VOLUME I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

MAR 13 2019

S.C. SUPREME COURT

Certiorari to Georgetown County

Honorable Paul M. Burch, Circuit Court Judge

DOMINIC A. LEGGETTE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001793

APPENDIX

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

Pages 1-500

INDEX

INDEX i

TRIAL TRANSCRIPT DATED MARCH 29 - APRIL 1, 2010 1

FINAL BRIEF OF APPELLANT 498

FINAL BRIEF OF RESPONDENT 513

UNPUBLISHED OPINION NO 2012-UP-203 (filed March 28, 2012) 527

PETITION FOR REHEARING 530

ORDER DENYING PETITION FOR REHEARING 539

PETITION FOR WRIT OF CERTIORARI TO COURT OF APPEALS 540

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS ... 555

ORDER DENYING PETITION 566

APPLICATION FOR POST-CONVICTION RELIEF 567

RETURN 574

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 9, 2016 580

ORDER OF DISMISSAL 656

INDICTMENTS 674

SENTENCE SHEETS 678

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN)	08-GS-22-944, 945
State of South Carolina,)	
Plaintiff,)	Transcript of Record
vs.)	Hearing
Dominic Alexander Leggette,)	March 29 through April 1, 2010
Defendant.)	

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

Scott Hixson, Esquire
Attorney for Plaintiff

Ronald Hazzard, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

I N D E X

(Monday, March 29, 2010.)
Voir Dire. 1
Jury Selection 16
Instructions By Court. 25
Motions. 28
(Tuesday, March 30, 2010.)
Instructions By Court. 90
Motions. 92
Instructions By Court. 123
Opening by State 129
Opening by Defense 131
Verney Cumbee
Direct by State. 134
Cross by Defense 148
Michael Thacker
Direct by State. 153
Cross by Defense 171
Redirect by State. 173
Cynthia Anna Schandl
Direct by State. 175
Cross by Defense 190
Al Ingram
Direct by State. 192
Cross by Defense 217

Redirect by State. 228

Ed Lee

Direct by State. 233

Cross by Defense 254

Leron Gardner

Direct by State. 263

Cross by Defense 272

Redirect by State. 273

Jamar Mitchum

Direct by State. 275

Cross by Defense 281

(Wednesday, March 31, 2010.)

Steve Brown

Direct by State. 289

Craig Jackson

Direct by State. 292

Cross by Defense 307

Motion for Directed Verdict. 315

Questioning Re: Rights 317

Dominic Leggette

Direct by Defense. 322

Cross by State 344

Redirect by Defense. 364

Motions. 368

Closing Argument by Defense. 371

Closing Argument by State. 387
Charge 404
Question from Jury 425
Alternate Seated. 426
(Thursday, April 1, 2010.)
Question from Jury 461
Allen Charge 466
Verdict. 469
Polling of Jury. 472
Motions. 476
Sentencing 477
Certificate. 489

E X H I B I T S

		ID	EVD
S-1	Aerial Photograph		138
S-2	Photograph		157
S-3	Photograph		157
S-4	Photograph		237
S-5	Photograph		157
S-6	Photograph		240
S-7	Photograph		157
S-8	Photograph		240
S-9	Photograph		157
S-10	Photograph		157
S-11	Photograph		157
S-12	Photograph		157
S-13	Photograph		157
S-14	Photograph		157
S-15	Photograph		157
S-16	Photograph		157
S-17	Photograph		157
S-18	Photograph		157
S-19	Photograph		157
S-20	Photograph		157
S-21	Photograph		157
S-22	Photograph		157
S-23	Photograph		157

1	S-24 Photograph		157
2	S-25 Photograph		157
3	S-26 Photograph		181
4	S-27 Photograph		183
5	S-28 Photograph		183
6	S-29 Photograph		187
7	S-30 Sketch		164
8	S-31 Shell Casings		238
9	S-32 Shell Casings		242
10	S-33 Bullets (Tisdale)		187
11	S-34 Lineup		216
12	S-35 Concealed Weapon		292
13	S-36 Miranda Form (was C-1)		348
14	S-37 Miranda Form (was C-3)		349
15	C-1 Miranda Warnings	30	
16	C-2 Interview - CD		
17	C-3 Miranda Warnings		
18	C-4 Statement		
19	C-5 Six pack lineup	65	
20	C-6 Warnings	65	
21	C-7 Lineup	68	
22	C-8 Foreperson Selection	89	
23	C-9 Magistrate Court Record	287	
24	C-10 Question from Jury Re: 111	431	
25	C-11 Question from Jury Re: Testimony	447	

C-12	Question from Jury Re: Charges	447
C-13	Note from Jury	449
C-14	Question from Jury	451
C-15	Note from Jury Re: Dinner	
C-16	Question from Jury	464
C-17	Note from Jury Re: Impasse	469
C-18	Charges	

Georgetown County Circuit Court
RANDOM STRIKE SHEET

JUDGE NAME : Culbertson, Benjamin H
TRIAL TYPE : Criminal
PANEL ID : 08GS2200944&45
COURTROOM CTR

DESCRIPTION : STATE vs DOMINIC A LEGGETTE

Sorted by: Random Nbr
Trial

	NAME	JUROR NBR	RACE	SEX	STR	DEF	CRT	REMARKS
1	Smith, Wanda J	122	B	F	✓	✓	( )	
2	Jones, Sharon M	71	W	F	✓	X	( )	
3	Roberts, Francis W	111	W	M	✓	✓	( )	
4	Plummer, Graham J	99	W	M	X	( )	( )	
5	Alston, Donovan A	1	B	M	X	( )	( )	
6	Elmore, Patricia A	38	B	F	X	( )	( )	
7	Fowler, Jimmy D	43	W	M	✓	✓	( )	
8	Linnen, Ronald	82	B	M	X	( )	( )	
9	Bird, Christopher P	6	W	M	✓	X	( )	
10	Nooft, Victoria E	95	W	F	✓	✓	( )	
11	Scott, Carol J	119	W	F	✓	✓	( )	Alt. 3 person
12	Reed, Linda	106	B	F	✓	✓	( )	
13	Feagin, Kimberly N	42	W	F	X	( )	( )	
14	Washington, Linda G	141	B	F	✓	✓	( )	
15	Alston, Samuel SR	2	B	M	✓	✓	( )	
16	Culbertson, Richard M JR	28	W	M	✓	X	( )	
17	Grover, Joyce R	55	W	F	✓	✓	( )	
18	Byrd, Patricia M	17	W	F	✓	X	( )	
19	Thomas, Gerald K	132	B	M	✓	✓	( )	
20	Coleman, Jasper D	23	B	M	✓	✓	( )	
21	Sullivan, Barbara J	126	W	F	✓	✓	( )	
22	Grimes, Cheryl R	54	W	F	✓	✓	( )	Alt. 1
23	Byrne, Alex D	18	W	M	✓	✓	( )	Alt. 2
24	Eubanks, Joyce A	40	W	F	( )	( )	( )	

(On the record, March 29, 2010.)

THE COURT: Let me see the attorneys for just one brief second.

(Whereupon, a bench conference was held.)

THE COURT: All right, Mr. Solicitor.

MR. HIXSON: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

MR. HIXSON: Your Honor, at this time the State of South Carolina will call the matter of the State versus Dominic Leggette. It's a trial, Your Honor, and specifically I'm referring to two indictments the State would present to the Court, 2008-GS-22-944, that is the State of South Carolina versus Dominic Alexander Leggette. He's been charged with murder in that indictment, Your Honor, and that case has been true-billed by our Grand Jury.

Also, 2008-GS-22-945, that is the State of South Carolina versus Dominic Alexander Leggette. That's an indictment for assault and battery with intent to kill, and also, Your Honor, that item has been true-billed.

THE COURT: All right, sir.

Thank you, sir.

All right, ladies and gentlemen of the jury panel, we are getting ready to start the trial of the case of the State of South Carolina versus Dominic Alexander, is it Leggette?

MR. HAZZARD: Yes, sir.

THE COURT: Leggette. Mr. Leggette has been charged and indicted by the Grand Jury on the crime of murder, the allegations being that on or about August 13th, 2008, that he committed murder by killing Antonio Tisdale with malice aforethought, that occurring in Georgetown County.

Also, on that same date he is alleged to have committed the crime of assault and battery with intent to kill upon the alleged victim, Al Ingram.

Now, is there any member - now, previously we have gone through jury qualifications to determine whether or not you were qualified to serve as jurors this week of General Sessions Court. What I'll now go over with you is voir dire questioning. Now, the purpose of this questioning is to determine whether or not you're qualified to serve as jurors on this particular case and it also gives the attorneys some additional information that assists them in the selection process. As I told you during the qualification process you're constantly taking oaths; and so, I'll need everyone in the jury panel to please stand and raise your right hand while the clerk administers the oath for these voir dire questioning.

(Whereupon, jury panel sworn by clerk.)

THE COURT: All right, thank you very much. Is there any member of the jury panel who did not respond to the

Clerk's oath by saying I do, if so, please stand.

(No response.)

THE COURT: All right, as I told you earlier the Defendant in this case is Dominic Alexander Leggette. The alleged victims are Antonio Tisdale and Al Ingram. Now, is there any member of the jury panel related by blood or marriage to either the Defendant or either of the alleged victims?

(No response.)

THE COURT: Is there any member of the jury panel have any business relationship, social relationship, personal relationship or any other type of relationship with the Defendant or either of these alleged victims, if so, please stand.

Yes, sir, your name and jury number?

MR. EARLY: Kenneth Early, 37.

THE COURT: All right, Mr. Early, who is it that you know or are related to?

MR. EARLY: Victoria Leggette, his mother and I run a small car lot in Andrews.

THE COURT: All right.

MR. EARLY: And would rather not be on this case.

THE COURT: Okay, and I understand your reluctance to be on this case; however, what I need to find out is whether or not you're qualified to be on this case and whether or not

it's going to be up to the parties to strike you because of whatever reason or whether or not you are unable to give or preside as a fair juror. Now, you say you know the Defendant's mother?

MR. EARLY: She was a good customer of mine.

THE COURT: All right, would that relationship prohibit you from giving both the State and the Defendant in this case a fair and impartial trial?

MR. EARLY: I'd rather not be on this case.

THE COURT: Okay, I understand your reluctance, but would that relationship - would you be able to set that relationship aside or would it influence your decision in this case?

MR. EARLY: I don't think that I could set that aside, no.

THE COURT: Okay, all right, Mr. Early, thank you for that. I'll excuse you from this case.

All right, ma'am, your name and number?

MS. MILLER: 87, Cecelia Miller, I am known with the Mitchum family.

THE COURT: I'm sorry, say that again.

MS. MILLER: I know the Mitchum family, we all live in the same neighborhood.

THE COURT: All right, now, the Mitchell [sic] family is?

MR. HIXSON: Your Honor, the Mitchum family is Mr. Tisdale's family, the deceased.

THE COURT: Okay, all right, now, when you say you know the Mitchum family how do you know them?

MS. MILLER: We grew up in the same neighborhood.

THE COURT: All right, would that relationship effect your ability to give both the State and the Defendant a fair and impartial trial?

MS. MILLER: No, sir, it will not.

THE COURT: Okay, what number are you, what juror number?

MS. MILLER: 87.

THE COURT: 87. All right, Ms. Miller, how often do you see members of the Mitchum family?

MS. MILLER: Daily.

THE COURT: Excuse me?

MS. MILLER: Daily.

THE COURT: Dailey?

MS. MILLER: Uh-huh.

THE COURT: Do you talk to them daily?

MS. MILLER: No, sir.

THE COURT: Okay, when you say you see them daily how do you see them?

MS. MILLER: Basically passing.

THE COURT: Okay.

MS. MILLER: Or run into each other in the store or somewhere.

THE COURT: Okay, you all live in the same neighborhood?

MS. MILLER: Yes, sir.

THE COURT: Okay, now, which members of the Mitchum family is it that you know?

MS. MILLER: The parents of the deceased.

THE COURT: Okay, and how well do you know them?

MS. MILLER: Well.

THE COURT: Extremely well?

MS. MILLER: Well to a point, yes, sir.

THE COURT: Okay, do you go to the same church or anything?

MS. MILLER: No, sir.

THE COURT: Okay, do you have any business relationship?

MS. MILLER: No, sir.

THE COURT: Do you see each other socially?

MS. MILLER: No, sir.

THE COURT: Okay, do you ever socialize, go over to their house or do they ever come to your house?

MS. MILLER: No, sir.

THE COURT: Have you ever discussed this case with any of them?

MS. MILLER: No, sir.

THE COURT: Would you be able to disregard those relationships in their entirety and if you were selected as a juror in this case base your decision exclusively on the testimony and evidence presented in this case?

MS. MILLER: Yes, sir.

THE COURT: Okay, do you have any problem presuming the Defendant to be innocent of all of these charges?

MS. MILLER: No, I do not.

THE COURT: All right, all right, Ms. Miller, thank you very much.

Is there anybody else related by blood or marriage, have a business relationship, social relationship, personal relationship or any other type of relationship with either the Defendant or any of the alleged victims; if so, please stand.

(No response.)

THE COURT: All right, I need you to listen up carefully. Here are or is a list of potential witnesses who may testify in this case: Investigator Eddie Lee of the Andrews Police Department; Al Ingram; Jamar Mitchum; Dr. Schandl, Schandl, how do you pronounce it?

MR. HIXSON: Schandl, Cynthia Schandl.

THE COURT: Schandl, S-C-H-A-N-D-A-L [sic] of the Medical University of South Carolina; Investigator Michael Thacker of the Georgetown County Sheriff's Office; Chief

Harvey Knox of the Andrews Police Department; Verney Cumbee of the Andrews Police Department; Craig Jackson; Ron Gardner; Investigator Steve Brown.

Is there any member of the jury panel related by blood or marriage, have any close personal relationship, social relationship, business relationship or any type of relationship with any of these potential witnesses; if so, please stand.

Yes, sir, your name and number for the record?

MR. CULBERTSON: It's Richard Culbertson, Juror Number 28.

THE COURT: All right, Mr. Culbertson, how - who is it that you know and how do you know them?

MR. CULBERTSON: In the capacity where I work we occasionally will work with Investigator Lee and also Investigator Thacker we occasionally work with. I also attend a few meetings occasionally with Chief Knox.

THE COURT: All right, would those relationships effect your ability to give both the State and the Defendant in this case a fair and impartial trial?

MR. CULBERTSON: No, sir, it would not.

THE COURT: Would you be able to disregard those relationships in their entirety and base your decision in this case exclusively on the testimony and evidence presented in the trial of this case?

MR. CULBERTSON: Yes, sir.

THE COURT: All right, thank you for bringing that to our attention.

Anyone else know any of these potential witnesses?

(No response.)

THE COURT: All right, the attorney for the State in this case is Attorney Scott Hixson of the 15th Circuit Solicitor's Office. The attorney for the Defendant in this case is Attorney Ron Hazzard of the Office of Indigent Defense.

Is there any member of the jury panel related by blood or marriage, have a business relationship, social relationship, personal relationship or any other type of relationship with any of these attorneys; if so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who either personally or has a family member employed with the Office of the 15th Circuit Solicitor's Office or the Office of Indigent Defense for the 15th ---

MR. HAZZARD: Technically, Your Honor, it would be the Public Defender's Office for the 15th Judicial Circuit.

THE COURT: All right.

MR. HAZZARD: Comprised of Horry and Georgetown Counties.

THE COURT: All right, any member of the jury panel

either personally or have a family member employed by the Public Defender's Office for the 15th Circuit Solicitor's - 15th Circuit comprised of Horry and Georgetown Counties; if so, please stand?

(No response.)

THE COURT: Is there any member of the jury panel ever been represented by either of these attorneys; if so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who has ever been involved in any legal action in which either of these attorneys represented another party to that action; if so, please stand.

(No response.)

THE COURT: Has any member of the jury panel formed or expressed an opinion about any issue or matter involved in this case; if so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel aware of any bias or prejudice towards either the State or the Defendant in this case; if so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel that was a member of the Grand Jury that issued the indictment in this case; if so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is a member of or a contributor to any organization which has as its primary concern the promotion of law enforcement or victims' rights? These groups include, but are not limited to Mothers Against Drunk Driving, commonly referred to as MADD; Students Against Drunk Drivers, which is common referred to as SADD; Citizens Against Violent Crime or commonly referred to as CAVC; or Citizens Against Spousal Abuse, also known as CASA. Is anybody a member of or a contributor to any of these organizations or any similar type organizations? If so, please stand.

Is there - yes, sir, your name and number?

MR. ANDERSON: William Anderson, Juror Number 3.

THE COURT: All right, Mr. Anderson, what organization are you a member of or contributor to?

MR. ANDERSON: First off, I'm a board member at Fireside Ministries. We strongly contribute to CASA. We have Christmas parties, I mean, baby-sit their children for different parties and so on.

THE COURT: What organization is that?

MR. ANDERSON: CASA.

THE COURT: No, the one that you're a member of.

MR. ANDERSON: Fireside Ministries.

THE COURT: Okay.

MR. ANDERSON: I'm a board member there.

THE COURT: All right, sir.

MR. ANDERSON: And my wife works for her dad, she publishes. Her dad is the director of Teen Challenge which is a faith-based drug and alcohol abuse program here in South Carolina.

THE COURT: All right, would your associations with those organizations prohibit you in any way from giving both the State and the Defendant in this case a fair and impartial trial?

MR. ANDERSON: No, sir.

THE COURT: Would you be able to disregard that association in its entirety and base your decision in this case exclusively on the testimony and evidence presented in the trial of this case?

MR. ANDERSON: Yes, sir.

THE COURT: All right, thank you very much for bringing that to our attention, Mr. Anderson.

Anybody else a contributor to or member of any type of organization that has as its primary purpose the promotion of law enforcement or victims' rights; if so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who has a religious or moral opposition to the consumption of alcohol; if so, please stand?

(No response.)

THE COURT: Is there any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case with particular emphasis being placed on your ability to be fair and impartial to both the State and the Defendant in this case; if so, please stand.

(No response.)

THE COURT: As I said earlier these charges arose out of an alleged incident that occurred on or about August the 13th, 2008. Where did this occur?

MR. HIXSON: In the Andrews Section of Georgetown County, Your Honor.

THE COURT: All right, in the Andrews Section of Georgetown County.

Is there any member of the jury panel who has read anything, heard anything, discussed anything or knows anything about this case; if so, please stand.

All right, ma'am, I apologize, but for the record we have to create a record. Your name and number again?

MS. MILLER: Juror 87, Cecelia Miller.

THE COURT: All right, Ms. Miller, don't tell me what you heard, read, discussed or anything but is this something that you have discussed with someone, someone has discussed with you or something you have read or heard?

MS. MILLER: All the above.

THE COURT: All of the above?

MS. MILLER: Right.

THE COURT: All right, all right, Ms. Miller, I'm going to go ahead and excuse you from presiding over this, serving as a juror in this case. Thank you though.

Anybody else know anything, heard anything, discussed anything or read anything about this case; if so, please stand.

(No response.)

THE COURT: Any additional questions from the State?

MR. HIXSON: Nothing from the State, Your Honor.

THE COURT: Any from the Defense?

MR. HAZZARD: Nothing on behalf of the Defense, Your Honor.

THE COURT: All right, thank you very much.

All right, ladies and gentlemen, how we proceed now in this age of automation, your names are fed into a computer and they are printed out on a list at random. Your names will be called one at a time from that list and if you have not been excused in this case when your name is called we'll ask that you come forward and stand here in front of the attorneys, turn and face the attorneys. Now, in this case the State gets a certain number of strikes and the Defense gets a certain number of strikes and we follow that procedure until we select 12 jurors and two alternates, we'll select 12 jurors and two

alternates in this case. So, when your name is called, if your name is called, if you would please come forward, stand in front of the bench here, face the attorneys and wait for further instructions. If you have any coats, pocketbooks, umbrellas or anything like that please bring it with you when you come forward.

Now, if you are excused as a juror, struck as a potential juror in this case, whether it be from the Defense or from the State, please don't take it personally. It just means that for whatever reason the attorney in this particular case does not feel that you fit what they're looking for as a juror in this particular case. Oftentimes I've seen an attorney strike a juror in one case and then another trial that week accept the same juror. By the same token I've seen an attorney take a juror and then strike him in the next case. So, there's no rhyme or reason as to why an attorney will strike a particular juror or a potential juror in a particular case. So, please don't take it personally. So, if - have we got that list?

Thank you, ma'am.

All right, ladies and gentlemen, please listen up. When your name is called if you would please come forward, bring with you anything that you have, stand in front and face the attorneys.

THE CLERK: Juror Number 122, Wanda Smith.

THE COURT: That's fine right there. Thank you.

THE CLERK: What says the State?
MR. HIXSON: Please present Ms. Smith.
THE CLERK: What says the Defense?
MR. HAZZARD: Please swear Ms. Smith.
THE CLERK: Please take a seat in the jury box.
Juror Number 71, Sharon Jones.
What says the State?
MR. HIXSON: Please present Ms. Jones.
THE CLERK: What says the Defense?
MR. HAZZARD: Please excuse Ms. Jones from the trial of this particular case.
THE CLERK: You may return to your seat.
Juror Number 111, Francis Roberts.
What says the State?
MR. HIXSON: Please present Mr. Roberts.
THE CLERK: What says the Defense?
MR. HAZZARD: Please swear Mr. Roberts.
THE CLERK: Please take a seat in the jury box.
Juror Number 99, Graham Plummer.
What says the State?
MR. HIXSON: Please excuse Mr. Plummer.
THE CLERK: You may return to your seat.
Juror Number 1, Donovan Alston.
What says the State?
MR. HIXSON: Please excuse Mr. Alston.

THE CLERK: You may return to your seat.
Juror Number 38, Patricia Elmore.
What says the State?
MR. HIXSON: Madam Clerk, is this Juror Number 38? Is that correct?
THE CLERK: Yes.
MR. HIXSON: Please excuse Ms. Elmore.
THE CLERK: You may return to your seat.
Juror Number 43, Jimmy Fowler.
What says the State?
MR. HIXSON: Please present Mr. Fowler.
THE CLERK: What says the Defense?
MR. HAZZARD: Please swear Mr. Fowler.
THE CLERK: Please take a seat in the jury box.
Juror Number 82, Ronald Linnen.
What says the State?
MR. HIXSON: Beg the Court's indulgence, ma'am.
THE COURT: All right.
MR. HIXSON: Please excuse Mr. Linnen.
THE CLERK: You may return to your seat.
Juror Number 6, Christopher Bird.
What says the State?
MR. HIXSON: Please present Mr. Bird.
THE CLERK: What says the Defense?
MR. HAZZARD: Please excuse Mr. Bird from the trial of

this particular case.

THE CLERK: You may return to your seat.

Juror Number 95, Victoria Nooft.

THE COURT: Excuse me. How do you pronounce your name?

MS. NOOFT: Victoria Nooft.

THE COURT: Nooft, okay, thank you.

THE CLERK: What says the State?

MR. HIXSON: Please present Ms. Nooft.

THE CLERK: What says the Defense?

MR. HAZZARD: Please swear Ms. Nooft.

THE CLERK: Please take a seat in the jury box.

Juror Number 119, Carol Scott.

What says the State?

MR. HIXSON: Please present Ms. Scott.

THE CLERK: What says the Defense?

MR. HAZZARD: Please swear Ms. Scott.

THE CLERK: Please take a seat in the jury box.

Juror Number 106, Linda Reed.

What says the State?

MR. HIXSON: Please present Ms. Reed.

THE CLERK: What says the Defense?

MR. HAZZARD: Please swear Ms. Reed.

THE CLERK: Please take a seat in the jury box.

Juror Number 42, Kimberly Feagin.

What says the State?
MR. HIXSON: Please excuse Ms. Feagin.
THE CLERK: You may return to your seat.
Juror Number 141, Linda Washington.
Are there any challenges from the State?
MR. HIXSON: Please present Ms. Washington.
THE CLERK: What says the Defense?
MR. HAZZARD: Please swear Ms. Washington.
THE CLERK: Please take a seat in the jury box.
Juror Number 2, Samuel Alston, Sr.
Are there any challenges from the State?
MR. HIXSON: Please present Mr. Alston.
THE CLERK: What says the Defense?
MR. HAZZARD: Please swear the juror.
THE CLERK: Please take a seat in the jury box.
Juror Number 28, Richard Culbertson, Jr.
Are there any challenges from the State?
MR. HIXSON: Please present Mr. Culbertson.
THE CLERK: What says the Defense?
MR. HAZZARD: Please excuse Mr. Culbertson from this particular case.
THE CLERK: You may return to your seat.
Juror Number 55, Joyce Grover.
Are there any challenges from the State?
MR. HIXSON: Please present Ms. Grover.

THE CLERK: What says the Defense?
MR. HAZZARD: Please swear the juror.
THE CLERK: Please take a seat in the jury box.
Juror Number 17, Patricia Byrd.
Are there any challenges from the State?
MR. HIXSON: Please present Ms. Byrd.
THE CLERK: What says the Defense?
MR. HAZZARD: Please excuse Ms. Byrd from this particular trial.
THE CLERK: You may return to your seat.
Juror Number 132, Gerald Thomas.
Are there any challenges from the State?
MR. HIXSON: Please present Mr. Thomas.
THE CLERK: What says the Defense?
MR. HAZZARD: The Court's indulgence, Your Honor.
MR. THOMAS: I'm sorry?
MR. HAZZARD: I'm still thinking. Thank you.
MR. THOMAS: Okay.
MR. HAZZARD: If I could get a second.
Okay, this is Juror 132, Madam Clerk?
THE CLERK: Yes, that's what it's showing.
MR. HAZZARD: Okay, all right, please swear the juror.
THE CLERK: Please take a seat in the jury box.
Juror Number 23, Jasper Coleman.
Are there any challenges from the State?

MR. HIXSON: Please excuse Mr. Coleman.

THE COURT: Hold for one second. Let me see the attorneys.

(Whereupon, a bench conference was held in the presence but out of hearing of the jury panel.)

THE COURT: All right, any challenges from the State?

MR. HIXSON: Beg the Court's indulgence, Your Honor.

THE COURT: All right.

MR. HIXSON: Your Honor, I withdraw my challenge to Mr. Coleman. Please present Mr. Coleman.

THE COURT: All right.

MR. HAZZARD: Your Honor, and Madam Clerk, I apologize, during jury qualification I did not catch Mr. Coleman's employment and if the Court would so inquire I would greatly appreciate it.

THE COURT: All right, Mr. Coleman, where do you work?

MR. COLEMAN: I'm unemployed right now.

THE COURT: You're unemployed? Where did you previously work?

MR. COLEMAN: I was a student, but spring of last year at Wal-Mart.

THE COURT: At Waccamaw?

MR. COLEMAN: Wal-Mart.

THE COURT: Wal-Mart, okay, thank you very much.

MR. HAZZARD: Please swear Mr. Coleman.

THE COURT: All right, sir.
THE CLERK: Please take a seat in the jury box.
Juror Number 126, Barbara Sullivan.
Any challenges from the State?
MR. HIXSON: Madam Clerk, please present Ms. Sullivan.
THE CLERK: What says the Defense?
MR. HAZZARD: The Court's indulgence, Your Honor.
THE COURT: All right.
Excuse me, just one second. He's still looking.
MR. HAZZARD: Please swear Ms. Sullivan.
THE CLERK: Please take a seat in the jury box.
THE COURT: All right, we'll go with the first alternate. The State will have one strike. The Defense will have two.
THE CLERK: Juror Number 54, Cheryl Grimes.
What says the State?
MR. HIXSON: Please present Ms. Grimes.
THE CLERK: What says the Defense?
MR. HAZZARD: Please swear the juror.
THE CLERK: Please take a seat in the jury box.
THE COURT: All right, we'll go for the second alternate, the State will have one strike, Defense will have two.
THE CLERK: Juror Number 18, Alex Byrne.
What says the State?

MR. HIXSON: Please present Ms. Byrne, excuse me, Mr. Byrne, sorry about that.

THE CLERK: What says the Defense?

MR. HAZZARD: Please swear the juror.

THE CLERK: Please take a seat in the jury box.

THE COURT: All right, ladies and gentlemen, you are the jury that will comprise the jury of this case. I'm going to excuse you back to the jury room for just a minute. I'll bring you out shortly, but I've got some matters that I need to go over with the attorneys first before we do that, but this will give you an opportunity to stretch your legs, use the restroom or whatever the case may be, but we'll bring you out shortly in just a minute.

Please do not discuss the case, don't conduct any independent investigation, don't even talk about the case among yourselves at this point in time. We'll let you know when you can begin your deliberations but it's still premature at this point in time, but I'll excuse you back to the jury room and bring you out in just a second. Thank you very much. Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, any challenges to the selection or composition of the jury by the State?

MR. HIXSON: Nothing from the State, Your Honor.

THE COURT: Any from the Defense?

MR. HAZZARD: The Court's indulgence, Your Honor.

THE COURT: All right.

(Mr. Hazzard and Mr. Leggette confer.)

MR. HAZZARD: Nothing from the Defense in that regard, Your Honor.

THE COURT: All right.

MR. HAZZARD: With regard to the composition of the panel.

THE COURT: Thank you, sir.

(Remaining jury panel excused with call-in instructions.)

THE COURT: All right, you all say the remainder of the day will be taken up with pretrial matters?

MR. HIXSON: Yes, Your Honor.

THE COURT: Okay, I think what I'll do is probably call the jury back in, excuse them for the remainder of the day and have them come back - what time do we want them back tomorrow morning?

MR. HIXSON: Nine o'clock?

MR. HAZZARD: 9:30 would be preferable for the Defense, Your Honor.

THE COURT: Okay, well, let's do this. I'll tell them to be back because I do want them to pick a foreman and do that. I'm going to tell them to come back at 9:15 so that we can get started at 9:30. How is that? Okay.

MR. HAZZARD: That's fine from the Defense, Your Honor.

MR. HIXSON: That's great, Your Honor.

THE COURT: All right, let's bring the jury back in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back. We are getting ready to start the trial of the case of the State versus Dominic Alexander Leggette as I told you earlier before we started the jury selection process. However, we do have some pretrial matters that will take the balance of the afternoon. So, I'm going to excuse you for the remainder of the day and we'll get started with the evidentiary portion of this trial tomorrow morning, but I don't want to tie you up here any longer than we have to. So, I am going to excuse you for the remainder of the day and I'll ask that you be back in the jury room at 9:15 tomorrow morning and then hopefully soon thereafter we can get started with the trial of the case.

Now, when you get back tomorrow morning if I could get you to do me a favor and that would be to select a foreperson for this jury. If you're not able to select a foreperson, don't worry about it. I can appoint someone to serve as foreperson and many judges appoint forepersons for their juries, but I like to give the jury the opportunity to select one on their own if they're able to do so.

Now, the foreperson has absolutely no more authority, no more influence or no more importance than any other juror. The sole purpose and function of the foreperson is to act as a contact between the Court and the jury. If the jury has a need, the foreperson lets the Court know. If the jury has a question the foreperson lets the Court know. When it's time to deliberate the foreperson will preside over the deliberations, and when the jury reaches a verdict the foreperson will let the Court know that the jury has reached a verdict, but other than that the foreperson has no more influence or authority or importance than any other jury, member of the jury.

Now, when you select a foreperson tomorrow morning if you would just write that person's name on a sheet of paper with their jury number, give it to the bailiff and the bailiff will bring it back into court and we'll publish it.

When you come back into the courtroom tomorrow morning, the foreperson will occupy this first seat that would be closest to the jury, excuse me, closest to the witness. Ms. Grimes and Mr. Byrne, you will always occupy the two alternate seats in the back. The rest of you are at liberty to sit in whichever seat you like. You can sit in the same seat throughout the trial of the case. You can alternate seats throughout the trial of the case, whichever makes you feel more comfortable. There's no, no requirement that you occupy

any particular seat other than the foreperson occupying the first seat and the alternates occupying the two alternate seats.

I caution you again, please do not discuss this case with anyone. Don't conduct any independent investigations into this case. Don't listen to any news accounts, look through any newspapers, go on the internet or try to find out anything about this case. Your responsibility as jurors is to act fairly and impartially to both the State and the Defendant and base your decision in this case exclusively on the testimony and evidence presented during the trial of this case without any influence from any outside source. That is your duty as jurors and I'll have some further instructions and directions for you tomorrow morning. However, I'm going to excuse you for the remainder of the day. I hope everyone has a good evening, and we'll see you back at 9:15 tomorrow morning. Thank you very much.

Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, Mr. Hixson, anything from the State?

MR. HIXSON: Yes, Your Honor, I think we have quite a few pretrial motions, I only guess would maybe free flow back

and forth. I just think we're - I think we're doing some of the same motions, Your Honor. Specifically I guess we can start with Mr. Leggette after his arrest and detention, this incident occurred August 13th of 2008. He was finally brought into custody on September 10th, 2008. At that time law enforcement, specifically Eddie Lee and Chief Harvey Knox from the Andrews Police Department, interviewed him. He gave a voluntary statement that was recorded, and I believe that it will be appropriate at this time to have a evidentiary hearing on the voluntariness of that statement, make sure there isn't any problems if ultimately that statement is admitted.

THE COURT: All right.

MR. HIXSON: Is that safe to say, Mr. Hazzard?

MR. HAZZARD: Yes, sir.

THE COURT: All right, sir.

MR. HIXSON: Your Honor, at this time the State would call Detective Eddie Lee to the witness stand, Investigator Lee, excuse me.

Whereupon, Eddie Lee was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record, please.

MR. LEE: Investigator Lee, Andrews Police Department.

THE COURT: All right, Mr. Hixson.

MR. HIXSON: Thank you, Your Honor.

EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir.

A How you doing?

Q What do you do for a living?

A I'm an investigator with the Andrews Police Department.

Q And how long have you been in that capacity?

A I was working at the Andrews Police Department about 25 years. I've been an investigator about 15 years.

Q Okay, so, that means you were working around August 13th of 2008?

A Yes, sir, I did.

Q And did you have an opportunity to be involved in a homicide investigation during that period of time?

A Yes, I did.

Q And at some point in time was a suspect generated in that murder?

A Yes, sir, through my investigation, yes, sir.

Q And who was that suspect?

A Dominic Alexander Leggette.

Q Okay, and at some point in time was Mr. Leggette taken into custody?

A Yes.

Q Do you recall was that on September 10th of 2008?

A Yes, sir.
Q Okay, and did you have an opportunity to interview Mr. Leggette?
A Yes, sir, twice.
Q And could you please tell the Court about the facts and circumstances surrounding that interview?
A Basically that he made the contact with me I think was on the 10th of September and also on the 13th he wanted me to talk to him and I made contact with him at the jail and at the Georgetown Sheriff Department.
Q Okay, let's focus on the September 10th incident. I handed you a piece of paper. I need to make sure Madam Court Reporter ---
A Yes.
Q --- is aware of what I'm doing. Hold on for a second.
MR. HIXSON: And Your Honor, I'm marking this as a Court's Exhibit, Court's Exhibit Number One. The caption on this says Andrews Police Department Miranda warnings on the piece of paper, Judge.
THE COURT: All right.
(Whereupon, Court's Exhibit Number One [Miranda Warning] appropriately marked.)
BY MR. HIXSON:
Q Take a look at that, Investigator, and tell me what that is. Do you recognize that item?

A Yes, sir, I do.
Q And what is that?
A It's an Andrews Police Department Miranda warning rights file.
Q And generally speaking what's your understanding of Miranda rights?
A It means that anytime a suspect is allegedly accused of anything you've got to give him his rights before you ask him any questions, advise him he's got a right to remain silent or either get a, have an attorney present while being questioned.
Q Okay, now, that form, is that a form that you also add information to?
A Yes, sir.
Q And what type of information would you add to that form if someone was giving a voluntary interview?
A Once I would read it to him and once the subject agreed to talk to me I would let him initial "do not want a lawyer at the time," and he usually put his initials inside and sign it, I have a witness to it.
Q Okay, now, let's go back and talk specifically, factually about this form, okay. Did you have an opportunity to interview Dominic Leggette in reference to the facts of this case?
A Yes, sir, I did.
Q And what date did that occur?

A This the date I got before me is on the 10th, 2008.
Q And to the best of your recollection where did that interview take place?
A This happened at the Georgetown County Sheriff Department.
Q Okay, and was that process recorded in any way?
A Yes, sir, video, video and audio.
Q Did you provide the video equipment to do that?
A No, sir, the Sheriff Department did.
Q Okay, let me show you what's also been marked as a Court's Exhibit. It has not been yet, this is a copy. Mr. Hazzard.

Let me present to you what's been marked as Court's Exhibit Number One [sic], that's not for evidence, just for here. It's a - do you know what's on that?
A Yes, sir.
Q And what is that?
A The interview, the interview we had with Dominic Leggette at the Georgetown Sheriff Department in which Chief Harvey Knox was with me during this same time.
Q Okay.
A On the 10th of September, 2008.
Q Okay, now, prior to interviewing him did you read him his Miranda rights?
A Yes, I did.

Q And did you follow the information on that sheet?
A Yes, I did.
Q And for the Court - for the Court's purpose could you tell us and read to the Court what's on that sheet of paper?
A Okay, "Before we ask you any question you must understand your rights. You have the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present while you're being questioned. If you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish one. If you decide not, ask questions without a lawyer you have the right to stop at any time."
Q Okay, did you ask Mr. Leggette if he understood that information?
A Yes, sir, I did.
Q Did he acknowledge?
A Yes, sir, he did. Verbally he acknowledged he understand his rights.
Q And did he make - execute that document in any way?
A He execute the document by circling the word "do not want a lawyer at this time," and placed his initials inside the circle.
Q Did you have a conversation with him about each sentence in that piece of paper?
A Yes, sir, I did. I actually got him to put his initials

by each one of them, also along with the waiver of the rights as well.

Q Okay, did he appear as if he understood when you were interviewing him?

A Yes, sir, he did. He said he understood and I make sure he understood.

Q Okay, and you indicated that was witnessed by someone?

A Yeah, Chief Harvey Knox of the Andrews Police Department, Chief of Police.

Q Okay, and did that witness execute anywhere on that document?

A Yes, sir, it is.

Q Okay, I also noticed on the top of this this says date, place, it says Andrews Police Department on that.

A There's some discrepancy on that. We was actually at the Georgetown Sheriff Department. I think I made that part of video, audio and video statement that we was actually at the Georgetown Sheriff Department because normally when I mirandize somebody normally always be at the police department. This time it was at Georgetown Sheriff Department.

Q So, that's an - that's an error on that sheet?

A Not an intentional error, just a error.

Q Okay, now, was this process recorded on video on this?

A Yes, sir.

Q And so, the Miranda readings are on this also?
A On that as well, yes, sir, it's recorded.
Q Approximately how long do you think this interview lasted?
A Approximately maybe about a hour, you know, this happened back in - I'm saying it might be a little longer.
Q And did you provide him an opportunity to take a break for food or drink, anything?
A Yes, sir, we respected him, I mean, we treat him like somebody.
Q Okay, and once again, just to clarify that, did he, in fact, waive his rights and talk to you at that time?
A Yes, sir, he did.
Q And did he execute his intent of any way on that document?
A Yes, sir, he actually circled the word "do not want a lawyer," and we went forward, put his initials inside the circle where he put do not.
Q Okay.

MR. HIXSON: Your Honor, at this time I have no further questions for this witness.

THE COURT: All right, Mr. Hazzard.

MR. HAZZARD: I have no questions for this witness, Your Honor.

THE COURT: All right, sir, you may step down. Thank

you very much.

You can call your next witness.

MR. HIXSON: Your Honor, perhaps, may I - there was a second statement and perhaps it might be appropriate, Mr. Lee, Investigator Lee can comment on that second statement as well, perhaps we should do them at the same time.

THE COURT: If you want to call him that'll be fine.

MR. HAZZARD: I would submit that that would be somewhat confusing because I would think that the Jackson v. Denno hearing is to determine the voluntariness of each statement individually; and so ---

THE COURT: We can handle it however you want to. It doesn't really matter to me. I mean, I, I agree with you. I need to judge each of them individually but how you want to present it I'll leave it up to the State, however you want to go forward.

MR. HIXSON: That's fine, Your Honor. I'll just, would just request that I'm able to recall Investigator Lee then.

THE COURT: That'll be fine.

All right.

MR. HIXSON: At this time the State would call Chief Harvey Knox.

THE COURT: All right.

Whereupon, Harvey Knox was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

MR. KNOX: Chief Harvey Knox.

EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir.

A Good afternoon.

Q What do you do for a living, sir?

A Currently hold the position of Chief of Police for the Town of Andrews.

Q And how long have you done that?

A Approximately two years.

Q Okay, so, back in August 13th of 2008 were you working for the Andrews Police Department?

A Yes, sir, I was.

Q Okay, and did you have an opportunity to participate in the homicide investigation around that period of time?

A Yes, sir, I did.

Q And specifically one involving the Defendant in this case, Dominic Leggette?

A Yes, sir.

Q Did you have an opportunity to interview Mr. Leggette?

A Yes, sir, I participated in that first interview.

Q And could you please tell the Court about the facts and circumstances surrounding this interview we're referring to?

A Basically, basically, Your Honor, the, the event in question took place in the center of Town in Andrews. We were in the midst of a homicide investigation and Mr. Leggette was the prime suspect.
Q Okay, at some point in time was Mr. Leggette placed into custody?
A Yes, sir, he was.
Q And in fact, was the U.S. Marshal Service involved in that apprehension?
A Yes, sir, they were.
Q After that apprehension did you interview Mr. Leggette?
A Yes, we did.
Q And where did that interview take place?
A That interview took place at Georgetown County Sheriff's Office.
Q And were other people present in the room during the course of that interview?
A Myself and Investigator Lee.
Q Okay, now, is it your department policy or tell us about department policy relating to the use of Miranda warnings.
A Miranda warnings, that's, it's a very, very strict rule that we adhere to. We will interview no one unless we mirandize them.
Q Okay, and did you, in fact, mirandize Mr. Leggette on this occasion?

A He was mirandized by Investigator Lee and I witnessed.
Q Okay, and you witnessed that, did you say that?
A Yes, sir.
Q Let me show you what's been marked as a Court's Exhibit, State's Exhibit or Court's Exhibit Number One. Do you recognize that item?
A Yes, sir, I do.
Q And what is that?
A This is the official Andrews Police Department Miranda warning.
Q And you use that during, during your ordinary operations at Andrews?
A Yes, sir, we do.
Q And what does that document contain?
A It contains the rights of the person being interviewed.
Q Okay, and could you please read that document just rather quickly.
A Yes, sir, "Before we ask you any question you must understand your rights. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you're being questioned. If you cannot afford to hire a lawyer one will be appointed to represent you before questioning if you wish one. If you decide to answer any questions without a lawyer present you have the right to

stop answering at any time. Waiver of rights," and it also states, "I have been given my Miranda warning both verbally and in writing. I understand that my rights are - what my rights are. I do or do not want a lawyer at this time. I understand and know what I am doing, no promises or threats have been made to me or no pressures or coercion of any kind has been used against me."

Q Okay, and did you witness this process?

A Yes, I did.

Q And did Mr. Leggette during that period of time appear to understand those questions being asked of him?

A Totally.

Q Okay, did he act appropriately to the response of those questions?

A Yes, he did.

Q Okay, and did you execute that document as a witness?

A Yes, sir, I did.

Q And was this process captured on audio or video recording device?

A Both audio and video.

Q Okay.

A Yes, sir.

MR. HIXSON: Your Honor, I have no further questions of Chief Knox.

THE COURT: All right, Mr. Hazzard.

MR. HAZZARD: No questions.

THE COURT: All right, sir, you may step down.

A All right.

THE COURT: Thank you.

Call your next witness.

MR. HIXSON: Your Honor, we - as it relates to this particular statement we're referring to, which is an audio recording on September 10th of 2008, I have asked - if it's necessary for me to play the statement it's about two hours long or to see if Mr. Hazzard would stipulate if Your Honor needs that that recording does contain the Miranda warnings on the recording. If we were to listen to that we could hear that as well. At this time I would just move the Court, I think the State has made a sufficient showing that this statement was given voluntarily, pursuant to Miranda, and as such the State doesn't intend to admit it at this time, Your Honor, but in the end, in the interest of judicial efficiency, if in fact this comes up in cross examination we have cleared this issue up pretrial.

THE COURT: All right.

MR. HAZZARD: Your Honor, the Defense moves to call Dominic Leggette for the purposes of this motion hearing.

THE COURT: All right, I'll allow that. Mr. Leggette, if you'd come forward, please.

Whereupon, Dominic Alexander Leggette was called to the

stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your full name for the record.

MR. LEGGETTE: Dominic Leggette.

EXAMINATION

BY MR. LEGGETTE:

Q Please spell your last name for the record, sir.

A L-E-G-G-E-T-T-E.

Q Okay, Mr. Leggette, you are the Defendant in the case that brings us here today, the State of South Carolina versus Dominic Leggette; is that correct?

A Yes, sir.

Q You're charged with one count of murder, one count of assault and battery with intent to kill; is that correct?

A Yes, sir.

Q Okay, now, sir, were you arrested on or about September 10th of 2008?

A I was arrested on September the 9th.

Q Okay, and around what time of day or night were you arrested?

A I was arrested about nine, nine in the night.

Q Okay, and if you would tell the Court about how that arrest came about. Did you call the police or did they just show up at your door? How did that come about?

A They showed up at a friend's house looking for me and I

wasn't there. So, when I learned about the incident I called the U.S. Marshal that was looking for me. I called them. I told them, his name was Rudy Tisdale. He called me, I called him and I told him I said, "Are you asking" - I asked him, I say, "Are you looking for me, Mr. Rudy Tisdale?" He said, "Yes, sir." He said, "Where are you?" I said, "I just now - I'm in the same place you are, that you just now left, Green Sea Floyd," and he said, "All right." So, he said, "Stay on the phone with me until I come." So, when he got there he arrested me. He put me in handcuffs and he brought me down, he brought me - he was bringing me to Andrews when he called Investigator Eddie Lee on the phone.

Q Okay.

A And when he called - at the time he called Investigator Lee on the phone he, he fervently stated to Investigator Eddie Lee that I turnt myself into him.

Q Okay.

A And ---

Q Okay, let me, let me stop you right there and interrupt you for a second. So, this arrest or you were taken into custody sometime around nine p.m. on September the 9th; is that correct?

A Yes, sir.

Q Okay, and so, you were traveling at that point in the custody of the U.S. Marshal, Marshal Tisdale; is that correct?

A Yes, sir.
Q Okay, at some point were you turned over to another law enforcement agent?
A Yes, sir.
Q Okay, tell us about that if you would, sir.
A I was turned over to Patrick Cumbee on 41, Highway 41, a couple, about three miles out of Andrews.
Q Okay, and you were arrested initially or taken into custody in Horry County; is that correct?
A Yes, sir.
Q Okay, and so, then Marshal Tisdale subsequently turned you over to Patrick Cumbee?
A Yes, sir.
Q And who does Patrick Cumbee work for to your understanding?
A He was working for Andrews Police Department.
Q Okay, and about what time was this that this occurred on Highway 41, sir?
A Probably about, probably about ten, 10:30, 11 o'clock.
Q Okay, now, at any time from the time you were taken into custody to the time you were turned over to Officer Cumbee were you given a bathroom break or asked if you needed anything or anything of that nature, sir?
A No, sir.
Q Okay, and now, tell us what happened once you were placed

into Patrick Cumbee's custody.
A I was escorted to Georgetown County Detention Center.
Q Okay, and then what happened?
A When I got there I stayed the night in booking and the next morning they moved me to D Block, their maximum security.
Q Okay, well, let's back up. You were placed in booking; is that correct?
A Yes, sir.
Q So, I mean, were you just sitting there by the booking desk or do they have special booking cells at the Georgetown County Detention Center?
A They put me in a booking cell right in front.
Q Okay, and approximately how - what size is that cell, sir?
A About the same, about the same size as this area right here.
Q Okay, approximately, let the record reflect he's indicating approximately five and a half feet by seven feet?
A Yes, sir.
Q Sound about right? Okay, and you spent the night there you said?
A Yes, sir.
Q Okay, did anyone, any law enforcement officer come and speak with you at that time?
A No, sir.

Q Okay, what was your next - did they feed you at some point?
A Yes, sir.
Q Okay, and when did they feed you?
A That morning.
Q Okay, the following morning?
A Yes, sir.
Q Okay, were you in the booking cell by yourself or with other detainees?
A By myself.
Q Okay, now, what happened the following morning, the morning of the 10th?
A The morning of the 10th I was awoken and they took me to their maximum security holding and known as D housing and around, right before lunchtime they - I was came and got by Mr. Knox and Mr. Eddie Lee.
Q Okay, had you asked to speak to them?
A No, sir.
Q Okay, but they came to interrogate you?
A Yes, sir.
Q Okay, what did they say when they came to get you?
A They didn't, they didn't say nothing at the time. I - the only thing I was told is that where you're going with these, with Investigator Lee and Mr. Harvey Knox.
Q Okay, did anyone tell you you had the option of not going

with them?
A No, sir.
Q Okay, okay, so, what happened? Were you turned over into Chief Knox and Investigator Lee's custody?
A Yes, sir.
Q Okay, and what happened once you were given into their custody?
A Once I was given into their custody I was - we traveled to the Sheriff's Department here in Georgetown.
Q Okay, so, they removed you from the Georgetown County Detention Center and took you to the Georgetown County Sheriff's Office; is that correct?
A Yes, sir.
Q Okay, do they have interview rooms at the Georgetown County Detention Center?
A Yes, sir.
Q Okay, was there any conversation between you and Chief Lee or Chief Knox and Investigator Lee during the drive from the Georgetown County Detention Center to the Sheriff's Office?
A Not that I recall.
Q Okay, did you ask them any questions that you recall?
A No, sir.
Q And you don't recall them making any statements to you at that time?

A No, sir.
Q Okay, so, what happened once you arrived at the Sheriff's Office, sir?
A When I arrived there I was escorted into, to a interrogation room ---
Q Okay.
A --- and I was - I was informed of my rights and I was interrogated.
Q Okay, now, tell the Court if you would, describe the interrogation room, give the Court, if you can, an approximation as to the size of the interrogation room.
A The interrogation room is probably about the size of where you're standing at right now from, from you, from where I'm sitting to where Mr. Scott is sitting.
Q Okay, and do you have any idea how, how, what distance that would be in feet?
A No, sir.
Q Okay, let's see.
MR. HAZZARD: The Court's indulgence.
BY MR. HAZZARD:
Q From where you're sitting about right here?
A No, like right in front, right here.
Q The front of the jury ---
A Yes, sir.
Q The front of the witness stand.

A Yes, sir.
Q To where Mr. Scott is sitting?
A Yes, sir.
Q You mean Scott Hixson the prosecutor?
A Yes, sir.
Q Okay, it appears to be about 14 paces, I'm a man of approximately six feet one and a half inches tall, 14 paces, would you think that would approximate about 14 feet? Do you think the room is that wide, that big?
A No, it wasn't that wide. It was about that long.
Q It was about that long.
A Yes, sir.
Q Okay, and about how wide was it?
A Probably about eight.
Q About eight feet wide?
A Yeah.
Q Okay, and who all was present in this room?
A Mr., Mr. Harvey Knox and Mr. Ed Lee.
Q Okay, and I take it you were in the room as well; correct?
A Yes, sir.
Q Okay, no one else was present?
A No, sir.
Q Okay, were either Chief Knox or Detective Lee armed with a weapon in the room?

A I can't recall, I can't - I don't remember right now.
Q Okay, now, when they sat you in the room were you still in handcuffs, did they remove the handcuffs?
A I was still in handcuffs.
Q Were your hands cuffed in front of you or behind your back?
A In front of me.
Q Okay, did they secure the handcuffs to a u-bolt on the table or anything of that nature?
A No, sir.
Q Okay, so, you had your hands cuffed in front of you. What did they say then, sir?
A They informed me of my Miranda rights.
Q Okay, now, there's a form here that's been marked as Court's Exhibit Number One for the purposes of this particular hearing and I'll show you this form and ask you did you execute this form with your signature?
A Yes, sir.
Q Okay, first of all I notice that you're looking at that very closely. How is your eyesight, Mr. Leggette?
A Fairly bad.
Q Okay, and when you say fairly bad can you read what is on that form?
A Not like this, I got to get close on it.
Q Okay, how close? Show the Judge how close you have to

get to see what's on the form.
A Probably have to get about this, like this close right here.
Q Okay, now, on this particular date, September 10th, when you were in the interview room with Chief Knox and Investigator Lee did you look at what was on the form, did you listen to what they were saying to you?
A I listen to what they're saying but I glanced at the form.
Q Okay, that's fine. So, you listened to what they were saying.
Did they read what was on the form? Did they tell you you have the right to remain silent?
A Yes, sir.
Q Did they tell you you had the right to an attorney?
A Yes, sir.
Q Did they tell you you didn't have to talk?
A Yeah.
Q Okay, did you feel that you actually had those rights?
A Not at the time.
Q Why not? They told you that. Why not?
A Because it was - the whole, the procedure, it was like but was basically like I didn't have no say-so at the time because the way, the way that everything that went I was basically hunted, I was basically hunted for something that I

didn't even know I was accused of until that, until the day of - until the day of the U.S. Marshals ---

Q Yes, sir.

A --- a friend, appearing at my friend's house.

Q Yes, sir.

A So, I was kind of - I was fairly scared.

Q You were fairly scared. Okay, once they read you the rights and you signed that piece of paper, approximately how long as far as you recall did the interrogation last?

A I'd say about an hour 30 minutes, probably two hours.

Q So an hour and a half to two hours?

A Yes, sir.

Q At any point during that time did they ever take a break?

A No, sir.

Q Did they ever ask you if you needed anything to drink?

A No, sir.

Q Did they ever ask you if you needed anything to eat?

A No, sir.

Q Did they ever ask you if you needed to use the bathroom?

A No, sir.

Q Did they ever tell you that you had the right to use the bathroom?

A No, sir.

Q Okay, who was doing the questioning? Was it just Chief Knox, just Detective Lee?

A Basically it was like both, but Mr., Mr. Knox didn't say too much.
Q Uh-huh, okay. Did you feel threatened at the time of this questioning?
A Yes, sir.
Q All right, thank you. Please answer any questions the Court or the Prosecutor may have.
MR. HIXSON: Briefly, Your Honor.
THE COURT: All right.

EXAMINATION

BY MR. HIXSON:
Q How are you doing, Mr. Leggette?
A I'm fine, how are you?
Q Isn't it true that you called your mother, Victoria, a couple of times during the period of time from September, August 13th till September 10th?
A No, sir.
Q Okay, you didn't call her?
A No, sir.
Q How about Rhonda Brown?
A Once.
Q Okay, and didn't you tell, tell the officers and stuff that you didn't - that you knew that people were looking for you at that period in time and didn't want to drag her into it?

A No, sir.
Q Okay, did she give a - do you know if she's given a written statement to that effect?
A I saw that in my motion.
Q Okay.
A Yes, sir.
Q You saw that in your motion of discovery?
A Yes, sir.
Q And isn't it true that they did offer you a drink of water, I guess, when Mr. Knox had to leave, Harvey Knox had to leave the room to go tend to some other business and there's a period of silent on the tape and asked about whether you wanted something to drink; isn't that right?
A I don't remember that.
Q You don't remember that?
A No, sir.

MR. HIXSON: Okay, I have no further questions, Your Honor.

THE COURT: Anything on redirect?

MR. HAZZARD: Nothing further in that regard, Your Honor.

THE COURT: All right, you may step down.

The Defense can call any other witnesses.

MR. HAZZARD: No other witness for the - witnesses for the Defense with regard to this motion, Your Honor.

THE COURT: All right, anything in reply from the State?

MR. HIXSON: No, Your Honor.

THE COURT: All right.

MR. HAZZARD: Your Honor, if the Defense might be heard briefly on the motion.

THE COURT: All right.

MR. HAZZARD: Thank you very much, Your Honor.

