be reading to you some of the allegations
16 of the indictments.

17 But, of course, I want to hasten to tell you that
18 to these allegations Mr. Benjamin has pled not guilty, and
19 it's important for you to know that.

20 And it's also important for you to know that it is
21 the State that has the burden of proving each of these
22 allegations.

23 Now -- and, of course, those of who are selected
24 to serve on this jury, we will talk a lot more about that,
25 about the burden of proof and about the law applicable to

1 this matter.

2 Now, ladies and gentlemen, an indictment --

3 Well, let me stop a minute, because I'm about to
4 read to you some of these allegations.

5 On the other side of this my question again is
6 going to be this: Do any of you know, or think you may
7 know, or have you heard, or think you may have heard, to
8 include today, anything about these allegations.

9 Ladies and gentlemen, Indictment 2013-GS-09-52
10 alleges, in part, that in Calhoun County, on or about
11 September the 18th, 2011, with malice aforethought, the
12 defendant, David Jamar Benjamin, did with the intent to
13 kill, either expressed or implied, commit the offense of
14 attempted murder by shooting and wounding the victim James
15 Hampton. This offense being in violation of the Common Law
16 and Section 16-3-29 of the South Carolina Code of Laws, as
17 amended.

18 Ladies and gentlemen, 2013-GS-09-53 alleges, in
19 part, that in Calhoun County, on or about September the
20 18th, 2011, with malice aforethought, the defendant, David
21 Jamar Benjamin, did with the intent to kill, either express
22 or implied, commit the offense of attempted murder by
23 shooting and wounding the victim, Shawn Defreitas, this
24 offense being in violation of the Common Law and Section
25 16-3-29 of the South Carolina Code of Laws, as amended.

1 Indictment 2013-GS-09-51 alleges, in part, that in
2 Calhoun County, on or about September the 18th, 2011, with
3 malice aforethought, the defendant, David Jamar Benjamin,
4 did kill one Dominique Lawton by means of a gunshot wound to
5 the head. The victim did die as a proximate result thereof.
6 This offense being in violation of the Common Law and
7 Section 16-3-10 of the South Carolina Code of Laws, as
8 amended.

9 Again, to each of these allegations and to each of
10 these three indictments the defendant, Mr. Benjamin, has
11 pled not guilty.

12 Ladies and gentlemen, I ask do any of you know or
13 think you may know, or have you heard or think you may have
14 heard anything about these allegations, to include having
15 heard something today? If so, please stand at this time.

16 And I find no one is standing.

17 All right. Now, ladies and gentlemen, please
18 allow me to introduce you to the two solicitors who will be
19 trying this case. This is Mr. Don Sorenson. This is Mr.
20 Ted Lupton. And Mr. Sorenson is going to list the
21 solicitors in his office.

22 MR. SORENSON: The Orangeburg office, or --

23 THE COURT: Well, Mr. Lupton would be -- yes, I
24 think so.

25 MR. SORENSON: Okay. As far as Calhoun, Mr.

1 Lupton is our prosecutor here in Calhoun County.

2 I'm primarily in our Orangeburg office. It's
3 myself, Deputy Solicitor Tommy Scott, Rob Clariday, Crystal
4 Chapman, Harrison Bell, Sara Ford and Brian Jefferies.
5 Those are our prosecution in Orangeburg. They all do stuff
6 over here in Calhoun also.

7 THE COURT: And, of course, the elected --

8 MR. SORENSON: And also our elected solicitor
9 David Pascoe.

10 THE COURT: Who is a resident of Calhoun County.

11 Very well.

12 Ladies and gentlemen, do any of you know or think
13 you may know --

14 Well, let me -- I need to define a term for you
15 before I ask you this question, because I'm going to use it
16 a lot today and I need to define the term for you, because I
17 intend a very general definition for the term acquainted
18 with. You will hear me ask are you related by blood or
19 marriage or acquainted with so and so.

20 When I use the term acquainted with, I use it and
21 I intend a very, very general definition of the term
22 acquainted with. Why? Because I'm trying to find out if
23 you have any connection with these folks that I'll be asking
24 you about.

25 Let me give you some examples. It may be that you

1 went to school twenty years ago with someone that I will
2 mention and you hadn't thought about them, hadn't seen them
3 in twenty years, but you remember this person and you know
4 that you went to school with them twenty years ago. Well,
5 believe it or not, that relationship, as limited and as old
6 and moldy as it is, would be encompassed within my
7 definition of acquainted with.

8 Again, I'm trying to find out if you have any
9 connection with these folks at all.

10 Now, it may be that you simply work at the same
11 location with somebody that I'll ask you about. Believe it
12 or not, that relationship, as limited as that is, would be
13 encompassed within my definition of acquainted with.

14 I'm trying to find out if you have any connection
15 with these folks at all.

16 In other words, if you are pondering should I
17 stand, should I not stand, the answer is yes, you should
18 stand. You should disclose the information.

19 Now, ladies and gentlemen, with that in mind, I
20 ask are you related by blood or marriage or acquainted with
21 Mr. Sorenson, Mr. Lupton, Mr. Pascoe, or any of the
22 attorneys that Mr. Sorenson has just mentioned? If so,
23 please stand at this time.

24 All right. First of all, your name or your
25 number?

1 JUROR NUMBER 114: Mildred Wannamaker. I think my
2 number is 114.

3 THE COURT: Thank you.

4 Now, let me tell you what I need you to do is I
5 need little answers, just the answers to my questions. I
6 don't need any more than I ask. Most of them are going to
7 be yes or no.

8 The first one, who do you know? It's not yes or
9 no. Tell me who you know.

10 JUROR NUMBER 114: Pardon?

11 THE COURT: Who do you know?

12 JUROR NUMBER 114: I am familiar with and
13 acquainted with a good many of them.

14 THE COURT: Okay. Very well.

15 And let me ask you this question. Do you visit in
16 their homes? Do they visit in your homes, any of them?

17 JUROR NUMBER 114: No, ma'am.

18 THE COURT: All right. Would you describe your
19 relationship as one that is more professional or personal?

20 JUROR NUMBER 114: Professional on their part,
21 personal on mine.

22 THE COURT: Okay. And do you have a matter
23 pending for which the solicitor's office is involved, and
24 that would be a yes or a no?

25 JUROR NUMBER 114: No, ma'am.

1 THE COURT: Okay. Very well.

2 As a result of the relationship, as you have just
3 described it, might that or could that in any respect, in
4 any respect, interfere with your ability to be completely
5 fair and impartial, both to the solicitor's office as well
6 as to Mr. Benjamin?

7 JUROR NUMBER 114: No, ma'am, I don't believe it
8 will.

9 THE COURT: All right. I should say the State, as
10 well as Mr. Benjamin, really.

11 JUROR NUMBER 114: No, ma'am, I don't believe it
12 will be or will cause me any impartiality.

13 THE COURT: And can you set those relationships
14 completely aside and make up your mind, based upon what you
15 hear in court while court is in session?

16 JUROR NUMBER 114: Yes, ma'am.

17 THE COURT: All right. Thank you.

18 Your name or number?

19 JUROR NUMBER 194: Matthew Weeks and I do not know
20 my number.

21 THE COURT: That's okay. Tell me who you know.

22 JUROR NUMBER 194: Rob Clariday. Not very well,
23 though. Not very well.

24 THE COURT: All right. And do you visit in each
25 other's homes?

1 JUROR NUMBER 194: I watched the Super Bowl at his
2 house two years ago.

3 THE COURT: Okay.

4 JUROR NUMBER 194: And at the time there were --

5 THE COURT: There were a number of people there?

6 JUROR NUMBER 194: Yes.

7 THE COURT: I understand.

8 And do you believe that that relationship just as
9 you have described it --

10 JUROR NUMBER 194: No, ma'am.

11 THE COURT: All right. Would not interfere,
12 correct?

13 JUROR NUMBER 194: No, I haven't seen him in a
14 year or so.

15 THE COURT: I understand. Can you set that
16 relationship aside and make up your mind, based upon what
17 you hear in court while court is in session?

18 JUROR NUMBER 194: Absolutely.

19 THE COURT: Thank you, Mr. Weeks.

20 Yes, ma'am, your name or number?

21 JUROR NUMBER 3: Carol Barton, juror number 3.

22 THE COURT: Yes, ma'am.

23 And who do you know?

24 JUROR NUMBER 3: Crystal Chapman was the attorney
25 for the Guardian Ad Litem Program, which I have been

1 associated with over the last twenty years.

2 THE COURT: All right.

3 JUROR NUMBER 3: Staff attorney for them.

4 THE COURT: And as a result of that relationship,
5 might that, could that interfere with your ability to be
6 completely fair and impartial both to the State, as well as
7 to Mr. Benjamin?

8 JUROR NUMBER 3: No, ma'am.

9 THE COURT: Can you set that relationship aside
10 and make up your mind, based on what you hear in court while
11 court is in session?

12 JUROR NUMBER 3: I can.

13 THE COURT: Thank you so much.

14 Now, I want to mention some support staff of the
15 solicitor's office.

16 Are you related by blood or marriage or acquainted
17 with Mr. Walt Turner, Mr. Greg Whetstone? This is Mr.
18 Whetstone. Jennifer -- is it Jakes?

19 MR. SORENSON: Yes, ma'am.

20 THE COURT: Angie Martin.

21 If so, please stand.

22 Very well. Tell me who you know -- first of
23 all --

24 Ms. Wannamaker, you know everybody.

25 JUROR NUMBER 114: Yes.

1 THE COURT: Okay. And as a result of your -- do
2 any of these folks visit in your home?

3 JUROR NUMBER 114: I have known Greg since he was
4 this high.

5 THE COURT: Knee high to a grasshopper, so to
6 speak?

7 JUROR NUMBER 114: Yes.

8 THE COURT: All right. And as a result of your
9 relationship, either with any of these individual folks, or
10 with the whole group, might that, could that interfere with
11 your ability to be fair and impartial?

12 JUROR NUMBER 114: No, it wouldn't.

13 THE COURT: All right. Very well. Thank you.
14 Yes, sir, your name or number?

15 JUROR NUMBER 182: Melvin Robinson. I think it's
16 182.

17 THE COURT: Great. And tell me who you know.

18 JUROR NUMBER 182: I know Greg and Walt Turner.

19 THE COURT: Okay. And who else did I say?

20 JUROR NUMBER 182: Yeah. Who else?

21 THE COURT: I said Jennifer Jakes or Jachs and
22 Angie Martin.

23 JUROR NUMBER 182: No, I don't know them.

24 THE COURT: Very well.

25 As a result of your --

1 Well, let me stop. Do you visit in their homes,
2 Mr. Turner or Mr. Whetstone, or they in yours?

3 JUROR NUMBER 182: No, ma'am.

4 THE COURT: All right. And as a result of those
5 relationships, do you believe that they could or might
6 interfere with your ability to be completely fair and
7 impartial to the State, as well as to Mr. Benjamin?

8 JUROR NUMBER 182: No, ma'am.

9 THE COURT: Can you set those relationships
10 completely aside and make up your mind, based on what you
11 hear in court while court is in session?

12 JUROR NUMBER 182: Yes, ma'am.

13 THE COURT: Thank you.

14 Mr. Weeks?

15 JUROR NUMBER 194: I know Mr. Greg as well.

16 THE COURT: All right. And do you visit in each
17 other's homes?

18 JUROR NUMBER 194: No.

19 THE COURT: All right. And did you watch maybe
20 the Super Bowl this year?

21 JUROR NUMBER 194: No.

22 THE COURT: Just teasing. Just teasing.

23 JUROR NUMBER 194: I graduated high school with
24 his daughter.

25 THE COURT: I understand. Okay. All right.

1 Always like could see him sitting on the front stoop with a
2 shotgun.

3 Ladies and gentlemen --

4 Well, Mr. Weeks, might that, could that
5 relationship interfere with your ability to be fair and
6 impartial, both to the State as well as to Mr. Benjamin?

7 JUROR NUMBER 194: No, ma'am.

8 THE COURT: All right. Could you set that
9 relationship aside and make up your mind, based on what you
10 hear in court while court is in session?

11 JUROR NUMBER 194: Yes, I can do that.

12 THE COURT: Thank you, Mr. Weeks.

13 And your name or number?

14 JUROR NUMBER 135: Brandon Dewitt, 135.

15 I know Angie Martin and Greg Whetstone.

16 THE COURT: Okay. And as a result of that
17 relationship, might that, could that interfere with your
18 ability to be fair and impartial, both to the State, as well
19 as to Mr. Benjamin, and that is a yes or no?

20 JUROR NUMBER 135: No, ma'am.

21 THE COURT: Can you set that relationship aside
22 and make up your mind, based on what you hear in court while
23 court is in session?

24 JUROR NUMBER 135: Yes, sir.

25 THE COURT: Thank sir, sir.

1 Now, ladies and gentlemen, please allow me to
2 introduce to you Mr. David Benjamin.

3 Mr. Benjamin, if you could stand and face our jury
4 panel for me.

5 This is Mr. David Benjamin. David Jamar. Jamar
6 is his middle name, David Jamar Benjamin.

7 Thank you so much Mr. Benjamin, and you may be
8 seated.

9 Ladies and gentlemen, are you related by blood or
10 marriage, or acquainted with Mr. David Jamar Benjamin? If
11 so, please stand at this time.

12 And tell me your name and number.

13 JUROR NUMBER 140: I don't know my number. My
14 name is Eartha Fields.

15 THE COURT: And Ms. Fields, do you visit in Mr.
16 Benjamin's home; yes or no?

17 JUROR NUMBER 140: No.

18 THE COURT: All right. And would you describe
19 your relationship with him as a friendship or
20 acquaintanceship?

21 JUROR NUMBER 140: I think we are related by
22 marriage. I think we're in the same family.

23 THE COURT: You think you are in the same family?

24 JUROR NUMBER 140: Yes.

25 THE COURT: But you don't know how close that

1 relationship might be?

2 JUROR NUMBER 140: No.

3 THE COURT: All right. As a result of that
4 potential family relationship, might that, could that
5 interfere with your ability to be completely fair and
6 impartial both to the State, as well as to Mr. Benjamin?

7 JUROR NUMBER 140: Yes.

8 THE COURT: Very well. I'll ask you to sit this
9 one out. Thank you so much.

10 JUROR NUMBER 140: Can I leave?

11 THE COURT: No, ma'am, because I have got -- I
12 have got to give you some instructions about how to stay in
13 contact with each other. Okay. Very well.

14 Now, ladies and gentlemen, Mr. Benjamin is
15 represented by Mr. Nick Thomas, and this is Mr. Thomas. He
16 practices law in the law firm called the Coastal Law Firm.
17 He's now going to list for you the folks in his office.

18 MR. THOMAS: Hey, y'all, I'm Nick Thomas. In my
19 office is David Wells, Michael Wells, and the young fellow
20 is Russell Frye. They practice primarily in Myrtle Beach,
21 Surfside, Conway. I practice primarily in Orangeburg.

22 THE COURT: Very well. And are you going to be
23 assisted by --

24 MR. THOMAS: I am assisted by Ginger Meyers Howe.

25 THE COURT: Thank you so much, Mr. Thomas.

1 Ladies and gentlemen, are you related by blood or
2 marriage or acquainted with Mr. Thomas or any of the folks
3 in his law firm that he just mentioned for all of us? If
4 so, please stand at this time.

5 (No response).

6 THE COURT: Very well. Thank you.

7 Now, ladies and gentlemen, I am now going to be
8 reading to you a list of potential, potential witnesses.

9 My question as to each and every one of these
10 folks is are you related by blood or marriage or acquainted
11 with any of these people.

12 Now, ladies and gentlemen, I'm going to read you
13 the list. There are several people on this list. If any of
14 you need me to read this list again, I am delighted to do
15 that.

16 Now, if I call your name and you happen to be in
17 the courtroom, I am going to ask you to please stand for me,
18 because it is so much easier to put a face with a name than
19 the name alone. So if you happen to be in the courtroom and
20 your name is called, I'm going to ask you to please stand.

21 Now, Dr. Janice Ross.

22 Terry Snead.

23 Earl Kinley.

24 Bill Cartwright.

25 Henry Dukes. This is Mr. Dukes.

1 Thank you so much.
2 Matt Trentham. This is Mr. Trentham.
3 Kirk Corley.
4 James Green.
5 Betty Butler.
6 Lilly Gallman.
7 John Roberts.
8 This is not the United States Supreme Court Chief
9 Justice. This would be John Roberts from Columbia.
10 Faith Trogon.
11 Dr. Jerrold Buckaloo.
12 Tammy Hunter.
13 Andrew Haynes.
14 Michael Bullock.
15 Shawn Defreitas.
16 James Hampton.
17 Jacob Warren.
18 Erik Adams.
19 Tanesha Adams.
20 Danny Saxon.
21 Nayrone Shivers.
22 Georgio McGarrah.
23 Natasha Sumpter.
24 Delvin Lawton.
25 Jamie Moore.

1 William Pinckney.

2 Joshua Haggood.

3 Kevin Frazier.

4 Latisha Cooper.

5 Trey Pugh.

6 Robert Riviera.

7 I have got a few more.

8 (Off the record)

9 (Back on the record)

10 THE COURT: Now, a few more names, please.

11 Antonio Gidron.

12 Danny McDaniel.

13 Nayrone Shivers.

14 Joshua Haggood.

15 Kevin Frazier. I think I'm repeating myself a
16 little bit.

17 And there are 911 operators and their names
18 have -- their first names at this point. Amy.

19 Vicky.

20 I cannot -- I'm so sorry, I can't read my own
21 handwriting.

22 MR. THOMAS: Tracy.

23 THE COURT: Tracy. Thank you so much, Mr. Thomas.

24 And Kelly Fite.

25 Are you related by blood or marriage or acquainted

1 with any of those individuals? If so, please stand.

2 Yes, ma'am, Ms. Wannamaker. You know everybody.

3 JUROR NUMBER 114: Actually I have just been an
4 acquaintance of Cartwright for thirty years, or better.

5 THE COURT: Thirty years, or better.

6 JUROR NUMBER 114: I have known him for a long
7 time.

8 THE COURT: Do you visit in each other's homes, or
9 you are just acquainted with him?

10 JUROR NUMBER 114: Just acquainted.

11 THE COURT: As a result of that acquaintanceship,
12 could that, might that interfere with your ability to be
13 completely fair and impartial?

14 JUROR NUMBER 114: No, ma'am.

15 THE COURT: All right. Thank you.

16 Yes, ma'am, your name or number.

17 JUROR NUMBER 69: Helen McPeck and I don't know my
18 number.

19 THE COURT: That's okay.

20 JUROR NUMBER 69: I know Officer Cartwright.

21 THE COURT: All right. And do you visit in each
22 other's homes?

23 JUROR NUMBER 69: No.

24 THE COURT: As a result of that relationship,
25 might that or could that interfere with your ability to be

1 completely fair and impartial, both to the State, as well as
2 to Mr. Benjamin?

3 JUROR NUMBER 69: No.

4 THE COURT: And could you set that relationship
5 completely aside and make up your mind, based upon what you
6 hear in court while court is in session?

7 JUROR NUMBER 69: Definitely.

8 THE COURT: Thank you.

9 All right. Yes, sir, your name again?

10 JUROR NUMBER 135: Brandon Dewitt, 135.

11 THE COURT: Who do you know?

12 JUROR NUMBER 135: Half of the list.

13 THE COURT: Half of the list. I got it. I got
14 it.

15 As the result -- and out of the half of the list,
16 do any of those folks visit in your home or you in theirs?

17 JUROR NUMBER 135: No, ma'am.

18 THE COURT: All right. Would you describe those
19 relationships more of acquaintanceships; yes or no?

20 JUROR NUMBER 135: Andrew Haynes, I have known
21 him.

22 THE COURT: Yes.

23 JUROR NUMBER 135: Then some on the list I may
24 have --

25 THE COURT: I got you. So it's varying degrees.

1 Very well. But none of these folks are close enough where
2 you visit in each other's homes?

3 JUROR NUMBER 135: No, ma'am.

4 THE COURT: All right. I understand.

5 As a result of those relationships, either
6 separately or together, might they or could they interfere
7 with your ability to be completely fair and impartial both
8 the State, as well as to Mr. Benjamin?

9 JUROR NUMBER 135: No, ma'am.

10 THE COURT: All right. Now, can you -- in other
11 words -- and this is really where it gets to be important.
12 Can you set those relationships aside and make up your mind,
13 based solely on what you hear in court while court is in
14 session, not affected by those relationships?

15 JUROR NUMBER 135: Yes, ma'am.

16 THE COURT: You can do that?

17 JUROR NUMBER 135: Yes, ma'am.

18 THE COURT: Very well.

19 All right, yes, ma'am, your name?

20 JUROR NUMBER 5: Shannon Blount.

21 THE COURT: Thank you Ms. Blount.

22 Tell me who you know.

23 JUROR NUMBER 5: I know quite a few of them.

24 THE COURT: You know quite a few of the folks?

25 JUROR NUMBER 5: Yes.

1 THE COURT: Do any of those folks visit in your
2 home or you in theirs?

3 JUROR NUMBER 5: No, I just went to high school
4 with them.

5 THE COURT: I understand. You went to high school
6 with a number of these folks. Okay.

7 And let me ask you this question. You are so
8 young. How long ago were you in high school?

9 JUROR NUMBER 5: I graduated in 2007.

10 THE COURT: Okay. About five years ago, six years
11 ago, almost?

12 JUROR NUMBER 5: Yes.

13 THE COURT: Okay. As a result of those
14 relationships, might they or could they interfere with your
15 ability to be completely fair and impartial to the State, as
16 well as to Mr. Benjamin?

17 JUROR NUMBER 5: No, ma'am.

18 THE COURT: And can you set those relationships
19 aside, just as you have described them, and make up your
20 mind, based upon what you hear in court while court is in
21 session?

22 JUROR NUMBER 5: Yes, ma'am.

23 THE COURT: Thank you so much, Ms. Blount.

24 Anyone else?

25 (No response).

1 THE COURT: Does anyone need me to go over the
2 list again because you are not sure, because I am happy to
3 do that?

4 (No response)

5 THE COURT: I read y'all a lot of names. Okay.
6 Very well. No one is raising their hands. All right.

7 All right. Ladies and gentlemen, I'm going to ask
8 you three questions together and you don't need to respond
9 until I have asked all three of them together.

10 All right. Ladies and gentlemen, are you, or any
11 member of your immediate family, or close personal friend --

12 Now, let me tell you about this close personal
13 friend. This close personal friend is so close to you that
14 you really consider this person a member of your family.
15 You probably like them better than you do like one of your
16 brothers or sisters. They're that close. So that's this
17 close personal friend. This is not an acquaintance. This
18 is somebody that when you think about family, you just --
19 you can't distinguish this friend. That's how close you are
20 to this person.

21 Are you, or any member of your immediate family,
22 or a close personal friend someone who is or has been, to
23 your knowledge, a member of any law enforcement agency?
24 That is the first question.

25 The second question is are you, or any member of

1 your immediate family, or close personal friend someone who
2 has been or currently is employed by the Attorney General of
3 South Carolina, or any other Attorney General's office,
4 employed by any solicitor's office, or any prosecuting
5 attorney's office, either now or in the past; or, are you,
6 or any member of your immediate family, or close personal
7 friend someone who has ever been employed by or is employed
8 now, or in the past, by any civilian or military law
9 enforcement agency?

10 In other words, I'm trying to catch -- I guess I'm
11 trying to catch all law enforcement agencies. If so, please
12 stand at this time.

13 Yes, ma'am, your name?

14 JUROR NUMBER 50: I just want to make sure. My
15 brother-in-law is in law enforcement.

16 THE COURT: That works. Tell me your name first.

17 JUROR NUMBER 50: My name is Allene Jackson.

18 THE COURT: And do you know what your juror number
19 is by chance?

20 JUROR NUMBER 50: No, ma'am.

21 THE COURT: That's okay. Well, don't worry about
22 it.

23 Yes, ma'am, Ms. Jackson, your brother-in-law might
24 be a member of law enforcement?

25 JUROR NUMBER 50: Irving Green.

1 THE COURT: And what law enforcement agency?

2 JUROR NUMBER 50: Sheriff's.

3 THE COURT: Sheriff's department?

4 JUROR NUMBER 50: Yes.

5 THE COURT: And that's your brother-in-law?

6 JUROR NUMBER 50: Yes.

7 THE COURT: All right. Now, as a result of your
8 brother-in-law's employment with the sheriff's department,
9 might that, could that have an effect on your ability to be
10 completely fair and impartial to the State, as well as to
11 Mr. Benjamin?

12 JUROR NUMBER 50: No, ma'am, not at all.

13 THE COURT: Very well. You can set that
14 relationship aside and make up your mind?

15 JUROR NUMBER 50: Yes, ma'am.

16 THE COURT: Based on what you hear in court while
17 court is in session?

18 JUROR NUMBER 50: Yes, ma'am.

19 THE COURT: Thank you.

20 Ms. Wannamaker. Yes, ma'am.

21 JUROR NUMBER 114: Well, prior to 1984, I spent a
22 year and a half employed with the Orangeburg County
23 solicitor's office.

24 THE COURT: Okay.

25 JUROR NUMBER 114: But my brother was Sergeant

1 Tommy Harrison who was killed in the line of duty in 1993,
2 in Orangeburg.

3 THE COURT: Okay. Very well.

4 JUROR NUMBER 114: Yes, I'm afraid that could make
5 me very impartial. I mean very partial.

6 THE COURT: Ms. Wannamaker, that's fine. That's
7 fine. That's fine. Two thumbs up. That's going to happen
8 to you on any of these cases.

9 Ms. Wannamaker, come on up here and pick yourself
10 a civil term; car wreck, breach of contract, I didn't like
11 my hamburger, whatever, from Ms. Paulling.

12 Yes, sir, tell me your name or number.

13 JUROR NUMBER 151: Thomas Jamison, 151. 151.

14 THE COURT: Got it. Who is a member of law
15 enforcement?

16 JUROR NUMBER 151: I have a brother Herman
17 Jamison, he's at the Orangeburg Sheriff's Department in
18 Orangeburg, South Carolina.

19 THE COURT: Currently?

20 JUROR NUMBER 151: Currently.

21 THE COURT: And as a result of your brother's
22 employment, might that, could that interfere with your
23 ability to be completely fair and impartial, both to the
24 State, as well as to Mr. Benjamin?

25 JUROR NUMBER 151: No, ma'am.

1 THE COURT: Can you set that relationship aside
2 and make up your mind, Mr. Jamison, based on what you hear
3 in court while court is in session?

4 JUROR NUMBER 151: Yes, ma'am.

5 THE COURT: Thank you so much.

6 And your name or number?

7 JUROR NUMBER 32: Tammy Gerringer, juror number
8 32.

9 THE COURT: Ms. Gerringer, tell me who is --

10 JUROR NUMBER 32: My husband worked at Richland
11 County Sheriff's Department. He was in the military police,
12 and he worked at Lexington County Sheriff's Department, but
13 he no longer works there.

14 THE COURT: How long ago are we talking about?

15 JUROR NUMBER 32: Probably twenty years ago.

16 THE COURT: Twenty years ago?

17 JUROR NUMBER 32: Yes.

18 THE COURT: Twenty years ago you were like in
19 kindergarten.

20 And as a result of his employment, might that,
21 could that interfere with your ability to be completely fair
22 and impartial, both to the state, as well as Mr. Benjamin?

23 JUROR NUMBER 32: No.

24 THE COURT: And can you set aside his former
25 employment and make up your mind, based on what you hear in

1 court while court is in session?

2 JUROR NUMBER 32: Yes, ma'am.

3 THE COURT: Thank you so much. Please stay with
4 us.

5 Yes, sir, your name again for the record?

6 JUROR NUMBWER 182: Melvin Robinson, 182.

7 THE COURT: Yes, sir.

8 JUROR NUMBER 182: My wife worked for the
9 Orangeburg office of probation and parole for fourteen
10 years.

11 THE COURT: Yes.

12 JUROR NUMBER 182: Retired three years ago.

13 THE COURT: Yes.

14 JUROR NUMBER 182: And my brother is currently an
15 officer with the Charleston Police Department.

16 THE COURT: Very well.

17 As a result of those, your relations employment,
18 might that, could that interfere with your ability to be
19 completely fair and impartial, both to the State, as well as
20 Mr. Benjamin?

21 JUROR NUMBER 182: No, ma'am.

22 THE COURT: Can you set their former -- their
23 current and former employment aside and make up your mind,
24 based on what you hear in court while court is in session?

25 JUROR NUMBER 182: Yes, ma'am.

1 THE COURT: That's a yes?

2 JUROR NUMBER 182: Yes.

3 THE COURT: Thank you.

4 Yes, ma'am, your name or number?

5 JUROR NUMBER 106: I'm Carolyn Thomas. My number
6 is 106.

7 THE COURT: Thank you.

8 JUROR NUMBER 106: My husband is a retired
9 magistrate in Calhoun County. He's been retired about eight
10 years.

11 THE COURT: Very well.

12 JUROR NUMBER 106: And he's also on the Commission
13 with the Orangeburg Calhoun Detention Center.

14 THE COURT: Okay. Very well.

15 As a result of your husband's prior duties and
16 current -- I gather he's still on the commission now?

17 JUROR NUMBER 106: No.

18 THE COURT: In the past?

19 JUROR NUMBER 106: Yes.

20 THE COURT: In the past.

21 Might that, could that interfere with your ability
22 to be completely fair and impartial both to the State, as
23 well as Mr. Benjamin?

24 JUROR NUMBER 106: No.

25 THE COURT: That's a no.

1 Can you make up your mind, based on what you hear
2 in court while court is in session?

3 JUROR NUMBER 106: Yes.

4 THE COURT: Please stay with us and thank you so
5 much.

6 Yes, sir, your name or number?

7 JUROR NUMBER 54: Charles Jones. I don't know my
8 number.

9 THE COURT: That's okay.

10 JUROR NUMBER 54: My sister-in-law is employed
11 with the State's Magistrate Court in Spartanburg County.

12 THE COURT: Your sister-in-law?

13 JUROR NUMBER 54: Yes.

14 THE COURT: As the result of that employment,
15 might that, could that have an affect on your ability to be
16 completely fair and impartial both to the State, as well as
17 to Mr. Benjamin?

18 JUROR NUMBER 54: I don't think so.

19 THE COURT: Can you set her employment aside,
20 completely aside, make up your mind, based on what you hear
21 in court while court is in session?

22 JUROR NUMBER 54: Yes.

23 THE COURT: Thank you. Thank you, Mr. Jones.

24 Yes, sir, your name and number?

25 JUROR NUMBER 6: Altroy Bodrick, juror 6.

1 My uncle is at the Atlanta Police Department. My
2 brother is NCI.

3 THE COURT: All right. And as a result of your
4 family's employment, might that, could that interfere with
5 your ability to be completely fair and impartial both to the
6 State, as well as to Mr. Benjamin?

7 JUROR NUMBER 6: No, ma'am.

8 THE COURT: Can you set those your relationship --
9 your relation's employment aside and make up your mind,
10 based on what you hear in court while court is in session?

11 JUROR NUMBER 6: Yes, ma'am.

12 THE COURT: Thank you, sir. Please stay with us.
13 Yes, ma'am, your name or number?

14 JUROR NUMBER 117: Amy Wieber, 117.

15 My brother was in the Marine Corps security forces
16 and military police.

17 THE COURT: As a result of his prior -- I gather
18 is that prior employment?

19 JUROR NUMBER 117: Yes.

20 THE COURT: Might that, could that interfere with
21 your ability to be fair and impartial both to the State, as
22 well as to Mr. Benjamin?

23 JUROR NUMBER 117: No, ma'am.

24 THE COURT: And can you set that relationship --
25 his -- not your relationship aside, but his former

1 employment aside and make up your mind, based on what you
2 hear in court while court is in session?

3 JUROR NUMBER 117: Yes, ma'am.

4 THE COURT: Thank you so much. Please stay with
5 us.

6 Yes, sir, your name and number?

7 JUROR NUMBER 17: Scottie Coleman, 17.

8 THE COURT: Yes.

9 JUROR NUMBER 17: My brother is in the military
10 police security currently.

11 THE COURT: And would that have an effect on your
12 ability to be fair and impartial both to the State, as well
13 as to Mr. Benjamin?

14 JUROR NUMBER 17: No.

15 THE COURT: That's a no?

16 JUROR NUMBER 17: No, ma'am.

17 THE COURT: All right. And can you make up your
18 mind, based on what you hear in court while court is in
19 session, completely unaffected by his employment?

20 JUROR NUMBER 17: Yes.

21 THE COURT: Thank you.

22 Juror number 3.

23 JUROR NUMBER 3: Yes, ma'am.

24 THE COURT: Tell me.

25 JUROR NUMBER 3: His brother and my other son --

1 this is my son.

2 THE COURT: That is a first. That is a first.

3 JUROR NUMBER 3: Is in the security forces
4 currently.

5 THE COURT: The same -- the same person?

6 JUROR NUMBER 3: Yes.

7 THE COURT: All right. And you said his former
8 work. He's not still --

9 JUROR NUMBER 3: Currently.

10 THE COURT: He's currently.

11 Can you set that aside and make up your mind,
12 based on what you hear in court while court is in session?

13 JUROR NUMBER 3: I can.

14 THE COURT: Very well. Thank you so much.

15 JUROR NUMBER 69: I don't know if I'm supposed to
16 be standing or not.

17 THE COURT: You should, yeah.

18 JUROR NUMBER 69: My husband was a guard at the
19 Orangeburg Calhoun Detention Center. He's been retired
20 since 2005.

21 THE COURT: And you are juror number?

22 JUROR NUMBER 69: I'm not sure. Helen McPeek.

23 THE COURT: Yes, ma'am, Ms. McPeek, I thought I
24 had it memorized.

25 THE CLERK: 69.

1 THE COURT: Okay. Yes, ma'am. Thank you.

2 Would that have an effect on your ability to be
3 fair and impartial?

4 JUROR NUMBER 69: No, ma'am. No, Your Honor.

5 THE COURT: Thank you so much, Ms. McPeek. Stay
6 with us.

7 All right. Ladies and gentlemen, I'm going to ask
8 you two questions together. Two questions together.

9 Question number one is --

10 (Off the record)

11 (Back on the record)

12 THE COURT: She can remain out until we are done.

13 All right. Have you, or any member of your
14 immediate family, to your knowledge, or that close personal
15 friend that we were talking about earlier, or close personal
16 friend, ever either been the victim of or charged with a
17 crime?

18 Have you, or any member of your immediate family,
19 or a close personal friend, ever been the victim of or
20 charged with a crime?

21 That's the first one.

22 Here is the second one. Don't answer the first
23 one until I have asked the second one.

24 Is any member of our jury panel, or a member of
25 your immediate family, to your knowledge, or that same close

1 personal friend, a member of or someone who gives money to
2 organizations such as MADD, Mother's Against Drink Driving,
3 SADD, Students Against Drunk Driving, CAVE, Citizens Against
4 Violent something, or other -- or any other similar type
5 organizations which has as its goal or their goal promoting
6 law enforcement or the assistance of victims to crimes?

7 Ladies and gentlemen, if you need to respond to
8 either of those questions, I'm going to ask you to please
9 stand and come forward.

10 (Whereupon, the following were on-the-record bench
11 conferences)

12 (Juror Number 155 approached the bench)

13 THE COURT: Just loud enough for our court
14 reporter to hear you and we will gather around.

15 First of all, your name or number?

16 JUROR NUMBER 155: Shirley Huggins and I don't
17 know my number.

18 THE COURT: Shirley what?

19 JUROR NUMBER 155: Shirley Huggins.

20 THE COURT: Huggins?

21 JUROR NUMBER 155: Uh-huh.

22 THE COURT: Yes.

23 JUROR NUMBER 155: My uncle was killed by someone.

24 THE COURT: Your uncle was killed. When?

25 JUROR NUMBER 155: Last year in I want to say

1 November.

2 THE COURT: In November?

3 JUROR NUMBER 155: Yes.

4 THE COURT: Where?

5 JUROR NUMBER 155: In Orangeburg County.

6 THE COURT: In Orangeburg County?

7 JUROR NUMBER 155: Uh-huh.

8 THE COURT: All right. And is that a case that is
9 still pending?

10 JUROR NUMBER 155: I'm not sure. I think the case
11 is still pending, but they do have the guy in custody.

12 THE COURT: Okay. All right.

13 Ms. Huggins, with that experience, do you believe
14 that that might or could --

15 JUROR NUMBER 155: It could.

16 THE COURT: It could. All right.

17 JUROR NUMBER 155: Yes.

18 THE COURT: Thank you for your candor and I
19 certainly understand why. I'm going to ask you to sit this
20 one out for me.

21 JUROR NUMBER 155: Okay.

22 THE COURT: Thank you.

23 If you would be so kind as to not discuss this
24 matter with your fellow jurors, I would really appreciate
25 that.

1 JUROR NUMBER 155: Okay.

2 THE WITNESS: Have a seat?

3 THE COURT: Yeah, because we need to stay in
4 contact with each other and I need to tell you how we are
5 going to do it.

6 (Juror Number 155 returned to the Jury Venire
7 Panel).

8 (Juror Number 106 approached the bench)

9 THE COURT: Hi. Yes, ma'am, your name or number?

10 JUROR NUMBER 106: Carolyn Thomas, 106.

11 THE COURT: Yes, ma'am, Ms. Thomas.

12 JUROR NUMBER 106: In years past I supported MADD.

13 THE COURT: Very well.

14 And that's all I need to know. Thank you so
15 kindly.

16 (Juror Number 106 returned to the Jury Venire
17 Panel)

18 (Juror Number 5 approached the bench)

19 THE COURT: Hi, and your name or number?

20 JUROR NUMBER 5: Shannon Blount.

21 THE COURT: Blount.

22 Yes, ma'am, Ms. Blount.

23 JUROR NUMBER 5: My number is 5.

24 THE COURT: I knew that, yes.

25 JUROR NUMBER 5: And my brother in Florida was

1 charged for attempted murder and a sexual crime.

2 THE COURT: How long ago?

3 JUROR NUMBER 5: Maybe a year ago.

4 THE COURT: A year ago. Okay.

5 And is that matter still pending or has it been
6 resolved?

7 JUROR NUMBER 5: I'm not sure.

8 THE COURT: Okay.

9 JUROR NUMBER 5: He just was released from prison,
10 but I'm not sure if they --

11 THE COURT: Okay. As a result of your brother's
12 experience, do you believe that that might or could
13 interfere with your ability to be completely fair and
14 impartial both to the State, as well as to Mr. Benjamin?

15 JUROR NUMBER 5: I think it could --

16 THE COURT: You think it could. I'm going to ask
17 you to sit this one out for me, okay?

18 JUROR NUMBER 5: Okay.

19 THE COURT: Would you do me a favor and be so kind
20 as to not discuss this matter with your fellow jurors?

21 JUROR NUMBER 5: Yes.

22 THE COURT: Thank you.

23 (Juror Number 5 returned to the jury venire
24 panel).

25 (Juror Number 81 approached the bench)

1 THE COURT: Yes, sir, your name and number?

2 JUROR NUMBER 81: Rodney Ranck, 81.

3 THE COURT: Yes.

4 JUROR NUMBER 81: While I was in Pennsylvania
5 thirty years ago we had a burglary in our home.

6 THE COURT: I understand.

7 As a result of that experience, might that, could
8 that interfere with your ability to be completely fair and
9 impartial?

10 JUROR NUMBER 81: No, ma'am, I was in the prison
11 ministries, and I still am, so --

12 THE COURT: I understand that. Thank you, sir.

13 JUROR NUMBER 81: You are welcome.

14 (Juror Number 81 returned to the jury venire
15 panel)

16 (Juror 68 approached the bench)

17 THE COURT: Hi, your name or number?

18 JUROR NUMBER 68: Barbara McMahan, 68.

19 THE COURT: Okay.

20 JUROR NUMBER 68: My brother is incarcerated, my
21 half-brother.

22 THE COURT: Half-brother.

23 Do you know why?

24 JUROR NUMBER 68: Molestation. Molestation.

25 THE COURT: I got you.

1 And as a result of that experience in your life,
2 do believe that that might or could interfere with your
3 ability to be completely fair and impartial both to the
4 State, as well as to Mr. Benjamin?

5 JUROR NUMBER 68: No.

6 THE COURT: Can you set that aside and make up
7 your mind, based on what you hear in court while court is in
8 session?

9 JUROR NUMBER 68: Yes.

10 THE COURT: Thank you. Stay with us.

11 (Juror Number 68 returned to the jury venire
12 panel)

13 (Juror Number 182 approached the bench)

14 THE COURT: Hello.

15 JUROR NUMBER 182: Our home was broken into about
16 fifteen years ago.

17 THE COURT: Okay.

18 JUROR NUMBER 182: Okay. I know it's on record so
19 I tell you.

20 THE COURT: Thank you so kindly.

21 JUROR NUMBER 182: Melvin Robinson.

22 THE COURT: I know Mr. Robinson.

23 Would have that an effect on your ability to be
24 fair and impartial?

25 JUROR NUMBER 182: No, ma'am.

1 THE COURT: And can you set that experience aside
2 and make up your mind, based on what you hear in court?

3 JUROR NUMBER 182: Yes.

4 THE COURT: Thank you, Mr. Robinson.

5 (Juror Number 182 returned to the jury venire
6 panel)

7 (Juror Number 152 approached the bench)

8 THE COURT: Your name and number?

9 JUROR NUMBER 152: Brent Hendricks, 152.

10 THE COURT: Yes.

11 JUROR NUMBER 152: I just had a couple of cars
12 stolen and a shed broken into last week as a victim.

13 THE COURT: Okay.

14 JUROR NUMBER 152: As a result of those
15 experiences, separately or together, could they, may they,
16 might they have an effect on your ability to be completely
17 fair and impartial both to the State, as well as to Mr.
18 Benjamin?

19 JUROR NUMBER 152: No, ma'am.

20 THE COURT: Can you set those experiences aside
21 and make up your mind based on what you hear in court while
22 court is in session?

23 JUROR NUMBER 152: Yes, ma'am.

24 THE COURT: Thank you. Please stay with us.

25 (Juror Number 152 returned to the jury venire

1 panel).

2 (Whereupon, the on-the-record bench conferences
3 were concluded)

4 THE COURT: All right. Ladies and gentlemen, I'm
5 going to ask you this question. Are you, or any member of
6 your immediate family, or, you know, that close personal
7 friend, to your knowledge, a member of the National Rifle
8 Association? If so, please stand.

9 State your name.

10 JUROR NUMBER 118: Robert Wilson.

11 THE COURT: That's good. Thank you so much.

12 Juror number?

13 JUROR NUMBER 3: 3.

14 THE COURT: 3. And her son, who is juror number?

15 JUROR NUMBER 17: 17.

16 THE COURT: Thank you so much.

17 JUROR NUMBER 32: Number 32.

18 THE COURT: That's it. Thank you.

19 All right. I'm going to ask you these two
20 questions together. Please don't respond to either one
21 until I have asked both.

22 Are you, or any member of your immediate family,
23 or close personal friend, to your knowledge, opposed to
24 private citizens owning or possessing firearms, including
25 handguns or other weapons?

1 And the next question is have you ever received
2 assistance from a victims advocacy program?

3 If you need to respond to either of those
4 questions, please stand and come forward.

5 Does anybody want me to ask those questions again?

6 (No response)

7 THE COURT: Nope. Great.

8 And I find no one is standing.

9 All right. Ladies and gentlemen, this next
10 question is going to be very general, and just so you know,
11 I intend it to be general.

12 Do you know any reason why you ought not, should
13 not, could not be a juror in this case, being ready, willing
14 and able to listen to the evidence and to make up your mind,
15 based solely on what you hear in court while court is in
16 session, being completely unaffected, not affected by
17 matters determined extraneous, by matters having to do with
18 anything outside the courtroom, outside the courtroom?

19 In other words, can you make up your mind based
20 solely on what you heard in court while court is in session,
21 being completely, completely fair and impartial, both to the
22 State, as well as to Mr. Benjamin?

23 And it could be anything. I mean it to be
24 general. It could be that you really wanted to tell me
25 something or respond earlier to one of those questions that

1 I asked, but you are shy, and now we have like warmed up
2 because we have been together for awhile and now you are
3 more comfortable in telling me that what you couldn't tell
4 me before.

5 It might be that during the break -- I know you
6 didn't have your cell phone with you, but maybe you went to
7 just check your cell phone at your car and somebody is
8 calling you and telling you you have got to get home right
9 now because there are people there and they have got all
10 these balloons and like poster board check and all the
11 sudden you are having trouble focusing on what we are doing
12 here, because you are just wondering what's written on that
13 big old poster board check.

14 It may be that when you went to your car during
15 the break the tickets to Tahiti were above the visor and how
16 are you supposed to tell me you forgot about your trip to
17 Tahiti and you are supposed to leave tomorrow afternoon?

18 It really could be anything. It could be
19 anything.

20 As a matter of fact, about ten months ago in
21 Dorchester County, I promise you, we have reached this point
22 in the selection of the jury, at this point, and this
23 precious young man stood up and did like this and I said
24 yes, sir. He said "Your Honor, my wife is in labor down at
25 Trident Hospital. Can I go be with her?"

1 Is anybody in labor? Okay. Is anybody's family
2 member in labor? Okay. Okay. So now I'm really sensitive
3 about that.

4 If you know of any reason why at all. You
5 remembered the doctor's appointment, or anything, and you
6 are now like how do I tell her now, now would be your time
7 to come forward and share that information with me.

8 You have a particular upset or concern about these
9 particular issues for whatever reason, anything, come
10 forward and let us talk about it.

11 (No response).

12 THE COURT: Very well. I find that our jury is
13 now qualified.

14 And I'll just ask, any additional voir dire, from
15 the State?

16 MR. SORENSON: No, Your Honor.

17 THE COURT: From the defense?

18 MR. THOMAS: No.

19 THE COURT: Thank you.

20 Now, do you waive the selection of the jury by a
21 small child or a blind person?

22 MR. SORENSON: Yes, Your Honor.

23 MR. THOMAS: Yes, ma'am.

24 THE COURT: Here is what happens next.

25 If you have an umbrella, bring that, whatever you

1 have with you, bring it with you and you will just stand
2 here and next you are going to feel really odd, but it's
3 okay. Just stand here. And at first you are going to hear
4 from one of the attorneys for the State is going to say one
5 of two things; either present the juror, or he's going to
6 say excuse the juror.

7 Now, if you hear excuse the juror, here is what I
8 promise you is that these lawyers mean you no bad thing.
9 There are like a thousand different thoughts that go into
10 jury selection and if you are excused as a juror, then you
11 just go ahead and have a seat in the audience. I can
12 promise you that these lawyers mean you no embarrassment.
13 They don't. It's just a thousand different things going
14 through jury selection, their thought processes in jury
15 selection.

16 But you will -- at first you will hear one of two
17 things; either present the juror or excuse the juror.

18 If you hear excuse the juror, be seated.

19 If you hear present the juror, present the juror,
20 then you will then wait and hear from Mr. Thomas, and then
21 you will hear either seat the juror, which means you will go
22 take a seat over here and start with the front row, or you
23 will hear excuse the juror, at which point you will excuse
24 the juror. Again, you will take a seat back into the
25 audience. And, again, I assure you the lawyers mean no

1 embarrassment.

2 Now, with regards to strikes, ten for the defense
3 and five for the State.

4 I want us to have two alternates, please. Each
5 alternate, one strike for the State and two for the defense
6 and I'll turn it over to you now.

7 MR. SORENSON: May we approach?

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 THE CLERK: Juror number 163, Kelvin M. Jumper.

11 What says the State?

12 MR. SORENSON: Please present Mr. Jumper.

13 THE CLERK: What says the defense?

14 MR. THOMAS: Please excuse the juror.

15 THE CLERK: You are excused.

16 Juror Number 17, Scottie B. Coleman.

17 What says the State?

18 MR. SORENSON: Please present Mr. Coleman.

19 THE CLERK: What says the defense?

20 MR. THOMAS: Please seat the juror.

21 THE CLERK: Be seated in the jury box.

22 Juror Number 153, Heather Hoffman.

23 What says the State?

24 MR. SORENSON: Please present Ms. Hoffman.

25 THE CLERK: What says the defense?

1 MR. THOMAS: Please seat the juror.
2 THE CLERK: Be seated in the jury box.
3 Juror Number 70, Phillip J. McPeek.
4 What says the State?
5 MR. SORENSON: Please present Mr. McPeek.
6 THE CLERK: What says the defense?
7 MR. THOMAS: Please excuse the juror.
8 THE CLERK: You are excused.
9 Juror Number 3, Carol F. Barton.
10 What says the State?
11 MR. SORENSON: Please present Ms. Barton.
12 THE CLERK: What says the defense?
13 MR. THOMAS: Please seat the juror.
14 THE CLERK: Be seated.
15 Juror Number 73, Richard L. Morgan.
16 What says the State?
17 MR. SORENSON: Please present Mr. Morgan.
18 THE CLERK: What says the defense?
19 MR. THOMAS: Please excuse the juror.
20 THE CLERK: You are excused.
21 Juror Number 68, Barbara G. McMahan.
22 What says the State?
23 MR. SORENSON: Please present the juror.
24 THE CLERK: What says the defense?
25 MR. THOMAS: Please excuse the juror.

1 THE CLERK: You are excused.
2 Juror Number 118, Robert Steve Wilson.
3 What says the State?
4 MR. SORENSON: Please present Mr. Wilson.
5 THE CLERK: What says the defense?
6 MR. THOMAS: Please seat the juror.
7 THE CLERK: Be seated in the jury box.
8 Juror Number 41, Rowland J. Harley.
9 What says the State?
10 MR. SORENSON: Please present Mr. Harley.
11 THE CLERK: What says the defense?
12 MR. SORENSON: Please seat the juror.
13 THE CLERK: Be seated in the jury box.
14 Juror Number 32, Tammy W. Gerringer.
15 What says the State?
16 MR. SORENSON: Please present Ms. Gerringer.
17 THE CLERK: What says the defense?
18 MR. THOMAS: Please excuse the juror.
19 THE CLERK: You are excused.
20 Juror Number 194, Matthew U. Weeks.
21 What says the State?
22 MR. SORENSON: Please present Mr. Weeks.
23 THE CLERK: What says the defense?
24 MR. THOMAS: Please excuse the juror.
25 THE CLERK: You are excused.

1 Juror Number 176, Brandy Myers.
2 What says the State?
3 MR. SORENSON: Please present Ms. Myers.
4 THE CLERK: What says the defense?
5 MR. THOMAS: Please seat the juror.
6 THE CLERK: Be seated in the jury box.
7 Juror Number 42, Kimberly D. Hartley.
8 What says the State?
9 MR. SORENSON: Please present Ms. Hartley.
10 THE CLERK: What says the defense?
11 MR. SORENSON: Please excuse the juror.
12 THE CLERK: You are excused.
13 Juror Number 30, Stephanie L. Gates.
14 What says the State?
15 MR. SORENSON: Please present Ms. Gates.
16 THE CLERK: What says the defense?
17 MR. THOMAS: Please seat the juror.
18 THE CLERK: Be seated in the jury box.
19 Juror Number 39, Joseph A. Hair.
20 What says the State?
21 MR. SORENSON: Please present Mr. Hair.
22 THE CLERK: What says the defense?
23 MR. THOMAS: Please excuse the juror.
24 THE CLERK: You are excused.
25 Juror Number 85, Ineatha Riley.

1 What says the State?

2 MR. SORENSON: Please present Ms. Riley.

3 THE CLERK: What says the defense?

4 MR. THOMAS: Please seat the juror.

5 THE CLERK: Be seated in the jury box.

6 Juror Number 58, Michelle Lavender.

7 What says the State?

8 MR. SORENSON: Please present Ms. Lavender.

9 THE CLERK: What says the defense?

10 MR. THOMAS: Please excuse the juror.

11 THE CLERK: You are excused.

12 Juror Number 160, Ashley Jeffcoat.

13 What says the State?

14 MR. SORENSON: Please excuse Ms. Jeffcoat.

15 THE CLERK: You are excused.

16 Juror Number 15, Rosa B. Carson.

17 What says the State?

18 MR. SORENSON: Please present Ms. Carson.

19 THE CLERK: What says the defense?

20 MR. THOMAS: Please seat the juror.

21 THE CLERK: Be seated in the jury box.

22 Juror Number 190, Amanda K. Taylor.

23 What says the State?

24 MR. SORENSON: Please present Ms. Taylor.

25 THE CLERK: What says the defense?

1 MR. THOMAS: Please seat the juror.
2 THE CLERK: Be seated in the jury box.
3 Juror Number 59, Michelle S. Lawson.
4 What says the State?
5 MR. SORENSON: Please present Ms. Lawson.
6 THE CLERK: What says the defense?
7 MR. THOMAS: Please seat the juror.
8 THE CLERK: Be seated in the jury box.
9 Juror Number 29, Sylvia Gardner.
10 What says the State?
11 MR. SORENSON: Please excuse Ms. Gardner.
12 THE CLERK: You are excused.
13 Juror Number 141, Denise J. Fleming.
14 What says the State?
15 MR. SORENSON: Please present Ms. Fleming.
16 THE CLERK: What says the defense?
17 MR. THOMAS: Please excuse the juror.
18 THE CLERK: You are excused.
19 Juror Number 187, Megan C. Stanton.
20 What says the State?
21 MR. SORENSON: Please present Ms. Stanton.
22 THE CLERK: What says the defense?
23 MR. THOMAS: Please seat the juror.
24 THE CLERK: Be seated in the jury box.
25 This will be drawing on the alternates.

1 Alternate Number 1, Juror Number 0152, Brent
2 Hendricks.

3 What says the State?

4 MR. SORENSON: Please present Mr. Hendricks.

5 THE CLERK: What says the defense?

6 MR. THOMAS: Please excuse the juror.

7 THE CLERK: You are excused.

8 Juror Number 81, Rodney Ranck.

9 What says the State?

10 MR. SORENSON: Please present Mr. Ranck.

11 THE CLERK: What says the defense?

12 MR. THOMAS: Please excuse the juror.

13 THE CLERK: You are excused.

14 Juror Number 69, Helen McPeek.

15 What says the State?

16 MR. SORENSON: Please present Ms. McPeek.

17 THE CLERK: What says the Defense?

18 MR. THOMAS: Please seat the juror.

19 THE CLERK: Please be seated in the jury box.

20 Juror Number 117, Amy Wieber.

21 What says the State?

22 MR. SORENSON: Please present Ms. Wieber.

23 THE CLERK: What says the defense?

24 MR. THOMAS: Be seated in the jury box.

25 THE CLERK: Juror Number 54, Charles Jones.

1 What says the State?

2 MR. SORENSON: Please present Mr. Jones.

3 THE CLERK: What says the defense?

4 MR. THOMAS: Please seat the juror.

5 THE CLERK: Be seated in the jury box.

6 THE COURT: Are there any matters regarding the
7 qualification or selection of the jury, from the State?

8 MR. SORENSON: No, Your Honor.

9 THE COURT: From the defense?

10 MR. THOMAS: No, Your Honor.

11 THE COURT: Very well.

12 Ladies and gentlemen, those of who are in our
13 audience are now known as our remaining jurors.

14 When you entered this morning there probably was a
15 card given to you. That would be -- like this there. Now,
16 if you don't have one of these cards, if you will just
17 approach, we will be happy to get you another one. If you
18 think you will lose it, we will get you another one in
19 advance, because I need you to have that card so that you
20 can call the juror information line after six o'clock this
21 evening. After six o'clock this evening.

22 Ladies and gentlemen, you will either be asked to
23 call back at another time, or you will be asked to return to
24 the courthouse at a particular time for the selection of our
25 next jury. I don't know what the machine will say. I don't

1 know what the recording will say, rather, because I don't
2 know what our schedule will be for tomorrow at this point.
3 Irrespective of what the message is, please follow it,
4 though, and please wait until after six o'clock to make the
5 phone call, because otherwise it won't make a bit or sense
6 to you. Having said that, you can call at 6:01 or 7:25. If
7 y'all walk into court tomorrow, feel free to give it a call,
8 but please wait until six o'clock this evening. That gives
9 us time to know what our schedule is going to be for
10 tomorrow and to place the recording on the machine for you.

11 Ladies and gentlemen, you have given us so of your
12 time, I want you to know how much I appreciate it, each and
13 every tick of the clock.

14 Those of you who are dashing off to work and your
15 employer is going to want to know where you have been and
16 what you have been up to, if you would just stop by the
17 clerk's office on the first floor, they will be excited to
18 get you something that you can take with you for work so
19 that your employer will know where you have been and what
20 you have been up to.

21 Ladies and gentlemen, thank you again and know
22 that I so look forward to seeing you later in the week. If
23 you will do for us, just leave quitely, you are free to go.
24 You are free to stay, but you are free to go as well.

25 (Whereupon, the jury venire panel left the

1 courtroom)

2 THE COURT: Now, ladies and gentlemen, I know
3 that -- I know that you are probably hungry, so in just a
4 moment I'm going to be excusing you for your lunch break,
5 but I'm going to ask our bailiffs just to show you your jury
6 room and show you how to come and go from your jury room.

7 Ladies and gentlemen, I'm going to ask you to be
8 back in your jury room at three o'clock. At three o'clock
9 we are going to start this trial. You are going to be sworn
10 in as a jury in this case. I have pre-preliminary remarks I
11 want to make to you, and then we are going to get right into
12 this trial.

13 Now, ladies and gentlemen, I do need to give you
14 some instruction and I'm going to do that briefly. I'll
15 give you more when you return.

16 Most importantly do not discuss this matter or
17 allow anyone to discuss it with you. And you are going to
18 think well, nothing started yet. Well, you have got a tiny
19 bit of information. I have introduced you to some people,
20 so you have got a little bit of information. Each and every
21 time that we leave each other I will give you the
22 instructions. Do not discuss this matter or allow anyone to
23 discuss it with you. In fact, that's so important, it's so
24 critical. Should anyone try to discuss this matter with
25 you, please get their name; if not, a description, and

1 report that to me upon your return.

2 Now, also very briefly leave your cell phones,
3 please, away from the courthouse after lunch. You cannot
4 have a cell phone or other communication device with you
5 while you are serving on the jury. If you think you are
6 going to turn your cell phone off and put it in your pocket
7 or put it in your pocketbook, you know it's going to turn
8 itself back on and it's going to ring. So if you forget and
9 you do return with your cell phone, please, if you would
10 just let our bailiffs know, they will take possession of it
11 and keep it very safe until I break for the afternoon or
12 until we conclude for the afternoon and then they will
13 return that, your cell phone, to you. Do not keep your cell
14 phone in your possession. It's best to leave it away from
15 the courthouse, either in your car or wherever.

16 Now, ladies and gentlemen, please do not read
17 anything, do not listen to anything about this matter. That
18 means the radio, the television, the Internet, the
19 newspaper. You must receive all of your information from
20 which you will make up your mind here in court while court
21 is in session. Do not do any sort of research. No Columbo.
22 No Columbo. And -- I believe that concludes everything that
23 I need to tell you.

24 Now, I will have some additional instructions for
25 you -- oh, except for this. My alternates, I have three

1 alternates and there you are. If you all will keep that
2 back row. Y'all can switch all around, try it different
3 seats, but, please, if you all will just please stay on that
4 back row then so I can keep up with you as my alternates.
5 It's not so we know where to put your whoopie cushion. It's
6 just so I can keep up with you. I do need to keep up with
7 you as our alternates, so please if you all will keep that
8 back row for me, please.

9 And Mr. Harley?

10 JUROR NUMBER 41: Yes, ma'am.

11 THE COURT: When you return, will you take that
12 seat?

13 JUROR NUMBER 41: Okay.

14 THE COURT: And keep that seat throughout the
15 trial, because I'm going to ask you to serve as our
16 presiding juror.

17 As our presiding juror you will just have three
18 very simple additional tasks of the presiding juror. For
19 example, and here they are. I will ask you at the
20 conclusion of the trial. There will no question as to when
21 that time will come, and the jury's deliberations are
22 finished, and there will no question in your time when that
23 time has come, the time to deliberate has come, you will
24 simply write the verdict of the jury on the verdict form.

25 You will also preside during those deliberations.

1 And, again, there will be no question in your mind as to
2 when that time will come, because I will tell you now is the
3 time to begin your deliberations. So there will be no
4 question in your mind. You will simply preside in the jury
5 room so everybody has a chance to talk.

6 And then finally in the event that the jury needs
7 to communicate with me, for whatever reason, you will take
8 that pen and paper, you will probably give it to one of the
9 bailiffs or who in turn will give that to me. You are the
10 jury spokesperson here in court.

11 So if you will serve in this capacity I will be
12 most appreciative. And then take that seat and keep that
13 seat throughout the trial for me. That would be great.

14 Now, with everybody else, if you get a seat and
15 you like it, keep it. If not, get here early and get
16 another seat. There isn't any other assigned seating.
17 However, when you return, there will be pads and pencil or
18 paper for you and I will go over that with you. There are a
19 couple of rules about that, but we will go over that with
20 you when you return, because I know you are starving.

21 So without further ado, do not discuss this
22 matter, allow anyone to discuss it with you. Your bailiff
23 is coming and he's going to take you and show you your jury
24 room and how to come from your jury room, and I will see you
25 all at three o'clock. Thank you so much and you will go out

1 that door.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: All right. On behalf of the State
5 have there been any issues that have arisen that you need to
6 address?

7 MR. SORENSON: No, Your Honor.

8 THE COURT: Very well.

9 On behalf of the defense?

10 MR. THOMAS: No, Your Honor.

11 THE COURT: I will see you all shortly before
12 three o'clock so we are ready to go right at three. Thank
13 you so much. Have a good lunch.

14 (Whereupon, proceedings were recessed)

15 (Whereupon, proceedings were reconvened)

16 (Poster board marked as State's Exhibit No. 1 for
17 identification)

18 (Photograph marked as State's Exhibit No. 2 for
19 identification).

20 (Photograph marked as State's Exhibit No. 3 for
21 identification)

22 (Photograph marked as State's Exhibit No. 4 for
23 identification)

24 (Photograph marked as State's Exhibit No. 5 for
25 identification)

1 THE COURT: All right, anything from the State
2 before we bring the jury out?

3 MR. SORENSON: No, Your Honor.

4 THE COURT: From the defense?

5 MR. THOMAS: No, Your Honor.

6 THE COURT: All right. Let's have the jury,
7 please.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: All right. Ladies and gentlemen, at
11 this time I'm going to call on Mr. Hasty to please swear you
12 in as the jury in this case. If you would please stand and
13 raise your right hand.

14 THE CLERK: Ladies and gentlemen, you may affirm
15 this oath in the end by saying I do.

16 You shall well and truly try the case
17 2013-GS-09-0051, 2013-GS-09-0052, and 2013-GS-09-0053, the
18 State versus David Jamar Benjamin, indicted for murder, two
19 counts of attempted murder, and render a true verdict
20 according to the law and the evidence?

21 THE JURY PANEL: (Collectively said I do)

22 THE CLERK: Thank you.

23 THE COURT: Thank you much, Mr. Hasty.

24 Ladies and gentlemen, as you can see at your place
25 there is a note pad for you and I want to talk about that a

1 little bit, but the first thing I want you to do is either
2 put your name or your juror number, whichever is your
3 preference, on your first page. Do that for me now.

4 And then if you choose to make notes, I want you
5 just to take that note pad and turn that sheet over so that
6 that becomes your cover sheet, if you will.

7 Now, ladies and gentlemen, I want you to keep that
8 note pad as your note pad and I want to talk about the use
9 of that note pad, and the reason for it is this. It is, for
10 those of you who are note keepers, some people like to take
11 notes. It makes it a little bit easier for you to listen
12 and pay attention, if you are able to take a note or two,
13 and that's why it's there.

14 Do not feel any pressure at all to take notes. It
15 is much more important that you listen to the witnesses and
16 listen to the attorneys, and, of course, that you listen to
17 the court. Do not allow the taking of a note to let you
18 miss something as it's coming from the witness stand.

19 And, again, having the note pads is just for those
20 folks, and I'm one of them, who -- it's just easier to
21 listen and if I can take a note or two, and oftentimes I
22 will go back and look at my notes and they make absolutely
23 no sense, but for some reason it's helpful for me to listen
24 and be able to take a note or two.

25 Now, those notes are to be shared with no one.

1 Those are for your eyes only and they are for the purpose of
2 allowing you to refresh your recollection prior to your
3 deliberations.

4 With that in mind, each and every time that you
5 leave the courtroom, just leave your notes pads and your
6 pencils or pens in the courtroom. Should you run out of
7 paper, just let us know and we'll be more than happy to get
8 you another note pad.

9 At the evening, just so you know, each time that
10 we leave each other, your note pads are guarded, and
11 overnight we take them and we secure them overnight so that
12 they remain private to you.

13 Also at the conclusion of the trial when you have
14 been dismissed by the court, again, there would be no
15 question in your mind when that time has come, you are free
16 to take your notes with you. And if you take your notes
17 with you, that's perfectly fine. If you choose not to take
18 your notes with you, that's equally very fine.

19 I want you to know, though, if you do not take
20 your notes with you, what happens is the note pads are
21 brought to me and I, myself, by my hands, I take your notes
22 and I destroy them. So I wanted you to know that they are
23 not left to wherever. They are -- if you leave and you
24 don't take your notes with you, they come to me and I
25 destroy them, so your privacy in your notes would be

1 maintained.

2 So notes are for note taking. There should be no
3 absolutely no pressure to take note. It's much more
4 important that you listen and that you observe witnesses,
5 listen to the attorneys, listen to the court than taking a
6 note. Again, it's just for those of who happen to be the
7 note taking type of folk.

8 Now, ladies and gentlemen, we are about to begin
9 this trial. And I do want to tell you, to begin with, that
10 this trial probably will be different from what you might
11 expect. It clearly will be different from what you may have
12 seen in movies or read in books or seen on television. And
13 most people actually do not have a chance to attend actual
14 court sessions, as you are now doing.

15 And, ladies and gentlemen, I want you to know that
16 you may think that trials are always full of high drama,
17 intense action and riveting circumstances, based on what
18 your experience may be, particularly if that experience
19 comes from watching movies or reading books or watching
20 television, but ladies and gentlemen, I want you to know
21 that while all these things may be true at times, a trial
22 obviously is not for entertainment. It is a fundamental
23 part, it may be the fundamental part of our democracy. It
24 is a search for the truth in an effort to make sure that
25 justice is done for the parties before the court. Searching

1 for the truth and making sure that justice is done is often
2 slow, deliberate, and repetitive, the opposite of what you
3 may have seen on television or in movies or read in books.

4 Ladies and gentlemen, this courtroom is a place of
5 honor dedicated to the protection and the preservation of
6 citizens rights, to what many have called, and I submit to
7 you, the greatest system of justice that people have ever
8 created.

9 Ladies and gentlemen, the attorneys appearing
10 before you are advocates for the parties they represent,
11 but, first and foremost, they are officers of the court and
12 they are sworn to uphold the integrity and the fairness of
13 our judicial system and to help you in the search for the
14 truth. You should expect them to be professional, competent
15 and ethical in the representation of their client's
16 interests.

17 And remember that you have taken an oath to try
18 this case and reach a fair and just verdict and you are also
19 expected to be professional, reasonable and ethical.

20 I want to thank you for accepting this most
21 important responsibility for jury service and for your
22 contribution to, if you will, our way of life to our system
23 of justice.

24 Now, ladies and gentlemen, I want to give you an
25 outline of what to expect. And the reason that I want to

1 give you a little bit of a road map is just so that you may
2 be able to better follow what is occurring.

3 Ladies and gentlemen, the first thing that will
4 occur is that the attorney -- one of the attorneys for the
5 State will make what is called an opening statement, which
6 will be followed by an opening statement also by Mr. Thomas,
7 of course, who is the attorney for the defendant in this
8 matter.

9 Ladies and gentlemen, these opening statements are
10 not arguments. Those arguments will come at the conclusion
11 of the case before you retire to consider your verdict.

12 Ladies and gentlemen, the purpose of the opening
13 statement is to allow each side to tell you, to outline for
14 you what they believe the issues are in this case.

15 Now, ladies and gentlemen, following the opening
16 statements each side will have an opportunity to present
17 evidence to you, with the State, once again, going first.

18 Evidence may take many forms. It will be more
19 testimony. It may be documents, photographs, and the like.
20 It is so important that you pay close attention to all the
21 evidence which is presented in this case, because, you see,
22 ladies and gentlemen, only you, only the jury, can be the
23 finders of fact in this case.

24 Ladies and gentlemen, no one else will be
25 permitted to weigh the evidence and to render a verdict

1 based upon the evidence but you.

2 After all the evidence has been presented, the
3 attorneys will make their closing arguments to you. Unlike
4 their opening statements, their final remarks will be true
5 arguments; that is, each side will emphasize certain
6 portions of the evidence and try to persuade you to agree
7 with their version of the facts.

8 Keep in mind that the opening statements, as well
9 as the closing arguments of the attorneys, while they are
10 important, and I urge you to give them your undivided
11 attention, but do keep in mind that what the attorneys say
12 is not evidence. Evidence will come from the sworn
13 witnesses in this case and from any exhibits which are
14 admitted into evidence.

15 Now, after the arguments are finished I will
16 explain to you the law that applies to this case.

17 You will then retire to the jury room and you will
18 find the facts as you find them to be, based upon the
19 evidence in this case. You will then take the law as I give
20 it to you. You will apply it to those facts and that is how
21 you will render your verdict, which will then be a true and
22 just verdict under the oath that you just took.

23 Now, ladies and gentlemen, during the course of
24 this trial the State has the burden of proving each and
25 every element of each and every one of these three

1 indictments beyond a reasonable doubt. Beyond a reasonable
2 doubt.

3 Now, ladies and gentlemen, keep in mind that the
4 defendant doesn't have to prove anything in this matter.
5 The burden is and remains on the State to prove guilt beyond
6 a reasonable doubt.

7 Now, ladies and gentlemen, I want to talk to you
8 about a few additional matters. I want you to understand
9 that as you are the finders of the facts, as I have just
10 discussed with you, on the other hand and with equal
11 emphasis the same law that makes you the finders of the
12 facts or the judges of the facts makes me the judge of the
13 law in this case. And what this means is is that you must
14 accept and follow the law as I give it you to you, even
15 though you might disagree with it. The law, as given to you
16 by the court, is the only law that you may consider and you
17 must accept and follow it, even though you may disagree with
18 it. It might be that that will be a topic of conversation
19 at some point in the future with your legislator, but for
20 our system to work correctly you must accept the law exactly
21 as I give it to you.

22 Now, ladies and gentlemen, because you are the
23 only finders of the facts, the sole finders of the facts, I
24 want you to keep in mind that should I say or do anything
25 over the course of this trial, if I make a gesture, or

1 whatever, please understand that I have no opinion regarding
2 the facts. I'm not making a gesture with regard to the
3 facts. I have no opinion. The law doesn't allow me to have
4 an opinion. I have no opinion regarding these facts. I
5 know that that is a matter solely for you to determine. So
6 if I happen to make a gesture or make an expression that
7 looks like it may be associated somehow with the facts,
8 please know that maybe it was too much lunch, or something,
9 because I can assure you that that gesture, or whatever
10 might occur, is not associated with these facts. Please
11 disregard that. I ask you in advance, because I have no
12 opinion regarding them and will make no gestures, certainly
13 nothing intentional with regards to these facts, because I
14 know that that is a matter solely for you to determine.

15 Now, ladies and gentlemen, as you make the
16 findings of fact it is important that you keep an open mind
17 and that you not decide any issue in this case until all the
18 evidence has been presented, the parties have made their
19 closing arguments and I have instructed you on the law
20 applicable to this case.

21 It is your solemn responsibility, ladies and
22 gentlemen, to determine whether this defendant, Mr.
23 Benjamin, is guilty or not guilty, and your verdict must be
24 based solely on the evidence as it is presented to you in
25 this trial and on the law as I instruct you during the

1 course of and at the close of the trial.

2 Now, ladies and gentlemen, one of the things that
3 you necessarily will determine, must determine in making
4 your findings of fact, is you must determine the credibility
5 of the witnesses who will testify in this case. Credibility
6 simply means believability. Believability.

7 And in deciding whether to believe a witness, you
8 have the right to consider the interests of any witness, the
9 bias of any witness, the prejudice of any witness, the
10 opportunity for the witness to have seen the matters and
11 things about which the witness may testify, and the way the
12 witness acts on the witness stand.

13 You have a right to consider anything that is in
14 the record that will help you evaluate the testimony of the
15 witnesses, and that means that it is your duty to pay close
16 attention to these witnesses, observe them, listen to the
17 witnesses, and pay close attention to the attorneys, and, of
18 course, to the court. Please do not let your thoughts
19 wander, but give the strictest attention to the testimony in
20 this case, so at the end of all the testimony and after the
21 arguments of counsel and the charge on the law you will then
22 be in a position to determine what the true facts are and to
23 apply the law to those facts and thus render a true and just
24 verdict.

25 Now, ladies and gentlemen, I want to mention to

1 you that evidence that is presented to you is presented
2 pursuant to what are called the Rules of Evidence. The
3 Rules of Evidence. And these rules have a definite purpose.
4 Their purpose is to ensure that the information that you
5 receive is the most trustworthy and reliable information
6 that is available. And so, ladies and gentlemen, there is a
7 procedure that is given to attorneys, along with the duty,
8 to call a possible violation of these rules to my attention
9 and you may see these lawyers from time to time say
10 something like "objection," or "Your Honor, may we
11 approach," something like that. I want to talk to you a
12 moment about what's going on when that happens.

13 Ladies and gentlemen, these lawyers have a duty.
14 If they believe there is a possible violation of the rules
15 to say something like objection. And they may say a word or
16 two and I will be able to rule on the objection from their
17 saying a word or two. It may be that I will ask the lawyers
18 to approach. It may be, and this will be kept to an
19 absolute minimum, but it may be that I will need to ask you
20 to step to your jury room. If I ask the lawyers to approach
21 or I ask you to step to your jury room, I want you to know
22 what's going on. What is occurring is that I'm needing to
23 have a very short exchange with the attorneys so that I
24 might make a ruling on the objection. I would not want
25 anything that I might say in ruling on a matter of evidence

1 to be considered by you as a comment on the facts and that
2 is the reason that I would ask the attorneys to approach or
3 ask you to step to your jury room. It's so that nothing
4 that I might say in ruling on a matter of evidence would be
5 considered by you as some comment on the facts and that's
6 the reason for that. It just gives me that space to do the
7 work which I must do.

8 Now, ladies and gentlemen, because that is the
9 only means by which an attorney can make an objection
10 regarding the Rules of Evidence, you must not hold his
11 objection against him or his client, nor should you conclude
12 from my ruling on the objection that I favor one side or the
13 other, because I can assure you I do not. This is simply
14 the procedure that is afforded attorneys the opportunity to
15 raise a possible objection to matters offered for
16 introduction into evidence.

17 Now, ladies and gentlemen, it is a matter of law
18 whether or not testimony is admissible at all or not, or
19 whether or not an exhibit is admissible at all or not. But
20 once evidence is admitted, whether you believe it, the
21 weight that you give to it are matters that's solely for you
22 to determine.

23 Now, ladies and gentlemen, just a couple of other
24 matters very, very briefly. Be mindful that you must not
25 discuss this matter or allow anyone to discuss it with you,

1 and that means your fellow juror, your family, your friends,
2 or anyone associated with this case.

3 You must not discuss this matter until you are
4 instructed to begin your deliberations by the court, and at
5 that time you are to discuss and to deliberate this matter
6 only in the jury room with your fellow jurors while all
7 twelve of you are present. We will go over that prior to
8 your deliberations beginning.

9 Ladies and gentlemen, as I said to you earlier,
10 should someone over the course of this trial try to talk to
11 you about this matter, please get their name; if not, a
12 description, and report that to me immediately upon your
13 return to the courtroom or to the courthouse and I will deal
14 with that person, because no one, no one, should be
15 attempting to talk to you about this matter.

16 And to that end, you know, lawyers are gregarious
17 folks. So if you happen to see anyone associated with this
18 case and they don't even say hello, please don't think they
19 are being rude. They just know that they are not to
20 interact with you at all. So if you happen to see one of
21 the lawyers coming and going or someone associated with the
22 matter coming and going and they seem to hide from you,
23 please know that they are not being rude. They are simply
24 following my instructions.

25 Now, ladies and gentlemen, in order to observe

1 everyone's rights, I would give the parties now an
2 opportunity to object to anything that I have said to you in
3 these opening remarks.

4 Any exceptions to anything that I have said to the
5 jury, by the State?

6 MR. SORENSON: No, Your Honor.

7 THE COURT: And by defense?

8 MR. THOMAS: No Your Honor.

9 THE COURT: Ladies and gentlemen, at this time I
10 ask that you please draw close as we listen to the opening
11 statements on behalf of the State.

12 Mr. Lupton.

13 MR. LUPTON: Thank you, Your Honor. May it please
14 the court?

15 THE COURT: Yes, sir.

16 MR. LUPTON: Ladies and gentlemen, during the
17 course of this trial Deputy Solicitor Don Sorenson and I are
18 going to prove beyond any reasonable doubt that this
19 defendant, David Jamar Benjamin, is guilty. He's guilty of
20 murder. He's guilty of two counts of attempted murder.

21 Now, we have all heard these terms, but what is
22 the law say murder is? Simply put, the law defines murder
23 as the killing of another person with malice aforethought.

24 Malice is just a legal term that means wrongful
25 intent to injure another. It indicates a wicked or depraved

1 spirit intent on wrongdoing.

2 Aforethought is simply the amount of time that
3 malice has to exists. It is not any significant length of
4 time. It's not an appreciable length of time. It simply
5 has to exists for some length of time. The law says malice
6 can be formed at the moment the fatal blow is struck.

7 Attempted murder is simply the same thing, only
8 the victim survives.

9 And what you are going to see in this trial is the
10 evidence is going to show that that's what happened in this
11 case. The evidence that's going to come from the witness
12 stand, come from witnesses; law enforcement officers who
13 investigated, witnesses who were at the scene, even victims
14 that will tell you what happened.

15 What that evidence is going to show happened is
16 that here in Calhoun County, on the night of September 17th,
17 over to the early morning hours of September 18th, that the
18 defendant, Mr. Benjamin, got picked up by a friend of his,
19 an old childhood friend named Joshua Haggood, a
20 co-defendant. Mr. Haggood picked up defendant Benjamin,
21 picked up another co-defendant Kevin Frazier, and they went
22 from -- came over from Orangeburg where they are from. They
23 came over here to Calhoun County. They went to a club out
24 in Elloree.

25 When they got to this club, the evidence is going

1 to show you what happened when they got to the club. That
2 as they are going in, the victim of the murder, Dominique
3 Lawton, was out on the floor, out on the dance floor,
4 hugging somebody, just having a good time and accidentally
5 bumps the defendant Mr. Benjamin. And that the reaction to
6 that bump was a confrontation where he -- they get into a
7 shoving contest and argument there on the dance floor. And
8 you are going to hear the defendant's reaction to that
9 argument.

10 After they have other people separate them, after
11 they are pulled apart, what does he do? You are going to
12 hear that what he does is gather up his co-defendants and
13 they go out and arm themselves. They go out to their car
14 and get guns. They come back in, and that's important,
15 because of something, a legal theory called mutual combat,
16 where there is bad blood from this bump, or other bad blood,
17 and a person arms himself in anticipation of a confrontation
18 that he has the ability to avoid, it's called mutual combat.

19 And it's important at this point to note what this
2 case is not about as much as what it is. This case is not
2 about a person's right to protect himself, protect his home,
2 protect his business, or his farm, his family, or himself
2: when he's doing nothing wrong. The law of self-defense in
24 this state is very strong. It gives a person the right to
25 protect their home, protect their property, their business,

1 their farm, or themselves and their family when they are
2 doing nothing wrong. But the law of self-defense requires
3 first, and foremost, that the person be without fault in
4 bringing on the situation. And where the evidence shows
5 that the person is at fault, where the person seeks to arm
6 themselves to gain the upper hand in a confrontation that
7 they could avoid, but chose not to, that is not
8 self-defense.

9 So you are going to see the evidence about the
10 defendant going out to arm himself, to get the upper hand
11 rather than avoid this confrontation. And then he and his
12 two co-defendants come back into the club.

13 You are going to hear testimony about what happens
14 after that. Rather than in an attempt to diffuse the
15 situation and let this accidental bump just slide, the
16 defendant spends the rest of the time glaring at the victim
17 of this murder, glaring at him, keeping this argument, this
18 confrontation stoked up rather than letting it go away.

19 At this point there has been no gun pulled out by
20 anybody. There is no reason for the defendant to expect
21 that the victim has got a gun, but he's got his gun and he
22 knows this. He continues stoking up this problem.

23 You will hear testimony that this was such a
24 significant issue that the people who were running this
25 club, the people in charge, noticed this and believed it was

1 enough of a problem that they were concerned enough that
2 they started talking and said "you know what? We need to --
3 we need to shut this down early." They need to -- said "we
4 need to close this down early to avoid this confrontation,
5 to try and diffuse this before it gets out of hand." You
6 are going to hear how that happens.

7 So as they shut the party down, the victim goes
8 outside. The victim is clearly intoxicated. The victim
9 pulls out a gun and cocks it and he immediately gets grabbed
10 by his friends and they pull him off to try and calm him
11 down. And you may hear testimony that the gun may have been
12 fired off in the distance somewhere, but it's important for
13 you to look at this testimony and see that none of this is
14 directed at David Benjamin.

15 This victim is pulled off by his friends. Again,
16 what he did was wrong and if he were alive today and he were
17 here, he would have to answer, answer for his actions in
18 criminal court as well, but he paid the ultimate price for
19 his mistake, for his wrongdoing. So we are here for the one
20 that's left.

21 You are going to hear that in reaction to the
22 victim doing something he shouldn't have done, but that
23 wasn't a direct threat to the defendant, what did the
24 defendant do? Well, the people with the defendant, they
25 start pulling out guns and flashing guns themselves.

1 You are going to hear testimony about the
2 defendant, Mr. Benjamin, talking trash, basically, arguing
3 with those around him saying things.

4 You are going to see one of the people with him,
5 Kevin Frazier, pulls out his gun. The other one flashes it.
6 Kevin Frazier pulls out his gun. This is significant
7 because of a legal concept called accomplice liability.

8 Now, accomplice liability, or as it is commonly
9 called in South Carolina, the phrase is the hand of one is
10 the hand of all, or the act of one is the act of all. Well,
11 what people are doing together and they are doing something
12 together, when they are out up to no good together, then the
13 act of one of them is the act of all of them and each is
14 responsible for what the other does.

15 So in this case you have got a situation where
16 rather than trying to diffuse the situation, you are going
17 to hear testimony about it being aggravated, escalated by
18 one of the defendants pulling out his gun and waving it
19 around.

20 Now, you are going to hear testimony about his
21 words. Kevin Frazier, I think pretty much everybody is in
22 agreement, that his words were a little bit different than
23 his actions. What he was saying was stuff like "we just
24 want to get out of the country and go home. We just want to
25 go home. We just want to leave," things of that nature, but

1 look at his actions. He was escalating the situation by
2 pulling out a gun at a point where nobody else has got a gun
3 out. The person who pulled the gun earlier, he's been
4 pulled off out of the way. Nobody is stopping them from
5 leaving, and yet he keeps waving his gun around. Ultimately
6 he shoots that gun. Nothing going on around him. No one
7 threatening them. He's just at the car and he starts
8 shooting into the air, and this is the trigger of the fatal
9 blood bath. It is this that triggers everything.

10 At this point nobody else has a gun out. David
11 Benjamin starts shooting into the crowd over towards where
12 the victim Dominique Lawton is. One person is immediately
13 hit in the leg. The victim of one of the attempted murders,
14 Shawn DeFreitas. He is immediately hit in the leg while
15 he's running for cover. And Benjamin walks his rounds into
16 the head of Dominique Lawton killing him.

17 And like I said, that is what this case is about.
18 This mutual combat, where he has shown a willingness, a
19 preparedness, a readiness to fight rather than let this
20 situation go. This is not self-defense.

21 Self-defense is a very important right in this
22 state. When I personally -- well, my personal beliefs are
23 not important, but one that the law strongly protects, but
24 the law does not condone just firing into a crowd. This is
25 about shooting into a crowd, not about a person's right to

1 self-defense.

2 Once you look at that, you will also see what
3 happens after this, and I want you to look at the testimony
4 about what follows the shooting. As the defendant flees the
5 scene, one of them goes to another club. David Benjamin
6 gets rid of the evidence, gets rid of the gun that he was
7 using.

8 Now, one calls -- none of the three of them called
9 911. If this was a legitimate case of self-defense, would
10 you expect a person who has been attacked to call 911 and
11 report it?

12 Look at the evidence that's here. Look at the
13 evidence that's not here. You will see from the actions of
14 these defendants that this case is about mutual combat. I
15 want you to look at that evidence.

16 I want you to consider the documents that come in
17 and the testimony and at the end of this trial I want you to
18 go back into the jury room and I want you to take that
19 evidence and render a just verdict. Thank you.

20 THE COURT: Thank you, Mr. Lupton.

21 Mr. Thomas.

22 MR. THOMAS: Y'all, I'm Nick Thomas and I'm here
23 with David Benjamin.

24 Y'all think back, I want y'all to paint a picture
25 here and that picture is of September 17th, 2011. Saturday

1 night. It was a big football night in South Carolina.
2 Clemson had just beat Auburn, a big win for Clemson. South
3 Carolina had just beat Navy. Big running game. Marcus
4 Lattimore, he had good knees then, everything seemed fine in
5 the world.

6 David Benjamin had a long week at work and after
7 that week of work one of his old friends came to pick him up
8 to go to a birthday party. They went -- he went from his
9 home in Calhoun County into Orangeburg to pick up another
10 friend and then down to a remote location near Elloree where
11 this birthday party for a friend of theirs was.

12 At this party, at this club out in the woods,
13 there was free liquor. There was free beer. A bunch of
14 DJ's and a big crowd in a small space.

15 Like any social situation that involves alcohol,
16 there is emotions running all over the place. People are
17 happy. People are sad. People angry. People are jealous.
18 People from one area of the county might not be happy with
19 people from another area of the county. You know, I think
20 that in this day and age folks would be beyond that way of
21 thinking, but that's something that's almost primordial.
22 People get territorial.

23 As this night develops -- you know, I believe in
24 opening the solicitor mentioned that management said it was,
25 you know, time to end the party. Well, it was pushing four

1 o'clock in the morning. It was pushing four o'clock in the
2 morning, this party starts breaking up.

3 And when David Benjamin and his buddies walked out
4 of that club, there was a little man, a little man, with a
5 big gun and then chaos erupted, and it was chaos. There are
6 shots being fired, boom, boom, boom, all over the place.
7 People are trying to get out of there. David and his
8 friends were trying to get out of there. They weren't
9 trying to stir the flames of hatred, the flames of fire.
10 They were trying to get out. That's what they were trying
11 to do. They are trying to leave that scene.

12 There is going to be a lot of testimony from
13 investigators, from experts, from witnesses that were there,
14 but one of the most important things to remember when you
15 are judging these witnesses and you are taking in their
16 testimony, who has a reason to lie and who has got the
17 courage to tell the truth? Those are two different things.
18 They're two different things and we are going to hear about
19 them.

20 Now, one of the best things that y'all bring to
21 the table as jurors is life experience. You know, I usually
22 just call it my gut. Life experience is important. Y'all
23 come from different walks of life, every one of you. You
24 know, different upbringings, different ways of going about,
25 but every one of you has personal life experiences. You can

1 tell when things are funny, things aren't right, something
2 feels good, something feels bad, something smells fishy.
3 Y'all know that. Everybody knows that feeling. Well, trust
4 in your gut, and trust in your gut when it comes to
5 reasonable doubt.

6 The way that I like to explain reasonable doubt is
7 like this. Y'all seen the scales of justice before. In a
8 civil action they use what's called preponderance of the
9 evidence where just a little bit more this way or a little
10 bit more this way is what you need to secure a verdict.

11 Well, with reasonable doubt it doesn't work that
12 way. Reasonable doubt, it starts here with David Benjamin
13 here and the State up here, and the State has got to keep
14 piling that evidence and keep piling it and keep piling it
15 and keep piling it. Not that they have a little bit more,
16 but until it's like this. And you are going to hear
17 testimony where they pile it and they pile that evidence and
18 then you will hear some that shifts it back. It shifts it
19 back and shifts it down and shifts it back. It's going to
20 be interesting. I don't think that you are going to be
21 bored.

22 Really I think the last thing that I want to talk
23 about is this. It's kind of ironic that this little club
24 way out here in the country, on a very dark night, it's
25 formal name is the Pine Terrace Club, but everybody calls it

1 the Piggy Park. Something stinks. Something stinks. And
2 you can put lipstick on a pig all you want, but that pig is
3 not David Benjamin. Thank y'all.

4 THE COURT: Very well.

5 I just had a communication from my jury that we
6 need to take a comfort break, is that correct?

7 JURY FOREMAN: Yes.

8 THE COURT: Very well.

9 Ladies and gentlemen, do not discuss this matter
10 or allow anyone to discuss it with you.

11 Please step to your jury room and take your
12 comfort break. And when y'all have had a chance to take
13 your comfort break, please let us know and we will return
14 and we will continue.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: I have got a note to that effect, so
18 I'm going to make that a Court's Exhibit.

19 And so we will -- you know, we will be at ease.
20 Y'all feel free to take a comfort break, if you need one as
21 well.

22 (Jury Note marked as Court Exhibit No. 1 for
23 identification)

24 (Whereupon, proceedings were recessed)

25 (Whereupon, proceedings were reconvened)

1 THE COURT: Are you ready?

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: All right, call your first witness,
5 please.

6 MR. LUPTON: Your Honor, the State would call
7 Deputy Terry Snead.

8 DEPUTY TERRY SNEAD, having been first duly sworn,
9 testified as follows:

10 THE CLERK: State your full name for the record,
11 please.

12 THE WITNESS: Terry Don Snead.

13 THE CLERK: Okay. Have a seat.

14 Pull that mike as close as you can.

15 DIRECT EXAMINATION BY MR. LUPTON:

16 Q. Would you tell the jury, please, where it is that you
17 work?

18 A. I work for the Calhoun County Sheriff's Office.

19 Q. And are you a sworn deputy, a sworn law enforcement
20 officer with the Calhoun County Sheriff's Department?

21 A. Yes, sir.

22 Q. Tell the jury a little bit about the training that you
23 went through to become a sworn deputy and kind of your
24 experience, how long you have been a deputy.

25 A. Yes, sir. My career actually started September of --

1 like I say, I graduated the academy in September of 1992, so
2 I have been in law enforcement since 1992.

3 I started my career with the Lexington County Sheriff's
4 Department, where I was a basic and basic line officer there
5 at the sheriff's office.

6 Then I graduated from the basic line officer to what we
7 call -- what they call the contract officer. I spent most
8 of my time right there in the Town of Swansea patrolling
9 right there in the town of Swansea.

10 Then I graduated from that and I spent the last twelve
11 years while I was there at the sheriff's office in Lexington
12 as a traffic safety officer, meaning that I run radar,
13 traffic enforcement, DUI enforcement, patrolling the roads
14 of Lexington County for that purpose.

15 Once I left the Lexington County Sheriff's Office I
16 came to the Calhoun County Sheriff's Office and I have been
17 here for approximately two years, just a little under two
18 years.

19 While here at the Calhoun County Sheriff's Office I'm
20 on the Uniform Patrol Division where I patrol the rural
21 roads of the county protecting and serving the citizens of
22 Calhoun County.

23 Q. And were you working back on the night of September
24 18th, 2011?

25 A. Yes, sir.

1 Q. And do you recall what you were doing that night?

2 A. I was doing routine patrol, property checks, checking
3 businesses. Just the normal sheriff's department
4 operations.

5 Q. And directing your attention to a little bit before
6 four a.m. that morning, did anything happen?

7 A. While I was on patrol, I was in the Sandy Run area of
8 Calhoun County during my patrols. Then we received a radio
9 transmission of an incident down in Ellore, yes, sir.

10 Q. And so you were dispatched to the shooting?

11 A. Yes, sir.

12 Q. And what did you do as a result of that?

13 A. Myself, with other officers, responded from the area
14 that I was in patrol from Sandy Run, we responded in an
15 emergency-type situation with lights and siren from that
16 area to right there on Community Club, what they call Piggy
17 Park, the establishment there.

18 Q. You got there as quick as you could?

19 A. Yes, sir.

20 Q. Now, you talked about some other people. Who else
21 responded with you initially?

22 A. There was Sergeant Phil Rice and Sergeant Earl Kinley,
23 and I believe a town officer had assisted at one point in
24 time.

25 Q. All right. Is this area in the town's jurisdiction?

1 A. No, sir.

2 Q. But he responded, because --

3 A. Right. The nature of the call that came out is more of
4 a mutual aid assistance out there.

5 And once we got there and he realized that we had
6 everything secured at the point that we could, then he
7 responded back to the town, back to his jurisdiction.

8 Q. So he hears a call about a shooting and he goes to make
9 sure that y'all don't need backup?

10 A. Yes, sir.

11 Q. All right. And once it was determined that y'all
12 didn't need backup, what did he do?

13 A. He left -- he left the scene and returned back to the
14 town.

15 Q. And was that pretty much immediately?

16 A. Probably within the first five minutes after we got
17 there we got everything contained.

18 Q. All right. And you talked about Sergeant Rice. Did he
19 make it out there to the scene at about the same time as you
20 did?

21 A. He was a little bit more delayed, because he
22 actually -- while we were en route we received a radio
23 transmission of another victim that was at the -- I believe
24 it was at the convenience station right there in the Town of
25 Cameron, so he went on -- straight on to that location to

1 check and assist with that individual there in the Town of
2 Cameron.

3 Q. One of the people who got shot had tried to make it to
4 the hospital, is that --

5 A. Correct.

6 Q. And so he went and dealt with that?

7 A. Correct.

8 Q. So you and one other deputy show up at the crime scene?

9 A. Yes, sir.

10 Q. Did y'all show up about the same time?

11 A. Yes, sir.

12 Q. All right. And when you got there, what did you find?

13 A. Initially on arrival we -- it was kind of a chaotic
14 scene, because we still got people -- people were leaving as
15 we showed up there, myself and Sergeant Kinley, trying to
16 control and find out exactly what had happened at the scene.

17 Arriving at the scene I saw one individual on the
18 ground with another group of people kind of huddled around
19 that one person on the ground, and there was a gray car, a
20 little small car right there as you come in where another
21 person was inside that vehicle.

22 Q. Another person who had been shot?

23 A. Yes, sir.

24 Q. All right. I'll show you what's been marked for
25 identification as State's Exhibit 1. And what does that

1 depict?

2 A. A fair representation of the actual building and the
3 property there where we responded to.

4 Q. All right. And obviously it's not to scale?

5 A. Correct.

6 Q. But does it generally depict what you saw, what was out
7 at the scene?

8 A. As far as the building and the vehicles, yes, sir.

9 Q. All right. Would it help you in explaining to the jury
10 what you saw?

11 A. Yes, sir.

12 Q. Okay.

13 MR. LUPTON: Your Honor, I ask that this be
14 admitted as State's Exhibit 1.

15 THE COURT: Any objection?

16 MR. THOMAS: No objection, Your Honor.

17 THE COURT: Very well, State's Exhibit 1 in
18 evidence without objection. It is a diagram.

19 (Whereupon, State's Exhibit No. 1 was admitted
20 into the record as evidence)

21 BY MR. LUPTON:

22 Q. And if you could just hold that diagram up so that the
23 jury can see it, and can you just sort of orient them as to
24 what that diagram shows?

25 A. Yes.

1 Q. Explain to them what it shows.

2 A. What this is showing, this area right here is actually
3 Community Club Road. Like if you are coming from Highway 6
4 on this side coming down Community Club Road, everything
5 would be off to your right-hand side.

6 This right here is like a little driveway into it.

7 If you are looking from the roadway toward the blue
8 building here, this is actually the representation of the
9 building of the Community Club there.

10 This vehicle here is I believe is a gray Cadillac,
11 which was pulled in there on the scene.

12 This area right here I believe is another little
13 outbuilding that's just outside the front of the club, and
14 you have got several trees there in the parking lot also.

15 Q. All right. Now, I show you what's been marked as
16 State's Exhibits 2 through 5 and ask you to look at those.

17 And do you recognize what those depict?

18 A. I do.

19 Q. And are they a fair and accurate representation -- is
20 it each a fair and accurate representation of what you saw
21 that night?

22 A. That's correct, they are fair representations of the
23 actual -- the actual scene and the areas around it.

24 Q. Okay. Now, obviously there is some crime scene tape?

25 A. Yes, sir.

1 Q. Would that have been up at the time that you got there?

2 A. No, sir, that was -- that was put up by myself and
3 Sergeant Kinley after we had secured the scene.

4 Q. Okay.

5 MR. LUPTON: Your Honor, at this point I would
6 move these in as State's Exhibits 2 through 5.

7 THE COURT: Show them, please, to Mr. Thomas.

8 MR. LUPTON: I have shown them to him.

9 MR. THOMAS: I have no objection, Your Honor.

10 THE COURT: All right, State's Exhibits 2 through
11 5 into evidence without objection. They are photos.

12 (Whereupon, State's Exhibit No. 2 was admitted
13 into the record as evidence)

14 (Whereupon, State's Exhibit No. 3 was admitted
15 into the record as evidence)

16 (Whereupon, State's Exhibit No. 4 was admitted
17 into the record as evidence)

18 (Whereupon, State's Exhibit No. 5 was admitted
19 into the record as evidence)

20 MR. LUPTON: Thank you, Your Honor.

21 THE COURT: Uh-huh.

22 BY MR. LUPTON:

23 Q. Now, going through these, I'll hand you first State's
24 Exhibit 2, and can you explain that for the jury?

25 A. Okay. This picture represents as you are looking

1 from -- from the roadway right about here, what it's looking
2 at is a picture of the corner edge of the building, and this
3 area of the parking lot where the victim that was laying on
4 the ground at the time we arrived, somewhere in between the
5 trees here and where the Cadillac was, where the car was
6 marked.

7 Q. And this would have been taken sometime afterwards,
8 correct?

9 A. Correct.

10 Q. In fact, I'll show you this picture. Can you point
11 to -- point to this location right here. Can you explain
12 what significance of this is?

13 A. Yes, sir.

14 What he's looking at is this right here on the picture
15 right here, this area right here where it may have some like
16 garbage-type material, what that is is materials from the
17 EMS when they were working on the victim there on the
18 ground, and actually you can see the blood stain right there
19 on the ground.

20 Q. All right. So obviously this picture was taken -- all
21 these pictures were taken after that Cadillac and the body
22 were moved?

23 A. Correct.

24 Q. All right. And so this is -- State's 2 is coming in
25 through the driveway?

1 A. Yes, sir, coming in the driveway. It would be looking
2 here on the edge of the building in between the driveway and
3 these trees right here, in this area right here.

4 Q. And State's Exhibit 3, if you can show that to the
5 jury?

6 A. This one is almost a similar picture of the same -- of
7 the same location, but it's just a little bit further over
8 where they have got the gray car sitting here by the light
9 pole, but it's still coming from Community Club Road looking
10 back toward the building, say from the corner of the
11 building back over almost to the front door.

12 Q. All right. And it shows kind of a better shot of that
13 corner, is that --

14 A. That's correct.

15 Q. Okay. And also this right here, what is this?

16 A. That's -- that's --

17 Q. On the other side of the car?

18 A. That's actually a van that is back here. You can't
19 hardly see it because of the lights of it, but it's actually
20 a van, which is almost backed up to the building, which
21 belonged to the DJ's. The DJ equipment there.

22 Q. All right. And then State's Exhibit 4, I'll show you
23 that. Can you explain what that is?

24 A. Yes, sir, this is a picture of the front door of the
25 club. This is actually -- if you look here on the diagram,

1 it's more on this side, so you are looking to the left of
2 the door facing back this way where you got the van sitting
3 just to the right of the door, almost from roadway back up
4 this way.

5 Q. All right. So on this picture, on State's 4, that
6 would be taken from over on this right-hand side of the club
7 as you are facing the road?

8 A. Yes, sir.

9 Q. Looking towards --

10 A. Looking back across -- back toward the --

11 Q. Towards where the shooting was?

12 A. Correct.

13 Q. Okay. But with that van, are you able to see the area
14 where the shooting occurred?

15 A. No, sir.

16 Q. It's on the other side of the van?

17 A. On the other side of the van.

18 Q. Okay. And then finally State's Exhibit 5, could you
19 explain what that is?

20 A. Okay. This is a -- this is a picture showing in
21 between -- in between where the van is sitting here and the
22 front door there is kind of like a little nook in the
23 building, and then in between where the van is backed up to
24 the building.

25 Q. All right. So basically it just shows this same side

1 of the club, the right side of the club --

2 A. Uh-huh.

3 Q. -- straight on?

4 A. Yes, sir.

5 Q. All right. And those pictures again were after the
6 victim and most of the cars were cleared away, is that
7 correct?

8 A. Correct.

9 Q. Now, when you first got to the scene, what did you do?

10 A. When we first got to the scene, we were trying to
11 figure out the chaos exactly, kind of what had happened.
12 Identified the victims on -- the one laying on the ground
13 and the one in the car.

14 Of course, our first response is immediate action to
15 get them emergency aid, so we had already EMS on standby to
16 call them in to provide EMS services for the victims.

17 Q. All right. So you got EMS coming?

18 A. Yes.

19 Q. And you said that you tried to do something to help?

20 A. To -- tried to evaluate what they were -- although I
21 don't -- no medical background, but as law enforcement you
22 have got basic CPR type stuff.

23 Q. You tried to render what aid you could?

24 A. Yes, sir.

25 Q. All right. And so you do this, and you said that one

1 of them was the victim who was on the ground and who was --
2 who was that? Which victim was that?

3 A. I believe that was Mr. Lawton.

4 Q. All right. The one who died?

5 A. Yes, sir.

6 Q. All right. And who was the one in the car?

7 A. I don't remember names in the car?

8 Q. Well, do you know -- do you remember what part of his
9 body he was shot in?

10 A. He was -- I believe it was in the upper right-hand
11 shoulder or up in the shoulder.

12 Q. In the arm?

13 A. In the shoulder area, arm area, right.

14 Q. And so you deal with those.

15 And I'm assuming that was your first priority was
16 trying to help them out?

17 A. On first arrival was first priority was securing the
18 scene and then rendering aid.

19 Q. Okay. So you secured the scene?

20 A. (Shaking head yes).

21 Q. All right. And what do you mean by securing the scene?

22 A. Make sure there is no other active shooters on the
23 scene.

24 And then once we have determined there was no other
25 active shooters on the scene, then we rendered aid to the

1 victims.

2 Q. All right. Did it also have any element of making sure
3 that this crime scene stayed intact?

4 A. To secure it and try not to let anything move or be
5 disturbed --

6 Q. All right.

7 A. -- until we could call other investigators in.

8 Q. So you basically keep it the way it is until the
9 investigators arrived?

10 A. Correct.

11 Q. All right. And as far as you could tell, as far as you
12 observed, other than everybody leaving, people scattering --

13 A. Yes, sir.

14 Q. -- was the crime scene disturbed or tampered with?

15 A. To my knowledge, no, sir.

16 Q. All right. Now, once the investigators got there, what
17 did you do?

18 A. We had -- we had already roped -- we had roped off the
19 scene to keep the scene as sterile as possible until they
20 got there. Then once the investigators got there, then I
21 assisted with the investigators, as far as locating and
22 identifying evidence on the ground.

23 Q. All right.

24 MR. LUPTON: Beg the court's indulgence.

25 THE COURT: All right.

1 (Off the record)

2 (Back on the record)

3 BY MR. LUPTON:

4 Q. And what county did all this occur in?

5 A. This was Calhoun County.

6 Q. Thank you.

7 MR. LUPTON: Your Honor, at this point I ask to
8 publish the exhibits to the jury.

9 THE COURT: Very well.

10 Ladies and gentlemen, you are going to be shown
11 the exhibits and it's certainly fine for you to take a look
12 at them. However, I would not want you to allow the viewing
13 of the exhibits at this point to keep you from being able to
14 listen to the testimony. These exhibits will be with you in
15 your jury room for your deliberations.

16 Cross-examination?

17 CROSS EXAMINATION BY MR. THOMAS:

18 Q. Good afternoon, Deputy Snead. How are you doing?

19 A. I'm doing good. How are you doing?

20 Q. Pretty good. Pretty good.

21 A question for you. You were in Sandy Run. Where were
22 you in Sandy Run when you got a call, do you remember?

23 A. I was roughly in between Sandy Run -- Sandy Run Guns
24 and the old P. Tucker Store right there at the highway. I
25 think it's Highway 33.

1 Q. I know you had your blue flashers on, in all
2 likelihood?

3 A. Yes, sir.

4 Q. How long did it take you to get from there to Community
5 Club Road?

6 A. Roughly from when I plugged in the GPS in the car, it
7 said I was twenty-six, twenty-seven miles from it, so a good
8 twenty-six, twenty-seven minutes, something like that.

9 Q. So almost a half hour?

10 A. Yes, sir.

11 Q. And you were the first responder? You were the first
12 one on the scene?

13 A. Well, me and Sergeant Kinley arrived about roughly the
14 same time, yes, sir.

15 Q. Okay. Do you know what time the first 911 call came
16 in?

17 A. I know it was -- I know it was right around -- right
18 around four a.m..

19 Q. Okay. And, again, when you arrived on the scene, what
20 was it like?

21 A. There was a lot of chaos. People -- people were
22 leaving. Just not a whole lot of order going on at the
23 time.

24 Q. The use of the word chaos is interesting.

25 Twenty-seven miles. Half hour, almost, as you said.

1 You got to the crime scene and you said you secured it.
2 And, as far as you know, it had not been disturbed or
3 tampered with?

4 A. Correct.

5 Q. As far as you know?

6 A. As far as I know, correct.

7 Q. So there was a half hour period from the time of this
8 alleged shooting until first response got there, is that
9 correct?

10 A. Yes, sir.

11 Q. And so, as far as you know, in that thirty minutes
12 nobody touched anything?

13 A. I would have no way of knowing that from the time we
14 got the call until the time I got there, yes, sir.

15 Q. And you described it as a chaotic scene?

16 A. Chaotic. People leaving, people rushing to go. As we
17 are coming in, meeting cars leaving from there, you know,
18 just trying to exit the parking lot.

19 Q. Thank you.

20 MR. THOMAS: No more questions.

21 Thank you, deputy.

22 THE COURT: Very well.

23 Redirect?

24 REDIRECT EXAMINATION BY MR. LUPTON:

25 Q. Just briefly, just to make sure we're clear on this,

1 this pencil mark there, what exactly is that?

2 A. Are you talking about this one right here?

3 Q. Yes.

4 A. That is -- that is -- that is a fair representation of
5 the gray Cadillac that was parked on the scene.

6 Q. And that shows where it was parked?

7 A. Yes, sir.

8 Q. And the little point on that, does that indicate --

9 A. That represents the front nose or the front end of the
10 car.

11 Q. All right. And where in relation to that vehicle was
12 the victim that died?

13 A. He would be in between a little grove of trees right
14 here near the road. And then from here to the right rear
15 corner of the Cadillac he was in between these two points
16 here.

17 Q. Okay. If you could just put an X basically where it
18 was.

19 A. (Witness marking on diagram).

20 MR. LUPTON: Nothing further, Your Honor.

21 THE COURT: All right, recross?

22 MR. THOMAS: Nothing, Your Honor.

23 THE COURT: All right. Is this witness free to
24 leave?

25 MR. LUPTON: No objection from the State, Your

1 Honor.

2 MR. THOMAS: No objection.

3 THE COURT: Very well. You are free to go.

4 Call your next witness, please.

5 MR. SORENSON: The State calls Andrew Haynes.

6 ANDREW HAYNES, having been first duly sworn,

7 testified as follows:

8 THE CLERK: State your full name for the record,
9 please.

10 THE WITNESS: Andrew Jerome Haynes.

11 THE CLERK: Have a seat.

12 THE COURT: Pull that mike up really close to you.

13 THE CLERK: Close up.

14 THE COURT: Just state -- this is a sound check.

15 THE WITNESS: Andrew Jerome Haynes.

16 THE COURT: Go ahead.

17 MR. SORENSON: Thank you, Your Honor.

18 DIRECT EXAMINATION BY MR. SORENSON:

19 Q. Good afternoon, Mr. Haynes.

20 A. Good afternoon.

21 Q. If you would, tell the jury how old you are.

22 A. I'm twenty-five years old. I will be twenty-six June
23 1st.

24 Q. June the 1st.

25 Tell the jury what you do for a living, Mr. Haynes?

1 A. I'm a DJ for the surrounding areas.

2 Q. You are a DJ?

3 A. Yes, sir.

4 Q. And how long have you been doing that?

5 A. Since I was in high school, so that's like six years.

6 Q. Okay. And have you got a nickname you go by?

7 A. DJ Stroke.

8 Q. And how about a nickname that some of your friends know

9 you on?

10 A. Bubba.

11 Q. Bubba?

12 A. Yes.

13 Q. All right. And I want to turn your attention, if I

14 could, to the early morning hours of -- or I guess the

15 evening of September 17th, into the early morning hours of

16 September 18th back in 2011. Do you remember that night?

17 A. Yes, sir.

18 Q. Okay. And were you working somewhere that evening?

19 A. Yes, I was working right in the club that night.

20 Q. Okay. What's the name of that club?

21 A. They call it Pine Terrace, but everybody calls it Piggy

22 Park.

23 Q. Piggy Park. All right.

24 And you were working that night as a DJ?

25 A. Yes, sir.

1 Q. Okay. And was that a -- was that a club that you had
2 worked at prior to that night?

3 A. Yes, sir.

4 Q. Tell the jury how many other DJ's besides yourself were
5 there that night?

6 A. It was one other.

7 Q. Okay. What's his name?

8 A. DJ Mike.

9 Q. Is that Michael Bullock, is that right?

10 A. Yes.

11 Q. And what -- could you tell the jury, Mr. Haynes, about
12 what time you got there that night?

13 A. Mike had got there earlier. I got there around
14 about -- I would say between 11:00 and 11:30. No later than
15 that.

16 Q. Okay. And Mike, the other DJ, was he there already
17 when you got there?

18 A. Yes.

19 Q. What kind of -- what kind of vehicle does Mike drive?

20 A. The van that was backed up, like -- it was -- he drives
21 the big van.

22 Q. I'm showing you State's Exhibits 4 and 5. Have you
23 seen -- have you seen these pictures, Mr. Haynes?

24 A. Yes.

25 Q. Whose van is that that is depicted in State's 4 and 5?

1 A. That is DJ Michael's van. D.J. Mike. That's his van.

2 Q. When you got there that night between 11:00 and 11:30,
3 was that van parked where it's parked in these two pictures?

4 A. Yes, it never moved.

5 Q. Okay. And you see that it appears to be backed up to
6 the club, is that correct?

7 A. Yes, sir.

8 Q. And what is at the back of that van with regards to the
9 club?

10 A. It was another door.

11 Q. Okay.

12 A. It was another door. That would be like take stuff out
13 and put in. It would be quicker.

14 Q. I'm showing you State's Exhibit No. 1, this diagram.
15 If you are facing the road -- if you are at the road facing
16 the club, the main door is on the left-hand side?

17 A. Yes, sir.

18 Q. And then this other kind of mark right here, is that
19 consistent with where that door is that Mike's van was
20 backed up to?

21 A. Yes, sir.

22 Q. And you said that you got there between 11:00 and
23 11:30.

24 Now, did there come a time that night when you were
25 inside when you observed kind of an altercation inside of

1 the club?

2 A. Oh, yes.

3 Q. And about how long after you got there do you think
4 that happened?

5 A. I'm going to say like probably about thirty minutes.
6 Approximately thirty minutes.

7 Q. About thirty minutes?

8 A. Yes.

9 Q. And who was that altercation between that you saw?

10 A. It was between Dominique and the defendant.

11 Q. The defendant?

12 A. Yes.

13 Q. Now, Dominique -- explain to the jury. Do you know
14 Dominique?

15 A. Yes, I know him well. Yes, we grew up in the same
16 areas.

17 Q. Okay. And you indicated between him and the defendant.
18 The defendant, Mr. Benjamin, did you know Mr. Benjamin
19 prior to that night?

20 A. No, I never met him.

21 Q. You never seen him before prior to that night?

22 A. No, sir.

23 Q. Okay. And how --

24 Let me ask you. Looking at him, he doesn't have any
25 hair today, obviously, right?

1 A. True.

2 Q. Back in September of 2011, did he have hair on his
3 head?

4 A. Oh, yes, he had hair like mine, but longer.

5 Q. Okay. Braids like yours?

6 A. Yes, longer.

7 Q. Longer.

8 And describe for the jury this altercation that you saw
9 inside the club. What was it that you observed?

10 A. Okay. That night when I came in, it was like I had
11 people following behind me, so it was a lot of people behind
12 me, so when I came in, I brought a crowd.

13 So -- Dominique was already there.

14 So when -- when I saw it, it was dancing around on the
15 floor. The defendant and his friends were on the floor as
16 well. So when Dominique bumped into him, I saw the
17 altercation, so I went in between them and stopped it.