Your Honor, the position of the Defense, the Defendant has testified that he was in the custody of not one but two law enforcement officers, that he was taken from the Georgetown County Detention Center, not given any information indicating that he did not have to go with them. There has been no testimony that the purposes of removing him from the Georgetown County Detention Center was for the purposes of booking or taking him in front of a magistrate or any other administrative proceeding. So, he's removed from his place of custody for the pure purpose of interrogating him. He is not told at the time he is taken away for interrogation that he has the option of not going. So, at that point anything else they say with regard to, "Oh, you have the right to an attorney," and this, that and the third with regard to the Miranda rights, we would argue as the Defendant has testified, he did not truly feel that he had those rights. He has testified before this Court that for the period of

approximately an hour and a half to two hours he was questioned by not one but two law enforcement officers, he was not at any point in time given an opportunity to take a break, he was not at any time given an opportunity to eat, nor was he given the opportunity to use the bathroom. He has indicated that he was fearful and that he was coerced. I would note that the information placed forward by the State in this regard goes specifically to the knowing and voluntary nature of his signature on the form, but does not in any way, shape or form address the specificity of what Jackson versus Denno was about, which is is there coercion present that presents, prevents the Defendant from making a knowing and voluntary waiver. There's not a single word submitted by the State that addresses the issue of coercion; and the Defendant, therefore, is the only evidence before the Court, his statement to this Court, his evidence and testimony before the Court is that he felt that he was in a coerced situation, a coerced state and was not in a position to refuse the officers. We would, therefore, submit that any statement made by the Defendant on that date, September 10th, 2008, be excluded from evidence in this case.

THE COURT: All right, I think the State has satisfied the requirements of Jackson versus Denno. I find that the statement given on September 10th, 2008, is admissible. The Defense can still argue voluntariness to the jury but I think

that the State has met its burden to at least get it to the jury. All right.

MR. HIXSON: Thank you, Your Honor.

We have a subsequent statement like three days later though I believe we would probably need to address now. That also involves Investigator Lee.

THE COURT: All right. You can call your first witness.

MR. HIXSON: Investigator Eddie Lee from the Andrews Police Department.

THE COURT: Since it's another statement let's go ahead and swear him again.

Whereupon, Eddie Lee was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record, please.

MR. LEE: Do you need me to repeat my name again?

THE CLERK: Yes, sir.

MR. LEE: Investigator Eddie Lee, Andrews Police Department.

EXAMINATION

BY MR. HIXSON:

Q Sir, we've already, we've already met and had a little discussion before. Let's get straight to the point. Two days after, three days after this, after September 10th of 2008

did you receive some kind of information that Mr. Leggette wanted to speak with you?

A Captain Wineglass, he's a captain at the detention center, she notified me, told me Mr. Leggette wanted to see me and I got that documented in my report.

Q Okay, do you recall what date that was?

A I think it was on the 13th. I'm not sure now. I think it was.

Q Let me show you this document, see if that refreshes your recollection.

A Yes, this is on the 13th of September, 2008.

MR. HIXSON: And Your Honor, what I've handed the investigator in this case is a document ---

A Document.

MR. HIXSON: --- marked Court's Exhibit Number Three, Your Honor.

A Yeah, Andrews ---

Q Do you recognize that, Mr. Lee?

THE COURT: Hold it, hold it for a minute. The court reporter can't pick it up if both of you are talking at one time. So, let him ask the question and then you can answer, okay.

MR. HIXSON: Your Honor, I've handed up Court's Exhibit Number Three to Mr. Lee, Investigator Lee.

A Yes.

Q Investigator, do you recognize that?
A Yes, sir.
Q And what is that?
A It's an Andrews Police Department Miranda warning form.
Q Is that the same style or form that you would have used three days earlier?
A Yes, sir.
Q And what is the date on that?
A The date on it is 9-13-2008.
Q And what is the - is there a location indicated on that?
A Yeah, the place is Georgetown County Detention Center.
Q And why did you respond to that again?
A Because of Captain Wineglass said that Mr. Leggette wanted to talk to me.
Q Okay, and so, you went to the detention center this time?
A Yes, I did.
Q And did you read him those Miranda warnings?
A Again, I read it to him again.
Q And this is a separate hearing.
A Separate, yes.
Q So, could you please read that document into the record.
A Okay, "Before we ask you any question you must understand your rights. You have the right to remain silent. Anything you can and will be used against you in a court of law. You have the right to talk with a lawyer, have present with you

while you're being questioned. If you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish. One, decide now to answer questions without the lawyer, a lawyer, you have the right to stop at any time." The second part is the waiver of rights. "I have been given my Miranda warnings both verbally and in writing. I understand what my rights are." They got two indication of, "I do and I do not want a lawyer at this time. I understand what I'm doing, no promise or threat has been made to me and no pressure" ---

Q Investigator Lee, can you slow down just a hair?

A Okay.

Q Madam Court Reporter is doing her best.

A "I understand and know what I'm doing, no pressure, no promise or threat has been made to me, pressure, coercion of any kind has been used against me."

Q Okay, did Mr. Leggette appear awake and alert and understanding of that?

A Yes, he did.

Q Did he execute anything on that document as well?

A Yes, he circled the word do not and placed his initials inside the circle.

Q Okay, and what's the context of what you referred to, do not what?

A Do not want a lawyer at this time.

Q Meaning that he wanted to make a statement?
A He wanted to make a statement, yes.
Q Okay, did you coerce him in any way?
A No, sir, he sent for me.
MR. HIXSON: Let me follow up, Your Honor. I'm handing the witness Court's Exhibit Number Four.
BY MR. HIXSON:
Q What is that?
A This a voluntary written statement from Dominic Leggette.
Q Okay, let me back up for a second. Was the meeting on September 13th, was that audiotaped or videotaped?
A No, this just was, just, I just got a verbal written statement from him on this. There was no audio, videotape on this.
Q Okay, and did you have a discussion with Mr. Leggette when you first arrived on why he wanted you there?
A Yes, he did, but before - I told him before I could talk to him I had to give him his Miranda warnings before I asked him anything.
Q Okay, and then after the warnings what did he say?
A He actually give me a verbal written statement addressing the issues as, as before us today.
Q Okay, so, do you recognize that item?
A Yes, sir.
Q And what is that?

A That's a written statement from Dominic Alexander Leggette.
Q Okay, and did you witness him writing this?
A Yes, sir, I did.
Q Okay, and did he execute that document in any way?
A Yes, sir, he execute it by placing his signature on it.
Q Okay, are there any warnings on that document?
A No, not this document. It's a voluntary written statement form.
Q Okay, above his written statement is there a repetition of the Miranda warnings above that?
A Yes, it is.
MR. HIXSON: That'll be a Court's Exhibit, Your Honor. I'll let the Court review that as well. I'd just point out for the Court that this says this statement was given to Investigator Lee and that his Miranda warnings once again are reiterated on the top of that.
Q Is that correct?
A Yes, sir; yes, sir, it is. It's right there on top.
Q And you - were you the only one present during this?
A Yes, sir. Let me see - let me take a look back. Yes, I was because he - the only initials on here is his and mine because he actually met - send for me.
Q Okay, I have no further questions.
THE COURT: All right, so, Court's Exhibit Three is

Miranda warnings and Court's Exhibit Four is the statement.

MR. HIXSON: Is actually the statement itself.

THE COURT: From September 13th, 2008.

MR. HIXSON: That's correct, Your Honor.

THE COURT: Okay, all right, I got you.

All right, Mr. Hazzard, any questions?

MR. HAZZARD: No questions, Your Honor.

THE COURT: All right, sir, you may step down.

A All right, thank you, Judge.

THE COURT: Call your next witness.

MR. HIXSON: I have no more - no other witnesses on this statement, Your Honor.

THE COURT: All right, Mr. Hazzard.

MR. HAZZARD: No argument in this one, Your Honor.

THE COURT: All right, all right, the Court's ruling is that the State has satisfied the requirements of Jackson v. Denno as to the statement given on September 13th, 2008. It'll be admissible to the jury subject to any other - I mean, the Court finds it's voluntary, but it can still be argued, voluntariness can still be argued to the jury by the Defendant.

All right.

MR. HIXSON: Thank you, Your Honor.

We also have a six-pack lineup that was used in this, Your Honor. Perhaps we should address that pretrial.

THE COURT: All right, all right.

MR. HIXSON: We would call Investigator Eddie Lee of the Andrews Police Department.

Whereupon, Eddie Lee was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record, please.

MR. LEE: Investigator Eddie Lee, Andrews Police Department.

EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir. We already know that you participated in the investigation of a shooting that happened in Andrews August 13th of 2008; is that correct?

A Yes, sir.

Q Did you at some point in time interview a witness in this case, specifically Al Ingram?

A Yes, I did.

Q And what did Mr. Ingram tell you?

A He basically give me a voluntary witness statement that on the 13th him along with the victim was on West Main Street walking toward the Super Chic and that he made contact with Mr. Leggette who actually shot the victim and shot Mr., I think from what I recall, Mr. Ingram in his right heel, I think it is.

Q Okay, and based on that statement did you feel it was important to provide a, created what's commonly referred to as a six-pack lineup?
A Yes, sir.
Q And did you in fact create one of those?
A Yes, sir.
MR. HIXSON: Your Honor, let me show - Your Honor, I have the original as well as photocopies of the original in case there's any question about that. I'd like to try to use the copies for - but I can put the original into evidence. It doesn't matter, however.
THE COURT: Any objection to copies?
MR. HIXSON: Made copies front and back. It doesn't ---
MR. HAZZARD: No objection, Your Honor.
THE COURT: All right, without objection that'll be Court's Exhibit ---
MR. HIXSON: Five and Six because it's a front, front and back, the warnings are on the back of it.
THE COURT: All right, Court's Exhibits Five and Six.
(Whereupon, Court's Exhibit Five [Lineup] and Six [Warnings] appropriately marked.)
BY MR. HIXSON:
Q Mr. Lee, I'll give you these, specifically Number Five, what is that?

A This is a photo lineup of six black males.
Q Okay, and did you create that?
A Yes, sir.
Q And please tell the Court how you went about creating that.
A Well, based on the information we got we know, on my information that the subject, Mr. Leggette, was a black male. So, you know I've got to get six black males, basically, you know, to be fair with him, not be suggestive, background, hair and skin color and I did the photo lineup.
Q Okay, so, did you select those photographs - how did you select those photographs?
A Based on the description of Mr. Leggette himself and other subjects here basically match his description.
Q Okay.
A To be fair to him.
Q Were you provided a general description of what the suspect looked like?
A Yes, ma'am - yes, sir.
Q Do you recall what that general description was?
A Black male, approximately about maybe six feet tall, got dreads in his head.
Q Okay.
A Kind of large eyes, yes, sir, and I know him.
Q Okay, and at what point in time did you receive that

description?
A I did that on - I actually made contact with Mr. Al Ingram on the 14th and he actually pick him out the lineup as the subject who shot him and the victim.
Q Okay, now, did you prepare the lineup on the 14th?
A I did that - yes, sir, I did that myself, too.
Q Okay, did you get the - what day did you get the initial description of what the suspect looked like?
A I got that at the, at the - on the 13th, the same day when the murder and Mr. Ingram got shot, the same day.
Q Okay, how much time do you believe transpired between the time you were given - between the incident and the time that the description was taken down?
A Okay, well, the incident happened on the 13th. I actually did it the following day, which would be the 14th and the witness identified Mr. Leggette as the shooter, which it would be the next day.
Q Okay, the next day, and did you take any steps to make sure that that lineup didn't appear presumptive in any way?
A Yes, sir, and how I did that in reference to the background itself, make sure all the photograph looks the same and also if you can tell by some of it, the photo lineup basically you got some of the subjects basically got hair and same description and in some way in the same description as Mr. Leggette is, all, and all the males is dark complected.

Q Okay, now, describe what procedure you go about to give the lineup to the witness.
A Basically what I do is I usually get the lineup, have to get the information, make contact with the, with the, with the witness, and inform the witness, "I've got a lineup of six black male," and, and to be fair to Mr. Leggette I want to see if he can pick out the subject who he says shot him.
Q Okay, okay, are there any - let me ---
MR. HIXSON: Judge, let me mark this and just so I don't have to go around the instructions on here. I may as well just put this part of the record, Judge, and make it.
THE COURT: All right, so, that'll be Court's Exhibit what number?
MR. HIXSON: Number Seven, Judge.
THE COURT: Court's Exhibit Seven.
(Whereupon, Court's Exhibit Number Seven [Lineup] appropriately marked.)
BY MR. HIXSON:
Q Take a look at that Investigator Lee, what is that?
A This is a lineup of six black males on a Georgetown County Sheriff Department case folder.
Q Now, is that the actual lineup form that you used that day?
A Yes, sir; yes, sir.
Q Okay, and could you please describe to the Court if there

are any warnings contained on that document?
A Yeah, there are some warnings on the back of it, but I didn't read those to him. I basically just told the witness that the, you know, to see if he can pick out the subject who he said did the shooting, did he know him.
Q Now, did you pressure that witness in any way?
A No, sir.
Q Did you tell the witness that he had to pick somebody out?
A No, sir.
Q Did you make it clear to him there may not - the Defendant may not be there?
A Well, I basically told him that he have to pick him out. I am - I made it explicit to him that, you know, to be fair, fair to Mr. Leggette that he'll have to pick out the subject. I can't assist him or aid him in any way.
Q Did you, in fact, assist him or aid him in any way?
A No, sir.
Q Ultimately on the 14th did Mr. Ingram come into the office?
A Yes, sir, I actually did this at his, if my memory serves me right, we did it at his residence. I think it's on MLK Drive.
Q I apologize. I apologize.
A Yes, sir.

Q So, you came in contact with Mr. Ingram at some point in time?
A Yes, sir; yes, sir.
Q And did you present him with that lineup?
A Yes, sir.
Q And how did Mr. Ingram react?
A He immediately went to lineup number five. He actually placed his initials and the day's date when I made contact with him over on Mr. Leggette.
Q Okay, and how much time you said, how much time did you say from the time you showed it till he identified the person?
A He actually went to it basically ---
REPORTER: Judge, they've got to stop running over each other.
THE COURT: Yeah, you're going to have to slow down because we're going too fast. The Court reporter can't pick it up, okay.
MR. HIXSON: Thank you, Your Honor.
THE COURT: All right, ask your question again and then when he finishes asking the question you can start your answer. All right, sir.
MR. HIXSON: Thank you, Your Honor.
BY MR. HIXSON:
Q How long - how much time transpired between the time that you showed that document, that lineup to Al Ingram and to the

point he reacted to it?
A I would say probably - I'm just guessing maybe less than five seconds. I mean, he immediately went to lineup number five.
Q Okay, did you ask him to indicate on that form in any way his choice?
A Yes, sir, after he - I asked him, after he picked lineup number five, I asked him to place his initials and today's date, which he did.
Q Okay.
MR. HIXSON: I have no further questions from this witness, Your Honor.
THE COURT: All right, Mr. Hazzard.
MR. HAZZARD: No questions for this witness, Your Honor.
THE COURT: All right, let me see, let me see the exhibit for a second.
MR. HAZZARD: The Defense would like to be heard prior to the Court's ruling.
THE COURT: All right.
All right, you may step down.
A Yes, sir.
THE COURT: Call your next witness.
MR. HIXSON: The State would call Al Ingram to the witness stand, please.
Whereupon, Al Ingram was called to the stand, duly sworn

by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

MR. INGRAM: Al Ingram.

EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir. You want to slide up a little bit so you can make sure you speak clearly. We're not going to get into the whole thing, Al. We're just going to talk about one part of it; okay?

A Yes, sir.

Q Were you involved in a shooting incident down on Main Street in Andrews?

A Yes, sir.

Q Did you get shot down there?

A Yes, sir.

Q Okay, did during the course of that incident did you see the person that shot you?

A Yes, sir.

Q Did you recognize the person that shot you?

A Yes, sir.

Q Had you seen that person sometime in the past?

A I seen him like throughout, throughout town, you know what I'm saying? I didn't actually know his name but I just know his face throughout town.

Q Okay, so, prior to - do you recall being in Andrews August 13th of 2008?
A Yes, sir.
Q Okay, and so, you had seen the Defendant prior to that?
A Yes, sir.
Q Okay, okay, let's go back to the August 13th, okay. At some point in time you were shot during that period of time; is that correct?
A Yes, sir.
Q Okay, what did you do after that?
A Well, after I was shot, well, when I realized I was shot I immediately fell to the ground and I jumped back up and I looked at Antonio, he looked at me and we just started running back towards the car.
Q Okay, now, who is Antonio?
A It is my friend who I was with during the shooting.
Q Okay, who's - what's his whole name just for the record just to clarify for the Court.
A Antonio Billy Tisdale.
Q Okay, is that the deceased?
A Yes, sir.
Q Okay, you looked at each other and took off running; is that right? That's where we are?
A Yes, sir.
Q Okay, and then tell me what happened after that.

A He was running toward - we was trying to get to the car, but while we was running I stated to Mr. Tisdale that I was shot and he said back to me, "He shot me, too." After he said that I just kept running. I kept running till I got to the car and I looked back. I didn't see Mr. Tisdale. When I went back to the front of the club that's when I seen Mr. Tisdale on the ground.

Q Okay, let me ask you this, about how long that evening, how long did you see Mr. Leggette, the whole night, I'm not talking about, I mean, just before and after that incident.

A Maybe 10 minutes at the most.

Q Okay, and how close were you from him? How clearly, clear was he to you when you saw him?

A A good 15 to 20 feet.

Q Okay, could you see his face?

A Yes, sir.

Q At any point in time did he try to obscure his face?

A While, while we was - while we was walking down towards Super Chic.

Q Okay, and keep going on that. When you're walking towards Super Chic what did he do?

A I seen him try to put like a white fabric, a fabric or maybe a white shirt over his face, like try to tie it over his face and the next think I know I just seen him, he just started shooting.

Q Okay, what was the lighting - what were the lighting conditions around that period of time?
A It was like it was like the Super Chic lights was on actually, so, I knew who it was, I seen who it was.
Q Okay, and then when the - actually when the gun went off about how far were you from Mr. Leggette?
A I want to say between 10, no more than 15 feet.
Q Okay, and where were your - where was your focus at that time? What were you looking at?
A I wasn't - I was just looking at the gun, really. That's, that's what really just made me try to get out the way.
Q Okay, after this happened did at some point in time did you give a statement to law enforcement?
A Yes, sir.
Q And did you give a description of who the shooter was?
A Yes, sir.
Q And what did you say?
A A black male, dreadlocks, black t-shirt, blue jeans.
Q And did you use the person's name?
A After I found out who it was, yes, sir.
Q Just in the statement, just at that time did you use his name?
A No, sir.
Q Did you know who it was?

A By face, yes, sir.
Q Okay, and well, I won't ask you that. Did that information - at some point in time did Investigator Lee talk to you about this incident?
A Yes, sir.
Q And at some point in time did he ask if you would look at some pictures?
A Yes, sir.
Q Okay, please tell us about that.
A He gave me a chart looking envelope that had six black males on it. He told me, he told me that to look and see if any, if Mr. Leggette was in the lineup. I looked at the lineup. I immediately seen number five, that was Dominic Leggette and I initialed and put the date.
Q Okay.
MR. HIXSON: Your Honor, may I have that, Your Honor?
BY MR. HIXSON:
Q Al, let's take a look at what's been marked as State's or Court's Exhibit Number Seven. Take a look at that. Do you recognize that?
A Yes, sir.
Q And what is that?
A It's a six photo lineup.
Q Okay, is that the same item that you saw August 14th?
A Yes, sir.

Q Okay, did - were you - did you feel like you were under any pressure to pick a specific person?
A No, sir.
Q Were you told - what other - were any other instructions given to you or, or do you, or do you recall if there were?
A I don't remember, sir.
Q Okay, were you told that you had to pick somebody?
A No, sir.
Q Will you turn that around on the back of that form, please, and what is that on the back of this form?
A Just a statement asking me to look at the groups in the photograph, the pictures, and ---
Q Do you recall if you were apprised of those warnings on that day?
A I'm not sure.
Q Okay, but you didn't feel pressure to pick somebody?
A No, sir.
Q And in fact did you pick somebody?
A Yes, sir.
Q Okay, and who did you pick?
A Number five, Dominic Leggette.
Q Okay, and about how long, how much time transpired from the time that you first saw that form until you picked somebody?
A I want to say less than ten seconds.

Q And did, did Investigator Lee ever tell you that Dominic Leggette was in that form?
A No, sir.
Q Okay, okay, I just wanted to clarify that. Once you saw - picked number five, what did you do?
A I put my initials and the date.
Q Okay, did anything else happen during that meeting?
A No, sir.
Q Okay.

MR. HIXSON: Your Honor, I have no further questions for this witness.

THE COURT: All right, Mr. Hazzard.

EXAMINATION

BY MR. HAZZARD:

Q Okay, Mr. Ingram, you knew who Dominic Leggette was because you had had previous fights with him, correct?
A Yes, sir.
Q Okay, when was that?
A A year prior to the shooting.
Q Okay, and no fight two days prior to the shooting?
A No, sir.
Q And no - because August 13th was on a Wednesday, correct?
A Yes, sir.
Q Okay, and you all did not have an altercation the preceding Monday and then the Saturday prior to that?

A Not between me and Mr. Leggette.
Q Okay, well, then who was it between, sir?
A Well, people that he associate with.
Q Got you. So, that was on that Wednesday, the Wednesday when the incident occurred where you were injured, correct?
A Yes, sir.
Q And then there was some prior altercation two days prior to that, that Monday?
A Yes, sir.
Q And then an altercation two days prior to that, that Saturday; is that correct?
A Yes sir.
Q Okay, now, when Detective or Investigator Lee showed you the photographs there, he did not - he said he couldn't tell you who it was, he said you had to pick it out on your own; correct?
A Yes, sir.
Q Okay, but he never specifically said the person who shot you might not be in these pictures; did he?
A No, sir.
Q Okay, thank you.
MR. HAZZARD: No further questions.
THE COURT: Mr. Hixson?
MR. HIXSON: No further questions, Your Honor.
THE COURT: All right, you may step down. Call your

next witness.

MR. HIXSON: I have nothing, just argument, Your Honor.

THE COURT: All right, anything from the Defense?

MR. HIXSON: Very briefly, Your Honor, as the Court knows in this type of Biggers situation, what concerns the Defense is that Investigator Lee by his statements and actions intimated that the perpetrator of the crime, their picture could be found in that photo array, and as the Court knows that is extremely improper. Detective Lee could not indicate that he read the actual warnings on the back of the folder. The witness, Mr. Ingram, has indicated that he either does not recall or does not believe he was ever read those warnings, which I would think the warnings specify that the person that committed this offense may or may not be included. So, you don't have that and you have Detective Lee saying, "I can't help you, but you have to pick him out yourself," which gives the impression and imprimatur that the guilty party can be found among those six photos. We would submit that makes the lineup itself unduly suggestive and improper. We would submit that, therefore, it should be excluded from evidence in this case.

THE COURT: All right, Mr. Hixson?

MR. HIXSON: Your Honor, we presented this information to the Court out of an abundance of caution. We don't really believe this is a Neil v. Biggers issue at all simply because

Mr. Leggette or, excuse me, Mr. Ingram already knew Mr. Leggette. He told the detectives that he knew who did it. He knew him before but couldn't remember his name. Just out of an abundance of caution we try to present this pretrial to clear up the issue at trial, but Neil v. Biggers applies specifically when there has never been any identification before and they see that person to begin with the first time during the course of the incident and that makes sure there's nothing suggestive prior to that. There's testimony from Mr. Ingram that he knew him from the neighborhood, knew him before. In fact the cross examination line by Mr. Hazzard indicated he tried to run - ran home the point that he knew him before. So, not only do we feel that the - we have accomplished and satisfied the Court's questions on Neil v. Biggers, but our second position would be that or perhaps our first position that Biggers doesn't apply.

THE COURT: All right.

MR. HIXSON: That the ID had already occurred.

THE COURT: All right, well, regardless, I think, I think there has been a showing of reliability under the totality of the circumstances. It will be up to the jury to determine how much weight to give to the identification, but I think the State's satisfied its burden to at least make it admissible.

All right, anything else?

MR. HAZZARD: Okay, Your Honor. Do you have something else (to Mr. Hixson)?

MR. HIXSON: Your Honor, just a few more things relating to photographs, but I think that Mr. Hazzard and I can look at those together and come to a resolution relating to objections at an appropriate time.

MR. HAZZARD: Have I seen all of them?

MR. HIXSON: Not yet.

MR. HAZZARD: Okay.

Your Honor, a couple of things from the Defense perspective, one, obviously, the Defense would request that any and all witnesses on both sides be sequestered prior to their testimony.

THE COURT: All right, any opposition to that?

MR. HIXSON: No, Your Honor.

THE COURT: All right, so all witnesses will be sequestered except for Mr. Leggette and who is going to be your chief investigating officer?

MR. HIXSON: Investigator Eddie Lee.

THE COURT: All right, with the exception of Investigator Lee. I'm trying to write this down.

MR. HIXSON: Your Honor, I apologize about that, Mr. Brown, Investigator Brown needs to work on the audio-video equipment on the computer, and if that's the case then I need to have Mr. Brown present to run that.

MR. HAZZARD: Defense has no objection to both Investigator Lee and the, you know, and, and Officer Brown being present, Investigator Brown being present.

MR. HIXSON: Thank you, Mr. Hazzard.

THE COURT: All right, so, Mr. Lee - Investigator Lee can be present, Investigator Brown can be present, the Defendant can be present, all other witnesses will be sequestered.

MR. HIXSON: Thank you, Your Honor.

MR. HAZZARD: All right, the second thing with regard to the Defense perspective, Your Honor, I would want to - there is a very real possibility that the Defendant will take the stand, and in order to streamline things I didn't know if the Court wanted to address the issue of his prior convictions on whether any of that would be admissible against him if he decided to take the stand, that way once we get into the trial and get into the Defense case, we would not have to take a break for that purpose. We could make that determination today, if the Court so wishes.

MR. HIXSON: Your Honor, my understanding he doesn't have any impeachable convictions. I will run a new NCIC on him, but my understanding he's been incarcerated during the pendency of this trial and I would not expect to find anything additional other than, of course, for impeachment if he, you know.

THE COURT: Let's do it this way, how about go ahead and do your NCIC or whatever you got to get and give it to Mr. Hazzard and at least we'll have it on notice so when it comes time, the State rests, we can address it at that time, okay?

MR. HIXSON: Thank you, Your Honor.

THE COURT: But at this time you're saying you don't know of any impeachable offenses?

MR. HIXSON: No, there doesn't appear to be any.

THE COURT: Okay, all right, well ---

MR. HIXSON: Based on a prior conviction.

THE COURT: --- you'll need to bring it to the Court's attention before you introduce anything, okay?

MR. HIXSON: Yes, sir.

THE COURT: All right, Mr. Hazzard?

MR. HAZZARD: Okay, Your Honor, with regard to the Defense subpoenas, we would like to place a couple of things on the record; number one, the Defense subpoenaed a young man by the name of Jamie White. It is our understanding through investigation that although he would be a possibly pivotal witness in this case, it is our understanding through investigation that, number one, he is no longer in the State of South Carolina, he is in the state of Virginia, and number two, that he is - as the result of an illness he is physically incapacitated; and therefore, even if he were present would not be available to testify; and so, I did want to place that

on the record because Mr. Leggette had mentioned that this individual could shed some light on the facts of the case, and we have tried to obtain his testimony on the Defendant's behalf. Secondly, with regard ---

THE COURT: Well, first, excuse me, let me back up.

MR. HAZZARD: Yes, sir, sure.

THE COURT: I apologize for interrupting, but what do you want me to do with regard to that?

MR. HAZZARD: Nothing, Your Honor, I'm simply placing it on the record because the Defendant had indicated to me that as a matter of course I ask all my clients, "Who would you want to have available to testify at trial?" He had indicated Mr. White was someone he wanted available and I did not want there to be any question as to why the Defense did not produce Mr. White.

THE COURT: All right.

MR. HAZZARD: Okay?

THE COURT: All right, sir.

MR. HAZZARD: There are a couple of individuals who are subpoenaed by the Defense in addition to Mr. White. One is a Sharon McGee. I would place on the record with the Court, Mr. McGee has been subpoenaed, he did appear today pursuant to the subpoena. I requested that he return pursuant to the subpoena at approximately 11 a.m. tomorrow, and I place that on the record in case he doesn't appear. I would then ask the

Court to request that the sheriff go and obtain his presence.

The second witness, and I believe both parties have this individual subpoenaed, is Craig Jackson. I do not know if he is present at this time, have not spoken to him but if he does not come tomorrow, then I would be making that same request, Your Honor.

THE COURT: All right.

MR. HIXSON: And Your Honor, Mr. Jackson just heard what he said. So, I think he'll be here.

MR. HAZZARD: All right, excellent.

Nothing further from the State [sic] with regard to pretrial motions in this case, Your Honor.

THE COURT: All right, anything further from the State?

MR. HIXSON: No, your Honor, other than that it's just if we can clear up the pictures and make sure that's streamlined and I think we're in good shape.

THE COURT: Do you all want to do that now or ---

MR. HIXSON: Yes, sir.

THE COURT: --- or get together?

MR. HIXSON: Yes.

THE COURT: All right.

MR. HAZZARD: Okay, Defense has no objections to the photographs, Your Honor.

THE COURT: All right, let's go ahead and get them on

the record for identification, not that we're putting them in now, but at least we'll have a record that you've reviewed them.

MR. HIXSON: Number one is a - you want them one by one, Judge?

THE COURT: Well, no, just tell me, give - they're marked for identification as State's Exhibits what?

MR. HIXSON: State's Exhibit One is an overhead aerial photograph.

THE COURT: You don't have to tell me what they are, just what the numbers.

MR. HIXSON: Okay, two through - I believe they are all the way - one through 30.

THE COURT: All right, so ---

MR. HIXSON: They'd all be photographs, 29 is a photograph, 30 should be a crime scene sketch.

THE COURT: All right, so, the Defense has no pretrial objections to Plaintiff's Exhibits one through 30?

MR. HAZZARD: That is correct, your Honor.

THE COURT: All right. All right, anything else?

MR. HIXSON: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing further from the Defense at this time, Your Honor.

THE COURT: All right.

MR. HIXSON: I do have one other thing, Judge, I apologize.

THE COURT: All right.

MR. HIXSON: Chief Knox is on the witness list, mainly for pretrial matters and I would - don't mind excusing him subject to recall so he can tend to his duties.

THE COURT: Any objection by the Defense?

MR. HIXSON: And also be ---

MR. HAZZARD: Without objection.

THE COURT: All right, he'll be excused. He's still under subpoena which means that once you're contacted you would need to return pursuant to the subpoena, but we're not going to make you sit in court throughout the trial.

MR. HIXSON: All right, would that be appropriate then if he wants to come in he can watch because I don't intend to call him as a witness?

THE COURT: Well, if he's going to appear as a witness he's going to be sequestered.

MR. HIXSON: He's not.

THE COURT: Okay, all right, otherwise he's - anybody that is not sequestered will not be allowed to testify except for Investigator Lee, Investigator Brown and the Defendant.

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right, anything else before we break? All right, we'll stand in recess until 9:30 tomorrow morning.

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right, thank you.

OFF THE RECORD

(On the record, Tuesday, March 30, 2010.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, I understand that there is at least one pretrial matter that we need to bring up; is that correct?

MR. HIXSON: That's correct, Your Honor, I think there's a couple, there is two of them.

THE COURT: All right, all right, well, let me do this, rather - the jury has been back there for a while. Let's go ahead and bring the jury in. I'm going to tell them that we still have some pretrial matters, apologize to them for keeping them back there so long, but it's something that can't be avoided so that they'll - they won't be sitting back there, you know, wondering what's going on. I did receive a note from the jury, Carol Scott, Juror Number 119, has been selected as the foreperson and we'll mark this note as Court's Exhibit Eight.

(Court's Exhibit Number Eight [Foreperson Selection] appropriately marked.)

THE COURT: Thank you. All right, let's bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back. I hope everyone had a good evening. We're getting ready to start the trial of this case, but I wanted to bring you out at this point in time to, number one, thank you for being prompt and being here ready to go and, number two, to apologize to you for keeping you back in the jury room for so long. I do have some opening instructions that I will be giving to you shortly; however, I wanted to let you know why we're keeping you back in the jury room at this point in time and I'll explain it a little bit more later on when we start the trial of the case, but what I will instruct you in my preliminary charges are that you, the jury, are the sole deciders of the facts in this case. I, on the other hand, as the judge decide the law that is applicable to this case and there are certain legal matters that require me and the attorneys to discuss issues of law and when we decide these issues of law sometimes it requires us to discuss factual matters and we don't want anything that the attorneys say or anything that I say as a judge to influence you in your findings of the fact and I'll explain it a little bit later when I give you my opening charge, but suffice it to say that for the time being, you and you alone decide the facts of this case based upon the testimony and evidence presented at trial.

Now, nothing that I say in deciding these legal issues and nothing that the attorneys say in arguing these legal issues is testimony or evidence; and therefore, you should not be influenced by what we say during the course of these legal matters and that's why we excuse you to the jury room while we discuss it. It's so that you will not be influenced by anything that the attorneys say or anything that I say.

I understand that Ms. Scott has been selected as foreperson, and I thank you for serving in that capacity. If you would always occupy that seat where you are, Ms. Grimes and Mr. Byrne, if you would always occupy the alternate seats, the rest of you are at liberty to sit wherever you like.

Now, before we proceed in this matter, I want to go ahead and introduce you to some of the court personnel, who you have met some of them and the others that you will be working with this week.

(Court personnel introduced by Court.)

THE COURT: Now, at this point in time we do have some more legal matters that I need to take up with the attorneys before we start the trial of this case. So, I'm going to excuse you back to the jury room, give you another opportunity to stretch your legs before we get into this case. So, please do not discuss the case even among yourselves at this point in time and we'll bring you out very shortly. Thank you very much.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, Mr. Hixson, what issue do we want to take up first?

MR. HIXSON: Thank you, Your Honor. We have a matter we alluded to yesterday about, I think, three dying declarations. Thought it would be appropriate to take that matter up and provide the foundation for that pretrial. I believe we've had a discussion with Mr. Hazzard and he would like to suppress those. I think it's his motion and I'm prepared to go forward.

THE COURT: All right, as I explained back in our conference, I can leave it up to you, Mr. Hazzard, whether or not you want to bring a motion, oral motion in limine to suppress those or wait until they are offered, however you want to proceed.

MR. HAZZARD: In light of the fact that those - that I know the State intends to attempt to introduce them, I would make an oral motion in limine at this time to suppress any alleged dying, dying declarative statements made by Antonio Tisdale.

THE COURT: All right, all right, Mr. Hixson, do you want to go ahead and proffer your testimony and let's see how we're going to do it?

MR. HIXSON: Yes, Your Honor, that'd be great.

THE COURT: Okay, all right.

MR. HIXSON: The State would call Craig Jackson to the witness stand, please.

Whereupon, Craig Jackson was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated, state your name for the record.

MR. JACKSON: Craig Jackson.

EXAMINATION

BY MR. HIXSON:

Q Good morning, sir.

A How you doing?

Q Tell us what you do for a living.

A I'm a cook.

Q Okay, and you live here in Georgetown County?

A Yes, in Andrews.

Q And I'll try to shortcut this a little bit since we're not in front of the jury here. Do you recall being in the Andrews Section of Georgetown County back on August 13th of 2008?

A Yes, I was.

Q And where were you?

A I was at Carnell's Bar and Grill.

Q Okay, and did an incident, a shooting incident happen down - during that period of time?

A Yes, sir, it did.
Q Okay, at some point in time, just try to fast forward you to the point we're talking about. Did you hear gunshots?
A Yes, I did.
Q Okay, did you actually see a shooting?
A Yes, I did.
Q Okay, did you see the victim or the victims in that shooting?
A Yes, sir, I did.
Q And who were they?
A It was Billy better known as Tony and Alfonso.
Q Okay, you talked about a couple of different names there. Can you be more - describe to the Court exactly what people you're talking about?
A Tony is the victim, the one that was, that's deceased.
Q Antonio Tisdale?
A Yes.
Q Did he - do you know, did he go by any other nicknames?
A Billy.
Q He went by Billy also?
A Yeah.
Q So, when you say Billy, Tony and Antonio, all of that is Mr. Tisdale; is that correct?
A Well, Antonio I think his - the other guy name is Alfonso; right? You taking about Alfonso?

Q Al Ingram is the victim in the assault and battery with intent to kill indictment.
A Yes.
Q I'm just trying to clarify the names because I know there are some names floating around there.
A Right.
Q Okay, so, let me back up. So, did you see the victims in this shooting?
A Yes, I did.
Q And who were they?
A The first one, the one that's deceased was Tony, better known as Billy.
Q Okay.
A And the second was the one with the, with the, with the wound or that's still living is Alfonso.
Q Okay, now, tell us what happened from the time that you saw the shooting, what happened after that?
A From the time I saw the shooting?
Q Uh-huh.
A Well, after I saw the shooting, after I saw the shooting they both came back running by me and then Tony stopped and said, "Dominic shot me," and held his shirt up and he kept on running. Well, Alfonso kept on running, Tony stopped at me and said, "Dominic shot me," and when he held his shirt up, I saw the hole in his chest.

Q Okay, now, tell me, you intimated that they both - let's just talk about Mr. Tisdale, the one that passed away ---
A Right.
Q --- the person that passed away. Did you say he was running back towards you?
A They both were, but Tony stopped to me because I was standing right in front of Carnell's on the right hand side of the door. Alfonso kept right on running, but Tony stopped for a brief moment and said, "Dominic shot me."
Q Okay.
A And then he kept, he - Alfonso was running and Tony kept - after Tony said that to me he kept - he ran, then he collapsed right near Blue's place.
Q Okay, tell us about, I know this may seem like a silly question, but tell us about what Mr. Tisdale's demeanor was like during that period of time.
A You mean when he stopped in front of me?
Q Yeah, when you saw him coming towards you, all through the conversation and beyond.
A Well, he was, he was panicked, you know, I guess, I guess in shock that, you know what I'm saying, that he got, that they, that they got shot.
Q Okay, but he ---
A I mean that's what I see, that's what I saw.
Q Okay, and from the time that he made that statement to

you, from ---
A He, he was, he was upset, he was, he was, he was panicked, you know, it was like he couldn't believe it that he got shot.
Q From the time that he made the statement, "Dominic shot me" ---
A Uh-huh
Q --- how much time transpired until Mr. Tisdale collapsed?
A Not even, not even a minute.
Q Okay, did Mr. Tisdale regain consciousness after that?
A Well, I don't really know, well, because what I did was after, after, after he stopped in front of me and said that the guy shot him, I stepped back inside real fast and told them, you know, that, that the two, that they got shot, and then I came back outside. When I did come back outside he was laying in his brother's arm. I went and looked at him. Then I went across the street to my car.
Q Were other people around?
A A lot of people.
Q While Mr. Tisdale was on the ground?
A Yes.
Q Did he appear to you to seem like he was still under the stress of the incident?
A You mean when he was laying on the ground?
Q Well, let me back up.

A Okay.
Q Was he unconscious when he was laying on the ground?
A From what I see he was.
Q Okay.
A From what I saw.
Q Prior to him becoming unconscious, did he appear to you to seem to be still under the stress of this incident?
A You mean when he was laying on the ground or ---
Q No, when he was still conscious.
A When he was still conscious? Can you answer that - ask that question again?
Q Was he excited and stressed out?
A Yes, he was.
Q And just briefly to clarify for the Court, how much time transpired from when you heard the shots fired till you saw what was going on down there ---
A Uh-huh.
Q --- until Mr. Tisdale ultimately fell unconscious?
A I'd probably say three to four minutes at least cause they were running, running pretty fast, you know.
Q So, it's all around the same time period?
A Yeah.
Q A pretty quick incident?
A Pretty quick incident.
MR. HIXSON: I have no further questions of this

witness at this time, Your Honor.

THE COURT: All right, any challenges?

EXAMINATION

BY MR. HAZZARD:

Q Good morning, Mr. Jackson. How are you?

A How you doing?

Q Now, you indicated that you actually saw the shooting occur?

A Yes, I did.

Q How far away did it occur from where you were standing?

A At least 20, maybe - at least 30 feet from where I was or more.

Q Okay, at least 20 or 30 ---

A Yeah.

Q --- possibly more?

A I'd say, yeah.

Q Okay.

A Uh-huh.

Q Now, let's back up a little bit. Did you see Mr. Ingram and Mr. Tisdale before this alleged shooting occurred?

A Yes, I did.

Q Okay, and tell us about that if you would.

A Well, what happened was I was, I was, I was on the inside of the bar and grill. So, I said I was going to step outside and catch some air and as soon as I step outside to catch the

air, I lean on the wall and all the guys were standing to the left of me. All of them had on white t-shirts.

Q All what guys, sir?

A Alfonso and Tony, better known as Billy, and a bunch of more of his, a bunch of more of the friends.

Q Okay, and was there any conversation between you and them at that time?

A None. I was just standing there by myself.

Q Okay, and then what happened?

A And then someone said, "That's Dominic right there." So, when they said that was Dominic right there, I got up off the wall and I looked, I start - Tony - after Tony and Alfonso started walking down the street, I got up off the wall and I looked, you know what I'm saying, then Dominic started walking back down the street and they went, you know, they were walking behind him.

Q Okay, did they ever indicate that they were looking for him or wanted to see him?

A No, nobody wasn't - they wasn't - nobody wasn't saying a thing, nothing. Nobody wasn't saying anything. All I heard was when they said, "That's Dominic right there," when they started walking behind him, I figured there was going to be a fight. So, I got up off the wall and I started looking down the street.

Q Okay.

A Uh-huh.
Q All right, no further questions.
A All right.
THE COURT: Redirect?
MR. HIXSON: No, Your Honor.
THE COURT: All right, you may step down.
A All right.
MR. HIXSON: Simply argument, Your Honor.
THE COURT: All right.
MR. HIXSON: As it relates to the statement that we intend to proffer by Mr. Jackson, that that satisfies the elements as a 804(B)(2). That specifically is a statement based on the belief of an impending death. Mr. Tisdale was shot. It was a traumatic event. He was aware of the fact that he was shot during that period of time. He suffered an immediate impact of that shooting event; in fact, he lost consciousness within minutes after the event. Testimony proffered indicates that he is obviously feeling the effects or stress of the event and we feel like we have satisfied that element under 804(B)(2). In addition to that we also would proffer that as an excited utterance if Your Honor finds that unsatisfactory.
THE COURT: All right.
MR. HAZZARD: Your Honor, I would submit there was nothing, no statement made by Mr. Tisdale that would give the

indication that he believed that he was suffering impending death. In fact, the man was running apparently right up to the point where he dropped. He was running and then he stopped and then he pulled up his shirt more out of surprise and said, "Dominic shot me." Then apparently according to Mr. Jackson's testimony proceeded onward. That would not indicate an individual who believed that they were facing impending death, Your Honor.

THE COURT: All right, I find that the statement by the victim, Antonio Tisdale, that "Dominic shot me," is admissible under Rule 803(2), South Carolina Rules of Evidence as an excited utterance. I think it satisfies those requirements. So, I deny your motion in limine to suppress that statement. You still may raise an objection when it's tendered at trial, you know the groundwork still has to be laid at trial, but I'm not going to grant your motion in limine. All right, anything else?

MR. HIXSON: Yes, Your Honor, we have two more of the same statements.

THE COURT: All right.

MR. HIXSON: At this time the State would call Jamar Mitchum to the stand, please.

Whereupon, Jamar Mitchum was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state

your name for the record.

MR. MITCHUM: Jamar Mitchum.

EXAMINATION

BY MR. HIXSON:

Q Good morning, sir. Good morning, sir, how are you?

A I'm fine.

Q Can you please tell the Court what your relationship is to Billy Tisdale?

A He's my brother.

Q Okay, and I'm sorry about your loss.

Were you in the Andrews Section of Georgetown County, August 13th of 2008?

A Yes, sir.

Q Were you outside of an area in the uptown area around Carnell's and Blue's, that area?

A In between Blue's Nightclub and Carnell's Nightclub.

Q Okay, and did a shooting incident occur during that period of time?

A Yes, sir.

Q Okay, we'll - to try to get straight to the point relating to that, at some point in time did you see who the victims of the shooting case were?

A Yes, sir.

Q Okay, and who were they?

A Antonio Tisdale and Alfonso Ingram.

Q Okay, tell me what you saw. Did you hear gunshots?
A Yes, sir.
Q Tell me what you saw after you heard gunshots.
A Well, I saw Al fell in the road. He took off running back towards us first and if you're looking directly down the sidewalk from Blue's Nightclub or Carnell's Nightclub, you cannot see down the sidewalk, bushes are sticking up. So, when I did step in the road after I heard the gunshots, I saw my brother running right behind Al. I said well maybe whoever did the shooting maybe just had shot in the air. So, when he got up to me after he passed Carnell's Nightclub, he collapsed and I was holding him. His last words been to me, "Miles," he called me, "Bro, please carry me to the hospital. Dominic just shot me."
Q Okay, could you tell the Court again what - in what position was Mr. Tisdale when he spoke to you?
A Yeah, he was in shock, but he was in his right mind.
Q Okay, was he excited?
A A little like he was, it shocked him that he was shot. He still was talking, he still was breathing, he had a pulse. After he, after he collapsed, he still was breathing.
Q Okay.
A You know, when I - I just left, I couldn't see him like that.
Q Okay.

A And I came back.
Q At some point in time did Mr. Tisdale lose consciousness while you were there, just ---
A No, not to my knowledge.
Q --- okay, don't guess at the future, just what you saw.
A No.
Q Okay, he was still conscious?
A He was still in his right mind.
Q Okay, did you see, did he have a shirt on when you saw him?
A Yes, I, I - well, I the one helped took the shirt off after he collapsed and was holding it on the wound.
Q Okay, so you were trying to tend, some medical assistance to him?
A Yeah, I was telling him, well I kind of panicked, but I was telling him just to stay calm and I couldn't see him like that, I mean.
Q Okay, tell me how much time transpired from the time that you heard gunshots till you heard what Antonio told you?
A It wasn't that far apart because, I mean, I walked from Super Chic to Blue's, Carnell's Nightclub is no longer than two minutes maybe. So, and they was running. So, it wasn't that long, but after everything happened I give him three to four minutes maybe, and he was ---
Q So, about three - let me see if I understand, about three

minutes from the time you heard the shots till they ran - till Antonio and Al ran up there?

A Al got back to Blue's Nightclub.

Q Till he collapsed and he said, "Take me to the hospital. Dominic shot me"?

A Yes, sir.

Q Okay, did he still seem to be under the stress of what just happened? He was stressed out?

A Yes, well, I mean because he was still talking, he was in his right mind, I mean, but he was shocked.

Q I have no further questions, Your Honor.

THE COURT: All right, Mr. Hazzard?

MR. HAZZARD: No questions, Your Honor.

THE COURT: All right, you may step down.

MR. HIXSON: And Your Honor, our argument on this would be the same as the other, we believe that the statement was made in the fear of impending death. The Defendant, some of the case law and interpretation of 804(B)(2) doesn't indicate that the victim absolutely had to know that he was going to die for sure, he was under the stress of the event, ultimately passes on, as well as we proffer as well under excited utterance.

THE COURT: All right, all right, I find that that statement, "Miles, take me to the hospital. Dominic just shot me," is - qualifies under Rule 803(2) and Rule 804(B)(2) for

admissible as an excited utterance and as a dying declaration. So, I'll permit it. I deny the motion in limine to suppress that statement. All right.

MR. HIXSON: Thank you, Your Honor.

The State would call Al Ingram.

Whereupon, Al Ingram was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

MR. INGRAM: Al Ingram.

EXAMINATION

BY MR. HIXSON:

Q Good morning, sir.

A Good morning.

Q You've testified a little bit yesterday; didn't you? So, you're a little familiar with what we're going to talk - I'm going to get kind of straight to the point on this, too. We'll save the other stuff in front of the jury, okay?

A Yes, sir.

Q Were you in Georgetown, excuse me, Andrews in Georgetown County, August 13th of 2008?

A Yes, sir.

Q Were you down in front of Carnell's, Blue's Nightclub, that area?

A Yes, sir.

Q At some point in time did a shooting incident happen down there?
A Yes, sir.
Q Okay, were you, in fact, shot that evening?
A Yes, sir.
Q Okay, let's go, not to get in a whole bunch of detail yet, let's go back to the moment you were shot, okay. Did you see who shot you?
A Yes, sir.
Q Okay, tell me what happened from the time that you were shot, what happened after that?
A Well, after I was shot I instantly just I fell in the street, and I just ---
Q Was anybody with you? I apologize. Was anybody with you also?
A Yes, sir.
Q Okay, who was with you?
A Antonio Tisdale.
Q Okay, the one we some - some folks are calling Billy, that's the same person?
A Yes, sir.
Q Okay.
A After I was shot, I instantly fell in the street, and I just remember hopping right back up and I just looked at Antonio, he looked at me and then I just remember it was just

start taking off running back towards the car, and while we was running we was really basically side to side. I wasn't - he wasn't too far from behind me and I just remember saying he was, I just remember saying to him, I was like, "Billy, he shot me," and he said back to me, he was like, he was like, "He shot me, too", and I just remember kept running till I got to the car.

Q Okay, did you see Antonio, Billy, after that, that moment when he said that? What happened after that?

A I just remember I just kept running until I got to the car, and then when I turned around to see if Billy was by me and near the car I didn't see him. So, that's when I walk back to the front of the club and that's when I seen he had collapsed.

Q Okay, did you have, exchange anymore words? Did he say anything to you after that moment?

A No, that was the last thing he said to me, sir.

Q Okay, can you describe to the Court what his demeanor was like, how he was acting? I guess he was running at the time, right?

A Yes, sir. I think at the time it probably really didn't faze him because like it happened so quick. Like my adrenaline was pumping, I didn't - I really didn't feel the shot. I really at the time I don't think he really felt it until he collapsed. That's when he realized that it was real

bad.
Q Did you say adrenaline was running?
A Yes, sir.
Q Did it appear to you that Billy's adrenaline was running?
A Yes, sir.
Q Did he seem excited about the incident? I know that's s a silly question, but ---
A Yes, sir.
Q Okay.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right, Mr. Hazzard?

EXAMINATION

BY MR. HAZZARD:
Q Sir, whose car were you and Mr. Tisdale running to?
A Mr. Tisdale's car, sir.
Q What type of car is that?
A It's a, I want to say a Cadillac Deville.
Q Okay, what color was it?
A White.
Q Okay, and you indicated that you and he were running and then at some point you realized that he was no longer following you?
A Yes, sir.
Q Okay, all right. Thank you, no further questions.

THE COURT: All right, redirect?

MR. HIXSON: No, Your Honor.

THE COURT: All right, you may step down.

MR. HIXSON: And Your Honor, I would just - for the Court's efficiency, the same argument that I made two prior times.

THE COURT: All right. I deny the motion in limine to suppress the statement, "He shot me, too." I think that's an excited utterance, qualifies for admissibility under Rule 803(2), South Carolina Rules of Evidence.

All right.

MR. HIXSON: Thank you, Your Honor.

THE COURT: Anything else?

MR. HAZZARD: Simply, Your Honor, the Court ruled on our motion for sequestration yesterday, indicating that all witnesses other than the Defendant, Investigator Brown and Investigator Lee would be sequestered and I would ask that that be done at this time.

THE COURT: All right. Any objection?

MR. HIXSON: No, Your Honor, not at all.

THE COURT: All right, anybody who's going to testify in this case you need to go with the security and the bailiffs. We'll sequester you and we'll call you out as we need.

MR. HIXSON: May we approach?

THE COURT: All right.

(Whereupon, a bench conference is held.)

THE COURT: All right, sir.

MR. HIXSON: Your Honor, we have one additional individual, Ron Gardner, that heard factually the substance of the same statements that were made to the other witness that we have proffered. We're prepared to go forward with the pretrial motion on that if necessary, but just I'm bringing to the Court's attention just for judicial efficiency.

THE COURT: All right, Mr. Hazzard, do you want to move in limine to suppress that statement?

MR. HAZZARD: The Defense would.

THE COURT: All right.

MR. HAZZARD: Okay.

THE COURT: Let's go ahead and call him.

MR. HIXSON: Thank you, Your Honor. The State calls Ron Gardener to the witness stand, please.

Whereupon, Leron Gardner was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

EXAMINATION

BY MR. HIXSON:

Q What's your name, sir?

A Leron Gardner.

Q Okay, Mr. Gardner, I believe - can you speak up just a little bit? Madam Court Reporter is going to have to hear everything you say.
A Leron Gardner.
Q Okay, how are you doing, sir?
A I'm doing all right.
Q All right, were you in Georgetown Section, Andrews in the Georgetown Section of Georgetown County - let me back up. Were you in Andrews on August 13th of 2008?
A Yes, sir.
Q And was there a shooting incident occurred around that period of time?
A Yes, sir.
Q Did you, did you see anything that happened with the victims in that case during that period?
A Yes, sir.
Q Okay.
A I saw Antonio running back from being shot, but I didn't see who shot him.
Q Okay.
A And ---
Q Was he with - was Antonio with anybody?
A Yes, sir, he was with Al Ingram.
Q Okay, okay, so, tell the Court what happened from the time, let me back up. Did you hear gunshots?

A Yes, sir.
Q Okay, tell the Court what you saw from the time you heard gunshots, did Al, the deceased, Mr. Tisdale say anything to you or did you hear him say anything, I should put that?
A Yes, sir, he said, "Dominic shot me."
Q Okay, now, tell, tell the Court what happened from the time that you heard the shots up until you heard those words?
A From the time - repeat that question, sir?
Q Tell the Court what happened from the time you heard the shots, what you saw, up until you heard Mr. Tisdale say those words.
A From the time I heard the shots, I saw Billy and Al running from like the area between Super Chic and up in that area and they were running back and Billy was like in with adrenaline, like he really didn't feel the shot or whatever at that time and then he passed out. Well, before he passed out they hold up his shirt and see the wound and stuff, then I caught him and then Miles was right there beside me and we was talking through the whole situation. Then he walked off and he came back and then ---
Q Who is he? When you say - who, who walked off and came back?
A Jamar.
Q Okay, that's Mr. Tisdale's brother?
A Yes, sir.

Q Okay, during that period of time when Billy, Antonio, the same person, finally get up to that area, where was Mr. Tisdale when he said those words to you?
A Right in front of Carnell's area like where the little alley is in between.
Q Okay.
A Both of those areas.
Q Okay, and was he standing? Was he laying down? What was he doing?
A He was standing at that moment.
Q Did you see the bullet wound?
A Yes, sir.
Q Okay, and about how much time transpired between the time you - he said those words and did he pass out or lose consciousness?
A In my arms he lost consciousness.
Q He did?
A Yes, sir.
Q Okay, did he appear to be, I know it's a silly question, did he appear to be stressed out with the event going on?
A No, sir.
Q Okay, then tell me, tell the Court how he appeared to you, what his demeanor was like.
A He was like kind of relaxed, he was like relaxed.
Q Did you feel like he was going into shock?

A I can't really say that cause I wasn't really him, but ---

Q Okay

A --- to me he seemed kind of relaxed and calm about the situation.

Q But you know he was aware he just got shot in the chest?

A Yes, sir.

Q Okay.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right, Mr. Hazzard.

EXAMINATION

BY MR. HAZZARD:

Q Good morning, Mr. Gardner.

A Good morning.

Q Very briefly, you told the prosecutor that initially Jamar Mitchum was holding Mr. Tisdale; correct?

A No, I was holding him.

Q You were holding him? So, Mr. Mitchum never was?

A He was right beside me.

Q Okay, but then you said Mr. Mitchum left?

A Yes, sir.

Q Did you see where Mr. Mitchum went?

A He stepped off just a little bit not far from - I could still see him in my eye.

Q I mean, he just walked away but - he just walked away a

distance?
A Yes, sir.
Q But he was still outside or where was he?
A He was still outside.
Q Okay, now, let's back up a little bit. Did you see Mr. Ingram and Mr. Tisdale prior to this alleged shooting?
A Yes, sir.
Q Okay, and where did you see them?
A In the front of us, me and Dominic, in the front of us at Carnell's.
Q Okay, and what happened then?
A There was like an altercation going on. I really didn't know too much what was going on, but it was like an altercation going on.
Q Between whom, sir?
A Between a group of people and Dominic.
Q Between a group of people and Dominic Leggette?
A Yes, sir.
Q Okay, and then what happened?
A Dominic was getting nervous or whatever and he took off running.
Q Okay.
A And they ran after him, sir.
Q And they, when you say they, does that include Mr. Ingram and Mr. Tisdale?

A Yes, sir.

Q All right, thank you, sir. No further questions.

THE COURT: Redirect?

MR. HIXSON: No, Your Honor. I'll take it up in front of the jury.

THE COURT: All right, you may step down. Thank you.

MR. HIXSON: And Your Honor, once again, would be the same argument relating to the dying declaration and excited utterance, Your Honor.