18 Q. Okay. And so you said Dominique bumped into --

19 A. Yes.

20 Q. -- the defendant?

21 A. Uh-huh.

22 Q. And --

23 THE COURT: Is that a yes?

24 BY MR. SORENSON:

25 Q. You got to say yes or no, Andrew. I'm sorry. It's

1 hard to take down an uh-huh.

2 A. Yes.

3 Q. Okay. And so at that point in time --

4 So after he bumped into him, what -- I mean, what
5 happened after the bump? Were there words exchanged? Any
6 pushing, or what?

7 A. Yeah, it was both. It was words and a little shoving.

8 Q. Okay. Any punches thrown at that point in time?

9 A. No, there was no punches.

10 Q. Any weapons produced by anybody at that time?

11 A. No, sir.

12 Q. Okay. And describe Dominique. I mean, how was he --
13 you know, right prior to that how was he acting?

14 A. Right before the pushing and --

15 Q. Before -- before the bump occurred how was he acting?

16 A. I mean, like he was like dancing on the dance floor
17 like -- like I guess like -- like they say there was free
18 alcohol, so you know how to get with free alcohol, I mean,
19 but he was like that --

20 Q. He appeared to be a little intoxicated to you at that
21 time?

22 A. Yeah, intoxicated.

23 Q. Did everybody appear to be drinking in there?

24 A. Yes.

25 Q. There was -- it was my understanding there was a liquor

1 bar?

2 A. Yes.

3 Q. And then another place where you could get beer also,
4 is that right?

5 A. Yes, sir.

6 Q. And you said that you came over and kind of got in
7 between them?

8 A. Yes.

9 Q. Okay. And you talked to both of them?

10 A. Yes, I talked to both of them.

11 Q. Okay. And at that point in time did they kind of seem
12 to calm down, as far as you saw?

13 A. Yeah, it -- it was calm.

14 And then the defendants went outside. And when they
15 went outside, I took the advantage like since I'm well
16 respected around there, so I thought I could go outside and
17 talk to them, calm them down a little bit.

18 Q. Okay. About how many people went outside?

19 A. I'm going to say three.

20 Q. Okay. All right.

21 And did you know any of those three people? You said
22 that --

23 A. I did know one of them. That was Kevin Frazier,
24 because I played basketball against him in high school.

25 Q. Describe Kevin Frazier.

1 A. He's like 6'5", 230.

2 Q. He's a tall guy?

3 A. Yeah, he's tall.

4 Q. And then you said the defendant was one of them who had
5 hair a little bit longer than yours?

6 A. Uh-huh.

7 Q. What about the third guy that went outside?

8 A. He was a little short stocky like built type.

9 Q. Okay. All right.

10 And so you saw the three of them leave the club and you
11 went out and followed them outside?

12 A. Yes, sir.

13 Q. Where were they when you ran into them or found them
14 outside?

15 A. They was coming back like almost in. When I was going
16 out, they was like coming back in, like -- and I had an
17 exchange with them right there.

18 Q. Okay. So kind of right outside the door?

19 A. Yeah.

20 Q. Okay. What direction were they coming from when you
21 encountered them right outside the door?

22 A. Like I'm going to say -- I mean, it looked like they
23 were coming from towards their car, because when I was going
24 out they was like coming in, because it's not -- you know,
25 like -- like all the cars are basically parked on the left

1 side. So when they come from this side, I would say they
2 was coming from their car.

3 Q. Okay. Were there cars parked on the other side of this
4 van?

5 A. Yes, sir.

6 Q. Okay. We'll get to that in a minute. So is that kind
7 of the direction that they appeared to have been coming
8 from?

9 A. Yes, sir.

10 Q. And did you at that point in time have a conversation
11 with any of them when you stopped them outside there?

12 A. Oh, yes, I had a conversation. It wasn't that long,
13 but --

14 Q. Who was it that you were talking to?

15 A. Mr. Benjamin.

16 Q. What, if anything, did you say to him?

17 A. I was like -- I was like "man, don't follow --

18 Well, Dominique's nickname is Killa, so like "don't
19 follow around with Killa because he's young, drunk, you know
20 how they get."

21 And the defendant looked at me, he said "I'm a killer,"
22 and then they walked in and that was all.

23 And me knowing Dominique, I thought that -- so I wanted
24 to go talk to him too. I was like "go ahead and calm down
25 because it's not called for," because as a DJ you don't want

1 fights to happen at your club because your name get wrong,
2 you know.

3 Q. It's not good for your business, I guess.

4 A. It's not good for my business, so I was trying to like
5 die it down before it became escalated.

6 Q. Okay. So you confronted them outside or ran into them
7 outside and you were telling Mr. Benjamin basically to calm
8 down, that --

9 A. Yes.

10 Q. Did you refer to him as Dominique or Killa? What did
11 you call him?

12 A. I referred to him as Killa.

13 Q. Okay. You said he was young, a little intoxicated, you
14 know how they get, something exactly.

15 A. Yeah.

16 Q. What was his response to that?

17 A. He was like "I'm killa."

18 Q. Okay. And they went inside at that point in time?

19 A. Yes.

20 Q. Now, let me ask you, did you see any of them have any
21 weapons in their hands when you saw them as they were
22 approaching the door?

23 A. No, sir.

24 Q. Did you ultimately go back inside then?

25 A. Yes.

1 Q. And you say that's when you talked to Mr. Lawton,
2 to Dominique?

3 A. Yes.

4 Q. And I guess kind of telling him the same thing trying
5 to calm him down?

6 A. Yes.

7 Q. And were there any more problems then after that inside
8 the club between them?

9 A. No, it wasn't no problems. I mean, like right then I
10 say I wasn't -- I wasn't paying no attention. I was still
11 looking for -- it wasn't no --

12 Q. Nothing else that you observed then?

13 A. Yeah.

14 Q. Let me ask you, was the decision made at some point in
15 time as a result of this that, you know, things needed to be
16 shut down shortly?

17 A. Yes. The owner came up -- well, I said -- I got a
18 person there standing beside me, so I sent them out. You
19 know, the crowd was kind of getting kind of iffy, so we
20 should shut it down at two, but I think we shut it down I'm
21 going to say about 2:30 or two o'clock.

22 Q. Okay. Were you watching and looking at your watch when
23 all this was happening?

24 A. No.

25 Q. At some point in time after -- when the club got shut

1 down for the night, how does that happen? Did the lights
2 come on, or how do people know that it was time to go?

3 A. We will turn the lights on, but I announced it.

4 Q. Okay. You announced it that night?

5 A. No, I don't think I announced it that night, because I
6 think the one crowd went out, everybody went out, so you
7 know like -- I know there is a problem, they want everybody
8 to go out.

9 Q. All right. Now, ultimately, Mr. Haynes, did it come to
10 your attention that something was going on outside the club
11 then kind of after y'all were attempting to shut things down
12 for the night?

13 A. Oh, yes, sir. Somebody ran back in and had told me
14 about it.

15 Q. Okay. And as a result of that what did you do?

16 A. I went outside to see if I could calm them down.

17 Q. Okay. And describe for the jury, if you would, what
18 you encountered when you went out the front door.

19 A. As I was walking outside --

20 Well, when I got outside I saw Kevin Frazier had a
21 silver revolver in his hand. He had it in the air. So
22 since I know him personally, I went to him and talked to
23 him. He was like -- he was like "I just want to get home to
24 my kids," but his child -- I don't know if he got a child.
25 "I just want to get out the country. I want to get home."

1 And I was like "all right, since I'm well respected,
2 well, I'll walk you out to your car," but you still got
3 chatter. You know, you still got chatter going on.

4 So I'm in between the two parties. Like I was like
5 "all right. I'm going to walk you to your car."

6 So everything like -- I'm walking him to his car. So
7 when I got him to -- when I got up to the silver -- to the
8 silver car to the back door, he still was saying the same
9 thing, but I'm focused on him because he's the one that had
10 the gun in the air. And so his gun was in the air, I'm
11 focused on him, so the surrounding area, what's going on
12 behind me, I'm not focused on that. I'm focused on Kevin.

13 So when Kevin got to the back of the -- like the
14 driver's door -- the passenger's -- well, the back of the --
15 the back door of the driver's side, he was by the trunk
16 area, he let off rounds. It was a revolver, so I would say
17 a revolver got six, seven shots, so it went in the air. He
18 is shooting and then I left.

19 Q. Okay. Let me kind of back you up just so the jury
20 understands what we are talking about here.

21 All right. So you -- you said when you came out --
22 How many people were outside the door there?

23 A. I'm going to say about a good twenty-five to thirty.

24 Q. So a decent amount of people?

25 A. Yes.

1 Q. And guys and girls?

2 A. Yes, guys and girls.

3 Q. Okay. And did you see who was kind of arguing or who
4 was yapping back and forth at that point in time when you
5 first came out?

6 A. It was so much going on. The only one I was focusing
7 on with the gun. That's -- that's the one I was focused on.

8 Q. You come out and you see Kevin Frazier with the gun in
9 the air?

10 A. Yes.

11 Q. So you said that's basically where your attention was
12 at that point in time?

13 A. Yes.

14 Q. All right. Do you know what happened to everybody else
15 or who else may have been dealing with or talking to anybody
16 else out there?

17 A. I think the party from outside, Dominique's side, they
18 were going towards the road or -- I didn't see them no more.
19 I don't know if he was arguing with the other defendant. I
20 was just talking to Kevin, because that's the only one I
21 know.

22 Q. By talking to him, what were you trying to -- I mean,
23 were you trying to calm him down?

24 A. Yeah, I was trying to calm him down.

25 Q. Okay. You said that you ultimately kind of walked him

1 towards his car?

2 A. Yes.

3 Q. Okay. And where -- where was his car parked at?

4 A. On the side of the building right like right next to
5 that van.

6 Q. I'm showing you State's Exhibit No. 3. Do you see the
7 van in that picture?

8 Do you see the van that is in the back right there?

9 A. No, it was parked like right here on the side, right
10 here.

11 Q. So it was on this side, on the --

12 A. Yes.

13 Q. Basically on the far side from where the door is, is
14 that correct?

15 A. Yes.

16 Q. Okay. And were there any cars parked in between the
17 van and --

18 A. Yes.

19 Q. -- the car that you took Mr. Frazier to?

20 A. Yes, sir.

21 Q. How many? Do you remember how many?

22 A. I think it was like one.

23 Q. Okay. And how were those cars --

24 The van obviously was backed up to the club. How about
25 those cars? Were they backed up or pulled straight in?

1 A. I mean, the one that -- the one that was beside the
2 van, in between that one -- that one was backed in, but you
3 had one, the -- that got shot, he was like in front.

4 Q. I got you. All right. We will get to that in a
5 second.

6 So the car in between -- the vehicle that you took Mr.
7 Frazier to?

8 A. Yes.

9 Q. The car in between his car and the van was backed up to
10 the club?

11 A. Yes, sir.

12 Q. Okay. How about the car that you took Mr. Frazier to?
13 Was that backed up, or --

14 A. Yes, sir, that was backed up.

15 Q. Okay. And you said it was basically at the corner of
16 the club?

17 A. Yes.

18 Q. Okay. Now, you also I think was just referencing, is
19 there another car that was kind of pulled in facing their
20 car?

21 A. Yes, sir.

22 Q. Okay. And do you know whose car that was?

23 A. That was Shawn's.

24 Q. Shawn's. Okay.

25 That's Shawn DeFreitas or Shawn Cooper DeFreitas?

1 A. Shawn Cooper?

2 Q. And his car in the picture now?

3 A. No, sir.

4 Q. Okay. And let me ask you, did Shawn end up getting
5 shot?

6 A. Yes.

7 Q. Okay. And do you know how he left the scene that
8 night?

9 A. No, sir.

10 Q. Okay. Ultimately did his car not leave the scene, as
11 far as you are aware?

12 A. I have no idea.

13 Q. Okay. All right.

14 I'm going to get to this other car in a second. All
15 right.

16 So you had indicated that you got Kevin to the driver's
17 side rear door area of his vehicle?

18 A. Yes.

19 Q. Okay. And what color car was it that they were in?

20 A. It was silver.

21 Q. Okay.

22 A. Silver car.

23 Q. A silver car that they were in?

24 A. Yes.

25 Q. Okay. Are you sure about that?

1 Do you remember giving a statement back on -- right
2 after this happened?

3 A. Yes, sir.

4 Q. Let me show you and ask if you recognize these two
5 pages. Is that the statement that you gave the police?

6 A. Yes, sir.

7 Q. And do you remember them asking you "did you see any
8 vehicle," the very last question?

9 A. Oh, yes. Yes. Yes. Yes.

10 Q. What color?

11 A. It was black car.

12 Q. Black car?

13 A. Yes.

14 Q. Okay.

15 A. Shawn Cooper's car is silver.

16 Q. I got you. All right.

17 Now, you had indicated at that point in time that Mr.
18 Frazier ended up shooting up in the air?

19 A. Yes.

20 Q. Okay. And what happened when he started shooting?
21 What did you do?

22 A. I ran. I ran to the door that's behind the DJ van.

23 Q. And did you go in the door?

24 A. Yes, I went in the door.

25 Q. Okay. Now, after you got -- or after that happened and

1 you got inside that door, what, if anything, did you hear
2 then?

3 A. I would say it was like gunfire.

4 Q. Do you have any idea of how many shots you heard?

5 A. I don't even know. I know there was a lot of them.

6 Q. A lot of them?

7 A. Yes.

8 Q. Let me ask you, prior to you running -- seeing Mr.
9 Frazier shoot up in the air and running back into the club,
10 had you seen anybody else out there with a gun prior to
11 that?

12 A. No, sir.

13 Q. And ultimately did you end up going back --
14 Let me back you up.

15 Where -- when that happened, when Mr. Frazier fired
16 those shots up in the air, do you remember where the other
17 people were that were at that car, if there was anybody else
18 there?

19 A. I think Mr. Benjamin was standing by the driver door,
20 and the sharp dude -- the other defendant was on the
21 passenger side.

22 Q. The passenger side.

23 Now, ultimately did you end up going back outside kind
24 of after things had died down a little bit?

25 A. Yes, after everything died down, yes, I went outside.

1 Q. Okay. And did you observe anybody that was shot out --

2 A. Yes.

3 Q. That had been shot or anything?

4 A. Yes, my friend had got shot.

5 Q. Who was that?

6 A. James Hampton.

7 Q. Does James have a nickname he goes by?

8 A. PeeWee.

9 Q. PeeWee.

10 All right. And ultimately, Andrew, this car, this
11 white car in State's Exhibit No. 3, whose car was that
12 that's parked out in the middle of the parking lot?

13 A. That's my vehicle.

14 Q. Okay. And how did your vehicle come to be parked
15 basically where it is?

16 A. I pulled up, because I wanted to take him to the
17 hospital.

18 Q. And ultimately did you end up taking him to the
19 hospital?

20 A. No, because they said -- when the cops got there, they
21 said I couldn't move it because my car was part of the crime
22 scene. He said that.

23 Q. And ultimately did EMS end up taking James to the
24 hospital?

25 A. Yes.

1 Q. So you left to go run inside when Kevin started
2 shooting?

3 A. Yes.

4 Q. You didn't see anybody else with a gun at that point in
5 time?

6 A. No, sir.

7 Q. But ultimately right after that you heard a whole lot
8 of shots, is that correct?

9 A. Yes.

10 Q. How did you know that --

11 You had testified earlier that you knew -- out of the
12 three defendants, as you referred to them, they went to
13 their car, that you knew Mr. Frazier. How did you know Mr.
14 Frazier?

15 A. Playing basketball.

16 Q. But now the defendant, you said you had never -- you
17 don't ever remember seeing him before?

18 A. Never before.

19 Q. How about the other short stocky guy?

20 A. No.

21 Q. Okay, let me ask you. What was his hair cut like?

22 A. It was a low cut.

23 MR. SORENSON: Beg the court's indulgence.

24 THE COURT: All right.

25 (Off the record)

1 (Back on the record)

2 BY MR. SORENSON:

3 Q. Thank you, Mr. Haynes. Please answer any questions
4 that Mr. Thomas has for you.

5 THE COURT: All right, cross-examination, Mr.
6 Thomas.

7 MR. THOMAS: Thank you, judge.

8 THE COURT: Yes.

9 CROSS EXAMINATION BY MR. THOMAS:

10 Q. Hi, Mr. Haynes. How are you? Thank you for being
11 here.

12 You said that you worked the Piggy Park club before?

13 A. Yes.

14 Q. How many times, approximately?

15 A. It was a lot of times. Like I'm going to tell you --
16 I'm going to say like thirty times.

17 Q. Really?

18 A. Yes.

19 Q. What's the environment usually like there at night?

20 A. I mean, it's like a regular club. I mean, people
21 drink. People have emotion, but I never had like a murder.
22 I never had -- I never seen a murder before.

23 Q. That's good.

24 Have you seen any fights there before?

25 A. Yes.

1 Q. A number of fights?

2 A. Not too many.

3 Q. Okay. Did you ever see Dominique Lawton get in a fight
4 there?

5 A. Yes, we grew up together.

6 Q. What was his nickname again?

7 A. Killa.

8 Q. How did he get that reputation, as far as you know?

9 A. I mean, he -- he -- he had it since we was growing up.
10 I have no idea.

11 Q. Had you seen Dominique Lawton drinking that night?

12 A. Yes. Yes, he was drinking.

13 Q. Do you remember what he was drinking?

14 A. No, I can't tell you what he was drinking.

15 Q. You said a line a little while ago "you know how they
16 get with free alcohol."

17 A. Yes.

18 Q. Describe what you mean by "how they get."

19 A. I mean, that's like me be in a crowded place, alcohol,
20 bump and shove, you are going to see that.

21 Q. It happens, doesn't it?

22 A. Yeah, that happens.

23 Q. You stated earlier that you observed an altercation
24 about thirty minutes after you had arrived?

25 A. Yes.

1 Q. Is that -- as I recall correctly.

2 And I believe you also said that you arrived between
3 11:00 and 11:30, is that correct?

4 A. Yes.

5 Q. You did.

6 Do you remember the statement that you gave to the
7 Calhoun County Sheriff's Office?

8 A. I mean, it was awhile back, but yeah.

9 Q. Do you mind if I show it to you to help refresh your
10 memory?

11 A. Yes, sir.

12 Q. Thank you.

13 If you would just read the first line for me, please.

14 A. "Around two a.m. the party began getting into it for no
15 reason" -- "for some odd reason."

16 Q. That's good. Thank you.

17 So it says at the time right after this event you
18 recalled it about being two a.m., is that correct?

19 A. Say that again.

20 Q. You recalled in this statement that it was about two
21 a.m. the two parties began arguing. That's what you just
22 read, is that correct?

23 A. Not -- that's when the confrontation happened on the
24 outside, around two a.m..

25 Q. Let me bring this back to you again real quick --

1 A. Yes.

2 Q. -- so you can continue reading then. I didn't mean to
3 cut you off.

4 A. Do you want me to read the whole thing?

5 Q. Yeah, read the whole thing, please.

6 A. All right. "Around two a.m. a party began getting into
7 it for some odd reason. I stopped it first but it led to
8 the outside of the club. So I told I would walk him to
9 their car. On the way there Kevin Frazier had pulled out
10 his handgun and said I'm trying to get home. While saying
11 that I heard gunfire and that made me run back in the club."

12 Q. Okay. Thank you. Thank you. I'm not going to nickle
13 and dime you about some time. It might have been confusing,
14 it sounded like, as we have heard a chaotic scene.

15 A. Yes.

16 Q. Were you drinking that night?

17 A. No, I wasn't drinking.

18 Q. Did you have a backpack on that evening?

19 A. Yes.

20 Q. Do you remember what was in that backpack?

21 A. Yes, I'm a DJ, so I had wires.

22 Q. Okay. You said that you had a brief conversation with
23 my client?

24 A. Yes.

25 Q. What did you tell him?

1 A. I said -- I said "don't bother Killa. You know, he's
2 probably drunk." And he was like "well, I'm a killer and
3 that's --

4 Q. So essentially you were warning him --

5 A. Yes.

6 Q. -- about Dominique Lawton?

7 A. Yes.

8 Q. And then following that I heard you tell us just a few
9 minutes ago that there was no problem, no confrontation?

10 A. Yes.

11 Q. So did the owner shut down the club because of a
12 confrontation between my client and Dominique Lawton?

13 A. Not -- not because -- I -- I told them -- the crowd was
14 getting kind of -- it was like -- I mean, you could tell as
15 a DJ we are crowd control, so we know what's going on in the
16 club or not, so we can tell if something about to happen.

17 Q. Have you done a lot of crowd control before?

18 A. Yes.

19 Q. Do you ever notice from your own personal experience
20 doing crowd control, do bigger guys start problems or
21 smaller guys start problems?

22 A. I mean, it depends.

23 Q. It depends?

24 A. Yeah.

25 Q. Okay. Fair enough. Fair enough.

1 When you went outside and walked Kevin Frazier to his
2 car --

3 A. Uh-huh.

4 Q. -- was there a car parked in front of that vehicle?

5 A. Yes. Yes.

6 Q. There was?

7 A. Yes.

8 Q. So they were kind of parked in, is that correct?

9 A. Yes, it was blocked in.

10 Q. Okay. And you also stated that Kevin Frazier got in it
11 near the driver's side rear door?

12 A. Yes.

13 Q. Okay. Thank you.

14 Of a black Impala?

15 A. Yes.

16 Q. Well, you described a lot of shots. Any idea how many?

17 A. No, I have no idea. I mean, it was no telling.

18 Q. And the only person that you saw with the gun was Kevin
19 Frazier?

20 A. Yes, sir.

21 Q. Did you ever see David Benjamin with a gun?

22 A. No, sir.

23 Q. Inside the club?

24 A. No, sir.

25 Q. Outside the club?

1 A. No, sir.

2 Q. At any time?

3 A. No, sir.

4 Q. Thank you.

5 MR. THOMAS: No more questions.

6 THE COURT: Redirect?

7 MR. SORENSON: Just a couple things.

8 THE COURT: Okay.

9 REDIRECT EXAMINATION BY MR. SORENSON:

10 Q. Mr. Thomas had asked you about whether you had a
11 backpack on?

12 A. Yes, sir.

13 Q. Is that correct?

14 A. Yes.

15 Q. What -- I didn't catch your answer as to what was in
16 the backpack. You said because "I'm a DJ I have --

17 A. I had wires and laptop and stuff.

18 Q. Okay.

19 A. So I had two backpacks. Two of them.

20 Q. Okay. And what -- what color -- is there a backpack
21 that you would have had on your back, basically?

22 A. Yeah, I had one on my back and one in my hand.

23 Q. One in your hand?

24 A. Yes.

25 Q. What color are they?

1 A. One of them was black and one of them was black and
2 gray.

3 Q. So you would have had that on when you were talking
4 with him outside?

5 A. No, I think it was off by then.

6 Q. Okay.

7 A. I can't recall.

8 Q. Okay. How about when you talked with Dominique back
9 inside, do you know if you could have had it on your back at
10 that time?

11 A. No, I couldn't have.

12 Q. Couldn't have been?

13 A. No.

14 Q. And Mr. Thomas had asked you about Dominique's nickname
15 and you said he's had that since he was a kid?

16 A. Yes.

17 Q. All right. And the club, ultimately y'all shut it down
18 just because of the tension that appeared to be inside?

19 A. Yes.

20 Q. And did that stem out of what had happened earlier?

21 A. Uh-huh.

22 THE COURT: You have to say yes or no.

23 A. Yes.

24 MR. SORENSON: Thank you, Mr. Haynes.

25 THE COURT: Recross?

1 MR. THOMAS: Nothing, Your Honor.

2 THE COURT: And is this witness free to leave?

3 MR. SORENSON: No objection from the State.

4 MR. THOMAS: No objection.

5 THE COURT: Very well. You are free to go.

6 Now, ladies and gentlemen, it's five o'clock. I
7 believe we've about to conclude for the day.

8 I do need to give you some instruction.

9 The first matter that I would want you to be
10 mindful of is please leave your notebooks in your chair and
11 don't -- that's perfect. I saw some of you just cover that
12 sheet back over your notes so that it will remain private.
13 We will put those out for you tomorrow. I don't know
14 whether or not our clerk will hand them to you as you come
15 out tomorrow or how we will handle it, but we will do
16 something to get you together with your note pads. Please
17 be sure that you get your note pads. A couple years ago I
18 didn't realize what had happened, but folks were just
19 getting each other's note pads and they were just writing in
20 them, so I just want you to be able to keep your note pad.
21 So please help us in the morning do that.

22 You are going to be going home this evening. And
23 it's perfectly appropriate to answer whomever is curious
24 about what you had been doing today and what we have been.
25 It would be normal and perfectly fine to say that you did

1 not need a chauffeur driven ride down to the courthouse and
2 that you had been selected to serve on a jury.

3 And then I think folks will want to know what kind
4 of matters, civil or criminal. You can certainly say that
5 it is a criminal matter as opposed to a civil matter, but
6 beyond that you must not discuss this matter or allow anyone
7 to discuss it with you. Why? Don't you let anybody get
8 upset with you. Put it on the judge and tell them the judge
9 is the person who said you can't talk about it.

10 Now, I don't mind sharing with you that when you
11 have been discharged from your service on this jury by me,
12 and there will be no question in your mind when that time
13 comes, you will be at liberty to talk about the case at that
14 point, if you want to, and we will talk about that. Until
15 then you must not discuss this matter or allow anyone to
16 discuss it with you.

17 You know what? I hadn't told you why we repeat
18 that, why that is so important. Let me just take a moment
19 and explain that to you, because what we have learned over
20 two hundred years of trying cases in America is that we have
21 learned the way that we are put together is that if we start
22 talking about something, we can't help it. We start forming
23 opinions about what we are saying. That's the reason for
24 the instruction, because as we have already talked, it is
25 absolutely critical that you are able to listen

1 open-mindedly to all the evidence and that you don't make up
2 your mind about anything until you have heard all the
3 evidence and the arguments of counsel and my charge on the
4 law.

5 The reason that I keep giving you that instruction
6 do not discuss this matter, do not allow anybody to discuss
7 it with you is to support your ability to listen
8 open-mindedly to all the evidence. So, see, there really is
9 a reason. It's not just to satisfy my children's view of me
10 that I'm a nag. It really has a purpose and that's the
11 reason that it exists and the reason that I keep repeating
12 myself about it, because it really is important.

13 Now, anybody work at night? Not tonight. Not
14 tonight. Now, let me tell you why. You must rest. You
15 must rest. These people have missed their work today. They
16 are going to go home and rest. You must do the same.

17 Now, sometimes, sometimes employers will get a
18 little bit upset because they are like why can't you go and
19 serve on jury duty and then come to work. Well, the reason
20 for that is because you must rest so that you can listen and
21 do your work here.

22 So if anyone is concerned that you are not coming
23 in, that you going to miss work because you are going to
24 rest this evening, please get their name, get their phone
25 number. I would be excited to talk to them about that in

1 the morning and explain to them why it is that I have given
2 you that instruction. I want you rested. How gruesome for
3 you to have to work at night and work all day here. Uh-uh,
4 I need you to be able to listen and focus, just as you all
5 have done today. So tonight you go home and chill.

6 So, again, if anybody gets upset, that's fine, get
7 their name, get their phone number, give it to me in the
8 morning. Check with my presiding juror and you make sure
9 that I don't need to make a phone call and get that from
10 them and I will make that phone call the first thing. I'll
11 be happy to.

12 Now, please do not read anything. Do not listen
13 to anything with regard to this matter, and that means the
14 radio, the television, the newspaper, or the Internet.

15 Oh, and as you can see, we do have Anderson Cooper
16 is here today. I'm sorry. But please be mindful not to
17 read anything or listen to anything about this matter,
18 because you must receive all of the information from which
19 you will make up your mind here in court while court is in
20 session.

21 Remember to leave your cell phones and other
22 communication devices away from the courthouse tomorrow. If
23 you forget, just let us know and we will take good care of
24 your communication device cell phone until our morning break
25 and then you can take it to your car.

1 Ladies and gentlemen, no Columbo. No Columbo. No
2 investigation. No going to the Internet. You must receive
3 all of the information here in court while court is in
4 session.

5 Ladies and gentlemen, we will begin at 9:30 in the
6 morning. Is that going to put a particular burden on
7 anyone? 9:30. 9:30. Okay. Very well.

8 Have a pleasant evening and I look forward to
9 seeing you in the morning at 9:30.

10 Leave your note pads in your seats or on the bar
11 and we will take good care of them.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: All right. Do you have any issues
15 before we conclude this day, from the State?

16 MR. SORENSON: No, Your Honor.

17 THE COURT: From the defense?

18 MR. THOMAS: Nothing, Your Honor.

19 THE COURT: All right. Very well. I'll see you
20 all in the morning.

21 I'm going to get here a little bit before 9:30
22 just in case there are any issues, just to let me -- come on
23 in and let me know and you all have a good evening and I'll
24 see you in the morning.

25 MR. SORENSON: Thank you, Your Honor.

1 MR. THOMAS: Thank you, Your Honor.

2 (Whereupon, proceedings were adjourned to March 5,

3 2013)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CALHOUN) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 DAVID JAMAR BENJAMIN,) 2013-GS-09-00051
7) 2013-GS-09-00052
8) 2013-GS-09-00053
9) MARCH 5, 2013
10) SAINT MATTHEWS, SOUTH CAROLINA
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DEFENDANT.

(VOLUME II)

B E F O R E:

THE HONORABLE DIANE GOODSTEIN, JUDGE. ; And a Jury.

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

DONALD SORENSON, ASSISTANT SOLICITOR
THEODORE LUPTON, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

NICHOLAS THOMAS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, MARCH 5, 2013)

2 (Photograph marked as State's Exhibit No. 6 for
3 identification)

4 (Photograph marked as State's Exhibit No. 7 for
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6 (Photograph marked as State's Exhibit No. 8 for
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23 (Photograph marked as State's Exhibit No. 29 for
24 identification)

25 (Photograph marked as State's Exhibit No. 30 for

1 identification)

2 (Photograph marked as State's Exhibit No. 31 for
3 identification)

4 (Off the record)

5 (Back on the record)

6 THE COURT: All right. When I arrived this
7 morning apparently one of our alternates approached and
8 wanted to speak with Mr. Hasty and Mr. Hasty spoke with him.

9 And, Mr. Hasty, I think the best thing to do is
10 just raise your right hand.

11 CLERK OF COURT KENNETH HASTY, having been first
12 duly sworn, testified as follows:

13 THE COURT: Just tell me, if you would, please,
14 for our record what occurred when you spoke with --

15 THE CLERK: Yes, ma'am, Charles Jones, the
16 alternate juror, came and approached me and that told me he
17 had some issues with serving on this case due to the reasons
18 that the defendant's mother and him knew each other. His
19 son has had some issues with the defendant and that he
20 thought that he had some issues with serving on this jury.

21 THE COURT: Very well.

22 All right. And -- thank you so much.

23 THE CLERK: Yes, ma'am.

24 THE COURT: Questions from either of you?

25 From the State?

1 MR. SORENSON: The only thing I thought that back
2 in chambers there was some allegation that they had some
3 contact this morning.

4 THE CLERK: Yes, he told me that him and the
5 defendant's mother had some words this morning, but that
6 they knew each other and they had talked with each other. I
7 don't know who approached who, but they did speak with each
8 other.

9 THE COURT: All right.

10 Yes.

11 MR. THOMAS: Nothing, Your Honor.

12 THE COURT: Very well.

13 And I have a note from the presiding juror that
14 says "judge," and I will just publish it and make it a
15 Court's Exhibit. "Charles Jones stated that he just
16 remembered that he worked with the defendant's mother at
17 Easton Chemical Company and Mr. Jones stated that his son
18 had a confrontation in the past. He thinks that he should
19 be excused from jury duty. Rowland Harley, juror 41."

20 Okay. Here is what I would propose to do. I
21 would propose -- to begin this process, I would propose to
22 bring out Mr. Jones and establish some information and then
23 we will take it from there. All right.

24 If you would go get me Mr. Jones.

25 (Whereupon, Juror Number 54, Charles Jones, was

1 brought into the courtroom)

2 THE COURT: Hi, Mr. Jones. Just have a seat right
3 there for me.

4 Good morning.

5 JUROR NUMBER 54: Good morning, Your Honor. How
6 are you?

7 THE COURT: I'm fine.

8 I want to thank you for your candor with sharing
9 this information with us. And, if you don't mind, if you
10 would raise your right hand for me, please, sir.

11 CHARLES JONES, having been first duly sworn,
12 testified as follows:

13 THE COURT: Thank you so much.

14 And you, of course, are Charles Jones?

15 JUROR NUMBER 54: Yes.

16 THE COURT: And you are one of our alternates?

17 JUROR NUMBER 54: Yes.

18 THE COURT: Yes.

19 And tell me what -- first of all, tell me what
20 occurred this morning and then just tell me --

21 JUROR NUMBER 54: Well, nothing had occurred this
22 morning. I didn't realize who the defendant was until I got
23 home yesterday. His mother and I used to work together.

24 THE COURT: Okay. Okay.

25 JUROR NUMBER 54: And my son and him had some

1 confrontation back about two or three years ago.

2 THE COURT: Okay. Okay.

3 JUROR NUMBER 54: And I didn't realize who he was
4 until when I left here yesterday.

5 THE CLERK: I understand.

6 JUROR NUMBER 54: Uh-huh.

7 THE COURT: And did you have occasion to speak
8 with anyone about that situation today?

9 JUROR NUMBER 54: Well, I saw his mother outside.
10 I didn't know that was her son until she told me that just
11 now.

12 THE COURT: Okay. Tell me who approached who.
13 Tell me.

14 JUROR NUMBER 54: No, I approached her, because
15 when I walked up the steps she was standing there.

16 THE COURT: When you walked up the steps in front
17 of the courthouse?

18 JUROR NUMBER 54: Right.

19 THE COURT: She was standing at the front of the
20 courthouse.

21 JUROR NUMBER 54: Right, and I wouldn't have asked
22 her because I didn't know.

23 THE COURT: And you said -- tell me what you said.

24 JUROR NUMBER 54: I asked her was that her
25 brother. She said "no, that's my son."

1 THE COURT: Okay. Okay. All right.

2 And did she say anything to you other than "he's
3 my son?"

4 JUROR NUMBER 54: No, no, that's it.

5 THE COURT: That it's.

6 And did you say anything else to her?

7 JUROR NUMBER 54: No.

8 THE COURT: Okay. Very well.

9 And so when that occurred is when you put it
10 together, finally put it together?

11 JUROR NUMBER 54: Right, uh-huh.

12 THE COURT: I understand.

13 JUROR NUMBER 54: Uh-huh.

14 THE COURT: And tell me who on the jury panel have
15 you spoken with about this?

16 JUROR NUMBER 54: Nobody.

17 THE COURT: And I know -- well, other than --

18 JUROR NUMBER 54: Other than the juror foreman.

19 THE COURT: The presiding juror?

20 JUROR NUMBER 54: Right.

21 THE COURT: And did the presiding juror mention
22 this to anyone?

23 JUROR NUMBER 54: No, ma'am.

24 THE COURT: Very well. Very well.

25 Well, I think you are exactly correct, Mr. Jones,

1 and I just -- I want to thank you so much for your candor.
2 And if you will remember yesterday, that's when I asked
3 people to stand, because, remember, I said it's so much
4 easier to put a face with a name, and that is just a name.

5 JUROR NUMBER 54: Well, I seen her eating
6 yesterday, but I didn't know at the time that -- I didn't
7 know that.

8 THE COURT: I understand.

9 How long ago has that been, just for informational
10 purposes, that y'all worked together?

11 JUROR NUMBER 54: Maybe three, four, maybe five
12 years ago.

13 THE COURT: Okay. It's been years ago?

14 JUROR NUMBER 54: Uh-huh.

15 THE COURT: Very well.

16 Now, I'm going to ask you to do this for me. I'm
17 going to ask you to go with Ms. Paulling right on out, not
18 to go back in the jury room, but just stand right outside
19 the door --

20 JUROR NUMBER 54: Okay.

21 THE COURT: -- so I can talk about you behind your
22 back.

23 JUROR NUMBER 54: No problem.

24 THE COURT: Okay.

25 JUROR NUMBER 54: I have no problem.

1 THE COURT: I just need to be sure I have asked
2 you everything that I needed to ask you.

3 JUROR NUMBER 54: Okay.

4 THE COURT: You are so kind in doing that. If you
5 would just go with Ms. Paulling.

6 JUROR NUMBER 54: Thank you.

7 (Whereupon, Juror Number 54, Mr. Charles Jones,
8 was taken out of the courtroom)

9 THE COURT: All right, clearly he is not
10 appropriate to serve, but have I asked every question of him
11 that I need to, and I'll hear from the State first and then
12 from the defense.

13 MR. SORENSON: I think so, yes, ma'am.

14 THE COURT: Okay.

15 MR. THOMAS: Pardon me, ma'am?

16 THE COURT: Did you think -- I think -- I think I
17 have asked him everything that I needed to. I don't think
18 it's appropriate for him to serve, but is there anything
19 else I need to ask him?

20 MR. THOMAS: I don't believe so, Your Honor. I
21 think he was fairly self-explanatory.

22 THE COURT: Well, we will --

23 MR. THOMAS: It's not prejudicial, but I don't
24 believe he should be--

25 THE COURT: I'm going to excuse him now.

1 Here is my concern. My concern is is that what do
2 I do about my presiding juror? I'm concerned about my
3 presiding juror, because my presiding juror has information
4 that the defendant has had a confrontation. I'm very
5 concerned about that.

6 Let me hear from the State.

7 MR. SORENSON: I whispered the same thing to Mr.
8 Lupton --

9 THE COURT: I figured that's what you were saying.

10 MR. SORENSON: -- two seconds before you said
11 that. I am, short of bringing him back and questioning him,
12 I --

13 THE COURT: I think I have got to do that to make
14 sure he hasn't shared that with anyone.

15 Do you understand my concern, Mr. Thomas?

16 MR. THOMAS: I do, judge, and I think bringing him
17 out and questioning him would be fine. And depending on the
18 content of what he's got to say, whether or not we are in an
19 awkward position with that juror.

20 THE COURT: All right. Very well.

21 Let me have Mr. Jones first and then I'm going to
22 need Mr. Harley.

23 (Whereupon, Juror Number 54, Charles Jones, was
24 brought into the courtroom)

25 THE COURT: Great. Mr. Jones, first and foremost,

1 I just thank you so much for your candor and I would just
2 share with you that your experience is not unique. It
3 happens many times that once a juror begins to serve and
4 they see the people, it's almost as though your mind sort
5 of -- particularly when it's been some time.

6 JUROR NUMBER 54: Right.

7 THE COURT: And it's like "oh, wait a minute, I
8 know that person." That actually is not unusual. It
9 happens a lot.

10 JUROR NUMBER 54: Uh-huh.

11 THE COURT: It happens a lot. And you are so
12 very, very correct in your assessment. I think it's best
13 that you sit this one out.

14 JUROR NUMBER 54: Okay. I appreciate that.

15 THE COURT: But, no, no, I'm the one who is
16 appreciative to you, because, you know, I'm sure it's like
17 oh, my god, now I got to go tell these people and I know
18 that's not comfortable. So just thank you so much for your
19 candor. I really do. And what that says to me is that our
20 system of justice means so much to you that you want to be
21 sure that people who sit on this jury have no information or
22 are not biased and I just think it's great, so I am just so
23 grateful to you for that.

24 JUROR NUMBER 54: I ready to serve later if I have
25 to.

1 THE COURT: Oh, listen, you have done such a
2 beautiful job, I think you have done your duty. And this is
3 not pleasant nor comfortable, and so with your permission I
4 would excuse you for the balance of the week.

5 JUROR NUMBER 54: Okay.

6 THE COURT: And, remember, you have earned your
7 exemption now for 2014 and 2015, should you choose to
8 exercise it.

9 JUROR NUMBER 54: Okay.

10 THE COURT: You are now not eligible to serve in a
11 court of record for 2013. I know you are upset. However,
12 just keep that in mind as well.

13 JUROR NUMBER 54: Okay.

14 THE COURT: And, of course, your big fat juror
15 check will be in the mail to you very soon.

16 Thank you so much for your service and for the
17 very difficult position that you are in, yet you have
18 handled your situation with great honor and I appreciate it.

19 JUROR NUMBER 54: Thank you, Your Honor.

20 THE COURT: Thank you. You are free to go. Thank
21 you.

22 JUROR NUMBER 54: Thank you. Have a nice day.

23 THE COURT: If you need anything for your
24 employer, I don't know that you do, but they will get that
25 for you downstairs. All right.

1 JUROR NUMBER 54: Thank you.

2 THE COURT: Bye bye now.

3 JUROR NUMBER 54: Bye, bye.

4 (Whereupon, Juror Number 54, Charles Jones, was
5 discharged from further jury service)

6 THE COURT: All right. And I need to speak with
7 Mr. Harley. If you would ask Mr. Harley to please step out.

8 (Whereupon, Juror Number 41, Rowland Harley, was
9 brought into the courtroom)

10 THE COURT: Hi, Mr. Harley.

11 JUROR NUMBER 41: Hello.

12 THE COURT: Have a seat.

13 JUROR NUMBER 41: Yes, ma'am.

14 THE COURT: Come on in and have a seat.

15 JUROR NUMBER 41: All right.

16 THE COURT: Now, Mr. Harley, just because I have
17 got to make a record, I am just going to ask you a couple of
18 questions --

19 JUROR NUMBER 41: Okay.

20 THE COURT: -- about the note.

21 JUROR NUMBER 41: All right. Okay.

22 THE COURT: I'm going to ask you to please raise
23 your right hand please, if you be so kind.

24 ROWLAND HARLEY, having been first duly sworn,
25 testified as follows:

1 THE COURT: Thank you so much.

2 In your capacity as the presiding juror, Mr.
3 Harley, you had occasion to speak with one of your jurors
4 this morning?

5 JUROR NUMBER 41: Yes, ma'am.

6 THE COURT: And that was Mr. Jones?

7 JUROR NUMBER 41: That's right.

8 THE COURT: And you took down what Mr. Jones
9 needed --

10 JUROR NUMBER 41: Yes, ma'am.

11 THE COURT: -- to say to you, is that right?

12 JUROR NUMBER 41: I did.

13 THE COURT: Yes?

14 JUROR NUMBER 41: Yes.

15 THE COURT: Did you discuss with your other jurors
16 the situation that Mr. Jones discussed with you?

17 JUROR NUMBER 41: No, ma'am.

18 THE COURT: All right. And did the other jurors,
19 would they have heard your conversations between you and Mr.
20 Jones?

21 JUROR NUMBER 41: No, ma'am. Mr. Jones called me
22 out, out of the jury room, and I went out in the hallway and
23 spoke to him.

24 THE COURT: And you spoke to him. Very well.

25 Then when you all went back into the jury room,

1 you wrote down what Mr. Jones had said?

2 JUROR NUMBER 41: Right.

3 THE COURT: And did you have any conversations
4 with your other jurors?

5 JUROR NUMBER 41: No, ma'am.

6 THE COURT: Okay. Excellent. Excellent.

7 And do you believe that any of the jurors saw the
8 note that you wrote?

9 JUROR NUMBER 41: I'm not sure. I don't think
10 they did.

11 THE COURT: Okay. They would have been having to
12 look at you while you wrote the note.

13 JUROR NUMBER 41: No, ma'am, nobody was gazing and
14 looking at it.

15 THE COURT: Okay. So you believe that probably
16 that didn't happen?

17 JUROR NUMBER 41: Right.

18 THE COURT: Okay. Very well.

19 JUROR NUMBER 41: However, after I wrote the note,
20 I asked all the jurors whether they had anything that they
21 needed to bring forward to the judge.

22 THE COURT: Wonderful. Wonderful.

23 And they said?

24 JUROR NUMBER 41: No one said anything.

25 THE COURT: Very well. Excellent. Excellent.

1 JUROR NUMBER 41: Uh-huh.

2 THE COURT: Very well.

3 Now, I need to ask you this question.

4 JUROR NUMBER 41: Yes, ma'am.

5 THE COURT: There was some information that Mr.
6 Jones shared with you regarding some -- and you used the
7 word confrontation. I gather that he used the word
8 confrontation?

9 JUROR NUMBER 41: That's right, he did.

10 THE COURT: Between his son and the defendant?

11 JUROR NUMBER 41: Yes.

12 THE COURT: My question to you is what, if any,
13 effect does that have on you as a juror with regards to the
14 defendant?

15 JUROR NUMBER 41: I don't think it would have any
16 effect. At this time, I don't think so.

17 THE COURT: Okay. And my question to you is
18 simply this. Can you set aside completely, completely, the
19 conversation that you had with Mr. Jones when Mr. Jones
20 shared with you what he described as a confrontation between
21 his son and the defendant?

22 JUROR NUMBER 41: At the present time I think I
23 could.

24 THE COURT: Okay.

25 JUROR NUMBER 41: I mean, it's -- it would be in

1 the back of my -- you know, back of my head, but at the
2 present time I don't think it would be an issue, if I had to
3 make a decision.

4 THE COURT: I understand that.

5 JUROR NUMBER 41: Yeah.

6 THE COURT: I don't know what the testimony is
7 going to be in this case. I really don't.

8 JUROR NUMBER 41: Right.

9 THE COURT: I just -- I'm like you, I just got
10 here yesterday and really began to learn. We really begin
11 to learn it about the same time. I'm a little bit ahead,
12 but I ain't much ahead, but for purposes of my question, for
13 purposes of my question, I want you to assume that you hear
14 testimony that in some way that the defendant was aggressive
15 to other people.

16 You know he's charged with murder. You know he's
17 charged with two counts of attempted murder.

18 JUROR NUMBER 41: Right.

19 THE COURT: So I'm going to presume that the State
20 has some evidence that they are going to present that this
21 defendant did something towards -- it's in their allegations
22 at this point, but I'm going to presume, and I want you for
23 my question to presume, that there are -- that there will be
24 some testimony of that. Assume for the purpose of my
25 question that there is that testimony that's presented. Is

1 it going to be back in your mind "wait a minute now, I have
2 heard that he had some aggressiveness, a confrontation." I
3 don't know who was aggressive, but a confrontation --

4 JUROR NUMBER 41: Right, uh-huh.

5 THE COURT: -- with another young man. Is that
6 going to have an effect on you?

7 JUROR NUMBER 41: As I said, I know it's going to
8 be in the back of my mind when -- you know, I don't know
9 whether that would -- that would kind of alter my decision
10 but --

11 THE COURT: But you have that information.

12 JUROR NUMBER 41: It's in there. So --

13 THE COURT: Yeah, it is. I understand that.

14 I'm going to ask you to do me a favor and just
15 step out with Ms. Paulling. Don't go back into the jury
16 room at this point. I got to talk behind your back.

17 JUROR NUMBER 41: Okay.

18 THE COURT: I need to make sure I have asked all
19 the questions that I need to, Mr. Harley.

20 JUROR NUMBER 41: Okay.

21 (Whereupon, Juror Number 41, Rowland Harley, was
22 taken out of the courtroom)

23 THE COURT: Oh, yes, sir. Other questions from
24 either of you?

25 MR. SORENSON: I'm going to leave this up to Your

1 Honor.

2 THE COURT: I'm with you.

3 Mr. Thomas?

4 MR. THOMAS: Your Honor, I'm going to have to move
5 that the juror be excused.

6 THE COURT: Well, I am concerned. He's been so
7 wonderfully candid to talk about the fact that the
8 information is in his mind and he doesn't know. He doesn't
9 know what the effect is going to be. I mean, obviously I
10 tried to dance around it as much as I could, but obviously
11 this case has been indicted, so there is going to be some
12 evidence, I could presume, that would be brought forward
13 that this defendant had some aggressive conduct towards
14 other people, and because of that I believe that he has been
15 wonderfully candid and basically what he's said is that he
16 can't be assured that those dots aren't going to connect in
17 his head. Because of that I am concerned that we are
18 putting him in an unfair position, to be quite frank. Not
19 to speak to his ability to be fair and impartial. I just
20 think that the circumstances are such that he's been put in
21 a compromised position and it's not fair to him, to be
22 honest, so I'm going to excuse him on that basis.

23 And, again, aren't you glad -- I'm so excited that
24 you said let's do three. We should have done four, but it
25 didn't -- because we have three.

1 All right. Now, what I'm going to need you to do
2 for me, Mr. Hasty, is I'm going to need you to take our
3 three alternates names. They go in a cup and then --

4 MR. SORENSON: The two alternates. He was one of
5 the --

6 THE COURT: All three got to go -- all three of
7 them of my alternates names got to go in the cup.

8 MR. SORENSON: But you have excused one of the
9 alternates.

10 THE COURT: Oh, that's right, he was an alternate.
11 Okay. He was alternate. You are so right. Thank you. Oh,
12 yeah, yeah, yeah. In my mind just then he was one of the
13 jurors. Thank you. The two that remain. The two
14 alternates that remain and then you will select. We will
15 shake those up.

16 Now, let me ask you this question, counsel. Under
17 the statutory provisions the -- under the new statutory
18 provisions the clerk can appoint someone with whom the clerk
19 has confidence to select out of the two.

20 And I gather you would appoint Ms. Paulling, am I
21 right?

22 THE CLERK: Yes, ma'am.

23 THE COURT: Any objection on behalf of the State?

24 MR. SORENSON: No, Your Honor.

25 THE COURT: By the defense?

1 MR. THOMAS: No, Your Honor.

2 THE COURT: Very well. You got to find two pieces
3 of paper and put those names down. Okay.

4 I'm going to now excuse him and explain to him
5 why.

6 All right, let me have Mr. Harley.

7 (Whereupon, Juror Number 41, Rowland Harley, was
8 brought into the courtroom)

9 THE COURT: Mr. Harley, here is what I need to
10 tell you. I need to -- first of all, I need to just tell
11 you and express to you my gratitude for your candor, because
12 I think what you have told me is absolutely true, and would
13 be true for anybody.

14 JUROR NUMBER 41: Right.

15 THE COURT: And I also want to say to you that by
16 virtue of your serving in such a superb capacity as my
17 presiding juror on this case, I believe that I'm going to
18 have to excuse you, because I think that -- I think that the
19 circumstances have put you in an untenable position. I
20 really do. So I want you to be real clear that the reason
21 that I'm excusing you is because you did such an excellent
22 presiding juror and I think that the circumstances have put
23 you in an untenable position.

24 JUROR NUMBER 41: Yes, ma'am.

25 THE COURT: And I have -- I don't think that I can

1 ask of you -- I don't think I could ask of anybody to be
2 able to put that out of their mind, but what I do want to
3 tell you is that you could not have handled this
4 circumstance in a more perfect way to preserve this trial,
5 and so I'm so grateful for you for the way that you have
6 handled this matter. Speaking to Mr. Jones outside the room
7 and keeping this away from the jury in a magnificent way has
8 allowed me to preserve the trial and I'm so grateful to you
9 for having handled it that way, but I think that if I put
10 you in a position to continue is just simply not fair. And
11 so for that reason with a heavy heart I'm going to have to
12 say thank you, thank you, thank you, but I am going to
13 excuse you for the reasons that I have stated.

14 JUROR NUMBER 41: Okay.

15 THE COURT: Now, I want to tell you to remember
16 that you have well earned your jury exemption for 2014 and
17 15, if you choose to exercise it. And you are now not
18 eligible to serve in a court of record for the balance of
19 2013. I know you are just heartbroken, say it, and just
20 hope for your Magistrate's Court and municipal court, but
21 really I want you to take with you my special gratitude for
22 the way that you handed this matter.

23 If you need anything -- if you are dashing off to
24 work now and you need anything for your employer, please
25 know that they will get that for you down to the clerk's

1 office.

2 JUROR NUMBER 41: Thank you.

3 THE COURT: I will take your note pad. Thank you.

4 JUROR NUMBER 41: Thank you.

5 THE COURT: Yes, sir. Thank you so much.

6 (Whereupon, Juror Number 41, Rowland Hartley, was
7 discharged from further jury service)

8 THE COURT: Let the record reflect Ms. Paulling is
9 shaking the names of the two remaining alternates in the
10 cup?

11 THE CLERK: Yes, ma'am.

12 THE COURT: And you are shaking them around?

13 THE CLERK: I have.

14 THE COURT: And you are Ms. Paulling?

15 THE CLERK: That's correct.

16 THE COURT: And are you ready to select?

17 THE CLERK: I am.

18 THE COURT: Select away.

19 THE CLERK: Amy Wieber.

20 THE COURT: Who now?

21 THE CLERK: Amy Wieber.

22 THE COURT: Amy Wieber?

23 THE CLERK: W-I-E-B-E-R.

24 THE COURT: Got it. Thank you so much.

25 All right. Anything further from the State at

1 this time?

2 MR. SORENSON: No.

3 THE COURT: From the defense?

4 MR. THOMAS: Yes, I just have two things real
5 quick. The defendant's mother would --

6 THE COURT: Yeah, she can come back.

7 MR. THOMAS: She can come back in.

8 And could you please address all the gallery to
9 remind them ever so gently that there is to be no contact?

10 THE COURT: Sure, that's a great idea.

11 MR. THOMAS: I would appreciate that greatly.

12 THE COURT: A great idea.

13 MR. THOMAS: And we discussed having the first row
14 as clear as well.

15 THE COURT: Yeah.

16 (Off the record)

17 (Back on the record)

18 THE COURT: Okay. And you all talked about
19 sequestration of witnesses back in chambers and agreed to
20 it, so is everybody out that's going to testify?

21 MR. THOMAS: We have.

22 THE COURT: Okay.

23 MR. SORENSON: The only person I have got in here
24 is my next witness.

25 THE COURT: Oh, absolutely.

1 Now, for my folks who are here in the courtroom,
2 let me just remind everyone that you cannot, you cannot,
3 under any circumstances, have any sort of interchange with
4 this jury, even if the juror approaches you. Please report
5 that either to counsel, if you -- you know, if you are a
6 family member and you can certainly talk to counsel, or you
7 can talk to me and let me know that, because I cannot, I
8 cannot, have anyone associated with this case having any
9 sort of interchange with our jurors.

10 And let me -- and I will speak to -- I don't
11 know -- her first name or last name?

12 MR. THOMAS: Benjamin.

13 THE COURT: Ms. Benjamin. Very well.

14 Ms. Benjamin, I understand that you were put in a
15 very difficult situation this morning, and I understand
16 that, because one of the jurors approached you and how
17 uncomfortable that must have been for you. And so I'm going
18 to ask you to do that. I don't think that will happen again
19 to you, but should that happen again to you, remember,
20 remember you can use me, so that you are not -- you know, so
21 because obviously you don't want a juror to be upset with
22 you, because you don't want them to then be upset with your
23 son. I mean, that's just human nature, so I don't think
24 that's going to happen to you again. But should that happen
25 to you, or to anyone, remember use the judge. The judge has

1 instructed me that I can't have any conversation, because
2 you must not have any conversation. So even if you find
3 yourself in that very uncomfortable situation, remember
4 please feel free to use me, because you must not have any
5 interaction with the jury at all. If you say I'm so sorry
6 but the judge has told me I can't have any interaction, then
7 you have -- then they are not going to be upset with you,
8 because you put it on the judge, but you must not have
9 any -- you must not have any contact. I understand that
10 that was incredibly uncomfortable and I understand why, but
11 no one can have any contact with the jury. Everybody is now
12 on notice. Just put it on the judge. It's okay. You have
13 my permission. And so now you know that. If that happened,
14 you could say the judge told me I can't have any
15 conversation. They would be mad at me and not you and
16 that's fine, okay. All right. Very well. But in any
17 event --

18 So, anything further from the State?

19 MR. SORENSON: No, Your Honor.

20 THE COURT: From the defense?

21 MR. THOMAS: No, Your Honor.

22 THE COURT: Any objection from either side, based
23 on my comments to Ms. Benjamin and of the gallery as well?

24 MR. SORENSON: No, Your Honor.

25 THE COURT: None.

1 Mr. Thomas?

2 MR. THOMAS: No, Your Honor.

3 THE COURT: Very well.

4 Now let me have my jury.

5 (The following takes place in the presence of the
6 jury panel)

7 THE COURT: Good morning, ladies and gentlemen.

8 JURY PANEL: (Collectively said good morning).

9 THE COURT: I apologize for keeping you in your
10 jury room this morning, but there was a matter that I needed
11 to attend to, which I have attended to.

12 Ladies and gentlemen, what I want to say to you
13 is -- and I don't want to keep you in the dark, because you
14 are certainly entitled to an explanation because two of your
15 number have left, and let me just suffice it to say that
16 they have certainly done nothing wrong and I don't want you
17 to think that, because they have not. They have been so
18 wonderful and they have acted with wonderful integrity and
19 as a result of some matters that have occurred that I will
20 not share with you, because it's not appropriate that I
21 would share those with you, but I want you to know that I
22 have excused those two jurors, but I also want you to know
23 that it's not because of any improper conduct on their part.
24 Quite the contrary. It's because of their very, very proper
25 conduct and their integrity, and I don't want you to think

1 that there is anything that's happened that would cast any
2 sort of negative aspersions on any parties to this matter,
3 because that certainly has not occurred either. So I don't
4 want you to be thinking that anyone here has done anything
5 wrong, because they have not, but I have excused these two
6 folks. And, please, I don't want anybody to think anything
7 negative, because you shouldn't. It's just these -- it's
8 just these folks have acted with impeccable integrity, for
9 which I'm so grateful.

10 Now, ladies and gentlemen, let me tell you what
11 did happen. Mr. Jones, who was one of our alternates, has
12 left us, as has our presiding juror, and so first of all --
13 then what happens is that our remaining alternates got put
14 in a cup and shaken up, about like that. And then Ms.
15 Paulling reached in and today Ms. Wieber is your lucky day.
16 Your status as our alternate and you are now our juror.
17 Congratulations. Look at her. And because you are going to
18 take this seat, it seems only appropriate that you would be
19 the presiding juror. And let me remind you, because when
20 you were an alternate, you were probably just listening with
21 one-half of one ear.

22 JUROR NUMBER 117: No. Both.

23 THE COURT: So you know about the presiding juror.
24 You got it. Fabulous. So I thank you for serving in that
25 capacity. That's called like a two jumper, instantly. Very

1 well. Thank you for serving in that capacity. If you will
2 keep that seat throughout the trial, I would be grateful.

3 ... Everybody got their note pads? Turn that first
4 page over for those of you who are note keepers are ready to
5 take your notes.

6 And, ladies and gentlemen -- I know you are lonely
7 back there. Look at all the seats you can check out. Just
8 check them all out. See which one has got the best vantage.
9 Be fun. Wonderful.

10 Ladies and gentlemen, at this time we will
11 continue with the State's case.

12 If you call your next witness, please.

13 MR. SORENSON: Thank you, Your Honor.

14 The State calls James Hampton.

15 JAMES HAMPTON, having been first duly sworn,
16 testified as follows:

17 THE CLERK: Please have a seat and state your full
18 name for the record, please.

19 THE WITNESS: James Ryan Hampton.

20 THE CLERK: Pull the microphone up.

21 THE WITNESS: James Ryan Hampton.

22 THE COURT: Oh, that was wonderful.

23 Now, let me tell you, Mr. Hampton, just so I'm
24 clear, see this young lady way back on the back of the jury?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: I need everybody to be able to hear
2 you, because everyone is interested in what you have to say,
3 so I'm going to ask you to keep your volume up. Keep your
4 volume up. This is an old historic courthouse and the
5 acoustics are not the best in the world, so I'm going to
6 need you to just be mindful of the volume of your voice for
7 us. Thank you. If you forget, that's okay, I'll nag you.
8 My children think I'm a nag.

9 Thank you, Mr. Sorenson, your witness.

10 MR. SORENSON: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MR. SORENSON:

12 Q. Mr. Hampton, if you would, tell the jury or tell us how
13 old you are?

14 A. Twenty-six.

15 Q. Twenty-six.

16 And what do you do for a living, Mr. Hampton?

17 A. Work at Quality Model.

18 Q. And what do you do there?

19 A. Well, I make gas tanks.

20 Q. And where did you -- where did you grow up?

21 A. Elloree, South Carolina.

22 Q. Did you go to Elloree High School?

23 A. Yes, sir.

24 Q. I'm going to ask you, Mr. Hampton, do you have a
25 nickname that you go guy?

1 A. Yes, sir.

2 Q. What's that nickname?

3 A. PeeWee.

4 Q. PeeWee.

5 And the victim in this case, Dominique Lawton, do you
6 know Mr. Lawton, or did you know Mr. Lawton?

7 A. Yes, sir.

8 Q. And how -- tell the jury how you knew Mr. Lawton.

9 A. We grew up together.

10 Q. How long?

11 A. All my life.

12 Q. All your life.

13 All right. And how about the defendant in this case,
14 David Benjamin? Prior to September the 18th of 2011, did
15 you know Mr. Benjamin?

16 A. No, sir.

17 Q. How about a young man by the name of Joshua Haggood?
18 Did you know Mr. Haggood prior to that night?

19 A. No, sir.

20 Q. Okay. And how about a young man by the name of Kevin
21 Frazier? Did you know Mr. Frazier prior to September of
22 2011?

23 A. Yes, sir.

24 Q. Tell the jury how you knew Mr. Frazier.

25 A. Playing basketball in high school.

1 Q. Did he go to the same high school as you, or a
2 different high school?

3 A. Different high school.

4 Q. What high school did he go to?

5 A. Calhoun County.

6 Q. Calhoun County.

7 All right. Now, I want to turn your attention, if I
8 could, Mr. Hampton, back to the night of September 17th,
9 that Saturday night, into the early morning hours of the
10 18th of 2011. Did you go out to the Piggy Park in Elloree
11 that night?

12 A. Yes, sir.

13 Q. And who did you go with?

14 A. Charles Goodwin.

15 Q. And do you remember, did you drive or did Mr. Goodwin
16 drive?

17 A. Charles.

18 Q. Okay. And do you remember about what time you arrived
19 there that night?

20 A. About 12:30, one o'clock.

21 Q. And do you remember where y'all parked?

22 A. On the side of the road.

23 Q. On the side of the road.

24 And were there other cars that were parked out there
25 out on the side of the road?

1 A. Yes, sir.

2 Q. Okay. And how about were there cars parked in the
3 parking lot?

4 A. Yes, sir.

5 Q. All right. Now, at some point in time that night, Mr.
6 Hampton, did you become aware that Dominique Lawton had been
7 involved in some sort of altercation inside the club?

8 A. Yes, sir.

9 Q. Okay. And as a result of learning that, did you speak
10 to anybody about that?

11 A. I spoke to Dominique.

12 Q. Okay. And what did you -- what did you tell Dominique?

13 A. I told him to chill out and calm down.

14 Q. Okay. And at that point in time was he agitated?

15 A. No, sir, he was calm.

16 Q. He was calm?

17 A. Yes.

18 Q. And were you aware at that point in time who he had had
19 the altercation with?

20 A. Yes, sir.

21 Q. Okay. Had somebody pointed him out to you, or did you
22 see the altercation?

23 A. Pointed him out.

24 Q. All right. Now, I'll fast forward you a little bit.
25 Did you become aware at some point in time later on

1 that morning, or that evening into the morning, of some sort
2 of commotion going on outside the club?

3 A. Yes, sir.

4 Q. And how long was that after you had initially -- you
5 had spoken to Dominique inside the club?

6 A. About an hour or two, maybe.

7 Q. And what did you do when you learned about that
8 commotion going on outside?

9 A. I went outside and tried to keep it calm.

10 Q. And who -- tell the jury what you saw when you got
11 outside.

12 A. I saw Kevin had a gun in the air.

13 Q. Okay. And where was Kevin located at that you saw him
14 with a gun in the air?

15 A. Standing to my right as I come out the door.

16 Q. I'm showing you State's Exhibit No. 4. I'll get you to
17 kind of point on here, James, if you could, kind of where
18 you saw Kevin at.

19 A. Right here.

20 Q. So you came out the door, he was on the -- to the left
21 a little bit of the door, as you came out?

22 A. That would be to my right, because you are coming out
23 the door like this. This is how you come out the door.

24 Q. You come out the door. So if you could point for me.

25 A. Here.

1 Q. He's on this side over here?

2 A. Yes.

3 Q. Okay, I'm sorry.

4 He's on this side of the door.

5 You said that you saw him with a gun in his hand?

6 A. Yes, sir.

7 Q. What kind of -- what kind of gun was that that you saw
8 Mr. Frazier with in his hand?

9 A. A revolver.

10 Q. And what was he doing with that gun?

11 A. Waving it around.

12 Q. Okay. And was he saying anything at that time?

13 A. He said "all we want to do is go home."

14 Q. Now, were there other people that were around also?

15 A. Yes, sir.

16 Q. And was there anybody else that was with Kevin, or at
17 least appeared to be with Kevin, at that time?

18 A. Yes, sir.

19 Q. Okay. And describe those individuals that were with
20 him.

21 A. David, had dreads, heavy built. Josh, little low hair
22 cut.

23 Q. Okay. So the guy that you pointed out -- did you know
24 Mr. -- you testified you didn't know Mr. Benjamin?

25 A. No, I didn't know him.

1 Q. Did you see him out there that night, though?

2 A. Yes, sir.

3 Q. What was different about him back that night as opposed
4 to now?

5 A. He had dreads.

6 Q. Okay. All right.

7 And then you also testified another guy that you
8 referred to as Josh. You said he had low hair cut?

9 A. (Shaking head yes).

10 Q. Was he short, tall?

11 A. About medium height.

12 Q. Medium height. All right.

13 And the two of them were both around the door also when
14 you came out and you saw Kevin with the gun?

15 A. Yes, sir.

16 Q. Now, was there anybody else around that area?

17 A. Yes, sir.

18 Q. Okay. And who else had -- was Dominique around that
19 area?

20 A. Yes, sir.

21 Q. Other friends of Dominique's?

22 A. Yes, sir.

23 Q. And you had testified that Kevin was saying -- was
24 waving the gun around and saying "we just want to go home."
25 Were other people carrying on and talking at that time also?

1 A. There was a lot of chatter.

2 Q. And did you see at that point in time anybody else --
3 besides Kevin, did you see anybody else with a gun at that
4 point in time?

5 A. Yes, sir.

6 Q. Who was that that you saw with a gun?

7 A. Josh and David.

8 Q. You saw both of them?

9 A. Yes, sir.

10 Q. And was that at the front door or later on?

11 A. Front door.

12 Q. Front door. All right.

13 And what -- what ended up happening at that point in
14 time?

15 A. Well, I ended up walking over by their car. I was
16 walking by Josh.

17 Q. Okay. All right.

18 And let me ask you, do you know one of the DJ's that
19 goes be Bubba; Andrew Haynes?

20 A. Yes, sir.

21 Q. Do you remember if Andrew was out there?

22 A. Yes, sir.

23 Q. Okay. You said you walked them over towards their car?

24 A. Yes, sir.

25 Q. Where was their car parked at?

1 A. Like right where the DJ was parking at. Right where
2 the DJ go in there.

3 Q. Say that last part again.

4 A. Where the DJ go in there.

5 Q. Okay. Let me show you State's Exhibit No. 3. Is that
6 the DJ's van right there?

7 A. Uh-huh.

8 Q. That's in the picture?

9 A. Yes, sir.

10 Q. And where in relation to the van was their car parked?

11 A. Right on the corner.

12 Q. The corner.

13 So right where my finger is right now? In that general
14 vicinity?

15 A. A little farther over.

16 Q. Which way? This way or that way?

17 A. That way.

18 Q. Right there?

19 A. Yes, sir.

20 Q. Okay. So basically at the corner of the building.

21 Do you remember what kind of car that they were in?

22 A. No, sir.

23 Q. Do you remember the color?

24 A. No, sir.

25 Q. Let me ask you this. Do you remember if their car was

1 pulled in forward or backed in?

2 A. Backed in.

3 Q. Backed in. Okay.

4 And let me ask you this, James. Do you remember, were
5 there any cars in between their car and the DJ's van, that
6 you recall?

7 A. No, sir.

8 Q. You don't recall, or there wasn't?

9 A. I don't recall.

10 Q. You don't recall. All right.

11 Let me ask you, you just testified that their car was
12 parked over near that -- backed in near the corner of the
13 building, is that correct?

14 A. Yes, sir.

15 Q. Were there any cars out in the parking lot in front of
16 their vehicle then?

17 A. Yes, sir.

18 Q. Okay. Whose car was out in front of their vehicle?

19 A. A guy named Shawn Cooper.

20 Q. All right. Now, how about -- as y'all are walking them
21 over to their car, do you know where Dominique was at that
22 time?

23 A. Like walking towards a little, but him and the other
24 guy was still chatting, light chatter.

25 Q. Still a lot of chatter going back and forth between

1. Dominique and his friends and Kevin and his friends?

2. A. Yes, sir.

3. Q. All right. And during this whole time, did Kevin
4. Frazier have his gun out the whole time?

5. A. He had it out, but he didn't have it in the air no
6. more.

7. Q. He had what?

8. A. He had it out but he didn't have it in the air.

9. Q. He had it out, but not up in the air?

10. A. Yes, sir.

11. Q. Down?

12. A. Yes.

13. Q. And how about the other two guys that you have
14. identified; you know, the guy with the braids that you have
15. identified as being Mr. Benjamin, and the other guy with the
16. shorter hair cut, did they have their guns out also?

17. A. Yes, sir.

18. Q. And do you remember anything about the two guns that
19. they had?

20. A. No, sir.

21. Q. Okay. All right.

22. And ultimately as you kind of get over to the vehicle
23. there, what, if anything, happened then?

24. A. Well, they were standing by the car. There was just a
25. bunch of chatter going on. Then that's when Kevin fired in

1 the air.

2 Q. Fired in the air?

3 A. Yes, sir.

4 Q. You don't know how many shots he fired initially in the
5 air?

6 A. One or two, maybe.

7 Q. Okay. And when that happened, what did you do?

8 A. Turned and walked away.

9 Q. Turned and walked away.

10 All right. Which direction did you walk, did you head?

11 A. Like I was about to walk out back towards the road.

12 Q. Back towards the road?

13 A. Yes.

14 Q. Okay. Now, tell the jury what happened as you were
15 walking away from their vehicle where Kevin was shooting up
16 in the air. What happened then?

17 A. More shots were being fired and I could feel the bullet
18 coming past my own head. That's when I ducked by the van,
19 turned by the van and went the other way.

20 Q. Okay. And what -- where were those shots coming from?

21 A. Behind me.

22 Q. Behind you, which would be in towards whose vehicle?

23 A. David's vehicle.

24 Q. The vehicle that you just walked Kevin, David and Josh
25 to?

1 A. Yes, sir.

2 Q. Now, did you see anybody shooting over there?

3 A. No, sir, but I have already turned my back.

4 Q. Okay. Did you see --

5 Let me ask you this. At any point in time -- you
6 testified that you saw Mr. Benjamin with a gun. Did you see
7 Mr. Benjamin shoot?

8 A. No, sir.

9 Q. How about -- how about the other guy, Mr. Haggood, did
10 you see him shoot?

11 A. No, sir.

12 Q. You remember giving a statement, right, Mr. Haggood
13 (sic)? Do you remember giving a statement to the police?

14 A. Yes, sir.

15 Q. Do you remember telling them in that statement that you
16 did see Josh shooting, is that correct? Do you remember
17 telling them that?

18 A. Possibly.

19 Q. You said that you could almost feel the shots coming --
20 the bullets coming by you. What happened next? Did anybody
21 started yelling anything?

22 A. Yes, sir.

23 Q. What was that?

24 A. They were saying "Killa, get up."

25 Q. Who is -- we have referred to him as Dominique earlier,

1 but who is Killa?

2 A. Dominique Lawton.

3 Q. Is that the nickname that you knew him by?

4 A. Yes, sir.

5 Q. Has he gone by that since he was a kid?

6 A. Yeah, he was real little.

7 Q. Say again?

8 A. Yes, he was real little when he got the name.

9 Q. And when you heard that, what did you do?

10 A. Ran over and see what was going on.

11 Q. Okay. And where was he located at?

12 A. Right over by the tree on the ground.

13 Q. I'm showing you State's Exhibit No. 2. Does that kind
14 of show the area where he was?

15 A. Yes, sir.

16 Q. Can you point that out?

17 A. (Witness pointing).

18 Q. That actually appears to maybe be the blood right
19 there?

20 A. Could be.

21 Q. Okay. But in that general area where I'm pointing
22 right now?

23 A. Yes, sir.

24 Q. Okay. So when you went over to there, tell the jury,
25 Mr. Hampton, what you observed when you got over to that

1 area.

2 A. He had been shot by the gun in the head.

3 Q. Shot in the head?

4 A. Yes, sir.

5 Q. Was he on the ground or up?

6 A. On the ground.

7 Q. All right. As a result of seeing that -- yet, again,
8 this is one of your childhood friends?

9 A. Yes, sir.

10 Q. Mr. Hampton, as a result of seeing that, what did you
11 then do?

12 A. Ran back toward the club, picked up a pole out of the
13 ground and threw it at the car.

14 Q. Okay. Describe that pole that you threw.

15 A. It was a pretty good sized pole, green.

16 Q. Mr. Hampton, let me show you this. Does this appear to
17 be that post that you threw at --

18 A. Yes, sir.

19 MR. SORENSON: Okay. At this time we would offer
20 this into evidence.

21 THE COURT: Any objection?

22 MR. THOMAS: No objection, Your Honor.

23 THE COURT: Very well. States's Exhibit --

24 COURT REPORTER: It's not been marked yet.

25 MR. SORENSON: He needs the number.

1 (Wooden Post marked and admitted into the record
2 as evidence as State's Exhibit No. 32)

3 THE COURT: State's Exhibit 32 is in without
4 objection.

5 BY MR. SORENSON:

6 Q. Mr. Hampton, tell the jury again what did you do with
7 this post?

8 A. Throw it towards the shooter's car.

9 Q. Were they still backed up in that same spot where you
10 had pointed out to the jury earlier?

11 A. Yes, sir.

12 Q. Let me ask you this. When you were walking back from
13 over where Dominique was on the ground to get that post, did
14 you observe anything else on your way back to get that post?

15 A. Yes, sir, I saw my other friend on the ground shot.

16 Q. Who was that?

17 A. Shawn Cooper.

18 Q. Shawn.

19 Where was Shawn located at?

20 A. He was on the ground behind his car.

21 Q. Behind his car.

22 And his car was still facing the defendant's vehicle?

23 A. Yes, sir.

24 Q. Could you see where Shawn had been shot?

25 A. No, sir.

1 Q. After throwing that post at their vehicle, what did you
2 do then, James?

3 A. I started going back towards the van, behind the DJ
4 van.

5 Q. Behind the DJ van?

6 A. Yeah.

7 Q. Would that be on kind of the far side from their
8 vehicle?

9 A. Yes, sir.

10 Q. Okay. And tell the jury when you got around to that
11 van, what happened then?

12 A. A few more shots went off and I realized I was hit in
13 the arm.

14 Q. Did that happen when you were on the side of the van?

15 A. Yes, sir.

16 Q. Okay. And show the jury, if you would. Are you able
17 to show them where it was that you got shot?

18 A. (Witness pointing).

19 MR. SORENSON: Could I have him stand up, Your
20 Honor, and actually kind of walk him down here?

21 THE COURT: Yes.

22 (Witness off the witness stand)

23 THE COURT: You need to come all the way down.

24 MR. SORENSON: Please let the record reflect, Your
25 Honor, that's kind of on the inside of his left elbow area.

1 That's what he was pointing out.

2 THE COURT: We will.

3 (Witness back on the witness stand)

4 BY MR. SORENSON:

5 Q. After you were shot -- after you were shot in the
6 arm --

7 Let me ask you, did any of the vehicles that have been
8 out in the parking lot move after that?

9 A. At that time I didn't notice it, but apparently there
10 was.

11 Q. Okay. Let me ask you, did you notice at some point in
12 time whether Shawn's car had moved?

13 A. No, I never noticed that.

14 Q. Okay. How about the vehicle that you had walked Kevin
15 Frazier and Mr. Benjamin and Mr. Haggood to, is their
16 vehicle gone?

17 A. I never noticed that either.

18 Q. You didn't, okay.

19 After you -- after you got hit in the arm, what did you
20 do then?

21 A. I like yelled out saying "I'm hit," and then some girl
22 came over and wrapped my arm up and then they sat me down in
23 Andrew Haynes car.

24 Q. Whose car?

25 A. Andrew Haynes.

1 Q. And is that the car that's actually in State's Exhibit
2 No. 3 here, the white car that is in the picture?

3 A. Yes, sir.

4 Q. All right. Did EMS, an ambulance ultimately come and
5 get you?

6 A. Yes, sir.

7 Q. Where were you when they got -- when the ambulance got
8 there?

9 A. Still sitting in the car.

10 Q. Okay. All right.

11 Now, did they take you to the hospital that night?

12 A. Yes, sir.

13 Q. I guess that morning.

14 And let me ask you, that morning did they -- did they
15 remove that bullet from your elbow that morning?

16 A. No, sir.

17 Q. Did you subsequently sometime later have that bullet
18 removed from your elbow?

19 A. Yes, sir.

20 Q. I believe that was on or about February 8th of 2012?

21 A. Yes, sir.

22 Q. And where was that done at?

23 A. Orangeburg.

24 Q. The Regional Medical Center in Orangeburg?

25 A. Yes, sir.

1 Q. To your knowledge, were the hospital going to make
2 arrangements to turn that bullet over to law enforcement
3 then?

4 A. Yes, sir.

5 MR. SORENSON: Beg the court's indulgence.

6 THE COURT: All right.

7 (Off the record)

8 (Back on the record)

9 BY MR. SORENSON:

10 Q. Thank you, Mr. Hampton. Please answer any questions
11 that Mr. Thomas has.

12 THE COURT: Cross-examination.

13 MR. THOMAS: Thank you, Your Honor.

14 CROSS EXAMINATION BY MR. THOMAS:

15 Q. Good morning, Mr. Hampton.

16 A. Good morning.

17 Q. I just got a few things for you.

18 You knew Dominique Lawton all your life?

19 A. Yes, sir.

20 Q. Y'all grew up together in Elloree?

21 A. Yes, sir.

22 Q. That evening what kind of car did you arrive in?

23 A. A Honda.

24 Q. A Honda.

25 What color Honda?

1 A. Like a blue.

2 Q. Okay. Do you remember the statement that you gave to
3 the police, the Calhoun County Sheriff's Office, on
4 September 27th, 2011?

5 A. Yeah, I remember them taking some statement.

6 Q. Do you remember what you said in that statement?

7 A. Not everything.

8 Q. I would like to bring you the statement so you could
9 read it for us to help refresh your memory.

10 A. Yes.

11 Q. Read the whole thing, starting on the first page.

12 MR. SORENSON: Your Honor, he can give that to him
13 to refresh his memory, but I don't think he can just have
14 him publish the statement.

15 THE COURT: Thank you.

16 That's correct, you cannot publish it. You cannot
17 publish a document that is not in evidence. You can show
18 him the Manhattan phone book to refresh his recollection, if
19 you believed that would help.

20 MR. THOMAS: Yes, indeed.

21 THE COURT: But it cannot be published.

22 MR. THOMAS: I apologize to the court. This
23 wasn't my intention to publish the document.

24 THE COURT: Okay.

25 BY MR. THOMAS:

1 Q. Could you please read your statement to refresh your
2 recollection?

3 MR. SORENSON: To himself.

4 MR. THOMAS: Certainly, that's fine.

5 A. (Witness reviewing document.)

6 BY MR. THOMAS:

7 Q. Thank you.

8 Now, a few minutes ago you told the court that you
9 never saw Josh Haggood shoot.

10 Do you remember now in this statement that you gave on
11 September 27th, 2011, approximately eight days after this
12 incident occurred, do you remember stating that you saw Josh
13 lift up his shirt and show his gun?

14 A. Yes, sir.

15 Q. Is that accurate?

16 A. Yes, sir.

17 Q. It is.

18 But you just told the court that you never saw Josh
19 with a gun, is that correct?

20 A. No, I didn't.

21 MR. SORENSON: No, that's not what he said. He
22 testified he saw all of them with guns.

23 BY MR. THOMAS:

24 Q. Do you remember when you gave this statement that you
25 said that you saw Josh start shooting towards the crowd?

1 A. Yes, sir.

2 Q. Is that correct what you said in your statement?

3 A. That's what I said on the statement.

4 Q. And is that not what you are saying now? Do you still
5 believe Josh Haggood shot at the crowd?

6 A. I believe he shot at the crowd, but -- at that time
7 that's what I put in my statement, that Josh shot towards
8 the crowd. I said that because I feel the bullet coming
9 past my head, which I'm standing right by Josh, but I never
10 seen him shoot.

11 Q. You never saw him shoot.

12 You saw Kevin Frazier fire in the air, is that correct?

13 A. Yes, sir.

14 Q. You did.

15 You never saw Josh Haggood shoot, is that correct?

16 A. No, sir.

17 Q. You never saw him shoot?

18 A. No, sir.

19 Q. They removed the bullet from your arm?

20 A. Yes, sir.

21 Q. Do you know anything about that bullet they removed
22 from your arm?

23 A. No, sir.

24 Q. Do you have any tattoos?

25 A. Yes, sir.

1 Q. No?

2 A. Yes, sir.

3 Q. You do.

4 Could you just describe those to us, please?

5 MR. SORENSON: Your Honor, I would --

6 THE COURT: Let me see you, please.

7 (Whereupon, the lawyers approached the bench for
8 an off-the-record discussion)

9 (Bullet marked as State's Exhibit No. 33 for
10 identification)

11 MR. THOMAS: Court's indulgence.

12 THE COURT: All right.

13 (Off the record)

14 (Back on the record)

15 BY MR. THOMAS:

16 Q. Did you see my client shoot Dominique Lawton?

17 A. No, sir.

18 Q. Thank you.

19 MR. THOMAS: No more questions.

20 THE COURT: Redirect?

21 MR. SORENSON: Nothing further.

22 THE COURT: Is this witness free to leave?

23 MR. THOMAS: No objection.

24 THE COURT: Any objection?

25 MR. SORENSON: No objection, Your Honor.

1 THE COURT: You are free to leave.

2 Call your next witness, please.

3 MR. SORENSON: The State calls Ms. Tasha Sumpter.

4 NATASHA SUMPTER, having been first duly sworn,

5 testified as follows:

6 THE CLERK: Please have a seat.

7 THE COURT: And what I need you to do is the
8 acoustics in this wonderful old courtroom are not wonderful.
9 The courtroom is wonderful, so I need you to help me by just
10 keeping your volume up.

11 THE WITNESS: Okay.

12 THE COURT: Oh, that was very good.

13 And if you would, just state again for our record
14 your name.

15 THE WITNESS: Natasha Sumpter.

16 THE COURT: Okay. Your witness.

17 MR. SORENSON: Thank you, Your Honor.

18 DIRECT EXAMINATION BY MR. SORENSON:

19 Q. Ms. Sumpter, if you would, tell the jury how old you
20 are.

21 A. I'm twenty-four.

22 Q. And what do you do for a living, Natasha?

23 A. I work at a gas station as a cashier.

24 Q. Okay.

25 COURT REPORTER: Just a second.

1 A little bit closer to you.

2 THE COURT: State again where you work.

3 A. At a gas station.

4 THE COURT: Okay.

5 BY MR. SORENSON:

6 Q. Just keep it nice and loud, all right, and just talk
7 right into that microphone.

8 A. Yes.

9 Q. And where did you go to school, Natasha?

10 A. Lake Marion.

11 Q. Okay. And did you graduate?

12 A. Yes.

13 Q. And when was that?

14 A. 2006.

15 Q. 2006.

16 All right. I want to turn your attention, Natasha, if
17 I could back to the evening of September 17th, into the
18 morning of September 18th of 2011. Did you go out to a club
19 known as Piggy Park that night?

20 A. Yes, sir.

21 Q. Okay. And that's located in Elloree?

22 A. Yes, sir.

23 Q. And what was -- what was going on at the club that
24 night?

25 A. It was a little small little argument, I guess.

1 Q. I mean, I guess I didn't phrase that. What was -- was
2 there some occasion that was going on there at the club?

3 A. What was it?

4 Q. Was there some occasion going on?

5 A. Oh, yeah, a party.

6 Q. Okay.

7 COURT REPORTER: Speak up straight into the
8 microphone.

9 BY MR. SORENSON:

10 Q. Stay in front of the microphone.

11 And was that somebody's birthday party?

12 A. Yes, sir.

13 Q. Okay. Whose birthday party was that?

14 A. Well, we call her momma. Her name is Nevadria Miller.

15 Q. Okay. Speak into the -- I'm having trouble hearing you
16 from right here.

17 THE COURT: Yeah, let me tell you that if we were
18 in another courthouse with maybe a little different
19 electronics, we wouldn't have to keep doing this, but it's
20 just the acoustics are unique, but we really are interested
21 in your answers. And I apologize. It's not you. It
22 happens with everybody that testifies. I am so sorry, but
23 we are really interested in your answers.

24 See this lady, young lady way back in the back?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Talk to her. Talk like you are
2 talking to her.

3 And Mr. Sorenson, maybe you can stay back there.

4 MR. SORENSON: I'm going back there.

5 THE COURT: Wonderful.

6 And I'm sorry, it's not you. It is these
7 acoustics. I'm so sorry. All right.

8 If you would just ask her the question one more
9 time. Whose birthday party I think was where you are.

10 BY MR. SORENSON:

11 Q. Yes, ma'am, Natasha, whose birthday party were y'all
12 at?

13 A. Nevadria.

14 Q. Nevadria.

15 And do you remember what time you got there that night?

16 A. No, I'm not sure.

17 Q. And who were you with?

18 A. Tanesha.

19 Q. Tanesha. And that's a friend of yours?

20 A. Yes, sir.

21 Q. And let me ask you, where had y'all parked?

22 A. We were like up right by the ditch.

23 Q. And there's a ditch that this occurred -- a couple
24 people referred to that. There was a ditch that kind of
25 runs parallel to the road out in front of the club, is that

1 correct?

2 A. Yes, sir.

3 Q. So when you were parked with your car, the passenger
4 side of your car on the side of the club or away from the
5 club?

6 A. Yes, passenger's side was away from the club.

7 Q. All right. Let me ask you, I want to fast forward to
8 basically kind of when y'all were getting ready to leave.

9 Tell the jury what, if anything, happened when y'all
10 were kind of getting ready to leave for the night.

11 A. When we were leaving there was a lot of argument and
12 then I saw one of the guys with the gun.

13 Q. Okay. Describe -- if you would, describe for us that
14 guy that you saw.

15 A. He was brown skinned, had a little haircut, maybe a
16 little taller than me.

17 Q. Okay. How tall are you?

18 A. I'm 5'4".

19 Q. Okay. So he was fairly short for a guy?

20 A. Uh-huh.

21 Q. Okay.

22 THE COURT: That's a yes?

23 A. Oh, yes, sir.

24 BY MR. SORENSON:

25 Q. And tell them -- you said that you saw him with a gun.

1 Describe for the jury kind of where and what was he doing
2 with the gun or where did you see the gun?

3 A. He was in front of me and Tanesha. The gun was kind of
4 under his right arm.

5 Q. Okay. Was it down on his side?

6 A. Yes.

7 Q. Could you tell if it was in his waistband or if he was
8 holding it?

9 A. I can't really say if it was in his wristband -- I mean
10 in his waist, or whatever, or he was holding it, but I knew
11 it was there.

12 Q. Okay. And as a result of seeing that did you say
13 something to Tanesha?

14 A. Yeah, I kind of pulled her, because she was a little
15 drunk, I guess you could say. Tipsy. She almost bumped
16 into him, so I pulled her, and, you know, I told her that
17 "he had a gun, watch where you are going."

18 Q. Okay. You said there was a bunch of arguing going on?

19 A. Yes, sir.

20 Q. Okay. Do you recognize any of the other people that
21 were kind of out there that were involved in this argument?

22 A. I mean, I knew Dominique was one of them.

23 Q. Okay. And how about --

24 Let me ask you this. The defendant, David Benjamin, do
25 you know Mr. Benjamin?

1 A. I don't know him. That night was the first time I saw
2 them.

3 Q. Okay. How about -- and obviously you testified the guy
4 that you saw with the gun around his waistband area, was he
5 somebody that you had seen before or --

6 A. No, sir.

7 Q. Okay. How about a guy named Kevin Frazier? Do you
8 know Kevin Frazier?

9 A. I don't know any of them personally.

10 Q. You don't know any of those guys. Okay.

11 But how many people, if you could estimate, Natasha,
12 were kind of around -- let me back up a second.

13 Where did this all happen that you saw this person with
14 the gun?

15 A. That was like kind of in front of the door.

16 Q. Okay. And how many people do you think were kind of in
17 around in that area?

18 A. Around -- I would say maybe about six people, I guess,
19 or more --

20 Q. Okay.

21 A. -- at the door.

22 Q. At the door?

23 A. Around that area.

24 Q. Okay. And that was people that were involved in the
25 arguing?

1 A. No, it was a bunch of people just going back and forth,
2 so it's kind of hard to say.

3 Q. And ultimately then after seeing that what did you and
4 Tanesha do?

5 A. You know, I told her like "let's go," because they were
6 arguing. You know, we already saw one guy with the gun, so
7 I knew eventually something probably would have jumped off
8 on it --

9 Q. Okay.

10 A. -- so that was that.

11 Q. Okay. So where -- where did y'all go?

12 A. I was pulling her to the car. She was talking to
13 everybody. I'm like "let's go."

14 Q. Okay. Did you ultimately make it out to your car?

15 A. Yes, sir.

16 Q. Okay. And let me ask you this. On the going from
17 there to your car, did you hear any gunshots?

18 A. By the time we got to the car and she was trying to get
19 the doors open the shots started firing.

20 Q. Okay. And could you tell where the shots were coming
21 from?

22 A. I'm not sure. I didn't look back. I was just trying
23 to tell her, you know, "open the door, get the door open."

24 Q. And as a result of that, did you actually see anybody
25 shooting?

1 A. Nope, I wasn't trying to.

2 Q. Okay.

3 A. I was just worried about, you know, not getting shot,
4 though.

5 Q. And your car --

6 Let me ask you. The car that y'all were in, did it end
7 up getting hit at all?

8 A. No, sir.

9 Q. Okay. And did you stick around out there kind of after
10 things died down and the shots stopped?

11 A. Yes.

12 Q. Okay. And let me ask you. Were there cars that did
13 leave, though --

14 A. Uh-huh.

15 Q. -- afterwards?

16 A. Yeah, there were cars pulling off afterwards.

17 Q. Okay. And what did you do then kind of after -- after
18 the shots had settled down and kind of waiting for the
19 police to show up, what all -- do you remember what you did,
20 or --

21 A. Well, when everything stopped, you know, we did -- got
22 back out and went back over, you know, to see what was going
23 on, because the girl was screaming. She was saying, you
24 know, "they shot him. They killed him."

25 And when I went over there, I saw that it was

1 Dominique. You know, they already had called the ambulance,
2 so I called his sister.

3 Q. And where was it that Dominique was, do you remember?

4 A. He was close to the road. I think it's like a tree
5 right there where he was kind of laying not too far from it.

6 Q. Okay. Let me -- I don't know if you are able to tell
7 this or not, but you said that, you know, a whole lot of
8 gunshots went off. Do have any idea how many shots that you
9 heard?

10 A. I would say it was at least maybe six or more, but --

11 Q. Okay. I guess you weren't counting, right?

12 A. Yeah. No.

13 Q. All right. And you had said, other than seeing the one
14 guy with the gun around his waistband, did you see anybody
15 else with a gun?

16 A. No, sir.

17 Q. Okay. And do you know what kind of -- what direction
18 any of the shots were coming from even?

19 A. I'm not sure.

20 Q. Okay. All right.

21 MR. SORENSON: Beg the court's indulgence.

22 THE COURT: All right.

23 BY MR. SORENSON:

24 Q. Thank you, Natasha. Please answer any questions that
25 Mr. Thomas has.

1 THE COURT: Cross-examination.

2 MR. THOMAS: Yes, ma'am.

3 CROSS EXAMINATION BY MR. THOMAS:

4 Q. Good morning, Natasha.

5 A. Good morning.

6 Q. You parked out by the ditch?

7 A. Yes, sir.

8 Q. How many cars were parked out there? Any idea?

9 A. No, sir. It was a lot.

10 Q. It was a lot?

11 A. They were on both sides.

12 Q. A bunch of cars.

13 How many people do you think were at the club at the
14 time that things were breaking down?

15 A. It was a lot of people there.

16 Q. A lot of folks?

17 A. Uh-huh.

18 THE COURT: And is that a yes?

19 A. Yes, sir.

20 BY MR. THOMAS:

21 Q. And people were already leaving prior to the shots
22 being fired, is that correct?

23 A. I don't recall. I know they were, you know, kind of
24 leaving when they were being fired.

25 Q. Okay. Okay.

1 And really just one other thing, I guess -- well,
2 one -- you have known Dominique a long time?

3 A. Yes, sir.

4 Q. Have you seen him out at the club before?

5 A. Yes, sir.

6 Q. Did you ever see him get in trouble at the club?

7 A. Like -- well -- well, maybe like a little arguing
8 thing.

9 Q. Okay. You said that you saw a man with a gun in his
10 waistband?

11 A. Yes, sir.

12 Q. Is that the man that you saw with the gun in his
13 waistband?

14 A. No, sir.

15 Q. Did you ever see this man shoot a gun?

16 A. No, sir.

17 Q. Thank you so much.

18 MR. THOMAS: No more questions.

19 THE COURT: Redirect?

20 MR. SORENSON: Nothing from her, Your Honor.

21 THE COURT: All right.

22 Is this witness free to leave? Any objection?

23 MR. THOMAS: No objection, Your Honor.

24 THE COURT: You are free to go. Thank you.

25 Please call your next witness.

1 MR. LUPTON: Your Honor, the State would call
2 Nurse Tammy Hunter.

3 THE COURT: All right.

4 THE CLERK: Raise your right hand for me, please,
5 ma'am.

6 TAMMY HUNTER, R.N., having been first duly sworn,
7 testified as follows:

8 THE CLERK: Please have a seat. Pull the mike to
9 you as close as comfortable so that we can hear you.

10 THE COURT: The acoustics in this courtroom are a
11 challenge, so the first thing I'm going to ask you to do, if
12 you don't mind, see this young lady way back there?

13 THE WITNESS: Uh-huh.

14 THE COURT: I need to be sure that she's able to
15 hear you.

16 And, again, I apologize in advance, because the
17 acoustics, while this courtroom is wonderful, the acoustics
18 aren't wonderful. You need to speak up.

19 State your name for the record. Please.

20 THE WITNESS: Tammy Hunter.

21 THE COURT: All right. Thank you.

22 DIRECT EXAMINATION BY MR. LUPTON:

23 Q. And could you please tell the jury what it is that you
24 do?

25 A. I'm a registered nurse in the operating room at

1 Regional Medical Center.

2 Q. Okay. And how long have you been a nurse?

3 A. Twenty-three years.

4 Q. Twenty-three years.

5 And were you working as a nurse back in February of
6 2012, in this capacity?

7 A. Yes, sir.

8 Q. And in that capacity did you have occasion to come into
9 contact with this case?

10 A. Yes, sir.

11 Q. And what was significant about that contact that sticks
12 in your mind?

13 A. This is the first and only case I have ever done that
14 was considered a criminal case with evidence that needed to
15 be passed off.

16 Q. All right. And did that help it stick in your mind?

17 A. Yes, sir.

18 Q. And as part of your duties that day, what were you
19 doing? Were you in the operating room?

20 A. Yes, sir, I was circulator for this case.

21 Q. And what exactly role did you have in this case?

22 A. I am the nonsterile person in the room. So when they
23 removed the foreign object from Mr. Hampton's arm, they
24 passed it off to me.

25 Q. And so, first of all, the patient that we are talking

1 about was James Hampton?

2 A. Yes, sir.

3 Q. And you said that there was a foreign object removed
4 from him?

5 A. Yes, sir.

6 Q. Do you recall what that was?

7 A. It was what appeared to be a bullet.

8 Q. All right. And do you know where it was removed from?
9 Do you remember?

10 A. Around his left elbow.

11 Q. All right. I'll show you what's been marked for
12 identification as State's Exhibit 33. Do you recognize that
13 object and the packaging?

14 A. Yes, sir.

15 Q. All right. And specifically what is it?

16 A. Well, I would describe it as a foreign body.

17 Q. All right.

18 A. A foreign object.

19 Q. And where did it come from?

20 A. His left elbow.

21 Q. Okay. This is the object that was removed from his
22 left elbow?

23 A. Yes, sir.

24 MR. LUPTON: Your Honor, at this time I would ask
25 that this be admitted as State's Exhibit 33.

1 MR. THOMAS: No objection, Your Honor.

2 THE COURT: Very well.

3 (Whereupon, State's Exhibit No. 33 was admitted
4 into the record as evidence)

5 BY MR. LUPTON:

6 Q. Now, the foreign object was removed from victim
7 Hampton's elbow, correct?

8 A. Yes, sir.

9 Q. And once that was done --
10 First of all, who did that?

11 A. Dr. Buckaloo.

12 Q. And once that was done, what happened to it?

13 A. He handed it to the scrub person who was working with
14 him. They were both sterile. She passed it off to me. I
15 placed it in the container.

16 Q. And that's the container that's in this packaging?

17 A. Yes, sir.

18 Q. All right.

19 A. I took the container to my charge nurse and handed it
20 to her, and security from the hospital came up and picked it
21 up while I was standing there.

22 Q. All right. And was it ultimately labeled?

23 A. It was labeled while I was -- when I passed it off to
24 my charge nurse, she said it needed a label, a patient label
25 placed on it. I went to the recovery room and got the

1 label, brought it back and placed it on that and then
2 security picked it up.

3 Q. All right. And the first label that was put on there,
4 did that turn out to be an incorrect label?

5 A. It was.

6 Q. All right. And was that corrected?

7 A. Yes, sir.

8 Q. And is that what's noted with the scratch-thru on one
9 of the labels?

10 A. Yes, sir.

11 Q. And your signature --

12 A. Yes, sir.

13 Q. -- indicating that it --

14 A. That's my signature, yes, sir.

15 Q. What does that signature indicate?

16 A. That I collected that specimen and placed it in that
17 container.

18 Q. Now, let me ask you, is there any chance that you got
19 the object that was removed mixed up with a different bullet
20 that was removed from somebody else that day?

21 A. No, sir, there was no other case that we did that we
22 removed a bullet from anyone.

23 Q. All right. So there is no question that was the bullet
24 that was removed from Hampton?

25 A. Yes, sir.

1 Q. All right. And then ultimately did a Calhoun County
2 sheriff's deputy come and retrieve the bullet, as far as you
3 know?

4 A. As far as I know, someone came to security and picked
5 it up.

6 Q. All right.

7 MR. LUPTON: Beg the court's indulgence.

8 THE COURT: All right.

9 (Off the record)

10 (Back on the record)

11 MR. LUPTON: Nothing further, Your Honor.

12 THE COURT: All right.

13 Cross-examination?

14 MR. THOMAS: No questions for this witness, Your
15 Honor.

16 THE COURT: Is this witness free to leave?

17 MR. LUPTON: No objection from the State, Your
18 Honor.

19 MR. THOMAS: No objection, Your Honor.

20 THE COURT: You are free to leave. Thank you.
21 Call your next witness, please.

22 MR. SORENSON: May we approach?

23 THE COURT: Sure.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 THE COURT: All right, ladies and gentlemen, we
2 are going to take our morning break.

3 When you step to your jury room do not discuss
4 this matter or allow anyone to discuss it with you. Leave
5 your notepads, please, in your seat.

6 We are going to take probably, oh, I don't know,
7 twenty minutes, just because we -- do we have any smokers?
8 Well, that takes not that much longer, but let them smoke.
9 And then when you have had time let us know.

10 And, again, please do not discuss the matter or
11 allow anyone to discuss it with you, but we will take about
12 twenty. Thank you. That's our official time keeping piece
13 right there.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: All right. Anything before we take
17 our break, from the State?

18 MR. SORENSON: No, Your Honor.

19 THE COURT: From the defense?

20 MR. THOMAS: No, Your Honor.

21 THE COURT: Let me know when your next witness has
22 arrived.

23 (Gun marked as State's Exhibit No. 34 for
24 identification)

25 (Bullets marked as State's Exhibit No. 35 for

1 identification)

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened).

4 THE COURT: Anything from the State?

5 MR. THOMAS: No.

6 THE COURT: Defense?

7 MR. SORENSON: No.

8 THE COURT: All right. We can have our jury,
9 please.

10 (The following takes place in the presence of the
11 jury panel)

12 THE COURT: Ladies and gentlemen, at this time we
13 will continue with the State's case.

14 Please call your next witness.

15 MR. LUPTON: Your Honor, the State calls Dr.
16 Jerrold Buckaloo.

17 THE CLERK: Doctor, if you would raise your right
18 hand for me please, sir.

19 DR. JERROLD BUCKALOO, having been first duly
20 sworn, testified as follows:

21 THE CLERK: Please have a seat.

22 State your full name for the record, please.

23 Pull the mike close to you.

24 THE WITNESS: Jerrold Marshall Buckaloo.

25 THE CLERK: Thank you, sir.

1 DIRECT EXAMINATION BY MR. LUPTON:

2 Q. Doctor, could you tell the jury a little bit about
3 yourself? What's your profession?

4 A. I am an orthopedic surgeon with a subspecialty in hand
5 surgery and I practice over at the Regional Medical Center
6 in Orangeburg.

7 Q. And, just generally, what is required to be an
8 orthopedic surgeon?

9 A. In terms of educational training?

10 Q. Right.

11 A. I had an undergraduate degree and went on to medical
12 school. Once completing that, did a residency in orthopedic
13 surgery and a fellowship in hand and upper extremity after
14 that.

15 Q. So you are a fully licensed medical doctor here in
16 South Carolina?

17 A. That's correct, licensed in the state, and I'm board
18 certified in orthopedics and hand surgery.

19 Q. All right. And were you working as a doctor back in
20 February of 2012?

21 A. Yes.

22 Q. And in the course of working as a doctor, did you come
23 into contact with James Hampton?

24 A. Yes, I did.

25 Q. Did you perform a procedure on him?

1 A. Yes.

2 Q. Could you tell the jury, please, when that happened and
3 what you did?

4 A. Sure. I'm just going to refer to the operative record
5 from the hospital.

6 That was on February the 8th, 2012, and it was on the
7 left elbow and forearm. And the procedure that was
8 performed was to remove what we call in medical terms a
9 foreign body. It was actually a missile or bullet and -- do
10 you want me to go on with the details?

11 Q. Please.

12 A. Essentially what we do is evaluate the problem in the
13 office and determine, you know, whether this should or
14 shouldn't come out, and the decision was made to go ahead
15 and remove the foreign body from the arm.

16 We scheduled an outpatient procedure at the hospital in
17 Orangeburg, where a patient comes in as an outpatient and he
18 was taken to the operating room and he was put under general
19 anesthesia, which means that they go to sleep. And then the
20 arm is cleaned and managed appropriately. And then what's
21 done is make a small incision about this big, about an inch
22 and a half, go through the skin, the muscle, identify the
23 foreign body, which had a little fibrous capsule around it.
24 Open that up, remove the metal, the bullet in this case, and
25 clean everything out, sew up the skin, put a dressing on it

1 and wake up from anesthesia in recovery and go home.

2 Q. All right. You talked about a fibrous capsule?

3 A. Correct.

4 Q. Could you explain that to the jury, please, sir?

5 A. What the body does when it identifies a foreign
6 material is it tries to wall that off. And what happens is
7 is that over time, if it's been there for awhile, let's say
8 a month or so, you know, maybe longer, it forms a little
9 capsule around it. It's a thick fibrous sheath that forms
10 around it. You know, if it were to happen within a couple
11 of days, or a week or two, or something like that, it
12 probably wouldn't form.

13 Q. All right. So the fibrous capsule is simply the body's
14 response to the foreign object?

15 A. Correct.

16 Q. All right. And I show you what's been marked as
17 State's Exhibit 33 entered into evidence. Is that -- based
18 on the packaging, does that appear to be what you removed?

19 A. Yes.

20 Q. And once you removed it, what did you -- what did you
21 do with it?

22 A. Well, what's required is it needs to be passed off from
23 the surgical field. We put it into a tray or a basin and
24 then that's passed off to the nurse and the authorities.
25 They are usually aware that this is going to occur and are

1 present to observe, you know, the actual bullet, or foreign
2 material in this case being removed and it changing hands
3 from one person to the next. It's passed off the operative
4 field and then --

5 Q. All right. And so this was passed off to the nurse in
6 the room?

7 A. To the best of my recollection, I believe it was. And
8 I believe the authorizes were either right outside the room
9 or in the room as well.

10 Q. Now, I understand this may seem a silly question, but
11 would a gunshot wound, in your medical opinion, be the kind
12 of thing that would be likely to cause death? Not
13 necessarily this one, but gunshot wounds generally.

14 A. Yes.

15 Q. Would they be likely to cause great bodily injury?

16 A. Yes.

17 Q. And by that I mean a substantial risk of death, or
18 serious permanent disfigurement, or protracted loss or
19 impairment in the function of a bodily part or organ?

20 A. Yes.

21 Q. All right. And I want to switch gears just a little
22 bit. I understand that this did not involve a leg wound,
23 but I want to talk about the anatomy of a leg very briefly.

24 Could you describe the anatomy of the upper leg and
25 what is in that area?

1 A. Sure. Close to the front or right below the hip most
2 of the thigh is surrounded by muscle, but in the front,
3 as -- it's hard to, you know, with the words, but there are
4 some vital blood vessels, nerves that travel right up under
5 a ligament which is close to where when folks have hernia
6 repairs, close to that region, and a large artery with
7 multiple veins and major nerves that pass, in addition to
8 some that pass behind the hip that give support and blood
9 flow and nerve function to the rest of the leg.

10 Q. And if one of those major arteries was damaged, was cut
11 by a bullet, what would the likely result of that be?

12 A. Significant bleeding. And if it could be controlled,
13 you know, in an amount of time, then a favorable outcome.
14 But if you could not get or control the bleeding, then that
15 individual could exsanguinate or bleed to death.

16 MR. LUPTON: Beg the court's indulgence.

17 THE COURT: Okay.

18 (Off the record)

19 (Back on the record)

20 MR. LUPTON: Nothing further, Your Honor.

21 THE COURT: Very well.

22 Cross-examination.

23 CROSS EXAMINATION BY MR. THOMAS:

24 Q. Thank you, doctor.

25 Just real quick.

1 A. Sure.

2 Q. The patient that you treated, was he on the verge of
3 dying, in your professional opinion?

4 A. My patient, the one that -- no. No, sir.

5 Q. Thank you, doctor.

6 MR. THOMAS: No more questions.

7 THE COURT: Redirect?

8 MR. LUPTON: No, Your Honor.

9 THE COURT: And is this witness free to leave?

10 MR. LUPTON: We would ask that he be excused, Your
11 Honor.

12 THE COURT: Any objection?

13 MR. THOMAS: No objection, Your Honor.

14 THE COURT: Good. You are free to go. Thank you
15 for being here.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness, please.

18 MR. LUPTON: Your Honor, the State would call
19 Deputy Kirk Corley.

20 THE CLERK: Raise your right hand for me, please,
21 sir.

22 CAPTAIN KIRK CORLEY, having been first duly sworn,
23 testified as follows:

24 THE CLERK: Please have a seat.

25 If you will just pull the microphone as close to

1 you as possible and state your full name for the record.

2 THE WITNESS: It's Kirk Corley, C-O-R-L-E-Y.

3 DIRECT EXAMINATION BY MR. LUPTON:

4 Q. And could you tell the jury a little bit about
5 yourself?

6 A. Currently I work for the Kershaw County -- I used to
7 work with the Kershaw County Sheriff's Office, but i'm
8 currently with the Calhoun County Sheriff's Office in the
9 capacity of a captain of the special operations.

10 Q. And, captain of special operations, this is a sworn
11 deputy position?

12 A. That's correct. I have been in law enforcement for
13 twenty-three years now.

14 Q. And have you been trained in this capacity?

15 A. I have.

16 Q. All right. Were you working back last September -- or
17 excuse me, back in September of 2001 (sic), as a Calhoun
18 County deputy?

19 A. 2001, no, sir.

20 Q. I'm sorry, 2011.

21 A. Yes, sir.

22 Q. I apologize.

23 Back in September of 2011, were you employed here in
24 Calhoun County?

25 A. Yes.

1 Q. And in what capacity?

2 A. As a lieutenant.

3 Q. In the course of your duties as a lieutenant, were you
4 involved in the investigation of this case?

5 A. I was, yes, sir.

6 Q. And as part of that, did you go up to North Carolina
7 and interview a witness?

8 A. Yes, I did.

9 Q. Who was that witness?

10 A. It was Joshua Haggood.

11 Q. And you went up and took a statement from him?

12 A. That's correct.

13 Q. Okay. Did you have occasion to go back up to North
14 Carolina?

15 A. I did, yes, sir.

16 Q. And when you went up to North Carolina that second
17 time, what did you do?

18 A. I met with a lieutenant in the homicide division in the
19 county there in Fayetteville, Lieutenant Reyes. I met with
20 him and gathered some evidence that he had collected for us,
21 and also interviewed another witness.

22 Q. All right.

23 MR. THOMAS: No objection.

24 BY MR. LUPTON:

25 Q. I'll show you what is marked as State's Exhibit 34.

1 MR. LUPTON: And we will note for the record that
2 the firearm is cleared and securely locked.

3 THE COURT: Thank you.

4 BY MR. LUPTON:

5 Q. And do you recognize that?

6 A. I do.

7 Q. What is this?

8 A. That's a Springfield .40 caliber semiautomatic handgun.

9 Q. And is this the firearm that you retrieved from North
10 Carolina?

11 A. That is correct.

12 Q. What is the significance of this firearm?

13 A. It was tied into the case that we are here talking
14 about today. It was -- it was loaned to a Joshua Haggood to
15 bring back home to Saint Matthews the night of the incident.

16 Q. Is that the firearm that investigation revealed Haggood
17 had on the night of the incident?

18 A. That's correct.

19 MR. LUPTON: Your Honor, at this point I move
20 this, State's Exhibit 34, into evidence.

21 THE COURT: Any objection?

22 MR. THOMAS: No objections, Your Honor.

23 THE COURT: Very well.

24 (Whereupon, State's Exhibit No. 34 was admitted
25 into the record as evidence)

1 BY MR. LUPTON:

2 Q. And can you describe what kind of firearm this is?

3 A. It's a semiautomatic handgun. The description of that
4 is as long as the magazine is loaded and there is one in the
5 chamber, a press of the trigger one round is fired. And
6 subsequent the slide pulls to the rear, strips another round
7 off the magazine and into the chamber and ready to be fired
8 again.

9 Q. And what caliber is this?

10 A. It's a .40 caliber.

11 Q. All right. And -- now, you talked about it was -- that
12 Haggood, the co-defendant Haggood, had borrowed this. Who
13 did he borrow it from?

14 A. I cannot pronounce the guy's last name.

15 Q. McGarrah?

16 A. That's correct.

17 Q. All right.

18 A. I had a tough time with it that day too.

19 Q. And did the investigation show whether or not the
20 firearm was ever returned to McGarrah?

21 A. It was. It was returned by Joshua Haggood to McGarrah.
22 And then once he got it back, he actually took it to a pawn
23 shop a day or so after he got it back from Joshua Haggood.

24 Q. All right. And while you were up there, you said that
25 you talked to McGarrah?

1 A. That's correct.

2 Q. Did you retrieve anything from him?

3 A. I did. During the course of the interview about him
4 loaning the firearm to Joshua, I questioned him to see if he
5 had any more rounds that -- or what type of round was in the
6 firearm, as well as if he had any left out of it that we may
7 be able to use for forensic comparison. He said he did.

8 Q. All right. Now, I show you State's Exhibits 35. Do
9 you recognize that?

10 A. Let me get my glasses back on. I'm getting old.

11 Q. I understand. It creeps on all of us.

12 A. That is the bag of ammunition that I recovered from him
13 that day.

14 Q. Okay. All right.

15 MR. LUPTON: Your Honor, I ask that this be
16 admitted into evidence as State's Exhibit 35.

17 MR. THOMAS: No objection.

18 THE COURT: Very well. State's Exhibit 35 is in
19 evidence without objection.

20 (Whereupon, State's Exhibit No. 35 was admitted
21 into the record as evidence)

22 BY MR. LUPTON:

23 Q. All right. Now, I'll note that there is a couple of
24 these rounds of ammunition that are separated into a plastic
25 bag and appear to have been fired. Was that condition --

1 did that happen after you retrieved them?

2 A. That was after I -- from my understanding, that's for
3 the forensic testing that took place after the ammunition
4 was turned in.

5 Q. Testing at SLED?

6 A. Correct.

7 Q. All right. So when you got these, it was just a bag of
8 live ammunition?

9 A. Correct, the projectile was still intact and had not
10 been fired.

11 Q. All right. And you got those from McGarrah, you said?

12 A. That's correct.

13 Q. And they were the same type that he had loaned to the
14 defendant?

15 A. That's -- that's a mix of ammunition. He gave me the
16 exact ammunition that was in the magazine when he loaned it
17 and it's written down in my case notes. And I do believe
18 there was some of that ammunition in that bag.