THE COURT: All right, yeah, I'm going to rule that it's admissible as an excited utterance under Rule 803(2) South Carolina Rules of Evidence.

MR. HIXSON: Your Honor, I believe the last thing we have and we discussed this a little bit pretrial. I don't know if Your Honor is able to craft a remedy I think we'll have to see the testimony, but we have concerns relating to prior incidences of bad conduct with individuals not related to this case, not the victim and not the Defendant, State vs. Day or among other ones indicate that incidences of bad conduct are inadmissible unless they relate specifically to between the victim and the Defendant. Since I don't know, Your Honor is aware, we don't know exactly what all is going to come out through the testimony and through the testimony of the Defendant. I just want to bring it to the Court's attention because we had, we have been discussing that.

THE COURT: Yeah, I know we discussed it and I don't know how to address it until when and if it comes up, then Mr. Hixson, you can raise your objection and I'll deal with it at that time.

MR. HAZZARD: Okay, because for the record, Your Honor, obliviously we would be going under rule 404(A)(2) the character - character evidence generally is not admissible except character of a victim, evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut same. So, 404 and 405 with regard to the methods of proving that character are controlling as far as the Defense perspective is concerned and I would submit that these rules of evidence would be controlling in this issue.

THE COURT: All right.

MR. HIXSON: And Your Honor, just as it relates to the record, I'm sure this will develop more into an issue. The State's position is evidence of a victim's other specific instances of violence are only admissible if directed against the Defendant or if directed against others were only so closely connected at the point of time or occasion with the killing to reasonably indicate the victim's state of mind, that's State versus Day, 341 S.C. 410, and that's kind of what we're dealing with, Your Honor, that's the State's opinion.

THE COURT: All right, well, as I say, unless and

until it presents itself I don't really know how to deal with it. Just raise your objections and we'll deal with it at that time; okay?

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right, anything else pretrial?

MR. HAZZARD: Nothing from the Defense, Your Honor.

THE COURT: Anything from the State?

MR. HIXSON: No, Your Honor.

THE COURT: All right, let's take about a ten minute break and then we'll come back, bring the jury in and get started, okay?

OFF THE RECORD

(On the record.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, anything before we bring in the jury?

MR. HIXSON: Yes, Your Honor, one brief point, my victim advocate brought to my attention as well that it wasn't clear during the course of your order for sequestration, Al Ingram is a victim in the case, and as such under the Victim's Bill of Rights under our constitution he has a right to be present during the course of this trial and your sequestration order didn't specifically address that and we're asking for clarification from the Court.

THE COURT: All right, Mr. Hazzard?

MR. HAZZARD: Your Honor, the Defense position is that Mr. Ingram is an integral witness in this case, as the Court has already heard throughout the course of the pretrial motions, the testimony the Court has heard is that there are some very differing statements as to what occurred on that night. I would not want there to be a situation where these witnesses would have a chance to hear each others testimony and piggy back on it. That would be to the detriment of the Defendant's constitutional rights to a fair trial under the Fourth, Fifth, Sixth and Fourteenth Amendments of our Constitution. We would, therefore, respectfully request that the Court maintain its sequestration order with regard to Mr. Ingram, and obviously I believe the Court's practice normally is that once a witness has given his testimony then the sequestration order no longer applies to him. So, I do not believe it will be a hardship on this victim, Your Honor.

THE COURT: Okay, yeah, I'm going to go ahead and leave him sequestered. I understand the argument, but I'm going to go ahead and leave him sequestered.

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right, anything else before we bring the jury in?

MR. HIXSON: No, Your Honor.

MR. HAZZARD: Nothing from the Defense.

THE COURT: All right, I think we'll bring them in, swear them, I'll give them the opening charges and then you all can go straight into your opening statements; okay?

MR. HAZZARD: Very good.

THE COURT: All right, let's bring the jury in. Thank you.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, we are now ready to begin the trial of the case of Dominic Alexander Leggette. I have some opening charges, but as I told you during jury qualifications and during voir dire, juries are often taking oaths and now it's time for you to take your oath to serve as jurors on this particular case. So, if everyone will please stand, raise your right hand while the clerk administers the oath.

(Jury sworn by Clerk.)

THE COURT: All right, any member of the jury who did not respond to the oath by saying I do, please stand.

(No response.)

THE COURT: Good.

All right, ladies and gentlemen, as I stated earlier we are beginning or getting ready to start the trial of the case of the State of South Carolina vs. Dominic Alexander Leggette, and before we begin this trial, I want to tell you that this

trial will probably be different from what you are accustomed to or from what you might expect. Many people do not have a chance to attend actual court sessions as you're doing now and may think from watching television or the movies or reading books that trials are often full of high drama, intense action and riveting circumstances. Now, while all of these things may be true in this case, it probably won't be. A trial is not for entertainment. It is a fundamental part of our democracy, a search for the truth in an effort to make sure that justice is done between the parties.

Now, searching for the truth and making sure that justice is done is often a slow, deliberate and repetitive process, the opposite of what you might have come to expect in the movies and television and reading books and other types of medias.

Now, the attorneys appearing before you are advocates for the parties they represent, but first and foremost, they're officers of the court. They are sworn to uphold the integrity and fairness of our judicial system and to help you in the search for the truth. You can expect them to be professional, competent and ethical in the representation of their clients' interest.

Now, what I will now say is intended to serve as an introduction to the trial of this case. These remarks are not a charge on the law in this case and I will instruct you on

the law applicable to this case at the end of the trial before you begin your deliberations and consider your verdict. This is merely an explanation of the procedure that we'll follow in the trial of this case so that you can better understand what may be happening.

Now, the Defendant is charged by indictments filed with this court with the crimes of murder and assault and battery with intent to kill, the elements of which will be explained to you at a later time. The indictment is simply the charge by which this case is brought into court and it is not in any sense evidence of any of the allegations it contains. The Defendant has pled not guilty to these indictments; and therefore, the State has the burden of proving each element of the indictments beyond a reasonable doubt. It will be your duty, ladies and gentlemen, to decide whether or not the State has met that burden of proof. Your purpose as jurors is to find and determine the facts. You are the sole judge of the facts. If at anytime I make any comment regarding the facts you must disregard my comments. You are to determine the facts from the testimony you hear and the other evidence introduced in court, and it is up to you to determine the inferences which you feel may reasonably be drawn from that evidence. It is especially important that you perform your duty of determining the facts diligently and conscientiously, because ordinarily there is no way to correct an erroneous

determination of the facts by a jury.

On the other hand and with equal emphasis, the same law that makes you the judge of the facts makes me the judge of the law. The law as given by the Court is the only law that you may consider. You must accept and follow the law as I give it to you even though you may disagree with it. Just as I cannot tell you what the facts of this case are, you cannot disagree with me about the law to be applied in this case. Your job is to take the law as I give it to you and apply it to the facts as you find those facts to be from the testimony and evidence presented during the trial of this case. After doing that you'll render your verdict, a true and just verdict under the solemn oath that you just took as jurors. Now, until I advise you to begin your deliberations, you must not discuss this case with anyone, including your fellow jurors. Do not discuss it with any friends, family members or anyone involved in the case. After the case is submitted to you, you must discuss it only in the jury room with your fellow jurors. The attorneys and parties in this case have been advised that they are not to talk to you at all. So, if you see anyone involved in the case and they do not say hello to you they are not being rude, they are just following the instructions of the Court.

During the trial do not read, listen to or watch any news reports about the case. This includes anything that may be in

the newspapers or on the internet, the radio or television. You must not consider anything you may have read or heard about the case outside of the courtroom, whether before or during the trial of this case. It is important that you keep an open mind and not decide any issue in this case until all of the evidence has been presented, the parties have made their closing argument and I have instructed you on the law of the case. It is your solemn responsibility to determine the guilt or innocence of the Defendant and your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as I instruct you during and at the close of the trial.

Now, in just a moment the Solicitor will make what is called an opening statement, in which the Solicitor will explain to you the issues in this case or at least what the Solicitor thinks the issues in this case are. The attorney for the Defendant may also make an opening statement, although he is not required to do so. What the attorneys tell you during their opening statements is not evidence in this case; it is only their contention as to what the issues in this case are. The evidence in this case will be presented to you by the testimony of sworn witnesses from the witness stand or by any exhibits that may be introduced into evidence.

Now, from time to time we may take breaks to address legal matters, but as I advised you earlier that is simply to

keep you from being influenced by anything that I may say or that the attorneys may say about the factual issues because your determination of the facts is to come exclusively from the testimony of the witnesses and any other evidence that is introduced in the trial of this case.

Now, in determining what the true facts are in this case you must decide whether or not the testimony of a witness is believable. It will be my responsibility to rule as a matter of law as to whether certain testimony is admissible at all or not, but once the testimony is admitted whether or not you believe it is solely within your discretion. In deciding whether to believe a witness you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way the witness acts on the witness stand. You have the right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means that it is your duty to pay close attention to the witnesses, to observe them, to listen to them and to pay close attention to the attorneys and to the Court. Don't let your thoughts wander but give strict attention to the testimony in this case so that at the end all of the testimony, after the arguments of counsel and a charge on the law, you will then be in a position to determine what the facts of this case are and

apply the law to those facts and thus render a true and just verdict.

All right, any challenges or additions to opening statements by the State?

MR. HIXSON: Not a one, Your Honor.

THE COURT: Any from the Defense?

MR. HAZZARD: None by the Defense, Your Honor.

THE COURT: All right, ladies and gentlemen, at this time we'll begin the trial of this case with opening statements. Mr. Hixson?

MR. HIXSON: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. HIXSON: Three shots. Bang. Bang. Bang. An absolute celebration of power, celebration of power. In that celebration those bangs didn't come from bottle rockets, they didn't come from firecrackers on the 4th of July. It was a coming out party, a coming of age for Dominic Leggette. About to turn 20 years old, about to turn 20 years old. He's coming of age.

You're going to hear a lot about the Andrews Section of Horry [sic] County in this case, that's where this murder happened. You're going to hear about problems between people who live in this part of town and this part of town. You're going to hear a lot of stories about 16 year olds, 20 year

olds, 22 year olds, everybody coming of age.

Now, we all come of age in different ways, different times. Some people graduate from high school. That's how they come of age, but we're talking about young males here, we're not talking about young females, we're talking about young boys, 16 to 22. Some people maybe they graduate from high school, their parents kick them out of the house and go, "You're on your own, son." Maybe sometimes the father dies and the mom has to say, "Son, now's your chance to be a man, you're going to have to take care of us, you're just - you're coming of age." You could go to college. Maybe you go in the military, now you're a man. Dominic Leggette decided he was going to be a man by packing a gun, taking it to a place to get into a confrontation. He knew he was going to get into a confrontation with people from the other side of town, and in three shots he came of age. That's what we're going to talk about today, that's what we're going to talk about.

You're going to hear testimony from the officers at the scene who set up the crime scene about what happened, what they observed, what they saw, three shell casings, in their best efforts never found a gun that committed this crime. You're going to hear about from the forensic pathologist who's going to talk to you about Antonio Tisdale. That's the young man who lost his life on that day. You're going to hear about a bullet wound to the chest and the bullet recovered from his

body on an autopsy table down in Charleston, South Carolina. That's what you're going to hear about.

You're also going to hear the testimony of a second person who was shot in this incident. That is Al Ingram, 16 years old at the time, shot in the ankle. You're going to hear a bullet was not recovered from that. Those are the facts that, those aren't in dispute. The question is how does a man become of age? That's the question.

You're going to hear about bad blood, you're going to hear about whether someone ran or walked down there to get in a fight with this young man. You're going to hear testimony there was no other weapon involved other than one gun and three shots. That's what this case is going to be all about.

Now, as you heard during jury selection my name is Assistant Solicitor, excuse me Deputy Solicitor Scott Hixson. I represent every citizen in Georgetown County and all the citizens in Georgetown County, collectively through me, have decided to indict this young man for murder, and murder in South Carolina is the intentional, unlawful killing of the person of another with malice aforethought, malice either express or implied. That's it, that's all there is to it. We'll get in a lot more detail about that during the course of our closing arguments when we talk about the law and we'll talk about what we heard, but right now that's the one charge we're facing and that is the murder of Antonio Tisdale, Billy

Tisdale. He goes by two names, done at the hand, really the trigger finger of a young man coming of age, Dominic Leggette.

During the course of this altercation, Al Ingram was also shot, but fortunately Mr. Ingram didn't pass on; and so, in South Carolina, we don't have a murder, attempted murder. We have what's called assault and battery with intent to kill. That's what the second indictment before you is is whether or not Dominic Leggette on April, excuse me, August 13th of 2008 attempted to assault and batter Al Ingram with malice aforethought, with intent to kill him, but he didn't pass on fortunately. So, you get to hear from Mr. Ingram. He'll testify.

That's what this case is all about. It's going to be about whether bad blood and fistfights, if you deserve to be killed over bad blood, fistfights. The State's position is clear, you're not allowed to do that and at the end of this I'll come back before you to talk about what we heard and ask you at that time to render a verdict of murder in the death of Billy Tisdale and assault and battery with intent to kill in the death of Al Ingram, at the hands of a young man coming of age.

THE COURT: Mr. Hazzard, does the Defense wish to make an opening statement?

MR. HAZZARD: Yes, sir, Your Honor. Thank you very much. Well, let's see. Good morning, ladies and gentlemen.

Thank you for your time and your patience. As we discovered yesterday my name is Ronald Hazzard. I am a senior trial attorney for the Public Defender's Office of 15th Judicial Circuit. That is obviously comprised of Horry and Georgetown Counties and I spend most of my time in Horry County, but every now and then you folks are good enough to show me a little hospitality and let me come down here and work with you.

Here I have seated with me is a Leah Cio [spelled phonetically]. She is a senior getting ready to graduate from Coastal Carolina University and she has been very instrumental in this case and here we have a young man, Dominic Leggette, okay? Now, Mr. Hixson wants to say this is about a young man coming of age. What this case is about is the fact that defending yourself is never a crime. Defending yourself is never a crime. On August 13th of 2008, evidence and testimony will show that the State's own witnesses will admit that at a club in Andrews named Carnell's Bar and Grill on that evening Dominic Leggette went to this club to deliver a - something as innocuous and innocent as a car charger to his then girlfriend Rhonda Brown. Evidence and testimony will show that there were young men, who are the State's witnesses, who had previously had altercations with Mr. Leggette, previously had beaten up Mr. Leggette, previously beaten members of Mr. Leggette's family. Evidence and testimony will show that on

the evening of August 13th Dominic Leggette did go to that club to deliver the car charger to Ms. Brown, that once he got there, sure as day follows night, the State's witnesses began to harass him and hound him. Evidence and testimony from the State's witnesses will show that Dominic Leggette attempted to remove himself from the scene, that he left, that he went down the street in the fading daylight and that evidence and testimony will show that once they saw him leave, that Antonio Tisdale and Alkanese [spelled phonetically] Ingram then ran after him. As evidence and testimony will show, that two on one by himself, this man in fear for his life did what he felt he needed to do to protect himself, protect his life. That's what the evidence and testimony will show, ladies and gentlemen, and it will be up to you, because the Judge, I believe, at the end of this case will tell you the law and in telling you the law one of the things he's going to tell you is that self defense is a complete and pure defense under the law. That if I did not cause a dispute, okay, I didn't bring it on myself, like this young man leaving the scene, if I am in fear of death or serious bodily injury, if any reasonable person would be in fear under those circumstances, then I have the right to defend myself, and on August 13th of '08 that's what this young man did and that's what the evidence and testimony will show in this case.

I look forward to working with you and I thank you for

your time and your attention.

THE COURT: All right, Mr. Hixson, the State can call its first witness.

MR. HIXSON: Thank you, Your Honor. The State would call Officer Verney Cumbee of the Andrews Police Department.

Whereupon, Verney Cumbee was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

MR. CUMBEE: Verney Cumbee.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good morning, sir.

A Good morning.

Q Please tell this jury what you do for a living.

A I work routine patrol in the Andrews area, Georgetown County.

Q About how long have you been in that capacity?

A About five years.

Q Okay, and what are yours duties and responsibilities as an officer for Andrews?

A What I do is respond to numerous calls; can be anything from an alarm call to a burglary call, shots fired. I also write traffic tickets, you know, numerous traffic tickets, speeding violation, any kind of traffic offense.

Q Okay, so, you've been working there that long. That must mean you were working August 13th of 2008.
A Yes, I was.
Q And did you have an occasion to respond to the - I guess is that considered the uptown section of Andrews?
A Yeah, Main Street area, that's correct.
Q Okay, and what did you respond to?
A Respond to a shots fired and a victim, well, somebody being shot.
Q Okay, and just to clarify, Andrews where this occurred is that in Georgetown County, South Carolina?
A That's correct.
Q Okay, please tell the jury what you did.
A On that date in hand, like I said, I work routine patrol. So, on that day at hand I was working routine patrol, got a call from my dispatch saying it was shots fired and someone had been shot on Main Street between the area of Main and Beech. Myself, along with my backup partner, well, I proceeded first. I was the first one on scene. When I arrived on scene, when I got up to the area of, like I stated, Main and Beech, it's two nightclubs right close to each other called Carnell's and Blue's. When I passed Carnell's, I had my window down in my vehicle. When I looked to the left, 'cause I was coming back west on Main Street, I saw a crowd of people standing around and they were yelling, saying, "Come

here. Come here. Tony just got shot," and I was going there anyway.

Q Can you approximate what you mean by a group of people, how many people you think that was?

A Maybe 15 at the most, probably.

Q And this was after the incident had occurred?

A This was after the incident had occurred, that's correct.

Q Okay, sorry to interrupt you.

A You want me to proceed?

Q Sure.

A Like I stated, when I pulled up I saw everybody standing on the corner. They were huddled around Tony at that time. After I got out my vehicle, well, I turned my vehicle around, came back, turned on my lights and I just parked in the middle of the road with my lights on. When I came out, I saw Mr. Tisdale, Tony Tisdale laying on the pavement and he was in a, I can't recall who arms he was in at that time and when I walked up, I just, my normal thing is to ask questions and try to tend to the victim, which was Tony at that time. So, at that time when I was walking up I had individuals, well, when I was asking them what happened, they said, "Dominic just shot Tony," and I said, "Okay," and when I saw Tony laying there, like I said, I can't remember somebody was holding him. I can't remember who was holding him at that time and there was

a bunch of other people just yelling, going around. So, like I said my thing was to try to find out what happened, where's he at? My backup officer came, and the next thing, you know, was to try to tend to the victim.

Q Okay, let me show you what's been marked as State's Exhibit Number One. It's not in evidence yet. See if you recognize that item.

A Yes, sir, that's an aerial view of the Andrews area, Main Street from Beech Avenue to Farr Avenue to about middle ways to - well, almost from Farr to Morgan Avenue.

Q Okay.

MR. HIXSON: And I've already shown this to Defense counsel, Your Honor. I believe we've discussed these pretrial.

BY MR. HIXSON:

Q Let me ask you, is that a fair and accurate representation of the scene in Andrews, South Carolina?

A Yes.

Q That you responded to?

A Yes.

Q Okay.

MR. HIXSON: At this time the State would move State's Exhibit Number One into evidence, Your Honor.

THE COURT: Any objections?

MR. HAZZARD: No objections.

THE COURT: That's State's Exhibit Number One admitted into evidence without objection.

(Whereupon, State's Exhibit Number One [Aerial Photograph] admitted into evidence and appropriately marked.)

MR. HIXSON: And Your Honor, may I publish this to the jury at this time?

THE COURT: Yes, that'll be fine.

MR. HIXSON: And let me see how - could I ask the witness to come around, Your Honor? I'm not sure if you all can ---

THE COURT: As long as he's near a microphone or facing the court reporter where the court reporter can take, take down what's ---

BY MR. HIXSON:

Q How about that? You want to try to do it that way and see if ---

A I guess so, yes.

Q You want to hold on to that, see if you can describe - let me back away so you all can see it.

All right, Mr. Cumbee, can you describe - kind of start over again now that we have a visual reference, the jury can see what you're talking about.

A All right, like I said when I was on patrol, I was further on the east side of town which this area is Main Street.

Q Use your microphones, Officer.
A Okay.
Q And perhaps you can stay by one of those and I'll hold it. That's a little tough to see.
A Okay.
Q Go ahead. Sorry about that.
A This is the east side of town. This is the west end. This is what I call West Main Street here is back this direction. Like I stated I was coming west when I got the call. Tony and everybody else, this is Hammond's building. This here is Blue's building and if you'll look in between here there's a little crack-way. This is like a little small alley where someone can walk in between. When I came everybody was huddled up right here. Like this white pickup truck, everybody was huddled up right there and that's where Tony was laying.
Q Okay, now, this photograph was taken in the daytime, What time did you arrive, approximately what time?
A About - I got the call at 10:40.
Q Okay.
A So, it took me a minute, less than a minute to get there and that's running with my lights on.
Q So, obviously, the incident would have happened prior to 10:40?
A Probably so because usually we - dispatch might get the

call a little earlier and then they give it out to us soon as they get all the information and relay it to us.

Q Okay, please continue. I'm sorry.

A Like I said, when I was coming west on Main Street, I saw everybody up in this area here. So, I turnt my vehicle around right here in this intersection and parked right here in the road. When I parked in the road, I immediately exited my vehicle, went to where the crowd was at, where they say Tony was. As I stated I saw a crowd of people around, someone holding Tony. I asked what happened to numerous people and everybody just kept saying, "Dominic shot him. Dominic shot him." So, I said okay. Then I went to attending to the victim Tony hisself. I looked. I saw he didn't have a shirt on, saw a gunshot hole in his chest. So, I put my gloves on and put my hand over the gunshot and started talking to him, telling him - because he was - he wasn't conscious, but he was breathing. I could look at him. His eyes was open. He was steady breathing, steady breathing. So, my thing was to ---

Q Let me interrupt you for a second. Let's come back to that. Let's just finish with this and talk about this area through here. Is this the area we're dealing with?

A Yes, sir, this is the area.

Q Please describe for the jury what those, those landmarks are.

A You want all the landmarks?

Q Yeah, it's just a ---
A All right, what we got right here is Blue's Club. Like I stated this is the Hammond's building, this here is Carnell's Club. This here is now what is a fish, a fish house where they sell seafood at. This is the alleyway that comes out to a back road. This here is the old vacant furniture store. This here is just open bush area that this here used to be a health clinic. This here I think was like a old police building back in - years ago. This here was an old vacant building. This here is Farr Avenue and this here is Momma's Kitchen and right here we have the Super Chic parking lot and the Super Chic building.
Q And what is the Super Chic for folks that haven't been up that way?
A It's known for gas and mainly for chicken, for selling chicken.
Q There you go. I know who's from Andrews now. It's a convenience store as well?
A A convenience store as well.
Q Open late hours, that type thing?
A Yes, open Wednesdays night, Wednesday night they're open 24 hours. They stay open all night.
Q Okay.
A That was then, now they close up on Wednesdays and Thursdays now, but Wednesday night they open all night.

Q So, the Super Chic was open all night on the night when this took place?
A Yes, it was, yes, it was.
Q Okay, now we got - you all got the lay of the land. Now, please, you were at an important part. Tell us about, you indicated I think you got out of your vehicle.
A Yes, well, like I stated, when I got out of my vehicle, I went to - after I listened to everybody was telling me Dominic shot Tony, Dominic shot Tony.
Q Take your seat back. Officer, please continue from that please.
A All right, after I heard everybody saying that my next thing was just to make sure he wasn't around or anybody was in harm and then I tended to the victim. Like I stated, when I went to Tony, he was laying in somebody's arms, they eventually laid him down, I got my hand and put it over the bullet wound cause I saw like some of the blood coming out, just to stop it, and my next thing was to keep him, you know, responsive. So, I just started talking to him. I could look in his face, his eyes was open and he just kept - I could see his chest just going up and down. I just kept telling him, "Keep breathing, keep breathing, if you can, if you can hear me keep breathing, keep breathing." So, I just kept talking to him just to try to keep him up and I didn't know if he was hearing me or not, but like I said, my thing was to try to

hold that wound until medic arrived, and you know, they can take it from there.

Q Did ultimately assistance arrive to you?

A A few minutes later they came in, my backup officer was there and he was trying to keep everybody back. The medic unit came, saw me had my hand over the wound, asked me to move my hand. I moved it. They said, "All right, put pressure back on it, keep it there." I did that. I kept talking to him. Like I said could still see him, his chest and everything moving, but when I would say anything, "Tony, can you hear me? Can you hear me," you know, he never responded, but his eyes were just still open looking up in the sky. So, I just kept asking him, you know, "Can you hear me?" "If you can hear me, keep breathing, keep breathing."

Q Okay, now, on several occasions you have referred to him as Tony. Does Mr. Tisdale go by any other name?

A Billy, I know him. People talk - call him in the street they call him Billy.

Q Okay.

A Some will call him Antonio.

Q And on that evening was that the first time that you had seen Mr. Tisdale?

A Yes.

Q Had you known him - I mean, did you know him prior to this period?

A I known him prior to that.
Q Okay, help arrived to you. During that period of time when you were attending to Mr. Tisdale's medical needs, was he able to say anything to you during that period of time?
A No, he wasn't.
Q Okay, and then ultimately was he ultimately transported?
A Yes, yes, he was transported. Like I stated I sat there and just hold my hand over it, EMS came. After I moved my hand, put it back, they went and got some more stuff from out the ambulance, came. Also, the fire department was sent out for extra help. They came and took over from there and I got up.
Q Okay, did, did you have - sounds like you had your hands full. Did you put forth any effort to try to secure the crime scene area or your interest was pretty much in the victim?
A At that time my interest was pretty much on the victim itself, you know, trying to make sure that we could keep him going. So, I wasn't even focused on the crime scene, the area. I had my other officer trying to do that when he came, but I was just still focusing because I had already start something.
Q And given the severity did you call for investigators, investigative assistance?
A Yes, I called. After EMS came and tend to Mr. Tisdale, then I finally - well, on the way coming, I told my dispatch to just go ahead and notify the investigator, which is my

protocol to notify the investigator, and they also told me that they had sheriff's officers in route coming to assist me, also.

Q Now, at some point in time did it come to your attention there was a second victim?

A Yes, when I was standing there dealing with Mr. Tisdale, I look and I saw Mr. Al Ingram, who's the other victim in this here. He was standing up and people were pointing to me and saying, you know, he was involved ,too. So, I asked him, I said, "Did you see who, who shot you," and he was like, "Yeah." I said, "Do you know his name?" He said, "No, I don't know his name." I said, "Have you seen him before?" He said, "Yeah, I already seen him around, but I don't know his name," and I said, "Well, are you shot?" He said, "Yeah, I think I was," and I looked at his foot. When I was looking at Tony, I look and glanced across because he was standing right beside, behind Mr. Tony, Mr. Tisdale and I looked at Mr. Ingram's foot and when I looked at his foot, he had on some sneakers and you could see the blood coming out of his sneakers, and I said, "You were shot, too," and I said, "I think you were shot in your foot," and he say, "I think I was." So, I took my finger and I pulled his shoe back and his socks down and you could see the bullet hole in his shoe. So, I told him, I said, "Well, sit right here. We got EMS coming so they can look at you, also."

Q Okay, was that - to clarify, Mr. Tisdale, was he on the sidewalk?
A He was laying on the sidewalk, that's correct.
Q And Mr. Ingram, was he in the street?
A No, at that time when I came he was standing behind Mr. Tisdale.
Q And I guess at some point ---
A When I looked and saw the bullet wound in his foot, he was standing behind Mr. Tisdale.
Q Let me, let me - at some point in time was he asked to rest in the street on the back of a pickup truck? I guess is what I'm asking?
A Yeah, it was after - what I did is after they got Mr. Tisdale, I told him, I said, "Come and" - that same white pickup truck that's sitting right there, put the tailgate down and asked him to sit on the back of the truck because they had to call another medic unit to come and attend to him.
Q Okay, and ultimately did Mr. Ingram receive medical attention?
A Yes, he did.
Q Did you go to the hospital or anything?
A No, I didn't.
Q Okay, well, just tell the jury about the end of your, end of your contact, I guess, and the end of your shift.
A All right, after both of them got transported I helped

them, went and secured the crime scene. Investigator Lee finally came and I told him what we had. Like I said we had some other officers from the sheriff's department come and help. We had from Main and Beech secured off all the way to half of the Super Chic parking lot. So, that's probably about a half, a block and a half, almost two blocks secured off.

Q Let me refer you back to State's Exhibit One. I believe that's State's Evidence One. It's in evidence now. Can you just point to what area you crime scened off?

A Right here was what I did is we backed a patrol car up. We had a patrol car sitting right here, which this is Main and Beech, the intersection of Main and Beech. They had a patrol car sit up here. So, we had yellow tape run from this area, around this patrol car to it's a light pole and a trash can right here on the corner. We had that secured off and then it was secured from here all the way to, we had another patrol car set up middle ways of the road here and it was secured all the way to, half way that parking lot up in that area.

Q Okay.

A On this street, both of these, Farr Avenue, you couldn't come across here because it was also secured with yellow tape, also.

Q And then into the Super Chic parking lot?

A Yes, sir.

Q Okay.

MR. HIXSON: Beg the Court's indulgence, Your Honor.

THE COURT: All right.

MR. HIXSON: I have no further questions from this witness, Your Honor. Please answer any questions Mr. Hazzard may have.

THE COURT: Mr. Hazzard.

MR. HAZZARD: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HAZZARD:

Q What is your rank? You were a patrolman at the time. Are you still a patrolman or what do you?

A Yes, sir, I'm still a patrolman, also the K-9 unit.

Q And you are Verney Cumbee.

A That's correct.

Q And are you related to Patrick Cumbee?

A That's correct.

Q How are you related to Patrick?

A First cousins.

Q Okay, now, is Patrick still with the force or no longer with the force?

A No, he's no longer with the force.

Q Okay, now you told Mr. Hixson that you had prior knowledge of Antonio Tisdale, the deceased; is that correct?

A That's correct. That's correct.

Q Okay, now, how were Mr. Ingram and Mr. Tisdale dressed on

that night to your recollection, and if you don't recall that's fine?
A I don't recall. I know when Mr. Tisdale was laying down he didn't have a shirt on, and that's the only thing I can remember about him on that.
Q Okay, now, did you complete an incident report as a part of your work in this case?
A Yes, sir.
Q Okay, do you have a copy of that incident report?
A Here in front of me.
Q Yes, sir.
A No, sir.
Q Okay, do you have one available to you?
A Yes, sir.
Q If you could retrieve that I would appreciate it, sir.
A It's in my patrol car.
MR. HIXSON: Your Honor, I would just object. He can ask the question. If he can answer we don't need an incident report.
Q Okay.
THE COURT: Okay, he doesn't have it with him, he said it was in a patrol car.
MR. HAZZARD: All right, the Court's indulgence, if I may approach the witness, hand him a document I have been provided and see if it is, in fact, your incident report.

A Yes, sir, that's it, without reading everything in the narrative to make sure that's it word for word, but that sure is.

Q Okay, all right, now, I note on the report that it says here that you spoke to the victim who is a juvenile and the victim stated that him and the other victim, which would be Mr. Tisdale, correct?

A Correct.

MR. HIXSON: Your Honor, I object to that. That's hearsay. He'll get a chance to ask the witnesses when they testify but he can't get statements in through ---

MR. HAZZARD: I'm asking him what's in his report.

THE COURT: Yeah, but how is that not hearsay?

MR. HAZZARD: Okay.

THE COURT: I sustain the objection.

BY MR. HAZZARD:

Q As a part of your investigation, okay, as a part of your investigation did you speak with Al Ingram?

A Yes.

Q Okay, and Al Ingram is the alleged victim in this case; correct?

A Correct.

Q Now, in speaking with Mr. Ingram as a part of your investigation, did you get the impression that Mr. Ingram did not know the identity of his alleged assailant?

A By name.
Q Okay, now, when you came up and you tended to Mr. Tisdale; correct?
A Correct.
Q You indicated that Mr. Ingram was standing behind him. How far behind him was he standing?
A It was close enough that I could reach out and touch his foot ---
Q Okay.
A --- and pull his socks down like I stated what I did.
Q Okay, and by your testimony, I get the impression Mr. Ingram never volunteered any information. In other words, did Mr. Ingram ever say to you, "Hey man, I've been shot, too. I was injured, too," or did you have to ask him?
A If I recalled, somebody else made the statement that he might have been shot, too, and I think I asked him on that, "Was you shot, too," but I ---
Q Okay, and how long had you been on the scene when you finally asked Mr. Ingram if he had been injured as well?
A I can't recall because my focus was basically on Mr. Tisdale at that time because I thought he was the only one that was ---
Q Five minutes, 10 minutes, 30 minutes?
A Maybe five at the most.
Q Okay, so, someone else had to bring it to your attention

that Al Ingram had been involved in an altercation; correct?
A That's correct.
Q Okay, now, as a part of your investigation, did you in any way secure, tow and process Antonio Tisdale's vehicle?
A No.
Q Okay, to your knowledge and as a part of your investigation and your involvement in this case, do you know whether or not Mr. Tisdale's vehicle was ever secured, towed and processed by the authorities?
A No.
Q Okay. Thank you.
MR. HAZZARD: No further questions.
THE COURT: Redirect?
MR. HIXSON: No, Your Honor.
THE COURT: All right, you may step down.
All right, Mr. Hixson, you can call your next witness.
MR. HIXSON: Thank you, Your Honor. The State would call Investigator Michael Thacker from the Georgetown County Sheriff's Department.
Whereupon, Michael Thacker is called to the stand, duly sworn by the clerk and testified as follows:
THE CLERK: Please be seated and state your name for the record.
MR. THACKER: Michael Thacker.
MR. HIXSON: If it please the Court, Your Honor?

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir.

A Good afternoon.

Q Please tell the jury what you do for a living.

A I'm a criminal investigator for the Sheriff's Office here in Georgetown County.

Q And how long have you been in that capacity?

A Ten years.

Q Okay, where did this incident occur?

A City of Andrews.

Q Okay, and I notice that you said you work for Georgetown County; is that right?

A Yes, sir.

Q So, how in the world did you get involved in this?

A We was asked to respond to process the scene there.

Q Okay, so, you provided assistance based on the request of the Andrews?

A Yes, sir.

Q Okay, so, did you, in fact, respond to the City of Andrews on August 13th of 2008?

A Yes, sir.

Q Okay, and please tell us what you did.

A I - the first thing is I spoke with the officers that

were there on scene as I was in route there and they advised me that the scene had been secured with tape that's placed around the location that they had identified and also ---

Q Was Investigator Lee present on the scene at that time?

A I'm not sure if I saw him when I first got there. I spoke with one of my officers that was there to assist. They had came there prior to my arrival, and I spoke with him and I believe that Investigator Morris, who is - who my contact was was speaking to Investigator Lee at that point.

Q Okay, okay, very good. Sorry about that. Please continue.

A That's okay. Well, once I got there and verified that the scene had been secured with the tape the first thing I did was spoke with Investigator Morris again, a little background information on the information they had at that time. At that point I surveyed the scene, did a walkthrough of the areas identifying any potential items that could be of evidentiary value, continued through there to look for any other items that was outside of that scope of where they had placed the tape as well and photographed the scene, at that point placed markers down to identify items, photographed those items once again, prepared a sketch, measurements, collected the items that I had placed markers with.

Q Okay, let me show you what's been marked and in evidence as State's Evidence Number One, which is an overhead diagram,

see if you recognize that?
A I do.
Q Okay, and what is that?
A That's an overhead view of the location area of the City of Andrews, Main Street.
Q Okay, now, this is in evidence. So, we've already published it. So, if you don't mind, can you point and just show the jury where you responded to and the areas you were looking at.
A My areas were from Farr and Beech Avenue. That means this area here down through to this area.
Q Okay, and let me also show you, just take a look at all those. I'll ask you some questions after - for judicial efficiency maybe take a look at all of them and I'll ask you some questions all at once. If you have any issues with any of them just point and pull those aside.
A Okay.
Q Okay, do you recognize those items?
A All, all but the last four.
Q Oh, I apologize. I didn't mean to give you the last four. I'm sorry about that. Let me sit those back up there. And what are those?
A These are photographs I had taken of the scene.
Q Okay, who took those photographs? Did you take those photographs?

A I took the photographs, yes, sir.
Q Okay, let me show you - there are a couple of more that are out of order. That's why I've set these aside. These - because they're out of order, I'm referring to State's Exhibit Number Two, Number Three, Number Five and Number Seven. Take a look at all those, also.
Okay, do you recognize those items?
A Yes, sir.
Q What are those items?
A These are also photographs of the scene that I took ---
Q Okay.
A --- on that night.
Q And did you - you took those photographs?
A Yes, sir.
Q Okay, now, all of these, and what I'm specifically referring to are photographs Nine, State's Ten, State's 11, State's 12, State's 13, State's 14, State's 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and ultimately 25, as well as Two, Three, Five, Seven, Your Honor. Okay, I went kind of fast. Are we good with that?
THE COURT: All right, you moving to put those in?
MR. HIXSON: Yes, Your Honor.
BY MR. HIXSON:
Q Are these a fair and accurate representation of the scene that you saw August 13th of 2008?

A Yes, sir.
Q Okay.
MR. HIXSON: At this time the State would move those items that I read to Madam Court Reporter into evidence.
THE COURT: Any objection?
MR. HAZZARD: No objection.
THE COURT: All right, Plaintiff's [sic] Exhibits Two, Three, Five, Seven and Nine through 25 are admitted into evidence without objection.
(Whereupon, State's Exhibits Two, Three, Five, Seven and Nine through 25 [see index for description of exhibit] admitted into evidence and appropriately marked.)
MR. HIXSON: Okay.
BY MR. HIXSON:
Q All right, Detective, if you don't mind, and Investigator Brown, I'm ready to roll, State's Two, which is number one may we publish those to the jury, Your Honor?
THE COURT: Yes.
Q Please describe what we're looking at there, Investigator Thacker.
A This is the photograph of where the store called the Super Chic and this crime scene tape is what was placed up there prior to my arrival.
Q Hold on for a second, make sure we're - having a little technological difficulty over there now. Are we okay? Power

on?

MR. HAZZARD: We have no - okay, now something is on, okay.

MR. HIXSON: Can you see it, Ron?

MR. HAZZARD: I assume I can see what you're talking about, yes, we have the picture, all right.

BY MR. HIXSON:

Q I apologize, Investigator. Let's try that again. Tell the jury what we're looking at at State's Two.

A Okay, this is a photograph of the parking lot that you can see of the Super Chic convenience store and the crime scene tape that was placed around and this side where they had at that point, as I was told, established where some of the incident had began, possibly.

Q And can you correspond that to this overhead? Where is that picture looking from, what angle are we looking at?

A Okay, this is from here - let me stand up. From the - this is east and west. So, I was standing on the east side pointing back towards.

Q Taking a picture this way?

A Right, at an angle towards the parking lot.

Q Okay, let's take a look at State's - the next photograph that's State's Two or Three, excuse me.

A There we go, okay.

Q What is that?

A That's a ---
Q Who is that, let's start with who is that.
A That, that's Investigator Morris. He was there to assist me there and the person I had - the contact I had he had arrived prior to my arrival and this is a photograph I had asked him to point out the general area where the shell casings were located.
Q Did Investigator Lee already recover the shell casings?
A Exactly, yes, sir.
Q So, you did not personally see they were - had already been picked up by the time you got there?
A I did not.
Q Okay, they, they were already picked up?
A They had already been picked up and this was, this was a photograph of the general area where, where I was told that they had been located.
Q Okay, how about the next photograph. That's State's Number Five. Excellent. How about that one?
A And this is just a closer, a closer shot of the same area where Investigator Morris is pointing out the general direction.
Q Where a second shell casing was recovered?
A Exactly.
Q Okay, State's Seven, the next photograph.
A Okay.

Q Tell me if those don't match because we have some Foamcore there. That's it?
A Yes, that's it. This, again, this is the same photograph. It's a closer, a closer view of the photographed general area, shell casing.
Q Okay, now, relating to those series of photographs can you please show what area the photograph was taken from the overhead? And, please, you all tell me if you can't see it, we need to move this over that way.
A I can probably ---
REPORTER: Judge, he needs to stop rubbing on the mike. I can't hear. I'm sorry.
A I'm sorry. Sorry about that. Okay, it would be right in this area right here.
Q Okay.
A There's a large trash can in the parking lot of the Super Chic. So, it's right in that area.
Q Okay, and the detective, in case you can't see, pointed to this area.
Please continue, sir. To the next photograph, Mr. Brown, Investigator Brown. They should be in order for you.
A Okay.
Q And what is that photograph?
A All right, and this a photograph I'm approximately in the general area of the prior photographs where the casings

generally are casings located. To the left of that building would be the trash can. So, this is going back west.
Q Okay, and that is Momma's Kitchen? Is that what that ---
A That's correct.
Q --- that signs says?
A That's correct.
Q Okay, and please continue. What's the next photograph depict?
A Okay, this is, I'm walking west on the sidewalk. So, I'm standing approximately right before the intersection of the next street where Momma's Kitchen to the left.
Q Are you walking back towards the area where Carnell's is?
A I'm, I'm walking west, correct. I'm walking down the street. I'm following a path of some items that I've identified on the street.
Q Okay, next photograph.
A Okay, this is at the corner of the first intersection, and there's crime scene tape there to the left. It's cordoned off that road.
Q Okay, since we have a street involved let's point to - point out what you're referring to.
A Okay, right here at south Farr, right on the corner.
Q In which direction would the camera be pointing?
A The camera is pointing west. It's pointing that way.

Q In this direction?
A Yes, sir.
Q Okay, go ahead. Now, this is the first marked piece of evidence you've come across; is that correct?
A Correct, yes, sir.
Q Now, what does that picture depict?
A Okay, this is a marker that I had placed down beside some red stains of suspected as blood.
Q Okay, now, during the course of your duties and responsibilities do you - tell me about what your normal procedures are? You mentioned to it earlier about when you arrive on scene the things that you do.
A Uh-huh.
Q Can you just kind of briefly highlight that again?
A Sure, the first thing I want to make sure is that the area is secure, properly cordoned off, that there is not - a smaller area, you know, it's large enough to where it encompasses what we know at the time as far as the incident and the next thing that I do is just do a walk through of the general area first, and then do another walk and see if I can identify any items that may be of value pertaining to that case, and at that time doing a good search of some outlining areas for any other items that may be involved with the case as in this one possibly a firearm. So, all those areas are searched and once I feel pretty good about that then I'll go

back and make sure that there's not any other items that's anywhere else that I want to identify and place markers next to those items, and at that point then photograph those items individually.

Q And so, there were no markers for the shell casings; is that right?

A Correct.

Q And why is that just to clarify?

A That's because there was none there when I arrived.

Q Okay, and then do you do a - try to do some diagram to reference the information that you found?

A That's correct.

Q Okay, did you do that in this case?

A I did a sketch, yes, sir.

Q Okay, let me show you what's been marked as State's Exhibit 30. See if you recognize that.

A Uh-huh, yes, sir, that's ---

Q What is that?

A This is a - the sketch that I had completed.

Q Do you write it on a piece of foamcore like that?

A No, this is actually blown up. It's - I actually do it on graph paper. So, it's a copy.

Q This prepared for trial?

A Yes, sir.

Q Okay, and is this sketch or this recreation of your

sketch a fair and accurate representation of the scene that you saw?

A It is with the exception of scale obliviously.

Q Right, and is this sketch to scale?

A No, it's not.

Q No, it's not scale. Very good.

MR. HIXSON: Your Honor, at this time the State would move State's Exhibit Number Three into evidence, 30, excuse me, into evidence.

THE COURT: Any objection?

MR. HAZZARD: No objection.

THE COURT: State's Exhibit Number 30 admitted into evidence without objections.

(Whereupon, State's Exhibit Number 30 [Sketch] admitted into evidence and appropriately marked.)

MR. HIXSON: And we would like to publish this to the jury as well.

THE COURT: All right.

BY MR. HIXSON:

Q Can you maybe - see if we both can see. Can you briefly describe the orientation of that exhibit to the jury?

A Sure, as was in the photos, where I had began the photographing this is east in this direction and west going this direction. This is South Farr, the first intersection of the last photo, and all the items that are marked have numbers

and they follow in correspondence all the way down the sidewalk here. There is also an A and a B. Those are telephone poles that I use as reference points for measurements. So, there'll be measurements from each, each item, from each pole.

Q Okay, now, the photographs, the earlier ones we were referring to, the one with Dustin Morris, Investigator Morris pointing ---

A Uh-huh.

Q --- those are not marked on there; is that correct?

A They are not.

Q And where were - what was the area he was pointing to?

A He was in this general area here. I'm sorry, right in this area.

Q And then finally to completely finish it, I guess, if I'm referring to showing the jury State's One, if you turn that exhibit on its side, that's what we're dealing with; is that correct?

A That's correct.

Q Okay, for clarification.

A Uh-huh.

Q So, does this area correspond to this sidewalk through here; is that correct?

A That's correct.

Q Farr is here?

A That's Farr.
Q Okay.
A Uh-huh.
Q Very good. Thank you. Now that I did all that, let's talk about State's One and use your diagram now you can show us and see what we're talking about.
A Okay.
Q Excuse me, I didn't mean State's One. The photograph that shows ---
A Photograph.
Q --- your marker one.
A Item one, yes, sir.
Q There you go. Sorry about that.
A Okay, item one is going to be identified on the sketch. It's going to be on South Farr just around the corner of this building of where Momma's Kitchen was located.
Q And how about look at the next photograph as well, item two, and please describe that photograph as well and where it corresponds on your diagram.
A Okay, item two is in the same general location as well, on South Farr.
Q Okay, and what were those items?
A They were - it's red stains I, I listed as suspected blood until further known.
Q Sure, let's look at the next photograph or next series

of photographs is fine. Let's take a look at, let's take a look at your next one. I noticed there are several markers in there for, I guess, for efficiency. Tell us what those are.
A Right, this, this is a photograph. It's a mid-range photograph of items three and four. Now, this is going back, pointing back west, east, excuse me. So, I'm at this point standing in this location taking a photograph back, back east.
Q Okay, take a look at the next picture or next couple, you can ---
A Got you, okay.
Q And all these markers you're referring to, markers, the five, the ones that correspond, what are those items of evidence that you have, you have marked?
A These are all stains that are on the sidewalk.
Q Okay.
A Uh-huh.
Q Presumptive human blood stains?
A Correct, and this is a photograph of the same, in the same orientation back east of three, four and five, items three, four and five.
Q Okay, the next photograph.
A That's the same, that's the same photograph as before.
Q That's marker six?
A It was out of order, yes, three, four and five.
Q Okay.

A Uh-huh.
Q The next one?
A Okay, this is again in the same, the same direction, east, and this is a photograph of item six which again is a - it's a stain of suspected blood.
Q Next photograph.
A This is a photograph of items six, seven and eight, and again, that's suspected blood, and at this point right here on the, on the sketch.
Q Next photograph, sir.
A Okay, and this is a photograph of nine, 10, 11 and 12, same, same direction, orientation with the photograph back east.
Q The next photograph, also, please by all means just continue this if you ---
A Yeah, all right, this is item 13 and 14. All right, and this is items 15 through 22, and that's again the suspected blood on the sidewalk, orientation east with the photographs, and this photograph is 23, 24 and 25. In the background you can, you can make out the prior markers. They're not in focus, but these were focused on items 23, 24 and 25, and we're up at this area, this point.
Q You can actually see a corresponding vehicle in that photograph?
A There is, it's, it's right beside a vehicle. Okay, and

this photograph is 27, 28, 29 and 30, and that's - we're past the vehicle here in this, in this area with the sketch. Okay, and 31, 32 and 33 and that's these three here at the top. It's ---

Q Is that the end of the blood trails, the photos to the west?

A This is the last that I located beside this vehicle, 32 and 33.

Q And do you recall the business or the businesses that that blood trail ends in front of?

A I do not. I wrote it on one of my - on my form but I do not have it on the sketch here, no, sir.

Q Fair enough, fair enough and I believe there's one subsequent photograph.

A There's one more that's back beside the first vehicle that's marked as item 34.

Q Okay, item 33, the photograph, the last photograph, that was on the sidewalk?

A 33 was on the sidewalk; correct.

Q And then the blood pool on 34 that's in the street?

A That's correct.

Q To the rear of the white pick-up truck?

A That's right at the - I believe, I'm trying to think, I have to look at the photograph, that's in the front of the ---

Q The front part of the truck.

A --- of the truck and 31, item 31 was actually a shirt and that was in the street as well in front of the vehicle.
Q I'm sorry, and then, I'm sorry referring to the last photograph, I'm sorry, 34.
A Yeah, 34 was the suspected blood and that was in the street in front of the vehicle.
Q Okay, all right, did you find any other items of evidentiary value?
A I did not.
Q Did you search the area of the crime scene tape for weapons?
A I did.
Q Did you find any firearms?
A No firearms.
Q Did you find any edge weapons, knives?
A There was nothing else located.
Q Okay.
MR. HIXSON: Beg the Court's indulgence, Your Honor.
THE COURT: All right.
BY MR. HIXSON:
Q Once again out of an abundance of caution did this incident occur in Georgetown County?
A That's correct.
MR. HIXSON: I have no further questions of this witness, Your Honor.

THE COURT: All right, Mr. Hazzard, cross examination?

MR. HAZZARD: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HAZZARD:

Q Sir, what is your, what is your title?

A I'm an investigator.

Q So, Investigator Thacker, how are you today, sir?

A Fine, sir.

Q Okay, let's see, I've been provided by Mr. Hixson, he was nice enough to provide me with a narrative report that bears your name. Did you prepare a narrative report in this case?

A That's correct, yes, sir.

Q Now, is it fair to say that your report indicates that you arrived on the scene at about 11:55 p.m.; is that correct?

A No, sir, I did not. I was contacted at my residence at about approximately 11:55 pm.

Q Got you, okay. All right, and what time did you arrive on the scene, sir?

A I believe it was after 12:30, I mean, it was after midnight because I had to leave my residence and pick up some items at my office and then drive to Andrews. So, it was at least, at least 40 minutes, 30 minutes.

Q Okay, and the officer log, I believe, has you signing out of the scene at 3:20 a.m., does that sound about accurate?

A Yes, sir.

Q Okay, now, so you're at the scene for a little under three hours; correct, from 12:49 until about 3:20 a.m.; is that correct?
A Yes, sir
Q And all of the pictures there depict the actions that you took, the evidence that you documented and collected; correct?
A That's correct.
Q Okay, now, all of the evidence you documented and collected, there isn't anything that you saw or documented or collected at that scene that is inconsistent with Alkanese Ingram and Antonio Tisdale attacking this young man, him shooting in self defense and them then turning and running away; is there?
MR. HIXSON: Your Honor, I'll object to that. That requires speculation on items that aren't in evidence.
THE COURT: Okay, I think - it's cross examination. I'm going to allow it, overruled. Go ahead.
A I wouldn't know how to answer that honestly, sir. I was there to assist them and process the items that was in front of me. I wasn't handling any part of the investigation side of it.
Q All right, how long have you been a police officer, sir?
A Ten years.
Q Okay, and you have training with regard to investigation; correct?

A Yes, sir.
Q Now, with regard to that training, sir, no evidence collected at that scene that is inconsistent with Al Ingram and Antonio Tisdale attacking this young man, him shooting in self defense, then them turning and running away leaving the blood trail that you collected; is that correct?
A I - you could say so, yes, sir.
Q Okay.
A Yes, sir.
Q No further questions.
THE COURT: Redirect?
MR. HIXSON: Just one question, Your Honor.

REDIRECT EXAMINATION

BY MR. HIXSON:
Q Investigator Thacker, the evidence that you looked and put in front of this jury is that evidence also consistent with an ambush killing?
A It could be, yes, sir.
MR. HIXSON: No further questions.
THE COURT: You may step down. Let me see the attorneys for a second. Mr. Hazzard, let me see you for a second.
(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)
THE COURT: All right, ladies and gentlemen, I just

wanted to check with the attorneys to see if it was a good time to break for lunch and I think everybody agrees it's a good time for us to go ahead and break for lunch. It's 12:30. I'm going to go ahead and excuse you for lunch. Please be back in the jury room at 2:00. As I cautioned you before, please do not discuss this case even among yourselves, don't discuss it with anyone else, don't conduct any independent investigations into this matter. I hope everybody has a good lunch and we'll see you back at 2:00. Thank you very much. Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: Anything before we recess for lunch?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing from the Defense, although I will admit I did not hear what time the Court wanted to reconvene.

THE COURT: I'd like to get started back at two o'clock; okay?

MR. HAZZARD: Okay.

MR. HIXSON: Thank you, Your Honor.

THE COURT: So, let's stand in - we'll stand in recess till two o'clock.

MR. HAZZARD: Thank you.

THE COURT: Thank you.

OFF THE RECORD

(On the record.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, anything from the State before we bring the jury in?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing on behalf of the Defense.

THE COURT: All right, let's bring the jury in. Thank you.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back. I hope everyone had a good lunch. We are now ready to resume the trial of this case of the State versus Dominic Alexander Leggette.

All right, Mr. Hixson, you can call your next witness.

MR. HIXSON: Thank you, Your Honor. At this time the State would call Dr. Cynthia Schandl.

THE COURT: All right.

Whereupon, Cynthia Schandl was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record, spelling your last name, please.

MS. SCHANDL: Cynthia Anna Schandl, S-C-H-A-N-D-L.

DIRECT EXAMINATION (BY MR. HIXSON)

Q Good afternoon, Dr. Schandl.

A Hi.

Q Can you please tell this jury what you do for a living?

A Yes, I'm a forensic pathologist.

Q And what exactly is that?

A A forensic pathologist is a pathologist, so a licensed physician or doctor who specializes in the field of forensics and forensic pathology in particular is concerned with determining the cause of death and the manner of death in individuals and in particular those - so, the manner of death that we're looking at may be homicide, suicide, accident, natural or undetermined. So, frequently we'll get individuals who have died in the community from different, what - by different ways to our office referred through the coroner's office and try to determine the cause and manner of death.

Q Where is your office?

A I'm employed at the Medical University of South Carolina in Charleston, South Carolina.

Q Okay, and how long have you been in that capacity?

A I've been faculty there for almost six years.

Q Okay, and it sounds like you needed some specialized training to do what you do. Do you, in fact, have any specialized training?

A Yes, so, a bachelor's degree to start and then you go to medical school. So, I went to the medical school at South Carolina, MUSC, Medical University of South Carolina and completed medical school to become a medical doctor and then following that there is additional training in pathology. So, both anatomic and clinical pathology there's what they call a residency and following that training there is specialized training in forensic pathology, so, an additional year called a fellowship in forensic pathology, and then following that training there are American Board of Pathology certifications to be earned by examination in anatomic pathology, clinical pathology and forensic pathology, all three of which I am board certified.

Q And Doctor, have you ever been qualified as an expert in a court of law here in South Carolina before?

A Yes, sir.

Q And have you ever testified in court before?

A Yes, sir.

MR. HIXSON: At this time the State would offer Dr. Cynthia Schandl as an expert in the field of forensic pathology.

THE COURT: All right, any questions or challenges?

MR. HAZZARD: No questions, challenges or objections, Your Honor.

THE COURT: All right, I find this witness to be

qualified as an expert in the field of forensic pathology.

Now, ladies and gentlemen of the jury, ordinarily when a witness testifies a witness can only testify as to what that witness personally knows, what they saw, what they tasted, what they smelled, what they felt, things of that nature. However, an exception to this rule are for witnesses qualified as expert witnesses. What that means is because a person has a special training, special education or special experience in a certain field they can be qualified as an expert to give an opinion in that field and that is really the only distinction between an expert and a lay witness is that an expert is allowed to give his or her opinion in the field in which they are qualified. I'll give you some further directions on expert witness testimony later when I charge you on the law in this case, but suffice it to say for right now that I have found this witness qualified as an expert in the field of forensic pathology, which means she can render an opinion in that field. All right, Mr. Hixson.

MR. HIXSON: Thank you, Your Honor.

BY MR. HIXSON:

Q Doctor, were you working in this capacity on August 14th, 2008?

A Yes, sir.

Q And were you in Charleston?

A Yes, sir.

Q And did you happen to have an opportunity to come across a deceased individual by the name of Antonio Tisdale?
A Yes, sir. I performed an autopsy on Antonio Tisdale on the 14th of August in 2008.
Q Okay, can you please give the jury just a real general idea of what your day is like when you're getting - how does the victim arrive, are they clothed, kind of general things like that?
A Yes, so, basically cases are like I mentioned referred to our office, the forensic pathology office through the coroner's office or county coroners. So, the county coroner will contact our office and inform us that they have a case for us, and from there the body will be transported to Charleston to the Medical University of South Carolina to our morgue and then when we're ready to perform the case that body will come up to the autopsy suites and go onto the autopsy table. At that point that individual will be in whatever condition they were in at the scene or at the hospital or whatever, wherever they were when they died. So, if they had clothes on then they will still have their clothes on. If they didn't have any clothes on or if the clothes were removed during attempts at resuscitation then those clothes would be absent. So, it just depends on where they were when they died. That's how we get the body.
Q Did you - do you, part of your process, do you make a

photographic record of what you do?
A Yes, we do take photographs and make diagrams as we go through each case in order to document our findings.
MR. HIXSON: Your Honor, at this time I'm offering three, four items for the witness, State's Exhibit 26, 27, 28 and 29.
BY MR. HIXSON:
Q If you can just look at those briefly, Doctor, and see if you recognize those items and then we'll deal with them later.
A Yes, these are four photographs. Each of them have the case number assigned to Antonio Tisdale which is FA08-554 from our photographs variably representing portions of the case.
Q Okay, and you saw those items in that condition at the time those photographs were taken?
A That's correct.
Q And all of those photographs are fair and accurate representation of the items and the scene that you saw on August 14th, 2008, while at the Medical University of South Carolina?
A Yes, during, during the course of the autopsy, yes, sir.
Q Okay, thank you.
MR. HIXSON: Now, specifically, Your Honor, I would like to draw the witness's attention to State's 26.
BY MR. HIXSON:
Q And see if you recognize that.

A Yes, State's Exhibit 26 is that of Mr. Tisdale's clothing, including socks and shoes and pants and so forth as well as the other personal effects that he had on his - in his clothing.

Q Okay.

MR. HIXSON: Your Honor, at this time the State would move State's 26 into evidence.

THE COURT: Any objection?

MR. HAZZARD: No objection.

THE COURT: All right, State's Exhibit Number 26 admitted into evidence without objection.

(Whereupon, State's Exhibit Number 26 [Photograph] admitted into evidence and appropriately marked.)

MR. HIXSON: At this time we'd like to publish that for the jury if Your Honor so deems appropriate.

THE COURT: All right, that'll be fine.

MR. HIXSON: Mr. Brown, you have it?

BY MR. HIXSON:

Q And on the screen, Doctor, is that the same representation you see in the picture that you have in your hand?

A Yes, it is very similar. It's the same picture.

Q Okay, now, Doctor, let's talk about on some of your findings and some of the processes that you have gone through. Can you please describe to the Court, the jury what - not

your findings you made, what you observed.
A Yes, so, an autopsy consists of several portions, several different examinations comprise an autopsy. First, we have the external examination and we'll take a look again at the clothing which you've seen, take the clothing off of the body and then begin what we call the external examination. The external examination includes those things that would be significant for identification of the body such as the height, the weight, the hair color, any scars or tattoos, that sort of thing, as well as any injuries to the body that you can see on the outside. So, if there were stab wounds or gunshot wounds or abrasions, scrapes, other things like that, we would document those during the external examination, and in this case Mr. Antonio Tisdale there was a single entrance gunshot wound to the left chest and that we could document upon external examination.
Q Doctor, let me show you what's been marked as State's Exhibit 27, see if you recognize that item.
A Yes, this is a photograph taken during the course of the autopsy that shows a portion of Mr. Tisdale's chest, including the area of the gunshot wound.
Q And also State's Exhibit 28.
A And State's Exhibit 28 shows that same gunshot wound closer up. So, we're nearer to the gunshot wound. You can just see the nipple of the chest and the gunshot wound

superior or above that on the chest.
Q And I believe you already indicated those are fair and accurate representations of the scene that you saw as you were performing your services.
A That is correct.
MR. HIXSON: At this time the State would move State's Exhibit 27 and 28 into evidence, Your Honor.
THE COURT: Any objection?
MR. HAZZARD: No objection, Your Honor.
THE COURT: All right, State's Exhibits 27 and 28 admitted into evidence without objection.
(Whereupon, State's Exhibit Number 27 and 28 [Photographs] admitted into evidence and appropriately marked.)
MR. HIXSON: At this time the State would like to publish 27 to the jury, Your Honor.
THE COURT: All right.
Q And specifically as it relates to those, Doctor, did you have any specific finding as to the direction of travel or the depth of the injury at that point in time?
A Well, during the external examination we do very little as far as determining where the projectile, where the bullet goes. So, basically, we're just looking at those what you can see on the outside at the external examination. So, then the next part of the autopsy examination is the internal

examination which is what many people think of as the autopsy where the Y-incision is made and the chest plate can be removed and then we can look further to see where that projectile or bullet in this case went, through which organs; and so, we do that at that part of the autopsy, the internal examination.

Q Okay, then let's clear up this last little bit. Could you look at 28 into evidence. That's this one.

MR. HIXSON: And we published that ---

THE COURT: All right.

Q Will you share that, please?

A So, again, this is the gunshot wound which is designated with a letter A and it's the case number above it, and you can see the nipple below it. So, that's at left chest.

Q Okay, now, you also indicated that while we're talking about it external findings did you - were you able to determine the height and the weight of the deceased?

A Yes, sir.

Q And what were those findings?

A His weight was approximately 145 pounds and he was about five foot nine and a half high, height.

Q Okay, five foot nine, 145; is that right?

A Yes, yes, sir.

Q Thank you. Okay, Doctor, now, how did your procedure continue from that point?

A Okay, so, following the external examination we, again, continued to the internal examination and the findings were that the bullet did go through the left lung, both through the left upper lobe of the lung and through the left lower lobe of the lung and it did so going through about the third rib. So, we have 12 ribs. So, you can kind of figure that out. So, about the third rib, between the 3rd and the 4th rib, through the upper lobe, through the lower lobe and then it hit the eighth rib in the back. Now, the bullet was recovered from the chest cavity. So, it basically, kind of bounced off that, that rib in the back, that eighth rib in the back and we got the bullet out of the chest cavity, and in association with that injury there was a great deal of bleeding into that chest cavity. He at this point, at the point of autopsy, he still had almost a whole liter of blood in that left chest cavity and that's after medical intervention where he had had a chest tube placed which we presume also drained some blood. So, there was a great deal of bleeding that is associated with this injury through the left lung.

Q Okay, you, in fact, indicated you recovered an object from inside the victim, Mr. Tisdale?

A That is correct.

Q Okay, let me show you what's been marked as State's Exhibit 33, see if you recognize that item?

A Yes, this is - this is the container that we use when we're packaging bullets and other items and it has our case number and my writing here that designates that this is the bullet from this case.

Q Okay, and you recovered that from the person, the deceased person of Mr. Tisdale?

A Yes, from Mr. Tisdale's left chest cavity.

Q Okay, Doctor, do you recognize that item?

A Yes, sir, that is the bullet that was recovered from Mr. Tisdale.

Q Okay, did you make a photographic record of that item?

A Yes, yes, sir.

MR. HIXSON: Your Honor, at this time the State would show State's Exhibit 29 to the witness. I don't believe that's in evidence quite yet.

BY MR. HIXSON:

Q Do you recognize that item?

A Yes, sir, this is a photograph of that bullet after taking, after it was taken out of the left chest cavity.

Q Okay, and obviously that, you indicated before that's a fair and accurate representation of the scene you saw when you removed the bullet from Mr. Tisdale?

A Yes, it is.

MR. HIXSON: At this time the State would move State's 29 into evidence, Your Honor.

THE COURT: Any objection?
MR. HAZZARD: No objection.
THE COURT: All right, State's Exhibit Number 29 admitted into evidence without objection.
(Whereupon, State's Exhibit Number 29 [Photograph] admitted into evidence and appropriately marked.)
MR. HIXSON: May I publish that to the jury, Your Honor?
THE COURT: Yes, sir.
MR. HIXSON: And State's 33?
THE COURT: State's 33 has not been admitted yet.
MR. HIXSON: I'm sorry. At this time the State would move State's 33 into evidence.
THE COURT: Any objection?
MR. HAZZARD: The Court's indulgence, Your Honor.
THE COURT: All right.
MR. HAZZARD: I just want to make sure I've seen it before. I'm pretty sure I have.
THE COURT: All right.
MR. HAZZARD: Okay, no objection.
THE COURT: All right, State's Exhibit Number 33 admitted into evidence without objection.
(Whereupon, State's Exhibit Number 33 [Bullet] admitted into evidence and appropriately marked.)
MR. HIXSON: At this time we would publish 29, Your

Honor?

THE COURT: All right.

MR. HIXSON: As well as 33.

BY MR. HIXSON:

Q Doctor, did you make any other findings of note relating to the Defendant's extremities or anything of note that you recorded?

A Let's see. There was a healing abrasion on one of his hands. So, it was a - not, not to do with this time period but something that had happened earlier, a small abrasion which is just a scrape to the - it's actually the back of his right wrist and then the other things were included several scars and then evidence that he had - that resuscitation attempts had been tried including IV access and endotracheal tube placement and those sorts of things.

Q So, there didn't appear to be anything remarkable relating to extraneous injuries that you recall?

A No, no, no other injuries, no, sir.

Q Did you - based on your observations did you record these observations in any type of reports?

A Yes, we generate a complete autopsy report which is what I have been referring to here and then that report goes to the coroner's office.

Q Okay, and part of the process do you do toxicology on the victim's blood?

A Yes, it is - on, on all of our forensic cases when possible, whenever possible we do do toxicologic studies on, on the blood.

Q Okay, and was there anything of note that you - in the victim's blood at this time?

A His toxicology was positive for ethanol, which is alcohol, at 106 mg per deciliter which is the same thing as 0.106 percent and his blood was also positive for Delta nine tetrahydrocannabinol which is the active ingredient in marijuana as well as a metabolite, an inactive metabolite of marijuana and it was also positive for nicotine which is from possibly smoking cigarettes or other form of tobacco use as well as a metabolite of nicotine which is called cotinine and was otherwise negative.

Q Okay, and all of those items do you take all that into account and generate a report based on that?

A Yes, sir.

Q Okay, and could you please tell the Court about the significant findings you made in this case?

A The cause of death is left lung perforation due to a penetrating gunshot wound to the left chest.

Q Okay, and based on, based to a reasonable degree of medical certainty I would ask you to offer this Court your opinion on whether or not this bullet wound to the chest was the proximate cause of this victim's death.

A Yes, sir, it was.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right, Mr. Hazzard, cross examination.

MR. HAZZARD: Thank you, Your Honor. Thank you.

CROSS EXAMINATION

BY MR. HAZZARD:

Q Good afternoon, Dr. Schandl, how are you?

A Fine, thank you.

Q Okay, now, you are a forensic pathologist; and so, your sole responsibility is to make the determination of the actual cause of death of an individual; correct?

A Yes, sir.

Q Okay, you were not involved in determining how or what incidents led up to that death; is that correct?

A That is correct.

Q Okay, so, you are not here to tell the jury in any way, shape or form that Dominic Leggette was not defending himself when he fired the gun that led to the fatal shot that led to the death of Antonio Tisdale; are you?

A No, sir, I have no information to that effect.

Q Okay, now, with regard to the entry wound, was the entry - was - I'm confused. To your knowledge did the bullet enter the chest from the front or from the back?

A From the front.

Q Okay, so, wasn't like any type of an ambush or anything

like that? It was a shot that was fired from in front of the decedent Antonio Tisdale; correct?

A Well, there are always many - there are - I cannot tell you where the two individuals were in space. However, the gunshot wound itself was to the front of the chest.

Q Okay, it entered the front?

A Yes, sir.

Q All right, thank you. No further questions.

THE COURT: Redirect?

MR. HIXSON: No, Your Honor.

THE COURT: All right, you may step down. Thank you very much.

MR. HIXSON: And may we excuse the doctor to return to her duties?

THE COURT: Any objection to excusing the witness?

MR. HAZZARD: No, Your Honor, no objection.

THE COURT: All right, you're free to go. Thank you very much.

All right, Mr. Hixson, you can call your next witness.

MR. HIXSON: At this time the State would call Al Ingram to the witness stand.

THE COURT: All right.

Whereupon, Al Ingram was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state

your name for the record.

MR. INGRAM: Al Ingram.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir.

A How you doing, sir?

Q Good, good, good. Please tell everybody where you live now.

A Fayetteville, North Carolina.

Q Okay, and who do you live with up in Fayetteville?

A My mother and my brothers and sisters.

Q Okay, and where were you born and raised?

A Newark, New Jersey.

Q I apologize?

A Newark, New Jersey.

Q Okay, and just make sure that - Madam Court Reporter has to hear everything you say. So, just if you need to slide up and speak more clearly as she wants to hear everything as well as everybody else. Okay?

At some point in time did you come to South Carolina?

A Yes, sir.

Q About how old were you when you came to South Carolina?

A I want to say about 12, 13.

Q Okay, do you have any brothers or sisters?

A Yes, sir.

Q Okay, how many brothers and sisters?
A I've got two brothers and one sister.
Q Okay, where are you age-wise?
A I'm the oldest.
Q You're the oldest one?
A Yes, sir.
Q Okay, and how about your brothers, tell me about them, your brothers and sisters how much - what are their ages?
A I've got one brother he just turned four, one brother is nine and my sister is 16.
Q Okay, so, at some point in time did your family come to live in - around Andrews, South Carolina?
A Yes, sir.
Q Okay, do you remember when that was?
A I want to say in 2006.
Q Okay, let's fast forward a little bit in 2006, back up to 2008, okay.
A Okay.
Q Specifically around August 13th of 2008, do you remember that?
A Yes, sir.
Q Okay, where were you August 13th, 2008, in the evening hours?
A I was up at a nightclub called Blue's.
Q Okay, now, what's Blue's like? Is this a nightclub? Is

it a - what, what's Blue's?
A It's more - I wouldn't say a nightclub but more just a hangout spot for everybody.
Q Okay, let me show you something that we've used already. This is State's Exhibit One. It's in evidence. See if you recognize this. Let me get it oriented for you. Do you recognize that?
A Yes, sir.
Q Take a look at that and tell me what that is.
A That's Main Street in Andrews.
Q Okay, well, can you point out to the jury since this is already in where, where's Blue's on this document?
A This, this is Blue's right here.
Q Okay, let me try to slide over here and see if this helps. Okay, and show me where everything else is. Now, where is Carnell's on that, on that sheet?
A This right here is Carnell's.
Q Okay, and show me where the Super Chic is on that diagram.
A This the Super Chic.
Q Okay, and is there a sidewalk down in front of all of this?
A Yes, sir.
Q So, now we know what we're talking about, let's talk about just generally what Carnell's is like, what Blue's is

like.
A Like I say, it's just really much a hangout spot for everybody in town. They pretty much come there, hang out, talk, whatever, just hang out pretty much.
Q Do you all stay inside, outside or what's it like?
A I want to say both, sometime shoot pool, sometimes we just hang out outside.
Q Do they have food there?
A Nah, I wouldn't say really food, like chip and soda, things like that.
Q Okay, how about Carnell's?
A No, Carnell's is more of a club, like a small nightclub setting.
Q Okay, and there's - well, is there more alcohol? Is there alcohol in both places?
A Yes, sir.
Q What do you mean by it's more like a night club?
A Like it's more of a, more of an - more older people be at Carnell's than Blue's, I should say.
Q Okay, let's talk about that night. Okay, that night I'm referring to we're talking about August 13th of 2008. Were you down there around - well, tell me what happened. Tell me what you saw.
A We was at - in front of Blue's around maybe 9:30, 10 o'clock, just out there hanging, you know what I'm saying,

with a group of friends that I normally be with or whatever from my side of town and we was just ---

Q What do you mean by your side of town?

A At the time I was staying on Jones Avenue, on Jones Avenue.

Q Okay, and I mean that's where you - your house was, that's where you lived?

A Yes, sir.

Q Okay, go ahead. I'm sorry. I didn't mean to interrupt you.

A I was just hanging out whatever, me and Antonio we was together or whatever. I can't say really too much of what happened right then because we had left, me and Antonio had left and when we came back it was - I don't know exactly what was going on but I just know it was like words being exchanged with people from my side of town and Dominic Leggette.

Q Okay, let me back up a little bit and you said a whole bunch right there. At some point in time, and you already answered it, did you see Dominic Leggette?

A When I came back, yes, sir.

Q Did you recognize Dominic Leggette by face or by name or what?

A I just at the time I didn't know his name. I knew his face. I just knew his face through town.

Q Okay, and where is Dominic Leggette from in Andrews?

A He's from what they call uptown.
Q Okay, and do people from uptown and Jones get along?
A No, sir.
Q And - okay, so, let - you said you left and came back?
A Yes, sir.
Q Did you speak to Dominic Leggette before he left?
A No, sir.
Q Did you speak to Dominic Leggette when he came - excuse me, Mr. Leggette, the Defendant when he came back?
A No, sir.
Q Did you - was there a fight going on?
A No, sir.
Q Well, you have to describe the scene a little bit to the jury because everybody wants to understand, so.
A Okay, when we - when I, when I first was there Dominic wasn't there. He wasn't, he wasn't up there at the club anywhere but when we came back that's when I seen him as I was walking up, I seen him and I can't really say who all words was exchanged but I just know it was him and maybe two or three other people. Words were exchanged and when I was walking up with Antonio I just hear people saying, "There go Al right there. There go Al right there." I guess once he seen me or whatever I seen him, once he seen me he just start walking off towards Super Chic I want to say.
Q Let me, let me ask you this, why would anybody care that

Dominic Leggette was there?
A I guess because like they don't like him I guess.
Q All right, is it because he's from the wrong side of town?
A Yes, sir, I'll say that.
Q Had you ever been in a fight with the Defendant, Dominic Leggette?
A It was one, one incident where we had got into it but it wasn't towards him. It was other people that he associated with that I had problems with and I was fighting him and he was trying to help them. So, blows was exchanged between me and him.
Q And how long ago prior to August 13th was that?
A That was maybe a year before this even happened.
Q So, a year before August 13?
A Yes, sir.
Q Had you ever had any interaction or fight with the Defendant between - do you remember where that fight was? Do you remember where that fight a year prior to this one happened?
A Yes, sir.
Q Where did it happen?
A It happened behind a club called Take a Break.
Q Okay, is that in the city limits of Georgetown?
A It's in ---

Q I mean, yeah, the city limits of Andrews, excuse me, in Georgetown County?
A Yes, sir.
Q Okay, were any weapons involved in that fight?
A No, sir.
Q What was the nature of that fight?
A It was just basically a fistfight.
Q Okay, did everybody go home after that was over?
A Yes, sir.
Q Did you talk about that to the police?
A If I don't - no, sir, because I don't, I don't remember any police showing up.
Q Okay, did you know Dominic Leggette's name then?
A No, sir.
Q Just knew him by his face?
A Yes, sir.
Q Okay, did you have any, did you and the Defendant have any fights or threats or anything from that time at Take a Break up until leading up to this night in question?
A No, sir.
Q Okay, do you - I won't ask you that. You don't know what he said. Okay, we're back in front of Blue's, okay.
A Yes, sir.
Q Try to reset. You said you left and then you came back.
A Yes, sir.

Q Now, let's start up from there, okay? Tell us what you saw.
A Like I said, when I came back, whatever, like I said it was him and two other people, whatever, words was exchanged or whatever and all I know is when me and Antonio walked up everybody was saying, "There go Al right there. There go Al right there," and when I looked down I seen Dominic standing by the Carnell's and he walked off and all I know ---
Q Which way, you say he walked off ---
A He walked off ---
Q --- which way did he walk off?
A --- towards Super Chic.
Q Okay, let me show you - let me just to make sure we're all on the same page, I'm referring the witness to State's Exhibit One in evidence. Can you point to the area we're talking about and the areas that you saw Mr. Leggette go?
A Okay, he was standing here and then he start walking this way towards this way towards Super Chic.
Q Okay, very good, that's good. Now, once again, why would someone tell you, "There goes, there goes Dominic?"
A I guess the - I should say I guess to start up a fight or whatever, whatever it was but me and him never had no, I say me and him never had no real problem. Any problem I had was with other people that he hung out with. It was never between me and him.

Q Did you see where Dominic Leggette went, where the Defendant went when he started walking away?
A He was just walking on the sidewalk like he just was just walking or whatever and when he was walking I said I'm very - I was like, "I'm not even about to mess with him tonight," you know what I'm saying? That's exactly what I said.
Q Okay, do you remember what he was wearing?
A He had a black T-shirt on and blue jeans.
Q Okay, did he have anything in his hands?
A He had like a, it was just like a white shirt, white type fabric he had. It was like at the time it was in like his back pocket.
Q And so, when you saw him he was walking down the street away from you to Super Chic?
A Yes, sir.
Q Okay, then what did you all do?
A As he was - he was a good, good feet away from us and that's when Antonio Tisdale, Billy, he told me he was like, "Let's walk to the store to get some cigarettes." So, I was like, "All right, fine, ain't nothing wrong with that." So, as we was walking we, we was walking --
Q Which direction did you go to get, according to Billy, get cigarettes?
A Towards Super Chic because that was the closest store

that was open.
Q Okay, please go ahead.
A And as we was walking we just was walking on the sidewalk like regular people do just walking, and I want to say we got towards - before we could even get to Momma's Kitchen it's a, it's a building - it's not - I don't think it's open now but it's called Momma's Kitchen, and when we got close to that area he just - I just seen him start tying like something around his face like a shirt, like a white shirt or a fabric, whatever it was, tying around his face, but I didn't think nothing about it like anything was going to happen, and before we could even get to the end of Momma's Kitchen to even see Super Chic, I just know he just turned around and just start shooting.
Q Did you yell at him?
A No, sir.
Q Did you yell - did, did Billy Tisdale yell at him?
A No, sir.
Q Did you all exchange words of any kind?
A He maybe said two or three words to us but I didn't hear - I didn't know exactly what he said. I just know he said maybe one or two, maybe three words at the most.
Q Okay, let's take a look at State's One and point to the area we're talking about here, okay.
A Yes, sir.

Q Okay, tell me where, where the walk started.
A Okay, the walk started from here from Blue's.
Q Okay, and where were you standing when you first saw Mr. Leggette, the Defendant, Mr. Leggette?
A I was standing in front of Blue's. He was standing down here by Carnell's.
Q Okay, and then you said that - you testified that Mr. Leggette started walking I guess that's east, that's towards Georgetown down the sidewalk; is that correct?
A Yes, sir.
Q Okay, and just show us the direction of travel where you were going.
A Okay, and he was already walking, whatever, and that's when Antonio asked me, "Let's go get some cigarettes." So, that's when we started walking on the sidewalk coming down, came down until we got about here, about right here. That's when I seen him start tying the fabric or the white shirt around his face. By the time we got to about right here, I want to say before we can get to the end of this building that's when he just started shooting.
Q Okay, can you tell us about this white t-shirt or fabric on his face you were talking about? Can you describe in what style you saw that? Like how, how was it done?
A It was tied like, like, like over his, over his face and his mouth, like he tied it like that like it in a knot or

whatever and like I say he just had it on his face like he was trying to hide his face or something. I don't know what he was trying to do.

Q Did you hear shots go off?

A Yes, sir.

Q Now, tell the jury about that.

A After he tied the fabric around his face or whatever that's when he maybe said, like I said he maybe said maybe three words at the most and then he just turned around and he just alike, like spent and just started firing the gun maybe three to four times.

Q Did you see - prior to this did you see a gun on him?

A No, sir.

Q Where did he reach for that firearm?

A It was like on his, on his waistline where, where his belt was.

Q Okay, what were the pacing of the shots? By that I mean how fast did they come?

A They came pretty - I couldn't get out the way. I seen him when he reached for the gun and I was trying to get out the way but it was just too fast.

Q Did you have a weapon on you?

A No, sir.

Q Did you have a knife on you?

A No, sir.

Q How long were you with Billy Tisdale prior to that, prior in the night to, earlier in the night to that?
A I want to say I was with him maybe an hour, hour and 30 minutes.
Q Did you see Billy Tisdale pull a weapon?
A No, sir.
Q Did you see him pull a gun?
A No, sir.
Q Or a knife?
A No, sir.
Q Was anybody - did anybody walk down behind you as you were going to the Super Chic?
A No, sir.
Q Tell us what happened after the gunshots.
A After the gunshots, like I say, he fired maybe three or four times. As he was firing I was, I was, I seen one bullet ricocheted off the ground and that was the bullet that actually hit me in the foot.
Q What do you mean by you saw that? What do you mean?
A Like I seen it spark like when it came off the ground and it hit me in the foot, and after that, after that it was maybe two more shots and I instantly fell to the ground, you know, I remember just hopping, jumping back up, and then I looked at Antonio. He looked at me and then we start running back towards Blue's to where the car was.

Q Okay, where was - when you were going past Momma's Kitchen, you weren't quite to the Super Chic yet ---
A Yes, sir.
Q --- you said you - you testified that you saw him with a white T-shirt or fabric or I think that's what you said?
A Yes, sir.
Q He was starting to tie something around his face.
A Yes, sir.
Q Where was Billy in relation to you during that period of time?
A He was like, he was on the right side of me. I was closer - I was - when we was on the sidewalk I was closest to the street. He was on the inside.
Q Okay, and about how far away from the Defendant, how far behind the Defendant were you during this last period of time?
A I want to say a good 10 to 15 feet.
Q Were you in striking distance?
A No, sir.
Q Are you in punching distance?
A No, sir.
Q Are you in stabbing distance?
A No, sir.
Q How about Mr. Tisdale?
A No, sir.
Q About how long did it take from the time that you saw

this - the white shirt, the fabric till Mr. Leggette turned around?

A I want to say a good 10, 15 seconds.

Q Okay, did - had Mr. Leggette made it to the Super Chic parking lot yet?

A He made it to where the lights was but he didn't actually like make it towards the parking lot. He made it to the like basically to the end of Momma's Kitchen.

Q Okay, was he running?

A At the time as he was shooting, no, but after the shots let off that's when he ran.

Q Did you see which direction he ran?

A I'm not sure, sir.

Q You did not see him or you did not - not sure of the question or what?

A I'm not sure exactly which way he ran.

Q Okay, okay. That's good. Let me point something out to you here. There's a Super Chic, can you point to where the area you believe that you were shot?

A I believe I was shot right up in here.

Q And where would Mr. Leggette have been standing when he turned?

A He was standing about, about right here.

Q Okay, and that's in the parking lot of the Super Chic pretty much; is that correct?

A Yes, sir.
Q Okay, what is this area here? Is this an alley?
A Yes, sir.
Q Okay, is that called Super Chic alley?
A Yes, sir.
Q Okay, had you been shot?
A Before?
Q No, no, I apologize. Let me clarify. After the gunfire went off I think you said you hit the ground. Can you describe from that point on?
A After, after he shot or whatever I was hit, I was hit. I seen I was hit. That's when I, I instantly fell to the ground and I remember jumping back up and I looked at Antonio. He looked at me and we just start running back towards Blue's to get to the car.
Q Did, did Antonio fall down?
A I don't think so, no, sir.
Q Were you watching him during that period of time?
A Yeah, yes, sir.
Q And what - you had to think about that. So, what do you mean by that? What did you, what did you have to think about?
A Because when I was hit, no, I wasn't watching him but when I jumped back up he was right there, like he was standing right there.
Q Did it hurt?

A At the time, no, sir.
Q Okay, then tell us what happened.
A When I got back up I looked at Antonio. He looked at me and we start running back towards Blue's to get to the car.
Q Okay, tell us about that. Did you all say anything during the running back or why you running?
A Because we just been shot at and we didn't know whether the shots was going to keep coming or we didn't, we didn't know what was going to happen. I knew I was hit. At the time I didn't know Mr. Tisdale was hit at the time, okay, and as we was, as we was running back we was running basically side to side by each other and I said to him, I said, I said, "Tony, he shot me," and he was like, "I know. He shot me, too," and when he said that I just remember I just kept running until I got to the car and when I got to the car I looked back. I didn't see Antonio. So, that's when I went back to the front of the club and that's when I seen him laying down in front of Carnell's and Blue's.
Q Did you get into that car?
A No, sir.
Q And why didn't you get into a car?
A Because Antonio had the keys in his pocket at the time.
Q All right, was the car locked?
A Yes, sir.
Q Tell us, tell us about when you went back to where

Antonio was.
A When I went back where Antonio was he was like I want to say stretched out, laying down on the concrete and it was like people trying to hold him up, you know what I mean, trying to, I guess, help him fight for his life.
Q Were you bleeding?
A Yes, sir.
Q Let's talk about your injury a little bit. Where were you shot?
A In the ankle.
Q Okay, can you please describe as best you can to the jury about your wound?
A It was, it's basically, it was basically two holes where the bullet went in and the bullet came out.
Q Okay.
MR. HIXSON: Your Honor, we would ask permission to show that injury. It's on his ankle so the jury ---
THE COURT: All right, any objection?
MR. HAZZARD: No objection.
THE COURT: All right.
BY MR. HIXSON:
Q Can you come around? You want to try to show - can - so the juror - everybody can see from here, maybe the back row can slide around. Okay, that's the entrance wound right there?

A Yes, sir.
Q And exit wound right there?
A Yes, sir.
Q Can you slide back here for a second, see the folks in the back row, and the lady in the back make sure she can see it. That's an entrance wound right there?
A That's it.
Q An exit wound right there?
A Yes, sir.
Q Thank you.
So, no bullet was recovered from that?
A No, sir.
Q Was it bleeding bad?
A Yes, sir.
Q Let me show you a couple of photographs. These have already been presented to the jury. The jury has already had a chance to see these. Beginning with State's Two, see if you recognize that.
A Yes, sir.
Q Is that the area we were talking about that's in front of ---
A Momma's Kitchen.
Q And the Super Chic?
A Yes, sir.
Q Okay, I'm going to show Two.

MR. BROWN: Number Two.
Q State's Exhibit Two, I think that's the first photograph.
MR. BROWN: The first one.
Q Is that it? Make sure that's the right one. That's the right one.
A Yes, sir.
Q Okay, let me show you photograph eight. That's, that's not - our number photograph eight it's State's Exhibit 12 and State's Exhibit 13 into evidence that's our photograph nine. Some blood. Is that the area where you all bled?
A Yes, sir.
Q And can you show the next one, Mr. Brown, Investigator Brown, and then there's a bunch of photos, Al. So, let me get them just to be sure. I'm showing the witness State's Exhibit 21. That's photograph 17. Do you recognize - well, do you recognize that area?
A Yes, sir.
Q Is that where - the area that you and Mr. Tisdale ran?
A Yes, sir.
Q Is that where you all bled?
A Yes, sir.
Q I'm showing photograph 20, State's Exhibit 24. That's in evidence. Do you recognize that?
A Yes, sir.
Q Is that where Mr. Tisdale was lying?

A Yes, sir.
Q Thank you.
Did you have to go to the hospital for your bullet wound?
A Yes, sir.
Q And you received some medical treatment for that?
A Yes, sir.
Q How are you doing because of that wound I should say, clarify that.
A It was, it was hurting pretty bad, but I was doing okay I should say.
Q Okay, now, did you give a statement to the police concerning the identity of the person that shot you?
A Yes, sir.
Q And what did you tell the police?
A I told them I didn't know his name but I knew him by face.
Q Okay, and who did you give that statement to?
A Inspector Eddie Lee.
Q Okay, and then after that did Mr., Investigator Lee give you any pictures to take a look at?
A Yes, sir.
Q Okay, did you provide a description of the clothing that the person was wearing that night to Investigator Lee?
A Yes, sir.

Q Is that the same description you've given the court today?
A Yes, sir.
Q About blue jeans and a dark T-shirt?
A Yes, sir.
Q Okay, tell us what happened when Mr. Lee came out to your house.
A Mr. Lee came to my house, asked me about could I pick out, if I was to look at some pictures could I pick out who the shooter was.
Q Okay, did he provide you with any photographs?
A Yes, sir.
Q Okay, I have in my hand what's been marked as Court's Exhibit Number Seven and which will be State's Exhibit 34. It's not in evidence yet. Do you recognize that item? Take a look at that.
A Yes, sir.
Q What is that?
A It's photographs of six black males.
Q Okay, is what they call a lineup?
A Yes, sir.
Q Okay, how did Investigator Lee present that information to you?
A He basically told me he was going to show me a lineup of six black males telling me that he can't help me pick out

anybody, I had to do it myself, if I see the suspect acknowledge that.

Q Okay, did you see anybody in there you recognized?

A Yes, sir.

Q And what did you do when you saw that?

A I told Investigator Lee which, which exact picture I knew it was.

Q And which picture was that?

A Number five.

Q Okay, and did you make any indication on that file in writing on who you picked?

A Yes, sir.

Q What did you do?

A I put my initials and the date.

Q Okay, and do you see that person that you picked in this courtroom today?

A Yes, sir.

Q Who is that?

A Over here Mr. Dominic Leggette.

Q And what is he wearing?

A White ---

Q To make sure we're clear we're talking about the right person.

A --- got the dreadlocks, white collared shirt and blue tie.

MR. HIXSON: At this time the State would move State's Exhibit 34 into evidence.

THE COURT: Any objection?

MR. HAZZARD: Subject to previous motion, Your Honor.

THE COURT: All right, State's Exhibit Number 34 admitted into evidence.

(Whereupon, State's Exhibit Number 34 [Lineup] admitted into evidence and appropriately marked.)

MR. HIXSON: And may I publish this, Your Honor?

THE COURT: Yes, sir.

BY MR. HIXSON:

Q Now, from the time that Investigator Lee handed that to you until the time you identified the person that shot you how long did that take you to do that?

A I want to say less than five seconds.

Q But you had seen him before; is that right?

A Yes, sir.

Q But the only reason you did that because you didn't know his name; is that correct?

A Yes, sir.

Q Okay.

MR. HIXSON: Beg the Court's indulgence.

BY MR. HIXSON:

Q Let's talk about this. You been in trouble before?

A Yes, sir.

Q You been in trouble as a juvenile before?
A Yes, sir.
Q Okay, what kind of trouble you been in?
A Possession of a weapon.
Q Okay, did you get adjudicated for that, guilty of it?
A Yes, sir.
Q What kind of sentence did you get for that?
A It was a 13 month sentence.
Q As a juvenile for DJJ?
A Yes, sir.
Q Okay, how old were you when this happened?
A I was 13.
Q 13 years old and how about how old were you when this shooting occurred when you were shot?
A I was 16.
Q Okay, once again, did you fight with Dominic Leggette within a year prior to this happening?
A No, sir.
Q Okay.

MR. HIXSON: I have no further questions at this time, Your Honor.

THE COURT: All right, Mr. Hazzard, cross examination.

CROSS EXAMINATION

BY MR. HAZZARD:

Q Good afternoon, Mr. Ingram, how are you, sir?

A How you doing, sir?
Q I'm fine. Thank you very much for asking.
So, at age 13 you were carrying an unlawful weapon?
A Yes, sir.
Q And what type of weapon was that, sir?
A It was a 22 caliber handgun.
Q 22 caliber handgun, okay.
Now, August 13th of 2008 was a Wednesday; correct?
A Yes, sir.
Q Okay, and about what time was it that you and Mr. Tisdale made your way to Blue's?
A I want to say 9:30 to 10 o'clock.
Q 9:30 to 10 o'clock, okay.
Now, that's a school night; isn't it?
A Yes, sir.
Q Okay, didn't you have school the next today?
A Yes, sir.
Q Okay, but you're out in the juke joint; is that correct?
A Yes, sir.
Q Okay, now, the forensic pathologist has said that Mr. Tisdale had marijuana and alcohol in his system. Were you drinking and smoking with him?
MR. HIXSON: Your Honor, I would object to that relating to relevance.
THE COURT: All right, I sustain the objection.

Q So, you got there about 9:30 or 10 o'clock; correct?
A Yes, sir.
Q Okay, and when you got there I believe you told Deputy Solicitor Hixson that Mr. Leggette, that Dominic here was already over by Carnell's; is that correct?
A Yes, sir.
Q Okay, so, this person that you didn't really know but recognized by face you knew enough about him to know that he was over there by Carnell's; right?
A Yes, sir.
Q Okay, now, how far is it from Carnell's to Blue's?
A Maybe 10 feet, it's not very far.
Q Practically side-by-side; right?
A Yes, sir.
Q Okay, so, when you - and was anyone else with you and Mr. Tisdale or it was just the two of you?
A It was other people standing out there that was outside.
Q Okay, when you came to Blue's was it just you and Mr. Tisdale?
A Yeah, we --
Q You all arrived together?
A Yes, sir.
Q Okay, in his car; is that correct?
A Yes, sir.
Q Okay, so, you get to Blue's and there were other - I

believe you told Mr. Hixson that there were words between people from your side of town and Mr. Leggette when you got there; is that correct?

A Yes, sir.

Q Okay, who were these people from your side of town, sir?

A I'm not, I'm not sure exactly who it was. I just know it was people.

Q And when you say words, what kind of words?

A Like I wasn't trying to get into their conversation or whatever they was talk - whatever they was talking about. I just know it was words between him and them. That, that's all I could verify.

Q So, when you say words though tell the jury whether it seemed like a polite and casual conversation or did it catch your eye because people from your side of town seemed to be having a problem with Mr. Leggette or vice versa?

A Repeat that, sir.

Q Okay, sir, did it catch your eye because there was some conflict in those words?

A I'm saying you see people arguing of course it's going to catch your eye.

Q Okay, so, there was some arguing going on. Okay, and roughly how many people from your side of town were we talking about?

A I want to say two, three at the most.

Q Two or three and then at that point I believe you told Mr. Hixson that when you and Mr. Tisdale come up Mr. Leggette starts to leave; is that correct?
A Yes, sir.
Q And some of these people from your side of town when he starts to leave they say, "Al, there goes Dominic"; isn't that correct?
A Yes, sir.
Q But you have no idea why they felt the need to call out Mr. Leggette's name to you, especially since according to you you don't even know him by name; isn't that right?
A Yes, sir.
Q Okay, but apparently people from your side of town think you know him by name; right?
A No, sir.
Q Well, you just said they said, "Al", when he started to leave, they said, "Al, there goes Dominic"; right?
A Yes, sir.
Q All right, and so, Dominic takes himself away from the situation, he starts walking down towards the Super Chic; right?
A Yes, sir.
Q Okay, and how long after that did you and Mr. Tisdale decided you all needed to follow him?
A We were never following him. We was going to the store.

Q Okay, how long after Dominic left and removed himself from that altercation did you and Mr. Tisdale feel the need to go in the same direction he went?
A I want to say maybe two, three minutes.
Q Two or three minutes. Now, I'm not good with distances at all but for the sake of the jury you all have been pointing on this all day. Is this the Super Chic building right here?
A Yes, sir.
Q Okay, now, which one of these buildings is Blue's?
A Right here.
Q This one and which one is Carnell's?
A This one.
Q Right there, okay, so, can you give me an idea on this sidewalk here what kind of distance we're talking about from the front of Carnell's to this intersection right here? What kind of distance do you figure that is, sir?
A I'm not sure, sir.
Q Okay, any idea whatsoever?
A No, sir.
Q But it's less than a city block; right?
A Yes, sir.
Q Okay, so, in two or three minutes then according to you you didn't, you all didn't follow after him for two or three minutes but yet two to three minutes after he leaves from in front of Carnell's you're saying this man didn't make it half

a city block before you all got behind him?
A No, sir.
Q Okay, now, where is the - you say that Dominic and his family, his people are from what they call uptown; is that correct?
A That's where he from far as I know.
Q Okay, and that's how the people in Andrews refer to the area of town that he is from, they call it uptown area?
A Yes, sir.
Q Okay, where is the uptown area in relation to Carnell's and Blue's?
A It's considered uptown.
Q Okay, so, that is the uptown area?
A Yes, sir.
Q Okay, and you say that you at that time were living I believe you said on Jones Street or Jones Avenue?
A Yes, sir.
Q Okay, now, that's referred to more as west side; right?
A Yes, sir.
Q Okay, and where is that in relation to Carnell's and Blue's?
A It's a couple of minutes away.
Q Okay, but this particular night in front of Carnell's though people from your side of town, the west side, are out there in front of Blue's, in front of Carnell's; correct?

A Yes, sir.
Q Okay, and Dominic Leggette was there - did it appear - was anybody with him?
A Not that I seen. He was by hisself.
Q All right, so, you say there was a bullet - that you saw a bullet that sparked off of the ground. Was that the first shot, second shot, third shot?
A I'm not sure. I just know I seen a bullet hit the ground and come up and hit me in the foot.
Q Okay, did you hear a bullet before one hit you in the foot? Did you hear a shot before the bullet hit you in the foot?
A I'm not sure. I just know he was shooting.
Q Okay, and your testimony to Mr. Hixson is that when Dominic according to you for reasons satisfactory only to himself turned around and started shooting at you and Mr. Tisdale, according to you you all were still some 10 to 15 feet away; correct?
A Yes, sir.
Q Okay, but yet you have no idea how far it is from Carnell's which is in the middle of the block to the intersection at the end of the block where it happened; is that correct?
A Yes, sir.
Q Okay, make sure I'm correct, Mr. Hixson, and I didn't

really get to see it, Mr. Hixson had you show the jury your ankle injury but am I correct in stating that the entrance wound is somewhere along the front of your ankle and it exits kind of out of the side of your ankle?

A Yes, sir.

Q Okay, so, it's not like somebody shot you in the heel from behind?

A No, sir.

Q Okay, now, you say that there were, there was a previous fight some year prior between you and Dominic; right?

A It wasn't towards him but he was there, he was helping his, his people or whatever and I was helping mine.

Q Okay, so, during that altercation about how many people were on each side?

A I want to say a good four or five on each side.

Q Okay, and getting back to the night of August 13th, 2008 ---

A Yes, sir.

Q --- there was still a long-running beef from something that had happened two days prior to that that involved you; correct?

A Not between me and him.

Q Not between you and him but between him and his family; right?

MR. HIXSON: Your Honor, once again, I would object to

that. It has to be relating to the victim and the Defendant, not fights in general.

THE COURT: I'm going overrule it. I'll allow it. Go ahead.

Q So, that preceding Monday there was another altercation with you and your people and some of Dominic's family members; is that correct?

A I won't say his family members but his associates who he be with.

Q And do you know whether or not these people are members of his actual blood family?

A I'm not sure.

Q Okay, and in fact, two days prior to that, the preceding Saturday, Saturday the 9th, four days before this incident on the 13th, you had an altercation with some of the members of what you refer to as his associates; isn't that correct, sir?

A Yes, sir.

Q Now, on the 9th when this occurred how many of your people were with you?

A I want to say maybe a good eight at the most.

Q And how many of Dominic's associates or family members were with him, his relatives were, were there, were present since you say he wasn't there?

A He wasn't there but it was a good four or five of them.

Q Okay, so, eight of you all, four or five of them and

there was a physical altercation at that time; right?
A Yes, sir.
Q Okay, so, that's Saturday the 9th, then Monday the 11th how many of your people were with you?
A It was four of us.
Q Okay, and how many relatives of Dominic's were involved this time?
A It was a good eight or nine of them.
Q Eight or nine of them, okay, so, now, on the 13th there's just Dominic; isn't it?
A Yes, sir.
Q And your people out in front of Carnell's, out in front of Blue's, you and Mr. Tisdale get there and all of a sudden people are saying, "Hey, Al, there goes Dominic"; isn't that correct?
A Yes, sir.
Q Oh, this all started with you and Mr. Tisdale at Blue's; correct?
A Yes, sir.
Q And you told Mr. Hixson here that Mr. Tisdale said, "Let's walk down to the Super Chicken and get some cigarettes"; right?
A Yes, sir.
Q They sell cigarettes at Blue's; don't they?
A Not that I know of.

Q Not that you know of. All right, no further questions.
THE COURT: Redirect?
MR. HIXSON: Yes, sir.
REDIRECT EXAMINATNION
BY MR. HIXSON:
Q I think Mr. Hazzard alluded to this quite a bit. So, let's just, you know, get straight to that point, I guess. Were those guys trying to encourage you to fight these guys, your, your, your people as Mr. Hazzard said?
A Yes, sir.
Q Did you want to fight him?
A No, sir.
Q So, what did you say?
A I said exactly out of my mouth, "I'm not about to bother him tonight." That's exactly what I said.
Q And so, the - isn't it - the group of the folks in front of Blue's that discussion you had with, as Mr. Hazzard refers to as your people, are you in a gang?
A No, sir.
Q Who were the people he's referring to?
A We all from Jones Avenue.
Q Okay, and Jones Avenue is the place you live?
A Yes, sir.
Q Do you know if Mr. Leggette is in a gang?
MR. HAZZARD: Objection, Your Honor.

THE COURT: Sustained.

MR. HIXSON: Your Honor, just so I can put that on the record, I believe Mr. Hazzard has opened the door relating to that when he specifically refers to that group as relatives and this group as people. That's, that's ---

THE COURT: I disagree. Overruled.

MR. HIXSON: Thank you, Your Honor.

THE COURT: I mean, sustain the objection.

MR. HIXSON: Thank you, Your Honor.

BY MR. HIXSON:

Q These prior altercations were there guns involved in these?

A No, sir.

Q What were they?

A Just regular fistfights.

Q Okay, how old were the guys involved in these?

A Pretty much everybody was older than me. I was basically the youngest out of everybody.

Q Okay, did Mr. Leggette routinely win those fights, beat you up?

A No, sir.

Q Did - on the - in the fight around Christmastime were you actually hitting Mr. Leggette, excuse me, Take a Break a year prior.

A My intentions with him it wasn't to hit him but he was

coming towards me. So, I had to defend myself.
Q Okay, so, there are hittings, there's hitting going on during that period of time. That's what I'm trying to say, fistfights?
A Yes, sir.
Q Okay, but the other ones trying to get to is you and Mr. Leggette were not involved in those fights together?
A No, sir.
Q Now, when he keeps talking about the relatives, his relatives are that - is that mother and father?
A No, sir.
Q What is it referring to as the group that he's talking about relatives?
A I guess his, his associates, his gang or whatever.
MR. HAZZARD: Your Honor, I'm going to object again that characterization.
THE COURT: Sustained, sustained.
MR. HAZZARD: And ask that ---
THE COURT: I ask the jury please disregard the last answer.
MR. HIXSON: Thank you, Your Honor.
BY MR. HIXSON:
Q Finally, Mr. Ingram, was there a fight going on in front of Blue's and Carnell's that night?
A No, sir.

Q Was there a fight going on in front of Momma's Kitchen that night?

A No, sir.

Q Was there a fight going on anywhere at any period of time during August 13th of 2008?

A No, sir.

MR. HIXSON: No further questions, Your Honor.

THE COURT: All right, you may step down.

Let me see the attorneys for a second.

(Whereupon, a bench conference is held in the presence but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen, before we get to this next witness I think it's a good time for us to take a break. We've been at it for about an hour and 15, 20 minutes now. So, I'm going to excuse you back to the jury room, give you an opportunity to get something to drink, use the restroom, stretch your legs, whatever the case may be but please do not discuss this case even among yourselves at this time. Thank you very much. Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, let's stand in recess for about 10 minutes, okay?

MR. HIXSON: Your Honor.

THE COURT: Yes, sir.

MR. HIXSON: I do have one brief point. Mr. Ingram ---

THE COURT: Hold for a second. Hold for a second. All right.

MR. HIXSON: Mr. Ingram and his mother, his mother really was trying to get back to Fayetteville for work and I'm okay with excusing him from subpoena but I wanted to bring that to the Court's attention, if we could have him excused from his subpoena so that we can get his family back to Fayetteville.

THE COURT: Any objection?

MR. HAZZARD: No objection.

THE COURT: All right, Mr. Ingram is free to go. Thank you very much. All right, let's stand in recess for about 10 minutes.

OFF THE RECORD

(On the record.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, anything from the State before we bring the jury in?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing from the Defense.

THE COURT: All right, let's go ahead and bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back to.

Mr. Hixson, you can call your next witness.

MR. HIXSON: Thank you, Your Honor. The State would call Investigator Eddie Lee from the Andrews Police Department.

THE COURT: All right.

Whereupon, Eddie Lee was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record, please.

MR. LEE: Investigator Lee, Andrews Police Department.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir.

A Yes, sir, good evening.

Q Please tell the Court what you do for a living.

A I'm a criminal investigator for the Andrews Police Department.

Q And about how long have you been in that capacity?

A I work for - I've been an investigator about 15 years though I got about a total of 25 years of law-enforcement experience.
Q Okay, and so, within the past 25 years I guess were you working August 13th of 2008?
A Yes, I did.
Q And did you have an occasion to report to - at around 15 West Main Street in Andrews?
A Yes, sir.
Q In reference to a shooting incident?
A Yes, sir.
Q And please tell the jury what happened, what, what you did.
A On that day in question on the August the 13th, 2008, I was called, dispatched to West Main Street in reference to a shooting.
Q Okay, and tell us what the scene looked like when you arrived.
A It was roped off when I got there. I don't know who roped it off but it was, it was roped off for collecting evidence.
Q Okay, so, tell the jury what, Investigator, your role, what normally you would do in cases like this.
A The first thing I would do is make contact with the initial officer who would respond to the location and it's

basically is a fact-finding, information, gathering information and I usually ask them what happened, who's the person involved, any witnesses and go down the line like that.

Q Okay, did you do that in this case?

A Yes, sir, I did.

Q Okay, let me show you what's been marked as State's Exhibit Number Two in evidence. Can you take a look at that photograph?

A Yes, sir.

Q And what is that?

A This is Momma's Kitchen on West Main Street beside the Super Chic which is the Andrews Food Pantry on West Main Street in Andrews.

Q Okay, and can - Investigator Brown, can you bring up picture number one? Are you ready to do that or - okay, and that's the picture you're looking at?

A Yes, sir, the same thing.

Q And that's the - that's what the scene looked like when you arrived?

A Yes, sir.

Q The crime scene tape and such was in place like that?

A Yes, sir.

Q Okay, once you arrived then what do you do?

A I made contact with Patrol Officer Verney Cumbee. He provided me with information that who, who was the alleged

shooter at that time.
Q Okay, were the victims still on scene when you arrived?
A The victim wasn't there when I arrived. The victim was already transported to my information, he was already transported to the hospital.
Q Okay, did you do any walk-through for evidence?
A Yes, sir.
Q Okay, and what did you find?
A I find three 380 shell casings approximately almost right in front of Momma's Kitchen.
Q Okay, let me show you a photograph that's been marked. It's in evidence as State's Exhibit Number Three. That's photograph number two. That's in evidence. Do you recognize that scene?
A Yes, sir.
Q And do you recognize Investigator Dustin Morris with the Sheriff's Department?
A Yes, sir.
Q And why is he pointing in that direction?
A He's actually pointing to where I collected the 380 shell casings at.
Q Okay, let me show you, this is not in evidence yet. This is State's Exhibit Number Four. Let me show you that item.
A Yes, sir, those, those - this is one of the 380 shell

casings I collected.
Q What is that you're looking at?
A This is a photograph of a 380 shell casing.
Q Okay, did you observe that scene?
A Yes, sir.
Q Okay, and is that photograph a fair and accurate representation of the location you found that shell casing?
A Yes, sir, I did because I took the photograph.
Q Okay, and does that correlate with State's Exhibit Number Two, the area where Dustin Moors is pointing?
A Yes, it does.
Q Okay.
MR. HIXSON: At this time the State would move State's Exhibit Number Four into evidence.
MR. HAZZARD: Without objection.
THE COURT: All right, State's Exhibit Number Four admitted into evidence without objection.
(Whereupon, State's Exhibit Number Four [Photograph] admitted into evidence and appropriately marked.)
MR. HIXSON: And may I publish this to the jury, Your Honor?
THE COURT: Yes, sir.
BY MR. HIXSON:
Q Did you, in fact, collect shell casings from that incident?

A Yes, sir, I did.
Q Let me show you what's been marked as State's Exhibit 31. It's not in evidence yet. Take a look at that.
A Yes, sir.
Q What is that?
A A 380 shell casing.
Q Is that the one you recovered from that scene?
A Yes, sir, it is.
Q Okay.
MR. HIXSON: At this time the State would move State's Exhibit 31 into evidence.
THE COURT: Any objection?
MR. HAZZARD: No objection.
THE COURT: State's Exhibit Number 31 admitted into evidence without objection.
(Whereupon, State's Exhibit Number 31 [Shell Casing] admitted into evidence and appropriately marked.)
BY MR. HIXSON:
Q Investigator Lee, can you take a look at State's Exhibit Five in evidence, that photograph.
A Yes, sir.
Q And excuse me for a second. Let me see what photograph that is. That's our number photograph three. Go ahead and bring that up to show the jury which one we're talking about. Did you recover a shell casing from that location?

A Yes, sir, I did.
Q Okay, I'm showing State's Exhibit Six. It's not in evidence, for identification only. Do you recognize that?
A Yes, sir.
Q Tell you what, Investigator Lee, here's another one. How about State's Exhibit Eight for identification purposes only. Take a look at that one, also.
A Yes, sir.
Q What are those?
A Two photograph of 380 shell casings, which I took all two of the photographs, a total of three of them altogether.
Q Okay, and those photographs were taken in the location where you originally found the shell casings?
A Yes, the original, yes, sir.
Q And you picked up those casings?
A Well, I took a photograph of them before I removed them.
Q Okay, are those - are those photographs fair and accurate representations of the scene you saw August 13th, 2008, around 10, 11 o'clock at night?
A Yes, sir, it is.
Q Okay.
MR. HIXSON: Your Honor, at this time the State would move State's Exhibit Six and Eight into evidence.
THE COURT: Any objection?
MR. HAZZARD: No objection.

THE COURT: State's Exhibit Number Six and State's Exhibit Number Eight?

MR. HIXSON: Yes, sir.

THE COURT: Admitted into evidence without objection.

(Whereupon, State's Exhibit Number Six [Photograph] and Eight [Photograph] admitted into evidence and appropriately marked.)

MR. HIXSON: And may I publish these, Your Honor?

THE COURT: Yes, sir.

BY MR. HIXSON:

Q And then finally we have a photograph, State's Seven, this is already into evidence. Investigator Lee, could you take a look at that?

A Yes, sir.

Q And what is that a photograph of?

A Photograph of basically some general area of the casings that we found and with Investigator Dustin Morris is pointing into.

Q Okay, and that item is in evidence.

A Yes, sir.

Q Take a look at State's - I'm handing the witness State's 32, Your Honor.

A Yes, sir.

Q For identification only.

A These are two 380 shell casings.

Q Okay, did you collect those shell casings?
A Yes, I collected those as well.
Q Placed them in an evidence container?
A Yes, sir.
Q At the Andrews Police Department?
A Yes, sir.
THE COURT: Your Honor, at this time the State would move State's Exhibit 32 into evidence and just for clarification, and State's 31 if I have not already done so.
THE COURT: All right, any objection?
MR. HAZZARD: Simply ask that there be a specification for the record that they have not been altered or amended in any way, that they are in substantially the same condition upon when he collected them.
MR. HIXSON: Fair enough. I don't mind laying the foundation for that, Judge.
BY MR. HIXSON:
Q Investigator Lee, when you collect items of this nature ---
A Uh-huh.
Q --- do you safeguard these items?
A Yes, sir.
Q Do you protect the integrity of these items?
A Yes, sir.
Q Do you manipulate or do anything with them in any way?

A No, sir.
Q And you assure their appearance in court?
A Their appearance, yes, sir, I do.
MR. HIXSON: That sufficient?
MR. HAZZARD: No objection.
THE COURT: All right, Plaintiff's [sic] Exhibit 31 is already in evidence. Plaintiff's Exhibit - excuse me, State's Exhibit Number 32 admitted into evidence without objection.
MR. HIXSON: Thank you, Your Honor.
(Whereupon, State's Exhibit Number 32 [Shell Casing] admitted into evidence and appropriately marked.)
BY MR. HIXSON:
Q Investigator Lee, what's a head stamp on a cartridge?
A What's that?
Q Do you know what the stamp, a head stamp stamping on the end of a cartridge is?
A The head stamp would basically show the caliber of the casing.
Q Does it show the manufacturer?
A It, it should. I'm not sure. It should, it should.
Q Okay, could you read the ---
A Do you want me to take it out?
Q Yes, sir. Unless you can read it through the bag.
A I can't. I need my glasses on this one.