19 MR. LUPTON: Beg the court's indulgence.

20 THE COURT: All right.

21 (Off the record)

22 (Back on the record)

23 MR. LUPTON: Nothing further, Your Honor.

24 THE COURT: Cross-examination?

25

1 CROSS EXAMINATION BY MR. THOMAS:

2 Q. Thank you, captain.

3 Real quick. Who did this firearm belong to?

4 A. McGarrah. I think that's pronounced correct.

5 Q. McGarrah?

6 A. Correct.

7 Q. And who had he loaned it to?

8 A. To a Joshua Haggood.

9 Q. Did he loan it to David Benjamin?

10 A. I'm not aware that he did, no, sir.

11 Q. Did you retrieve any fingerprints from that handgun?

12 A. I did not perform any testing, no, sir.

13 Q. Okay. Did you retrieve a firearm from David Benjamin?

14 A. No, sir.

15 Q. Thank you.

16 MR. THOMAS: No more questions.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION BY MR. LUPTON:

19 Q. As far as fingerprints, at the point where it was --
20 after it was retrieved from the pawn shop, would there have
21 been any point in fingerprinting it?

22 A. Forensically speaking it had been handled by so many
23 people at that point in time, the chances were next to zero.

24 MR. LUPTON: Nothing further, Your Honor.

25 THE COURT: All right. Recross?

1 MR. THOMAS: Nothing further.

2 THE COURT: Is this witness free to leave?

3 MR. LUPTON: Your Honor, we would ask for him to
4 be excused.

5 THE COURT: Any objection?

6 MR. THOMAS: No objection.

7 THE COURT: Very well, you are free to go.

8 Call your next witness, please.

9 MR. SORENSON: The State calls Joshua Haggood.

10 THE CLERK: Mr. Haggood, have a seat, please.

11 Raise your right hand for me, please.

12 JOSHUA HAGGOOD, having been first duly sworn,
13 testified as follows:

14 THE COURT: Please have a seat.

15 State your full name for the record.

16 THE WITNESS: Joshua Haggood.

17 THE CLERK: Okay. Thank you, sir.

18 DIRECT EXAMINATION BY MR. SORENSON:

19 Q. Good morning, Mr. Haggood.

20 A. Good morning.

21 Q. You need to make sure you pull that mike closer.

22 Almost get right up on it, all right?

23 If you would, Mr. Haggood, tell the jury how old you
24 are?

25 A. Twenty-six.

1 Q. All right. And where did you go to high school?

2 A. Calhoun County.

3 Q. And did you graduate?

4 A. Yes.

5 Q. What year did you graduate?

6 A. 2004.

7 Q. And in 2005, what did you do?

8 A. Joined the United States Army.

9 Q. And when was that in 2005?

10 A. January of 2005.

11 Q. Okay. And up until September of 2011, were you in the
12 United States Army during that period of time?

13 A. Yes, I was active duty.

14 Q. And back in September of 2011, where were you stationed
15 at at that time, Mr. Haggood?

16 A. Fort Bragg, North Carolina.

17 Q. Okay. And how long had you been at Fort Bragg?

18 A. About four or five years.

19 Q. And during that time had you been deployed at some
20 point in time during that time?

21 A. Yes, twice.

22 Q. Okay. Where was that that you were deployed to?

23 A. Afghanistan.

24 Q. And in September of 2011, what was your rank at that
25 time?

- 1 A. Sergeant.
- 2 Q. Mr. Haggood, are you married?
- 3 A. Yes.
- 4 Q. And how long have you been married?
- 5 A. It will be seven years -- seven years this month.
- 6 Q. And do you have any children?
- 7 A. Two.
- 8 Q. Two.
- 9 And how old are your children?
- 10 A. Six and three.
- 11 Q. And are they both boys?
- 12 A. Yes.
- 13 Q. Let me ask you this. The defendant in this case, David
- 14 Benjamin, do you know Mr. Benjamin?
- 15 A. Yes, I know Mr. Benjamin.
- 16 Q. And how long have you known Mr. Benjamin?
- 17 A. Most of my life.
- 18 Q. And we have heard reference to another individual by
- 19 the name of Kevin Frazier. Do you know Mr. Frazier?
- 20 A. Yes.
- 21 Q. How long have you known Mr. Frazier?
- 22 A. Since about middle school.
- 23 Q. Okay. You have known Mr. Benjamin longer than Mr.
- 24 Frazier?
- 25 A. Yes.

1 Q. Back in September of 2011, how would you have
2 classified your relationship with Mr. Frazier and Mr.
3 Benjamin?

4 A. Friends.

5 Q. Were two of your best friends, is that correct?

6 A. Yes.

7 Q. You are currently incarcerated, is that correct?

8 A. Yes.

9 Q. And, in fact, back in August of last year, of 2012, you
10 were convicted of an aggravated assault in Lexington County,
11 is that correct?

12 A. That's correct.

13 Q. All right. And that has nothing to do with -- it's not
14 related to this case at all, is that correct?

15 A. That's correct.

16 Q. All right. And stemming out of the incidents of the
17 morning of September 18th of 2011, you were ultimately
18 charged with one count of murder and two counts of attempted
19 murder stemming out of that incident, is that correct?

20 A. That's correct.

21 Q. The same thing Mr. Benjamin was charged with and the
22 same thing as Kevin Frazier was charged with, is that
23 correct?

24 A. That's correct.

25 Q. And last Friday, Mr. Haggood, you pled guilty in front

1 of Judge Goodstein, is that correct?

2 A. Yes, that's correct.

3 Q. You pled to one count of assault and battery of a high
4 and aggravated nature involving the shooting of James
5 Hampton, the young man the jury heard from this morning, is
6 that correct?

7 A. That's correct.

8 Q. Now, you could have been looking at up to twenty years
9 on that charge, is that correct?

10 A. That's correct.

11 Q. All right. But part of your plea was that the State
12 was going to recommend no more than ten years in exchange
13 for you testifying today, is that correct?

14 A. That's correct.

15 Q. And that ultimately that sentence is going to run
16 concurrent or run at the same time as your sentence in
17 Lexington?

18 A. Yes.

19 Q. That's basically what you have been offered, is that
20 correct?

21 A. That's correct.

22 Q. All right. And Mr. Haggood, now, you testified that
23 you had been at Fort Bragg for several years, is that
24 correct?

25 A. Yes.

1 Q. When had you gotten back from your last deployment to
2 Afghanistan?

3 A. December of 2010.

4 Q. Okay. And at some point in time after that did you
5 start coming back to Orangeburg and visiting?

6 A. Yes.

7 Q. How often were you doing that?

8 A. About once or twice a month.

9 Q. All right. And those once or twice a month when you
10 would come back here from North Carolina, who were you
11 typically hanging out with when you came back?

12 A. David and Kevin.

13 Q. And at some point in time did you start bringing
14 anything with you when you came back to Orangeburg, Calhoun
15 area?

16 A. .40 caliber pistol.

17 Q. And whose .40 caliber pistol was that?

18 A. A friend of mine from -- well, a fellow soldier from
19 Fort Bragg.

20 Q. What was his name?

21 A. Georgio McGarrah.

22 Q. And how often do you think that you borrowed that .40
23 caliber gun from Mr. McGarrah?

24 A. Maybe about five times.

25 Q. And describe to the jury what kind of gun that was.

1 A. It was a silver and black semiautomatic.

2 Q. Do you remember the type of gun or the --

3 A. XD 40.

4 Q. I'm showing you what's been marked as State's Exhibit
5 No. 34. Does appear to be the gun that you borrowed from
6 Mr. McGarrah?

7 A. Yes.

8 Q. I want to turn your attention to the weekend of
9 September 16th through the 18th. Did you come back to
10 Orangeburg or Calhoun that weekend?

11 A. Yes, I came back to Orangeburg.

12 Q. And what was -- what was the purpose of you coming --
13 Now, let me ask you this. Do you still have family
14 that lives in the area?

15 A. I have a son that lives in Orangeburg and my mom lives
16 in Orangeburg also.

17 Q. Okay. So one of your children lives with you in North
18 Carolina, or lived with you in North Carolina, and the other
19 one lived here in Orangeburg?

20 A. Yes.

21 Q. So what was the purpose that weekend of you coming back
22 to this area?

23 A. Just to visit.

24 Q. And this .40 caliber gun, State's Exhibit 34, did you
25 borrow this from Mr. McGarrah before you came home that

1 weekend?

2 A. Yes, I did.

3 Q. And specifically that Friday night, September the 16th,
4 did you see Mr. Benjamin at all that night?

5 A. No.

6 Q. How about Mr. Frazier?

7 A. Yes.

8 Q. All right. Now, fast forward then to the evening of
9 Saturday, September 17th.

10 Did there come a time where you ultimately got up with
11 Mr. Benjamin and Mr. Frazier that night, that Saturday
12 night?

13 A. Yes.

14 Q. Tell the jury kind of how that initially came about.

15 A. I went over to pick up David from his mom's house. And
16 then after that he and I went to Kevin's house and we met
17 up -- well, we were all there together.

18 Q. Okay. All right.

19 And let me ask you, when you picked up David from his
20 mom's house, do you know at that point in time whether he
21 had a weapon on him?

22 A. Yes, I believe he did.

23 Q. Okay. And what did he do with that weapon?

24 A. Placed it in the trunk of my car.

25 Q. Okay. Let me ask you this. Prior to that night had

1 you seen him with a handgun before?

2 A. Yes.

3 Q. What kind handgun was it that you had seen him with
4 prior to that night?

5 A. A silver or chrome .45 semiautomatic.

6 Q. Chrome .45 caliber?

7 A. Yes.

8 Q. How many times do you think that you had seen him with
9 that gun?

10 A. A few times.

11 Q. A few times.

12 And -- let me see, you said you picked up Mr. Benjamin
13 first?

14 A. Yes.

15 Q. And then from there went and picked up or met Mr.
16 Frazier at his place?

17 A. Yes.

18 Q. Where was that? Were they both in Orangeburg, Calhoun
19 County, or --

20 A. One is Calhoun County and one is in Orangeburg. One is
21 out like the Sweetwater Lake area, which I believe is in
22 Orangeburg.

23 Q. Okay. Who was in Orangeburg?

24 A. Kevin was in Orangeburg.

25 Q. So you picked up Mr. Benjamin in Calhoun County and

1 then went over to Orangeburg and picked up Mr. Frazier?

2 A. Yes.

3 Q. And what -- what were y'all doing? Did y'all stay at
4 Mr. Frazier's trailer?

5 A. Not very long.

6 Q. Okay.

7 A. It was about twenty minutes or so.

8 Q. Okay. And let me ask you, had y'all been -- leading up
9 to that point in time, had y'all had anything to drink?

10 A. A few beers.

11 Q. That was yourself?

12 A. Yes.

13 Q. How about Mr. Frazier?

14 A. Yes.

15 Q. How about Mr. Benjamin?

16 A. Yes.

17 Q. All right. And then ultimately did y'all have plans to
18 go somewhere that evening?

19 A. Yes.

20 Q. Where was that that y'all were planning on going that
21 evening?

22 A. The party at Piggy Park.

23 Q. And what is -- describe for the jury what is Piggy
24 Park?

25 A. It's a club out in the Elloree area.

1 Q. Okay. Had you been there before?

2 A. No.

3 Q. And was there something going on there that you were
4 specifically going to, or --

5 A. It was a birthday party.

6 Q. Okay. And who was that birthday party for?

7 A. Nevadria Miller.

8 Q. Make sure you keep your voice up for me, all right?
9 What was her name?

10 A. Nevadria Miller.

11 Q. Okay. Ms. Miller was somebody that y'all knew from
12 school?

13 A. High school.

14 Q. High school.

15 All right. Now, whose car were y'all in?

16 A. We were in my car.

17 Q. Okay. And what kind of car was that?

18 A. A 2009 black Toyota Camry.

19 Q. Okay. And when you picked up Mr. Benjamin and then
20 ultimately went over and picked up Mr. Frazier, who was
21 driving during that period of time?

22 A. I drove to Kevin's house. David drove to Piggy Park.

23 Q. Okay. So from Kevin's house to Piggy Park who drove?

24 A. David.

25 Q. Okay. Why was that? Why did he drive instead of you?

1 A. Because he knew how to get there.

2 Q. And what -- do you know about what time you got there
3 that night?

4 A. Between twelve and one.

5 Q. It was just the three of y'all in your car?

6 A. Yes.

7 Q. Okay. Let me ask you, was there anybody else that had
8 kind of followed you or that arrived around the same time
9 that you did?

10 A. My brother William was in the other car with my cousin.

11 Q. So your brother William and your cousin. What's your
12 cousin's name?

13 A. Brandon.

14 Q. Brandon.

15 And what kind of car does your brother have?

16 A. I can't even remember. It was a tan car.

17 Q. Tan car?

18 A. Yes.

19 Q. Okay. All right.

20 Now, when y'all got to the club, do you remember where
21 y'all parked?

22 A. On the edge of the club.

23 Q. I'm showing you State's Exhibit No. 3. Could you point
24 on there --

25 A. Backed in towards the edge of the club right here.

1 Q. You backed in kind right of where my -- right in the
2 area --

3 A. Yeah.

4 Q. -- generally where my finger is?

5 A. Yeah.

6 COURT REPORTER: Pull that microphone closer,
7 please.

8 BY MR. SORENSON:

9 Q. That's kind of at the corner of the club?

10 A. Yes.

11 Q. How about your brother? Where did your brother park?

12 A. To the -- to the right of my car.

13 Q. Okay. Do you see -- let me ask you this. Do you see
14 there is a van in that picture?

15 A. Yes.

16 Q. Was your brother parked in between your car and the
17 van?

18 A. Yes, sir, it was in between my car and the van.

19 Q. Okay. And I believe you had testified that y'all
20 backed in?

21 A. Yes.

22 Q. How about your brother, did he back in too?

23 A. He backed in also.

24 Q. Okay. Now, when you got to the club, where --

25 Let me ask you, that .40 caliber pistol, when you got

1 to the club that night, where was it located?

2 A. It was in the middle console of the car.

3 Q. And did you do anything with it when you got to the
4 club?

5 A. Locked it in the glove box.

6 Q. Now, you testified that you knew that Mr. Benjamin had
7 a .45 caliber pistol on him. Where was it located at?

8 A. In the trunk of my car.

9 Q. How about Mr. Frazier? Do you know whether Mr. Frazier
10 had a gun with him that night?

11 A. It was on him until we got there. He placed it in the
12 trunk also.

13 Q. Okay. When you got to the club?

14 A. Yes, sir.

15 Q. Do you know what kind of gun that was?

16 A. A .32 revolver.

17 Q. And had you seen Mr. Frazier with that .32 revolver
18 prior to that night?

19 A. The night before.

20 Q. Okay. So that Friday night when you had gone out with
21 him?

22 A. Yes.

23 Q. Now, let me ask you what -- when you first got to the
24 club, were there a lot of cars there?

25 A. Not really.

1 Q. Did y'all ultimately go inside?

2 A. Yes.

3 Q. So when you go inside, your gun, or at least the gun
4 you had borrowed, was in the glove box?

5 A. Yes.

6 Q. The other two guns are in the trunk of the car?

7 A. Yes.

8 Q. All right. Describe for the jury, if you would, Mr.
9 Haggood, what -- I mean, what was going on when y'all went
10 inside?

11 A. There was a few people inside the club. Nothing major.
12 It was plenty of people were dancing. It was like -- it all
13 started -- like when we first walked in, we walked past the
14 bar and went to the dance floor. Then we went -- well, they
15 told us that it was a free liquor bar and that, so we had to
16 pay for our own beers, so we went back to -- we went back to
17 both bars.

18 Q. So you were drinking liquor?

19 A. I wasn't drinking liquor, no.

20 Q. Okay. How about Kevin, was he drinking liquor?

21 A. I believe so.

22 Q. How about Mr. Benjamin?

23 A. I'm not a hundred percent sure, but I believe so.

24 Q. Then you said -- so the liquor was free?

25 A. Yes.

1 Q. There was another bar that had beer?

2 A. Yes.

3 Q. And how about the beer? Were you drinking --

4 A. Yes.

5 Q. -- drinking beer?

6 A. Yes, I was drinking beer.

7 Q. And how many beers do you think that you had when you
8 were there?

9 A. No more than four or five.

10 Q. Okay. And you had said that Mr. Frazier was drinking
11 liquor. Was he drinking beer too?

12 A. Yes.

13 Q. How about Mr. Benjamin?

14 A. I believe so.

15 Q. All right. Describe for the jury kind of -- did the --
16 did the club start to eventually fill up with more people?

17 A. Yes.

18 Q. Okay. And who were you hanging out with inside?

19 A. David and Kevin for the most part, but I was like
20 moving back and forth, like all over the place. Well, not
21 really all over the place, but my brother William had a pool
22 table, so it was like a back and forth thing between the
23 pool table and the dance floor.

24 Q. All right. Let me ask you, Mr. Haggood, did there come
25 a time when Mr. Benjamin called you over and told you about

1 something happening in there?

2 A. He didn't really call me over, but, like, you know,
3 when I went back over there, he let me know what was going
4 on.

5 Q. Okay. Tell the jury what Mr. Benjamin told you was
6 going on inside that club.

7 A. He pointed at two individuals and he told me that I
8 needed to look out for them because he thinks that -- he
9 thought that one of them had a gun. One had him a book bag
10 and the other one was reaching inside the bag.

11 Q. Two guys, one of them reaching inside a book bag, and
12 Mr. Benjamin told you to look out for them because he thinks
13 one of them has a gun?

14 A. Yes.

15 Q. Okay. Did he tell you anything else that had happened
16 between him and one of those guys?

17 A. He didn't really say that something happened between
18 them, but I could tell that because he was like kind of
19 agitated.

20 Q. Okay. So he didn't tell you anything specific that had
21 happened between them?

22 A. No.

23 Q. All right. And what -- what was your response to that
24 when he made those comments to you?

25 A. I asked him what he wanted to do.

1 Q. Okay. And what was Mr. Benjamin's -- this was the
2 defendant we are talking about that you are having this
3 conversation with, right?

4 A. Yes.

5 Q. And what was Mr. Benjamin's comment to you asking him
6 what he wanted to do?

7 A. He said he wasn't trying to get caught slipping.

8 Q. "He wasn't trying to get caught slipping." Tell the
9 jury what does that mean?

10 A. Basically not trying to be unprepared.

11 Q. Okay. What did you take that to mean that he wanted to
12 do?

13 A. Get his gun.

14 Q. And where was Kevin at when all this was going on, Mr.
15 Frazier?

16 A. He was like in the dance floor area also. He wasn't
17 very far away from us.

18 Q. Okay. So Mr. Benjamin makes the comment to you he
19 doesn't want to get caught slipping, and what do y'all do
20 then as a result of that?

21 A. We went out to my car.

22 Q. Okay. And who went out to your car?

23 A. The three of us.

24 Q. You, David Benjamin, and Kevin Frazier?

25 A. Yes.

1 Q. And what did y'all do out at your car?

2 A. Got guns. Got our guns.

3 Q. All three of y'all?

4 A. Yes.

5 Q. What did you do with your gun?

6 A. Stuck it in my waistband.

7 Q. What did Mr. Benjamin do with his gun?

8 A. I believe he stuck it in his waistband also.

9 Q. And that .45 caliber pistol, was that about the same
10 size as your gun; smaller or bigger?

11 A. Probably a little bit bigger.

12 Q. A little bit bigger?

13 A. Yes.

14 Q. And then Mr. Frazier and you have testified had a .32
15 revolver. What did he do with his gun?

16 A. I believe he stuck it in his pocket.

17 Q. And is that a smaller gun than your gun?

18 A. A lot smaller.

19 Q. A lot smaller.

20 And do you know about what time -- you said you had
21 gotten there, I think I had asked you --

22 A. Between twelve and one.

23 Q. Between twelve and one.

24 So what time do you think this was that you went out to
25 your car and the three of y'all got your guns out of the

1 car?

2 A. Probably like an hour or hour and a half later, two
3 hours at the most.

4 Q. Somewhere maybe between one and two, somewhere in that
5 range?

6 A. Yeah.

7 Q. Now, after getting your guns out of the car, what did
8 y'all do then?

9 A. We went back inside the club.

10 Q. Okay. And tell the jury what was going on when you
11 went back and after the three of y'all are armed. What went
12 on inside the club then?

13 A. It was just like a normal club environment. It was
14 nothing going on, really, other than music, dancing, and
15 just people talking and everything. Nothing negative was
16 going on.

17 Q. Y'all continued to drink then during that period of
18 time?

19 A. Yes.

20 Q. You said that you had four or five beers. Was that
21 basically spread out over the --

22 A. That was the course of the night, yes.

23 Q. The whole time that you were there, right?

24 A. Yes.

25 Q. All right. Now, at some point in time did things kind

1 of come to an end inside?

2 A. Yes.

3 Q. And tell the jury kind of how that came about.

4 A. They stopped playing the music and turned the lights
5 on.

6 Q. Okay. And what -- what did you do when that happened?

7 A. I was already up like near the pool table area, so I
8 just walked out.

9 Q. The pool tables are kind of near the front door?

10 A. Towards the front door, yes.

11 Q. Did you know where Mr. Benjamin and Mr. Frazier were at
12 that time?

13 A. I believe they were like probably back on the dance
14 floor?

15 Q. Okay. So when you walked out, they were not with you
16 when you initially walked out?

17 A. No.

18 Q. And what -- tell the jury what happened when you got
19 outside?

20 THE COURT: Hold on one second.

21 (Off the record)

22 (Back on the record)

23 THE COURT: Ask that question again.

24 MR. SORENSON: Yes, ma'am.

25 BY MR. SORENSON:

1 Q. Tell the jury, Mr. Haggood, when you got outside, what
2 was going on when you got outside?

3 A. There was people outside the club. I was standing next
4 to like a Suburban truck talking to one of my friends from
5 high school, somebody that I knew from high school, not
6 necessarily a friend.

7 Q. That was a female that you were talking to?

8 A. Yes, a female.

9 Q. And what happened then?

10 A. After everybody was -- well, when everybody was coming
11 outside the club, I saw David and Kevin coming outside the
12 door. When they first got -- like as soon as they got
13 outside the door, somebody pulled out a gun and discharged a
14 round.

15 Q. Somebody pulled out a gun and discharged a round?

16 A. Yes.

17 Q. Okay. Who was -- do you know who that was that did
18 that?

19 A. I later -- I found out later on that it was Dominique.

20 Q. Okay. Was that -- let me ask you, was he one of the
21 guys that Mr. Benjamin had pointed out to you earlier inside
22 the club?

23 A. Yes.

24 Q. So you said he pulled out a gun and discharged it.
25 What do you mean by that? Actually fired it?

1 A. No, he cocked his pistol.

2 Q. Okay. And what happened when he cocked it?

3 A. Discharged a round. There was a round already in the

4 chamber. So cocked it and --

5 Q. For some of us that may not understand, by discharging

6 a round -- was it a similar type gun to this?

7 A. Yes. He had -- a round ejected from the top of the

8 gun.

9 Q. Okay. He did this, the slide?

10 A. Yes.

11 Q. And then it kicked out a live round at that point in

12 time?

13 A. Yes, I believe -- I believe it was a live round. I

14 didn't know that he cocked his gun. Later on I found out

15 that it was a live round that was on the ground.

16 Q. So you saw something fly out of it and that's what --

17 from your training you assumed it was?

18 A. Yes.

19 Q. Okay. He didn't actually fire a round at that point in

20 time?

21 A. No.

22 Q. And where did that happen?

23 A. Near the front door.

24 Q. Near the front door.

25 Do you know what kind of gun he had that he pulled out?

1 A. No.

2 Q. All right. Now, as a result of him doing that, what
3 happened?

4 A. It was just like everything became chaotic, you know.

5 Q. Okay.

6 A. Like people arguing and everything and people trying to
7 separate everything.

8 Kevin pulled his gun out and put it in the air and was
9 like "I'm just trying to get home. I'm just trying to get
10 home. I don't want any trouble."

11 Q. Okay. What were you doing when all this was going on?

12 A. I reached for my gun. And when I walked toward David,
13 he grabbed me by the shoulder -- well, it wasn't really a
14 grab. He kind of like touched me on my shoulder. He
15 pressed against my shoulder and it was like "just fall back.
16 Chill out."

17 Q. He told you to fall back?

18 A. Yes.

19 Q. All right. Where did y'all end up going at that point
20 in time?

21 A. Towards the cars.

22 Q. Towards the cars.

23 All right. And you had said that there were a lot of
24 people kind of when that happened. So when the guy -- you
25 know, when the first guy kind of does his gun, Kevin pulls

1 his gun out, a lot of people intervening at that point in
2 time?

3 A. Yes.

4 Q. You, Kevin, and David and people are ushering you kind
5 of towards y'all's -- your car?

6 A. Well, it was more so ushering Kevin towards the car.

7 Q. Okay.

8 A. I was behind that crowd -- well, I was behind -- David
9 and I both -- neither one of us were in the crowd.

10 Q. Okay. So people ushering, and obviously Kevin still
11 had the gun out that whole time?

12 A. Yes.

13 Q. Okay. How about the guy that you said that you later
14 found out was Dominique, where was he?

15 A. He was part of the -- he was part of the opposite where
16 the other crowd from Kevin.

17 Q. Okay. What was going on -- do you know where they went
18 or what was going on with them?

19 A. I didn't really see where they went, but I know they
20 went like towards the road.

21 Q. Okay. Kind of out into the parking lot towards the
22 road?

23 A. Yes.

24 Q. All right. And then tell the jury then as you are
25 going towards your car, what happened then?

1 A. By the time I got in front of my brother's William's
2 car, that was when the first shots came out. They started
3 shooting. And then it was like everybody was scattering,
4 basically.

5 And while we were headed towards my car, there was
6 another car parked in front of mine.

7 Q. Okay. So there is a car parked in front of yours. So
8 obviously that car wasn't there when you first got there,
9 right?

10 A. No.

11 Q. Was that car there when you had gone out and got the
12 guns from the car?

13 A. No.

14 Q. All right. So the car parked in front of y'all.

15 So you hear some shots. Do you know where those shots
16 were coming from?

17 A. Not really, not, but I know it was like towards the
18 road.

19 Q. Okay. And do you hear those shots hitting anything?

20 A. No.

21 Q. Did your car get hit?

22 A. No.

23 Q. The building get hit by you, or anything of that
24 nature, that you are aware of?

25 A. No.

1 Q. And as a result of that, what did you then see happen?

2 A. Well, by the time I got in my brother's William's car
3 David was may have been like three stops in front of me. He
4 pulled out his gun. That's when he let off about two shots
5 like towards that car.

6 Then after that he moved around to the driver's side of
7 my door -- or the driver's side of my car and I went to the
8 passenger's side. I tried to pull on the door but the door
9 wasn't unlocked yet.

10 Somebody had threw a post or something like that. It
11 was like a two-by-four, or something like that that hit the
12 mirror on my car.

13 Q. Let me stop you there just for a second, Josh.

14 All right. So you hear -- you hear some shots coming
15 from somewhere out in the road from somebody shooting.

16 As a result of that Mr. Benjamin pulls out his gun and
17 starts shooting back in that direction?

18 A. It wasn't really in that direction, but it was like the
19 direction of the car that was in front of mine.

20 Q. Okay. And how was he -- was he -- you know, people
21 talked about Kevin firing up in the air. What was the kind
22 of angle of his gun?

23 A. It was like a -- it was like a downward angle
24 towards -- like outstretched arm like downward, you know,
25 like from the waist.

1 Q. You said when you initially saw this -- when you
2 initially saw him firing, he was near the passenger side
3 corner of your vehicle?

4 A. Yes.

5 Q. But it was still -- he was still moving when that was
6 happening?

7 A. Yes.

8 Q. Okay. And was Kevin still in front of him that whole
9 time?

10 A. Kevin was already at the car then.

11 Q. He was already at the car?

12 A. Yes.

13 Q. And what -- what door was he or what part of the car
14 was Kevin near?

15 A. Rear driver.

16 Q. The rear driver.

17 All right. Now, you said somebody at that point in
18 time threw a post and hit where in your vehicle?

19 A. The passenger side mirror, rearview mirror.

20 Q. Okay. And where were you at when that happened?

21 A. I was like right next to it.

22 Q. Okay. And as a result of that, what -- I mean, what
23 did you -- what ended up happening next?

24 A. Somebody was firing from behind the van -- well, like I
25 could hear the shots coming from behind the van, because --

1 well, it was still people shooting like from different
2 directions and everything, so I moved like towards the back
3 of my car. I saw somebody shooting from behind the van. I
4 pulled out the .40 caliber pistol that I had had on me and I
5 shot back.

6 Q. And when you were doing that, when that post gets
7 thrown and you said you hear somebody or you could tell
8 somebody was behind the van, you think they are shooting
9 at you --

10 A. I didn't see that person until after I moved until like
11 the rear of the car.

12 Q. Okay. So you moved to the rear of your car?

13 A. Yes.

14 Q. Do you have any idea what Mr. Benjamin or Mr. Frazier
15 were doing?

16 A. They were back -- my back was to them.

17 Q. Okay. And you had testified that you saw Mr. Benjamin
18 fire a couple of shots as he's moving around to the driver's
19 side?

20 A. Yes.

21 Q. So do you know whether he fired more after that?

22 A. I have no idea.

23 Q. Okay. How about Mr. Frazier, did you ever see him fire
24 his gun?

25 A. Before he got into the car he fired in the air.

1 Q. In the air.

2 Okay. How many times did you see him fire in the air?

3 A. Probably about two or three times.

4 Q. And ultimately the shots --

5 How many shots did you fire out of this .40 caliber gun
6 then back in the direction of that van?

7 A. About three or four shots.

8 Q. And did you know at that point in time whether you hit
9 anybody on the other side of that van?

10 A. No.

11 Q. After that happened, what do you do, Mr. Haggood, after
12 firing those three or four shots in that direction?

13 A. Turned around and reached for the door and the door was
14 already unlocked.

15 Q. Did you get in the car?

16 A. Yes.

17 Q. It's the passenger -- the front passenger side?

18 A. Yes.

19 Q. And when you got in the car, were Mr. Benjamin and Mr.
20 Frazier in the car?

21 A. David and I got in about the same time. But Kevin, he
22 got in and was like staggering, I guess you could say, but
23 it was all around the same time, like within a couple of
24 seconds.

25 Q. The two of y'all about the same time and Kevin

1 basically right after that?

2 A. Yes.

3 Q. All right. And -- now, you had testified earlier that
4 there was a vehicle that was initially blocking y'all in.
5 Was that vehicle still in front of y'all?

6 A. Yes, that vehicle was still in front of us.

7 Q. And what happened -- what happened then?

8 A. David hit the horn a couple of times and like while he
9 was -- well, he had already put the car in gear and he hit
10 the horn a couple of times. He was moving forward and that
11 car started to back up.

12 Q. And when that car started backing up, what did y'all
13 do?

14 A. We -- well, he went around the car and we pulled out
15 and went back to the right.

16 Q. Okay. And let me ask you, did you know whose car that
17 was that had y'all blocked in?

18 A. I found out later that it was Shawn Defreitas.

19 Q. Okay. You didn't know that at the time?

20 A. No.

21 Q. Now, Shawn Defreitas, is that somebody that you knew?

22 A. I didn't really know him, but I knew of him.

23 Q. Okay. And, in fact, you are pretty good friends with
24 his sister, is that correct?

25 A. Yes.

- 1 Q. Now, Shawn, was he involved at all in this altercation?
- 2 A. I have no idea.
- 3 Q. Did you see him ever -- was he somebody ever that was
- 4 arguing with any of y'all or anything like that out there?
- 5 A. No, I don't believe so. I'm not sure, though.
- 6 Q. All right. Now, when y'all get in the car and you said
- 7 you took a right out of the parking lot?
- 8 A. Yes.
- 9 Q. And what was -- what was going on in the car now when
- 10 the three of y'all had gotten in and pulled out of this
- 11 parking lot?
- 12 A. I was trying to call my brother William and find out
- 13 where he was at.
- 14 Q. Were you able to get ahold of him at that time?
- 15 A. It was like in and out, because I barely had any cell
- 16 phone service.
- 17 Q. And what was Kevin doing?
- 18 A. He -- he was in the back seat. He was basically like
- 19 yelling back and forth, but it was really hard to hear
- 20 anything, make out anything, because the radio was still on
- 21 at the beginning.
- 22 Q. Okay. Do you remember him asking anything or making
- 23 any comments about what he had done or asking y'all what you
- 24 may have done?
- 25 A. He said -- he was like -- well, he said that he

1 couldn't believe that what was going on, or whatever, or how
2 it went down, or whatever. He said he couldn't believe that
3 they started shooting at us.

4 Then after that he -- he asked it was like if we shot,
5 or whatever, and if we had to shoot.

6 And then he -- well, later on, like he dropped -- he
7 let the window down and he threw something out the window.
8 I found out later that it was a shell casings out of his
9 weapon.

10 Q. Okay. Let me ask you this. You said when you said
11 that he had asked the question whether y'all -- either one
12 of y'all had to shoot, did you respond to him?

13 A. No, I was on the phone.

14 Q. Okay. How about Mr. Benjamin, did he respond to him?

15 A. Yes, sir.

16 Q. What was his response?

17 A. He -- well, he was just like -- I'm not sure exactly
18 how he said it, but he was like -- he said that he wasn't no
19 reason he shots in the air because Kevin said that he had to
20 let off a few shots in the air to let them know what time it
21 was, or to let them know they weren't the only ones with
22 guns.

23 Q. So Kevin made the comments about shooting them off in
24 the air and his response was he wasn't going to waste
25 bullets?

1 A. Yes.

2 Q. And where did y'all end up going from --

3 A. We dropped --

4 Q. -- this club?

5 A. We dropped Kevin off at another club.

6 Q. Y'all went there after being in this shootout and then
7 dropped Kevin off at another club?

8 A. Yes.

9 Q. How about Mr. Benjamin?

10 A. I took him back to his car back at his mother's house.

11 Q. Now, on the way back there did you ultimately hear over
12 the phone from somebody about what had happened?

13 A. Latisha let me know what was going on.

14 Q. Who is Latisha?

15 A. Shawn Defreitas' younger sister.

16 Q. Shawn's sister?

17 A. Yes.

18 Q. Okay. And did you learn at that point in time that her
19 brother had been shot?

20 A. Yes.

21 Q. Did you learn that two other people had also been shot
22 also?

23 A. Yes.

24 Q. And did you tell Mr. Benjamin about that?

25 A. Yes, I let him know.

1 Q. What was his reaction to that?

2 A. It wasn't really any talking to him. He just -- it's
3 like I just let him know that --

4 Q. After dropping Mr. Benjamin off back at his mom's
5 house, what did you do, Mr. Haggood?

6 A. I went back to my mom's house.

7 Q. Okay. And what time do you think we are talking about
8 now?

9 A. Four, five o'clock in the morning, something like that.

10 Q. And did you end up staying in Orangeburg?

11 A. Hour and a half, two hours.

12 Q. And then what did you do?

13 A. I got in my car and went back to North Carolina.

14 Q. Did you have your other son with you too?

15 A. Yes, both of my sons were at my mom's house.

16 Q. Okay. So what time do you think that you got back on
17 the road to North Carolina?

18 A. Maybe six.

19 Q. And did you ultimately end up giving this gun back to
20 Mr. McGarrah?

21 A. Later on that afternoon, that Sunday afternoon.

22 Q. Did you tell him -- what did you tell him about what
23 had happened?

24 A. I told him that we got into some stuff and I shot the
25 gun.

1 Q. Are you aware of whether he ended up pawning that gun
2 the next day or two?

3 A. I found out later on after I got arrested that he
4 pawned the gun.

5 Q. Now, you testified earlier that the vehicle that
6 y'all -- that you drove up there and then ended up taking
7 out that night was your Toyota Camry?

8 A. Yes.

9 Q. Is that correct?

10 A. Yes.

11 Q. Let me show you -- hold on one second.

12 (Off the record)

13 (Back on the record)

14 BY MR. SORENSON:

15 Q. Let me show you State's Exhibits 6 through 10 and ask
16 if you recognize these?

17 A. Yes.

18 Q. Your vehicle?

19 A. Yes.

20 Yes.

21 Yes.

22 Yes.

23 Q. That would more accurately depict your vehicle back in
24 September of last year -- or of 2011?

25 A. Yes.

1 MR. SORENSON: Your Honor, at this time we would
2 offer State's 6 through 10 into evidence.

3 THE COURT: Any objection?

4 MR. THOMAS: No objection, Your Honor.

5 THE COURT: Very well, Exhibits 6 through 10 in
6 evidence without objection.

7 (Whereupon, State's Exhibit No. 6 was admitted
8 into the record as evidence)

9 (Whereupon, State's Exhibit No. 7 was admitted
10 into the record as evidence)

11 (Whereupon, State's Exhibit No. 8 was admitted
12 into the record as evidence)

13 (Whereupon, State's Exhibit No. 9 was admitted
14 into the record as evidence)

15 (Whereupon, State's Exhibit No. 10 was admitted
16 into the record as evidence)

17 BY MR. SORENSON:

18 Q. All right. Let me show you State's Exhibit No. 6, Mr.
19 Haggood. That's just the rear of your vehicle?

20 A. Yes.

21 Q. Is that correct?

22 A. Yes.

23 Q. Let me ask you, when you got back up to North Carolina
24 was there any damage to the rear of your vehicle?

25 A. No, there was no damage to the rear of my vehicle.

1 Q. No bullet holes anywhere in it?

2 A. No.

3 Q. Let me show you State's Exhibit No. 7, and I guess that
4 would be the driver's side of your vehicle?

5 A. That's the driver's side, yes.

6 Q. Any damage to the driver's side of your vehicle?

7 A. No, there is no damage.

8 Q. How about the front of your vehicle?

9 A. No damage.

10 Q. No bullet holes anywhere?

11 A. No.

12 Q. State's Exhibit No. 8 would be the passenger side then?

13 A. Yes.

14 Q. And on the passenger side, let me specifically ask the
15 body part of the vehicle, any damage to the body of the
16 vehicle?

17 A. No damage to the body.

18 Q. No bullet holes?

19 A. No.

20 Q. Ultimately your car wasn't struck at all by any shots,
21 is that correct?

22 A. That's correct.

23 Q. You did testify about getting -- somebody throwing a
24 large post, or a two-by-four, or something at your vehicle,
25 is that correct?

1 A. Yes.

2 Q. Okay. I'm showing you State's Exhibit No. 10. Is that
3 your passenger's side mirror that was hit?

4 A. Yes.

5 Q. And did that subsequently then knock out the -- State's
6 Exhibit No. 9, actually knock the mirror portion out of your
7 vehicle?

8 A. Yes.

9 Q. Is that the only damage -- ultimately when you got back
10 to North Carolina, the only damage to your vehicle?

11 A. Yes.

12 Q. So now we are talking on Sunday, the 18th of September,
13 what time did -- how long -- how long a ride was it from
14 Orangeburg or Calhoun County back to Fort Bragg?

15 A. From Orangeburg it's about two and a half hours, three
16 at the most if there is traffic.

17 Q. So you got back that Sunday morning kind of mid to
18 early morning still?

19 A. Yes.

20 Q. Okay. And later on that day, is that the first time
21 that you were contacted by law enforcement here in Calhoun
22 County?

23 A. Yes.

24 Q. Do you recall talking to them on the phone?

25 A. Yes, I recall.

1 Q. A couple times, right?

2 A. Yes.

3 Q. And part of that was them trying to find your brother's
4 vehicle also, is that correct?

5 A. Yes, they asked me about my brother's vehicle.

6 Q. Okay. And at that point in time on the phone to
7 investigators here in Calhoun County did you admit to having
8 a gun?

9 A. No.

10 Q. Did you admit to shooting?

11 A. No.

12 Q. Did you tell them about either Mr. Benjamin or Mr.
13 Frazier having a gun?

14 A. No.

15 Q. In fact, you told them none of y'all had guns, is that
16 correct?

17 A. That's correct.

18 Q. And then do you recall a few days later, on September
19 22nd, Investigator Dukes and Lieutenant Corley actually
20 coming up there to Fort Bragg and interviewing you up there,
21 is that correct?

22 A. Yes.

23 Q. And they took not only a video statement from you, but
24 also allowed you to write a written statement, is that
25 correct?

1 A. That's correct.

2 Q. At that point in time you still were denying having a
3 gun, is that correct?

4 A. Yes.

5 Q. And still denying seeing Mr. Benjamin or Mr. Frazier
6 with a gun?

7 A. I let them know that Kevin said that he shot a few
8 shots in the air, but that was it.

9 Q. So you told them at that point in time -- that's the
10 first time that you had mentioned that Kevin had said it in
11 the car afterwards --

12 A. Yes.

13 Q. -- that he had fired up in the air, is that correct?

14 A. Yes.

15 Q. But still didn't say that you had seen either one of
16 them with a gun, is that correct?

17 A. That's correct.

18 Q. And then a few days later you were interviewed a third
19 time by an investigator up there at the Cumberland County
20 Sheriff's Office, is that correct? That was when you were
21 arrested, when you were finally actually served with those
22 warrants?

23 A. Yes.

24 Q. And still at that point in time not admitting to
25 shooting a gun, is that correct?

1 A. That's correct.

2 Q. And then you were ultimately brought back here to South
3 Carolina, to Calhoun County, and gave a final statement to
4 Lieutenant Graham with the Calhoun County Sheriff's Office,
5 where at that point in time you admitted to having this gun
6 and firing it basically in the direction of that van
7 multiple times, is that correct?

8 A. That's correct.

9 Q. But you were still at that point in time protecting
10 your two friends and not saying that you had seen either one
11 of them with a gun, is that correct?

12 A. That's correct.

13 Q. Why did you on that fourth time, that fourth time law
14 enforcement has talked to you at least, finally admit at
15 that point in time to actually having a gun yourself and
16 firing it?

17 A. From speaking to other people, I had already put a
18 picture in my mind of what happened and what didn't happen,
19 and I know that I didn't -- well, I wasn't under the
20 impression that I shot anybody.

21 Q. Did you ever shoot out away from the club?

22 A. Only in the direction of the van.

23 Q. Only in the direction of the van?

24 A. Yes.

25 Q. And that night, did you know whether you had hit

1 anybody on the other side of that van?

2 A. No, I didn't know.

3 Q. When going through the discovery and everything with
4 your lawyer, did you come to the realization that you did
5 hit somebody on the other side of that van?

6 A. Yes.

7 MR. SORENSON: Beg the court's indulgence.

8 THE COURT: Okay.

9 (Off the record)

10 (Back on the record)

11 BY MR. SORENSON:

12 Q. I'm not sure if I asked you this or not. You had -- I
13 thought I had, but just in case I didn't, y'all had backed
14 into this corner of the club. In between the van and your
15 car, whose car was there?

16 A. My brother William's.

17 Q. Okay. And it was backed in also, you said?

18 A. Yes, sir, it was backed in also.

19 Q. Let me ask you. I know I had asked you what kind of
20 car it was. You couldn't remember, but if I show you a
21 picture of it, would you recognize it?

22 A. Yes.

23 Q. Let me show you State's Exhibits No. 12. Is that your
24 brother's car?

25 A. Yes, it looks like it, yes.

1 MR. SORENSON: At this time we would offer State's
2 Exhibit 12 into evidence.

3 MR. THOMAS: No objection.

4 THE COURT: Very well, State's 12 is in without
5 objection.

6 (Whereupon, State's Exhibit No. 12 was admitted
7 into the record as evidence)

8 BY MR. SORENSON:

9 Q. So that car was backed in next to your car that night?

10 A. Yes.

11 Q. Thank you, Mr. Haggood. Please answer any questions
12 that Mr. Thomas may have.

13 THE COURT: Cross-examination.

14 CROSS EXAMINATION BY MR. THOMAS:

15 Q. Mr. Haggood, how long were you in the service?

16 A. About six years.

17 Q. Six years.

18 What units did you serve in?

19 A. 3-6 Cav in Korea. 2-321 Field Artillery, Fort Bragg.

20 And 618 Engineer Support Company, Fort Bragg also.

21 Q. What type of firearms training have you had?

22 A. M-4. Everything else, just like machine guns, like a
23 .50 caliber.

24 Q. Do you have any marksmanship awards? Ribbons?

25 A. Yes.

1 Q. For what?

2 A. Sharpshooter. I was a sharpshooter with my M-4 and I
3 also shot expert.

4 Q. Sharpshooter and expert?

5 A. Yeah.

6 Q. In the scene which your words described as chaos when
7 you left the club, when Dominique Lawton was outside the
8 club, the shooting started -- have you been in combat
9 before?

10 A. Yes, I have.

11 Q. Was that hostile fire when you walked out of that club?

12 A. Yes, it was.

13 Q. Where were the shots coming from?

14 A. Shots were coming from all different directions.

15 Q. Every direction?

16 A. Yes.

17 Q. From the road?

18 A. It was from the road also, yes.

19 Q. Behind you?

20 A. Yes, behind me. The van was behind me initially, yeah.

21 Q. Let me ask you some questions about a little bit before
22 that happened.

23 You had been friends with David Benjamin a long time,
24 correct?

25 A. Yes.

1 Q. Did you -- is David a hot tempered guy?

2 A. I wouldn't really say hot tempered, no.

3 Q. He is strong-willed?

4 A. Strong-willed, yes.

5 Q. Physically is he a lot larger than Dominique Lawton?

6 A. Yes.

7 Q. In your opinion, who seemed to be the aggressor inside
8 the club?

9 A. I didn't see what happened.

10 Q. Okay.

11 A. I didn't see it transpire inside the club.

12 Q. Okay. Now, when you walked outside of the club, who
13 seemed to be the aggressor?

14 A. Dominique seemed to be the aggressor.

15 Q. What would call his behavior? How else could you
16 describe his behavior?

17 A. It was more so like -- I guess you could say like an
18 ambush type thing. He came out of nowhere. It wasn't
19 provoked or anything. Once he walked up, he pulled out his
20 gun, it wasn't anything said before he pulled out his gun.

21 Q. There wasn't -- so there was no continuing beef going
22 on?

23 A. No, we saw him pull out his gun.

24 Q. And the little guy broke out his gun, is that correct?

25 A. That's correct.

1 Q. And chambered a round when his gun was already had a
2 gun chambered?

3 A. It was already chambered.

4 Q. When you -- you said this a little while ago, that
5 David said, you know, "step back and chill out"?

6 A. Right.

7 Q. What do you think his intention was at that point?

8 A. To stop me from, I guess, flying off the handle, I
9 guess you could say.

10 Q. He was the cooler head at that point in time?

11 A. Yes, his head was -- I guess you could say, yeah, it
12 was cooler than mine, because I was -- I was -- I was ready
13 to pull my gun out and do something in there.

14 Q. Thank you.

15 And y'all were ushering Kevin Frazier to the car, more
16 or less? Not ushering him, but --

17 A. Yeah, less. A lot less.

18 Q. Okay. But was Kevin Frazier upset?

19 A. Yes, he was upset.

20 Q. Was he irate?

21 A. Yes.

22 Q. Was his the first gunshot round that you heard
23 discharged?

24 A. No.

25 Q. Who fired the first shot?

- 1 A. I'm not sure who fired the first shot.
- 2 Q. But it wasn't you?
- 3 A. It wasn't.
- 4 Q. It wasn't Kevin Frazier?
- 5 A. No, it wasn't Kevin.
- 6 Q. And it wasn't David Benjamin?
- 7 A. No, it wasn't David Benjamin.
- 8 Q. Just one shot prior to that, or were there more?
- 9 A. It was -- it was like a domino effect. Once the
- 10 first -- once the first shot came out, then it was like
- 11 shots from everywhere. Like I guess you could say people
- 12 already had their guns on them in the parking lot.
- 13 Q. And that was before Kevin fired?
- 14 A. Yes.
- 15 Q. But you don't know how many shots, but there were a lot
- 16 of shots?
- 17 A. There were a lot of shots.
- 18 Q. You described it as an ambush? That's a fairly
- 19 accurate description?
- 20 A. Yes.
- 21 Q. And numerous guns before Kevin Frazier?
- 22 A. Before Kevin Frazier fired, yes.
- 23 Q. You said that my client was running or moving quickly
- 24 when you saw him fire?
- 25 A. Yes.

1 Q. He was on the move?

2 A. Yes, he was on the move.

3 Q. What do you that in the military?

4 A. Bounding I guess you could say.

5 Q. Would you describe it as laying cover fire?

6 A. Yes.

7 Q. And that's usually done with what intention?

8 A. Everybody rallying, I guess you could say, to get to a
9 safe point.

10 Q. Exactly.

11 Did my client say he shot anybody?

12 A. No.

13 Q. Did you see him shoot anybody?

14 A. No, I did not.

15 Q. Now, the solicitor went over some questions with you
16 about lies that you told along the way.

17 A. Yes.

18 Q. You finally went in and told them and brokered a deal
19 for your testimony, is that correct?

20 A. For the testimony here, yes.

21 Q. Was that after you learned that you had possibly
22 wounded?

23 A. Yes.

24 Q. But you never saw my client shoot anybody?

25 A. No, I never saw him --

1 Q. He was on the move when two rounds were discharged?

2 A. From his weapon, yes.

3 Q. And he was cooler head?

4 A. He was cooler head before everything popped off, yes.

5 Q. And you saw shots coming all different directions?

6 A. Yes.

7 Q. Thank you.

8 MR. THOMAS: I have no more questions.

9 THE COURT: All right, redirect?

10 MR. SORENSON: Thank you, Your Honor.

11 REDIRECT EXAMINATION BY MR. SORENSON:

12 Q. Mr. Haggood, Mr. Benjamin wasn't in the military, is
13 that correct?

14 A. No, he was not.

15 Q. Mr. Thomas had asked you whether Mr. Benjamin is a hot
16 tempered guy, is that correct?

17 A. Yes, he did ask me that.

18 Q. And your response to that was "no, not really," right?

19 A. Not really hot tempered, no.

20 Q. And you had known him all -- most of his life?

21 A. Yes.

22 Q. Let me ask you this. Does he have a nickname too?

23 A. Yes.

24 Q. What his nickname?

25 A. Kevin gave him the nickname Killa Season.

1 Q. Killa what?

2 A. Killa Season.

3 Q. What was the reason for that?

4 A. Because of the type of fighter, I guess you could say,
5 he was. He didn't really lose any fights.

6 Q. Okay. But he's not a hot tempered guy?

7 A. No.

8 Q. Okay. A guy with that nickname, Killa Season, is that
9 right? Is that what you said?

10 A. That was -- yeah, it was a high school nickname. It
11 was like --

12 Q. Because he didn't used to lose any fights?

13 A. Yes.

14 Q. Okay. That's the guy, your testimony, is not a hot
15 tempered guy.

16 Is the cool head in this situation?

17 A. I wouldn't even really call myself a hot tempered guy.
18 I have been in fights in high school also.

19 Q. It's your testimony now from Mr. Thomas on
20 cross-examination that now that there are shots coming at
21 you from all different directions when you were walking out
22 to your car?

23 A. Yes, it was different directions that shots were coming
24 from.

25 Q. Okay. Yet, again, I mean, none of y'all were hit, is

1 that correct?

2 A. That's correct.

3 Q. Your car wasn't hit, is that correct?

4 A. That's correct.

5 Q. And I'm going to get to it with some later witnesses as
6 to your brother's car, but the front of your brother's car
7 wasn't hit, is that correct?

8 A. That's correct.

9 Q. The driver's side of your brother's car wasn't hit, is
10 that correct?

11 A. That's correct.

12 Q. In fact, it ends up with one bullet hole back in the
13 back rear, consistent with when you say somebody was
14 shooting at you at the very end, is that correct?

15 A. That's correct.

16 Q. Other than that, the building behind y'all was not hit,
17 is that correct?

18 A. That's correct.

19 Q. Okay. So it's your testimony that y'all were receiving
20 fire from all different directions?

21 A. Yes, sir, that's my testimony.

22 Q. Okay. Of course, you are aware from going through the
23 discovery that the van that was on the other side of you is
24 only hit three times from your shots, is that correct?

25 A. That's correct.

1 Q. And just so we are clear, your testimony was that when
2 you heard some shots initially, that you looked and at that
3 point in time you saw Mr. Benjamin pull out his gun?

4 A. Yes, he was in front of me.

5 Q. And started firing?

6 A. Yes.

7 Q. Okay. And he is firing out? He's not firing back in
8 your direction, is that correct?

9 A. That's correct.

10 Q. Okay. He's firing out obviously away in the direction
11 that he is going, is that correct?

12 A. Yes.

13 Q. And slightly downward -- with his arm extended at a
14 slightly downward angle?

15 A. Yes.

16 Q. Okay. But you said you only saw him shoot twice, is
17 that correct?

18 A. That's correct.

19 Q. All right. And then ultimately is your attention drawn
20 elsewhere?

21 A. Yes -- yes.

22 Q. Okay. So you don't know if he kept shooting, is that
23 correct?

24 A. I have no idea.

25 Q. Okay. So you don't know what or who those two shots

1 may have hit, is that correct?

2 A. I have no idea.

3 Q. Or what any subsequent shots he may have fired may have
4 hit?

5 A. I have no idea.

6 Q. And as far as Kevin goes, how many times did you see
7 Kevin shoot altogether?

8 A. No more than about three times.

9 Q. Okay. And every time you saw him shooting, he was
10 firing up in the air?

11 A. Yes.

12 Q. And that is consistent with what he then commented in
13 the car, is that correct?

14 A. That's correct.

15 Q. Part of, and Mr. Thomas has hit it a little bit on some
16 of these statements also, but you -- you talked to law
17 enforcement on the phone initially and then met with them in
18 person, but they came up and met with you several days after
19 that, is that correct?

20 A. That's correct.

21 Q. Did you talk to Mr. Benjamin in the interim?

22 A. David was -- from the time that the incident happened?

23 Q. Uh-huh.

24 A. Yes.

25 Q. You talked to him on the phone before he ultimately

1 turned himself in and he was arrested, is that correct?

2 A. That's correct.

3 Q. How about Mr. Frazier, did you talk to him also in the
4 interim?

5 A. Kevin got arrested that night, or that same day -- that
6 morning or the next day.

7 Q. But he's been arrested prior to him talking to you on
8 the phone, is that correct?

9 A. Yes. I didn't speak to Kevin until after I had spoken
10 with the investigators.

11 Q. Okay. But had spoken to Mr. Benjamin in the meantime?

12 A. Yes.

13 Q. Thank you.

14 THE COURT: All right, recross?

15 MR. THOMAS: Just a couple things.

16 THE COURT: All right.

17 RECROSS EXAMINATION BY MR. THOMAS:

18 Q. You said that he got that nickname in high school --

19 A. Yes.

20 Q. -- or around that.

21 Did you play football with him too coming up?

22 A. Yes -- we -- well, I used to practice with them. I
23 didn't really play football that long.

24 Q. Okay. You were a little bit smaller then?

25 A. Yes.

1 Q. Was David the primary aggressor in these fights in high
2 school, or did he finish them?

3 A. From what I understand, I guess you could say.

4 Q. He wasn't the starter of the fights, as far as you
5 remember?

6 A. No.

7 Q. Did he get the nickname Killa from killing people?

8 A. No, he didn't the nickname from killing people.

9 Q. Have you ever known him to kill anybody?

10 A. No, I have never known him to kill anyone.

11 Q. Was it more of a flattering nickname?

12 A. Basically, yes.

13 MR. THOMAS: Nothing further. Thank you.

14 THE COURT: All right. And you may go back.

15 All right. Call your next witness, please.

16 MR. SORENSON: May we approach?

17 THE COURT: Yes.

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 MR. SORENSON: Shawn Defreitas.

21 SHAWN DEFREITAS, having been first duly sworn,
22 testified as follows:

23 THE CLERK: State your full name.

24 THE WITNESS: Shawn Defreitas.

25 THE COURT: Thank you. And can you spell your

1 last name for us, please?

2 THE WITNESS: D-E-F-R-E-I-T-A-S.

3 THE COURT: Thank you. Please be seated.

4 The acoustics in the courtroom are not wonderful,
5 and I apologize in advance, but you have got a good voice
6 and just speak up. Thank you.

7 Your witness, Mr. Sorenson.

8 MR. SORENSON: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. SORENSON:

10 Q. Shawn, can you tell us how old you are.

11 A. Thirty-one.

12 Q. Okay. And what do you do for a living?

13 A. Drive trucks for HH Gregg and Ashley Furniture.

14 Q. Okay. And where did you go to high school?

15 A. Well, I went to Calhoun County for a little while.

16 Then I transferred over to Elloree High.

17 Q. Did you graduate from Elloree or --

18 A. No.

19 Q. No. Okay.

20 And ultimately did you grow up basically in this area?

21 A. Yes.

22 Q. Okay. And did there come a time when had you moved
23 away from this area?

24 A. Yes.

25 Q. When was that?

1 A. I left I believe in 2001. I came -- I came when I was
2 about twelve from New York. Then I left again when I was
3 about twenty-one, twenty-two.