Q Okay. It's small writing. Can you read it?
A I can't. It's kind of small. I really can't read it. I don't want to try to manipulate nothing. I just can't see it.
MR. HIXSON: Your Honor, do you mind - do you have an objection if I read what the head stamp says?
A Because I can't see it.
MR. HAZZARD: No objection.
THE COURT: All right, go ahead.
MR. HIXSON: Or the Court may.
BY MR. HIXSON:
Q W-I-N, Winchester 380 aut.
A Winchester 380, yeah.
Q Okay, let's put that back in that one.
MR. HAZZARD: Out of an abundance of caution I would ask that the Court review it and may - and take judicial notice of what's on the head stamp.
THE COURT: All right.
MR. HAZZARD: So, that way there's no question.
MR. HIXSON: That's quite appropriate, Your Honor, and I'm handing the Court - I have already handed the Court two 380 caliber Winchester casings in State's 32 in evidence and I'm handing State's 31 which contains a single cartridge casing.
THE COURT: All right, the Court will take judicial

notice that both of these casings are stamped W-I-N 380 auto.

MR. HIXSON: And Your Honor, this is State's 31, and I'll place that back.

THE COURT: Likewise, this casing is stamped, heading is stamped W-I-N 380 auto.

MR. HAZZARD: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. HIXSON:

Q Investigator Lee, therefore, all three of these casings are the same caliber and manufacturer cartridge; is that correct?

A Yes, sir.

Q Okay, once you pick up these shell casings and photograph them tell us, tell the Court what you did then.

A What I basically do is package them and I send them off to SLED.

Q Okay. Did SLED perform any analysis of these items?

A Yes, they did.

Q And what did they determine?

A Based on the information to my knowledge they determined that it was a 380 round that came out of the shell casing.

Q Okay, did you make any efforts to try to find a pistol involved in this case?

A Yes, sir, I did.

Q Can you just quickly, I guess, detail those, those,

those efforts?
A Based on my fact-finding information got a guy named Harry Cox I heard that he was alleged to be some associate of Mr. Leggette. I made contact with him. He signed what you call a custom receipt form and he actually relinquished the gun. I received the gun, send the gun off to SLED for comparison, but it didn't match up with the casing that we found at the crime scene.
Q Now, was there any allegations that that was the gun used in the offense?
A Well, I had heard it but I wanted to, you know, check it out. I wanted to be fair not only to the victim, I wanted to be fair to Mr. Leggette as well. That's why I did what I did.
Q Okay, and how far after the crime did this effort occur?
A I don't have an exact date. I'm just saying maybe a week or two once I - as the information came in I had to take everything and gather it together and make the right analysis of it and when I got that information that he was associate of Mr. Cox and Mr. Cox did own a 380 and we find a 380 shell casing, I asked Mr. Cox would he relinquish the gun to me to test to see if it match up with the shell casing we found at the crime scene.
Q And this, Mr. Cox voluntarily did that?
A He voluntarily, he signed a property receipt and relinquished the gun and I received it.

Q And did that investigation reveal that was the gun that fired those shots?
A It revealed it wasn't the gun.
Q So, we still don't - you still have not been able to find the murder weapon.
A No, sir, I have not.
Q Okay, please tell us what - how you generated the Defendant as a suspect.
A Based on my initial contact with Corporal Cumbee the night of the incident the 13th August.
Q Okay, was that based, was that based on eyewitness testimony?
A That and also I - I also made contact with Mr. Al Ingram. He was actually in the ambulance. The deceased victim had already left the scene.
Q Okay, and did Al Ingram indicate he knew who had shot him?
A He never did, he said he didn't know his name. He just say he saw him around town at that time.
Q And did he say he could identify him by face?
A Yeah, he told me he could identify him but he didn't know his name.
Q And then if you have a situation like that what does an investigator - what do you do next?
A Well, the next thing you do is you get a description of

the alleged suspect, you put them in what you call a photo lineup.

Q Okay, did you do that?

A Yes, sir.

Q Okay, let me show you what's in evidence as State's Exhibit 34, see if you recognize that.

A Yes, sir.

Q What is that?

A This is a lineup of six black males.

Q Okay, who created that lineup?

A I did.

Q Okay, and where did you draw the photos from?

A I got the photos from the Georgetown County Detention Center.

Q Okay, do you make any steps to make sure that the lineup is not presumptive in any way?

A Yes, sir, basically what I did, you know, originally, you know, Mr. Leggette was a black male. So, I got six black males. I basically got the background of the picture basically all of them the same, like I said, to be fair to the victim and Mr. Leggette and that's the way I did the photo lineup.

Q Okay, at some point in time did you present that lineup to Al Ingram?

A Yes, sir, I present it to him on the 14th of August.

Q Okay, did you give him any instructions or tell him anything during - while you presented it?
A I basically told, I basically told him that he - I got six black males and I want him to see if he could identify and he'll have to pick him out.
Q Okay.
A If he's in the photographic lineup.
Q Okay, did Mr. Ingram pick somebody out?
A Yes, sir.
Q And what did you tell him to do if he recognized anybody?
A I asked him to place his initials on which one of the photo lineup numbered through - one through six to put his initials and the date.
Q Okay, and he did that?
A He put his initials A-I and then he put 8-14-2008 on number five.
Q On number five, and is that photograph a photograph of Dominic Leggette?
A Yes, sir.
Q Is Mr. Leggette present in the courtroom?
A Yes, sir.
Q And where is he sitting?
A He is sitting to the right of Mr. Hazzard, white shirt, blue tie and black pants, dreads in his hair.

Q Based on this did you attempt to obtain warrants for Mr. Leggette?
A Yes, sir.
Q Please tell us about your efforts in that regard.
A Well, basically, what I initially did once we find out he left the scene we did what you call a NCIC and the abbreviation of that is National Crime Information Center in reference to the - he was wanted for the Andrews Police Department for the two crimes. We also notified the U.S. Marshal which is Stuart Cottingham. We tapped his phone. I made contact with his girlfriend, family member, associate and I think a couple of days later I got a call from one of the marshals said that they actually had him up in the North Carolina line. He got captured.
Q Okay, do you recall what date Mr. Leggette was placed into custody?
A I think it was on the 9th. I think it was on the 9th of September I think it was. I'm not sure about that.
Q Okay, do you have your documentation with you by chance ---
A Yes, sir.
Q --- to refresh your recollection on the incident, the date of arrest?
A Yes, sir.
Q Now, when did this occur ---

A What, the ---
Q When did the, when did the shooting occur?
A On the 13th of August.
Q Okay, and do you recall when Mr. Leggette, the warrants were served on Mr. Leggette, placed into custody?
A I don't, I don't - I got it in my case folder but I know they were served on him.
Q Okay, if you looked at a document in your case folder would that refresh your recollection?
A Yes, sir, it would.
Q Is this your case folder, sir?
A Yes, sir. Well, the warrants, yes, the warrants were served on him on the 9th of September, 2008 by Officer Patrick, Patrick Cumbee of the Andrews Police - former employee.
Q You said it was as a result he was placed in custody --
A Yes, sir.
Q --- and charged on September 9th?
A Yes, yes, sir.
Q For the incident date of August 13th; right?
A Yes, sir.
Q During that period of time from August 13th to September 9th the Defendant was at large?
A Yes, sir, he was at large, from the incident up until the day he was arrested, which was the 9th of September.
Q Did you take steps to try to apprehend him during this

period of time?
A Yes, sir, I did what you call a fugitive form. I went through the Solicitor's Office. At that time was Bo Bryan. He signed an order for us to get in contact with Stuart Cottingham, the U.S. Marshal, actually faxed him all the information on Mr. Leggette, then that's whenever they put a tracking system on it.
Q What steps did you personally take besides utilizing U.S. Marshals subsequently to locate this Defendant?
A I put him in what you call a NCIC, National Crime Information Center, as being wanted by the Andrews Police Department.
Q Did you make any phone calls?
A Yes, sir.
Q Tell us about that.
A I, well I actually made phone calls. I made - contact some of his family members, also made contact with Mr. Stuart Cottingham which is the U.S. Marshal. I also made contact with the Solicitor's Office in reference to trying to locate Mr. Leggette. So, I - we spend some several hours or more trying to locate him several days.
Q Okay, did you speak to his family members?
A I talked to his mother as well. I also talked to - she said she didn't know where he was. I talked - I think I talked to his sister. They didn't know where he was. I also

talked to his father, Mr. George Leggette, Sr., who is in the courtroom. He told me at that time and I got to be honest ---

MR. HAZZARD: Objection, Your Honor.

Q That's fine.

MR. HAZZARD: Objection, that would be hearsay testimony. I mean, if they want to call Mr. Leggette he can say what he, what he said but for the investigator to characterize what a person who's present allegedly said and also I think it's a mischaracterization. I think it's actually the grandfather that's listed on the incident report, not this gentleman here, but ---

THE COURT: All right. Well, I'm ---

MR. HAZZARD: So, we would object on all those grounds.

THE COURT: I'm going, I'm going to allow it but I will give some curative instructions here.

Ladies and gentlemen of the jury, as I said earlier only a person can, usually a person can only testify as to what they personally observed, what they saw, smelled, whatever the case may be and one of the restrictions is the hearsay, rule against hearsay, which means a witness cannot testify as to what they were told by someone else. Now, there is an exception to that where this witness can testify as to what was told to him, not to prove that the statement was true but to explain his actions and why he acted in the way he did. So, this testimony that Investigator Lee is now giving is not

offered to show that the statement made to him was, in fact, true or false. We don't know because the person who made the statement is not testifying to it, but it is - I will allow it to explain why Investigator Lee took the actions that he took. All right.

MR. HIXSON: Thank you, Your Honor.

BY MR. HIXSON:

Q Now, just try to sum it up, Investigator Lee. Was Mr. Leggette considered a fugitive from justice after this shooting for several weeks?

A Yes, sir; yes, sir, he did.

Q Did you make efforts to try to locate him?

A Yes, sir.

Q And ultimately had to use the U.S. Marshals to find him?

A Yes, sir.

Q Did the U.S. Marshals - are you aware of the efforts they made and when they find - raiding houses to find him?

A Yes, sir.

Q And ultimately did Mr. Leggette call the U.S. Marshals? Do you know that?

A I'm not, I'm not aware of that. I heard him made that statement but I don't have any information of that, Mr. Hixson.

Q But you know they were actively executing search warrants in the homes to find him?

A Yes, sir; yes, sir.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right, Mr. Hazzard, cross examination.

MR. HAZZARD: Thank you.

CROSS EXAMINATION

BY MR. HAZZARD:

Q Good afternoon, Detective Lee. How are you doing?

A Good, Mr. Hazzard.

Q Okay, now, I assume you were referring to this investigative note that I assume you generated dated August 19th that says that on August 17th you talked to Dominic Leggett's grandfather; is that, is that correct?

A Yeah, if it ---

Q Is that's what in your note; right?

A Yes, yes, sir, his grandfather and his father. It's documented. It's in the report.

Q Okay, okay, but the note refers to you talking with his grandfather; right?

A Yes, sir.

Q Okay, and Dominic called the U.S. Marshals when he heard they were looking for him and he turned himself in; isn't that correct?

A I don't have any information to support that, Mr. Hazzard.

Q Well, you talked to the marshals; didn't you, sir?

A Yes, sir, but I don't have no information of what Dominic said about calling the marshals.
Q Did you ask the marshal how it is that they came into contact with Dominic Leggette?
A Yes, sir, I did but the information I got is I don't know anything about him calling the marshal himself. I don't have that information, Mr. Hazzard.
Q You don't have that information.
A No, sir, I sure don't.
Q Okay, but Mr. Hixson has that information though?
A I don't know what Mr. Hixson got now.
Q Okay, all right, now, as part of your investigation you spoke with several people; didn't you?
A Yes, sir.
Q You spoke with Rhonda Brown who was Dominic's girlfriend at the time; right?
A Yes, sir.
Q Okay, and you spoke with Sharon McGee and several other folks; right?
A Yes, sir.
Q And as a result of speaking with those people your investigation concludes that Dominic felt that he was acting in self-defense to save his life; isn't that correct, sir?
A No, sir.
Q No, sir?

A No, sir.
Q No, sir. Where - when you got a note here that says you spoke with Ms. McGee and that or that with Ms. Brown and that Dominic stated that he was on his way to Florida, he didn't mean to kill Bill, meaning Antonio Tisdale.
MR. HIXSON: Your Honor, I object to that. That's ---
Q And that those boys had beaten him up.
MR. HIXSON: Objection.
THE COURT: Hold it, hold it, hold it. Okay, I sustain the objection.
MR. HIXSON: Yeah, that's a self-serving statement.
THE COURT: That's hearsay. I sustain it.
MR. HAZZARD: Your Honor, it's coming from the same report that he was allowed to testify to not more than a minute ago, the exact same piece of paper.
THE COURT: But that is not explaining his actions. That's being offered for the truth of the statement. So, it's - I sustain the objection as hearsay.
MR. HAZZARD: All right, thank you, Your Honor.
BY MR. HAZZARD:
Q Now, sir, when you were on the scene of the incident on August 13th of '08, okay, how long were you out there?
A Approximately maybe two and a half, maybe three hours, it might be longer.
Q Now, at that time did you see Mr. Tisdale's white

Cadillac?
A Yes, sir, it was out there.
Q Okay, and where was it out there in relation to where Super Chicken, Carnell's and Blue's are?
A It was about a block down there on the West Main Street.
Q Okay, and when you say a block down the Court's indulgence. Okay, I believe this is State's Exhibit Number One.
A Uh-huh.
Q Is the location of that white Cadillac visible as far as where it would've been parked on the night of the incident?
A If you stand out in the roadway in front of Super Chic you can see parked somewhere up in this area right here.
Q So, when you say in this area right here you're basically talking about in front of Blue's or in front of Carnell's; correct?
A Carnell's, yes, sir, one of them, yes, sir.
Q Okay, all right, thank you.
Now, you told Mr. Hixson that you had spoken with someone you referred to as this young man's associate, a Mr. Eric Cox regarding a gun that Mr. Cox legally owned; correct?
A Yes, sir.
Q Legally owned?
A Yes, sir.
Q Okay, and did your investigation reveal the relationship

between Mr. Leggette and Mr. Cox, specifically that Mr. Cox is related to Mr. Leggette on Mr. Leggette's mother's side?

A No, sir, I don't have - I don't know if they're related. I just know they was friends with each other.

Q Okay, now, you talked with Al Ingram at some point; correct?

A Yes, sir.

Q Okay, and what Al basically told you, gave you a written statement on August 14th at about 2:30 in the afternoon; is that correct?

A Yes, sir, I think that's correct, Mr. Hazzard.

Q Okay, and basically what his statement told you was that just he and Antonio were going to the Super Chic to buy cigarettes and they didn't know nothing about nothing and all of a sudden somebody they didn't know turned around and started shooting at them?

MR. HIXSON: Your Honor, again I'd object to that. That's a hearsay statement for the truth of the matter asserted. The witness has already testified, Mr. Ingram. He can't get in other testimony through this witness. He has to ask that witness himself and he's already cross-examined that witness. That's a hearsay objection, Your Honor.

MR. HAZZARD: I'm asking him about a document that ---

THE COURT: It's a prior - if it's a statement taken by the police as part of an investigation I think it can be

offered as a prior inconsistent statement.

MR. HIXSON: That statement was consistent; wasn't it?

MR. HAZZARD: No, it wasn't.

THE COURT: Okay, overruled. I'll allow you to go ahead and ask the question. Go ahead.

MR. HAZZARD:

Q Okay, all right, do you need me to repeat the question?

A Yes, I sure do. Yes, sir.

Q Okay, as part of the written statement that you took from Al Ingram on August 14th of '08 at about 2:30 in the afternoon his statement says that he and Antonio Tisdale were just going to the Super Chic and to buy cigarettes and someone he did not recognize just turned around and shot them; is that correct?

A If that's what's in the statement that's what I got from him, Mr. Hazzard.

Q Okay, so, that's what he told you at that time?

A Yes, sir.

Q Okay, did you - so, he never told you that there had been other altercations between him and Dominic; did he?

A I wasn't aware of any other altercations between them.

Q Did he tell you there had been others?

A No, sir. I wasn't aware of any others.

Q Did he tell you about any other altercations between him and members of Dominic's family?

A No, sir, I don't recall that, Mr. Hazzard.
Q Did he tell you about altercations two days prior to that on the preceding Monday?
A I have no knowledge of that, Mr. Hazzard.
MR. HIXSON: Once again, Your Honor, I object to that. I have no way of knowing Mr. Ingram's statements whether they're, the truth or the veracity of any of the statements he's asking the witness. It's not subject to cross examination. I don't know if Mr. Ingram even made the statements.
THE COURT: That's what he was asking him, did he make the statement to him. So, I overrule the objection. Go ahead.
MR. HIXSON: Thank you, Your Honor.
Q Did he tell you about any altercation four days prior on August the 9th?
A No, sir, he sure didn't.
Q Okay, and based on your investigation and the folks that you had spoken with and your experience in 25 years your investigation indicated that even prior to this particular night in question or even prior to the incident that occurred down the block at Super Chic your investigation indicated that Al Ingram had every intention of attacking Dominic Leggette; didn't he?
A Not to my knowledge, Mr. Ingram, I mean, Mr. Hazzard.
Q Okay. I'm going to hand you a copy of an incident

report supplemental that has your name on it ask you to review it and tell me if that is, indeed, a copy of your report that has been provided to me by the Solicitor's Office.

MR. HIXSON: Your Honor, may I get a look at what Mr. Hazzard is referring to?

MR. HAZZARD: Yes, sir, I'm be more than happy to.

MR. HIXSON: Thank you.

A Yes, sir, this is my report, yes, sir.

Q Okay.

A Sure is.

THE COURT: Before we question him on it let Mr. Hixson see it.

MR. HAZZARD: Yes, sir.

BY MR. HAZZARD:

Q Now, you have had a chance to review the document that I've handed you; correct, sir?

A Uh-huh, uh-huh.

Q And this is a report that you prepared as a part of your official duties in this investigation; correct?

A Yes, sir.

Q Now, after having a chance to review this report and specifically the highlighted portion I've highlighted for you based on your investigation did you have knowledge and information that indicated Al Ingram had an intention to attack Dominic Leggette prior to that particular night, what

particularly happened that night but before 10 p.m. on August 13th was there information that he intended to attack Dominic Leggette?

MR. HIXSON: Your Honor, I'm going to have to object to that. He's referring to a line in a statement from Shannon McGee who is available to testify subject to cross examination of his thinking of what Al Ingram may have thought. That's what he's referring to. It's hearsay. It goes to the truth of the matter asserted. He can ---

THE COURT: All right.

MR. HIXSON: I don't mind the information coming out but Shannon McGee has to say it.

MR. HAZZARD: Sharon McGee.

MR. HIXSON: Sharon McGee, excuse me.

THE COURT: All right, so, I'm going to sustain that objection then.

MR. HAZZARD: All right, no problem.

BY MR. HAZZARD:

Q Have you ever been in Blue's club before, sir?

A Yes, sir, when I go in there probably to arrest somebody.

Q Okay, so, you haven't spent any decent amount of time in there. Don't, don't - all I'm going to ask is do you know whether they sell cigarettes in there, sir?

A I don't have no knowledge whether they do or not.

Q Don't know for sure do you. All right, nothing further.
THE COURT: All right, redirect?
MR. HIXSON: No, Your Honor, not at this time.
THE COURT: All right, you may step down.
A I can step down? Thank you, Judge.
THE COURT: Thank you very much.
Mr. Hixson, you can call your next witness.
MR. HIXSON: The State would call Ron Gardner, please.
THE COURT: All right.
Whereupon, Leron Gardner was called to the stand, duly sworn by the clerk and testified as follows.
THE CLERK: Thank you. Please be seated and state your name for the record, spelling your last name, please.
MR. GARDNER: Leron Gardner.

DIRECT EXAMINATION

BY MR. HIXSON:
Q Good afternoon, sir.
A Hey, how you doing?
Q Can you do us a favor and you have to speak up a little bit in the microphone. You want to make sure the court reporter and all these folks can hear you; okay?
A Yes, sir.
Q Okay, Leron, where are you from?
A I'm from Andrews, South Carolina, but I live in Darlington, South Carolina.

Q Okay, and how old are you?
A 20.
Q 20 years old, okay, and about how long did you live in Andrews?
A All my life practically.
Q Okay, and when did you leave Andrews to go to Darlington?
A About three years ago.
Q About three years ago, okay, so, you were living in Darlington around August 13th of 2008; is that true?
A Yes, sir.
Q Okay, now, tell us about your time in Andrews. Where did you live?
A I lived in Big Dam, South Carolina, which they call over the river and uptown in the projects and in Italy.
Q Okay, and during that course of time did you make any friends in school and such?
A Yes, sir; yes, sir.
Q Did you come to know Dominic Leggette?
A Yes, sir.
Q Okay, and tell us about your friendship with Dominic Leggette.
A We grew up together. We played baseball, football and other things together, sir.
Q Okay, were you pretty good?

A Not as good as him but I was all right.
Q Okay, all right, were you all pretty good friends during this period of time until you moved away?
A Yes, sir.
Q Okay, well, have you - had you had any occasions to come back to Andrews?
A I rarely came home to be honest because it wasn't a good environment to be at.
Q Okay, okay, well, did you come home August 13th of 2008?
A Yes, sir.
Q Okay, tell us what - tell the jury what brought you home.
A I wasn't, I wasn't even supposed to come to Andrews. I was supposed to be in Charlotte but I left with my baby brother and we went to Andrews.
Q Okay.
A And he was doing something and I was doing something. So, we kind of split up and I was chilling.
Q When you say he I don't know - who, who are you talking about?
A My baby brother Dezi.
Q Okay, okay.
A And we kind of split up and I met up with Dominic in the projects and we were talking and walking.
Q About what time of day or night was that?

A About eight or nine. I would say around that time.
Q Okay, and how was - did you all have plans to go do something that evening?
A Not really, sir, we just was chilling and he had got a phone call from his girlfriend or somebody say he was going to get a charger. So, we went and walk uptown.
Q What do you mean by charger, make sure we're clear on that.
A Like a phone charger, sir.
Q Okay.
A And we went uptown, stand up for a while, wait. Then we had a altercation with people trying to jump us and ---
Q Tell us about that walk on the way up there. Did Mr. Leggette show you something on the walk up towards Carnell's?
A Yes, sir, he showed me a weapon but ---
Q What did he show you? Was it a gun?
A Yes, sir.
Q And where was the gun?
A In his waist.
Q Okay, and how in the world did that come up in conversation?
A He just showed it to me like, "Check out what I got," like you know how homeboys do. He just basically showed me his weapon like, "This is a nice gun," and stuff like that.
Q Okay, so, that happens on the walk from the projects up

towards, I guess, let me show - make sure we're on the same page here. Let me show you what's been marked as State's Exhibit One. We've been using it a bunch but do you recognize that, that picture?

A It looks a little different but I assume that look like Andrews.

Q Is that what it looks like from an airplane. Well, let's turn around here, if I point out, we've been using it a bunch, it's in evidence. This is the Super Chic right here, a bunch of people testified to that. Does that help you orient yourself to the photograph?

A This right here is Super Chic?

Q Uh-huh.

A Okay, yes, sir, I know where that is.

Q Okay, do you know where Blue's and Carnell's would be?

A It would be like up in here, I guess.

Q Okay.

A Well, now, this Super Chic right here; right?

Q Yeah.

A So, it would be a little down further like about up in here.

Q Okay, so, that's the area we're talking about; right?

A Yes, sir.

Q Okay, I guess that means you've never seen Andrews from an airplane; have you?

A No, sir.
Q Okay.
A Don't fly.
Q Okay, so, you made it - you walked with Mr. Leggette down to Blue's and Carnell's; is that right? I'm trying to get started back again where we were and then you said there was an altercation or something I think is what you were talking about.
A Yes.
Q Tell us about that, what you saw.
A It was like a bunch of people just rushed up on us out of nowhere out of the blue. I ain't gonna' story. I was scared myself, but he, he took off running and he left and then Billy and Al went running after him and then that's when we heard gunshots.
Q Now, let's talk about that altercation you were talking about right there. Did you hear what - did you know what that was about?
A Oh, no, sir, I ain't - I don't know nothing about it.
Q Did you hear specific words that were said?
A I was scared, sir. I was scared.
Q Did you recognize any of the folks?
A Yes, sir.
Q Okay, were they folks that you remember from back when you lived in Andrews?

A Yes, sir, everybody know almost everybody in Andrews.
Q Did those folks recognize you?
A Nah, I kind of grew up and changed a little bit.
Q Okay, okay, so, you said that you were there. Did anybody try to fight with you?
A Yes, sir.
Q Did anybody punch you?
A No, sir.
Q Did you see anybody punch Mr. Leggette?
A No, sir.
Q Did you see Mr. Leggette punch anybody?
A No, sir.
Q Did you see any, besides Mr. Leggette, when you saw the weapon when you were walking to there, did you see any knives or bats or guns or anything?
A No, sir.
Q Okay, so, now, Mr. Leggette, I think you said Mr. Leggette ran to the Super Chic; is that right?
A He ran before he get to Super Chic. It's like a little a cut in between. He ran down that road, and that's when we heard gunshots.
Q Do you remember what Mr. Leggette was wearing?
A I believe he had on a black shirt, some jeans and that's pretty much all I remember.
Q Did he have any, anything else in his hands or any other

shirts or anything; do you remember?
A Not as I remember, sir.
Q Okay, you made it down, you made it down to the, the - you heard shots. Did you see what was going on down towards the Super Chic?
A No, sir, it's impossible for you to see what's going on because it's a - like a road in between you can't see if I'm standing in the street.
Q Okay.
A You had to follow them to be able to see what happened.
Q Okay, let me show you - well, I won't worry about it then. You heard the shots, then what happened?
A That's when we saw Al and Billy come running back towards us.
Q And did you see them with weapons?
A No, sir.
Q So, you - they come up the street. What happened then?
A That's when Billy was fussing about him getting shot like he was in what you want to call it hypertension or whatever you call it. I don't know how to say it but he was like pumped up and later on he like passed out and I caught him.
Q Did he say anything to you?
A Yeah, he was like, "Dominic shoot me." He say some other words, but that's what he practically said.

Q Okay, well, go ahead and say what - we want to know what the truth is. So, what did he say?
A "The MF has shot me."
Q Okay, where were you when he said those words?
A I was holding him.
Q You were?
A Yes, sir.
Q Was anybody else around?
A Miles, his brother.
Q Okay, well, how about Al, did you see Al?
A No, sir.
Q Okay, did you see him running from the - up the sidewalk?
A Oh, yes, sir.
Q Okay, and then, and then where did you see him from there?
A I wasn't focusing on him. I was focusing on Billy.
Q Okay, did you know Billy?
A Yes, sir.
Q Okay, you knew him from back when you lived in Andrews?
A Yes, sir.
Q Okay.
MR. HIXSON: Beg the Court's indulgence, Your Honor.
THE COURT: All right.
BY MR. HIXSON:

Q I have no further question, Leron. If you want to answer any Mr. Hazzard has that'd be great.

THE COURT: Mr. Hazzard, cross examination?

MR. HAZZARD: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HAZZARD:

Q Good afternoon, sir.

A Good afternoon.

Q What is your full name, sir?

A My full name is Ebony Leron Gardner.

Q Okay, what do you go by?

A Leron.

Q All right, Leron, now, let me make sure I'm clear on this. You say that you and Dominic got to somewhere around Blue's or Carnell's; right?

A Yes, sir.

Q And you say these people kind of came out of nowhere?

A Yes, sir.

Q And you were frightened?

A Yes, sir.

Q Okay, so, I take it these people didn't, didn't intend you any goodwill; did they?

A No, sir.

Q Okay, and you said Dominic took off running trying to get away?

A Yes, sir.
Q And you say that Al and Billy, that being Al Ingram and Billy Antonio Tisdale went after him?
A Yes, sir.
Q Did they go after him immediately or two or three minutes later?
A Immediately, sir.
Q Okay, now, did you - why were you scared? Why were you scared, sir?
A Because there was a bunch of people.
Q Okay, no further questions.

THE COURT: Redirect.

MR. HIXSON: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. HIXSON:

Q Were words exchanged during that period of time when you said that you were in front with a car charger?

MR. HAZZARD: Your Honor, I would object because I do not believe that I mentioned anything in addition to what was touched on on direct.

THE COURT: Redirect is limited to anything brought out on cross that was not addressed in direct.

MR. HIXSON: Fair enough, fair enough, fair enough - I was just playing it by - fair enough, Judge.

THE COURT: All right.

BY MR. HIXSON:
Q I was trying to - you said there was no weapons involved during the period of time relating to your fear?
MR. HAZZARD: Objection.
THE COURT: Sustained.
Q I'm trying to get into the fear that you referred to on cross examination that you said you were afraid.
MR. HAZZARD: Which he also referred to on direct examination. It is not anything that I brought out that is new, Your Honor.
THE COURT: Okay, well, it's redirect. I'm going to let him explore it a little bit if he wants to. Go ahead.
Q How many people - are you - did you say when there are lot of people, how many people do you think were there?
A I'd say about ten.
Q Ten folks?
A Yes, sir.
Q Was everybody about your age?
A No, sir.
Q Okay, folks older than you?
A Yes, sir.
Q Of course, how old were you then?
A Like 19.
Q 19 years old? Okay, do you know how old Al Ingram was?
A No, sir.

Q Okay, did you know he was 16?
A No, sir.
MR. HIXSON: I have no further questions, Your Honor.
THE COURT: All right, you may step down.
All right, you can call your next witness.
MR. HIXSON: Your Honor, Leron and his dad, I won't tell you where they live, they really would try - like to get back home if they can and would ask if he be excused from his subpoena.
THE COURT: Any objection?
MR. HAZZARD: No objection, Your Honor.
THE COURT: All right, he's released from his subpoena. He can go. Thank you.
All right, you can call your next witness.
MR. HIXSON: At this time the State would call Jamar Mitchum.
THE COURT: All right.
Whereupon, Jamar Mitchum was called to the stand, duly sworn by the clerk and testified as follows.
THE CLERK: Thank you, please be seated and state your name for the record, please.
THE COURT: State your name, please.
MR. MITCHUM: Jamar Mitchum.
THE COURT: All right.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir. Where are you from?

A Andrews area of Georgetown County.

Q Okay, how old are you?

A 22.

Q Okay, and I'll say this gently, do you have any brothers or sisters?

A Yes, sir.

Q And tell us about that.

A Well, Antonio Tisdale, one of my brothers, he's deceased right now. I have one other sister and a older brother.

Q Okay, how long have you lived in Andrews?

A All my life.

Q Okay, and what part of Andrews do you live in?

A Jones Avenue.

Q Jones Avenue, is that kind of called the west end?

A Yes, sir.

Q Okay, were you in Georgetown around August 13th, 2008?

A Andrews area.

Q Excuse me, I've been doing that a lot. Andrews, excuse me.

A Uh-huh.

Q And in the early evening or rather the around eight o'clock on August 13th, 2008, tell the jury what you were

doing.
A Well, I was standing in between Blue's Nightclub and Carnell's Nightclub.
Q Okay, and tell us what Blue's and Carnell's is like a little bit.
A Well, a little bar you shoot pool, you know, deal with a little alcohol and but it's pretty much a nightclub, shoot, shoot a little pool every time, every now and then.
Q Okay, do you all hang inside and outside or where?
A Yes, sir.
Q That was a compound question I bet. Where do you, where do you hang out when you go there?
A Well, mostly I be in the inside but the night of the 13th of August I was on the outside.
Q A warm evening?
A Yes.
Q At some point in time did you see the Defendant in this case, Dominic Leggette, in that area?
A Yes, sir.
Q Please tell the Court and the jury what you saw.
A Well, he walked by to meet a girl at Carnell's, okay, we was standing on the outside and Alfonso Ingram and Antonio Tisdale say they was going to walk down to Super Chic. They walked towards him. He walked ahead of them.
Q Okay.

A But if you're standing on the sidewalk you can't really see directly down the sidewalk because of the bushes. Okay, I heard maybe three or four gunshots. I saw Alfonso fell in the road and he jumped back up, came running ahead of Antonio. So, after I saw him I saw Antonio. When he got up to where I were he said, "Well, Miles," he called me Miles, he said, "Miles carry me to the hospital. Dominic just shot me."

Q Okay, let's, let's back up first and talk about when you first saw Mr. Leggette, the Defendant. Was there a fight, was there a fight going on?

A No.

Q Tell us about that environment right there. What was happening during that period of time?

A Well, all of us was just standing around.

Q Okay.

A I mean, as far as I - as far as I could have see or whatever it wasn't no argument or no fight. So, they just walked towards that way, was going next Super Chic.

Q And why did your, did your brother tell you why he was walking that way?

A Well, maybe for cigarettes, food. I'm not sure now.

Q He didn't tell you anything?

A Nah.

Q About how long was the Defendant in that area before he started walking down toward the Super Chic?

A Maybe five or 10 minutes at the most.
Q Okay, I think you said he was supposed to meet a girl there. Did you see - what did you see between him and anybody else?
A Well, I saw, I saw him talking to the girl but, I mean, I was maybe 20 feets away from them. So, I don't know what they was talking about or nothing but he was talking to a girl.
Q Okay, did you hear any argument going on?
A Not where we were.
Q I'm sorry?
A Not where I was at.
Q Okay, I kind of interrupted you now. Now, let's go back, you said you heard shots. I think you said you couldn't see because of the bushes from where you were; is that correct?
A Yes, sir.
Q And now, I think you were at the point where you said they were - that and - that Billy and Al were running back up the sidewalk; is that right?
A Yes, sir.
Q Okay, can you start from that point forward?
A Well, they was running back towards me, and I mean, I heard the gunshots. I thought maybe someone shot in the air or something. They were running fine until he got up to me

and he was trying to take his shirt off and he was showing me the wound. I helped him got out of his shirt. I was holding him and then it was too much for me, I mean, I walked off -- I was kind of in shock myself. I walked off and kind of cooled off. I came back. There was a few other guys standing around him but I done worked up, I mean, that's pretty much all I saw.

Q Did you see any weapons?

A No, sir.

Q Did you see any knives or bats or anything?

A No, sir.

Q Did you see any weapons at that time on Mr. Leggette?

A No, sir.

Q Did you talk to ---

MR. HIXSON: Beg the Court's indulgence.

THE COURT: All right.

Q After, after you saw your brother did he - was he able to say anything else to you?

A His last, his last word was to me is, "Miles, carry me to the hospital. Dominic just shot me," but he was still in his right mind. He was breathing and we was telling him, you know, everything'll be all right, holding his shirt on the wound or whatever and it, it worked me up. I walked off and when I came back by that time the ambulance and everything was there,

you know, they took him but that was his last words to me.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right, Mr. Hazzard, cross examination.

MR. HAZZARD: Thank you.

CROSS EXAMINATION

BY MR. HAZZARD:

Q Now, when you say you were worked up and you walked off, walked off for how long, sir?

A Maybe five or 10 minutes before I even came back to him, 10 minutes or more.

Q Okay, and when you walked off where did you go?

A I went to my car.

Q Okay, and where was your car parked?

A There's a car wash right across, well, I wouldn't say across the street from Blue's, but on the side across the street from Blue's nightclub.

Q Okay, now, I'm sorry, maybe I perhaps wasn't paying close enough attention. Were you at Blue's or were you at Carnell's?

A Blue's.

Q Okay, you were at Blue's and about what time did you arrive there, sir?

A Maybe about seven o'clock that night.

Q Okay, I'm sorry. Please continue.

A I arrived there about seven o'clock that night. That's

where I were.
Q And this, this incident occurred, what, sometime after 10 p.m.?
A No, it was - I think it was before 10 p.m.
Q Okay, between nine and 10?
A Yes.
Q Okay, and what did you do while you were at Blue's between seven and this - and the time of the incident?
A I was shooting pool until I step out on the sidewalk.
Q Okay, and why did you step out on the sidewalk?
A Because that where all my friends were.
Q That's where all your friends were. Okay, and about what time did you step out on the sidewalk, sir?
A Maybe a little after eight. We was outside for a while.
Q Okay, now, what time to your recollection did your brother Antonio and his friend Al Ingram arrive?
A It was after nine.
Q It was after nine?
A Yeah.
Q Okay, and to your recollection what time did Dominic get there?
A Well, he get a - he get there about maybe 15, 20 minutes before ten at the most.
Q So, if he got there 15 or 20 minutes before 10 and the incident occurred before ten is it safe to say he wasn't in

the area of Blue's and Carnell's very long; was he?
A He wasn't. I said that.
Q Okay, I just wanted to make sure. Now, when you saw Dominic for the short period of time that he was there in front of Blue's and Carnell's where was Al Ingram?
A He was standing right by Blue's nightclub.
Q Okay.
A Where all, all us were.
Q Okay.
A After he arrived that's where he were, where we were.
Q So, I'm sorry, go ahead, sir.
A After we have, after he had arrived at Blue's nightclub he was standing where we were.
Q Okay, so, about how close was he to you?
A Maybe 5 feet.
Q Maybe 5 feet. So, you could hear what he could hear, would you say?
A Yeah.
Q Okay, but is it your testimony to this jury that you didn't hear any arguing or any altercation?
A Not where we were. Like I say I can't tell you what happened on the other side of those bushes but where we were no.
Q Uh-huh, so, you heard no arguing, no loud voices, nothing?

A No, when I had arrived to the sidewalk out of Blue's nightclub, no.
Q Uh-huh, did you, could you see Mr. Leggette ---
A Yes.
Q --- from where you were standing?
A Yes.
Q And could you see people near Mr. Leggette?
A Well, a few people were.
Q Okay, and did it look to you as if there was an altercation going on?
A No, not to my knowledge it wasn't.
Q No problem, there was no problem whatsoever?
A No, sir.
Q And you are Antonio Tisdale's brother?
A Brother.

MR. HAZZARD: No further questions.

THE COURT: Redirect?

MR. HIXSON: No, Your Honor.

THE COURT: All right, you may step down.

MR. HIXSON: May we approach, Your Honor?

THE COURT: Yes, sir.

(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen, the attorneys advise me this would be a good time to break. I

think the next witness is going to take some time, and it's about 25 till five at this time. So, we'll go ahead and break for the evening. I'm going to ask you to be back in the jury room tomorrow morning at 9:15 like you were this morning and I appreciate everybody being on time again. Thank you for that. I caution you, again, please do not conduct any independent investigation. Do not watch any news reports. Don't read any newspaper reports, listen to any radio reports. Don't conduct any independent investigation into this case. Do not discuss the case even among yourselves at this time. I'll excuse you for the time being. I hope everybody has a good evening and we'll see you back at 9:15 tomorrow morning. Thank you very much. Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, anything before we recess for the evening?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing from the Defense.

THE COURT: All right, we'll be in recess until 9:30 tomorrow morning. I'll have the jury come back at 9:15. That'll give them the opportunity to get some coffee or whatever before we come back in and start up at 9:30; okay?

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right, thank you very much.

OFF THE RECORD

(On the record, Wednesday, March 31, 2010.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, anything from the State before we bring the jury in?

MR. HIXSON: Yes, briefly, one, one item, Your Honor.

THE COURT: All right.

MR. HIXSON: The State's marked a document, Your Honor, we had discussed this prior, Court's Exhibit Nine, that is an Andrews Magistrate Court disposition record. What it is it's a certified true copy of the record of conviction on Dominic Alexander Leggette. He's been convicted of criminal domestic violence first offense, Your Honor, had a bench trial. This happened July 30th of 2007. We're making this part of the Court's record, Your Honor. As Your Honor is well aware this prohibits him federally from possessing a weapon as of 2000 - excuse me, July 30th of 2007. We don't - we ask this is not - does not go in front of the jury, Your Honor. It's just a Court Exhibit.

THE COURT: All right, and so, that's Court's Exhibit ---

MR. HIXSON: Court's Exhibit Nine, Your Honor.

THE COURT: Nine, all right.

(Whereupon, Court's Exhibit Number Nine [Magistrate Record] appropriately marked.)

MR. HIXSON: And that is, that comes in as a document under C, I believe, Your Honor.

THE COURT: All right, Mr. Hazzard, as I understand the purpose of that and the reason the State is introducing that is under the new legislative statute that basically says a person engaged - not engaged in any unlawful activity has no duty to retreat. That more or less does this away - does away with your getting a charge on that statute; correct?

MR. HAZZARD: Yes, sir, that is my understanding, Your Honor, under 16-11-440 as previously discussed in chambers, yes, sir.

THE COURT: Okay, all right, thank you very much.

MR. HAZZARD: But it is my understanding though that the Defendant will be entitled or if sufficient evidence has been presented the Defendant will be entitled to the standard four prong self-defense from our case law ---

THE COURT: Right.

MR. HAZZARD: --- that thing obviously - okay.

THE COURT: But, but one of the prongs being that there is a duty to retreat.

MR. HAZZARD: A duty to retreat, yes, sir.

THE COURT: Right, okay.

All right, anything else from the State before we bring in the jury?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing on behalf of the Defense.

THE COURT: All right, let's bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

FOREPERSON: They just want ---

THE COURT: You'll need to ask the bailiff. She ---

FOREPERSON: I did. She said to ask the Judge.

THE COURT: Okay, well ---

FOREPERSON: We just want the witnesses to speak into the microphone. Some of the people can't hear very well.

THE COURT: All right, let me - I'll ---

FOREPERSON: Would you like me to go back out and ask the bailiff?

THE COURT: Yeah, tell the bailiff that you were speaking to.

(Bailiff and Foreperson confer and Bailiff confers with the Court.)

THE COURT: All right, thank you, ma'am, we'll make sure that they speak into the microphone. I understand that some of the jurors were having some trouble hearing some of the testimony yesterday because the witnesses were not talking

into the microphone. Can we turn the microphone up any?

THE CLERK: Yes, sir.

THE COURT: All right, let's turn it up and make sure that the witnesses speak directly into the microphone. Okay, thank you, ma'am. All right, ladies and gentlemen, welcome back. I hope everyone had a restful evening. We're ready to resume the trial of the case. If you have trouble hearing a witness please raise your hand and let me know and we'll make adjustments then, okay?

All right, Mr. Hixson you can call your next witness.

MR. HIXSON: Thank you, Your Honor. At this time the State would call Investigator Steve Brown.

THE COURT: All right.

Whereupon, Stephen Brown was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

MR. BROWN: Stephen Brown.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good morning, sir.

A Good morning.

Q What do you do for a living?

A I am an investigator with the Fifteenth Circuit Solicitor's Office.

Q And what does that, what does that occupation entail?
A Basically I work at the leisure of the Solicitor. We do lots of - well, lots of different tasks actually. In this case particularly I basically assisted Solicitor Hixson in preparing for trial.
Q Okay, do - is the, part of the course of your duties do you research records, serve subpoenas, review documents, investigate documents?
A Absolutely.
Q Are you a certified law-enforcement officer?
A I am.
Q Okay, on this occasion did you have the opportunity to look into whether or not Mr. Leggette possessed a valid concealed weapons permit?
A I did.
Q And did you in fact, what steps did you take to determine that?
A Well, dispatch was contacted, I contacted a dispatcher. It's my understanding that the proper way to go about that and they do what's called an NCIC report on that. That's the National Crime Information Center. For instance, if there's a traffic stop out there and someone has a weapon in the vehicle the police officer would call dispatch and dispatch, you know, if the person in the car claimed to have a legal weapon in the vehicle dispatch would run an NCIC through that

person's date of birth, Social Security number to see if there was a valid concealed weapon permit on file.

Q Okay, did you in fact do that?

A I did for Mr. Leggette.

Q What were the results of your investigation?

A The results were that there was no concealed weapon permit on file and it's my understanding that the dispatcher checked that for past and present.

Q I'm going to show you an exhibit which has been marked State's Exhibit 35. It's not into evidence. What is that document?

A These are the documents that were faxed to me by the dispatcher where she ran the inquiry on NCIC.

Q And the results of that are the same as you testified to?

A No record on file with that name.

Q Okay, as such he doesn't have a concealed weapons permit; is that correct?

A That's correct.

MR. HIXSON: No further questions, Your Honor. I apologize, Your Honor. At this time the State would move State's Exhibit 35 into evidence.

THE COURT: Any objection?

MR. HAZZARD: No objection.

THE COURT: All right, State's Exhibit Number 35

admitted into evidence without objection.

(Whereupon, State's Exhibit Number 35 [NCIC Report] admitted into evidence and appropriately marked.)

THE COURT: All right, Mr. Hazzard, cross examination.

MR. HAZZARD: No questions, Your Honor.

THE COURT: All right, sir, you may step down. Thank you.

All right, Mr. Hixson, you can call your next witness.

MR. HIXSON: At this time the State would call Craig Jackson, Your Honor.

THE COURT: All right.

Whereupon, Craig Jackson was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

MR. JACKSON: Craig Jackson.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good morning, sir.

A How you doing?

Q Tell us where you're from.

A I'm from Andrews.

Q And how long have you lived there?

A Like 40 years.

Q Okay, were you born there?
A Yes.
Q Okay, so, you lived there your whole life, huh?
A Yes.
Q What do you do for a living?
A I'm a cook.
Q Okay, what part of Andrews you live in?
A Jones Avenue.
Q Okay, so, you living there 40 years I guess you lived there around August 13th of 2008 then, huh?
A Of course.
Q Tell us about what you were doing - let's start around say about seven o'clock on the 13th.
A Well, around about seven o'clock, 7:30 I went to Carnell's, Carnell's Bar and Grill.
Q Okay, and what is Carnell's Bar and Grill?
A It's a club.
Q Is it?
A Yeah.
Q Is Wednesday dollar night at Carnell's?
A Yes.
Q Okay, tell us what happened after that.
A Well, I went there like maybe 7:30, eight o'clock, left, went back again and I was on the inside having some drinks. Then around 10:30 - about 9:30, 10 o'clock I step on the

outside leaning on the wall and it was a group of guys standing to the left of me and I been standing there now all them. The next thing I heard somebody say, "That's Dominic right there," and Tony and Alfonso walked off, started walking next Super Chic. So, I'm standing there looking figuring I'm, figuring I'm about to see a fight and as they got down - Dominic like in the front of them and he, you know, he had on a black shirt and blue jeans. As he got to the side of that building I think it's an hibachi Japanese restaurant now, I saw when he turned, started shooting like, like three or four shots. Tony and Alfonso fell in, fell in the street and jump up and started back running. I'm standing there. Tony stopped to me and said, "Dominic shot me." I mean, when the, when the, when the shots went off I was shocked. Tony stopped at me, said, "Dominic shot me," and he ran, ran on down and collapsed.

Q Let's go into a little more detail about that now; okay? You said you were inside Carnell's?

A Yes.

Q Okay, when you stepped back outside I think you said you were leaning up against the wall; is that right?

A That's right.

Q Describe the scene, what you saw right around there when you were leaning up against the wall.

A Well, it was a normal night, you know what I'm saying,

all the guys were standing to the left and I was just leaning there, you know what I'm saying, just catching some air.

Q Okay, when you say all the guys to the left let me show you what's already in evidence as State's Exhibit Number One. Let me see if - you haven't seen this. Let me see if you recognize this.

A Yes.

Q Okay, what is that?

THE COURT: Excuse me, you're going to need to speak into the microphone.

A I need to speak into the mike. Well, that's, that's Super Chic and that's the Japanese restaurant right there, that's --

Q Was that a Japanese restaurant then?

A No, it was Momma's Kitchen if I'm not mistaken. There's another store, I think it was a maybe used to be a furniture store. I know this used to be a furniture store. This is Carnell's right there and this is Ms. Hammond's store and that's Blue's ---

Q Okay.

A --- Nightclub.

Q Okay, so, Blue's, Hammond's, Carnell's.

A Well, this - well, this - really this, this is, this is the fish market now. This is Carnell's right here.

Q I got you.

A Yeah.
Q Okay, so, show where you - when you came outside where you were standing.
A I was standing right there ---
Q Okay.
A --- in front of Carnell's.
Q And you said you looked to the left, there were guys standing to your left I guess is what you said.
A Well, Tony and all them was standing on this side to the left of me.
Q Okay.
A Because I was standing facing the street.
Q Okay, I got you.
A Yeah.
Q About how far away to your left were these folks?
A Well, not even, not even four, five feet.
Q I mean, here - less than from here to the wall?
A Well, a little bit further, a little bit further than that.
Q Got you.
A Yeah.
Q And what, what were those folks doing?
A They were just standing there talking like they, like they usually do, a whole group of them.
Q Were they being rowdy and loud?

A Nothing, no, it was normal.
Q Well, I know but we don't know what normal is. That's what we're trying ---
A Well, they were just standing there talking, talking, just they were standing there talking.
Q Okay, did that change at some point in time? Did, did ---
A Well, not really I mean because like I said the only, the only thing I heard was one of the guys say, "That's Dominic right there," and I mean, I didn't, I didn't think nothing was going to happen, I mean, after Tony and Alfonso walked off I got up off the wall and started looking to my right. I'm thinking that they were going to fight, it was going to be a fight or something like that, you know.
Q Well, let me stop right there. Ask you right there you said, "I didn't think anything was going to happen," but what made you think there was going to be a fight?
A Well, I don't know. I just got up off the wall and looked figuring that there was going to be something because of the way he walked off.
Q The way, okay, let me - that's good. Did you see Dominic?
A Yes, I did.
Q Which way did Dominic go?
A Well, he was walking, he was like he was coming towards

Carnell's at first and then he turned around, started walking back next Super Chic.

Q Okay, when you stepped out of Carnell's was Dominic, was the Defendant Dominic Leggette already there?

A No, I didn't see him.

Q Okay, so, when you stepped out of Carnell's did Dominic Leggette come up or walk up in that area?

A I didn't see him until, I didn't see him until I got off - until Alfonso and Tony started walking down the street and I saw him walking in front of them, walking back near Super Chic.

Q So, the first time you see the Defendant, Mr. Leggette ---

A Right.

Q --- he is already walking towards ---

A Super Chic.

Q --- Super Chic.

A Yeah.

Q Okay, was he running?

A No, he was walking, taking, walking normal.

Q Okay.

A Casual walking.

Q Did you hear Mr. Leggette say anything to anybody?

A No.

Q How about you talked to Antonio and Al, Billy and Al?

A Yes.
Q How about those guys, were they yelling at Mr. Leggette?
A Wasn't no yelling - nobody wasn't saying anything.
Q Well, you said somebody said something, "There goes".
A Well, this, this is before they started walking.
Q Okay.
A Yeah.
Q And what did they say?
A "That's Dominic right there."
Q Okay, and then about how far behind, how much time transpired by the time the Defendant starts walking and Antonio and Al, Billy and Al start walking?
A I would say maybe three to four minutes at the most.
Q Okay.
A Or less.
Q Well, how far behind the Defendant and the two victims were they?
A Maybe four to five feet or more.
Q Did you say four to five or more?
A Yeah.
Q Okay, I didn't hear. I thought you said 45 for a second there.
A Yeah.
Q Okay, so, from there to the deputy?
A Maybe a little bit further, maybe from here, maybe from

here to you.
Q Okay, well, we'll try to get a clear idea about it.
A Yeah.
Q Because we've got three to four minutes you get further than that far apart; wouldn't you?
A Uh-huh.
Q Okay.
A It wasn't that far, you know what I'm saying, but like I said maybe four to five feet or more or maybe a little bit more.
Q Okay, did you see - can you see all the way down to the Super Chic?
A Yes, I ---
Q --- when you're standing on the sidewalk?
A Yes, I could have made if you lean up, get up off the wall you can look down the street and see. I mean, now you can't because the bushes have grown out so far, you know.
Q So, did you - you said you get up off the wall, what does that mean?
A Yeah, because when you lean on, if you're leaning on the wall you can't really see all the away down the street but if you get up off the wall and like stand up on the sidewalk and just look down there you can see, you can see straight down to Super Chic. I mean, you can't see the store but you can see that hibachi restaurant.

Q I got you.
A You know.
Q I understand. Did you move out into the street to see that or is that ---
A I was standing on the sidewalk.
Q Okay.
A Uh-huh.
Q But you leaned ---
A But I had a clear view.
Q Okay, okay, now, we've got the progression down the sidewalk. At what point in time does the walking stop?
A Well, the walking stopped after they, after they got on the other side of the Japanese restaurant. That's when I saw the gun went up, you know, the, the, the - when he threw his hand up and the, and the flames coming from the gun. Tony and Al fell in the street at that point. That's the time when the walking stopped and they started back running towards me.
Q Okay, now, describe that in more detail. That's a pretty good distance away. So, how - you're looking from the back view of these folks walking this way?
A Yeah, I'm looking at, looking at the back of them.
Q Okay, and tell us what you saw then if this is how we're laying out.
A Well, when they got down there he turned to the side and I guess they - I just like they were - getting ready to turn,

turn, turn into Super, like turn into Super Chic that's when the shooting starts. I mean, they weren't all the way to Super Chic yet but they were right there on the side of the Japanese restaurant.

Q Okay.

A On the right hand side.

Q So, which way, if I'm standing like this, which way did you see the Defendant turn?

A He turned facing, facing the street.

Q So, facing the street would be this way?

A Yes.

Q Okay, and then, and then what did you see?

A I saw when the - well, when the bullet - I mean, the flames coming from the gun and Tony and Alfonso fell in the street at the same time.

Q What hand did you see a firearm in?

A Right hand.

Q This hand, right hand?

A Yes, yes.

Q Like this?

A Uh-huh.

Q About how far apart did you see Antonio and Billy, the victims in the case, how far were they from where you saw the Defendant turn?

A Well, they were fairly close, maybe about three feet or

more.
Q Three feet?
A Three feet, yeah, three feet or less.
Q How far do you think it is from the rail to me?
A About two feet.
Q Two feet?
A Yeah.
Q So, you think, do you think that's three feet? I'm not putting - how far do you think this is?
A Looks like about maybe two or three feet.
Q Do you think that's about how far away?
A Yeah.
Q Were they in close enough to punch?
A No, they wasn't close enough to punch.
Q Were they close enough to stab?
A No.
Q To hit with a bat?
A Nothing, no, they weren't.
Q Did you see any weapons?
A No weapons.
Q Did you see or I should say did you see a gun?
A Not - I saw the, you know, the, the, the - I mean, the flame from the muzzle come from the gun that he had but the other guys didn't have no gun.
Q Okay, did you see any weapons before you saw folks walk

that way?
A Nothing at all.
Q Did you see any weapons after folks ran back that way?
A None.
Q Did you see it on Al?
A None.
Q Did you see on Billy?
A No, no weapons.
Q After you saw the flashes and you just said, I think you testified that they fell down?
A Both of them fall in the street simultaneously together and they jump up at the same time they were running.
Q Tell - describe how the, the fall. Was it like on the movies where you all are flying back in the street?
A Yes.
Q How was it, how was it?
A They both fell, they both fell on their behind and jumped up and started running.
Q Okay, talk about the, talk about the running. When - did you see him come all the way up the street towards you?
A Yes.
Q Okay, did you see the Defendant?
A I didn't see him anymore after that. I don't know where he went.
Q So, that was the - when was the last time you saw the

Defendant?
A After the shooting stopped.
Q Okay, did you see which direction he went?
A No.
Q Okay, have you seen him since that time until today or not ---
A Not until today.
Q Is that the person that you saw pull the trigger on that firearm?
A Yes.
Q And let the record reflect that I was pointing to the Defendant, the Defendant's table, Dominic Leggette.
Okay, now, I think we're at the point you talk about running back up the sidewalk; is that right?
A That's right.
Q Okay, tell us what happened once Billy and Al got back to where you were standing.
A Well, they were running, they were running fairly fast, like, you know, like they, like, like they were scared or panicked or whatever and when, when - Al kept running and Tony stopped at me and said, "Craig" - well, he didn't call my name. He said, "Dominic shot me," and when he held his shirt up I saw the hole right there in his chest, and he ran on down but after he, after he, after he walk - just kept - walked on down or ran right and panicked, I mean, and fell I walked on

inside Blue's - I mean inside Carnell's and told them, said, "That guy just shot them, shot them guys, man, you know."

Q And why did you go into Carnell's? Why did you go into Carnell's?

A I mean, because I was in shock, it shocked me, too. You know, and I went back and told them, "Man, he just shot them," and I came back outside and that's when Tony was lying on the ground, went to my car, I went and looked at him, then I went to my car, then went, went, went to go tell his mother and his father.

Q Why did you go to the, why did you go to the car again, I'm sorry. That testimony came pretty fast.

A To go to - to go, to go, to go let his mother and his father know what happened.

Q Did you drive to their house?

A Yes.

Q And tell ---

A I didn't - well, never made it to the house. I went, I went to stop by his grandfather's, where his grandfather be all the time at his girlfriend's house. Then I went to his, to his grandfather's house and his nephew, his, his uncle was sitting under the carport and I told him, said, "Tony just got shot."

Q Okay, back on the street right there, back at the spot where, did you ever see Mr. Tisdale lose consciousness?