4 Q. Okay. And when -- and you moved back up to New York?

5 A. Yes.

6 Q. When did you move back to South Carolina?

7 A. I have been here for about two years.

8 Q. So back -- obviously back in September of 2011 you were
9 back in South Carolina?

10 A. Yes.

11 Q. And at that time how long had you been back?

12 A. I believe I came back in September of -- I think it was
13 September of 2011.

14 Q. Okay. So when this all happened, I guess you just
15 moved back recently before that?

16 A. Yes.

17 Q. Okay. That's I guess what I was getting at.

18 Let me ask you, you have a sister named Latisha Cooper?

19 A. Yes.

20 Q. And if somebody has referred to you earlier as Shawn
21 Cooper, that would be you?

22 A. Yes, sir.

23 Q. Okay. Now, Shawn, I want to turn your attention to the
24 morning of September 18th of 2011. Did you ultimately that
25 night or that morning go out to the Piggy Park in Elloree?

1 A. Yes.

2 Q. And what time did you get there?

3 A. I got there about maybe three.

4 Q. Three in the morning?

5 A. Yes.

6 Q. What were you driving when you got there?

7 A. Chevy Impala.

8 Q. Chevy Impala.

9 All right. And was anybody with you?

10 A. No, I came by myself.

11 Q. Okay. And when you got there, do you remember where
12 you parked?

13 A. Yes.

14 Q. Okay. Where did you -- tell jury where you parked.

15 A. Like if you was coming from Cameron way, the first
16 driveway, I pulled in right there and I was parked like on
17 the right-hand side of the club.

18 Q. When you are facing the club, you are at the right-hand
19 side?

20 A. Yes.

21 Q. Let me ask you, where you were parked, were you
22 basically kind of facing some other vehicles how you were
23 parked?

24 A. I was facing -- I was facing two vehicles and there was
25 one on the side of me.

1 Q. Okay. And what did you do when you got there about
2 three o'clock?

3 A. Went -- paid, and got -- went in the club and started
4 talking to some people.

5 Q. Okay. And were you aware of anything that had been
6 going on earlier inside there at that time?

7 A. No, sir.

8 Q. Had there come a time, you know, an hour or so later
9 when things were shutting down?

10 A. Yes, sir.

11 Q. And tell the jury what you did then.

12 A.. Well, I left out, went to my car. A couple was out
13 there hanging around, you know, joking, laughing having fun.
14 Then an altercation broke out with some of the people that I
15 knew, so I went to go break it up.

16 Q. And where was that at?

17 A. Right in front of the door.

18 Q. Okay. Who was -- you said between some people that you
19 knew. Who was out there?

20 A. Kevin and Dominique.

21 Q. Okay. So you knew Kevin Frazier and Dominique Lawton?
22 You knew both of them?

23 A. Yes.

24 Q. How about the defendant? Do you know David Benjamin?

25 A. I seen him a couple of times, but I didn't know him

1 personally.

2 Q. Okay. All right.

3 How about a young man name Joshua Haggood? Did you
4 know Mr. Haggood?

5 A. No, sir.

6 Q. Okay. All right.

7 So you said that there was an altercation over by the
8 door. And about how many people were kind of around when
9 that happened?

10 A. Maybe eleven, twelve.

11 Q. Okay. And who did you go over -- did you go over and
12 specifically talk to anybody or try to calm anybody down?

13 A. Well, I got in the middle of both sides, kind of, and I
14 was telling Dominique, you know, just leave it alone.

15 And then Kevin -- I turned to Kevin and told Kevin just
16 to go to his car.

17 The altercation was still going. They were yelling at
18 each other and then Kevin pulled out a gun. When he pulled
19 out the gun, that's when I grabbed him and I walked him over
20 to the car.

21 Q. Okay. All right.

22 Do you remember anything about what kind of gun that
23 was or anything like that?

24 A. No, sir.

25 Q. Now, did you see anybody else with a gun?

- 1 A. Not at the time.
- 2 Q. Okay. Not at that time.
- 3 A. Correct.
- 4 Q. And so you said that you were then kind of marching him
- 5 over to -- where was his car parked?
- 6 A. It was actually parked in front of me.
- 7 Q. Okay. So that was the car that -- basically one of the
- 8 cars that you were facing when you pulled in?
- 9 A. Yes.
- 10 Q. And how much room was in between your car and their
- 11 car?
- 12 A. About the distance between me and you.
- 13 Q. Okay. Maybe another car length?
- 14 A. Yes.
- 15 Q. Maybe you could have slid a car in between y'all, is
- 16 that right?
- 17 A. Yes, a small car.
- 18 Q. A small car.
- 19 A. Yes.
- 20 Q. So you weren't pulled up right on to him of him, right?
- 21 A. No.
- 22 Q. All right. Tell the jury then when you got there what
- 23 kind of where -- what part of the car, their car, did you go
- 24 to?
- 25 A. I walked him to the driver's side.

1 Q. To the driver's side?

2 A. Yes..

3 Q. Okay. And tell the jury what was going on then.

4 A. Him and Dominique was still going at it. And basically
5 Dominique was heated because Kevin pulled out the gun, you
6 know what I mean, was telling him "what, are you going to
7 shoot me now? Are you going to shoot me? What are you
8 going to do with that?"

9 I was telling Dominique just leave it alone, and
10 somebody else came, walked over there, you know what I mean?
11 They grabbed Dominique. So I told Dominique "y'all, just go
12 to your car."

13 Kevin was screaming "I just want to go home. I just
14 want to go home."

15 I was like "you are going to get home. Just get in the
16 car."

17 When I tell -- when I told him that, Mr. Benjamin came
18 walking over to the car. When he went walking over to the
19 car, I turned around. When I went to walk to the car, then
20 shoots just started firing.

21 Q. Okay. You said Mr. Benjamin. What did he look -- what
22 did that person look like that came over to the car?

23 A. Dark skin. I think he had on a lot of hair at the
24 time.

25 Q. A lot of hair at the time?

1 A. Yes.

2 Q. What part of the car did he come to?

3 A. Passenger.

4 Q. Passenger side?

5 A. Yes.

6 Q. And you were around kind of the driver's side?

7 A. Yes, sir.

8 Q. Okay. And what -- what ended up happening then?

9 A. Well, I thought Kevin was actually going to get in the
10 car, because when I told him -- when I told Dominique to
11 walk away, he went walking away with somebody else, and
12 Kevin went to go sit in the car.

13 So actually somebody else tapped me and told me to move
14 my car because I was blocking them. I didn't actually
15 realize I was blocking them at the time. So when I went to
16 go walk to my car, that's when I heard the firing going on.
17 I got hit in the leg. I went down. I crawled behind my
18 car. When I crawled behind my car, I looked up to see who
19 was shooting and I seen Kevin shooting in the air and I seen
20 Mr. Benjamin shooting at the other side of the club.

21 Q. Okay. Now, let me back you up now. So you were
22 walking -- you are at the driver's side kind of that
23 vehicle?

24 A. That's right.

25 Q. So to get back to your car you got to turn and walk

1 this way?

2 Let's kind of orient these here.

3 Pretend the car is kind of going back this way, okay?

4 A. Yes.

5 Q. So the front of their car is where I am.

6 A. All right.

7 Q. Okay. You said that you were around on the driver's
8 side of the vehicle with Kevin?

9 A. Yes.

10 Q. Okay. Then Mr. Benjamin had come up more near the
11 front passenger and the passenger's side?

12 A. Yes, that's correct.

13 Q. Okay. And at that point in time you turned to go walk
14 to your car to move it, is that correct?

15 A. Yes, sir.

16 Q. And that's when the gunshots go off?

17 A. Yes, sir.

18 Q. As you were walking to your car?

19 A. Yes, sir.

20 Q. Okay. Now, where do you get hit with that shot? In
21 your body, where did you get shot?

22 A. In my side.

23 Q. Okay.

24 THE COURT: Can he stand up, Your Honor.

25 THE COURT: He may.

1 BY MR. SORENSON:

2 Q. Just stand up right there and just kind of -- I don't
3 expect you are pull your shorts down, but just kind of -- is
4 it somewhere -- is it below your waistband, or --

5 A. I got hit right about here.

6 Q. Right here.

7 A. About right here.

8 Q. You got hit right there. And what -- did it come out
9 somewhere?

10 A. Close to my -- you know.

11 Q. Kind of in the inside leg there?

12 A. Yes, sir.

13 Q. And that was as you were walking to your car?

14 A. Yes, sir.

15 Q. Now, did you see who actually shot you?

16 A. No, sir.

17 Q. You said that when you looked back that way, who was
18 shooting when you looked back that way?

19 A. Well, I didn't look until I crawled to my car.

20 Q. Okay.

21 A. But I seen Kevin shooting in the air, and the other guy
22 shooting -- Mr. Benjamin shooting towards the opposite side
23 of the club.

24 Q. You said that you crawled kind of to the back of your
25 vehicle?

1 A. Yes.

2 Q. Okay. And did there come a time when you heard anybody
3 yelling anything about Dominique?

4 A. Yeah. Actually -- actually when I crawled back there,
5 there was somebody else back there also. I was telling them
6 "I got hit. I got hit."

7 It's like "word," you know just -- in the heat, I'm not
8 too sure exactly what they were saying, but I was like "I
9 got hit. I got hit."

10 And then they screamed out "Dominique hit."

11 When I turned my right, I would say about the distance
12 from me to where the two gentlemen are sitting, Dominique
13 was laying on the floor.

14 Q. Okay. Did you see whether he had been hit from there
15 or not?

16 A. No, I couldn't really see. I just seen him laying on
17 the floor.

18 Q. He was on the ground there.

19 And did you -- let me ask you, were you -- did you
20 stick around there for EMS to come?

21 A. No, sir.

22 Q. What did y'all do after that?

23 A. After I realized, well, I mean, I was bleeding and
24 stuff, it was another young lady that was ducked down by my
25 car. I threw her the key, told her to crank it up. She was

1 screaming. Like "y'all, crank it up, I have been shot."

2 She jumped in my car, cranked it up. As she cranked it up,
3 I opened my back seat and hopped in the back seat.

4 Q. Okay. What did y'all do?

5 A. She backed out and she started going towards Elloreë,
6 but I told her to "turn around, don't go that way." So we
7 turned around and another car came speeding up and I believe
8 that was Kevin cut going towards Elloreë. We turned around
9 and went towards Cameron.

10 Q. Okay. And ultimately did you end up making it to the
11 hospital in your car that night?

12 A. No, sir.

13 Q. What ended up happening?

14 A. The car had a blowout.

15 Q. Flat tire?

16 A. Yeah.

17 Q. And I'm showing you State's Exhibit No. 11. It's four
18 pictures together. Is that your car?

19 A. Yes, sir.

20 Q. That's actually where you see you had a front flat
21 tire, is that right?

22 A. Yes.

23 Q. That's where you ended up leaving your car?

24 A. Yes, sir.

25 Q. How -- how did you end up getting to the hospital from

1 there?

2 A. Well, there was a cop that was coming by when we had
3 the blowout and I guess he was going to the scene, so we
4 flagged him down. The young lady flagged him down that was
5 with me and stopped him. He did a U-turn and turned around
6 and he called the ambulance for us.

7 Q. So the ambulance came and got you from where your
8 car --

9 A. Yes.

10 Q. -- got a flat.

11 MR. SORENSON: Your Honor, at this time we would
12 offer State's 11 into evidence.

13 MR. THOMAS: No objection.

14 THE COURT: State's Exhibit -- it's more than one
15 photograph, though, correct?

16 MR. SORENSON: There is four of those stapled
17 together. It's just one from each angle of the car,
18 basically.

19 THE COURT: All right. State's Exhibit 11, but
20 there are four photographs. I think it would be 11-A, B, C
21 and D.

22 MR. SORENSON: Okay.

23 THE COURT: That's what we will do.

24 (State's Exhibit No. 11 was remarked as State's
25 Exhibit No. 11-A, 11-B, 11-C and 11-D for identification).

1 (Whereupon, State's Exhibit No. 11-A was admitted
2 into the record as evidence).

3 (Whereupon, State's Exhibit No. 11-B was admitted
4 into the record as evidence).

5 (Whereupon, State's Exhibit No. 11-C was admitted
6 into the record as evidence).

7 (Whereupon, State's Exhibit No. 11-D was admitted
8 into the record as evidence)

9 BY MR. SORENSON:

10 Q. Let me ask you this, Shawn. Besides obviously the
11 driver's side front tire being flat, was there any other
12 damage to your vehicle?

13 A. No, sir.

14 Q. There were no bullet holes anywhere?

15 A. Not that I know of.

16 Q. Okay. Not that you ever saw, right?

17 A. Yeah.

18 Q. No other damage or anything had hit it or anything,
19 right?

20 A. No.

21 Q. Who is the first person that you saw shoot, or heard
22 shoot, even?

23 A. I ain't really seen no first person. Like when I
24 crawled up behind my car and looked up in the air, I just
25 seen them two shooting.

1 Q. Okay. So the initial shots that hit you, you don't
2 know who fired them?

3 A. Yes.

4 Q. Obviously it had to come from your right side, though,
5 right?

6 A. Left.

7 Q. Left side?

8 A. Yes.

9 Q. So you didn't see them. Maybe I misunderstood this.
10 So it was Kevin shooting in the air?

11 A. Yes, sir.

12 Q. Did you see that before you started walking away or
13 after you had gotten behind your car?

14 A. After I got behind my car.

15 MR. SORENSON: Beg the court's indulgence.

16 THE COURT: All right.

17 (Off the record)

18 (Back on the record)

19 BY MR. SORENSON:

20 Q. Thank you, Mr. Defreitas. Please answer any questions
21 that Mr. Thomas has.

22 CROSS EXAMINATION BY MR. THOMAS:

23 Q. Good afternoon.

24 A. Hi. How are you doing?

25 Q. When you arrived at the club, were you aware of any

1 static going on inside the club?

2 A. No, sir.

3 Q. Did you see any static between my client and Dominique
4 Lawton?

5 A. No, sir.

6 Q. But you saw some type of altercation between Kevin
7 Frazier and Dominique Lawton?

8 A. Yes, sir.

9 Q. Did you see Dominique Lawton with a gun?

10 A. No, sir.

11 Q. You never saw him with a gun?

12 A. No, sir.

13 Q. You didn't see him chamber a round outside the front of
14 the club?

15 A. No, sir.

16 Q. Okay. How close to him were you?

17 A. Maybe about three, four feet.

18 Q. Were you working to break up the altercation at that
19 point or still socializing?

20 A. Break up.

21 Q. Okay. Did you say that you knew Josh Haggood? I
22 couldn't hear your response earlier.

23 A. No.

24 Q. I didn't think so, but this opportunity to ask you, so
25 I thought I would ask you.

1 A. All right.

2 Q. How long have you known Dominique?

3 A. For about twelve, thirteen years.

4 Q. A long time?

5 A. Yeah.

6 Q. Close friends with him?

7 A. Not really close. Just friends.

8 Q. Have you ever seen him get in arguments before?

9 A. No, sir.

10 Q. Never?

11 A. (Shaking head no)

12 Q. How would you describe his demeanor?

13 A. He's like any other person.

14 Q. Okay. Fair enough.

15 Now, I might have got a little confused in your story.

16 When you got wounded, then you crawled behind your car?

17 A. Yes.

18 Q. And that's when you saw Kevin shoot?

19 A. I seen him shooting up in the air.

20 Q. From behind your car?

21 A. Yes.

22 Q. So there were already shots being fired, is that
23 correct?

24 A. Yes, sir.

25 Q. You don't know where those shoots were coming from?

1 A. No, sir.

2 Q. But on a timeline, there were shots, correct? Then you
3 saw Kevin Frazier shoot his gun in the air, is that correct?

4 A. Yes, sir.

5 Q. And then you saw -- allegedly saw David Benjamin shoot?

6 A. Yes, sir.

7 Q. And he was on the passenger side of the vehicle?

8 A. Yes, sir.

9 Q. Who was near you when you were crouched by your car?

10 A. Another young gentleman. I'm not too sure.

11 Q. You don't know that person's name?

12 A. No.

13 Q. Okay. And what would you describe the scene when
14 shooting was going on? How would you describe it?

15 A. It was crazy. Everybody ducking and screaming and
16 stuff like that.

17 MR. THOMAS: Court's indulgence?

18 THE COURT: Yes.

19 (Off the record)

20 (Back on the record)

21 BY MR. THOMAS:

22 Q. Could you say with any certainty who shot Dominique
23 Lawton?

24 A. No, I don't know.

25 Q. And you were shot prior to seeing Kevin Frazier

1 shooting?

2 A. Well, like I said, I didn't -- I didn't see him shoot
3 until after I got behind my car.

4 Q. So you had got behind your car and you were wounded?

5 A. Yes.

6 MR. THOMAS: I have no further questions. Thank
7 you.

8 THE COURT: Redirect?

9 MR. SORENSON: A couple things.

10 REDIRECT EXAMINATION BY MR. SORENSON:

11 Q. Just so we are clear, that's the first time that you
12 saw Kevin Frazier shoot?

13 A. Yes.

14 Q. Correct?

15 A. Yes.

16 Q. He could have been shooting prior to that, but you
17 didn't see him because you were walking towards your car?

18 A. Yes, sir.

19 Q. You don't know who fired those initial shots, right?

20 A. No, sir.

21 Q. And Mr. Thomas had asked you how long you had known Mr.
22 Lawton and I think you said twelve or thirteen years?

23 A. Yes.

24 Q. Of course, for a significant portion of that you were
25 living up in New York, right?

1 A. Yes.

2 Q. Okay. When you were back here prior to moving back to
3 New York, how old was Mr. Lawton?

4 A. I can't even remember.

5 Q. Is he younger than you?

6 A. I know he was younger than me, though.

7 Q. So if you moved when you were twenty-one, I mean, he
8 was a teenager?

9 A. Yes.

10 Q. Okay. You said that it was crazy out there? Everybody
11 was ducking and screaming and running?

12 A. Yes.

13 Q. Is that correct?

14 A. Yes.

15 Q. Of course, they weren't ducking and screaming or
16 running, right?

17 A. No.

18 Q. They were shooting?

19 A. Yes.

20 Q. Thank you.

21 THE COURT: All right, recross?

22 MR. THOMAS: Nothing further, Your Honor.

23 THE COURT: Very well. And can this witness to be
24 released?

25 MR. SORENSON: No objection.

1 MR. THOMAS: No.

2 THE COURT: Very well. Thank you. You are free
3 to go, sir.

4 THE WITNESS: Thank you.

5 THE COURT: Ladies and gentlemen, we are now going
6 to take our lunch break. Please leave your notes in your
7 seats.

8 Please be mindful, do not discuss this matter. Do
9 not allow anyone to discuss it with you. And that, of
10 course, is anyone who is associated with this matter, or
11 anyone for that matter.

12 We are going to reconvene at 2:15. At 2:15.

13 Please remember to leave your communication device
14 or cell phone away from the courthouse. You must receive
15 all of the information which you will make up your mind here
16 in court while court is in session.

17 Enjoy your lunch. I will see you at 2:15.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: All right, anything before we take our
21 lunch break, from the State?

22 MR. SORENSON: No, ma'am.

23 THE COURT: From the defense?

24 MR. THOMAS: Nothing, Your Honor.

25 THE COURT: All right. See you back ten minutes

1 after two.

2 (Whereupon, proceedings were recessed)

3 (Gun marked as State's Exhibit No. 36 for
4 identification)

5 (Gun marked as State's Exhibit No. 37 for
6 identification)

7 (Shell Casing marked as State's Exhibit No. 38 for
8 identification)

9 (Shell Casing marked as State's Exhibit No. 39 for
10 identification)

11 (Bullet marked as State's Exhibit No. 40 for
12 identification)

13 (Bullet marked as State's Exhibit No. 41 for
14 identification)

15 (Shell Casing marked as State's Exhibit No. 42 for
16 identification)

17 (Shell Casing marked as State's Exhibit No. 43 for
18 identification)

19 (Shell Casing marked as State's Exhibit No. 44 for
20 identification)

21 (Shell Casing marked as State's Exhibit No. 45 for
22 identification)

23 (Shell Casing marked as State's Exhibit No. 46 for
24 identification)

25 (Shell Casing marked as State's Exhibit No. 47 for

1 identification)

2 (Shell Casing marked as State's Exhibit No. 48 for
3 identification)

4 (Shell Casing marked as State's Exhibit No. 49 for
5 identification)

6 (Shell Casing marked as State's Exhibit No. 50 for
7 identification)

8 (Shell Casing marked as State's Exhibit No. 51 for
9 identification)

10 (Shell Casing marked as State's Exhibit No. 52 for
11 identification)

12 (Shell Casing marked as State's Exhibit No. 53 for
13 identification)

14 (Shell Casing marked as State's Exhibit No. 54 for
15 identification)

16 (Shell Casing marked as State's Exhibit No. 55 for
17 identification)

18 (Bullet marked as State's Exhibit No. 56 for
19 identification)

20 (Bullet marked as State's Exhibit No. 57 for
21 identification)

22 (Bullet marked as State's Exhibit No. 58 for
23 identification)

24 (Bullet marked as State's Exhibit No. 59 for
25 identification)

1 (GSR Kit marked as State's Exhibit No. 60 for
2 identification)

3 (GSR Kit marked as State's Exhibit No. 61 for
4 identification)

5 (GSR Kit marked as State's Exhibit No. 62 for
6 identification)

7 (GSR Kit marked as State's Exhibit No. 63 for
8 identification)

9 (GSR Kit marked as State's Exhibit No. 64 for
10 identification)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: All right, anything from the State
13 before we bring the jury out?

14 MR. SORENSON: No, Your Honor.

15 THE COURT: From the defense?

16 MR. THOMAS: No, Your Honor.

17 THE COURT: All right. Let's have the jury.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: All right. Ladies and gentlemen, I
21 certainly hope that you had a pleasant lunch.

22 At this time we will continue with the State's
23 case.

24 Please call your next witness.

25 MR. SORENSON: The State calls Danny Saxon.

1 THE CLERK: Please raise your right hand, sir.

2 DANNY SAXON, having been first duly sworn,
3 testified as follows:

4 THE CLERK: Pull that microphone close to you and
5 speak loudly and clearly.

6 Please give your full name for the record.

7 THE WITNESS: Danny Saxon.

8 THE CLERK: Thank you, sir.

9 THE COURT: Your witness.

10 MR. SORENSON: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MR. SORENSON:

12 Q. Good afternoon, Mr. Saxon.

13 A. Good afternoon.

14 Q. If you would, tell the jury how old you are?

15 A. I'm thirty-four years old.

16 Q. And, what do you do for a living?

17 A. Every day work.

18 Q. Where do you work at?

19 A. Sinbark in Bolding, South Carolina.

20 Q. How long have you been there?

21 A. Two years now.

22 Q. Okay. And did you grow up around here?

23 A. Well, I went to high school here. I grew up in
24 Elloree.

25 Q. In Elloree?

1 A. Right.

2 Q. And I want to turn your attention, Danny, back to
3 September of 2011.

4 Let me ask you, do you know or did you know the victim
5 in this case Dominique Lawton?

6 A. Yeah, I knew him.

7 Q. How long have you known Mr. Lawton?

8 A. Give or take maybe fifteen years, you know.

9 Q. Okay.

10 A. Something like that.

11 Q. He's a little bit younger than you, right?

12 A. Yeah, a little bit younger than me.

13 Q. And how about the defendant in this case, David
14 Benjamin, do you know Mr. Benjamin?

15 A. Yeah, I know him from school.

16 Q. Okay. How about Kevin Frazier and Joshua Haggood?

17 A. No, I can't recall none of those.

18 Q. You don't recall those names?

19 A. No.

20 Q. Okay. All right.

21 I want to turn your attention back to the early morning
22 hours of September 18th of 2011. Did you have an occasion
23 that night or that morning to go out to the Piggy Park?

24 A. No, I didn't.

25 Q. In Elloree?

1 A. No.

2 Q. Okay.

3 A. I did not. I was -- like I said, I was in Columbia.

4 Q. Okay. Well, did there come a time that following
5 morning after midnight that you went to Piggy Park?

6 A. Yes.

7 Q. That's what I meant.

8 A. Okay.

9 Q. About what time do you think that you got there?

10 A. I left Columbia around two o'clock, so give or take it
11 was about 3:15 by the time I get there, by the time I got
12 there.

13 Q. Give or take? Were you looking at your watch?

14 A. No, I just estimated time, because Like I said, the
15 sports bar closed at two and from there to Elloree shouldn't
16 take no more than forty-five minutes. You know, we made a
17 stop at the gas station.

18 Q. Okay. All right. And who all -- did you have anybody
19 with you?

20 A. Yeah, I did.

21 Q. Who was that?

22 A. Sammy Brigman.

23 Q. Sammy Samuel Brigman?

24 A. Yes.

25 Q. And whose vehicle were y'all in?

1 A. Mine.

2 Q. Okay. What kind of vehicle was that?

3 A. 2002 Cadillac Seville.

4 Q. 2002 Cadillac Seville?

5 A. Yes, sir.

6 Q. And who was driving?

7 A. Sammy was driving.

8 Q. Okay. And when you pulled up into the parking lot or

9 arrived at Piggy Park, where did you -- where did y'all pull

10 in?

11 A. We -- we pulled in in the driveway on the far side of

12 the club and we just -- once we pulled in, we maybe pulled

13 up ten, twelve feet off the side of the road, maybe fifteen,

14 and we just parked right there.

15 Q. Okay.

16 A. Yeah.

17 Q. And obviously you said Sammy was driving. What did he

18 do?

19 A. As soon as we got there, he got out of the car. He

20 went towards the club.

21 Q. Okay. What were you doing?

22 A. I was just standing around just spectating, seeing what

23 was going on. You know, after hearing all those gunshots,

24 or whatever, I'm looking around to see what's what.

25 Q. Okay. Well, back up a little bit before that happens,

1 okay?

2 When you first pull into the club, were there gunshots
3 going off when y'all first pull in?

4 A. I can't recall. I had my music on when I got there.
5 You know, I just seen people running around, you know.

6 Q. Okay. All right.

7 So there is people out in the parking lot?

8 A. Yeah, there was people in the parking lot.

9 Q. All right. And you are obviously initially sitting in
10 the front passenger seat of your vehicle?

11 A. Yeah, actually I was sitting there at one point. Then
12 I got up and stand up and I was standing in between my door
13 and, you know, the seat. I was just standing in between my
14 door just looking around.

15 Q. Okay. And did there come a time when you saw
16 Dominique?

17 A. Yeah, he came -- he came around on my side -- the
18 front -- the front of my vehicle and came on my side. And
19 like I say, when I seen him, I just seen he was kind of
20 agitated about something. I didn't know what was going on,
21 so I asked him, I said "man, calm down." I said "calm
22 down," or, you know, "take it easy." You know, that's what
23 I told him, "take it easy," and he was like okay.

24 Q. Okay. Now, did you notice if he had anything in his
25 hands at that time?

1 A. No, I didn't see anything, no.

2 Q. Okay. Did you notice if there was anybody with him?

3 A. No.

4 Q. Okay. He was the only person that you talked to,
5 though?

6 A. Sir?

7 Q. How close were you when you spoke to him?

8 A. Oh, I was -- like I say, I grabbed his arm and I said
9 "hey, take it easy a little bit," just like that. And, you
10 know, I was face to face with him.

11 Q. Okay. And that's at the passenger side now of your
12 vehicle?

13 A. Passenger's side of my vehicle.

14 Q. Okay. And after that -- what happened after, you know,
15 kind of did that, told him to calm down, what happened then?

16 A. After that, like I said, I heard gunshots. And, you
17 know, he walked on behind me. You know, he walked on around
18 to the rear side of my car.

19 And like I said, I heard gunshots, so it was kind of
20 loud, and I just ducked down in between, you know, my door
21 and, you know, whatever was blocking me from, you know,
22 being in that open area. So I just ducked down there and
23 that was it.

24 Q. Okay. Now, before you ducked did you see anybody
25 actually shooting?

1 A. No, I haven't seen nobody actually shooting. I just
2 seen a guy -- well, not aiming. I seen a guy shooting in
3 the air. You know, that's -- that's all I seen.

4 Q. Okay. And did you recognize that guy that was shooting
5 in the air?

6 A. No, I actually didn't.

7 Q. Okay. How did you -- describe him for us, please, for
8 the jury.

9 A. All I seen was an orange short. That's all I seen.
10 And like I say, the gunfire was going in the air and
11 that's -- that's it.

12 Q. Can you tell if he was a short guy, a tall guy?

13 A. He was a tall guy.

14 Q. A tall guy. Okay.

15 And you said at that point in time you basically ducked
16 down behind the car?

17 A. Yes, sir.

18 Q. All right. And what -- what's the next thing that
19 caught your attention that you noticed?

20 A. After I ducked down, like I said, I just turned around
21 to the rear of my car by kneeling. I was kneeling down and
22 I turned around and looked at the rear of my car and that's
23 when I saw Dominique laying there, you know, with a wound to
24 his head.

25 And I got up and I walked back around my driver's side

1 in the front of my car and went and got one of his cousins
2 and let them know that, you know, he was laying down down
3 there. I didn't know if he was dead or not, but I told him
4 I said "well, I think your cousin is over there laying down
5 dead," and that was it.

6 Q. Okay. Now, when you went and got his cousin, was there
7 still shooting going on when you went and got his cousin?

8 A. I can't recall. I don't think so, because, like I say,
9 I walked around the car. In the atmosphere I don't think
10 there was shooting going on at that point.

11 Q. Okay. Were there cars leaving the parking lot? Were
12 people leaving?

13 A. I can't -- I don't remember that. I don't remember a
14 car leaving at all, you know.

15 Q. Now, where -- you said that you saw Dominique on the
16 ground and it looked like a gunshot wound to the shed?

17 A. Yes, sir.

18 Q. Where was he located at in relation to your vehicle at
19 that time?

20 A. He was at the rear passenger side of my vehicle.

21 Q. Okay. And ultimately was that where he was at when the
22 first police officer arrived on the scene?

23 A. Yes, sir, after I pulled my car up, because they asked
24 me to pull my car up a little bit.

25 Q. And that was going to be my next question. At some

1 point in time did you move your car?

2 A. Yeah, I did.

3 Q. And how far -- what did you do as far as moving your
4 car? Just pull it up a little ways?

5 A. Yeah, I pulled it up and kind of like turned to the
6 left when I pulled up. I turned to the left so I could, you
7 know, be out of the way of, you know, anything else what's
8 going on or what they had to do.

9 Q. Okay. Let me show you State's Exhibit No. 1. One of
10 the officers testified yesterday that after your car kind
11 was moved, it was kind of in relation to that and that X is
12 where Dominique was, that you were kind of up and just a
13 little bit to the left of him, is that right?

14 A. Yes, sir.

15 Q. And prior to that you would have been back and closer
16 to the rear of your vehicle, closer to the X on the diagram?

17 A. Yes, sir.

18 Q. Okay. The driver's side of your vehicle is still
19 oriented the same way it is in this picture, though, facing,
20 you know, basically this side of the club here?

21 A. Yes, sir.

22 Q. Did you have an opportunity, Mr. Saxon, to take a good
23 look at your vehicle that night to see if it had any damage?

24 A. Actually I didn't, no.

25 Q. Okay. Well, did there come a time subsequent to this

1 that you did see your vehicle and noticed some damage to it?

2 A. Yeah, Monday -- that Monday morning I -- I didn't drive
3 my car at all Sunday. Once I got home late that Sunday
4 night, that Sunday morning I was, you know, laying around
5 recuperating from my big night, so, you know, I didn't drive
6 my car at all.

7 That Monday morning when I walked out the door, I
8 noticed a hole was on the side, you know, of the door.

9 Q. I'm showing you -- I'll show you State's Exhibit 27
10 through 30.

11 Let me ask you, did you ultimately take your car up to
12 the sheriff's office and let them kind of look at it and
13 photograph it?

14 A. Yes, sir.

15 Q. Okay. I'm showing you State's Exhibit 27, 28, 29 and
16 30. Are these photographs that were taken at the sheriff's
17 office showing the damage to your car?

18 A. Yes, sir.

19 Q. And prior to that night was that hole in your car?

20 A. No.

21 Q. Prior to it?

22 A. No.

23 MR. SORENSON: Your Honor, at this time we would
24 offer State's 27 through 30 in evidence.

25 MR. THOMAS: No objection, Your Honor.

1 THE COURT: Very well.

2 (Whereupon, State's Exhibit No. 27 was admitted
3 into the record as evidence)

4 (Whereupon, State's Exhibit No. 28 was admitted
5 into the record as evidence)

6 (Whereupon, State's Exhibit No. 29 was admitted
7 into the record as evidence)

8 (Whereupon, State's Exhibit No. 30 was admitted
9 into the record as evidence)

10 BY MR. SORENSON:

11 Q. I'm showing you State's Exhibit No. 27. Can you point
12 out the damage to your vehicle there?

13 A. Yeah, it's right here.

14 Q. So that would be kind of in the center -- in the center
15 of the vehicle, I guess the bottom part of the driver's side
16 door?

17 A. Yes, sir.

18 Q. And that's a hole.

19 State's 28 I guess is kind of the interior of that
20 door?

21 A. Yes, sir.

22 Q. Is that correct?

23 A. Yeah.

24 Q. Were you present then in State's Exhibit No. 29 and 30
25 when law enforcement put a -- I guess put a -- it almost

1 looks like an arrow kind of showing the path of that bullet
2 into your vehicle?

3 A. Yes, sir.

4 Q. And did you ever find the bullet inside your vehicle?

5 A. No, I didn't.

6 Q. Did you tell law enforcement that too?

7 A. Yes, sir.

8 Q. Danny, obviously, other than the tall guy with the
9 orange shirt shooting up in the air, did you see anybody
10 else shooting?

11 A. No, sir, I didn't.

12 Q. Did you see anybody back kind of behind your vehicle
13 shooting?

14 A. No, sir.

15 MR. SORENSON: That would be all I have, Your
16 Honor.

17 THE COURT: Cross examination?

18 CROSS EXAMINATION BY MR. THOMAS:

19 Q. Good afternoon, Mr. Saxon.

20 A. Good afternoon.

21 Q. I'll be brief with you.

22 I believe you said that you heard a bunch of shots and
23 then you looked and saw a tall skinny man shoot, is that
24 correct?

25 A. Yeah, as I was coming in. I was entering there.

1 Q. You heard shots first

2 A. Heard the shots first.

3 Q. Then you looked?

4 A. Then I looked across, you know, standing in between my
5 door. When I opened the door and my passenger's side, I'm
6 looking across and I'm seeing -- I'm hearing shooting and
7 I'm seeing someone shooting in the air.

8 Q. And you said you knew David Benjamin from school?

9 A. From school, yes, sir.

10 Q. Was that the man that was shooting with the gun in the
11 air?

12 A. No.

13 Q. Did you ever see him shoot?

14 A. I didn't see him at all that night.

15 Q. Did you ever see him with a gun?

16 A. I didn't see him at all that night.

17 Q. Thank you. I have no more questions, Mr. Saxon.
18 Appreciate it.

19 THE COURT: All right, redirect?

20 MR. SORENSON: Nothing, Your Honor.

21 THE COURT: Very well. Is this witness free to
22 leave?

23 MR. SORENSON: No objection.

24 MR. THOMAS: No objection.

25 THE COURT: Very well. You are free to go.

1 THE WITNESS: Thank you.

2 THE COURT: Call your next witness, please.

3 MR. SORENSON: Michael Bullock.

4 THE CLERK: Raise your right hand for me, please,
5 sir.

6 MICHAEL BULLOCK, having been first duly sworn,
7 testified as follows:

8 THE CLERK: Please have a seat.

9 Please state your full name for the record.

10 THE WITNESS: Michael Leon Bullock.

11 DIRECT EXAMINATION BY MR. SORENSON:

12 Q. Michael, you need to make sure you keep your voice up
13 nice and loud for us, all right?

14 Would you tell the jury how old you are?

15 A. Twenty-five.

16 Q. Twenty-five.

17 And what do you do for a living?

18 A. DJ.

19 Q. DJ.

20 How long have you been doing that?

21 A. About nine years.

22 Q. Okay. Nine years?

23 A. Yes, sir.

24 Q. Okay. And specifically out there at the Piggy Park,
25 how many times do you think that you DJ'd out there?

1 A. About three or four.

2 Q. Three or four. All right.

3 And did you grow up in Calhoun County?

4 A. Yes, sir.

5 Q. Where did you go to high school?

6 A. CC.

7 Q. I want to turn your attention back to the evening of
8 September 17th of 2011. Were you DJ'g at a birthday party
9 that night at Piggy Park?

10 A. Yes, sir.

11 Q. About what time do you think that you got there that
12 night?

13 A. About nine o'clock.

14 Q. About nine o'clock.

15 Would you have been one of the first people there?

16 A. Yes, sir.

17 Q. And let me ask you this. Do you -- the defendant,
18 David Benjamin, do you know Mr. Benjamin?

19 A. Yes, sir.

20 Q. Where do you know Mr. Benjamin from?

21 A. From school.

22 Q. From school.

23 How about Joshua Haggood?

24 A. Yes, sir.

25 Q. Where do you know him from?

1 A. From school.

2 Q. And Kevin Frazier?

3 A. The same place.

4 Q. Okay. How about Dominique Lawton? Do you know Mr.
5 Lawton?

6 A. I don't really know him. I met him when I started
7 playing out there at Piggy Park.

8 Q. Okay. So he wasn't somebody that you knew prior to
9 DJ'g out at Piggy Park?

10 A. Yes.

11 Q. Mr. Frazier, Mr. Benjamin and Mr. Haggood, were they
12 behind you or ahead of you in school?

13 A. They was ahead of me.

14 Q. Ahead of you.

15 Let me ask you, that night -- did you become aware that
16 night when you were working out there about kind of a little
17 bit of an altercation that occurred between Mr. Benjamin and
18 Mr. Lawton?

19 A. A little. They had bumped into each other in the club
20 and Dominique kept watching him the whole time in the club.

21 Q. Okay. All right.

22 And as a result of that did you actually have somebody
23 go kind of talk to Dominique initially?

24 A. Yes, sir.

25 Q. And who was that?

1 A. DJ Stroke.

2 Q. All right. Is that Bubba or --

3 A. No --

4 Q. -- Andrew Haynes?

5 A. Yes.

6 Q. He was the other people DJ'g with you that night?

7 A. Yes, sir.

8 Q. Okay. Now, kind of after that initial kind of bump,
9 kind of what were they all doing after that?

10 A. They were just looking back and forth at each other.

11 Q. Okay. So both parties kind of looking back and forth
12 at each other?

13 A. (Shaking head yes).

14 Q. Is that something that you observed, I mean --

15 A. Yes.

16 Q. -- throughout the evening after that?

17 A. Yes, sir.

18 Q. Mr. Haggood, Mr. Benjamin, and Mr. Frazier, were the
19 three of them pretty much hanging together --

20 A. Yes, sir.

21 Q. -- for the most part?

22 Now, let me ask you this. Kind of as the thing started
23 to wind down for the night, did there come a time when you
24 went outside?

25 A. I went out after everything was over.

1 Q. Okay. And what was the purpose of you going outside?

2 A. I went outside to unlock my van, because I had to put
3 my stuff in.

4 Q. Okay. And the van -- the van that we see in a bunch of
5 these pictures, State's Exhibit No. 5, was that your van?

6 A. Yes, sir.

7 Q. Okay. Is that where it was parked the whole time that
8 night?

9 A. Yes, sir.

10 Q. And what -- right behind the van, what is right behind
11 the van?

12 A. A door.

13 Q. Okay. Is that the door that you were using --

14 A. Yes, sir.

15 Q. -- to go in and out with your equipment and stuff?

16 A. Yes, sir.

17 Q. So is that the door that you went out to go unlock your
18 van?

19 A. Yes, sir.

20 Q. And, if you would, Michael, tell the jury what -- when
21 you went outside to unlock your van, what was going on
22 outside?

23 A. It was just a big commotion outside. I mean, I turned
24 around to go back in, all I heard was Kevin Frazier said all
25 he wanted to do was go home.

1 Q. Okay. Where was he out when you heard him saying that?

2 A. They was standing up at their car.

3 Q. At their car?

4 A. Yes, sir.

5 Q. Okay. Now -- and where was their car parked in
6 relation to your van?

7 A. On the left side, the driver's side.

8 Q. Okay. So you come out of the back door, your van is
9 backed right up to the door?

10 A. Yes, sir.

11 Q. So it's over to the left?

12 A. Yes, sir.

13 Q. Okay. And that's where you saw Kevin at?

14 A. Yes, sir.

15 Q. And heard him also?

16 A. Yes, sir.

17 Q. Okay. Now, did you see whether he had a weapon in his
18 hand?

19 A. No, sir.

20 Q. Did you see at that time anybody with a weapon?

21 A. No, sir.

22 Q. Let me ask you, I mean, anything that may have happened
23 prior to that over at the front of the club, I guess you
24 were inside when that would have happened?

25 A. I couldn't see.

1 Q. And who else was outside when you said there was a
2 commotion going on? I mean, were there --

3 A. Everybody that was in the club was outside.

4 Q. A lot of people outside?

5 A. Yes, sir.

6 Q. Okay. So what did you do after unlocking your van?

7 A. I went back inside and unplugged my stuff.

8 Q. Okay. So you were back in unplugging your stuff. And
9 what happened when you were doing that?

10 A. That's when the gunshots started firing.

11 Q. Okay. All right.

12 And how many gunshots do you think that you heard?

13 A. I couldn't really say.

14 Q. A little, a lot?

15 A. It was a lot.

16 Q. A lot?

17 A. Yes, sir.

18 Q. And let me ask you, where -- where was Andrew Haynes at
19 when that was going on?

20 A. He was outside. When the shots started firing, he ran
21 back inside.

22 Q. Okay. So he was -- was that kind of toward the
23 beginning of all the shots when he came in?

24 A. Yes, sir.

25 Q. Now, ultimately did you have an opportunity at some

1 point in time after things had settled down to go back
2 outside?

3 A. I went outside after everything was over and I started
4 to put my stuff in the van.

5 Q. Okay. All right.

6 And did you notice at that point in time any damage to
7 your van?

8 A. No, sir.

9 Q. Okay. Did there come a time before you left that night
10 that you noticed some damage to your van?

11 A. No, sir, I was getting ready to pull off and --

12 Q. How did you find out something had happened to your
13 van?

14 A. One of the deputies stopped me.

15 Q. Okay. And then did you ultimately notice some damage
16 to your van? I guess that was my question.

17 A. Yeah, after he stopped me and told me.

18 Q. Okay. All right.

19 So you weren't allowed to leave at that point in time,
20 right?

21 A. No.

22 Q. Okay. And tell the jury what that damage was that you
23 saw to your van.

24 A. It was bullet holes through the window of the van in
25 the back side.

1 Q. I'm showing you State's Exhibits 17 and 21.
2 17, the driver's side of your van?

3 A. Yes, sir.

4 Q. All right. Is that three bullet holes?

5 A. Yes, sir.

6 Q. And then 21 shows some corresponding holes on the other
7 side?

8 A. Yes, sir.

9 Q. And any of those holes there when you got there that
10 night?

11 A. No, sir.

12 MR. SORENSON: Your Honor, at this time we would
13 offer State's 17 and 21 into evidence.

14 THE COURT: Any objection?

15 MR. THOMAS: No objection, Your Honor.

16 THE COURT: Very well.

17 (Whereupon, State's Exhibit No. 17 was admitted
18 into the record as evidence)

19 (Whereupon, State's Exhibit No. 21 was admitted
20 into the record as evidence)

21 BY MR. SORENSON:

22 Q. Did law enforcement end up kind of dealing with those
23 photographs and those holes and what have you in your
24 presence?

25 A. Yes, sir.

1 Q. And were you aware of whether they actually found the
2 bullet in your van?

3 A. They found one.

4 Q. Just so I'm clear, I mean, when you went outside, you
5 said there was a whole lot of commotion going on, but you
6 didn't actually see anybody with a weapon?

7 A. No, sir.

8 Q. Okay. The gunshots didn't start until after you got
9 back inside the club?

10 A. Yes, sir.

11 Q. Is that right?

12 A. Yes, sir.

13 MR. SORENSON: Beg the court's indulgence.

14 THE COURT: All right.

15 (Off the record)

16 (Back on the record)

17 BY MR. SORENSON:

18 Q. Thank you, Mr. Bullock. Please answer any questions of
19 Mr. Thomas.

20 THE COURT: Cross-examination.

21 CROSS EXAMINATION BY MR. THOMAS:

22 Q. Good afternoon, Mr. Bullock.

23 A. Good afternoon.

24 Q. You mentioned earlier that you saw Dominique Lawton
25 watching David Benjamin?

1 A. Yes, sir.

2 Q. Did you see David Benjamin doing the same to him?

3 A. Not all night.

4 Q. Did he seem interested in Dominique Lawton?

5 A. No, sir.

6 Q. Was there a continuing vibe from my client towards
7 Dominique Lawton --

8 A. No, sir.

9 Q. -- that you picked up on.

10 You said you heard a lot of gunshots?

11 A. Yes, sir.

12 Q. And you know my client, David Benjamin, correct?

13 A. Yes, sir.

14 Q. Did you see him with a gun?

15 A. No, sir.

16 Q. Did you see him shoot a gun?

17 A. No, sir.

18 Q. Thank you.

19 MR. THOMAS: No more questions.

20 THE COURT: All right. Redirect?

21 REDIRECT EXAMINATION BY MR. SORENSON:

22 Q. Just to be clear, Mr. Bullock, initially when I was
23 questioning you I believe you said that they were all kind
24 of glaring back and forth at each other, is that correct?

25 A. Yes, sir.

1 Q. And you know him a lot better than you know Mr. Lawton,
2 right?

3 A. Yes, sir.

4 Q. You have known him for years, is that correct? Since
5 high school?

6 A. Since school.

7 Q. Okay.

8 MR. SORENSON: Thank you. That's all I have.

9 THE COURT: Recross?

10 RECROSS EXAMINATION BY MR. THOMAS:

11 Q. You had seen Mr. Lawton a number of times since you
12 first started DJ'g at the park?

13 A. Yes.

14 Q. Have you ever seen Mr. Lawton get in any trouble?

15 A. No, sir.

16 MR. SORENSON: Object, Your Honor. I mean --

17 MR. THOMAS: He said no, sir.

18 MR. SORENSON: Never mind.

19 THE COURT: Very well.

20 MR. THOMAS: No more questions. Thank you.

21 THE COURT: All right. Is this witness free to
22 leave?

23 MR. SORENSON: Yes.

24 THE COURT: Any objection?

25 MR. THOMAS: No objection.

1 THE COURT: You are free to go.

2 Call your next witness, please.

3 MR. LUPTON: Your Honor, the State would call Mr.
4 Delvin Lawton.

5 THE CLERK: Raise your right hand for me, please,
6 sir.

7 DELVIN LAWTON, having been first duly sworn,
8 testified as follows:

9 THE CLERK: Please have a sweat.

10 Please state your full name for the record.

11 THE WITNESS: Delvin Lawton.

12 THE CLERK: Just keep your voice up.

13 DIRECT EXAMINATION BY MR. LUPTON:

14 Q. Mr. Lawton, how are you related to the victim in this
15 case, Dominique Lawton?

16 A. My little brother.

17 COURT REPORTER: Speak up, please.

18 A. My little brother.

19 BY MR. LUPTON:

20 Q. He was your little brother?

21 A. Yes.

22 Q. And were you there that night with him?

23 A. No, sir.

24 Q. Did you hear about what happened to him after the fact?

25 A. Yes, sir.

1 Q. And when was that?

2 A. That was that night, the same night.

3 Q. I'm sorry?

4 A. The same night.

5 Q. The same night you heard about it?

6 A. Yeah.

7 Q. And when you heard about it, did anybody bring you
8 anything that belonged to the victim?

9 A. Yes, sir.

10 Q. What was that?

11 A. A gun.

12 Q. I'll show you -- I'll show you what's been marked as
13 evidence for identification at this point State's 36.

14 MR. LUPTON: Your Honor, let the record reflect
15 that it is locked and cleared.

16 THE COURT: Okay.

17 BY MR. LUPTON:

18 Q. Do you recognize this?

19 A. Yes, sir.

20 Q. And what is this?

21 A. .380.

22 Q. It's a .380?

23 A. Yes, sir.

24 Q. Is this the firearm that was brought to you the next
25 day?

1 A. Yes, sir.

2 Q. And who brought it to you?

3 A. A guy named Boomer. His real name is Jacob Warren.

4 Q. A person named Jacob Warren, who you know as Boomer?

5 A. Yes, sir.

6 Q. And where did he get it?

7 A. He said he got it off the ground by my brother.

8 Q. All right. And he brought it to you?

9 A. Yes, sir.

10 Q. About what time was that?

11 A. That was about twelve, one o'clock the next day.

12 Q. So basically around lunchtime the next day.

13 And did you touch the gun?

14 A. No, sir.

15 Q. What did you do?

16 A. He brought it to me, I got a bag and put it in a bag.

17 I put it in the house.

18 Q. And did you call law enforcement?

19 A. Yes, sir.

20 Q. And did you arrange to meet with them?

21 A. Yes, sir.

22 Q. And what did you do with the gun?

23 A. I took it to them.

24 Q. And from the time that it came into your possession to

25 the time that you turned it over to the police, did you

1 touch it?

2 A. No, sir.

3 Q. Did you mess with it in any way?

4 A. No, sir.

5 Q. All right. So how you gave it over to the police is
6 how it came to you?

7 A. Yes, sir.

8 MR. LUPTON: Your Honor, at this point I move
9 State's 36 into evidence.

10 MR. THOMAS: No objection.

11 THE COURT: Very well.

12 (Whereupon, State's Exhibit No. 36 was admitted
13 into the record as evidence)

14 MR. LUPTON: Beg the court's indulgence.

15 (Off the record)

16 (Back on the record)

17 MR. LUPTON: Nothing further, Your Honor.

18 THE COURT: Cross examination?

19 CROSS EXAMINATION BY MR. THOMAS:

20 Q. Hey, Mr. Lawton.

21 A. How are you doing?

22 Q. Have you seen this gun prior to that evening?

23 A. No, sir.

24 Q. Had you seen your brother with another gun?

25 A. I have seen him with a gun before, yes.

1 Q. You have?

2 A. Yes.

3 Q. Have you ever seen him with a MAC 10?

4 A. No, sir.

5 Q. Did you ever see him with a Glock?

6 A. No, sir.

7 Q. But you have seen him with other guns before?

8 A. Yeah.

9 Q. Let me make it easy on you. No more questions.

10 THE COURT: Very well.

11 Any redirect?

12 MR. LUPTON: No, Your Honor. We would ask that

13 he --

14 THE COURT: Is this witness free to leave?

15 MR. LUPTON: We would ask that he be excused.

16 THE COURT: Any objection?

17 MR. THOMAS: No objection at all, Your Honor.

18 THE COURT: Thank you. You are free to go.

19 Call your next witness, please.

20 MR. SORENSON: The State calls Investigator Henry

21 Dukes.

22 THE CLERK: Please raise your right hand, Mr.

23 Dukes.

24 INVESTIGATOR HENRY DUKES, JR., having been first

25 duly sworn, testified as follows:

1 THE CLERK: Please have a seat.

2 Please state your full name for the record.

3 THE WITNESS: Henry O. Dukes, Jr..

4 THE CLERK: Thank you, sir.

5 DIRECT EXAMINATION BY MR. SORENSON:

6 Q. Good afternoon, Investigator Dukes.

7 A. Good afternoon.

8 Q. If you would, tell the jury where it is that you are
9 employed.

10 A. I am employed with the Calhoun County Sheriff's Office.

11 Q. All right. And what are your current duties with the
12 sheriff's office?

13 A. I am a lieutenant over the investigation division.

14 Q. All right. And how long -- first of all, how long have
15 you been with Calhoun County?

16 A. Just about two years I have been with them.

17 Q. And prior to that -- do you have law enforcement
18 background prior to that?

19 A. Yeah, I have accumulated twenty-five years of law
20 enforcement experience.

21 Q. Okay. For the last two years you have been lieutenant
22 over investigations?

23 A. Yes, sir.

24 Q. I want to turn you back to the morning of September
25 18th of 2011. Did you ultimately respond out that morning

1 to the shooting that took place in Elloree?

2 A. Yes, sir, I did.

3 Q. And that's obviously in Calhoun County where you
4 responded to?

5 A. Yes, sir.

6 Q. And, if you would, describe for the jury when you got
7 there kind of what the scene was like when you got there.

8 A. When I arrived on the scene, the scene was secure.
9 Crime scene tape had been placed up. All the victims had
10 been transported to the hospital at that time by EMS.
11 Statements were being obtained from some witnesses that were
12 there. Law enforcement had started doing initial report.

13 Q. Okay. And ultimately you learned that night that you
14 had three -- you know, three gunshots wound victims?

15 A. Yes, sir.

16 Q. Mr. Hampton, Mr. Defreitas and Mr. Lawton --

17 A. Yes, sir.

18 Q. -- is that correct?

19 All right. Now, as far as actually processing the
20 scene, who went about doing that, as far as collecting any
21 physical evidence that may have been out there?

22 A. I did.

23 Q. Okay. All right.

24 Well, I want to start with you kind of I guess at the
25 front of the club.

1 You had indicated that the scene was secure, as far as
2 nobody was in the kind of area around the club parking lot,
3 is that correct --

4 A. That's correct.

5 Q. -- when you got there?

6 A. Yes, sir.

7 Q. And specifically I guess starting with State's Exhibit
8 No. 1, around this front area of the club, did you find any
9 items of evidentiary value in that area?

10 A. Up near the front door I had an unspent shell
11 cartridge.

12 MR. SORENSON: I beg the court's indulgence one
13 second, Your Honor.

14 THE COURT: Okay.

15 (Off the record)

16 (Back on the record)

17 MR. SORENSON: Could I have him step down, Your
18 Honor?

19 THE COURT: You may.

20 (Witness off the witness stand)

21 BY MR. SORENSON:

22 Q. If I can get you to hold this.

23 Now, you indicated that was around the front door --

24 A. Yes.

25 Q. -- you are talking about.

1 I'm showing you State's Exhibit No. 4. Just kind of
2 point to the area that you are talking about.

3 A. It was kind of in this area right up in here.

4 Q. You said that was a live round --

5 A. Yes, sir.

6 Q. -- of an unfired bullet?

7 A. Yes, sir.

8 Q. All right. I'm showing you State's Exhibit No. 40. Is
9 that that item that was collected?

10 A. It is, sir.

11 Q. All right.

12 MR. SORENSON: Your Honor, at this time we would
13 State's 40 into evidence.

14 THE COURT: Any objection?

15 MR. THOMAS: No objection.

16 THE COURT: Very well.

17 (Whereupon, State's Exhibit No. 40 was admitted
18 into the record as evidence)

19 BY MR. SORENSON:

20 Q. All right. And as far as in that vicinity of that
21 front door, did you find any other items in that area?

22 A. No, sir.

23 Q. Okay. And then kind of let's -- let's kind of move --
24 I guess the easiest way is to move sideways across the
25 parking lot. All right. Can you switch over. That's kind

1 of the next view. Slide over, is that correct?

2 A. Yes, sir.

3 Q. And just kind of relate to the jury kind of where that
4 area is now.

5 A. This area here is between the door and back over toward
6 the van.

7 Q. All right. And the van is backed up to this other door
8 right here?

9 A. Yes, sir, it's right here. We are talking about this
10 area here.

11 Q. Okay. And in that area kind of in between the front
12 door and the van, any shell casings, bullets, anything of
13 that nature, projectiles, found in that area?

14 A. I found one spent shell casing in that area.

15 Q. Okay. I believe that was actually over kind of behind
16 the van area?

17 A. Yes, sir, it was.

18 Q. And I'm showing you State's Exhibits No. 41. Is that
19 that item?

20 A. Yes, sir, it is.

21 Q. Okay. All right.

22 Let me show you -- actually let's kind of fast forward
23 a little bit here, but State's Exhibit No. 17. Does that
24 actually have a marker on the ground where that item was
25 found behind the van?

1 A. Yes, sir, it does, indicated by No. 2.

2 Q. Okay.

3 MR. SORENSON: Your Honor, at this time we would
4 offer State's 41 into evidence.

5 THE COURT: Any objection?

6 MR. THOMAS: No objection, Your Honor.

7 THE COURT: Very well.

8 (Whereupon, State's Exhibit No. 41 was admitted
9 into the record as evidence)

10 BY MR. SORENSON:

11 Q. Now, as we kind of move over, Investigator Dukes,
12 Lieutenant Dukes, over to the -- kind of the corner area of
13 the club. Did you find any items over in that area of the
14 club?