A I thought, when I went and looked at him after I came out of Carnell's it looked like he was unconscious.
Q I should ask this, was he standing or ---
A He was laying on, he was laying down. His brother was holding, holding his head then and his brother was panicking then. When he let his head go, his head hit the, hit the - when his head hit the pavement, I like, "Man," I'm saying in my mind he's dead.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: Mr. Hazzard, cross examination.

MR. HAZZARD: Thank you, very much, Your Honor.

CROSS EXAMINATION

BY MR. HAZZARD:

Q Good morning, Mr. Jackson, how are you, sir?
A I'm doing fine. How are you?
Q I'm fine. How are you employed, sir?
A How am I what?
Q Employed.
A How am I employed?
Q Uh-huh.
A I'm a cook.
Q And where are you a cook, sir?
A Well, right now I'm unemployed but I basically do a lot of cooking for myself on, on the side.
Q Okay.

A Yes.
Q Now, you indicated that you live on Jones Avenue; is that correct?
A That's correct.
Q On the west side?
A That's right.
Q All right, and you know Antonio Tisdale's entire family apparently; is that correct?
A Correct.
Q Because you wanted to go tell his mother and father and went to the grandfather's house and basically went and talked to the whole family or tried to talk to the whole family; is that correct?
A That's right; that's correct.
Q Okay, now, when - about what time was it when all of this occurred?
A Around 10.
Q Around 10 p.m. ---
A Yes.
Q --- on a Wednesday; is that right?
A That's right.
Q Okay, now, with regard to that street that Super Chic is on and Carnell's is on and Blue's Club or whatever is on, at 10 p.m. on a Wednesday what other businesses on that street are open?

A Well, it's Carnell's, Carnell's and Blue's, Super Chic. The restaurant wasn't open during that time. They just opened the restaurant back up.
Q So, nothing else on that street is open at that time 10 p.m. on a Wednesday?
A Well, there are other businesses further down the street.
Q Okay, like past Super Chic?
A Well, no, past Blue's - well, yeah, past Super Chic and past Blue's.
Q Okay, so, let's make sure we're clear. We've all seen the diagram, the photo several times. Basically one part of the block you've got Blue's and then Carnell's and then on down the block you got that building that was Momma's Kitchen and then you have the Super Chic; right?
A Correct, correct.
Q Okay, so, the building that was Momma's Kitchen that wasn't open at 10 p.m. on Wednesday, August 13th, 2008; right?
A Well, the building, the building was vacant during that time.
Q Okay.
A If I'm not, if I'm not mistaken.
Q Okay, so, between Carnell's and Blue's which is right here --
A Right.

Q --- there is no other business that was open at 10 p.m. until you get to Super Chic; right?
A That's right.
Q All right, just wanted to make sure we're very clear on that.
A Okay.
Q Now, you indicated that you walked outside of Carnell's and you said you had been there about three hours; right?
A Correct.
Q Okay, and you have a little something to drink; right?
A For sure.
Q Okay, no problem. Can you buy cigarettes in Carnell's?
A No.
Q No, you can't, can you buy cigarettes at Blue's?
A No.
Q Cannot?
A No.
Q You're sure of that?
A I'm positive.
Q Okay, now, when you're in there and you come outside about how many people were outside?
A Well, to the left of me I basically, I basically saw maybe about 10 guys standing there. All of them had on white T-shirts.
Q Ten guys all of them wearing white T-shirts?

A Uh-huh.
Q Okay, were they all west side guys?
A I'm not positive. I mean, like I said I was basically just minding my business until I heard what, you know what I'm saying, heard them say that, "That's, that's Dominic."
Q Okay, let's back up a little bit before that.
A Okay.
Q You come outside ---
A Uh-huh.
Q --- and there are these 10 guys in white T-shirts out there.
A Yeah.
Q What were you wearing?
A I can't remember exactly what I was wearing that night.
Q Okay, but you weren't wearing a white T-shirt or anything like that?
A No.
Q You didn't have on a uniform of any type?
A None.
Q Okay, what was - were you talking to anyone? Do you recall whether you were talking with anyone?
A I wasn't talking to no one. I was by - I was alone.
Q Okay, so, you just came outside to get some fresh air?
A That's right.
Q And you noticed these ten guys are out there as well?

A Yeah.
Q Okay.
A Uh-huh.
Q Did you happen to hear any of their conversation when you first walked outside?
A No, sir, I didn't.
Q Okay, but were they talking or do you not recall?
A They were talking but I was, I was, I was - I was basically paying, minding my own business, you know.
Q Okay, so, you weren't paying any attention to their conversation?
A No, sir.
Q At that time.
A No, sir.
Q So, what was or what was so significant about the words, "There goes Dominic right there"? What was so significant that that caught your eye?
A Well, I guess, I guess it was just the way that, the way that it was said, you know.
Q The way that it was said?
A Yeah.
Q And as soon as that was said ---
A Well, at - not as soon as it was said. Go ahead, go ahead and ask your question.
Q No, go ahead and answer.

A Well, as soon as it was said that's when I said Tony and Alfonso started walking off. That's when I really paid attention to what was going on, you know.
Q Yes, sir.
A Right.
Q Yes, sir, now, did you know Al Ingram before this incident?
A No, sir, I didn't.
Q Okay, had you seen him around?
A I seen them around.
Q Okay, so, you knew who he was but ---
A I knew of him. I mean, I seen him, well, yeah.
Q Okay, okay, and he's kind of a - he's not a big guy; is he?
A No, sir.
Q And he was probably even smaller back in 2008; right?
A I think he was.
Q A little bit smaller?
A I think he was.
Q And I don't think by the coroner's report, I don't think Antonio Tisdale was a big fellow; was he?
A No, sir, he wasn't.
Q About 5-9, about 145?
A Right.
Q Now, Dominic here - stand up for me, please, sir. Now,

Dominic here ain't the smallest guy in the world; is he?
A No, he's not.
Q Okay, you can sit down, please, sir. Thank you very much, but yet, August 13th in 2008 somebody says, "There goes Dominic right there," and these two little guys walk off and go towards him in a manner that caused you to think there was going to be a fight; is that correct?
A That's correct.
Q All right, no further questions.
THE COURT: All right, redirect?
MR. HIXSON: No, Your Honor.
THE COURT: All right, you may step down.
A All right.
MR. HIXSON: At this time the State of South Carolina rests.
THE COURT: All right, all right, ladies and gentlemen, the State has presented their case. It is now time for me procedurally to address some matters of law with the attorneys. So, I'm going to excuse you back to the jury room for just a minute while we tend to these matters. It will give you an opportunity to stretch your legs, use the restroom, whatever the case may be and we'll bring you out in just a minute. Thank you very much. Please do not discuss the case even among yourselves at this time. Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, any motions?

MR. HAZZARD: Your Honor, at this time the Defense makes two motions for a directed verdict. The first motion is with regard to the sufficiency or insufficiency of the evidence presented. In our light - in our view the evidence presented by the State in this case, even taken in the light most favorable to them, is insufficient to submit to the jury for their consideration on the offenses for which the Defendant is charged. The second part of the motion for a directed verdict, Your Honor, our position is and has been that based upon the evidence adduced from the State's own witnesses that this is a case of self-defense, that there has been sufficient evidence and information submitted where a self-defense charge is appropriate in this case. As the Court well knows under State versus Hendrix, 270 S.C. 653, 244 S.E2d 503, that - and also State versus Wiggins, 330 S.C. 538, 500 S.E.2d 489, a 1998 case under both of those the burden is on the State to disprove self-defense. So, once evidence has been adduced from that witness stand through testimony, through other evidence that raises the issue properly of self-defense, the burden is on the State to disprove it; and so, we would submit that the State has not presented any evidence to disprove the self-defense charge to which the Defendant is

entitled to. So, A, on the sufficiency or in this case insufficiency of evidence to prove the charges against him, that being murder, that being assault and battery with intent to kill, specifically with regard to murder, Your Honor, there has been absolutely no testimony or evidence submitted whatsoever which would indicate that this Defendant killed another unlawfully, you know, with malice aforethought. There's been absolutely no evidence in that regard. So, we would submit at the very least the charge of murder needs to be stricken at this point.

Also, with regard to the self-defense we submit that sufficient evidence through the State's own witnesses has come up to make that an issue for the jury and that then pursuant to Hendrix and Wiggins the burden then is on the State to disprove that and that they have failed to do so, Your Honor.

THE COURT: All right, all right, I'm going to note your motions. I'm going to deny them though. I think there is enough - viewing the evidence in the light most favorable to the prosecution at this point in time that there is enough to go to the jury on those issues. So, I deny those motions for a directed verdict. All right.

MR. HIXSON: Thank you, Your Honor.

THE COURT: Anything else?

MR. HAZZARD: Nothing further from the Defense.

THE COURT: All right, Mr. Hazzard, let me go ahead

and put your client under oath so I can question him regarding his right to testify, okay? Please put him under oath.

(Defendant sworn by clerk.)

THE COURT: All right, sir, your name is Dominic Alexander Leggette?

MR. LEGGETTE: Yes, sir.

THE COURT: All right, Mr. Leggette, at this time I'm going to explain to you certain rights that you have. If you do not understand anything that I say please let me know.

MR. LEGGETTE: Yes, sir.

THE COURT: If you want me to explain anything in more detail please let me know.

MR. LEGGETTE: Yes, sir.

THE COURT: Do you understand that?

MR. LEGGETTE: Yes, sir.

THE COURT: Okay, we've now reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment of the United States Constitution. This amendment states in part that no person shall be compelled in any criminal case to be a witness against himself. This means that you cannot be required to testify in this case. You have the right to testify on your own behalf. However, no one can make you testify. This is a personal right and no one can waive this right except you. If you decide to testify you will be

subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this Court determines that the probative value of admitting this evidence outweighs the prejudicial effect to you then the Solicitor will be able to introduce your record to attack your credibility. If you decide to testify this decision on your part must be freely, voluntarily and intelligently made with knowledge of the protections given to you by the Fifth Amendment of the United States Constitution and the consequences of your decision to testify. If you decide not to testify I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you testify. You may talk with your attorney, with your family, with your friends or anyone else that you want to talk to. However, the final decision will be left entirely up to you. Now, do you understand these rights as I have explained them to do?

MR. LEGGETTE: Yes, sir.

THE COURT: Have you had ample opportunity to discuss this matter with your lawyer?

MR. LEGGETTE: Yes, sir.

THE COURT: Would you like some additional time to speak?

MR. LEGGETTE: Yes, sir.

THE COURT: Okay, now, do you have any questions that you want to ask me at this time? I'll give you an opportunity after you've talked to your lawyer if you want to ask me a question then. I'll give you an opportunity to do it then.

MR. LEGGETTE: Thank you, sir.

THE COURT: Would you like to talk to your lawyer first?

MR. LEGGETTE: Yes, sir.

THE COURT: All right, let's take about a ten, will that be sufficient?

MR. HAZZARD: Ten should be sufficient, Your Honor.

THE COURT: All right, let's take about a 10 minute recess. Let Mr. Leggette speak with his lawyer and then we'll come back and at that time, Mr. Leggette, if you have any questions I'll answer them for you. If you need any additional time to talk to your attorney longer I'll give you the additional time but when you're through talking with your lawyer, with your family, with your friends, whoever you want to speak with and you don't have any questions for me at that time I'll be asking you whether or not you wish to testify; Okay?

MR. LEGGETTE: Yes, sir.

THE COURT: All right, let's stand in recess.
MR. LEGGETTE: Thank you, sir.
THE COURT: Thank you.
OFF THE RECORD
(On the record.)
(Whereupon, the following takes place outside the presence of the jury.)
THE COURT: All right, Mr. Leggette, if you'd please stand.
(Complies with request.)
THE COURT: Have you had ample opportunity to discuss with your attorney your right to testify?
MR. LEGGETTE: Yes, sir.
THE COURT: Do you recall and understand all of the rights that I explained to you before we took a break?
MR. LEGGETTE: Yes, sir.
THE COURT: Do you have any additional questions for your attorney?
MR. LEGGETTE: No, sir.
THE COURT: Do you have any questions for the Court?
MR. LEGGETTE: No, sir.
THE COURT: All right, do you wish to testify in this case?

MR. LEGGETTE: Yes, sir.
THE COURT: Is that your decision to testify?
MR. LEGGETTE: Yes, sir.
THE COURT: Is it given freely and voluntarily?
MR. LEGGETTE: Yes, sir.
THE COURT: All right, has anyone forced you or coerced you or threatened you to get you to testify?
MR. LEGGETTE: No, sir.
THE COURT: And is it your desire to testify?
MR. LEGGETTE: Yes, sir.
THE COURT: All right, thank you very much. You may be seated.
MR. LEGGETTE: Thank you.
THE COURT: All right, anything before we bring the jury in?
MR. HAZZARD: Nothing from the Defense, Your Honor.
MR. HIXSON: Nothing, Your Honor.
THE COURT: All right, let's go ahead and bring the jury in.
(Whereupon, the following takes place in the presence of the jury.)
THE COURT: All right, ladies and gentlemen, welcome back. We're ready to proceed with the trial of this case. Mr. Hazzard, you can call your first witness.

MR. HAZZARD: Thank you, Your Honor. The Defense calls Dominic Leggette.

THE COURT: All right.

Whereupon, Dominic Alexander Leggette was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

MR. LEGGETTE: Dominic Leggette.

DIRECT EXAMINATION

BY MR. HAZZARD:

Q Could you spell your last name for the record, please, sir?

A L-E-G-G-E-T-T-E.

Q And before August 13th of 2008, Dominic, where did you live?

A In Andrews, South Carolina.

Q Okay, and had you lived in Andrews most or all of your life up to that point?

A Yes, sir.

Q Okay, where did you go to high school?

A Andrews High.

Q Okay, and I think there's been some testimony that you played sports while you were there; is that correct?

A Yes, sir.

Q And what sports were those, sir?
A Football, basketball, baseball, track and field.
Q Okay, now, did you graduate?
THE COURT: I'm sorry.
FOREPERSON: Could you ask the witness to move up a little bit?
THE COURT: Please slide up, speak into the microphone. Let's turn up the sound a little bit more.
FOREPERSON: It's not the sound. It was the monitor here. It's fine.
THE COURT: Okay, all right, thank you.
Q So, you said football, baseball, basketball, track and field?
A Yes, sir.
Q Okay, now, did you graduate from Andrews High School?
A No, sir.
Q Why not?
A I was, I was an athlete and I lost my, I lost my athletic abilities from prior missing days in school and that made me not want to attend school anymore.
Q So, you were suspended from engaging in athletics because you didn't go to enough classes?
A Yes, sir.
Q Okay, now, after you left high school did you start working anywhere?

A Yes, sir.
Q And where is that?
A L and L.
Q What is L and L, sir?
A It's a - basically it's a diesel, it's a diesel shop, they do diesel mechanics.
Q Okay, and what did you do there?
A I did a little diesel mechanic work.
Q Okay, now, in August of '08 where were you employed, sir?
A 3D Metal.
Q Okay, and what is 3D Metal? What do they do, sir?
A They weld. They're known for welding, diesel mechanics and things, and things of that caliber.
Q And what did you do for 3-D Metal?
A They had me pressure washing heavy equipment.
Q Okay, okay, now, I think there was some testimony from Al Ingram, you know Al Ingram.
A Yes, sir.
Q Okay, there was some testimony from Al Ingram that you and he had some prior difficulty in 2006 or 2007; is that true?
A Yes, sir.
Q Okay, tell the jury about that if you would, sir.
A On - in 2006 Mr., when Mr. Ingram moved to Andrews he,

he moved to the uptown, to the area known as uptown and then a couple, like a month or two later he moved to an area called Jones Avenue, known as West Andrews, and then about a night, on a - no - I can't remember the date of the night an incident occurred between Mr. Ingram. I was walking with my so-called girlfriend at the time home.

Q Okay, now, what was her name?

A Her name was Kamera [spelled phonetically] Jackson.

Q Okay.

A And when we was coming, when we was walking home Mr. Ingram and a couple of his friends rode up in a car and he proceeded to talk to - try to holler at my girlfriend, try to talk to my girlfriend and I kept walking to the point because she was handling it by herself. She was basically letting him know because he had already knew. He just was trying to be funny. I ain't paying him no attention but she was handling it and then he, when he got, he got to a point where he said, "It don't matter. You can come and holler at me. Them boys there already know." So, when he said that it made be angry. I was like, "If them boys already know, what is you, what is you talking about? What do you mean? What do I know? What is you talking about? I don't know nothing about you," and then so, from that the next day - I proceeded, they left. I took, I took my girlfriend home. The next day I saw his friend in the projects, in the apartments, Arbor Place

Apartments, and I saw, I saw his friend. I told his friend that I didn't like the way Mr. Ingram approached me last night with my girlfriend.

So, two nights after that I was at a - at the back of a club, of a nightclub called Take a Break in Andrews and Mr. Ingram, Mr. Ingram's friend came to me saying that Mr. Ingram had want to fight me. So, it wasn't - I, I - at that point in time I wasn't scared of Mr. Ingram. So, me and him got into a confrontation. We had a fight. He knew my name because I knew his name from being in our neighborhood. We had a fight. The fight resulted in a big old fight and more people from their side being on four people from my side, 10 to 12 people from their side. So, we got jumped. So ---

Q Now, was this at the Take a Break --

A Yes, sir.

Q --- club? Okay.

A It was at the Take a Break club behind it in, in the, in the road area. It wasn't - it was - as a result we - it was no police involved. So, none of us went to the police and a couple and we - and we left, and that, that was - and we left. That was it.

Q Okay, now, after that incident in either 2006 or 2007 did you have any other difficulties with Mr. Ingram or Mr. Tisdale up to August of 2008?

A Yes, on the, on the, on August 2008 ---

Q Hold on, listen to my question. Between that issue at Take a Break and August of 2008, between those times, did you have any other issues with Mr. Ingram?

A Yes, we had a couple of confrontations, a couple, a couple of lynchings had went on, jumpings that went on throughout the neighborhood but it was nothing new. It was nothing new it was going on.

Q Okay, well, when were these, sir?

A These were just throughout the years, throughout, throughout the years. Andrews is not, Andrews is not a big place. So, we see each other just about every day. So, it's like every, every day, every two or three days it be a big fight. It's, it's a whole lot more them than us. Most of the time I mostly I be with my family and my family consists of my brother, my cousins and all of us look at each other like brothers. So, we - basically we call each other brothers. So, we, we consist each other as brothers.

So, it goes on, we get jumped, we get jumped by 20, 30 people on eight people. That's not a fair fight but at the same time we lick wounds and we go on about our business.

Q Now, let me ask you a question, when Investigator Lee was on the stand there was some question about a 380 pistol that he got from whom he referred to as your associate, Mr. Eric Cox. Do you know Eric Cox?

A Eric Cox is my cousin.

Q Okay, so, he is indeed related to you by familial blood?
A Yes, sir.
Q Okay, and that, that gun that he got from Mr. Cox was legally registered to him, had nothing to do with this case; right?
A Yes, sir.
Q Okay, but they're just wanting to check it out?
A Yes, sir.
Q Okay, so, you're saying that there's these different instances over the course of a period of time from 2006 or thereabouts up to August of 2008; is that correct?
A Yes, sir.
Q Okay, now, let's go to August of 2008. This incident where you defended yourself was on August 13th, Wednesday; correct?
A Yes, sir.
Q Okay, let's go back four days to Saturday, August the 9th; okay. Tell us what if anything happened on Saturday, August the 9th of 2008.
A Well, Saturday, Saturday, August the 9th, it was a night - say - it was, it's a night that everybody gathers at Take a Break in Andrews and people come from all over. So, Take a Break is like a popular spot; and so, we was at Take a Break inside the club and ---
Q When you say we, who are you referring to?

A Me and my family members.
Q Okay, what are their names?
A Me, Mr. - and Mr. Terrell Cox, Mr. James Scott, I - my brother, my brother - my other brother Jamie White and I had a cousin. I had a cousin named Sharon there.
Q Okay, go ahead.
A And, and during the, during the course of the time I saw my brother - I saw my brother, one of my brothers, one of my cousins, well, girlfriend, baby mother dancing with a guy and, and my brother was incarcerated at the time. So, basically, she left his baby at home by hisself, had - with somebody watching him but she should've been there. She's out there acting up. So ---
Q That's how you felt?
A Yes, sir, that's how I felt at the time being. So, I approached her. I approached her and I told her, I say, "You need to go home with my nephew and you need to go home right now," and I didn't say, I didn't say it in a mean manner. I didn't fly off the handle, didn't snatch her up or anything. I just say, "You need to go home and talk to - and be with my nephew." My brother, my - he, he, my cousin is in jail. He was incarcerated in Williamsburg County at the time and I was like, "You really need to be home. He left you good. He left you home with money. He left you a car. He left you with everything. Why is you out here dancing with these dudes and

he will be home soon." So, from that it escalated, it escalated into a thing with Mr. Ingram. Mr. Ingram ---

Q Now, let's back up. You're talking to this young lady. What was her name?

A Clarissa [spelled phonetically].

Q Okay, you're talking to Clarissa. How does Mr. Ingram get involved in this?

A He was right beside, he was right on the other side like a person down from when I was talking to Clarissa. I didn't really pull her to the side but I was like, I like - was like whispering - I was like talking to her but people couldn't hear me.

Q Okay, okay, so, you're talking to her and then what did Mr. Ingram do?

A That when, that when he got into a little uproar. He got into a little uproar.

Q When you say that what did - did he say something?

A Yes.

Q Okay.

A It was some words exchanged.

MR. HIXSON: Your Honor, I would object to this in that State versus Day specifically talks about that the facts of a prior difficulty absolutely are admissible in court, but details of specific conduct, of specific instances ---

THE COURT: I sustain the objection.

MR. HIXSON: --- are not admissible because you can't cross-examine.

THE COURT: Sustain it.

Q Okay, so, without then giving me the specific details there was - was there a physical altercation involving you and Mr. Ingram on Saturday, August the 9th of 2008?

A Yes, sir.

Q Okay, now, Sunday the 10th comes and goes; right?

A Yes, sir.

Q And then we get to Monday the 11th. Did anything happen on Monday - what if anything happened on Monday, August the 11th, 2008?

A Monday, August the 11th we was in the Arbor Place Apartments once again.

Q Okay, who is we?

A Me, me, Mr. James Scott, my brother - my cousin Jamie White and it was my cousin, my cousin Mario Cox, Terrell Cox and I had a person name that came out named Cameron Green. He was there with us, too.

Q Okay, so, you all are there. What - and was there another altercation at that time?

A Yes, sir, at that time we saw Mr. Ingram and he was, he was in a, he was in a car basically. He, he was like - he came through - they came through. He got out the car. He said some things. Basically he was, basically he was ---

Q You can't, you can't get into the details of it apparently. However, as a result of the incident that occurred on August the 11th did that incident cause you to have some fear for Mr. Ingram?
A Yes, sir.
Q Okay, now, let's back up a little bit. Mr. Ingram has testified that he has and the Prosecutor has asked him about his prior weapons charge when he was 13. Were you aware of that?
A Yes, sir.
Q Okay, was that something that was known in the community to your knowledge?
A Yes, sir.
Q Okay, so, that wasn't any secret?
A No, sir.
Q Okay, now, Monday the 11th there's another altercation; right?
A Yes, sir.
Q Okay, now, Monday - I mean, Wednesday, the 13th, tell us what happened, if anything.
A What happened was I was in the Arbor Place Apartments probably about seven o'clock. I was out there, me, me and my cousin Terrell Cox. We walked, we walked right up the block, right up the road to Mr. Jamie White's house, my other cousin, and we was at his house talking for a while and that when Mr.

Ron Gardner came up here. He came up there. He - I know him from playing sports together. We play sports together and we went to school together but he moved away and anyway I was, I was kind of, I was - I was kind of happy to see him. So, we had, we had, we was talking. Then Mr. White, his girlfriend showed up. So, we left and gave them some privacy and when we were standing on the, on the - basically on the corner talking because I was, I was telling them I'm about to go home when I got a phone call from my ex-girlfriend at the time, Miss Rhonda Brown.

Q Okay, let me interrupt you right there, and I apologize for doing so, sir. Give the jury an idea of where these apartments are in relation to Super Chic, Carnell's and Blue's. How far away are these apartments where you say you guys were from those locations?

A Probably about a hundred yards.

Q Okay, and you said you were getting ready to go home. Where did you live at that time?

A I lived - actually, I used to - it was a path my brother, from my brother house to my house. So, I could basically walk through the path. I stayed right on the back street, right on the back street from my brother house because my brother's - Mr. White's house is on one block and Blue's Nightclub and Carnell's is on another block.

Q Okay.

A They right side by side.
Q Okay, so, how far did you live from Blue's and Carnell's roughly?
A Right behind them.
Q Basically right behind them?
A Yes, sir.
Q Okay, now, please continue.
A At that time when I got the phone call Miss Rhonda Brown, my ex-girlfriend she gave me a call. She said that she needed to use my phone charger. So, I got my phone - I had my phone charger with me because I was like, "You need to come" - I was like, "Come, come to the house and get it," because I just I had a feeling, I had an iffy feeling. I had a messed up feeling that something was going to happen and this is, yes, this, this is my side of town but people from west Andrews side, Jones Avenue side, tend to be up there because this is Andrews. It's small. So, I had a feeling that they would kind of be up, that they kind of be up there but she was like, "No, bring it to me." So, I was like, "All right, I'll bring you the charger." So, I took the charger up there to - I took the charger to my girlfriend, my girl - my ex-girlfriend, my girlfriend at the time and when I was walking up there me, me and Mr. Ron Gardner was talking and, yes, I did, in fact, show him a gun at the time.
Q Okay, now, what were you doing with this gun?

A I bought the gun for protection, for, for my safety because I was, I was - it was getting to the point - I was kind - I was scared of Mr. Ingram because it was the things what - it was happening too fast. Things were happening way too fast and if you - Your Honor ---

THE COURT: Just answer the questions.

Q Okay.

A But ---

Q Let's - I'm sorry.

A Okay, okay.

Q Do you have a, do you have a question for me? Do you need some water or something of that nature?

A No, I was ---

Q Are you not sure you can tell me something?

A Yes, sir.

Q Okay, then don't say it.

A Because ---

Q Don't say it.

A All right.

Q If you're not sure if you can say it don't say it. We'll get to it. We'll cover it.

Now, you said things in your mind and in your view were escalating too fast. So, without talking about the specifics of the prior incidents between you and Mr. Ingram had something happened prior to August 13th of '08 that caused you

to believe that this was no longer simply a matter of boys having fistfights with boys?

A Yes, sir.

Q Okay, now, when you obtained this gun did you go to a licensed, registered dealer and fill out and get a permit and all that good stuff?

A No, sir, I was not able at that time and I was neither old enough.

Q Okay, and so, what, you bought it on the street?

A Yes, sir, I bought it illegally.

Q Okay, all right, now, so, you showed this gun to Mr. Gardner as you all were walking; right?

A Yes, sir.

Q Okay, and then what if anything happened next, sir?

A Well, then we proceeded walking down to the, to Carnell's Nightclub where - well, right before I got up there I saw Mr. Fabian Holmes and Mr. - I saw a person I know named - known as DD. I shook their hands and I kept walking by because I saw the person, the - I saw people from West, Jones Avenue already up there in Blue's, in the Blue's space. So, I kept moving. I didn't want no confrontation. I had a feeling that something would've pop up. So, I didn't want a confrontation. So, I moved away. I moved away from them.

All right, and I got there - when I got to Carnell's my girlfriend was at the door at the time. So, I, I, I handed

her my phone charger and I was like, I asked her, I said, "How long you going to be there?" That's when Mr. Sharon McGee comes around to in the front of me because I was facing this way and my girlfriend was right here. Like, I was leaning against the wall and she was leaning against the door. Mr. Sharon McGee came around - comes around me and he was like ---

Q Let me stop you right there. Mr. McGee has not testified yet in this case. So, it would be hearsay for you to say what he said, but is it fair to say that he confronted you?

A Yes, sir.

Q Okay, did anyone else confront you at the time?

A Yes, sir, personally, a fellow by the name of Carroll Wilson.

Q Okay, and as a result of that confrontation what actions did you take next?

A It was - as a result of that confrontation I was, I was scared because it was more than one person. It was about - I saw it was one here, one here, one here and a couple of people behind them. So, I already, I already knew I was going to get jumped, and my ex-girlfriend, my ex-girlfriend at the time ---

Q Let me ask you this.

A Sorry.

Q You were in an establishment, somebody runs this place I take it; correct?

A Yes, sir.
Q Okay, but this establishment is such that they would allow people to get jumped?
A Sir, it's - Andrews, this is an Andrews thing and it's been going on for years. It's not a thing that they don't know. It's a thing that everyone in Andrews knows about.
Q Okay, okay, all right, so, these individuals are kind of around you in a semi-circle I think you're pointing at; correct?
A Yes, sir.
Q Okay, what if anything happened next, sir?
A At that time, at that time, Mr. Tisdale and Mr. Ingram come riding by in their car and Mr. McGee kind of like flagged them down telling them that I was there, but before they got back Mr. Wilson decided that he didn't want to fight me. So, he - so, I walked off. I walked off and I called my cousin, Mr. Eric Cox, to come pick me up from Super Chic, and in the course of me walking off I heard someone coming behind me, and when I heard someone coming behind me I wasn't sure what it was but I heard the footsteps, you know, when somebody come running behind you you can hear footsteps on the pavement and then I heard somebody say, "What's up now? What's up now," and when I turned around the person was about from me to where that orange cup is.
Q Okay, approximately three feet or thereabouts?

A Yes, sir.
Q Okay.
A And when I turned around one hand was like that and the other hand looked like he was grabbing for something.
Q Okay, hold on a second. When you say one hand stand up if you would, will the Court allow him to stand up so the jurors can see?
THE COURT: Yes.
Q Stand up and show these jurors what you - what actions you're referring to.
A One hand was like this and the next hand was like he was reaching in his waist for something.
Q And who are you referring to?
A Mr. Ingram.
Q Okay, what happened then?
A In that course of time I was already scared. I didn't know what to do and I already prior, I already knew that it escalated from facts, from prior facts and me knowing that he known, is known for carrying guns. So, I automatically thought that he was reaching for a gun. So, I proceeded to pull my gun out and shot two, two to three times.
Q Okay, okay.
A And when I, when I finished, when I finished - when I, when I, when I shot the two or three times I didn't stick around. I ran past Super Chic and they have a alley there in

the back. I took the back alley and I ran off and during that time I proceeded to leave Andrews.

Q Okay, now, when you left Andrews, when you ran off, I'll put it this way, did you see Mr. Ingram and Mr. Tisdale get up and head back towards their friends?

A No, sir.

Q Okay, okay, so, you just took off, you left?

A Yes, sir.

Q Okay, how long after this incident was it before you were apprised of the fact that someone had died?

A It wasn't - right, the day, the day that I actually got picked up that's the day that I really found out that the person was - that actually had died. I had, I had rumor - I had heard rumors that a person had died but I wasn't going on rumors because I didn't see it in any paper and I didn't see it on any news channel. So, I didn't, I didn't really know.

Q Okay, now, there's been some talk, some questions with regard to Investigator Lee as far as how it is you came into custody. The deputy solicitor mentioned that you might have contacted the U.S. Marshal; is that correct, sir?

A That is correct.

Q Okay, tell us about that if you would.

A I was in the Green Sea Floyd area of Loris, outside of Conway and they raided a person - they raided a friend of mine house and they was basically looking for me. The U.S. Marshals

made it known they were looking for me, and during the course of the time the friend, the friend said that he knew me and he had gave me a ride. So, they gave him - picked him up on aiding and abetting; and so, being a true and honest person and it was, it was getting tiresome. Every - I knew that I was just - it was getting tiresome. I was tired of running. So, I decided to currently turn myself in. I called the U.S. Marshal, Rudy Tisdale, at the time and I said, "Mr. Tisdale, I have been told that you are looking for me," and he was like, "Yes, sir, I am." "This is Mr. Leggette?" I said, "Yes, sir." I say - he said, "Where are you?" I said, "I'm right where you just now left." He said, "Do you mind staying on the phone with me?" I say, "No, sir." So, I stay on the phone with him to the course of time that he got there. Then I was taken into custody.

Q How - on August 13th of '08 how old were you?

A 19.

Q And how old are you now, sir?

A 21.

Q Okay, so, you were 19 at the time?

A Yes, sir.

Q Okay, after you were in custody you have occasions where you spoke with Chief Knox and I believe for a couple of minutes you might have spoken with Investigator Brown there and with Investigator Eddie Lee; is that correct?

A Yes, sir.
Q Okay, and you weren't always truthful with them; were you?
A No, sir.
Q Okay, in fact, in one instance you told them that you didn't have anything to do with the shooting at all; didn't you?
A Yes, sir.
Q Okay, but were you under oath when you gave those statements?
A No, sir.
Q Okay, why did you give those statements, why did you tell those untruths?
A Basically I was 19 at the time. I was - I have - I haven't never been convicted of a serious crime to this caliber. The longest I ever stayed in jail was 22 days and I didn't really - yes, yes, I don't watch TV shows but there's nothing like when you're actually into it of yourself and they got you, holding you for this thing. So, I was, I was scared. I was scared and then when they came to me I told them, I told them two sets of lies which I, that's, which I regret, which I regret doing, doing, doing so when I should've basically told them the truth.
Q When you told - when you spoke with Chief Jackson, I mean, when you spoke with Chief Knox and you spoke with

Investigator Lee you discussed this whole issue of - I'll put it this way, were you ever asked about prior difficulties with Mr. Ingram and Mr. Tisdale?

A No, sir, not that I recall.

Q Okay, okay. Now ---

MR. HAZZARD: The Court's indulgence, Your Honor.

THE COURT: All right.

MR. HAZZARD: The Court's indulgence.

BY MR. HAZZARD:

Q Okay, sir, on the night of August 13th of 2008, did you do anything to provoke Mr. Tisdale or Mr. Ingram?

A No, sir.

Q Okay, and when they came running after you I believe you have testified that that caused you to be frightened and fearful; is that correct?

A Yes, sir.

Q Okay, and let me ask you something while I've got you here on the stand, Mr. Jackson has indicated, Craig Jackson testified that you have Carnell's and you have Blue's right here and then as you go down the street you got Super Chic further on down the block; correct?

A Yes, sir.

Q Okay, was Super Chic - when you left and took off from in front of Carnell's and Blue's was Super Chic the next lighted place that was open where other human beings might

have been?
A Yes, sir.
Q Okay, were you able to make it to Super Chic?
A No, sir.
Q All right, thank you. Please answer any question that Mr. Hixson might have.
THE COURT: Cross-examination.
MR. HIXSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HIXSON:
Q Good morning, sir, how are you?
A I'm fine, how are you doing, Mr. Hixson?
Q Need a drink of water or anything? Are you good?
A I've got some, sir. Thank you, sir.
Q Okay, so, let's start kind of after everything starts, work our way back through. How's that?
A Okay.
Q Let's talk about the 9th of September of 2008. I believe - isn't it true that you had warrants signed against you and they were served on you on September 9th, 2008?
A Yes, sir.
Q And you were placed into custody on that day; isn't that right?
A Yes, sir.
Q And then on September 10th of 2008 didn't you - isn't it

true you sat down with Investigator Chief Knox, Chief Knox, Investigator Eddie Lee ---

A Yes, sir.

Q --- in the Andrews Police Department?

A Yes, sir.

Q Didn't they take you down to the sheriff's department to interview you?

A Yes, sir.

Q Okay, at that time did they read you your Miranda rights?

A Yes, sir.

Q Let me take a look - let me show you a form. I believe it's a Court's Exhibit. I have a copy of it here. I'll use the Court's Exhibit, and it's been marked as Court's Exhibit Number One. I think I'm going to put that into evidence. So, let's mark that one a State's Exhibit, also. It's been marked State's Exhibit 13 [sic]. It's a Andrews Miranda form.

MR. HAZZARD: No objection.

Q Do you recognize ---

THE COURT: Are you putting it in evidence now?

MR. HIXSON: Let me make sure he recognizes it. We'll go from there, Judge.

THE COURT: Okay.

BY MR. HIXSON:

Q Do you recognize that, sir?
A Yes, sir.
Q What is that?
A It's a Miranda form.
Q Okay, and what's a Miranda form? What's your understanding?
A From my understanding your rights. It says Miranda warning, your rights, right here.
Q Okay, did they read those rights to you?
A Yes, sir.
Q Did you sign that in any way?
A Yes, sir.
Q And what - isn't, isn't the purpose of Miranda form is that you testify voluntarily?
A Yes, sir.
MR. HAZZARD: Objection to the term testify. That would indicate under oath.
THE COURT: Sustained.
Q That you give a statement to law-enforcement voluntarily?
A Yes, sir.
Q Okay, did you sign that?
A Yes, sir.
Q Did anybody threaten you?
A No, sir.

Q Did anybody coerce you?
A No, sir.
Q Anybody withhold food or drink or make you stay up late to get something out of you?
A They - I recall the - since you brought it to my attention the other day I do recall one time when Mr. Knox stepped out, that he asked me for something to drink, but they did not give me a bathroom break or nothing else.
Q Okay, did you feel like you had to testify?
A Yes, sir.
Q Or excuse me ---
MR. HAZZARD: Judge ---
Q --- have to give a - did you feel like you had to give a statement to law enforcement?
A Yes, sir.
Q Okay, does on that say that you have to do that?
A No, sir.
Q Okay, but you felt like you had to?
A Yes, sir.
Q How about ---
MR. HIXSON: At this time the State would move State's Exhibit 36 into evidence.
THE COURT: Any objection?
MR. HAZZARD: No objection.
THE COURT: State's Exhibit Number 36 admitted into

evidence without objection.

(Whereupon, State's Exhibit Number 36 [Miranda Form] admitted into evidence and appropriately marked.)

BY MR. HIXSON:

Q About three days later isn't it true you started having second thoughts about the statement you gave to Investigator Lee and Detective Knox and Investigator Knox?

A Yes, sir.

Q Isn't that right?

A Yes, sir.

Q So, isn't it true that you called a corrections officer and said, "Can you please send him out here. I want to talk to him again"?

A Yes, sir.

Q And on that date that was September 13th; is that right, one month after the killing?

A Yes, sir.

Q Isn't that right?

A Yes, sir.

Q Investigator Lee came to the detention center to talk to again; isn't that right?

A Yes, sir.

Q Gave you a second chance; isn't that right?

A Yes, sir, you can call it that.

MR. HIXSON: I'm looking at Court's Exhibit Number

Three, Your Honor. We're going to make that a State's Exhibit, also, put that into evidence.

Mr. Hazzard, this Andrews Miranda form is from the 13th, the detention center.

THE COURT: What's the number?

MR. HIXSON: It's been marked as State's Exhibit 37.

THE COURT: All right, Mr. Hazzard, any objection?

MR. HIXSON: For identification right now.

MR. HAZZARD: No objection, Your Honor.

THE COURT: All right, State's Exhibit Number 37 admitted into evidence without objection.

MR. HIXSON: Thank you.

(Whereupon, State's Exhibit Number 37 [Miranda Form] entered into evidence and appropriately marked.)

BY MR. HIXSON:

Q I know you've been through this already before. So, take a look at that on the 13th. What is that?

A The same, the same form you just handed me earlier.

Q Okay, could you read that to the jury?

A Which ---

Q The whole, the whole thing.

A "Andrews Police Department warning, Miranda warning, your rights, before we ask you any questions you must understand your rights. You have a right to remain silent. Anything you can - say - anything you can - anything you can

and will be used against you in a court of law. You have the right to talk to an attorney if you have and to have him present with you while you are being questioned. If you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if one - if you wish one. If you decide to answer questions without a lawyer present you have the right to stop answering at any time. Waiver of rights, I have been given my Miranda warning, my Miranda warning both verbally and written. I understand what my rights are. I do not - I do or do not want a lawyer at this time. I understand, I understand and I know what I am doing. No promises or threats have been made to me and no pressure or coercion." That's it?

Q Coercion.

A Coercion?

Q Uh-huh.

A "Of any kind has been used against me."

Q Okay, and isn't it true you circled that you do not want a lawyer at this time?

A Yes, sir.

Q And initialed that?

A Yes, sir.

Q Okay, did you sign the bottom of it?

A Yes, sir.

Q Witnessed by Eddie Lee, signed it 5:27 p.m.; isn't that

right?
A Yes, sir.
Q And that is in evidence as State's 37. They talked to you about three hours; isn't that right?
A Yes, sir.
Q The first time. The second time was a written statement; isn't that right?
A Yes, sir.
Q Okay, you said they never ever asked you anything - isn't it true you just testified they never ever asked you about any prior difficulties; isn't that what you said?
A Not that I recall.
Q You said they never did.
A I say not that - I said not that I recall, sir.
Q Okay, well, let me be clear about this, let me make sure I set the foundation for this properly. Do you recall being at the Georgetown County Sheriff's Department on March 10th of 2008?
A Yes, sir.
Q Do you recall Investigator Knox, excuse me, Chief Knox and Investigator Eddie Lee from the Andrews Police Department were present in that room?
A Yes, sir.
MR. HAZZARD: Your Honor, if he is asking him about events on March 10th of 2008 I would not see how this is

relevant ---

MR. HIXSON: If I misspoke I'll clarify.

MR. HAZZARD: --- because that's what it sounded like to me.

THE COURT: All right, I'll let him ---

MR. HIXSON: I'll rephrase the question.

THE COURT: --- I'll let him question him further. Go ahead.

BY MR. HIXSON:

Q On September 10th, 2008, the day I'm questioning about do you recall being in the Georgetown County Sheriff's Department?

A Yes, sir.

Q Present in that room were Harvey Knox and Eddie Lee?

A Yes, sir.

Q That session was videotaped, audio-taped?

A Yes, sir.

Q They were talking to you about the shooting death of Antonio Tisdale, as well as the shooting of Al Ingram; isn't that correct?

A Yes, sir.

Q Okay, and that happened at 2:05 p.m. that's when this form was signed; isn't that correct? Date, time, place substance, you recall that; isn't that true?

A Yes, sir.

Q And I believe a copy of your statement has been provided to Defense counsel as well, the recording that you recorded at that time; isn't that correct?
A I think so.
Q Okay, well, isn't it true then and I'll refresh your recollection if you want that you went through quite a bit of detail about fight at the Take a Break Club on August 13th of 2007; isn't that correct?
A August 13th.
Q A year prior to this incident?
A Yes, sir.
Q Isn't it true you talked to Detective Lee about it, said it was a fistfight at that time outside of Take a Break?
A I did not recall but ---
Q Do you recall that now?
A Yes, sir.
Q Okay, and do you recall telling them that you haven't had any fistfights with Al Ingram until you saw him again this time, you'd seen him around town but isn't it true you told them you and he never punched each other during that period of time in this run up; isn't that true?
A I do not recall that.
Q Okay, you don't recall saying that?
A No, sir.
Q Do you want us to play it for you?

A I don't recall it, I mean, sir.
Q Okay, okay.
A But if you said I said it I said it.
Q no, I'm not putting words in your mouth. I just want to make sure we're clear on your statements.
Okay, let's start with your first statement. Isn't it true that you told Eddie Lee that you did not have a gun that night at all?
A Yes, sir, that is true.
Q Okay, isn't it true that you said that you never saw a gun that night but you heard gunshots and when you heard gunshots you ran?
A Yes, sir, that is true.
Q Okay, and that's not consistent with your testimony tonight; is that correct?
A No, sir.
Q Today you say you saw Al turn and reach for something and you shot because you thought that he was coming at you; isn't that correct?
A Yes, sir.
Q But on September 10th, audio recording, you said, "I didn't see no gun, I didn't see anything and I didn't have a gun"; isn't that true?
A Yes, sir.
Q Isn't it true that you said, "I was like, nah, I ain't

going to run tonight because this ain't me. I'm tired of running. I was like, forget that, I'm a grown man. I'm about to be 20 this year, this month on the 29th," excuse me. "I was like fuck that, I ain't running. If I don't make a stand now I ain't never gonna' make a stand for the rest of my life to these guys. So, I was like F it. I ain't running. So I kept walking and kept walking, I kept walking. Then all I saw was knives, I saw a bat, I saw a knife."

MR. HAZZARD: Okay, Your Honor, at this point ---

Q Isn't that true you said that?

MR. HAZZARD: --- if he's going to ask him ---

THE COURT: Hold it. He's raised an objection, so stop.

MR. HIXSON: Apologize, Your Honor.

THE COURT: Yes, sir.

MR. HAZZARD: If he's going to ask him about his statement that is fine. I don't think he is allowed to basically put the statement in evidence, then ask him if he said it.

THE COURT: I sustain the objection.

BY MR. HIXSON:

Q Isn't it true you made the statement on the videotape like that?

A I made a statement to some of that effect.

Q Okay, isn't it true you told Investigator Lee that you

were cut bad that night, you were stabbed and poked and cut through?

A Yes.

Q And isn't it true you just testified that you weren't touched at all, you were afraid, turned, fired and ran?

A Yes.

Q Isn't it true you told Investigator Lee that, "My girlfriend picked me up on the alley outside of Super Chic and took me to Loris"?

A I don't recall saying that to that effect. I recall saying something to that effect but I don't recall saying that to that effect.

Q Okay, so, you're not denying you made that statement. You're just saying you don't remember that statement.

A No, sir.

Q Okay, isn't it true you had a little frustration with the fact that people in Andrews don't give you the respect that you feel like you deserve?

A Yes, sir.

Q Okay, isn't it true in the statement you gave to Detective Lee you don't understand why these young kids are more popular than you being 16 years old, you've been there your whole life, these guys move in here and they carry more of the load than you do.

A Said nothing to that - I don't remember saying nothing

to that effect.
Q Okay, well, let me be a little more concise about that. Isn't it true that you told Detective Lee you were frustrated that you hang around people that are under you that get more respect than you and that's not right?
A I may have say something to that effect.
Q Isn't it true that you told Investigator Lee that that fight at Take a Break that you're not going to let it go?
A Sir?
Q Isn't it true that you told Investigator Lee in your recorded statement that on the August 13th fight 2006 from a year ago that you weren't ready to let that go?
A August 13th?
Q August 13, this happened the 13th day of August, "I wasn't going to show anybody the injuries, myself, and I was like I don't even got time for this but at the same time I was like, man, I ain't going to let this go"; isn't that true you said that to Investigator Lee?
A On August 13th of 2006?
Q You were talking about the past incident in your statement, the statement happened on September 10th of 2008.
A The statement that you are referring to right now is the statement that I was talking about the lynching that happened at Take a Break at - on, on August the 9th.
Q That's correct.

A That's the statement, the statement that you are referring to and the statement that you are referring to I said that - I said something to that effect. I said basically, basically what I said was I was - I felt real disgrace because I had to be tend by, by a woman, I had to be tended by by my loved one on - in a certain area of my body that she shouldn't have - that she shouldn't have really had to attend to me to and that it resulting in that incident. So, it was real hard for me to come across that, come across forgiveness them at that point in time.

Q Isn't it true you got, you got injury to your rear hindquarters?

A Yes, sir.

MR. HIXSON: Beg the Court's indulgence, Your Honor.

THE COURT: All right.

BY MR. HIXSON:

Q Isn't it true during the course of your direct testimony I believe you said that folks came around you and you testified to questions by your attorney Mr. Hazzard that Carroll Wilson walked off, the boys that came around you said they weren't going to fight you and you started walking down to Super Chic to get picked up.

A Yes, sir.

Q Let's talk about the marshal service for a second, let's go over to there. So, this incident happened August 13th of

2008; is that correct?
A Yes, sir.
Q And you were ultimately or taken into custody and served with a warrant September 9th of 2008.
A Yes, sir.
Q Roughly 27 days?
A Something like that, yeah.
Q Something like that.
A Yes, sir.
Q Isn't it true your girlfriend picked you up at the Super Chic, that's what you say in your statement, you said consistent with here behind the Super Chic and drove you to Loris; isn't that correct?
A She didn't - I - she didn't - I don't recall saying she pick me up behind Super Chic.
Q Okay.
A Because it was not.
Q Did you not say that?
A I don't recall saying that right now. I don't recall saying that she picked me up behind Super Chic.
Q Let's go back to the first part of your statement.
MR. HIXSON: Can you play 1959, please?
MR. BROWN: Track one?
MR. HIXSON: Track one, 1959, excuse me, 2002.
THE COURT: Wait a minute, let me see the attorneys

for a second.

(Whereupon, bench conference was held in the presence but the hearing of the jury.)

MR. HAZZARD: Thank you, Your Honor.

BY MR. HIXSON:

Q So, let me rephrase and ask that question more directly. Isn't it true that your - that after the shooting incident you ran through Super Chic alley and your girlfriend picked you up on the back side of the Super Chic? Isn't it true that's the story you told Investigator Lee I should say?

A Yeah, something, something to that effect, yes, sir.

Q Okay, that's fine. So, during that period of 27 days you were - there were warrants for you but you were at-large. You were a fugitive at that time; is that correct?

A Yes, sir.

Q All right, and you made a couple of phone calls to some people during that period of time; didn't you?

A Yes, sir.

Q Okay, but ultimately you were in Loris during that period of time; isn't that correct?

A Yes, sir.

Q "I'm staying at a trailer up towards the Green Sea kind of Cool Springs area, kind of Green Sea area"; isn't that correct?

A You could say that.

Q Okay, well, isn't it true you told Investigator Lee that you were in a residence, a trailer in that area and you watched the police pull up, the U.S. Marshal service and raid that trailer and you ran out the back door of that trailer; isn't that correct?
A Yes, sir.
Q Okay, now, isn't it true that quite a few folks that were in that trailer were placed under arrest and taken to Horry County; isn't that correct?
A One person was placed under arrest.
Q Okay, well, isn't it true you told Detective Lee they hemmed everybody up and took them to jail in Horry County?
A Yes.
Q Okay, and based on that isn't it true you told him, "I don't want other folks to get in trouble for what I did. So, I'm going to call the marshal service and turn myself in"?
A That's what I did, yes, sir.
Q Okay, you did that after all your neighbors got arrested; isn't that correct?
A I did, no, basically what it was, like I, like I said earlier in my, in my, in my testimony he was a friend of mine and I was, I was just --
Q Dominic?
A I was just walked, I just now walked away from his house and when the U.S. marshals pulled up and I was in the other

house and I saw them, I ran out the back door; and so, during that time, at that - during the course of time that I was gone they - he said that, he said that he gave me a ride and they took them and they tried to give him aiding and abetting. So, what I basically did I turned myself in so that, so that they couldn't charge him with aiding and abetting because they were - it was something that he didn't know at the time. You don't want to - I didn't want to put a person into something that it was deaf, blind, dumb and dumb to the fact that what happened.

Q Okay, let me ask you about the - a little bit about - let's go back to that second statement. After you gave a statement to Detective Lee and Chief Knox about - but in that statement isn't it true that you said you didn't have a gun? Isn't it true in that statement you said, "I don't even know who I shot"?

A Yes, sir.

Q Isn't it true in that statement you subsequent, you changed that statement and you say, "These boys jumped me and cut me and I had to shoot them to get them off me"; isn't that true?

A Yes, sir.

Q Let's go to September 13th of 2008, had a chance to think about this for a little bit, three days after the statement on the 10th, where were you being housed at that period of time?

A In D holding.

Q Okay, at some point in time did you call a corrections officer and ask him if you - he - you can get - if he can get in touch for you with law enforcement?
A Yes, sir.
Q At that time you give a written statement then?
A Yes, sir.
Q And isn't it true that in that written statement you say, "I didn't have a gun, I didn't bring a gun. You thought those boys were shooting at you and you ran"?
A Yes, sir, I believe I done answer that question one time.
Q You didn't ask - answer it on this statement. I haven't used this statement yet. I'm asking about this statement.
A Okay, yes, sir.
Q You answered that question on your first statement.
A Yes, sir.
Q So, isn't it true during the course of two days and two statements that you start from no gun on your person, "isn't it true your side didn't bring any gun up there"?
A Yes, sir.
Q No gun up there to you didn't have a gun, they did, to a statement change that you brought the gun but it fell out till you have the gun, you had to shoot them to get them off of you, you were stabbed and cut and bleeding badly, hit with bats and knives; isn't that true that you said that?

A Yes, yes, sir.
Q To three days later you're back to square one, you don't know anything about it, you didn't have a gun and you don't know who you shot because you didn't shoot; is that correct?
A Yes.
Q I have no further questions.
THE COURT: All right.
MR. HAZZARD: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. HAZZARD:
Q Dominic, Mr. Hixson asked you about where you were housed on September 10th and where you were housed on September 13th; is that correct?
A Yes, sir.
Q Okay, where have you been housed from September 9th of 2008 up until you come into this courtroom today?
A I was housed when I first got in jail in holding. Then I - they put me in - they put me in a place called D Block, actually, actually known as max, as their max, as their maximum security. Basically they said that, they said that they were scared for my safety for something because they know, because they knew that something - one - basically what Mr. Knox said he said it was for my safety because some of them will strike me. So, they took me out of there and put me in a block called - put me in a medical dorm. I've been

housed in a medical dorm - I'm still housed in a medical dorm currently because they are scared, they are saying that - they are afraid of my safety. They're afraid that people going to strike me because of what happened.

Q Okay, no further questions.

THE COURT: All right, you may step down.

A Judge.

MR. HIXSON: Brief redirect, Your Honor?

THE COURT: On? No, all right, step down.

A Your Honor ---

THE COURT: All right, call your next witness.

MR. HAZZARD: Your Honor, the Defense rests.

THE COURT: All right, let me see the attorneys for a second.

MR. HAZZARD: Yes, sir.

(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen, the Defense has presented their case. Given the hour I'm going to go ahead and excuse you for lunch. We have some legal matters that we need to take up and we still have some closing arguments and the jury charge before you begin your deliberations. So, please do not deliberate on this case. Do not talk about this case. Do not discuss it even among yourselves at this point in time. Don't conduct any

independent investigations or listen to any accounts or read any newspaper accounts about it, but I am going to excuse you to lunch. I'm going to ask that you be back in the jury room at two o'clock. That will give you about two hours to eat lunch and to get back. I hope you enjoy your lunch and we'll see you back at two o'clock. Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, anything from the State before we break for lunch?

MR. HIXSON: Your Honor, just a brief position on charging if that's appropriate now.

THE COURT: All right.

MR. HIXSON: I indicated to Your Honor a little bit earlier that depending upon the testimony of the Defendant it may be appropriate to charge mutual combat if in fact there was testimony that he knew the individual was armed and went - armed himself and went to a location where he anticipated a conflict and that has been borne out. So, we would just not - place that on the radar for Your Honor. We have some cases on there to let Your Honor take a look at the break.

THE COURT: All right, I'll take a look at it.

MR. HAZZARD: And obviously the Defense position is all the testimony from the State and the Defense is that he was

leaving the area at the time. So, there is mutual combat is something where two parties mutually agree to engage and is not appropriate where one person is leaving the area.

THE COURT: Okay.

MR. HIXSON: Just briefly, to just clarify without argument my - the State's understanding of the case law if an individual arms themselves, knowingly arms themselves and he knows the person he's going to a location to that knows they're going to be there, he said, "I knew those boys were going to be up there," and he testified he knew he was armed, that's why he was afraid, he testified that he knew Al Ingram had a gun and he was building fear because it was escalating. That is a willingness to engage, potentially arguably, and that's obviously for the Court, to engage in mutual combat thus, you know, there's some questions relating to bringing on the difficulty. That's the purpose of it.

THE COURT: All right.

MR. HIXSON: He may be at fault in bringing on the difficulty. That's the case law and I'd just provide that for Your Honor's attention.

THE COURT: All right, I'll take a look at the cases that you want me to look at. All right.

MR. HAZZARD: At this time, Your Honor, the Defense renews its motions for directed verdicts both with regard to insufficiency of evidence with regard to the charges of murder

and assault and battery with intent to kill and with regard to the State's failure to disprove the defense of self-defense.

THE COURT: All right, your motions are noted. I'm going to deny it.

All right, anything else before break for lunch?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense before we break for lunch?

MR. HAZZARD: Your Honor, I would hand up three cases for the Court's consideration at this time. That's State v. Nichols, N-I-C-H-O-L-S, 325 S.C. 111, State v. Starnes, 340 S.C. 312, and State v. Harris, 674 S.E.2d 532, Nichols and Starnes are Supreme Court of South Carolina cases. Harris is a 2009 Court of Appeals case for the Court's consideration with regard to crafting the appropriate self-defense charge, if I might approach.