15 A. I did.

16 Q. And what -- I'm going to show you -- let's move on.
17 I'll show you State's Exhibit No. 3. It might be easier
18 than kind of --

19 A. This is the corner of the club. If you are looking at
20 the front of the club, it would be over to the right.

21 We found evidence pretty much in this area coming out
22 in the gravel and also into the grass.

23 Q. And that's right at the corner area of the club there?

24 A. Yes, sir, right at the corner area.

25 Q. Okay. And ultimately did you collect -- I believe

1 there is a total of eight shell casings from that area?

2 A. Yes, sir, I did.

3 Q. I'm showing you State's Exhibit 42 through 49.

4 A. 46, 45, 44, 43, and 42 were five .45 rounds.

5 Q. Rounds or shell casings?

6 A. I mean shell casings, I apologize.

7 Q. Okay.

8 A. 49 -- 48, 49, and 47 is three .40 caliber shell
9 casings.

10 Q. Those -- all eight of these were found in that same
11 general vicinity at the corner of the club there?

12 A. Yes, sir, they were.

13 MR. SORENSON: Your Honor, at this time we would
14 offer State's 42 through 49 into evidence.

15 MR. THOMAS: No objection.

16 THE COURT: No objection?

17 MR. THOMAS: No objection.

18 THE COURT: I'm sorry.

19 MR. THOMAS: I'm sorry, Your Honor.

20 THE COURT: Very well.

21 (Whereupon, State's Exhibit No. 42 was admitted
22 into the record as evidence).

23 (Whereupon, State's Exhibit No. 43 was admitted
24 into the record as evidence).

25 (Whereupon, State's Exhibit No. 44 was admitted

1 into the record as evidence).

2 (Whereupon, State's Exhibit No. 45 was admitted
3 into the record as evidence).

4 (Whereupon, State's Exhibit No. 46 was admitted
5 into the record as evidence).

6 (Whereupon, State's Exhibit No. 47 was admitted
7 into the record as evidence).

8 (Whereupon, State's Exhibit No. 48 was admitted
9 into the record as evidence).

10 (Whereupon, State's Exhibit No. 49 was admitted
11 into the record as evidence)

12 BY MR. SORENSON:

13 Q. We'll come back to the van in a second.

14 Kind of move --

15 All right. And ultimately -- I'll also show you
16 State's Exhibit No. 2. Would you kind of relate what's
17 being shown in State's Exhibit No. 2 for the jury, what we
18 see in the map?

19 A. It's what we call a -- it's not necessarily a distance
20 shot, but we would be shooting back toward the corner of the
21 club.

22 Also encompassing an area, there is a large oak tree
23 right here, and then there is a gravel area in front of the
24 oak tree.

25 Q. Okay. And does that picture actually show kind of the

1 vicinity of where Mr. Lawton was when the initial -- when
2 the first initial responder showed?

3 A. Yes, sir, it does, right here.

4 Q. Now, where my finger is, for lack of a better word, I
5 guess a blood stain on the ground --

6 A. Yes, sir.

7 Q. -- from Mr. Lawton?

8 A. Yes, sir.

9 Q. Now, in that vicinity, back in the back area of that
10 picture, did y'all find any other either shell casings or
11 projectiles or anything of that nature that night in that
12 vicinity?

13 A. We found shell casings back in this vicinity, which
14 would be behind where Mr. Lawton at, laying. It was five
15 9-millimeter shell casings that were found back in that
16 area.

17 Q. How close were they to where Mr. Lawton was?

18 A. From here to the wooden frame right here in the
19 courtroom.

20 Q. Fifteen feet?

21 A. Fifteen feet, yes, sir.

22 Q. And were they -- you said there were five 9-millimeter
23 shell casings?

24 A. Yes, sir.

25 Q. And were they, you know, all sitting in a pile, or how

1 were they in relation to each other?

2 A. They were scattered around I guess is the word that you
3 want to use. Different locations, distances apart.

4 Q. I'm showing you State's 51 through 55 and ask you if
5 you recognize those items?

6 A. This is the five 9-millimeter shell casings that were
7 found in that area.

8 Q. Okay.

9 MR. SORENSON: At this time we would offer State's
10 51 through 55 into evidence.

11 MR. THOMAS: No objection.

12 THE COURT: Very well.

13 (Whereupon, State's Exhibit No. 51 was admitted
14 into the record as evidence)

15 (Whereupon, State's Exhibit No. 52 was admitted
16 into the record evidence)

17 (Whereupon, State's Exhibit No. 53 was admitted
18 into the record as evidence)

19 (Whereupon, State's Exhibit No. 54 was admitted
20 into the record as evidence)

21 BY MR. SORENSON:

22 Q. I'm showing you State's Exhibit No. 32. Was that item
23 collected from out there?

24 A. Yes, sir, it was.

25 Q. And where about was that located at, do you remember?

1 A. It was collected in the area of the front of the club.

2 Q. Let me show you -- Mr. Bullock had testified a little
3 while ago about some damage to his van. Do you remember
4 hearing that?

5 A. Yes, sir.

6 Q. Testimony.

7 And ultimately did you photograph the damage to the
8 van?

9 A. I did.

10 Q. And let me show you State's Exhibits No. 17. That's
11 already in evidence. Tell the jury what they are seeing
12 there in State's Exhibit No. 17.

13 A. This is of the bullet holes where it entered into the
14 van. There is actually three of them.

15 Q. Did you then subsequently take closer-up photograph of
16 those three holes also?

17 A. Yes, sir, I did.

18 Q. I show you State's Exhibits 18, 19, and 20. Are those
19 those items?

20 A. Yes, they are.

21 MR. SORENSON: At this time we would offer State's
22 18 through 20 into evidence.

23 MR. THOMAS: No objection.

24 THE COURT: Very well.

25

1 (Whereupon, State's Exhibit No. 18 was admitted
2 into the record as evidence)

3 (Whereupon, State's Exhibit No. 19 was admitted
4 into the record as evidenced)

5 (Whereupon, State's Exhibit No. 20 was admitted
6 into the record as evidence)

7 BY MR. SORENSON:

8 Q. And, if you would, kind of relate those kind of -- I'll
9 hold this up, kind what each one of these is. Make sure
10 you -- you got jurors behind you.

11 A. I'm sorry, I apologize.

12 This is going to be the bullet hole that goes through
13 the glass part of the van.

14 The next one will be the bullet hole that is up higher
15 in this area.

16 Q. How can you tell? Is there any way that -- is there a
17 way to tell whether that's an entry or an exit hole?

18 A. It is. You can tell by when you look at it, you can
19 see that the steel of the van is not protruding out. It's
20 actually going in, which means the projectile traveled into
21 an inward direction taking the steel with it.

22 And the next bullet hole is the one that's indicated
23 right down here --

24 Q. Okay.

25 A. -- on the van near the taillight, which is also another

1 entry wound to the van, and you can also tell by the window.
2 Q. Okay. Were you able to then look at the other side of
3 the van, the passenger side of the van, and find basically
4 the three corresponding kind of exit holes on the other side
5 of the van?

6 A. Yes, sir, I was.

7 Q. Okay. And I'm showing you photographs 22, 23, and then
8 24. Does that depict those three?

9 A. Yes, sir, it does.

10 MR. SORENSON: At this time we would State's 22,
11 23 and 24 into evidence.

12 MR. THOMAS: No objection.

13 THE COURT: Very well.

14 (Whereupon, State's Exhibit No. 22 was admitted
15 into the record as evidence)

16 (Whereupon, State's Exhibit No. 23 was admitted
17 into the record as evidence)

18 (Whereupon, State's Exhibit No. 24 was admitted
19 into the record as evidence)

20 BY MR. SORENSON:

21 Q. And State's Exhibit No --

22 If you could, I'll give you -- let me take that back
23 from you and I'll give you that.

24 Show the jury what you are talking about there, kind of
25 so they can see that's an exit hole instead of an entry

1 hole?

2 A. Okay, this is going to be an exit hole. And as you can
3 tell, you can tell it's an exit hole because when the bullet
4 came out, it pushed the metal out taking it going in the
5 same direction that the bullet was traveling, and you could
6 see where this hole exited out.

7 Q. Okay. And that is going to be --

8 A. That would be one of the marks right here towards the
9 back.

10 Q. Okay.

11 A. This is also going to be an exit wound -- an exit shot
12 where the bullet came out of the side of the van, and that's
13 the one that came through the taillight. And you can tell
14 this was an exit of a projectile, because part of the glass
15 is out in the direction where the bullet was traveling.

16 Q. Okay. And the third one?

17 A. The third one is actually a picture of the projectile.
18 You can see right here where it did not completely exit out
19 through the window. It actually got jammed. It hit a piece
20 of the steel and stayed right here.

21 Q. Is that where my finger is?

22 A. Right where his finger is at is where that projectile
23 was lodged and recovered.

24 Q. Okay. I'm showing you State's No. 50. Is that that
25 projectile that was recovered?

1 A. It is, sir.

2 MR. SORENSON: Your Honor, at this time we would
3 offer State's 50 into evidence.

4 THE COURT: Any objection?

5 MR. THOMAS: No objection, Your Honor.

6 THE COURT: Very well.

7 (Whereupon, State's Exhibit No. 50 was admitted
8 into the record as evidence)

9 BY MR. SORENSON:

10 Q. And did you also have an opportunities then,
11 lieutenant, to look at the building kind of around there to
12 see if there appeared to be any bullet impacts to the
13 building?

14 A. I did.

15 Q. Okay. And specifically --

16 Let's see, we are looking at the front of the building.
17 Did you find any bullet impacts on the right side of the
18 building there?

19 A. No, sir, I did not.

20 Q. Okay. How about behind, where we have heard testimony
21 about the defendant's vehicle and Mr. Haggood's brother's
22 vehicle being parked back up to the corner of the building?

23 A. No, sir, I did not.

24 Q. Okay. How about behind the van?

25 A. No, sir, I did not.

1 Q. Okay. And how about as we move down the front of the
2 building, did you find any what appeared to be bullet
3 impacts?

4 A. Yes, I did.

5 Q. Okay. I'm showing you State's Exhibit No. 5. Could
6 you kind of point out to the jury kind of what area that you
7 are talking about?

8 A. Okay. This is a part of the -- if you are looking at
9 the front of the club, of course, you have the van parked
10 here. It would be over toward the left of the van. It's
11 actually a short -- it's a cut in. It's a dip into the
12 club. There is an area and then there is a brick part of
13 the wall that comes out of it.

14 Q. Okay. And I'm showing you State's Exhibit No. 25 and
15 26. Does that depict some of the impression that you saw
16 there?

17 A. Yes, sir, it does.

18 MR. SORENSON: Your Honor, at this time we would
19 offer State's 25 and 26 into evidence.

20 MR. THOMAS: No objection.

21 THE COURT: Very well.

22 (Whereupon, State's Exhibit No. 25 was admitted
23 into the record as evidence)

24 (Whereupon, State's Exhibit No. 26 was admitted
25 into the record as evidence)

1 BY MR. SORENSON:

2 Q. I'll let you kind of point it out to the jury what is
3 depicted there.

4 A. Okay. What you are looking at here is the brick wall
5 that is kind of coming out to where you have the area that
6 sets in. You can see two areas marked here. One of them is
7 where a projectile struck. You can tell that, and that was
8 actually part of the cement off the wall, off the brick,
9 that was on the ground.

10 The other hole up here is marked. We could not
11 determine whether that was from a projectile or not. We
12 didn't have the fresh brick remains on the ground where it
13 broke out.

14 Q. Okay. And also State's Exhibit No. 26, is that --
15 that's an up close of what?

16 A. That is an up close of this projectile strike right
17 here.

18 Q. Can you show the jury kind of what that --

19 A. This is where you can tell where the projectile struck
20 in. You can see roundness of being a projectile.

21 And like I said, again, there was the chipped out parts
22 of the brick was on the ground, the green paint, and you
23 could tell it was fresh.

24 Q. Okay. And this other one you indicated that top here,
25 you could not tell that, but that was necessarily a fresh

1 impact there?

2 A. Exactly. We could not tell whether it was even an
3 impact at all. It was a broken out part that, of course, we
4 are going to document it.

5 Q. Okay. You can have a seat.

6 (Witness back on the witness stand)

7 BY MR. SORENSON:

8 Q. Now, lieutenant, did you -- and all this, I assume, was
9 going on kind of that morning when you arrive out there? I
10 assume it's still dark when you got there, is that correct?

11 A. Yes, sir, it was.

12 Q. Okay. And when did y'all ultimately end up finally
13 clearing that scene out there that morning?

14 A. It was after daylight.

15 Q. Okay. And, in fact, some of the shell casings and
16 evidence that you found was kind of multiple searches that
17 morning out there, is that correct?

18 A. Yes, sir.

19 Q. Okay. Now, let me ask you, do you -- ultimately later
20 on were you kind of early on come up with the name Kevin
21 Frazier as being somebody that you were looking for?

22 A. That was a name that was provided when the 911 call
23 came into dispatch.

24 Q. Okay. All right.

25 And did you ultimately that morning, later on that

1 morning then, several hours later, on the 18th, make contact
2 with Mr. Frazier?

3 A. We did. We traveled out to his mother's house and was
4 subsequently able to make contact with him by telephone, by
5 the assistance of his mother.

6 Q. Okay. And were arrangements made for him to come in
7 and talk to you?

8 A. Yes, sir.

9 Q. Okay. And did he initially show up when he was
10 supposed to show up that day?

11 A. No, sir.

12 Q. Okay. And, in fact, later on that afternoon, about two
13 o'clock, or so, did he finally show up at the sheriff's
14 office?

15 A. Yes, sir, he did.

16 Q. And at that point in time was he ultimately placed
17 under arrest --

18 A. He was.

19 Q. -- that afternoon?

20 And as part of that afternoon did you also do a gunshot
21 residue collection kit on Mr. Frazier.

22 A. Yes, sir, we did.

23 Q. Explain to the jury what a gunshot residue collection
24 kit is.

25 A. A gunshot residue kit, it has different items in it

1 where you can do different tests to check and see if a
2 person has handled or fired a firearm recently. They use
3 different -- there is different devices in there; Q-tips,
4 little round devices that have sticky stuff on the end of
5 them where you can touch it on people's skin, and what it
6 will do is it will pick up particles that were left behind
7 from a firearm being fired.

8 Q. Okay. And that's something that can then be sent out
9 to the State Law Enforcement Division for them to further
10 test?

11 A. Yes, sir.

12 Q. All right. But you and your fellow investigator,
13 Investigator Trentham, did y'all perform that or conduct or
14 collect a gunshot residue collection kit from Mr. Frazier
15 that afternoon?

16 A. Yes, sir, we did.

17 MR. THOMAS: No objection.

18 BY MR. SORENSON:

19 Q. State's Exhibit No. 61, can you see that from there
20 without me walking around, or -- I'll walk around.

21 I know I wouldn't have been able to.

22 Is that the kit that y'all collected from Mr. Frazier
23 that afternoon?

24 A. Yes, sir, it is.

25 MR. SORENSON: Your Honor, at this time we would

1 offer State's 61 into evidence.

2 THE COURT: Any objection?

3 MR. THOMAS: No objection, Your Honor.

4 THE COURT: Very well.

5 (Whereupon, State's Exhibit No. 61 was admitted
6 into the record as evidence)

7 BY MR. SORENSON:

8 Q. Now, I believe you had mentioned a few moments ago when
9 I asked you, Mr. Frazier was placed under arrest at that
10 point in time?

11 A. Yes, he was.

12 Q. Let me ask you, lieutenant, Mr. Lawton, he hadn't
13 passed away yet at that point in time, had he?

14 A. No, sir, he had not.

15 Q. Now, in talking to Mr. Frazier that afternoon, did he
16 admit to having a gun or firing a gun that afternoon?

17 A. Yes, sir, he did.

18 Q. That afternoon, that first time that you talked to him?

19 A. No, I correct, he did not.

20 Q. Okay. Now, as part of that did you also get the
21 information for the first time the names of Josh Haggood and
22 David Benjamin?

23 A. Yes, sir.

24 Q. And did you make contact or attempt to make contact
25 that afternoon with Mr. Haggood up in North Carolina?

1 A. Yes, sir.

2 Q. And as part of that conversation that he had made
3 reference to that earlier today, did you find out some
4 information about his brother's vehicle and where it might
5 be located?

6 A. Yes, sir, we did.

7 Q. Okay. And let me show you State's Exhibits 12, 13 and
8 14. Is that Mr. Pinckney, William Pickney, Josh Haggood
9 brother's vehicle?

10 A. Yes, it is.

11 MR. SORENSON: All right, at this time I would
12 offer State's 12, 13 and 14 into evidence.

13 MR. THOMAS: No objection.

14 THE COURT: Very well.

15 (Whereupon, State's Exhibit No. 13 was admitted
16 into the record as evidence)

17 (Whereupon, State's Exhibit No. 14 was admitted
18 into the record as evidence)

19 BY MR. SORENSON:

20 Q. I think the jury has already seen State's Exhibit No.
21 12, but that is Mr. Pinckney's vehicle, is that correct?

22 A. Yes, sir, it is.

23 Q. Now, in looking at that vehicle, did y'all determine if
24 it had any damage to it?

25 A. We did.

1 Q. And what was that?

2 A. That was a bullet hole to the right back by the
3 taillight.

4 Q. Let me show you what appears where my finger -- kind of
5 right below my finger.

6 A. Yes, sir.

7 Q. Kind of like at the top of the taillight.

8 And were you ultimately able to, in State's Exhibit No.
9 13, to basically take that taillight apart?

10 A. Yes, sir, we did.

11 Q. And as a result of that, in State's Exhibit No. 14, did
12 you actually find a projectile or bullet inside that
13 taillight assembly there?

14 A. Yes, we did.

15 Q. And was that item collected?

16 A. Yes, sir, it was.

17 Q. And let me show you State's Exhibit 56. Do you
18 recognize that?

19 A. That is the projectile that was removed from Mr.
20 Pinckney's vehicle.

21 MR. SORENSON: Your Honor, we offer State's 56
22 into evidence.

23 MR. THOMAS: No objection.

24 THE COURT: Very well.

25

1 (Whereupon, State's Exhibit No. 56 was admitted
2 into the record as evidence)

3 BY MR. SORENSON:

4 Q. Any other damage to that vehicle projectile-wise? I
5 think there may have been some evidence that they may have
6 struck a deer or something?

7 A. Yes, sir.

8 Q. I mean any other evidence, bullet impressions, or
9 anything of that nature, or bullet holes?

10 A. No, sir, there was not.

11 Q. And the jury -- you heard Mr. Saxon's testimony
12 earlier?

13 A. Yes, sir.

14 Q. Mr. Saxon.

15 And State's Exhibit Nos. 27, 28, 29 and 30, are those
16 photographs that you took of his vehicle?

17 A. Yes, sir.

18 Q. Now, in looking at those, at his vehicle, did y'all
19 find any -- did you find any projectiles or any bullets when
20 you looked at Mr. Saxon's vehicle?

21 A. No, sir, we did not.

22 Q. Okay. And in kind of looking at it, what did it appear
23 to you might possibly have happened?

24 A. When I examined it looking from the outside and, you
25 know, getting closer detail of it, I was able to, I guess in

1 my experience, be able to tell that the projectile had
2 struck the door and entered and it had struck what we call
3 the door post. And when it struck the door post, which is
4 between the door and the door post, if you close your door
5 you have got a spot right there, and it exited. It went
6 through the door, striking the post, and it never penetrated
7 the door post and never went anywhere. So when looking at
8 that, we kind of came to a conclusion that the projectile
9 had been right in between the door and the door post.

10 Q. Okay. Possibly as the door was subsequently opened,
11 what would have happened to that projectile?

12 A. The projectile would have fell -- would have been right
13 on the ground.

14 Q. Okay. We will get back to that in a second.

15 Now, State's Exhibits 29 and 30 are, yet again, you
16 know, two different angles of that hole in Mr. Saxon's door?

17 A. Yes, sir.

18 Q. What is -- what's sticking out of that hole?

19 A. That was the only device I had to be able to halfway
20 judge the angle, I used an arrow to do so, because it was
21 straight and true.

22 Q. Is that -- in shoving the arrow through the hole,
23 that's kind of the angle there. I mean obviously nobody is
24 holding it up in the picture?

25 A. Right.

1 Q. I mean, that's how the --

2 A. I pushed it through until it touched the door post and
3 then just let it sit there and it kind of gave an angle of
4 the traveling projectile.

5 Q. I'm going to fast forward a little bit here. Did you
6 have an opportunity, while we are talking about Mr. Saxon's
7 car, to then at some point in time later on go back out to
8 the scene there at the club?

9 A. I did.

10 Q. Okay. And did you have an opportunity to bring
11 something with you in an attempt to kind of look and see if
12 there was any other evidence that you may have missed
13 initially?

14 A. Yes, sir, I did.

15 Q. Okay. And what was that that you brought?

16 A. A metal detector.

17 Q. Okay. And tell the jury where you went out and where
18 you were looking with that metal detector.

19 A. Through the information that had been gathered through
20 the course of the investigation and also seeing the vehicle
21 where the projectile had struck the door post, we went back
22 out into the area where Mr. Lawton was laying at and the
23 vehicle was parked. The vehicle was not there that morning
24 when I arrived, so we went back out in that general area and
25 we started checking with the metal detector in that area.

1 And some of that had to do with the scenario of the door
2 coming open, because information was provided to us that the
3 car had been moved. So, of course, that means somebody went
4 up and opened the door to get in to move it. And I -- you
5 know, just believing that was an area that I wanted to check
6 to see if that projectile had fell out of there.

7 Q. And in searching that area did you find anything in
8 that area?

9 A. We actually recovered three projectiles.

10 Q. Okay. And those were -- where were they at in the
11 vicinity to let's say the blood stain that's on the ground
12 in the photograph?

13 A. You are facing the club, the front of the club, Mr.
14 Lawton was laying over to the right. The projectiles were
15 right in front of where he was at, approximately maybe seven
16 to eight feet away.

17 Q. Okay. I'm going to show you State's Exhibit No. 2 and
18 kind of go back to the one that shows the blood stain on the
19 ground there.

20 A. Yes, sir.

21 Q. So which direction am I heading?

22 A. Heading back this way.

23 Q. Okay. So seven or eight feet kind of in that
24 direction?

25 A. Yeah, approximately right in this area, yes, sir.

1 Q. Okay. Right kind of in the vicinity of where my finger
2 is right now?

3 A. Yes, sir.

4 Q. Okay. Enough room to basically put a car pulling up in
5 between the blood stain on the ground and where the
6 projectile was found?

7 A. Yes, sir.

8 Q. I'm showing you State's Exhibits 57, 58 and 59. Are
9 those the three items you then recovered.

10 A. Those are the three items.

11 MR. SORENSON: At this time we would offer State's
12 57, 58 and 59.

13 MR. THOMAS: No objection.

14 THE COURT: Very well.

15 (Whereupon, State's Exhibit No. 57 was admitted
16 into the record as evidence)

17 (Whereupon, State's Exhibit No. 58 was admitted
18 into the record as evidence)

19 (Whereupon, State's Exhibit No. 59 was admitted
20 into the record as evidence)

21 BY MR. SORENSON:

22 Q. All right, we are going to kind of go back in time now,
23 all right?

24 You had indicated that afternoon of the 18th Mr.
25 Frazier was arrested, is that correct?

1 A. It was.

2 Q. And initially he denied having the gun, denied firing a
3 gun, is that correct?

4 A. Yes, sir.

5 Q. All right. The following day did he ultimately kind of
6 amend that a little bit and indicate that he did have a
7 weapon?

8 A. He did.

9 Q. Okay. And ultimately did you get consent from him and
10 his girlfriend at the time to go search their house and
11 recover a weapon from Mr. Frazier's house?

12 A. We did.

13 Q. Okay. And where was that that that weapon was
14 recovered?

15 A. It was in the couch in the living room.

16 Q. Okay. I'm showing you State's 15. Does that show
17 where that weapon was recovered?

18 A. Yes, sir.

19 Q. And what's State's Exhibit No. 16 showing?

20 A. That shows the gun being opened up.

21 Q. Okay. And what kind of gun was it?

22 A. It was a revolver.

23 Q. Okay.

24 MR. SORENSON: Your Honor, at this time we would
25 offer State's 15 and 16 into evidence.

1 MR. THOMAS: No objection.

2 THE COURT: Very well.

3 (Whereupon, State's Exhibit No. 15 was admitted
4 into the record as evidence)

5 (Whereupon, State's Exhibit No. 16 was admitted
6 into the record as evidence)

7 BY MR. SORENSON:

8 Q. 15 initially shows the gun kind of -- I guess it's in a
9 couch after the cushions were lifted up?

10 A. It was between the couch and the cushion on the side.

11 Q. Okay. And you had indicated State's 16 and that's you
12 in the picture?

13 A. It is, yes, sir.

14 Q. And that's -- this was a revolver as opposed to a
15 semiautomatic that we have been talking about with these
16 other weapons?

17 A. Yes, sir.

18 Q. And that's showing -- it's got, I guess, a couple of
19 spent casings in it?

20 A. Yeah, there was spent casings in it, yes, sir.

21 Q. And that's showing, I believe, it's two of them that
22 you can see in the picture --

23 A. Yes, sir.

24 Q. -- is that correct?

25 And obviously that gun and those casings were then

1 collected?

2 A. Yes, sir, they were.

3 Q. I'll show you State's Exhibit 37, 38, and 39.

4 MR. SORENSON: And, once again, Your Honor, 37 is
5 the revolver that is open with the gun lock in it.

6 THE COURT: Yes.

7 BY MR. SORENSON:

8 Q. Is that the gun that's depicted in State's 15 and 16?

9 A. It is.

10 Q. I believe it's here State's Exhibit 38 and 39. Are
11 these the two casings that were in it when you recovered it?

12 A. Yes, sir, these are two shell casings that were in it.

13 MR. SORENSON: Your Honor, at this time I would
14 offer State's 37, 38 and 39.

15 MR. THOMAS: No objection, Your Honor.

16 THE COURT: Very well.

17 (Whereupon, State's Exhibit No. 37 was admitted
18 into the record as evidence)

19 (Whereupon, State's Exhibit No. 38 was admitted
20 into the record as evidence)

21 (Whereupon, State's Exhibit No. 39 was admitted
22 into the record as evidence)

23 BY MR. SORENSON:

24 Q. Subsequently that same afternoon then did you
25 ultimately learn that Mr. Lawton had passed away?

1 A. Yes, sir.

2 Q. Did you have an opportunity then to go to the hospital
3 where he was at, I guess in Columbia, and collect and do a
4 gunshot residue kit on him also?

5 A. Yes, sir.

6 Q. I'm showing you State's Exhibit No. 62. Is that the
7 kit that you and Detective Trentham collected from Mr.
8 Lawton after he passed away?

9 A. Yes, sir, it is.

10 Q. Okay.

11 MR. SORENSON: Your Honor, we would offer State's
12 62 into evidence.

13 MR. THOMAS: No objection.

14 THE COURT: Very well, 62 in evidence without
15 objection.

16 (Whereupon, State's Exhibit No. 62 was admitted
17 into the record as evidence)

18 BY MR. SORENSON:

19 Q. Let me ask you, that same afternoon then -- did Mr.
20 Benjamin ultimately turn himself in that afternoon also?

21 A. Yes, sir.

22 Q. I'll kind of fast forward a couple dates.

23 Did you have an opportunity then on September 22nd, a
24 few days later, to go up with Lieutenant Corley up to Fort
25 Bragg?

1 A. I did.

2 Q. Did y'all take a statement and talk to Mr. Haggood
3 again?

4 A. Yes, sir.

5 Q. At that point in time he's still not admitting to
6 having a gun, is that correct?

7 A. Correct.

8 Q. Or to seeing a gun in any of the three defendants'
9 hands, is that correct?

10 A. Correct.

11 Q. And ultimately -- just to make sure we are clear,
12 ultimately Mr. Frazier was charged?

13 A. Yes, sir.

14 Q. Mr. Benjamin was charged. Mr. Haggood's was charged.
15 Ultimately all three of them with two counts of attempted
16 murder and one count of murder, is that correct?

17 A. Yes, sir.

18 Q. Okay. And Mr. Frazier's charges are still pending and
19 he will have his day in court down the road, is that
20 correct?

21 A. Correct.

22 Q. Okay. All right.

23 Now, as part of that going up there to Fort Bragg, did
24 you have an opportunity to view and photograph Mr. Haggood's
25 vehicle?

1 A. I did.

2 Q. And the pictures that we have seen, State's 6 --

3 A. Yes, sir.

4 Q. -- 7, 8, 9, and 10 are all photographs that you took of
5 his vehicle up there?

6 A. Yes, sir.

7 Q. Okay. And any evidence of his vehicle being struck by
8 any projectiles, any bullets?

9 A. No, sir.

10 Q. And you heard testimony, obviously there was some
11 evidence it was struck by something on the passenger's side
12 side-view mirror, is that correct?

13 A. Correct.

14 Q. And that -- what kind of color paint does that look
15 like rubbed off on the mirror, on the back of the mirror?

16 A. Green.

17 Q. Is that consistent with the post that you collected out
18 there that Mr. Hampton has testified about throwing at the
19 vehicle?

20 A. Yes, sir.

21 Q. And looking at State's Exhibit No. 9, what's missing
22 from the mirror?

23 A. The reflective part of the mirror where you can see
24 yourself in is gone.

25 Q. Okay. And was that actually recovered?

1 A. It was.

2 Q. Where was it recovered at?

3 A. At the crime scene.

4 Q. Out there at the club that night?

5 A. At the club, yes, sir.

6 Q. With regards to that vehicle, did you also have an
7 opportunity to perform some further tests on that vehicle?

8 A. Yes, we did.

9 Q. What -- tell the jury what it is with regards to that
10 vehicle that you did?

11 A. What we did, we did a GSR kit on the vehicle itself.
12 We used the same kit that we would use for a person, we
13 would use the same kit. We can do it on a vehicle, any
14 surface, because if you remember the little round container
15 with the sticky stuff on the end of it is simply gathers the
16 particles that are left behind.

17 Q. I think on the ones for a person they usually have a
18 spot for you to, you know, to do the backs of both hands and
19 the fronts of both hands, is that right? So basically four
20 areas?

21 A. Yes, sir, they do. They supply you with four little
22 round containers with the sticky stuff on it.

23 Q. Okay. So with regards to the car then, what did you do
24 with those four things?

25 A. I was able to have the luxury of being able to use one

1 in each compartment area; the driver's door, passenger front
2 door, passenger back door, driver's back door. I was able
3 to take the sample from each area around those openings.

4 Q. Okay. Now, were you swabbing the exterior of the
5 vehicle or the interior of the vehicle?

6 A. Right around the interior up around the window part.

7 Q. Okay. So like on here, State's Exhibit No. 8, that's
8 showing the passenger side exterior. You are not swabbing
9 out here, right?

10 A. No, sir.

11 Q. Okay. So you are opening the door and swabbing around
12 the inside?

13 A. The inside, yes, sir.

14 Q. Okay. So you did the -- I guess the inside of the
15 driver's door?

16 A. Yes, sir.

17 Q. Inside driver's rear door?

18 A. Yes, sir.

19 Q. Inside front passenger door?

20 A. Yes, sir.

21 Q. Inside front --

22 A. Rear door.

23 Q. -- rear passenger door?

24 A. Passenger rear door, yes, sir.

25 Q. Okay. I'm showing you State's Exhibit No. 60. Is that

1 then what you collected from that Toyota Camry?

2 A. Yes, sir, inside the container is the four plastic
3 vials that were with the sticky stuff on them.

4 Q. Okay.

5 MR. SORENSON: I offer State's 60 into evidence.

6 MR. THOMAS: No objection.

7 THE COURT: Very well.

8 (Whereupon, State's Exhibit No. 60 was admitted
9 into the record as evidence)

10 BY MR. SORENSON:

11 Q. I believe ultimately --

12 Let me ask you this. On the -- I believe looking at my
13 notes, on the 26th of September, so several days later did
14 y'all have an opportunity to go search the defendant David
15 Benjamin's house?

16 A. We did.

17 Q. Did you find any firearms in his house?

18 A. No, we did not.

19 Q. You did not locate a .45 caliber --

20 A. No, sir.

21 Q. -- gun.

22 Let me ask you this. Have you ever -- has a .45
23 caliber gun ever been located in relation to this crime?

24 A. No, sir.

25 Q. Nor has a 9-millimeter with the 9-millimeter shell

1 casings that were found out beyond the victim?

2 A. It has not.

3 Q. Three guns that were recovered were the .32, the .380
4 and the .40 caliber, is that correct?

5 A. Yes, sir.

6 Q. Mr. Haggood, I believe, was ultimately -- a warrant was
7 obtained for him on or about September 27th, a few days
8 after you returned from Fort Bragg, and he was ultimately
9 extradited and brought back here, is that correct?

10 A. Yes, sir.

11 Q. Let me show you, did you have an opportunity at some
12 point in time kind of in the daylight to go back out there
13 and kind of put some stakes up in the ground --

14 A. Yes, sir.

15 Q. -- to try to kind of help you visualize where some of
16 the cars were parked?

17 A. Yes, sir.

18 Q. Okay. I'm showing you State's Exhibit No. 31. Is that
19 one of those photographs?

20 A. It is.

21 MR. SORENSON: Your Honor, at this time we would
22 offer State's 31 into evidence.

23 MR. THOMAS: No objection.

24 THE COURT: 31 is in evidence without objection.

25

1 (Whereupon, State's Exhibit No. 31 was admitted
2 into the record as evidence)

3 BY MR. SORENSON:

4 Q. And the main thing, obviously, is this jury has heard
5 some testimony about the vehicles, but this allows us to see
6 where the door is that the DJ's van was backed up to, is
7 that correct?

8 A. Correct.

9 Q. And also basically stakes down showing, you know, two
10 cars that would be parked beside it, being Mr. Pinckney's
11 and then Mr. Haggood's, is that correct?

12 A. Yes, sir.

13 Q. I'm more concerned -- also just kind of show me -- now
14 this is a little more close up and obviously daylight
15 photograph. Point in the area where the .45 caliber and the
16 .40 caliber shell casings were located at.

17 A. Around in this area was where the .45, and the .40's
18 were back there on this side.

19 Q. So the .40's are a little closer to my left hand?

20 A. Yes, sir.

21 Q. And --

22 A. This way.

23 Q. And then the --

24 A. .45.

25 Q. The .40 calibers was kind of in this area.

1 The .45's are more where my left finger is?

2 A. Yes, sir.

3 Q. They were all in the same general vicinity of each
4 other?

5 A. Yes, sir.

6 Q. You testified about the 9-millimeters being kind of
7 spread out. These were more concentrated?

8 A. Concentrated, yes, sir.

9 MR. SORENSON: Beg the court's indulgence.

10 THE COURT: All right.

11 (Off the record)

12 (Back on the record)

13 BY MR. SORENSON:

14 Q. Just one more topic here, lieutenant.

15 The night of the shooting did you ever see David
16 Benjamin, Kevin Frazier, Josh Haggood?

17 A. No, sir.

18 Q. They weren't at the scene when y'all got there?

19 A. No, sir, they were not there when I got there.

20 Q. Didn't return to the scene while y'all were there?

21 A. No, sir.

22 Q. Didn't call 911 to report people shooting at them?

23 A. No, sir.

24 Q. The only way you ever get in contact with them is you
25 physically going out and looking for them, is that correct?

1 A. Correct.

2 Q. Thank you.

3 THE COURT: Cross-examination?

4 MR. THOMAS: Thank you.

5 CROSS EXAMINATION BY MR. THOMAS:

6 Q. Real quick, lieutenant.

7 Did you call my client and tell him there was a warrant
8 for his arrest?

9 A. I believe I spoke to his mother.

10 Q. Okay. And then he turned himself in, is that correct?

11 A. Yes, sir.

12 Q. Okay. Thank you.

13 How long have you been the lead investigator in Calhoun
14 County?

15 A. Pretty much the whole time that I have been here.

16 Q. Two years?

17 A. Yes, sir.

18 Q. How many homicides have you worked in that time?

19 A. As far as the lead investigator?

20 Q. Yes.

21 A. This is my first homicide being the lead.

22 Q. First homicide?

23 A. Yes, sir.

24 Q. Before I get into your report, you said that you found
25 five spent 9-millimeter shell casings?

1 A. Yes, sir.

2 Q. They were scattered about, is that correct?

3 A. Yes, sir.

4 Q. At what point did you learn that Nayrone Shivers was a
5 suspect?

6 A. That name was provided early on in the investigation.

7 Q. Did you get a warrant for his arrest?

8 A. Yes, sir.

9 Q. Did you execute that warrant?

10 A. No, sir.

11 Q. Why didn't you?

12 A. During the course of the investigation, prior to
13 meeting with Mr. Shivers, the information we had provided
14 did not -- it seemed to be inconsistent, as far as what we
15 were provided.

16 Q. Okay. Who do you believe is responsible for the
17 9-millimeter shell casings?

18 A. I have no idea.

19 Q. No idea.

20 Did you look for that person?

21 A. Well, we tried to find out who the person was, yes,
22 sir.

23 Q. And it wasn't Nayrone Shivers, as far as you know?

24 A. Not that I know of, no, sir.

25 Q. Okay. So you don't believe he was the shooter?

1 A. We have no proof at this point.

2 Q. I'm going to you ask something about this chart, if I
3 may.

4 Can you point and show me -- draw a line, if you will,
5 what area you roped off.

6 A. Area --

7 Q. That you taped off for investigation.

8 THE COURT: Can everyone see? Yes?

9 A. Pretty much what we have is an area coming out this way
10 and went across the parking lot, came down through the trees
11 and back over this way.

12 BY MR. THOMAS:

13 Q. You didn't want to extend it further, including that
14 ditch line that runs from across here?

15 A. I dealt with the area that was roped off when I arrived
16 on the scene.

17 Q. Okay.

18 A. I didn't exceed the tape.

19 We checked the area. The area was basically checked to
20 see if there was any evidence to be found out here and we
21 didn't find any.

22 Q. But it wasn't preserved and protected in case of
23 possible contamination or tampering, is that correct? This
24 area was not taped off, this ditch line area here, or this
25 road area, or the other side of the road?

1 A. When I arrived the area was taped off, taken over in
2 conjunction with these trees back over this way. That when
3 I arrived, the traffic, most everybody was gone except law
4 enforcement.

5 Q. Okay. Thank you.

6 Did you do an investigation into what other cars were
7 parked along that ditch line?

8 A. Attempted to.

9 Q. Unsuccessful?

10 A. Unsuccessful, yes, sir.

11 Q. There were a lot of people apparently at the club that
12 night, weren't there?

13 A. That's what I understand.

14 Q. So they're -- I might be repetitive.

15 Did you take a statement from Jacob Warren?

16 A. I'm trying to recall Jacob Warren. I'm not that good
17 with names.

18 Q. Do you mind if I show you part of your report to
19 refresh your memory?

20 A. Absolutely. Thank you.

21 Q. Thank you.

22 A. Thank you.

23 Yes, sir, we did.

24 Q. Okay. When you took that report from Mr. Warren --

25 You said you have been in law enforcement twenty-six

1 years?

2 A. Twenty-five years.

3 Q. Twenty-five years. Apologize.

4 And you have taken a lot of victims statements or
5 witness statements?

6 A. A few.

7 Q. A few?

8 A. Right.

9 Q. Are you in the habit or is it regular practice
10 customary in your years of experience when a declarant is
11 finished writing their part of the statement, do you draw a
12 line usually to separate the end of that statement to where
13 the next statement begins?

14 A. Yes, sir. Some of them get done that way. Some they
15 are initialed at the beginning and at the end.

16 Q. Why isn't a line -- well, why is the line done?

17 A. That's so that you can't go back and add anything to
18 it.

19 Q. You can't go back and add anything to it?

20 A. Right.

21 Q. Because it physically makes it impossible to add to it
22 because the line is drawn across it? Well, it would have a
23 line through that section, if it did.

24 A. It would have a line through it.

25 The person that's making the statement, if the line was

1 already drew and he decided he wanted to add something more
2 to it, there wouldn't be anything wrong, because then you
3 would have where he added it, you would have initials by
4 that part also. I mean, I --

5 Q. You have initials -- is it commonplace, though, to skip
6 lines and then add further part to a statement?

7 A. I think that if you --

8 Normally if I see where one is skipped, it's because
9 they are adding something to it after they have said -- I
10 guess they feel they concluded and then they remember
11 something else and then they add it in.

12 Q. Couldn't you just go to a new page? Draw a line and go
13 to a new page?

14 A. Probably could, yes, sir.

15 Q. Okay. Thank you.

16 Did you travel to my client's residence to conduct a
17 search?

18 A. Yes, sir.

19 Q. Your report says no evidence was collected?

20 A. Correct.

21 Q. But did you take some property from that location?

22 A. Yes, sir.

23 Q. What did you take from that location?

24 A. A license tag that was expired. I think there was an
25 issue with it in reference to DMV, and then a box -- an

1 empty box of -- it was where shell casings would have been
2 in it, but it was empty.

3 Q. What caliber shell casings?

4 A. I think, if I recall correctly, .38's.

5 MR. THOMAS: Court's indulgence.

6 THE COURT: Sure.

7 (Off the record)

8 (Back on the record)

9 BY MR. THOMAS:

10 Q. Would this be the box that you recovered from that
11 property?

12 A. Yes, sir, that is the box.

13 Q. And what cartridge is that?

14 A. 9-millimeter.

15 Q. Thank you.

16 MR. SORENSON: Are you offering that?

17 MR. THOMAS: No.

18 THE COURT: That would be marked for
19 identification.

20 THE WITNESS: For identification.

21 MR. THOMAS: Yes, sir.

22 (Box of Bullets marked as Defendant's Exhibit No.
23 1 for identification)

24 MR. THOMAS: Court's indulgence.

25 THE COURT: Sure.

1 (Off the record)

2 (Back on the record)

3 BY MR. THOMAS:

4 Q. At what point did you go back out to the scene with the
5 metal detector?

6 A. It was -- I can't tell you the exact number of days,
7 but it was days after the initial incident.

8 Q. And days after the tape had been removed?

9 A. Yes.

10 Q. And you described the location of those 9-millimeter
11 rounds, or the projectile rounds. How far were those from
12 the decedent Dominique Lawton?

13 MR. SORENSON: Your Honor, I have a -- his
14 characterization --

15 MR. THOMAS: I'll withdraw that.

16 BY MR. THOMAS:

17 Q. I'm trying to read my own chicken scratch handwriting
18 and that's the problem. It's as bad as my mother's.

19 THE COURT: Mr. Thomas, on behalf of the mothers
20 we would take issue.

21 MR. THOMAS: She should have been a doctor.

22 BY MR. THOMAS:

23 Q. State's items 57, 58 and 59, the recovered projectiles,
24 those items were found approximately how far from where you
25 estimate the body of Dominique Lawton was?

1 A. I --

2 MR. SORENSON: I think you are going to have to
3 show him.

4 A. Yeah, I would ask to please be shown, because I --
5 BY MR. THOMAS:

6 Q. Do you see it on 31?

7 A. No.

8 If you would just show me the --

9 Q. The board?

10 A. Yes, the bags.

11 MR. SORENSON: I don't think he knows what you're
12 talking about.

13 MR. THOMAS: Well, I was talking about State's 57,
14 58 and 59.

15 MR. SORENSON: But he doesn't know what those
16 numbers are up there. Only one he found with the metal
17 detector.

18 THE COURT: Counselor, are you asking that he be
19 shown a different exhibit?

20 MR. SORENSON: He doesn't know what numbers. If
21 you are just referring to them by State's numbers, he
22 doesn't know what those numbers are up there.

23 THE COURT: I'm with you.

24 And, Mr. Thomas, you certainly can take a moment
25 to find it, if you need to take a moment.

1 MR. THOMAS: Yes. It's like Christmas over here.

2 (Off the record)

3 (Back on the record)

4 THE COURT: And Mr. Sorenson, in the interests of
5 time, if you could be assistance.

6 MR. SORENSON: I think he could just -- it's the
7 ones that he located with the metal detector.

8 MR. THOMAS: Yeah, exactly. Those are the ones
9 located with the metal detector. That's the line of
10 questioning I was on.

11 THE COURT: I understand. The court reporter
12 can't take you both down, or all three of us down at the
13 same time, so if you want to locate those three exhibits and
14 show them to --

15 It's a good time for a break, I bet. A comfort
16 break maybe. We will take a short comfort break. That will
17 allow you to find it. We'll regroup.

18 Ladies and gentlemen, please step to your jury
19 room. Do not discuss this matter or allow anyone to discuss
20 it with you. We will be about ten to fifteen minutes.

21 When y'all finish before then, knock on the door
22 and let us know.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: All right. We going to be at ease.

1 Please feel free to go. Don't discuss your testimony but
2 you can certainly take a comfort break.

3 THE WITNESS: Thank you.

4 THE COURT: If you want to locate those exhibits,
5 that would be fine.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: Anything before we bring the jury out
9 from the State?

10 MR. SORENSON: No.

11 THE COURT: From the defense?

12 MR. THOMAS: No.

13 THE COURT: Wonderful.

14 Let's have the jury.

15 (The following takes place in the presence of the
16 jury panel)

17 THE COURT: All right, ladies and gentlemen, at
18 this time we will continue with the State's case and
19 cross-examination of Investigator Dukes.

20 Yes, sir, Mr. Thomas, you may continue.

21 MR. THOMAS: Thank you.

22 BY MR. THOMAS:

23 Q. Lieutenant Dukes, just a couple of things.

24 After ruling out Nayrone Shivers as a suspect, did you
25 look for any other possible shooters?

1 A. We continued the investigation.

2 Q. You did?

3 But you ended it without firing -- without finding
4 anyone else who fired the 9-millimeter rounds, is that
5 correct?

6 A. No, sir.

7 Q. What was your delay in going back to the crime scene
8 with the metal detector?

9 A. I guess that most what you would say would be
10 prioritizing. I know everything is important, okay, but
11 there is only so much we can do in one day. And as we just
12 kept continuing over the investigation, as information was
13 provided, i.e., the car coming to the sheriff's office and
14 looking at it where the projectile appears it went through
15 the door and struck the post, it could have fell out when
16 the door was opened. That was information that was gathered
17 that let me say --

18 Q. Sure.

19 A. -- let's go back out.

20 Q. Do you remember that date that you went back out there?

21 A. I would have to look at the report. I mean I --

22 Q. That's fine. That's no problem. Thank you.

23 MR. SORENSON: No more questions.

24 THE COURT: All right. Redirect?

25 MR. SORENSON: Just real briefly.

1 REDIRECT EXAMINATION BY MR. THOMAS:

2 Q. He had asked you several questions about a Nayrone
3 Shivers. I believe your testimony is that y'all had
4 initially actually gotten warrants for Mr. Shivers, is that
5 correct?

6 A. Correct.

7 Q. And that was with the belief that he may have been the
8 person that fired the 9-millimeter and this 9-millimeter
9 shell casing, is that correct?

10 A. Correct.

11 Q. And that was based on some information that y'all were
12 with provided initially, correct?

13 A. Yes, sir.

14 Q. Which then turned out to not necessarily be credible?

15 A. Yes, sir.

16 Q. Okay. It doesn't mean that Nayrone Shivers wasn't the
17 person that fired it. You just don't have the evidence at
18 this point in time to prove who fired that 9-millimeter gun
19 out there?

20 A. Correct.

21 Q. Okay. Here, again, assuming that it even relates to
22 our case, is that correct?

23 A. Correct.

24 Q. Okay. But if such time you are able to prove who was
25 firing that gun out there, what would happen at that point

1 in time with regards to them?

2 A. We would take them into custody and bring the case to
3 trial.

4 Q. Thank you.

5 THE COURT: Recross?

6 MR. THOMAS: Nothing, Your Honor.

7 THE COURT: All right, you may come down. Thank
8 you.

9 Call your next witness, please.

10 MR. LUPTON: Your Honor, the State would call
11 Detective Matt Trentham.

12 THE CLERK: Mr. Trentham, would you raise your
13 right hand, please, sir?

14 DETECTIVE MATTHEW TRENTAM, having been first duly
15 sworn, testified as follows:

16 THE CLERK: Please state your full name for the
17 record.

18 THE WITNESS: Matthew Ryan Trentham.

19 THE COURT: Your witness.

20 DIRECT EXAMINATION BY MR. LUPTON:

21 Q. And could you tell the jury where it is that you work?

22 A. I'm employed by the Calhoun County Sheriff's Office.

23 Q. In what capacity?

24 A. Right now as a criminal investigator.

25 Q. How long have you been in law enforcement?

1 A. I started in Calhoun County in March of 2008, with the
2 sheriff's office on patrol, and been in investigations since
3 August of 2010.

4 And prior to that I did three years in the army as a
5 military policeman, 2001.

6 Q. So three years as an MP and then at Calhoun County
7 since?

8 A. Five years.

9 Q. Five years.

10 All right. And what was your responsibilities with the
11 sheriff's department back in September of 2011?

12 A. September of 2011, I was the investigator. I was in
13 investigations, and the night of the shooting I was actually
14 the on-call investigator.

15 Q. All right. And in your capacity as the on-call
16 investigator that night, did you receive a call?

17 A. I did. It was around four o'clock that morning I
18 received a call from dispatch advising me of a club shooting
19 with approximately three victims, various injuries. One was
20 shot in the head and was in -- was a severe condition and
21 was being transported at that time to TRMC. And then there
22 were two other victims shot; one was shot in the leg and one
23 was shot in the arm.

24 Q. When you say TRMC, are you referring to the Orangeburg
25 hospital?

1 A. Correct.

2 Q. Now, so you get this call and you get some information
3 about what happened?

4 A. Uh-huh.

5 Q. What did you do?

6 A. I started notifying the other investigators, being
7 Lieutenant Dukes, as well as the rest of the chain of
8 command, and got up out of bed and got dressed and started
9 being en route to the call.

10 Q. So you responded to the scene?

11 A. Correct.

12 Q. And once you got to the scene, do you know about what
13 time that was?

14 A. I received the first call, according to my notes, at
15 4:08 from dispatch. I left my house at 4:17 en route to the
16 call.

17 Q. And so it was a little while after that?

18 A. Right, it was right before five o'clock. It takes a
19 while to get from my house to that area of the county.

20 Q. So it would be fair to say that the scene was secure at
21 that point?

22 A. Correct.

23 Q. And were there still people there?

24 A. There were I'll say a few people there. The DJ's were
25 on the scene, as well as the rest of law enforcement. There

1 may have been a few other folks that were there kind of.

2 Q. Were any of the victims still there?

3 A. No, all the victims had been transported.

4 Q. And what did you do while you were on the scene, just
5 briefly?

6 A. Initially I met with Deputy Snead.

7 Investigator Dukes arrived basically within a few
8 minutes of myself while on the scene, so we basically
9 started coordinating on who was going to do what, as far as
10 the crime scene, and who was going to respond back to the
11 hospital. It was deemed at that point that I talked with
12 the DJ's and obtained a statement from the DJ --

13 Q. Without going into anything anybody said, you talked to
14 some people and got statements?

15 A. Right. Right, and then went to the hospital.

16 Q. All right. Then you went to the hospital you say?

17 A. Yes, sir.

18 Q. All right. And when you got to the hospital, what was
19 your reason for going to the hospital?

20 A. To meet with the victims and see if I could obtain more
21 information, as far as who may have been involved in the
22 shooting, and see if I could get more witnesses, because a
23 lot of folks who were at the club -- it was a family type
24 function, a birthday party, I believe, and it was kind of
25 rumored, I'll say, that there were other family members at

1 the hospital.

2 Q. So you thought there might be some potential witnesses
3 at the hospital?

4 A. Correct.

5 Q. And you also were going to check on the victims?

6 A. Correct.

7 Q. Now. When you got there, were you able to talk to the
8 victims?

9 A. Yeah, on arrival I walked into the entrance of the
10 emergency room, I noticed a small gaggle of some females
11 that -- primarily females. There was just various people
12 there.

13 Q. And just regards to the victims at this point, did you
14 attempt to talk to the victims?

15 A. I did. Once inside I did attempt to talk to the
16 victims, yes.

17 Q. All right. And were you able to speak with them? What
18 was their condition?

19 A. They were both conscious and alert, but --

20 Q. When you say both, were all three of the victims taken
21 to the Orangeburg hospital?

22 A. On my arrival at the hospital Mr. Lawton had been
23 transferred by air ambulance, I believe, to Palmetto
24 Richland. The other two victims were still at the Regional
25 Medical Center.

1 Q. So the victim Lawton was transported to Richland?

2 A. Correct.

3 Q. I guess because of the severity of his wounds?

4 A. Correct.

5 Q. All right. The other two were still there, you say?

6 A. Yes.

7 Q. And did you attempt to talk to them?

8 A. I did. Basically just because of their state of mind,
9 I learned from the ER nurse there that they had been given
10 some pain medication, as well as when I entered the room on
11 both of them I could smell an odor of alcohol, so I didn't
12 want to get too in depth as far as interviews were
13 concerned.

14 Q. Were you able to look at their wounds?

15 A. I saw the area. They had already been -- I was about
16 an hour, hour and a half into it by the time I got actually
17 to the hospital, so they had already been dressed and the
18 wounds bandaged.

19 Q. And just to be clear, the two individuals we are
20 talking about, James Hampton?

21 A. Correct.

22 Q. And Shawn Defreitas?

23 A. Yes, sir.

24 Q. Which is -- he's been referred occasionally as Shawn
25 Cooper?

1 A. Correct.

2 Q. Now, in talking with them, did you try and get some
3 physical evidence from them?

4 A. I did.

5 Q. And what was that?

6 A. I carry a gunshot residue kit, the standard issue for
7 the State of South Carolina through SLED, with me and
8 because of the incident involving firearms, I requested that
9 both the victims submit to the GSR kit.

10 Q. All right. Now, I'll show you what's been marked
11 State's 63 and State's 64. Do you recognize those?

12 A. Yes, sir, these are the kits labeled that I collected
13 that night.

14 Q. And about how long after the incident itself did you
15 collect these two?

16 A. As I said, it was 6:30, or so, that -- the times are
17 indicated on the kits, but it was within a few hours.

18 Q. And so it was before seven?

19 A. Yes.

20 Q. All right.

21 MR. LUPTON: Your Honor, at this point I move
22 State's 63 and State's 64, the gunshot residue kits on James
23 Hampton and Shawn Defreitas respectively, please.

24 MR. THOMAS: No objection, Your Honor.

25 THE COURT: Very well.

1 (Whereupon, State's Exhibit No. 63 was admitted
2 into the record as evidence)

3 (Whereupon, State's Exhibit No. 64 was admitted
4 into the record as evidence)

5 BY MR. LUPTON:

6 Q. So you got those gunshot residue kits?

7 A. Yes.

8 Q. And followed procedure in getting them?

9 A. Correct.

10 Q. Did you seal them up?

11 A. I did.

12 Q. And after that did you go out and speak with the people
13 that were with the victim, the witnesses that were there?

14 A. I did, yes.

15 Q. And obviously you are not allowed to go into what
16 anybody said, but as a result of your conversation with
17 these witnesses, what, if anything, did you do?

18 A. We began looking at David Benjamin, Kevin Frazier, and
19 Nayrone Shivers as possible suspects involved in this
20 shooting incident.

21 Q. Okay. So you began looking for David Benjamin at that
22 point?

23 A. Correct.

24 Q. And did you go and did you report that to the other
25 investigators?

1 A. I did. I spoke with Lieutenant Dukes.

2 Q. Okay. Ultimately -- Mr. Hampton had a gunshot wound to
3 his arm, correct?

4 A. Correct.

5 Q. Was the bullet removed that night?

6 A. No, sir, it was not.

7 Q. Did you ultimately, on February 8th, 2012, go back to
8 the hospital?

9 A. Yes, sir.

10 Q. Around about that time?

11 A. Yes, sir, I did.

12 Q. And what was the purpose of that?

13 A. It has been set up through the Regional Medical Center
14 that he was going to have the surgery to remove the bullet
15 from his arm.

16 Q. And did you bring that -- did you recover that bullet
17 after the surgery?

18 A. I recovered it from TRMC security I guess is their
19 protocol.

20 Q. All right. I'll show you -- it's already in. It's
21 State's 33?

22 A. Yes, sir, that's it.

23 Q. That's what you recovered from the hospital?

24 A. Yes, sir.

25 MR. LUPTON: Beg the court's indulgence?

1 THE COURT: Okay.

2 (Off the record)

3 (Back on the record)

4 BY MR. LUPTON:

5 Q. After talking with the victims, you said that you began
6 looking at David Benjamin as a suspect?

7 A. Correct.

8 MR. LUPTON: Nothing further, Your Honor.

9 THE COURT: All right, cross-examination?

10 CROSS EXAMINATION BY MR. THOMAS:

11 Q. Thank you. I'll be brief.

12 You said that you also began looking at Nayrone
13 Shivers?

14 A. At that time, yes.

15 Q. You did.

16 Did you follow up on that investigation with Nayrone
17 Shivers?

18 A. We did.

19 Q. And what were your results?

20 A. We discovered that, basically through the
21 investigation, conversation with him and other family
22 members that he was excluded as a suspect.