THE COURT: All right. All right, anything else?

MR. HIXSON: No, Your Honor.

MR. HAZZARD: Nothing on behalf of the Defense.

THE COURT: All right, we'll stand in recess till two o'clock.

MR. HAZZARD: Thank you, Your Honor.

THE COURT: Thank you.

OFF THE RECORD

(On the record.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, Mr. Hixson, I understand the State has no reply in this case; is that correct?

MR. HIXSON: That's correct, Your Honor.

THE COURT: All right, we're ready to go into closing arguments and then a charge on the law?

MR. HIXSON: Yes, sir.

THE COURT: Is that correct with you also, Mr. Hazzard?

MR. HAZZARD: That's correct, Your Honor.

THE COURT: All right, all right, ladies and gentlemen, for those of you that are in the audience we're getting ready to start closing arguments in this case and then I will charge the jury on the law. I'm bringing that matter to your attention at this point in time because once we start closing arguments then I'm going to direct the bailiffs and security not to let anybody in or let anybody leave. So, if you are in here you will need to stay here throughout the closing arguments and when I finish with the charge and the then the jury retires to begin their deliberations, after the jury leaves then you'll be able to leave the courtroom if you want to, but unless - if you have to leave within the next hour or two you probably need to go ahead and excuse yourself at this time and this is just to make sure that the jury is

not distracted and that the attorneys are not interrupted during their closing arguments and that there is no interruption on the jury charge.

All right, anything from the State before we bring the jury in?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: No, Your Honor.

THE COURT: All right, let's go ahead and bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back. All of the evidence to be presented in this case has been presented and now is the time of the trial when the attorneys will make their closing arguments. Now, like their opening statements these closing arguments are not evidence in the case. It is simply the attorneys contention as to what they think the evidence in this case has shown. You and you alone are to decide the facts in this case based upon the testimony and evidence that has been given in this case. However, the attorneys are given the opportunity at this stage to make a closing argument to you to give you their impression as to what they think the evidence has shown. If at any time an attorney makes a statement as to an issue of fact that

differs from what you find those facts to be then you are to disregard the attorney's statement. If either of the attorneys makes a charge on the law in this case that differs from the law as I will charge you at the close of their arguments then you're to disregard their statements because you and you alone decide what the facts are and then at the close of their arguments I will give you a charge on the law to be applied in this case. All right, Mr. Hazzard.

MR. HAZZARD: Thank you very much, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. HAZZARD: Good afternoon, ladies and gentlemen.

How far can you run? Honestly, how far can you run? Because that's what this case is about. We all know now what occurred August 13th of 2008 in Andrews, South Carolina, and the reason we know is not just because of what Dominic Leggette says. We know because of the witnesses presented by the State. We know because of what Al Ingram says. We know because of what Craig Jackson says. We know because of what Leron Gardner says and what do they say? They say on August 13th of 2008 this young man, Dominic Leggette, went to this juke joint or bar or whatever this place is called Blue's and Carnell's, they're side - pretty much side-by-side. Why? Simply to deliver a phone charger to his girlfriend. What did the State's witnesses also say? They say that once Mr.

Leggette arrived he ended up in an altercation. He was basically being threatened or bullied by somewhere between two and ten people because if you remember Craig Jackson, Craig Jackson said, the last gentleman who testified for the State, he said there were ten guys out there all in white T-shirts, don't know if that's some kind of uniform or whatever, but that Craig Jackson walked outside to get a breath of fresh air, those 10 guys are out there and one of them says, "Hey, there goes Dominic. There goes Dominic," and what does the State's witness tell you happens next? Immediately, immediately Al Ingram and his sidekick, Antonio Tisdale, head in that direction.

Now, if you see an automobile accident and you round up all the witnesses you're going to have some discrepancies in what people say happened, no question, you know, maybe even down to the color of car but what isn't in dispute here by any stretch of the imagination is that this young man was headed away from Carnell's, he was headed away from Blue's. He was headed towards, and this is important, why is he heading away from there? Well, first of all, by all the State's witnesses' accounts he's being harassed and threatened and the question is, well, where does he go? Well, what did Craig Jackson tell you? Other than Carnell's and other than Blue's there is no other place at 10 o'clock on a Wednesday night in Andrews, no other place that's open, no other place that's lit, no other

place where other people might be who can intervene other than the Super Chicken that stays open all night on Wednesdays. Now, oddly enough where is he headed? He's headed towards that one place of safety because if you think it's safe at Carnell's and you think it's safe at Blue's, don't listen to what he says. What does Investigator Eddie Lee tell you? I asked him, "Have you ever been in the Blue's club?" "Yeah, I've been in there to arrest people plenty of times." So, there's no safety to be had there apparently. So, he's going to the only other place where there's light and there might be some safety, where there might be some people that can intervene, where there might be people where others won't try to harm him in their presence, but what did he tell you? "I didn't make it that far."

Now, we started this case talking about self-defense and I told you at the very beginning on the very first day, it is never, ever a crime to defend yourself. Okay, never. Self-defense, Judge Culberson will tell you, is a complete and total defense, as it should be. Now, self-defense isn't something that you can just cavalierly and casually claim. It's not a coat that you can just slip on and slip off as you may. It has four very significant elements and Judge Culberson is going to tell you about those when he gives you the law, but let's look at those four elements and let's see whether they apply based on the evidence presented by the

State.

The first element of self-defense is that the Defendant cannot have been at fault in bringing on the difficulty, okay, cannot have been at fault in bringing on the difficulty. I'm a very simple person. So, let's break it down like this. Just like in the schoolyard, "I didn't start the fight, okay, I didn't start the fight." That's the first thing. Well, what does Al Ingram tell you? What does Leron Gardner tell you? What does Craig Jackson tell you? What does every other State's witness who was present tell you? Dominic Leggette was headed the other way. Now, whether he was running, whether he was walking, whether he was skipping, I don't know. I really don't know. I think it was what Ron Gardner said. Ron Gardner to me is the most important witness in this case because think about it that's the young man, very nice young man who says, "I live in Darlington now. I used to live in Andrews but I don't live here anymore, still got family in the area, came back to visit," but he's the one guy he ain't from the west side boys, he's not a part of Dominic's family. He's the one guy who doesn't have a dog in this fight, the one person who doesn't have a dog in this fight who was there on August 13th, 2008, when it happened and what does he say happened? He said, "Man, we went up there to give Rhonda the charger. We get there and immediately a group of guys surround us," which kind of dovetails with what Craig Jackson

said. He said, "Yeah, there are ten guys out here, all in white T-shirts." Okay, and what else does Leron Gardner tell you, he says, "Man, I was scared to death. I was scared to death apparently just because I was with Dominic Leggette." Now, if that ain't fear for you there is no fear, but, "Just because I was with this guy, the way these people were acting caused me to be scared," and what does Leron Gardner say happened then? Dominic apparently wasn't the best friend in the world because he left Leron in the lurch and took off running, okay.

Now, you've heard a lot of other stuff. Al Ingram says, "Well, yeah, I mean, Dominic was down there," and remember, folks, Super Chicken, Carnell's, and Blue's, no matter how you cut it that is barely a city block, and I don't know what the deal is that these guys are saying, "Well, yeah, Dominic took off or went walking or went skipping or went running," or whatever and then three to five minutes later Antonio and Al took a leisurely stroll after him.

Okay, my grandmother is on oxygen 24 hours a day. She can walk a city block in less than five minutes. So, I don't think there's any truth to that. So, you, and use your common sense in bringing all of these, all these statements together into one cohesive as to what the actual facts are. So, we know by the fact of the very distance it's not a situation where Dominic's down the street and two or three or five

minutes later Al and Antonio decide to go down there and get a pack of cigarettes. If that were the case, because we never heard any testimony about Dominic stopping and talking to anyone and Dominic turning and coming back the other way, Dominic sitting down on the sidewalk. No. He's walking or he's running, one or the other, or something in between but he's moving in the other direction, and if that's the case then it wasn't two minutes, three minutes, five minutes from where they started to the corner. We know that. We know that as sure as we know the sun rises in the morning.

So, then, what are you left with? What Leron Gardner says. "We got there, those guys surrounded us, Dominic took off running and they went running after him," and that's very interesting because one of the issues in this case - well, let me get back to that. The first thing is he didn't start any fight. That's the first element. Okay, now, the second issue is, "Well, who's following after him?" Al Ingram and his sidekick, Antonio Tisdale.

The second element, am I in fear of death or serious injury, okay. Well, Leron Gardner, who doesn't even have a dog in the fight, says he was scared to death, number one. Number two, what is the State's witness Al Ingram say to you? "Yeah, you know, my first conviction, weapons charge when I was 13," okay. Does that cause you maybe to be a little concerned about what this person might do, what they might be

carrying because remember as I asked Craig Jackson, now, I saw Al Ingram and I don't know any of these people, didn't know them before this week, but Al Ingram ain't the biggest fellow in the world and he's not that stocky or that strong looking and remember Dr. Schandl, the forensic pathologist, said, I believe, that Antonio Tisdale was about 5-9 and I think some 145 pounds, some incredibly small weight, and that makes me wonder and I think it will make you wonder why would these two little guys be brave enough and bold enough to go after this fellow here? Do you think maybe they might have had something to equal things up on? Do you think maybe they did?

Also, when we had all the talk about the different issues and different problems that had been, that Dominic has had with the west side boys, this is the only time that anyone testified to where Dominic was by himself. He didn't have his cousins, the Cox boys. He didn't have his brother Jamie White. He had no one else with him, and when he is standing in front of Carnell's and those west side boys see that, what happens then? "Hey, hey, Al, Al, here he is, here he is, here he is. This is our chance. This is our chance," and man, they tried to make the most of it. They tried to make the most of it.

Now, the Judge will tell you, I believe, because I'm not a legal scholar but I try to do some reading occasionally that when it comes to being afraid for your life and acting on that

that I've got the right to act on appearances, okay. I don't have to diagram it out. I don't have to wait and let them get the drop on me. I don't have to start taking a beating or getting injured before I defend myself, and the right to defend yourself is so strong, so strong that the law even says so long as I had a truly reasonable belief that I was in danger, even if I was wrong, even if I was wrong, so long as I had a good-faith belief then that is good enough for the law because honestly you don't have to wait until somebody fires the fatal shot, until they take the fatal thrust, until they get you down on the ground. You have the right to defend yourself in this country.

Okay, now, the third one is is the fear reasonable? And we've already covered that. Leron Gardner was fearful. He's not even from the area anymore, but he's scared to death. If two guys are chasing me I guarantee I'm going to be a little concerned but I also believe that His Honor will explain to you that when there are prior difficulties and prior history you have the right to act on that as well. If I'm walking to school every day and every day the bully beats me up and takes my lunch money, okay, I have the right to act on that on the day that I decide to come with a lead pipe. Okay, that's as simple as I can put it. I don't have to wait for the bully to beat me up again. Next time I see him I'm going to say, "All right, there you are. I'm going to defend myself this time,"

okay, and the fourth prong is you cannot have been able to retreat without, without placing yourself in substantial danger of death or serious injury, and folks, I don't know about you but when two people are coming after me I think I'm in a little more danger when I turn my back on them. Okay, so, those are your four elements: one, can't have started the fight; two, you have to have fear of death or bodily injury; three, that fear of death or bodily injury has to be a reasonable one, whether it's from appearance or actuality; and number four, I can't be able to retreat without increasing or keeping my level of danger.

Now, he was trying to retreat, no question about it but couldn't retreat far enough, couldn't run fast enough, couldn't run far enough. So, gets us back to the question, how far do you have to run, how far did he have to run? Now, the question may be raised about why didn't you just call the police and tell them what was going on and all like that. Well, apparently Deputy Solicitor Hixson talked with Dominic about that to some extent because he asked him about and this to me was very revealing and it's the little things to me that are very revealing. Like my grandmother used to say, if you want to know which way the wind is blowing don't look at the big oak tree, look at the leaves on the trees and that will tell you where the wind's blowing. So, about at the end of his cross-examination Deputy Solicitor Hixson asked Dominic

about, "Yeah, you were very frustrated and upset and were having a hard time letting this thing go with these west end boys," and what did Dominic tell him, and it was hard for him to say, hard for him to say but what did he say? He said, you know, the reason I told Eddie Lee I was having a hard time letting it go is because they put me in a position where a man had to be tended to by a woman on a part of his body that she shouldn't have to, and what did, what did, what did Mr. Hixson say? He says, "Yeah, they hit, they hit you right here; didn't they? They hit you right here."

Okay, now, how far do you have to run because obviously he had tried it before and that's what he got for his troubles. So, how many times are you supposed to run? Is there any one of us who don't believe knowing Al Ingram and his history and Antonio Tisdale running with them and the west end boys, are there any of us who don't believe that if this young man had not defended himself on that date that those guys would be in this courtroom facing the jury right now.

Now, as I said I appreciate your hospitality. I really do. I love coming down here. I love working with you folks but I'm an Horry County boy and in Horry County we have a saying that I would rather be judged by 12 than carried by six, and I tell you if this young man had not protected himself that night his family would be carrying him and we all know that.

Now, Mr. Hixson may say, "Well, those two little fellows didn't even have a weapon on them." Let's talk about that for a second. Let's talk about that for a second because there's a lot and I'm sure you can tell that hasn't come out in this case. First of all, again, two little fellows, but yet something causes them to be brave enough to say, "We are going to chase this man down and attack him." Again, do you think they might have had a little equalizer on them somewhere? Number two, what causes me and I wonder about this and maybe you guys know better than I do, what did Jamar Mitchum, that's, that's, that's Antonio Tisdale's brother, remember? What did he testify to? He said, "Yeah, Antonio came running back up the street. He'd been shot. He fell out on the pavement and I went over to him and then I went to my car for 10 or 15 minutes." What in the world do you have to either put in your car or get out of your car when your brother is lying dying in the middle of the street? Okay, do you have to put something away? Do you have to hide something before the emergency personnel get there? Is that why you've got to go to your car when your brother is in the middle of the street?

What did Craig Jackson say? Craig Jackson said, again, "Antonio came running up, fell out." "And Craig, well, what did you do then?" "Man, I turned around and went back in Blue's, had another drank," okay. All these West end boys when this went down all of a sudden they are scattering like

roaches when the lights come on. Do you think maybe they were engaged in some illegal activity and they knew it when they were chasing this man and hunting him like an animal? Is that why nobody wanted to be around?

Oh, let's go further, what about Al Ingram, one of the alleged victims. What did Officer Cumbee of the Andrews Police Department say? Remember he was the gentleman, the first witness, first responder, first person to administer to Antonio Tisdale. What did he say? He said, "Well, Al Ingram was kind of standing back a little bit and somebody else had to tell me that Al Ingram had been shot. Somebody else had to tell me that," and then what did he say? "Even then Al doesn't say anything." He says, "I've got to reach over, lift up his pants leg to see the blood in order to know that he is a victim." Now, ladies and gentlemen, I tell you if somebody has done me wrong and injured me I'll be the first one in front of the police saying, "Hey, look, I need some help. Give me, give me some bandages. Give me something." No. So, do you think maybe they were doing something that was a little bit wrong that caused them to say, "You know, we really don't want to be talking to the police about this," and then, of course, with Mr. Ingram you know with his conviction of possessing a handgun three or four years prior or actually five years prior, you know, when he was 13 in 2003. Now, you may wonder, remember Mr. Ingram tells you that he and Mr.

Tisdale were just walking down the street because Mr. Tisdale said he wanted to get a pack of cigarettes, okay, and then you get in the whole issue of, "We left two to five minutes after Mr. Leggette," but somehow managed to not even make it to the end of the block in that period of time, and I leave that to your discretion as to the weight and veracity of that statement but when you want to know whether someone is telling the truth or not look at things like that and remember also what Mr. Ingram, once he's run aground and he is identified as being involved, well, you've got to have a story then. You got to have a story. Then you've got to have an explanation as to why someone would just pull out a gun and shoot you on the street. So, what is his explanation? His explanation is, "Well, I seen this guy around but I don't really, I don't know his name, okay. I've seen him around but I don't know his name." Okay, that's lie number one. That's the first one. Why do we know it's not true? Because what did he tell you on that stand? "Me and Antonio got there to in front of Blue's and Carnell's and my boys, my west side boys immediately go, 'Al, there's Dominic, there's Dominic.'" Well, I'm sorry, if I don't know somebody named Bill how do - why do I care who is calling out there's Bill? "Okay, I don't know a Bill. So what." Okay, so, we know that.

Number two, according to Mr. Ingram he and Mr. Tisdale are walking down the street, discussing the weather, the stock

market, sporting news, whatever when this man they do not know then pulls out this mysterious white shirt, wraps it around his head or face and then turns around and begins shooting. The significance of that to me is none of his west side boys, all of whom say they saw this whole thing, and Jamar Mitchum who is Antonio's brother, Craig Jackson, none of them say anything about any white shirt, anybody disguising themselves, but again, this is the day after. This is the first day after when Eddie Lee is talking to him; and so, he's got to try to come up with something; and so, that's the best he can come up with, okay.

Now, I believe that Judge Culbertson will tell you that you as the triers of the facts in considering the evidence in a case can believe all of what a witness says, part of what a witness says or none of what a witness says, if you find them to be totally incredible and totally unbelievable; and so, again, with regard to Al Ingram's testimony in that regard, when you consider it in its entirety I am sure that you will find that it is incredible and not to be believed. So, that takes us out of the realm of he just turned and attacked us for no reason. So, also, remember Craig Jackson because what did Craig Jackson say, "I was coming out, standing up against the wall with ten guys with the white T-shirts on, the posse is out there, and everything is fine until someone says, 'Hey, Al, there's Dominic,'" and this is just very strange, very,

very strange. It's like no one wants to actually say it but Craig Jackson couldn't help himself because what did he say. He said, by the - "I wasn't listening to any of the conversation of any of the ten guys but when one of them shouted out, 'Hey, Al, there goes Dominic,'" caught his ear, and so, he looks, and what does he say he sees? He says, "I see immediately, immediately Al and Antonio heading towards Dominic, heading down the street after him," whether it's running, walking, who knows but what did he say? "I could tell by the way they were walking that there was - that I was about to see a fight. I can tell by the way they were walking that I was about to see something," and ladies and gentlemen, if that is not the indication of some people out bent on mischief I don't know what is, and that's what one of their own west end boys says, one of the Jones Avenue crew. That's what he says. The State's witness says that, not us. As Dominic has said in his testimony and, yes, in his, in his statements that the Prosecution wants to call testimony, but we know it's not, the statements he's given, he's given to the police once he was arrested, did he lie to them? Oh, yeah, he lied to them. He told them a bunch of fanciful tales and, "I wasn't there and it wasn't me and this, that and the third. Why? Because he was a 19-year-old boy who was scared to death. All of us have done things that were not wise and prudent and been less than truthful at that age, and I dare

say none of us were facing what he knew he was facing. So, did he lie? Did he prevaricate? Did he try to figure some way out of it? Yes, he did. Yes, he did. Yes, he did, but even if you choose to say, "Dominic Leggette, you are a liar, we don't find you to be a truthful person," and that's fine, that's fine, listen to what the State's witnesses have said because there lies self-defense, there - I mean, you can - no matter who, this is an interesting case because no matter who you listen to on either side, you know, there are variations, but the thing that ain't never gonna' change no matter what Mr. Hixson says, no matter what anybody says is that this young man did not start a fight on the night of August 13th, 2008. This young man tried to leave the area where the trouble was brewing. This young man had two people who for reasons satisfactory only to themselves with hearts bent with fatal mischief chased him down and attacked him and he couldn't run fast enough or far enough to get away. That doesn't change, ladies and gentlemen. That doesn't change. That does not change. It is never, ever a crime to defend yourself.

Now, this young man has been in custody since September 10th, 2008, as Mr. Hixson has mentioned, and that is 18 months. I have done what I can for him and now you as the conscience of the community will decide whether his actions in defending his life on that night are warranted and whether he

will be able to go home to his family. Now, there are going to be allegations made I assume and I haven't - and remember, you're going to be told, I believe, with regard to the law regarding prior difficulties and I haven't even really touched on that because we don't go into the factual specifics of those difficulties but be that as it may there's no question difficulties were there and like Mr. Hixson said when he was talking with Dominic, "Yeah, you tried to run and they hit you back here; didn't they?" You can't run forever. You can't hide forever. Thank you for your time and your attention.

THE COURT: Mr. Hixson.

MR. HIXSON: How many steps, how many steps does it take to decide that you're going to be a man today, that Dominic Leggette is going to be a man on this day, August 13th, 2008. According to the scale on Exhibit One that's about 350 feet. That's the distance everyone was talking about couldn't figure out. There's a scale on here. It's in evidence. From Carnell's to the killing it's 350 feet. That's how long it took for Mr. Leggette to decide today is the day he's going to be a man and take no more. "Today is the day I'm going to walk 100 yards from the place I armed myself to go to a place where I know there's going to be trouble and take no more."

You heard a lot of discussion about Al Ingram. You didn't hear a word of bad things about Mr. Tisdale and that's

the man that lost his life. Heard all about Al. Don't know if it's true or not. I know that's his testimony. Haven't heard a word about Billy. That's the one that lost his life. 350 steps thinking about the embarrassment that he went through, thinking about, "These young boys don't respect me. I'm from Andrews. I'm West side. I'm uptown," excuse me. I even get it confused. "They don't respect me. These boys, 16-year-old boys smaller than me and they don't respect me." Take a 380 caliber pistol, put in his waistband and went to the fight. That is bringing on the difficulty. Arming yourself, going to a place he knows where there's a fight, that is bringing on the difficulty. That's the first element of self-defense that does not apply here, taking a gun to a fistfight. That's bringing on the difficulty.

There was a ton of conflicting testimony. Mr. Hazzard has alluded to that, but let's kind of calm the filter down a little bit and talk about what is conflicting and what isn't conflicting. Let's think about that for a second. It sounds like we heard about nothing but fights for three years. It's only been a couple of days, three days. It feels like three years worth. You know what, there is not a single piece of evidence in this record that said there was ever a fight on August 13th of 2008, not a single fight. It's hard to believe because it feels like fights are raining everywhere, but let's think about this for a second. Let's go through it. The

first character witness we talked about, not character witness, excuse me, the first witness list, Verney Cumbee. Verney Cumbee arrived and said that the Defendant was on the ground. He didn't see a fight, didn't see an altercation. When Investigator Michael Thacker arrived, crime scene specialist, obviously he didn't see a fight. It was after the fact; right?

Al Ingram, he specifically said, he specifically said, "There were words, guys are trying to get me to fight him," said, "No, no, I ain't fighting him. I'm tired of that. I'm not fighting him." That's what he said. That's the testimony from the witness stand for Al Ingram.

Let's skip ahead. Mr. Leggette admitted there was no fight going on in front of Blue's, there was no fight in front of Carnell's. In fact, he said Carroll Wilson said he walked away, said, "I ain't fighting him." There was no fight.

Ron Gardner, Ron Gardner, if you recall Mr. Gardner testified he was a lifelong friend of Mr. Leggette. He said, "We played sports together," said one was better than the other. It was probably a little uncomfortable for Mr. Gardner to be here. I thought it seemed, he seemed like he was trying to help out his friend a little bit if he could. Mr. Gardner is the only one that said Dominic Leggette ran down the sidewalk. He is the only one. He is the only person that said Billy and Antonio - excuse me, Al and Billy ran. Every

witness, including the Defendant himself, said he walked down there. No one said he ran other than Ron Gardner, his lifelong friend. I think trying to help him out just a little bit, but in the end Mr. Gardner says, "I saw the gun on him." He says, "You know how boys are, they show off their gun. You know how boys are." I don't know how boys are. He – "I got my gun. Check it out. You know how boys are," on the way to where Mr. Leggette said he knew them boys was going to be. Man, that's bringing on the difficulty.

Jamar Mitchum, if you recall Jamar Mitchum said there was no fight. He said they hear words. Now, Mr. Mitchum was inside playing pool, came back outside. There's no question there's tension. There's no question there's words. There's no question this overbearing thing. There's no question about that. It's been going on for year and a half. According to Mr. Leggette the Defendant they fight every two days according to him, every two days. That's a little tough to believe but nonetheless assuming it is every two days there's a fistfight, no one gets shot, no one brings a gun to a fistfight, no one says they had enough. They fight. Apparently it's his hobby. We've learned a lot about that but it's a fight. If you could shoot somebody in self-defense in South Carolina because you had a fistfight with them a year ago half the families at Thanksgiving in South Carolina would get a gunshot wound in it. You can't shoot somebody because you had a fight with

them a year ago, an unarmed man, two unarmed men, you can't do it, can't do it. He testified he knew there was no weapon involved. Didn't see a gun. Well, we'll get to his testimony a little bit because there's about four different stories that we need to talk about on that process, but nonetheless, he never saw a gun, said he never saw a gun, not a single person testified they saw a weapon at all. The only person that testified was Ron Gardner and Ron Gardner said, "Look at that, he's bringing a gun to a fistfight.' That's bringing on the difficulty.

Craig Jackson testified, said he saw, looked down a way, can't see it down there for the bushes, step around and look, sees flashing out of the gun, sees those shots. No one else ever said they saw down that way. Said they couldn't. There's bushes. Said they saw - heard shots and saw people come running up. So, there was only one person that testified they saw anything about a white T-shirt around the face and that's the only living human being that was standing in proximity to the shooter, is the only one that could have seen whether he put a - something to disguise his face. That's Al Ingram and he said he was standing this far away, not close enough to lunge, not close enough to stab, nothing, unarmed, autopsy photograph of what Mr. Tisdale is wearing that night had on his person. He had a condom, keys, wallet, unopened beer. Had no knife, no gun, blood-soaked boxer shorts and

shoes. That's the weapon that a 5 foot 9, 145 pound person was going to do to a six footer with no prior problems with at all, not a single testimony about any prior problems with this young man.

Let's talk about what it takes to become a man in Andrews, according to Mr. Leggette, not of course the other good folks of Andrews. "I was like, nah, I ain't going to run tonight because this ain't me. I was like, man, forget that. I'm a grown man. I'm about to be 20 this year."

MR. HAZZARD: Your Honor, if he is referring to something that is not in evidence I would submit that that is improper.

THE COURT: Well, the jury is told to disregard anything that is not presented in evidence in trial.

MR. HIXSON: And your - and ladies and gentlemen, if you recall, I asked him, "Isn't it true that you gave a statement to Investigator Lee," and he admitted to this statement. He admitted to saying this to Investigator Lee in and his statement. "I was like, man, forget that. I'm a grown man. I'll be 20 this year this month on the 29th." I'll delete the, "I was like F that. If I don't make a stand now I ain't never gonna' make a stand for the rest of my life." 350 feet of thoughts like this going through that man's head. Bringing a gun and turns around, shoots two people, a person he doesn't have any hard time with. He admitted he said, he

said on the witness stand, "I didn't know who I shot." I don't know how now he can claim that he had prior difficulties with somebody. He testified to that he didn't know who he shot. I don't have prior difficulties with somebody I don't know. He knows them. He's lying then, lying there or something but he said, "Yes, I said I didn't know who, I didn't know who it was," but he didn't have any beef with Billy. Today is the day he's going to get respect in Andrews because he's going to take care of it and he isn't going to run anymore. "I'm going to walk down there and I'm going to think about it and I'm frustrated because I got embarrassed in front of my girlfriend, I got embarrassed with these fights." Pow, pow, pow, "and I'm getting in the car and I'm rolling to Loris," and that's what he did. That's what he did.

Now, let's talk about what a person who had come to the decision to pull the trigger, commit a murder, how would that person act, if you had a guilty conscience, if you had guilty thoughts about what you did? Well, most people don't stay around and talk to the police about it; do they? No, most people hide or run, buy some time, get your story straight, try to figure out what exactly we're going to do. If you remember his testimony was he was walking down to the Super Chic to pick up, to have someone pick him up. His testimony from the witness stand wasn't that he was running, wasn't - he thought the fight was over. He said Carroll Wilson didn't.

Carroll Wilson said, "We ain't fighting you, man." That was out of the Defendant's words. Made it to the Super Chic waiting for a ride is what he said he was doing. There's been so many stories from Mr. Leggette, but I'm telling, you all heard that testimony. Said he ran through Super Chic alley, girlfriend picked him up, went to Loris. Now, said he turned himself in, 27 days later with the help of the United States Marshal Service on a fugitive task force, kicking in front doors of people's houses, finally got the one next to him, for his neighbor was getting arrested, "I did it in self-defense." You want to talk about getting your story straight, Al Ingram's got to get his story straight? If you had guilty knowledge of the fact that you committed a murder would you get rid of the gun that did it? Would you say, "Man, that guy jumped me. Just please, what do I need to do to show I acted in self-defense?" Get rid of the gun? Get out of town? Get out of the county? Those are all things people do when they know they did something wrong. Every single one of those things this young man did, every single one of them.

Let's go back to that respect thing. When I asked him on the witness stand, "Isn't it true that you have a problem with people not respecting you in Loris," whatever the system of, social system of respect is, excuse me, in Andrews, whatever that social system is I don't know, but we're learning it together, but I know he was very frustrated, raised his voice

on the witness stand and said, "I got people I grew up with, people that's under me. People look at me and they don't get no respect from too - I don't get no respect from too many people." "People under me," meaning people younger than him. He's 21, 21 years old. Al Ingram is 16 years old. Ron Hazzard, excuse me, Mr. Hazzard posed an interesting question. I made a note of it. I thought it was interesting on his part. Why would these two little fellows, five foot nine, 145 pounds, hanging out with their friends in front of Blue's where no fight occurred, even though it sure sounds like it; doesn't it? Not a word about a fight. He even said there wasn't a fight, the Defendant no fight. "Why would these young men walk down behind Dominic Leggette like that unless they had an equalizer?" Why would they fear walking down behind him if they didn't intend to do anything? I do think it is interesting why a young man would pick a fight with a bigger man unless you weren't trying to pick a fight, unless it's true what Al said, "I'm done fighting with that, man. I'm done." Oh, and it was a school night. August 13th, school wasn't in session then. It's summertime. It's summer break. That was a little tidbit in there that I thought interesting. It was summer. School hadn't started yet, August 13th of 2008.

Interestingly enough smoking is a bad habit apparently because we know the forensic pathologist said there was nicotine in Billy Tisdale's lungs, tested for it. So,

apparently he's a smoker. Apparently it isn't that far to think that maybe he was getting cigarettes. There's independent evidence that shows that he was.

Okay, let's go through the elements of self defense a little bit. We already have kind of beat a dead horse maybe a little bit on bringing on the difficulty, bringing on a fault. Clearly, he brought on the difficulty himself. By that he went armed to a place where he knew those folks were going to be by his own testimony and no fight occurred there. He didn't walk away from a difficulty because there wasn't a difficulty there. He interjected a firearm into a situation where there wasn't even a fight unlawfully by his own statement, unlawful in carrying it and illegally purchasing it, both.

How about a reasonable fear of bodily harm? Now, I want to clarify one point for you all. Bodily harm in South Carolina means great bodily harm or death. It doesn't mean a bully at a school for your lunch money. It means great bodily harm or death. How many fights according to his testimony has he been I, fistfights no weapons involved? Nobody ever hurt, nobody getting medical attention other than maybe his girlfriend tended to, the indignity of it all. No one had ever been hurt in two years worth of fights, a year worth of fights, twice a week worth of fights. There is no reasonable person in that situation that believes you get great bodily

injury or death with all the fights apparently these people say they're going to be in. Can't bring a gun to a fistfight. He brought a gun to a fistfight. He'd been in them enough. He knows he ain't getting shot. No one else says anything about it except for this Defendant that day when he's had enough. He's got to get respect today, "because I'm stopping it. Everybody is going to look at me, look at me like I'm the man." That's a reasonable belief of great bodily harm, not just any harm, not a fistfight, great bodily harm or death. No evidence there was any instrumentality used to kill him, not a bat, not a knife, not a gun, nothing.

Finally, he's talked a lot about duty to retreat, okay. There are a lot of places this young man could go. He said he lived right behind Carnell's, right behind it, said, "I live right behind Carnell's," if you remember. He also said that, "Where I came from is a hundred yards. I live right there. I live right there." If, in fact, self-defense applies here and I don't believe it does - excuse me, let me back up. Self-defense doesn't apply here and one of the reasons why it doesn't is he could have gone anywhere. There was no threat of lethal force. There was no increase of harm to him if he backed up. He was in the parking lot almost to the parking lot of a lighted Super Chic. No one said they were running. He is that close, to continue to walk in there and he's done. Carnell's is right there, could have gone right there. He

said he wasn't running away from anybody, said he was waiting on a ride. So, what made him decide that, "This is the spot in the world I'm going to make my stand?" I don't know, but I know he did and the reaction to these young men, pow, hit the ground, hit the ankle, hit the ground, ran the other way, didn't return gunfire, didn't get into a firefight, nothing, ran the other way.

Let's talk a little about the Defendant's different stories. He was very clear on the stand. You heard it when Mr. Hazzard was directly examining him, he said, "I was afraid, afraid for my life," although I don't know why he was afraid of Antonio Tisdale and there's never been any weapon used against him before that we could hear of, no, no evidence of that, said, "These boys are rushing up behind me, I hear them, I turn around, see him do something like this. So, I get the drop on him, get the drop on him." What he had told Eddie Lee that he didn't even have a gun before. Then he said, "Well, one of them was carrying a gun but then that fell out and somebody picked it up, and I thought I shot myself, and then they ran up behind me and jumped me and hit me with knives and baseball bats, all of them, all of them." Then there was only one shot, well, there's two shots apparently because we've got two folks that are hurt, then ten days later, excuse me, three days later there's another statement, "I didn't have a gun, didn't touch a gun, folks are running up

behind me, I heard gunshots, so I took off through the Super Chic alley." Those are all the stories that we've heard so far that he's told law enforcement about what happened. This is inconsistent with the rest of those stories. A person with a legitimate claim of self-defense stands on the pillar and announces to the world what happened. The mere fact that there is so many contradictory stories is information for you to use to analyze the credibility of his version of events. So, what do we when we have all of that kind of noise we calm down again and we think about it, think about what independently do we know about this case to help us reach a verdict, to have the truth come through this chatter, this chatter. We know there's bad blood everywhere. West end hates these guys, hates these guys, hates these guys, and it doesn't appear as if it's going to change any time soon. We know there was no other weapons involved in this assault or this shooting other than the gun, other than a gun. We know the Defendant has given strikingly different stories about what happened from, "I don't know who I shot," to this, to he pulled a gun to he didn't pull a gun, that's evidence you use to not believe what he's saying. We know that these fellows, Ron Gardner is the only one that said anybody ran. We know we heard words, we heard, "What you doing up here?" We know that. We know there was no fight. We know there was this overview of bad blood. We know that the Defendant said,

"I'm tired of being disrespected. I'm tired of being embarrassed. I'm tired of running. I'm not going to run no more. I'm turning 20." You heard testimony that he put a T-shirt on his face and turned around. You also didn't hear from the forensic pathologist any close contact would or stippling or anything from that testimony. Didn't hear anything about that. The reasonable inference from that fact is there's a distance from away where that gun was fired. You also heard the forensic pathologist say there was no injuries to Al's hand, to Antonio Tisdale's hands. There were no bruising, no cuts, just an old scrape, no fist fighting, no evidence of it, not a scintilla, not a scintilla. What we do know, we do know this young man admitted to killing one man and shooting another. The only question for you all is did he do it illegally, was he justified in doing it? It's not a whodunit. It's can he do it? I submit to you he cannot. He brought a gun. He didn't have any reasonable fear of bodily injury because he's been in this over and over again. The malice aforethought that's necessary to convict this young man of murder is pretty straightforward.

Let me tell you about the elements of murder. It's the unlawful killing of the person of another with malice aforethought, either express or implied, okay. Unlawful means if you were legally justified in doing it, say a police officer involved shooting, something like that, if you find

self-defense that would be a lawful killing. This is an unlawful killing, the person of another, Mr. Tisdale is a natural person. You saw the pictures. You know he's a natural human being. That's an easy one to get to there. The person of another with malice aforethought, depraved heart, ill will, prior plan. All of that there's evidence that you can use to determine. The nature of the injuries, the nature of the instrumentality, all of those things you can use to decide whether you believe there was malice present. The existence of prior ill will is evidence of malice, "had enough of this, I'm going to do something about it today." All that's evidence of malice and malice can be express or implied meaning, "I'm going to kill you," and you deliver the goods or the way you go about doing it such as putting a - deciding now is the time, pulling the concealable weapon so the person didn't see a weapon was there could be used as evidence of malice. Okay, we have unlawful killing of the person of another. Malice is all over the place on this thing. It's not express, didn't hear any words. We heard a couple of words. Actually Al Ingram testified there were a couple of words but couldn't hear what he said. Maybe he couldn't hear through the material on his face according to Mr. Ingram's testimony. I don't know. He just said couldn't hear what he said, then pow, pow, pow and ran that way. So, it's implied malice and you can see malice through the instrumentality,

through the nature of the injury, through the prior ill, the depraved heart. Malice can be established by gross recklessness to the health and safety of others. If he says he didn't know who he shot, he turned around and shot, shooting down a street at people you don't know is gross reckless disregard for the person. He knew exactly who he was shooting at. He knew exactly who he was shooting at. He was shooting at the guy he had bad blood with that's walking behind him.

All right, assault and battery with intent to kill is injury to a person of another of a violent nature with malice aforethought either express - excuse me, express or implied, very similar to murder. The only difference is a person survives really. It's a violent injury, a gunshot wound through the ankle with the same malice that was used at the other person. Now, remember there wasn't any testimony that he had ill will towards Mr. Tisdale, but we have what's called transferred intent in South Carolina, in other words if I'm really upset at Mr. Brown here and I fire a weapon at him, due to my bad aim or whatever I strike someone else, the intent that I had to cause harm to him is transferred to another person. So, I don't get away with it because I'm just a bad shot. That's transferred my intent to somebody else. So, any ill will that Mr. Leggette had towards Mr. Ingram is transferred to Mr. Tisdale as well, okay.

Finally, the Judge is going to charge you on voluntary manslaughter and what voluntary manslaughter is, said, it basically means, it's still the unlawful killing of a person of another but it's also accompanied by sufficient legal provocation. In other words that means, the classic law school example of that would be someone is at home and they walk in and they see their husband, their wife or husband in there together with somebody else and they're so enraged they get a pistol and shoot somebody, put an end to their life. It's still against the law. It just isn't quite as bad as lying in wait at somebody. You know, it's still an intentional act. You still intended to do what you did but the law says you're not quite as bad as if you, you know, didn't have any provocation whatsoever, okay. All of those require - murder requires aforethought, in other words you have to think about it before you pull the trigger, but there's no set period of time, don't have to think about it for two years, five years. You can form malice aforethought in 350 steps. You can form it in one step as long as that fills your heart and your mind and you say, "I'm going to act." It can happen in a second. "Now is the time I'm going to be a man right now. I'm going to get respect. That's enough for malice aforethought, okay.

Voluntary manslaughter requires that you're under the stress and excitement of a legally sufficient stress and you

act improperly but you act and kill somebody, but you had sufficient legal provocation to do it. Not that mitigates, you know, it's called a lesser included offense of the offense of murder, okay.

Let me wrap up by saying it's difficult to try to figure out what's going on in the minds of young folks, different, different areas, different upbringing. What's normal for us may not be normal for everybody else, but there are a few standards that we all are governed by. You can't kill an unarmed man when you know they're unarmed, when you've had dealings with them before, you can't kill them, can't kill them. When you bring on the difficulty yourself by bringing a gun to a knife fight, carrying an illegal weapon down there when you know you're getting into a problem, that's why when you go back to your jury room and think about everything you've heard and all this cacophony of contradiction, you'll realize that a lot of bad stuff was going on but that doesn't keep him from being able to kill two human beings on a Main Street in the United States. Thank you.

THE COURT: All right, ladies and gentlemen, all of the testimony and other evidence to be presented in this case has now been presented to you and now is the time of the trial when I will charge you with the law to be applied in this case. The indictments in this case charge the Defendant with murder and assault and battery with intent to kill. I remind

you that the fact that the Defendant was arrested, charged and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt. These documents are simply the formal written instruments which contain the charges made against the Defendant. They are the formal documents by which this case is brought into this courtroom.

The indictments in this case allege several different offenses against the Defendant. As I have stated these charges are one indictment for murder and one indictment for assault and battery with intent to kill. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it, uninfluenced by your decision as to the other indictment. The Defendant may be convicted or acquitted on one or both of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment.

Now, the Defendant has pled not guilty to these indictments and that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove his innocence. I charge you that an important rule of the law is that the Defendant in a criminal trial, no

matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberations but it accompanies the Defendant throughout the trial unless you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant which remains with the Defendant unless it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt. The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every Defendant is entitled unless you the jury are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

Now, what is reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly

convinced that the Defendant is guilty of the crimes with which he has been charged you must find the Defendant guilty. If on the other hand you think there is a real possibility that the Defendant is not guilty you must give the Defendant the benefit of that doubt and find the Defendant not guilty. I remind you that during this trial you and I have certain duties to perform. As the trial judge it is my responsibility to preside over the trial of this case. I also have the duty to rule on the admissibility of evidence offered during this trial. You are to consider only the competent evidence before you. If there was ever any testimony ordered stricken from the record in this case during this trial you must disregard that testimony. You are to consider only the testimony which has been presented to you from the witness stand, any exhibits which have been made a part of the record in this case and any stipulations between the attorneys. I have the additional duty to charge you the law applicable to this case. As the presiding judge I am the sole judge of the law of this case and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be and your idea differs with what I now tell you the law is you must abandon your idea of what the law is or ought to be because you are sworn to accept the law and apply the law exactly as I state it to you. In every case tried in this court before a jury the jury

becomes the sole and exclusive judge of the facts in a case. A trial judge cannot intimate, state, comment on or make any statement to a trial jury about the facts in a case. Since you the jury are the sole judge of the facts in this case you are not to infer from what I have said during the progress of this trial in ruling on the admissibility of evidence or otherwise or anything that I say now during the course of this instruction to you that I have any opinion about the facts of this case. The law does not allow me to have an opinion about the facts in this case. This matter is solely for you the jury to determine. As jurors it is your duty to determine the effect, value, weight and truth of the evidence presented during this trial.

Now, there are two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact sought to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or value to be

given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case and after weighing all of the evidence if you are not convinced of the guilt of the Defendant beyond a reasonable doubt you must find the Defendant not guilty.

Necessarily you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of witnesses who have testified in this case you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand.

Now, there has been evidence presented that a witness made prior statements which are not consistent with the witness's present testimony. You may use this evidence to decide whether to believe the witness. You may also use

evidence of the earlier contradictory statement to determine the truth of the statement. It is up to you to decide whether to believe all, part or none of the earlier statement or all, part or none of the testimony given at trial. If a witness is shown to have knowingly testified untruthfully concerning any material matter you may consider this in determining whether you trust the witness's testimony as to other matters. You may reject all testimony of that witness or give all or part of the testimony the weight you think it deserves.

The Rules of Evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become expert in some art, science, profession or calling may state an opinion as to the relevant and material matter in which the witness claims to be an expert and may also state the reasons for that opinion. You should consider any expert opinion received in evidence in this case and like any other evidence give it the weight that you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence you may disregard the opinion entirely. An expert witness's testimony is to be given no greater weight than that of any other witness simply

because the witness is an expert. Further, you're not required to accept an expert's opinion even though it is not contradicted.

Now, ladies and gentlemen, this Court has admitted evidence of statements allegedly made by the deceased victim after the injuries. I have determined that these statements should be admitted into evidence in this case. However, it is for you to determine the believability of these statements. In deciding this question you may consider whether the victim was dying and he knew he was dying and whether the victim had lost all hope of recovery at the time the statements were made.

An issue in this case is the identification of the Defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant. Identification testimony is an expression or a belief or impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short a time was

available, how far or close the witness was, the lighting conditions and whether the witness had a chance to see or know the person in the past. Once again, I instruct you the burden of proof is on the State and it extends to every element of the crime charged and this specifically includes the burden of proving beyond a reasonable doubt the identity of the Defendant as the person who committed the crime. If after examining the testimony you have a reasonable doubt as to the accuracy of the identification you must find the Defendant not guilty.

Now in order to establish criminal liability criminal intent is required, for example the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There's no way to prove intent to a mathematical certainty. There is no way that medical science can dissect a person's brain and determine what the person had in mind. So, the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent

may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all of the facts and circumstances of the case. Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness or an indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

The Defendant is charged with murder. For the Defendant to be found guilty of this charge the State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought. Malice is hatred, ill-will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed but malice must exist in the mind of the Defendant just before and at the time of the act - at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be express or inferred. These terms express and inferred do not mean different kinds of

malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished; for example, lying in wait for a person or any other act of preparation going to show that the deed was within the Defendant's mind would be express malice.

Malice may be inferred from conduct showing a total disregard for human life. If the Defendant with malice aforethought attempts to kill another person but by mistake kills a different person the Defendant still has the intent to kill. The intent to kill is merely transferred from the original person the Defendant attempted to kill to the actual person killed.

If you find that the State has failed to prove beyond a reasonable doubt that the Defendant committed murder you may consider whether the State has proved beyond a reasonable doubt that the Defendant committed, excuse me, committed voluntary manslaughter. Included within the offense of murder is the lesser offense of voluntary manslaughter. To prove voluntary manslaughter the State must prove beyond a reasonable doubt that the Defendant took the life of another in the sudden heat of passion based on sufficient legal

provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter.

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

Sufficient legal provocation must be the type that would make a person of ordinary reason and caution become enraged and to lose control temporarily. The provocation needed for voluntary manslaughter must come from some act of, or related to, the victim.

Words alone, however vulgar or insulting, are not enough to be legal provocation. Where death is caused by the use of a deadly weapon, the words must be accompanied by some overt, threatening act which could have produced the heat of passion. The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter. If the heat of passion had cooled, or if there was enough time between the provocation, if any, and the killing for the passion of a reasonable person to cool, the killing would not be voluntary manslaughter. In deciding whether a reasonable person would have had enough time to cool off, you should consider all of the circumstances surrounding

the killing. You may consider the nature of the provocation, if any; the Defendant's mental and physical state; and the circumstances and relationships between the parties.

The Defendant has also been charged with assault and battery with intent to kill. In order to prove assault and battery with intent to kill, the State must prove beyond a reasonable doubt that the Defendant committed an unlawful act of a violent nature to the person of another with malice aforethought.

An assault occurs when a person unlawfully attempts or offers to commit a violent injury upon another person and had the present ability to complete the attempted injury. An assault is the intentional creation of a reasonable fear of immediate bodily harm. It is not necessary that the attempted injury or harm actually take place. For example, if I walk up to you and when we are within arm's reach, I draw back to hit you, that is an assault.

A battery is the unlawful touching of another person by a person who has committed the assault. An unlawful touching can be caused by a part of the, excuse me, by a part of the accused's body or any object the accused puts in motion. A battery is the completion of the assault by using or applying force to another person, however slight, in a rude, angry, or resentful manner without legal justification for doing so. Using my earlier example, if I carry through the assault by

hitting you, then that is a battery.

Now, as I have instructed you before malice is required in this charge, also. Malice is hatred, ill-will or hostility towards another. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Just like before malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must be - must exist in the mind of the Defendant just before and at the time of the act it is committed. Therefore, there must be a combination of the previous evil and the act for this charge as well.

Malice aforethought just like the charge for murder in this charge, malice aforethought may be express or inferred. These terms, as I stated before, do not mean different kinds of malice but merely the manner in which malice may be shown to have existed, that is either by direct evidence or by inference from the facts and circumstances which are proved.

As stated before express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished; for example, lying in wait. Malice may be inferred from conduct showing a total disregard for human

life.

Now, if facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction this inference would be simply an evidentiary fact to be considered by you along with other evidence in the case and you may give it the weight you think it deserves. A specific intent to kill is not an element of assault and battery with intent to kill, but there must be a general intent to commit serious bodily injury. Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the Defendant and other - excuse me, and other circumstances from which you may naturally and reasonably infer intent. Evidence of the character of the assault, the character of the instrument used, the manner in which it was used, the purpose to be accomplished and the resulting wounds or injuries may be considered in determining the intent with which the assault was committed. Intent may be inferred when it was - is demonstrated that the Defendant voluntarily and willfully commits an act, the natural tendency of which was to destroy another person's life.

Now, included within the offense of assault and battery with intent to kill is the lesser offense of assault, of assault and battery of a high and aggravated nature. Therefore, if you find that the State has not proven that the

Defendant is guilty of assault and battery with intent to kill you must then determine whether the State has proved that the Defendant is guilty of assault and battery of a high and aggravated nature. Assault and battery of a high and aggravated nature includes all of the elements of assault and battery with intent to kill except malice aforethought. In addition, the State must prove beyond a reasonable doubt an aggravating circumstance. Assault and battery of a high and aggravated nature is an unlawful act of violent injury to the person of another accompanied by circumstances of aggravation. Circumstances of aggravation include the use of a deadly weapon, the intent to commit a felony, the infliction of serious bodily injury, a great disparity between the ages or physical conditions of the parties, a difference in the genders of the parties, the taking of indecent liberties or familiarities with a female through the use of force, the purposeful infliction of shame and disgrace and the resistance of lawsuit authorities. These are only examples of circumstances of aggravation.

Now, the Defendant has raised the defense of self-defense. Self-defense is a complete defense and if it is established, you must find the Defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the Defendant's guilt after considering all of the evidence,

including the evidence of self-defense, then you must find the Defendant not guilty. On the other hand, if you have no reasonable doubt of the Defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the Defendant guilty.

The following elements are required to establish self-defense. First, the Defendant must be without fault in bringing on the difficulty. If the Defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the Defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of self-defense is that the Defendant was actually in imminent danger of death or serious bodily injury or that the Defendant actually believed he was in imminent danger of death or serious bodily injury. If the Defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the Defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief.

In deciding whether the Defendant actually was, or believed he was, in imminent danger of death or serious bodily

injury, you should consider all of the facts and circumstances surrounding the crime, including the physical condition and characteristics of the Defendant and the victim.

Now, the Defendant does not have to show that he was actually in danger. He does not have to wait until he is attacked to act in self-defense. It is enough if the Defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. The Defendant has the right to act on appearances even though the Defendant's beliefs may have been mistaken. It is for you to decide whether the Defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation. Evidence of prior difficulties between the Defendant and the victim may be considered in determining whether a threat existed, whether the Defendant had a reason to believe a threat existed and how serious that threat was.

The reputation of the victim as a violent person may be considered in deciding whether there was a need for force, whether the Defendant had reason to believe there was a need for force and whether deadly force was reasonably necessary. Prior instances, excuse me, prior instances of violence by the victim may be considered in deciding whether the Defendant actually believed he was in imminent danger of death or serious bodily injury and was actually in immediate danger or

imminent danger. Threats made by the victim may be considered in determining whether the Defendant actually was, or believed he was, in imminent danger.

The final element of self-defense is that the Defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the Defendant did in this particular instance. The Defendant has no duty to retreat if by doing so the danger of being killed or suffering serious bodily injury would increase. A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm. Therefore, in self-defense the Defendant has the right to use the force needed to avoid death or serious bodily harm. The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The Defendant has the right to use so much force as appeared to be necessary for complete self protection and which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

Now, there are three possible verdicts which you may find for each indictment in this case. There's no significance whatsoever in the order in which I state these verdicts to you. I simply must state one first, one second and one third.

On the charge of murder you may find one of these three

verdicts; we, the jury, find the Defendant guilty of murder or we, the jury, find the Defendant guilty of voluntary manslaughter or we, the jury, find the Defendant not guilty. On the charge of assault and battery with intent to kill you can find one of these there verdicts: we, the jury, find the Defendant guilty of assault and battery with intent to kill or we, the jury, find the Defendant guilty of assault and battery of a high and aggravated nature or we, the jury, find the Defendant not guilty.

Now, ladies and gentlemen, your verdict must be a unanimous one. Ms. Scott, as foreperson, when the jury agrees on a verdict you will have two verdict forms, one for the indictment for murder and one for the indictment for assault and battery with intent to kill. When the jury reaches it verdict you will sign your name under the appropriate verdict, date it and then knock on the door and let the bailiff know that the jury has reached a verdict.

Now, I'm going to excuse you back to the jury room at this time, but please do not begin your deliberations. I have to check with the attorneys to see if they have any challenges, additions or corrections to the charge of the law that I've given to you. If there are additions or corrections that need to be made I'll bring you back out and I'll make those to you. If there are none to be made then we will send all of the evidence with the verdict forms and the indictments

back to you with instructions by the bailiff that you can begin your deliberations. So, I'm going to excuse you back to the jury room right now but please do not begin your deliberations at present.

Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, any challenges, exceptions or additions to the charge by the State?

MR. HIXSON: No, Your Honor.

THE COURT: Any by the Defendant?

MR. HAZZARD: No exceptions, additions or deletions requested by the Defense.

THE COURT: All right, let's go ahead and make sure we get all the exhibits together. Here are the indictments. Here are the verdict forms.

(Exhibits reviewed by counsel for State and Defendant and approved.)

THE COURT: All right, we got everything?

MR. HIXSON: Yes, sir.

THE COURT: All right, here's the verdict form, the indictments, take the exhibits back there to them and bring out Ms. Grimes and Mr. Byrne, the alternates.

(Alternates enter courtroom.)

THE COURT: Mr. Byrne, Ms. Grimes, unfortunately you're like the person that listens to the campaign speech but then doesn't get to vote. As alternates in this case your services were needed in the event one of the sitting jurors became sick, ill or could not go forward in this case. The unfortunate part is that you have to sit through the whole trial, listen to all of the evidence, but then you don't get to deliberate on guilt or innocence. So, your services in this case would not be needed any longer. You're certainly at liberty to sit and wait and see what the outcome is, you're free to go if you wish to go, but you would not be allowed to deliberate further in this case. Do you understand?

BAILIFF: A juror has a question about somebody in the audience that he knows and he was asking about.

THE COURT: We'll get to that in just a minute; okay? All right, so, let me have you sit for just a second and then I'll bring you back up in just a minute; okay?

MR. BYRNE: In here?

THE COURT: Just have a seat right over here for a second.

Go tell them to write the question on a sheet of paper and bring it to me. Tell the foreman to write their question on a sheet of paper.

BAILIFF: It's just one juror.

THE COURT: Well, have him write it out and then bring

it to me.

MR. HIXSON: May we approach, Your Honor?

THE COURT: Yeah.

(Whereupon, a bench conference is held.)

THE COURT: It appears that one of the - that there is a question that they're bringing in. So, let's get Ms. Grimes and Mr. Byrne - I might be cutting you loose prematurely and that's what I've got to check on. Let's have them sit in this jury room over here while I deal with this question. We very well may not need you any further, but until I confirm that let me, let me double-check on this question; okay? So, I'm going to excuse you to this jury room over here until we deal with this question first.

(Alternates exit courtroom.)

THE COURT: All right, this is from Juror Number 111, Francis W. Roberts. It says, "After lunch when we came in I seen a co-worker in the courtroom. His last name is Mitchum, and one of the witness's last name was Mitchum. I do not know if they are related. I just wanted the Court to be aware." So, evidently when he came back after lunch he saw a co-worker that he may now have the impression was related to one of the witnesses. Do we need any questioning or are you all satisfied that he's not going to be influenced by that?

MR. HIXSON: I'm satisfied with that in that he didn't - there was no improper contact and we weren't - he wasn't -

there was no voir dire on the issue of, "Do you know anybody that's going to be in the audience." So, he addressed the question truthfully.

THE COURT: Right.

MR. HIXSON: You know, so, there's no apparent misleading or anything like that. I don't know which way it cuts.

THE COURT: I don't either. I mean he certainly didn't answer a question. As I understand this he's just saying that, "I see a co-worker. His last name is Mitchum and one of the witness's last name was Mitchum. I don't know if they're related but I just wanted the Court to know that."

MR. HAZZARD: From the Defense perspective it concerns me that it concerned this juror enough to bring it to the Court's attention and I think so that the record is completely clean I would suggest that it's appropriate to ask him, "Okay, does this fact or possibility of a fact effect your ability to fairly, you know, try the facts of the case?"

THE COURT: Well, I mean, we can do that or we can go ahead and seat one of the alternates because if he says yes we can seat the alternates. Whatever you want, whatever you want to do.

MR. HAZZARD: Well, the Defense would move to seat one of the alternates.

THE COURT: All right.

MR. HIXSON: I have no objection. I'm fine with whatever remedy the Court crafts.

THE COURT: All right, as I understand in a criminal case it has to be drawn by lot rather than in the order they were picked.

All right, I put Juror Number 54, Cheryl R. Grimes, on one sheet of paper, Juror Number 18, Alex D. Byrne, on the other paper. Who do we want to pick?

MR. HAZZARD: The clerk, the clerk.

THE COURT: Huh?

MR. HAZZARD: The clerk.

THE COURT: All right, Mr. Clerk, pick one.

All right, Juror Number 54, Cheryl R. Grimes, is the alternate.

All right, let's bring Francis Roberts, Juror Number 111, out; okay?

Yeah, they've got the evidence, go tell them that they need to stop deliberations and what I'll need to do is bring them back out.

(Juror Number 11, Francis Roberts, enters courtroom.)

THE COURT: All right, Mr. Roberts, because as I understand you raised a concern that there might be someone, that you had a co-worker out there that might be related to one of the witnesses?

MR. ROBERTS: Yes, sir.

THE COURT: All right, out of an abundance of caution I'm going to go ahead and excuse you from this trial and seat one of the alternates; okay? All right, thank you very much. You're free to go.

MR. ROBERTS: Thank you.

(Juror Number 111, Francis Roberts, exits courtroom.)

THE COURT: All right, let's - if you can go ahead and excuse him. Let's go ahead and bring the jury back in and let's bring the alternates in and let them be seated; okay? Bring both alternates in and bring the jury back in.

(Alternates enter courtroom.)

THE COURT: If you all want to just have a seat back up there in your alternate seats. Thank you.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, an issue has come up which has required us to excuse one of the jurors, and it's out of a sense of precaution and things of that nature; and so, we've had to seat one of our alternate jurors.

Ms. Grimes, you were selected. So, you will now be a part of the jury to participate in deliberations during this case; okay?

Now, I don't know whether you had begun deliberations. You certainly hadn't been back there very long to deliberate long if at all. Having said that you will need to start

deliberations all over from the beginning. As I said I don't know if you had begun deliberations. If you hadn't, that's good. If you had you must start over from the beginning with your deliberations with Ms. Grimes now participating in those deliberations.

Okay, all right, I'll excuse you back to the jury room and you can begin your deliberations at this time. Mr. Byrne, if you would just remain where you are while they're excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, Mr. Byrne, unfortunately you will not be able to participate in deliberations; and so, that will conclude your duties as a juror - as an alternate for this case. You are free to go if you want to go. If you want to stay until the jury reaches a verdict or if you want to wait and see how long it takes them it's up to you. You can do whatever you want to do. I do want to thank you, however, for being here. I want to thank you for serving as alternate juror, as an alternate juror and rest assured that you have fulfilled all of your duties as a juror. Even though you have not participated in deliberations, the fact that you were here and had to listen through the whole trial we appreciate your service in that regard; okay?

If you want to go, as I said, you're free to go. If you want to stay you can stay where you are there. We have an

alternate jury room where you can sit to get you something to drink, eat, use the restroom, whatever you wish to do; okay? All right, thank you very much.

Anything else?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing from the Defense.

THE COURT: All right, I'm going to stick Mr. Roberts's question, that'll be Court's Exhibit what?

REPORTER: 10.

THE COURT: 10, all right, and we'll stand in recess until we have a verdict.

(Whereupon, Court's Exhibit Number 10 [Note from Jury] appropriately marked.)

(Deliberations begin at 4:19 p.m.)

OFF THE RECORD

(On the record, question from jury at 5:06 p.m.)

(The following takes place outside the presence of the jury.)

THE COURT: All right, okay, I've gotten in a request from the jury. It simply says, "Al's testimony when they decided to walk to the Super Chic. We also want the brother's testimony, Tony's brother." As I understand Tony's brother that's Jamar Mitchum; is that correct?

MR. HIXSON: That's correct, Your Honor.

THE COURT: All right, I'll confirm it with the jury but it sounds like to me that they want to hear that portion of Al Ingram's testimony when he's testifying that they decided to walk to the Super Chic and they're also, it appears they're wanting Jamar Mitchum's testimony. So, I'm assuming his entire testimony.

MR. HAZZARD: The Defense position would be that if they wish to hear the testimony that it be played in its entirety for them.

THE COURT: All right, let me hear from you on that, just playing both testimonies of both witnesses in their entirety.

MR. HIXSON: My feeling is, I guess, is for judicial efficiency if they're able to focus on the issue in question and they can articulate that it's appropriate to play that part that satisfies that question if it's - especially if the testimony is over an hour plus long. Mr. Mitchum's testimony is not that long.

THE COURT: You all are going to make me do some research. I don't know, what is it when they want to hear a portion of the testimony? Do we have to play it in its entirety or ---

MR. HIXSON: My understanding it's not - the standard - the burden is in the discretion of the Court and if you feel you address the question as posed to you by the foreman of the

jury that that's proper.

THE COURT: All right, well, I'll ask them then if, if they're just looking for that portion of Mr. Ingram's testimony that deals with when they decided to walk to the Super Chic, and if it is then I'll just play them that portion. If they're hesitant as to how much or where to start or where to end then I guess we'll just have to do the whole thing; okay, and then let me find out exactly from them.

(Reporter and Court confer.)

MR. HAZZARD: One of the issues from the Defense perspective is our position would be that the Court may send the forelady an interrogatory asking for clarification because, for instance, his testimony regarding their decision to walk to the Super Chic is both on direct and on cross. So, a question can be made asking for clarification, "Is there a specific portion of testimony, direct or cross examination, that the jury wishes to have replayed or is the jury requesting that Mr. Ingram's testimony be replayed in its entirety," and then we can go based on what they respond.

THE COURT: Yeah, that might be ---

MR. HIXSON: Your Honor, I would just suggest that we ask for clarification on, "What exactly do you need" without referring to anything else, not to what part, just, "Could you clarify your question?"

THE COURT: Let me see.

I tell you what I'm going to do. I'm just going to call them in and I'm going to ask them and then I'll just tell them it'll take us a while to get it set up and I'll excuse them back to the jury room and then once we get it set up I'll bring them in and we can get started; okay? All right, let's go ahead and bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back. Ms. Scott, I understand the jury has made really two requests and I just need clarification on what you're requesting.

Number one you say, "Al's testimony when they decided to walk to the Super Chic." Is the jury requesting to hear a specific portion of Al Ingram's testimony, and if so, what specific portion?

FOREPERSON: Yes, sir.

THE COURT: All right, what specific portion?

FOREPERSON: The specific portion when they were talking about going to get a pack of cigarettes, that area.

THE COURT: Okay, and from then until the end of the testimony or when do you want - at what point in time? Just that portion when he's talking about going to ---

FOREPERSON: Just that portion to clarify who said what about going to get the cigarettes.

THE COURT: Okay.

FOREPERSON: Is that correct, you wanted?

THE COURT: All right, now, the second request, "We also want the brother's testimony, Tony's brother."

FOREPERSON: Tony's brother.

THE COURT: That would be Jamar Mitchum?

FOREPERSON: Jamar, right.

THE COURT: Do you want that entire testimony?

FOREPERSON: Entire testimony.

THE COURT: Okay, all right, I'm going to excuse you back to the jury room because it's going to take us a while for the court reporter to get everything set up so we can replay those testimonies for you.

FOREPERSON: Okay.

THE COURT: As soon as we get it set up we'll bring you back in and play it for you then; okay?

FOREPERSON: Thank you, sir.

THE COURT: All right, now, is - oh, okay. I just saw Ms. Grimes sitting back there in the alternate seat. You're allowed to sit with the other jurors now. I understand. Thank you.

FOREPERSON: It's her comfort zone.

THE COURT: Yeah.

(Whereupon, the following takes place outside the presence of the jury.)

(Court and counsel review testimony.)

THE COURT: Well, another problem I've got now that I just thought about since they left was there any cross examination raised on that issue, too? So, are they talking about just the direct testimony or the direct and the cross?

MR. HIXSON: I don't know, but I certainly the first part of it you can ask after playing the first if that satisfies their question or if they need to hear another segment.

THE COURT: All right, well, let's, let's start it where you've got now.

(Testimony reviewed by court and counsel.)

THE COURT: All right, let's go ahead and stop. The only thing I know, I think I know where we can start the testimony where they first start talking about where I told her to mark it earlier about walking to the Super Chic to get some cigarettes and then just leave it up to the forelady to say, "That's all we wanted to hear," and stop it and let them keep listening as long as they want to listen.

MR. HIXSON: Yes, Your Honor, that was going to be my suggestion is that you instruct them that once they're satisfied to indicate and you can shut it off at that point.

THE COURT: Just indicate to me that that's - that they've heard what they wanted to hear. That's the only way I know to handle it because they're kind of - I'm like you, they

said they only wanted to hear a specific part and it dealt with when they decided to walk to the Super Chic to get some cigarettes. So, we know where to start. I don't know how far into the testimony they're talking about. So, I think we'll just do it that way, handle it, let it - say, you know, "You let me know when you want to stop the testimony, that you've heard what you wanted to hear or what you were looking to - the testimony you were looking to hear again," and we'll stop it then and then we'll go - because they did say they wanted to hear Jamar Mitchum's testimony in its entirety.

(Reporter and Court confer.)

THE COURT: All right, anything before we bring the jury in?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Your Honor, no, except note the Defense position regarding the replaying of the testimony as previously stated.

THE COURT: All right, all right, I understand that you want it in its entirety. Since they said they only wanted a specific part, that dealing with when they decided to go get some cigarettes we know where to start. That's where I indicated earlier. I agree with you, Mr. Hazzard, it's open-ended as to how much they want to hear. So, I'm going to leave it up to them as to stop me when and if they want to

stop it. They may want to hear the whole part. I don't know, but we'll have to wait and see.

MR. HAZZARD: And again, obviously, my concern is that there's no specification as to whether they want to hear direct or cross examination or both with regard to that issue.

THE COURT: And that's why I'm going to wait and let them stop the testimony when they want, when they want to.

All right, let's go ahead and bring the jury back in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, they've come back in with some other questions. I'm going to have to send you back out to the jury room and I'll bring you back in in just a minute.

FOREPERSON: We just - I just wrote that real quick because they were all on the way out.

THE COURT: All right, well, let me excuse you back to the jury room right quick and we'll bring you back out in just a moment.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, as they came back in the bailiff brought me another note then, says, "Four descriptions of self-defense and voluntary manslaughter definitions." So, all I know is to charge them again on the law on self-defense and the law on voluntary manslaughter is all I know to do;

okay. Now, the question is do you want me to ---

MR. HAZZARD: Do you want to ask them which they want first ---

THE COURT: Do what?

MR. HAZZARD: Do you want to ask them which they want first as far as the descriptions or the tape or since they asked for that first we do that and then do the second?

THE COURT: Well, that's what I was going to say. I think the best thing would be for me to go ahead and charge them on the law that they've requested, then play the testimony and then excuse them. Don't you think?

MR. HAZZARD: All right.

MR. HIXSON: And of course, we just ask that you read the standard charge in the order that you read the charge to begin with.

THE COURT: Yeah, that's, that's what I'm going to do is charge them first on voluntary manslaughter, then charge them on self-defense and then let them listen to the testimony and then we'll excuse them back to the jury room. All right.

MR. HAZZARD: Do they have a copy of the charge with them?

THE COURT: No, it was one of the - I was going to give them a copy of the charge and then we had some changes there at the last minute. I didn't have a chance to print it out. So, I just struck through and didn't give it back to

them.

MR. HAZZARD: All right.

THE COURT: All right, let's go ahead and bring, bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, Ms. Scott, I understand that the jury would like to hear the charge on voluntary manslaughter again as well as the description of self-defense; is that correct?

FOREPERSON: Yes.

THE COURT: All right, what we've decided to do is I'm going to go ahead and give you those charges on the law and then we're going to play the testimony that you've requested; okay?

All right, as to voluntary manslaughter, to prove voluntary manslaughter the State must prove beyond a reasonable doubt that the Defendant took the life of another in the sudden heat of passion based on sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter.

Sudden heat of passion may, for a time, affect a person's self-control and temporarily disturb a person's reason. The sudden, excuse me, the sudden heat of passion must be the type

that would make an ordinary person unable to coolly reflect on his actions and would produce an uncontrollable impulse to do violence.

Sufficient legal provocation must be the type that would make a person of ordinary reason and caution become enraged and to lose control temporarily. The provocation needed for voluntary manslaughter must come from some act of or related to the victim.

Words alone, however vulgar or insulting, are not enough to be legal provocation. Where death is caused by the use of a deadly weapon, the words must be accompanied by some overt, threatening act which could have produced the heat of passion. The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter. If the heat of passion had cooled, or if there was enough time between the provocation, if any, and the killing of the passion of a reasonable person to cool, the killing would not be voluntary manslaughter. In deciding whether a reasonable person would have had enough time to cool off, you should consider all the circumstances surrounding the killing. You may consider the nature of the provocation, if any; the Defendant's mental and physical state; and the circumstances and relationship between the parties.

Now, as to the defense of self-defense, self-defense is a complete defense and if it is established, you must find the

Defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the Defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the Defendant not guilty. On the other hand, if you have no reasonable doubt of the Defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the Defendant guilty.

The following elements are required to establish self-defense. First, the Defendant must be without fault in bringing on the difficulty. If the Defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the Defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of self-defense is that the Defendant was actually in imminent danger of death or serious bodily injury or that the Defendant actually believed he was in imminent danger of death or serious bodily injury. If the Defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the Defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of

ordinary firmness and courage would have had the same belief.

In deciding whether the Defendant actually was, or believed he was, in imminent danger of death or serious bodily injury, you should consider all of the facts and circumstances surrounding the crime, including the physical condition and characteristics of the Defendant and the victim.

The Defendant does not have to show that he was actually in danger. He does not have to wait until he is attacked to act in self-defense. It is enough if the Defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. The Defendant has the right to act on appearances even though the Defendant's beliefs may have been mistaken. It is for you to decide whether the Defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation. Evidence of prior difficulties between the Defendant and the victim may be considered in deciding whether a threat existed, whether the Defendant had a reason to believe a threat existed and how serious that threat was.

The reputation of the victim as a violent person may be considered in deciding whether there was a need for force, whether the Defendant had reason to believe there was a need for force and whether deadly force was reasonably necessary. Prior instances of violence by the victim may be considered in

deciding whether the Defendant actually believed he was in imminent danger of death or serious bodily injury or was actually in imminent danger. Threats made by the victim may be considered in determining whether the Defendant actually was, or believed he was, in imminent danger.

The final element of self-defense is that the Defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the Defendant did in this particular instance. The Defendant has no duty to retreat if by doing so the danger of being killed or suffering serious bodily injury would increase. A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm. Therefore, in self-defense the Defendant has the right to use the force needed to avoid death or serious bodily harm. The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The Defendant has the right to use so much force as appeared to be necessary for complete self protection and which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

All right, now, first what we are going to do is play you that portion of Al Ingram's testimony that begins with when they decided to walk to the Super Chic. Now, I don't know how much of that testimony you want to hear. I do - I think we've

got it down to where you wanted it to start. However, I'm going to leave it up to you to let me know when you heard that portion or portions or amount that the jury wanted to hear. Then when you have reached that portion if you would just raise your hand and let me know we'll stop it then and then progress on to Jamar Mitchum's testimony. Okay, all right.

(Testimony of Al Ingram, page 201 line 17 through page 202 line 12 replayed.)

THE COURT: All right. Can you not hear it?

FOREPERSON: Yeah, it was a little muffled for them in the back.

THE COURT: All right, what we're going to have to do then is have the court reporter read back to you the testimony, okay. All right, and if you would just let us know when you want us to stop. Yeah, just start in that same - is that where you wanted us to start?

JUROR: Yeah.

FOREPERSON: That's, that's what was in question.

JUROR: Judge, can she go back like in the sentence before that?

THE COURT: Okay, we can go back as far as you all want to go back.

JUROR: To the beginning of his testimony.

THE COURT: Excuse me.

JUROR: To the beginning of his testimony.

THE COURT: Well, do you want to hear his testimony in its entirety?

JUROR: That's the beginning of it; right?

THE COURT: Okay, well.

FOREPERSON: That's not the beginning of his testimony.

THE COURT: No, that was not the beginning of his testimony. That was the first - excuse me. That was the first part of his testimony where they started talking about walking when they decided to go the Super Chic.

JUROR: Go back just a little.

JUROR: Just a little bit.

JUROR: When he's asking questions.

THE COURT: Wait a minute, all right, all right. Let me, let me do this. She's going to have to get it set up to where she can read the - you're going to read it? Well, I'm just wondering if we know - we need to send them back and let them tell us where do they want us to start, okay. So, let me excuse you all back to the jury room and let us know where you want the testimony, if you want to hear the testimony in its entirety or where you want it to start; okay?

All right, thank you.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, I sent them back to decide because they were starting to almost deliberate out here in

open court and I wanted them - there may be - I think Mr. Hazzard is right to a certain degree that when they started hearing the testimony there may have been more that others wanted to hear that others weren't concerned about hearing. So, I'm going to let them decide how much they want to hear and then we'll, we'll go there.

MR. HIXSON: Yes, sir.

THE COURT: All right, their first request on this sheet of paper I'll mark this as Court's Exhibit 11 and their second request is going to be Court's Exhibit 12.

(Court's Exhibit 11 and 12 [Questions from Jury] appropriately marked.)

MR. HIXSON: I think it may clarify it like you - I think Your Honor is exactly right I think they're starting to deliberate but it seemed as though those folks wanted a small amount but when this instruction - I think that we're hearing ---

THE COURT: Well, I ---

MR. HIXSON: --- instructed to us once we find that out.

THE COURT: Well, the things is is I agree with you. I think they wanted - with - at least the foreperson was of the impression that they just wanted a small amount and when she reached it she said that's it and she turned around to somebody in the back that said that's it and he's the one who

said, "Well, it's muffled. I couldn't hear it," and then you had two ladies down there that said, "No, we want to hear some more or we wanted him to back up a little bit more before that."

MR. HIXSON: I know the one lady said, "Can I hear the question leading into that," but I think we'll find out here in a second, hopefully.

THE COURT: Yeah, so, we'll find out in a minute. My question is is if they come back and they're wanting to hear more testimony than that little bit we just played back with it being a quarter till six now what do you - I guess my question is do we play them the testimony and then send them out and deliberate and keep plowing through it ---

MR. HIXSON: I think it'd be good if they got - answered their questions, gave them a little time, see if that sorted it out. If it takes too much then that might, that might be it either way what they heard. I don't know.

THE COURT: All right, all right, well, let's sit in recess until we find out from them. Don't go anywhere because I'm assuming they're going to come back in just a minute, but they might be in there deliberating now as to what they want to hear, so.

OFF THE RECORD

(On the record.)

(Whereupon, the following takes place outside the

presence of the jury.)

THE COURT: All right, they've come back and just said, "We're okay with the testimony being read from the point that was already played."

So, I guess we're going to have you just start reading it from that point, and then I'm just going to tell her to again let us know when they've heard what they wanted to hear and we'll stop then and then we'll go to the testimony of Jamar Mitchum.

(Reporter and Court confer.)

THE COURT: All right, I'm going to go ahead, let's go ahead and mark this as 13.

(Whereupon, Court's Exhibit Number 13 [Note from Jury] appropriately marked.)

THE COURT: Okay, let's go ahead and bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, I understand that you - the testimony can begin where we started the recording; is that correct?

FOREPERSON: Yes, Your Honor.

THE COURT: All right, I'm going to have Ms. Hurley read to you that testimony. There again, when we reach that portion where you've heard what you want to hear, however much

that might be, just let me know and we'll stop then; okay?

FOREPERSON: Uh-huh.

THE COURT: All right, Ms. Hurley.

(Testimony of Al Ingram read back to jury starting on page 201, line 17 and continuing through page 202, line 6, "building".

THE COURT: All right, is that sufficient?

FOREPERSON: Yes, Your Honor.

THE COURT: All right, all right, now what we're going to do is play you the testimony of Jamar Mitchum. If the recording of that testimony is muffled like Al Ingram's and you can't understand let us know and we'll read it as well, but we're going to try to play it for you like we did Al Ingram's testimony.

(Testimony of Jamar Mitchum played in open court.)

THE COURT: All right, all right, ladies and gentlemen, before I send you out let me see the attorneys for a second.

(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)

THE COURT: All right, Ms. Scott, I understand that the jury has another request where you say you would like, "a written copy of what the Judge read to us regarding voluntary manslaughter and self-defense"; is that correct?

FOREPERSON: Yes, Your Honor.

THE COURT: Okay, all right, I will give you a copy of my entire instructions. I can't give you some and not give you others, but I'll give you a copy of the instructions in written form in their entirety and during your deliberations you can refer to these instructions to decide your decision making. However you must consider the instructions as a whole and not follow certain portions and ignore other portions and then when you return after your deliberations I'll ask that you bring the written instructions back with you at that time; okay?

FOREPERSON: Thank you.

THE COURT: All right, it's going to take me just a minute or two to get those together for you. I'll get them together and I'll just send them back to the jury room then; okay? All right, I'll excuse you back to the jury room and let you resume your deliberations.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, let's mark this as Court's Exhibit 14.

(Whereupon, Court's Exhibit Number 14 [Question from Jury] appropriately marked.)

THE COURT: And I'm going to clean up the copy where we discussed in chambers that part that I originally had in there that I redacted. I'm going to go ahead where I just

struck through it with a pen on this, I've saved it on my computer and I'm just going to go redact it, print it out and then just give it to the jury in that way. Is that agreeable?

MR. HIXSON: Yes, sir.

MR. HAZZARD: No objection from the Defense.

THE COURT: All right, all right, and we'll stand in recess - now, it's getting to be about six o'clock. What I generally do and I'll, I'll follow you all's guidance, whatever you all want to do, but what I generally do is like to leave it up to the jury as to whether or not they want to deliberate a while and let us order them dinner or whether they would rather break and come back tomorrow. The way I usually pose it to them is if they want to deliberate and let us order them dinner it's going to take about 45 minutes for us to get dinner here. So, I don't know - I guess my question was here in about the next 30 minutes do you want me to bring the jury back in and ask them or can we just send a bailiff in and ask them, "Do you want us to order you dinner or do you want to break and then come back tomorrow," and if they say they want to break and come tomorrow I'll bring them back in, tell them that they have to stop deliberating, they can't resume until everybody comes back the next day. Ordinarily if they say, "We want to eat dinner," then I'll just tell the bailiff to go ahead and order them dinner.

MR. HIXSON: I would like to have them go a little

longer before that question is posed to them as oftentimes when it's posed to them right away they - if there's any - folks they kind of hold out till dinner and it's almost a waste of time.

THE COURT: Well, what time do you think?

MR. HIXSON: Maybe a half hour, if we haven't heard anything in a half hour then you pose the question and maybe excuse them because you don't know if this answered the question and may get it - get the job done here versus the hold out saying.

THE COURT: Well, the fact of the matter is is it's going to take about 45 minutes to an hour to get their food here. So, I don't want to wait and ask them at 7:30 and have them eating at 8:30 or quarter till nine.

MR. HIXSON: No question, I agree with that. I agree with that.

THE COURT: So, my question to you all is is do you want me to bring them back into the courtroom and pose the question or can I send a bailiff to ask them?

MR. HIXSON: I'm more than happy the bailiff myself.

MR. HAZZARD: The problem with having the bailiff ask is that it seems to me that this is a group that really likes to discuss things. I don't know if it would be a quick vote either way. If you ask them out here they may end up talking amongst themselves. If you ask the bailiff to ask them maybe

if you pose the question in the matter of, "Do you wish to continue deliberating or do you want us to order you dinner? If we order you dinner that will not arrive until sometime after 7 p.m.," and then see if - and then give them the option of stopping now which is as much as I hate to say it a good truncation point because then they can start fresh in the morning with the written instructions that the Court is going to provide them. So, either way is fine by me.

THE COURT: Okay, all right, well, let me think, let me think on that for a minute. I might just send a questionnaire back to them, just a generic questionnaire and we'll see. All right, let me go clean this up and I'll get it to them.

OFF THE RECORD

(On the record.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: Look at this and see if this agreeable to you to send back to them about whether to order dinner or let them go home. I was just going to ---

MR. HAZZARD: They have been provided with the redacted.

THE COURT: Yeah, I've already given these.

MR. HAZZARD: They've got that.

THE COURT: Yeah.

MR. HAZZARD: This is fine.

THE COURT: All right, that'll be good?

MR. HAZZARD: Yes, sir.

THE COURT: Do you all want a copy of the redacted thing?

MR. HAZZARD: No, sir, because I know what's redacted. Are we going to make, are we going to make a copy of it a Court's Exhibit?

THE COURT: Yeah, when they bring it back I'll put it a Court's Exhibit and put it in here. That'll be good.

MR. HAZZARD: Okay.

THE COURT: Now, is this ---

MR. HAZZARD: The Defense has no objection to the interrogatory.

THE COURT: All right, this deals with letting them decide whether they want to order dinner or not, if you would just hand this, knock on the jury room door, ask them, just tell them that we need them to answer that and give it back to us. Let me know what they decide.

OFF THE RECORD

(On the record.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: I'm going to bring them back in. I'm going to let them go about another 15 minutes. They want to go home for the evening. So, what I'm going to do is I'm

going to bring them back in, tell them to stop deliberations, that they can't start back and I'll get all that on the record when I come back but let's let them go about another 15 minutes, okay.

OFF THE RECORD

(On the record.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: I said I was going to let them go for about 15 minutes but I say let's go and bring them in and I'm just going to - my instructions - well, first so we get it on the record I sent a questionnaire back to the jury that said, "Please choose one of the options below, check one of the following options, one, the jury would prefer for the Court to order dinner for the jury and allow us continue deliberating. If this option is chosen it will take approximately 45 to 60 minutes for dinner to arrive, or two, the jury would prefer to stop deliberations, go home for the evening and return tomorrow to resume deliberations. If this option is chosen the jury must stop deliberations completely and not resume deliberations until instructed by the Court to resume deliberations." They chose to stop deliberations, go home for the evening and come back tomorrow. So, I'm going to bring them in, tell them that they have to stop deliberations completely, they cannot discuss the case with anyone, even

among themselves at this point in time and they cannot resume their deliberations until they're instructed to by the Court tomorrow morning and then I'll have them come back at 9:30. All right.

MR. HAZZARD: I would simply ask that the Court remind them to leave all exhibits in the jury room, including the instructions.

THE COURT: All right, yeah, we'll do that.

All right, let's go ahead and bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back. I sent a questionnaire back to you and I understand that the jury has decided that they wish to stop deliberations for the evening and go home and then resume tomorrow morning; is that correct?

FOREPERSON: Yes, Your Honor.

THE COURT: All right, all right, well, I am directing you at this point in time to stop your deliberations. Now, what that means is that you cannot discuss this case with anyone even among yourselves. You can no longer discuss it among yourselves from this point forward until the Court directs you tomorrow morning that you can resume your deliberations. So, do not discuss the case with anyone, with any family members, any friends or even among yourselves at

this point in time. I'll let you know when you can resume your deliberations.

Also, I caution you, please do not conduct any independent investigations. Don't listen to any news reports, don't read any newspaper accounts, don't go on the internet, don't try to find out anything about this case because your decision is to be based exclusively on the testimony and evidence presented during the trial of this case.

I'm going to ask that you be back in the jury tomorrow morning at 9:30, and soon thereafter, don't begin your deliberations when you return to the jury room. I'll bring you back into the courtroom and I'll tell you when you can resume your deliberations. All exhibits, jury instructions everything that the Court has given you must be left in the jury room at this time; okay?

I hope everybody has a good evening. I do want to thank you for your service. I thank you. I know it's not an easy job. I thank you for your intense deliberations, for your concerns in this case, and everybody is doing a fine job and I want to thank you for that and I hope everybody has a good evening, and we'll see you back at 9:30 tomorrow morning.

Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury. Jury exits courtroom at 6:54 p.m.)

THE COURT: All right, we'll be in recess until 9:30 tomorrow morning. I'm going to bring them back in, then tell them to resume their deliberations.

(Scheduling for pleas discussed.)

THE COURT: That sounds good. We'll see you tomorrow morning at 9:30.

OFF THE RECORD

(On the record, April 1, 2010.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, I understand that the jury has returned for State versus Leggette - well, let's get Mr. Leggette in here.

(Mr. Leggette enters courtroom.)

THE COURT: All right, anything from the State before we bring the jury in?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing from the Defense, Your Honor.

THE COURT: All right, let's go ahead and bring the jury in, please

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen, welcome back. I appreciate - I want to thank you again for

everybody being prompt and being on time. I want to thank you for that.

It is now time for you to resume your deliberations in the case of the State versus Dominic Alexander Leggette. So, I'm going to excuse you back to the jury room. We have the exhibits, the verdict forms as well as the charge on the law that I will allow to be taken back to the jury room and you can resume your deliberations at this time. When you reach a verdict if you would complete the verdict forms as I instructed during my closing charge, knock on the door and let the bailiff know that you have reached a verdict.

Now, we'll be taking - I'm going to be taking - doing some other court business while you are deliberating, but rest assured when you reach a verdict we will get you back into the courtroom as quickly as we can to publish that verdict; okay?

Thank you very much and you resume your deliberations at this time. Let's make sure we've got all of the exhibits, verdict forms, charge and indictments to go with them.

(Whereupon, the following takes place outside the presence of the jury. Deliberations resume at 9:37 a.m.)

THE COURT: All right, anything further from the State at this time in the case of the State versus Leggette?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing from the Defense, Your Honor.

THE COURT: All right, we'll stand in recess on that case until we have some information from the jury; okay?

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right.

OFF THE RECORD

(On the record, question from jury at 1:00 p.m.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, we got a request in from the jury, "We would like to hear Dominic's testimony in its entirety." So, they're wanting to hear the Defendant's testimony again. All I know to do is we can set it up and play it back for them. What is their situation - because their second request is lunch with a question mark. Do we know when it's coming? I thought it would have been here by now. Let me call right quick.

I propose let's just tell them that when lunch gets here we'll eat lunch. I wouldn't propose playing it back to them before lunch because it's 1:15 because then you'll be - by the time we get it set up it'll be 2:30 or after before they finish hearing it and that'll be a little late for them to eat lunch. So, okay, let's see about lunch because we ordered it about an hour and a half ago.

She's got the food right now. All right, I'm going to go ahead and bring the jury in and tell them that the food is on

its way. We're going to go ahead and feed them lunch, tell them to stop their or I'll let them continue - well, no, I'm going to tell them to stop deliberating until - since they've made this request or do we want to tell them they can go ahead and deliberate during lunch if they way to? I'll tell them to stop until after we do this request and then we'll start back; okay?

All right, let's go ahead and bring the jury back in.

MR. HAZZARD: Your Honor, once the jury comes in if we could approach I have a suggestion. I would make it now but I'm not sure how close the jury is to walking in. My thing is if the Court were to instruct them that everyone must be included in the deliberations over lunch then they can do so. My only concern is they might break off into little different groups and want to talk.

THE COURT: Well, that - yeah, my concern and I would definitely instruct them that, my concern was whether or not is there going to be any objection if they come back and say, "We've reached a decision," before they hear Dominic's testimony again.

MR. HIXSON: That's correct, that's the ---

MR. HAZZARD: Well, they have made a request, that's true. That's true.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back into the courtroom. I've really gotten one request and one question from you, the question being lunch with a question mark. I can answer that one easily. It's here.

The second is your request, "We would like to hear Dominic's testimony in its entirety." So, we're going to set that up and we're going to play it back for you.

Now, since lunch is here what I'm going to do is suggest that we wait until you get through eating before we listen to Dominic's testimony because rather than keeping you in here and having, having the food out there I'm going to go ahead and send you back to the jury room, let you each lunch.

Now, since you want to hear the Defendant's testimony again I'm going to ask that you stop your deliberations during lunch. Do not discuss the case even among yourselves or with anybody during your lunch break.

Enjoy your lunch. When you get through eating lunch just let the bailiff know that everybody is through eating lunch and that you're ready to listen to the Defendant's testimony and we'll bring you back into the courtroom then at that time and we'll play the Defendant's testimony but please do not deliberate at any - from this point forward until you're instructed to do so. All right, thank you very much. Hope everybody enjoys their lunch.

(Whereupon, the following takes place outside the

presence of the jury.)

THE COURT: All right, we would like to hear Dominic's testimony in its entirety we'll mark that as Court's Exhibit 16.

We'll stand in recess until they get through eating lunch. I don't know how long it's going to take them to eat, but if you all would please just stay, stay close by because I don't know if it'll take them 20 minutes, 30 minutes or an hour. I wish I could be more definite but I don't want to keep them back there in the jury room if they're ready to hear testimony, okay.

MR. HIXSON: Your Honor, if in fact if we come back - you know I'll be downstairs.

OFF THE RECORD

(On the record.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: Anything from the State before we bring the jury in?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: No, sir.

THE COURT: Let's go ahead and bring the jury in.

(Whereupon, the following takes place in the presence of the jury. Jury enters courtroom at 2:07 p.m.)

THE COURT: All right, ladies and gentlemen, welcome back. We've got everything set up now to play the testimony back for you. I think we've got it tapped in where you should be able to hear a little bit better than you did yesterday. If you have trouble just raise your hand and we'll make adjustments to make sure you can hear everything. Okay, all right, this is the testimony of the Defendant.

(Testimony of Dominic Leggette played in open court.)

THE COURT: All right, ladies and gentlemen, that concludes the testimony of Mr. Leggette. I'm going to excuse you back to the jury room. You can now resume your deliberations in this case. Thank you very much.

Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, we'll stand in recess.

MR. HIXSON: Thank you, Your Honor.

THE COURT: Thank you.

OFF THE RECORD

(On the record, note from jury at 4:25 p.m.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, gentlemen, as I told you I got a note from the jury that we'll put in as a Court's Exhibit,

says, "Your Honor, this jury is at an impasse. We feel it is a hung jury. Do we have any other recourse? Do you have any suggestions to help us get through this? I've approached this in a manner of facts, law of charges and have stepped through the process over and over," signed Carol Scott.

It's one of these they say they have a hung jury but then they say, "Do we have any other recourse? Do you have any suggestions?" So, based upon that I'm going to give them the Allen charge and send them back out and see if they can reach a verdict. Now, if they come in a second time then that would be the mistrial.

Anything before we bring the jury in from the State?

MR. HIXSON: Nothing from the State, Your Honor.

THE COURT: Any from the Defense?

MR. HAZZARD: Nothing from the Defense, Your Honor.

THE COURT: All right, let's bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back. I have received the note from the jury that says that you feel that you're in an impasse and that you're hung but that you wanted to know if there was any recourse or if I had any suggestions and to assist you in this matter.

What the law states and what the law requires is that we do have an additional charge that I can give to you which

basically says that you've stated that you're unable to agree on a verdict in this case and as I instructed you earlier your verdict must be a unanimous verdict.

Now, when a matter is in dispute it isn't always easy for even two people to agree, much less 12 people to agree on one thing. Twelve people make it a lot more difficult. In most cases absolute certainty cannot be reached or expected. However, you have a duty to make every reasonable effort to reach a unanimous verdict. In doing this you should consult with one another, express your own views and listen to the opinions of your fellow jurors. Tell each other how you feel and why you feel that way. Discuss your differences with open minds.

Now, although the verdict of the jury must be unanimous, every one of you has the right to your own opinion. The verdict you agree to must be your own verdict, the result of your own convictions and you should not give up your firmly held beliefs merely to be in agreement with your fellow jurors. The majority should consider the minority's position and the minority should consider the majority's position. You should carefully consider and respect the opinions of each other and reevaluate your position for reasonableness, correctness and impartiality. You must lay aside all outside matters and reexamine the questions before you based on the law and evidence in this case.

Now, if you do not agree on a verdict in this case I must declare a mistrial. In this case it does not mean that anybody wins. It just means that at some future time I will try this case with some other jury sitting where you now sit. The same participants will come and the same lawyers will ask basically the same questions and get basically the same answers and we will go through the whole process again.

Now, you were selected in the same manner and from the same source as any future jury will be and there's no reason for me to suppose that the case will ever be submitted to 12 more intelligent, impartial, conscientious and competent jurors than you are or that a more or clearer evidence will be produced for one side or the other. Therefore, I'm going to ask that you return to the jury room, continue your deliberations a little bit more, discuss it more and I don't want to imply that you haven't discussed it because I know that you have. There has been some time that's passed and I know that you have been deliberating, but please do not get discouraged because of the length of time. As I said, it's hard for two people to agree on a disputed issue, much less get 12 people to unanimously agree on an issue. Having said that I'm going to send you back to the jury room and let you deliberate a while longer; okay? Thank you very much.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, this will be Court's Exhibit 17.

(Whereupon, Court's Exhibit Number 17 [Note from jury] appropriately marked.)

THE COURT: All right, anything from the State before we recess?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing from the Defense.

THE COURT: All right, we will stand in recess.

OFF THE RECORD

(On the record. Verdict reached at 7:07 p.m.)

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right, I understand the jury has reached a verdict. Anything from the State before we bring the jury in?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: Nothing from the Defense.

THE COURT: All right, those of you who are in the courtroom I want to set some ground rules. Now, this jury has had a very difficult time and has gone above and beyond what is usually required of jurors in reaching this decision. When the decision, when they come into the courtroom and when

the decision is published there is to be absolutely no comment, no show of emotion, no display in any manner whatsoever. If you are in favor of the verdict keep it to yourself. If you are opposed to the verdict keep it to yourself. I say this to caution you that if there is any show of emotion, any response to the verdict in any way, shape or form then the offender I'm going to direct that officers bring them forward, you will be held in contempt of court and you will be sanctioned, whether it be jail time, a fine or both or community service, whatever the Court deems appropriate depending on the reaction. Now, I'm not saying that to intimidate anybody. I am saying it to give you the opportunity now if you do not feel that you can control your emotions, regardless of the outcome, regardless of the verdict then I want to give you the opportunity at this point in time to go ahead and excuse yourself from the courtroom.

All right, since nobody has stood to leave, so I will assume that everybody knows the game rules we're playing by.

All right, let's go ahead and bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, welcome back. Ms. Scott, I understand the jury has reached a verdict; is that correct?

FOREPERSON: Yes, we have, Your Honor.

THE COURT: And have you completed both verdict forms?
MS. SCOTT: Yes, I have.
THE COURT: All right, if you'd please give them to the bailiff.
(Complies with request and Court reviews.)
THE COURT: All right, I'll ask the clerk if he would please publish the verdict.
THE CLERK: State of South Carolina versus Dominic Alexander Leggette, case number 2008-GS-22-944, as to the charge of murder we, the jury, find the Defendant guilty of voluntary manslaughter.
State of South Carolina versus Dominic Leggette, Alexander Leggette, case number 2008-GS-22-945, we, the jury, find the Defendant guilty of assault and battery of a high and aggravated nature.
THE COURT: All right, Ms. Scott, is that the verdicts of the jury?
FOREPERSON: Yes, it is, Your Honor.
THE COURT: And was it unanimous?
FOREPERSON: Yes, it was, Your Honor.
THE COURT: All right, any polling of the jury by the Defense?
MR. HAZZARD: Yes, Your Honor.
THE COURT: All right.
All right, I can do that.

All right, when I call your name I'm going to ask you to stand and I will ask you two questions. The first question will be is this your verdict and the second question will be is this still your verdict. So, when I call your name if you would please stand and respond to the questions as they ask them.

Juror Number 122, Wanda J. Smith.

Ms. Smith, is this your verdict?

MS. SMITH: Yes, sir.

THE COURT: Is it still your verdict?

MS. SMITH: Yes, sir.

THE COURT: Thank you.

Juror Number 43, Jimmy D. Fowler.

Mr. Fowler, is this your verdict?

MR. FOWLER: Yes, sir.

THE COURT: Is it still your verdict?

MR. FOWLER: Yes, sir.

THE COURT: Thank you.

Juror Number 95, Victoria Nooft.

Is this your verdict?

MS. NOOFT: Yes, sir.

THE COURT: Is it still your verdict?

MS. NOOFT: Yes, sir.

THE COURT: Thank you.

Juror Number 119, Carol J. Scott.

Is this your verdict?

MS. SCOTT: Yes, it is, Your Honor.

THE COURT: Is it still your verdict?

MS. SCOTT: Yes, it is, Your Honor.

THE COURT: Thank you.

Juror Number 106, Linda Reed.

Is this your verdict?

MS. REED: Yes, it is, Your Honor.

THE COURT: Is it still your verdict?

MS. REED: Yes, it is, Your Honor.

THE COURT: Thank you.

Juror Number 141, Linda G. Washington.

Is this your verdict?

MS. WASHINGTON: Yes, sir.

THE COURT: Is it still your verdict?

MS. WASHINGTON: Yes, sir.

THE COURT: Thank you.

Juror Number 2, Samuel Alston, Sr.

Is this your verdict?

MR. ALSTON: Yes, sir.

THE COURT: Is it still your verdict?

MR. ALSTON: Yes, sir.

THE COURT: Thank you.

Juror Number 55, Joyce R. Grover.

Is this your verdict?

MS. GROVER: Yes, Your Honor.
THE COURT: Is it still your verdict?
MS. GROVER: Yes, Your Honor.
THE COURT: Thank you.
Juror Number 132, Gerald K. Thomas.
Is this your verdict?
MR. THOMAS: Yes, Your Honor.
THE COURT: Is it still your verdict?
MR. THOMAS: Yes, Your Honor.
THE COURT: Thank you.
Juror Number 23, Jasper D. Coleman.
Is this your verdict?
MR. COLEMAN: Yes, sir.
THE COURT: Is it still your verdict?
MR. COLEMAN: Yes, sir.
THE COURT: Thank you.
Juror Number 126, Barbara J. Sullivan.
Is this your verdict?
MS. SULLIVAN: Yes, Your Honor.
THE COURT: Is it still your verdict?
MS. SULLIVAN: Yes, sir.
THE COURT: Thank you.
Juror Number 54, Cheryl R. Grimes.
Is this your verdict?
MS. GRIMES: Yes, Your Honor.

THE COURT: Is it still your verdict?

MS. GRIMES: Yes, Your Honor.

THE COURT: All right, thank you very much.

All right, ladies and gentlemen, that concludes your services as jurors for this case and for the week and I sincerely want to thank you for your services. The County of Georgetown thanks you. I know the Defense thanks you, the Prosecution, everybody involved in this case thanks you because that is how this system works. Without you we could have not reached a decision. I know it hasn't been easy. It's been long hours, but you've done it diligently. The fact that it's taken so long shows that you did deliberate in this case, you do consider the case seriously and you performed your duty as jurors and I want to thank you for that.

Now, I have told you before that you could not speak with anyone about the case. Well, now, you're at liberty to, if you wish to. It is up to you. If you want to talk about the case you can talk about the case. If you don't want to you don't have to and you can speak with whomever you want to speak with about it, but you don't have to if you do not want to.

You're free to go at this time and again I want to thank you for your service. Thank you very much. Everybody else please remain seated while the jury is excused.

(Whereupon, the following takes place outside the

presence of the jury.)

THE COURT: All right, any post-trial motions at this point in time?

MR. HAZZARD: Your Honor, at this time the Defense makes a motion for a new trial. The position of the Defense is that the verdict is inconsistent, the two verdicts are inconsistent with regard to the evidence presented and would show passion, caprice or prejudice on the part of the jury, and as a result the Defense respectfully moves this Court for a new trial, asks the Court to set aside the verdict and grant a new trial.

THE COURT: All right, your motion is noted. I'm going to deny it.

Anything else?

MR. HAZZARD: No other motions at this time, Your Honor.

THE COURT: All right.

Any reason as to why the Court cannot go ahead and impose sentence at this time?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from the Defense?

MR. HAZZARD: No, sir, Your Honor.

THE COURT: All right.

MR. HIXSON: May I approach, Your Honor?

THE COURT: Yes.

(Whereupon, a bench conference was held.)

THE COURT: All right, Mr. Hazzard, anything in

mitigation?

MR. HAZZARD: Yes, sir, Your Honor, the Court obviously has heard all of the evidence in this case. The Court has heard the testimony of Dominic Leggette, and as a result of that testimony has a good idea of his life story already. So, I will not belabor the Court with a retelling of that. With regard to Dominic's situation I would point out to the Court that he initially was charged with murder and assault and battery with intent to kill. A jury that constitutes the collective conscience of this community has seen fit to return verdicts that are less than that charged by the State, specifically of interest is the fact that they chose to come back with assault and battery of a high and aggravated nature as opposed to assault and battery with intent to kill in a situation where obviously a deadly weapon is involved. Taking that in light of also the fact that this jury has deliberated long and hard for over 11 hours of actual deliberation I would submit to the Court that that indicates that the conscience of this community is somewhat divided as to the nature of the crime that Dominic has been convicted of and that I think the Court is very aware that the jury did not come to these decisions lightly.

With regard to the conviction for voluntary manslaughter, obviously the Court has a range, I believe, from two years to 30 years in sentencing. We would ask that the Court impose a

sentence not to exceed ten years, taking into account also the assault and battery of a high and aggravated nature, which carries that same possible penalty, Your Honor.

The Court is also aware that this young man now at the age of 21 has virtually no prior record whatsoever, nothing to speak of, definitely no offense involving violence, although he did have one criminal domestic violence charge sometime ago.

We would indicate to the Court that again the Court has been in the best position and has heard the witnesses for the Defense and has also heard the witnesses' character and demeanor of the witnesses for the State, Your Honor, those allegedly involved in this and we would submit that this is not your garden variety voluntary manslaughter where someone went off and did something incredibly reckless. The Court is aware of the prior difficulties in this case between the parties and we would submit that while the jury did not deem it to be a clear case of self-defense, thus allowing him to have a verdict of not guilty, that the 11 plus hours of deliberation indicate that this jury thinks that it's something that falls far, far short of your standard voluntary manslaughter case and I would submit that had they had any other option other than murder and voluntary manslaughter that they very well may have come with a verdict of even less than that, and in light of that, Your Honor, knowing the Court has

a significant range again I believe in voluntary manslaughter from two years to 30 years, we would respectfully request that this Court give Dominic a sentence not to exceed ten years on these offenses.

THE COURT: All right, all right, Mr. Leggette, anything you would like to say or does anybody want to speak on your behalf?

Who am I hearing from first?

MR. HAZZARD: Well, the Court asked Dominic if he wanted to speak.

THE COURT: All right, let me hear from him then.

MR. LEGGETTE: First of all I thank Your Honor for bringing me here today. I thank, I thank everybody for bearing with me throughout this trial for I know it has been hard and long and I know that everyone is tiresome, everyone, including myself and Your Honor. I thank everyone for being here.

I'm very sorry for the things that I'm here for today for I made a bad decision that night on defending myself to the caliber that I truly feel that I had to defend myself. Whatsoever, I was truly scared to the point that I had to defend myself.

Like Mr. Ron said earlier I was - it was to a point where I, I really thought that I might would have been the one - my people would have been burying me. That's why I feel like a

lot of the - a lot of things that, that, that was - that needed to be said during the trial was not being - had not been able to say, Your Honor, like repeated jumpings. There were repeated getting beat up. I'm not a, I'm not a, I'm not a guy that - I grew up hard. I grew up basically - I basically raised myself because me and my father had difficulties at one time. So, I was put out of my house. So, I basically raised myself, and as a result of that I do not like police officers. I do not. So, I do not come in contact with them all the time.

One of the State's witnesses, Mr. Verney Cumbee is my cousin and I do not speak to him because I do not like police officers. I'm very sorry that I should have knowed it and set that aside at that time and put all these things, put all these things on record so that they would have showed the Court what was going on these years. For this was going on since I was in middle school up to the time that I - that the incident happened.

Your Honor, on the night of the 11th when everything happened in the Arbor Place Apartments Mr. Ingram showed me, he was reaching in the back seat for a pistol. He actually gave me the impression that this had already escalated. I knew from that point on if that guy would have seen me by myself he would try to kill me and later on that night I didn't even know Mr. Ingram was going to come behind me that

night on August the 13th, but he came behind me and when he reached in his waistband my world lit up. I got scared and I, I fired two shots and in doing so I missed and killed Mr. Antonio Tisdale which I really am sorry for. I apologize to the Mitchum family right now for I went to school with their son, Jamar Mitchum. We went to school together. He was like a friend to me. Antonio was not a person that I really had too much problems with. Yes, we had a couple of fights but he never really pulled a gun on me. Yes, we, yes, this is - Andrews is small. Everyone knows, everyone knows. You can - if you leave here today and you ask someone from Andrews how long has these things been going on, they'll tell you for years. They'll tell you since 2005. It started off as a Christmas fight, as a Christmas fight and it escalated and it kept escalating and kept escalating. Instead of us listening, instead of us young people listening to the older folks that said to leave it alone we see each other day, every other day, every three days we fight, something that we should have left alone. We took that negligence and that's why I'm here right now. I took my negligence to a point that - where I, I, I was hurt. I hurt myself. I hurt myself by hurting others, by defending myself. Basically today what I really learned that it's not right for me to defend myself, Your Honor. I felt like - that's the way I feel. I feel like I, I have no right in the State of South Carolina to actually defend myself. If

I get scared enough to the point where I think that somebody is going to kill me I do not have the right to defend myself and that's, that's why I feel like the State of South Carolina has showed the people of South Carolina today in my case because my case is going on defending yourself, a person got repeated jumpings then letting things go by, letting bygones be bygones to a point where he sees a man has a gun.

I bought a gun illegally but I did not carry that gun up there that night to shoot Mr. Tisdale and Mr. Ingram. I went up there to take a phone charger to my ex - to my current girlfriend at the time and it escalated to them following me and it escalated to me shooting at them.

THE COURT: All right, sir.

MR. LEGGETTE: Something that I'm very sorry that I did. All I can do right now is say that I apologize to everyone and I apologize to Mr. - to the Mitchum family, the Ingram family and my family because everyone goes through something. We don't - we as young folks these days we don't understand the things that we put our families through that what we go through. We, we do stupid things. We go out there. People sell drugs. They buy guns, shoot at each other. They join gangs. They drink, beat each other up, wreck cars. All these things we affect our family. We affect our loved ones. These are things that we need to take into consideration, things that I have now took in consideration and I, I found the Lord

while I was incarcerated. He showed me many things and I just thank him for everything even though I haven't got - I didn't get the verdict I was looking for today everything will work out for me. He'll work it out to the best for me.

THE COURT: All right, sir. Thank you.

MR. HAZZARD: His father is here, Your Honor.

THE COURT: All right, sir.

Your name, sir?

MR. LEGGETTE, JR.: George Cleveland Leggette, Jr.

THE COURT: All right, Mr. Leggette.

MR. LEGGETTE, JR.: First of all I'd like to say to the Mitchum family that I'm sorry for what happened because these kids knew each other, but it's a lot farther than what's going on now. Just because this right here is not going to stop it and I'm being honest and sincere. These kids need to listen to their parents just like he did. He wouldn't listen but when he got in trouble he wanted me to understand where he was coming from, which I did, but I told him to start with, "Don't follow yourself out there into trouble."

Now, he's going to pay for his consequences, but I hope everybody else will find it in their heart to forgive him like he - like I forgive him because what's going on now is not going to stop. I promise you that.

THE COURT: All right, sir, thank you.

Anything else?

MR. HAZZARD: Nothing further on behalf of the Defendant, Your Honor.

THE COURT: All right, anybody from the victims wish to speak?

MR. HIXSON: Yes, Your Honor, brief comments and then I believe the father of Mr. Tisdale would like to address the Court.

THE COURT: All right, if he - anybody that wants to address the Court can address the Court.

MR. HIXSON: Your Honor, as it relates to the Defendant's prior criminal record, in 2006 there's a public disorderly conduct, purchasing beer or wine by a minor, drinking in public, another criminal mischief type offense. In 2007 he was convicted of criminal domestic violence, and then 2008 arrested for the charges pending before today, and Your Honor, just briefly would like to remind the Court that it was Mr. Leggette that escalated this situation. No weapon had been involved in any of this prior to the incident in question. He is the one that escalated it. There - could understand why there might be a situation with some - a beef with Al Ingram but the person we're here talking about is Billy Tisdale is the one that had a life taken from him, not Mr. Ingram, and there was not a scintilla of testimony there was a problem with that young man. That's the true victim in the case and that's who should be sentenced for. Mr. Ingram

[sic] will get one to 10 years on the ABHAN, even a 10 year sentence we're looking at about five years for the beef between Mr. Ingram and that may be about right. Mr. Tisdale was 19 years and for that fact we'd ask for a minimum of 19 years for every year of Mr. Tisdale's life up to the 30 years, Your Honor, that Your Honor may impose on that.

I believe that Mr. Tisdale would like to address the Court - Mr. Mitchum, excuse me.

THE COURT: All right, sir.

MR. MITCHUM: Michael Mitchum.

THE COURT: All right, sir.

I'm sorry, your name again?

MR. MITCHUM: Michael Mitchum.

THE COURT: All right, Mr. Mitchum.

MR. MITCHUM: I hear a lot of stuff about Andrews, you know. I wasn't born in Andrews and I hate it when my mother and father moved me here from Brooklyn, New York, and I always said when I get out of high school I'm going to go back to Brooklyn, but when I go back to Brooklyn I see these things going on. I say it's not a place for me to raise my family. I grew up in Andrews. We fight. We might be friends the next day or get back together, never no guns. Well, I raised my sons to avoid trouble. My wife every night they leave out the house she would tell them, "Jamar, be careful, don't get in trouble." She would tell Antonio, which we call Tony, "Tony,

be careful, don't get in no trouble." Neither one of those guys, boys right there, I got four of them, they can go anywhere in Andrews by theirself. They had no problem with nobody. They wouldn't get jumped or nothing like that, and something happening here today and I wanted to hear it for the longest, it was like rumors that the Leggette family wanted to come and talk to me and my wife. We was waiting on that and open arms because that meant a lot to me. We knew each other. It's a small community and there's no bad blood towards my family, towards the Leggette family. All I just wanted that little - they could have come talk to me because me and George used to talk, you know. We did a lot of stuff together. We throwed horseshoes together, I mean, and everybody know everybody, but what I'm saying here today you got a group of guys just like that night when they told them, "I'm not going to fight you tonight," if it take one in that group to say they ain't going to do nothing the rest of them will back off. It wouldn't be no problem, but if they don't think it's going to be a problem. So, all the young kids that I'm saying and I want it to get back out in Andrews because if you can't think for yourself, if you can it won't be a lot of trouble because there can be seven of you. If one of them say, "Man, I'm not going to do that. I'm not going to say. I'm not going to do that," and an old guy told me one time, he said, "Yeah, you young. You're growing up, you're growing up," but if you

think about something for seven times before you do it eventually you won't do it." You've got to think about things before you just go ahead and do stuff, and I forgive Dominic, although him and my son never had a beef. They never had problems, but he's dead. He's gone, and it's hard, you know. It's real hard because we really love him, and we felt like we did the right thing by raising him and what gets me he got a three year old that comes to my house right now who we have to hide his pictures because when he see those pictures he don't want to - he don't want to give them, he just, he just want to hold it and that hurts. Thank you.

THE COURT: Thank you.

All right, Mr. Leggette.

MR. LEGGETTE: Yes, sir.

THE COURT: I'm ready to impose the sentence. Although the jury did deliberate a long time they have reached a verdict in this case convicting you of voluntary manslaughter and of assault and battery of a high and a aggravated nature. Now, both of these carry a wide range of possible sentences. However, I often look at these cases and look at the possible sentences and say when did the legislature intend for a minimum sentence, when the legislature intend for a maximum sentence and when did the legislature intend for something in between, and the biggest problem that I have with your case is the fact that with your

prior record by federal law you were prohibited from owning a firearm. In spite of that you went and you purchased one illegally and then you carried it down there that night.

Having said that, the sentence of the Court for assault and battery of a high and aggravated nature, the sentence of the Court is that you be confined to the State Department of Corrections for ten years. On the charge of voluntary manslaughter the sentence of the Court is that you be confined to the Department of Corrections for 30 years. I'm going to impose the maximum sentence. Thank you very much.

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right.

(Adjourned.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State versus Dominic Alexander Leggette, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on March 29-31, 2010, and April 1, 2010.

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

Grace L. Hurley, CVR-CM
Official Reporter

August 8, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMINIC LEGGETTE,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUES ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT 5

CONCLUSION 12

CERTIFICATE OF COUNSEL 13

TABLE OF AUTHORITIES

Cases

In the Interest of Tracy B., 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010) 10

State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978) 9, 10

State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997) 9

State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010) 11

State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006) 9

State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998) 5, 9, 10

Statutes

S.C. Code Ann. Section 16-3-10 (2003) 10