23 Q. Did you look for anyone else that could have been
24 shooting in the area of that tree?

25 A. We -- we worked diligently to identify all -- anybody

1 that had a firearm that night and anybody involved.

2 Q. And you didn't come up with any other suspects?

3 A. No.

4 Q. No leads from other people or --

5 A. No.

6 Q. Thank you.

7 MR. THOMAS: No more questions.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION BY MR. LUPTON:

10 Q. Nobody else was seen with a gun that night?

11 A. Kevin Frazier -- oh, excuse me, Kevin Frazier --
12 through the course of the investigation, it was Kevin
13 Frazier, Mr. Haggood and --

14 Q. All right. Other than the three defendants --

15 A. Right.

16 Q. -- and the victim, Mr. Lawton --

17 A. Correct.

18 Q. -- did witnesses identify anybody else with a firearm
19 that night or anybody shooting?

20 A. The three defendants, the victim, as well as Nayrone
21 Shivers had a firearm, but it was learned later that that
22 was after the fact, after Mr. Lawton was already struck and
23 the defendants were --

24 Q. So there was -- he was identified as having a firearm
25 but not related to the shooting?

1 A. Correct. Correct.

2 Q. So no other witnesses to anybody shooting a gun related
3 to the incident?

4 A. No, not to my recollection.

5 MR. LUPTON: Nothing further.

6 THE COURT: Recross?

7 MR. THOMAS: Nothing, Your Honor.

8 THE COURT: All right. Is this witness free to
9 leave? Any objection?

10 MR. LUPTON: No.

11 MR. THOMAS: No.

12 THE COURT: Thank you. You are free to leave.
13 Yes, call your next witness, please.

14 MR. SORENSON: May we approach?

15 THE COURT: Yes.

16 (Whereupon, the lawyers approached the bench for
17 an off-the-record discussion)

18 THE COURT: All right, ladies and gentlemen, we
19 have proceeded a little more quickly than was anticipated
20 today and we have now exhausted the witnesses who were
21 scheduled to be called for today, so in a moment I'm going
22 to be sending you all home a little bit early for this
23 evening and ask you to be back in the morning at 9:30 ready
24 to continue with this matter.

25 Of course, remember to leave your notebooks in

1 your seats. We will collect them and then we will return
2 them to you in the morning before we begin.

3 And, of course, remember do not discuss this
4 matter or allow anyone to discuss it with you. Do not go to
5 work at night, those of who work at night. I know it, but
6 you have to be rested. So if your employer is upset, get
7 their name and number and I'll be happy to call.

8 And whoever is curious in your world about where
9 you have been and what you have been up to, remember you
10 cannot discuss this matter or allow them to discuss it with
11 you, but don't you take any upset. Put it on the judge.
12 You tell them the judge has told you not to discuss this
13 matter. Do not go to the Internet. Do not do any research.
14 Do not go to any scenes. Do not try to pull up anything on
15 Google Maps, or do not do anything to include any sort of
16 definitional research. You must receive all of the
17 information from which you will make up your minds here in
18 court while court is in session.

19 Do not read anything, listen to anything about
20 this matter, and that's the radio, the television, the
21 newspaper, the Internet. Anderson is still with us, so I
22 know that there has been some publicity, so keep your eyes
23 open and do not read it or listen to it. You must receive
24 all of the information from which you will make up your
25 minds here in court while court is in session.

1 Leave your cell phones or other communication
2 devices away from the courtroom. If you forget, just let us
3 know and we will keep good care of it for you tomorrow.

4 Ladies and gentlemen, have a very fine evening and
5 I look forward to seeing you in the morning at 9:30.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: All right. Let's get the witnesses,
9 all of them here and ready to go.

10 Thank you so much. Anything before we take our
11 leave this evening from the State?

12 MR. SORENSON: No, ma'am.

13 THE COURT: From the defense?

14 MR. THOMAS: No, ma'am, nothing.

15 THE COURT: Would you do this for me, counsel, and
16 you may not know they did this, but I know that we have -- I
17 know that we have put in a lot of exhibits. Please do not
18 leave until we are satisfied that we have them all. Not
19 that to say Mr. Watts isn't on top of it and he's got
20 everything organized, but do not leave and make him chase
21 you down, but he will. Wait just a moment while he makes
22 sure he has all the exhibits.

23 (Whereupon, proceedings were adjourned to March 6,
24 2013)

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CALHOUN) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 DAVID JAMAR BENJAMIN,) 2013-GS-09-00051
7) 2013-GS-09-00052
8) 2013-GS-09-00053
9) MARCH 6, 2013
10) SAINT MATTHEWS, SOUTH CAROLINA
11)
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25)

(VOLUME III)

B E F O R E:

THE HONORABLE DIANE GOODSTEIN, JUDGE. ; And a Jury.

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

DONALD SORENSON, ASSISTANT SOLICITOR
THEODORE LUPTON, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

NICHOLAS THOMAS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, MARCH 6, 2013)

2 THE COURT: All right, anything before we bring
3 the jury out, from the State?

4 MR. SORENSON: No, ma'am.

5 THE COURT: Defense?

6 MR. THOMAS: No, Your Honor.

7 Let us have the jury, please.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: Good morning, ladies and gentlemen.
11 At this time we will continue with the State's
12 case.

13 Please call your next witness.

14 MR. SORENSON: Thank you.

15 The State calls Agent John Roberts.

16 THE CLERK: Raise your right hand, please sir.

17 SLED AGENT JOHN ROBERTS, having been first duly
18 sworn, testified as follows:

19 THE CLERK: Please have a seat.

20 If you will pull that mike close to you, please.

21 THE WITNESS: Yes.

22 THE CLERK: And state your full name for the
23 record.

24 THE WITNESS: My name is John Graydod Roberts.

25 THE COURT: Your witness.

1 MR. SORENSON: Thank you, Your Honor.

2 DIRECT EXAMINATION BY MR. SORENSON:

3 Q. Good morning, Agent Roberts.

4 A. Good morning.

5 Q. If you would, tell the jury, please, where you are
6 employed.

7 A. I work for the South Carolina Law Enforcement Division,
8 more commonly called SLED.

9 Q. Okay. If you would, tell the jury what you do at SLED?

10 A. As of November of last year I transferred into the
11 Arson Investigations Unit.

12 Previous to that, from 2005 until November of 2012, I
13 was in the Trace Evidence Department in the forensics lab at
14 SLED.

15 Q. Okay. If you would, describe for the jury what the
16 Trace Evidence Department is.

17 A. Trace evidence is the analysis of evidence that you
18 generally can't see with your naked eye. In the trace lab
19 we do paint, fiberglass. We do explosive analysis. We do
20 gunshot residue. We do ignitable liquid analysis, duct tape
21 and bank dye pack.

22 Q. Okay. And specifically in this case were are going to
23 be talking about some gunshot residue analysis.

24 If you would, describe for the jury what training you
25 have had with regards to analyzing gunshot residue evidence

1 collection kits.

2 A. When I started at SLED I went to work underneath my
3 lieutenant, who had been there for twenty years before I got
4 there and doing gunshot residue for fifteen before I got
5 there. He showed me how to process the gunshot residue
6 kits. He showed me how to work the instrumentation that we
7 use to do the gunshot residue kits. And I worked under him
8 for about six months helping him work his cases, helping him
9 write up cases, talking about how to draw conclusions from
10 the data that we generate.

11 After that I was given my own test and the other court
12 qualified people in the department put me in a courtroom
13 setting and asked me questions about the test that I had
14 been taking. And after that I was cleared to run my own
15 gunshot residue evidence and I did that, like I said, up
16 until 2012.

17 Q. Okay. And how many gunshot residue kits do you think
18 that you have analyzed in your six or seven years in the
19 trace department?

20 A. It's in the thousands.

21 Q. Have you had an opportunity then to come and testify in
22 court before about your findings with regards to gunshot
23 residue kits?

24 A. Yes, sir, I have.

25 Q. And how many times, approximately, have you done that?

1 A. Sixty.

2 Q. Have you been qualified as an expert witness on those
3 occasions?

4 A. Yes, sir.

5 Q. All right.

6 MR. SORENSON: Your Honor, at this time we would
7 offer Agent Roberts as an expert in this field of trace
8 analysis.

9 MR. THOMAS: No objection, Your Honor.

10 THE COURT: Very well.

11 Ladies and gentlemen, let me explain to you what
12 has just occurred.

13 Just now Mr. Sorenson has offered Mr. Roberts as
14 the expert in the field of trace analysis. And what that
15 means is is that under our Rules of Evidence ordinarily
16 witnesses are not allowed to testify regarding their
17 opinions and the reasons for those opinions. However, there
18 is an exception, and that is when by virtue of someone's
19 knowledge, or training, or education, experience, sometimes
20 profession, they have become an expert in a particular
21 field, sometimes it's in the scientific field, sometimes
22 it's in the artistic field, and those individuals are
23 allowed to testify regarding their opinions within the field
24 of expertise and their reasons for their opinion.

25 I will give you some instructions regarding expert

1 testimony when I give you the concluding instruction, but
2 very shortly let me just tell you that expert opinion
3 testimony is given for the purpose of helping you understand
4 the evidence and certainly not for the purpose of
5 controlling your judgment.

6 You may proceed, Mr. Sorenson.

7 MR. SORENSON: Thank you, Your Honor.

8 BY MR. SORENSON:

9 Q. Agent Roberts, if you would, just kind of start off by
10 explaining to the jury what gunshot residue is, if you
11 would.

12 A. Gunshot residue is the term that we give to the
13 collection of particles that is ejected from a firearm when
14 it's fired.

15 Specifically it is the metals contained in the
16 explosive mixture of a primer of a cartridge case. And
17 that's really fancy talk for the stuff that comes out of the
18 gun that comes out of the little silver disk on the back of
19 the bullet.

20 What we do in trace evidence is we look for the metals
21 that are contained in that little silver disk on the back of
22 the bullet.

23 We look for three metals. We look for lead, barium and
24 antimony, and we look for them in quantities that we
25 associate with firing a gun, handling a gun, or being near a

1 gun when it goes off.

2 Now, when these metals come out of the firearm, they
3 don't go down range with the bullet as far as the bullet
4 goes. They tend to stay and hang around and kind of cloud
5 around the barrel of the gun or around the ejector port of
6 the gun.

7 They are also heavier than air, so they land on stuff
8 that's near the gun when it goes off, which is why we test
9 hands. We test the palm and the back of the hand of both
10 hands. So when I read your results here in a little bit for
11 different gunshot residue kits that may have been introduced
12 into evidence, I'll say right palm, right back, left palm
13 and left back. When I say right back, I don't mean the back
14 somebody's back. I mean the back of their hand. That's
15 what gunshot residue is.

16 Q. Okay. And you touched on this a little bit, but how
17 can you get -- what are the ways then that you can get
18 gunshot residue on your hands?

19 A. There are three main ways that you can get it on your
20 hands. You can shoot a gun; you can be near a gun when it
21 goes off, either standing in front of it or standing beside
22 it; or you can handle a gun that's been recently fired.

23 I go to the shooting range and I shoot and I don't
24 clean my firearm afterwards. A couple days later if I have
25 left that gun alone, I can pick it back up and any residue

1 that may be left on that gun I can get on my hands.

2 Q. And also -- now, that's as far as dealing with a
3 person's hands. Can that gunshot residue also get on other
4 items that are near it when it's fired?

5 A. Yes, sir. Very often we test clothing. Somebody
6 that's suspected of shooting will get their clothing and we
7 will test that gunshot residue, because it lands on items
8 that are near the gun when it goes off. If you are wearing
9 a shirt, the shirt is near the gun when it goes off, it
10 could possibly be on the shirt.

11 Q. Okay. So, therefore -- I mean, if you found gunshot
12 residue on an item of clothing, that would just suggest to
13 you either the person had fired a gun, had been in close
14 proximity to a gun being fired, or a recently fired gun had
15 come into contact with their shirt, I guess would be --

16 A. Yeah, those are ways that it could get on the shirt,
17 yes, sir.

18 Q. Okay. Now, let's talk a little bit about that this
19 gunshot residue, and if I were to fire a gun, got that
20 gunshot residue on my hands, how is that removed?

21 A. Gunshot residue is fairly easy to remove off your
22 hands. If you have ever baked and used flour, you know, you
23 dust your hands with flour to keep the dough from sticking
24 to your hands or sticking to the counter. As soon as you
25 put your hands under running water, that dough -- or not the

1 dough, the flour goes away, or most of it goes away.

2 The same thing with gunshot residue. You get it on
3 your hands, you can't see it, but as soon as you touch
4 something with your hands, you are transferring that gunshot
5 residue onto whatever you have touched. You stick your
6 hands in your pockets, it comes off in your pockets. If you
7 rub your hands on your pants, it comes off on your pants.

8 If you are bleeding and you are bleeding heavily enough
9 from some place that's running down into your hands, the
10 blood can wash the gunshot residue off your hands. To say
11 nothing of if you are shooting in the rain and you stick
12 your hands out in the water, it will come off just like that
13 too.

14 Q. Okay. And ultimately does your body actually absorb
15 that gunshot residue over time also?

16 A. It does. What we found is that within six hours of
17 shooting your body will -- even if you don't do anything, if
18 you just sit there with your hands resting palms up on a
19 desk, if you sit there, within six hours you will -- your
20 body will have absorbed the material to a point that we
21 can't find it in quantities that we associate with firearms.

22 Q. So, therefore -- let me ask you this. If you receive a
23 gunshot residue collection kit from a law enforcement agency
24 indicating that it's been collected more than six hours
25 after the shooting allegedly occurred, what, if anything,

1 would you then do with that gunshot residue kit?

2 A. If it's on a living person and there is a -- there is
3 an information sheet that's filled out every time one of
4 these kits is performed. We ask for the shooting time and
5 the time of collection. If the time of collection is
6 greater than six hours after the time of shooting, we will
7 not analyze it, if it is taken from a living person.

8 If it is taken from a deceased person, we will analyze
9 it, because they are deceased. Their body has stopped
10 breathing. They have stopped absorbing materials. The
11 materials will stay where they are, unless they are
12 physically removed.

13 So if someone is deceased and they have got gunshot
14 residue on their hands, it will stay there until either
15 somebody removes it with a gunshot residue kit or somebody
16 cleans the body, or the body is washed somehow.

17 So living person, six hours; deceased person,
18 indefinite.

19 Q. Now, that obviously as far as deceased -- now, if
20 somebody was shot and died, you know, a day or so later, I
21 mean, their body would be absorbing it in that interim up
22 until they passed away, is that correct?

23 A. Yes, sir, that's correct.

24 Q. So that would ultimately be a kit that if you had all
25 that information you would not examine?

1 A. That's correct.

2 Q. Okay. Let's get to some of the items that you received
3 in this case and go through kind of your results.

4 Did you receive a handful of gunshot residue collection
5 kits in this case?

6 A. I did, and I can read them, if that will help you.

7 Q. Well, let's just kind of go through just your report.

8 A. Okay.

9 Q. If you could identify for the jury which ones you
10 received and whether they indicated on there what time when
11 they were collected and, therefore, whether you analyzed
12 them or not.

13 A. Give me just a minute to get to that.

14 All right. The first gunshot residue kit that I have
15 is a gunshot residue kit from Shawn Defreitas, and I have
16 the information here. The shooting information was 9-18 of
17 2011, at 3:41 in the morning. And the gunshot residue kit
18 was collected at 7:10 the same day. So a little less than
19 four hours.

20 Q. Okay.

21 A. Do you want the results now, or --

22 Q. Yes, sir.

23 A. Okay.

24 Q. Yes, sir.

25 A. The results as from my report, and there are -- when we

1 do results for gunshot residue, there is a couple different
2 results. Quite often this is the result that we get. It's
3 the quantities of metals found did not indicate the presence
4 of gunshot residue. Negative. There wasn't any -- there
5 might have been metals there, but they were not in
6 quantities that we associate with gunfire.

7 So in this case, Mr. Defreitas, his right palm, his
8 right back, left palm and left back were all negative for
9 metals associated with gunshot residue.

10 Q. Okay.

11 A. My second gunshot residue kit was from James Hampton.
12 Again, the shooting time was 3:41 in the morning, and the
13 collection time is listed at 7:01 in the morning. So within
14 the six hours.

15 For Mr. Hampton, for the right palm, the right back,
16 the left palm and the left back, the quantities of metals
17 found did not indicate the presence of gunshot residue. So
18 negative for all four of the areas that we tested for Mr.
19 Hampton.

20 My next gunshot residue kit was from Kevin A. Frazier.
21 This result was no analysis was performed. The samples were
22 collected beyond the six hour time frame in which probative
23 evidence would be found.

24 Now, I'll read you the shooting time again, which was
25 at 3:41 in the morning. The collection time was at one p.m.

1 the same day. So fourteen hours after the shooting time was
2 when this kit was collected, well beyond my six hour time
3 limit for even testing a gunshot residue kit.

4 Q. That would be about nine hours, right, Agent Roberts?

5 A. Math is not apparently today is not my strong suit.

6 Q. That would be right, about nine hours?

7 A. Nine hours, yes, sir. I'm sorry.

8 Q. That's all right.

9 Even if Mr. Frazier had fired --

10 Let's just kind of just hypothetically, even if, you
11 know, we knew without a doubt that Mr. Frazier had fired a
12 gun at 3:41 in the morning, one o'clock in the afternoon
13 would you expect, even if you had tested that, to have found
14 any evidence probative towards that shooting at 3:41 in the
15 morning?

16 A. Not -- I wouldn't have associated it with the shooting
17 at 3:41 in the morning, no, sir.

18 My next gunshot the residue kit was from Nayrone
19 Shivers, and that result is going to be the same as the
20 previous one. No analysis was performed. This kit was
21 taken at eight p.m. after the shooting. So the shooting
22 happened at 3:41 in the morning and this one was taken at
23 eight p.m. in the evening. So, again, beyond my six hour
24 window.

25 My next gunshot residue kit was from Dominique Lawton.

1 And what I have indicated on my gunshot residue sheet -- or
2 my information sheet is that Mr. Lawton was deceased.

3 The shooting happened at 3:41 in the morning on 9-18 of
4 2011, and I have the gunshot residue kit being collected on
5 9-19 of 2011, at five p.m.. Mr. Lawton's kit was negative
6 for the right palm and the right back and the left palm and
7 the left back.

8 Q. Let me ask you this. Now, Agent Roberts, have you
9 since learned through kind of prepping for this case for
10 trial today that Mr. Lawton, you know, didn't pass away
11 right away from his injuries?

12 A. Yes, sir.

13 Q. And, in fact, was in the hospital on life support for a
14 day or so before being pronounced dead on the 19th, and then
15 having this kit collected at five o'clock on the 19th?

16 A. Yes, sir.

17 Q. Let me ask you this. If you had had all that
18 information back when you were doing your analysis, would
19 you even have tested his kit then?

20 A. No, sir, I wouldn't have, because regardless of what
21 you are doing, if six hours goes by between the time of the
22 shooting and the time of collection, your body will have
23 absorbed the materials that we are looking for on the
24 gunshot residue kit.

25 So even if he's just laying in a hospital bed, not

1 moving, his body is constantly absorbing that material. If
2 his heart is beating, his body is working and it's sucking
3 that material off the surface of his skin and down into his
4 body.

5 So if that information had been made known to me, that
6 this had been taken twenty-four hours after the gunshot --
7 or the incident happened, we would not even have analyzed
8 this kit.

9 Q. Now, if he had passed away out at the scene, and, you
10 know, then there wouldn't have been any problem with it
11 being collected a day or so later?

12 A. No, sir, there would have been no problem with that.

13 Q. So let me just kind of -- so your results were
14 negative -- I mean, given that fact pattern, that's what you
15 would expect to find anyway, right?

16 A. Yes, sir, that's correct.

17 Q. So that doesn't really say whether Mr. Lawton may or
18 may not have fired a gun, handled a gun, or been in the
19 proximity of a gun being fired the morning of September
20 18th, is that correct?

21 A. That's correct.

22 Q. Okay.

23 A. My next gunshot residue kit was the gunshot residue kit
24 from the interior of Joshua Haggood's vehicle.

25 Vehicles work a lot like clothing. If a gun is fired

1 in the vehicle, or near the vehicle, sometimes you can take
2 samples and you can find gunshot residue kit on those
3 samples from that vehicle.

4 In this case a number of particle lifts were taken from
5 the vehicle.

6 Particle lifts are aluminum disks with double-sided
7 tape on them and they are stuck, applied like a bingo dobber
8 whatever you want to take the sample from. If you want to
9 take it from the interior of a vehicle, the headliner is a
10 good place to take it from. The side post of the door is a
11 good place to take it from, and you just dab this particle
12 lift against that surface and try to pull any gunshot
13 residue off of that surface. Then you send it to us and we
14 analyze it.

15 And in this case in the samples that were collected
16 from that vehicle I found gunshot residue.

17 Q. Let me ask you, is this like you have -- the kit that
18 comes that has, you know, a right palm, right back, left
19 palm, left back, was that kit that was collected from Mr.
20 Haggood's vehicle broken down the same way?

21 A. It was broken down like that. Those weren't the
22 exact -- those weren't the exact areas. I can -- I think I
23 can find where I have got the areas written down of where
24 the gunshot residue kit was collected from, if you will give
25 me just a second here.

1 All right. The kit that was collected from the
2 vehicle, there were four samples taken and they were
3 relabeled from the original labeling. The original labeling
4 for a gunshot residue kit is right palm, right back, left
5 palm, left back, so that when I get results I can know where
6 they come from.

7 In this case they were relabeled. There was one that
8 was labeled DS front driver's side. There was one that was
9 labeled right back set. There was one labeled driver's side
10 back. And there was one labeled right front set. Those
11 were the labels that were on the gunshot residue kit as I
12 received them.

13 Q. So it appears to kind of relate to the four areas of
14 the inside of the vehicle doorwise?

15 A. Yes, sir.

16 Q. Okay. And you had indicated that your results you
17 reported out were that gunshot residue --

18 Let me go back to that. The samples collected from the
19 vehicle, gunshot residue was found?

20 A. Yes, sir, that's correct.

21 Q. Is that correct?

22 Now, was that gunshot residue found in all four of
23 those areas in the vehicle?

24 A. No, sir.

25 Q. Specifically as to those four different areas that were

1 tested, what were your results of those four areas?

2 A. The results for the front driver's side, I found two
3 particles, two non-round particles with lead, barium and
4 antimony. And let me explain a little bit about the
5 particles.

6 What we are looking for when we get these particle
7 lifts is we are looking for actual pieces of gunshot
8 residue. Gunshot residue comes out the gun and it cools
9 into a sphere or a ball and then it solidifies and then it
10 lands on whatever is near when it goes off.

11 There are particles that are unique to gunshot residue.
12 You don't find them in anything else, just from gunfire.
13 And what we look for are those particles that are round and
14 that have lead, barium and antimony in them.

15 Now, for the front driver's side particle lift I found
16 two non-round particles that have lead, barium and antimony.
17 They are metals or they are particles that we call
18 associated with or consistent with gunshot residue. There
19 is one other place that we have seen these. We have never
20 ever seen them anywhere else, but we can't call them unique
21 because we have seen them one other place.

22 I also found a round lead particle on this particle
23 lift. Round lead particles are associated with gunshot
24 residue. There is a couple other places that they come
25 from, but not very many. They are not unique, but they are

1 close.

2 The only other particle lift that the positive from
3 this set of four was the driver's side back. And on that
4 particle lift I did find a round gunshot residue particle,
5 the particle that's unique to gunshot residue and doesn't
6 come from anywhere else. And I found a non-round particle
7 that has lead, barium and antimony.

8 Q. As a result of your findings --

9 So, therefore, on the passenger's side areas there was
10 nothing found, is that correct?

11 A. On what I have listed as the right back set and the
12 right front set, negative. So, yes, sir, passenger side.

13 Q. All right. So now as to -- as to the two from the
14 driver's side back and front driver's side, what then was
15 your opinion as to what caused those particles that you
16 found?

17 A. That there was a gun fired near it.

18 Q. And you had testified earlier about, you know, as far
19 as the person, you know, our body absorbs those items over
20 time so that, you know, basically outside that six hour
21 window you wouldn't even analyze the sample that was
22 collected. Is that the same thing with a vehicle such as
23 this?

24 A. No, sir, with a vehicle, we will test the vehicle
25 almost irregardless of how much time has passed between the

1 shooting and the collection time.

2 Q. Okay. So this was collected, you know, several days
3 after our shooting, that wouldn't have --

4 A. It's not an issue, no, sir.

5 Q. Okay. And how ultimately is this -- I mean, you said
6 that if, you know, it's on your skin, obviously your body is
7 going to absorb it, but you can also wash it off, or wipe it
8 off, or what have you. How about such as this, if it was
9 on, you know, as you said the headliner, or around the
10 inside door post, or something of that nature, how would
11 that gunshot residue get removed?

12 A. The material will stay there until it's physically
13 removed, until you either wash it, or remove it with
14 particle lifts, or something like that.

15 Q. All right. And then lastly did you have any other
16 items that you analyzed?

17 A. Yes, sir, I had one more -- one more item. I had a
18 black T-shirt from Nayrone Shivers and I took particles
19 lifts off of that, because they submitted the physical
20 T-shirt, so I did the sampling. I took six particle lifts
21 and on those particle lifts I found round lead particles,
22 and round lead particles are associated with gunshot
23 residue.

24 Q. Okay. And what would that suggests to you, as far as
25 that T-shirt at least?

1 A. That it was near a gun when it went off.

2 Q. And yet, again, just as the same thing with the
3 vehicle, was there any way that you can tell with the shirt,
4 I mean, when it was in the proximity of a gun that went off?

5 A. No, sir, there is no -- there is no time stamp on
6 inanimate objects and gunshot residue.

7 Q. Obviously, I guess, if the shirt was washed, that
8 would --

9 A. It would have removed it.

10 Q. Okay. Just so I'm clear, as far as going back just
11 briefly on the vehicle. So your findings from both the
12 front driver's side and also the driver's side back was that
13 a gun was fired in the vicinity of those parts of the
14 vehicle --

15 A. Yes, sir, that's correct.

16 Q. -- is that correct?

17 And any way that you can tell, I mean, how close the
18 person would have had to have been?

19 A. Within eight -- six to eight, ten feet of that -- of
20 that area.

21 Now, that being said, you couldn't have done it on that
22 side of the vehicle with the windows rolled up. If you were
23 standing outside the vehicle, you couldn't fire off three or
24 four rounds and expect to get gunshot residue to somehow
25 magically go through the glass window and into the vehicle.

1 The window had to be down or the door had been to be open,
2 or somebody had to be sitting in the vehicle and shooting.

3 Q. If you were standing in the apex of an open door and
4 fired it, you may expect to find that gunshot residue
5 wherever you are finding?)

6 A. Yes, sir.

7 Q. Thank you, Agent Roberts. Please answer any questions
8 that Mr. Thomas has.

9 THE COURT: Cross examination?

10 CROSS EXAMINATION BY MR. THOMAS:

11 Q. Good morning, Agent Roberts.

12 How are how?

13 A. I'm doing good. How are you?

14 Q. That's good. I'm good. Thank you.

15 Just a couple quick things. I'm not going to keep you
16 long.

17 A. Yes, sir.

18 Q. You didn't do a GSR analysis of David Benjamin?

19 A. No, sir.

20 Q. You did not.

21 You just said just a minute ago that it could be within
22 a six to eight to ten foot?

23 A. Yes, sir.

24 Q. It's kind of a big area, don't you think?

25 A. Depending on the firearm.

1 Q. Does it -- what -- give me a physical size of what
2 these particles are. How small are they? A pen dot?

3 A. No, much smaller. These are submicroscopic.

4 The microscope that I look to use at these are not --
5 it's not something that you go to high school and you -- you
6 know, you have seen the microscopes. You look in them like
7 this and it uses light. This uses a beam of electrons to go
8 through a vacuum and look at particles that are ten to the
9 minus twelve meters. We are talking micrometers --

10 Q. Okay.

11 A. -- and nanometers -- well, not quite nanometers, but
12 micrometers.

13 Q. You found two of those particles?

14 A. In the car?

15 Q. In the driver's side area, is that correct?

16 A. Let me --

17 Q. Front driver's side and driver's side back.

18 A. Let me -- let me be sure here.

19 Q. Driver's side back unique to GSR.

20 A. Driver's side back I found one unique to gunshot
21 residue. And another supportive particle on the front
22 driver's side I found two, and one round lead. So two
23 non-round three component particles.

24 Q. Two non-round, though?

25 A. Yes, sir. And one round lead, and then one unique, and

1 then another three-component particle.

2 Q. So you said it was kind of like flour before when you
3 wash your hands on it?

4 A. Yes, sir.

5 Q. You know, when you fire a firearm, it discharges out of
6 the barrel out of where the hammer hits the shell, it
7 creates a dusting of its own, is that correct?

8 A. That's -- yes, sir, that's correct.

9 Q. And that is what creates this GSR?

10 A. Yes, sir.

11 Q. And you get it out of the front of the barrel and out
12 of where the hammer comes down?

13 A. Out of the --

14 Q. If it's an automatic where the slide returns?

15 A. Out of the ejector port, yes, sir --

16 Q. Okay.

17 A. -- or out of where the trigger comes through the frame.

18 Q. Like you said, in fabric, it could -- how long could it
19 remain in fabric?

20 A. Until it gets removed. I mean --

21 Q. A shampooing of a car?

22 A. No, that would remove it.

23 Q. Yeah, that would remove it?

24 A. Yes.

25 Q. But, otherwise, it could be there -- it could be -- if

1 you parked your truck at a clay pigeon shoot and you shot
2 close to the truck, it could stay in your liner for an
3 extended period of time?

4 A. That's correct.

5 Q. You did find gunshot residue on the T-shirt of Nayrone
6 Shivers, did you not?

7 A. Round lead particles.

8 Q. Round lead particles.

9 A. They are associated with gunshot residue. They are
10 not -- they are not as unique as the round three-component
11 particles --

12 Q. Okay.

13 A. -- but they are associated with gunshot residue.

14 MR. THOMAS: No more questions. Thank you.

15 THE COURT: All right. Redirect?

16 MR. SORENSON: Just real briefly.

17 THE COURT: Sure.

18 REDIRECT EXAMINATION BY MR. SORENSON:

19 Q. Mr. Thomas had asked you, Agent Roberts, about whether
20 you performed or tested a gunshot residue kit on the
21 defendant David Benjamin?

22 A. Yes, sir.

23 Q. Now, if you had learned that he was arrested, you know,
24 a day and a half after this incident, the evening of the
25 19th, would there have been any reason for them to have

1 collected a gunshot residue kit at that point in time?

2 A. They could have collected it, but we would not have
3 analyzed it.

4 Q. So it would have had to have been found within that six
5 hour window, is that correct?

6 A. That's correct.

7 Q. Thank you.

8 THE COURT: All right. Recross?

9 MR. THOMAS: Briefly.

10 THE COURT: Sure.

11 RECROSS EXAMINATION BY MR. THOMAS:

12 Q. In reference to what Solicitor Sorenson was saying --
13 hold on, I had a little brain issue.

14 In reference to what he was saying about that --

15 You said this earlier. GSR can still remain -- if you
16 were to pick up a firearm that had been shot previously,
17 transport it, carried it --

18 MR. SORENSON: Your Honor, I'm going to -- I think
19 this is --

20 MR. THOMAS: I believe this is repeating testimony
21 from earlier.

22 THE COURT: Let me hear the question first. Let
23 me hear the question. Don't answer the question until I
24 have had a chance to rule on it.

25 BY MR. THOMAS:

1 Q. If you were to pick up a firearm that's been shot
2 earlier, could GSR get transported onto your hands?

3 THE COURT: Sustained. He didn't go into -- it
4 was very limited.

5 Now, if you want to start -- if you want to ask
6 him again and try to connect it back to your client, that's
7 fine.

8 BY MR. THOMAS:

9 Q. Let me ask you more just about GSR collection in
10 general.

11 Is it cost prohibitive to go back and test again?

12 MR. SORENSON: Your Honor, again, I asked one
13 question --

14 MR. THOMAS: Well, I --

15 MR. SORENSON: -- and it has nothing to do with --

16 THE COURT: I'll let him set it up and see if it's
17 going to come back to his client. I understand your
18 objection. I'm going to give him a little bit of leeway to
19 see if --

20 MR. THOMAS: Thank you, judge.

21 THE COURT: -- it comes back to his client.

22 MR. THOMAS: Thank you.

23 THE COURT: Okay.

24 BY MR. THOMAS:

25 Q. If you attempted to test someone at later date, does it

1 break the evidentiary chain? Would that be a reason it
2 isn't retested?

3 MR. SORENSON: I mean, here again, we weren't
4 talking about retesting something. I asked him one simple
5 question about the fact that his client --

6 THE COURT: Sustained, but do let me see the two
7 of you, please.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 BY MR. THOMAS:

11 Q. Thank you so much, agent. I appreciate your time.

12 A. You are welcome.

13 THE COURT: Now, you know, what question is, guys,
14 is this witness free to leave?

15 MR. SORENSON: No objection from the State.

16 MR. THOMAS: No objection.

17 THE COURT: Very well. Thank you. You are free
18 to leave.

19 THE WITNESS: Thank you, ma'am.

20 THE COURT: Call your next witness please, Mr.
21 Sorenson.

22 MR. SORENSON: The State calls Agent James Green.

23 THE CLERK: Raise your right hand, please.

24 SLED AGENT JAMES GREEN, having been first duly
25 sworn, testified as follows:

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

3 THE WITNESS: James William Green.

4 MR. SORENSON: May it please the court, Your
5 Honor?

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION BY MR. SORENSON:

8 Q. Good morning, Agent Green.

9 A. Good morning.

10 Q. If you would, please tell the jury where it is that you
11 are employed.

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

14 Q. And what do you do at SLED?

15 A. I'm a forensic scientist working in the forensic
16 services laboratory. I'm a firearms examiner.

17 Q. Okay. And, if you would, tell the jury a little bit
18 about your law enforcement background, first of all.

19 A. I worked at Mt. Pleasant Police Department, which is
20 slightly north of Charleston, about three and a half, almost
21 four years before I came to SLED in 2005.

22 Q. Okay. So for the last eight years, or so, seven or
23 eight years you have been at SLED?

24 A. Yes, sir.

25 Q. And you have been in the firearms department that whole

1 time?

2 A. Yes, sir.

3 Q. If you would, tell the jury a little bit about your
4 training in the firearms department.

5 A. At SLED we undergo what we call the firearms and tool
6 mark course of instruction. It's roughly a three to three
7 and a half year training cycle in an apprentice-type
8 capacity where you come in and do extensive reading and
9 studying on firearms, ammunition manufacturers, tools and
10 how firearms and tool marks are made, firearms and tools are
11 made as well. You sit back at first and you watch them work
12 cases and you see how they do and they let you look at
13 things and, you know, ask what you see and explain how you
14 think those marks got there.

15 And then as you move through your training cycle you
16 take oral exercises, written tests, practical problems. And
17 at the end of that you are given a very extensive
18 comprehensive final exam consisting of microscopic
19 comparison, general rifling characteristic examinations and
20 definitions.

21 Q. And after that, I guess, if you pass all that, you are
22 then allowed to start analyzing, examining?

23 A. Yes, sir, you are deemed competent and given your case
24 load.

25 Q. Okay. And have you been doing that then for the last

1 seven years, or so?

2 A. Yes, sir.

3 Q. And as a result of that, Agent Green, have you had an
4 opportunity over the years to come and testify in court
5 about your findings with regards to firearms and ballistics?

6 A. Yes, sir.

7 Q. And about how many times have you testified in court?

8 A. I believe it's eighteen now.

9 Q. Eighteen?

10 A. Yes, sir.

11 Q. Have you been qualified as an expert on those
12 occasions?

13 A. Yes, sir.

14 MR. SORENSON: Your Honor, at this time I would
15 offer Agent Green as an expert in the field of firearms
16 analysis.

17 MR. THOMAS: No objection, Your Honor.

18 THE COURT: All right. Very well. He's so
19 qualified.

20 BY MR. SORENSON:

21 Q. Agent Green, if you would, just kind of -- with regards
22 to, you know, firearms analysis at SLED, would you tell the
23 jury kind of what y'all's capabilities are out there, I
24 mean, what you are able to do?

25 A. The most probably common examinations we do are

1 firearms examinations as opposed to tool mark examinations.

2 When a firearm is fired it can leave markings on a
3 bullet or cartridge case which would be unique to that
4 firearm. So we are able to take tests -- or test, rather,
5 I'm sorry, looking at like consecutive slides manufactured,
6 consecutive barrels manufactured and differentiate between
7 cartridge cases or bullets fired by those firearms through
8 the consecutively made run. So we differentiate bullets
9 fired out of the first barrel from the bullets fired from
10 the second barrel, third barrel and fourth barrel, based on
11 microscopic markings.

12 Q. So if you have a gun -- let me just kind of -- if you
13 have a gun that's presented to you and then have either
14 shell casings or bullets that have been presented to you
15 from a crime scene, you can then do a comparison to
16 determine whether that gun has fired that bullet or fired
17 that shell casing?

18 A. Yes, sir, we can look at cartridge cases or bullets and
19 identify them back to a gun, exclude them from being fired
20 by a gun, or render an inconclusive answer, which means just
21 basically I don't know.

22 Q. Okay. And how about if you have multiple shell casings
23 found at a scene? Can you compare those shell casings to
24 each other?

25 A. Yes, sir, we can compare bullets to bullets, bullets to

1 guns, cartridge cases to cartridge cases, or cartridge cases
2 to guns.

3 Q. Is there any way to compare a cartridge case to a
4 bullet?

5 A. There are some that do that. However, at SLED we don't
6 feel that test is reliable enough. The markings that are
7 placed on the bearing surface of a bullet when it's being
8 seated into a cartridge case, some people feel that those
9 are reliable enough to say that this cartridge case and this
10 bullet were part of the same cartridge at the same time.

11 However, at SLED we don't feel that's reliable, based on the
12 bullets traveling down the barrel, bearing surfaces come in
13 contact with the lands and grooves, and the markings placed
14 on the bullet being seated in the cartridge case are usually
15 covered up by the markings left on the bullet by the barrel.

16 Q. All right. Now, turning you specifically to this case,
17 were there several firearms that were presented to you in
18 this case for your analysis?

19 A. Yes, sir.

20 Q. And I guess initially if I could kind of hand you
21 those.

22 State's 34, 36, and 37, take a look at those.

23 A. Ladies and gentlemen of the jury, if you see me looking
24 at firearm or evidence items, when evidence items are
25 submitted to SLED, if they are large enough or if they have

1 enough surface area we will mark the lab number, SLED item
2 number and our initials on them. So if you see me spinning
3 around evidence, that's what I'm doing. I'm looking for the
4 markings I have placed on them.

5 State's Exhibit 36 is a Highpoint firearms Model CF-380
6 and a .380 ACP or .380 auto caliber, serial number of
7 P844000. And I did examine State's Exhibits 36 and it bears
8 my markings and my initials.

9 Q. Okay. And your examination of that weapon, was it
10 found to be in working order?

11 A. Yes, sir.

12 Q. Okay. And -- all right.

13 If you will set that one down and then move to the one
14 that's in front of you and then I want to get you to kind of
15 talk about the differences between those two type of
16 firearms.

17 A. State's Exhibit 37 is an Armenius, Model HW3-32, Smith
18 & Wesson long caliber revolver with a serial number of
19 232359. I did examine this item as well and it has my
20 markings and my initials.

21 A revolver is different from a pistol, is that what you
22 would like --

23 Q. Yes, sir.

24 A. In the fact that you see right here it has a cylinder
25 that holds each cartridge in it. When you pull the trigger,

1 the cylinder rotates, based on the firing mechanism of the
2 revolver. So each cylinder is aligned in line with the bore
3 consecutively. When you pull the trigger, the firing pin
4 hits the primer, the cartridge detonates, the bullet goes
5 out the barrel. You pull the trigger again -- and during
6 the motion of pulling the trigger, the cylinder will rotate
7 and line the next cartridge up to be shot.

8 A revolver will normally not eject fired cartridge
9 cases after it's been fired, if it's functioning properly.
10 There are some that do, but this one does not. You actually
11 have to open the cylinder to eject the cartridge case, once
12 they have been fired.

13 Q. Okay. So if I was somewhere in, you know, fired that
14 gun three, four, five times, short of me opening up that
15 cylinder and emptying the shell casings out, you would not
16 expect to find any shell casings out there where I had fired
17 it, is that correct?

18 A. Correct, without opening the cylinder, the cartridge
19 cases should still remain in the cylinder.

20 Q. And how many bullets does that hold?

21 A. It holds seven cartridges.

22 Q. All right. Now, how is that now different from the
23 first item, item State's 36 that you had shown the jury?

24 A. State's Exhibit 36 is a semiautomatic pistol. It has a
25 detachable box magazine. You load the cartridges in the

1 magazine, insert it into the magazine well, close the slide.
2 Allow it to close and the slide will strip the first
3 cartridge off the magazine and load it into the chamber.

4 When you pull the trigger, the firing sequence that
5 happens, the cartridge case will be slammed back into the
6 breech face or where the firing pin comes from, taking on
7 the markings left on the breech face. The bullet goes out
8 the barrel. And then by recoil and by the force of firing,
9 the slide will come back and the extractor will grab the
10 cartridge case out of the chamber and it will come back
11 where it hits the ejector and it will be expelled from the
12 firearm. The slide will then close, taking the next
13 cartridge from the magazine and loading it into the chamber,
14 and that sequence will continue until the trigger is stopped
15 being pulled. One pull for each shot, or until the
16 ammunition runs out.

17 Q. Okay. Every time you pull that trigger, obviously if
18 it's loaded, the bullet theoretically should come out of the
19 barrel?

20 A. Yes, sir.

21 Q. Is that correct?

22 A. Yes.

23 Q. And then a shell casing is going to eject out of that?

24 A. It is ejected and expelled from the firearm.

25 Q. Okay. Let me ask you, is there any way to tell, I

1 mean, where that shell casing is going to go when it comes
2 out of that gun?

3 A. As a general rule it's going to go back and to the
4 right, but that's a very general rule.

5 Ejection patterns are not something that we test at
6 SLED because of the all variables that are involved; how
7 tall the shooter is, was it really windy outside like it is
8 today, was he standing on concrete or grass. There is a
9 whole bunch of different variables that we cannot reproduce
10 in our laboratory.

11 Q. Okay. Let me ask you this. If somebody was standing
12 on the driver's side of the vehicle and fired a
13 semiautomatic pistol like that, is it conceivable that a
14 shell casing could end up on the passenger side of the
15 vehicle?

16 A. It could, or it could end up at their feet, or in the
17 front, just depending on if it hits the roof and rolls to
18 the left, or hits the roof and rolls to the right, or if
19 it -- whatever. If there is an intervening object.

20 Q. Too many variables, I guess to -- 5?

21 A. Yes, sir.

22 Q. -- tell for sure?

23 A. Yes, sir.

24 Q. Okay. And -- all right.

25 Let me go back. State's Exhibit No. 36, I have one

1 other question about that.

2 Is there a way that you can do something to that that
3 would cause it to eject a live round out of it?

4 A. There is a couple of things that could happen. One, if
5 it were a misfire, meaning if the firing pin did hit the
6 primer but it didn't have enough force to detonate the
7 primer to make the cartridge go off.

8 Or, I see this happen all the time on the range.
9 Someone has a loaded weapon. They don't know it's loaded,
10 so they go to charge the pistol, and when they pull the
11 slide back, that cartridge is ejected from the pistol when
12 they let the slide go. It just takes the next one off the
13 top of the magazine.

14 Q. Somebody earlier had used that charged that pistol.
15 Explain to the jury what that means, what that --

16 A. It's not a very technical term, but charging the pistol
17 is when you have a loaded magazine, you seat the magazine
18 into the pistol. You pull rearward on the slide and let go.
19 And what it does is it charges the pistol or makes it ready
20 to fire by taking a cartridge from the magazine and loading
21 it into the chamber.

22 Q. But if you had just loaded that magazine in there and
23 didn't charge it, it wouldn't be ready to fire until that is
24 done?

25 A. If there was a cartridge in the chamber.

1 Originally, yes, but if there is no cartridge in the
2 chamber, then you just put the magazine in the pistol
3 without moving the slide or charging the slide, no, sir.

4 Q. Okay. And that would ultimately then cause -- but if
5 you did that and there was one, it would cause basically a
6 live round to just come out --

7 A. Yes, sir. That's one explanation, yes, sir.

8 Q. -- where shell casing would have ordinarily, if you had
9 fired it?

10 A. Yes, sir.

11 Q. Okay. All right.

12 I want to go through -- I'm sorry, then you got the
13 last gun, if you would --

14 And let me back you up. As to that, that .32 revolver,
15 was it functional --

16 A. Yes, sir.

17 Q. -- functioning properly?

18 A. Yes, sir.

19 Q. Okay. And then I believe that's State's Exhibit 34 --

20 A. Yes, sir.

21 Q. -- that you have there?

22 A. Yes, sir. State's Exhibit 34 is a Springfield Armory,
23 Model XD-40 S&W caliber, with a serial number of US298932.

24 Q. Okay. And how is that -- is that gun similar to either
25 of the other two?

1 A. That is similar to State's Exhibit 36. It's a
2 semiautomatic pistol.

3 Q. So the same thing, when you pull that trigger, the
4 bullet should come out of the barrel?

5 A. The cartridge case would be extracted and ejected, yes,
6 sir.

7 Q. And State's Exhibit No. 34 was functioning properly?

8 A. Yes, sir.

9 Q. And any other weapons that you received?

10 A. No, sir.

11 Q. You never received a .45 caliber pistol to examine?

12 A. No, sir.

13 Q. Or a 9-millimeter for that matter, is that correct?

14 A. No, sir.

15 Q. All right. I want to go through some of the items that
16 you -- that were submitted to you to compare, not only to
17 themselves possibly, but also to those firearms.

18 I'm going to start off with State's Exhibits 40, 41,
19 and 56.

20 A. State's Exhibit 40 is an unfired .380 auto caliber
21 cartridge, which I have seen before. It has my markings.

22 State's Exhibit 41 is a fired .380 auto caliber
23 cartridge case, which I have examined.

24 And State's Exhibit 56 is a fired bullet, which I have
25 examined.

1 Q. And starting with State's Exhibit No. 40, what, if
2 anything -- with that unfired .380 round, what, if anything,
3 could you tell us about that round?

4 A.. It's a correct caliber for use in the State's Exhibit
5 36 pistol.

6 Q. All right. And if somebody had charged that and that
7 was found, I mean, that could have come from the -- ejected
8 from that gun?

9 A. It could have, yes, sir.

10 Q. All right. How about State's Exhibit No. 41?

11 A. State's Exhibit 41 is a fired .380 auto caliber
12 cartridge case and it was fired by State's Exhibit 36.

13 Q. So your analysis comparing it to State's Exhibit No.
14 36, that gun ejected that shell casing after firing it?

15 A. Yes, sir, it was fired.

16 What we do when we get evidence items, we will look at
17 them microscopically. We have a comparison microscope,
18 which is basically two microscopes connected by an optical
19 bridge. It let's us look at two items simultaneously. We
20 can vary the degrees of magnification and under a different
21 lighting.

22 The markings we are looking for are just really
23 scratches or striations. And the way we look at them is by
24 angling the lights, they will cast shadows. And we can look
25 at our evidence versus the test fire.

1 Like in this case, State's Exhibit 36, I took it into
2 the laboratory and I shot it into a vertical water tank.
3 The reason why we choose water to shoot into is because it
4 does not add any extraneous markings to the bullet, nor does
5 it take markings away from the bullet, and then we can
6 retrieve the bullets and the cartridge casing, knowing they
7 have been fired by those guns, because we fired them
8 ourselves.

9 What I did is I sat down and I looked at my test fired
10 cartridge cases against each other microscopically,
11 concluded that the firearm was marking consistently, and
12 then I looked at the test fired versus the evidence
13 cartridge case. Based on those comparisons I concluded that
14 State's Exhibit 41 was fired by 36 -- or excuse me, State's
15 Exhibit No. 36.

16 Q. All right. Now, how about State's Exhibit No. 56? I
17 believe that was the bullet you have testified to?

18 A. Yes, sir. Just like the cartridge cases where we
19 looked at them side by side, we look at the bullets side by
20 side as well. And from my comparisons I concluded that
21 State Exhibit 56 was fired by State's Exhibit 36, the
22 Highpoint pistol.

23 Q. So you had that .380 Highpoint pistol that you matched
24 one shell casing with one bullet to, is that correct?

25 A. One cartridge case and one bullet, yes, sir.

1 Q. All right. Any other items that you received that
2 related to that .380 pistol?

3 A. No, sir.

4 Q. I'm going to give you the next pile of stuff here.
5 I believe what I have just handed you are State's
6 Exhibit 47, 48, 49, 50, 33, and 35.

7 A. State's Exhibits 47, 48 and 49 are three fired .40
8 Smith & Wesson caliber cartridge cases that I have seen
9 before.

10 And State's Exhibit 50 is a fired bullet.

11 And State's Exhibit 35 is unfired cartridges, two fired
12 cartridge cases and two fired bullets.

13 And State's Exhibit 33 is a fired bullet.

14 I have seen all of this evidence before.

15 Q. Okay. Let me back you up just for one second, okay,
16 just back to the items relating to the .380, just so we are
17 clear on that. You had testified about the bullet matching
18 the .380 pistol, and that envelope that that bullet is in,
19 that relates to Pinckney's Ford Taurus, is that correct?

20 A. That's what it says, yes, sir.

21 Q. And the live round, the live .380 round is in an
22 envelope. That's State's Exhibits 40, located near the
23 front door?

24 A. That's what it says, yes, sir.

25 Q. And the shell casing that you matched to the .380,

1 State's Exhibit 41, is No. 2 area of the van?

2 A. Yes, sir.

3 Q. Is that correct?

4 A. Yes.

5 Q. All right. Now, as far as --

6 All right. So all of these items -- let's start, I
7 guess, with the shell casings, State's 47, 49 and 49. You
8 indicated that they were .40 caliber casings?

9 A. Yes, sir.

10 Q. So could they have been -- out of the three guns that
11 were presented to you, what guns are those could have
12 theoretically fired those shell casings?

13 A. The only firearm that could have fired, and based on
14 these three, is the Springfield, which would be State's
15 Exhibit 34.

16 Q. Okay. Did you have an opportunity then to compare
17 those casings, not only to themselves, but also to State's
18 Exhibit No. 34?

19 A. Yes, sir, I looked at State's Exhibit 47, 48 and 49
20 against each other and they all matched. I mean, they were
21 all fired by the same firearm.

22 However, when I looked at them versus test specimens
23 from the item 34 pistol, my results were inconclusive.

24 The test specimens I fired from the Springfield all
25 marked consistently, but when I looked at them versus

1 State's Exhibit 47, 48 and 49, the markings were not of the
2 quality or quantity to either include that firearm as being
3 the firearm that fired these, or to exclude it and say it
4 was not this firearm. There was enough there to pique my
5 interests, but there wasn't enough to tip the scales either
6 way, so to speak.

7 Q. So ultimately you reported that out as inconclusive?

8 A. Yes, sir.

9 Q. And how about -- you had also received an item, State's
10 35, which I believe is the a bag of seventeen .40 caliber
11 bullets?

12 A. Yes, sir.

13 Q. And what, if anything, did you do with those items?

14 A. When I originally shot State's Exhibit 34, which is the
15 Springfield pistol, I looked at the test fires against each
16 other. I saw that they were marking inconsistently and then
17 compared them versus State's Exhibits 47 through 49. I saw
18 some similarities, but not enough.

19 So based on the fact that different ammunition
20 manufacturers have different pressures in their loads,
21 primer material, primer composition is different, I decided
22 to shoot some of State's Exhibits 35, some of the
23 cartridges, because they were consistent in their
24 construction and their markings with State's Exhibits 47
25 through 49, so I did shoot two of the bullets -- excuse me,

1 two of the cartridges and get two bullets to compare with
2 the fired bullet and two cartridge cases to compare with
3 State's Exhibit 47 through 49.

4 Q. Okay. And then, finally, let me ask you. So that bag
5 of bullets that we have heard testimony was recovered from
6 up in North Carolina, is that the same brand of casings that
7 were found in State's 47, 48 and 49?

8 A. Yes, sir.

9 Q. And what were -- what were your results then when you
10 compared those two test fires from that bag of seventeen
11 bullets to State's 47, 48 and 49?

12 A. I could match the cartridge cases from the submitted
13 ammunition against each other, but I could not match them
14 versus State's Exhibits 47 through 49. They were
15 inconclusive as well.

16 Q. Yet again does that mean that State's Exhibit No. 34,
17 that .40 caliber gun, didn't fire those shell casings?

18 A. It means I don't know. It could have and it also may
19 not have.

20 Q. All right. And then State's Exhibits 33 and 50 I
21 believe were two bullets that you -- additional bullets?

22 A. Yes, sir. State's Exhibit 50 was the one fired bullet
23 and then State's Exhibit 33 was the second fired bullet.

24 Q. Okay. And State's Exhibit No. 50, does that envelope
25 indicate anything as far as where it was recovered from?

1 A. It says six van.

2 Q. Van?

3 A. Yes, sir.

4 Q. And item 33?

5 A. Item 33 says description of evidence enclosed bullet
6 removed from James Hampton, LT for left arm.

7 Q. And specifically I guess let's deal with item 50 first.
8 What, if anything, were you able to determine with regards
9 to that bullet removed from the van?

10 A. It was most consistent with being a .40 Smith & Wesson
11 caliber -- or a bullet loaded in some .40 Smith & Wesson
12 caliber cartridges. It bore the same -- I'm sorry.

13 Q. Go ahead.

14 A. It bore the same general rifling characteristics as
15 test specimens from the State's Exhibit 34 pistol, which
16 means I had the same number of lands and grooves, which is
17 the rifling in the barrel, and the land and the groove
18 widths were approximately the same.

19 This bullet was also inconclusive with test bullets
20 fired by the item 34 -- or excuse me, the State's Exhibit 34
21 pistol.

22 Q. Okay. And is there any -- I mean, is there any reason
23 behind why, you know, everything is inconclusive with that
24 gun, as opposed to when it wasn't inconclusive with the
25 other gun that you were --

1 A. Some firearms mark inconsistently. I don't know how to
2 explain it. I have worked a couple of cases where I have
3 shot the gun fifteen times and can't match it to the test,
4 but then I can shoot sixteen and seventeen and match sixteen
5 and seventeen to everything else. I can't explain it. Some
6 firearms just mark inconsistently.

7 Q. All right. So that was item 50 we just talked about,
8 State's 50?

9 A. Yes, State's Exhibit 50.

10 Q. How about State's Exhibit No. 33, the bullet that was
11 removed from the Mr. Hampton's left arm?

12 A. Once again, it had the same similar general rifling
13 characteristics, or GRC's. And State's Exhibit 33 was also
14 inconclusive with State's Exhibit 50 and State's Exhibit 34
15 test bullets.

16 The difference with 33 is that when I received it, it
17 had dried blood and dried body fluids on it and sometimes
18 that has a deleterious effect on the microscopic markings.
19 It will eat away some of the markings. It was -- some of it
20 is still adhering to it. I cleaned it off as best I could,
21 but it was just still inconclusive.

22 Q. So ultimately if the jury has heard testimony that
23 wasn't removed from his arm until, you know, four or five
24 months later, that might have an effect on your ability to
25 do anything analyzing that bullet?

1 A. Possibly, yes, sir.

2 Q. All right. But it's yet, again, consistent with a .40
3 caliber?

4 A. Yes, sir.

5 Q. So, therefore, as to those two bullets, the one from
6 the van and the one from Mr. Hampton's arm, nothing where
7 you can exclude them from having been fired by State's
8 Exhibit No. 34, the .40 caliber pistol, is that correct?

9 A. Correct, I cannot exclude it.

10 Q. I will give you State's Exhibits 42 through 46, and 57,
11 58 and 59.

12 A. State's Exhibit 42 through 46 are fired .45 auto
13 caliber cartridge cases that I have previously examined.

14 Q. Okay. And obviously we had addressed earlier, you
15 don't have a .45 caliber gun to compare it to those, is that
16 correct?

17 A. Correct.

18 Q. How about as far as comparing State's Exhibit 42, 43,
19 44, 45, and 46 to each other?

20 A. They were all fired by the same firearm.

21 Q. Okay. And the markings on those, are they something
22 where you would feel in your opinion if you had a gun, that
23 you would be able to compare it to a .45 caliber gun, if one
24 was located?

25 A. Yes, sir.